

The proposed *Design and Place State Environmental Planning Policy*

Submission in response to the exhibition of the
Explanation of intended effect for a Design and Place SEPP: February 2021

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This submission in one page

The NSW Government has developed a plan to reduce the community's access to new housing and substantially drive up apartment construction costs.

The proposed *Design and Place SEPP* does not 'simplify' anything. The consultation document itself is 101 pages. There will be 11 different guidance documents. The government is proposing more than 30 new complex measures.

The cost to the community of the *Design and Place SEPP*, if applied to the projects analysed in detail by Meriton, would be either of the following:

- **Reduced access to housing:** The community would have lost the opportunity to have additional residential apartments in areas ideally suited to the provision of compact, more affordable, housing. For the two projects we have analysed, there will be a loss of close to 300 apartments for each project.
- **More expensive housing:** The cost of each dwelling would have increased by up to \$280,000.

As the Design and Place SEPP is intended to be a state-wide policy, it will apply across all sites. The overall consequence of this (in the short term) is that many intended development projects will stall. Such projects will be placed on hold until the housing shortfall is sufficiently large, that the market will be able to sustain the extra hundreds of thousands of dollars in costs per dwelling. This will take some time.

The proposed SEPP will make far-reaching changes to the extent of land that may be developed on a site, the number of dwellings that can be provided and the cost of providing each individual dwelling.

These changes cannot be justified. They will come at an enormous social and economic cost to the community.

The changes will result in much poorer design outcomes relative to the status-quo.

The claimed commitment to moving away from a system governed by prescriptive controls is a rhetorical — rather than a real — proposal. Before the Design and Place SEPP is progressed further there should be a comprehensive review of measures, to see how this promise can be turned into a reality. The proposed SEPP should only be further progressed on the basis of the overriding principle that the changes must not result:

- in any net loss of currently achievable gross floor area and dwelling yield; and
- no net increase in overall development and construction costs.

Any departure from this principle should need to be the subject of a rigorous regulatory impact statement and a cost-benefit analysis — that has been independently verified by the Productivity Commissioner.

Overview

In brief terms, the key points of this submission are as follows:

Key objectives of the planning law are ignored

1. Many of the measures proposed in the Design and Place SEPP are not responsive to some important statutory objectives of the EP&A Act. These objectives are about:
 - promoting the social and economic welfare of the community and a better environment by the proper development of NSW's land resource;
 - the promotion of the orderly and economic use and development of land; and
 - the promotion of the delivery and maintenance of housing for households up to and including moderate income households.

Enormous cost to the community

2. The cost to the community of the Design and Place SEPP, if applied to the projects analysed in detail by Meriton, would be either of the following:
 - **Reduced access to housing:** The community would have lost the opportunity to have additional residential apartments in areas ideally suited to the provision of compact, more affordable, housing. For the two projects we have analysed, there will be a loss of close to 300 apartments for each project.
 - **More expensive housing:** The cost of each dwelling would have increased by up to \$280,000.
3. As the Design and Place SEPP is intended to be a state-wide policy, it will apply across all sites. The overall consequence of this (in the short term) is that many intended development projects will stall. Such projects will be placed on hold until the housing shortfall is sufficiently large, such that the market will be able to sustain the extra hundreds of thousands of dollars in costs per dwelling. This will take some time.

Moving away from a system governed by prescriptive controls

4. At present, the claimed commitment to moving away from a system governed by prescriptive controls is a rhetorical — rather than a real — proposal. Before the Design and Place SEPP is progressed further there should be a comprehensive review of measures, to see how this promise can be turned into a reality.

The proposed guiding principles should be revised

5. The proposed guiding principles are an incomplete picture of the principles that should guide the Design and Place SEPP. In particular, the principles should be responsive to the statutory objectives that have been expressly overlooked (see above).
6. The proposed SEPP should only be further progressed on the basis of the overriding principle that the changes must not result:
 - in any net loss of currently achievable gross floor area and dwelling yield; and
 - no net increase in overall development and construction costs.

Any departure from this principle should need to be the subject of a rigorous regulatory impact statement and a cost-benefit analysis — that has been independently verified by the Productivity Commissioner.

Baseline residential density targets

7. For baseline residential density targets to be meaningful, they should be expressed in the Design and Place SEPP as 'cannot refuse' standards. This submission makes recommendations as to what those targets should be.

Design process is not as important as design outcome

8. A Design and Place SEPP that is truly concerned about avoiding the costs, time and delays associated with unproductive processes, would allow 'innovative and creative' design outcomes to be supported — irrespective of the design process used to get there. This submission makes a recommendation as to how this can be done.
9. Meriton proposes that any Design and Place SEPP should be a comprehensive **single code** to deal with design considerations — replacing all local controls, and other state controls and policies. This would be a more coherent approach to achieving good design. This submission makes a recommendation as to how this can be done.

Private land should not be expected to be routinely handed over as public space

10. The Design and Place SEPP would apparently impose an expectation that large residential developments should make available parts of their land for public access to meet community-wide shortfalls. It appears to be a way of effectively acquiring private land without compensating for it under the *Land Acquisition (Just Terms Compensation) Act 1991*. This is inappropriate and should not be contemplated under the Design and Place SEPP.

Street intersection density and block lengths

11. Meriton submits that there should not be a minimum street intersection density or a maximum block length. Density targets are best dealt with in the way that we have outlined in section 4.3 of this submission. Desirable block length needs to be considered in the context of a site as there can be wide variations between sites, and different development types, as to what block length is appropriate and acceptable.

Tree canopy

12. Blanket rules (even when dressed-up as 'matters for consideration') for tree canopy or tree replacement are not helpful. Such guidance is more relevant to low density development, where there is generally more land available in the finished development.
13. In general terms a proponent should simply be expected to do the best that can be done in terms of tree canopy in the finished development in the context of the desired future character (and built form) for the area.

Local area demographics

14. It is important that there is not an over-emphasis on purely **local area** demographics. Most localities within Sydney will not be selected for high density housing. High density housing will be concentrated in a relatively small number of highly accessible locations (accessible to concentrations of, workplaces, services or transport, or all three). This means that these locations will play a role in meeting the needs of housing occupiers **across a much larger catchment** than simply the local area. When considering the requirements of potential occupants the occupants should be drawn from across the relevant 'housing market demand areas', **not** simply the local area.

Car parking

15. A proponent should have the flexibility to make a proposal for the actual provision for car parking that is reflective of the preferences of households in the relevant housing market demand area. This may require the provision of car parking above minimum levels. For example, if there would be a significant portion of seniors — or families with children — seeking accommodation in the development it may, in certain circumstances, lead a proponent to proposing parking above minimum levels. These household types may have a greater need for a vehicle than, say, a single person, or a couple with no children.
16. The proposed Design and Place SEPP will mean that the official policy of the NSW Government to generally **discourage** private car ownership. This is a significant societal-level measure — which, if embraced by government, must surely have implications across the board. For example, in relation to road investment, taxation of vehicles and fuels, and provision of vehicle refuelling infrastructure (including electric vehicle infrastructure). Meriton considers that people should generally have a choice about whether they want to adopt a lifestyle that is free of a car. What works for some in our community will not work for everyone.
17. In any event, in a residential or mixed-use area where there are parking restrictions (either physical or as a result of signage) denying residents parking spaces in their property is not a genuine 'discouragement' of private car ownership. It is an effective **prohibition** on car parking ownership.
18. The capacity to provide adequate above-ground parking should not be diminished by unnecessary restrictions that would reduce the acceptability of above-ground car parking. Above-ground car parking has numerous positive sustainability and urban design outcomes.

Character

19. Areas that are zoned for higher density development will often be areas 'in transition'. In such areas the existing character is not the relevant reference point, but the desired future character is.

Activation

20. The SEPP proposal assumes that 'activation' will be provided through non-residential use, typically provision of retail or business premises on the ground floor. This is not always appropriate if the true goal is **activation**. For example, in areas where there is insufficient commercial demand for retail or business floor space, better activation might be achieved by some form of terrace-style presentation to the street (within the context of a residential flat building).

Affordable housing

21. Meriton is the state's largest supplier of affordable housing. That is, housing that is able to be afforded by households up to and including moderate income households. A significant portion of Meriton's customer base (both new home purchasers and renters) fall into this demographic. 'Affordable housing' solutions that exclude private sector provisions (including the ownership of rental properties by 'mum and dad' investors) will inevitably constrain the actual provision of affordable housing.

Communal open space

22. In Meriton's submission the existing ADG design criteria for communal open space should largely remain unchanged, except with a modification to promote a more performance-based approach.

Daylight and ventilation

23. There should not be an expectation that there will be a need for 'adequate daylight and natural ventilation' for all car parking, bicycle storage areas, garbage compactor/storage rooms, communal storage rooms, communal cinema rooms, communal laundries and the like.

Solar access

24. Meriton does not support the proposal to make current solar access design criteria **mandatory**. However, we support increasing in the hours in which a development may achieve solar access and any **genuine** simplification as to how solar access is to be measured. Consideration should be given to the surface/facade area of building receiving solar access rather than a percentage of units. The percentage approach in the current ADG pushes the architect to push in all the 1 bedroom units orientated to comply and reduces large units for families to have less solar access.

Cross-ventilation

25. Meriton supports extending the natural cross-ventilation design criteria to across all storeys. However, it should not become a 'requirement'. It is not presently a requirement and such a change would be a radical alteration to the way the ADG works. However, Meriton does not support increasing the numerical design criteria for natural cross-ventilation from 60 per cent to 70 per cent. There is no evidence base to support this change. This will simply result in reduced access to housing in areas that are important to the state in terms of housing supply.

Deep soil

26. The present ADG design criteria for deep soil is a requirement to provide for seven per cent deep soil. However, a change is now proposed to double the deep soil criterion for small sites, close to tripling for medium sized sites and an even bigger increase for larger sites.
27. The current ADG definition of 'deep soil' is beyond what is required to achieve the relevant objective. The roots of the majority of medium to large tree species (suitable for the NSW environment) will only reach to a depth of 1.5 metres. This due to the limited soil oxygenation below this depth. This means the existing ADG definition of 'deep soil' is unnecessarily burdensome and out-of-alignment with the relevant ADG objective. This already leads to extra excavation, compromised basement configurations and additional complications in a development assessment process.
28. The numerical design criteria for deep soil should not change and there should be no watering-down of the existing design guidance which acknowledges the many sites where it is not practicable to provide any deep soil.

Floor plates

29. The present ADG design guidance on apartment numbers from a lift core is 12. The reduction from 12 to eight will significantly hamper efforts to provide efficient floor plates and minimise expensive (and energy intensive) use of lifts. (Lift maintenance and replacement is one of the biggest single costs borne by owners' corporations over the life of a building.)
30. The proposed 700sqm maximum floor plate control is new. This kind of control is not commonplace. Even where controls like this exist in a development control plan, compliance is often not practicable (and is undesirable in design terms). Reduced floor plate sizes and increased deep soil reduces density well below the permitted density without being able to go substantially above the height limit, which Meriton should not have to rely on.

Building separation

31. There is a proposal to increase in 'building separation distance' from 24 metres to 30 metres between habitable rooms for towers of 25 or more storeys.
32. This change cannot be justified in terms of privacy or acoustic amenity (the only two reasons that there are building separation provisions in the ADG).
33. The current ADG leaves the spatial regulation of built form for the purposes of ground plane and urban and public space amenity to local councils **and their development control plans**. If the ADG is to start regulating the spatial arrangement of buildings to achieve external amenity outcomes, then the ADG **should entirely displace local controls on this point**.
34. Additionally, there is no evidence (and there can be no evidence) that increasing a separation distance at the 25th storey and above will generally lead to better outlooks. The change in any given outlook is likely to be imperceptible. This measure is plainly disproportionate to the cost in terms of housing supply and access.
35. The combined effect of building increased building separation, more deep soil, and reduced floor plates reduces the permissible density.

Ground floor uses

36. The Design and Place SEPP proposes setting a 40 per cent benchmark for non-residential uses in the R3 and R4 zones. R3 and R4 zones frequently only allow a narrow range of non-residential uses. Most typically these are 'neighbourhood shops'. 'Neighbourhood shops' are essentially general merchandise type stores (that is, either convenience stores or chemists). There is insufficient demand in most localities to support additional convenience stores or a chemist (particularly in out-of-centre locations). If this was introduced it would likely lead to large-scale vacant non-residential space at the ground floor level.
37. The proposed change to ceiling heights on the ground floor level is justified by reference to what (at best) can be described as a fundamental misunderstanding of the current provisions of the ADG.
38. The proposal that all ground floor apartments facing a street to have direct access to the street is misconceived. In some instances, it can be a good design solution for ground floor units to present to the street as terrace style development. However, in many other instances, it would be a very poor design solution.

Apartment sizes

39. Meriton supports the creation of new guidance to facilitate departures from minimum areas where it may contribute to housing choice or affordability in areas of high housing demand.
40. Meriton does not support new proposals for a share of units in a new building have super-sized bedrooms (2-3 sqm larger than the current norms), with all units to be equipped with study rooms. Such measures are not justified based on the current state of the evidence and would simply reduce access to housing. The market/purchaser will decide to purchase a unit that has a study or not.
41. Meriton does not support changes to increase the amount of storage space provided. There is no credible evidence that the current provision of storage space is generally inadequate. Indeed, Meriton's experience is that the amount of storage presently delivered under the existing ADG is more than sufficient to meet the overwhelming majority of households.

42. Meriton does not support changes to increase the amount of bicycle storage. There is also no credible evidence that the current provision of bicycle and mobility-aid storage is generally inadequate. Indeed, again, Meriton's experience is the amount of such storage presently delivered under the existing ADG is more than sufficient to meet the overwhelming majority of households.

Electric vehicles

43. Provision of a power supply to individual car parking spaces is expensive and disproportionate in the absence of significant government investment to support community-wide infrastructure for the recharging of electric vehicles. That is, electric vehicles will need to be re-chargeable at petrol stations generally (or some equivalent) before it would be proportionate to expect expensive power supply provision to individual car spaces. Technological advances may see other energy sources for vehicles that make electric cars less prevalent and require different fuel type/source and power supply.

BASIX

44. BASIX was set-up as a single state regulatory regime in 2004, before the National Construction Code had advanced to embrace energy and sustainability goals. Now that there is an agreed national way forward on this issue, Meriton submits that NSW should not seek to continue its standalone regulatory approach and should instead look to phase out the BASIX SEPP in favour of the National Construction Code as the work program of the *Trajectory for Low Energy Buildings* is progressively implemented.

Adaptive re-use

The adaptive re-use of existing buildings should be promoted where possible. The current ADG text that provides examples of adaptive re-use should expressly reference serviced apartment conversions (as well as the existing references to large houses, redundant industrial buildings, major institutional buildings and groups of buildings to commercial office towers).

