



Lane Cove Council

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11 November 2014

Our ref: 65872/14

Ms Carolyn McNally,
Secretary,
NSW Department of Planning & Environment,
23-33 Bridge St,
SYDNEY NSW 2000



Dear Ms McNally,

RE: DRAFT STATE ENVIRONMENTAL PLANNING POLICY 65 & APARTMENT DESIGN GUIDE

Council welcomes the opportunity to comment on the draft State Environmental Planning Policy 65: Design Quality of Residential Flat Development and Apartment Design Guide.

The State Government's introduction of SEPP 65 and the Residential Flat Design Code was commendable and is widely regarded as having achieved significant improvements overall to the quality of design and amenity of apartments in NSW. These policies have served the State, local councils and their communities well by providing clear policy direction and a credible planning reference for best practice and innovation that promoted better livability and amenity standards in residential unit development.

The timing of the review is appropriate given the period that has elapsed since the introduction of the policies in 2002. Notwithstanding the support for the documents, it is accepted that they are in need of review and updating to better reflect changes in construction methods, residential unit design and community expectations. The review is appropriate also given the focus by the State Government on residential growth around major rail and light rail transport nodes.

The following submissions are made in accordance with a Council resolution of 27 October 2014.

The proposed amendments to SEPP 65 and the new Apartment Design Guide are a move in the right direction and aspects are supported. However, the proposed SEPP amendments fail to recognize and engage local communities and councils in a way that encourages local solutions to problems while keeping true to the overall policy direction of the State.

Issues supported

The aspects of the SEPP that are supported include:

- The SEPP would now apply to mixed use developments and shop top housing that include a residential component.
- The SEPP would give Councils the choice and ability to appoint a design review panel.
- The SEPP would clarify that apartment buildings need to comply with the Building Sustainability Index (BASIX).

Issues of concern

Aspects of the Apartment Design Code appear to move away from a reference document of best and innovative practice to a document of minimum acceptable standards only, and this is not supported.

- Setting a minimum size (35m²) for a studio apartment is welcomed as a reference point, yet it fails to state the basis for the minimum and to explain the design context where a deviation should be considered. The RFC articulated examples for consideration of design layout that would justify a range of sizes, while maximizing internal amenity.
- The reduction and removal of the need for on-site car parking spaces near major rail nodes appear to be premature. Council has recently included a new chapter in the DCP centralizing traffic issues. Removal of the need for on-site car parking is not supported given the likely impacts of on-street parking in local streets in these areas. In this locality, the residential streets in and around St Leonards and Wollstonecraft would bear the unacceptable impacts of such a move.

The demographics of car ownership is changing, whether that change continues and at what rate needs to be monitored and considered in a rational manner that maintains certainty for all stakeholders, including residents.

The reference to the RMS guidelines would be seen as a preferred model and benchmark for Councils for the adoption of minimum on site car parking numbers rather than making such optional.

- A case in point is the long term view adopted of unit make-up for residential development contained in our DCP which considers lifecycle change, long term housing diversity and the shorter term needs of developers. Council's requirement for a 10% allocation of 1, 2 and 3 bedroom apartments is a well-considered and measured local response to housing diversity.

This is an example of local innovation and context that supports the State policy. Councils should not be deterred by the SEPP and Code revision from maintaining standards and amenity for the long-term future of an area, rather than responding to short-term market forces only.

Local application of the SEPP and Code should be permitted: Council has taken a measured and realistic approach to achieving the State policy of increasing meaningful residential development. We were among the first councils to adopt the new comprehensive LEP and DCP, consulting with our community and listening to their concerns and expectations. We researched and adopted residential standards that increased the livability of unit living in a manner that encourage development and maintained diversity and choice. The outcome was that, in combination with local community character, the State's residential targets were achieved.

Please see the attached report to Council of 27 October 2014 at **AT 1** for detailed supporting comments on the review.

Issues in detail

(i) *Clause 4 – Application of the Policy:*

The Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential component.

Submission: This clarifies the application of the SEPP and is supported.

(ii) *Bedroom Mix:*

The proposed Principle 8 – Housing Diversity and Social Interaction states: “Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets”.

Lane Cove Council supports this principle, on the proviso that councils be permitted to determine the locality's dwelling mix according to local conditions. Lane Cove's Development Control Plan requires a 10% mix of 1, 2 and 3 bedroom apartments with a 70% mix determined by the developer (market). This local principle, applied also by other councils, is of particular importance to Lane Cove on these grounds:-

- It aims to ensure a range of dwelling sizes for diversity and livability appropriate to all life-cycle stages of the present and future residents
- It reflects market demand with 3-bedroom apartments selling successfully - ahead of other units, in many developments – in the units approved since the LEP's introduction in 2010 (2,500 units have been approved).
- The Australian Bureau of Statistics Census 2011 data for Lane Cove LGA, as an example, shows that 19.1% of residents of apartments live in units comprising 3 or more bedrooms.

