



7 November 2014

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NSW Department of Planning and Environment  
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Dear Ms Wing

## **SEPP 65 AND APARTMENT DESIGN GUIDE**

We thank you for the opportunity to comment on the review of *State Environmental Planning Policy 65 - Design Quality of Residential Flat Development* (SEPP 65) and the accompanying Apartment Design Guide (ADG). This submission outlines JBA's comments with respect to the elements of the existing framework that work well, and those areas that could be improved in the amended SEPP 65 and new ADG. Our submission also benefits from having undertaken a number of presentations to developers and architects about the proposed changes to the SEPP and the new ADG, with some common themes/comments being raised that have been incorporated.

The comments are based on our extensive experience with SEPP 65 and in applying the existing Residential Flat Design Code (RFDC) to various residential developments in different locations across NSW, as well as having a number of senior staff members as core committee members of various industry bodies. JBA also has great insight from working with residential developers, designers (architects) and Councils and accordingly are well placed to offer commentary on where improvements/policy shifts could be made.

The provision of high quality Residential Flat Buildings (RFBs) is critical in implementing the housing targets of the Metropolitan Strategy, and will need to become the housing type of choice for many people if we are to meet the demand for housing required by growth in the State. It is generally acknowledged that the RFDC has led to an increase in the quality of RFBs, and the ADG seeks to clarify some elements of the existing RFDC which are problematic. However, there are several key issues arising from our review which still require resolution:

- The need for the Department of Planning and Environment (the Department) to provide greater clarity on the application of the ADG, in particular that the 'performance criteria' and 'acceptable solutions' outlined in the ADG should not be treated as a set of development standards, further clarification of the circumstances in which they can be varied upon demonstration that the objectives of the Guide have been met and greater understanding of how the 'alternative solutions' will be applied;
- The need for greater clarity to be provided that 'inner city' versus 'suburban'/'regional' context is important when assessing a RFB against the ADG, and greater clarity around what defines a 'dense urban area'; and
- The need for a thorough review of the ADG and any impact of its policies on housing affordability. One of the key drivers of the revised SEPP 65 framework has been to improve housing affordability, however the ADG does not make significant changes which would facilitate this. SEPP 65 / ADG should provide a clear policy setting on housing affordability.

## 1.0 KEY BENEFITS OF SEPP 65 AND THE EXISTING RFDC

There is general support for the fundamental principles of the existing RFDC, and a recognition that residential amenity is now at the forefront of developer' and architects' minds when designing RFBs. The main benefits arising from the existing framework are outlined below.

### *Design Quality of Residential Flat Buildings*

SEPP 65 and the accompanying RFDC were developed following significant research and extensive industry consultation, and have had substantial success in its implementation. It is generally considered that the quality of RFBs (both in terms of design and amenity) has improved since SEPP 65 and the RFDC were introduced in 2002. The requirement for architects to be registered and to complete design verification statements is also considered to have had a positive effect on the design quality of RFBs.

### *Design Review Panels*

The creation of Design Review Panels is also viewed as a positive outcome of SEPP 65. The design panels generally work well, providing for both reasonable and constructive reviews of developments. Further, Councils are now engaging more qualified, higher profile architects to sit on their panels, as recognition of their usefulness, contribution and validity grows. The fact that developments are being reviewed independently can give comfort to proponents and objectors alike, and the independent design advice is not viewed as a threat by Councillors. The Design Review Panel process is particularly reassuring for proponents whose applications are going before the JRPP, as the JRPP cannot be consulted prior to lodgement of a DA.

## 2.0 KEY ISSUES WITH SEPP 65 AND ADG FRAMEWORK

The main concerns with the existing SEPP 65 and RFDC framework surround the practical application of the 'Rules of Thumb', the need for greater consideration of context when assessing applications, and the critical need to review the Code with respect to any implications for housing affordability. Whilst the ADG has gone some way to try and respond to these concerns, the success will largely come down to the application of the new Guide. These key issues are addressed in turn below.

### *Issues with the Application of the existing Code, and the ADG's Response*

The primary concern around SEPP 65 and the existing RFDC is the way that the Code is currently applied. What was intended as a guideline with 'Rules of Thumb' provided as an assessment tool, is often applied by consent authorities as a series of development standards. There is a need for greater focus on the objectives of the provisions, rather than strict compliance with a numeric requirement to stimulate innovation in design.

It is acknowledged that the ADG is trying to resolve this - the fact that the 'Code' has been relabelled as a 'Guide' is evidence of this - however given that no significant changes have been made to the content or numerical nature of the existing 'Rules of Thumb' it is likely that it will continue to be applied in the same way, unless there is cultural change at both a Council and Departmental level. Continued education will play a critical part in this required cultural change.