Transitional provisions

45. It is not sufficient to merely 'ensure savings provisions are in place in relation to applications that have already been lodged'. This is because many (large) future development sites will require detailed planning, that may take several years to complete. A savings provision that only applies to lodged development applications will result in a rushed process of finalising and lodging development applications prematurely. The public interest would not be served by that type of approach. This submission contains specific recommendations to deal with this issue.

Next steps

46. Given the issues that we have identified in this submission, we consider it essential that all of these steps take place. In particular, it is crucial that, in light of the matters we have raised, the government:
- considers the financial impact analysis we have presented;
 - consults on the proposed text of its draft Design and Place SEPP — and the associated revised *Apartment Design Guide (ADG)*, *Urban Design Guide (UDG)* and the revisions to BASIX — through targeted stakeholder consultation; and
 - publicly exhibits the proposed text of its draft Design and Place SEPP (and associated documents) before any attempt at finalisation.

1. Introduction

1.1 Our record

Established in 1963, Meriton has made a significant impact on the Australian landscape. Together, the Meriton group companies are Australia's largest apartment developer. The private group has designed, developed and built more than 75,000 apartments and some of the tallest residential towers across the east coast of Australia.

Meriton is Australia's leading supplier of both new homes for owner occupiers — as well as new rental homes. There is no private sector rental landlord in NSW that even approaches the scale of Meriton's rental portfolio.

Meriton takes care and pride in the way we design and build to minimise any adverse impacts on the environment — whilst serving the public interest by providing much-needed housing in locations that align with government social and environmental goals.

We work closely with the community to deliver on our commitment to environmental best practice, taking each development to new levels of sustainability. All Meriton developments comply with Australia's NatHERS, BASIX and ecologically sustainable development principles, including features such as:

- energy-efficient lighting and appliances;
- water-saving fixtures and fittings rain/stormwater harvesting;
- rooftop solar panels;
- rooftop gardens; and
- cycleways and walking tracks.

From saw-tooth roofs to towering pillars of glass, Meriton apartments respond to their surrounds, creating projects that integrate with the community while standing tall as examples of exceptional design.

1.2 Responding to the explanation of intended effect

Meriton is always pleased to assist the government when it undertakes public consultation on proposed policies that may affect apartment supply. For this reason, Meriton welcomes the opportunity to respond to the *Explanation of intended effect for a Design and Place SEPP: February 2021 (the EIE)*.

The proposed *Design and Place State Environmental Planning Policy (Design and Place SEPP)* is clearly intended to be a significant public policy measure.

Meriton generally supports the overall planning objectives set out in section 2.1 of the EIE. That is, Meriton supports:

- achieving ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment — as per section 1.3(b) of the *Environmental Planning and Assessment Act 1979 (the EP&A Act)*;
- protecting the environment — as per section 1.3(e) of the EP&A Act;
- promoting the sustainable management of built and cultural heritage (including Aboriginal cultural heritage) — as per section 1.3(f) of the EP&A Act;

- promoting good design and amenity of the built environment — as per section 1.3(g) of the EP&A Act; and
- promoting the proper construction and maintenance of buildings— as per section 1.3(h) of the EP&A Act.

However, we note that other key objectives of the EP&A Act are not identified as being part of the aims and principles of the Design and Place SEPP. This does not seem to be an oversight. As our submission explains, we consider that many of the measures proposed for the SEPP are not responsive to the following important statutory objectives of the EP&A Act:

- promoting the social and economic welfare of the community and a better environment by the proper development of NSW's land resource — as per section 1.3(a) of the EP&A Act;
- the promotion of the orderly and economic use and development of land — as per section 1.3(c) of the EP&A Act; and
- the promotion of the delivery and maintenance of affordable housing (this is defined to mean housing for households up to and including moderate income households) — as per section 1.3(d) of the EP&A Act.

In relation to the last point, the government should note that Meriton is the state's largest supplier of affordable housing. That is, housing that is able to be afforded by households up to and including moderate income households. Moderate income households are defined to include households whose income is up to 120 per cent of the median household income for the time being for Greater Sydney (as per clause 8 of the *State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)*). This is around \$120,000 a year (based on 2016 census data). A significant portion of Meriton's customer base (both new home purchasers and renters) fall into this demographic.

2. Better regulation requirements

Treasury circular TC19-02 (issued on 22 January 2019) says:

In developing, managing and reviewing **regulatory proposals**, agencies must meet the following requirements:

- New and amending regulatory proposals must demonstrate compliance with the better regulation requirements under the Guide and/or requirements under the Subordinate Legislation Act 1989.
- A **Better Regulation Statement is required** for significant new and amending regulatory proposals, **and must be published online on the agency's website**.
- The impacts of the proposal must be identified and justified through quantitative and qualitative analysis of all available data. The level of analysis should be proportionate to the significance of the proposal.
- Effective consultation with stakeholders is required to inform the development of regulatory proposals and to assist the Government to thoroughly understand the impacts.
- Opportunities to simplify, repeal, reform or consolidate existing regulation should be considered. ...

The term '**regulatory proposal**' is used in this circular **in the broadest possible sense** to cover any policy proposals with an option to implement, remove or transfer any rule that has an expectation of compliance, either statutory or non-statutory (bold added).

The Design and Place SEPP is plainly a 'significant new and amending regulatory proposal'. Despite this, no better regulation statement has been published online — and we suspect that such a document has not been prepared.

This material oversight has probably contributed to the many problems with the proposed Design and Place SEPP (which are dealt with in this submission).

If a better regulation statement had been prepared it would have had to address the following principles (as set out in the *NSW Government Guide to Better Regulation*, TPP19-01, January 2019):

Executive summary (Principle 4)

Provide a summary of the proposal, and a short justification, for why the preferred option is recommended.

- Demonstrate the proposed regulatory approach is proportionate to the policy problem.
- Outline the consultation approach adopted and provide a summary of stakeholder views of the proposal.
- Demonstrate the preferred option provides the greatest net benefit, or least cost, to the community.
- Demonstrate the Licensing Framework has been applied, if a revised or new licence is proposed as part of the proposal. Attach the assessment to the BRS.

Need for government action (Principle 1)

Demonstrate government intervention is justified.

- Clearly identify and provide evidence of the policy problem.
- Advise whether consultation was used to help identify the problem.
- Explain the actual, or potential impacts, of not acting and summarise the outcome of any risk analysis.

Objective of government action (Principle 2)

Demonstrate the objectives of government action are well understood.

- Clearly describe the objectives of the proposal.
- Ensure the objectives are consistent with existing government policies.

Consideration of options (Principle 3 and Principle 6)

Outline the various options that were considered in developing the proposal.

- Ensure the status quo is considered as an option.
- Consider non-regulatory alternatives.
- Show opportunities to simplify, repeal, reform or consolidate existing regulation has been considered and acted on.
- Show any opportunities for national, or cross border uniformity or harmonisation, have been pursued.
- Outline if stakeholders have been consulted in the development of options.

Meriton (for the reasons set out in detail below) submits that the current proposal for a Design and Place SEPP:

- is not a proposed regulatory approach that is proportionate to the policy problem;
- has not been subject to any meaningful industry consultation prior to its public release (for example, Meriton, as Australia's largest apartment developer was not approached);
- does not demonstrate that its preferred options provide the greatest net benefit, or least cost, to the community;
- does not demonstrate that the specific proposed government interventions are justified;
- does not clearly identify and provide evidence of any policy problem that would justify the very significant regulatory measures proposed;
- does not explain the actual, or potential impacts, of not acting and summarise the outcome of any risk analysis;
- does not ensure the objectives are consistent with existing government policies (for example, the proposal to **discourage** private car ownership);
- does not consider non-regulatory alternatives; and
- does not take any meaningful opportunities to simplify, repeal, reform or consolidate existing regulatory measures.

Before this proposal is further advanced Meriton submits that a better regulation statement should be prepared and be the subject of a public consultation.

3. Viability and affordability

Section A1.1.2 of appendix A to the EIE says:

In reviewing the [apartment design] guide, careful consideration has been given to the balance required between supporting the amenity of residents, **the affordability of housing, and the need for apartment development to remain financially feasible** in the areas where it is being delivered (bold added).

Regrettably, despite this claim, it is not apparent to Meriton that any serious effort has been invested in considering either the implications of the proposed measures for housing affordability or financial feasibility. This is clear from:

- the sweeping financial consequences of the changes;
- the obvious reduction in physical development capacity on sites; and
- the consequent reduction in the financial feasibility of development and construction.

Meriton has carried out a detailed review of the feasibility analysis of two of its existing projects. Meriton has compared the following:

- the actual feasibility analysis that formed the basis of Meriton's investment decision; and

- what the feasibility analysis would have looked like had the proposals for the Design and Place SEPP been in place at the time that the investment decision was made.

Project 1

Project 1 is a development for 305 residential apartments.

If the Design and Place SEPP had been in place, the site would likely have only yielded 216 units (a loss of 89 units).

The cost of land required to produce individual apartments would have been close to \$120,000 extra for each apartment.

Construction costs, per apartment, would have jumped up by close to \$140,000. These costs are attributable to:

- the actual cost of newly-required fixtures; and
- inefficiencies arising from more complex construction methodologies.

Holding costs will increase as a result of more complex approval processes (which will inevitably be lengthier). Meriton's experience is that the more 'guidance' or 'design criteria' that must be addressed, the more matters that will need to be debated and justified. This always requires time (by both Meriton and the consent authority). Meriton expects these additional delays to add to its holding costs to the tune of \$24,000 per dwelling.

All up, **each apartment in project 1 would cost just over \$280,000 extra (per dwelling) to deliver.**

Project 2

Project 2 is a development for 297 residential apartments.

If the Design and Place SEPP had been in place the site would likely have only yielded 255 units (a loss of 42 units).

The cost of land required to produce individual apartments would have been close to \$33,000 extra for each apartment.

Construction costs, per apartment, would have jumped up by close to \$92,000. These costs are attributable to:

- the actual cost of newly-required fixtures; and
- inefficiencies arising from more complex construction methodologies.

Holding costs would have increased by approximately \$7,000 per dwelling.

All up, **each apartment in project 2 would cost just over \$132,000 extra (per dwelling) to deliver.**

Implications

If the Design and Place SEPP were in place, Meriton would have only green-lighted construction for either of these two projects if it was confident that the market could have supported **an increase in this price** to accommodate these extra costs. If there was not sufficient home buyer demand at this much higher price point, these two projects would not have proceeded.

In short, the cost to the community of the Design and Place SEPP, if applied to either of the projects, would be either of the following:

- **Reduced access to housing:** The community would have lost the opportunity to have additional residential apartments (305 for project 1, 297 for project 2) in areas ideally suited to the provision of compact, more affordable housing.
- **More expensive housing:** The cost of each dwelling would have increased by \$280,000 (project 1) or \$132,000 (project 2).

As the Design and Place SEPP is intended to be a state-wide policy, it will apply across all sites. The overall consequence of this (in the short term) is that many intended development projects will stall. Such projects will be placed on hold until the housing shortfall is sufficiently large, that the market will be able to sustain the extra hundreds of thousands of dollars in costs per dwelling. This will take some time.

4. Guiding principles

4.1 There should be an *actual* move away from prescriptive controls

Meriton strongly supports this statement (in section 2.3) of the EIE:

A principle-based planning system is one that is focused around achieving a desirable outcome through a reasoned and considered approach. It is aimed at **moving away from a system governed entirely by prescriptive controls**. This allows for, and encourages, innovative and creative approaches to achieve an outcome. It is proposed the principles will be given effect through matters for consideration and application requirements (bold added).

A principles-based system expresses outcomes sought in a **performance outcome** way, not in terms of numerical controls (which may not actually result in the desired outcome). To the extent that numerical criteria are outlined, they would — in a **genuine** principles-based system — merely be **one** (unarguable) way of achieving the qualitative performance outcome.

The ADG, in **theory**, is already a principles-based document. However, the practical reality of the ADG, is that most consent authorities generally strive to apply its numerical design criteria **as if they were prescriptive controls** that must always (or almost always) be satisfied.

If the ADG is to be reformed to reflect the above statement of intent (in section 2.3 of the EIE) then much clearer language needs to be inserted in the ADG — more precisely spelling out the relationship between design criteria and objectives, in a way that **cannot be misunderstood** by consent authorities and their assessment staff.

Furthermore, if a principles-based approach is to be pursued, many of the wide-ranging proposals in the EIE to propose new design criteria should not proceed. These measures, as proposed, will inevitably:

- reduce the ability for the community to make efficient and cost-effective use of the state's small supply of land in locations that are within walking and cycling reach of concentrations of workplaces or services (including public transport services);
- reduce access to housing in places in which the social, economic and environmental benefits of compact housing are greatest; and
- divert population growth to locations with poorer access to services, workplaces and transport — at significantly greater community cost.

At present, the EIE’s commitment to moving away from a system governed by prescriptive controls is a rhetorical — rather than a real — proposal. Before the Design and Place SEPP is progressed further there should be a comprehensive review of measures, to see how this promise can be turned into a reality.

4.2 The proposed guiding principles should be revised

Section 2.3 of the EIE says that the Design and Place SEPP is to be framed around five ‘guiding principles’. These are:

PRINCIPLE

1. Design places with beauty and character that people feel proud to belong to

PRINCIPLE

2. Design inviting public spaces to support engaged communities

PRINCIPLE

3. Design productive and connected places to enable thriving communities

PRINCIPLE

4. Design sustainable and greener places for the wellbeing of people and the environment

PRINCIPLE

5. Design resilient and diverse places for enduring communities

Meriton supports these principles, but they are an incomplete picture of the principles that should guide the Design and Place SEPP. In particular, the principles should be responsive to the statutory objectives of the EP&A Act that the EIE expressly overlooks (in section 2.1-2.2). That is, sections 1.3(a), (c) and (d) — as outlined in section 1.2 of this submission.

At a high-level this can be corrected by revising current principle 3 and inserting two new principles as follows:

PRINCIPLE

3. Design to maximise opportunities for thriving, productive and connected residential communities within walking and cycling reach of workplaces or services (including public transport services).

PRINCIPLE

- X. Design to promote increased access to housing in places in which the social, economic and environmental benefits of compact housing are greater.

PRINCIPLE

- X. Design to promote affordability — by prompting sufficient flexibility in design expectations so that they do not diminish housing supply (and are proportionate in the circumstances).

4.3 Baseline residential density targets

In explaining principle 3, the EIE says that the Design and Place SEPP will:

propose baseline residential density targets in urban areas (along with a range of housing and tenure types ...)

For baseline residential density targets to be meaningful, they should be expressed in the Design and Place SEPP as ‘cannot refuse’ standards.

