

31 October 2014

Department of Planning and Environment
Att: Acting Director, Local Plans, Codes and Development Guides
GPO Box 39
SYDNEY NSW 2001

Dear Sir or Madam

SEPP 65 Review and Apartment Design Guide submission – Maitland City Council

Thank you for the opportunity to provide comment on the Department's review of SEPP65 and the accompanying Apartment Design Guide. SEPP 65 and the Residential Flat Design Code have made a positive contribution to higher density living in New South Wales.

The review of the SEPP and the Apartment Guide is welcomed. Of particular note is the change of format that links performance criteria with acceptable solutions and provides opportunities for innovation through alternative solutions. This approach has been applied successfully in other States and also in the Building Code of Australia. It has precedence and appears to work well.

The following observations and detailed comments are made with reference to these established examples. This submission should not be viewed as a criticism of this approach.

Performance criteria and acceptable solutions

To be effective, the *performance criteria – acceptable solution* format relies on clearly expressed performance criteria and tightly-focussed, preferably quantified, development provisions. The Apartment Design Guide as it is

currently drafted does not consistently achieve this. Many of the performance solutions contain several objectives. For example:

“Building types and layouts respond to the streetscape and the site while optimising solar access within the development” 3B-1

There are also many examples where the acceptable solution has no relationship with the performance criteria. The purpose of performance criteria is to provide a strong basis to evaluate alternative means to achieve the desired outcome where an acceptable solution is not met. For example:

“Performance criteria

3D-4 Public open space, where provided, responds to the existing pattern and uses of the neighbourhood”

Acceptable solution

A range of uses are provided for people of all ages”

There are also many examples where the acceptable solution is written as a performance criteria or a list of acceptable solutions is prefaced by an additional performance criteria. For example:

“Performance criteria

4N-3 Apartment layout can accommodate a variety of household activities and occupant needs.

Acceptable solution

(7) Apartment layouts are resilient over time and have dimensions that facilitate a variety of furniture arrangements and removal, design solutions may include:

- spaces for a range”

Plain English

We acknowledge that it is difficult to write a technical document such as the Apartment Design Guide without jargon. However, where it is not possible to substitute a technical word for a ‘plain-English’ alternative, a footnote or reference to a diagram on the same page would improve understanding.

Qualitative words

Words like 'adequate', 'appropriate', 'suitable' are used frequently throughout the guide. These should be replaced wherever possible by quantitative values, particularly when they are development provisions.

For example:

"4W-1(1) adequately sized storage areas for rubbish bins are located discreetly away from the front of the development or in the basement car park."

Use of images – diagrams – illustrations

Images, diagrams and illustrations in the document are well used. They greatly assist in interpretation of controls and provide examples of good outcomes. However, there are several examples where images do not contribute to the immediate context. These are confusing and could be revisited in further revisions.

The images contribute significantly to the length of the document (currently 176 pages) and to the file size (18.6MB). The final version of the guide should consider reducing the number of these images, revisiting the format or externalise the non-essential images in a supplementary 'best practice' guide.

Cross-references / hyperlinks

The guide should take advantage of document publishing improvements and technologies. At a minimum, hyperlinks and cross references to other parts of the document and external references should be provided. In addition, tool-tips, multi-media and other interactive material could be incorporated in electronic versions of the guide.

Consistency in language

There are many provisions in the document that refer to 'solar access', 'daylight', 'natural light', 'sun access'. A single term should be used consistently throughout the document.