The issues associated with the application of the RFDC/ADG are summarised below:

- *Emphasis on Numeric Provisions.* There is too much focus in planning practice on compliance with numeric requirements, which encourages a 'planning by numbers' approach, rather than a merit assessment of amenity. The ADG continues this approach, with the 'acceptable solutions' and 'alternative solutions' continuing to have a numeric focus.
- *Application of the existing Code can be Inflexible.* Despite its original intent, the application of the existing RFDC lacks flexibility, or the scope to achieve adequate amenity outcomes through alternative means, with many planning practitioners not recognising that there are other ways of achieving the intent of the code. The continued focus on numerical factors is likely to mean that alternative solutions, such as off-setting reduced sunlight access in a built-up urban context against increased open space or views, will rarely be given consideration or any material weight. Similarly, there is an expectation that the provisions of the RFDC work together, and can be fully achieved simultaneously, which is not always possible, particularly in high density inner city environments. These concerns have not been substantively addressed in the ADG, and in our view, it is likely that the ADG will continue to be applied in the same way as the existing RFDC despite the inclusion of terms such as 'acceptable solutions' and 'alternative solutions'. It needs to be recognised that practitioners have had over 10 years' experience in applying the existing RFDC, and that moving across to the new ADG and implementing it in its true spirit will be challenging and met with resistance by some.

Further, the status of the ADG is somewhat contradictory. It is labelled as a guide, but then given a level of statutory weight by the proposed SEPP amendment which nominates certain provisions ('standards') which cannot be used as grounds for refusal. As outlined at Section 4, some of these 'standards' may be difficult to achieve.

- *Focus on Solar Access Requirements.* Solar access requirements form a heavily weighted focus for assessing planning officers. There is no change to the existing 'Rule of Thumb' under the proposed ADG. Rather, there is general consensus that the wording under performance criteria 4L-1 has been strengthened so that 70% of apartments are required to achieve 3 hours solar access as a minimum, with significant justification and specific circumstances required to demonstrate that 2 hours is an appropriate alternative. As presently drafted, 2 hours of solar access to 70% of apartments is the lowest base case scenario that is considered appropriate. JBA has been involved in a large number of projects which, for sound planning reasons, have achieved well below the 70% numeric control (including as low as 19%). The focus on solar access, which is likely to continue under the new regime, can result in an unbalanced and even obstructive approach, as it is currently one of the more difficult 'Rules of Thumb' to achieve. Focusing on solar access requirements at the expense of appropriate consideration of other amenity outcomes also means that other opportunities for increased amenity are overlooked.
- The lack of consistency in the application of the existing sunlight access 'Rule of Thumb' is also a concern. For example, the Department has in recent times taken the view that on master planned sites each building must be assessed individually (i.e. each building has to meet 70% for 2-3 hours), rather than the whole site (or even a precinct within a site), being assessed as a whole. The building by building approach overlooks the fact that on many master plan sites, it is not possible for each building to independently achieve the requirements of the code, with the natural constraints of a site meaning some buildings will over perform (i.e. when north facing) and other buildings may appropriately deliver amenity outcomes through other elements of design (i.e. south facing parts of the site may capitalise on views, outlook, apartment size, open space or access to services to offset a lower solar performance). This focus on a building by building basis has the potential to limit development potential and the provision of new dwellings. There is no clarity in the new ADG around how master planned sites should be addressed.

- *Less focus on External Design.* The focus on internal amenity means that other areas of design are potentially being focussed on less, such as external appearance and design innovation. The requirement to comply with the requirements also has the potential to limit innovation and stifle creativity with concerns that the application of the controls will lead to a particular style of housing (i.e. a contrived solution – which was a recurring concern among developers and designers with the existing regime).
- *Enforced on Other Housing Types.* In JBA's experience, there have been several instances where other housing types, such as student housing and serviced apartments, have been required to comply with SEPP 65. This is inappropriate, and not the intent of SEPP 65. Whilst the amendments to the SEPP seek to clarify what uses it applies to, there is still ambiguity around these forms of housing. We are of the view that there should either be revised guidelines or a derivative of the ADG that is appropriate for student housing.
- *Relationship with Council DCPs.* There are instances where Councils are applying the existing RFDC inappropriately, requiring full 'compliance' with numerical guidelines in the Code (refer above), or implementing DCPs that include requirements that go over and above the requirements of the RFDC. In these instances, the Code is being applied as a development standard, rather than as a guideline as was originally intended. JBA supports the renaming of the 'Code' to a 'Guide', as well as the proposed SEPP amendment which provides that a DCP cannot be inconsistent with the ADG with respect to visual privacy, solar access and daylight, common circulation and spaces, apartment layout (including apartment sizes), ceiling heights, balconies and private open space, natural ventilation and storage.
- *RFDC Compliance Required as Conditions of Consent.* Consent authorities have, and do in instances, impose conditions of consent requiring compliance with the existing RFDC 'Rules of Thumb'. There should be clear direction that consent authorities (including the Department) cannot condition compliance with the future ADG unless the Department wants to first give them statutory weight. Whilst we are not of the view that the ADG should be given statutory weight, there is no guidance in the ADG or draft SEPP amendment around how this should be managed.
- *Design Review Panels.* Whilst the Design Review Panels are generally seen as working well, there is currently inconsistency in the way that they are consulted. Whilst pre-lodgement review is seen as being constructive, post lodgement consultation is viewed by some developers as burdensome and costly as a result of changes being required after finalisation of DA documentation. We note that the draft SEPP amendment seeks to have these formalised as a post-lodgement action, which is somewhat contradictory to the ADG. We are of the view that it would be more appropriate for the Panel to review the scheme prior to lodgement, so that any feedback can be reflected in the lodgement package and exhibition documents. Notwithstanding this, mandated pre and post lodgement consultation is not considered necessary.