This figure reflects the market demand over many decades of residential flats construction - and so is a better indicator of long-term demand for bedroom mix than relying only on the current market. It would not be considered a satisfactory basis for public policy to rely on the current market as a de facto policy-forming entity for housing provision.

The requirement for a specific bedroom mix would be consistent with the SEPP's objectives, and the trend for families increasingly living in apartments. Planning authorities have a responsibility to plan for the long-term well-being of the future community as a whole, not only the immediate market, considering that these developments will exist for many decades.

Submission: Lane Cove Council requests that the SEPP/ Apartment Design Guide ensure that local DCPs may specify the requirement for a minimum bedroom mix.

(iii) *Replacement of Residential Flat Design Code with Apartment Design Guide*

The new Apartment Design Guide has been described in the exhibition material as moving towards greater flexibility and innovation in the design of buildings. In reality, the new Apartment Design Code provides developers and others greater certainty at the cost of less flexibility and innovation.

A one-size-fits-all approach is unsuitable across Sydney's diverse urban and suburban characters, constraints and locations.

Submission: The Apartment Design Guide should be amended to be a best practice reference rather than a statement and justification of minimum standards.

(iv) *Separation distances:*

Separation distance is increased by 3m when adjacent to a zone permitting lower density.

Submission: The 3metre increase in separation when adjacent to a zone permitting lower density residential is new and has merit.

(v) *Car parking:*

No minimum requirement applies for sites within 400m of a railway station or light rail stop.

This is of major concern as this could provide an outcome where the cost of private parking is transferred to the public. Despite the presence of heavy rail, it will not meet all the transport needs of residents particularly on weekends.

If the Amendment to the SEPP proceeds and the Guide is adopted, then the result would be more pressure for on-street parking, as it is likely that unit owners may still have cars to meet demands, particularly on weekends, for trips to areas which do not have public transport.

Submission: The reduction in mandatory car parking provision is not supported.

(vi) *Apartment size*

The inclusion of minimum apartment sizes in the SEPP implies that all Council's across NSW are subject to the same economic, environmental and social factors. When a minimum standard is set that cannot be used as grounds for refusal it affects what should essentially be a merit-based assessment of residential flat buildings in compliance with design principles contained within a State planning policy.

It is noted the Code used to provide both (i) minimum sizes for affordability and (ii) optimal sizes for good amenity. This is preferable as promoting a wider range of housing layouts and scale for a diverse population.

Submission: Optimal configuration should be encouraged by the continued inclusion of guidelines for a range of sizes from affordable to sizeable, rather than promoting reduced living areas only, at a time when households of an increasing range of sizes are living in apartments.

In conclusion, Council wishes to:-

- highlight the need for an amended SEPP to recognise local measures and councils that deliver State aims while having regard to local constraints, innovation and circumstance, and
- call for the Apartment Design Code to be a best practice reference rather than a statement and justification of minimum standards.

The review of the SEPP 65 and the Apartment Design Code are timely and in part welcomed. However, there is an opportunity to significantly improve the fundamental premise and approach to achieving changes that improve all aspects of multi unit development in our towns and cities. These changes should be based on best practice, consideration of local circumstances, have broad community support and, at every opportunity, improve livability.

Thank you for the opportunity to comment on the review of these important planning policies.

Yours sincerely,



Michael Mason,
Executive Manager – Environmental Services

Subject: SEPP 65 Review - Design Quality of Residential Flat Buildings
Record No: SU1802 - 63596/14
Division: Environmental Services Division
Author(s): Michael Mason

Executive Summary

Amendments to State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Buildings (SEPP 65) by the NSW State Government are currently on public exhibition until 31 October 2014.

The main changes proposed to the SEPP are:-

- The replacement of the Residential Flat Design Code with a new Apartment Design Guide;
- A new requirement has been included that carparking is nominated in the list of matters that Council cannot refuse a DA on; and
- A Development Control Plan cannot be inconsistent with the Apartment Design Guide.

The report recommends that Council make a submission to Planning & Environment on the SEPP Amendment and the Apartment Design Guide that highlights the need for an amended SEPP to recognise local measures and Councils that deliver State aims while having regard to local constraints, innovation and circumstance. The submission would also call for the Apartment Design Code to be a best practice reference rather than a statement and justification of minimum standards.

Background

SEPP No. 65 was introduced in 2002 with the aim to improve the design quality of residential flat development in NSW. The current SEPP applies to the development of residential flat buildings; substantial redevelopment or the substantial refurbishment of an existing residential flat buildings; and the conversion of an existing building to a residential flat building. A residential flat building is defined as a multi-unit development with three or more storeys and four (4) or more self-contained dwellings.

The SEPP was accompanied by the Residential Flat Design Code which provided tools for improving the design of residential flat buildings and guidance on how the design quality principles provided under the SEPP can be applied to developments.