Detailed comments

The following table lists suggestions on specific items in the guide that could be corrected or improved.

| Page | Reference | Comment |
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| 11 | Alternative solution explanation | The explanation, purpose and inclusion of stated, alternative solutions should be revisited. If the Department believes that an alternative solution is acceptable, then it should be incorporated in the controls. The term alternative solution should be reserved for that proposed by the proponent as an alternative solution to the acceptable solution. |
| 15 | Matrix table | The value of the matrix table is questionable. It is unclear how it is to be used and how it contributes to the application of the Guide. The value of items such as this should be weighed up against the physical and electronic size of the document. |
| 33 | Item 6 | The Standard LEP does not allow secondary height provisions. A clause ¹ does allow for exceptions to development standards (such as building height). However, the justification required to support a variation does not extend to aesthetic outcomes or building function. |
| 34 | FSR | How valuable is the FSR control in achieving a sound building design outcome? Does it provide any greater certainty over the combination of controls on heights, setbacks, building depths, articulation zones, building separation? FSR's can inflate yield expectations and often poorly reflect actual development potential when other constraints are applied to the site. |
| 49 | 3A-1 | The performance criteria should omit the reference to the site analysis. That is, "Design decisions are based on opportunities and constraints of the site conditions |

¹ Extract from Clause 4.6 Exceptions to development standards ([Maitland Local Environmental Plan 2011](#))

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Director-General has been obtained.

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| | | and their relationship to the surrounding context.” |
| 51 | Figure 3B.3 | The space occupied by this figure could be better used to demonstrate the acceptable solutions. |
| 51 | 3B-1 | There appears to be two criteria in this performance criterion. |
| 51 | 3B-2 | Items 1, 2 do not relate to the performance criteria. |
| | | Item 3 “to neighbouring properties” could be reworded “to that property”. |
| 52 | 3C | <p>Here are a couple of minor amendments that may be considered:</p> <ul style="list-style-type: none"> • Planting and fencing do not create an active domain. People create active domains. Good urban design can promote activity. • Long, high (,) blank walls ... • ...and impact on the (perceptions) of safety ... • ...changes in level, services(,) locations... |
| 53 | 3C-1 | Item 2. “...surveillance and improve visual privacy for ground level dwellings” are performance criteria and should be omitted from the acceptable solution. |
| | | Item 4. This solution would benefit from a minimum opening area i.e. 25%. |
| | | “The height of solid fences or walls is limited to 1.0m” – should be its own item. |
| | | Item 5 should be quantitative. |
| | | Item 6. “Opportunities for casual interaction between residents and the public domain is provided for...” is a performance criterion. |
| | | Item 7. The language could be simplified to improve clarity. |
| 55 | 3C-2 | Item 2 could benefit from a list. |
| | | Item 3 contains a performance criterion and an acceptable solution. |
| | | Item 4 “...or out of view” of ? |
| | | Item 5 would benefit from the simplification of language. |
| | | Item 7, dot point 1 is not relevant to performance criterion. |
| | | Item 8, omit comma. |
| 57 | 3D-1 | Item 2 – ‘recognisable’ would benefit from clarification and quantification. |

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| | | Item 4 – ‘principal useable portion’ would benefit from clarification and quantification. |
| | | Item 5 – ‘equitable access’ would benefit from clarification. |
| | 3D-2 | Item 1, dot point 4 – common rooms are not open space. |
| | 3D-3 | “Safety of communal open space is maximised” could be simplified to “Communal open space is safe” |
| | 3D-3 | Item 1 would benefit from simplification and punctuation. |
| | | Item 3 – “safe, well lit” may be omitted as “safe” is the performance criteria, and “well lit” is required under item 2. |
| | 3D-4 | Item 2 “...and the wider street grid” could be reviewed. If it is still relevant, its relationship to the performance criterion should be clarified. |
| | | Item 4 – It is unclear how this is relevant to the performance criterion? It is also: “A range of uses are (is)..” |
| | 3E | Table 1 – “7% consolidated” – would benefit from further explanation. |
| | 3E-1 | “Deep soil zones are <u>suitable</u> ”? |
| | | Item 2 – “Deep soil zones are located to retain existing significant trees” is a performance criterion. |
| | | Item 3 and 4 – How do these items interact with the requirements in Table 1? Are area and minimum dimensions the requirements for DSZ or soil volume? |
| 62 | 3F, Para 1 | This paragraph could be revisited. It is unclear how visual amenity achieves the following: “In higher density developments it also assists to increase overall amenity.” |
| 63 | 3F-1 | Item 1, dot point 3 – ‘appropriate’ should be quantified. |
| | | Item 2 – The statement: “Unimpeded space is provided in front of windows and balconies to ensure visual privacy is achieved”, could be revisited or removed. |
| | | “Separation distances between buildings on the same site” should be a separate control. |
| | | Item 3 is confusing. A table may be more appropriate |

