

25<sup>th</sup> February 2022

The Hon Anthony Roberts Minister for Planning and Homes

Dear Minister

### Submission on the Draft Design and Place SEPP 2022 and Environmental Planning and Assessment Amendment (Design and Place) Regulation 2021

Thank you for the opportunity to make a submission on the Draft Design and Place SEPP 2022 and Environmental Planning and Assessment Amendment (Design and Place) Regulation 2021.

It is encouraging for members of Consulting Surveyors NSW to see the government regularly reviewing and updating policies as they impact planning in New South Wales. Unfortunately, it seems that the *Surveying and Spatial Information Act (2002)* is not often considered as it relates and impacts other government policies.

Consulting Surveyors NSW is the association representing the private industry of more than 200 surveying firms around the state. These firms employ thousands of professional staff including, Registered Surveyors, technical surveyors, town planners, civil engineers, environmental scientists, landscape architects and other key professionals involved in the land development process. There are Registered Surveyors in every major centre and town across the state helping develop the cadastre for land management that is so critical to the country's success. In fact, no housing precinct or master planned estate can start until the land has been surveyed.

Our members have raised significant concerns with the proposed Design and Place SEPP and the associated regulation.

### 1. Include Registered Surveyors as Urban Designers

A significant oversight when it comes to delivering Clause 6 of the SEPP for Urban Design is the definition of Urban Designer in the Regulations at Clause 3, the meaning of "urban design development" not including Registered Surveyors.

Currently, the draft states:

"urban designer means the following-

(a) a qualified town planner with at least 5 years' experience in precinct or master planning,

(b) a landscape architect with at least 5 years' experience in precinct or master planning,

(c) an architect with at least 5 years' experience in precinct or master planning."

## Consulting Surveyors NSW recommends the inclusion of point (d) "a registered surveyor."

And the removal of the master planning requirement for all categories, a-d.

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Neither master planning nor master planning experience is required for a development if it adheres to the LEP or DCP. We are not aware of any legislation or regulation which defines master planning or what constitutes suitable experience. We consider this requirement to have insufficient legislative support or evidence that any category of urban designer would benefit from such a description.

Often, Registered Surveyors have considerable experience and, in some cases, additional qualifications in Urban & Regional Planning or similar. Their design skills are relied upon for the orderly design and development of both brown and green field development sites.

Registered Surveyors are involved in a broad range of projects including the design of large residential estates up to 2,000 allotments or more to the design of the supporting infrastructure and titling systems. This submission includes examples of registered surveyors undertaking these activities as a part of their everyday work.

## We ask that the examples provided in the attachments to this submission be withheld from public view, as some are Commercial-In-Confidence.

Registered Surveyors are regulated by the NSW State Government under the *Surveying and Spatial Information Act 2002*.

To become a Registered Surveyor through the Board of Surveying and Spatial Information (BOSSI), surveyors must hold a degree qualification in surveying. Subjects studied in the degree are reviewed and required by BOSSI and include a variety of surveying subjects plus the following relevant planning topics:

- Legal systems and process for land management
- Town planning
- Hydrology and water engineering
- Sustainable engineering practice

Of relevance are the Town Planning units which, upon completion, students will be able to:

- 1. Analyse and document the social, economic and environmental issues affecting urban and regional planning at various spatial levels.
- 2. Identify and assess typical natural and cultural constraints affecting land development.
- 3. Apply design concepts and processes for planning of urban neighbourhoods and precincts.
- 4. Describe basic legal concepts and processes affecting plan making and development assessment.
- 5. Research planning literature and apply knowledge gained to practical town planning problems.

To become a Registered Surveyor through the Board of Surveying and Spatial Information (BOSSI), surveyors must sit further examinations by the Board in Urban Design (Town Planning). They also complete examinations in rural cadastral, urban cadastral, strata and community title and engineering and design.

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In Section 3.1 of the BOSSI Determination for Registration Examinations and Guidelines for Surveying in relation to the Town Planning Assessment requires:

The assessment process involves the presentation of a Town Planning project at the viva voce exam. The project allows the candidate to demonstrate competence in town planning, land development, subdivision design and the relevant legislation that is encountered when undertaking these activities. Candidates must also demonstrate that the proposal complies with the relevant planning controls and appropriately addresses the natural and man-made attributes of the site and reflects current commercial and social expectations for such a proposal. Guidelines for the size and scope of suitable projects.

The project will involve preparing a proposal for a significantly large development in an urban, rural or industrial area which meets the provisions of the relevant planning instruments and other planning requirements. Ideally the project will be one on which the candidate has had some professional involvement whilst undertaking their practical experience. A project of suitable complexity will generally assist the candidate to demonstrate competence, thus avoiding the need for assessors to also rely on questions of a more general nature

- As a guide the following subdivisions sizes are considered suitable:
- Conventional residential subdivision 20 hectares or 50 lots
- Rural subdivision 50 hectares or 20 lots
- Industrial subdivision 20 hectares or 20 lots

A 'hypothetical' project may be prepared, but candidates must visit the site and document their investigations with photos and notes. Candidates should discuss this project with their supervising surveyor and other professionals and also note these discussions, along with any comments. Candidates should seek relevant data from councils and government agencies for their project.

The links immediate below refer to Town Planning as a mandatory competency to be assessed and obtained from the Board in the pathway to Registration as a Surveyor in NSW.

- <u>https://www.bossi.nsw.gov.au/candidates/candidate\_land\_surveyors/pathway\_to\_registrati</u> on
- <u>https://www.bossi.nsw.gov.au/\_\_data/assets/pdf\_file/0020/226424/BOSSI\_Determination\_-</u> Board\_Examinations\_E2.pdf
- <u>190826\_BOSSI\_Registration\_Examinations\_Guidelines\_for\_Land\_Surveying\_Assesments</u> (003).pdf

Registered Surveyors are also required to undertake annual Continuing Professional Development to maintain their registration, which includes (but is not limited to) matters relating to: Environment, Town Planning, Subdivision Design, Legislative changes, Development Community, Strata and Stratum Title, Infrastructure and Engineering.

As our members report, Registered Surveyors, particularly in regional areas, have been undertaking precinct and master planning for generations. Some recent examples, listed from our members, are included in the Appendices, with brief explanations further into this submission.

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### 2. Urban Designer requirement for any development over 1 hectare

### **Urban Design Development**

"In this Policy, urban design development means the following development—

(a) development on land that is not in an industrial zone that has a site area greater than 1 hectare, (b) development on land in an industrial zone that has— (i) a capital investment value of \$30 million or more, and (ii) a site area greater than 1 hectare,

(c) development in relation to which an environmental planning instrument requires a development control plan or master plan to be prepared for the land before development consent may be granted for the development."

Our members in regional areas have raised significant concerns with this clause and the meaning of Urban Design Development. For instance, if a property of 1.1 hectares that is zoned 0.95 hectares environmental protection and 0.15 ha residential with only one lot yielded, then under the proposal, a town planner is required. Our profession feels this is an arbitrary figure and will become problematic, particularly in a rural centre where lot sizes are often of 2000m2. These types of scenarios are also possible in Sydney.

### NSW land-owners should not be facing the prospect of having to contract an urban designer to masterplan a two-lot subdivision and the costs that accompany such a contract.

The Government Architect has asked us for examples of Urban Designed Masterplans performed by Registered Surveyors, which we include as attachments and which we have sent through directly, as requested. However, neither master planning nor master planning experience is required for a development if it adheres to the LEP or DCP. We remain of the view that - even though our members clearly perform masterplans - it is not necessarily a requirement for a development application.

The Government Architect has communicated to us that the Department is looking to give the right to urban design over 1 hectare, for masterplans and the like, to people with at least five years' experience. We guery who determines whether the person has deemed experience? Could the development application be refused because the consent authority did not consider the person to be suitably experienced? We also note there is no definition of masterplan or master planning in the Draft SEPP.

The Draft states: "The proposal to extend design verification to open space and urban design has been retained and refined in the DP SEPP. Town planners, architects and landscape architects are proposed to be acknowledged as having potential skills in urban design. In the case of surveying, the DP SEPP still seeks a designer's input on subdivisions of sites over 1 ha, development with a CIV of \$30m or developments that are over 35 m tall, recognising these kinds of development would benefit from a greater consideration of place."

Registered Surveyors have a long history in the design and creation of residential projects up to and in excess of the above thresholds. Their experience and knowledge should clearly identify them as 'Qualified Design Professionals' in the design of residential estates of such size under the provisions of the SEPP.

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Consulting Surveyors NSW requests the definition of Urban Design Development be significantly altered. Reference to the **1 hectare cap should be removed completely** and perhaps replaced with an urban residential development criteria with a cap investment similar to the industrial criteria. That would immediately cut out the smaller, standard development proposals and make them affordable and accessible for the lower end of the market.

### 3. Sections 10 and 11 - Maps

On a number of occasions, ACS has raised our concerns regarding the Department of Planning policies referring to their own maps. Whilst we appreciate the Department's regular use of maps, we are concerned that the Climate Zone Map and the Water Use Map mentioned, will not be "ground-truthed" or confirmed through NSW Spatial Services. NSW Spatial Services are the Government's key agency responsible for maintaining accurate mapping services for the people of NSW. Our experience most recently with the Koala SEPP identified the problem with the Department failing to ground-truth their maps with surveyors locally or ensuring accuracy with Spatial Services.

### We would like to see NSW Spatial Services being referenced in Sections 10 and 11 of the SEPP.

### 4. Public Spaces

The draft documentation consistently refers to public spaces. We draw to your attention to the issue all council reserves are considered public spaces, specifically drainage reserves. Drainage reserves are utilised for the temporary storage and detaining of stormwater flows, the treatment of the quality of those flows and the general conveyance of stormwater whether over land or through pipes within the sites of those reserves.

Part 2 section 17 of the Draft SEPP provide design considerations for public spaces including maximising public accessibility and such spaces are designed by Landscape Architects.

Drainage Reserves as public spaces are "engineered spaces". General accessibility during periods when the spaces operate as designed during high volumes of stormwater run-off poses a danger to the public. Further, as these spaces need to be engineered by Registered Surveyors or civil engineers the requirement for design by Landscape Architects is inappropriate.

# We wish to ensure drainage reserves and other public spaces that have an engineering or operational purpose are expressly excluded from the SEPP for the safety of the public and to relieve the necessity for direct involvement by a Landscape Architect.

We understand the NSW State Government is committed to policy reform with the intention of removing excessive regulation and red tape, making the planning process easier and more consistent for consumers and the people of New South Wales. Consulting Surveyors view the changes proposed in the Design and Place SEPP as being the reverse of reform, as it is clearly restrictive to the planning process and undermines the integrity of both the surveying profession and the land development sector.

We have included a number of examples in our submission, the details and contents of which we ask be kept off the public record due to commercial-in-confidence. The outline of those examples, included below, may be kept on the public record with this submission.

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We would be pleased to meet with you at any time to discuss our concerns and we look forward to significant changes being made to the final document.

Yours sincerely

Michelle Blicavs Chief Executive Officer M: 0425 244 055 E: michelle@acsnsnw.com.au

Cc: The Hon Paul Toole The Hon Rob Stokes The Hon Victor Dominello The Hon Wendy Tuckerman Thomas Grinter, Acting NSW Surveyor-General

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Consulting Surveyors NSW requests that our examples and attachments be withheld from public view, as some are Commercial-In-Confidence.

### Examples as requested by Government Architect – Commercial-In-Confidence

### Appendix 1a.

The Plan has been designed by a Registered surveyor, with the DA by others is considered a basic design. It involves a 10-lot rural-residential subdivision in minimum one-hectare R5 Zone subdivision plus a road. It is not in an industrial zone and the development is greater than one hectare.

This would constitute "urban design development" under the Design and Place SEPP and does not meet any of the exemption criteria. Therefore, the DA would require an Urban Designer and a Design Review Panel. We consider the proposed requirements excessive for this type of development.

#### Appendix 1b.

This is a hypothetical example of a typical in-fill residential development at a regional level. It would not be considered a large development.

The base lots are 140m2x80m2 = 1.12hectares. Therefore, it equates to 14 residential lots and some road, which would be considered urban design development under the proposed Design and Place SEPP and therefore requires an Urban Designer, Design review panel, which is excessive.

#### Appendix 1c.

We include a pictorial representation of DAs for residential subdivision with 200-300 lots created at a time. These include town centre commercial master planning, environmental, recreation and education precincts. They were rezoned by a consulting surveyor firm, with all DAs, engineering design and survey carried out by the firm.

### Appendix 2

An example of an estate designed by a Registered Surveyor in a Consulting Surveyor firm.

### Appendix 3a

An example of an estate designed by a Registered Surveyor in a Consulting Surveyor firm.

### Appendices 3b & 3c

This example has since been expanded to include all of the land in the plan (Appendix 3c). The Registered Surveyor will be including areas of commercial zoning, with varying levels of residential density from townhouses to about 800m<sup>2</sup> (which is the current Minimum Lot Size for the area). This site will require a trunk road layout to be designed, with a view to preserving and protecting areas of biodiversity value along the western edge of the land.

The consulting surveyor firm is currently working with the strategic planners at Dubbo Regional Council for both sites, and council staff are relying on the registered surveyor and his firm to create structure plans in order that they can make some decisions to future rezoning and long-term planning for the city.

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This Consulting Surveyor firm also has a 130ha rural-residential development, which their registered surveyors have worked on for the past 7 years. This has included a rezoning, layout design, and development application for a community title development of 33 residential lots with shared community land. The DA for this development is due to be submitted in February 2022, once the final reports from other consultants have been received.

### Appendices 4a & 4b

The Plan (Appendix 4a) shows 13 lots of a 16-lot staged rural residential subdivision and screen shot (Appendix 4b) of the same area.

The base lot is over 1ha and therefore would be captured under the Draft SEPP. It is zoned R5 large lot residential therefore it is also captured under the Draft. This is not applicable to metropolitan areas.

The DA was prepared by a Registered Surveyor and complies with the LEP and local area DCP. It did not require oversight by an architect nor any master planning background.

#### **Appendices 5a-d**

These Master Plans were undertaken by a Registered Surveyor in a Consulting Surveyor firm within the past three years. Appendix 5a project is worth around \$70 million and is in the DA stage. Appendix 5b is worth around \$20 million without dwellings and is due to go to the Land and Environment Court. Appendix 5c is about to commence construction and is valued at around \$140 million. Appendix 5d has a CIV of more than \$1.3 billion and is at the DA stage.

The Registered Surveyors in this firm have multiple large scale Retirement Villages that they have master-planned with more than 250 dwellings going back a few more years.

### Appendices 6a & 6b

This example shows a DA for a two-lot subdivision of 4.9ha and earthworks for future regional shopping centre. As it is greater than one hectare, it would be captured under the Draft SEPP and as it is Zoned B5 – Business Development – it would also fall under the Draft SEPP. Essentially, this example requires some earthworks and cutting the base lot in half. There is no need for master planning experience for this development.

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### **Claire Krelle**

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Friday, 25 February 2022 4:22 PM
PDPS DRDE Design and Place SEPP Mailbox
DPE PS ePlanning Exhibitions Mailbox
Webform submission from: The Design and Place SEPP 2021

Submitted on Fri, 25/02/2022 - 16:21

Submitted by: Anonymous

Submitted values are:

**Submission Type** I am submitting on behalf of my organisation

### Name

First name Penelope

Last name Fischer

I would like my submission to remain confidential No

### Info

Email policy@acsnsw.com.au

Suburb/Town & Postcode Sydney

Please provide your view on the project I object to it

#### Submission

While we are happy for our submission to be in the public domain, we request the attachments remain closed to the public, as some are Commercial-in-Confidence.

They are too large to fit within the file limit, therefore have been emailed directly to the Government Architect, as she requested.

I agree to the above statement Yes 223 Liverpool Street, Darlinghurst NSW 2010 | 02 8006 0828 | admin@asbec.asn.au | www.asbec.asn.au | ABN: 93 968 924 420

AUSTRALIAN SUSTAINABLE BUILT ENVIRONMENT COUNCIL

2 March 2022

Abbie Galvin Executive Director Government Architect NSW 4 Parramatta Square, 12 Darcy Street PARRAMATTA NSW 2150

Via designandplacesepp@planning.nsw.gov.au

Dear Ms Galvin

#### **DESIGN AND PLACE SEPP**

The Australian Sustainable Built Environment Council (ASBEC) welcomes the opportunity to respond to the *NSW Design & Place State Environment Planning Policy* (the SEPP) and commends the NSW Government on the aim of delivering healthy, resilient and sustainable places for people, communities and Country.

ASBEC is a body of peak organisations committed to a sustainable built environment in Australia, with membership consisting of industry and professional associations, non-government organisations and government observers who are involved in the planning, design, delivery and operation of our built environment.

ASBEC has thirty industry members including the Property Council of Australia, Planning Institute of Australia, Green Building Council of Australia, Australian Institute of Architects, Building Designers Association of Australia, Australian Institute of Landscape Architects, Australian Passive House Association, Australian Building Sustainability Association, Australian Institute of Refrigeration, Air Conditioning and Heating, Infrastructure Sustainability Council of Australia, Engineers Australia and the Energy Efficiency Council. The NSW Department of Planning, Industry and Environment is an ASBEC observer member and an important contributor to ASBEC's body of work.

ASBEC's key priorities include:

- Net Zero Buildings: Support a transition towards net zero buildings
- Sustainable Housing: Grow the market for sustainable housing
- Building Quality: Enforce and improve energy efficiency requirements in the Building Code
- Urban Resilience: Integrated sustainable and climate resilient economic and social infrastructure

ASBEC commends the NSW Government on its leadership in the sustainability policy space, and the consultation and engagement that has been undertaken to date. We appreciate this opportunity to provide feedback on how specific elements of the SEPP can be strengthened to support sustainability, liveability, resilience and good governance in NSW, whilst ensuring alignment with relevant State and national processes.

#### Principle-based approach

ASBEC is broadly supportive of the five principles introduced by the SEPP and their intended outcomes for environmental performance, noting the alignment between the aims of the SEPP and ASBEC's priorities.

The success of the SEPP will be determined by its ability to deliver consistent and measurable outcomes that clearly reflect the principles for the design and assessment of places in NSW. The NSW Government should commit to a periodic review to evaluate the effectiveness of the SEPP (as is being proposed for the BASIX component) and, where necessary, adapt provisions to ensure successful delivery of the principles.

#### Sustainability provisions

ASBEC commends the NSW Government for its commitment to reach net zero emissions by 2050, and its recognition that achieving the 2050 economy-wide target will require all new and existing buildings to be operating at net zero well before then.

#### Increasing thermal performance targets

ASBEC strongly supports alignment of the SEPP with the National Construction Code (NCC), noting the NSW Government's commitment to the *Trajectory for Low Energy Buildings*. A key component of the Trajectory is a commitment from all governments to cost effective increases to the energy efficiency provisions in the National Construction Code (NCC) over time.

ASBEC supports raising the minimum standard equivalent for new homes to at least the equivalent of a NatHERS rating of 7 Stars, consistent with strengthened energy efficiency provisions proposed by NCC 2022. ASBEC regards the shift to 7 stars as a sensible, commensurate and feasible step along the pathway towards net zero. Multiple robust studies suggest that for both home buyers and the economy as a whole, the cost-effective minimum standard for new homes is at least 7 Stars. Many homes are now built above 7 stars and we anticipate that the cost of building homes at and beyond 7 stars will continue to decline.

In addition, greater transparency about how the new energy end use calculations differ from existing settings would provide more confidence that the proposed changes are substantive and based on robust modelling. It would also be useful to clarify the design and/or technology changes (i.e. building design, fabric and fixed appliances) that would be required for dwelling categories to meet the new requirements.

ASBEC is also of the view that as the GHG intensity factor proposed for the updated BASIX tool reflects projected 'greening' of the grid over a 10-year period, then projected climatic conditions should also be included using the climate files for 2030 that CSIRO has made available to the Australian community specifically for modelling and policy development purposes.

### Addressing embodied carbon emissions

ASBEC commends the NSW Government for its leadership in requiring consideration of embodied carbon emissions of the material used in a new building. This is a critical step if the built environment is to fully play its role in contributing to NSW and national emissions abatement commitments.

However, ASBEC considers the provisions as currently drafted require further work, particularly to ensure the proposed embodied carbon calculators are underpinned by the best available data and metrics. ASBEC would welcome the opportunity to work with the NSW Government to develop an industry-aligned approach that will drive the intended performance improvements and be relevant for future iterations of the SEPP. Further, robust industry-supported policy settings for embodied emissions in NSW will also encourage and inform relevant processes in other jurisdictions.

#### Alternative Merit Assessment Pathway

We note the aim to introduce more flexibility for development applicants through the introduction of an alternative Merit Assessment Pathway. However, ASBEC strongly cautions against measures that would weaken the required sustainability and energy efficiency expertise of a 'suitably qualified' person to undertake a BASIX assessment.

With regards to energy efficiency and thermal performance, appropriately skilled and qualified practitioners are essential to the delivery of building quality as well as to ensure standards that deliver functionality over the life of the building.

ASBEC is concerned there is insufficient detail to provide confidence that the listed professions will have the appropriate skills and training to undertake assessments of an acceptable quality and consistency. Greater clarity is needed on how outcomes from this alternative pathway will be verified and enforced.

#### Net zero statement

ASBEC commends the NSW Government for requiring applicants to consider early in the design process, how the project will avoid dependence on fossil fuels and be capable of operating at net zero emissions. Incorporating such considerations into decision-making as early as possible provides the best opportunity for delivering high impact outcomes at least cost. However, further work is needed to clarify how this provision will work in practice, particularly to ensure offset requirements are appropriate to the size, type and efficiency of a building, to avoid unintended outcomes.

#### Additional points

#### <u>Resilience</u>

ASBEC commends the focus throughout the SEPP on the critical importance of making our built environment more resilient to heat and water stresses being driven by climate change. In particular, ASBEC commends the effort to mitigate urban heat impact through proposals to limit solar absorptance by roofs and promote green infrastructure and tree canopy.

However, despite these positive initiatives the SEPP lacks an overall strong framework and clear guidance on best practice, targets or standards that developments should achieve to deliver the SEPP's resilience objectives. For example, a key opportunity has been missed to embed a comprehensive set of guiding principles for addressing urban heat within the Urban Design Guide, as it is currently drafted.

We would also encourage consideration of additional measures to mitigate urban heat such as those recognised by Green Star – Communities, which addresses all sunlit surfaces. This includes green roofs, vegetation, hardscaping elements, water bodies and green walls.

ASBEC members would welcome the opportunity to work with the NSW Government to showcase best practice benchmarks for urban resilience and contribute to the development of a strong framework of principles, guidance, targets and methods for assessment.

#### **Compliance**

Critical to the delivery of good outcomes is a robust compliance framework that ensures policy objectives are achieved in practice. Definitive requirements in the SEPP, such as applying a BASIX Completion Receipt mechanism to the merit assessment pathway, would support stronger compliance as well as contribute to good quality data collection to inform ongoing policy development.

#### Conclusion

ASBEC strongly commends the NSW Government for its commitment to the design of healthy and prosperous places that support the wellbeing of people, community, and Country through the positive influence of new development.

Regular consultation with key organisations is integral to implementing best practice policy reform. Given the breadth and expertise of our membership ASBEC is uniquely placed to facilitate high quality input to built environment sustainability policy, and we would be very happy to do so.

While acknowledging the consultation materials have been designed to be accessible to a wide audience, the lack of detailed, technical information in key areas has hampered the ability of ASBEC members with deep technical expertise to provide a thorough and comprehensive response. We would appreciate the

opportunity to engage more fully with the technical detail underpinning the proposed provisions during further consultation planned for coming months.

We look forward to continuing to work with the NSW Government in delivering a more sustainable, liveable and resilient built environment.

Yours Sincerely

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Luke Menzel Acting Chair

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Anne Martinelli Interim Executive Director

# DESIGN AND PLACE SEPP



Public Consultation Draft Feedback

GANSW

### NEW SOUTH WALES CHAPTER

Submission date: 18 March 2022



### **OVERVIEW**

The Australian Institute of Architects (the Institute) and its members are dedicated to raising the quality of the built environment for people and to the advancement of architecture. We seek to improve the enduring health and wellbeing of all Australians. The design of the built environment shapes the places where we live, work and meet.

Good design adds value to all aspects of the built environment. Good design creates built environments which are environmentally, socially and economically sustainable. Climate change, housing affordability, equitable access to core amenities such as solar access, ventilation, privacy and open spaces; these are urgent issues, requiring sophisticated solutions.

The planning and design of cities and towns to address these challenges will significantly impact the shape of Australia's built environment, requiring governments to be committed to delivering a high quality, sustainable legacy for future generations. Placing good design at the heart of this process will improve outcomes for our communities. The buildings and urban solutions we accept today directly impact on our ability to successfully navigate the key issues of the future – we need to design and build today for the future we hope to have.

To face these challenges and act upon lessons learnt, it is critical to foster the unique capability of our built environment professionals and their capacity to bring innovation and know-how to the government's work.



Laura Cockburn PRESIDENT NSW CHAPTER



### **ABOUT THE INSTITUTE**

The Australian Institute of Architects (the Institute) is the peak body for the architectural profession in Australia. It is an independent, national member organisation with around 12,000 members across Australia and overseas.

The Institute exists to advance the interests of members, their professional standards and contemporary practice, and expand and advocate the value of architects and architecture to the sustainable growth of our communities, economy and culture.

The Institute actively works to maintain and improve the quality of our built environment by promoting better, responsible and environmental design.

### PURPOSE

This submission is made by the Australian Institute of Architects (the Institute) to provide input on the draft Design and Place SEPP.

At the time of this submission the NSW Chapter President is Laura Cockburn, the NSW State Manager is Joanna McAndrew and the NSW Policy and Advocacy Manager is Lisa King.

### **CONTACT DETAILS**

Australian Institute of Architects, NSW Chapter ABN 72 000 023 012

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### Contact

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### **EXECUTIVE SUMMARY**

The Australian Institute of Architects (the Institute) commends the Department of Planning, Industry and Environment (DPIE) and the Government Architects NSW (GANSW) for elevating ecological sustainability, the protection of the environment and our connection with Country to the forefront of place-based design planning.

We strongly support the Design and Place SEPP and we look forward to working with the GANSW to ensure the implementation of this work results in a robust framework which delivers future-focussed design quality and is integrated appropriately with existing NSW planning processes.

### The Institute strongly supports:

- provision of well-researched planning controls that protect the core amenities for residents such as solar-access, cross-ventilation, privacy and access to open space
- a clear and consistent demonstration of design principles and objectives prescribed as part of the application requirements for a development application
- strengthening the role of BASIX and increasing sustainability targets
- learning to connect with Country at the earliest opportunity and embedding this knowledge throughout our approach to planning
- an Urban Design Guide which puts quality place-based design at the forefront of strategic planning

We advocate that the creation of well-designed places be the central emphasis that guides policy and decision-making. We support planning policy which enables community input in shaping the future of places, delivers certainty for investors and the resulting confidence in the system.

We understand the Design and Place SEPP has a significant role to play within the current legislative framework. It needs to support a design-thinking process which can address emerging strategic planning while demonstrating awareness of the development controls that apply to individual sites and the assessment of these proposals.

We recognise this is a large body of work and we note it is ambitious in its scope and nature. We thank the DPIE and the GANSW for showing leadership in this area and for striving to bring focus to place-based design. We believe this work will be vital into the future as we continue to face complex challenges, such as climate change.

The Institute supports a rational, linear, design-based planning system, where good strategic planning underpins development controls that can lead to predictable outcomes for development assessment.



### RECOMMENDATIONS

- 1. Remove new definition of architect as defined in EP&A Amendment (Design and Place) Regulation 2021 and retain existing definition of qualified designer
- 2. Remove new definition of urban designer as defined in EP&A Amendment (Design and Place) Regulation 2021 and partner with industry to further resolve the definition, recognition and accreditation of urban designers
- 3. Design Review Panels should be endorsed rather than constituted by the Minister under part 16B for the local government area in which the development will be carried out (EP&A Amendment (Design and Place) Regulation 2021)
- 4. Further strengthen and simplify the link between design principles and objectives with the relevant design criteria and accompanying guidance across the suite of documents
- 5. Ensure language is clear, concise and not open to interpretation across the suite of documents
- 6. Provide further guidance in the Apartment Design Guide in terms of acceptable alternative solutions to ensure certainty in meeting design criteria particularly in the areas of shading and ventilation
- 7. Align with the NCC to ensure new housing meets the equivalent of LHDG Silver standard with some housing provided at Gold and Platinum standard levels or equivalent
- 8. Provide more specific guidance within the Urban Design Guide, including case studies, to better inform the design of other sites such as urban infill or in regional areas
- 9. Re-conceive the Urban Design Guide as a suite of guides for different development types or contexts as recommended by the Designers In Government group
- 10. Provide an opportunity for a Design Review Panel, or Design Advisory panel, at early concept or schematic design phase to critically review strategic merit prior to large time and cost outlays by proponents
- 11. Provide adequate resourcing and training to ensure Design Review Panel members have the expertise required to assess 'alternate pathways'
- 12. BASIX and sustainability measures should continue to be developed in collaboration with the Institute, and other relevant stakeholders, to determine how they will be practically implemented, with more detailed information provided and an additional round of consultation undertaken



### SEPP AND REGUATION

EP&A Amendment (Design and Place) Regulation 2021 (NSW) Definition of architect:

architect means a design practitioner registered under the Design and Building Practitioners Act 2020 in the design practitioner – architectural class

This definition must be deleted, and the existing definition of qualified designer being 'a person registered as an architect in accordance with the Architects Act 2003' retained.

The Institute strongly believes that the registration process administered by the NSW Architects Registration Board under the Architects Act 2003 is more than robust enough to ensure that architects have the requisite experience to competently carry out work under the Design and Place SEPP. The Institute cannot support ANY additional requirement for registration on architects under the Design and Place SEPP.

EP&A Amendment (Design and Place) Regulation 2021 (NSW) Definition of architect:

urban designer means the following-

(a) a qualified town planner with at least 5 years' experience in precinct or master planning,

(b) a landscape architect with at least 5 years' experience in precinct or master planning, (c) an architect with at least 5 years' experience in precinct or master planning.

This definition should be removed until further work has been undertaken with all relevant stakeholders to ensure any definition of urban designer addresses the specific experience, skills and competencies required.

The Institute of Architects recommends a focus group be formed in partnership with government and including other relevant member organisations and professional bodies to further resolve the definition, recognition and accreditation of urban designers.

EP&A Amendment (Design and Place) Regulation 2021 (NSW) [1] Sch 1 Cl 3:

design review panel means—

the design review panel constituted by the Minister under Part 16B for the local government area in which the development will be carried out, or

*if a design review panel has not been constituted for the local government area in which the development will be carried out— the State design review panel. (b) a landscape architect with at least 5 years' experience in precinct or master planning, (c) an architect with at least 5 years' experience in precinct or master planning.* 



The Institute of Architects supports the City of Sydney position that the design review panel be **endorsed** by the Minister rather than **constituted** under part 16B for the local government area in which the development will be carried out.

### RECOMMENDATIONS

- 1. Remove new definition of architect as defined in EP&A Amendment (Design and Place) Regulation 2021 and retain existing definition of qualified designer
- 2. Remove new definition of urban designer as defined in EP&A Amendment (Design and Place) Regulation 2021 and partner with industry to further resolve the definition, recognition and accreditation of urban designers
- 3. Design Review Panels should be endorsed rather than constituted by the Minister under part 16B for the local government area in which the development will be carried out (EP&A Amendment (Design and Place) Regulation 2021)



### **APARTMENT DESIGN GUIDE**

The Institute commends the government for placing context, built form, sustainability and connecting with Country at the heart of good place-making. We strongly support the objectives of the ADG which identify and value the important conditions and amenities, such as solar access, natural cross-ventilation, privacy and access to open space which greatly contribute to making our apartments liveable.

The Institute strongly supports an ADG which clearly links design principles with objectives and the relevant design criteria and accompanying guidance. The ADG has provided common ground and consistency for planning controls across NSW. We believe these links can be further simplified and strengthened to ensure there is no ambiguity, and assessments can be carried out efficiently and effectively. The use of wording which is not open to interpretation is critical, and the Institute believes the wording of some sections can be further tightened to ensure consistency and clarity. In this respect, we support the detailed response outlined in the City of Sydney submission.

