LOCAL GOVERNMENT NSW

LGNSW Submission to the Review of State Environmental Planning Policy 65 – Design Quality of Residential Flat Development (SEPP 65)

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Background and Introduction

Local Government NSW (LGNSW) is the peak body for councils in NSW. It represents all the 152 NSW general-purpose councils, the special-purpose county councils and the NSW Aboriginal Land Council. LGNSW represents the views of councils to NSW and Australian Governments; provides industrial relations and specialist services to councils; and promotes NSW councils to the community.

We are pleased to have an opportunity to comment on the review of State Environmental Planning policy No 65 – Design Quality of Residential Flat Development (SEPP 65), and thank the Department of Planning and Environment (DP&E) for its ongoing consultation with Local Government throughout the review. LGNSW made a formal written submission to the review process in 2012, focussing largely on the structure and operation of Design Review Panels. LGNSW has also been a member of the technical review panel for SEPP 65 for several years, and has appreciated the opportunity to participate on this panel.

LGNSW recognises that SEPP 65 and the *Residential Flat Design Code* have contributed to improved quality and amenity of apartments in NSW since their introduction in 2002. We acknowledge that the overall aims of the amendments are to clarify and refine existing provisions within the SEPP and the accompanying design guide. It is indisputable that the outcome of the Apartment Design Guide should be better-designed and built high density developments and better amenity for all, particularly as this type of development becomes more prevalent in the future. It is therefore pleasing to see that "the proposed changes aim to ensure that design quality is maintained while promoting housing delivery in NSW"[1].

LGNSW's understanding is that SEPP 65 concerns itself only with design principles, and that existing planning controls in relation to building envelopes and density remain unchanged. Our primary concerns with what is being proposed in this current review relate to changes affecting car parking standards and minimum apartment sizes. Local Government supports higher density in appropriately zoned areas that comply with the design principles established in SEPP 65 and locally prepared controls. However, the proposed changes impose one-size-fits-all State-wide minimums that remove the ability of councils to tailor provisions for car parking and apartment size to local circumstances.

The following key matters of importance to LGNSW are detailed in this submission:

1. Design principles
2. Application of Local Controls
3. Car parking
4. Apartment sizes
5. Apartment diversity/mix
6. Housing affordability
7. Design Review Panels

[1] Overview - Proposed amendments to SEPP 65 and the Residential Flat Design Code, September 2014, p 5

Issues

1. Design principles

LGNSW notes that the review of SEPP 65 has supported the existing design principles, with some minor updates and amendments, and a reduction in the number, by consolidating 'Scale' and 'Built Form'. These design principles have provided councils with a well-accepted means of assessing the design quality of residential flat developments, therefore it is important to see that these principles have been retained. They are well tested and considered to support good design. We understand that feedback during the review process has led to some refinement of these principles to make them clearer and reduce duplication. We recommend that the Department defers to the specific submissions and feedback from individual councils about the practical application of the design quality principles to achieve the desired quality design outcomes 'on the ground'.

2. Application of Local Controls

The following proposed changes will make any locally prepared controls relating to apartment size and car parking obsolete:

- Clause 6A - Development control plans cannot be inconsistent with standards for 'apartment layout' set out in the Apartment Design Guide; and
- Clause 30 amendment - The addition of car parking as a standard that cannot be used as grounds to refuse development consent or modification of development consent.

A State-led policy or development guide that ignores provision for local place-based adaptation flies in the face of the Government's stated policy of returning planning powers to Local Government.

3. Car parking

The proposed changes to car parking requirements mean that a development could not be refused if it complies with the minimum standards specified for car parking in the design guide. LGNSW notes that there is no specific requirement set at all for apartment buildings on sites within 400m of a railway station or light rail stop in certain nominated inner and middle ring metropolitan areas. The consequence of this is that potentially, a development could proceed with no car parking provided at all and a council would not be able to refuse it.