Outline of Changes

The draft documents comprise the SEPP Instrument and the design guidelines. In respect of the SEPP Instrument, the changes proposed are as follows:-

1. Changes to SEPP 65 – Design Quality of Residential Flat Buildings

Table 1 – Summary of Changes to the SEPP	
Proposed Amendment	Comment
Clause 2 – Aims, Objectives etc.: Insert additional aims	
<p>(f) <i>to contribute to the provision of a variety of dwelling types to meet housing and population targets, and</i></p> <p>(g) <i>to contribute to the provision of affordable housing options, and</i></p> <p>(h) <i>to facilitate the timely and efficient assessment of applications for residential flat development.</i></p>	<p>The amendment will reference the housing targets set by the NSW State Government. Council should note that new targets will shortly be set for Councils.</p>
Clause 3 – Definitions: Replace all definitions with new definitions	
<ul style="list-style-type: none"> • Apartment Design Guide means the document titled —Apartment Design Guidell published by the Department of Planning and Infrastructure on the day on which State Environmental Planning Policy No 65—Design Quality of Residential Flat Development (Amendment No 3) commenced. • Note. A copy of the Guide is available on the website of the Department. • design quality principles means the principles set out in Schedule 1. • design review panel means a panel constituted under Part 3. • relevant design review panel, in relation to an application for development consent or the modification of development consent, means the design review panel for the local government area or areas in which the development concerned is being (or is proposed to be) carried out. • residential flat development means development to which this Policy applies because of clause 4. • the Act means the Environmental Planning and Assessment Act 1979. 	<p>The <i>Residential Flat Design Code</i> will be replaced with the <i>Apartment Design Guide</i>. Refer to the discussion below which outlines the new Guide.</p>

Table 1 – Summary of Changes to the SEPP	
Proposed Amendment	Comment
Clause 4 – Application of the Policy: Replace the clause with a new clause	
<p><i>This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:</i></p> <p>(a) <i>the development consists of any of the following:</i></p> <ul style="list-style-type: none"> (i) <i>the erection of a new building,</i> (ii) <i>the substantial redevelopment or the substantial refurbishment of an existing building,</i> (iii) <i>the conversion of an existing building for use as a residential flat building, shop top housing or mixed development with a residential accommodation component, and</i> <p>(b) <i>the building concerned is at least 3 or more storeys (not including levels below the ground level (existing) providing for car parking, and (c) the building concerned contains at least 4 or more dwellings.</i></p>	<p>The amended SEPP will be extended to include mixed use development and shop top housing of three or more storeys and four or more dwellings in addition to residential flat buildings.</p> <p>This clarifies the application of the SEPP and is supported.</p>
Clause 6 – Relationship with other Environmental Planning Instruments	
<p>Insert at the end of the clause:</p> <p>(2) Subclause (1) does not apply in relation to <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.</i></p>	<p>The amendment to the SEPP will clarify that apartment buildings being assessed under SEPP 65 will also need to comply with BASIX (the building sustainability index) SEPP.</p>
Clause 6A – DCPs Cannot be Inconsistent with Apartment Design Guide: New Clause	
<p><i>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:</i></p> <ul style="list-style-type: none"> (a) <i>visual privacy,</i> (b) <i>solar and daylight access,</i> (c) <i>common circulation and spaces,</i> (d) <i>apartment layout,</i> (e) <i>ceiling heights,</i> (f) <i>balconies and private open space,</i> (g) <i>natural ventilation,</i> (h) <i>storage.</i> 	<p>The amendment to the SEPP will require that the design criteria in the <i>Apartment Design Guide</i> will prevail over Council's comprehensive DCP. A comparison of where council's DCP exceeds the new standard is outlined later in the report.</p>

Table 1 – Summary of Changes to the SEPP

Proposed Amendment	Comment
Part 2 – Design Quality Principles	
<p>Delete Part 2, including the 10 Design Quality Principles.</p> <p>The 10 Design Quality principles are proposed to be replaced with the following 9 design quality principles:</p> <ul style="list-style-type: none"> • Context and Neighbourhood Character; • Built Form and Scale; • Density; • Sustainability; • Landscape; • Amenity; • Safety; • Housing Diversity and Social Interaction; and • Architectural Expression 	<p>Design Quality Principles are now proposed to be contained in Schedule 1 to the SEPP (instead of the main instrument).</p> <p>The existing principles are:</p> <ul style="list-style-type: none"> • Context • Scale • Built form • Density • Resource, energy and water efficiency • Landscape • Amenity • Safety & security • Social dimensions and housing affordability • Aesthetics
Clauses 19 to 27 Relating to the Constitution of Design Review Panels, Functions, etc.	
<p>The SEPP makes various changes to provisions relating to the appointment of a Design Review Panel.</p>	<p>Whilst the <i>Frequently Asked Questions Fact Sheet</i> published by the Department states that <i>the SEPP amendment will give councils the ability to appoint design review panels and to determine who is on the panel (previously, the Minister appointed panels)</i>, the wording in the public consultation draft indicates that it is still the Minister who may constitute a panel or abolish a panel.</p> <p>While Lane Cove Council does not have a Design Review Panel at present it has resolved to investigate and call for a report on a likely model that would consider the Lane Cove context.</p>
Clauses 28 to 30A – Relating to preparation of LEPs, DCPs, Masterplans, DAs, S96s, issue of construction and occupation certificate, and standards that cannot be used as grounds to refuse development consent	
<p>The SEPP amendment reduces Part 4 to three provisions:</p> <ul style="list-style-type: none"> • Determination of DAs; • Determination of Section 96 Applications; and • Standards that cannot be used as grounds to refuse development consent or modification of development consent. 	<p>For Councils who have a formal SEPP 65 Panel the major changes are:</p> <ul style="list-style-type: none"> • The 31 day period for obtaining the Design Review Panel's advice on a DA is reduced to 14 days. After 14 days the consent authority may determine the DA. Same for Section 96 modifications to consent. • If an architectural design competition that is consistent with the Design Excellence Guidelines has been held for the proposed development, the consent