The Institute supports an 'alternate pathway' which enables a flexible approach to design, however we believe further guidance including supporting case studies would assist both designers and assessors in understanding what an acceptable alternative solution may be and ensuring the consent authority is confident the objectives have been satisfied. This additional guidance should aim to provide more certainty with regard to how each design criteria may be met, particularly in the areas of shading and ventilation.

The Institute strongly supports the position that all new housing be certified Silver standard level under the Livable Housing Australia certification. Additionally, we would also welcome an objective which supports some housing being provided at Gold and Platinum standard levels. We encourage the NSW government to adopt the NCC inclusion of accessible standards into housing ensuring there is national consistency and meeting the objectives of the 2041 Housing Strategy.

### RECOMMENDATIONS

- 4. Further strengthen and simplify the link between design principles and objectives with the relevant design criteria and accompanying guidance across the suite of documents
- 5. Ensure language is clear, concise and not open to interpretation across the suite of documents
- 6. Provide further guidance in the Apartment Design Guide in terms of acceptable alternative solutions to ensure certainty in meeting design criteria particularly in the areas of shading and ventilation
- 7. Align with the NCC to ensure new housing meets the equivalent of LHDG Silver standard with some housing provided at Gold and Platinum standard levels or equivalent



### **URBAN DESIGN GUIDE**

### **DESIGN REVIEW PANEL MANUAL**

The Institute strongly supports the intent of the Urban Design Guide and the guidance provided. Member feedback has indicated that many architects feel the guidance provided is more relevant to greenfield sites at the outer limits of existing cities and that additional guidance, with case studies, should be provided to more comprehensively and specifically address other contexts such as urban infill sites and regional areas. We support the recommendation put forward by the Designers in Government group which suggests re-conceiving the UDG as a suite of guides for different development types or contexts.

Key decisions, including the integration of infrastructure and land use need to be structured in strategic frameworks prior to the development application process occurring. The Institute strongly supports a Design Review panel, or Design Advisory Panel, at early concept or schematic design phase which aims to critically review the basis of an application to ensure there is strategic merit. This form of design review enables a collaborative discussion about the issues and opportunities at an early stage to assist both the applicant and the assessment team in understanding the best outcomes for the site prior to significant costs being outlayed by the proponent or large delays being experienced. This will ensure urban design resources are directed at the outset of a project leading to improved place-based plan making.

We strongly support the inclusion of a planner and urban designer, either independent or from within government itself, on the panel to provide a broader review of the project in its context and encourage design-based thinking where alternatives can be interrogated and considered.

The Institute is concerned that there is currently a lack of sufficiently experienced panel members, particularly in regional areas. It is imperative that the proposed Design Review panels are supported adequately to ensure panels are resourced with those who have the expertise to provide the level of guidance required, particularly in the event of a 'alternate pathway' being assessed.



### RECOMMENDATIONS

- 8. Provide more specific guidance within the Urban Design Guide, including case studies, to better inform the design of other sites such as urban infill or in regional areas
- 9. Re-conceive the Urban Design Guide as a suite of guides for different development types or contexts as recommended by the Designers In Government group
- 10. Provide an opportunity for a Design Review Panel, or Design Advisory panel, at early concept or schematic design phase to critically review strategic merit prior to large time and cost outlays by proponents
- 11. Provide adequate resourcing and training to ensure Design Review Panel members have the expertise required to assess 'alternate pathways'



### **BASIX AND SUSTAINABILITY MEASURES**

### STRONGLY SUPPORTED

The Institute supports the proposed measures for non-residential buildings to increase their energy efficiency and progress towards net zero greenhouse gas emissions (SEPP Part 2, Clauses 19 – 22 & Part 3, Division 1, Clause 26 as well as EP&AA Regs 2000, Schedule 1, Part 6, Division 1A, Clause 57D), noting: the Institute supports the City of Sydney's recommendation to remove NCC JP1 from the list of compliant standards and supports their proposed amendments to Subclause 1e to align with their methodology for offsite renewable energy.

The Institute supports the proposed new measures for residential buildings to increase their energy efficiency and thermal comfort, in line with proposed changes to the National Construction Code. We would welcome continued consultation as the new BASIX tools are developed and note the significant difficulty in providing feedback without access to the tools. (SEPP Part 2, Clauses 19-22 & Part 3, Division 2, Clause 27).

The Institute supports the proposed measures to include infrastructure for electric vehicles; noting specific technical energy supply requirements should be defined in consultation with electric vehicle experts) (EP&AA Regs 2000, Schedule 1, Part 6, Division 8A, Clause 99).

### IN PRINCIPLE SUPPORT – FURTHER CONSULTATION REQUIRED

The Institute supports the proposed reporting measure for embodied energy / emissions in non-residential buildings; noting that extensive work is underway (lead by the NABERS team and in collaboration with the Australian Government and a wide cohort of industry and academic advisors) to define a robust and practical method of implementation. We request that consultation on this project continue and welcome the opportunity to actively contribute to the project. (EP&AA Regs 2000, Schedule 1, Part 6, Division 1A, Clause 57C).

The Institute supports the proposed new reporting measure and standards for embodied energy / emissions for residential buildings in principle; noting that access to the tool for testing is critical before comprehensive comments can be provided to the NSW Government, and further consultation is required to ensure objectives are achieved in a robust and practical manner. The per person metric chosen to measure embodied energy / emissions should be explained in detail and possibly changed to square metres (SEPP Part 3, Division 2, Clause 27).

The Institute supports the new merit assessment pathway for residential buildings in principle; noting that extensive further information and consultation is required to address concerns regarding the administrative structures and administrative resourcing required to ensure sustainability objectives are met and to prevent 'gaming of the system'. Detailed work is required to determine how 'recognised professionals' who are permitted to conduct assessments and 'Non- BASIX modelling software' will be accredited and audited. It is not clear if energy modelling software that meets the international technical standard (ANSI/ ASHRAE standard 140-2017) takes into consideration Australian climactic conditions and the properties associated with Australian building materials. Hence it is unclear if this standard is suitable for use. It is noted that the *Merit* 



*Assessment Pathway Modelling Rules* are still under development and not included in the Design and Place SEPP Exhibition Package; the Institute requests that detailed consultation be undertaken on the Rules (EP&AA Regs 2000, Schedule 1, Part 6, Division 8A, Clause 164A).

### RECOMMENDATIONS

12. BASIX and sustainability measures should continue to be developed in collaboration with the Institute, and other relevant stakeholders, to determine how they will be practically implemented, with more detailed information provided and an additional round of consultation undertaken



### CONCLUSION

The Institute commends the DPIE and GANSW for the extensive work which has been undertaken on the Design and Place SEPP, including the considerable time dedicated to consultation with industry. We strongly support the intent of this work and the important objectives which have been elevated as a result.

The Institute is grateful for the opportunity to provide input into the draft Design and Place SEPP. We look forward to continued consultation as this work evolves even further and we offer the Institute's support in assisting the DPIE and the GANSW to achieve a high quality, place-based framework for delivering quality built environment outcomes for all in NSW.



Australian Institute of Landscape Architects

24 March 2022

Government Architect NSW c/o Department of Planning, Industry, and Environment Locked Bag 5022, Parramatta NSW 2124

To whom it may concern

RE: DESIGN AND PLACE SEPP - PUBLIC EXHIBITION DRAFT | AILA DRAFT SUBMISSION

### Introduction

The Australian Institute of Landscape Architects NSW (AILA) thanks the Department of Planning and Environment (DPE) and the Government Architects of NSW (GANSW) for inviting our organisation and members to be involved in - and contribute to - the development of the Draft Design and Place SEPP.

As expressed in our preliminary response we reiterate that AILA commends both agencies and more broadly the NSW State Government for the comprehensive, inclusive and transparent nature of this extensive stakeholder engagement process and its related communications. All of the staff members from those agencies with whom our AILA members have interacted have shown commitment, professionalism and energy in their respective endeavours to explain in detail the objectives and intent of the proposals and to patiently facilitate constructive debate on what is a complex suite of interdependent considerations.

In preparing this submission we also note that AILA NSW has been in close contact with the Australian Institute of Architects NSW (AIA) and the Planning Institute of Australia NSW (PIA) throughout the EIE and Draft SEPP processes. The three organisations have found a high level of alignment in our responses to those areas of the SEPP that are of common interest to us all; consequently, many of the responses below reflect those discussions.

Finally, as has been expressed in a joint news release from AILA and the AIA of 17<sup>th</sup> March 2022, we are very concerned and disappointed that the nine Design Principles that were contained in the Ministerial Directions for the Draft SEPP have been recently rescinded by the NSW Planning Minister, Mr Roberts: These Principles form a critical anchor and reference point for directing and testing the application of the provisions and guidelines in the SEPP. In particular we are concerned that:

- Without these Principles and their associated Design Considerations, the basis on which a consent authority can establish a design excellence response that is contextual to any given site is largely lost
- Removing the Principles discourages design excellence responses based on a merit case that may still meet the collective objectives of these Principles, whilst potentially being at



odds with specific guidelines within the SEPP. Without the Principles, a merit case assessment becomes largely arbitrary, putting applicants at risk when choosing this option.

AILA believes that the contextual application of the Principles from a design excellence approach should impact neither Housing Affordability nor Housing Supply, as inferred by the Minister. Indeed, the improved liveability and environmental outcomes implicit in the Principles when intelligently applied would likely reduce the overall housing cost cycle for developers and home owners, through factors such as long term energy savings, resale value and lifespan.

### Submission in support

We reiterate from our preliminary submission that AILA is in full support of the Draft SEPP, endorses its role in promoting a Connecting with Country framework and urges the NSW Government to adopt its provisions as drafted.

In particular we support the objective of the SEPP to draw together a number of previously disparate controls and guidelines that should rightly be consolidated under a single over-arching SEPP, where a holistic approach to integrated planning and design provisions can be better understood - and where more contextual development responses can be assured.

AILA also welcomes the support for the vital role of Landscape Architects in delivering the objectives of the Design and Place SEPP.

In its earlier submission on the EIE and in subsequent engagement meetings AILA has consistently pressed for the need to promote a systems-based approach to all of the landscape and environmental aspects of the SEPP, which the draft seeks to promote further. In particular, we have focused on the vital role that connected soil and groundwater networks will play in achieving many of the targets in the SEPP.

These two foundations of a healthy green infrastructure network will have a direct bearing on the SEPP's success in addressing climate change mitigation and tree canopy targets as well as microclimate control and amenity of public, communal, and private open spaces, amongst other influences.

### Specific considerations and further collaboration

We offer the following observations and commentary on some key aspects of the Draft SEPP.

THE SEPP

AILA supports the provisions of the SEPP and the objectives that these give effect to in the related guidelines, on which we have provided responses below.



### URBAN DESIGN GUIDELINES (UDG)

We welcome the focus of the UDG in establishing a higher level of contextual framework for all developments, seeking to achieve a greater level of connectivity between the development and the natural values, urban fabric, recreational networks and cultural values of its setting.

We endorse this approach as being central to the concept of planning, designing, and delivering for place.

We are however concerned that the UDG is unduly prescriptive and compliance oriented. More particularly, we are concerned that the UDG is being integrated into the SEPP as part of the development process and not – as we believe it should be – an upfront informing process generated through local government plan making.

For instance, the extensive contextual analysis of the immediate locality or district and the development-related design constraints and opportunities required of developers in the SEPP is not only unduly onerous but may well result in fragmented development where those responses will inevitably vary across adjoining sites and precincts.

AILA believes that the Local Government Authority (LGA) - or indeed the collective City District LGAs - within which any development is proposed should be the agency responsible for establishing the landscape and urban strategy to which all developments in any given locality or district should respond. This is the broad intent of the Spatial Frameworks that the NSW State Government has encouraged all LGAs to develop.

By way of example, the relevant mapping of strategies for localising the Sydney Green Grid for a given locality/district through the LGA's Spatial Frameworks should be available to developers to direct and inform their site analysis, external connections and development responses.

With the above caveats, AILA also supports the gateway approach to design verification that is intended to ensure that the findings from the site and precinct analysis required in the pre-design phase is evident in the design responses as the concepts evolve. There does however need some greater clarity on the co-ordination of appropriate professional inputs into that verification assessment.

However, AILA does not support the intent of the SEPP to define what constitutes an Urban Designer (see Definition of Urban Designer below).

### **APARTMENT DESIGN GUIDELINES**

We acknowledge the significant body of work undertaken through the development of the Draft SEPP to reconcile the sometimes conflicting objectives of built form controls in the previous ADG.

We also acknowledge that there are some significant technical challenges in establishing synergies between such controls that ensure intended objectives can be achieved on the ground in numerous different site contexts and built forms.

From AILA's perspective we strongly urge that, independent of any revisions/omissions that may of be considered for built form guidelines in the final SEPP, the landscape guidelines relating to all landscape elements such as Deep Soil (we continue to urge that this misleading name be

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revisited), open space, solar/shade access, urban tree canopy and the likes be adopted.

While there are many elements of the landscape related guidelines of the Draft ADG that AILA believes would benefit from further refinement, the current proposals in the Draft comprise a significant advance on those in the previous ADG and they have AILA's full support.

### BASIX

AILA has always supported the role of BASIX and now supports the proposed improvements that bring the document in line with contemporary science, technology, and research to underpin development sustainability.

### DESIGN REVIEW PANELS

AILA supports the role of the Design Review Panel (DRP) process and endorses the proposals for their continued involvement in ensuring that high design standards are consistently applied across all developments.

The relevant experience and expertise of the DRP's professional members, especially Landscape Architects, Architects and Urban Designers is central to maintaining such high standards and relevant tertiary qualifications should be considered a basic requirement for admission to a DRP.

However, we believe that, rather than relying on additional qualifications such as Registration (which does not necessarily reflect experience or expertise in all the areas that the DRPs are required to address) all applicants should perhaps be peer-reviewed by their applicable professional organisation for their relevant experience and expertise.

This peer review process would also ensure that experienced professionals in other disciplines that may be able to bring critical expertise to the DRPs are not excluded.

We also endorse the strengthening of Terms of Reference for DRPs and greater clarity on their role as an advisory body to developers and Councils, rather than as a quasi-approval body.

#### ROLE OF LANDSCAPE ARCHITECTS

AILA welcomes the requirement for the involvement of Landscape Architects in all development processes associated with the SEPP. We are however concerned with the criterion that this requirement only applies for developments over 1000m2.

This arbitrary size-based criterion belies the likelihood that smaller developments – especially in high density environments - can frequently generate more complex design and technical challenges than larger development lots or precincts.

We would recommend that this criterion be reviewed and further refined to include all areas and

spaces external to buildings, including streets and public and private open space. This would further reinforce the crucial consideration of connected soil and groundwater networks, as outlined above.



As the peak body for the accreditation of University Landscape Architecture programs and for the assessment and registration of Landscape Architects, AILA recommends that the definition of Landscape Architect should be *AILA Registered Landscape Architect*.

### **DEFINITION OF URBAN DESIGNER**

The matter of what definitions constitute an Urban Designer has been contested territory for some time now; however, the allied professions of Landscape Architecture, Architecture and Planning are liaising with Urban Designers (many of whom are members of those organisations) as to the appropriate definition, qualifications, and definitions of an Urban Designer.

In this light AILA is concerned that the Draft SEPP appears to be making such a definition for the purposes of the involvement of Urban Designers in the SEPP processes.

AILA believes that the profession of Urban Design plays a vital role in all aspects of urban development and the public realm, none more so than in delivering on the Design and Place SEPP. We believe therefore that the definition of an Urban Designer should be generated by Urban Designers themselves. Likewise, AILA would seek to find alignment with these definitions for our members who are also Urban Designers.

We understand that a number of eminent Urban Designers in NSW have recently formed the Urban Design Group (a chapter of the UK based membership organisation) with a view to developing definitions for what constitutes an Urban Designer and a peer recognition process. AILA will be keen to work with the UDG towards a recognition of such definitions and peer review processes.

Consequently, we would recommend that the definition of an Urban Designer be omitted from the SEPP and that Urban Designers, and the related professions continue a more comprehensive dialogue with DPE and GANSW that allows those professions themselves time to establish such a definition for wider application in the broader built environment context.

### MORE DETAILS MATTERS FOR ONGOING DIALOGUE

AILA is keen to continue dialogue with DPE and GANSW on many areas of detail in the SEPP. However, we have not sought to expand on all of these in this submission. Instead, the following is a small selection of some more detailed matters that members of AILA (including those on our submission working group) have requested be raised.

### Soil Networks

As outlined above, the growing evidence around the crucial role of connected soil network is - in association with ground water and stormwater management - is one of the most important building blocks in establishing a healthy and connected Green Infrastructure. The moves in the SEPP to increase soil volume is appreciated, but AILA would like to discuss how soil connectivity can be further encouraged; moving everyone's understanding well beyond outdated concepts of soil depth being the major determinant.

### **Open Space**

The consider integration of high-quality public, communal and private open space is central to

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successful places and the details surrounding quantity and quality (as being evolved in the Greener Place Guidelines) is key in this regard.

Amongst other matters we are keen to discuss the following:

• 15% NDL for Open Space

There is an inherent difficulty in reaching 15% NDL target area for public open space using metrics provided in draft UDG. From a preliminary review at least two factors affect this calculation:

Inclusion of local & collector roads as well as E2&3 Zoned land increase the amount of land considered NDL and therefore increase quantum of public open space to be provided. b) Both the median and minimum sizes of open space types at the distribution stated will not achieve the required quantum without both decrease of walking catchments and increase in size, particularly of district parks, which are key to achieving the quantum provision.

• Dual Use of Open Space

The text and method re dual use seems contradictory and potentially confusing. In practice flood prone and riparian can only provide linear/connections with minor other incidental recreation value. We are keen to discuss the details around this.

• Open Space Integration

How public, communal, and private open space (especially in apartment developments) can be better integrated to work more closely, both within and external to buildings.

### Sha de Sma rt

AILA has been working with Cancer Council NSW and Cancer Institute NSW on best practice guidelines for Landscape Architects and we are keen to bring these proposals into the evolution of the SEPP in discussion with GANSW and DPE.

### **Biodiversity**

The SEPP rightly places emphasis on the need for clear targets to increase Urban Tree Canopy, in line with the draft Greener Places Guidelines. However, AILA is concerned that increasing residential density and loss of private gardens (as well as the unintended consequences of CPTED) is driving a dramatic loss of the shrub and field layers in urban landscapes. The consequent loss of ecological complexity (particularly in insect and bird populations), biodiversity, amenity and microclimate amelioration need to be swiftly addressed. The SEPP is a good place to start here.

Yours faithfully,

Janya llood.

Tanya Wood AILA NSW State Chapter President

### **Claire Krelle**

From:	noreply@feedback.planningportal.nsw.gov.au
Sent:	Friday, 25 February 2022 3:07 PM
То:	PDPS DRDE Design and Place SEPP Mailbox
Cc:	DPE PS ePlanning Exhibitions Mailbox
Subject:	Webform submission from: The Design and Place SEPP 2021
Attachments:	bdaa-submission-on-the-draft-design-and-place-sepp-2021.pdf

Submitted on Fri, 25/02/2022 - 15:04

Submitted by: Anonymous

Submitted values are:

**Submission Type** I am submitting on behalf of my organisation

### Name

First name Chris

Last name Knierim

I would like my submission to remain confidential No

### Info

Email <u>ceo@bdaa.com.au</u>

Suburb/Town & Postcode 2011

Please provide your view on the project I am just providing comments

Submission file bdaa-submission-on-the-draft-design-and-place-sepp-2021.pdf

Submission Please find attached the Building Designers Association of Australia's "BDAA" submission to the Draft SEPP 2021

Kind regards Chris

I agree to the above statement Yes





# Submission on the Draft Design and Place SEPP 2021

**Organisation Name:** Building Designers Association of Australia (BDAA) Contact: Name: Chris Knierim Email: ceo@bdaa.com.au



### Introduction

The Building Designers Association of Australia (BDAA), is a national member-based association which, for 60 years has, represented, advocated, and promoted the Australian built environment. The BDAA is a not-for-profit, peak industry Association representing Australian designers involved in, or associated with the built environment nationally. Our key role is to educate and raise awareness of designers within the industry, to build and sustain relations with the key stakeholders, and to provide services to our members.

The BDAA membership includes residential, commercial, and industrial building designers, architects – and architectural graduates - landscape architects, engineers, planners, specifiers, thermal performance assessors and design students. Originally starting as the Building Designers Association of South Australia, the association developed and continued to grow its membership and spread into other states and territories, becoming a unitary national organisation in 2014. BDAA has over 2,000 members, of which 39% are domiciled in NSW.

The BDAA has an established National Accreditation Program for building designers that has been running successfully for 20 years. Under this Program, building designers are assessed for competence to design and document professionally in all building classes, especially 2 – 9 classes.

The BDAA welcomes the review of the Design and Place SEPP 2021. We have reviewed the exhibition documents and provide this submission which outlines several key issues of concern to the BDAA regarding the draft Design and Place State Environmental Planning Policy (DP SEPP) 2021 and supporting regulations.


# **Key Points**

The BDAA supports the Government's review all current SEPPs provided that the end results are an improved and more efficient system.

However, in relation to two key issues, the end results of the proposed SEPP reforms will not be an improved and more efficient system. Rather they will impose significant costs on NSW building designers (and some other occupations) and reduce competition for urban design services in NSW to the detriment of NSW consumers.

These key issues are outlined below. The BDAA would welcome an opportunity to expand on the key issues raised if that is required.

## Significant adverse impact on Building Designers

1. The BDAA is extremely concerned that the draft Environmental Planning and Assessment Amendment (Design and Place) Regulation does not recognise NSW building designers as qualified to undertake a range of developments in all classes of design. Rather, the focus is weighted towards architects.

- The BDAA is disappointed that its previous representations to the review on this matter have been ignored.

2. Currently, Building Designers – Low Rise and Building Designers – Medium Rise registered under the DBP Act can undertake building design work in NSW under the existing SEPPs.

3. The net effect of the proposed DP SEPP and supporting regulations will be to significantly reduce the scope of work that building designers in NSW can undertake.

- It is noted that some other licenced occupations will be similarly affected by the proposed changes. For example, Urban Planners and Surveyors.

4. Should the proposed reforms be implemented as they stand, NSW will see the farcical situation arise where a NSW building designer can submit a design for a council Development Assessment, but will not be able to submit that design for building construction approval.

5. The BDAA is not aware of any evidence to justify the proposed further restrictions on the scope of work that NSW building designers can undertake.

a) No evidence is presented at all in the exhibition documents to justify further restricting the scope of work of building designers. Accordingly, it is unclear on what basis a policy decision to exclude building designers from building design work is being justified.

b) The economic impacts of these additional restrictions on building designers and their customers are not recognised in the Deloitte's Cost Benefit Analysis. BDAA considers this to be a major omission and contrary to the NSW Government's strict Better Regulation Requirements.



6. The BDAA observes that the proposed restrictions would put NSW considerably out of step with the authorised scope of work for building designers in other jurisdictions.

a) At the same time, building designers from interstate will continue to be able to undertake urban design work in NSW equivalent to their licenced/registered scope of work in their home state/territory under Australia's mutual recognition arrangements. Indeed, their ability to do this will be assisted by the new national automatic mutual recognition arrangements .

b) The net result of these restrictions will be to significantly disadvantage NSW based building designers.

7. The BDAA strongly recommends that the definition of building designers to be used by the DP SEPP and supporting regulations be aligned to the Building Designers – Low Rise and Building Designers – Medium Rise registered under the DBP Act to ensure that NSW building designers can continue to undertake their existing scope of design work. Further, this alignment should also be applied to all other proposed SEPPs and supporting regulations to the extent they impact on the work of NSW building designers and to include all Classes of buildings of any size.

a) The BDAA considers that regulatory controls on the scope of work that can be undertaken by building designers in NSW should be based on the levels contained within the Australian Building Codes Board's (ABCB) National Registration Framework (NRF), which is currently being finalised.

b) The NRF contains three levels of registered building designer:

- Level 1: Registered building designer level 1 All buildings
- Level 2: Registered building designer level 2 Medium rise buildings
- Level 3: Registered building designer level 3 Low rise buildings

c) The BDAA observes that the new Design and Building Practitioners Act 2020 (DBP Act) provides a sound basis for achieving alignment with the NRF as, broadly speaking, there are DBP registration levels that are consistent with the NRF levels 1-3.

d) The BDAA's National Accreditation Program is already recognised by the NSW Government in both its Low Rise Medium Density CDC Code and its Design and Building Practitioner reforms that commenced on 1 July 2021 under the DBP Act.

8. BDAA has no objection to architects being permitted to undertake urban design work provided they are competent to undertake that scope of work. It is not clear to BDAA that all registered architects will be appropriately competent to undertake all the work of an urban designer as proposed under the current SEPP reforms as no hard compelling evidence has been presented on this matter.



## Unnecessary restriction on Building Designers in relation to Class 2 Residential Apartments

9. NSW is the only state in Australia where appropriately qualified building designers are not permitted to design Class 2 Residential Apartment buildings (3 or more storeys and 4 or more units). This restriction was introduced in 2002 and is contained in the current SEPP65 and supporting regulations, which restricts design work on Class 2 Residential Apartments to registered architects.

10. The BDAA has long considered this situation to be highly inequitable to appropriately qualified NSW building designers. The irony is that appropriately qualified and licenced/ registered interstate building designers can do design work on Class 2 Apartments in NSW under Australia's national mutual recognition arrangements (to be further assisted by the new automatic mutual recognition arrangements when they take effect). The BDAA is not aware of any evidence of deleterious impacts on NSW consumers arising from this.

11. The BDAA strongly recommends that the proposed DP SEPP and supporting regulations and the existing DBP Regulations should be amended to permit appropriately qualified building designers to design Class 2 Residential Apartment buildings.



# **CONTACT US**

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# DRAFT DESIGN AND PLACE SEPP - 28 February 2022

# Additional information to this basic submission can be lodged prior to 25 March 2022, as agreed by the Design and Place SEPP Team, Planning NSW

Better Planning Network (BPN) is a state-wide Not for Profit, grassroots volunteer-based organisation founded in 2012. Our aim is for a robust and visionary planning system for NSW - one that fosters best practice environmental, heritage, social sustainability and design outcomes; and to make sure best practice planning is achieved through a collaborative and authentic community partnership engagement approach.

While BPN agrees that the Draft Design and Place SEPP is a good first step towards better planning outcomes, we would only support the inclusion of alternative pathways if they can be demonstrated to be beneficial to residents and the wider community as confirmed by an independent Design Review Panel.

We are concerned that a 'principle-based system' lacks the certainty required to ensure good planning outcomes and is likely to result in resources being diverted to costly and protracted litigation. We also point to the warnings made by the NSW Independent Commission Against Corruption that says that discretionary decision-making results in an increased corruption risk. A number of key objective outlined in the Urban Design Guide and Apartment Design Guide need to be mandated.

Most people live in urban landscapes. If we are going to ensure mitigation and adaptation to climate change we need to change the way we live and work. The design of houses and suburbs is an integral part of this. However it is noted that the Draft Design and Place SEPP (hereafter called the Draft DP SEPP) applies to all of NSW. BPN is of the opinion that a one-size-fits-all SEPP cannot be applied to metropolitan and regional LGAs alike and there needs to be greater differentiation than is currently proposed in the Draft DP SEPP.

BPN has reviewed the draft guides and initial comments and recommendations are as follows.

## APARTMENT DESIGN GUIDE

BPN strongly objects to the changes made from the exhibited Explanation of Intended Effects (EIE) to the current draft ADG, obviously at the behest of the development industry lobby groups. The EIE proposed changes were modest in their extent but would have made a noticeable difference to the liveability and amenity of apartments. BPN therefore considers it appalling that, after persuading the Government that many of the proposed EIE changes that were beneficial to residents should be deleted and significant reductions made in many of the other community-beneficial EIE changes, the development industry is now complaining that the whole package of reforms should be ditched and started again.

BPN had considered that the proposed EIE beneficial changes did not go far enough, yet the community is now being insultingly 'compensated' for the loss of those basic amenity improvements proposed in the EIE, by increasing the width of balconies in two bedroom units by 0.4m (still not enough room to even swing a cat) and a small increase in storage space. Whoopee do, that will make people rush out to buy units instead of houses, not.

References are made to the recommendations made in the Explanation of Intended Effects (EIE) exhibited in 2021.

THEME	CURRENT DRAFT	RECOMMENDATION
Verification Statement	Design verification statement -	BPN has seen the first of these
	response to 36 objectives	DVSs and they're just 36 points
		of waffle instead of the old 9
		points. The DVS must be written
		by an INDEPENDENT registered
		architect, selected from a panel.
Building Separation	No change in distances from	Separation must be increased in
9 storeys and above – 12-	ADG (2015)	line with EIE separations.
24m Up to 8 storeys 9-18m		Separation of 30m for 25+
Up to 4 storeys 6-12m (in		storeys. Minimum distances
visual privacy)		between apartments must be
		mandated. Where local
		government controls stipulate
		greater separation, these to take
		precedence.
Building form	No maximum tower floorplate	Maximum floorplate size
No max. tower floorplate		consistent with EIE or subject to
		the restrictions in the LEP of
		each LGA, whichever is lesser.
Street Activation	Place based – where it meets	Support the place based
	LGA objectives (DG)	approach on the basis it is
	Guidance on ground floor	regulated by the LEP and DCP
Deen Seil	apartments (DG)	of each LGA
Deep Soli	<1500m <sup>2</sup> : 10% site area,	Lup to 2000m <sup>2</sup> : 14 199/ of site
	$1 = 0.000$ $\pm 1.000$ $\pm 1.000$ $\pm 1.000$	14-16% of site
	ninimum 2m wide with 6m	Deep soil is accepted for large
	numinum sm wide with om	troos with smaller troos providing
	portion (DC)	insufficient chade to reduce heat
		island offect
	>1500 m2: 15% minimum tree	Tree canony is critical to the
Thee carlopy	ranopy target (DC) 1500 m2	amenity and liveability of an
	$\pm$ 20% minimum tree canony	area Additional criteria needed
	target (DC)	for $3000m^2+$ 25% minimum
		To ensure existing and planted
		trees thrive and survive the BPN
		proposed Tree Capopy Design
		Criteria of Objective 10 of the
		UDG needs to be included in the
		ADG as well. Green alternatives
		must <b>NOT</b> replace tree canopy
		targets, only be in addition to.
Car parking	For development within 800m	Remove reference to "nominated
	of railway station in Sydney	regional centres". Most bulky
	Metro or in B3/B4 in	goods retail is not accessible by
	nominated regional centres	rail in regional centres.

	use lesser of Guide to Traffic Generating Developments or Council guidance. Criteria for carparking identified in clause 30 of SEPP 65 as NDDS	Additional parking must be provided for car sharing services particularly in regional centres. ADG must provide minimum criteria for Green Travel Plans. Many GTPs are little more than provision of maps and bus timetables in foyers. The requirement that all resident car parking spaces must be 'EV ready' is supported.
Bike parking	1 per dwelling (DG). Class A spaces can be provided as part of external storage calculation. I visitor space per 10 dwellings	Keep EIE recommendation of one bike space per bedroom and include additional visitor bike parking. Include 20% of bike spaces to be 'EV ready' for ebikes. No bike parking is to be used in external storage calculation otherwise consequent reduction in external storage will reduce bike usage.
Common circulation	Maximum of 8 units/ core Up to 12 units/core with additional amenity	Keep EIE recommendation of 8- 12 units per core below nine storeys only. Will reduce bulk and scale above 9 storeys and assist in fire evacuation times. All lifts above 6 storeys should be emergency lifts. Controls on lift wait time & capacity (DC), provision of suitable clearance in front of lifts to allow for circulation, furniture and emergency access (DG), corridors to be naturally lit and ventilated (DG) and corridors over 12m to be articulated (DG), are all supported.
Communal spaces	8m <sup>2</sup> per unit up to 25% of site area. 50% has 2 hrs midwinter sunlight access No requirement for internal communal spaces	Unit metric provides insufficient communal space. Even owners in 4 storey blocks should have access to reasonable size communal space. They should not be discriminated against. There must be a requirement for internal communal spaces for developments over 4 storeys.
Apartment mix	Where no LGA controls, range of requirements provided	Support current Draft ADG recommendations except where LGA controls are in place
Apartment size	No change to ADG 2015. No change to apartment widths or min room sizes	Include EIE recommendation for 20% of 2 +3 bed to have 12m bedrooms to support family units and working from home
Ceiling height	Reduction of kitchen to 2.4m, reduction of ground floor non- residential to 3.3m	Kitchens are habitable rooms so ceiling heights should stay at 2.7m. Reducing ground floor residential heights reduces flexibility for tenants/owners.

