

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

11th November 2014

Email: via the Department's submissions weblink at:
http://planspolicies.planning.nsw.gov.au/index.pl?action=view_job&job_id=6692

Dear Sir/Madam,

**RE: Draft Amendment No 3 State Environmental Planning Policy No 65 - Design
Quality of Residential Flat Development and
Draft Apartment Design Code – Ku-ring-gai Council submission**

This submission prepared by Ku-ring-gai Council is intended to provide a positive response to proposed changes to SEPP 65 and the new Draft Apartment Design Guide (ADG).

It is organised into three parts:

- 1.0 Executive Summary
- 2.0 Overview - an expansion of key issues with suggested solutions, and areas that are supported
- 3.0 Appendices – Detailed clause by clause comments on the Draft Apartment Design Guide

1.0 EXECUTIVE SUMMARY

Ku-ring-gai Council supports the Department's extensive review of these policy documents as the RFDC/SEPP 65 have played a significant role in guiding improvement to apartment design. Any improvements to the policy that will promote healthier, more positive urban environments that deliver higher quality residential apartment development accessible to all market levels within NSW are supported.

Council is concerned that the new revised policy could effectively remove all development controls from apartment development as a result of the following:

- 1. There are no measureable, enforceable, and verifiable performance benchmarks as *development standards* contained within the SEPP or ADG;
- 2. The wording of Clause 6A potentially captures *all* develop controls not just the eight key areas identified in Clause 6A;
- 3. Alternative Solutions effectively negate Performance Criteria by providing a subjective parallel path that will enable poor design to be justified;
- 4. As a one-size-fits-all document, there are no mechanisms as *development standards* that recognise differences in character, demography, topography and specific local pressures (such as inadequate infrastructure and employment opportunities) between local government areas (LGAs).

All the issues that will be detailed in this submission is the combined effect of Items 1 and 2 in particular that can be applied in such a way as to effectively remove all development controls from apartment development¹.

¹ Although height and floor space ratio may remain within councils' LEPs they are separately open to Section 4.6 submissions.

Ku-ring-gai is of the firm opinion that this is not the intent of the SEPP 65 review and, as such, can be quite simply remedied.

Ku-ring-gai acknowledges the significant resources the Department has committed to undertake this review and the desire to ensure those efforts are effective in delivering more affordable housing *and* high quality apartment design.

As will be reinforced throughout this submission, the following amendments are required to ensure the policy is effective and consistent with the requirements of the Planning Bill 2013 and recommendations of the ICAC:

- a) Establish definitive numeric performance benchmarks for each of the eight key areas listed in Clause 6A (consistent with the approach in SEPP - Affordable Rental Housing; SEPP - Housing for Seniors or People with a Disability. The Building Code of Australia is a comprehensive *performance-based* code);
- b) Locate these enforceable, objective, measurable, and verifiable performance benchmarks within the body of SEPP 65 as statutory requirements;
- c) Amend wording within Clause 6A that ensures development controls outside the eight specific key areas are not captured and negated;
- d) Once enforceable, objective, measurable, and verifiable performance benchmarks are in place as *development standards*, the ADG can assume its role guiding flexible ways of achieving a measurable outcome with the added benefit of educating all stakeholders about quality design considerations.

Please do not hesitate to contact the author if any clarification is required.

Yours sincerely,

Corrie Swanepoel
Manager Development Assessment Services

2.0 OVERVIEW OF KEY ISSUES

2.1 Absence of objective, measureable, and verifiable performance benchmarks as development standards within the SEPP and ADG

2.1.1 The ICAC

Supporting documents for the proposed amendments of both SEPP 65 and the ADG make clear the policy intent that the changes are to *reinforce* the positive inroads made by the introduction of a planning policy that directly addresses Design Quality of Residential Flat Development not remove them.

This follows the overhaul of the current planning system largely as a result of adverse findings and recommendations arising from corruption inquiries into the planning system carried out over the past several years.

We support the Department's close consultation with the ICAC on the development of the new planning system, which has culminated in the Planning Bill 2013².

The ICAC submitted key recommendations in its submission (2012) in response to the Green Paper – *A new planning system for NSW*.

In particular, Item 13 which states:

... the Commission believes that subjective and ill-defined criteria are inherently open to varying interpretation and consequently provide a convenient cloak for corrupt conduct. Corrupt conduct can also be difficult to prove where any number of possible outcomes can be justified based on unclear standards.

ICAC Submission to the NSW Planning System Team re: A New Planning System for NSW (Green Paper) Sept 2012, p3

And Item 15,

The Commission has previously recommended that discretionary planning decisions, including the determination of proposals seeking to rely on a variation to development standards, are made subject to mandated sets of criteria that are robust and objective. This includes ensuring that the alternative set of criteria to be applied (given that by definition those agreed on are not met) are clearly articulated, measurable and enforceable.

ICAC Submission to the NSW Planning System Team re: A New Planning System for NSW (Green Paper) Sept 2012, p3

In the Department's letter dated 11th October 2013 in response to the ICAC's submission, the Department outlined key changes to the Planning Bill that included:

- *tougher rules apply where variations to development standards and controls are proposed including:*
- *code development must now comply with all of the development standards in a development assessment code, and any variation means that the whole development is subject to a full merit assessment (including community consultation) [4.7 (1), Planning Bill]...*

http://www.planning.nsw.gov.au/Portals/0/planningssystem/DG_to_ICAC_111013.pdf

This assumed that enforceable development standards would be in place.

² It is noted that the Planning Bill 2013 does *not* include Design Quality in its Objectives - Clause 1.3 (1).

Indeed, the ICAC's subsequent letter to the Department, dated 18th October 2013, regarding strategic plans, regulations and codes noted:

...The Commission cannot comment on these documents as they have not yet been drafted. The precise contents of these documents will be of crucial importance to the corruption vulnerability of the proposed system given the Department's advice that some of the Commission's concerns will be addressed via these documents.

And importantly,

*...These codes may contain both development standards and performance criteria. I understand that it is the intent of the Department that some performance criteria will be focused on outcomes as opposed to prescriptive controls. A key challenge in the drafting of local plans will be to ensure that the performance criteria against which certain developments may be measured are **objective, measurable and provide for independently verifiable limits of impact. A distinction should be drawn between flexible ways of achieving an outcome and flexible criteria.***

In the same way, when considering the 'merit assessment' category of development, consideration needs to be given to whether the set of assessment criteria are sufficiently robust to be capable of independent verification. The Commission's position has consistently been that high levels of discretion coupled with criteria open to varying interpretations can provide a convenient cloak for corrupt conduct. On the face of clause 4.18 the proposed assessment criteria in this regard appears no more robust than the current system, although some key documents that will support assessments have not been drafted.

http://www.planning.nsw.gov.au/Portals/0/planningssystem/ICAC_181013.pdf
[KMC emboldened text]

It is our supposition that the drafting of Clause 6A Amendment No 3 SEPP 65, the absence of any measurable and enforceable development standards within the SEPP, and the flexible criteria, arrangement, wording and inconsistencies of the ADG combine such that the outcome can be to effectively remove development controls from future apartment development.

This is diametrically opposed to the concerns and recommendations of the ICAC, appears to be in contravention of Clauses 4.16(2) and 4.18(5) & (6) of the Planning Bill 2013 and is clearly not the intent of the Department as described in its SEPP 65 supporting documents nor in the Department's own correspondence with the ICAC dated 11th October 2013 cited previously.