In a statutory sense these are described (somewhat misleadingly) as ‘non-discretionary development standards’ (as per section 4.15(2)-(3) of the EP&A Act).

However, the purpose of such development standards is to set out standards that — if complied with — prevent the consent authority from requiring more onerous standards for those matters (or refusing a development application).

Non-compliance with these particular development standards does not prevent development consent being granted. In short, these development standards limit the discretion of the consent authority, but do not limit the design flexibility available to the proponent.

We note that ‘cannot refuse’ standards have become commonplace in environmental planning instruments, but are confined to particular development types, for example:

- for seniors housing — part 7 of the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*;
- for rent-controlled residential flat buildings — clause 14 of the *State Environmental Planning Policy (Affordable Rental Housing) 2009*;
- for boarding houses — clause 29 of the *State Environmental Planning Policy (Affordable Rental Housing) 2009*;
- for some (but not all) types of ‘build-to-rent’ housing — clause 41D of the *State Environmental Planning Policy (Affordable Rental Housing) 2009*; and
- for mining — clause 12AB of the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*.

The omission of conventional residential flat buildings (that are not exclusively available for rent) from the current system of ‘cannot refuse’ standards is notable. There is no logical reason that:

- seniors housing developments (that are often also categorised as residential flat buildings, as per *Abret Pty Limited v Wingecarribee Shire Council* [2011] NSWCA 107);
- build-to-rent housing (which are likely to be mostly residential flat buildings); or
- boarding houses (which are normally also regarded as residential flat buildings as per *SHMH Properties Australia Pty Ltd v City of Sydney Council* [2018] NSWLEC 66),

should benefit from ‘cannot refuse’ standards, while the most important mechanism for promoting housing access (conventional residential flat buildings) is excluded.

If this principle is embraced, it is important that it also be made clear that a baseline residential density target overrides other factors. For example, in *Gloucester Resources Limited v Minister for Planning* [2019] NSWLEC 7, the Land and Environment Court said that even when a ‘cannot refuse’ standard for acoustic impacts was satisfied, the development could still be refused where the residual **acoustic** impacts could be said to have an adverse **social** impact (at [259]-[263]). This approach has the potential to deprive the proponent the benefit of a ‘cannot refuse’ standard, as there is considerable room to define ‘social impacts’ broadly to include a wide range of physical impacts. This can be addressed through appropriate legal drafting of any ‘cannot refuse’ provisions.

Furthermore, 'cannot refuse' development standards should also be extended to all residential flat buildings for the following aspects of a development:

- density or scale;
- building height;
- landscaped area;
- solar access;
- private open space;
- parking; and
- accommodation size.

These aspects of a development are subject to 'cannot refuse' standards for boarding houses (generally a form of residential flat building as per *SHMH Properties Australia*) under clause 29 of the *State Environmental Planning Policy (Affordable Rental Housing) 2009*.

5. Design process

5.1 Design process is not as important as design outcome

Section 3.1 of the EIE says:

good design process is undertaken for planning and development proposals, and **that the design processes**, as well as the design outcomes, **are assessed** (bold added).

With respect, this is entirely at odds with the early assertion of the EIE that there would be an effort to move away from 'prescriptive controls' and instead allow for 'innovative and creative approaches'.

A Design and Place SEPP that is truly concerned about avoiding the costs, time and delays associated with unproductive processes, would instead allow 'innovative and creative' design outcomes to be supported — irrespective of the design process that was used to get there.

5.2 Ensuring that innovative and creative design outcomes are not frustrated by ill-suited process requirements

To ensure that good design efforts are rewarded — without rejection merely because a prescriptive **process** has not been followed — Meriton proposes that the Design and Place SEPP include a clause along the following lines:

X Innovative and creative design outcomes

- (1) The objective of this clause is to ensure that positive innovative and creative design outcomes are able to be achieved, irrespective of the design process used to achieve those outcomes.
- (2) The consent authority may, despite any other provision of this Plan or any provision of any environmental planning instrument relating to design process, grant consent to a development if the consent authority is satisfied that—
 - (a) the proposed design (with or without modification) is, at least, a good design outcome, and

- (b) the proposed design (with or without modification) is an innovative and creative design outcome.
- (3) In this clause **design process** includes a requirement for any of the following:
 - (i) a competitive design process,
 - (ii) consideration by a design review panel, or
 - (iii) the preparation of a development control plan.

6. New mandatory matters for consideration

6.1 New matters for consideration

The Design and Place SEPP will apparently impose an additional layer of matters for consideration for 'precincts' and 'significant development'.

This would be on top of the many hundreds of matters for mandatory legal considerations (spread over local environmental plans, development control plans and the ADG) that already exist for every Meriton development application.

In section 2.4.2 of the EIE it says:

In NSW, considerations of design and place quality **are addressed variously in the planning system**, including through environmental assessment requirements required by the Secretary of the Department of Planning, Industry and Environment (Secretary's environmental assessment requirements: SEARs), design excellence clauses, and in SEPP 65, which apply to a narrow range of development typologies.

The Design and Place SEPP proposes to **expand** the need for design and place quality to a broader range of development typologies, from individual buildings, to public spaces, to whole neighbourhoods, to improve the delivery of well-designed precincts and the buildings and spaces within them (bold added).

The above text acknowledges that there are **already** complex layers of measures that require consideration of various design issues. However, instead of simplifying and consolidating these measures in a single source, the proposed Design and Place SEPP **will simply add another layer** to them.

Meriton proposes that any Design and Place SEPP should be a comprehensive **single code** to deal with design considerations — replacing all local controls, and other state controls and policies. This would be a more coherent approach to achieving good design.

To this end, a clause could be inserted into the Design and Place SEPP modelled after the current clause 6A of the *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65)*. It could read as follows:

X. Development control plans, policies and other environmental planning instruments

- (1) If a development control plan, policy or another environmental planning instrument contains design-related requirements those provisions are of no effect.
- (2) This clause applies regardless of when the development control plan, policy or environmental planning instrument was made.
- (3) In this clause **design-related requirements** means provisions that specify requirements, standards or controls by use of—

- (a) the word design, or
- (b) by words or expressions that are like descriptions, or
- (c) by descriptions that incorporate such words or expressions.

This also mirrors the policy approach that NSW Government has taken with residential sustainability standards (see clauses 8-9 of the *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*).

The EIE says (in section 2.4.2):

The proposed structure of the Design and Place SEPP will allow for new design requirements to be added in response to different scales and types of development as they arise ...

This appears to be suggesting that the Design and Place SEPP will authorise the alteration of mandatory matters for consideration outside of any formal amendment to the SEPP itself. This would avoid the consultation process that normally occurs when SEPPs are amended. It would also reduce public sector accountability for new burdens placed on proponents.

Meriton submits that such flexibility (for public officials to re-write the rules on the run) should not be adopted. Changes to the substance of the Design and Place SEPP (or any document referenced in it) should require a formal amendment to the SEPP.

6.2 Precincts

The EIE says (in section 2.4.1) that:

Precincts are generally proposed and delivered by State or local government

While it is probably true that most areas that are labelled as 'precincts' have been proposed by state or local government, the delivery of the built form within those precincts has generally rested with private sector developers.

However, this statement also overlooks the fact that the most successful and notable precincts are those that have been developed by a single large landowner/developer.

Notable precinct developments that have been brought to fruition by the Meriton Group include:

- 4,000 apartments at Bunnerong Road Pagewood, known as Pagewood Green;
- 800 apartments at Mobbs Lane Epping, known as Epping Park;
- 900 apartments at the former Dexus site at Rosebery, known as The Gallery;
- 1,200 apartments at Mascot, known as Mascot Central; and
- 1,500 apartments at Carter Street Lidcombe, known as The Retreat.

The definition of 'precinct' is wide. For example, it includes:

- '[A]ny ... subdivision into more than 50 lots'. This captures strata subdivision. The development of high-density residential development with more than 50 lots is commonplace.
- '[T]o any other similar plan or spatial arrangement greater than ... 1000 people'.

We have calculated the number of dwellings that are likely to attract 'precinct' status under the 1,000 people occupancy criterion.

To do this we have assumed the same occupancy numbers as the City of Sydney does for its *City of Sydney Development Contributions Plan 2015*:

- 1.3 people are assumed for a one-bedroom dwelling;
- 1.9 people for a two-bedroom dwelling; and
- 2.7 people for a three-bedroom dwelling.

We have also assumed a dwelling mix consistent with what is required under section 4.2.3.12 of the *Sydney Development Control Plan 2012*:

- studio/one-bedroom dwellings: 15 per cent;
- two-bedroom dwellings: 75 per cent; and
- three-bedroom dwellings: 10 per cent.

A development that delivers around 530 or more apartments is likely to be classified as a 'precinct'-scale development based on the occupancy criterion alone. This falls to 50 apartments if the 'subdivision' criterion is not drafted to exclude strata subdivision.

6.3 Significant development

According to section 2.4 of the EIE, 'significant development' would be defined to be:

- development on a parcel of land
 - within a precinct or on a site bounded by streets on all sides
 - on a site greater than 4000 m² or 500 people
 - on a site greater than 1500 m² in a metropolitan centre.
- State significant development (SSD), as declared in the State and Regional Development SEPP, on urban land
- regionally significant development, as declared in the State and Regional Development SEPP, on urban land
- State significant infrastructure (SSI) on or adjacent to urban land.

The occupancy threshold of 500 people (using the earlier-described methodology) is alone likely to capture any development that delivers around 270 or more apartments. The regionally significant criteria will capture all development that has a capital investment value of more than \$30 million.

It is likely that almost all of Meriton's developments (if not 'precinct development') would (at least) be 'significant development'.

6.4 Raising the expectation that private land will be routinely handed over as public space

According to section 3.22 of the EIE:

It is proposed the initiatives and guidance outlined in this EIE are mandatory matters for consideration for the purposes of s.4.15 of the EP&A Act **and will be required to be considered as part of the development assessment process** (bold added).

Public space generally

Item 2 of table 1 sets out the following proposed mandatory matter for consideration for precinct development:

Equitable distribution of accessible, well-designed public space has been provided on land fit for purpose with no net loss of public space.

This creates an expectation that development applications will routinely need to propose that private land be made available for use as public space whenever there is a need to do so in the name of 'equitable distribution'.

At present, the ADG addresses the need for apartment developments to provide 'communal open space'. In a residential development, the provision of adequate **communal open space** is a proper matter for consideration (as it currently is).

[C]ommunal open space is defined as follows:

outdoor space located within the site at ground level or on a structure that is within common ownership and **for the recreational use of residents of the development**. Communal open space **may be accessible to residents only**, or to the public (bold added).

In a residential development, the provision of adequate **communal open space** can be (and usually is) for access by the residents of the development, not the general public.

However, the Design and Place SEPP would apparently impose an expectation that large residential developments should make available parts of their land for public access to meet community-wide shortfalls. It appears to be a way of effectively acquiring private land without compensating for it under the *Land Acquisition (Just Terms Compensation) Act 1991*.

This is inappropriate and should not be contemplated under the Design and Place SEPP.

Such a serious step will materially weaken the integrity of the system of property law in NSW (and discourage investment).

Furthermore, it should not be routine for owners corporations in future residential developments to indefinitely bear the burden of providing public access over parts of the common property of those developments. While this does occur from time-to-time, it is not standard. When it occurs, it is usually a nuanced response to specific local conditions. It should not become a generalised approach. In this regard, it should be noted that owners corporations are typically funded by moderate income households and run by amateur owners' committees. The burden of providing and maintaining public space should generally rest with public authorities rather than owners corporations.

Meriton submits that item 2 in table 1 in section 3.22 of the EIE be re-phrased as follows:

Whether the development would result in a net loss of accessible, well-designed public space.

Through-ways

Item 3 of table 1 sets out the following proposed mandatory matter for consideration for precinct-scale development:

Connectivity has been provided where possible between green infrastructure including landscape corridors, recreational walking and cycling networks, and the network of public space.

Item 9 of table 1 sets out a further proposed mandatory matter for consideration for both precinct-scale and significant-scale development:

Proposed walking and cycle links connect to designated walking and cycling networks at the site boundary, and **provide publicly accessible through-site links** for walking and cycling (bold added)...

Both of these items raise similar issues to those discussed in section 0 of this submission.

Meriton submits that items 3 and 9 in table 1 in section 3.22 of the EIE be deleted or significantly re-phrased. Item 3 could, for example, require consideration as follows:

Whether:

- (a) the development would result in a net loss of connectivity between green infrastructure including landscape corridors, recreational walking and cycling networks and the network of public space; and
- (b) where there is such a net loss of connectivity, there are measures taken to offset or mitigate that loss.

Item 9 could, for example, require consideration as follows:

Whether:

- (a) there are opportunities for any walking and cycle paths within the development to connect to designated walking and cycling networks at the site boundary, and
- (b) where there are such opportunities, the extent that occupiers of the development will be able to access those links by walking and cycling.

6.5 Community use of areas of cultural and built importance

Item 1 of table 1 sets out the following proposed mandatory matter for consideration for precinct-scale development:

Areas of cultural and built importance are celebrated, conserved and protected, including heritage items or areas at risk, and a corresponding strategy has been developed to ensure **community use and enjoyment** of these (bold added).

The development of strategy for items of cultural and built importance (that are not heritage-listed or Aboriginal objects) appears to be excessive and unnecessary. In particular, it undermines the listing process for heritage items (that is already sufficiently broad). The listing process is designed to promote certainty as to what items/land are subject to special considerations in relation to cultural, aesthetic and heritage importance.

Additionally, the notion that there must or will be an expectation of 'community use and enjoyment' is worrying — where such community use or enjoyment is not consistent with the planned retention of land and facilities as private property.

Where buildings have some degree of public access in accordance with their private use (such as retail premises, hotels, functions centres, etc) this notion might be accommodated somewhat. However, in other instances, such as when the development is for residential use, it is inappropriate to expect that the community would use the item. Of course, if the item is visible from the public domain, the community could enjoy seeing it (in a passive sense), but this is all that should be allowed for in such circumstances.

Meriton submits that item 1 in table 1, should be revised to require consideration as follows:

Whether heritage items and Aboriginal heritage are celebrated, conserved and protected, and the extent it is feasible and practicable to create opportunities for a wider class of people to see and enjoy such heritage.

6.6 Locations of new precincts

Following on from the section above, item 4 of table 1 also proposes a new mandatory matter for consideration (for development assessment) as follows:

Local living

All housing in urban areas of new precincts is within:

- 20 minutes walk of local shops, and
- 5 minutes walk of local public open space.
- Where possible, housing is also within 20 minutes walking distance to primary schools, district open space, public transport, and supermarkets or groceries.

This appears to be a matter that should be considered at rezoning stage, rather than development assessment stage.