		Should stay at 4.2m
Liveable housing	20% of apartments	EIE recommendation to increase
		if supported by NSW Govt
		research should be retained
Adaptable apartments	Defer to local policy	EIE recommendation to increase
		if supported by NSW Govt
		research should be retained
Private open space	No change to 2015 ADG	Increase of just 400mm balcony
	minimum areas, 1m for	width on 2 bed apartments does
	studios, increase 2 bed	not compensate for all the other
	balcony from 2m to 2.4m	amenity losses clawed back by
0.1		the development industry.
Solar access	Add Gosford LGA to: Living	Delete Gostord LGA from
	area + POS IN 70% Of	minimum 2nr sunlight - all NSW
	motro Nowcostle Wellengeng	LGAS other than Sydney metro,
	LCAs) and 2 bra alsowhere	newcasile, wollongong LGAS
	LGAS) and 3 mis elsewhere	suplight between 0am and 2nm
	midwinter (DC) No change to	midwinter (DC) Time should not
	max 15% with no direct	he extended to 8am that does
	sunlight (DC) Allow 8am-3pm	not increase the amount of
	window in constrained	sunlight (just like davlight saving
	situations where criteria can't	doesn't fade curtains) it just
	be met (DG)	makes it easier for developers
Shading and glare control	Glazing greater than 30% of	Support current Draft ADG
	the wall to have external	recommendations
	shading to block 30% of	
	summer sun (DG)	
	Performance glazing not	
	considered substitute for	
	shade (DG)	
Natural cross ventilation	Maintain current 60% for first	Keep EIE recommendation to
	9 storeys, and 18 m	increase to natural ventilation to
	dimension for through-	70% of all units across <u>all</u>
	apartments (DC) Apartments	storeys. Support current Draft
	10 storeys or greater are	ADG that 10 storeys or above
	deemed to be cross-ventilated	deemed cross-ventilated if
	only if any enclosure of the	balconies cannot be fully
	balconies at these levels	enclosed. Alternative design
	allows adequate natural	solutions, including fans or air-
	ventilation and balconies	conditioning, must not be
	cannot be fully enclosed (DC)	provided as alternative design
	Ventilation tool in appendix to	solutions for ventilation. They
	help applicants and assessors	provide inadequate ventilation
	calculate / model / prove	where families are isolating and
	alternative design solutions for	fans do not provide adequate
	ventilation	heating/cooling.
Storage	No change to internal volumes	Internal storage volumes must
	trom 2015 ADG and minor	increase with many working from
	increase to external volumes	nome and needing office space.
		Increase in external volume is
		inadequate it, as above, it's part
		of bike parking calculation.
Water efficiency	Rainwater storage tank size	Support
	specified. Recycled water	
	intrastructure required (purple)	
vvaste	2 days waste storage within	Include EIE recommendation for
	apartments for waste and	source separation of waste

recycling (DG) and 1 day within apartment for organics (DG)	streams.
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BPN considers it necessary to mandate minimum metrics for core amenities of apartment blocks including the solar access, ventilation, natural cross ventilation, ceiling heights, room sizes, insulation for noise and heat, and private open spaces. BPN also considers that the minimum separation between apartment blocks must be mandated by the SEPP with the flexibility for LGAs to increase the separation in accordance with place based principles.

## URBAN DESIGN GUIDE

BPN considers that the 19 Objectives of the Urban Design Guide are far too generalized to be of any practical use. During assessment by whoever is the consent authority, the starting point is whether the Objectives of the particular planning instrument are being met. If a Council or other delegated authority refuses a development and the developer takes the matter to the Land and Environment Court, there is absolutely NO OBJECTIVE OF SUBSTANCE that a Court could rely upon to support the decision of the consent authority.

While the "Design Guidance" has some terrific concepts that would be fantastic if followed by developers, as guidance only they have the same planning weight as DCPs, they're no longer worth the paper they're written on. In BPN members' experience developers consider guidance (and DCPs) as mere irritations to be explained away in Statements of Environmental Effects, Design Verification Statements, or whatever other mechanism the State Government makes available to them to provide their spin on how their particular development would be in the public interest.

If DPE and the Government Architect's Office want the Design and Place SEPP to be anything other than a mechanism for the development industry's open slather across NSW, then the DP SEPP, UDG & ADG must have Objectives that have substance that can be applied by the consent authority and Design Criteria that ensure good planning outcomes.

Really, what sort of Objective is "*Projects start with nature, culture and public space*"? A measly eight feel-good words for the all-important first Objective. A developer can say they're planting some scraggly small Bottlebrush as street trees and some scruffy Lomandra in parks (nature), holding a smoking ceremony (culture) and installing a pocket park full of aforementioned scruffy Lomandra (public space) and voila, Objective 1 is met.

Wording for Objective 1 MUST say AT THE VERY LEAST "Projects shall:

a) protect and integrate existing topography and landscape; and

b) conserve and enhance ecological areas and natural and engineered watercourses; and

c) protect Aboriginal heritage; and

d) connect public spaces; and

e) provide an integrated and connected blue and green infrastructure framework; and

f) integrate a high-quality public open space network; and

g) integrate a water cycle management strategy."

It is imperative that all new urban design proposals clearly demonstrate that they meet the Objectives. Any attempt by the development industry to water down to "Guidance" or "Consideration" must not be accepted. If the State Government, DPE and the development industry do not accept comprehensive Objectives, then BPN considers they are NOT serious about providing good urban design outcome, just increased profits for the development industry.

The principles contained in the "Design Guidance" which will otherwise be consistently ignored and/or explained away, must be included in the Objectives if the Design and Place SEPP is to produce good planning outcomes.

# The Urban Design Guide doesn't need to be started again, it just needs some of the best concepts contained therein to be shifted across to the Objectives.

There must be clear definitions in the Glossary of "metropolitan centres" and "regional towns". "Urban area" must be better defined in relation to regional towns. Calling country towns an "urban area", when many of them have small pockets of high densities as well as commercial and industrial land uses, would allow developers to subdivide into 330m<sup>2</sup> lots within 1 km of the town boundary. Ill-defined definitions such as the "urban area" will be yet another loophole for developers to drive their bulldozers through.

#### THE FOLLOWING POINTS SPECIFICALLY RELATE TO OBJECTIVE 3 -

- There must be specific clarification that Sydney's Metropolitan rural lands are excluded from this DP SEPP. Otherwise rapacious developers will be subdividing for half a kilometre (5 minutes walk = half a kilometre) around local centres such as Brooklyn, Kurrajong, Galston, Picton, etc. Likewise, the periphery of Blue Mountains townships such Leura, Wentworth Falls or Blackheath would soon be unrecognisable blights on the local landscape.
- There must be gradations in lot sizes that the UDG is applied to, depending on whether the proposal is for a) Metropolitan Sydney, Newcastle and Wollongong; b) Suburban Sydney, Newcastle and Wollongong; and c) & d) Regional towns depending on population size. There must not be a one-size-fits-all across the whole of NSW. BPN applicable lot size recommendations are as follows
  - a) Metropolitan Sydney, Newcastle and Wollongong: 1 hectare
  - b) Suburban Sydney, Newcastle and Wollongong including greenfield areas: 5ha
  - c) Regional town, population > 20,000: 25 hectares
  - d) Regional town, population < 20,000: 50 hectares
  - e) Regional town, population < 1,000: Urban Design Guide does not apply
- The DP SEPP must not be used as a vehicle to take further planning powers away from local councils. Just because Kur-ring-gai Council and others challenged the Minister's powers to determine the housing targets (densities) of LGAs, it should not be a reason to use the DP SEPP as a de facto blunt instrument to force increases in density right across the whole of NSW.
- There must be gradations in the minimum gross residential densities that the UDG requires. There must not be a one-size-fits-all-developers across the whole of NSW. Current Metro Sydney Lot Size Maps have much bigger average lot sizes than are being proposed. For instance on average Hornsby LGA is 500m<sup>2</sup>, Woollahra is 700m<sup>2</sup>, while regional Wingecarribee is also 700m<sup>2</sup>.
- Metrics that are indecipherable to the average lay person must be avoided in the UDG. Expressing how far the spread of increased density outwards from neighbourhood shops in terms of the time taken to walk, produces ambiguity - is it the time taken by a fit teenager or an elderly resident with a walking frame? Likewise expressing the number of dwellings in terms of gross numbers which doesn't include streets, infrastructure or parks, provides no concept of the size of the blocks required to attain that minimum density.

Ten minutes walk = 1km. 30 dwellings /hectare =  $330m^2$  lots, without streets and public spaces being factored in the calculation. That lot size is far too small for the outskirts of Goulburn, let alone the town of Gulargambone with a population of 400.

• There is a very good reason that Lot Size Maps were developed across the state - they are clear and unambiguous - and the UDG must replicate that for clarity and transparency. Otherwise the true densities will be seen by the community as being sneakily and deviously attained.

- Residential density recommendations must be expressed in lot sizes or in floor space ratios (such as City of Sydney and Parramatta LGAs) and are as follows
  - a) Metropolitan Sydney, Newcastle and Wollongong: LGA Floor Space Ratio or Lot Size maps
  - b) Suburban Sydney, Newcastle and Wollongong including greenfield areas: LGA Lot Size maps
  - c) Regional town, population > 20,000: 700m<sup>2</sup>
  - d) Regional town, population < 20,000: LGA Lot Size map or 700m<sup>2</sup> whichever is greater
  - e) Regional town, population < 1,000: LGA Lot Size map only
- There must be a differentiation in the Urban Design Guide for different residential Land Zones. This is a major flaw in the UDG. For instance, it is far easier to achieve a minimum of 30 dwellings per hectare in an R4 High Density Residential zone than in an R3 Medium Density or R2 Low Density Residential Zone. Therefore developer-led planning proposals would inevitably seek R4 zoning where R3 may be more applicable to the desired local character. BPN applicable zoning density recommendations should be included and are as follows -
  - R1: Determined by LGA Lot Size Map
  - R2: Determined by LGA Lot Size Map
  - R3: 15 dwellings per hectare
  - R4: 30 dwellings per hectare or LGA Floor Space Ratio where available, whichever is greater
- The proposed concept of "mixed and diverse neighbourhoods" is extremely concerning to BPN. As proposed in the Draft, this would not just permit but actively encourage R4 High Density and R3 Medium Density dwellings within the same 1ha site as R2 dwellings. The photo provided in the UDG as an example (below) does nothing to alleviate those concerns, with high density right next to medium and low density housing.



• Local councils know their LGAs best and they are accountable to their community who will toss them out at the next council election if they get the balance wrong between density and amenity.

As stated in our submission for the Draft Design and Place SEPP Explanation of Intended Effects, BPN considers it to be unacceptable for what appears to be a developer-friendly Draft Design and Place SEPP (and the Draft Urban Design Guide which conspicuously WASN'T EXHIBITED as part of the EIE), to override council planning instruments.

## THE FOLLOWING POINTS SPECIFICALLY RELATE TO OBJECTIVE 15 -

 BPN and its member groups are ADAMANTLY OPPOSED to allowing R4 high density and R3 medium density in the same block as R2 low density (UDG excerpt below). The proposal to allow developers that have consolidated multiple lots within one block, to build apartment blocks alongside detached dwellings even if the LGA zoning map does not permit it, is offensive in the extreme. This is one of the worst examples of over-reach by the State Government into local Council Planning that BPN has seen.

> In consolidated sites and higher density development, provide a mix of building types within the block, such as an apartment building on primary roads and maisonettes on side streets or mews.

Provide a mix of housing types and sizes that reflect the future needs of the community, to promote affordability for families and aging in place.

In areas of 15 dwellings per hectare (gross) or greater, aim to achieve fewer than 30 per cent detached dwellings to increase walkability, provide housing diversity, maximise the opportunity for tree canopy and landscaping on lots, and optimise land use.

- Objective 15 will be used by the development industry to plonk unit blocks wherever they wish. Using catch phrases such as "aging in place", "mix of building types", "varied streetscapes" and "sustainable built-form massing" does not disguise this massive change, which would be implemented regardless of Council zoning. Minimising earthworks, vehicle access, overlooking etc will not provide any relief from having unit blocks towering right next to single storey houses.
- Objective 15 is silent on the matter of LGA Height of Building Maps. As R2 low density lots, consolidated or not, usually have a height limit of 8.5 metres, there needs to be some mechanism within the UDG to override height controls as well, otherwise R3 and R4 apartments could not be built. That mechanism occurs in Objective 17 Scale and Massing, where height "responds positively to adjoining buildings", a wonderful euphemism for overriding Height of Buildings maps. The UDG must NOT override the relevant LGA Height of Building Map in Objective 17.

# • OBJECTIVE 15 MUST BE DELETED IN ITS ENTIRITY AND OBJECTIVE 17 AMENDED CONSIDERABLY.

# BPN recommends the following 19 replacement Objectives and Design Criteria:

Objective:	Design Criteria:	Comment:
PROJECT OBJECTIVES	DESIGN CRITERIA	Details within "Design
1. Developments shall:	All seven points in the	Guidance" stay the
a) base design decisions on place	"Assessment Guidance" become	same.
analysis, strategic planning priorities	"Design Criteria"	
and the site's contextual		
opportunities and constraints; and	Include Diagrams	
<ul> <li>b) protect and integrate existing</li> </ul>		
topography and landscape; and		
c) conserve and enhance		

<ul> <li>ecologically sensitive areas and natural and engineered watercourses; and</li> <li>d) protect Aboriginal heritage; and</li> <li>e) connect public spaces; and</li> <li>f) provide an integrated and connected blue and green infrastructure framework; and</li> <li>g) integrate a high-quality public open space network; and</li> <li>h) integrate a water cycle management strategy.</li> </ul>		
<ul> <li>TRANSPORT OBJECTIVES</li> <li>2. Developments shall: <ul> <li>a) align with broader strategic</li> <li>planning, transport strategies and</li> <li>plans; and</li> <li>b) align with existing and planned</li> <li>transport networks; and</li> <li>c) provide a diverse range of</li> <li>transport options; and</li> <li>d) prioritise walking, cycling and</li> <li>public transport in metro areas; and</li> <li>e) locate and integrate development</li> <li>with highly accessible public</li> <li>transport; and</li> <li>f) ensure movement networks</li> <li>consider the existing conditions and</li> <li>environment; and</li> <li>g) provide for efficient movement of</li> <li>goods to minimise the impact on</li> </ul> </li> </ul>	<b>DESIGN CRITERIA</b> a) ensure existing and proposed infrastructure is used efficiently; and b) use a Movement and Place approach to integrate and balance movement and place functions and inform network planning, street hierarchy and street environments within the project. <i>Include Diagrams</i>	Details within "Design Guidance" stay the same.
NEIGHBOURHOOD OBJECTIVES 3. Developments shall: a) optimise land-use efficiency; and b) protect, enhance and support natural systems and agricultural land; and c) ensure urban networks are connected beyond the site; and d) create walkable neighbourhoods that support local living and healthy communities; and e) establish mixed and diverse neighbourhoods (omit the word dense) to limit sprawling and homogenous subdivisions (omit growth); and f) facilitate access and connectivity of sustainable mobility.	<b>DESIGN CRITERIA</b> a) provide a network of centres that supports a compact urban form; and b) ensure key land uses are well- sited and integrated for amenity, safety and productivity; and <i>OMIT - provide mixed and</i> <i>diverse neighbourhoods with high</i> <i>amenity</i> c) connect and integrate urban networks with the broader context and overcome barriers; and d) provide a compact urban footprint that minimises impact on adjacent productive sites. <i>Include Diagrams</i>	Details within "Design Guidance" stay the same with the exception of deletion of "mixed and diverse neighbourhoods". Neighbourhood density minimum dwelling numbers per hectare are far too high for regional areas. Where LGAs have LEP Lot Size Maps, Floor Space Ratio Maps and/or Zoning Maps, these must take precedence over "Neighbourhood density" requirements.

<ul> <li>RISKS OBJECTIVES</li> <li>4. Developments shall: <ul> <li>a) establish an integrated approach</li> <li>to building long-term resilience; and</li> <li>b) consider cumulative place-based</li> <li>risks; and</li> <li>c) ensure land-use planning</li> <li>considers resilience and the risks of</li> <li>vulnerable land; and</li> <li>d) reduce the impacts of hazards</li> <li>such as bushfire, drought, flooding,</li> <li>storm, erosion (including coastal</li> <li>erosion), or contamination, whether</li> <li>natural or human-induced; and</li> <li>e) respond to climate change effects;</li> <li>and</li> <li>g) reduce consumption and</li> <li>depletion of natural resources; and</li> <li>g) integrate the principles of</li> <li>ecologically sustainable</li> <li>development; and</li> <li>h) maximise quality of life and</li> <li>wellbeing; and</li> <li>i) protect ecologically sensitive areas</li> </ul> </li> </ul>	DESIGN CRITERIA a) provide a design for resilience summary; and b) meet the DP SEPP and EP&A Regulation requirements for urban design development, the 'design for resilience' template and the accompanying guidance; and c) have consideration of the Coastal Design Guidelines for NSW; and d) map and protect ecologically sensitive areas; and e) connect ecologically sensitive areas; and f) avoid, minimise, mitigate, address and respond to risks; and g) ensure safety and resilience underpin new and infill communities; and h) protect the natural ecology as a system; and i) incorporate the six principles of	Details within "Design Guidance" stay the same. Change "high ecological value to "ecologically sensitive". Definition of "ecologically sensitive" area must be provided in the Glossary. Include mandatory requirements to protect sensitive ecological areas, maintain wildlife corridors and provide for subdivision patterns and building setbacks suitable for tree planting. Preference to be given to locally endemic native vegetation being
ecological resilience.	biophilic design	planted in common
<ul> <li>WALKABILITY OBJECTIVES</li> <li>5. Developments shall: <ul> <li>a) facilitate local living, grow the</li> <li>local economy and promote</li> <li>walkability; and</li> <li>b) provide centres and nodes that</li> <li>build social resilience; and</li> <li>c) enable a shift away from car use;</li> <li>and</li> <li>d) enable vibrant and productive</li> <li>communities including night-time</li> <li>economies; and</li> <li>e) ensure all homes are within 15 to</li> <li>20 minutes walk of a collection of</li> <li>local shops, primary school, public</li> <li>transport, and a supermarket or</li> <li>grocery store.</li> </ul> </li> </ul>	Include Diagrams <b>DESIGN CRITERIA</b> a) deliver neighbourhoods with a vibrant centre; and b) support the local night-time economy; and c) provide varied, well-integrated entertainment uses. Include Table for "Public open space accessibility" and Diagrams. <b>DESIGN CRITERIA</b>	/public areas.         Details within "Design         Guidance" stay the         same.         The Green space         provisions outlined in         the SEPP must be         mandated.         There must be no         alternate design         solutions for green         space.         DELETE         "ALTERNATIVE         DESIGN         SOLUTIONS" BOX
<ul> <li>6. Developments shall:</li> <li>a) deliver a highly permeable urban environment; and</li> <li>b) maximise accessibility across urban areas; and</li> <li>c) deliver a street and block pattern that is robust and adaptable over time; and</li> <li>d) increase participation in active transport, particularly walking.</li> </ul>	<ul> <li>a) provide a street network with a legible hierarchy; and</li> <li>b) create a fine-grain street</li> <li>layout that facilitates ease of access to key destinations; and</li> <li>c) provide a diversity of block patterns to suit a variety of uses; and</li> <li>d) design urban environments to be adaptable for future change.</li> <li>Include Table for "Walkable block lengths" and Diagrams.</li> </ul>	Guidance" stay the same.

WALKING AND CYCLING	a) provide mid-block	Details within "Design
OBJECTIVES	connections; and	Guidance" stay the
7. Developments shall:	b) through-site links for	same.
a) facilitate active and sustainable	pedestrians are provided no more	
transport modes and increased	than 130m apart within walking	Parking and charging
transport choice (walking and	catchments of key destinations;	stations should be
cycling); and	and	provided for e-bikes at
b) reduce care dependency and	<ul><li>c) provide dedicated footpaths</li></ul>	regular intervals.
support healthy lifestyles; and	on both sides of street	
<ul><li>c) make streets and places</li></ul>	carriageways; and	Separated cycle ways
pedestrian-friendly.	<ul> <li>d) provide fine-grain pedestrian</li> </ul>	should be provided on
	permeability; and	streets where the
	e) provide pedestrian priority and	speed limit exceeds
	amenity; and	40km/hour.
	f) provide low-traffic and slow-	
	traffic streets; and	
	g) integrate safe cycling.	
PARKING OBJECTIVES	DESIGN CRITERIA	Details within "Design
8. Developments shall:	a) Integrate parking into urban	Guidance" stay the
a) provide efficient and effective	form; and	same.
management or parking that will	b) minimise parking, manage	
drivers and pedestrians; and	demand and explore strategies to	
b) onsure parking is integrated with	accommodate new technologies,	
the overall design of a place and	c) consolidate access to parking	
surrounding public spaces: and	and minimise conflicts: and	
c) promote more sustainable	d) screen above-ground parking.	
movement options: and	and	
d) ensure car parking does not	e) make parking adaptable and	
dominate urban centres; and	sustainable.	
e) incorporate new technologies		
such as electric vehicles by ensuring	Include Diagrams	
charging stations are integrated into		
the delivery of new projects.		
LANDSCAPE OBJECTIVES	DESIGN CRITERIA	Details within "Design
<ol><li>Developments shall:</li></ol>	<ul> <li>a) use green and blue</li> </ul>	Guidance" stay the
<ul> <li>address and design for site-</li> </ul>	infrastructure to improve human	same.
specific climatic conditions and	health; and	
ensure places are pleasant, inviting	b) use green and blue	
and memorable (that should	infrastructure to enhance and	
discourage some of the uglier	improve biodiversity;	
developments although ugly can still	c) use nature to mitigate	
be memorable), and	negative impacts and enhance	
b) Support movement, activity and	"delight" is a bit waffly even for	
c) avoid or mitigate negative site	Design Criteria): and	
impacts: and	d) incorporate the six principles	
d) ensure good thermal comfort for	of biophilic design	
all ages: and		
e) optimise the overall health and	Include Diagram	
wellbeing of individuals and	č	
communities; and		
f) achieve adequate amenity and		
human comfort can be achieved; and		
g) include in public open spaces		
features to support human comfort		
and mitigate against negative		
sensory experiences.		

#### TREE CANOPY OBJECTIVES

10. Developments shall:
a) enhance and protect the urban tree canopy in accordance with the mandatory benchmarks stipulated in Objective 10 and accompanying Design Criteria of this UDG; and
b) contribute to the mitigation of the urban heat-island effect; and
c) maximise the amenity and attractiveness of urban environments; and

d) prioritise tree retention over tree replacement; and

e) adhere to mandatory minimum tree canopy targets for all development types; and

f) not offset tree canopy targets for private dwellings against public space tree canopy targets; and g ensure no net loss of tree canopy coverage of the site when existing tree canopy coverage is higher that canopy target; and

h) create more shade and produce cleaner air; and

i) protect soil networks.

a) enhance the urban tree canopy; and
b) support the urban tree canopy with sufficient deep soil to enable trees to survive and thrive; and
c) provide an interconnected soil network: and

**DESIGN CRITERIA** 

d) position trees to allow for maximum canopy growth; and e) ensure a diversity of street types enable tree planting; and f) prioritise retention of existing mature trees, particularly trees with longer safe and useful life expectancy (SULE); and g) prioritise retention of tree species of endangered ecological communities (EECs); and h) new trees to be advanced stock with a minimum of 3m in height, planted in accordance with the provisions of AS2303-2018 Tree Stock for Landscape Use: and

i) tree species to be the largest practical size for the site; and e) trees to be maintained and protected in accordance with AS4970-2009 Protection of Trees on Development Sites; and

 j) preference to be given to locally endemic trees species; and

 k) the specified tree canopy target is to be achieved within 15 years; and

 nandatory tree canopy targets for private open space are in addition to mandatory tree canopy targets for public open space; and

m) conditions of consent shall stipulate a minimum five-year tree maintenance program for new and existing trees following completion of the development; and

n) an AQF Level 5 arborist shall be engaged as the project arborist for the life of the project, incorporating all stages of the development, as detailed in AS 4970-2009, being retained until the end of the post construction maintenance period; and o) automated watering systems shall be installed to ensure trees "Mandatory minimum tree canopy targets" in the Design Criteria to be amended as follows:

\* Street trees can be planted sustainably in 5-12m road reserves. Therefore amend "Street tree canopy targets" for existing and new residential streets to "5-20m reserve".

\* Minimum canopy targets for Residential land and Open Space must not include street trees. As targets for residential and streets are the same, there would be NO tree canopy in private open spaces.

Therefore amend the "Large development tree canopy target" to "Residential zoned land (R1, R2, R3, R4), <u>excluding</u> streets" and keep the target of 40%

Therefore amend the "Large development tree canopy target" to "Open space (RE1), <u>excluding</u> streets", and keep the target of 45%

\* There must be NO alternative design solutions for provision of tree canopy.

Lawns do not provide shade, planter boxes do not mitigate urban heat island effects, green roofs do not protect soil networks, pergolas do not enhance and protect

	are not impacted by prolonged dry spells; and p) where trees do not survive or thrive for five years, they are to be replaced with the same or similar tree species and size; and q) Preliminary Tree Assessment Reports shall be provided by an AQF Level 5 arborist that identifies high and moderate value trees to inform the design process about tree constraints; and r) Arboricultural Impact Assessments by an AQF Level 5 arborist shall be provided in accordance with the provisions of <i>AS 4970-2009</i> . <i>Include "Mandatory minimum tree canopy targets" Tables amended as per comments. Include "Street element" Tables amended as per comments . Include Diagrams.</i>	the existing tree canopy and neither does permeable paving. These design solutions must ONLY be used in Objective 9, not as alternatives for Objective 10. Alternative design solutions for Objective 10 are nothing more than a thinly disguised loophole for developers to drive their tree-removing excavators through and to cram more dwellings onto a site. <u>DELETE</u> "Alternative Design Solutions" section entirely.
WATER OBJECTIVES 11. Developments shall: a) reduce consumption and depletion of natural resources; and b) improve water quality for human health, the environment and the recreational value of our inland and coastal waterways and wetlands; and c) assist in cooling urban environments; and d) retain water in place to support urban tree canopy cover and contribute to reducing the urban heat- island effect; and e) water (particularly run-off and stormwater) is retained onsite or managed within the neighbourhood while allowing sufficient environmental flows into local creek systems; f) preserve and enhance existing watercourses and riparian zones.	<ul> <li><b>DESIGN CRITERIA</b> <ul> <li>a) to ensure the long term</li> <li>viability of local creek systems,</li> <li>onsite water retention must not</li> <li>inhibit sufficient environmental</li> <li>flows into existing watercourses</li> <li>and creek systems; and</li> <li>b) measures are implemented to</li> <li>prevent sediment or</li> <li>contamination from entering</li> <li>watercourses whether existing or</li> <li>man-made; and</li> <li>c) retain existing riparian zones</li> <li>and construct new riparian zones</li> <li>and man-made watercourses;</li> <li>and</li> <li>d) retain as much water in the</li> <li>landscape as possible; and</li> <li>e) use water to contribute to</li> <li>urban cooling; and</li> <li>f) reduce water consumption,</li> <li>reduce stormwater run-off and</li> <li>improve water quality.</li> <li>g) incorporate biophilic design</li> </ul> </li> </ul>	Details within "Design Guidance" stay the same with additional Guidance for extra points raised.
PUBLIC SPACE OBJECTIVES 12. Developments shall: a) create a vital network of high- quality public open space that connects town centres, public transport hubs, and residential areas:	<ul> <li><b>DESIGN CRITERIA</b></li> <li>a) solar access and shading</li> <li>shall be provided for public open</li> <li>space; and</li> <li>b) public open space is to be</li> <li>visible and connected; and</li> </ul>	Details within "Design Guidance" stay the same with the exception that the only acceptable "alternative design solution" must

and b) create a sense of community and encourage interaction and social cohesion; and c) ensure inclusive and equitable provision of public open space; and d) support the needs of the community by providing spaces for outdoor recreation and exercise, play, organised sport, nature and heritage appreciation, socialising, picnicking, walking and informal activities; and e) for all developments covered by this UDG (over 1ha), a minimum of 15% of the net developable land will be delivered as freely accessible public open space, with the majority of this as dedicated RE1-zones land.	<ul> <li>c) public open spaces shall be safe and accessible for all people; and</li> <li>d) landscaping and enhanced tree canopy shall be provided in public open space; and</li> <li>e) sports and active and passive recreation shall be provided for; and</li> <li>f) flexible, adaptable and resilient public open spaces shall be provided; and</li> <li>g) design measures to protect public open space shall be implemented; and</li> <li>h) incorporate the six principles of biophilic design</li> <li><i>Include "Public open space provision" Table, with 5ha amended to 1ha.</i></li> <li><i>Include "Solar access and shading for public open space" Table.</i></li> <li><i>Include Diagrams.</i></li> </ul>	be "The provision of shade can be from natural features or human-made structures. Tree canopy should be encouraged and accepted as a design solution <i>(etc)</i> ". Delete other "alternative design solutions". Public open space criteria must NOT in any way be met by existing open space located outside the development boundary or by inclusion of publicly accessible private open space in the calculation.
STREET OBJECTIVES 13. Developments shall: a) support the safety and amenity of all users and elevate the needs of people and the community; and b) create more attractive, productive and active high streets; and c) deliver streets with more urban amenity and comfort that prioritise space for people; and d) ensure the street design contributes to natural components of urban environments; and e) ensure sufficient 'dwell space' is provided for activities, pedestrians, landscape and buffers in accordance with the local council requirements or as set out in UDG Appendix 4: Street dwell space - whichever is the greater.	DESIGN CRITERIA a) varied street types that respond to the street hierarchy and place qualities shall be provided; and b) comfortable streets that are visually pleasing and designed to encourage social interaction shall be provided; and c) landscaped tree-lined streets that integrate services shall be provided; and d) streets shall be safe, walkable and accessible; and e) streets shall be designed to be active and designed. <i>Include Diagrams 49 to 54.</i>	Details within "Design Guidance" stay the same.
<ul> <li>PUBLIC FACILITIES OBJECTIVES</li> <li>14. Developments shall: <ul> <li>a) provide high-quality public</li> <li>features that support community</li> <li>wellbeing, social cohesion and</li> <li>resilience; and</li> <li>b) provide inviting and well-used</li> <li>public facilities at the heart of</li> <li>neighbourhoods; and</li> </ul> </li> </ul>	<b>DESIGN CRITERIA</b> a) specialist analysis of existing and future demographic needs will be provided in support of the proposal, using best practice benchmarks, relevant local council strategies and guidance; and b) public facilities shall meet the	Details within "Design Guidance" stay the same.