This correspondence appears unintentionally misleading as the proposed SEPP 65 Clause 6A wording and the status of the ADG result in a requirement to *comply with flexible performance criteria* (or even more flexible alternative solutions). The flexibility is absolute because firstly, the performance criteria are not contained within an enforceable code; and secondly, there is an alternative path within the already unenforceable flexible guidelines.

Solution:

- (a) Include objective, measurable and independently verifiable performance benchmarks within the body of the SEPP 65. These performance benchmarks are needed to provide certainty to all stakeholders and provide transparency to performance and for variations from compliance to be justified and demonstrated via an evidence-based method.
- (b) Clarify the role of the Apartment Design Guide as providing guidelines around enforceable performance criteria thus enabling design innovation and the flexibility desired by developers and architects to meet known objective performance criteria.

If we consider a true performance-based code already in use in Australia, the BCA, we find it provides deemed-to-satisfy *performance criteria* as *numeric benchmarks*. All buildings whether affordable or otherwise must meet these performance criteria – all

stakeholders accept these performance benchmarks are necessary to meet the community's expectation of safety and amenity in buildings.

Within the BCA, alternative solutions are completely flexible but need to demonstrate levels of performance that are defined and require a methodology to verify the performance (Australian Standards).

For SEPP 65 and the ADG to be performance-based documents, good design requires a similar approach.

If we use this true performance-based methodology in SEPP 65, it is not difficult to define required levels of illumination in lux reaching the back of a room to demonstrate natural light, areas of sunlight reaching a balcony/living area to demonstrate solar access, or air flow rates within a room or through an apartment to demonstrate natural/cross ventilation. All are defined, clear to all stakeholders and enable proponents the desired freedom to develop innovative solutions by which they can achieve basic accepted amenity.

2.1.2 Drafting of Clause 6A

The drafting of Clause 6A Amendment No 3 SEPP 65 *in combination* with the proposed status, organisation, and drafting of the Draft Apartment Design Guide (ADG) provides the statutory opportunity to effectively remove planning controls from residential apartment development in NSW.

There are no objective, measurable, or verifiable performance standards contained with Clause 6A. The intended status of the ADG as a *flexible guideline* results in performance criteria that in themselves are flexible. They become subjective, open to interpretation and ultimately highly vulnerable to perversion.

The parallel path of Alternative Solutions that applies to four of the eight key areas nominated in Clause 6A effectively dilutes (if not removes) the requirements of the Performance Criteria and Acceptable Solutions. This further exacerbates problems for transparency of assessment, consistent application, interpretation and probity as previously discussed.

Solution:

- a) Establish definitive numeric performance benchmarks for each of the eight key areas listed in Clause 6A (this already occurs in SEPP - Affordable Rental Housing; SEPP - Housing for Seniors or People with a Disability. The Building Code of Australia is an exemplar of a comprehensive *performance-based* code);
- b) Locate these enforceable, objective, measurable, and verifiable performance benchmarks within the body of SEPP 65 as statutory requirements.

2.1.3 Effect of flexible performance criteria on design quality

Ku-ring-gai has experienced development waves through the LGA over the past decade concentrated over the past several years following adoption of the Local Centres LEP and DCPs.

The first wave of development targeted existing residents many of whom are aging and wishing to downsize. This wave of development targeted owner-occupiers and required a level of design and construction quality that considered long-term building performance. Many of these developers are locally based or have a continued commitment to development within Ku-ring-gai.

More recent development is now targeting the rental market for off-shore owners, many of whom buy off the plan. As such, there appears to be less concern about design and construction quality demonstrated by proponents through the assessment process.

Ku-ring-gai has in place a highly integrated and coordinated suite of DCPs (discussed in Section 2.2 following) that dovetail with SEPP 65 and the RFDC very successfully. Their

consistent application is improving the design quality of apartment buildings and achieving Ku-ring-gai's desired urban character established with the community.

The absence of robust, objective, measurable and verifiable performance benchmarks that recognise Ku-ring-gai's DCP controls as is proposed by the Clause 6A and the existing form of the ADG are highly likely to have an immediate and significant adverse impact upon design quality and building performance over the longer term.

2.2 The wording of Clause 6A captures all develop controls not just the eight key areas identified in Clause 6A

This has a twofold effect:

- a) Clause 6A of itself becomes a quasi if not limited scope standard-instrument DCP;
- b) all other controls including those that may give an LGA its specific character and address issues specific to their LGA may be negated due to the wording of the clause.

The inclusion of the eight key areas under Clause 6A (a) to (h) that will take precedence over local Development Control Plans can be supported in principle where appropriate, enforceable, consistent, carefully considered, robust and measurable development standards are in place that achieve high levels of public and private amenity and where other LGA specific controls or other ADG controls are not otherwise impacted.

2.2.1 The effective negating of all development controls via wording of Clause 6A

Use of the wording "with respect to" in Clause 6A will need to be tested in law but appears to have the potential to capture any control that may be argued by a proponent as directly or indirectly impacting on any one of the eight nominated key areas³.

The effect of potentially negating other development controls appears to be inconsistent with the new planning system that aims to provide councils and the community the ability "to shape the growth of their local centres" nor does it meet Clause 3.13 and specifically (a), (b), (h), (i), and (j) of the Planning Bill 2013.

Ku-ring-gai is concerned that the current wording of Clause 6A effectively removes the rights of the community through their individual councils to tailor development standards outside the eight key areas of Clause 6A to address issues specific to their local government area.

This and other impacts are fully detailed in Appendix 1.

2.3 One-size-fits-all document for *development standards* fails to recognise differences in character, demography, topography and specific local pressures between local government areas (LGAs)

The inclusion of Clause 6A appears to have an implied policy outcome whereby Clause 6A is set to become a state-based standard-instrument DCP (albeit of limited scope) supported by the ADG.

A one-size-fits-all DCP is inappropriate.

However, the ADG could successfully apply to:

- dense urban areas such as the City of Sydney, Parramatta, North Sydney, Chatswood etc;
- council areas that have no DCP controls or controls that are less than the ADG.

³ (refer A1 **Ku-ring-gai Council Legal Opinion**).

If we consider the City of Sydney, Ku-ring-gai, Blacktown, and Upper Hunter Shire Councils we find all are dealing with vastly different issues – infrastructure, socio economics, demographics, employment opportunities, urban character, topography, landscape, block and lot patterns and sizes, community expectations etc – all of which need a range of quite different urban (housing) solutions that will still achieve the additional policy objectives of SEPP 65 amendments Clause 2(3) (f)(g)(h).

In Ku-ring-gai, implementing a standard-instrument DCP would have particular impact upon urban character. Our LGA's established urban character requires provision of deep soil, setbacks and landscape that will support large trees often blue gum high forest or Sydney turpentine and ironbark forest species and other large trees. While an LEP contains development standards for FSR and height, these do not capture site coverage and thus, control of deep soil landscape character.

The ADG uses setbacks and building separations as fundamental controls for the sole outcome of achieving visual privacy. However, setbacks and building separation are fundamental to the character of a place as they influence visual density, type and extent of landscaping. The proposed ADG requirements for deep soil, landscape and setbacks will not enable Ku-ring-gai's urban landscape character to be achieved.

