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Dear Sir/Madam,

### **Submission on the Review of SEPP 65 and the Draft Apartment Design Guide**

This submission has been prepared on behalf of the Australand Residential NSW Division in response to the proposed amendments to SEPP 65 and the Draft Apartment Design Guide (ADG) to replace the Residential Flat Design Code (RFDC). As an experienced developer of medium to high density residential apartments within the Sydney Region, Australand has a comprehensive knowledge of apartment design, market requirements, residential amenity considerations and the practical and non-practical components of the current Code.

We recognise the significant improvements in apartment design within NSW since the inception of SEPP 65 and the RFDC but also note that the current Residential Flat Design Code does not provide for sufficient flexibility to achieve the best design outcomes recognising individual site characteristics, opportunities and constraints.

Australand supports the general direction for change outlined in SEPP 65 (Amendment No 3) and the accompanying new Apartment Design Code. However we are concerned that the significant increase in assessment scope from 25 'Rules of Thumb' in the current RFDC to 84 'Performance Criteria' in the Draft ADG will add a substantial compliance burden to both Developers and Councils. Many of the Performance Criteria are a duplication of other legislation such as BASIX and BCA, while many other Performance Criteria, if applied, will increase costs and reduce our ability to deliver affordable apartments.

In particular we welcome greater certainty in relation to the design parameters of apartment size, car parking area which will improve housing affordability and provide a consistent approach to key elements of apartment design across the state. We do however have some concerns with the drafting of the wording of Clause 30 of the SEPP which we respectfully request the Department improve to provide greater clarity regarding what the minimum ceiling heights, apartment sizes and car parking rates are. Clause 30 refers to requirements in Parts 3 and 4 of the Apartment



Design Guide but each relevant section of the ADG contains numerous acceptable solutions and tables relating to each of these items.

### **Greater Certainty and Flexibility to Achieve Design Innovation**

We welcome the proposed more consistent approach for implementation of key minimum development parameters for items such as dwelling size across all local government areas within the State which will not only make a significant change to affordability but also tackle the current problem we face with different Councils setting different controls to their counterparts.

We support the intent of the Apartment Design Guidelines to be more flexible however there is a significant increase in items covered, with the risk that in practice the 84 performance criteria will become an onerous check box compliance list. It remains unclear whether one acceptable solution is sufficient to meet each criterion, or whether satisfaction of some or all solutions is required.

We support the introduction of Clause 6A into the SEPP which specifies that development control plans cannot be inconsistent with the Apartment Design Guide in relation to some key design matters including visual privacy, solar and daylight access, common circulation and spaces, apartment layout, balconies and private open space, natural ventilation and storage.

We would suggest the Department revisits the "How to Use this Guide" part of the ADG, particularly the section titled 'achieving the performance criteria'. One of the failings with the RFDC is that the rules of thumb which were also intended to be a guideline are typically assessed as though they were statutory provisions.

Comments on some of the key provisions of the draft Apartment Design Guide are provided below for consideration by the Department. Furthermore, we have drafted some suggested changes to the wording of key clauses of the ADG for your consideration (refer to Appendix A).

#### **1. Part 1 – Identifying the Context**

Overall we feel that this section of the draft ADG is out of touch with the types of apartment buildings and the context in which they are developed. For example shoptop apartments occur not only in established retail and commercial areas with traditional main streets with rear lane access but increasingly in residential areas to provide additional amenity by way of shops and services. Further, tower apartments are no longer limited to central business districts, major centres and renewal areas and are developed on sites with good access to transport, shops and services which are not necessarily located in existing centres. If apartment types are to be included in this section of the ADG it is suggested that this section be updated to more realistically reflect the locations and contexts within which type is typically developed. We have some concerns with this section overall and question whether it needs to be included in the ADG as it focuses on broader strategic planning issues relevant to land uses beyond residential

apartments. Further, the proposed wording of some parts of this section particularly in terms of scale and desired future character potentially create the same problems as the application of the existing SEPP 65 and RFDC which gives weight to development being consistent with the scale of existing buildings surrounding a site and existing character of a street. As the Department would be aware a significant proportion of residential apartment development occurs on brownfield sites rather than greenfield sites and accordingly often the size and scale of apartments will differ significantly from the 1-2 storey dwelling houses that surround them. As identified in the revised SEPP 65 design principles on exhibition, the Department is proposing to shift the focus in relation to matters of context and character from being consistent with neighbouring development to ensuring new design includes features that are compatible with neighbouring development albeit recognising the differences. It is often possible to be compatible with the character of an area without being consistent with it. It is suggested that this part of the ADG is outdated.