We note that the ADG now includes guidance around the duplication of processes, stating that a DA does not need to be referred to the design review panel where an architectural competition has been held. This is supported. JBA also supports the move to impose timeframes on the Panel's response.

JBA believes that the Panels could play a key role in championing/reinforcing the status of the ADG, and should lead by example in having the document treated as a guide with the flexible application of solutions in order to achieve the performance criteria. It may also be warranted to explore consequential amendments to other legislation (e.g. *Land and Environment Court Act 1979*) to enhance the status and function of the Design Review Panels. For example, if a Council refuses a development that has been endorsed by its SEPP 65 Design Review Panel on design grounds, then there should be consideration of costs being awarded against the Council if an appeal by an applicant is successful having regard to the ADG and amenity.

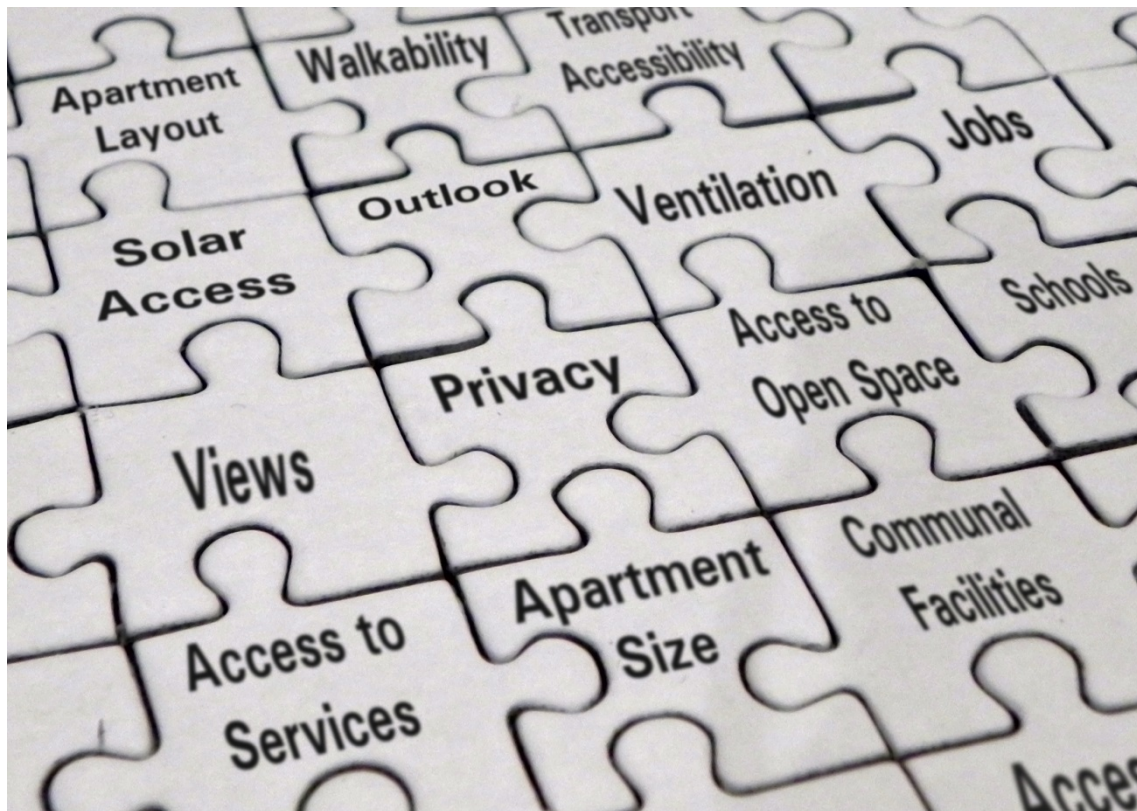


The issues with the application of the existing RFDC are considered to be the result of a lack of clarity and direction on how it should be applied, or its statutory weight. Aside from some cursory words at the beginning of the ADG around it being a 'guide', and mention of the ability to propose 'different design features' in lieu of the nominated alternative solutions, there is little clear direction on the document's status, or the ability to vary it where amenity can be achieved by alternate means. Consent authorities need to be provided with clear direction and training about how to give a comprehensive balanced assessment, which gives appropriate consideration to the ADG, as well as to other factors affecting amenity and affordability. Similarly, both applicants and consent authorities need to be open and flexible in taking and using the advice of the Design Panels.

Further, JBA believes it would be prudent to have SEPP 65 and the ADG reviewed by the Land and Environment Court or Chief Judge, in order to confirm how it will be interpreted by the Court.