In development assessment, the fact that land has been zoned for housing should be sufficient to establish its general locational suitability for housing.

Meriton submits that item 4 in table 1 in section 3.22 of the EIE should be re-phrased. It could, for example, require consideration as follows:

Whether the extent of achieved density will reflect an efficient use of land in the context of the proximity (if any) of the development to local shops, local public open space, primary schools, district open space, public transport, and supermarkets or groceries.

This amended text would properly focus attention on whether the community is getting an efficient development outcome — this minimises the need for population and housing growth to be diverted to land that cannot (as easily) achieve important social, economic and environmental goals.

6.7 Street design

In theory, the new Design and Place SEPP is about reducing the reliance on prescriptive controls. Nonetheless, item 5 of table 1 proposes a new mandatory matter for consideration (in development assessment) relevantly as follows:

The precinct: ...

- meets a **minimum street intersection density** (to be determined during development of the Design and Place SEPP)
- does not exceed a **maximum block length** between intersections (to be determined during development of the Design and Place SEPP) (bold added).

Item 9 of table 1 proposes a new mandatory matter for consideration (in development assessment) relevantly as follows:

...[N]o street frontage between paths is greater than the maximum block length set out in Consideration 5: Street design.

This text is not a genuine 'matter for consideration'. It is phrased as a development control. In any event, even if re-phrased, it is not enough that this is a 'matter for consideration' rather than a development standard. As a practical matter, any stated numerical targets,

even if only a matter of consideration, **will generally be applied by consent authorities**. This repeats the mistakes of previous regulatory documents. That is, past documents have overlooked the culture of planning in NSW — which places a greater deal of importance on numerical benchmarks, even when either:

- they are not technically binding; or
- not even appropriate in a merit sense in a particular case.

Meriton submits that there should not be a minimum street intersection density or a maximum block length. Density targets are best dealt with in the way that we have outlined in section 4.3 of this submission. Desirable block length needs to be considered in the context of a site as there can be wide variations between sites, and different development types, as to what block length is appropriate and acceptable.

For example, there could be an opportunity to create a large open space or provide a generous curtilage around a heritage item if longer block lengths are supported.

This could be dealt with, for example, by a matter for consideration as follows:

Whether—

- (a) block lengths are sufficient to accommodate desirable fine grain movement, and
- (b) where opportunities to limit particular block lengths are constrained by site context or site opportunities, alternative steps have been or may be taken to encourage desirable fine grain movement.

6.8 Tree canopy

Again, the new Design and Place SEPP is supposed to be about reducing the reliance on prescriptive controls. Nonetheless, item 6 of table 1 proposes a new mandatory matter for consideration (in development assessment) relevantly as follows:

retaining or enhancing existing significant and moderate tree canopy **or replacing any removed moderate or significant trees with at least two trees** or precinct DCP/council replacement rate, whichever is higher. In Greater Sydney **the tree canopy target** specified by council or in the Greener Places Design Guide (if not specified) **is to be delivered** (whichever is higher) (bold added)

This text overlooks the following issues:

- In central business districts, constrained sites, high density areas, or in centres, the building podium (for good urban design reasons) will often be built to the boundaries on all sides. This is already anticipated by the ADG (the third item of design guidance for objective 3E-1). This makes achieving any tree canopy target or replacement tree ratio impossible.
- Some sites will have insufficient land available to meet a given tree replacement rate (whether it is higher or lower than two trees). The appropriate level of tree canopy, or tree replacement, for any higher density development type (where land is expected to be utilised with a great deal of efficiency) needs to be highly tailored to individual site (and proposal) circumstances.

Blanket rules (even when dressed-up as ‘matters for consideration’) for tree canopy or tree replacement are not helpful. Such guidance is more relevant to low density development, where there is generally more land available in the finished development.

Existing (pre-development) sites will have a varying degree of existing canopy. In an area in transition (ie whether planning controls anticipate change) the existing canopy is not a

good indication of what should be on the site when the development is completed. On any site, if the desired future character for a given parcel of land is reflective of a particular building form, that form should not have to be scaled-back merely because it would involve a greater degree of land clearing than a typical development. The relevant measure is the look and feel of the finished community, not the historical surrounds (where a planning decision has been made that those surrounds need to significantly change in any event).

In general terms a proponent should simply be expected to do the best that can be done in terms of tree canopy in the finished development in the context of the desired future character (and built form) for the area.

Meriton submits that any matters for consideration in terms of tree canopy be qualitative (not quantitative) and recognise that some sites will contribute to urban ecology outcomes in ways other than via tree canopy.

The relevant part of item 6 of table 1 could be re-phrased as follows:

Whether, when landscaping has sufficiently matured—

- (a) the site should accommodate tree canopy, and
- (b) if the site should accommodate tree canopy, an appropriate level (in the context of the desired future character) of tree canopy is likely to be provided, and
- (c) if the site should not accommodate tree canopy, the manner and extent to which the site contributes, or is able to contribute, to urban ecology outcomes in other ways.

6.9 Housing diversity

Item 11 of table 1 proposes a new mandatory matter for consideration (in development assessment) relevantly as follows:

The proposal responds to the local housing strategy and provides **an equitable distribution of housing type** and **tenure for the demographics** of the local area to enable ageing in place (bold added).

In terms of the reference to the local housing strategy, see our separate comments in section 13 of this submission.

It is unclear what is meant by an 'equitable distribution of housing type'. For example, it could be a reference to equity for (or between) developers, or it could be a reference to equity between different categories of people who aspire to occupy different (competing) housing types.

Additionally, to the extent that 'demographics' have a role to play in making decisions about housing diversity, it should be the demographics of the likely occupants of the new housing, not the existing 'demographics of the local area'.

It is important that there is not an over-emphasis on purely **local area** demographics. Most localities within Sydney will not be selected for high density housing. High density housing will be concentrated in a relatively small number of highly accessible locations (accessible to concentrations of, workplaces, services or transport, or all three). This means that these locations will play a role in meeting the needs of housing occupiers **across a much larger catchment** than simply the local area.

The relevant catchments are identified in the research that led to the finalisation of *A Metropolis of Three Cities: The Greater Sydney Region Plan (the region plan)*. The region plan sets out housing targets which, in part, are informed by a study known as *Implementing metropolitan planning strategies: taking into account local housing demand: Technical Report* published by the City Futures Research Centre at UNSW in 2013 (as per objective 10: 'greater housing supply', page 62, see also footnote 10 on page 191).

Figure 7 of the report identifies 'housing market demand areas'. When considering the requirements of potential occupants it should be understood that the occupants will be drawn from across the relevant 'housing market demand areas', not simply the local area.

Accordingly, Meriton submits that item 11 of table 1 could be re-phrased to require consideration as follows:

Whether the proposal provides for housing types (and, where relevant, a mix of housing types) that responds to the likely preferences of the potential occupants of the housing within the relevant housing market demand area.

6.10 Transport and parking

Flexibility to make proposals above minimums

Item 12 of table 1 proposes a new mandatory matter for consideration (in development assessment) relevantly as follows:

The proposal **minimises** car parking using the **lowest** of:

- the rates specified in the *Guide to Traffic Generating Developments* (RTA 2002 (or when revised and retitled, the *Guide to Traffic Impact Assessment*),
- any maximum parking rates or lower minimum rates specified by local controls, maps or guidance, and
- any further reductions due to site-specific strategies including unbundling, or the preparation of adaptive travel plans.

This provision is problematic as it introduces a capacity for a consent authority to delete from a proposal (what would otherwise be) permissible levels of car parking.

The difficulty is that a proponent should have the flexibility to make a proposal for the actual provision for car parking that is reflective of the preferences of households in the relevant housing market demand area (see section 6.9 above).

This may require the provision of car parking above minimum levels. For example, if there would be a significant portion of seniors — or families with children — seeking accommodation in the development it may, in certain circumstances, lead a proponent to proposing parking above minimum levels. These household types may have a greater need for a vehicle than, say, a single person, or a couple with no children.

Accordingly, Meriton submits that item 12 of table 1 could be re-phrased to require consideration as follows:

Whether the proposal provides for car parking that either complies with the relevant minimums or responds to the likely preferences of the potential occupants of the housing within the relevant housing market demand area.

Discouraging private car ownership

The proposed ADG design criteria. In Appendix A1, item 8 in table A5 proposes the following design criteria:

As a minimum, retain the link to the lower of rates in *Guide to Traffic Generating Developments* (RTA 2002 or its replacement, the *Guide to Traffic Impact Assessment*) or council rates, and supplement this with:

- a reduced minimum parking rate and/or a maximum parking rate that applies to a list or map of locations that meet certain criteria, and/or

—an ability by applicants to reduce the parking rate by undertaking certain actions

—as set out in Table A4 above.

Table A5 proposes the following guidance:

Include new guidance (in addition to rates or methods for calculation) including for above-ground parking to be naturally ventilated.

According to table A5 the benefit is as follows:

Encourage sustainable transport options, **discourage private car ownership**, and reduce development costs (bold added).

It seems odd that it may become the official policy of the NSW Government to generally **discourage** private car ownership. This is a significant societal-level measure — which, if embraced by government, must surely have implications across the board. For example, in relation to road investment, taxation of vehicles and fuels, and provision of vehicle refuelling infrastructure (including electric vehicle infrastructure). Meriton considers that people should generally have a choice about whether they want to adopt a lifestyle that is free of a car. What works for some in our community will not work for everyone.

Denying transport choice

In any event, in a residential or mixed-use area where there are parking restrictions (either physical or as a result of signage) denying residents parking spaces in their property is not a genuine 'discouragement' of private car ownership. It is an effective **prohibition** on car parking ownership.

Such a restriction is deeply problematic. For example, according to 2016 census data for Greater Sydney:

- 52.7 per cent of employed people, aged 15 years and over, travel to work by car;
- 10.9 per cent travel to work by train;
- 5.5 per cent travel to work by bus;
- 4.4 per cent worked from home; and
- 4.0 per cent walked only.

Often it is assumed that most people work near high quality public transport hubs. The opposite is the case. For example, according to the 2016 census, 2.2 million people work full-time or part-time in Greater Sydney. However, only eight per cent of these people work in the Sydney City and Inner South statistical area.

Above-ground car parking

The expectation that above-ground parking will be naturally ventilated will cause particular problems.

Where car parking is above-ground (often necessary for flood, water table or excavation issues) the current ADG, appropriately, envisages that it may (as per the current ADG, page 75) be:

'wrapped' with other uses, such as retail, commercial or two storey Small Office Home Office (SOHO) units along the street frontage ...

This 'wrapping' may not be practicable **if there is an expectation of natural ventilation to all car parking areas.**

If a consent authority expects any above-ground car parking will be naturally ventilated, then it may not permit the 'wrapping' of the car parking. This may lead to the consent authority either not allowing the above-ground car parking, or scaling it back to inappropriately low levels.

The capacity to provide adequate above-ground parking should not be diminished by unnecessary restrictions that would reduce the acceptability of above-ground car parking.

Above-ground car parking has a range of positive sustainability and urban design outcomes:

- the reduction of substantial volumes of soil being transferred to landfill and its associated truck movements;
- avoids adverse environmental impacts that can arise on some sites for large-scale excavation, such as interference with the water table, flooding and drainage problems, and acid sulphate soil disturbance;
- creates opportunities for elevated and secure communal open space on podium tops (with better solar access and greater assurance that it will only be used by residents and guests); and
- it can assist in creating a strong street edge with good passive surveillance of surrounding streets and open space areas.

Above-ground car parking should not be discouraged by, for example, expecting all parts of the car parking to enjoy natural ventilation.

6.11 Attractive building form

Item 14 of table 1 proposes a new mandatory matter for consideration (in development assessment) relevantly as follows:

The development has, on balance, positive design qualities, and supports beautiful places (including **contributing to the local character**, where described), as determined against a number of specific aspects of design, including:

- massing
- articulation
- diversity and mix
- scale, views and vistas
- 3D expression
- entries and setbacks to public space
- details and materials
- wayfinding, paths and common areas.

Areas that are zoned for higher density development will often be areas 'in transition'. In such areas the existing character is not the relevant reference point, but the desired future character is. The text should be reflective of this.

Accordingly, Meriton submits that item 12 of table 1 could be re-phrased to require consideration as follows:

Whether the development, on balance, has positive design qualities, and supports beautiful places (including contributing to the desired future character of the area).

6.12 Activation

Item 16 of table 1 proposes a new mandatory matter for consideration (in development assessment) relevantly as follows:

There is **non-residential activation on a minimum percentage of frontage** of sites facing activity streets, with adequate lighting and passive surveillance (percentage to be determined during development of the Design and Place SEPP) (bold added).

This envisages that 'activation' will be provided through non-residential use, typically provision of retail or business premises on the ground floor. This is not always appropriate if the true goal is **activation**. For example, in areas where there is insufficient commercial demand for retail or business floor space, better activation might be achieved by some form of terrace-style presentation to the street (within the context of a residential flat building).

Furthermore, the Design and Place SEPP is supposed to be about reducing prescription, but this provision foreshadows the complete opposite approach.

Accordingly, Meriton submits that item 16 of table 1 could be re-phrased to require consideration as follows:

Whether there is:

- activation (whether it be via non-residential uses or residential built form that promotes passive surveillance and an interface with the street) on an appropriate stretch of the frontage for sites facing activity streets
- adequate lighting and passive surveillance where the site is adjacent to activity streets.

6.13 Emissions and resource efficiency

Item 17 of table 1 proposes a new mandatory matter for consideration (in development assessment) relevantly as follows:

The development meets or exceeds the relevant National Australian Built Environment Rating System (NABERS) targets set by the Design and Place SEPP, for:

- offices (base building energy)
- shopping centres (whole building energy)
- hotels (whole building energy)
- **apartment buildings including common areas (common property energy)**
- all buildings being 'ready for net zero' from 2030 (bold added).

Please see our comments in section 9 of this submission, which deal with this point (as part of the broader issue of the future of BASIX).

6.14 Affordable housing

Item 19 of table 1 proposes a new mandatory matter for consideration (in development assessment) relevantly as follows:

The proposal provides affordable housing in accordance with affordable housing targets or schemes. Where there are no targets or schemes, the applicant may propose a viable amount of affordable housing for the site, and must provide that amount.

Within Greater Sydney, targets generally in the range of 5–10% of new residential floor space are viable and should be delivered (Greater Sydney Region Plan Objective 11).

This matter for consideration seems to overlook important text that forms part of objective 11 in the region plan. It says (on page 70):

Affordable Rental Housing Targets would be applied in defined precincts **prior to rezoning**. This will not affect projects already underway. So as not to inhibit housing supply outcomes, or affect existing home and property owners, the application of the target will be the subject of a viability test (bold added).