The desired future character statements for areas subject to change as outlined in DCPs often do not reflect the development outcomes for sites envisaged by the LEP. There are however numerous references to consistency with desired future character through the new ADG which could continue to cause problems. Perhaps the Department could consider this matter during its final review of the draft ADG to recognize compatibility rather than consistency when land uses, heights and scales differ.

## 2. Part 2 – Developing the Controls

The how to use this guide section of ADG on page 10 outlines that part 2 provides tools to support the preparation of local development controls. This statement should be reiterated on page 29 of the ADG by perhaps adding to the title **“For Councils to Consider in Preparing Local Development Control Plans”**. This would clearly distinguish this section as a strategic planning as opposed to a development assessment control section as per its clear intention on page 10 of the guide. . It may be better to remove this section from the Guidelines, and issue as a separate ‘education’ booklet to Councils. Furthermore, the building envelope section is outdated with respect to current practice. FSR and height controls in the standard LEP template generally set the desired density and scale of development. Building envelopes are typically only developed as part of Concept Plan or Stage 1 development applications. Where such envelopes do form part of an application they are generally informed by an indicative design scheme which addresses the key matters of residential amenity and scale. The requirement for a building envelope to be at least 25 to 30% greater than the achievable floor space to allow development to contribute to building design and articulation is redundant as good articulation can be achieved not only through setbacks but also through façade design incorporating various finishes and use of design features such as slots.

Building envelopes included in stage 1 development applications typically also include balconies which is inconsistent with what the ADG provides for. For these reasons this provision in the RFDC is rarely used or implemented. We suggest that it be removed. The same issues are



prevalent in the height and floor space ratio sections 2C and 2D and we question the need for these sections in the ADG which are more strategic planning matters to be addressed in LEPs.

### **3. Part 3 – Siting the Development**

We suggest that the role of this section be reinforced by including the description from page 10 also on page 45 at the commencement to this section.

As part of our review we noticed some internal inconsistencies within the document. For instance we agree that acceptable solution 2 under 3F2 which requires balconies and private terraces to be located in front of living rooms to increase internal privacy is a good design outcome however an unfortunate outcome of need to comply with the solar access provisions of the ADG to the living room as well as to the balcony typically prevents a balcony being located to the side of the living room rather than the front.

**Car Parking** – We often experience DCPs with minimum parking requirements that are excessive and impact upon housing affordability.

Comment: We request that the wording of Clause 30 of the SEPP be modified to provide greater clarity in relation to exactly what car parking requirements Cl 30(c), which are presumably the rates in Table 2 of Part 3J of the ADG. While we welcome the addition of parking rates within the SEPP we would like to see a more equal application of minimum rates across all forms of public transport. Table 2 only relates to sites located within 400m or 800m of a railway station or light rail stop which fails to consider the significant role bus transport plays in Sydney particularly many popular inner ring suburbs such as Rozelle, Neutral Bay, Willoughby and Botany. We'd like to suggest that sites located within 400m of a metro bus stop within the Sydney Metropolitan Area also be able to rely on the RMS rates as a minimum. Alternatively, we have found for most development that the following rates are generally acceptable from both a market demand perspective and in relation to appropriately managing car parking and traffic impacts:

- Studio and 1 bedroom apartments –minimum nil to maximum 1 space (typically applied at 0.5 spaces per apartment)
- 2 bedroom apartment – minimum 1 space to maximum 2 spaces
- 3 bedroom apartment – minimum 1.5 to maximum 2 spaces

### **4. Part 4 – Designing the Building**

This part of the ADG contains a significant quantum of guidelines which we fear may place more limitations on apartment design throughout the assessment process and a far more onerous compliance regime than the current RDFC. It is therefore very important that the flexible approach to achieving the performance criteria be reiterated again at the commencement of this part. Further specific comments on fundamental sections of this part of the ADG are discussed below.



In addition many of the Performance Criteria, especially building and room depth controls, and ceiling height to room depth ratio guidelines, combine to drive very shallow depth, wide frontage apartments which will reduce the yield of site and increase construction costs severely affecting feasibility of development.

**Apartment Size** – We are increasingly faced with Council DCP requirements for large apartment sizes which significantly stifle affordability and do not meet the demands of the market. The current clause in SEPP 65 relates to the sizes in the table in the Residential Flat Design Code rather than the Rules of Thumb due to the SEPP wording which reference minimum internal and external areas.