Table 1 – Summary of Changes to the SEPP	
Proposed Amendment	Comment
	<p>authority is not required to obtain the advice of a Design Review Panel.</p> <ul style="list-style-type: none"> • A consent authority cannot refuse a DA on any of the following grounds: ceiling height, apartment area and carparking. Carparking is the new item. A DA cannot be refused on the basis of inadequate car parking if carparking for the building is equal to, or greater than, that recommended as the minimum amount of car parking set out in Part 3 of the <i>Apartment Design Guide</i>.
Schedule 1 – Design Quality Principles	
The Design Quality Principles have been reworded and updated. (Refer to the discussions in more details below.)	

Design Quality Principles

The current principles are outlined in **AT-1** and the new draft principles are in **AT-2**. The wording between the current and the proposed principles has been amended, but the intent remains the same. There is however a conflict between new Principle 8 (previously called “Principle 9 - Social Directions and Housing Affordability”) and the Council Policy Considerations of dwelling sizes, car parking rates and unit mix.

Principle 9 - Social Dimensions and Housing Affordability states:-

“Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities.

New developments should optimise the provision of housing to suit the social mix and needs in the neighbourhood or, in the case of precincts undergoing transition, provide for the desired future community.

New developments should address housing affordability by optimising the provision of economic housing choices.”

The proposed new *Principle 8 – Housing Diversity and Social Interaction* states:-

“Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets. Well-designed developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.”

The previous principle (being Principle 9 – Social and Housing Affordability) did not specifically mention apartment sizes nor requiring good design to achieve a mix of apartment sizes etc. This is of particular concern in the Lane Cove context as Council’s DCP requires a 10% mix of 1, 2 and 3 bedroom apartments with a 70% mix determined by the developer (market). This local principle will be included in Council’s submission.

2. Replacement of Residential Flat Design Code with Apartment Design Guide

The Apartment Design Code will replace the 2002 Residential Flat Design Code. The new Apartment Design Code has been described in the exhibition material as moving towards greater flexibility in the design of buildings and encouraging design innovation. In reality the new Apartment Design Code provides developers and other stakeholders greater certainty at the expense of less flexibility and innovation. It is more prescriptive than the Residential Flat Design Code and Council's DCP.

The Residential Flat Design Code (RFDC) contains three (3) parts as follows:-

- **Part 1 – Local Context:**

Contains guidelines on relating to the local context, residential flat building types, amalgamation and subdivision of sites, building envelopes and primary development controls such as: height, depth, separation, setbacks and FSR.

- **Part 2 – Site Design:**

Contains guidelines on site analysis, site configuration (deep soil zones, fences, walls, landscape design, open space, orientation, planting on structures and stormwater management), site amenity (safety & visual privacy) and site access (building entry, parking, and pedestrian access and vehicle access).

- **Part 3 – Building Design:**

Building configuration, including apartment layout & mix, balconies, ceiling heights. Internal circulation, mixed use and storage; building amenity (acoustic privacy, daylight access, and natural ventilation), building form (awnings and signage, facades and roof designs), and building performance (energy efficiency, maintenance, water management and water conservation).

The Apartment Design Guide is more comprehensive than the RFDC. It contains the above matters for consideration as well as the following new matters, which seek to accommodate life cycle and demographic change.

- **Part 4G - Universal Design:**

The Guide states that:-

“Universal design is an international design philosophy that enables people to carry on living in the same home by ensuring that apartments are able to change with the needs of the occupants. Universally designed apartments are safer and easier to enter, move around and live in. They are of benefit to all members of the community, from young families to older people, their visitors, as well as those with permanent or temporary disabilities.

Incorporating universal design principles in apartment design is a step towards producing a robust, flexible housing stock. It ensures that simple and practical design features are incorporated into new buildings that would be difficult and costly to retrofit at a later date. Universal design is different to adaptable housing which is governed by Australian Standard 4299 and is specifically designed to allow for the future adaptation of a dwelling to accommodate the occupant's needs.

