Using the Apartment Design Guide

This Circular provides guidance on the application of the Apartment Design Guide (ADG) in the development assessment process under State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development (SEPP 65).

Introduction

As more people in NSW choose to live in apartments, good apartment design is vital. Good apartment design delivers better living environments for residents, and enhances streetscapes and neighbourhoods across the state.

SEPP 65 and the ADG encourages a more consistent approach to apartment design across the state, more certainty for councils, architects and applicants, and promotes design innovation through Design Review Panels.

The purpose of this Circular is to:

- explain the relationship between SEPP 65 and the ADG and the application of the ADG to the assessment of development applications under SEPP 65;
- provide guidance to consent authorities regarding the application of the objectives and design criteria in the assessment of development applications; and
- clarify the role of Design Review Panels.

Relationship between SEPP 65 and the ADG

SEPP 65 provides a consistent planning framework to improve the design quality of residential apartment development in NSW. It gives legal force to the ADG, which is to be used in conjunction with SEPP 65. Further clarification on this relationship is set out in Figure 1, below.

The ADG is a guide containing design guidance to improve the planning and design of residential apartment development in NSW.

SEPP 65 and the ADG applies to residential flat buildings, shop top housing and the residential component of mixed use developments. They apply to buildings that are three or more storeys and that have four or more dwellings where the development consists of the:

- erection of a new building;
- substantial redevelopment or refurbishment of an existing building; and
- conversion of an existing building to a residential flat building.

Apart from the non-discretionary development standards in SEPP 65¹, the ADG is not intended to be and should not be applied as a set of strict development standards.

A summary of how SEPP 65 and the ADG work and their effect is provided in Figure 1 below.

¹ Clause 30 of SEPP 65 identifies non-discretionary development standards: car parking, internal area, ceiling heights which, if complied with in a DA, cannot be used as grounds to refuse the DA.
The overarching aim of SEPP 65 is to improve the design quality of residential apartment development in NSW. The ADG helps to achieve better design and planning for residential apartment development, by providing benchmarks for designing and assessing these developments. The ADG is to be used in conjunction with SEPP 65 which sets out the NSW Government’s policy direction for residential apartment development in NSW. SEPP 65 gives legal force to the ADG.

Schedule 1 sets out nine design quality principles, which must be considered when designing proposals, and during the development assessment process:
- context and neighbourhood character
- built form and scale
- density
- sustainability
- landscape
- amenity
- safety
- housing diversity and social interaction
- aesthetics

The ADG provides objectives, design criteria and design guidance on how residential development proposals can meet the principles through good design and planning practice. The SEPP 65 design quality principles must be considered by design professionals when designing residential apartment development, by design review panels when giving advice on proposals and by consent authorities.
**State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development (SEPP 65)**

### Determination of development applications

**Clause 28 SEPP 65**

When determining a development application, consent authorities are required to take into consideration:

- advice (if any) from a design review panel;
- the ADG; and
- the development’s design quality in relation to the design quality principles.

The extent of this consideration is a matter for the consent authority to consider under section 79C of the *Environmental Planning and Assessment Act 1979* (NSW), given the particulars of the application.

---

**The ADG is a matter for consideration for consent authorities when determining a DA.**

Parts 3 and 4 of the ADG set out:

- objectives;
- design criteria; and
- design guidance;
for the siting, design and amenity of residential apartment development.

A development needs to demonstrate how it meets the objectives and design criteria set out in Parts 3 and 4. The design criteria sets a clear and measurable benchmark on how the objective can be practically achieved.

If it is not possible to satisfy the design criteria, applications must demonstrate how, through good design, the objective can be achieved. The design guidance can be used to assist in this.

---

**Effect**

When determining a development application, consent authorities are required to take into consideration:

- advice (if any) from a design review panel;
- the ADG; and
- the development’s design quality in relation to the design quality principles.

In determining a development’s design quality in relation to the design quality principles\(^2\), the consent authority is to consider:

- how the development meets the objectives and design criteria set out in Parts 3 and 4.

If it is not possible to satisfy the design criteria, the consent authority is to consider:

- how, through good design, the objective can be achieved. Design guidance can be used to assist in this process.