<ul> <li>c) ensure the long-term sustainability of public facilities; and</li> <li>d) meet the needs of the existing and proposed community; and</li> <li>e) co-locate public facilities with complementary uses; and</li> <li>f) have direct and active interfaces with the public realm.</li> </ul>	needs of the community; and c) public facilities shall be connected and safe; and d) public facilities shall activate the public realm; and e) public facilities shall be visible civic spaces. <i>Include Diagrams 55 to 56.</i>	
LOT LAYOUT OBJECTIVES 15. BPN DOES NOT SUPPORT THIS OBJECTIVE AT ALL. DELETE IN ITS ENTIRETY. See comments under Objective 15 in the text above this Table	DELETE THIS OBJECTIVE NO. 15	DELETE THIS OBJECTIVE NO. 15
HERITAGE OBJECTIVES 16. Developments shall: a) ensure heritage buildings, Aboriginal heritage, cultural landscapes and places of cultural value are preserved; and b) where necessary for cultural, environmental or social reasons, heritage buildings that are no longer in use may be considered for adaptive re-use; and c) ensure that the historical, cultural or aesthetic values of heritage items are not negatively impacted by adaptive re-use; and d) historical street patterns are preserved and re-instated.	DESIGN CRITERIA a) internal and external heritage elements of heritage buildings shall be retained; and b) all works shall be compatible with and complement the heritage significance of the item; and c) restoration and/or adaptive re- use shall not negatively impact on the historical, cultural or aesthetic values of a heritage item; and d) historic curtilages of heritage items shall be preserved; and e) interpretative signage will not be considered as an acceptable replacement for heritage buildings being demolished; f) developments shall be sympathetic to existing natural and build heritage values; and g) where natural, built or aboriginal heritage or cultural landscapes items have local and/or state heritage listings, appropriate independent Heritage Assessments must be provided; and h) where identified as appropriate by independent Heritage Assessments, heritage listing is to be sought; and i) economic considerations are not to be used to justify demolition of heritage items; and j) make good orders shall be applied where vandalism or neglect of a heritage item has occurred. <i>Include Diagrams</i>	This was one of the shortest Objectives in the UDG. That is indicative of the low significance put on heritage items by the State Government. THIS OBJECTIVE AND THE DESIGN CRITERIA MUST BE EXPANDED

SCALE AND MASSING	DESIGN CRITERIA	THIS OBJECTIVE
OBJECTIVES	a) built form layout shall respond	AND DESIGN
17. Developments shall:	to natural and built conditions of	<b>CRITERIA MUST NOT</b>
a) ensure built elements are	the place to maximise amenity;	OVERRIDE LGA
consistent with the wider local urban	and	HEIGHT OF
form; and	b) built form (scale, height and	BUILDINGS MAP.
b) ensure appropriate transitions at	massing) shall provide transitions	
the interface of different zones in	at the interface of different zones	Details within "Design
accordance with the relevant LGA	in accordance with the relevant	Guidance" stay the
Land Zoning Map; and	LGA Land Zoning Map ; and	same with the
c) be consistent with or	c) built form shall consider	exception of the
conditions datum lines and	d) massing boight and sotbacks	Tonowing.
materials: and	shall be appropriate for adjacent	* Delete complete
d) ensure the scale massing and	nublic space: and	sentence in 17.3 "For
height of new development is	e) positive climatic conditions	example, street walls
consistent with or complementary to	shall be created through layout.	of a maximum of 4 to 6
adjoining buildings, the topography,	siting and appropriate built form;	storeys overlooking
views, vistas and landmarks to	and	public open space
reinforce a coherent local identity;	f) site coverage shall provide a	<i>(etc)</i> ". It is not
and	balance of indoor and outdoor	appropriate to have 6
e) ensure adequate amenity and	space; and	storey apartments
human comfort is maintained for local	g) built form shall use materials	directly adjacent to and
public space; and	that are appropriate for the local	overlooking parks,
f) materials and detailing respond to	area and will reduce urban heat;	particularly where
the local character of adjacent	and	there is childrens' play
streetscapes and parks; and	h) relevant LGA Height of	equipment.
g) setbacks are consistent with local	Buildings Maps take precedence	* Delete pertial
LGA controls and deep soll, and	over this Objective.	Delete partial
n) have appropriate orientation,	Evoludo Diagram 62	sentence in 17.4
articulation of built form elements	Exclude Diagram 62	or variation in
	Include Diagrams 63 & 64	orientation and
		setbacks"
		* Fither delete entirely
		"The scale, massing
		and height of new
		development responds
		positively (etc) or
		amend to wording in
		Objective 17 in this
		submission.
	DESIGN CRITERIA	Details within "Design
18. The Development shall:	a) public-private interfaces shall	Guidance" stay the
a) deliver built form that encourages	be designed to support the public	same.
and complements public life at the	h) built form shall be veried and	Amonity standards that
b) deliver a safe and lively public	articulated: and	Amenity stanuarus that
realm for the community; and	c) frontages shall be active: and	including hoarding and
c) increase the quality of people's	d) services and infrastructure	student housing and
lived experience of urban places, and	shall be integrated and	medium density
d) ensure built form frontages to	e) impacts of material choices	housing should be
main streets, neighbourhood centres	shall be properly considered.	included.
and public open spaces are fine grain		
and provide active frontages: and	Include Diagrams	
e) incorporate materials that make a	č	

positive contribution to the public realm.		
RESOURCES, EMISSIONS & ENERGY OBJECTIVES 19. Developments shall: a) use resources efficiently, reduce embodied emissions and consider onsite energy production; and b) reduce energy consumption and depletion of natural resources; and c) embody sustainable development; and d) embody and deliver technologies and smart solutions that enrich daily living and make it more sustainable; and e) adhere to emissions targets and provide onsite renewable energy equivalent to a minimum of 20% of the annual electrical energy demand of the development; and f) ensure smart technologies and infrastructure are integrated into the development.	DESIGN CRITERIA a) energy consumption shall be reduced; and b) renewable energy shall be generated onsite; and c) net zero emissions shall be delivered by the development; and d) embodied carbon in materials shall be minimised; and e) smart technologies and solutions shall be integrated. <i>Include Diagram</i>	Details within "Design Guidance" stay the same. In order to deliver net zero emissions the development must be clearly able to demonstrate that it meets the necessary criteria in relation to embodied carbon emissions, ongoing emissions and technologies. These criteria must be mandatory.

# SUSTAINABILITY IN BUILDINGS AND BASIX

The Design and Place SEPP is a critically important opportunity to make a significant contribution to Australia doing its fair global share of mitigating dangerous global heating by reducing emissions from buildings. This is important because buildings account for about 25% of Australia's emissions arising from electricity and gas use and embodied carbon in building materials.

## RECOMMENDATIONS

1. The SEPP should not just recommend, but require urgent minimisation of energy use and greenhouse gas emissions, maximisation of energy efficiency and provision of essential energy needs with renewables.

2. As the desired life of new buildings is beyond 2050 with its net zero emissions target as set by the Federal and NSW governments, and way beyond the net zero by 2035 fair global contribution target set by the Climate Council, the SEPP should not just recommend, but require all new buildings (residential and non-residential) to be designed to achieve net zero emissions immediately and all existing buildings to be retrofitted to achieve the same by 2035. The evidence is clear, that this is cost effective in the medium term and immediately if externality costs of global warming are included. These costs include Australian fossil fuel subsidies worth about \$10 billion each year, exacerbated extreme weather damage, and increased health care impacts and loss of life arising from these factors.

3. There needs to be a ban on the use of gas in new residential and non-residential buildings, as methane leakage from pipes and at the point of ignition contribute to a greater serious greenhouse gas emissions problem through the whole gas extraction and delivery system. Complete electrification is essential as methane is scientifically recognised as having about 84 times worse greenhouse gas impact than CO2 over the next critical 20 years for serious climate action. Accordingly, the SEPP must be amended to recognise gas as a high emissions form of energy due to the well established problem of "fugitive" methane emissions. In home leakage also presents an unnecessary health hazard.

4. The Design and Place SEPP must not be voluntary, but be prescriptive in consistently requiring raised sustainability standards with associated metrics across the building sector. Key performance metrics should be included in the SEPP itself and strong linking language should give force to metrics in the proposed associated guidance documents.

5. Contrary to the stated aim of achieving "certainty", the proposed 'principles-based' approach raises flexibility in interpretation and thus uncertainty around effectiveness and enforceability. This approach is thus opposed, as is the concept of inadequately defined "alternative pathways", but if this flexibility provisions recommendation is rejected. anv must include clear. legally defensible mechanisms that reject poor performance. Inclusion of any alternative pathways should also be qualified by the need to ensure that these can be demonstrated to be beneficial to residents and the wider community, possibly as confirmed by the local Council or an independent design review panel.

6. Standard requirements must allow for review every few years to be consistent with updated scientific evidence so as to adequately mitigate and adapt to increased global warming inertia arising from climate change.

7. The NSW Government should show leadership by exceeding the planned inadequate 2022 updates to environmental performance standards in the National Construction Code, which were scrutinised by a climate change sceptical federal government.

8. Rather than legislation requiring "consideration", this must include mandatory "performance standards" and avoid voluntary "performance targets", so that it reads for example "All new homes and all other developments **must** meet or preferably exceed the performance standards and relevant targets of BASIX".

9. "Mandatory consideration" of Emissions and Resource Efficiency must be "mandatory requirements" and must also apply to precincts and all other development.

10. Competing provisions in BASIX targets, other environmental planning instruments or DCPs should rather be allowed to exceed the current policy position highest standards if they are designed to provide better environmental outcomes.

11. Sustainability targets for environmental performance, including those currently embedded in the online BASIX tool should be converted to mandatory quantitative requirements.

12. The SEPP's applicability should be for all development including alterations and additions that exceed a value of say \$20,000 (not the current \$50,000) and for the installation of a pool or spa of more than say 20,000 litres (not more than 40,000 litres).

13. Although the reference for non-residential development to meet or exceed relevant NABERS targets, including for emissions reductions by 2030, 2040 and 2050 sounds worthwhile, these "targets" should be improved and made a mandatory minimum rather than "where possible". This is essential as the "zero net emissions by 2050 target" is assessed by the United Nations Intergovernmental Panel on Climate Change to give an unacceptably high 33% chance of exceeding a dangerous runaway 2℃ of global warming.

14. BPN supports the elimination of the use of "thermal comfort" as it is too subjective and prefers the measurable use of "thermal performance".

15. Newly proposed measures for BASIX performance assessment and compliance must be designed to result in better measurable local outcomes and sufficient funding provided to Councils to do this with expert assessors and compliance officers.

16. BPN recommends that the proposed move away from BASIX must not be done despite so-called "consultation" until proper consultation and analysis has been done on alternative "flexible" pathways, and only after the work in relation to these alternatives has been completed, such as in relation to the Sandbox Toolkit, and then further public submissions sought.

17. BPN also expresses its concerns among others, about the so-called "independent pathway outside BASIX using a "suitably qualified ... accredited assessor" instead of an expert BASIX assessment. Our members' experiences with so-called "independent" private certifiers has left us extremely wary of any such new experiment.

18. The current BASIX process for energy and water benchmarking should be continued and improved, rather than transferring it to the weaker national standard of NatHERS, which has no BASIX equivalent water use requirement planned and should be proposing at least 8 star energy efficiency rating with on-site renewables requirements.

19. The new SEPP should include enforceable standards for stormwater retention and Water Sensitive Urban Design in all developments.

20. There are many other design features that should be required or at least recommended in all new developments such as green vegetated roofs and walls, as in Biophilic Design rather than all too frequent heat absorbing dark coloured tile roofs and unshaded walls. However green roofs and walls must not be used as an offset for other vegetation or tree canopy cover.

21. The SEPP should include increased BASIX water standards and we suggested the need for a review of the effectiveness of the SEPP in say two years.

22. Recognition of embodied carbon and setting a pathway to regulation is also important. This should include comprehensive and transparent reporting frameworks that show emissions from building materials, such as steel and cement, and prepare industry for future decarbonisation.

23. Electric vehicle fast charging points in all new car parking stations, frequent kerbside charging points and electric vehicle ready buildings are important to be mandated, as well as cycling infrastructure.

24. Maximum mature tree retention, canopy cover, planting and green space requirements are referred to elsewhere in this submission, but should preference diverse locally endemic native planting and drought tolerant plants where appropriate.

25. Buildings need to be urban heat ready for future increasing heat stress.

26. Building standards must be updated with best available future climate projections, drawing on the recently updated NSW Government NARCLiM climate modelling.

27. It is good that the Cost Benefit Analysis section notes a cost savings over time, but should acknowledge that earlier more significant savings will result from reduced energy and emissions, if the cost impact on more frequent and extreme weather events and health impacts including from extreme heat in Western Sydney & W NSW is factored in as a saving. This consideration would result in small apartment buildings up to 5 storeys NOT being excluded from the increased BASIX standards for thermal performance and energy.

## **DESIGN VERIFICATION STATEMENT**

BPN agrees with the proposed amendments to the EP and A Regulation to require a Design Verification Statement for urban design and development. We are concerned however with the discretionary approach which we consider will result in non-compliance and/or litigation around definitions. We have concerns with the thresholds imposed by the SEPP for design review and consider that Part 4 Clause 34(2) should be removed.

As raised in previous submissions, BPN maintains that the only truly independent review can be made by a consultant that is not directly engaged by the developer. We believe that a rotating panel of expert reviewers will provide the only truly independent review that the community can have confidence in.

# **DESIGN REVIEW PANELS**

BPN is supportive of the adoption of Design Review Panels on the basis they are provided with clear terms of reference and mandatory minimum quantitative standard around the objectives as outlined in the above table. Where a local LEP and DCP extends the minimum requirements in accordance with the objectives, these should take precedence.

Appointees to the panel must be qualified and experienced practitioners in architecture, landscape and/or urban design to ensure that developments can be properly interrogated and tested against the relevant Objectives and Design Criteria.

The Design Review Panel should not be regarded as simply advisory. Sign off by the Panel must be obtained prior to the assessment of the proposal by the consent authority and the Panel's assessment that the development satisfies the objectives of the SEPP should be a mandatory requirement to consent.

#### **Claire Krelle**

noreply@feedback.planningportal.nsw.gov.au	
Monday, 28 February 2022 1:41 PM	
PDPS DRDE Design and Place SEPP Mailbox	
DPE PS ePlanning Exhibitions Mailbox	
Webform submission from: The Design and Place SEPP 2021	
submission-on-the-draft-design-and-place-sepp-feb-2022.pdf	

Submitted on Mon, 28/02/2022 - 13:40

Submitted by: Anonymous

Submitted values are:

**Submission Type** I am submitting on behalf of my organisation

# Name

First name Sean

Last name Macken

I would like my submission to remain confidential No

# Info

Email sean@seanmacken.com.au

Suburb/Town & Postcode NEWTOWN

Please provide your view on the project I am just providing comments

Submission file submission-on-the-draft-design-and-place-sepp-feb-2022.pdf

Submission Submission from the Committee for Sydney.

I agree to the above statement Yes



# **Draft Design and Place SEPP**

Submission from the Committee for Sydney

# February 2022

About the Committee for Sydney

The Committee for Sydney is an independent think tank and champion for the whole of Sydney, providing thought leadership beyond the electoral cycle. We bring people together to solve the problems of today and tomorrow.

With over 150 member organisations, we work on behalf of Sydney, not the interest of any industry or sector. Our goal is to build on our already strong history of shining a light on critical issues shaping our city and developing a suite of actions for a better future.

# Introduction

Since its inception, The Committee for Sydney has championed the need to lift the quality urban design in Sydney. In 2016, we released **Making Great Places: Density Done Well** (<u>Link</u>) which outlined how and why our planning system was not delivering the quality of places and neighbourhoods our city deserved. We argued that our system was too focussed on the shape and placement of buildings and structures and neglecting the much more important spaces between the buildings - the streets, parks, and footpaths. The places where the life of the city really happens.

We followed this up with a series of Papers focusing on how to improve place making in our town centres <u>Link</u>, neglected or struggling places like Parramatta Road (<u>Link</u>) and Kings Cross <u>Link</u>, or our critically important, High Streets <u>Link</u>.

In each of these Paper, and in numerous submissions, the Committee and our members have called for the planning system to broaden its focus away from being about rules for buildings, to a performance-based system which focuses on outcomes and the creation of great places.

Elevating the role of design in our planning processes should not adversely impact on or contradict the other priorities our system needs to deliver - orderly economic growth, housing our citizens and protecting our environment. In fact, improving the quality of design should improve the planning system's capacity to meet the competing needs of industry and society. We can walk and chew gum at the same time.

Well-designed places can accommodate greater density of housing - improving supply and in places where more people want to live. They can accommodate and grow a greater diversity of economic activities and supporting job creation. And good design can support our precious natural systems and protect our environment.

The Design and Place SEPP is a significant effort to us because we see the need to deliver better design and place outcomes as being critical in maintaining the social licence for growth. One of the biggest drivers of anti-development sentiment in Sydney, is that the promise of new development is not always matched by the final lived experience. We need more housing and to accommodate economic growth, but we also need to ensure the new places and neighbourhoods we are building are successful. The goal is not just new buildings, but complete neighbourhoods. Good design can help deliver them.

We support the goals behind the Design and Place SEPP. The Committee has been represented by our members on the numerous working groups to refine the package and to resolve some early concerns we had with its operation and implementation. While we understand that it will continue to be refined, we urge Government to continue the work of improving the quality of new development in NSW.

## BASIX

The revised and updated Building Sustainable Index (BASIX) is welcome. We support its expansion to cover non-residential development as a crucial step towards improving the sustainability of our metropolis.

We particularly welcome the creation of an alternative merit assessment pathway to achieve NSW's sustainability requirements. Advances and technologies to reduce our environmental footprint are emerging every day and having a mechanism for their early adoption resolves the biggest criticisms of BASIX in the past.

Introducing a new requirement for embodied carbon emissions to be a material consideration in a sustainability assessment is supported, though implementation may need to allow time for the building and materials industry to adapt. We also believe there are possibly better policy tools to deliver this objective which should also be considered, such as a market price on carbon or through industry regulatory controls.

#### Apartment Design Guide (ADG)

We agree that the ADG can be improved, and we like a lot of what we see in the latest draft -updating requirements for tree planting in deep soil, bike parking, for example. Allowing alternative solutions to the ADG which responds to local conditions is overdue.

We do remain concerned that draft ADG is still overly prescriptive. We believe further work and amendment may be required before it is adopted.

## Urban Design Guide (UDG)

The amendments made to the re-exhibited UDG have gone a long way to address our members earlier concerns. The Principles and Objectives are clear and should establish from the outset what new development and placemaking should be seeking to achieve. Providing the option to propose alternative design solutions to achieve the objectives will help drive innovation and creativity across the design and construction industry.

We think the UDG can be a way to streamline the planning process by providing greater clarity for LGAs and developers, while at the same time delivering better outcomes.

# Conclusion

The Committee is pleased to have been able to participate in the development of these policy reforms. We hope that Government will continue to develop them and drive change. There is an opportunity here to clarify the rules and make the planning system work better for everyone. Importantly, by amalgamating them under a single, over-arching framework, and in a single document will remove the many duplications and inconsistencies which has made development in NSW complex, time consuming and expensive. It should also serve to make the planning and development process more accessible for the lay person, helping to restore the communities trust and confidence in the system.

#### **Claire Krelle**

From:	noreply@feedback.planningportal.nsw.gov.au	
Sent:	Monday, 28 February 2022 2:59 PM	
То:	PDPS DRDE Design and Place SEPP Mailbox	
Cc:	DPE PS ePlanning Exhibitions Mailbox	
Subject:	Webform submission from: The Design and Place SEPP 2021	
Attachments:	chia-nsw-submissiondesign-and-place-sepp-and-higher-basix- standards_feb2022.pdf	

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Submitted by: Anonymous

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**Submission Type** I am submitting on behalf of my organisation

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Submission file chia-nsw-submission---design-and-place-sepp-and-higher-basix-standards\_feb2022.pdf

**Submission** Please refer to attached submission from Community Housing Industry Association NSW.

I agree to the above statement Yes

Community Housing Industry Association NSW

Submission on the draft Design and Place SEPP and supporting documents

February 2022



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# About this submission

The Community Housing Industry Association NSW (CHIA NSW) welcomes the opportunity to provide a submission on the draft Design and Place State Environmental Planning Policy (DP SEPP) and associated policy framework. This submission provides a consolidated set of responses relating to the exhibition package, including:

- Draft Design and Place SEPP 2021 (DP SEPP)
- Draft Urban Design Guide (UDG)
- Revised Apartment Design Guide (ADG)
- Proposed higher BASIX standards
- Proposed changes to the Environmental Planning and Assessment Regulation (DP Regulation)

This submission has been informed by engagement with community housing providers. CHIA NSW has also been assisted by Stanton Dahl Architects, who undertook a critical analysis of the revised ADG. Further details of this engagement and review process are outlined in Attachment 1.

Although CHIA NSW is broadly supportive of the aims of the draft DP SEPP, it is concerning that certain aspects of the proposals will impose additional barriers on community housing development. This submission outlines changes needed to the DP SEPP and supporting documents to better balance design outcomes with other important outcomes, including the critical need for more social and affordable housing to ensure people are not forced to remain in substandard housing.

CHIA NSW welcomes the opportunity to discuss our feedback and recommendations with the Department of Planning and Environment (DPE) in more detail.

# About CHIA NSW and community housing providers

CHIA NSW is the peak body representing 94 registered, not-for-profit community housing providers (CHPs) in NSW. Our members currently own or manage more than 51,000 homes across NSW for individuals and families who cannot afford to rent or purchase a home on the private market. Since 2012, CHPs have delivered more than 4,400 new affordable homes across NSW, representing an investment of over \$1.6 billion. This new development activity encompasses a range of development types, including townhouses, terraces, apartments, boarding houses and seniors housing.

CHPs are committed to delivering well-designed developments that foster sustainable and mixed communities. Priorities for CHIA NSW and its members include:

- Reducing complexity in the planning policy framework and streamlining approvals pathways.
- Improving outcomes for tenants by delivering good quality housing that is comfortable and safe during extreme weather and affordable to operate.
- Improving opportunities for tenants by focusing on place-making that connects people to transport, services, and employment and education opportunities.
- Design requirements which are feasible and do not impose additional costs on the delivery of much needed social and affordable housing.

Sustained investment in social and affordable rental housing is critical to tackling the housing affordability crisis in NSW, noting that the COVID-19 pandemic has not eased affordability pressures for vulnerable households. Pre-COVID, modelling undertaken by the University of NSW (on behalf of CHIA NSW) showed that, across NSW, an additional 317,000 social and affordable rental housing properties are needed by 2036 to meet current and future demand<sup>1</sup>.

<sup>&</sup>lt;sup>1</sup> L. Troy, R. van den Nouwelant and B. Randolph (2019) *Estimating need and costs of social and affordable housing delivery*, City Futures Research Centre, University of NSW, Sydney.

# Part 1 - Key comments on the draft SEPP framework

## Recognising good design outcomes include affordable housing outcomes

CHIA NSW broadly supports the overarching aims of the draft DP SEPP and its five design principles. The delivery of social and affordable housing is critical to supporting productive and connected places that enable communities to thrive. Rightfully, the draft DP SEPP identifies affordable neighbourhoods as an essential component of good design.

CHIA NSW welcomes inclusion in the draft DP SEPP of a requirement for consent authorities to consider whether residential development contributes to local housing needs (Section 18: Design consideration – vibrant and affordable neighbourhoods). This requirement needs to explicitly extend to consideration of whether proposals contribute to meeting *affordable* housing needs.

CHIA NSW makes the following recommendations for how the draft DP SEPP and supporting documents can be strengthened to better recognise and support affordable housing delivery as part of good design outcomes:

- Amend section 18(b) of the draft DP SEPP to require consideration of whether development contributes to meeting local affordable housing needs.
- Include a requirement in the UDG requiring affordable housing needs to be considered early, as
  part of the planning and design of large sites. This needs to include consideration of the specific
  mechanisms that will be used to support affordable housing delivery such as mandatory zoning
  requirements or other planning incentives. Design controls also need to be tested, as they are
  being established, to ensure they support the feasibility of new affordable housing.
- Within the revised ADG, or a unified housing design guide, include guidance on the design of mixed-tenure development. This should draw on research<sup>2</sup> and best practice on the design of 'tenure-blind' developments. Early decisions about management and maintenance and the apportionment of responsibilities are critical to the success of mixed tenure schemes. This will require the involvement of CHPs early in the design process.

## Getting the balance right

CHIA NSW is concerned that aspects of the proposals impose additional barriers to delivering new social and affordable housing. This runs counter to the aim of achieving affordable neighbourhoods that contribute to local housing needs. The delivery of fewer affordable homes will also mean more people are forced to remain in substandard housing, or, at worst, experience homelessness.

CHIA NSW's concerns include:

- Additional or increased design requirements which, if applied rigidly, would increase upfront and ongoing costs for CHPs and/or reduce dwelling yield. These include requirements relating to building heights, landscaping, bike parking, electric vehicles, lift capacity, storage, shading control, and natural ventilation.
- A lack of flexibility to enable community housing schemes to be tailored to specific housing needs. This includes requirements governing apartment sizes, car and bike parking, and communal spaces.
- A significant increase in specialist reports and documentation needing to be submitted with

<sup>&</sup>lt;sup>2</sup> Stubbs, J, Storer, J, Lux, C, Storer, T, and Ireland, L (2017) Best Practice in Multi-Tenure Development. Judith Stubbs & Associates <u>http://communityhousing.org.au/wp-content/uploads/2018/07/SUMMARY-MULTI-TENURE-REPORT-170703.pdf</u>

applications. In addition to the extra costs and complexity for applicants, and potential delays in the planning process, this will create a burden for consent authorities who will be required to review the extra documentation.

• Additional steps and matters for consideration in the development application process that will reduce efficiency and lengthen approval timeframes.

While well-intentioned, the proposed changes to design requirements need to be carefully balanced with the real and pressing need to increase the supply of genuinely affordable housing. This is especially critical at a time when the cost of land and building materials are rising alongside increases to operating costs, such as insurance premiums.

While DPE have asserted that the proposals will only have a marginal impact on development costs, the detailed testing that informed the Cost Benefit Analysis (CBA) of the proposals has not been released. CHIA NSW is concerned that the testing has not considered the particular development parameters of not-for-profit community housing development.

#### The community housing development context

CHPs retain most of their housing stock for the long-term. As not-for-profit organisations delivering lower-cost housing, designing developments that are cost-effective is an integral component of a CHP's financial viability. CHPs do not receive a market return from the housing they build. They typically have an operating margin of 2-3%, which is primarily comprised of rental revenue received from tenants on very low to moderate incomes. Most tenants will contribute 25%-30% of their income towards rent. CHPs have limited scope to increase the rents they charge to cover additional construction or operating costs.

Furthermore, outside Metropolitan Sydney, CHPs have identified additional cost burdens associated with getting workers and materials to regional and remote areas. It is not clear if this has been accounted for in the CBA, which only tested a small number of case study locations and appears to have focused on the Greater Sydney context.

The rental revenue that CHPs receive is not sufficient to cover the costs of delivering new affordable housing. CHPs rely on public subsidy, grant, planning concessions and access to discounted land to cover the funding gap and make new affordable housing schemes feasible. As such, community housing developments are very sensitive to increases in development costs.

Additional design and construction costs imposed on CHPs through the new policy reforms will increase the public subsidy needed to make schemes feasible and/or or reduce the amount of social and affordable housing that can be delivered.

Community housing schemes also have design requirements which differ from private housing. Social and affordable housing developments are often built to respond to identified gaps in provision with a specific tenant profile in mind. A key focus is on innovative design that delivers comfortable and secure homes, which require less maintenance, and deliver cost savings to their tenants. This means that design requirements intended for private housing are not always a good fit for community housing schemes.

Furthermore, the challenges CHPs face in acquiring development sites means the land they are able to access can be more constrained than the sites for-profit developers are able to acquire. This will make it more challenging to achieve generic design requirements.

#### Improving flexibility

In this regard, a flexible policy framework is critical to ensuring CHPs are strongly positioned to continue building fit-for-purpose social and affordable housing. Although CHIA NSW supports the

move towards a more principle-based approach that focuses on the delivery of outcomes, several aspects of the proposals do not sufficiently support such an approach. These include:

• The language used in the draft DP SEPP is stronger than under SEPP 65 – Design Quality of Residential Apartment Development. Whereas SEPP 65 requires consent authorities to "take into consideration" the design principles and ADG, the draft DP SEPP prevents consent authorities approving a development unless they are "satisfied that development is consistent with" the design principles and "meets the objectives of" the ADG. This stronger wording doesn't allow for consent authorities to apply the DP SEPP flexibly, and risks developments being refused if they achieve anything less than 100% compliance with the design principles and considerations.

There will be instances where achieving all the design considerations in full is not possible, or where achieving one design outcome may conflict with others – for example, on heritage sites or where the delivery of affordable housing could be maximised with some design concessions. Proposals need to be assessed on their merits.

- The wording of the draft DP SEPP also appears to give more weight to the design considerations relating to public spaces, resilience, and diverse land uses. For these, consent authorities "must be satisfied" each requirement is achieved. Whereas for the remaining design considerations, consent authorities appear to have more discretion in how they are assessed.
- The DP SEPP must deliver sufficient flexibility to enable the UDG and ADG to be used for guidance only. The DP SEPP needs to be clearer on the distinction between Design Criteria and Design Guidance. While the wording of the revised ADG implies that Design Guidance has a lower weight than Design Criteria, this is not reflected in the wording of the draft DP SEPP. To demonstrate compliance with the ADG, section 30(2) of the draft DP SEPP requires <u>both</u> the design criteria and design guidance in the ADG to be met in order to demonstrate compliance with the ADG objectives. Furthermore, while design criteria are required to be applied to 'the extent possible', a similar qualifier is not applied to design guidance. This implies the design guidance should be implemented prescriptively. CHPs' experience is that guidance can be applied rigidly by consent authorities even though it is not intended as a mandatory requirement. The DP SEPP needs to ensure this does not occur.
- The revised ADG incorporates certain concessions for development delivered through the Housing SEPP. Principally, these allow some flexibility with respect to apartment mix, layout, private open space, and storage. While welcomed, these concessions only apply to a limited range of matters. The circumstances in which they apply is also not clear. Currently, the Housing SEPP only requires build-to-rent housing to be considered flexibly against the ADG. It does not contain similar provisions for in-fill affordable housing. In some cases, the design requirements imposed by the Housing SEPP are more onerous than those in the ADG – for example, the landscaping requirements at section 18(2)(b) of the Housing SEPP. The DP SEPP and ADG need to support increased flexibility for all community housing development.

#### CHIA NSW recommends:

- Amending section 13 of the draft DP SEPP to make it clear that the design principles and considerations must be applied flexibly, to the extent possible. Consent authorities must be required to take into consideration site constraints and the broader merits of a proposal.
- Amending section 30(1) to read: "In determining a development application for residential apartment development, a consent authority must consider whether development meets the

objectives of the Apartment Design Guide."

- Amending section 30(2) of the draft DP SEPP to make it clear that the Design Guidance are not mandatory requirements and should be applied reasonably by consent authorities. While the introduction of alternative design solutions is welcomed, section 30(2)(b) also needs to be amended to require alternative design solutions to be assessed for general consistency with the ADG objectives, rather than against the design criteria and guidance.
- Amending the Housing SEPP, and/or the wording of the ADG, to extend design concessions to all affordable housing delivered by not-for-profit social housing providers. When applying the ADG to community housing schemes, consent authorities must consider:
  - The nature of affordable housing need in the local area and the needs of residents intended to be housed.
  - The need to support the feasibility of fit-for-purpose affordable rental housing, recognising the funding gap that exists.
- CHIA NSW strongly recommends revising the Housing SEPP so that design requirements for in-fill affordable housing are not more onerous than those outlined in the revised ADG.
- The ADG should provide additional guidance on the circumstances where alternative design solutions may be warranted and include examples of alternative approaches.

#### **Design review reforms**

CHIA NSW supports measures to bring robustness and consistency to design review and ensure that it is better integrated with the development assessment process. Despite proposals being fully compliant with planning requirements, CHPs have experienced protracted approvals processes, including delays that have resulted from inefficient design review processes. Unnecessary delays in the application process have increased costs, created project viability risks, and delayed project delivery.

CHIA NSW supports a design review process modelled on the Government Architect NSW's State Design Review Panel. Our members have found it to be a significantly faster process and cost less than processes implemented by some councils. The process was collaborative, and feedback was immediate and enabled an upfront conversation around trade-offs. The changes that were requested as a result of the process were meaningful and improved development outcomes.

CHIA NSW agrees that design review is most effective when it occurs early in the development process. However, CHIA NSW is concerned by guidance in the Draft Local Government Design Review Panel Manual (DR Manual) that provides scope for panels to request to review proposals on multiple occasions before a DA is lodged. This would add to the costs and design work required at a time when there is least certainty as to the outcomes of the assessment process. If panel meetings are not frequent enough, this would also add considerable delays to the planning process.

CHIA NSW is further concerned that the DR Manual also provides scope for councils to request additional panel sessions after lodgement of a DA. This includes the potential for referral to panels post-determination of a DA – it is not clear what the scope of such a review would be. This is contrary to the purpose of the reforms, creates uncertainty, and increases the cost and administrative burdens on both applicant and consent authorities.

Given the potential additional costs, documentation, and time that the process entails, CHIA NSW recommends a threshold is implemented so that only larger, more complex developments are required to go through design review. For example, CHIA NSW questions the need for apartment developments as small as three storeys and four dwellings to go through the process, as is currently

proposed. A CIV threshold of \$30m could be used instead, which is consistent with the threshold proposed for other types of development.