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| | | to represent the controls. |
| | | Item 5 is unclear. |
| 65 | 3F-2 | Item1, dot point 2 is not relevant to the performance criteria. |
| 67 | 3G-1 | Item 2 "... and subdivision pattern" could be clarified or removed. |
| | | Item 4 could benefit from a diagram or a clearer explanation. |
| | 3G-2 | Is "equitable" correct when referring to access? |
| | | Item 4, omit quotation marks around way finding. Is "large development" defined? |
| | | Item 5 – omit "to manage access". |
| 67 | 3G-3 | The performance criteria and acceptable solution 1 are the same. |
| | | Item 2 would benefit from a list. |
| 69 | 3H | Figure 3H.3. The caption could be simplified. |
| | 3H-1 | Two performance criteria are stated. |
| | | Item 1 "Car park access is integrated with the building's overall façade..." is another performance criterion. |
| | | Item 1, dot point 3. This should be separated into two acceptable solutions. |
| | | Item 3 – "minimising ramp length, excavation and impacts on the building form and layout" is a performance criterion. |
| | | Item 7 - "Adequate" should be quantified or the solution should refer to an external standard. |
| | | Item 8 – "Minimum" should be defined. |
| | | Item 11 is not relevant to performance criteria. |
| 69 | 3H-2 | Item 1 contains two controls. |
| | | Item 3 is the same as item 4, dot point 1. |
| | | Item 4 could be written more clearly. For example: "Pedestrian and vehicle access is separated by: <ul style="list-style-type: none"> • Changes in surface materials ... |
| | | Figure 3H.5 "...and comfort" is irrelevant. |
| 70 | 3J | Para 3 – "Reduced requirements (can) promote ..." |
| | | "Where less car parking is provided, councils are encouraged to limit on street resident parking for these new residents." This provision is difficult to |

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| | | enforce and cannot be demonstrated by an applicant applying for a residential flat building. |
| | | Figure 3J.1 – It is unclear how is the photo at the bottom is relevant to 'Bicycle and car parking'. |
| | | Table 2 – There seems little point to externally reference the RMS guideline. |
| | 3J-1 | Item 1 - Omit "where applicable" |
| | | Item 2 – This provision could be rewritten to clarify where the quantified control applies. |
| | | Item 3 – car share spaces should be located so that they are also available to the public also. Car clubs have certain membership thresholds that are rarely achieved in a single complex. |
| 71 | 3J-2 | Item 1 – quantify "sufficient". |
| | | Item 2 – It is unclear why bicycle parking has to be easily accessible from both common areas and the public domain? |
| | | Item 3 – This provision could be revisited and "where desirable" be removed. |
| | 3J-3 | Item 4 – "... and circulation areas have good lighting, <u>colour</u> , line marking..." |
| 72 | 3J-4 | Item 2, last dot point – "...to reduce increased surface temperatures..." is a performance criterion. |
| 73 | 3J-5 | Item 2. How does this relate to performance criteria? |
| | 3J-6 | Item 1 – The performance criterion refers to "enclosed", item 1 to "exposed" |
| | | Item 2 could be separated into 3 solutions. |
| | | Item 2, dot point 2 - remove quotation marks. SOHO should be defined. |
| | | Item 3 - Quantify or define "Positive street address" |
| 76 | 4A | The paragraph that starts: "The number of bedrooms ..." is incorrect and surplus. |
| | 4A-1 | Item 1 – 'Appropriate' could be defined by a needs analysis or some other quantitative research. |
| | 4A-2 | Define 'suitable'. |
| 78 | 4B | Clarify "at-grade". Controls 3J-4 refer to "on-grade". |
| | | Para 2 – "...as they [ground floor apartments] are generally more accessible" appears to conflict with 3C-1(2), 4B-1 and figure 4B.1. |