Comment: While we understand that the intention of Clause 30 of draft SEPP (Amendment 3) as it relates to apartment size is to set the minimum apartment sizes referred to in Table 6 as standards upon which a consent authority cannot refuse an application, the wording in the draft SEPP is a little ambiguous and perhaps open to interpretation because the apartment layout of the ADG (Section 4N) contains more than just apartment sizes in Table 6.

Part 4N of the ADG also contains other provisions such as ceiling to depth sliding scale, indicative layouts which include dimensions, and requirements such as all kitchens in corner apartments having an external openable window/door. On such a critical issue as apartment size we request that the wording of the SEPP be revisited and perhaps make specific reference to Table 6 in the Part 4 of the ADG or alternatively include the minimum sizes within the SEPP which is not dissimilar to the format of other SEPPs.

Figure 4N.3 and Performance Criteria 4N-2.1 limits the room depth achievable with a 2.7m ceiling 6.75m. This is a significant and onerous change which will severely impact the yield of sites (so increasing the cost per apartment of land) and construction costs. This will flow through to a major reduction in affordability.

**Private Open Space and Balconies-** the newly added balcony sizes are too large to be used as a minimum. We suggest retaining the current controls in RFDG of a simple minimum depth of 2m for primary balconies.

**Natural Ventilation-** The building depth control is too low to achieve viable development. We suggest a better building depth guideline would be 20m between external walls, or 25m to balcony edges.

We have found the requirement for a minimum of 60% of apartments to be cross-ventilated difficult to achieve in practice, especially in high rise apartments where it is not viable to have multiple cores. This control drives undesirable and costly measures such as narrow building slots to achieve compliance. We believe 50% is a more appropriate minimum.



**Solar Access** – Compliance with the solar access provisions of the Residential Flat Design Code is driving sub-optimum design outcomes as it tends to be given higher status in the assessment of applications than numerous other criteria that also contribute to residential amenity.

Comment: The ADG does not propose any substantial changes to the solar access provisions of the RFDC however it includes some additional provisions that would appear to make compliance with the current 70% even more difficult to achieve. We strongly believe in advocating a more holistic approach to measuring residential amenity where solar access is not the highest weighted item overall. We therefore propose that the target be reduced to 60% to allow more innovation in design to occur and in particular to allow apartments to have balconies located directly in front of their living areas. Compliance with the solar access provisions would also be more accessible if the time period was extended from 8am to 4pm which would provide greater amenity for people to enjoy sunlight who are typically at work or school between the hours of 9am and 3pm and further to require compliance to be either to the living room **or** the balcony, rather than to both.

**Universal Design** – We support the promotion and implementation of Universal Design principles in apartment buildings, and understand Livable Housing Australia's objectives to have Silver Level design standards incorporated into the BCA by 2020. Australand are currently contributing to the development of Silver Level standards in partnership with industry and LHA. As these controls are currently being developed, when introduced Australia-wide through the BCA they are likely to conflict with the controls that are built into this edition of the ADG. We suggest that the ADG promotes the incorporation of the principles rather than repetition of the standards.

**Energy Efficiency** – Energy efficiency is managed successfully through the BASIX platform. We suggest that repetition of the controls will become problematic, and that deletion of this section will not have an adverse impact on amenity as BASIX will always prevail.

**Water Management** – Due to the increasingly complex nature of development on infill sites in particular, and with the requirement to adhere to Council specific policy on water management that is usually very site specific, we suggest that to overlay additional restrictions on the hydraulic performance of each site will be detrimental to project viability. Water management is too site specific for universal controls.

## **Conclusion**

The review and updates to SEPP 65 and the Apartment Design Guide are generally positive in the intention to encouraging a more flexible approach to achieving good design..

However the increase in the number of assessment criteria, along with several new criteria added to the the standards carried over from the current RFDC will adversely affect affordability of new residential developments, undermining the positive changes to regulation of apartment sizes and car parking rates.



NSW needs to retain its position in facilitating high quality apartment design while targeting housing that is more affordable. Furthermore, the proposed changes to the SEPP and the new design guide will hopefully lead to a change in culture from a prescriptive approach to assessment of residential apartment buildings to a more performance based approach which encourages innovation and a site by site design response.

We thank you for the opportunity to review and comment on the draft changes to SEPP 65 and we look forward to working with the revised guidelines to achieve better design outcomes in the future.

Yours faithfully

Nigel Edgar  
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**Australand Residential NSW**

