



# Nature Conservation Council

The voice for nature in NSW

Acting Director  
Local Plans, Codes and Development Guides  
Department of Planning and Environment  
GPO Box 39 Sydney, NSW 2001

7 November 2014

## **Submission on the proposed changes to State Environmental Planning Policy 65 and the draft Apartment Design Guide**

Dear Sir/Madam,

The Nature Conservation Council of NSW (**NCC**) is the peak environment organisation for New South Wales, representing 130 member societies across the state. Together we are committed to protecting and conserving the wildlife, landscapes and natural resources of NSW. Our members have a strong interest in planning and environment decisions in their local areas.

NCC welcomes the opportunity to provide comment on the proposed amendments to *State Environmental Planning Policy No. 65 Design Quality of Residential Flat Buildings (SEPP 65)* and the draft Apartment Design Guide, with particular emphasis on the impacts of the proposed amendments on the natural and cultural environment of NSW, and recognising that the SEPP and Design Guide apply across all of NSW and across many and varied geographic areas, including sensitive environments and land with high value conservation attributes.

### **State Environmental Planning Policy 65 – Design Quality of Residential Flat Development (SEPP 65).**

SEPP 65 was introduced in 2002 to improve the design of residential flats in NSW. It was accompanied by the Residential Flat Design Code. The SEPP applied to residential flat buildings above two storeys, or four or more flats and set out principles for design quality and guidance for evaluating the merit of design solutions. It enabled the Minister for Planning to form SEPP 65 design review panels to provide independent advice on the design concepts of residential flat building proposals. It also required that residential flat buildings be designed by registered architects.

In addition, an Urban Design Advisory Service was established in the Department of Planning. When it was later abolished the opportunity to provide access to a quality design advisory service across State and Local Government was lost. Many councils and government agencies cannot maintain in-house or consultant urban design expertise to assist in project assessment and negotiation on development concepts and proposals. In the interests of continuing the improvement in the design of flats the advisory service should be re-instated, especially as more people including young families have no choice but to live in flats. The design of flats must therefore remain a very high priority. The advisory service should include people with relevant expertise that are appointed through a transparent and objective process – for example, Council's environment officer, a suitably qualified environmental scientist or bushland manager and/or environmental engineer - particularly to oversee issues such as drainage, stormwater management and capture, as well as to lift the environmental performance of new buildings.

**Recommendation:** Re-establish the Urban Design Advisory Service, with persons of relevant expertise appointed through a transparent and objective process, to provide expert advice across State and Local Government agencies, with capacity to provide advice on the conservation of natural systems, including natural features and drainage lines, bushland and trees, and the enhancement of the habitat values through the design process.

### **Proposed amendments to SEPP 65**

The existing Aims and Objectives of SEPP 65 are sound.<sup>1</sup> The proposal to add three new aims and objectives to the above, relating to housing targets, housing affordability, and processing times for development applications are matters that are already addressed by other administrative and specific policies and there is no need to amend the SEPP, or change the emphasis away from quality design of flats.

**Recommendation:** Do not weaken the aims and objectives of the SEPP by adding matters that are already addressed by existing policies and plans.

### **Definitions**

The existing definition of a flat building is as follows:

***“residential flat building”*** means a building that comprises or includes:

(a) 3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and

(b) 4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops),

but does not include a Class 1a building or a Class 1b building under the Building Code of Australia.

### **Note.**

Class 1a and Class 1b buildings are commonly referred to as **town houses** or **villas** where the dwelling units are side by side, rather than on top of each other.”

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<sup>1</sup>Clause 2, State Environmental Planning Policy No. 65 Design Quality of Residential Flat Buildings:

*“Aims, objectives etc*

(1) *This Policy aims to improve the design quality of residential flat development in New South Wales.*

(2) *This Policy recognises that the design quality of residential flat development is of significance for environmental planning for the State due to the economic, environmental, cultural and social benefits of high quality design.*

(3) *Improving the design quality of residential flat development aims:*

(a) *to ensure that it contributes to the sustainable development of New South Wales:*

(i) *by providing sustainable housing in social and environmental terms, and*

(ii) *by being a long-term asset to its neighbourhood, and*

(iii) *by achieving the urban planning policies for its regional and local contexts, and*

(b) *to achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define, and*

(c) *to better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities, and*

(d) *to maximise amenity, safety and security for the benefit of its occupants and the wider community, and*

(e) *to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions.*

(4) *This Policy aims to provide:*

(a) *consistency of policy and mechanisms across the State, and*

(b) *a framework for local and regional planning to achieve identified outcomes for specific places.”*

SEPP 65 is proposed to be expanded to also apply to development for the purpose of shop top housing, and mixed use development which includes a residential component. These broader categories are termed in the Draft SEPP as “Residential Flat Development”.

The Draft SEPP will apply:

- to the erection of a new building, substantial redevelopment or refurbishment of an existing building or the conversion of an existing building for the purpose of Residential Flat Development; and
- where the proposed building or existing building concerned has at least 3 storeys and will contain at least 4 dwellings.

The reference to “residential flat building” has been replaced with “residential flat development” and there is no reference to the percentage of a “residential flat development” that would comprise other uses purposes such as a retail centre or mixed use development or the scale of development to which the SEPP will apply. We are concerned that development could be the equivalent of a new town or redeveloped city centre, in the form of multiple high rise buildings comprising shops, schools, residential, and commercial uses, at the discretion of the developer/designer.