LGNSW opposes this policy on the following grounds:

- The policy is clearly inappropriate for the extensive range of twenty-three Sydney councils that are nominated. It is not limited to the inner city where there is a variety of frequent transport options and the option of walking to many destinations. The policy proposes to also apply to middle ring suburban areas such as Ryde and Bankstown.
- The policy will turn private costs into public costs, as councils will be left to deal with increased local on-street parking demands – between existing residents, visitors and commuters and those who live in and visit the new apartment buildings. Furthermore, street parking within rail stations is already at a premium, and the increased competition could lead some rail commuters to change their behaviour and revert to car travel to work.

- The policy takes no account of the proposed density of the development in each individual case. It ignores both the number of units and mix of units within a development and gives no consideration to the cumulative impact on local streets of having multiple numbers of apartment buildings with no off-street parking.
- The changes will override councils' car parking codes that have been designed on the basis of local parking studies and the local context.
- The policy unrealistically assumes that people who live in these apartments will not need to access vehicles for recreational, health, education, shopping or business needs either during the week or on the weekends. This may be good in theory but a recent example of 'first-hand experience' of the realities of higher density living and inadequate provision of parking would suggest otherwise[2].
- It assumes all transport journeys are centred on the central business district and that they will not have visitors or deliveries.
- The policy has been presented on the dubious pretext that it will improve the supply of affordable housing, although there is no evidence provided to support this contention. It is likely to advantage the development industry with no policy framework that delivers a positive outcome to the purchaser or the general public.

Councils are not averse to promoting reduced parking facilities where apartment buildings are located near centres, services and high frequency public transport facilities. Some inner city councils are in fact revising their parking provisions to encourage greater public transport use and reduce construction costs for apartment buildings. However, these initiatives must be left to councils to decide what works best for the local conditions, not mandated by the NSW Government. Furthermore, any policy to encourage reduced car usage must also be supported by concurrent significant State government public transport investment.

LGNSW objects to:

- The removal of minimum standards for car parking in the nominated inner and middle ring areas; and
- The addition of car parking in Clause 30 as a standard which council cannot refuse.

LGNSW contends that specific parking requirements must be established at the local level and have regard to local conditions. Minimum standards should be applied through Development Control Plans that respond to local conditions.

4. Apartment sizes

LGNSW questions whether the first-time introduction of a new 35m² minimum size for studio apartments is consistent with the overall SEPP 65 objective of lifting the design quality of apartments, or whether in fact this signals a reduction in quality standards. In addition, we note that the minimum apartment sizes for one, two and three bedroom apartments[3] in the Apartment Design Guide are to be retained, but will be strengthened through the provisions of the SEPP, which gives minimum apartment sizes significant weight over councils' locally

[2] Email/letter from Heath George (resident of Erskineville) to Minister Goward and Cr Keith Rhoades, President LGNSW, dated 26 September 2014 (see Attachment 1).
[3] 50m² for 1 bedroom apartments; 70m² for 2 bedroom apartments; and 95m² for 3 bedroom apartments.

prepared controls. The first-time introduction of a minimum size for studios means that these single-room apartments now join the list of apartments - along with one, two and three bedroom units - that cannot be refused by councils if they meet the prescribed minimum area.

Local Government is concerned that some industry proponents may exploit these studio apartment minimum sizes – which cannot be refused by councils - to gain maximum yield and return at the expense of amenity considerations. We are therefore concerned about the potential for these minimum-sized studios to dominate entire residential flat buildings. This could conceivably lead to a blurring of the lines between a residential flat building, a boarding house and a serviced apartment.

It is essential that this policy preserves principles of housing diversity and does not inadvertently introduce a system which would see entire apartment buildings being built containing only 35m² studio apartments.