#### ***Holistic Consideration for Amenity***

Another key concern with the existing RFDC and proposed ADG is the lack of consideration for context, or what in fact creates the amenity of a particular site. There are many instances where the amenity of a site or a development proposal is not based on solar access or the size of an apartment. For example, the amenity of an inner city unit is primarily a product of its location, and its access to transport, employment and entertainment, rather than its access to sunlight. As a result, there needs to be recognition that there are other contextual drivers of amenity, other than those that are outlined in the ADG, which can be just as important in influencing residential amenity and in determining the liveability of the apartment (refer to **Figure 1**).



**Figure 1** – The various aspects of amenity

Further, whilst the ADG is (in principle) appropriate for medium density development in established suburbs, the strict adherence to the 'acceptable solutions' means that the application of the Guide will be less flexible in inner city, high density built-up environments, where proximity to existing (and future) developments will likely prevent the acceptable solutions from being met (particularly solar access) as is the case with the existing RFDC 'Rules of Thumb'. As such, it should be recognised that the provisions of the ADG should not be applied equally, or weighted the same in different contexts, particularly that an assessment in a suburban context is not the same as an inner city context.

The inability to balance amenity factors is not limited to inner city environments. More broadly, it is considered that a rating tool (similar to BASIX) could be established to enable amenity factors to be considered holistically, whilst still ensuring a high-amenity outcome is achieved. Despite wide spread fear in the industry at the time BASIX was introduced that it would lead to further regulation, BASIX has proved to be a success story. There may be a similar BASIX like self-rating tool that could be developed to achieve SEPP 65 compliance and submitted along with DAs. This would allow flexibility and design choices or trade-offs for achieving an overall 'score' or acceptability level. It would also be relatively inexpensive and easy to use for developers and councils to generate an electronic 'certificate' based on all the variables and get an overall score.

#### **Harold Park Case Study – Holistic Amenity**

Harold Park benefits from:

- Over 35% of the site being dedicated as public open space (3.8ha);
- Close proximity to public transport infrastructure, including light rail, local bus services and cycle ways;
- Close proximity to jobs, schools and tertiary education;
- Close proximity to shops and other services within the site including a supermarket and a 'village hub' within the restored heritage Tram Sheds; and
- Expansive parkland, courtyard and streetscape views.

The master planning for the site and establishment of the planning controls has dictated the street networks and building envelopes. As part of the staged delivery of development across the site it became evident that strict compliance with aspects of the Residential Flat Design Code (for example the solar access 'Rule of Thumb') was not possible either on a building by building basis or a cumulative precinct wide approach. The planning controls and site constraints applying had effectively pre-determined the solar access outcome for development across the site.

The existing planning framework (including the RFDC) is not geared towards taking a holistic amenity approach to development and therefore Councils find themselves conflicted in terms of having tools at their disposal to assist them in navigating through instances where a particular development may not strictly comply with a numeric control.

When applying a holistic amenity approach to development at Harold Park and given the quality of residential apartments being delivered by the developer from a layout, size, functionality, privacy etc. perspective, it is clear that notwithstanding numeric non-compliance with the solar access rule of thumb, high levels of amenity will be afforded to all future residents across the development site.

### **Affordability**

Whilst the amendments to SEPP 65 and the ADG have been proposed with a view to improving housing affordability (most notably through the proposed amendments to parking requirements) it is considered that more holistic changes are required if greater housing affordability is to be achieved, and a thorough review of the impact of the Guide on housing affordability should be explored. It is noted that in some states, notably Victoria, there is flexibility to provide smaller apartments. This is not encouraged in NSW, leading to concerns over housing affordability. Whilst it is recognised that housing affordability is a complex issue, and it is not solely related to apartment sizes, the ADG continues to specify apartment sizes, as well as larger balcony sizes which together, do not support affordability. By way of example, the requirement for 60% cross ventilation (which is continued in the ADG) has resulted in an increase in cross over apartments (which are often larger) and therefore potentially less affordable housing options.

Introducing for the first time restrictions on apartments that face west (effectively only supporting buildings with north and eastern aspects) will also have a dramatic impact on housing supply and consequently, housing affordability. Further, JBA's experience and exposure to the market suggests that the apartment and balcony sizes required by the RFDC are often larger than what is needed or expected by the market.

Finally, any revised SEPP 65 framework needs to be flexible enough to respond to new forms of housing that may in part, address housing affordability issues. For example, modular housing is anticipated to be a key growth area, and any revised ADG must be flexible enough to accommodate and respond to this market innovation.

## **3.0 SPECIFIC CONCERNS REGARDING SEPP 65 AMENDMENT AND SUGGESTED IMPROVEMENTS**

Component of SEPP 65 Amendment	Comment / Suggestion
Clause 4	The proposed drafting of this clause has the potential to inadvertently require student accommodation to comply with SEPP 65/ADG (i.e. where such accommodation is provided in a 'mixed development'). To remove any ambiguity it is recommended that the SEPP list out forms of accommodation that it does not apply to.
Clause 29(2)	To reinforce that the focus in considering the ADG is not on numeric compliance with acceptable/alternative solutions, it is recommended that reference is made to the 'Performance Criteria'. For example:  <i>'In determining an application to which this clause applies.....</i>  <i>(c) the Apartment Design Guide (Performance Criteria).'</i>
Schedule 1 – Principle 6: Amenity	It is recommended that the wording of this principle is amended to make it clear that a number of factors contribute towards good amenity, and make it explicit that one must not necessarily tick every amenity attribute listed in order to achieve good amenity.  Consistent with the existing RFDC, it is recommended that the principle is amended to ensure a shift away from a focus on 'sunlight'. Accordingly, it is recommended that 'access to sunlight' is reworded to 'access to daylight', with daylight consisting of skylight and sunlight.