Item 19 is inconsistent with the region plan as it would apply to development assessment, even when the land has been zoned for higher density for some time.

Additionally, there is no acknowledgement of the 'viability test' set out in some detail under objective 11 of the region plan.

As explained in section 1.2 above, the EP&A Act defines 'affordable housing' to mean housing for households up to and including moderate income households (as per section 1.3(d) of the EP&A Act).

Meriton is the state's largest supplier of affordable housing. That is, housing that is able to be afforded by households up to and including moderate income households. A significant portion of Meriton's customer base (both new home purchasers and renters) fall into this demographic.

However, as a practical matter, environmental planning instruments that sit under the EP&A Act often define affordable housing in a far narrower way (when compared with the EP&A Act itself).

For instance, there can be a focus on 'affordable **rental** housing', thus excluding affordable housing for owner-occupiers.

There can also be a requirement that the 'affordable housing' be managed by not-for-profit organisations, even though the great bulk of housing that is affordable to Sydney's moderate-income households is not (and cannot be) provided by non-profit organisations. These organisations are constrained both in terms of their access to capital and their ability to manage a large-scale rental portfolio of sufficient scale. 'Affordable housing' solutions that exclude private sector provisions (including the ownership of rental properties by 'mum and dad' investors) will inevitably constrain the actual provision of affordable housing.

Accordingly, Meriton submits that item 19 of table 1 could be re-phrased to require consideration as follows:

Whether (and to what extent) the proposal provides affordable housing (that is housing that is able to be afforded — either in terms of rents or purchase price — by households up to and including moderate income households).

7. Guidance documents

According to section 3.3 of the EIE:

To support the proposed Design and Place SEPP, a suite of existing and proposed guidance (revised and new) has been identified. The guidance is intended to complement the principles and considerations in specialist areas by setting:

- objectives relating to specific development typologies and outcomes
- criteria relating to outcomes, including performance-based criteria where possible
- minimum criteria where required and desirable to help assessment.

Section 3.3 goes on to identify 11 different guidance documents, specifically:

- Three 'existing guidance' documents that presently have no statutory status. It appears that it is intended that the Design and Place SEPP will give them some sort of statutory status.
- Six documents identified as 'guidance to be revised'. Of these documents, only three presently have statutory status.
- Six more entirely new documents. It appears that these documents are also to be given statutory status.

This appears to be a very significant regulatory over-reach. Furthermore, the vast array of different (and overlapping documents) will be confusing and likely lead to a mass of legal conflicts.

Meriton submits that these documents — to the extent that they have statutory recognition under the Design and Place SEPP — be collapsed into, at most, three documents:

- an apartment design guide;
- a design guide for other development types; and
- the guide to traffic generating developments.

As a SEPP is an instrument intended to influence development assessment, not plan-making, there is no need for any statutory guidance (under a SEPP) for a locality-wide strategic planning document (as has been suggested for the 'Urban Design Guide'). If such a document is required it is more appropriate that this be the subject of a local plan making direction under section 9.1 of the EP&A Act.

8. The ADG

According to section 4.1 of the EIE it is intended to replace the ADG with a new such document.

8.1 Communal open space

Item 1 in table A7 proposes the following design criteria:

Replace the site area metric (min. 25% of site area) with a unit mix / occupancy metric, subject to the delivery of specific requirements for communal space in apartment development, including:

- new specific requirements for communal open space and communal (internal) rooms to recognise the needs of apartment dwellers, particularly in higher density development
- providing covered communal space accessible from the street capable of hosting private or community events and activities, consisting of
 - 2.5% of GFA for non-residential uses
 - min. 250 m² for residential developments > 1000 m².

Table A7 proposes the following guidance:

Requirements to consider flexibility for addressing resident/apartment mix and contextual factors including green infrastructure.

According to table A7 the benefit is as follows:

Safeguard open space for the needs of residents, while enabling flexibility to provide appropriate and diverse common spaces for residents based on contextual factors. Link open space provision with the need to improve amenity as urban density increases.

A quantum of common space is required, independent of any public space or deep soil, to ensure sufficient gathering space for events, childrens play, and strata meetings.

One specific space sought will be a common room or event space capable of hosting a range of activities including strata meetings, events, parties and gatherings.

This proposal lacks any credible evidence base. The existing ADG design criterion (paragraph 1 under objective 3D-1) envisages that communal open space has a minimum area equal to 25 per cent of the site.

In Meriton's direct experience (both as a developer and a manager of many apartment buildings) the 25 per cent criteria generally leads to a significant over-provision of communal open space. That is, much of the communal open space is under-utilised (or rarely utilised at all).

This under-utilisation is not reflective of the quality of the communal open space.

There is already very clear guidance as the quality of the communal open space that must be provided.

Firstly, design criterion 2 under objective 3D-1 (of the existing ADG) expects developments to achieve a minimum of 50 per cent direct sunlight to the principal usable part of the communal open space for a minimum of two hours between 9am and 3pm at mid-winter.

Secondly, the design guidance under objective 3D-1 can be briefly summarised as follows:

- communal open space should be consolidated into a well-designed, easily identified and usable area;
- communal open space should have a minimum dimension of 3 metres and larger developments should consider greater dimensions;
- communal open space should be co-located with deep soil areas;
- direct, equitable access should be provided to communal open space areas from common circulation areas, entries and lobbies; and
- where communal open space cannot be provided at ground level, it should be provided on a podium or roof.

Thirdly, there are two further existing ADG objectives:

Objective 3D-2

Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting

Objective 3D-3

Communal open space is designed to maximise safety

These two objectives, with their associated design guidance, have been more than sufficient to recognise the needs of apartment dwellers, particularly in higher density development.

Actual communal open space is under-utilised because of the location of most higher density development and the quality of services/facilities that are generally found within the vicinity. That is, where a higher density residential building is located in an area of high amenity — with cafes, restaurants, function spaces and public open space — the demand for communal open space is actually quite low. Residents will generally prefer to socialise and exercise in these places, rather than within their own building.

It is naive to assume that residential flat buildings operate in isolation from the community around it. Generally, the very reason that a residential flat building is permitted is directly related to the presence (or the anticipated presence) of off-site services/facilities that will be used by the residents.

Having said this, it is important to notice the flexibility that the existing ADG purports to allow (in the design guidance under objective 3D-1):

where developments **are unable to achieve the design criteria**, such as on small lots, sites within business zones, or in a dense urban area, they should:

- provide communal spaces elsewhere such as a landscaped roof top terrace or a common room
- provide larger balconies or increased private open space for apartments
- demonstrate good proximity to public open space and facilities and/or provide contributions to public open space (bold added).

Regretfully, this flexibility is usually not, in practice, made available. This reflects the day-to-day approach of consent authorities to treat numerical design criteria as development standards. Furthermore, the flexibility is only envisaged to be available when developments are 'unable to achieve the design criteria'. Where the design criteria can be achieved by reducing the size or number of dwellings to be provided, a consent authority will generally rule out permitting this flexibility. As a practical matter, this means that a normal consent authority will never allow this flexibility (and will not entertain evidence that the communal open space is not actually required in the particular area).

In Meriton's submission the existing ADG communal open spaces should largely remain unchanged, except with the modification of the above design guidance, as shown below:

where developments:

- are in a locality that has (or is expected to have within a reasonable time frame) high quality services/amenities; or
- it is not practicable to achieve the design criteria such as on small lots, sites within business zones, or in a dense urban area,

they should (to the extent that it is anticipated that the need for communal open space areas is not likely to be met off-site, within the locality):

- provide communal spaces elsewhere such as a landscaped roof top terrace or a common room
- provide larger balconies or increased private open space for apartments
- demonstrate good proximity to public open space and facilities and/or provide contributions to public open space (bold added).

8.2 Daylight and ventilation

Item 2 in table A7 proposes the following design criteria:

Introduce a new requirement to provide adequate daylight and natural ventilation to all common circulation spaces.

Table A7 proposes the following guidance:

Provide supporting design guidance on adequate daylight and natural ventilation to all common circulation spaces.

According to table A7 the benefit is as follows:

Improve the amenity of common circulation spaces, in particular for adequate fresh air in response to COVID-19, and to reduce energy consumption and building running costs.

This appears to create an expectation that there will be a need for 'adequate daylight and natural ventilation' for all car parking, bicycle storage areas, garbage compactor/storage rooms, communal storage rooms, communal cinema rooms, communal laundries and the like. These areas all include 'common circulation spaces'.

Such areas are well understood to include 'common circulation spaces' (as per the current ADG, page 96):

Common circulation and spaces within a building are shared communally by residents. They include lobbies, internal corridors and external galleries, vertical circulation such as lifts and stairs, as well as community rooms and other spaces.

At present the ADG's requirements are not onerous (and not so disproportionate). There is an objective that all '**habitable rooms**' are naturally ventilated (objective 4B-1).

Similarly, there is a design criterion (under objective 4D-1) that every **habitable room** must have a window in an external wall.

A 'habitable room' **does not include**:

- laundries;
- corridors/hallways;
- lobbies, photographic darkrooms, clothes-drying rooms; and
- other spaces of a specialised nature (occupied neither frequently nor for extended periods).

There is also currently 'design guidance' in the ADG that says:

Daylight and natural ventilation should be provided to all common circulation spaces that are **above ground** (bold added).

There are two things to note about this current text.

Firstly, it only applies to above-ground spaces.

Secondly, it is merely design **guidance** to inform the achievement of objective 4F-1:

Common circulation spaces achieve good amenity and properly service the number of apartments

Many car parking, bicycle storage areas, garbage compactor/storage rooms, communal storage rooms, communal cinema rooms and communal laundries **do not require daylight and natural ventilation** in order to have amenity sufficient for their purpose (and it is often not practicable to supply such daylight and ventilation).

Where car parking is above-ground (often necessary for flood, water table or excavation issues) the current ADG, appropriately, envisages that it may (as per the current ADG, page 75) be:

'wrapped' with other uses, such as retail, commercial or two storey Small Office Home Office (SOHO) units along the street frontage ...

This 'wrapping' may not be practicable if there is an expectation of solar and natural ventilation to circulation spaces servicing car parking areas.

Meriton submits that the current ADG provisions (as outlined above) are sufficient.

8.3 Lift requirements

Item 3 in table A7 proposes the following design criteria:

Require a lift report to be submitted for development nine or more storeys or over 40 units.

Table A7 proposes the following guidance:

Provide one lift with a clear internal height of 2.5 m to accommodate movement of furniture, plant and large household items. Clear space in front of the lift to be 2.5 m wide.

According to table A7 the benefit is as follows:

Clarify current guidance to ensure the suitability of lift provision. Improve lift servicing for high-density apartment development, and provide space for moving furniture where there is a higher incidence of rental units.

Consideration to be given to cost impact to ensure the additional costs are balanced by savings elsewhere.

8.4 Building access, common circulation and spaces

Item 4 in table A7 proposes the following design criteria:

Require access and circulation spaces to achieve Livable Housing Australia silver performance level. Ensure equitable access from the street and to on-site facilities for all housing types (social, affordable, open market).

Upgrade fire stairs to meet NCC common circulation requirements by providing hold-open fire doors and natural light to allow residents to access and use stairs daily.

Table A7 proposes the following guidance:

Note minimum corridor widths to allow a wheelchair to turn.

Provide new design guidance for fire stairs.

According to table A7 the benefit is as follows:

Increase the number of apartments with universal access to cater for residents and visitors of all ages, abilities and household types (including families with children needing prams, the elderly, and people with impaired mobility).

Leverage development space for common amenity, reduce reliance on lifts, and improve opportunities for residents to be active.

This is likely to add considerable costs and loss of usable floorspace. It will also create significant issues in respect of suggested changes in fire stairs (in particular), including compliance with fire separation and security between floors. It appears this proposal may be appropriate for a three-storey walk-up type building, rather than a higher density residential development.

8.5 Solar access

Item 1 in table A6 proposes the following design criteria:

For the avoidance of doubt, **clarify that design criteria are mandatory**.

An increase to the range of hours in which a development may achieve solar access is being considered, subject to design testing and industry feedback (bold added).

Table A6 proposes the following guidance:

Simplify the method for calculating solar access.

Limit east-west single-aspect units, and/or maximise units within 15 degrees of north.

According to table A6 the benefit is as follows:

Direct solar access to apartments has numerous benefits including providing warmth in winter, and improving indoor air and light quality to support people's daily routines and sleep patterns.

Extending the time period to which the design criteria apply aims to improve direct solar access to a greater number of apartments for improved liveability and health.

Meriton does not support this proposal (other than an increase in the hours in which a development may achieve solar access and any **genuine** simplification as to how solar access is to be measured).

Item 1 in table A6 proposes to 'clarify' that the design criteria is **mandatory**. This would not be a clarification. This would be a radical change to the ADG.

At present, **none** of the design criteria in the ADG are mandatory. The current ADG says (on page 11):

The design criteria set a clear measurable benchmark for how the objective **can** be practically achieved. **If it is not possible to satisfy the design criteria**, applications must demonstrate what other design responses are used to achieve the objective and the design guidance can be used to assist ... in this (bold added).

The current ADG objective for solar access for dwellings is objective 4A-1, which is:

To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space (bold added).

This objective is about optimisation to the receipt of sunlight. It is not about setting arbitrary compliance with a particular numerical benchmark.

Situations where it is not practicable to achieve the design criteria (but still achieve the objective for optimisation) include the following:

- Residential development in a dense urban area, where access to direct sunlight for individual sites is inevitably limited (in which case optimisation merely requires that the best that **can** be done, via skilful design, **is** done to secure good sunlight outcomes).
- Residential development on a site which is overshadowed by an adjacent building (in which case, again, optimisation merely requires that the best that **can** be done, via skilful design, **is** done to secure good sunlight outcomes).
- Achievement of the design criteria would compromise other important amenity outcomes, such as enjoyment of high-quality views, acoustic amenity and air quality amenity.
- Where compliance with the numerical design criteria would not improve the actual number of apartments/residents who receive good sunlight, but merely result in the elimination of otherwise acceptable dwelling supply. It should be understood that the design criteria operates as a percentage of the development's dwelling numbers (70 per cent for existing ADG design criteria 1-2 and 15 per cent for design criterion 3). Where the percentage calculation can be satisfied by merely deleting dwellings, thus lowering the denominator, no actual improvement to sunlight conditions for the site is achieved. All that has been done is deny some people a housing opportunity. This would be a poor outcome, given that (for example) an apartment with a south-facing aspect or one that is overshadowed by the development itself (or a neighbouring development) will be recognised by any normal purchaser and will be reflected in the price paid. That is, dwellings that would be eliminated will generally be the more affordable dwellings (relatively speaking).

Meriton submits that the application of the design criteria should become less arbitrary (between consent authorities and sites). This may be achieved if the above instances where numerical design criteria might not be achieved is actually much clearer in the design guidance for the existing objective 4A-1.