In addition to the specific aims of universal design and adaptable housing, flexible apartment design is desirable to allow buildings to accommodate a diverse range of lifestyle needs such as different household structures, live/work housing arrangements and future changes in use.”

The Guide states that the following universal design features should be incorporated into a proportion (20%) of all new apartments:

- Safe and continuous levelled paths to all entrances;
- Accessible entry door with a minimum 820mm clear opening width and a step for threshold;
- Level landing area of 1200mm by 1200mm at entrance door;
- Internal doors with a minimum 820mm clear opening width and a step free transition between surfaces;
- Internal corridors with a minimum of 1000mm clear width;
- Step free shower recess;
- Bathroom wall is reinforced for grab rails around the toilet, shower and basin; and
- A toilet is provided on the ground or entry level in multi-unit apartments.

- **Part 4H – Adaptive Reuse:**

The Guide states:-

“Buildings adapted for reuse as apartments can be of any shape or size from large houses, redundant industrial buildings, major institutional buildings and groups of buildings or commercial office towers. There are many benefits of retaining existing buildings. Adaptation of an existing building for a new residential use provides for the evolution of that place and should be approached in a way that acknowledges the past. Modifications should ensure the building’s continued relevance in the future. Residential adaptive reuse projects should be well designed contemporary layers that respect existing elements.”

Non-residential buildings often have dimensions, layouts and orientations that are not designed for residential use. A balance must be achieved between the benefits of retaining the building versus the quality of residential amenity that can be achieved.”

Adaptive Reuse applications can follow the rezoning industrial uses to high density residential purposes. While Lane Cove is yet to experience this type of development.

- **Part 4T – Noise & Pollution:**

This Part deals with design responses on sites that are affected by external noise and pollution sources. This Part is applicable to areas along major roads such as Epping Road, Pacific Highway and Burns Bay Road.

The Guide states:-

“Properties located near major roads, rail lines and beneath flight paths can be subject to noise and poor air quality. Similarly, hostile and noisy environments such as industrial areas, substations or sports stadiums can have impacts on residential amenity. Careful design solutions can help to improve quality of life in affected apartments by minimising potential noise and pollution impacts.”

- **Part 5 – Design Review Panels:** This Part of the Guide contains information on the function, membership, establishment, roles & responsibilities, meeting procedures and templates for a Design Review Panel. This is the first comprehensive guide to a SEPP 65 Design Review Panel. The SEPP Amendment does not indicate if the panels will be made compulsory.

Implications for Council

1. Development Control Plans Cannot be inconsistent with Apartment Design Guide

The proposed amendment to the SEPP proposes a new clause 6A which states:-

"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."

This means that Council's DCP be amended to delete the standards relating to the matters listed above for residential flat buildings. This includes Council's policy considerations of car parking rates, minimum dwelling sizes, etc. It should be noted that the Design Quality Principles in the SEPP (an environmental planning instrument) have more formal statutory weight at present than Council's comprehensive DCP.

The following table (Table 2) provides a comparison of the numerical standards in the Guide and Council's DCP 2013:

Numerical Standard	Lane Cove DCP	Apartment Design Guide	Comment
Communal Open Space	25% of site area	25% of the site area	Guide requires same communal open space as Council's DCP.
Solar Access to Communal Open Space	Minimum 3 hours in mid winter and reasonable application	50% of the principal useable portion of the communal open space for a minimum of 2 hours between 9am and 3pm in mid winter.	Guide provides less solar access than Council's DCP.
Deep Soil Zones	A minimum of 25% of the landscape area must comprise a deep soil planting area of which: <ul style="list-style-type: none"> A minimum of 50% should be located at the rear of the site. For sites with dual or rear lane frontages, this area may be 	Based on site area: <ul style="list-style-type: none"> Less than 650m² – 7% consolidated of site area 650-1500m² – 10% of site area with minimum 3m width. Greater than 1500m² – 15% of 	Guide provides less deep soil landscaping than the Council's DCP.

Table 2 – Comparison between Council's DCP 2013 & Apartment Design Guide

Numerical Standard	Lane Cove DCP	Apartment Design Guide	Comment
	<p>relocated to allow buildings to address the secondary frontage or provide for rear lane carparking access;</p> <ul style="list-style-type: none"> • A minimum of 30% should be located within the front setback; • A minimum 2 metre wide strip of landscaping is to be located along and rear side boundaries; and • Where building height is greater than 7 metres, a minimum 3 metres wide landscape planter bed for the purposes of dense, layered landscape screening is to be located on both the side and rear boundaries. If it is attached to private open space of ground floor apartments then a 2 meter buffer is sufficient. 	<p>site area with minimum 6m width</p> <ul style="list-style-type: none"> • Greater than 1,500m² and significant tree cover – 20% of site area with minimum 6m width. • Pathways and paving is a maximum of 10% of the deep soil zone. 	
Separation Distances	<p>Requires compliance with the Residential Flat Design Code:</p> <ul style="list-style-type: none"> • Up to 12m (4 storeys) – 12m for habitable rooms and balconies, 12m between habitable and non-habitable and 6m for non-habitable; • Up to 25m (5-8 storeys) – 18m, 13m & 9m; and • Over 25m (9+ storeys) – 24m, 18m & 12m 	<p>Depending on building height:</p> <ul style="list-style-type: none"> • Up to 12m (4 storeys) – 12m for habitable rooms and balconies, 9m between habitable and non-habitable and 6m for non-habitable; • Up to 25m (5-8 storeys) – 18m, 12m & 9m; and • Over 25m (9+ storeys) – 24m, 18m & 12m 	<p>The separation distances are the same.</p>