We note that special attention will be required to how the amendment to SEPP 65 and the ADG will apply from a savings and transitional perspective. This will need to address all potential scenarios, such as how it applies to:

- Transitional Part 3A Concept Approvals and Stage 1 Concept Proposals that include specific reference to SEPP 65 and the Residential Flat Design Code 2002;
- A section 96 modification application where the original approval was granted under SEPP 65/RFDC but the section 96 application is made following gazettal of the amendment to SEPP 65 and commencement of the ADG; and
- A development application that is lodged prior to and not yet determined when the SEPP 65 amendment is made and the ADG commences.

#### 4.0 CONCERNS REGARDING THE ADG AND SUGGESTED IMPROVEMENTS

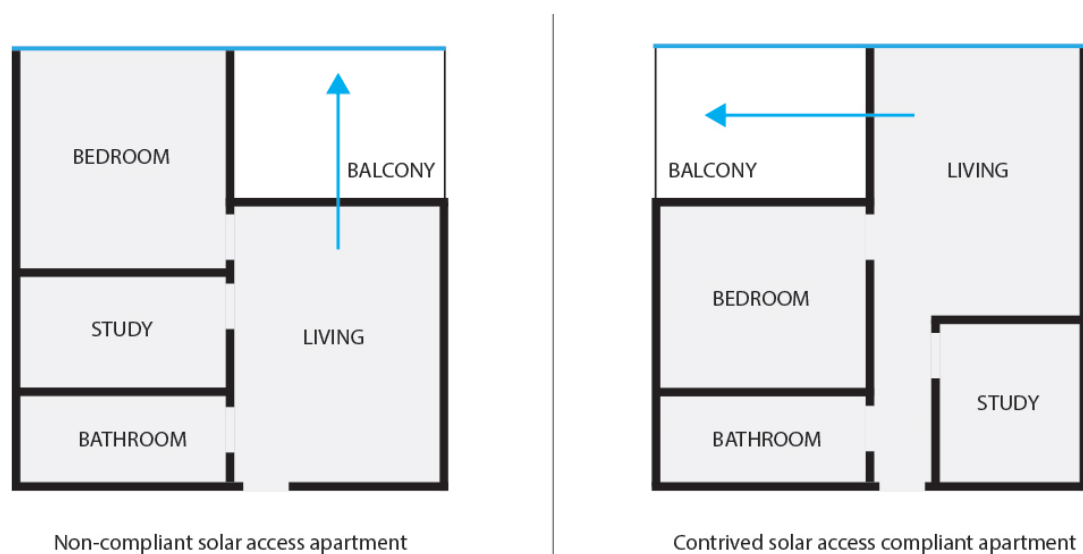
Our focus within the ADG has been principally across Part 3 and Part 4 as these parts are those that will chiefly be used and referred to by developers, practitioners, designers and Councils in a development application/assessment capacity.

As outlined above, whilst the ADG seeks to clarify a few existing areas of ambiguity, there is a general view that the ADG is seeking to impose similar, and in some cases additional, restrictions on the design of RFBs. These restrictions are to the detriment of building design, innovation, creativity and affordability.

The table below highlights the key performance criteria and acceptable/alternative solutions which are considered to be potentially problematic and warrant review/amendment. In addition to the specific provisions outlined in the table, and the broader issues outlined in Section 2.0, the following questions and comments are raised about the implementation/application of the ADG in general:

- *Application of the performance criteria and acceptable solutions.* It is unclear how the performance criteria and acceptable solutions relate to each other and how compliance will be required to be demonstrated (must each acceptable solution be met?). If an applicant is required to demonstrate compliance with each of the acceptable solutions under all of the performance criteria, documentation will become onerous and lengthy. Furthermore 100% compliance is simply not realistic in the majority of projects.
- *Compliance with the performance criteria and acceptable solutions leading to contrived solutions.* There is a general view that the existing RFDC leads to contrived design solutions in order to maximise compliance, particularly with respect to the solar access and cross ventilation requirements. For example the requirement to provide sunlight to the balcony and primary living space can result in balconies being located off bedrooms, and living spaces being pushed to the glassline, which is not the most appropriate solution from a design/liveability/amenity perspective. The ADG does not seek to resolve these situations. Refer to **Figure 2**.