Additionally, a mechanism is required for citing councils (such as Ku-ring-gai) for special consideration/exemption where considerable resources have already been deployed carrying out extensive research, analysis and stakeholder and community consultation over several years into high-density development, identifying how it can be best accommodated (social, economic, environmental and cultural considerations) and understanding its impact on adjacent interface sites which is of particular concern in Ku-ring-gai where topography, site orientation and block/lot structure can be very challenging leading to adverse amenity outcomes and/or excessive excavation to maximise yield.

As a result of work completed by Ku-ring-gai Council, a comprehensive suite of documents⁴ has been developed that already dovetail with state government policies to enable quality development across the LGA that is also in keeping with the local character. Indeed, the uptake by developers within the LGA has been rapid indicating a positive response from industry working with the expectations of the community.

Ku-ring-gai's coordinated LEP and DCP documents ensure *all* development for all building types is consistent with the current and future desired character of the locality including:

- Ku-ring-gai Local Centres DCP aligned with and supports KLEP (Local Centres 2012)
- Draft Ku-ring-gai DCP (suite of DCPs) aligned with and supports the draft KLEP 2014 (both likely to come into effect in Dec 2014)
- Ku-ring-gai Public Domain Plan
- Ku-ring-gai Contributions Plan
- Integrated Transport strategy for Ku-ring-gai

The following awards have recognised Ku-ring-gai Council's work on apartment development:

- Planning Institute of Australia, Australian Award for Urban Design, 2014 - Policies, Programs and Concepts - Small scale - Commendation for 'Thinking Outside the Box'
- Key Design Elements for Apartments in Ku-ring-gai
- AILA NSW, Landscape Architecture Award for Research and Communications 2013.

The effect of a one-size-fits-all approach in practice removes RFB and Residential Mixed Use/Shop Top housing from our local DCPs. This will have an unacceptable detrimental impact upon urban character if local character cannot be individually tailored and is not enforceable as is the case under the current wording of Clause 6A.

It is unclear whether the intent of proposed amendments is in fact to establish generic high-density centres within NSW. If not, this unintentional outcome needs to be addressed. If so, Ku-ring-gai Council does not support this move as it will have a detrimental impact on the

quality of NSW's city/local centre environments by removing the rich variety of urban character that is a hallmark of successful cities.

Homogeneity within our cities becomes inflexible, unable to cope with differing needs of different communities and undesirable as a sense of identity is lost.

Should apartments, mixed use and shop top housing in effect be separated from our DCPs, it is also likely to present unnecessary complexity and difficulties with the assessment of applications particularly in councils such as Ku-ring-gai where there is already in place a fully integrated document suite and established coordinated assessment process that is working well.

It is through the specific Aims, Objectives, and Controls of our DCPs that a building responds positively and holistically to the specific local character.

Solutions:

The optimal solution needs to achieve the following:

- (a) SEPP 65 provides numeric performance benchmarks for the eight key areas of Clause 6A to be located within the body of the SEPP.
- (b) Redraft Clause 6A to ensure that compliance with the clause does not capture DCP standards outside the specific eight key areas of:
 - (a) *visual privacy,*
 - (b) *solar and daylight access,*
 - (c) *common circulation and spaces,*
 - (d) *apartment layout,*
 - (e) *ceiling heights,*
 - (f) *balconies and private open space,*
 - (g) *natural ventilation,*
 - (h) *storage.*

Clause-by-clause comments on the proposed ADG performance criteria of these eight key areas are contained within Appendix 1.

2.4 The ease by which poor design can be justified via Alternative Solutions that effectively negate Performance Criteria

2.4.1 ADG document inconsistencies

There are inconsistencies and/or errors throughout the Apartment Design Guide that enable a pathway for technical compliance of apartment development that is deficient and/or poorly designed and/or would not otherwise pass a full merit assessment under the current RFDC provisions.

Ku-ring-gai acknowledges the extensive work that has gone into the preparation of the new Apartment Design Guide and the complexities in coordinating such a comprehensive document.

However, in context with the concerns already identified in this submission and shared by the ICAC, it is vital that the organisation, drafting, content (text, diagrams and images) contain no errors or inconsistencies that can be exploited for private gain. Such exploitation has been demonstrated time and again to be detrimental to the design quality of residential apartment development and ultimately fails the public interest test.

Council is concerned that clear examples of poor design practice are contained within the ADG. This, in combination with the status and flexibility of the performance criteria and wording of Clause 6A enable proponents to cite these poor examples and/or images (sometimes contravening the written performance criteria) as meeting either Acceptable or Alternative Solutions.

Solutions:

- (a) Ensure all Performance Criteria contain objective, measurable, verifiable and enforceable development controls.
- (b) Ensure all images and diagrams specifically demonstrate the performance criteria nominated. They need to be tightly cropped so that any non-compliant/poor practice visuals are removed from the document. This is likely to require the advice of consultants suitably experienced in apartment design including architects, landscape architects, WUSUD, mechanical engineering and the like to confirm consistency and accuracy.
- (c) Appropriately qualified *and* experienced consultants are required to verify all areas concerned with landscape and tree health, deep soil, WUSUD, natural ventilation, solar/natural light levels, and use of real-time data for car parking not obsolete RMS figures.

2.4.2 Ambiguous Performance Criteria

It is unclear whether specific Performance Criteria is deemed to have been achieved by compliance with one or all Acceptable Solutions. In our experience, developments generally need to meet multiple Acceptable Solutions before demonstrating specific performance criteria has been achieved unless it is clear the performance criteria has been demonstrated with one option and not at the expense of another.

Solutions:

- (a) Ensure all Performance Criteria contain objective, measurable, verifiable and enforceable development controls.
- (b) Ensure clarity where multiple acceptable solutions may be necessary to meet Performance Criteria.
- (c) Alternative Solutions should be removed from all development standards contained in Clause 6A. These need to demonstrate compliance with numeric benchmarks – the method by which they are achieved is then open to the proponent but must be verifiable.

2.4.3 Imprecise language

The use of words in the ADG such as “minimise” and “unavoidable” in the absence of enforceable, objective, measurable and verifiable development standards opens the door to poor apartment design being approved. These terms are subjective making it is easy for a proponent to justify a deficient/poor design solution that may have created its own “unavoidable” problems particularly where required design changes are being resisted.

This is further problematic where Alternative Solutions become a parallel path to development approval effectively negating the stated Performance Criteria and thus removing the level of public scrutiny that the community demands.

Solutions:

- (a) Provide enforceable, objective, numeric, measurable, verifiable Performance Criteria within the SEPP for the eight key areas of Clause 6A.
- (b) Strike out words such as “minimise” and “unavoidable” which is achievable where solution (a) is implemented because the level of expected performance has been defined.

2.4.4 Length of the ADG

The length of the ADG (at 176 pages and 290 standards) is likely to result in increasing both the amount of documentation of development applications and subsequent assessment times.

This appears to be inconsistent with the policy aims of streamlining residential apartment approvals and reducing red tape.

Solutions:

- (a) This is likely to be addressed with implementation of 2.4.3(a) above and with a clearly defined hierarchy of performance standards for all other items within the ADG

and where the wording of the body of clause 6A allows other local development controls to be effective.