CHIA NSW is disappointed that the proposals do not include a review of local council architectural design competition processes. The requirements for competitive processes vary across councils. In some areas, even moderate scale development such as medium rise housing can be subject to a design competition. While CHPs are committed to delivering design excellence, the experience of our members is that competitive design processes add considerable costs and delays to the development process. These processes do not necessarily achieve better outcomes than architect-designed schemes that are subjected to review by a design review panel – particularly for more routine development typologies, such as apartments.

Competitive design processes should be limited to key sites and major projects of state or regional significance. At the very least, a scaled-down, streamlined process should be piloted for more routine developments, such as medium-rise affordable housing schemes.

CHIA NSW recommends:

- Amending the draft DP SEPP/DP Regulation to only require larger, more complex apartment developments, with a CIV over \$30m, to go through a design review process. This will support the delivery of smaller community housing schemes and reduce the administrative burden on councils.
- Clear parameters are established to avoid proposals being stuck in an endless cycle of design review throughout the assessment process. Applicants should be able to revise proposals to address panel advice without having to refer proposals back again, particularly for less complex applications. Referral to panels post lodgement of DAs should only be required in exceptional circumstances. Panels must also be operated in a way that ensures sufficient availability and timeliness of design review meetings.
- Local design excellence processes are reviewed to bring consistency in practice across councils.

#### **Changes to BASIX standards and related proposals**

As ongoing managers of affordable housing, CHPs are committed to environmental sustainability and the reduction of costs for tenants. Although CHIA NSW recognises the need to improve environmental performance standards, it is critical these are undertaken in a staged and incremental way to avoid creating additional financial and regulatory barriers to affordable housing delivery.

CHPs have expressed concerns at the potential additional costs of meeting the proposed higher standards, particularly when combined with other aspects of the DP SEPP framework that will add to development costs. In inland regional areas, concerns also extend to additional costs associated with getting workers and materials to more remote areas. It is unclear if this has been factored into the CBA that informed the BASIX proposals.

Support from the NSW Government in the form of subsidies and capacity building programs is likely to be needed to facilitate the effective roll-out of increasingly higher standards.

#### Conflicts with Apartment Design Guide requirements

A central tenet of the BASIX scheme is to provide flexibility in how performance standards are met. The draft DP SEPP, like the existing BASIX SEPP, nullifies any 'competing provisions' in planning instruments or development control plans (DCP) that impose a standard or requirement for reducing water use, energy use, or greenhouse gas emissions.
CHIA NSW is concerned that the revised ADG includes competing provisions that impact how BASIX obligations could be met, contrary to the intent of the SEPP. For example, Part 3.2 of the revised ADG specifies numeric standards for the sizing of rainwater tanks, requires tanks to be connected to all non-human contact uses, and have the capacity for connection to future recycled water infrastructure.

These requirements could impact development feasibility, particularly for constrained sites. Recent experience of our members demonstrates that the provision of on-site water reuse for laundry, toilet, and common area irrigation, can add significantly to construction costs and realise only marginal water savings to tenants. A flexible approach will enable developers to select the best measures for a particular site, considering their relative costs, benefits, and ongoing maintenance requirements.

### Energy systems

While the benefits of roof-top solar are acknowledged, CHPs have reported it can be difficult to find sufficient roof space for solar energy generation, particularly on small, constrained sites. It is unclear how achievable the increased BASIX targets are without the provision of on-site solar PV. As such, CHIA NSW recommends that allowances be made for the use of off-site solutions (e.g. green energy agreements) in circumstances where a development cannot fully achieve sustainability targets on-site due to challenging conditions.

### Requirements for non-BASIX residential development

The BASIX requirements do not apply to certain residential uses, such as large boarding houses or hostels. The proposed energy and water use standards for non-residential development will also not apply. However, development applications for these uses would still need to submit embodied emissions and net zero statements under requirements in the draft DP Regulation. This includes evidence that buildings have the necessary infrastructure and space to achieve net zero emissions by 1 January 2035.

It is not clear how these requirements are intended to be applied to residential development to which BASIX does not apply. Further guidance is needed on the scope of emissions to be counted in the net zero commitment for these development types, which include both common areas and individual tenancies. CHIA NSW is concerned that the absence of agreed targets or benchmarks tailored to these uses will create uncertainty in the design and assessment process and could lead to the misapplication of the requirements.

### CHIA NSW recommends:

- A review of the feasibility of increasing BASIX requirements in inland regional areas, to ensure the CBA has accounted for additional cost burdens in these locations.
- Deployment of a government support package, in the form of subsidies and capacity building program for industry, to facilitate the roll-out of the higher targets. This should start with a pilot project targeting community housing.
- To provide certainty to industry, establish a forward trajectory that clearly sets out the incremental increases in performance targets that will occur over time, towards the goal of net zero carbon emissions by 2050.
- The ADG provides clarity that criteria and guidance on energy efficiency and water use are suggested design options and should not be interpreted as mandatory requirements, which would compete with BASIX.
- A toolkit is developed that showcases cost-effective ways to achieve the higher BASIX targets across a range of development types and scales, including apartment development on small sites where it can be difficult to achieve BASIX targets.

- Flexibility be provided for the use of off-site solutions (e.g. green energy agreements) in circumstances where a development cannot fully achieve sustainability targets on-site due to challenging conditions.
- Guidance be issued on how embodied emissions and net zero requirements are intended to be applied to non-BASIX residential accommodation. This guidance needs to be developed in consultation with industry.

## Car parking

CHIA NSW supports measures to reduce car parking in locations with good access to public transport and/or where site-specific strategies to manage demand are put in place. Car parking adds considerably to the cost of construction, particularly where it is provided in a basement, and takes up space that could otherwise be used to provide additional social or affordable housing or residential amenities. Reducing the provision of car parking will also contribute towards other desired design outcomes, such as increasing deep soil provision and tree canopy.

CHIA NSW supports the inclusion in the DP SEPP of a design consideration aimed at encouraging sustainable transport and minimising the provision of car parking. The related objectives in the draft UDG and revised ADG are also supported.

The 2021 Explanation of Intended Effect (EIE) for the DP SEPP proposed a broader range and application of measures to lower parking rates than what is now being proposed. It is disappointing that several of the measures proposed have not been incorporated in the draft SEPP and supporting guides.

CHIA NSW questions the merits of limiting the use of green travel plans to lower parking provision (section 33 of the draft DP SEPP) to sites with the very highest public transport accessibility level (PTAL 6). It is not clear from the exhibition material the extent of developable land that is classified as PTAL 6, but it is likely to be sites located in or close to metropolitan centres in Greater Sydney.

There will be circumstances, outside of PTAL 6 locations, where a reduction in car parking could be justified. This includes sites with access to car share services, where there is an oversupply of on-street parking, or sites close to town centres (but which may not be classified as PTAL 6).

The option to negotiate reduced car parking through a green travel plan should be available to a broader range of locations. The scale of any reduction in parking would be determined having regard to the measures proposed and the nature of transport and services in proximity to a site. Where car share schemes are provided, a reduction in the order of 10 to 12 resident car spaces for each car share space provided should be applied, reflecting recent case law on the issue<sup>3</sup>.

Further reductions need to also be available for social and affordable housing development to support its feasibility, recognising that car ownership tends to be lower amongst social and affordable housing tenants. It is also noted that, unlike market housing, CHPs operating an income-based rental model will not realise additional revenue from car parking that can help offset the costs of its construction.

### Electric vehicle requirements

CHIA NSW has some reservations about proposed requirements for 'EV-ready' buildings. These requirements are higher than those being proposed through the 2022 update to the National Construction Code (NCC) and will have several cost and space implications for CHPs, including:

• Additional electrical infrastructure needing to be installed from day 1.

<sup>&</sup>lt;sup>3</sup> Turner Architects v City of Botany Bay Council [2016] NSWLEC 1186: www.caselaw.nsw.gov.au/decision/5743ae70e4b0e71e17f51a04

- The additional electrical capacity required may trigger the need for a substation to be provided in a scheme that would not otherwise require one. This will have both a space and cost implication. CHIA NSW is concerned that energy providers may require the substation to be implemented up front, at significant additional cost.
- Charging units required for 10% of visitor spaces, and potentially any car share spaces.
- For other parking spots, sufficient space will need to be set aside for future installation, which could lead to a need for bigger basements. It could also limit opportunities for external storage units to be provided at the end of car spaces, making it more difficult to meet external storage requirements (which are proposed to be increased).
- Charging facilities for vehicles other than cars, including 1 per 4 bike parking spaces, needing to be installed from day 1.

These requirements represent a considerable outlay for infrastructure that may not be taken up by future owners, particularly if rates of car ownership decline as a result of increased take-up of car share and autonomous vehicle technology. CHPs retain long-term ownership of the housing they deliver. As such they are well placed to identify the EV needs of their tenants and manage retrofit as part of their long-term asset management plans.

### CHIA NSW recommends:

- Amending section 33 of the draft DP SEPP so that the option for reducing car parking provision through green travel plans is not limited to sites with a PTAL of 6. At a minimum, it should be opened to sites that meet the accessibility requirements of the Housing SEPP or are in proximity to a town centre. Further guidance should be provided through the UDG and ADG on the nature of reductions that could be supported in different contexts. This should draw on the options for reducing car parking outlined in the 2021 EIE.
- Lowering the minimum requirements for EV-ready buildings for development delivered by or on behalf of a social housing provider, recognising that car ownership tends to be lower amongst occupants of social and affordable housing.
- Alternatively, the introduction of requirements should be phased in over time as there is more certainty about the technology and likely take-up. In this regard CHIA NSW notes that the proposed NCC 2022 only requires buildings to provide capacity for 25% of car spaces to be retrofitted with EV chargers, with no chargers required up front. An incentive-based approach, tied to reductions in overall parking provision, could also support take-up.

## Relationship of the SEPP with local planning controls

### Application to strategic planning

To optimise outcomes, the design principles need to be embedded as early in the planning process as possible. In addition to master plans, rezoning proposals and DCPs, the DP SEPP and UDG need to be considered in broader strategic planning undertaken by councils, including preparation of local strategic planning statements and local housing strategies. Clarity is also needed as to how the SEPP and UDG apply to comprehensive reviews of local environmental plans (LEPs) by councils.

CHIA NSW recommends that councils be required to demonstrate how these proposals are consistent with the design principles and considerations. This will support the feasibility of future developments to realise the desired design outcomes.

### Conflicts between local controls and the ADG

The additional tests for development introduced through the DP SEPP along with the UDG and ADG objectives, criteria and guidance, will add significantly to the complexity of planning and development assessment, and has the potential to introduce additional conflict where they do not resonate with local policy.

The draft DP SEPP and revised ADG set out matters which override or switch off local controls (such as car parking and apartment sizes) or where local controls take precedence (such as deep soil or apartment mix). However, there remain several matters where the relationship between the ADG and local controls is not clear. This includes controls relating to communal spaces, built form and siting, and building articulation. To avoid confusion or inconsistent implementation, further clarity is needed on these aspects of the ADG.

Part 2 of the current ADG includes a series of guidance to inform the setting of local design controls, including building heights and floor space controls. While some of this guidance has been transferred into the draft UDG, much of it seems to have been omitted or recast as requirements for individual development applications. This guidance must be reinstated in the final DP SEPP framework as matters for councils to consider when setting local development controls. This will ensure height, floor space and other key development controls factor in the design outcomes sought by the ADG, supporting feasibility and reducing conflicts between planning documents.

### Conflicts between local controls and the UDG

While planning authorities will be required to consider the draft DP SEPP and UDG when preparing DCPs, it is not clear how inconsistencies between local controls and the UDG are to be treated. Unlike for the ADG, the draft DP SEPP does not specify any matters for which the UDG takes precedence over local controls. This could lead to confusion in the assessment process where there are conflicts between documents.

### CHIA NSW recommends:

- Councils be required to demonstrate how strategic plans, including local strategic planning statements, local housing strategies and comprehensive LEP reviews implement the design and place principles and considerations.
- Councils be required to consider the objectives of the ADG when preparing new LEP and DCPs.
- The omitted guidance from Part 2 of the ADG, relating to setting local development controls, be reinstated and established as matters for consideration when DCPs and LEPs are prepared.
- The DP SEPP identify matters for which the UDG takes precedence over local controls.

### **Transitional arrangements**

CHIA NSW agrees that transitional arrangements are needed to provide sufficient time for industry to prepare for the introduction of the DP SEPP framework. Lead times must be commensurate with the nature and scale of the changes, including the impacts on development costs, and the time needed for necessary supply chains, skills, and construction practices to be established. For major changes, such as increased environmental performance targets, a lead time of several years may needed.

CHIA NSW supports the delayed commencement of the DP SEPP. A deferred commencement period of 6 months is considered the absolute minimum necessary to avoid impacting the feasibility of proposals that are well advanced in their planning and design before the SEPP is finalised. The inclusion of savings provisions exempting development applications lodged before the SEPP commences from the

new requirements, is also supported. These transitional arrangements need to extend to the application of the revised ADG and new UDG.

### **Implementation**

The proposed reforms will not be successful unless consent authorities have the necessary skills and capacity to implement the new policy framework as intended. CHIA NSW is concerned that many consent authorities are already under resourced. The number and complexity of additional requirements introduced through the DP SEPP and supporting guides will only increase the burden on consent authorities.

The NSW Government must provide ongoing training and support to consent authorities to ensure the DP SEPP framework is implemented as intended and avoids creating further delays in the planning process. This needs to include a focus on:

- Moving away from a rigid application of supporting guides, as is currently common practice, and ensuring a consistent understanding of how the framework is to be applied flexibly.
- The consideration and assessment of alternative design solutions.
- Ensuring the design review reforms operate efficiently and effectively.
- Providing consent authorities with the necessary expertise and support to assess additional technical information and requirements in a timely manner, such as those relating to natural cross-ventilation. Many consent authorities will not have this capacity presently.

Training needs to be delivered before the SEPP's commencement and support continue to be provided to consent authorities throughout the initial years of its operation to ensure it is being implemented as intended. The Government Architect must prioritise an early review of the SEPP and its impact on development to enable adjustments to be made in a timely manner.

### CHIA NSW recommends:

- Extending transitional arrangements, including the delayed commencement of new requirements, to the application of the revised ADG and new UDG.
- The implementation of the new policy framework be supported by an early and ongoing program of training and capacity building for industry and consent authorities.

# Part 2 - Further comments on specific documents

## **Draft Design and Place SEPP**

Section	Comment	CHIA NSW recommendation
Section 7 - Meaning of non-residential development	The term "residential purposes" at subsection 7(d) is not defined in the draft SEPP or Standard Instrument LEP.	To improve clarity, provide a definition for "residential purposes", consistent with the definition of "residential accommodation" under the Standard Instrument LEP.
Section 8 - Land to which Policy applies	There appears to be drafting errors in the references provided in subsection 8(3).	Correct references so that it is clear to what development types Part 3, Division 3 of the draft SEPP applies.
Section 13 - Consideration of	As drafted, this section could lead to the unnecessarily rigid application of	Redraft section 13, as follows: "(1) In determining a development

Section	Comment	CHIA NSW recommendation
design principles and design considerations by consent authorities	design principles and considerations, removing the real benefits of a merits-based approach that principles-led planning systems can deliver. Design outcomes must be considered in the context of site constraints and other policy priorities. Refer to further comments in Part 1 of this submission.	<ul> <li>application for consent to carry out development to which this Policy</li> <li>applies, a consent authority must consider whether development is</li> <li>generally consistent with the design principles.</li> <li>(2) In assessing whether development is generally consistent with the design principles, the consent authority must take into account the design considerations for each principle, having regard to the matters at sections 14-23 (in addition to any other matters that are required to be, or may be, taken into consideration)."</li> </ul>
Sections 17, 22 and 23	It is unclear why for some design considerations consent authorities "must be satisfied" that all the requirements are met. Whereas for the others there appears to be more discretion in how they may be considered. This difference in the wording creates uncertainty and reduces flexibility.	In section 17, 22, 23 replace "must be satisfied that" with "must consider whether", to be consistent with the other design considerations.
Section 14(d) – overall design quality	CHIA NSW supports the requirement for consent authorities to consider whether development represents an effective and economical use of space that responds to the constraints of the site. This will enable a more balanced consideration of design outcomes.	This requirement needs to be applied broadly to the assessment of applications against all of the design considerations in the SEPP.
Section 15(a) – comfortable, inclusive, and healthy places	It is unclear how " <i>maximise passive</i> <i>heating and cooling</i> " is to be interpreted given energy use and thermal performance standards are outlined at sections 26 and 27 of the draft SEPP.	For the avoidance of doubt, include a note after subsection 15(a) to make it clear that achieving the minimum energy and thermal performance standards outlined in the SEPP satisfies this consideration.
Section 16(a) – culture, character, and heritage	CHIA NSW is concerned that consideration of <i>"desired future</i> <i>character"</i> has been misused by consent authorities to refuse schemes where there is community opposition to development due to stigma with a particular use.	Clear guidance is needed for how consent authorities are to apply this consideration, particularly where the desired future character of an area has not been clearly defined in a planning instrument or strategy.

Section	Comment	CHIA NSW recommendation
Section 17 – public spaces and public life	The requirement, at 17(c) for development to not have an adverse impact on open space is subjective. It would be unreasonable for this to extend to inconsequential impacts, such as minor overshadowing. Development involving public space needs to be guided by local council plans and strategies. There may be justification for the development of public space in some circumstances, such as to enable the delivery of another community use. With regard to 17(d), there will not always be scope for development to contribute to connectivity between landscape corridors, public spaces and active transport networks. Such outcomes will not always be achievable on small or isolated sites.	Amend the draft SEPP so that it is clear the matters at Section 17 are not mandatory requirements that must be satisfied in all cases. Require consent authorities to consider relevant local open space strategies when applying section 17. Amend 17(c) to focus consideration on <i>"significant"</i> adverse impacts on open space. Apply consideration 17(d) to large sites only (over 1ha).
Section 18 – Vibrant and affordable neighbourhoods	CHIA NSW welcomes the recognition that meeting housing needs is fundamental to achieving good design outcomes. This needs to include consideration of affordable housing needs. With respect to 18(c), it is not clear how the requirement for development to contribute to a "diverse mix of uses and active streets" close to train stations and town centres is intended to be applied. Land use outcomes need to be determined having regard to zoning controls and local plans and strategies.	Insert at the end of subsection 18(b): <i>"including for affordable housing.</i> " Amend subsection 18(c) to require consideration of the land use mix outcomes sought by relevant local plans or strategies (LSPS, LHS, LEP, or DCP).
Section 19 – Sustainable transport and walkability	Refer to comments in Part 1 of this submission.	Refer to Part 1 of this submission.
Section 20 – Green infrastructure	Clarity is needed on what is intended by <i>"maximises tree canopy cover"</i> at 20(b). Although CHIA NSW recognises the importance of increasing tree canopy cover, there may be limited opportunities for provision on some sites, such as in	To avoid introducing uncertainty into the assessment process, it is recommended subclause 20(b) be amended to read: <i>"whether the</i> <i>development contributes to tree</i> <i>canopy and provides sufficient deep</i>

Section	Comment	CHIA NSW recommendation
	high density areas. The SEPP needs to recognise this.	soil to support the tree canopy."
Section 21 – Resource efficiency and emissions reduction	The considerations relating to minimising greenhouse gas emissions and maximising water reuse need to be applied with regard to the environmental standards outlined at sections 26 and 27 of the draft SEPP.	For the avoidance of doubt, include a note at the end of section 21 to make clear that achievement of the SEPP's energy, water and thermal performance standards satisfies the requirement for minimising greenhouse gas emissions and maximising water reuse.
Section 23 – Optimal and diverse land uses	The considerations at 23(a) and 23(b) are more appropriately applied to large development sites. It is not clear how these would be applied to smaller scale in-fill sites/strata subdivision. For infill development, the mix of uses should be guided by local plans and strategies, including applicable zoning controls.	Amend the draft SEPP so that subsections 23(a) and 23(b) apply to urban design development, consistent with the application of subsection 23(c).
Section 24 – Objectives of Urban Design Guide	CHIA NSW supports the requirement for consent authorities to apply the UDG flexibility, to the extent possible.	Refer to further comments on the UDG below.
Division 2 - BASIX	Refer to comments in Part 1 of this submission.	Refer to comments in Part 1 of this submission.
Section 30 – Objectives of ADG	Refer to the comments in Part 1 of this submission.	Refer to the recommendations in Part 1 of this submission.
Section 33 – Green travel plans Section 34 – Design review	Further to the comments in Part 1 of this submission, CHIA NSW is concerned that the wording of subsection 33(2) will prevent consent authorities and applicants from negotiating lower levels of provision through other mechanisms, such as a variation under clause 4.6 of LEPs or using provisions under a DCP. This would reduce flexibility and impose unnecessary constraints on negotiating lower rates on sites in the most accessible locations. Refer to comments in Part 1 of this submission.	Extend the option to reduce car parking through green travel plans to other locations (refer to Part 1 of this submission). Amend subsection 33(2) to read: <i>"Development consent must not may be granted unless if the consent authority is satisfied that a plan (a green travel plan) that complies with subclause (3) has been prepared"</i> Section 33 should also apply to the parking criteria set out in the ADG, in addition to those in LEPs and DCPs. Amend Section 34(1)(e) to apply a CIV threshold of \$30m to residential apartment development.
Section 35 – Design	Clarify what is meant by <i>"the development"</i> in subsection 35(1)(a).	Amend subsection 35(1)(a) to make it clear that a development

Section	Comment	CHIA NSW recommendation
review panel advice	Applicants should be able to make revisions to a proposal to incorporate panel advice without having to resubmit it for review.	application that is lodged does not need to be identical to the proposal reviewed by a design review panel.
Section 36 – Design verification statements and design review reports	CHIA NSW is concerned that the wording of section 36 enables a consent authority to ignore a DVS or DRP if they are inclined to refuse a development application.	Amend section 36 to read: " <u>A</u> <u>consent authority must not</u> <u>determine a development application</u> <u>for</u> development-consent must not be granted to development to which this Part applies unless the consent authority has considered a design verification statement or design review report that accompanied the development application"
Part 4 – Design Review	Refer to comment in Part 1 of this submission.	Refer to comments in Part 1 of this submission.
Transitional arrangements	Refer to comment in Part 1 of this submission.	Refer to comment in Part 1 of this submission.

# Draft Urban Design Guide

Section	Comment	CHIA NSW recommendation
About this guide (pages 8 and 9)	CHIA NSW welcomes the acknowledgement that each project will have a unique response and the criteria and guidance in the UDG are not intended to be exhaustive. The UDG will be applied to a broad range of sites. The extent to which the design criteria and guidance can be implemented will depend on the scale and context of each proposal. Clearer guidance on this is needed throughout the UDG. Section 24 of the draft DP SEPP only requires compliance with the Design Criteria of the UDG, to the extent possible, to demonstrate it has met the design objectives. Clarity is therefore needed on the role and weight to be applied to the Design Guidance in the UDG.	<ul> <li>Throughout the UDG, clarify the scale and type of development to which criteria and guidance are to be applied. The UDG should distinguish between:</li> <li>master planning/rezoning, where controls are being set.</li> <li>development applications, where established controls are being relied.</li> <li>smaller sites versus larger sites.</li> <li>Greenfield versus urban in-fill contexts.</li> <li>The UDG also needs to be clear that any information or documentation requirements need to be tailored in scope and detail to the size and complexity of proposals.</li> </ul>
Part 2.3 – Proximity to transport services (page 23)	It is not clear how the guidance seeking homes to be located within 400m/800m of public transport is to be applied to less accessible sites	Clarify that this guidance only applies to large rezoning proposals or where uplift in density is sought.

Section	Comment	CHIA NSW recommendation
	that have already been zoned for residential use. CHIA NSW is concerned that this could present an unnecessary barrier to development of homes on sites already earmarked for housing under established plans and strategies - particularly in regional or remote areas, which tend to not be as well serviced as metropolitan locations.	
Part 3 – Neighbourhood density (page 26)	CHIA NSW supports, in principle, target residential densities being established to support the efficient use of land. However, CHIA NSW questions the usefulness of a 'one- size-fits-all' approach. It is noted that the proposed targets are minimum gross residential densities. However, in high density locations, such as within metropolitan centres, there will be potential for much higher than 30 dwellings a hectare. To provide certainty and better inform community expectations, the UDG needs to a provide more nuanced set of benchmarks tailored to different urban contexts.	Provide additional guidance, or establish additional benchmarks, for residential development in larger centres or on sites close to high frequency rapid transport, such as metro.
Part 3.3 – Mixed and diverse neighbourhoods (page 27) and Part 5.13 (page 73)	CHIA NSW supports the guidance that development on large sites should provide a mix of housing types to address local housing needs, promote affordability for families, and ageing in place.	Include Design Criteria requiring mechanisms for the delivery of affordable housing to be identified at an early stage in the planning and design of large sites. Refer to further comments and recommendations in Part 1 of this submission.
Part 5 – Walkable neighbourhoods and public open space accessibility (page 34)	While CHIA NSW recognises the importance of proximity to transport, services, and open space, it is not clear how the proposed minimum walking distance requirements are to be applied to sites that have already been zoned or identified for housing. It will not always be feasible to provide this infrastructure on-site, particularly on smaller sites. CHIA	Clarify that this guidance only applies to larger precincts (over 5ha), rezoning proposals or where uplift in density is sought.

Section	Comment	CHIA NSW recommendation
	NSW is concerned that the criteria could present a barrier to the delivery of housing - particularly in regional or remote areas less well serviced by infrastructure.	
Part 8.2 – Electric vehicles (page 43)	The guidance for providing 2% of parking spaces with EV-charging equipment is inconsistent with the requirements for EV-ready buildings in the revised ADG.	Clarify that for residential apartment development, the guidance in the ADG takes precedence. Refer to further comments in part 1 of this submission.
Part 10 – Tree canopy targets (pages 50 - 52)	The UDG needs to make clear that tree canopy targets are to be applied with regard to the constraints of a site and its development context. In this regard, CHIA NSW welcomes the guidance on alternative design solutions for constrained sites. CHIA NSW questions the feasibility of the guidance that canopy targets should ensure no net loss of baseline canopy. While this may be appropriate across larger precincts, it may be difficult to achieve when applied to individual development sites – for example where a low- density site is being redeveloped for higher density uses.	<ul> <li>Make clear that tree canopy targets need to be informed by consideration of:</li> <li>development type and scale</li> <li>site context and constraints, and</li> <li>desired future character of an area.</li> </ul>
Part 12 – Public open space provision (page 60)	CHIA NSW supports a more flexible approach to open space provision on sites under 5ha. However, further clarity is needed on how the criteria relating to the mix of open space types is to be applied to smaller sites, given their space constraints. The proposed exemptions in Appendix 2 only cover the size of local parks required. It is not clear how requirements for small parks and district parks are to be satisfied on smaller sites.	Provide further exemptions for sites under 5ha relating to requirements for small parks, district parks and green corridors. These should provide added flexibility for how open space needs are satisfied, having regard to local open space strategies and development contribution plans.
Part 19 – Renewable energy (page 84)	The basis for requiring the provision of onsite renewable energy equivalent to 20% of electricity demand is unclear. This seems an arbitrary figure and conflicts with BASIX requirements that prevent	Make clear the renewable energy targets are aspirational, and for residential development BASIX requirements take precedence.

Section	Comment	CHIA NSW recommendation
	other planning documents setting competing requirements.	
Part 19.2 – Deliver net zero emissions neighbourhoods (page 85)	The guidance relating to delivering net zero emissions is unclear. As above, CHIA NSW is concerned this contradicts provisions relating to the implementation of BASIX.	For residential development, the transition towards net zero needs to be guided by gradual changes to BASIX requirements.