**Figure 2** – Solar access and apartment design

- *Ability to adopt different alternative solutions.* The ADG should include additional alternative solutions, or clearer direction that the alternative solutions provided are simply only one alternative, and that other appropriate solutions may be available. In some instances there are only 1 or 2 acceptable solutions listed, and very specific circumstances in which they can be adopted. Whilst we don't believe it is necessary to provide alternative solutions for every acceptable solution, and that there should be scope for flexibility and creativity, Councils need to be educated that alternative solutions may be suitable, even if they are not specifically listed.
- *Readability and understanding of the relationship between performance criteria, acceptable solutions and alternative solutions.* There is no clear nexus for the reader between the performance criteria, acceptable solutions and alternative solutions, where included. It is recommended that the layout of the document is re-worked and strengthened in order to support how the guide is intended to be applied (e.g. a Queensland like 'code').

Component of ADG	Comment / Suggestion
<b>Part 1 – Identifying the context</b>	
1C Precincts and individual sites	Figure 1C.2 represents the precinct plan prepared by the Government Architect for Harold Park. This is a supported example of a project where a range of factors have contributed to amenity across the site, despite not complying with many of the 'Rules of Thumb'.
<b>Part 2 – Developing the controls</b>	
2B Building envelopes	Our experience across a large number of projects that have secured approval for building envelopes (Part 3A Concept Plans, Stage 1 DAs etc.) reveals that the building envelopes are typically more closely reflective of the final building form the subject of future detailed DAs. The suggestion that envelopes are 25-30% larger than the ultimate buildings does not reflect what occurs in practice.
2E Building Depth	<p>Very few residential projects JBA have been involved with have building depths (inclusive of balconies) of 10m – 18m. The building depth 'controls' (which are largely carried over from the existing RFDC) are often difficult to achieve:</p> <ul style="list-style-type: none"> <li>– Very few buildings achieve a depth of 10-18m, yet still achieve acceptable amenity with adequate cross ventilation and solar access.</li> <li>– The inclusion of balconies in the calculation of building depth is considered onerous, and would further limit the ability to comply with these provisions.</li> </ul> <p>It is strongly recommend that the Department review what happens in practice and what the market now delivers in terms of building depths. A more appropriate and current building depth (reflecting today's standards) would be 20m – 24m (including wintergardens and balconies).</p>

Component of ADG	Comment / Suggestion
2F Building separation	The building separation guidance does not give consideration to situations where habitable rooms face on to a blank wall. This situation is not the same as a habitable/non-habitable separation, which is often applied in lieu of recognition of the habitable/blank wall scenario, which is quite common.
<b>Part 3 – Siting of development</b>	
3B Orientation	<p>Reference is made in the introductory text regarding the need to balance the enjoyment of ‘significant’ views. There is no guidance provided as to what a significant view is intended to be. It is important that there be recognition that a view does not necessarily need to be of water, the Sydney Harbour Bridge, Centre Point Tower etc. for it to have a significant influence on building orientation and amenity. For example, district views or views of parkland/open space may provide just as an important consideration in determining a building’s orientation.</p> <p>3B-2 (7) The requirement to maintain a minimum of 4 hours of solar access to solar collectors on neighbouring buildings is potentially problematic. It is possible that neighbours could install solar collectors simply to thwart development. This provision needs to be reconsidered.</p>
3E Deep soil zones	<p>The deep soil zone requirements are more reflective of a suburban context. It is recommended that the alternative solution be switched to an acceptable solution in terms of having a 0% deep soil zone for inner city contexts.</p> <p>A clear definition of what comprises a ‘deep soil zone’ would provide greater clarity for applicants and consent authorities.</p>
3F Visual privacy	Recognition of party walls needs to be included as per 2F.
3H Vehicle access	<p>3H-1 (3) Due to site flooding constraints it may not be possible to locate car park entries at the lowest point of the site. This provision needs to be reconsidered.</p>
3J Bicycle and car parking	<p>JBA supports the policy shift in the SEPP amendment and the ADG with regards to car parking and providing options for developers to support more sustainable means of transport. The following comments are made to provide greater clarity around these provisions:</p> <ul style="list-style-type: none"> <li>– There is considered to be merit in expanding public transport to include bus stops along high frequency and grade separated routes.</li> <li>– To support ease of use, it is recommended that the RMS parking rates should be included as an Appendix to the ADG.</li> <li>– The RMS rate for visitor parking in multi-unit development is 1 per 6 units. However, the ADG suggests 1 per 10. It is recommended that clarification is provided to indicate that the ADG takes precedence.</li> </ul>
<b>Part 4 – Designing the building</b>	
4G Universal design	There is concern that the new requirement to achieve the silver standard coupled with Council DCP requirements will result in the need for a higher proportion of apartments to be adaptable. This will have feasibility implications on developments.
4H Adaptive reuse	<p>There are obviously key benefits from the adaptive reuse of buildings, including:</p> <ul style="list-style-type: none"> <li>- they have a lower impact on the environment;</li> <li>- they promote sustainability; and</li> <li>- as this often applies to heritage buildings, it promotes conservation.</li> </ul> <p>JBA supports the introduction of this new provision/objective. Our experience to date reveals that there is strong opposition from some Councils to the adaptive reuse of commercial buildings within city contexts. It may help strengthen this provision if reference is made to varying expectations in relation to solar access for adaptive reuse developments. Further, it would further encourage the adaptive reuse of buildings if there was some inbuilt flexibility in the application of the BCA / DDA and Heritage regulations (where appropriate).</p>
4J Mixed use	Today’s technologies and building standards are such that there is not necessarily a need to have a ‘buffer’ between a ground floor active use and residential apartments above. It is very rare in today’s market that this situation (as reflected in Figure 4J.2) is provided. Further, as is often the case where such a buffer space is provided, it proves to be very challenging to lease which has a consequential impact on affordability. It is recommended that this figure is deleted.