The status of the ADG can then function as a flexible guideline document while local development controls are able to function around those eight key areas identified in Clause 6A.

This would work for a Council such as Ku-ring-gai that already has in place a coordinated and integrated suite of development control documents, however, in other council areas that do not have such an established process in place, the ADG would become their standard-instrument DCP.

2.4.5 Clarify status of SEPP 65 and the ADG

The complementing functions of performance-based and merit-based assessment needs to be clarified within the SEPP and better arranged within the ADG.

The function of SEPP 65 should be to provide Performance Criteria in the form of enforceable, objective, numeric, measurable, verifiable development standards.

The function of the ADG is to provide flexible guidelines that support merit-based solutions that may be applied to demonstrate compliance with the enforceable, objective, numeric, measurable, verifiable Performance Criteria within the SEPP.

The proposed arrangement of the ADG does not provide clarity around the components that are considered standards and how they are prioritised.

Solutions:

- (a) Provide enforceable, objective, numeric, measurable, verifiable Performance Criteria within the SEPP for the eight key areas of Clause 6A.
- (b) The arrangement of the ADG needs to be restructured consistent with its function as a performance-based code. Analysis^{5 6} of the structure of performance-based codes has established the following hierarchy must be clearly defined:
 - 1 Goals/Objectives
 - 2 Functional Statement
 - 3 Operative/Performance Requirements
 - 4 Performance/Risk Level
 - 5 Performance Criteria – measure of pass/fail or range of acceptability
 - 6 VerificationThe analysis has demonstrated the clear link between the requirement for both enforceable qualitative and quantitative components in performance-based systems.
- (c) Strike out words such as “minimise” and “unavoidable” in the ADG. This is achievable where solutions (a) and (b) above are implemented because the level of expected performance has been defined thus negating the occurrence of qualitative terms such as “minimise” or “unavoidable” within performance benchmarks.

⁵ <http://www.abcb.gov.au/en/about-the-national-construction-code/the-building-code-of-australia/hierarchy-of-the-performance-based-bca.aspx>

⁶ *Performance System Model – A Framework for Describing the Totality of Building Performance*, Brian Meacham, Beth Tubbs, Denis Bergeron, Francoise Szigeti, 2002 pp66-68; and *Qualitative versus Quantitative Aspects of Performance-based Regulations*, Douglas Beller, Greg Foliente, Brian Meacham, 2002, p24

Where non-compliance is proposed, the alternative solutions thus would go through an evidence-based process to clearly demonstrate how the performance criteria have been achieved.

2.5 Other areas of Concern for Ku-ring-gai

The areas of specific concern for Ku-ring-gai's DCP controls that will directly affect Ku-ring-gai's urban character are:

- Context and urban character
- Landscape
- Deep soil
- Public domain
- Communal open space, and
- Car parking.

2.5.1 Car parking

Reduced/zero car parking is acknowledged as being likely to be the only mechanism within the ADG that may address affordability, the impact of which is likely to vary between LGAs due to issues specific to that LGA (indeed preliminary opinion by Urbis is that it may have limited impact on affordability at best).

Reducing car spaces in Ku-ring-gai is not practical or realistic.

Ku-ring-gai is aware of some LGAs where residents of apartments without car parking are prohibited from receiving resident parking permits. These LGAs are typically very high density, have a demographic with less car ownership, are hubs of employment, provide all manner of recreation and entertainment, education and health facilities in close proximity and can support development without private car spaces or with provision for car share.

While five of six of Ku-ring-gai's local centres are located around train lines, the ability of Sydney residents to move east-west across the metropolitan area via public transport from Ku-ring-gai has not been delivered by consecutive state governments.

Therefore, car parking is a vexed issue as its removal will be a direct benefit to the developer at the expense of the public interest unless public transport infrastructure enables residents to traverse the city and adequate commuter parking is provided at all train stations. The current government is making some inroads but not to the extent that has demonstrated any less reliance on cars in the majority of the Sydney metropolitan area or regional areas.

Bureau of Transport Statistics figures support this. The North Shore Railway Line provides direct rail access to employment areas such as Chatswood, North Sydney and the City, it remains difficult for a substantial number of Ku-ring-gai residents to move efficiently east and west. The Bureau of Transport Statistic's *Journey to Work Explorer* indicates that approximately a quarter of Ku-ring-gai residents work east and west of the LGA, and the modal split to cars at these work destinations is typically greater than 85% due to relatively poor east-west cross regional links from the Ku-ring-gai area. Therefore, until efficient and convenient mass transit across Sydney is achieved, people still need cars for trips to work as well as most trips outside of work.

The ADG cites the lower of the RMS standards or DCP standards. It is noted that the RMS figures are well out of date. Whilst in some items Ku-ring-gai's DCP has a lower value, for the most part the RMS standards are lower.

Reduced car parking would exacerbate the already growing problem of on-street parking which is already creating increasing dissent within the community. This is particularly problematic in the local centres where there is no dedicated commuter parking forcing train commuters to use on-street parking.

The market may deal with the proposed reduced car parking if it is seen to be a big driver in movement of sales. Ku-ring-gai amongst other LGAs already has developers who provide

rates of parking well above local DCP requirements. These developers are likely to continue to do so recognising market forces driving their ability to sell units.

3.0 AREAS SUPPORTED

The following areas are generally supported:

- SEPP - Membership of design review panels. This should be extended to JRPPs so that there is design expertise mandated in the panel membership.
- ADG - Extent of site analysis required to demonstrate an understanding local context. There needs to be a mechanism so that local context holds statutory weight to enable already established DCPs to dovetail with this analysis where controls are part of a coordinated suite of local development control documents.
- ADG - The clear relationship between amenity and depth of apartments to ceiling height. This will work specifically because there is no alternative solution that negates these performance benchmarks.

Refer Appendix 1 for detailed comments.

4.0 CONCLUSION

Ku-ring-gai Council acknowledges the extensive work of the Department in carrying out this review.

We appreciate the opportunity to provide our response and trust that the interests of the community advocated through the Council are duly considered and acted upon so that future apartment development is of a quality that furthers the significant progress already made with the introduction of SEPP 65 twelve years ago.

A1 Ku-ring-gai Council Legal Opinion

6A Development control plans cannot be inconsistent with Apartment Design Guide

The provisions of a development control plan under Division 6 of Part 3 of the Act, whenever made, are of no effect to the extent to which they aim to establish standards with respect to any of the following matters in relation to residential flat development that are inconsistent with the standards set out in the *Apartment Design Guide*:

- (a) visual privacy,
- (b) solar and daylight access,
- (c) common circulation and spaces,
- (d) apartment layout,
- (e) ceiling heights,
- (f) balconies and private open space,
- (g) natural ventilation,
- (h) storage.

The aim of particular standards in the ADG prevailing over equivalent DCP standards to bring consistency across regions may be consonant with the aims of the proposed amendments. However, the consequences of clause 6A are more likely to be increased scope for complex legal argument and uncertainty, and an unintended and indiscriminate loss of DCP standards.

Moreover, disparity in resources amongst participants in the development process to present and pursue complex and costly arguments may tend toward less equality of outcome across regions, despite the superficial consistency arising from Clause 6A.