5. Apartment mix

LGNSW is pleased to see that Design Principle No 8 of SEPP 65 supports housing diversity and identifies that 'Good design achieves a mix of apartment sizes'. However, Local Government anticipates there will be regular occurrences where applications for residential flat developments are received that propose entire buildings with minimum sized apartments, without necessarily representing a desirable mix of unit sizes. This would be inconsistent with Principle No 8, yet there appears to be nothing in the Guide that will ensure a mix of apartments. In the current high-demand property market, it is naïve to expect the market will necessarily deliver the diversity of apartment size desirable to meet the needs of all household sizes. The Guide must incorporate measures that ensure there is a mix of apartment sizes provided in any single development, and that the controls do not reinforce a one-size-fits-all minimum standard mindset that discourages a healthy mix of apartment sizes.

6. Housing affordability

The proposed amendments to SEPP 65 claim a dubious connection between car parking rates and housing affordability. There are many factors which impact on housing affordability and there is no evidence provided as part of the review to demonstrate that the proposed changes will improve housing affordability in the future.

The development industry continually argues that smaller apartments are cheaper to construct and that the provision of 'excessive' car parking spaces increases the cost of apartments, thus impacting on housing affordability. While underground car parking does entail significant cost, LGNSW argues that removing these standards ultimately become "priced in" to the overall development costs which in the long run, simply leads to a lowering of the standards and amenity the SEPP is actually seeking to achieve.

LGNSW objects to the reduction of car parking ratios within the Apartment Design Guide which are based on the untested argument of improving housing affordability. The planning system has failed if the key way to address housing affordability is through lowering development standards and ignoring local conditions.

7. Design Review Panels

LGNSW supports non-mandatory advisory Design Review Panels (DRPs) that provide advice to councils on development applications (DAs) for residential flat development on matters pertaining to SEPP 65 and the associated Apartment Design Guide.

LGNSW also supports the position that these DRPs should be set up and managed by council, as outlined in our previous submissions to the Department. We therefore welcome the proposed changes whereby:

> *'the Minister will delegate all functions relating to the constitution of SEPP 65 design review panels to councils. This will allow councils to appoint their own design review panels without requiring Ministerial involvement and to have discretion in terms of panel composition, member selection and detailed operating procedures.'*[4]

We recognise the intent of the changes to simplify and encourage the use of DRPs by councils, however, we question the insertion of a new provision under SEPP 65 (clause 19(2)), that enables the Minister to abolish a DRP. Is this intended to be applied to DRPs established by councils and what would be the grounds for the Minister taking such action?

We also bring to the Department's attention that Ministerial delegations can be withdrawn at a later stage. While it might be the intent of the current Minister to delegate functions to councils, there is no guarantee that these delegations will prevail in the longer term. We therefore recommend that the legislation to specifically enable councils to set up a DRP should be made clear, and that this may be a more effective way of encouraging councils to set up DRPs themselves.

It may also be useful for the Department to note that some DRPs recently set up by councils, outside the provisions of SEPP 65, are able to provide design advice to councils on a wider range of development applications, subject to their Terms of Reference, such as applications that trigger controversial design issues. It would be important to advise councils whether a DRP set up under the proposed powers of delegation, as recommended in the Overview document, would enable such a panel to advise on a wider range of DAs than those stipulated in clause 4 of SEPP 65. This is likely to be one of the factors that influences councils deciding whether to establish a design review panel within the confines of SEPP 65 or outside it.

[4] Overview - Proposed amendments to SEPP 65 and the Residential Flat Design Code, September 2014, p 14

Conclusion

This submission has called attention to the fact that the outcome of the Apartment Design Guide should be better-designed and built high density developments and better amenity for all, and that this is particularly crucial as this type of development becomes more prevalent in the future. Local Government supports higher density development in appropriately zoned areas that complies with the design principles established in SEPP 65 and locally prepared controls.

LGNSW understands that SEPP 65 concerns itself only with design principles, and that existing planning controls in relation to building envelopes and density remain unchanged. While we acknowledge the overall need to clarify and refine certain provisions of SEPP 65 and the accompanying design guide, we do not support all the proposed changes.