Component of ADG	Comment / Suggestion
4L Solar and daylight access	<p>To ensure consistency with the existing RFDC, it is recommended that this section is renamed as 'Daylight access', as solar access is an aspect of daylight access.</p> <hr/> <p>4L-1</p> <p>Several concerns are raised with respect to the solar access requirements:</p> <ul style="list-style-type: none"> <li>– In addition to limiting the number of south facing apartments, the ADG now seeks to limit the number of west facing apartments. Together, these requirements will be overly onerous and ultimately affect affordability. It is requested that the limit on west facing apartments be deleted. Measures such as screening can be incorporated to reduce summer heat loading to west facing apartment.</li> <li>– It needs to be acknowledged that increasingly, cultural beliefs and values are playing a role in buyer preferences when it comes to apartment orientation. Whilst Asian buyers have a preference for north/east facing apartments, Indian and Pakistani buyers prefer opposing views.</li> <li>– The need to provide 'direct sunlight' (rather than 'daylight') to living rooms <i>and</i> private open space is problematic, and can result in contrived design solutions. In order to comply with this requirement, balconies are often located off bedrooms, and living spaces are pushed to the glassline, often with no balcony. This is not the most appropriate amenity outcome. To overcome this, it is recommended that solar access be considered either to private open space <i>or</i> living rooms.</li> <li>– Figure 4L.1 is likely to be misleading as evidence suggests that solar access is not able to penetrate into inboard living spaces during mid-winter.</li> <li>– Providing 2/3 hours solar access to 70% of apartments between 9am and 3pm is often unachievable. The Department should investigate whether the consideration and application of solar access should be extended to 8:00am and 4.00 pm (when more residents are likely to be home, i.e. before and after work/school). Further, there may be instances where developments could achieve 70% solar access for a reduced period of the year, for example two weeks either side of 21 June. On this point, it is noted that the City of Sydney analyses both solar access at the winter solstice and equinox (March) in order to determine the solar performance of a development. The opening up of considering solar access at an alternative time of the year is reflective of the challenges faced for development in a CBD high rise context.</li> <li>– It is acknowledged that the ADG provides for 2 hours of sunlight in mid-winter where apartments have been orientated away from a noise source, have 'significant views' away from the desired aspect of direct sunlight or are located in 'major centres'. Whilst this goes some way to acknowledge the relative amenity benefits of other orientations, there is no acknowledgement of other drivers such as access to open space or having an outlook in general. Similarly, the alternative solutions read as though the options listed are the only means of achieving an acceptable alternative. The wording should be rephrased so that the suggested options are only some of the solutions available.</li> <li>– There has been a recent trend in the City of Sydney whereby Council has been accepting of residential developments that achieve 50 – 55% solar access, acknowledging the challenging constraints in a city context to achieve compliance with 70%. These types of circumstances are not reflected in the ADG and it is recommended that further guidance/an additional alternative solution is added.</li> </ul>
4M Common circulation and spaces	<p>4M-1</p> <p>Concern is raised to the requirement for corridors to have higher ceiling heights than apartments. BCA dictates only a 2.4m high ceiling along corridors, and this height is adopted by the majority of designers and developers.</p>
4N Apartment layout	<p>4N-1</p> <p>Suggest apartment sizes are reviewed as there are some developers who are delivering high quality, functional and efficient apartments that are below the minimum apartment sizes. Table 6 could be renamed to indicate that these are 'target' minimum apartment sizes and that there may be instances where variations to these sizes are appropriate subject to meeting relevant criteria. There are also inconsistencies between the apartment sizes and the apartment layouts. It is recommended that the dimensions be taken off the apartment layouts shown in the ADG.</p> <p>4N -2</p> <p>Several concerns are raised with respect to the environmental performance requirements.</p> <ul style="list-style-type: none"> <li>– The requirement to increase ceiling heights as room depths increase is unreasonable and the ceiling heights indicated in Figure 4N3 are impractical. If these provisions are carried forward, they are likely to result in smaller apartments, or shallower combined living / dining spaces (with a lower amenity) to ensure that the additional ceiling heights are not triggered. Feedback from developers reveals that ceiling heights will never practically or feasibly be higher than 2.7m.</li> </ul>