Additionally, Meriton submits that additional design guidance should be inserted allowing for the benefits of good daylight to be considered as an alternative to the numerical design criteria. For example:

Where compliance with the numerical design criteria would not improve the actual number of apartments/residents who receive good sunlight (but merely result in the elimination of otherwise acceptable dwelling supply) consideration should be given to the extent that the numerical design criteria for direct sunlight can instead be satisfied by the receipt of bright sunlight.

8.6 Natural ventilation

Item 2 in table A6 proposes the following design criteria:

- a. Require ceiling fans for habitable rooms with 2.7 m ceiling heights.
- b. Increase natural cross- ventilation requirements to 70% of units, and apply this **requirement** across all storeys (bold added).

Table A6 proposes the following guidance:

- a. Provide new supporting design guidance.
- b. Improve definitions and guidance for which units can be counted, including 'dual aspect' and corner units.

Use benchmarks and guidance to achieve more kitchens and bathrooms with windows.

According to table A6 the benefit is as follows:

- a. Improve resident thermal comfort, provide greater choice for enhancing natural airflow, and reduce the need for air conditioning.
- b. Increase the number of apartments with adequate fresh air circulation. Improve indoor air quality, liveability, health, and building longevity. Reduce mould growth, absorption of cooking smells, and exposure to material off-gassing. Reduce reliance on mechanical ventilation.

Removing this specification for below nine storeys enables flexibility in how % natural cross-ventilation is achieved across the building.

Firstly, Meriton supports extending natural cross-ventilation design criteria to across all storeys. However, it should not become a 'requirement'. It is not presently a requirement and such a change would be a radical alteration to the way the ADG works (see section 8.5 of this submission for more on this point).

However, Meriton does not support increasing the numerical design criteria for natural cross-ventilation from 60 per cent to 70 per cent. There is no evidence base to support this change.

It must be understood that natural ventilation and natural **cross**-ventilation are different things.

Objective 4B-1 (and its associated design guidance) of the existing ADG already requires that **all** habitable rooms are naturally ventilated. Meriton supports this measure.

Apartments that enjoy natural ventilation, in most cases, will enjoy the same practical amenity as apartments that have natural cross-ventilation. There is (and can be no science) that there are any adverse health impacts from the absence of cross-ventilation, so long as natural ventilation is achieved.

There is also is no science behind arbitrarily increasing the existing 60 per cent design criterion to 70 per cent. Sixty per cent was an arbitrary figure, so too will be 70 per cent. This increase will come at the expense of the number of dwellings that are able to be provided to the community in new development. This will simply result in reduced access to housing in areas that are important to the state in terms of housing supply.

8.7 Deep soil zones

Section A2.2 of appendix A to the EIE says:

[The measures include] an increase in the percentage of deep soil provision to support green cover, including tree canopy, for mitigating urban heat and to safeguard current delivery without relying on common open space. The suggested ranges for these percentages, detailed in Table A5, are based on an analysis of recent development practice, local government development control plans, and their relationship with communal open space provisions.

Table A5 proposes the following design criteria:

Consolidate objectives. Increase min. deep soil zones as a %of site area (a fixed minimum % within the range being considered below):

< 650 m2 min. 14–18%

| | |
|--------------|-------------|
| 650–1500 m2 | min. 14–18% |
| 1500–3000 m2 | min. 14–18% |
| > 3000 m2 | min. 21–25% |

Allow a pro-rata reduction in the targets if retail, commercial and entrances on the ground floor > 85% of the building footprint.

Table A5 proposes the following guidance:

Update design guidance (tree planting, soil volumes and criteria) to maximise green cover including tree canopy

The present ADG design criteria for deep soil is for seven per cent deep soil (design criterion 1, objective 3E-1).

This change represents a doubling in the deep soil criterion for small sites, close to tripling for medium sized sites and an even larger increase for larger sites.

The above description seems to overlook that many sites, appropriately, have no deep soil provision. The current ADG design guidance says:

Achieving the design criteria may not be possible on some sites including where:

- the location and building typology have limited or no space for deep soil at ground level (e.g., central business district, constrained sites, high density areas, or in centres)
- there is 100% site coverage or non-residential uses at ground floor level

Where a proposal does not achieve deep soil requirements, acceptable stormwater management should be achieved and alternative forms of planting provided such as on structure

Furthermore, even on sites where the above nominated areas of deep soil could notionally be provided, it will often not be practicable due to the need to accommodate basement parking and services (noting also separate design criteria seeking a dramatic increase in the provision for bicycle storage, which would increase the demand for basement space).

If these measures were implemented, the natural consequence would either be:

- inadequate or no provision for car parking and/or bicycle storage (see section 6.10);
- deeper, more costly and (potentially) environmentally destructive excavation; and/or
- compromised basement configurations, which have suboptimal safety or useability outcomes.

Meriton makes two submissions in response to this point.

Firstly, the current ADG definition of 'deep soil' is beyond what is required to achieve the relevant objective.

Objective 3E-1 of the current ADG says:

Deep soil zones provide areas on the site **that allow for and support healthy plant and tree growth**. They improve residential amenity and promote management of water and air quality (bold added).

The roots of the majority of medium to large tree species (suitable for the NSW environment) will only reach to a depth of 1.5 metres. This due to the limited soil oxygenation below this depth.

This means the existing ADG definition of 'deep soil' is unnecessarily burdensome and out-of-alignment with the objective 3E-1.

The current definition is as follows:

area of soil within a development that **are unimpeded by buildings** or structures above **and below ground** and have a minimum dimension of 6m. Deep soil zones exclude basement car parks, services, swimming pools, tennis courts and impervious surfaces including car parks, driveways and roof areas (bold added).

As a result of this definition, consent authorities almost always fail to recognise that an appropriate area of soil with a depth of around 1.5 metres will be sufficient to achieve objective 3E-1.

This already leads to extra excavation, compromised basement configurations and additional complications in a development assessment process.

If the new ADG were genuinely performance-based the definition of deep soil would be as follows:

area of soil within a development that are unimpeded by buildings or structures above and 1.5 metres below ground and have a minimum dimension of 6m (or less if there is still sufficient space to support healthy plant and tree growth). Deep soil zones exclude basements and services that are not at least 1.5 metres below the ground, swimming pools, tennis courts and impervious surfaces including at-grade car parks, driveways and roof areas.

Secondly, the numerical design criteria for deep soil should not change and there should be no watering-down of the existing design guidance which recognises the many sites where it is not practicable to provide any deep soil.

8.8 Floor plates

Item 3 in table A5 proposes the following design criteria:

Introduce a new criterion for towers (including any part of buildings of nine or more storeys) of:

—maximum gross floor area (GFA) of 700 m².

—adjust existing design criteria and guidance to a maximum eight units per core per floor.

Table A5 proposes the following guidance:

Consolidate objectives and design guidance in a new section: 'Built form and siting'. Note: 8–12 units per core per floor to remain permissible below nine storeys.

According to table A5 the benefit is as follows:

Slender towers reduce building footprint to improve urban and public space amenity: open space; sky view; solar access; reduced bulk, scale, and wind impacts.

Incorporation of tower footprints into design criteria provide clarity for a consideration that is already in the ADG but has no numerical criteria, and improves residential amenity, cross-ventilation, natural light, and reduces the number of single-orientation units.

The present ADG design guidance on apartment numbers from a lift core is 12 (last item of design guidance under objective 4F-1). The reduction from 12 to eight will significantly hamper efforts to provide efficient floor plates and minimise expensive (and energy

intensive) use of lifts. (Lift maintenance and replacement is one of the biggest single costs borne by owners corporations over the life of a building.)

The maximum floor plate control is new. This kind of control is not commonplace and, even where controls like this exist in a development control plan, compliance is often not practicable.

Setting a numerical floor plate without regard to:

- the size of a site;
- the orientation of a site;
- the boundaries of a site; and
- the extent, number and location of street frontages,

is a very poor planning approach. In practice, the appropriate size of a floor plate must be considered on a site-by-site basis.

For example:

- The size of a site, may lend itself to floor plates which are larger than 700sqm.
- The application of a numerical floor plate design criteria will likely lead to architects designing for compliance, where physically possible. This means, on large sites, breaking building forms up and effectively requiring more buildings on a site. This may result in loss of opportunities to provide large contiguous areas of open space and/or provide better solar access. It may also push the weight of built form closer to neighbouring properties with a likely increase in off-site adverse amenity impacts.
- Where there is more than one street frontage, a building may comprise of corner and midblock building elements. This may mean that the whole of the footprint is not visible from each frontage street.
- The matters that might be controlled by floor plate size, can also be addressed in other ways. For example, by active design measures to provide articulation and modulation to all street frontage facades. Buildings may be vertically articulated by progressive setbacks and, horizontally articulated through variation in street setback and architecturally articulated through segmentation of horizontal and vertical expression.

8.9 Building separation

Item 4 in table A5 proposes the following design criteria:

Require minimum building separation distance for towers of 25+ storeys of 30 m between habitable rooms.

Note: minimum building separation distance for 9–25 storeys: 24 m between habitable rooms (as existing).

According to table A5 the benefit is as follows:

Require greater separation for towers to improve ground plane and urban and public space amenity (open space; sky view; solar access; reduced bulk, scale, and wind impacts) and improve residents' outlook in high- density environments.

This involves an increase in ‘building separation distance’ from 24 metres to 30 metres between habitable rooms.

Meriton does not support this change.

Firstly, the current ADG objectives that are relevant to building separation are objective 3F-1 and objective 4H-1.

Objective 3F-1 is as follows:

Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy

Objective 4H-1 is as follows:

Noise transfer is minimised through the siting of buildings and building layout

Under the existing ADG, building separation is **not** about either:

- ground plane and urban and public space amenity; or
- outlook.

The current ADG leaves the spatial regulation of built form for the purposes of ground plane and urban and public space amenity to local councils **and their development control plans**.

This is because the ADG currently perceives the desirable controls as being likely to be different for different sites — depending on housing needs, likely surrounding built form, topographic details, actual outlook that might be achieved in a location, etc.

If the ADG is to start regulating the spatial arrangement of buildings to achieve external amenity outcomes, then the ADG **should entirely displace local controls on this point** (as it does with other key matters regulated by the ADG under clause 6A of the SEPP 65).

Secondly, there is no evidence (and there can be no evidence) that increasing a separation distance at the 25th storey and above will generally lead to better outlooks. The change in any given outlook is likely to be imperceptible. This measure is plainly disproportionate to the cost in terms of housing supply and access.

8.10 Ground floor uses — setting a 40 per cent benchmark for non-residential uses

Item 5 in table A5 proposes the following design criteria:

Allocate 40% of ground floor space for non-residential use in R3 and R4 zones, and centres.

Table A5 proposes the following guidance:

Update design guidance for mixed- use development to demonstrate new ground floor non-residential uses can contribute to local area needs and street activation, including indicative depth by type of use. Rule of thumb is to provide ground floor uses including community spaces, a neighbourhood shop, neighbourhood supermarket where there are no non-residential uses and amenities within 5 minutes’ walk.

According to table A5 the benefit is as follows:

Increase local business patronage in response to more people working from home during COVID-19. Improve neighbourhood amenity and local economy.

Provide space that is matched to the kinds of services missing from a local area, to support local living and reduce the need to travel further afield.

R3 and R4 zones frequently only allow a narrow range of non-residential uses. Most typically these are 'neighbourhood shops'. 'Neighbourhood shops' are essentially general merchandise type stores (that is, either convenience stores or chemists). There is insufficient demand for most localities to support additional convenience stores or chemist (particularly in out of centre location). If this was introduced it would likely lead to large-scale vacant non-residential space at the ground floor level.

8.11 Ground floor uses — ceiling heights

Item 6 in table A5 proposes the following design criteria:

Clarify ground floor ceiling heights for all non-residential uses (habitable rooms only) to 4.2 m (bold added).

Table A5 proposes the following guidance:

Improve design guidance for determining floor-to- floor heights to achieve ceiling heights.

According to table A5 the benefit is as follows:

Improve street activation and future adaptability of ground floor levels for non-residential uses (including retail, commercial, community and communal spaces). Clarify ambiguity of two illustrative heights in 4C.1 and 4C.2 drawings vs one height only in the 4C-1 table.

Meriton does not support this change.

The above text appears to misdescribe the status-quo, thus dressing up a material change as mere 'clarification'.

Ground floor heights for non-residential uses are dealt with in the existing ADG in objective 4C-3, which calls up figure 4C-1.

Figure 4C-1 of the existing ADG is clear:

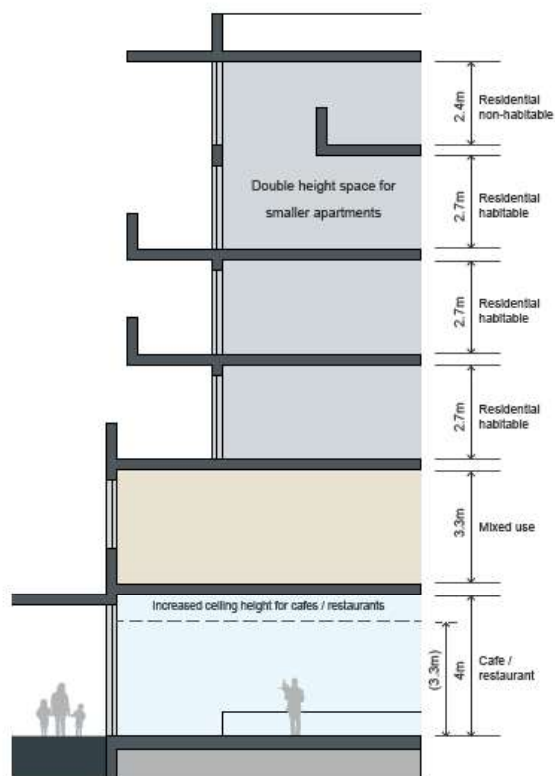


Figure 4C.1 Greater than minimum ceiling heights for retail and commercial floors of mixed use developments are encouraged to promote flexibility of use. Cafe and restaurant uses need greater minimum ceiling heights of 4m to allow for additional servicing needs

As can be seen from the above, the height is **four metres for retail and commercial** floors. Not 4.2 metres. There can be no argument that the specified height is 4.2 metres.

Furthermore, no height (is appropriately) specified for non-residential uses that are not retail or commercial uses. For example, serviced apartments, child care centres, indoor recreation facilities, etc.