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| | | Alternative solution – it is not clear why this is an alternative solution. |
| | 4B-1 | Item 2 – It is unclear how the façade of the building maximises street activity. |
| | 4B-2 | Item 1 – Spelling correction – ‘casual’. There are 2 performance criteria. |
| 81 | 4C-1 | Item 3, dot point 1 – this provision would be benefit from review and clarification. |
| | | Item 4 – remove ‘datum’. |
| | 4C-2 | Item 2 does not appear to relate to the performance criterion. |
| 82 | 4D | Suggest replacement of ‘tool’ with ‘clause’. |
| | | The clause to vary a development provision is not as straight forward as this section of the guide implies. |
| | 4D-1 | It is unclear how the design solutions achieve ‘roof design relates to the street’. |
| 85 | 4E | Table 3 – “Tree planting (density) in deep soil zones” Spelling error “Great(er) than 1500m ² ” |
| | 4E-1 | Item 1 - “Landscaping design is environmentally efficient ...” is a performance criterion. |
| | | Item 4 – Is there a more technical way to express this provision? |
| 87 | 4F | Figure 4F.2 – Grammatical error. “Planting on structures are (is) .”. |
| | 4F-3 | The performance criteria does not relate to the acceptable solutions. |
| | | Item 2 listed items do not relate to performance criteria. For example: “Soil volume is appropriate for plant growth, considerations include: <ul style="list-style-type: none"> • Tree anchorage is encouraged.” |
| 88 | 4G | Para 1 – “..is an international design philosophy..” appear to be surplus, non-contributory information. |
| | | Para 3 – This paragraph would benefit from additional punctuation. |
| | | If it is considered necessary to use the term “silver level” then it would benefit from further explanation includes an understanding its origin. |
| | 4G-2 | Item 1 – should refer to the Australian Standard where a Council policy does not exist. |

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| | | Item 2, dot points 2 and 5 – it is unsure what solar access and decoupling of parking has to do with adaptable housing? |
| | 4G-3 | Item 1, dot point 4. It is considered that “which are separate but on the same title” could be removed from the provision. If required, further explanation could be provided as a foot note. They are redefined: <ul style="list-style-type: none"> • on page 168 as “dual key apartments (able to be separated into two individual apartments)”, • on page 173 as “apartment with a common internal corridor and lockable doors to sections of the apartment so that it is possible to separate into 2 independent units” |
| 91 | 4H | Figure 4H.4, “interesting dialogue” is jargon and could be replaced. |
| | | Figure 4H.6, It is unclear how adaptive re-use “create a clear separation between old and new”. |
| | 4H-1 | Dot point 1, “new elements align with the existing building” would benefit from greater explanation. |
| | | Dot point 2, is the separation required, physical separation? |
| | | Dot point 3, it is unclear what is meant by signage and its role in exposing significant fabric. |
| 92 | 4J | The definition of ‘mixed use’ in the LEP is: “a building or place comprising 2 or more different land uses”. This is different than the definition in the draft guide. |
| | | “A vertical mix of uses is more likely to increase activity...” should be qualified. |
| 93 | 4J-1 | Remove or define ‘appropriate’ in performance criteria. |
| | | Item 2, last dot point – why are live/work units preferred over commercial development in mixed use areas? |
| 93 | 4J-2 | There are two unrelated, performance criteria written here. It is unclear what “Residential floors are integrated within the development” means? |
| | | Item 1, dot point 3 – It is unclear how “separated or (and) secured” achieves criteria: “Residential circulation areas are clearly defined.”? |
| | | An acceptable solution that requires an assessment |