Component of ADG	Comment / Suggestion
	<ul style="list-style-type: none"> <li>– The ability to provide a high amenity apartment, of the required size, with a depth of 8m to the back of the kitchen is impractical. Modern layouts typically have a combined living / dining space, with the kitchen at the rear. In order to provide a living / dining space with a furnishable depth, an overall depth of 8m to the back of the kitchen is often unachievable.</li> <li>– The need to provide bedrooms at the external face of the building limits the ability to provide inboard or snorkel style apartments where a corridor or 'slot' provides light and air for an inboard bedroom. Several recent, and successful, apartment developments have incorporated snorkel apartments which still achieve a high level of amenity.</li> </ul> <p>4N -3</p> <ul style="list-style-type: none"> <li>– It is requested that the dimensions be removed from the indicative layouts so that they remain indicative. It is also recommended that the layouts be updated on a regular basis to remain current, and consistent with modern apartment design. For example, the L-shaped kitchens shown in some of the diagrams are no longer a common kitchen design, with a move towards galley style kitchens in recent developments. It is recommended that the Department seek input from designers and developers to ensure that apartment layouts reflect current designs and market trends.</li> </ul>
4P Private open space and balconies	<ul style="list-style-type: none"> <li>– There may be instances where balconies are not suitable for a development, particularly in an inner city context. The City of Sydney recognises such circumstances and only requires 75% of apartments to have balconies.</li> <li>– The minimum areas for balconies are considered to be quite large, particularly for 1 bedroom apartments. Together with the minimum apartment sizes outlined in the ADG, these do not promote affordability. It is recommended that balcony sizes are reviewed.</li> <li>– We note that there are no minimum balcony sizes provided for studio apartments. There should be a clear statement in the ADG that studios are not required to have balconies.</li> <li>– As a broader comment, the ADG identifies enclosed balconies (wintergardens) as an alternative solution in noisy or windy environments. However, there is no guidance on whether these wintergardens would attract GFA. This is often a matter of contention, and is addressed differently in different local government areas. We would encourage the Department to adopt a clear policy position on this matter, particularly as wintergardens are identified as an alternative solution in the ADG.</li> </ul>
4Q Natural ventilation	<ul style="list-style-type: none"> <li>– JBA supports the inclusion of the acceptable solution at 4Q-3 which enables an appropriately qualified wind consultant to confirm that 60% of apartments achieve cross ventilation for buildings greater than 9 storeys. However, the explanation should be extended to acknowledge that wind speed creates a similar situation to that of normal cross ventilation for buildings above a certain height.</li> <li>– The ADG should recognise other ways in which cross ventilation can be achieved eg. through open atriums. There have been several instances where viable solutions such as this have been rejected, despite being able to demonstrate that adequate cross ventilation is provided. Mechanical exhaust systems should also not be excluded, especially where there are compensatory energy efficiencies.</li> </ul>
4R - Storage	<p>Whilst it is acknowledged that the provision of adequate storage is important, greater clarity is required around when and how alternative solutions can be adopted. In seeking to maximise storage within apartments, architects typically adopt solutions such as providing some storage in bedrooms (where wardrobes are larger than required). There should be greater direction around these types of solutions. It is also recommended that the split of 50/50 apartment to basement storage is reviewed in light of current trends, as it is difficult to provide 50% of storage within apartments.</p>
General	<p>View/outlook is not given the weight it deserves as a factor of amenity, it is accordingly recommended that a new section is added to the ADG.</p>
Appendix 4 – Apartment building types	<p>Shop top housing</p> <p>This example proposes a form of development that includes residential at ground floor level. Such a design approach is inconsistent with a recent ruling by the Land and Environment Court on the definition and interpretation of 'shop top housing'. The decision effectively means that all residential apartments must be located above ground floor retail/comment. To remedy what in circumstances may be an appropriate outcome to have apartments at ground floor level in a shop top housing development, it is recommended that the Department review the current definition of shop top housing in the Standard Instrument LEP.</p>

## 5.0 CONCLUSION

SEPP 65 and the existing RFDC have been successful in improving the design quality and amenity of RFBs. The new ADG seeks to build on the current RFDC framework and successfully resolves some existing areas of ambiguity, however there are several provisions which raise concerns. In the context of the next phase of urban renewal over the next 10-15 years, the ADG will become increasingly important and will need to encourage and respond to innovation and diversity in residential flat design.

As more constrained Brownfield sites are required to be developed to meet housing targets, it will be even more important that the Guide provides flexibility, that the 'performance criteria' and 'acceptable solutions' in the ADG are not applied as fixed development standards, and that the assessment of RFBs takes into account that there is a range of factors that affect the amenity of a building. Education and design review panels will therefore play a key role to the successful implementation and application of SEPP 65 and in particular the new ADG.

JBA would be pleased to meet with you to clarify any aspect of this submission and to work with you towards an updated SEPP65 framework. It needs to be acknowledged that the new framework will have far reaching impacts on the industry, and the liveability of apartments for residents into the future. We urge the Department to take the time required to carefully consider the feedback before finalising the SEPP amendment and ADG.

Should you have any queries about this matter, please do not hesitate to contact Alexis Cella or Kate Tudehope on 9956 6962 or via email [acella@jbaurban.com.au](mailto:acella@jbaurban.com.au) or [ktudehope@jbaurban.com.au](mailto:ktudehope@jbaurban.com.au)

Yours faithfully

Two handwritten signatures in blue ink. The first signature is on the left and the second is on the right.

Alexis Cella / Kate Tudehope  
*Principal Planner / Senior Planner*