



WAVERLEY COUNCIL

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Our ref: A03/0118

31 October 2014

The Hon Pru Goward MP  
Minister for Planning and Environment  
GPO 5341  
Sydney NSW 2001

**Re: Proposed Changes to SEPP 65 and the Residential Flat Design Code  
(Apartment Design Guide)**

Dear Minister,

Thank you for the opportunity to contribute to the review of SEPP 65 and the Residential Flat Design Code (RFDC). Waverley Council recognises the key role SEPP 65 and the RFDC have played in improving the design and amenity of apartments over the past decade and supports the significant effort that the Department of Planning and Environment (DP&E) have invested into updating the legislation and guidelines. As to be expected, there are some areas of concern in relation to the proposed changes that are highlighted in this submission.

**1. Overview**

Since the introduction of SEPP 65, RFDC and the subsequent creation of the Joint Waverley and Randwick SEPP 65 Design Review Panel (Design Review Panel) in 2003, hundreds of residential flat buildings and mixed (residential and commercial/retail) use developments throughout the Waverley Local Government Area (LGA) have undergone a more rigorous assessment, that has sought to improve the architectural design, quality and liveability of residential developments.

SEPP 65, the RFDC and the Design Review Panel have and continue to improve the overall architectural design quality and liveability of residential flat buildings and mixed use developments in the Waverley LGA. The proposed amendments to SEPP 65 and Apartment Design Guide seek to enhance and update the provisions of SEPP 65 and Apartment Design Guide are generally supported by the Waverley Council.

While the amendments to SEPP 65 and the RFDC are generally supported, if the amendments are formally adopted (gazetted) by the Minister, the application of SEPP 65 will have implications on the application and relevance of the Waverley Development Control Plan 2012 (Amendment No. 2) (WDCP 2012). In particular the following Parts of the WDCP 2012 may have either a reduced or limited consideration in the assessment of applicable Development Applications as the controls may be contrary to the Apartment Design Guide:

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- Part B – General Design Provisions, including:
  - Section B2 – Energy and Water Conservation
  - Section B7 – Accessibility and Adaptability
  - Section B8 – Transport
  - Section B9 – Heritage
- Part C – Residential Development, particularly:
  - C2 Multi Unit and Multi Dwelling Housing
- Part D – Commercial Development, including:
  - Section D1 – Commercial and Retail Development
  - Section D2 – Advertising and Signage
- Part F – Site Specific Development

It is requested that the Department clarify the hierarchy of controls relating to SEPP 65 in particular the relationship between the Apartment Design Guide and Waverley Development Control Plan 2012. It is vital that the legislative framework of applying the guidelines in lieu/versus the Development Control Plan is both clear and precise to remove any confusion that may occur.

## **2. State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development (Amendment No 3)**

### Development control plans cannot be inconsistent with Apartment Design Guides

Clause 6A elevates certain parts of the Apartment Design Guide above existing objectives and controls in the WDCP 2012. While the list of standards detailed in clause 6A is limited (comprising of 8), it is noted that the some standards cross reference additional standards in the Apartment Design Guide for acceptable solutions. An example of this is Part 3F Visual Privacy which refers to section 2H and 3B of the Apartment Design Guide. Clause 6A should be amended to clarify its application in particular the cross referencing between various standards within the Apartment Design Guide and implications for the WDCP 2012 controls (e.g. Setbacks and number of storeys).

### Design Review Panel Quorum requires 3 panelists

At present the Design Review Panel has only 3 panelists (formerly 4, however sadly a panelist passed away some years ago) and the Department implemented a freeze on appointing new panelists while SEPP 65 is under review. Occasionally the Design Review Panel has comprised of only 2 members (due to leave/pecuniary interest of panelists), which is considered adequate to assess an application against the provision of SEPP 65 and Residential Flat Design Code. The inclusion of clause 26 Quorum may impact on the effective and timely operation of the Design Review Panel. This clause also results in additional expense for Council's and is an onerous requirement. Therefore this clause should not be adopted.



#### Panel advice timeframes

The amendments to clauses 29 and 30 insert a 14 day timeframe for panels to provide advice to the consent authority. The inclusion of panel advice timeframes is considered appropriate and supported.

#### Determination of applications for development consent modifications

The inclusion of clause 29 which requires development consent modifications to address the provisions of SEPP 65 and Apartment Design Guide is supported.

#### Standards that cannot be used as grounds to refuse development consent or modification of development consent

The provisions of clause 30 relating to ceiling height, apartment area and car parking specified in the Apartment Design Guide are generally consistent with those detailed in the WDCP 2012 and are supported.

#### Design quality principles

The amendments to schedule 1 – Design quality principles are considered to be in keeping with the existing principles of SEPP 65 and are supported.

### **3. Residential Flat Design Code (Apartment Design Guide)**

The Apartment Design Guide (formally Residential Flat Design Code) is a very detailed and prescriptive document, with all of the document parts contributing to the design quality of residential flat buildings and mixed use developments. To avoid confusion in the application of the Apartment Design Guide the document should be amended to address the following matters:

- Incorporate a detailed relationship between SEPP 65, Apartment Design Guide and local planning controls (Waverley Development Control Plan); and
- Clarify the requirements for applications to satisfy “alternative solutions” and a consent authority’s ability to accept and merit assess “alternative solutions”.