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Table 2 – Comparison between Council's DCP 2013 & Apartment Design Guide

Numerical Standard	Lane Cove DCP	Apartment Design Guide	Comment
		<p>Apartment buildings should have an increased separation distance of 3m (in addition to the above) when adjacent to a zone permitting lower density residential development.</p> <p>The Guide also contains lower separation distances for infill development where privacy separation distances cannot be achieved.</p>	<p>The 3m increase in separation when adjacent to a zone permitting lower density residential is new and has merit.</p> <p>Lower separation distances for infill development is new and allows for a merit based assessment.</p>
Car Parking		<p>Sites within 400m of a railway station or light rail stop there is no specific minimum requirement.</p> <p>Sites within 400m to 800m of a railway station or light rail the minimum requirement is the RMS Guide to Traffic Generating Developments or the car parking prescribed by the Council's DCP – whatever is the less.</p> <p>Number of visitor's car parking is limited to 1 in 10 apartments.</p> <p>Car share spaces may be provided in lieu of the required number of car parking – subject to a council policy.</p>	<p>Guide is less restrictive than the Council's DCP – in fact for residential flat development within 400m of the St Leonards and Wollstonecraft Railway Stations there is no minimum carparking requirement.</p> <p>This means that for sites within this radius Council will not be able to require any car parking at all under the SEPP.</p> <p>This is of major concern as this could provide an outcome where the cost of private parking is transferred to the public. Despite the presence of heavy rail, it will not meet all the transport needs of residents particularly on weekends</p>
Solar and Daylight Access	Development must demonstrate that living rooms and private open spaces for at least 70% of	Living rooms and private open spaces of at least 70% of apartments in a building receive a	Similar controls in Council's DCP and the Guide.

Table 2 – Comparison between Council's DCP 2013 & Apartment Design Guide

Numerical Standard	Lane Cove DCP	Apartment Design Guide	Comment
	<p>apartments in a development should receive a minimum of three hours direct sunlight between 9am and 3pm in mid-winter.</p> <p>Neighbouring developments will obtain at least three hours of direct sunlight to 50% of the primary private open space and all windows to living rooms; and 30% of any common open space will obtain at least two hours of direct sunlight between 9am and 3pm on 21 June.</p>	<p>minimum of 3 hours direct sunlight between 9am and 3pm in mid winter.</p> <p>A maximum of 15% of apartments in a building have no direct sunlight between 9am and 3pm in mid winter.</p> <p>Apartments that receive direct sunlight in accordance with the acceptable solution 4L-1.4 (first point above) need to demonstrate that a person is able to sit in the sun in a habitable room or on a balcony of an apartment in mid-winter between 9am and 3pm.</p>	
Apartment Layout	<p>Minimum unit size of 40m² exclusive of balconies, common corridors and lobbies, car spaces, storage areas outside dwelling, and open space.</p> <p>Council requires 10% mix of 1, 2 and 3 bedroom units with 70% determined by the market.</p>	<p>Apartment sizes are in accordance with:</p> <ul style="list-style-type: none"> • Studio – 35m² • 1 bedroom – 50m² • 2 bedroom – 70m² • 3 bedroom – 95m² <p>Minimum of 2.7m for floor to ceiling heights for habitable rooms. There other reduced requirements for 2 level apartments – 2.4m for the second floor where its area does not exceed 50% of the apartment area.</p> <p>For open plan layouts, combining the living room, dining room and kitchen, the back of the kitchen is a maximum of 8 metres from a window</p> <p>Master bedrooms have a minimum area of 10m²</p>	<p>The Guide contains smaller apartment sizes than the Council's minimum standards.</p> <p>Council provides flexibility to developers in the size of units and mix outside the 10% 1, 2 and 3 bedroom mix.</p> <p>It is noted the Code used to provide optimal sizes for good amenity in addition to minimum sizes for affordability. Optimal configuration should be encouraged by the continued inclusions.</p>