Under the proposed clause 6A, the existence of an inconsistency between “the aim to establish **standards with respect to** the following matters” and “**standards set out** in the *Apartment Design Guide*” will be required to be considered having regard to the meaning that has been attributed to the words “standards” and “with respect to” in decisions such as the those of the Court of Appeal in *Blue Mountains City Council v Laurence Browning Pty Ltd* [2006] NSWCA 331 and *Agostino v Penrith City Council* [2010] NSWCA 20. These decisions considered the treatment of development standards under the EP&A Act, a matter that remains an unending source of complexity and uncertainty in development.

The task of interpretation will undoubtedly give rise to difficult questions as to whether a standard exists, however the expansive nature of concepts such as “apartment layout” and “common circulation and spaces” provides a fertile basis for arguing inconsistency, and ineffectiveness, of DCP standards. For example, any standard in the ADG which has an influence on “apartment layout”, could be used as a basis to argue inconsistency with each and every DCP standard that influences “apartment layout”.

Such an argument could lead to the wholesale and indiscriminate loss of DCP standards, and replacement with a standard which merely regulates a minor aspect of apartment layout. The asymmetry of application, presumably, is not intended.

It is submitted that the overall effect of Clause 6A would be to add to complexity and uncertainty in development decisions and lead to more costly and unequal outcomes.

(return to 2.2.1 The effective negating of all development controls via wording of Clause 6A)

APPENDIX 1

Apartment Design Guide – Review

| item | Commentary | Priority/ action |
|---------------------------------|--|---------------------|
| Overview | <p>The skills of architects, urban designers and landscape architects are essential in the detailed consideration of apartment building proposals.</p> <p>It is essential that all panels that review apartments include these skill sets, including large projects referred to the JRPPs.</p> <p>This expertise would be invaluable within membership of JRPPs so should be mandated similarly to DRPs rather than optioned.</p> | Urgent |
| Relationship to other documents | <p>While the intent to place SEPP 65 and the ADG above local DCPs is clear. The drafting of Clause 6A, and lack of objective, measureable, verifiable development standards within the SEPP is problematic. Even more so where the intent of the ADG is a 'flexible guide'. This results in no mandated performance standards with either the SEPP or ADG and can negate all DCP controls leaving no effective development controls for apartment development.</p> <p>The organization of the ADG is unclear. What are the objectives, what are the function statements, what are the measurable performance standards, what are the verification methods?</p> <p>There are no <i>development standards</i> as the ADG is a <i>flexible guide</i> as described p9 yet within the SEPP the ADG there is an expectation of compliance. With what?</p> <p>It appears that the amendments to the SEPP now provide a statutory mechanism that effectively removes development controls. ICAC should provide a submission.</p> | Urgent |

I N T R O D U C T I O N

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| <u>About this guide</u> Statutory relationship to SEPP 65. | It is important that the requirements of the ADG prevail over LEP and DCP controls but not where they are dealing with site-specific conditions, which the ADG is not equipped or intended to address. Council DCPs need to prevail for Local Context, Landscape, Deep soil as these determine urban character which is LGA specific. | Urgent |
| <u>How to use this guide</u> Achieving performance criteria | This does not clarify the <i>development standards</i> to be applied as cited under the SEPP due to the level of flexibility. This equates to any design solution that relates to CL 6A of the SEPP can be justified in effect negating the effect of any other control. Legal opinion required. | Urgent |
| Design Quality Principles (DQP) | Clear. These may become the <i>development standards</i> rather than the Performance Criteria as they are contained within the SEPP. However, they require objective, measurable, enforceable and verifiable development standards to accompany them possibly with the eight key areas of Clause 6A? | Supported |

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| Relationship of SEPP65 to ADG | <p>This matrix clearly demonstrates the relationship of the ADG to the 9 Principles.</p> <p>3J Car parking has a 'high' level of interaction to Principle 5 Landscape deep soil, in a suburban street setting with deep soil planting, but not along a mixed use high street.</p> <p>4B Ground Floor apartments have a 'high' level of interaction with Principle 5 Landscape.</p> <p>4N Apartment Layout has a 'high' level of interaction with Principle 2 Built Form and Scale</p> | Revise / review |
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PART 1 IDENTIFYING THE CONTEXT

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| <p>1A Apartment building types</p> <p>Narrow infill apartments</p> | <p>This typology has been problematic all over Sydney and in fact is specifically described by Bob Carr in the Preface of the RFDC as prompting the need for design quality in apartment development.</p> <p>The image does not represent narrow infill development as it is a corner site.</p> <p>The graphic as presented is deeply flawed as a typology.</p> <p>This needs to be amended to provide:</p> <ul style="list-style-type: none"> • Setbacks that enable more (rear) landscaping for tall trees, • a sliding ratio of site length to acceptable building length, and • a typology that clearly shows a deep articulation between the component fronting the street and the 'tail' <p>This is urgently needed to avoid infill development that transposes the problems of the 3-storey walkups to a greater scale of 5, 8 and 10+storeys on very long narrow sites.</p> | Urgent |
| Tower apartments | The image is of commercial office towers not tower apartments and does not show the podiums as described. | Amend |
| 1B Local character and context | <p>Of the four common settings described only Suburban Neighbourhoods reference "landscaped setting".</p> <p>For the ecology, climate, happy socialisation and sustainability of our increasingly urbanised city, "landscaped setting", deep soil landscapes and trees are important considerations in the design of quality Urban Neighbourhoods. Council DCPs need to prevail over these standards where inconsistent with the ADG.</p> | Amend |
| <p>1C Precincts and individual sites</p> <p>Precincts</p> | <p>Floor space of a precinct plan should not include streets.</p> <p>"When determining the floor space of a precinct plan, the <i>net</i> floor space is based on the whole of the site area including streets and open spaces. "...</p> <p>There may be a typo in p27 – replace the word <i>net</i> with <i>gross</i> (consistent with Figure2 D.3)</p> <p>"Through the precinct plan design process and testing of proposed building envelopes against site constraints, alternative solutions to some of the ADG performance criteria may be appropriate."</p> <p>These may need to be more onerous than the minimums</p> | Amend |

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| | soil. | |
| 3B Orientation | Supported. | |
| 3C Public domain interface | Supported. | |
| 3D Communal and public open space | Communal open space should be commensurate with the density of the proposed development. 25% is insufficient as an all-encompassing amount and does not take into account specific site/local conditions. The description notes refer to a "principal communal open space" but don't indicate how this is to be defined ie area, minimum dimensions and the like. Is the entire 25% principal COS ? Can COS be allocated as small pockets , rather than one larger area and still meet the criteria ? However the figure 3d3 seems to indicate one consolidated area as does 3D1.2 and needs clarification. | Urgent |
| Performance Criteria 3D1.1 | 1. There is no minimum dimension for communal open space, the notes indicate that this will vary. Again not clear. | |
| Performance Criteria 3D1.2 | 2. This is unclear. Does consolidate into a recognisable and useable area mean that COS is not to be divided into smaller areas ? . In that case objective measurement required to define " recognisable and useable" communal open space. | |
| Performance Criteria 3D1.3 | 3. The criteria that deep soil areas and COS should coincide seems to be reasonable on first glance however as COS will have other features to support recreational use this potentially could result in less useable deep soil for tree and plant growth. | |
| Performance Criteria 3D1.4 | 4. Solar access to 50% of the "principal useable portion " - what is a principal useable portion? How is this defined? | |
| Alternative solutions | The idea that lack of communal open space can be offset by increased private open space or "proximity" to public open space or "contributions" undermines the criteria. Also what contributions could there be other than those existing under S94? | |
| Performance Criteria 3D-2.1 | "Facilities are provided for a range of age groups <i>where size permits...</i> " Delete words "where space permits". All developments need to provide communal space whether at ground level or podium or roof. Where space 'does not permit' indicates proposed building footprint or density is inappropriate. | Amend |
| Figure 3D.3 Communal open space | Nominated area shown on this diagram is less than 25% inconsistent with Performance Criteria 3D-1.1 | Amend |
| 3E Deep soil zones | Some terms are unclear : What defines "significant canopy cover " ? Such terminology is not useful as an assessment tool as it is open to wide interpretation. | Urgent |
| 3E Deep soil zones | Deep soil landscape areas are inadequate. | |
| Table 1 | The percentages should be deleted. Deep soil should be set by Councils to reflect established or desired future character of an area. Where councils do not have specific provisions, the ADG can provide guidance, however the figures within the table are inadequate. Outside of Strategic Centres and Local Centres more significant amounts of landscape including deep soil | Urgent Urgent |