Apart from the non-discretionary development standards\(^3\), the ADG is not intended to be, and should not be applied as, a set of strict development standards.

---

\(^2\) Schedule 1 SEPP 65

\(^3\) Clause 30 of SEPP 65 identifies non-discretionary development standards: car parking, internal area, ceiling heights which cannot be used as grounds to refuse a DA
State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development (SEPP 65)

**Standards that cannot be used as grounds to refuse development consent**

**Clause 30(1) SEPP 65**
SEPP 65 identifies non-discretionary development standards relating to the following minimum requirements for:
- car parking;
- internal area;
- ceiling heights;
which, if complied with, cannot be used as grounds to refuse a development application or an application to modify a development consent.

The ADG sets out minimum requirements for:
- car parking;
- internal area; and
- ceiling heights.

If the proposal satisfies the design criteria in clause 30(1) of SEPP 65, the consent authority:
- is not entitled to take those standards into further consideration in determining the application;
- must not refuse the application on those grounds (however the consent authority can refuse the application on other grounds); and
- must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards.

**Development Control Plan (DCP) cannot be inconsistent with the ADG**

**Clause 6A SEPP 65**
SEPP 65 identifies that some provisions in the ADG prevail over any similar provisions in a Council DCP:
- visual privacy
- solar and daylight access
- common circulation and space
- apartment size and layout
- ceiling heights
- private open space and balconies
- natural ventilation
- storage

Parts 3 and 4 provide detailed objectives, design criteria and design guidance of provisions siting a development and designing the building, including the provisions identified in clause 6A of SEPP 65:
- visual privacy
- solar and daylight access
- common circulation and space
- apartment size and layout
- ceiling heights
- private open space and balconies
- natural ventilation
- storage

If a DCP contains provisions that specify requirements, standards or controls in relation to the following:
- visual privacy
- solar and daylight access
- common circulation and space
- apartment size and layout
- ceiling heights
- private open space and balconies
- natural ventilation
- storage;
those DCP provisions will have no effect, and the relevant ADG provisions will prevail.
Part 3 SEPP 65
Part 3 sets out the rules for:
- membership and function of Panels;
- requirements for consultation with Panels; and
- other procedural matters for Panels

Section 5 of the ADG explains:
- functions, membership and constitution of Panels;
- roles and responsibilities of councils and Panel members;
- operating procedures and guidelines;
- templates (meeting agenda, development assessment and meeting minutes).

SEPP 65 allows for the establishment of Design Review Panels as an important tool to improve and enhance design quality of residential apartment developments.

The ADG is a toolkit for the establishment and operation of Design Review Panels, including details about:
- functions, membership and constitution of Panels;
- roles and responsibilities of councils and Panel members;
- operating procedures and guidelines;
- templates (meeting agenda, development assessment and meeting minutes).
Design review panels

SEPP 65 establishes the Design Review Panel as an important tool to improve and enhance the design quality of apartment developments. Section 5 of the ADG explains the role of Design Review Panels in the development assessment process, and provides the specific procedures and templates councils can use to establish and administer Panels.

A Design Review Panel advises the consent authority on the design quality of applications with reference to SEPP 65’s nine design quality principles and the ADG, amongst other things.

Design Review Panels comprise of design experts able to debate the merits of the application of the design quality principles in relation to the ADG, amongst other things.

The Panel may identify and recommend improvements necessary to achieve consistency with the design quality principles and the ADG. The Panel may also provide advice on how to improve design quality. In some instances, this may include recommendations that contradict individual clauses in the ADG where the Panel are convinced this would achieve a better design outcome. However, these recommendations cannot be inconsistent with the non-discretionary development standards in clause 30(1) of SEPP 65.

The Panel's advice is a relevant consideration for the consent authority when assessing a development application or modification for apartment development under SEPP 65.

The ADG encourages pre-development application discussions, including early input by a Design Review Panel. Early panel advice on a proposal can allow applicants to address issues early on, and save time later in the application process.

Further Information

For further information please call 1300 305 695. Department of Planning and Environment circulars are available from planning.nsw.gov.au/circulars

Authorised by:

Carolyn McNally
Secretary

Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

© State of New South Wales through the Department of Planning and Environment planning.nsw.gov.au

Disclaimer: While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.