Table 2 – Comparison between Council's DCP 2013 & Apartment Design Guide

Numerical Standard	Lane Cove DCP	Apartment Design Guide	Comment
		<p>and other bedrooms 9m² (excluding wardrobe space)</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</p> <p>All bedrooms allow a minimum length of 1.5m for robes</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments 	
Private Open Space and Balconies	<ul style="list-style-type: none"> • Minimum depth of 2m and area of 10m² for all units above ground • Ground floor – minimum depth 4m and area 16m² 	<p>Primary private open space at ground level or similar space on a structure has a minimum area of 16m² and a minimum dimension in one direction of 3m</p> <p>Balconies to be provided as follows:</p> <ul style="list-style-type: none"> • 1 bedroom – 8m² minimum area and 2m depth; • 2 bedroom – 10m² and 2m; and • 3+ bedrooms – 12m² and 2.5m. 	The minimum private open space requirements and the balconies sizes under the Guide are less than those contained in Council's DCP for 1 bedroom units.
Cross Ventilation	The Council's DCP referenced the SEPP and the Residential Flat Design Code. The Code's Rule of Thumb required that 60% of residential units should be naturally cross ventilated.	At least 60% of apartments are naturally cross ventilated.	Same between the Guide and the Council's DCP.
Storage	Accessible and adequate storage facilities are to be provided at the following	<p>Studios - 6m³</p> <p>1 bedroom – 6m³</p>	Guide is the same as the Council's DCP.

Table 2 – Comparison between Council's DCP 2013 & Apartment Design Guide

Numerical Standard	Lane Cove DCP	Apartment Design Guide	Comment
	rates: Studios: 6m ³ 1 bedroom dwelling: 6m ³ 2 bedroom dwellings: 8m ³ 3+ bedroom dwellings: 10m ³	2 bedroom – 8m ³ 3+ bedrooms – 10m ³	
Basements	Merit based assessment with objective to minimise impacts	Protrusion of car parks does not exceed 1m above ground level, design solutions may include stepping car park levels or using split levels on sloping sites	
Site Coverage	Development for a residential flat building must not exceed a maximum site coverage of 45%.	Can be up to 100% - it depends on the locality characteristics.	Lane Cove to date have not assessed refurbishment of buildings for residential use. Any assessment would be on merit.

2. Standards that Cannot be Used as Grounds for Refusal

The SEPP amendment states that a consent authority cannot refuse a DA on the grounds of ceiling height, apartment area and car parking. Car parking is the new item. A DA cannot be refused if car parking for the building is equal to, or greater than, the recommended minimum amount of car parking set out in Part 3 of the Apartment Design Guide which is outlined in **Table 3** below.

The following table (**Table 3**) compares the car parking requirements in the recently adopted Chapter R – Traffic, Transport & Parking of the DCP to those in the Guide and Roads and Maritime Services Guide to Traffic Generating Developments.

Table 3 – Comparison of car parking between the Council's DCP and the Guide

Lane Cove Council Chapter – R DCP adopted 26 September 2014	Apartment Design Guide	Comment
Any residential development within 400m of St Leonards Railway Station is subject to the following:- <ul style="list-style-type: none"> • Studio – 0.6 spaces • 1 bedroom unit – 0.5 spaces • 2 bedroom unit – 1 space 	For sites within 400m of a railway station or light rail stop there is no specific minimum requirement. For sites within 400m to 800m of a railway station or light rail the minimum requirement is the RMS Guide to Traffic Generating Developments or	While Council parking standard has recently changed they are greater than that nominated in the Apartment Design Guide.

Table 3 – Comparison of car parking between the Council's DCP and the Guide

Lane Cove Council Chapter – R DCP adopted 26 September 2014	Apartment Design Guide	Comment
<ul style="list-style-type: none"> 3 bedroom units – 2 spaces (Table 2, p.35, Chapter R – Traffic, Transport & Parking)	the carparking prescribed by the Council's DCP – whatever is the less. Number of visitors is limited to 1 in 10 apartments. Car share spaces may be provided in lieu of the required number of car parking – subject to a council policy	

The main point of the car parking inclusion in the SEPP as a reason for not refusing a DA is to have fewer cars and to ensure that the expectation is that the people buying units will not need or want a car and therefore the unit would be more affordable.

Car parking is not required to be provided for residential flat development (RFB) and development involving a RFB within 400m of a Railway Station. Within 400-800m of a railway station the minimum requirement is the RMS Guide to Traffic Generating Developments or Council's DCP – whichever is the less. The carparking provisions in the RMS Guide are less than Council's DCP. This affects development around the St Leonards Station.

The new SEPP prevents Council from using its DCP to require developers to provide a minimum number of cars. The draft SEPP states that Council cannot mandate that a certain number of car spaces be provided in a development. If the Amendment to the SEPP proceeds and the Guide is adopted, then the result would be more pressure for on street parking, as it is likely that unit owners may still have cars to meet demands, particularly on weekends, for trips to areas which don't have public transport.

3. Apartment Size

Minimum apartment sizes and ceiling heights were introduced as an amendment to SEPP 65 in 2008 to address housing affordability by reducing the impact of building construction costs which were being passed onto purchasers.

The inclusion of minimum apartment sizes in the SEPP infers that all Council's across NSW are subject to the same economic, environmental and social factors. When a minimum standard is set that cannot be used as grounds for refusal it affects what is essentially a merit based assessment of residential flat buildings in compliance with design principles contained within a State planning policy.