The interpretation of the Apartment Design Guide as flexible guidelines rather than a strict code is supported. However, there are numerous clauses in the Apartment Design Guide that provide developers with justification to not comply with the guidelines. These should be strictly qualified in order to prevent developers using every exception found in the Guide to get poorly designed buildings approved. It is also noted that there is a lack of provisions for home office space within apartments subject to SEPP 65 and the Apartment Design Guide.

More specific comments regarding the Apartment Design Guide are outlined in the table below:



Section	Page	Comments
1C - Precincts and individual sites	26	<i>Site amalgamation requirements may be appropriate</i> – site amalgamation should, where possible, respect the character of the place.
	27	<i>'Alternate solutions to some of the Apartment Design Guide performance criteria may be appropriate'</i> – Additional information on the nature and appropriateness of this is required.
3A – Site analysis	46	<i>'It may be beneficial to undertake a site analysis in collaboration with technical consultants....'</i> – Comment could read <i>'it is beneficial to....'</i>
3C – Public domain interface	52	Diagrams could contain a tick next to the preferred scenarios and a cross next to the scenarios that do not add public domain benefit.
	55	Include photographs that demonstrate different building designs and apartment types, not just white render box shapes.
3D – Communal and public open space	56	Add a dot point to read 'opportunities for exercising and socialising pets.
	57	Minimum 2 hours of sun light to communal open spaces is not enough.
4B – Ground floor apartments	78	<i>'Ground floor apartments can be of particular benefit to the elderly and disabled as they are generally more accessible'</i> – Provide guidelines for ground floor apartment design in relation to access and universal design (refer to 4G). Promote the need for these facilities with an aging population and how it can be achieved. The images and sections all contain stairs.
4D – Roof design	82	<i>'The Standard Instrument Local Environment Plan allows for architectural roof features that can exceed the maximum building height'</i> – Where appropriate roof features may exceed the maximum building height.
4F – Planting on structures	87	<i>'Building design incorporates opportunities for planting on structures'</i> – Although green walls are gaining popularity there are many examples in Sydney that are failing due to poor orientation or maintenance. Guidelines for orientation, size and how to achieve best results may be helpful.
	87	<i>'Structures are reinforced for additional saturated soil weight'</i> – and the growth of the plant over its lifetime.
4G – Universal Design		Strongly support the content in the section
4H – Adaptive reuse	91	<i>'New additions allow for the interpretation and future evolution of the building'</i> – Work could be based on an understanding of the cultural significance of the place, with new work acceptable where it respects the cultural significance allowing interpretation and appreciation of the place. The historical item should read as the primary component and the addition as secondary.
4J – Mixed use	93	<i>'Residential floors are integrated within the development, safety and amenity is also maximised'</i> – Passive surveillance from first floor is encouraged.
4K – Awnings and signage	95	<i>'4K-1 2 A number of the following design solutions are used.'</i> – Include awnings should step or respond to the gradient of the land.
4L – Solar and daylight access	97	<i>'A maximum of 15% of apartments in a building have no direct sunlight between 9am and 3pm mid winter'</i> – 15% is too high. For the percentage of apartments that do not receive direct solar access provide acceptable solutions to allow these dwellings can receive indirect/secondary natural light and passive heating. The exclusion of natural light and passive heating during winter is not acceptable.



<b>4P – Private open space and balconies</b>	109	<i>'Private open spaces and balconies predominantly face north, east or west...' – Private open spaces should predominantly face north. East and West facing balconies are encouraged where operable external shading devices are provided.</i>
<b>4X – Building maintenance</b>	129	<i>'Material selection reduces ongoing maintenance costs...' – Provide design solutions for coastal areas and maintenance of material corrosion from salt.</i>
<b>5A – Function of Design Review Panels</b>		<p><i>General Function – Whilst panels are advisory it should be stressed that the advice has legal weight and panels will assess submissions in terms of the overall performance of the design. Assessment panels should not be expected to rubber stamp projects where minimum compliance with each criterion is achieved or argued on an engineered basis but the overall project is considered to provide a poor outcome.</i></p> <p><i>Relationship between Design Review Panels and Architectural Design Competitions – Whilst an architectural design competition consistent with the Director Generals Design Excellence Guidelines may exempt a project referral to a SEPP65 panel it should not be taken as an automatic exemption where a project clearly does not comply with SEPP 65 performance guidelines.</i></p> <p><i>Pre-DA – Discussions should be compulsory on all projects requiring SEPP 65 referral. Advice from Design Review Panels should be sought at this stage.</i></p>
<b>5B – Membership and Establishment</b>		A mix of expertise should be a compulsory requirement of panels and should include heritage expertise where projects are in established urban settings.
<b>5C – Roles and Responsibilities</b>		The Panel Chairperson should ensure that viable alternate recommendations are included in reports rather than supervising voting for a singular recommendation.
<b>5D – Meeting Procedures</b>		These guidelines are fully supported with the exception of the voting system which should be amended to a chairman having the right to include a particular recommendation as the preferred advice with acknowledgment that alternate options [identified in the report] have been identified by the panel.
<b>5E Templates</b>		Templates are supported

I hope these comments provide some helpful feedback. Should you require any clarification please contact Alex Beers, Strategic Planner, on 9369 8170.

Best regards,

Peter Monks  
Director, Waverley Futures, Waverley Council