There is no conflict with figure 4C.2 of the existing ADG:

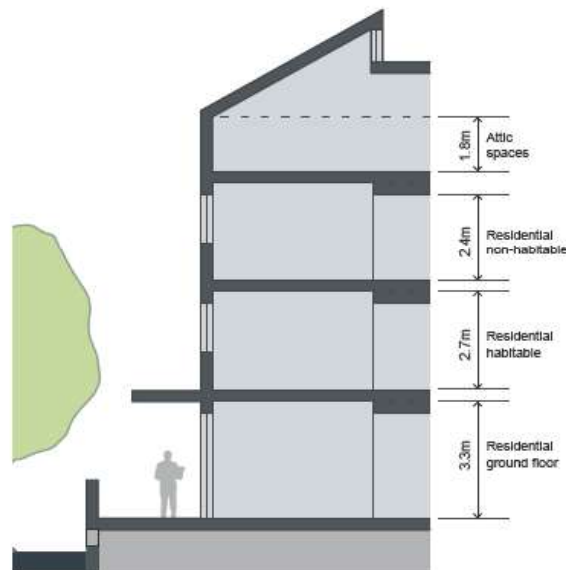


Figure 4C.2 Ceiling heights of minimum 2.7m help to achieve good daylight access and natural ventilation to residential apartments

This diagram plainly only deals with residential ground floor uses, not non-residential uses.

8.12 Direct access for ground floor apartments

Item 7 in table A5 proposes the following design criteria:

Require all ground floor apartments facing a street to have direct access to the street

According to table A5 the benefit is as follows:

Improve street activation and passive surveillance where street activation is not provided through non-residential use.

It is not sensible to establish any design criteria along these lines. Meriton does not support this change.

In some instances, it can be a good design solution for ground floor units to present to the street as terrace style development.

However, in many other instances, it would be a very poor design solution. For example:

- when the street has very poor amenity that is unlikely to be improved in the near future;
- when there would be safety or security concerns (these units would not have the benefit of the secure front door to the common property);
- where it would reduce opportunities for useable private open space; and
- where it would compromise other objectives (such as efficient floor plates, housing choice, etc).

8.13 Apartment size

Item 4 in table A6 proposes the following design criteria:

No change

Table A6 proposes the following guidance:

Provide guidance to assess departures from minimum areas.

According to table A6 the benefit is as follows:

Improve the range of layouts to accommodate the growing diversity of households living in apartments.

Section A1.1.1 of appendix A to the EIE says:

The past year has seen record numbers of Australians working from home in response to the COVID-19 pandemic, accelerating a global trend towards more flexible working arrangements. The emergence of this trend, and the length of time Australians have been working from home, is likely to make this a permanent shift, increasing the 'productive value' of apartment buildings. Apartment design needs to respond to this trend, and to the specific lessons learnt from having so many people working from home at once, including:

—increased pressure on internal and common spaces as a result of greater daytime occupancy, including the need for space in apartments for desks

—the need for greater internal acoustic separation within apartments with more than two working (or studying) occupants

—larger volumes of people occupying residential areas throughout the day, and using local streets, centres and neighbourhood shops within walking distance

—the need for ground-floor, non-residential uses to serve higher populations in predominantly residential areas

—more people needing well-designed common, open and public spaces for physical activity and recreation.

This may have been the immediate consequence of the COVID-19 pandemic — and the current nationally declared human biosecurity emergency. However, it is far too early to draw any meaningful conclusions about likely future trends.

In an article published by academics from Swinburne University of Technology ('Why COVID-19 might not change our cities as much as we expect', 2020 <<https://theconversation.com/why-covid-19-might-not-change-our-cities-as-much-as-we-expect-142159>>) the following relevant observations were made:

Right now, COVID-19 impacts are front of mind. In thinking ahead, we might therefore overemphasise what a crisis will do to how we live in cities. To put it simply, history shows us that the ways we organise our cities are often resistant to abrupt change – even in response to catastrophic events. ...

The reason for this urban inertia is that momentary change often does little to change the fundamentals of our cities. It doesn't greatly change locational advantages, built environment legacy, property rights and land ownership. ...

For instance, working from home has overnight (temporarily) become endemic. Higher education institutions (temporarily setting aside the challenges for teaching) switched remarkably quickly to almost exclusively online platforms. ...

The "death of the office" has long been predicted. Rumours of its death are likely exaggerated this time too.

Face-to-face interaction between workers often increases productivity in service and knowledge-based industries. Research shows face-to-face contact enhances co-operative and pro-social behaviour. ...

History tells us critical events such as COVID-19 often do little to change the fundamentals of our cities.

Planning rules should be generally set with an expectation of the appropriate built form within the next 10-40 years. Meriton submits that it is premature, and inappropriate, to jump to conclusions based on the current human biosecurity emergency when:

- The emergency is only just over one-year old and is likely to have another year or two to run before it is concluded.
- The consequences of mass vaccination are not yet known — and may materially change the course (and severity) of the emergency. Mass vaccination may result in a return to pre-COVID 19 practices.

In any event, it is not clear what has actually been proposed.

Meriton supports the insertion of express guidance for objective 4D-1 along the following lines:

Minimum areas or room dimensions may be reduced below minimum sizes where:

- it is likely to contribute to housing choice or affordability in areas of high housing demand; and
- the layout will still adequately meet the needs of the household types most likely to occupy the apartment.

Meriton does not support new proposals for a share of units in a new building have super-sized bedrooms (2-3 sqm larger than the current norms), with all units to be equipped with study rooms. Such measures are not justified based on the current state of the evidence and would simply reduce access to housing.

8.14 Apartment Layout

Item 5 in table A6 proposes the following design criteria:

Enable varying layouts to support different households, and people working or studying from home, by requiring 20% of 2 or more bedroom units to be 'family units', providing minimum 12 m2 bedrooms for all bedrooms.

Table A6 proposes the following guidance:

Encourage non-structural walls to be used between dry areas of apartments, capable of being modified by the occupants (subject to strata bylaws or consent where necessary).

According to table A6 the benefit is as follows:

Improve the ability for apartment residents to adapt their dwellings to suit their changing needs – to enable working from home, and support intergenerational and mixed occupancy

The result of this is that 20 per cent of three-bedroom units will grow by 9sqm and two-bedroom units by 6sqm. At a conservative rate of \$12,000sqm current sale prices, means a higher asking price for those units of some \$108,000 and \$72,000 respectively. This measure would materially impact on housing affordability and choice.

8.15 Private open space

Item 7 in table A6 proposes the following design criteria:

No change to total area. Increase min. depth of private open space:

- studio units min. 1 m
- 1-bed units min. 2 m (no change)
- 2-bed units min. 2.4 m
- 3+ bed units min. 2.4 m (no change).

Table A6 proposes the following guidance:

Revise design guidance for private open space including:

- recommending air conditioning condensers and hot water units not be located on balconies
- for towers (apartment buildings of nine or more storeys) provide additional guidance for the design of balconies and wintergardens.

According to table A6 the benefit is as follows:

Improve residents' quality of life through increased amenity, safety and usability of private open space, in particular for high-rise apartment development.

Meriton does not support this change. There is no credible evidence that the current provision of private open space is generally inadequate. Indeed, Meriton's experience is the amount of private open space presently delivered under the existing ADG is more than sufficient to meet the overwhelming majority of households.

8.16 Storage

Item 8 in table A6 proposes the following design criteria:

Increase requirements to:

- studio units 6 m³
- 1-bed units 9 m³
- 2-bed units 12 m³
- 3+ bed units 15 m³

Decrease the minimum amount to be provided inside the unit to one third (from 50%) (i.e. the remaining amount can be provided outside the unit).

Table A6 proposes the following guidance:

Require internal storage to provide for one storage space outside bedrooms:

- studio and 1-bed units –0.6 m deep x0.9 m wide x2.4 m high
- 2+ bed units –0.6 m deep x1.2 m wide x2.4 m high

According to table A6 the benefit is as follows:

Increase storage to provide adequate amenity more equal to detached housing, and support long-term residents and diverse and family households.

Note: No change to requirements for internal volume, as amount within apartments is the same as current ADG requirement (50% of 4 m² = one third of 6 m²).

Meriton does not support this change. There is no credible evidence that the current provision of storage space is generally inadequate. Indeed, Meriton's experience is the amount of storage presently delivered under the existing ADG is more than sufficient to meet the overwhelming majority of households.

8.17 Local needs, character and context

Item 6 in table A6 proposes the following design criteria:

Develop specific criteria for responding to local housing strategies.

Table A6 proposes the following guidance:

Revise objectives and design guidance for development to demonstrate a response to local planning needs, including reference to local housing strategies and contribution to local housing targets through apartment mix.

According to table A6 the benefit is as follows:

Ensure development contributes to local housing need as recently determined through new planning instruments (LSPS and LHS).

This is not supported by Meriton.

This proposal appears to be mixing-up statutory planning matters with design processes (see section 12 of this submission).

In any event local strategic planning statements and local housing strategies are not documents that are intended to inform development assessment. These documents have been prepared to inform land use planning decisions (that is, the content of local environmental plans). It is entirely a misuse of these documents to attempt to make them relevant to development assessment (as has been proposed).

8.18 Bicycle and mobility-aid storage

Item 9 in table A5 proposes the following design criteria:

Specify new bicycle parking and mobility storage requirements including number of bicycle spaces per unit, bicycle visitor parking, and access to bicycle parking:

—studio and 1-bed units – 1 secure space

—2-bed units –

2 secure spaces

—3-or more bed units – 3 secure spaces

Table A5 proposes the following guidance:

Require accessible units to be designed to facilitate parking a mobility scooter near the entrance to the unit.

Cross-reference to secure cycle design guidance including location and access from street.

According to table A5 the benefit is as follows:

Promote cycling through provision of adequate storage.

Encourage sustainable transport options, discourage private car ownership, and reduce development costs.

Meriton does not support this change. There is no credible evidence that the current provision of bicycle and mobility-aid storage is generally inadequate. Indeed, Meriton's experience is the amount of such storage presently delivered under the existing ADG is more than sufficient to meet the overwhelming majority of households.

8.19 External noise and pollution

Item 9 in table A6 proposes the following design criteria:

Introduce new requirements for development on busy roads (as currently defined, i.e. > 20,000 vehicles per day) to supplement the Infrastructure SEPP.

Table A6 proposes the following guidance:

Update design guidance to align with recent best practice developed by local councils.

According to table A6 the benefit is as follows:

Improve the amenity and consistency of development expectations for apartments where environmental quality is compromised (including road and rail corridors).

Meriton does not support this change.

It is particularly disappointing that Meriton is being asked to comment on so-called 'best practice developed by local councils' when the EIE does not spell out what it considers to be 'best practice'.

For example, Meriton is aware of some local councils that unlawfully apply informal local standards which cannot lawfully be enforced as part of a development control plan (under clause 6A of SEPP 65). Meriton wonders if this **unlawful** activity is now being retrospectively labelled as 'best practice'?

8.20 Acoustic separation

Item 10 in table A6 proposes the following design criteria:

To support people working from home or studying:

—for 1 or 2-bed units, provide one acoustically separable area from the main living space

—for 3+ bed units, provide two acoustically separable areas from the main living space.

Table A6 proposes the following guidance:

Provide new guidance: 'acoustically separable' is a room with sound transmission of < 45 dBA (generally via a solid-core door). These spaces may be bedrooms.

Provide guidance to show how desk space can be accommodated in all apartment configurations, and multiple desks for 3+ beds.

According to table A6 the benefit is as follows:

Accommodate the increase in the NSW population working from home due to the changing nature of work and increased flexibility, made more acute by COVID-19.

This will add costs as internal walls in the apartment will require acoustic insulation and thickness, usually reserved for inter-tenancy walls. Consideration to be given to cost impact to ensure the additional costs are balanced by savings elsewhere.

8.21 Energy efficiency

Item 1 in table A8 proposes the following design criteria:

- Provide a real-time energy use display or smart meter for each apartment.
- Design energy systems to enable choice of energy suppliers.
- Apply NABERS Common Property Energy requirements to common areas, with targets to be specified in the Design and Place SEPP.

Table A8 proposes the following guidance:

Update objectives and design guidance for development to address energy use more holistically and encourage use of renewable energy, including considering resilience.

According to table A8 the benefit is as follows:

Reduce energy use, and carbon emissions, and empower residents to reduce energy costs and switch to renewable energy sources.

Consideration to be given to cost impact to ensure the additional costs are balanced by savings elsewhere.

8.22 Electric vehicles

Item 2 in table A8 proposes the following design criteria:

Specify a target (or general incentive through replacement rates) for EV charging stations and car spaces. (Target to be determined.)

Require development to be EV-ready, providing sufficient power to the meter board to enable vehicle charging at every car space, and delivering power supply to each car space for future conversion and adoption.

Table A8 proposes the following guidance:

Update objectives and design guidance and coordinate this with car parking guidance.

According to table A8 the benefit is as follows:

Contribute to achieving NSW net zero policy goals, and reduce carbon emissions by accommodating sustainable transport options.

Encourage car sharing, use of electric vehicles and other reduced- emission transport options.

Meriton does not support this specific change.

Objective 3J-2 in the ADG requires that:

Parking and facilities are provided for other modes of transport

Design guidance for that provision is as follows:

Conveniently located charging stations are provided for electric vehicles, where desirable

Provision of a power supply to individual car parking spaces is expensive and disproportionate in the absence of significant government investment to support community-wide infrastructure for the recharging of electric vehicles. That is, electric vehicles will need to be re-chargeable at petrol stations generally (or some equivalent)

before it would be proportionate to expect expensive power supply provision to individual car spaces.

8.23 Water Management

Item 4 in table A8 proposes the following design criteria:

- Introduce minimum WELS standards.
- Require a strategy for on-site water re-use, including % of landscaped area for passive or recycled water irrigation.

Table A8 proposes the following guidance:

Update objectives and design guidance to support a holistic approach to water use, recycling and stormwater collection.

Set new benchmarks for on-site stormwater management and rainwater and grey water harvesting.

According to table A8 the benefit is as follows:

Improve water use and building performance to reduce urban water demands, helping to address the rising frequency of extreme heat and drought periods.

The addition of mandatory grey water systems adds costs for the installation and on-going lifecycle costs of those systems. Consideration to be given to cost impact to ensure the additional costs are balanced by savings elsewhere.

8.24 Building and landscape maintenance

Item 5 in table A8 proposes the following design criteria:

Require a building and landscape maintenance plan to document maintenance regimes for the building structure, soft landscaping, waterproofing, plant maintenance, replacement and repair strategies (including common property) and material life cycles. Require the landscape maintenance plan to identify how landscaping will be periodically maintained after completion (5-year, 10-year planning).

Table A8 proposes the following guidance:

Provide new objectives and design guidance to support the proposed design criteria.

According to table A8 the benefit is as follows:

Ensure ongoing maintenance of landscaped areas.

This is not a development cost, but is a significant life-cycle cost for the future building owners and reduces the competitiveness of apartment living against other typologies. Consideration to be given to cost impact to ensure the additional costs are balanced by savings elsewhere.