Discussion

The proposal to review both SEPP 65 and the Residential Flat Code (RFC) is welcomed and timely given the focus by the State Government on residential development at and near major communication nodes (Rail and Light Rail). SEPP 65 and RFC have served the State, local Councils and their communities well by providing clear policy direction (SEPP 65) and a credible planning reference of best practice and innovation that promoted better livability and amenity standards in residential unit development.

Notwithstanding the acceptance and support of these documents they are in need of review and updating to better reflect changes in construction methods, residential unit design and community expectations.

The proposed amendments to SEPP 65 and the new Apartment Design Guide are a move in the right direction and aspects are supported. However, the proposed SEPP amendments fail to recognise and engage local communities and Councils in a way that encourages local solutions to problems while keeping true to the overall policy direction of the State.

The aspects of the SEPP that are supported include:

- The SEPP would now apply to mixed use developments and shop top housing that include a residential component.
- The SEPP would give Councils the choice and ability to appoint a design review panel.
- The SEPP would clarify that apartment buildings need to comply with the Building Sustainability Index (BASIX).

Aspects of the Apartment Design Code appear to move away from a reference document of best and innovative practice to a document of minimum acceptable standards.

- Setting a minimum size (35m²) for a studio apartment is welcomed as a reference point yet it fails to state the basis for the minimum and explain the design context where a deviation should be considered. The RFC articulated examples for consideration of design layout that would justify a range of sizes, while maximising internal amenity.
- The reduction and removal of the need for on site car parking spaces near major rail nodes appear to be a step too far too soon. Council has recently included a new chapter in the DCP centralising traffic issues. To remove the need for on site car parking is not supported given the likely impacts of on street parking in local streets in these areas. In Lane Cove the residential streets in and around St Leonards and Wollstonecraft would bear the unacceptable impacts of such a move.

The demographics of car ownership is changing, whether that change continues and at what rate needs to be monitored and considered in a rational manner that maintains certainty for all stakeholders, including residents.

The reference to the RMS guidelines would be seen as a preferred model and benchmark for Councils for the adoption of minimum on site car parking numbers rather than making such optional.

The above examples and issues highlight both support and concern with the proposed amendments to SEPP 65 and the Apartment Design Code.

Council has taken a measured and realistic approach to achieving the State policy of increasing meaningful residential development. We were among the first Councils to adopt the new comprehensive LEP and DCP. We consulted with our community and listened to their concerns and expectations. We researched and adopted residential standards that increased the livability of unit living in a manner that encourage development and maintained diversity and choice.

A case in point is the long term view adopted of unit make-up for residential development contained in our DCP which considers lifecycle change, long term housing diversity and the shorter term needs of developers. Council's requirement for a 10% allocation of 1, 2 and 3 bedroom apartments is a well considered and measured local response to housing diversity.

This is an example of local innovation and context that supports the State policy.

Conclusion

The review of the SEPP 65 and the Apartment Design Code are timely and in part welcomed. However, there is an opportunity to significantly improve the fundamental premise and approach to achieving changes that improve all aspects of multi unit development in our towns and cities. These changes should be based on best practice, consideration of local circumstances, have broad community support and, at every opportunity, improve livability.

RECOMMENDATION

That Council:-

1. Receive and note the report; and
2. Make a submission to the Department of Planning & Environment for their consideration and response.

Michael Mason
Executive Manager
Environmental Services Division

ATTACHMENTS:

AT-1 <u>View</u>	Existing Design Quality Principles from SEPP 65	3 Pages
AT-2 <u>View</u>	SEPP 65 - Draft Amendment	2 Pages

TO: Office Manager (Angela Panich)

FOR
ACTION

Subject: SEPP 65 Review - Design Quality of Residential Flat Buildings
Target Date: 10/11/2014
Notes:

SEPP 65 REVIEW - DESIGN QUALITY OF RESIDENTIAL FLAT BUILDINGS

268 RESOLVED on the motion of Councillors Cheong that Council:-

1. Receive and note the report;
2. Make a submission to the Department of Planning & Environment for their consideration generally in accordance with the report and including:-
 - a) Emphasis in the submission the reasons and necessity to provide adequate number of car parking spaces within residential flat developments w/in 400m radius of St Leonards Train Station;
 - b) That a proportion of the total number of residential units retain the existing recommended sizes and only a certain smaller percentage to conform to the Affordable Apartment Design Guide Apartment sizes; and
 - c) To encourage social interaction, developments of 50 units or larger should provide a minimum of 20sqm of well designed communal space within the development in an appropriate location; and
3. Further comments be submitted to the General Manager and circulated to all Councillors.

For the Motion were Councillors Brent, Palmer, Cheong, Gold, Hutchens, Karpin, Strassberg, Bennison and Brooks-Horn (Total 9).

Against the Motion was Nil (Total 0).

ACTION TAKEN BY OFFICER