Our primary concerns relate to changes affecting car parking standards and minimum apartment sizes. The proposed changes impose one-size-fits-all State-wide minimums that remove the ability of councils to tailor provisions to local circumstances. We question whether the proposed new and very small minimum unit area for studio apartments actually signals a reduction in quality standards, and consider it essential that the policy includes measures to ensure a mix of apartment sizes and does not inadvertently introduce a system which would see entire apartment buildings being built containing only 35m² studio apartments.

We do not agree with the following specific amendments, which will make any locally prepared controls relating to minimum apartment size and car parking obsolete:

- Clause 6A - Development control plans cannot be inconsistent with standards for ‘apartment layout’ set out in the Apartment Design Guide; and
- Clause 30 amendment - The addition of car parking as a standard that cannot be used as grounds to refuse development consent or modification of development consent.

In conclusion, LGNSW argues that Local Government must retain the authority to refuse applications should it consider a proposal is inappropriate for a particular location and does not comply with locally prepared car parking provisions. With regard to design review panels, LGNSW supports non-mandatory panels that are set up and managed by councils.

Attachment 1

From: Heath George
Sent: Friday, 26 September 2014 9:40 AM
To: office@goward.minister.nsw.gov.au; goulburn@parliament.nsw.gov.au
Cc: LGNSW; Keith Rhoades
Subject: Apartments without parking (SMH)

Dear Minister,

My wife & I are the exact type of residents the development amendment will affect; please allow me to provide some insight & feedback.

We live in Sydney's Inner West in the suburb of Erskineville. A few years ago my wife & I purchased a new 2 bedroom unit off the plan; it had one assigned parking space. We tried to buy a second, the developers wouldn't sell us one. Council would also not issue parking permits for new apartments, houses only.

There are units in our complex without any parking spaces. We have also recently purchased an investment property in Newtown, also without a parking space.

Both properties are within 400m of a train station.

Allow me to share my experience as both an owner, resident & Chair Person of an Owners Corporation.

We have two cars. My wife commutes to North Ryde everyday working as a Producer at Foxtel, public transport adds an extra hour (or more) to her commute each day so she rarely uses it & the cost is not much less than fuel & tolls. I own & operate a TV Commercial Production Company employing a half dozen people & use my car for work, transporting film equipment, driving to meetings all over Sydney, scouting for film locations & attending shoots within a 2 hour radius of Sydney or as far Canberra by car (we obviously fly to interstate & OS filming locations).

We also enjoy regular weekends away, down the South Coast in particular where my wife's extended family have homes. I'm originally from Broken Hill, so once every couple of years drive to Broken Hill or Adelaide to see my family.

The point being, we don't just live, work, holiday, stay in our suburb on the public transport grid. So not owning a car isn't an option. We have also researched share cars; there are a lot of businesses benefiting from public parking spaces in our suburb. For my use it works out more expensive than owning a car & far less convenient. I've also looked at using a combination of hire cars & taxis, again owning a car (neither of our cars is under finance) is far more economical, particularly in regards to running a business. So my wife uses our designated space & I play street parking lottery on a semi-daily basis.

Most of the streets in our area have been changed to permit holder only in the four years we've been here, I assume because local non-apartment residents couldn't park outside their homes due to competition from apartment residents. Although I note my rates aren't any cheaper for note being eligible for parking permits, which doesn't seem very fair considering I also have to pay Strata Levies which are about the same cost again on top. But I digress. That leaves approximately 12 long term parking spaces within 50m of our unit & maybe 40-50 within 200-300m. This services local houses & three large apartment buildings (Zenix Towers, Verve, & Star Printery - at a guess some 800-900 apartments) we also get over-flow from nearby apartments which have even less parking down their end of Coulson St (Motto, Sydney Park Village & one I don't know the name of). There are three huge developments about a block closer to the city between these clusters of apartments already mentioned

that will add an additional 3000+ units to the area currently being built on the Ashfield Estate (including one called Erko), apparently they have even less parking than existing units.