8.25 Environmental performance of materials

Item 6 in table A8 proposes the following design criteria:

Require development to reduce carbon footprint and contribute to net zero targets and the circular economy including:

- pursuing green building ratings

—selecting materials with low carbon and embodied energy

Require carbon footprint and embodied energy of materials to be set out in a materials schedule documenting types, quantum, source, life span, embodied energy and recycled content of each material.

Table A8 proposes the following guidance:

Provide new objectives and design guidance to support the proposed design criteria.

According to table A8 the benefit is as follows:

Encourage sustainable material use and supply chains, and minimise the carbon footprint of development.

This already happens but any prescriptions will limit flexibility and introduce further constraints which will inevitably be picked up by consent authorities without regard to circumstances. Consideration to be given to cost impact to ensure the additional costs are balanced by savings elsewhere.

8.26 Waste management

Item 7 in table A8 proposes the following guidance:

Provide new design guidance: waste facilities for residential and non-residential uses to be separated

According to table A8 the benefit is as follows:

Improve space planning for ease of use and to encourage recycling.

This is already done but any further mandatory obligations must be assessed on a cost benefit basis. Consideration to be given to cost impact to ensure the additional costs are balanced by savings elsewhere.

8.27 Livable Housing targets through universal design

Item 3 in table A6 proposes the following design criteria:

The requirement for a specified Livable Housing Australia level and percentage will be increased if NSW government research supports higher standards.

According to table A6 the benefit is as follows:

Increase the number of apartments suitable for our growing ageing population, and for other households that benefit from universal design such as families with children.

This is incredibly open-ended and presents a risk of unmitigated costs. Consideration to be given to cost impact to ensure the additional costs are balanced by savings elsewhere.

8.28 Whole-of-life costs

Section A1.1.3 of appendix A to the EIE says:

Apartment development that considers whole-of-life costs can support environmental resilience through sustainable material selection and building systems

that improve performance and as well as contributing social, cultural, environmental and economic value.

The past year has seen record numbers of Australians working from home in response to the Apartment development that considers whole-of-life costs can support environmental resilience through sustainable material selection and building systems that improve performance and as well as contributing social, cultural, environmental and economic value.

The philosophy that generally underlies this type of proposition is that greater expense should be incurred in the upfront capital costs of building apartments, in order to secure lower running costs once an apartment building is occupied.

However, the social impacts of boosting capital costs, in return for lower recurrent costs, are overlooked. Generally home buyers are in greatest debt (and greater financial strain) at the time that they acquire their home (when they tend to borrow close to or at their lending limit). As a mortgage is paid down (and, often, incomes rise) home owners will find themselves in progressively more relaxed financial circumstances.

A policy approach that forces home buyers to pay more for the home upfront (by increasing the cost of materials, etc) will act as a barrier to entry for some who might otherwise be able to afford a home. Meriton submits that government policy should be directed to trying to reduce (or at least contain) the cost of the capital expenditure that is required to provide a new home. A failure to do this will simply reduce the opportunity for many people to own a home.

9. BASIX

According to section 4.2 of the EIE it is intended to repeal the *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (the BASIX SEPP)* and replace it with new sustainability provisions in the Design and Place SEPP.

The EIE says:

The *Trajectory for Low Energy Buildings* (Australian Government 2018) was endorsed by NSW and all Council of Australian Governments (COAG) Energy Ministers in February 2019. A trajectory for new homes is planned to be implemented through **cost- effective increases** to minimum energy performance standards in the National Construction Code (NCC), starting in 2022.

However, in NSW residential energy efficiency standards for new homes and alterations and additions are set by BASIX, not the NCC [the *National Construction Code*, which incorporates the *Building Code of Australia*] (bold added).

The aim of the *Trajectory for Low Energy Buildings* is to achieve zero energy and carbon-ready commercial and residential buildings in Australia. It is an initiative to address Australia's 40 per cent energy productivity improvement target by 2030 under the *National Energy Productivity Plan*.

While it is true that BASIX, not the NCC is presently the legal document that drives energy efficiency in NSW residential buildings, national consistency under the NCC is desirable. BASIX was set-up as a single state regulatory regime in 2004, before the NCC had properly advanced to embrace energy and sustainability goals.

Now that there is an agreed national way forward on this issue, Meriton submits that NSW should not seek to continue its standalone regulatory approach and should instead look to phase out the BASIX SEPP in favour of the NCC as the work program of the *Trajectory for Low Energy Buildings* is progressively implemented.

10. Adaptive re-use

The adaptive re-use of existing buildings should be promoted where possible.

Adaptive re-use is a form of development that can help turnaround localities that have suffered from high-vacancy rates, lack of street vitality and a poor social mix. Particularly flexibility is essential when applying any design considerations to proposals for adaptive re-use.

Adaptive re-use can involve converting warehouses, industrial building, office buildings, hotels or serviced apartments to residential flat buildings.

The positive benefits of adaptive re-use include:

- a reduction in the use of new building materials;
- a reduced need for landfill (to dispose of demolished materials);
- reduced energy consumption associated with demolishing a structure and building a new one to replace it;
- reduced social impacts — as there can be an opportunity to preserve more aspects of an existing local identity and sense of place;
- for serviced apartment conversions (and the like) buildings are able to be made available for residential use much faster;
- greater community acceptance of re-development (as there are less physical and social impacts); and
- less costly development (boosting opportunity to provide housing that is affordable).

The proposed Design and Place SEPP does nothing to indicate that there will be any special allowance made for adaptive re-use.

The existing ADG makes **some** allowance in this regard:

- greater flexibility on balcony provision (design guidance under objective 4E-1); and
- greater flexibility on other design criteria (design guidance under objective 4R-2).

Meriton submits this existing special recognition should not be lost, but should be strengthened.

Additionally, the current ADG text that provides examples of adaptive re-use (on page 120) should expressly reference serviced apartment conversions (as well as the existing references to large houses, redundant industrial buildings, major institutional buildings and groups of buildings to commercial office towers).

11. Clause 4.6

According to section 5.1.2 of the EIE it is intended to amend clause 4.6 of the Standard Instrument:

As part of developing the Design and Place SEPP, consideration will be given to amending cl.4.6 of the Standard Instrument (Local Environmental Plans) Order 2006 to reflect the need to demonstrate that any variation to development standards will result in an improved planning outcome and public good. State or council design review panels may be involved in determining this.

A 'clause 4.6 request' is a request to carry out a development (proposed in a development application) in a way that contravenes a development standard set out in an environmental planning instrument.

For a clause 4.6 request to be legally sound it must (under clause 4.6(3) of the LEP) seek to justify the contravention of the development standard by demonstrating:

- that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- that there are sufficient environmental planning grounds to justify contravening the development standard.

For a consent authority to actually approve a clause 4.6 request, the consent authority must be satisfied that:

- the requests have adequately addressed the matters outlined above (clause 4.6(4)(a)(i)); and
- the proposed development will be in the public interest because it is consistent with:
 - the objectives of the particular standard; and
 - the objectives for development within the zone in which the development is proposed to be carried out,

(clause 4.6(4)(a)(ii)).

The requirement that there must be sufficient environmental planning grounds to justify contravening the development standard already means that there must be some good planning reason to allow a contravention to occur. The reason for the proposed change is entirely unclear.

There is now a substantial body of case law that provides a great deal of clarity about the legal operation of clause 4.6. Meriton submits that the wording of clause 4.6 should not be adjusted unless there is a substantive reason to do so. If so, proper consultation is needed on the actual words proposed to be used in any revised clause 4.6.

12. Conflation between urban design and statutory planning processes

Following on from the previous section of this submission (in an apparent reference to clause 4.6), section A1.3 of appendix A1 of the EIE says:

Design review panels could be used to support variations to numerical design guidance. There needs to be greater consistency across local environmental plans in applying design excellence. ...

This proposal will only increase the existing overlap and confusion between the town planning staff preparing development assessment reports and design review panels. It needs to be recognised that there are no clear bright lines separating 'town planning' and 'urban design'. The two fields generally overlap. Generally, the situation is managed at present by asking urban designers (and design review panels) to consider matters purely on design merit — and leave statutory planning to town planners. Extending the role of design review panels into statutory planning will only complicate development assessment procedures and create new unjustifiable procedural hurdles in the assessment process.

The same should be said about item 1 in table A5. This proposes the following design criteria:

Require development to demonstrate a consideration of Country and positive contribution to place, local character and **planning aspirations (local strategic planning statement [LSPS], local housing strategy [LHS], LEP, DCP, local character statements)** as well as integration with urban and natural systems (bold added).

Firstly, the proposed design criterion is phrased on mandatory terms. Design criteria should be only one way of achieving an objective. The objective would appear to be identified in table A5 under the heading 'Benefit':

Improve the design integration of higher density development through apartment development that responds to its place and context, and adds value to the local neighbourhood and environment.

If this is adopted as an objective (perhaps without the word 'improve' which is not meaningful in an objective in a new ADG), it is not helpful to encourage a response to this objective as this is defined by reference to a series of likely conflicting statutory planning documents (ie the local strategic planning statement, the local environmental plan, a development control plan and local character statements).

This will switch the focus of the objective **from** being about fundamentally good merit-driven design **to** statutory compliance. It will mean the routine involvement of town planners (in place of architects) in the preparation of design verification statements. This is undesirable.

13. Transitional provisions

The EIE (relevantly) says this about transitional arrangements (in section 6.4 of the EIE):

It is proposed transitional arrangements will be put in place for implementation of the proposed Design and Place SEPP to:

- allow industry stakeholders to mobilise and get ready for any additional provisions that will be applied under the SEPP ...
- ensure savings provisions are in place in relation to applications that have already been lodged and are being considered

The Department is seeking feedback on the lead time required by stakeholders for the components of this SEPP to inform the making of these transitional provisions.

Meriton is NSW's leading property developer and is the largest developer of residential apartments. Meriton has a considerable land portfolio. The portfolio has been assembled so that there is an assured pipeline of sites to support Meriton's ongoing construction program.

Other apartment developers also acquire sites to support a construction pipeline, although not on Meriton's scale.

Developers who have acquired sites for future apartment development — in reliance on the existing SEPP 65, ADG and BASIX SEPP — should not be penalised by the new regime.

It is not sufficient to merely 'ensure savings provisions are in place in relation to applications that have already been lodged'. This is because many (large) future development sites will require detailed planning, that may take several years to complete. A savings provision that only applies to lodged development applications will result in a rushed process of finalising and lodging development applications prematurely. The public interest would not be served by that type of approach.

Meriton suggests two options for the government to deal with this.

Option 1: Identify pending sites which require medium term planning before a development application can be lodged

The government can ask industry participants, via a public process, to identify sites:

- that have already been acquired for future apartment development; and
- where it is not practicable for a development application to be lodged in the short term.

These sites could then be listed in the savings provision (such that the development applications for those sites would be determined under the planning controls in place prior to the commencement of the Design and Place SEPP).

An example of a recent clause that operates like this is clause 7.15 of *the Tweed Local Environmental Plan 2014*.

Option 2: Allowing development applications to be lodged up to three years after the commencement of the Design and Place SEPP and still be determined under the prior planning controls.

Such a provision would be along the following lines:

- (1) This Policy does not apply to or in respect of the determination of a development application or an application for the modification of a development consent, made but not finally determined before the commencement of this Policy.
- (2) This Policy does not apply to or in respect of the determination of a development application or an application for the modification of a development consent, made within 3 years after the commencement of this Policy.

It is important to note that the above provision is worded differently from standard savings provisions in environmental planning instruments (see, for example clause 31(2)-(3) of SEPP 65).

This is because standard savings provisions do not prevent a new environmental planning instrument from being taken into account — and used as a basis for refusing a development application. Even with a savings provision, a pending development application that has been ‘saved’ may still be determined with regard to the new environmental planning instrument (*Maygood Australia Pty Ltd v Willoughby City Council* [2013] NSWLEC 142 at [31]; *Terrace Tower Holdings Pty Ltd v Sutherland Shire Council* [2003] NSWCA 289 at [50]-[51] and [53]).

In order to avoid this outcome, it is necessary to use ‘clear language’ in the savings provision of the new environmental planning instrument (*Maygood Australia* at [35]; *Omid Mohebaty-Arani v Ku-ring-gai Council* [2017] NSWLEC 143 at [20]).

The above text uses the necessary ‘clear language’. It is based on clause 1(1) of schedule 5 the *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*. The legal effect of that clause was considered by the Court in *Omid Mohebaty-Arani* (at [16] and [20]).

Concept development consents

Additionally, **under any option**, sites that are the subject of a concept development consent (under Division 4.4 of the EP&A Act) that has been determined either:

- prior to the commencement of the Design and Place SEPP; or

- under the former planning controls under transitional provisions,

should also remain under the prior planning controls. If this is not done it will be difficult to reconcile the building envelopes approved, and the expected planning outcomes under the concept consent in the new considerations raised by the Design and Place SEPP.

A savings provision dealing with that issue would be written along the following lines:

- (3) While any consent granted on the determination of a concept development application for a site remains in force this Policy does not apply to or in respect of the determination of—
 - (i) a further development application in respect of the site under section 4.24(3) of the Act, or
 - (ii) an application for the modification of a development consent in respect of the site,
 if the consent granted on the determination of a concept development application was determined before the commencement of this Policy or within 3 years after the commencement of this Policy.

14. Next steps

We note that (according to section 1.22) of the EIE:

Following public exhibition and engagement, submissions and feedback on this EIE will be reviewed and analysed to refine principles and considerations and inform drafting of the proposed Design and Place SEPP.

Further testing and detailed economic analysis will also be undertaken.

Before being made, the Draft Design and Place SEPP will be exhibited mid to late 2021.

Drafting and exhibition of the revised ADG and BASIX, and new UDG (as well as other guidance identified to support the Design and Place SEPP), is also proposed for late 2021.

Given the issues that we have identified in this submission, we consider it essential that all of these steps take place.

In particular, it is crucial that, in light of the matters we have raised, the government:

- considers the financial impact analysis we have presented;
- consults on the proposed text of its draft Design and Place SEPP — and the associated revised *Apartment Design Guide (ADG)*, *Urban Design Guide (UDG)* and the revisions to BASIX — through targeted stakeholder consultation; and
- publicly exhibits the proposed text of its draft Design and Place SEPP (and associated documents) before any attempt at finalisation.

The proposed SEPP should only be further progressed on the basis of the overriding principle that the changes must not result:

- in any net loss of currently achievable gross floor area and dwelling yield; and
- no net increase in overall development and construction costs.

Any departure from this principle should need to be the subject of a rigorous regulatory impact statement and a cost-benefit analysis — that has been independently verified by the Productivity Commissioner.