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| | <p>landscapes should be provided for ecology, climate, happy socialisation and sustainability.</p> <p>Larger sites should be required to provide a higher percentage of consolidated landscape due to economies of scale.</p> <p>Tall trees contribute to visual and climate amenity.</p> | |
| Performance Criteria 3E-1.1 | <p>The deep soil % of site as indicated in Table 1, is not related to a development type, zoning and location. Deep soil should not solely be a product of site area. The % of deep soil is low particularly for the larger areas and will be inadequate to protect the sort of very large canopy trees which are common in an area such as Ku-ring-gai. This will have significant implications for landscape character achievable with the type of development permitted under this criterion.</p> <p>The 6m width for deep soil is insufficient to guarantee the retention of large (DBH 500mm+) established trees, and also the establishment of large trees. The 6m zone is also inadequate as an area to sustain the spreading canopy growth of large trees.</p> <p>The table should be deleted.</p> | |
| Performance Criteria 3E-1.3 | <p>It is unclear what purpose the soil volume figures for trees in deep soil zones serves as an assessment criteria. This is not useful and is not a "criteria". Rather, it is more a guide and even then It is unclear how it has been determined, how it would be calculated, and how it should be applied. It should be deleted.</p> | Delete |
| Performance Criteria 3E-2.1 | <p>Require trees comparable in height to the building. One large tree for every 50m2 deep soil landscape.</p> <p>Delete point 1. All paving and paths should be excluded from the deep soil calculation as this further reduces the already inadequate requirement by 10%.</p> <p>The proposition that there can be a further 10% encroachment into the deep soil area is not supported.</p> <p>Deep soil should be unimpeded by structures other than 1m wide access paths which KMC currently accepts.</p> <p>The 10% encroachment is too substantial a portion of an already reduced deep soil area and compromises the purpose of deep soil for substantial plant growth including retention of existing trees and establishment of new trees.</p> | Delete |
| Alternative Solutions | <p>This section undermines the performance criteria and should be deleted. As indicated previously the deep soil % should not be solely based on site area. It should be related to development type, zoning and location. Deep soil should not be able to be varied based on alternate solutions.</p> <p>Planting over structures is not capable of achieving the same outcomes as deep soil in regard to large scale tree establishment and is not an acceptable solution for a lack of deep soil.</p> <p>If a tower is proposed within a CBD then local controls should realistically deal with deep soil expectations in the circumstances - ie deep soil will not necessarily be an</p> | Delete |

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| Performance Criteria 3J-1.1 | Criteria says “where applicable”. No measureable, objective, verifiable method provided to determines “applicability”? | Revise |
| Performance Criteria 3J-1.2 | One visitor space per 10 units does not even comply with the RMS Guide, which recommends a minimum of one visitor space per 7 units for the CBD. | Amend |
| Figure 3J.8 | Fig 3J.8 while demonstrating a solution for above ground car parking, the unit typology appears to present a non-functional living area. | Amend |

PART 4 DESIGNING THE BUILDING

| Configuration | | |
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| 4A Apartment mix | <p>The reduced minimum apartment sizes will not reduce market prices as developers will take advantage of the reduced sizes.</p> <p>Anecdotal evidence supports this. Current DAs in many LGAs have been proposing affordable housing unit sizes for some time. Indeed Ku-ring-gai’s Local Centres DCP already uses the RFDC affordable housing sizes as general minimums. DAs in Ku-ring-gai are not being lodged as affordable housing schemes with the associated commitments of affordable housing.</p> <p>It is further noted that the minimum sizes within the ADG are flexible and can be further reduced. Hence, Clause 30 of the SEPP becomes difficult to apply where the development standard is not a standard but a flexible guideline.</p> <p>The ADG setting a lower threshold size could remove housing choice by encouraging a concentration of unit developments that are likely to have poorer amenity than is currently achieved under the RFDC.</p> <p>Minimum size also assumes all architects have the necessary skills to deliver efficient unit layouts. This has not been demonstrated in Ku-ring-gai where the vast majority of developments demonstrate inefficient layouts and wasted space largely as a result of flawed building typology.</p> | Urgent |
| 4B Ground floor apartments Figure 4B.3 | Figure 4B.3 is the same as that used in Figure 3J.8. This is a poor example as the living space is either non-functional with no room for a dining table or more than two chairs, or if SOHO, there is no provision for a kitchen area. Delete and replace with a functional example. | Amend |
| 4C Facades | Supported. | |
| 4D Roof design | Supported. Standard Instrument LEP allows Councils to approve roof elements that could also function as shade structures for communal spaces where maximum building height is proposed. | |
| Performance Criteria 4D-2 | <p>Use of roof as open space is fine as long as any BASIX rainwater tank for re-use inside the building only collects runoff from non-trafficable roof areas.</p> <p>This requires co-ordination between the engineer designing the water management system, the landscape architect and whoever prepares the BASIX Certificate.</p> | |