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| | | against the principles of 'Crime Prevention Through Environmental Design' may be better than 'safe pedestrian routes are provided' and 'avoiding concealment opportunities'. |
| | | Item 2 – it is unclear how this acceptable solution relates to the performance criteria. |
| 94 | 4K | The sentence: "Awnings coupled with building entries provide a public address, thereby contributing to the identity of a development" would benefit from review. |
| | | Para 2. This paragraph would benefit from additional punctuation. |
| | 4K-1 | Further definition of "Awnings are well located..." would be welcomed. |
| | | Item 2, dot point 2 "...with an existing pattern" of what? |
| | | Item 2, dot point 3 – does not appear to be required. |
| | | Item 2, last dot point – why are awnings retractable in this situation? If it is a high pedestrian traffic environment, it would seem appropriate to establish a pattern of awning provision. |
| | | Item 5 – "...integrated and (or) concealed..." |
| | | Item 6 – does not relate to performance criteria. |
| 96 | 4L | The introduction to 4L would benefit from revision. It is not necessary to state: "Sunlight is direct radiation from the sun. Daylight consists of sunlight and diffuse light from the sky." |
| | 4L-2 | This control is duplicated. |
| 101 | 4M-1 | Item 3 "Corridor widths and/or ceiling heights are greater than the <u>minimum</u> requirements..." A definition of the minimum requirement would be beneficial. |
| | 4M-2 | The acceptable solutions should be reviewed to establish if they contribute to the performance criterion. |
| 103 | 4N-2 | Items 3 or 5 may conflict. The main noise source is typically in front of the building (from roads and open space). Buildings and living spaces are oriented to take advantage of environmental conditions and promote surveillance. This appears contrary to item 3. |
| 105 | 4N-3 | Item 7 – is a performance criterion. |

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| 106 | 4O | Ceiling height is directly linked to achieving sufficient..." |
| | 4O-1 | 'sufficient' should be quantified if possible. |
| | 4O-2 | Item 2 – this provision would benefit from revision. |
| | | Item 3 – this is 2 provisions. |
| | 4O-3 | "Are greater than the minimum.." can be defined as 3.3m. |
| 108 | 4P | Would benefit from punctuation. |
| 109 | 4P-1 | 'Appropriately' should be defined. |
| | | Item 2. Are these 2 provisions? |
| | 4P-2 | 'Appropriately' should be defined. |
| 115 | 4Q | 'sufficient volumes' should be defined. |
| | 4Q-1 | Item 2 – 'appropriate depths' should be defined. |
| | 4Q-2 | Item 3 – would benefit from a diagram. |
| | 4Q-3 | Items 1 and 2 – why the difference between these two provisions? Item 1, we require it: item 2 we require it and require that is demonstrated by a consultant. |
| | | Item 7 – these provisions are duplicated elsewhere. |
| 119 | 4S-1 | Item 2 – conflicts with other provisions. |
| | 4S-2 | Item 1 – duplicated elsewhere. |
| 121 | 4T-1 | Item1, dot point 1 – contains two acceptable solutions. |
| | | Last dot point – this does not appear to relate to the performance criteria. |
| | 4T-2 | The performance criteria could be simplified to: "Noise transmission is mitigated by noise shielding or attenuation, construction and the choice of materials." |
| 122 | 4U | Para 1 would benefit from a review. |
| | | We question the benefit of duplicating and providing guidance on BASIX in this document. |
| | | Figure 4U.1 – spelling error '...level or (of) daylight...' |
| 123 | 4U-1 | Item 1, repeated elsewhere. |
| | 4U-3 | Repeated elsewhere. |
| 126 | 4W | Figure 4W.3 relates to the Figure 4W.2 |
| 127 | 4W-1 | Item 1 - 'adequately' should be quantified if possible. |

Council is supportive of good design as advocated by the SEPP and the Apartment Guide. However, regard should be given to the relative cost and practicality of implementation of some of the acceptable solutions. For example: the retractable awnings.

Unfortunately the nature of submissions such as these is that they generally focus on the negative aspects of the document. However, we wish to re-iterate that there is much to celebrate in this document and its new format. The inclusion of flexible parking rates around public transport nodes and the inclusion of car clubs reflect the evolving nature of living in our cities.

If you wish to discuss any item in this submission please contact Rob Corken on robc@maitland.nsw.gov.au or on 02 4934 9700.

Yours faithfully

Bernie Mortomore
Executive Manager Planning, Environment and Lifestyle