# Draft Apartment Design Guide

Section	Comment	CHIA NSW recommendation
About this guide (page 8)	CHIA NSW welcomes the acknowledgement that each project will have a unique response and the criteria and guidance in the ADG are not intended to be exhaustive. As outlined in Part 1 of this submission, further clarity is needed as to how design guidance is intended to be applied.	Make clear that the guidance provides suggested design options and not mandatory requirements. The ADG also needs to be clear that any information or documentation requirements need to be tailored in scope and detail to the size and complexity of proposals.
Part 1.2 – Building separation (page 14)	There appears to be a drafting error in the introductory wording to Table 1.2.1. The table identifies minimum separation distances between buildings, not between buildings and site boundaries (which would be half the distances identified in Table 1.2.1).	Redraft the Design Criteria to be consistent with the current ADG. Make clear that when applying the separation distances to buildings on adjoining sites, half the minimum separation distance listed Table 1.2.1 should be applied, measured to the site boundary (referencing Figure 1.2.5).
Part 1.2 – Siting (page 15)	The design guidance to articulate the skyline using a variety of building heights and staggered built form should only be applied to large sites where multiple towers are proposed. If applied to small in-fill sites, this could unfairly impact development potential.	Move this guidance to the Urban Design Guide and/or amend the ADG to make it clear the guidance only relates to large development sites where multiple towers are proposed.
Part 1.2 – Building height (page 18)	The revised ADG includes guidance requiring rooftop communal open space and articulated roofs to be accommodated within the permissible building heights. Strict application of this guidance could unnecessarily reduce the number of floors that can be delivered, impacting yield.	This guidance should be converted to a consideration for councils when setting local planning controls. It should not be used to assess individual development applications. Alternatively, amend the guidance to include the words <i>"where possible"</i> or <i>"unless otherwise justified"</i> to make it clear that site-specific

Section	Comment	CHIA NSW recommendation
	Minor exceedance of height limits to enable access to roof-top open space rarely cause significant visual or overshadowing impacts, as any structures are typically located within the middle of buildings. Roof top communal areas and associated access should be exempted from LEP height controls, in a similar way that architectural roof features are under cl 5.6 of LEPs.	variations should be considered on their merits under clause 4.6 of LEPs.
Part 1.2 – Building height (page 18)	The proposed design guidance seeking the alignment of floor-to- floor heights of new development with existing built form is unrealistic. Different land uses will require different floor to floor heights (e.g., an apartment building will not have the same requirements as a neighbouring hotel or commercial building). As drafted, the proposed guidance could reduce yield by unnecessarily limiting the number of floors in a building.	Remove proposed guidance, or amend to require consideration of aligning floor to floor heights with neighbouring buildings of the same use, taking into account the desired future character of an area.
Part 1.4 – Utilities and building services (page 27)	Restricting building services to secondary building frontages will reduce design options and could make it harder to meet technical standards and regulations governing infrastructure like fire hydrants. It could also unnecessarily impact development yield if, for example, larger side setbacks are required to accommodate necessary access and buffer zones.	The location of building services should be guided by applicable technical standards and requirements. Rather than unduly restricting where building services are located, reinstate current ADG guidance which encourages their concealment and integration with the building façade.
Part 1.5 – Deep soil (page 28)	CHIA NSW is concerned that increased deep soil targets will be difficult to achieve without impacting development footprint/yield – particularly if councils set even higher requirements than those in the ADG under local controls. While reducing the minimum dimension for deep soil areas to 3 metres could alleviate this impact to some degree, local council requirements could override this.	Increased targets must not be implemented without the associated reduction in the minimum dimension for deep soil areas. This minimum dimension must also apply to deep soil targets set by local councils. Where local controls apply lower targets in response to local circumstances, these should take precedence over those in the ADG. For clarity, the ADG needs to include additional commentary on the types

Section	Comment	CHIA NSW recommendation
	CHIA NSW supports the use of alternative options on sites where it is not possible to achieve deep soil targets due to site constraints. The revised ADG needs to expand the list of sites where alternative approaches may be warranted, consistent with the current ADG.	of sites where it is likely to be difficult to meet deep soil targets, including contaminated or otherwise constrained sites, and sites in inner- city and high-density areas. The guidance on alternative design solutions must be extended to local council deep soil targets.
Part 1.5 – Retaining trees (pages 29 and 30)	CHIA NSW recognises the importance of tree canopy. However, a balanced approach needs to be taken to achieving tree canopy targets. While the current ADG seeks the retention of existing <i>significant</i> trees, the consultation draft appears to require the retention of <i>all</i> existing trees. Having this as a starting expectation is problematic, particularly for higher density building forms such as apartments. Where vegetation is spread across many parts of a site, this requirement, if applied rigidly, would significantly impact yield. It is also unclear how the guidelines would be applied to trees which are classified as a noxious weed.	Retain current ADG guidance focusing on the retention of <i>significant</i> existing trees. The tree canopy cover targets should be achieved through a combination of retention of existing trees and replacement planting. AS 4970-2009 provides a sound basis for arborists to determine a tree's significance.
Part 1.6 – Car parking (pages 34 and 35)	Refer to comments in Part 1 of this submission regarding reducing car parking and 'EV ready' requirements.	Refer to comments in Part 1 of this submission.
Part 1.6 – Bike parking (page 36)	CHIA NSW recognises the importance of supporting active transport. However, like car parking, over- supply of bike parking is an impost that reduces a CHP's available investment for housing supply. The experience of CHPs is that bike parking spaces provided in schemes are often under-used. While the proposed rates are lower than those suggested in the 2021 EIE, CHIA NSW believes that parking rates should be determined having regard to local context. The need for parking is likely to be higher in urban areas with good levels of supporting	CHIA NSW recommends that the ADG enable bike parking provision to be determined based on the anticipated demand of occupants, taking into account availability of active transport infrastructure. The provision of bike-share facilities should be considered as a replacement for individual bike storage spaces, consistent with the proposed treatment of car share spaces. It is also recommended that the ADG allows more flexibility in how bike parking is provided, particularly on constrained sites. For example,

Section	Comment	CHIA NSW recommendation
	infrastructure, such as cycleways. While some types of bike storage will count towards external storage requirements, these requirements are also proposed to be increased.	apartment balconies/private open spaces could provide a secure storage option.
Objective 2.1 – Common circulation	CHIA NSW is concerned with the wording of this objective. A focus on <i>maximising</i> amenity in common circulation areas could compromise the delivery of other desirable design outcomes, as outlined below. It is questionable whether such a priority should be given to spaces which are used for short periods of time.	Amend Objective 2.1 to read: "Maximise the <u>Achieve a good level</u> <u>of amenity</u> <del>of</del> in common circulation areas and provide services for maximum building occupancy to create socially inclusive, secure, and safe circulation spaces."
Part 2.1 – Lifts (page 39)	CHIA NSW is concerned that the proposed criteria for lift capacity and waiting times could significantly impact the cost of delivering community housing.	To support the feasibility of community housing, exclude buildings of 10 storeys or over, or 40+ dwellings from the proposed criteria.
	While well intentioned, analysis by Stanton Dahl Architects found that for smaller community housing developments, the proposed requirements could double the number of lifts required (refer to Attachment 1).	CHIA NSW notes that in the 2021 EIE it was tower typologies that were identified as being underserved by lifts. Alternatively, more flexibility should be provided to community housing development.
	This would reduce the building footprint available for housing and add significant additional costs to the delivery and maintenance of community housing.	
	A lower standard that still maintains a satisfactory level of service would avoid this unintended outcome.	
Part 2.1 – Common stairs (page 41)	While well intentioned, CHIA NSW is concerned that providing windows and natural ventilation in common stairs will add significantly to development costs, particularly for stairs which need to be fire-rated.	Amend the guidance to read: "For lower floors, <u>where practical,</u> <u>consider opportunities</u> to locate and design common stairs"
Part 2.1 – Daylight and natural ventilation in common circulation spaces (page 41)	CHIA NSW is concerned the proposed specifications for providing daylight and natural ventilation in common circulation spaces will impact dwelling yield. Analysis by Stanton Dahl Architects	Amend the ADG to make it clear the specifications for achieving daylight and natural ventilation in common circulation areas are not mandatory requirements. While well intended, the provision of

Section	Comment	CHIA NSW recommendation
	found that having two or more sources of natural ventilation would prevent building ends being used for larger dual aspect units (refer to Attachment 1).	daylight and natural ventilation to common circulation spaces should be balanced against other desirable outcomes, including maximising social and affordable housing.
	The proposed guidance is also likely to increase the amount of glazing required on building facades, with resultant impacts on heat load and shading requirements.	
	Furthermore, any potential amenity benefit from natural ventilation would be reliant on windows being opened and closed at appropriate times. This will create an additional operational burden for CHPs.	
	The proposed guidance seems excessive given that circulation corridors are only used for short periods of time.	
Part 2.2 – Communal open space criteria (pages 44 and 45)	CHIA NSW supports the revised target for communal open space (COS) provision. The removal of the requirement for COS to be co-located with deep soil is also supported. These proposals will provide additional flexibility, particularly for smaller schemes.	Retain current ADG solar access and minimum dimension requirements.
	However, CHIA NSW is concerned that any benefit gained from the above changes will be negated by increased sunlight access and minimum dimension requirements.	
	As drafted, the revised mid-winter sunlight access criteria will have the effect of increasing the amount of COS required to achieve the standard – from 50% of the <i>"principal usable part"</i> of COS to 50% of <u>all</u> COS provided on site.	
	This could be difficult to achieve without reducing building footprints and impacting yield.	
Part 2.2 – Range of spaces (page 45)	Clarity is needed on how the proposed guidance seeking a range of communal open spaces offering a variety of activities for multiple	CHIA NSW prefers the current ADG objective for communal open space which is more focused on designing versatile spaces that allow for a

Section	Comment	CHIA NSW recommendation
	groups of people, is to be applied to small sites which will have fewer opportunities for provision. CHPs have also raised concerns with some councils being overly restrictive with respect to what is counted as communal open space, for example excluding communal space which is also accessible by the public. This forces more open space onto roofs, impacting the ability to maximise rooftop solar.	range of activities. A focus on versality rather than quantum will provide more flexibility in how this outcome could be delivered. Provide guidance on what can be counted as communal open space. To provide flexibility, allow some publicly accessible areas to be counted as communal open space where they provide recreation opportunities for residents. This guidance should prevail over local controls.
Part 2.2 – Communal indoor space (page 46)	CHIA NSW notes Objective 2.2.2 of the revised ADG seeks the provision of "safe and resilient communal spaces that support a range of activities and contribute to the wellbeing of residents." CHIA NSW supports a qualitative approach to the provision of communal facilities, allowing provision to be tailored to the peed	Provide additional flexibility for social and affordable housing developments, recognising the different needs and priorities of these schemes.
	of each scheme. While no numeric target is proposed, the revised ADG includes guidance seeking the provision of multiple communal indoor spaces, distributed across multiple levels and locations.	
	For community housing schemes, key considerations include the anticipated tenant profile, ensuring provision is safe and secure by maximising passive surveillance, and ongoing operational costs. For certain schemes, this means prioritising outdoor/semi-outdoor spaces over indoor facilities.	
Part 2.3 – Family friendly apartments (page 50)	CHIA NSW favours a flexible approach to the provision of family friendly apartments, which responds to the expected tenant profile of a development. Some of the proposed design measures, if mandated, would increase development costs and/or reduce the amount of offerdable	Amend the ADG to make it clear that the listed design solutions for family friendly apartments are optional and are not required to be implemented in combination in a development. Provide flexibility for community housing schemes in terms of how many apartments are provided as family friendly, aligned to the specific

Section	Comment	CHIA NSW recommendation
	housing that could be delivered. For example, requiring 20% of 2+ bedroom apartments to have larger bedrooms would use up space that could otherwise be used to provide additional amenity for residents, or additional affordable housing. The potential impacts would be compounded if multiple design	needs of the tenants that will be housed.
	implemented in combination.	
Part 2.3 – Apartment mix in community housing development (page 51)	Social and affordable housing developments are often built with a specific tenant profile in mind, to respond to identified gaps in provision. This means the apartment mix of these developments often needs to differ from built-for-sale market housing. As such, CHIA NSW welcomes additional flexibility to enable community housing schemes to respond to identified housing needs. However, the guidance on varying apartment mix needs to be improved so that it is clearer what type of development the concessions apply. Many local housing strategies do not provide a detailed breakdown of the specific dwelling mix requirements for affordable housing. The reference to <i>"relevant housing strategy"</i> therefore needs to be expanded to include consideration of social and affordable housing waiting lists.	Amend the apartment mix alternative design response guidance as follows: <i>"Development that includes social housing, or is delivered by <u>or on behalf of</u> a community housing provider, may incorporate an alternative approach to apartment mix, aligned with relevant housing strategies <u>or the profile of applicants</u> <u>on social and affordable housing</u> <u>waiting lists"</u>.</i>
Part 2.3 – Alternative design response for development delivered under the Housing SEPP (page 51)	Refer to comments in Part 1 of this submission. Currently, the Housing SEPP only provides concessions to build-to-rent housing with regard to apartment mix. Similar concessions need to be applied to affordable housing delivered under the Housing SEPP.	Amend the apartment mix alternative design response guidance as follows: <i>"Where <u>affordable housing</u> proposals are considered under State Environmental Planning Policy (Affordable Rental Housing) <del>2009</del> <u>2021</u>, the consent authority <del>may</del> <u>should</u> be flexible in applying the design guidance for the provision of apartment mix and configuration."</i>

Section	Comment	CHIA NSW recommendation
Objective 2.4 – Apartment configuration (page 52)	CHIA NSW questions the wording of this objective. Although CHIA NSW agrees with the intent, requiring the provision of apartments with "generous internal dimensions and proportions" could, if interpreted strictly, compromise the consideration of alternative design solutions involving smaller apartments.	Amend Objective 2.4 to read: "Design apartments that are functional and flexible over the life of the building, with <del>generous</del> internal dimensions and <u>proportions that</u> <u>support</u> a high level of internal amenity, natural ventilation, and daylight access."
Part 2.4 – Room depth criteria (page 53)	The proposals to link maximum room depth to window-head height, instead of ceiling heights, will have an impact on achieving sufficiently sized rooms (refer to Attachment 1). If window sizes are increased to compensate, CHIA NSW is concerned this could increase the need for shading devices to manage summer heat load, adding to building costs. CHIA NSW is concerned that any potential benefit of the proposed change will be marginal, compared to the additional costs and impacts on room sizes.	Retain the current ADG design criteria, linking habitable room depths to ceiling height only.
Part 2.4 – Apartment configuration – alternative design response (page 54)	CHIA NSW supports a pathway being established for variations to apartment sizes. CHIA NSW agrees this should focus on demonstrating apartment layouts are efficient, functional, and maintain a good level of amenity. However, CHIA NSW cautions against adopting too narrow a definition of amenity. Consent authorities need to take a proportionate approach when considering appropriate design responses, having regard to the nature and scale of variation sought and the broader merits of proposals. For example, it is questionable whether the provision of higher levels of <u>both</u> private and communal open space should be the default requirement.	The ADG should enable flexibility in the measures employed to offset smaller apartments, taking into consideration the nature and scale of the variation sought. The guidance on smaller apartment sizes must allow alternative design solutions for sunlight access, daylight, shading, natural ventilation, and storage to be used. This includes the application of any concessions provided for affordable housing.

Section	Comment	CHIA NSW recommendation
Part 2.5 – Balcony depths (pages 56 and 57)	CHIA NSW is concerned that increasing the minimum balcony depth to 2.4 metres for 2-bedroom units will make it more difficult to achieve solar access requirements. This is already the case for 3- bedroom units which have the same 2.4 metre requirement.	Include the option of a 2-metre balcony depth for 2 bedroom apartments, as per the current ADG, where this is necessary to meet solar access requirements.
	A balcony with a minimum depth of 2 metres is appropriate for 1 and 2 bedroom apartments and fits a table and 2-4 chairs.	
Part 2.5 – Clothes drying areas on balconies (page 58)	It is not clear why areas used for clothes drying areas need to be excluded from the minimum balcony size calculations. Clothes drying is a temporary use of space and is consistent with the desired uses of balconies identified in Objective 2.5.1 of the revised ADG.	Amend the ADG to count areas that can be used for clothes drying, but capable of being used for other activities at other times, towards meeting minimum balcony size criteria.
	Excluding these areas from the minimum size calculations will discourage opportunities for their integration into building design (such as through the use of screening devices) and makes the design criteria more onerous to achieve.	
Part 2.5 – Alternative design responses for private open space and balconies (page 59)	CHIA NSW supports additional flexibility for affordable housing delivered under the Housing SEPP. However, as noted above, the Housing SEPP currently only provides design concessions for build-to-rent housing. These concessions need to be extended to affordable housing. Consent authorities need to be flexible in considering both design	Require consent authorities to be flexible in considering how community housing proposals comply with design criteria and guidance for private open space. This may require an amendment to the Housing SEPP. Refer to the detailed comments in Part 1 of this submission for further discussion
	criteria and guidance.	
Part 2.6 – Shading control (pages 60, 62 and 63)	CHIA NSW is concerned that any potential benefits from the revised requirements for external shading control will be marginal compared to the additional costs and added complexity they will create.	Retain current ADG guidance on shading control, which is simpler and provides more flexibility compared to the more prescriptive revised guidance. Enable the option of planting to be
	This will be compounded by other revisions to the ADG that will likely	used as a shade device, consistent with the current ADG.

Section	Comment	CHIA NSW recommendation
	increase the amount of glazing required on buildings, thereby increasing the amount of shading devices needed. This includes new cross-ventilation requirements and changes to room depth criteria.	
Part 2.7 – Natural ventilation	The stated aim of revising guidance on natural ventilation is to provide a clearer and more consistent methodology for measuring cross- ventilation. However, this is not reflected in the wording of the revised guidance. A review by Stanton Dahl Architects has identified aspects of the proposals that, as drafted, will introduce more complexity into the design process and make it harder to achieve cross-ventilation (refer to Attachment 1). This includes additional requirements relating to building obstructions, primary air path length, and doorways. CHIA NSW is concerned this will have a significant impact on development costs and the amount of affordable housing that can be delivered, particularly on irregularly shaped or otherwise constrained sites. CHIA NSW is also concerned with the minimum ventilation rates and complex testing required to support an alternative design response. This seems an onerous requirement to impose on community housing schemes, particularly if only a minor variation is sought. It is also concerning that no alternative design pathway is available for apartments which do not meet the prescribed requirements for sizing and distributing openings (per Figure A4.2.1). The amenity outcomes from the increased requirements need to be balanced against achieving other desirable outcomes.	Redraft the design guidance, and provide additional illustrations, so that the methodology for demonstrating compliance with the natural cross-ventilation requirements is simpler and clearer. To provide sufficient flexibility, a broader range of design solutions must be permitted, particularly on challenging sites. It needs to be clearer that the option of an alternative design solution is available to all sites, not just those affected by ambient noise and pollution. A broader range of alternative design solutions should be supported, including the option of offsetting lower levels of cross- ventilation against other design outcomes, such as good levels of natural ventilation. Proposals seeking minor variations to requirements must not be required to go through a complex testing and verification process, particularly for smaller apartment developments. Variations should be justified on the overall merits of a proposal. It is recommended that the ADG include more examples of how the cross-ventilation requirements can be achieved under a variety of site conditions, without compromising yield or significantly increasing development costs.

Section	Comment	CHIA NSW recommendation
Part 2.10 – Storage (page 76 – 78).	The proposed increases to storage requirements will have space and cost implications for CHPs, particularly if larger basements are required as a result. CHIA NSW is also concerned that proposed revisions to storage guidance will unnecessarily reduce flexibility to thoughtfully address storage needs. This includes the proposed minimum dimensions for storage spaces/cupboards, and excluding storage integrated into balconies from counting towards the storage volume in an apartment. While some flexibility is proposed for development delivered under the Housing SEPP, the concessions are limited to internal storage. The rationale for this is unclear. Refer also to concerns outlined in Part 1 of this submission about concessions currently only being available to build-to-rent housing.	Require consent authorities to be flexible in considering alternative design solutions for community housing schemes, recognising that not all households require the same amount of storage. The concessions must be applied to <u>both</u> internal and external storage requirements to reduce the necessity of large basements. The ADG needs to be clear that recommended dimensions for storage areas are suggested guidelines only and not mandatory requirements. Storage areas integrated into balconies should be counted towards meeting minimum storage volume requirements, particularly on constrained sites and where this supports optimal affordable housing delivery.
Part 3.1 Energy efficiency	Refer to comments in Part 1 of this submission.	ADG design requirements must not exceed BASIX requirements.
Part 3.1 – Rooftop solar (page 86)	While the benefits of roof-top solar are acknowledged, CHPs have reported it can be difficult to find sufficient roof space.	The ADG needs to recognise that the potential for roof-top solar may be limited due to the need to accommodate communal spaces and building services.
Part 1.6 (page 35) & Part 3.1 (page 86) – Electric vehicles	Refer to comments in Part 1 of this submission.	Refer to Part 1 of this submission.
Part 3.2 - Water	Refer to comments in Part 1 of this submission.	ADG design requirements must not exceed BASIX requirements.
Part 3.2 – Rainwater reuse (page 89)	Refer to comments in Part 1 of this submission.	Refer to Part 1 of this submission.

## **DP** Regulation

Section	Comment	CHIA NSW recommendation
Cl 16(3) – Content of a DCP	Refer to comments in Part 1 of this submission.	Amend this clause to require councils to consider the objectives of the revised ADG when preparing DCPs.

Section	Comment	CHIA NSW recommendation
Cl 57 – Design verification statements	The DP Regulation, as drafted, requires certain proposals to submit multiple design verification statements. This will increase the documentation burden and lead to duplication.	Amend the DP Regulation to enable the option of a combined DVS to be submitted, which incorporates contributions from the required design professionals.
Cl 57A – Additional requirements for design verification statements	It is not clear how a DVS can satisfy the requirement to "verify that the design of the development incorporates the design review panel's advice" where it proposes to not take forward all the advice received, under the provisions of cl 57A(1)(c). CHIA NSW is also concerned that there is potential for different interpretations on whether a development is consistent with the design advice. This creates uncertainty. It risks a DA being refused or invalidated by a consent authority if they form the opinion that the DRV has not addressed every point of inconsistency.	<ul> <li>Amend cl 57A(a) (and similar clauses in the draft DP Regulation) to:</li> <li>Require design verification statements to explain how the design of development has considered the design review panel's advice rather than verify that the advice has been incorporated.</li> <li>Insert an additional provision into cl 57(A) clarifying that DAs are not invalidated and should not be refused simply because a consent authority is of the opinion that a DRV has not identified or addressed all inconsistencies with the design review panel's advice.</li> </ul>
Cl 57C and 57D – Embodied energy and Net zero statement	Clarity is needed on how these requirements apply to residential development that is not 'BASIX affected development'.	Refer to Part 1 of this submission.
Cl 99 – Conditions relating to EV charging facilities	Refer to comments in Part 1 of this submission.	Refer to Part 1 of this submission.
Cl 99A – Condition relating to green travel plans	This proposed condition is onerous and unworkable. It is not clear if the ongoing review of the green travel plan is to be undertaken by the consent authority, the applicant, or the owners. Additionally, the intended focus of the review is unclear. If it is intended that a green travel plan is updated post review, this could trigger the need for a modification to the development consent. This would be onerous and would impose additional administrative burdens on both consent authorities	Amend subclause 99A(2) to read: "(2) It is a condition of the development consent that measures to facilitate sustainable transport and achieve the targets for modal share are implemented as specified in the green travel plan."

Section	Comment	CHIA NSW recommendation
	and applicants.	
	CHIA NSW is also concerned with the proposed condition requiring green travel plans to be "implemented in a way that ensures the targets for mode share specified in the green travel plan are achieved."	
	While CHPs will implement the measures identified within green travel plans in good faith and to the best of their ability, it is not clear how delivery of the mode share targets can be guaranteed given this is ultimately dependent on the behaviour of future occupants.	
Cl 268D – Functions of a design review panel	CHIA NSW supports design review panels being required to provide their advice within 14 days.	Supported.
Schedule 1 – Cl 2(3A) - Site analysis	CHIA NSW notes that the requirements for site analysis differ from those outlined in the revised ADG.	Documentation requirements need to be commensurate with the scope and complexity of proposals. Amend the DP Regulation to allow photomontages of the streetscape to be used in lieu of drawings.

Attachment 1 – Advice from Stanton Dahl Architects

24 January 2022

Community Housing Industry Association CHIA NSW 619 Elizabeth Street Redfern, NSW 2016

Attention: Michael Carnuccio



Stanton Dahl Architects Pty Ltd 18-20 Oxford Street, Epping NSW 2121 PO Box 833, Epping NSW 1710, Australia Tel +61 2 8876 5300

design@stantondahl.com.au stantondahl.com.au

### Dear Michael

### Re: Advice on proposed reforms to the Apartment Design Guide

Stanton Dahl Architects (**SDA**) has been engaged by the Community Housing Industry Association NSW (**CHIA**) to undertake a review of the proposed reforms to the Apartment Design Guide (**ADG**) released in December 2021 by the Department of Planning, Industry and Environment as part of the Draft State Environmental Planning Policy (Design and Place) 2021 (**SEPP**). This draft policy sets out NSW Government policy for improving the design quality of the built environment, including residential apartment development.

### Who are we?

Stanton Dahl Architects has designed and delivered thousands of buildings across a range of sectors – with the common aim of making a difference in people's lives – something we call Architecture in the Service of People (**AISOP**). We have been involved in a significant number of housing types within the social, affordable and community housing sectors including boarding houses, group homes, seniors living, social housing, women's housing, crisis accommodation, student housing and many other housing types, applying respect and know-how to these frequently budget-constrained projects. Today, most of our projects are community and ethically focused with our clients including NSW Land and Housing Corporation and numerous Community Housing Providers (**CHPs**).

### Aims of Reform

Both **SDA** and **CHIA** acknowledge the aims of this reform in improving the built environment. Following our assessment of the draft **ADG** – which is described below – we found particular value in the introduction of mechanisms that enable the flexible application of **ADG** objectives as well as merit based pathways for BASIX and sustainability measures. Both of these will encourage greater creativity and innovation and will eventually create resilient and future-proofed places that suit the needs of the site and its context.

### **Assessment Framework**

**SDAs** assessment of the draft **ADG** was undertaken collectively with **CHIA** as a peak body within the social and affordable housing sector. **SDA** with **CHIA** established the frames of reference for the assessment and then undertook a series of workshops and meetings including a roundtable discussion attended by a large number of **CHPs** whose contribution was invaluable to both the process and the outcome.



The workshops and their focus were:

- Workshop-01 Frame of Reference
- Workshop-02 Roundtable discussion
- Workshop-03 Preliminary observations 22<sup>nd</sup> Dec 2021
- Workshop-04 Findings and conclusion

The objectives of our assessment of the draft **ADG** were:

(a) to understand the proposed design principles and objectives of the proposed **SEPP** and compare them to the current **ADG** (and SEPP 65),

14<sup>th</sup> Dec 2021

16<sup>th</sup> Dec 2021

19<sup>th</sup> Jan 2022

- (b) to outline the likely impacts on social & affordable industry offerings, particularly yield, cost and potential difficulties, and
- (c) to provide recommendations for the consideration of policy makers'

### **Assessment Method and Conclusion**

The method adopted for our assessment of the draft **ADG** involved the proposed changes being applied to actual projects and compared with the outcomes achieved under the current **ADG** – a method we felt safeguarded the integrity of the process and its findings. The key issues that were identified through the assessment have been summarized and attached to this letter whilst a comprehensive analysis has been documented and delivered to **CHIA**.

We are grateful to **CHIA** for giving us the opportunity to contribute to this process and together look forward to an improved design quality for our built environments.

Yours faithfully, Stanton Dahl Architects

gaperas.

Shayne Evans CEO, Architect 7686



# Key issues

Part 1.2 Building Height (page 18)	Requirement to accommodate rooftop communal open space, lift and stair access, shade structure and articulated roofs within permissible height limits.	Unless considered in the LEP HOB controls, it will likely lead to loss of floors and yield. Rooftop communal open spaces requires lifts and stairs access, lift overrun will be 4.2m-4.6m from the last reachable floor. The inclusion of this structure is a significant reduction in the number of floors. The purpose of this inclusion is unclear, rooftop COS are usually designed to setback from the building edge and when designed properly it doesn't cause any adverse impact <i>e.g. additional shadows</i> to the neighboring properties.
Part 1.4 Utilities and building services (page 27)	<ul> <li>Where building services are required to be located at or above ground level, including waste facilities, loading areas, car parking vents, rainwater goods, and infrastructure for electrical, fire, hydraulic or mechanical services, ensure they are:</li> <li>visually and physically recessive</li> <li>integrated with the development's built-form and landscape</li> <li>not in front of the primary building frontage</li> <li>screened with planting or other design elements.</li> </ul>	Substations and fire hydrants' location, spatial and distances from other buildings is dictated by NCC BCA and energy providers' guidelines. Having some of these services not in front of the primary frontage may require increased side setbacks to accommodate access requirements and separation distances.
Part 1.5 Deep soil (page 29)	Increased deep soil zone percentage.	Increased percentage will likely reduce building footprint. We note that the decreased minimum dimension of 3m may alleviate this impact to some degree.
Part 1.5 Retaining trees (pages 29 and 30)	Change in wording to reference requirement to retain all trees and not just significant trees.	Could impact yield to achieve tree protection zones for underground levels and to achieve adequate clearances from tree canopies at the above levels. Current ADG requires the retention of 'significant' trees only. AS 4970-2009 provides sound base for arborists to determine trees significance, along with the newly introduced tree canopy targets will achieve the purpose without the retention of insignificant trees that may hinder developments.
Part 2.1 Lifts (page 39)	Lift handling capacity and anticipated waiting times, demonstrated in a vertical transportation report prepared by a suitably qualified person, comply with the minimum standards in ISO 8100-32:2020 Lifts for the transportation of persons and goods – Part 32: — average waiting time: 60 seconds or less — handling capacity: 7 per cent or more.	<ul> <li>Proposed AWT and HC requirements could trigger the need for additional lifts – for schemes below 40 this could double requirements over current requirements – this could have cost and space implications.</li> <li>A comparison between current and proposed controls for a development comprises 30 units (3 x1B + 15 x 2B + 3 x 3B).</li> <li>Current ADG will require 1 lift as it's under 40 apartments.</li> <li>The same development required 2 lifts to achieve the proposed AWT &amp; HC.</li> </ul>



Part 2.1 Natural ventilation in common circulation spaces (page 41)	<ul> <li>Daylight and natural ventilation in common circulation spaces that are above ground provide:</li> <li>2 or more sources of natural ventilation and daylight, where the floorplate has 7 or more apartments per floorplate, with the distance between openings maximised to encourage air movement</li> </ul>	Having two sources of ventilation will likely impact yield as this won't allow utilising building ends for larger units with dual- aspects across the entire building width.
Part 2.2 Sunlight access requirements to COS (page 44)	At any time between 9 am and 3 pm in midwinter (21 June), ensure at least half the communal open space area receives 2 hours solar access.	Current ADG "Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter)" Requiring 50% of the entire COS as opposed to 50% of 'the principle usable part' as per current ADG – could reduce building footprint/yield.
Part 2.4 Depth of habitable rooms (page 53)	Depth of habitable rooms is limited to a maximum of 2.5 times the ceiling height or primary window-head height, whichever is lower. Where living and dining rooms are combined, habitable room depth is limited to a maximum of 3 times the ceiling height or primary window-head height, whichever is lower. This excludes depth occupied by storage space or a kitchen benchtop on the room's farthest wall.	Linking the room depth to the window-head height as opposed to ceiling heigh in the current ADG will have an impact on achieving sufficiently sized rooms. For example, a combined living, dining, kitchen space having a ceiling height of 2.7m and a window-head height of 2.4m (common practice) will limit the space depth to 7.2m only compared to 8m in the current ADG.
Part 2.5 Balcony depths (page 56)	Proposed 2.4m depth requirement for 2 bedrooms units.	<ul><li>Will make it difficult to achieve solar access requirements, as is currently experienced with 3-bedroom apartments for most orientations.</li><li>We note that Figure 2.5.2 requires more than the minimum balcony dimensions, and the exclusion of the cloth drying areas from the minimum balcony size.</li></ul>
Part 2.7 Natural ventilation (pages 64-67 and Appendix 4)		<ul> <li>The proposed changes are likely to have a significant impact on yield and cost, for example;</li> <li>Eliminating treatments such as indentation and slots to single-aspect units</li> <li>Introducing unobstructed exposure to wind and its calculations</li> <li>Requirements for primary air path to be not less than 5m, Coupled with</li> <li>Requirements for 2 or more sources of natural ventilation and daylight for common circulation spaces (Part 2.1)</li> <li>Will make corner and cross-through units the only qualified units to be counted as cross-ventilated. Other types with such as units with clerestory roof-window will likely struggle to achieve EOA of 2% of total</li> </ul>



habitable floor space to be considered as a second aspect.

Cross-over (up and over) units are usually not suitable for social & affordable houses due to inefficiencies and accessibility challenges.

That said, the proposed changes will likely lead to use multiple-core solutions that requires more lifts and additional cost. Or reduced yield to achieve the required number of cross-ventilated units.

the proposed restrictors/flyscreen reduction factor Table A4.1 between 5% and 55% will lead to increased windows sizes,

Calculations' complexity will require approximately 25%-30% additional drawings/hours to demonstrate compliance.

Alternative pathway for natural ventilation requires additional CFD and wind tunnel testing, those are additional consultants needed for all developments on busy roads or rail corridor.

requirements resulted in 25% increase in

unchanged. This change will likely lead to

the storage areas in total and approximately 51% increase of the external storage area

The proposed increased storage

assuming internal areas remains

increased basement area/cost.

Part 2.10 External storage (Page 76) increased storage requirements

## **Claire Krelle**

From:	noreply@feedback.planningportal.nsw.gov.au	
Sent:	Monday, 28 February 2022 1:41 PM	
То:	PDPS DRDE Design and Place SEPP Mailbox	
Cc:	DPE PS ePlanning Exhibitions Mailbox	
Subject:	Webform submission from: The Design and Place SEPP 2021	
Attachments:	fma-submissiondraft-design-place-sepp-2022.pdf	

Submitted on Mon, 28/02/2022 - 13:40

Submitted by: Anonymous

Submitted values are:

**Submission Type** I am submitting on behalf of my organisation

# Name

First name Glenn

Last name Evans

I would like my submission to remain confidential No

# Info

Email eo@floods.org.au

Suburb/Town & Postcode Garden Suburb 2289

Please provide your view on the project I am just providing comments

Submission file fma-submission---draft-design-place-sepp-2022.pdf

Submission Good Afternoon

Please find attached the submission from Floodplain Management Australia on the draft Design & Place SEPP.

Regards

Glenn Evans Executive Officer Floodplain Management Australia

I agree to the above statement Yes



# Floodplain Management Australia

Supporting Wise Planning and Development www.floods.org.au ABN 67 007 279 179

President: Ian Dinham 0435 946 525

28 February 2022

Ms Abbie Galvin Government Architect NSW 4 Parramatta Square, 12 Darcy Street, PARRAMATTA NSW 2150

### (Submitted on line)

Dear Abbie

## Submission – Draft Design and Place SEPP Public Exhibition

Thank you for the opportunity to provide input to the Draft Design and Place State Environmental Planning Policy (**DP SEPP**). We are also grateful for the opportunity to have been involved in the Stakeholder Consultation Forums facilitated by the Department of Planning and Environment and your office leading up to the preparation of the draft SEPP.

We note that the Draft DP SEPP is accompanied by a range of other documents including changes to the 2021 EP&A Regulations and Ministerial Directions, revised Apartment Design Guide (**ADG**) and proposed new Urban Design Guide (**UDG**). We are interested in all these documents to varying degrees as outlined below.

### About Floodplain Management Australia

Floodplain Management Australia (**FMA**) was established to promote sound and responsible floodplain management, and to help reduce the risks of flooding to life and property.

FMA has continued to carry out these important roles for more than 60 years and is now the national voice for flood risk management, with a membership of around 170 Local Government Councils, catchment authorities, government agencies, businesses, insurers and professionals involved in all aspects of urban and rural flood risk management. Our members are at the front-line of flood risk assessment, flood management planning, decision making, emergency management and community engagement - see <u>floods.org.au</u>

FMA has strong partnerships with key State/Territory and Commonwealth Government agencies including NSW State Emergency Service, NSW Department of Planning and Environment, ACT State Emergency Service, Victorian Department of Environment, Land, Water and Planning, Queensland Reconstruction Authority and the Bureau of Meteorology. In addition, we have links to equivalent organisations in the United States, the United Kingdom and New Zealand. Our international network is invaluable in sharing flood management experience and expertise from other nations with our members for the benefit of their communities.