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| Performance Criteria 4D-2.2 | Add: acoustic privacy. | |
| Performance Criteria 4D-3.3 | The feasibility to locate rainwater tanks on roofs is questioned. Weight, waterproofing etc may preclude it – although there are precedents in the City of Sydney and North Sydney for example where rooftop communal swimming pools have been constructed. | |
| 4E Landscape design Table 3 | Table 3 – requires further comment by experienced landscape architects Larger sites should be supporting more trees commensurate with the scale of development. All sites should require 1 large tree/50m2? | L'scape opinion needed |
| Performance Criteria 4E-1.1 | 1. The purpose of this criteria is unclear other than to demonstrate some "green " items that could go into the landscape areas, What about worm farms ...? Appears to provide an arbitrary list of questionable usefulness as solutions to enhance sustainability. | Amend and clarify with further l'scape advice |
| Performance Criteria 4E-1.2 | 2. Ongoing maintenance plans. Good idea but this is not a matter for assessment except where ecological issues and a vegetation management plan are required. KMC does not require a landscape maintenance plan now. Is this now to be an expected part of a DA proposal ? Is this able to be conditioned, enforceable and is this a consideration for assessment under EPA Act ? | |
| Performance Criteria 4E-1.4 | 4. Trees and shrubs selection considers size and potential for roots to overlap. This requires clarification from appropriately qualified landscape consultants. What does this mean ? In particular what is meant by... "potential for roots to overlap" ? It is unclear why is this something to consider ? | |
| Performance Criteria 4E-2 | As a general comment there is no recognition of landscape design in terms of creating external space quality, usability, privacy, general amenity and the like. The existing RFDC provides superior landscape design principles and design potential. The performance criteria are more like general guidelines and hints, and are not especially useful as assessment criteria. | |
| Performance Criteria 4E-2.1 | What does "responding to levels" mean? How is this verified? | |
| Performance Criteria 4E-2.2 | The criteria suggest significant features be protected should be consistent with 4E2-2.1 to include rock outcrops. | |
| 4F Planting on structures Table 4 | Evidence needed to demonstrate the long-term maintenance costs of maintaining green walls as these are still fairly new technology. Also whether water seepage has been an issue. Where failure occurs, the quality of building façade/form needs to be demonstrated. Table 4 – requirement for large trees is inadequate for above ground structures as large trees use deeper groundwater via the action of the surface roots within that 1200mm zone. | Clarify/ amend |
| 4G Universal design Figure 4G.1 | This should be the benchmark of the ADG. Fig 4G.1 is misleading as it is much larger than any of the minimum unit sizes. | Urgent |
| Figure 4G.4 | Fig 4G.4 contradicts the minimum unit sizes by up to 35m2 for | Urgent |

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| Performance Criteria 4G-1.1 | <p>3-bedroom unit in the example shown and demonstrates the inadequacy of the minimum unit sizes proposed.</p> <p>Requirement of 20% of total apartments achieving (silver) universal design is inadequate.</p> <p>If the Livable Housing Guidelines are to be referenced, this needs to be clear, direct and consistent. Table 5 should be deleted as Silver Standard may change over time resulting in this table being out-of-date while the clause would require the newer requirements.</p> <p>The description of universal design is what ALL units should be delivering under design quality, flexibility, amenity and is consistent with government policy to provide real housing choice with the intention that people are able to remain living in apartments over the long term – rather than the current expectation that apartment living is a short-term solution before moving to a detached house.</p> <p>Allowance needs to be made for excellence (Gold and Platinum Standard) as part of the strategy to address demographic shifts.</p> <p>The Universal Design requirement equates to only 20% of ALL proposed development being able to cater to the needs of ALL age groups and changes in life situations. This will not change behavior to consider apartment living as a long-term option.</p> <p>Where the Department is resistant to amending this as seems to be the case, it is suggested that a minimum of 50% of every development meets the requirements of 4G and follows the lead of Landcom's 2011 policy change, as well as that of Grocon, Stockland and Meriton. (We note the charter of UrbanGrowth is economics-centric with no Board members having a background in design disciplines). This would deliver 50% of units as 'affordable' with the remaining flexible and appropriate to all demographics.</p> <p>Adaptable units to applicable Australian Standards should form 10% of each of UD units and 10% of remainder although it is noted Council policies will need to reflect the community expectations.</p> | Urgent Urgent |
| Performance Criteria 4G-2.2 | How is the number of parking spaces determined for the adaptable units? If they are to be separately titled or shared, how is this enforced if a PCA can issue a strata subdivision approval and certificate? | |
| Figure 4G.4 | The sample dual key unit is a total area of approx 135m2 comprising 35m2 for the studio and 100m2 for the 2-bed, 1-bath unit. This is significantly larger than the (flexible) minimum apartment sizes thus demonstrating the limits to achieving flexibility and housing choice within the ADG standards. | |
| 4H Adaptive reuse | Supported | |
| 4J Mixed use | Should include a % figure of the ground floor that would define mixed use. Ku-ring-gai is seeing almost 100% of applications submitted under mixed-use providing sometimes less than 5% and often as a generic 'medical centre' which is unlikely to be leased given the concentration. This could be defined in the ADG or deferred to council DCPs. | |
| 4K Awnings and signage | Supported | |

| Amenity | | |
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| 4L Solar and daylight access | <p>4L-1 Acceptable solution 5 re: number of units receiving no sunlight: Amend to provide a range suited to urban context. Dense inner city situations may be appropriate to allow 15% but on suburban sites this is not acceptable and should retain the RFDC limit of apartments receiving no sunlight at 10%.</p> <p>Add additional point:</p> <p>7. No habitable rooms are to be excavated more than 1 metre below natural ground level.</p> | Urgent |
| Performance Criteria 4L-1 | | |
| Performance Criteria 4L-4 | <p>Acceptable solution 1:</p> <p>Interpretation of 'unavoidable' needs to be clarified as an inappropriate building type may result in 'unavoidable' lightwells, whereas the lightwells may be avoidable where an alternative building typology is proposed.</p> | Urgent |
| 4L Alternative solutions | <p>After last paragraph:</p> <p>Where buildings face within 20 degrees east or west of south, apartments should maximise dual aspect, or have narrow depth for single aspect apartments.</p> <p>Replace 'or' with 'and' have narrow depth':</p> <p>And add: '<i>and provide large areas of glazing to maximize indirect light.</i>'</p> | Urgent |
| 4M Common circulation and spaces | <p>Add to the last paragraph of the Description:</p> <p><i>'and building character.'</i></p> | |
| Performance Criteria 4M-1 | <p>Acceptable solution 4 : remove "<i>where possible</i>", and specify exceptions such as basement car parks.</p> <p>Fully internalized common lobbies are generally avoidable unless an inappropriate building typology is proposed or yield is excessive. Internalised common circulation spaces are unpleasant spaces, do not achieve performance criteria of creating meeting places, achieve poor amenity, poor residential character and place constant high energy demands on the life cycle of apartment buildings. This also unnecessarily and significantly increases carbon emissions and building costs over time.</p> | Amend |
| Figure 4M.6 | <p>Fig 4M.6 does not meet Performance Criteria 4M-1.1 which requires a maximum of 8 units off a circulation core. This figure shows 10.</p> | Amend |
| 4N Apartment layout | <p>Apartment sizes could be given as a preferred range to suit various locations and pricings as well as promoting efficient urban consolidation and inclusions such as sunrooms or studies.</p> <p>Studio 35-45m², 1-Bed 50-65m², 2B 70-85m² and 3B 90-110m².</p> <p>This is still less than the RFDC and less than needed for Universal Design.</p> | Urgent |
| Performance Criteria 4N-2 | <p>Acceptable solution 1: supported but Fig 4N.3 also needs to be referenced 4O-1 as well as 4O-3.</p> | Amend |
| Figures 4N.2, 4N.5 and 4N.6 | <p>Dimension lines do not match with internal faces of walls. Either dimension is slightly wrong or apartments are larger than dimensioned.</p> | |