The amendments to the Policy, together with the new Apartment Design Guide which will replace the Residential Flat Building Design Code were exhibited for public comment from 23 September to 31 October 2014. The public consultation phase has been relatively short and limited in its extent. The Nature Conservation Council participated in a “community group consultation” with no opportunity for exchange of ideas with architects, urban designers, planners and developers or to provide input into the draft amendments. The draft amendments are very significant and justify a full and proper process of informing the public of the proposed changes and their potential implications for development in NSW

**Recommendation:** That the implications of all of the draft amendments be clarified in an expanded exhibition with detailed explanatory notes and opportunity for submissions.

### **Environmental Protection and Conservation**

Given the massive increase in the number of flats being proposed, approved and constructed in NSW, many in areas where there have never previously been flats, the Policy should strengthen those provisions relating to the impact of development proposals on the natural environment and require that these matters be addressed in both the strategic planning, design and assessment phases. To date the NSW government has not finalised and adopted the mapping of vegetation types across the Sydney Region although this is critical to inform planning and development decisions. The SEPP is silent on the broad environmental context in which residential flat development under the Policy can take place or the need to conserve and enhance natural systems to protect the environment. There is a disjunct between the scope of development permissible under the draft amendments and the level of consideration of the natural and cultural environment in the Policy.

There is no reference to designing with nature and retaining natural features and enhancing and protecting natural systems. There is also no reference to protecting bushland and providing new and enhanced bushland linkages when a site presents an opportunity, as is often the situation. The scale of residential flat development that may occur under SEPP 65 is such that the environment is a critical consideration that must be taken into account when planning, designing, assessing and approving residential flat development to avoid serious and permanent negative impacts.

In particular, SEPP 65 should require that consideration be given to the interface of new development and existing surroundings and potential environmental impacts. The performance based approach talks about minimising

impacts on neighbours, and this should include minimising impacts on surrounding environments. For example, a back fence leading onto a bushland area can, and generally does, lead to weed invasion; drainage from fertilised lawns or bitumen roads into bushland and/or creeks can change the pH of the soil or cause eutrophication of water bodies; materials used on building sites should be compatible with surrounding geology and vegetation e.g. sandstone for landscape hardworks in sandstone areas. SEPP 65 development should also consider surrounding landscape values, such as skyline views involving natural features e.g. valley to ridge top.

**Recommendation:** Priority must be given to conserving and enhancing natural systems when designing and assessing proposals for residential flats.

### **Reliance on performance criteria**

The shift to performance criteria to avoid prescriptive provisions and conditions of consent requires that consent authorities have access to qualified professionals and experts to negotiate and assess residential flat development. If this is not made available via State Government funding and assistance, such as a Design Advisory Service, then it is very likely that the quality of flat buildings and flat developments will fall very significantly, with resulting adverse impacts on the liveability of the development and the natural and cultural environment.

We are concerned with the potential difficulties reconciling 'consistent' and 'flexible', and the potential increased uncertainty and reduction in quality that can arise when moving away from prescriptive provisions.

There need to be both standards and performance criteria in SEPP 65 to ensure that minimum standards for flat development are maintained. The standards should be clearly identified in the SEPP. The draft performance criteria should be clearly stated and support local detailed provisions in DCPs.

**Recommendation:** Provide resources and support to ensure that all consent authorities have access to skilled professionals and experts to assist in negotiation and development planning, design and assessment to maintain the improvement in the quality of design of flat buildings under the SEPP. Include standards in the SEPP for provisions that protect the health and well-being of the occupants. .

### **Relationship of Amendments to LEPS and DCPs**

The Briefing attended by NCC did not adequately explain the relationship of the draft amendments to LEPs and DCPs. There are now in NSW many different paths and mechanisms for approval of development that it is confusing for all stakeholders to a greater or lesser extent. A full explanation of the relationship should be made public as part of a further exhibition of the draft SEPP for public comment.

**Recommendation:** Prepare explanatory notes explaining how the SEPP amendments relate to the existing elements of the planning system, such as LEPs and DCPs in particular.

### **Open Space**

There is another disjunct in that Environmental Conservation zones are intended to apply to high conservation value land, and therefore land with bushland or riparian areas without high conservation value will not have a protective zoning but instead must be zoned for Public Recreation if publicly owned. The standard LEP instrument has expanded the range of uses that may occur on land zoned Public Recreation.

The SEPP 65 draft Apartment Design Guide talks about communal open space being "supplemented by public land used for open space and vested in or under the control of a public authority". If adopted this is likely to result in the development of many private and public facilities such as squash courts, tennis courts, gymnasiums and playing fields on adjacent public land zoned "Public Recreation" with no consideration of the need to protect bushland linkages and habitat values of public land.

**Recommendation:** The draft Guide be revised to clarify that public land is managed by councils and other government bodies on behalf of the broader community. It is not specifically to be developed to meet the demands of one group of residents or a developer.

**Lack of detail**

The draft Guide also states that “plants selected are to be endemic to the region and reflect the local ecology”, however the draft Guide relies upon performance criteria which will be unenforceable. Many councils have more specific and useable provisions in their DCPs which is prepared with reference to the local environment. As the SEPP applies across all of NSW, the SEPP should not replace local planning controls.

**Recommendation:** The draft SEPP should support local planning controls in DCPs that provide for plants that are endemic to the local area and reflect the local ecology, and recognise the value of suitable plant selection for good outcomes for flat development.

Thank you for taking the time to consider our submission. If you require any further information, please do not hesitate to get in contact on (02) 9516 1488 or [cloane@nature.org.au](mailto:cloane@nature.org.au).

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'C. Loane', with a small blue dot to the right of the signature.

Cerin Loane  
Policy and Research Coordinator