Natural disasters are costing Australia over \$560 million a year on average, and flooding from rivers and local catchments is one of the costliest, yet the most manageable, of natural disasters. Australia's total economic exposure to flooding is estimated to be around \$525 billion (net present

value) under a low emissions climate change scenario<sup>1</sup>. The annual economic costs of floods in 2060 is projected to reach \$30.7 billion under a low emissions scenario and \$40.2 billion under a high emissions scenario<sup>2</sup>. Consequently, it is extremely important to ensure that development designed today does not exacerbate the exposure of the community and individuals to these growing flood related risks and costs.

### **Our Comments**

FMA commends the Government's aim to review and update policies that influence the design of buildings and places in NSW. In particular we applaud the commitment to ensure that the new policy takes into consideration a comprehensive range of factors that will ultimately determine the quality, functionality and safety of buildings and spaces, including flood risk management (**FRM**).

Our vision is for simple but fundamental improvements to the manner in which the planning system in NSW deals with flood risk that:

- 1. Provides an uncomplicated and internally consistent system that is efficient to implement
- 2. Allows for best practice risk based planning outcomes
- 3. Communicates flood risks clearly to the public.

Our overriding concern is that the draft DP SEPP and associated guidelines do not appropriately consider the extensive range of FRM guidance available in NSW and current best practice, and consequently fails to:

- Ensure consistency with broader FRM policies of the State Government and local councils
- Provide a framework that ensures a best practice risk management based approach to FRM will be achieved, and
- Establish a framework that will work with existing systems in local councils to communicate flood risk clearly to the public.

The following provides examples of our concerns for your consideration:

- Clause 22 of the draft SEPP provides a requirement to consider natural hazards and climate change. However, this does not provide any benchmark for assessment, and the intended outcome could be better achieved with a reference back to council policies and adopted floodplain risk management plans, as well as State Government and broader national FRM guidelines.
- Clause 2 of Schedule 1 of the Environmental Planning & Assessment Regulation 2000, that
  outlines documents to accompany a DA, is to be amended to require a site analysis which
  includes the identification of "risks and hazards affecting the site." Councils typically have
  specific guidelines as to what information is required to accompany a development
  application to address flood risk. The information can vary considerably depending on the
  regional location of a Council, the extent of existing flood information available and the
  nature of the flood hazard at individual properties. The amendment to the Regulation
  should ensure that the information to be submitted is consistent with what councils require.

<sup>&</sup>lt;sup>1</sup> Deloitte Access Economics, *Special report: Update to the economic costs of natural disasters in Australia Australian Business Roundtable for Disaster Resilience & Safer Communities*. 2021, pg.9. This report defines a low emissions scenario as where net carbon dioxide (CO2) emissions start to decline by 2020 and fall to zero by 2100.

<sup>&</sup>lt;sup>2</sup> Ibid, pg.10. The report defines a higher emissions scenario in which net emissions continue to rise throughout the 21st century.

FLOODPLAIN MANAGEMENT AUSTRALIA SUBMISSION – DRAFT DESIGN AND PLACE SEPP

- The revised draft ADG includes various references and requirements to consider flooding (eg 1.2 Built Form and Siting and a new section 3.2 Water, which includes as an objective "3.2.3 Integrate flood managemen [sic] systems and water-sensitive urban design into site design"). Again this does not provide any benchmark for assessment and the intended outcome could be better achieved with a reference back to council policies and adopted floodplain risk management plans, as well as State Government policies and broader national FRM guidelines.
- The proposed new UDG includes various references to FRM under Objective 4 ("Placebased risks are mitigated, and ecological values sustained to ensure resilient communities") and a requirement under Objective 17 that relates to the scale of buildings to "Locate building platforms above 100-year flood levels and overland flow paths". The provisions within these sections of the UDG reflect an overly simplistic approach to addressing flood risk issues. Current best practice would require consideration of the vulnerability of different land uses to determine a range of flood risk mitigation measures depending on the nature of the flood hazard, consequently resulting in the application of multiple flood planning levels (FPLs).

The adoption of a specific floor level, whether based on the 100 year flood level or other levels, would also typically include a freeboard allowance and be based on council adopted policies. Such council policies are commonly developed as an outcome of flood risk management studies and plans prepared for individual floodplains which reflect the social, economic and environmental circumstances of different areas.

The simplistic statement provided by Objective 17 would have the devastating impact of undermining such council policies. While recognising the need to consider FRM early in the design process is a good thing, over simplistic guidance such as that proposed in the new UDG can have significant negative effects.

• Appendix 2 of the UDG provides criteria for public open space that addresses the dual use of flood prone land. The criteria include general objectives which appear sound although may vary dependent upon the circumstances of different areas. In particular we do not understand the basis for the 10% flood liable land criteria for the dual use of public open space. The area of land that will be suitable for dual use public open space purposes will vary dependent upon the characteristics of the floodplain. Some floodplains may have extensive high hazard areas and constrained evacuation capabilities that warrant a lower proportion of dual use while some floodplains may be conducive to more extensive dual use opportunities.

It is FMA's opinion that the design process should mandate a fit for purpose flood assessment be undertaken for all sites located on flood prone land. This should involve the upfront analysis of flood behaviour to inform the design process to avoid risks to life and property, an assessment of flood impacts to prevent unacceptable external impacts and, where necessary, a flood emergency response strategy to address unavoidable residual risks.

We envisage that the standards required for flood assessments, design and emergency management would best be expressed as performance outcomes that are linked to council prepared flood studies, floodplain risk management studies and plans and policies, the draft Floodplain Management Manual<sup>3</sup> currently on public exhibition and other widely accepted references such as *Managing the Floodplain Handbook* (published 2017 by the Australian Institute for Disaster Resilience) and associated Guidelines.

The above comments are consistent with the FMA Land Use Planning Position Policy, a copy of which is attached for your information.

<sup>&</sup>lt;sup>3</sup> Which is intended to replace the current NSW Floodplain Development Manual 2005

FLOODPLAIN MANAGEMENT AUSTRALIA SUBMISSION – DRAFT DESIGN AND PLACE SEPP

We would be pleased to elaborate further on the above comments as the Department progresses the important work of finalising the SEPP and associated legislative changes, and the new guidelines.

We thank you again for the opportunity to be involved.

Yours faithfully

heer

Paul Grech Land Use Planning Director

Enclosures:

1. FMA Land Use Planning Position Policy

 Please address correspondence to:

 Glenn Evans
 Executive Officer

 Floodplain Management Australia

 115 Marshall Street Garden Suburb NSW 2289
 Email eo@floods.org.au

Phone 0415 873353

FLOODPLAIN MANAGEMENT AUSTRALIA SUBMISSION - DRAFT DESIGN AND PLACE SEPP
# Floodplain Management Australia

Supporting Wise Planning and Development

www.floods.org.au ABN 67 007 279 179

27 May 2021

# Position Policy Floodplain Risk Management in Land Use Planning

#### Summary

FMA members are committed to ensuring that the planning system optimises floodplain risk management (**FRM**) outcomes. Flooding causes the most damage of all natural disasters but is also the most predictable. Planning can therefore be pivotal in managing flood risks associated with the development and redevelopment of urban and rural areas.

This Policy sets out recommendations for the preparation of planning strategies and development controls, and in the dissemination of flood related information through the planning system. This Policy was originally prepared for NSW, based on generic principles, and has been updated to be nationally applicable.

#### Introduction

The planning system should have regard to best FRM practice. Planning can have significant benefits in minimising and reducing flood risks to property and persons as part of the planning of new areas and the redevelopment of established areas.

Flooding is Australia's costliest natural hazard-related cause of disasters when both tangible and intangible losses are taken into account<sup>1</sup>. Australia's total economic exposure to flooding is estimated to be around \$100 billion. Approximately 7% of households have flood risk, with 2.8% being located in high risk areas; that is, up to 170,000 buildings are in locations exposed to floods with a 1 in 20 chance of occurring annually<sup>2</sup>.

There is often uncertainty in the planning process about what FRM issues and outcomes are expected to be addressed, at what stage in the hierarchy of plan making to do this, and who should do it. While overall guidance on FRM is provided at a national level through the Australian Emergency Management Handbook 7: *Managing the Floodplain Best Practice in FRM in Australia* (**AEM Handbook**) better integration of FRM and planning processes is required.

#### **Purpose of this Policy**

To present a concise FMA endorsed position that can be used in advocating best practice about how land use planning should address FRM issues.

#### **Scope of this Policy**

This Policy:

• applies to all planning documents including studies, non-statutory planning strategies, and local, regional and state land use planning controls (**planning policies**)



<sup>&</sup>lt;sup>1</sup> Deloitte Access Economics, Building resilience to natural disasters in our States and Territories, 2017.

<sup>&</sup>lt;sup>2</sup> AXCO, Insurance Market Report. Australia: Non-Life (P&C) 2018, as cited in Flood Risk Management in Australia, 2020, Neil Dufty, Andrew Dyer and Maryam Golnaraghi, Geneva Association, pg.24.

- provides a position on what FRM issues should be addressed when undertaking planning studies and preparing planning strategies, the content of planning policies and the format of flood risk maps prepared for planning purposes
- recognises that planning studies and policies inadvertently convey information to the public in regard to the nature and location of flood risks
- has been prepared to apply nationally.

As planning systems vary from state to state, generic terms are used where possible to describe planning studies, strategies and policies to reflect those relevant to the current and possible future planning systems. FRM planning terms as defined in the AEM Handbook are relied upon when needed.

#### **Position Statement**

FMA considers that the overall approach to addressing FRM in the planning system should be based on a risk based approach tailored to meet the social, economic and environmental context of individual floodplains and the communities within them. This must include recognition that climate change is changing the nature and frequency of flooding.

This application of FRM within the planning system should be undertaken as a partnership between all levels of government. State and local governments have a primary role in land use planning while the federal government should contribute by directing financial resources to maximise mitigation, aiding in recovery, and providing nationally consistent policy direction.

The attached table outlines the FMA policy position.

#### **FMA Action**

FMA will:

- liaise with all levels of government to achieve the above policy outcomes
- encourage its Members to promote and make decisions consistent with the above policy outcomes
- work with governments and industry to refine the above policy position
- continue to develop training opportunities to assist in improving the FRM knowledge and skills of those
  professionals who are involved in town planning.

#### **Policy Review**

This Policy Statement is to be reviewed every 2 years or where required to reflect changes in planning policies.

#### **Policy Status**

This Policy Statement was initially prepared by a working group of FMA members comprised of engineers and town planners from local Councils and consultants based in NSW. The decision to prepare the Policy was originally initiated by a resolution adopted at the 2014 Annual General Meeting (AGM) of FMA and endorsed at the following Annual General Meeting in 2015.

FMA members were invited to provide comments after 12 months from when the Policy was adopted. The Policy was subsequently reviewed in 2016 and updated on 25 January 2017.

The Policy was more substantially reviewed for the FMA Quarterly Meeting at the National Conference in May 2021, to provide a nationally applicable approach.

Planning Documents	Comment on Existing and Possible Future Planning Studies, Strategies and Policies	FMA Policy Position
	State Level	
Planning Information	Planning polices inadvertently provide a source of information on flood risks. Some jurisdictions also provide written certification of planning controls and constraints that affect the development potential of a property. However, this information is commonly limited to the flood related development controls that apply to the property and not necessarily to flood risk that a property may be exposed to. The public can wrongly rely on this information as reflective of all known flood risks. All legislation, directions, guidelines and practices associated with how the planning system allows for the presentation of flood related development controls, is important to how the community is informed about flood risks. The community should be fully informed about flood risks to allow an opportunity for individuals to decide what are acceptable risks (particularly where planning policies retain some residual risks) and to provide awareness that aids emergency management and recovery.	<ol> <li>The form and content of planning policies and certification should be reviewed to:         <ul> <li>avoid misleading the public who may believe there are no flood risks when only advising if flood related planning controls apply</li> <li>ensure that the same and more complete information is communicated to all enquirers</li> <li>ensure the public is fully informed of known flood risks or if there is insufficient information to know whether a flood risk exists.</li> </ul> </li> </ol>
Directions for deciding on land use zones and planning controls	Government policies may explicitly or implicitly direct the form and content of statutory planning schemes (local environmental plans in NSW) and supplementary planning controls (such as development control plans and codes).	<ol> <li>These should be either superseded by, or amended to be consistent with the direction provided by the AEM Handbook.</li> <li>Directions for deciding on land use zones and planning controls should be based on a risk based approach as opposed to relying on a singular defined flood event.</li> </ol>

State level planning policies -	State level planning policies in some states provide high level direction as to how to manage the development of land affected by natural hazards, including flooding.	<ul> <li>4. Each state should have a state policy to provide direction for the management of natural hazards, including flooding, that:</li> <li>incorporates direction consistent with that advocated by this FMA policy;</li> </ul>
	In some cases state level policies embody detailed planning controls for development in the floodplain such as specifying development that may be permitted without development consent of through a private certification system.	<ul> <li>references the AEM Handbook, and relevant state level FRM guidelines<sup>3</sup> as relevant to plan making;</li> </ul>
		<ul> <li>requires other state policies and subordinate planning policies to adopt FRM terms defined in the AEM Handbook;</li> </ul>
		<ul> <li>specifies that matters identified in this policy statement be addressed prior to the preparation of a plan that significantly changes development potential in floodplains;</li> </ul>
		<ul> <li>ensures that planning addresses flood risks to private and public property, infrastructure and to life;</li> </ul>
		<ul> <li>requires FRM planning to be based on a holistic risk based approach and not reliance on a single defined flood.</li> </ul>
		<ul> <li>requires consideration of measures to maximise the resilience of the community post flooding; and</li> </ul>
		considers climate change related flood risks.
		<ol> <li>That the relevant state planning authority be responsible for preparing the policy in consultation with other relevant government agencies in particular those involved with the management of the natural environment, emergency services, local government, utility authorities, FMA and the Bureau of Meteorology.</li> <li>In states where no state level FRM planning policy currently exists, this should be prepared as a priority.</li> <li>Related state policies, should also be revised to provide consistency<sup>4</sup>.</li> </ol>

<sup>3</sup> Such as the Floodplain Development Manual and NSW Flood Prone Land Policy in NSW.

<sup>&</sup>lt;sup>4</sup> For example in NSW, State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 contains provisions that rely on the definition of areas of high flood risk to determine where development can be approved through private certification or is permitted without development approval.

	Regional Level		
Regional Plans & Strategies applicable across all NSW regions	Typically each state produces a hierarchy of plans that seek to satisfy government goals and policies. At the top of this hierarchy are regional and metropolitan plans that set out key policies, targets and the structure of future development patterns to guide the making of lower order plans.	8. T • • •	<ul> <li>hese documents should:</li> <li>Identify the floodplains within the planning region and the key FRM considerations for development (eg evacuation and private and public damages due to significant flood depths).</li> <li>Include a Regional Flood Planning Map that shows the extent of the floodplain(s) defined by the AEM Handbook, and associated elements relevant to FRM.</li> <li>Identify regional stakeholders (eg. local Councils, state planning agencies, emergency services, insurance companies, transport infrastructure owners, dam/irrigation authorities, etc).</li> <li>Consider regional evacuation including the location and capacity of evacuation routes and centres.</li> <li>Where flood modelling at the regional level is appropriate, determine suitable development areas having regard to cumulative flood impacts. The cumulative impact of land filling and development should not increase flood levels in existing urban areas.</li> <li>Identify regional FRM mitigation measures that are required to ameliorate the impact of future development (eg augmented capacity to evacuation routes).</li> </ul>

	Subregional	
Subregional Plans & Strategies (Subregional Delivery Plan or District Plans within the Sydney Metropolitan Region)	Subregional planning links growth in population and housing to the infrastructure that supports communities, such as schools, health services, transport, and electricity and water projects. It also delivers planning outcomes across local Council boundaries and sets specific plan making actions such as for the making of local planning schemes to achieve a regional planning outcome.	<ul> <li>9. These documents should:</li> <li>Address the FRM items required for a regional growth plan where not undertaken as part of that plan.</li> <li>Consider FRM principles in the process of determining land use patterns<sup>5</sup>.</li> <li>Identify responsible authorities and funding sources for the delivery of regional FRM mitigation measures.</li> </ul>
	Local	
Local Plans (such as Local Planning Schemes or Local Environmental Plans)	<ul> <li>Local plans are typically statutory planning instruments that should have a line of sight back to higher order plans and reflect local strategic planning objectives. Local plans provide the basis upon which the majority of development is approved.</li> <li>A local plan might contain the following provisions that contribute to the way flood risks are considered in the assessment of a development proposal:</li> <li>The zoning of land, and key associated planning controls such as minimum lot size, can reflect the acceptability and appropriate density of development in locations subject to unmanageable flood risk.</li> <li>Definitions of terms, such as floodplain, or identification of the extent of flood affected land on a flood overlay map land guide the way that flood</li> </ul>	<ul> <li>10. The provisions of a local plan should:</li> <li>provide for the management of flood risks to life, property and public infrastructure</li> <li>apply a risk based approach that reflects a graded level of control dependent on the vulnerability of different land uses and the degree of hazard identified for different floodplains and different parts of a floodplain</li> <li>adoption definitions consistent with the AEM Handbook, in particular the definition of a floodplain</li> <li>apply to the whole of the floodplain</li> <li>include climate change considerations.</li> <li>11. The permissibility of development should be determined by the land use zoning applied to property having regard to all planning considerations including FRM.</li> <li>12. Where resources allow, a flood planning map should be incorporated into an LEP, with the following attributes:</li> </ul>

<sup>&</sup>lt;sup>5</sup> See principles outlined in the AEM Handbook and other publications such as 'Managing Flood Risk Through Planning Opportunities' prepared for the Hawkesbury-Nepean Floodplain Management Steering Committee, NSW Government, April 2007.

risk management considerations apply. Local plans identify either the whole (ie up the extent of the probable maximum flood) or part of floodplain (ie a flood planning level based on defined flood event lower than the probable maximum flood) as subject to flood related development controls.

- Flood overlay maps can identify areas subject to flood risk and trigger matters to be considered in the assessment of a development proposal.
- Clauses that outline matters that need to be taken into consideration when assessing the acceptability of development identified as within the area requiring consideration of flood risks.

- An overlay to land zoning maps.
- Divide the floodplain into precincts of flood risk for planning purposes (preferably 3) that trigger appropriate planning controls. These maps may show, for example, areas:
- where most development is undesirable because of the existing hazard which is unlikely to be able to be mitigated due to cost or environmental impact. These areas should coincide with those where exemptions from development consent or private certification of development is not allowed.
- where most development would be acceptable subject to flood mitigation measures.
- where controls apply to only especially vulnerable development except emergency management considerations that apply to all development.
- 13. Include both riverine and major overland flooding and tailor planning controls to the hazards associated with each.
- 14. The above maps should be used to inform the preparation and review of the LEP land zoning maps.
- 15. The zoning and development potential of land should be checked to ensure that it would not facilitate development that would be incompatible with the flood hazard or require environmentally unacceptable mitigation measures.
- 16. The local FRM provisions should be applied even if a flood planning map is not included in the LEP for the whole or part of the area to which it applies. In this situation guidance should be provided as to what criteria Council will apply to determine whether to apply the LEP clause, preferably as a part of more detailed development codes or control plans.
- 17. Include electronic links between flood related planning controls and mapping to more comprehensive FRM information sources where available.

Development Codes, Guidelines or Control Plans	These provide detailed controls that supplement higher order planning instruments (normally planning schemes or local environmental planning schemes).	<ol> <li>Model controls should be prepared by state agencies to assist Councils in preparing FRM provisions for development codes/plans.</li> </ol>	
		<ol> <li>These controls should be expressed as performance criteria and acceptable solutions, and cover:</li> </ol>	
		Floor Levels	
		Building material & methods	
		Structural soundness	
		Impact on others	
		Parking and access	
		Evacuation & refuge in place	
		Environmental management.	
		20. The development codes/plans should specify situations where further flood investigations should be undertaken, or not, at the development application stage and the specification for those investigations.	



Building a sustainable future

Ms Abbie Galvin Executive Director Government Architect NSW 4 Parramatta Square, 12 Darcy Street PARRAMATTA NSW 2150

Via www.planningportal.nsw.gov.au/design-SEPP-2021

Dear Ms Galvin

#### Re: NSW Design and Place State Environment Planning Policy

Green Building Council of Australia (GBCA) appreciates the opportunity to provide feedback on the NSW Design and Place State Environment Planning Policy (DP SEPP). GBCA applauds the NSW Government on the aim of the DP SEPP to put sustainability, resilience and quality of places at the forefront of development. We support the principles of the DP SEPP and in particular, we believe the inclusion of BASIX and its alignment to NCC 2022, the inclusion of a net zero statement and consideration of embodied energy are all critical elements for a planning framework that will play a part in helping NSW to achieve its commitment to achieving a net zero economy by 2050. However, many elements of the DP SEPP lack the detail required for GBCA to provide useful guidance and/or unqualified support and we welcome the opportunity for further engagement.

GBCA is the nation's authority on sustainable buildings, communities, and cities. With a membership of more than 550 individual companies with a collective annual turnover of more than \$46 billion, our shared vision is to create healthy, resilient, and positive places.

GBCA owns and operates Green Star, Australia's most widely used sustainability rating system for the design, construction and performance of buildings, fitouts and communities. Green Star aims to transform the built environment by:

- reducing the impact of climate change
- enhancing our health and quality of life
- restoring and protecting our planet's biodiversity and ecosystems
- driving resilient outcomes for buildings, fitouts, and communities
- contributing to market transformation and a sustainable economy.

The Green Star rating system sets industry-agreed best practice benchmarks for an extensive range of sustainability elements for buildings and communities. GBCA is pleased to be working with the NSW Department of Planning and Environment (DPE) on several areas where the aims of Green Star and the DP SEPP align, and we look forward to ongoing engagement and providing assistance wherever possible.

The DP SEPP and its various supporting documents cover a significant and complex range of elements pertaining to the NSW planning framework. GBCA has limited its focus to elements which influence the sustainability outcomes for the built environment. We appreciate the extension of time granted for returning final comment, and further to our letter of Wednesday 2 March summarising our key issues, please find detailed comment included below.

#### Non-residential developments

#### Clause 21: Design consideration – Resource efficiency and emissions reduction

The NSW Government has made a clear commitment to achieving a net zero carbon economy by 2050 and this is reflected throughout the DP SEPP and supporting documents. However, property industry consultation in 2021 (specifically a presentation to the Property Council of Australia NSW Sustainability



Committee on 25 August 2021) included incremental targets for 2025, and a 'maximum energy performance by 2030' target. It seems that this detail has not been included in the DP SEPP.

GBCA encourages the inclusion of a specific 2030 target in the DP SEPP in line with the objective within the NSW Climate Change Policy Framework to halve emissions by 2030.

GBCA supports the intentions of Clause 21 (fossil-free development, minimising waste and GHG emissions, and water sensitive design), which appear to encourage a move to all-electric buildings. However, the sub-clauses outline high-level objectives, with no details, enforceable regulatory requirements (or 'standards') included and we think that this could be redrafted to better achieve its aims.

GBCA notes that the Green Star rating system addresses all of these considerations with best-practice benchmarks supported by a process for compliance/verification. GBCA would welcome the opportunity to work with the NSW Government to develop appropriate guidance and/or explore the possibility of using specified credits from the Green Star rating system as a 'deemed to satisfy' option.

We note that City of Sydney uses online templates to streamline reporting and assessment of sustainability elements required within its planning framework. This may be an option worth considering to reduce the time and cost burden on both project proponents and those responsible for assessment.

#### Clause 26: Energy and water use standards for non-residential development

GBCA supports the intention of this clause to reduce and shift peak demand for electricity, enable storage of renewable energy, encourage metering and monitoring of energy consumption and achieve the standards for water and energy use set out at **Schedule 1**. However, while the clause reflects desirable objectives, there is no detail about how these could be enforced.

#### Schedule 1: Energy and water standards for non-residential development

GBCA commends the NSW Government on its inclusion of NABERS and Green Star as pathways for demonstrating compliance with energy and water use standards for non-residential development. The notable exclusion of terminology that allows for 'equivalence' rather than independently verified outcomes will lead to measurably better outcomes.

The third pathway provided for in the DP SEPP and outlined at **Schedule 1** is the JP1 energy use standard. This is the only enforceable method under the NCC. Targets for JP1 have been added, but as it is currently drafted, it is unclear how these have been determined and no guidance has been provided for how these should be tested and compliance ensured. In giving the targets in absolute numbers, with no mention of a calculation method, it may be assumed that for compliance to be shown using the JP1 route, the actual performance values would have to be provided based on monitored data.

As currently provided, the process to use the JV3 modelling process to determine/demonstrate compliance with the JP1 numbers is awkward. A modelling process assumes a theoretical compliance. Absolute performance outcomes (such as for a NABERS Commitment Agreement process) require that the simulation is developed as a risk assessment analysis rather than a compliance process. There is no guidance on how the monitored operational data could be converted into the JP1 targets using a standard process.

The units for the JP1 targets make reference to 'annual hours of operation'. GBCA is concerned that using this metric is problematic and opens this pathway up to 'gaming' and abuse as there is no way to determine the actual hours of operation and no verification process in place to check that projects using this pathway have met the targets.

There is also a lack of clarity regarding the equivalence between the three pathways proposed. If one of these pathways, for example the JP1 method, does not have the same rigor and governance of the Green Star or NABERS pathways, some in industry will gravitate towards the least rigorous pathway.

Further, this policy applies equally to new developments and "substantial redevelopment or refurbishments of an existing building" – this is a significant issue for building owners and managers in the non-premium or A-grade. The financial implications of refurbishing a building from a low rating to the mandated 5.5 star rating are significant. A building that currently has a 1.5 star NABERS rating may be

discouraged from undertaking renovations that would lift it to a rating below the 5.5 star rating but nonetheless higher than its original rating. We suggest that a scale of improvement below the 5.5 star rating be applied to existing buildings (for example, an uplifts of 1.5-2 stars).

# Clause 57 – Design verification statement (from *Environmental Planning and Assessment Amendment (Design and Place) Regulation 2021)*

A 'development application' for developments not affected by BASIX must include a disclosure of embodied emissions (57C) and a net zero statement (57D).

#### 57C Embodied energy

GBCA commends the NSW Government on the inclusion of embodied carbon considerations in the DP SEPP, which introduces oversight of embodied energy for non-residential buildings to the NSW planning system for the first time. This is a critical step if the built environment is to play its role in achieving NSW – and Australian – emissions abatement commitments.

GBCA notes that the inclusions relating to embodied energy (also described as embodied emissions) as currently drafted in the DP SEPP need further consideration. The data and calculations within the proposed embodied carbon calculator may not be based on the best or full extent of relevant data available.

GBCA urges the NSW Government to be transparent about the data and metrics used in the development of the calculator. GBCA welcomes the opportunity to work together with DPE, NABERS and other industry and research leaders to develop an industry-aligned approach to calculating and reducing embodied energy that will be appropriate for inclusion in future iterations of the DP SEPP.

#### 57D Net zero statement

GBCA supports the inclusion of a pathway to net zero in the DP SEPP that will encourage project proponents to consider at the design stage how their project could operate with net zero emissions. However, we believe there are details of the net zero statement as it is currently drafted that must be resolved. In particular, from *Environmental Planning and Assessment Amendment (Design and Place) Regulation 2021*:

Clause 57D

(e) for prescribed non-residential development—evidence that the non-renewable energy used by the building will be offset by the surrender of renewable energy certificates equivalent to 1 megawatt hour of renewable energy generation over 5 years.

The prescribed offset of renewable energy certificates is arbitrary and no consideration is given to the size of the building, nor its energy use/efficiency. This does not seem to reflect the intention of the net zero statement as outlined in the DP SEPP Overview and considering that most non-residential buildings impacted by this clause will be required to undertake complex energy modelling (i.e., for NABERS/Green Star). It is inconsistent that the offsets required will not reflect individual energy performance and this should be remedied in the text of Clause 57D along with clarification of what the 5-year period applies to.

#### **Residential developments**

#### Clause 27 – BASIX standards

This clause lists four elements for which certain standards must be met for a BASIX-targeted building or development to be given development consent. These elements include energy use, water use, thermal performance, and for the first time, embodied energy.

# Schedule 2 - Energy and water use, embodied emissions and thermal performance standards for BASIX affected development

Schedule 2 outlines some of the detail of the standards mentioned in Clause 27. Schedule 2, Part 2 – Energy use proposes four categories for apartment buildings (residential flat buildings and shop-top

housing), an increase from two categories in previous iterations of the SEPP. Energy use reduction requirements for the 'standard' above are given in a series of tables, for two sizes of 'residential accommodation' (houses) and the four categories of 'residential flat buildings' (apartments) listed above.

GBCA agrees an increased number of categories may allow a more nuanced approach to energy targets. However, the logic behind the percentage reduction metric for the four categories of apartments is not explained. Presumably the nuanced differences are based on NatHERS window/natural ventilation assumptions (GBCA notes there has been previous debate on this issue as windows in apartments at high levels cannot be opened due to wind issues). GBCA contends that the level of complexity in the targets does not reflect real world energy use and will not lead to better outcomes.

#### Schedule 2, Part 3 – Water use

The DP SEPP maintains the BASIX water metric as mains potable water use per person, which is a sound metric for a singular focus on water efficiency. However, the use of water has important implications for resilience. Irrigated landscapes can help lessen the impacts of urban heat. The existing metric encourages drought-ready planting and minimal irrigation but does not identify the importance or benefit of sustainably achieved irrigation (for example through rainwater harvesting).

GBCA suggests the NSW Government consider how the DP SEPP could encourage alternative water supplies, such as rainwater harvesting in tandem with sustainable landscape irrigation to both reduce potable/mains water use while allowing for water use to reduce urban heat.

Green Star rating tools include credits that provide guidance for rainwater harvesting and sustainable landscaping and we note the work of others, such as the Western Sydney Regional Organisation of Councils (WSROC), in this area.

#### Schedule 2, Part 4 – Embodied emissions

This section provides the standard for embodied emissions for BASIX affected buildings as 12.5 tonnes of carbon dioxide for each occupant of the building for prescribed residential accommodation, and 9.4 tonnes of carbon dioxide for each occupant of the building for residential flat buildings and shop-top housing. While the standard is clear, how it should be measured and assessed is not noted in the DP SEPP itself. Some information about the BASIX Materials Index can be found in the DP SEPP policy overview and the Sustainability in Residential Buildings document. This indicates that the embodied emissions of a home will be calculated by:

- estimating the volume of different materials used in the home's construction, based on materials selected
- applying an emissions factor for that material.

GBCA questions how the baseline will be calculated for the index and whether data such as the volume of different materials for a residential building will be known at the Development Approval stage and/or how it will be ensured that proponents are entering any required data accurately. It is also unclear how certifiers or council employees will be equipped to check compliance. The lack of information about which materials will or will not be included and which lifecycle assessment (LCA), environmental product declaration (EPD) and/or Australian Standards will be applied to the BASIX Materials Index is also unfortunate. It is difficult to provide useful feedback without this level of detail.

GBCA commends and supports the inclusion of embodied emissions considerations within the DP SEPP, but urges the NSW Government to ensure any metrics used are transparent and to consider how the standards can be drafted and applied in consultation with industry and leading experts in this field for the best possible outcomes. We also urge the NSW Government to consider how the inclusion of new and improved tools for measuring embodied energy would be included in future iterations of the DP SEPP.

Further, we question the use of embodied carbon/person as a metric for performance requirements. This would require knowledge of the final occupancy of a building which can vary significantly over time and depending on the use of the building. We suggest that an approach using a reference building would deliver more usable and relevant performance requirements.

#### Schedule 2, Part 5 – Thermal performance

GBCA recognises that BASIX is a complex tool and commends efforts to increase targets for energy and thermal performance and align the tool with the National Construction Code (NCC) as well as with the NSW Government's commitment to *the Trajectory for Low Energy Buildings*.

In particular, GBCA supports the NSW Government's intention to lift requirements within BASIX to align with 7 Star NatHERS and the proposed changes to NCC 2022. We commend the NSW Government on demonstrating leadership in implementing these sensible, moderate and necessary changes ahead of NCC 2022 coming into force. We also commend the NSW Government for introducing thermal comfort totals into BASIX, in addition to cooling and heating caps.

Greater transparency about how the new energy use calculations differ from the existing calculations would provide more confidence to industry and the community that the changes are substantive. It is also unclear what design and/or technology changes are required for dwelling categories to meet the requirements of the new policy. Specifically, building envelope design, hot water, lighting, air conditioning and renewable energy.