I have had arguments over parking spaces with local residents arguing I do not have a right to park on the street because I live in an apartment & that they think a specific park near their house should be theirs exclusively because they've previously enjoyed no competition for the permit free space. I park wherever I can find a legal long term space, rarely in the same spot although I'm rotating between a limited set of options. My car has been keyed (scratched) up both sides. My wipers snapped off twice (and regularly left sticking up - not sure what message that's supposed to send), notes on the windows telling me to "F Off" & dumper damaged by a local landscaper who likes to reverse his bumper into cars that park where he used to park his work van & trailer but often struggles to now (and yes he's been seen doing it & confronted). I've put up with this for four years now.

I've also found myself making decisions about when or if I should go grocery shopping (ps. Have you ever grocery-shopped using public transport? Our local Woolworths is a 10-15 minute drive away) or go to visit friends off the train grid based whether or not I might lose my parking space. Tension in the area over parking is palpable; I have a slight advantage in the parking lottery because I often work from home or odd hours. But I have spoken to many people that find it a constant source of anxiety.

As the Owners Corporation Chair Person, one of our main issues is with the abuse of the small amount of visitor parking we have available by residents either without parking or with a second car; or people parking in other resident's spaces. It has been an ongoing source of conflict within the building since occupation. Our Building Manager has been in two physical altercations with disgruntled residents (and he's the most mild mannered quiet person you're likely to meet) for putting parking violation stickers on cars (apparently our only legal option after a disastrous legal dispute regarding clamping & attempting to engage a private towing company) & the victim of semi-frequent abuse. We also frequently have flyers placed in our letter boxes for people seeking to rent parking spaces from residents, there seems to be a very high demand.

I am also aware of many incidents regarding parking disputes in our surrounding areas that have come back to the Executive Committee because they occurred on or near Common Property; these are just the ones I know about. There was one incident where a man was assaulted & police called over a parking space dispute in front of the building (police asked for security footage). Another incident where a woman called the police after stopping outside to unload her car, because there was no temporary parking available & a resident from an adjacent building became aggressive when they had to wait behind her to enter their bundling. We had an incident where a security guard we hired ended up in a fist fight with a resident from a unit without parking (therefore without an access FOB) who had been following other cars into the building but on this occasion was refused entry. There's also a Taxi Company that occasionally park Cabs in the spaces down the road from our units, I've noticed on two occasions someone has punctured all of the tires. And one of the most extreme examples I'm aware of was a domestic dispute in the building next to ours (Zenix) over a long running argument over which spouse should get to use their parking space that ended in the wife filling her husband's BMW with his clothes & driving it into the brick wall at the end if our driveway & leaving it there for a fee weeks (although I suspect parking issues were perhaps only the straw that broke the camel's back in that scenarios). But point is, parking is a source of community conflict & anxiety in my suburb.

These are just a few examples. And the competition for parking will only get worse when the new developments are completed and the Erskineville population is effectively doubled.

I can tell you from firsthand experience, very few residences are willing or able to get rid of their cars entirely. Most households own one; many have two with most families now having dual incomes to meet the rising cost of living.

It's seems logical that to build harmonious functioning communities developers should be required to provide sufficient parking spaces relative to average car ownership rates; or ideally slightly above to avoid conflict & provision for trades people, building managers, cleaners, loading zones & visitors.

Allowing developers to not supply adequate parking does not translate into people simply not owning cars, it translates into conflict & in a few examples I'm aware of violence. It also creates an unsafe work environment for building managers who are expected to police the problem with very limited legal support or authority to do so.

Please reconsider relaxing developer parking requirements. Moreover our local public transport system is already at or over capacity according to recent reports, there appears to be very few plans to upgrade it, and people aren't getting rid of their cars. And please don't get me wrong, I love catching the train when I can & love living in an area where I can walk to cafés & restaurants & believe minimizing car use is environmentally responsible - but still need a car for work & out of area lifestyle activities.

Please feel free to contact me to discuss further. As mentioned I have been on our owners' corporation executive committee since completion.

Warm Regards,
Heath George
Erskineville, NSW