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| Figure 4N.3 | The ceiling height to room depth of Figure 4N.3 is strongly supported. It is clear and appropriate but also needs to be referenced 4O-1. | |
| 4O Ceiling heights | | |
| Performance Criteria 4O-1.1 | 3.3m FL-CL height for ground floor uses in a mixed use zone is insufficient and inconsistent with Fig 4O.1 that nominates 4.2m and is a mixed-use example. Replace 3.3m in table with 4.2m. | Amend |
| Performance Criteria 4O-1.2 | Acceptable solution 1: Add: <i>... "and is measured clear of all services and structure."</i> | Amend |
| 4P Private open space and balconies | Generally supported, however, more generous balcony sizes add more amenity to smaller units. | Consider |
| Figure 4P.6 | Does not demonstrate a combination of solid and transparent balustrade materials but does show solid walls and transparent balustrades. | Amend |
| Figure 4P.10 | Does not demonstrate any soffit detailing other than the top floor roof. | Amend |
| Performance Criteria 4P-3.6 | Ku-ring-gai prohibits A/C on balconies. This should be amended to clarify so that any A/C units on balconies must be fully integrated with the façade design. | Amend |
| Performance Criteria 4P-3.7 | Add ... <i>"and fully waterproofed."</i> | |
| 4Q Natural ventilation | The inclusion of Figure 4Q.4 is strongly supported as it provides a measurable relationship between unit depth and amenity. All apartments should be cross-ventilated to maximise amenity, minimise energy use and reduce reliance on air conditioning. As a concession to urban consolidation and in support of small footprint apartment towers, 80% of apartments should be required to have dual orientation cross ventilation. | Urgent |
| Performance Criteria 4Q-1.3 | The proposed 5% of area of serviced room as opening size needs to be confirmed as adequate by a mechanical engineer – this appears to be inadequate to meet the stated performance criteria. Clarification necessary so that window types provide differing amounts of 'Effective Openable Area' such as sliding versus awning. Reference Glossary? | Amend |
| 4R Storage | Storage should be calculated <u>in addition</u> to apartment sizes not included in already tight room sizes. | Urgent |
| 4S Acoustic privacy | Figure 4S.5 does not demonstrate acoustic seals. | Amend |
| 4T Noise and pollution | Figure 4T.5 does not demonstrate acoustic louvres. | Amend |
| Performance Criteria 4T-2 | None of the Acceptable solutions in 4T-2.1 include noise barrier planning principles. This should be included. | Amend |
| Performance | | |
| 4U Energy efficiency | Supported status of BASIX. | |
| Performance Criteria | Acceptable solutions 1: | |

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| 4U-2 | Add specific reference to common circulation spaces. | |
| <p>4V Water management and conservation</p> <p>Figure 4V.2</p> <p>Performance Criteria 4V-1.2</p> <p>Performance Criteria 4V-2.2</p> | <p>Generally support.</p> <p>Appears that a DCP in relation to water management would still apply? Or is this not the case because of the design quality principle "Sustainability"?</p> <p>Second paragraph says "...recycles stormwater and wastewater for building services". Untreated stormwater cannot be used for building services except irrigation.</p> <p>Figure 4V.2 shows overflow from the water feature and the bio-sink going into the rainwater tank – this is stormwater and no good if the rainwater tank is for re-use inside the building. This is an error within the RFDC (but with an added error),</p> <p>This should be amended by appropriately qualified and experienced consultants in the design of these systems and the application of BASIX.</p> <p>On the right hand side of the figure is a second floor labelled "Basement parking" (16), which should probably be labelled "apartment building" and 17 should be the basement as in the RFDC.</p> <p>Reduction in potable water consumption as per BASIX, even if combined with stormwater detention, will not achieve the WSUD objective of minimising effects on receiving waters, as erosive flows can still occur. It is necessary to reduce the total volume of runoff, and since BASIX can be met by the use of water-saving fixtures, it does not do this. Hence the need for a DCP to apply in this regard.</p> <p>Wastewater re-use will reduce the re-use of rainwater further.</p> <p>How is this monitored or enforced?</p> <p>Runoff from balconies is stormwater and cannot be used internally.</p> | <p>L'scape opinion needed</p> <p>Amend</p> |
| 4W Waste management | Figure 4W.3 does not demonstrate compost bins or a community garden. | Amend |
| <p>4X Building maintenance</p> <p>Performance Criteria 4X-1</p> | <p>4X Topic description to include "and minimise likelihood of building defects".</p> <p>Strike-out "A number of the following design solutions are used:" and replace with "All the following design solutions are used:"</p> <p>Add 3 additional points:</p> <ul style="list-style-type: none"> - <i>No apartment is to be accommodated below natural ground level</i> - <i>no external wall is to have direct contact with soil above the proposed floor level and</i> - <i>no ground floor terraces are to be excavated below 1m of natural ground level.</i> <p>Extensive UNSW research has identified water penetration as a leading cause of building defects. Ensuring there is a physical separation of walls of habitable rooms from soil will alleviate problems with substandard waterproofing either due to poor construction detailing, poor construction methods. Water penetration is very costly to remediate, affects building value over time, affects affordability and is largely preventable.</p> | <p>Amend</p> <p>Urgent</p> <p>Amend</p> |

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| | Figure 4X.3 has expanses of rendered painted walls requiring scaffolding to maintain which is inconsistent with Performance Criteria 4X-2.3 and 4X-3.1 | |
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PART 5 DESIGN REVIEW PANELS

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| 5A Function of design review panels | Supported. | |
| 5B Membership and establishment | Supported. Needs to be extended to require that consent authorities including PACs, JRPPs include equal representation of similar design expertise. | |
| 5C Roles and responsibilities | Supported. | |
| 5D Meeting procedures | Supported. | |
| 5E Templates | Supported. | |

APPENDICES

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| App1 Site analysis checklist | Supported. | |
| App2 Pre-development application checklist | Supported. | |
| App3 DA documentation checklist | Supported. Appendix 3 – This was not separated out in the RFDC, but the water management concept design should be its own document, separate to the Landscape Plan and designed by a suitably qualified professional (ie an engineer), as required under 4V-2-1 | |
| App4 Apartment building example schemes | Sample schemes mostly do not demonstrate minimum deep soil areas – they are significantly higher than ADG minimums. This is clear evidence of the inadequacy of deep soil requirements and should be amended in 3D and 3E of the ADG. | Amend |
| Glossary | <p>Words such as ‘minimise’, ‘unavoidable’ are subjective and are not provided with any objective, measurable, or verifiable performance standards. They should be deleted from the ADG and replace with verifiable performance benchmarks.</p> <p>The following definition is incorrect – the tanks are the retention systems:</p> <p>Stormwater retention systems: Retention systems that allow for stormwater to be retained, for infiltration into groundwater or storage in tanks.</p> <p>There should perhaps be two separate items:</p> <p>Rainwater retention systems: Retention systems that allow for roof runoff to be retained, for re-use inside the building, irrigation or for infiltration into groundwater: and</p> <p>Stormwater retention systems: Retention systems that allow for stormwater to be retained, for infiltration into groundwater or irrigation</p> <p>The following definition looks incorrect – there is no “an” Australian Height Datum, but there is a “the” Australian Height Datum:</p> <p>Datum point or datum line: A significant point or line in</p> | Amend |

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| | <p>space established by the existing or desired context, often defined as an Australian Height Datum. For example, the top of significant trees or the cornice of a heritage building</p> <p>Should it read "...often defined to (or by? Or above?) Australian Height Datum."?</p> <p>Deep soil does not include paths in the exclusions but 3E.2 allows provision of 10% of deep soil area to include paths where tree roots are not impeded. This does not allow for other planting. Council DCPs to prevail for deep soil requirements.</p> | |
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