Additionally, the new GHG intensity factor proposed for the updated BASIX tool averages grid greening over a 10-year period. While this is reasonable, dwellings approved between 2022-2025 may be unfairly rewarded, and it also allows for a decrease in improvement of actual thermal performance. If projected emissions intensity of the grid is to be calculated, projected climactic conditions should also be included (i.e., model thermal performance using climate files for 2030 that CSIRO has made available). How BASIX aligns with the NCC must be demonstrated clearly and transparently. GBCA also encourages the NSW Government to ensure that the timeline for changes to BASIX requirements align as much as possible with the proposed timeline for implementing changes to the NCC and that these are clearly communicated to minimise confusion and impact on industry.

#### **Merit Assessment Pathway**

The Merit Assessment Pathway (MAP), a proposed alternate route to compliance, is described by DPE as an alternative to a BASIX assessment. It is understood that the MAP is intended to align with the NCC, but there is no evidence available to analyse whether this is the case. Additionally, GBCA notes that the MAP should reference NCC if it is to genuinely align.

GBCA supports the inclusion of the MAP in principle, as it is an especially helpful and appropriate option for mixed use developments – something that Class 2 buildings are increasingly likely to be. However, we urge the NSW Government to ensure that the MAP is a transparent, rigorous and attractive method of compliance.

In its proposed form, the MAP can only be signed off by certain officers within DPE following a review process. This may cause delays and uncertainty making this option unattractive to many builders and developers.

With regards to energy efficiency and thermal performance, appropriately skilled and qualified practitioners are essential to the delivery of building quality as well as to ensure standards that deliver functionality over the life of the building. The lack of detail regarding governance and guidance for undertaking a BASIX assessment (such as prescribing the skills, experience and qualifications that a 'suitably qualified' person must possess, and the acceptable energy assessment software) must be remedied.

GBCA urges DPE to develop strong governance and transparent reporting of MAP assessment and outcomes. Defining how the process will be verified, enforced and audited will provide greater certainty to industry and encourage better outcomes.

#### **BASIX and Class 2 buildings**

Many in industry have noted that BASIX is not an adequate fit for Class 2 apartments as the thermal comfort benchmarks are the same as those for single dwellings despite having so much more shared fabric and the relative differences in exposure of the external envelope. GBCA raised this point during the consultation for NCC 2022. In the absence of significant changes to BASIX (and the NCC) to address this, more flexibility in applying appropriate methods of assessment is important.

GBCA believes that it is critical for the NSW Government to continue consulting with industry to develop other methods for assessment that can be recognised by BASIX, for apartments, mixed use development and homes.

#### Thermal comfort and resilience

During extensive consultation on NCC 2022, GBCA noted the lack of consideration in the requirements to account for extremes of heat and cold. As climate change becomes a reality, the

frequency of extreme weather events is increasing. GBCA notes that in consultation on the proposed NCC 2022, we called for future iterations of the NCC to introduce a thermal performance stress test that considers the ability of NCC compliant houses to handle multi-day (2-3 days) heat wave or cold snap events. BASIX must adopt similar considerations.

#### Cost benefit analysis (CBA)

The cost benefit analysis undertaken by ACIL Allen for the proposed changes in NCC 2022 was viewed by many in industry as incomplete and problematic. Together with Australian Sustainable Built Environment Council (ASBEC), Property Council of Australia (PCA) and Energy Efficiency Council (EEC), GBCA commissioned a review of the NCC 2022 Consultation Regulation Impact Statement (CRIS) by consultants, Strategy Policy Research (SPR). SPR found the key conclusions of the CRIS to be inconsistent with other research and potentially influenced by key methodological choices and a set of assumptions that warranted careful review. This report underpinned our response to the NCC 2022 CRIS.<sup>1</sup>

GBCA notes that the CBA undertaken by ACIL Allen for proposed requirements for BASIX 2022<sup>2</sup> is based on the work done for NCC 2022 and we urge DPE to consider a peer review of this CBA and commit to publicly reporting the outcomes.

#### Additional points

#### Resilience

We note that while resilience and adapting to change is included as a design consideration in the DP SEPP (**Clause 22**), a strong framework to bring together a range of critical resilience considerations is lacking, along with clear guidance regarding best practice, targets or standards that developments should be required to target and/or achieve. For example, while GBCA supports proposed measures to reduce the solar absorptance of roofs, a key opportunity has been missed to embed a comprehensive set of guiding principles for addressing urban heat within the Urban Design Guide as it is currently drafted.

GBCA supports the increased requirements for deep soil (while noting that these are lower than those proposed in the original explanation of intended effect for the DP SEPP) and tree canopy cover (while noting that these should be supported with improved guidance on tree selection and a more rigorous methodology to estimate future canopy cover).

It appears that some resilience elements included during earlier consultation have now been removed and while the inclusions mentioned above will have a positive impact on the resilience of NSW's built environment, there are a range of other considerations (e.g., street orientation, cool materials, water (see earlier comments regarding Schedule 2, Part 3 – Water use)) that could offer further benefits to our communities with the development of strong principles, guidance, targets and methods for assessment.

GBCA encourages the NSW Government to continue working with industry leaders to encourage and showcase projects that meet and exceed industry-agreed best practice benchmarks for resilience. The Green Star rating tools include a number of such benchmarks and guidance, and we would welcome the opportunity to work with DPE on how these could inform improvements to resilience provisions.

#### **Biodiversity**

Biodiversity is included in the Urban Design Guide as part of the components of successful places and in slightly more detail at Objective 9 – Landscape features and microclimates enhance human health and biodiversity. While improving biodiversity is likely to be given effect by enhanced tree canopy (for which requirements are prescribed), there is no clear guidance or targets for how biodiversity will be protected and/or enhanced over time.

GBCA welcomes the opportunity to work with the NSW Government to showcase developments that exceed requirements to support increased thresholds and requirements in the future for an even greener, more resilient NSW.

<sup>&</sup>lt;sup>1</sup> ASBEC, EEC, GBCA, PCA. 2021. Consultation Regulatory Impact Statement – Proposed NCC 2022 residential energy efficiency provisions: Cover letter. <u>https://gbca-web.s3.amazonaws.com/media/documents/ncc-cris-cover-letter.pdf</u>

<sup>&</sup>lt;sup>2</sup> ACIL Allen. 2021. Proposed requirements for BASIX in 2022: cost benefit analysis. <u>https://shared-drupal-s3fs.s3.ap-southeast-2.amazonaws.com/master-test/fapub\_pdf/BASIX+NCC+alignment+final+report\_accessible(330827.1)+-+Accessible+V1.0.pdf</u>

#### Sustainable transport and walkability

While some clauses noted above will require development of further detail, GBCA commends the inclusion of guidance and requirements to increase sustainable transport. We note that **Clause 19**: **Design consideration – Sustainable transport and walkability** aims to minimise car trips and car travel distance, increase opportunities for walking and cycling, improve bicycle parking and end of trip facilities, and support the installation of electric vehicle charging infrastructure. Further guidance can be found at Clause 33 – Car parking requirements for new buildings and green travel plans. Clause 99 of the *Environmental Planning and Assessment Amendment (Design and Place) Regulation 2021* provides guidance for the inclusion of electric vehicle charging infrastructure while Clause 145AC provides a mechanism to support compliance with the new requirements.

#### Urban Design Guidelines (UDG):

GBCA commends the inclusion of key sustainability principles within the Urban Design Guidelines (UDG) that are upgraded to deliver more sustainable outcomes. We particularly draw attention to:

- Light materials for urban heat mitigation (Objective 17) and note that this is key for managing the urban heat island effect. We particularly support the UDG requirement that "*light colours for surfaces, especially roofs, together with urban tree canopy to reduce urban heat*"
- Minimisation of parking and inclusion of cycle ways (Objective 8 Parking is minimised, adaptive and integrated) and suggest that this is necessary for sustainable transport solutions of the future.
- Tree canopy is necessary to minimise the urban heat island effect whilst enhancing beauty and nature within neighbourhoods (Objective 10 – Tree Canopy Supports Sustainable, Liveable and Cool Neighbourhoods)
- Effective use of land density targets (Objective 3 Scale and massing responds to desired local character)
- Public open space targets (Objective 12 Public Open Space is high-quality, varied and adaptable)

#### Further engagement

GBCA commends the NSW Government on its commitment to improving the sustainability of NSW buildings and communities. The ambition of the DP SEPP is clear. However, as noted above, while GBCA supports the intention of the sustainability features and clauses included in the suite of consultation materials, many of these lack the detail necessary to provide useful guidance to proponents or the governance needed to ensure compliance and the best possible outcomes. Greater transparency and provision of more detail would also enable GBCA to provide more useful feedback.

We look forward to continuing to work closely with the NSW Government on the sustainable transformation of the built environment. Please do not hesitate to contact, Katy Dean, Policy Adviser, via email at <u>katy.dean@gbca.org.au</u>, should you require any further information.

Yours sincerely

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# HOUSING INDUSTRY ASSOCIATION



Submission to the New South Wales Department of Planning and Environment

**BASIX Higher Standards Exhibition 2021** 

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#### HOUSING INDUSTRY ASSOCIATION



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# ABOUT THE HOUSING INDUSTRY ASSOCIATION

The Housing Industry Association (HIA) is Australia's only national industry association representing the interests of the residential building industry.

As the voice of the residential building industry, HIA represents a membership of 60,000 across Australia. Our members are involved in delivering more than 170,000 new homes each year through the construction of new housing estates, detached homes, low & medium-density housing developments, apartment buildings and completing renovations on Australia's 9 million existing homes.

HIA members comprise a diverse mix of companies, including volume builders delivering thousands of new homes a year through to small and medium home builders delivering one or more custom built homes a year. From sole traders to multi-nationals, HIA members construct over 85 per cent of the nation's new building stock.

The residential building industry is one of Australia's most dynamic, innovative and efficient service industries and is a key driver of the Australian economy. The residential building industry has a wide reach into the manufacturing, supply and retail sectors.

Contributing over \$100 billion per annum and accounting for 5.8 per cent of Gross Domestic Product, the residential building industry employs over one million people, representing tens of thousands of small businesses and over 200,000 sub-contractors reliant on the industry for their livelihood.

HIA exists to service the businesses it represents, lobby for the best possible business environment for the building industry and to encourage a responsible and quality driven, affordable residential building development industry. HIA's mission is to:

*"promote policies and provide services which enhance our members' business practices, products and profitability, consistent with the highest standards of professional and commercial conduct."* 

HIA develops and advocates policy on behalf of members to further advance new home building and renovating, enabling members to provide affordable and appropriate housing to the growing Australian population. New policy is generated through a grassroots process that starts with local and regional committees before progressing to the National Policy Congress by which time it has passed through almost 1,000 sets of hands.

Policy development is supported by an ongoing process of collecting and analysing data, forecasting, and providing industry data and insights for members, the general public and on a contract basis.

The association operates offices in 22 centres around the nation providing a wide range of advocacy, business support services and products for members, including legal, technical, planning, workplace health and safety and business compliance advice, along with training services, contracts and stationary, industry awards for excellence, and member only discounts on goods and services.



# **1. EXECUTIVE SUMMARY**

# **1.1 BASIX STRINGENCY INCREASES**

The residential building industry acknowledges the need to build environmentally responsible housing that does not negatively impact on housing affordability and supply.

The Housing Industry Association (HIA) does not however, support the proposed BASIX stringency increases and imposing additional costs on all new houses, apartments and large home renovations arising from the design and construction implications of the proposed changes.

HIA has a number of concerns with the proposed BASIX stringency increases, and with the way the BASIX reforms have been publicly exhibited:

- 1. The cost-benefit analysis report demonstrates a net cost on a societal basis, and also underestimates both the capital costs and other costs to industry in implementing these reforms.
- 2. The cost-benefit analysis does not take into account the additional changes proposed to BASIX under the Design and Place SEPP exhibition. The interactions between the proposed SEPP changes and the stringency increases have not been adequately modelled.
- 3. Fully functional updated versions of the required web-tools and NatHERS software are not available during the exhibition period. Without the tools it is impossible for builders and designers to accurately begin making decisions about necessary design changes. Manufacturers and suppliers cannot begin transitioning their products and processes with confidence. This is creating a great deal of uncertainty for the industry, and threatening any chance of a smooth transition to the new requirements.
- 4. There is a lack of technical detail on the proposed changes and accompanying technical provisions meaning is it not possible for industry to review and comment with certainty on the necessary design and construction changes.
- 5. A further increases in NatHERS star rating underpinning a BASIX energy assessment will create only a marginal decrease in operational energy consumption of a home, while the resulting additional costs and complexities in design and construction will add significantly to the upfront construction cost. This is a clear case of diminishing returns for this aspect of the reform.
- 6. Moving to 7-stars for all of NSW climates zones does not align with the targets agreed in the national Trajectory for Low Energy Buildings, and stringency increases were not a specific target outlined in the NSW Net Zero Plan Stage 1: 2020-2030, which cited only improvements to BASIX generally.
- 7. Creation of multiple independent targets for individual aspects of emissions reduction will add to complexity, and prevent industry from developing optimal solutions for new homes to meet clear emissions reductions targets. This approach will not contribute to the development of a whole-of-home net emissions protocol and a single holistic target for industry.
- 8. There are significant design challenges for complex designs and homes on difficult blocks, where the homes already struggle to meet 6-stars, let alone achieve a 7-star performance without significant construction cost increases.
- 9. Tying the implementation of new BASIX targets to development applications determined after the commencement date of the legislation will create issues for construction agreements entered into in advance of DA lodgement. As has occurred for past stages of implementation of BASIX, the changes must only be applied to development applications yet to be submitted. Further, given the scope of the reform, the same approach as taken in 2004 should once again be applied; namely that the changes only apply where a home building contract has not been entered into in the last 12 months.



HIA

There are a range of other lower cost reforms that could be progressed, that would result in much lower cost impacts on affordability and build upon our current energy efficiency standards to address the goal of net zero energy (and carbon) ready buildings.

Greater efforts should be made to improve the energy efficiency of existing housing stock as a next step in reducing the emissions from the housing sector, as opposed to further adjusting existing standards for new homes that will only deliver a marginal increase on energy savings and emissions reductions already being delivered.

It is considered if these issues were adequately addressed it would in fact support the preliminary findings of the CRIS further, by revealing that the cost associated with increased energy efficiency stringency for all new Class 1 and Class 2 buildings would far outweigh the benefits.

## **1.2 EMBODIED EMISSIONS TARGETS**

HIA has even deeper concerns regarding the implementation of an embodied emission target for buildings and other changes to the BASIX scheme that were proposed outside of the BASIX-specific consultation under the Design and Place SEPP:

- 1. These additional changes have not been subject to a thorough regulatory impact assessment or cost-benefit analysis.
- 2. Setting the new target at the current mean performance is not a minor or insignificant change from business as usual, despite the claim as part of the exhibition materials. It is likely to have a major impact on a significant proportion of current building designs and add significantly to their construction costs.
- 3. The proposal contains insufficient detail, making it impossible for the building or manufacturing industries to generate a thorough understanding or assess the impacts accurately. It is not at a sufficient level for thorough public consultation process, let alone implementation.
- 4. There are broad concerns that the EPiC database is not suitable as a tool for carrying out specific product or building comparisons.
- 5. There will be significant implementation challenges created for builders, product suppliers and manufacturers, that have not been identified or addressed in the proposal.
- 6. This is a significant change to the technical regulation of buildings in NSW, coming at a time when several other significant reforms are underway and the industry is under extreme pressure in respect to building material supply chains. A regulatory change that impacts the selection of materials for all new homes moving forward must be considered in the context of Australia's relatively small marketplace and currently restricted access.

HIA has been directly engaging on the draft BASIX changes with a range of building product manufacturers and suppliers that will be significantly affected by these changes; and subsequent feedback from those designers, builders and manufacturers reinforces HIA's response and highlights the substantial impact these changes will have on their businesses.

Adoption of any embodied emissions targets and calculations should be voluntary in the first instance, to enable finalisation of the appropriate assessment tools and calculations, a deeper exploration of the operation and impacts of adopting a target and allowing for a more robust re-assessment at a later stage.



# 2. HIA KEY CONCERNS WITH PROPOSED STRINGENCY INCREASES

Through engagement with a range of builders, building product manufacturers and suppliers a number of issues regarding the BASIX stringency increases have been raised.

These concerns highlight significant technical, design and transitional challenges which add to the cost of implementing these reforms. HIA also considers that the stringency increases themselves are at a point of diminishing return with respect to the emission reduction that can be achieved compared to other options.

The underlying tools, calculations and climate models have not yet been completed and made available to industry for testing and knowledge development. This is making it even harder for industry to determine the impact and prepare.

# 2.1 COSTS ARE UNDERESTIMATED AND EXCEED BENEFITS

The ACIL Allen cost-benefit analysis report accompanying the BASIX Higher Standards exhibition concludes that the anticipated costs associated with the two models considered – which effectively require new homes and apartments to meet a 7-Star NatHERS rating along with higher standards for the operational energy efficiency and heating and cooling loads – would exceed benefits by a factor of three to one and six to one respectively, on a state-wide basis.

Overall, the cost-benefit analysis confirms that the change would result in a net social and economic loss to society of \$884.6 million under one scenario or \$1.286 billion under the second scenario, even when less tangible benefits like health impacts are factored in.

Furthermore, the cost-benefit and breakeven analysis finds it unlikely that any scenario would result in benefits exceeding costs, except in the event of a very significant increase in wholesale energy costs (between three and eight times) and/or a very significant reduction in the capital costs (a discount of around 65 to 85 per cent).

The cost-benefit analysis clearly demonstrates that both of regulatory options considered would result in a significant net cost to the community in the hundreds of millions of dollars, and as a direct consequence increase housing costs for home buyers and renters and reduced housing affordability.

The additional home building cost, home loan costs and resulting additional taxation on the dwelling, will affect every homeowner going forward, whether they see this set of requirements as their preferred approach to achieving reduced energy and emissions from their housing choice.

Notwithstanding the findings of the cost-benefit analysis, HIA holds the view that the assessment significantly undervalues the true cost of implementing the increase in operational energy stringency.

Costs relating to house redesign, internal layout changes and compromising internal room configurations, structural building changes and the specification of current industry standard building materials and products, are all underestimated.

Adapting allotment sizes, site conditions, designs, specifications and costings to meet the changes requires a significantly longer lead-in time. Client engagement, awareness and marketing time lines add to the challenges.

It is considered if these issues were adequately addressed it would in fact support the preliminary findings of the cost-benefit analysis by revealing that the cost associated with increased BASIX standards for all new Class 1 and Class 2 buildings far outweigh the benefits.



# 2.2 ADDITIONAL CHANGES TO BASIX NOT ASSESSED IN THE COST BENEFIT ANALYSIS

Further to the above issues, other substantive changes to BASIX requirements have been proposed separately to this exhibition as part of the Design and Place SEPP exhibition. The BASIX SEPP is proposed to be rolled into the Design and Place SEPP, which includes proposals to set a cap on embodied emissions and to ban dark coloured roofs. These changes have not been factored into the BASIX increased stringency cost-benefit analysis.

Thermal performance and embodied emissions have significant interdependencies and often competing demands on the materials used in construction of the building fabric. The impacts of these changes should not be assessed independently to the stringency increases; they will have a compounding effect on the costs associated with the stringency increases. Equally, the impact of stringency changes should not be assessed without the costs associated with these other proposed changes.

The outcome of each of these proposals will have a significant influence over final house designs and the products and materials that need to be specified in the future. Significant transition times will be required to enable the building material supply chain to adjust to increased demand for loweremission materials, with a corresponding increase in price for those materials while supply remains constrained.

# 2.3 EXHIBITION VERSIONS OF BASIX TOOLS NOT FULLY AVAILABLE OR FUNCTIONAL

The BASIX exhibition has been accompanied by the release of a supporting 'sandbox' version of the BASIX web-tool, but this tool is not complete or fully functional. Only the housing portion of the tool has been made available for industry, and not for apartments.

The housing tool (and apartment tool when available) is also incomplete – it does not contain the proposed embodied carbon targets, and does not include the DIY option.

It has been stated that a limited apartment tool will be available in March 2022 (after the exhibition period), and an embodied carbon tool will not be available until mid-2022 or later.

Complicating the problem further, the underlying NatHERS climate files are proposed for reform nationally to align with NCC 2022. These updates are unlikely to be available until September 2022, which also aligns with the implementation date proposed for these changes.

This means that energy assessors, and in turn builders and designers, cannot now, or until sometime after potential commencement, accurately model the homes that will be required to meet the new BASIX targets. Changes to the climate data and thermal bridging inputs will have a real impact on the outcome of NatHERS assessments for BASIX. Not having a fully operation tool means that industry and regulators do not have a complete picture of the real impact of the changes on designs or costs.

This will be further compounded by the short timeframe for industry adoption foreshadowed. At a minimum industry should be provided with 12 months from the time the NatHERS tools have been accredited with all of the elements fully incorporated, so industry can transition to the actual changes and make necessary adjustments to house designs and home building packages.

Furthermore, while a beta version of the CSIRO Accurate software has been made available on a limited basis, CSIRO has reportedly stated they are not comfortable a final version of the software will be available until September 2022. It is anticipated the other software suppliers will require several months to release updated programs, as has been observed in past, and the other programs are the current preferred options for NSW.

The design process for new buildings takes many months and for multi-unit developments could take 6-12 months depending on scale of the development.

The information currently available as part of exhibition is of little use to industry in assessing and preparing for the impacts of the proposed stringency increases.

Without access to fully functional tools, or some other means of determining accurate ratings, it is impossible for builders and designers to accurately begin making decisions about necessary design changes.

This has also made it impossible for the manufacturer and supplier chain to identify what changes would be required to their products, systems and processes, and has caused the industry to now approach the proposed BASIX reforms with a high degree of hesitance and uncertainty.

HIA is requesting that the implementation of the new BASIX reforms is delayed by at least 12 months, to September 2023, if they are to proceed.

Further it is considered that a more robust public consultation period should be relaunched in September 2022, once the fully functional web-tools and underlying NatHERS assessment software updates are available. This will allow a more considered and rigorous process for analysis of changes, a more accurate cost benefit assessment to be undertaken and industry to genuinely understand what the changes will mean.

# 2.4 UNDERSTANDING THE TRUE MEANING OF INCREASES IN 'STAR RATING'

The pursuit of further changes in building fabric performance solely on the basis that the rating scheme in place has higher standards (10 stars) completely fails to align with the actual overall public policy outcome sought from the policy response.

In this regard it is important to understand the NatHERS ratings, shows that the changes proposed will offer only a marginal decrease in energy consumption, and hence emissions, as opposed to the improvements that have been delivered to date by the original and amended BASIX benchmarks for building fabric (4, to 5, to 6 stars).

This is depicted in the following chart which is based on the national climate zones and benchmarks under the NatHERS Star Band criteria.



This clearly shows the diminishing return on energy savings as the star ratings increase beyond the initial 4-star and 5-star benchmarks introduced. Moreover, the Sydney climate, being more moderate than many others in Australia, shows a relatively flat line with respect to reductions beyond 4 stars.



Clearly the reduction in energy consumption for heating or cooling a home are markedly reduced as the rating moves beyond 6 stars. This is a simple outcome of the maths and the starting point where each increment is a 10 per cent reduction of a smaller number.

This is also a case of diminishing returns at ever increasing cost and complexity for construction.

To move to 7-stars in NSW is a significantly larger construction step than for the other states. The current thermal stringency target in NSW is in effect approximately 5.5 stars. Moving to a consistent 6 stars would require the highest window glazing performance levels and insulation levels that standard walls and roof/ceiling cavities could readily and economically take based on the common construction methods in Australia.

To move even further beyond that to 7 stars there is little more that can be done to the building fabric through 'simple' additions and tweaks. It will require a range of changes to the design and significant construction changes to be achieved across all house designs in each region of NSW.

Noting that the cost-benefit analysis demonstrates that the costs of the proposed changes outweigh the benefits it is hoped that the NSW Government will now take the opportunity to revisit the approach proposed and look at a broader range of more holistic options to achieve zero energy (and carbon) ready buildings.

### 2.5 DIFFERENCES IN APPROACH FROM THE NATIONAL TRAJECTORY

Notwithstanding that HIA does not support further stringency increases for the building fabric, it is important to note that the national Trajectory for Low Energy Buildings does not recommend a 7-star stringency increase across all jurisdictions/climate zones. Rather it proposed a move between 6.5-star and 7-star in the colder climate zones 6, 7 and 8.

For the other climate zones it recommended 6.5-star in climate zones 1 and 5, and 6-star in climate zones 2, 3 and 4.

Unfortunately, both the NCC 2022 provisions and now the proposed BASIX higher standards and associated cost-benefit analysis have not facilitated this approach or assessed these recommendations, instead proposing a 7-star requirement across all climate zones.

We acknowledge the exemptions for small apartment buildings and North Coast climate zones due to the outcomes of the cost-benefit report. However, given the anticipated under-estimation of costs within the report, and the societal costs outweighing benefits in all scenarios modelled in any case, HIA questions why the Government is proceeding with 7-stars for the climate zones that are contrary to the Trajectory.

Much of the concerns and issues raised above would still exist with the Trajectory settings, however, if the Government proceeds with BASIX changes in stringency a more pragmatic approach would be to align with the agreed recommendations for the thermal fabric settings being tailored for each climate zone as set out and agreed to in the Trajectory.

The NSW Net Zero Plan Stage 1: 2020-2030 itself does not include direct reference to BASIX stringency increases outside of the Trajectory, instead discussing general improvements to BASIX and the NCC, encouraging improvements and innovations in building materials, and electric-vehicle readiness.



# 2.6 THE CHALLENGE OF SEPARATE TARGETS FOR DISCRETE ELEMENTS OF EMISSIONS REDUCTION

In NSW there is a real opportunity to progress a new and more truly holistic approach to residential energy efficiency standards as supported by the Trajectory for Low Energy Homes of net zero 'ready' homes.

NSW is already ahead of the National Construction Code with respect to a 'whole of house' approach to residential energy efficiently. By necessity, a true 'net-emissions' approach to energy efficiency of buildings would seek to merge the different aspects of energy efficiency into one set of calculations to calculate a single rating, with a holistic target for net-emissions.

This approach would naturally allow for trade-offs and optimisations by industry to reach the desired standards, and allow for flexibility in addressing the sometimes conflicting needs of thermal performance, energy load, and other emissions sources (such as embodied emissions).

It would also allow for the setting in advance of simple, staged future targets aligned with the net-zero trajectory. This would provide clarity for industry, allowing a steady and smooth transition over time rather than periodic and costly large step-changes like the ones proposed.

Disappointingly, there appears to be a fragmentation of the approach away from holistic measures. Alongside the existing heating and cooling caps, a new lower total heating & cooling load cap is proposed. These caps operate independently of the star-rating and independently of the overall energy target.

Further, outside of this BASIX exhibition, a new element is being proposed with its own discrete targets - the embodied emissions of materials used in construction. This proposal is impossible to ignore within the context of the BASIX higher standards discussion.

Treating all of these targets independently ignores the complex interactions and interdependencies between them and inhibits industry in developing optimal solutions. Very often, gross over-compliance in one or more areas is required to satisfy another target. This would be an unfortunate and inappropriate outcome.

This situation will be further complicated if embodied carbon is introduced as a discrete target. Many of the standard approaches to improved thermal performance would require more material usage, and usage of materials with more thermal mass – which typically means higher emissions.

Simultaneously in NSW there also appears to be a move away from including additional allowances for reasonable trade-offs and offsets between elements within the BASIX system.

All of this moves NSW in the wrong direction, and away from the development of a true 'whole-of-house' net emissions rating.

HIA believes that trade-offs and offsets are in fact an inherent part of any holistic assessment, and are critical in allowing industry practitioners to achieve balanced and optimal designs, which deliver true energy efficient performance in the most cost-effective manner.

Simply shifting the benchmarks, and not fundamentally changing the approach to energy efficiency, will simply add more costs and not achieve the desired benefits. It will also do little to provide clarity for industry on how to achieve the desired trajectory moving forward.

### **2.7 IMPLICATIONS FOR HOME DESIGNS**

There are many standard houses designs that are already struggling to achieve 6-stars and if 7-stars is introduced those house designs would need to be scrapped or may be limited to construction on certain orientations only.

This issue is not limited to volume or project homes and has a large, if not larger impact on custom built homes.

This was further demonstrated by a recent ABCB commissioned study into difficult blocks that presently struggle to meet 6-star standards and subsequently how they would meet 7-stars if changes were to proceed.



Some of the observations from the report were:

- that the Typical Houses in colder climates required significant upgrades under each difficult block scenario (with high performance double, thermally broken, argon filled, high solar gain, low e glazing required).
- specifications and upgrades required for sub optimal house designs result in an increase in cost can be observed ranging from 5 to 25%.

These challenges are not limited to project homes and equally affect custom designed houses where home owners have a specific house design in mind and are willing to pay for this outcome yet often struggle with 6-stars. Most of these designs would never achieve 7-stars no matter what insulation and glazing specification was thrown at them.

The only solution in these scenarios is for the architects to engage the energy assessor immediately at concept stage and change the way they design the home. All houses will start looking the same, squares or rectangles with no courtyards or return walls to limit exposed walls to atmosphere.

The days of large expanses of windows will be completely gone as the window to floor area ratio will need to come back to around 22% as we simply don't have window specification in the country that will allow for large windows in a custom design and still achieve 7-stars.

For apartments, the issues are equally challenging in achieving a 7-star average across the apartment building. The window to floor area ratio and therefore window/glass performance levels would add excessive costs and design challenges.

Changing over to larger sections of cladding in lieu of window/glazed facades is not likely to be a desirable outcome for apartment owners due to consumer preferences for natural light, views, overall amenity and liveability.

The cost-benefit analysis case studies for apartments need a much broader representation of case studies and examples to ascertain the real world challenges and costs that may arise.

Even without these changes to BASIX, upcoming NCC 2022 is set to be the largest single amendment introduced to the NCC since its inception. There are a range of significant amendments beyond energy efficiency that will be introduced, impacting upon both house and apartment design in NSW.

All of these changes will add complexity and stringency to buildings and will ultimately impact affordability and viability of construction projects. They will also need significant investment from industry to understand, adapt and adopt the changes into their business operations and building designs. These reforms must be rationalised and considered as a cumulative package for their overall impact on housing affordability.

### 2.8 CHALLENGES FOR IMPLEMENTATION

Under the proposed implementation of the Design and Place SEPP (which will incorporate BASIX) compliance with the new requirements will continue to be required at Development Application stage. This does not align with the process undertaken between the builder and client for a typical new-home building project.

It will create issues for the prospective home owner, who will be relying on preliminary agreements and quotations provided by the builder in advance of decision to proceed with a building project. They will then proceed to DA or CDC based upon those estimates, and then sign the final construction contract on the basis of the approved DA. Where these preliminary costs have been quoted on the basis of prior BASIX targets, but the DA or CDC is not registered until after the implementation date, it could result in financing shortfalls for the project due to increased BASIX compliance costs. Meaning the owner may no longer be able to proceed with the project due to higher costs than originally assumed to gain finance.

HIA is requesting that implementation of new BASIX requirements is linked to the signing of the construction contract as occurred in 2004 and 2017, rather than to lodgement of the DA or CDC. This



approach avoided many of the potential transitional problems that will result if not managed in this way.

# 2.9 NCC ENERGY EFFICIENCY CHANGES DRAFT 7 STARS PROVISIONS

HIA recently made a substantial submission to the draft NCC changes to energy efficiency provisions highlighting a number of concerns in terms of the impacts, technical suitability and practical implications on the design and construction of new housing and apartments. These concerns include the following:

- Technical difficulties associated with proposed provisions
- Complexity of the changes
- Significant cost implications for the changes for homeowners
- Implications of the changes and corresponding thermal bridging changes
- Impact on standard building materials and construction practices
- Design implications of the changes
- Impacts on extensions and alterations
- The proposed increases exceeding the building fabric proposals in the Trajectory for low energy homes
- Construction, product and design transitional implications
- Added building envelope complexity
- A number of the provisions being incompatible creates contradictions with other parts of the NCC
- Increased condensation risk with the provisions with higher efficiency standards and increased wall, floor and ceiling/roof insulation provisions that will limit the ability for building to breathe, and cavities being packed with insulation and at capacity of space allowable
- Increased fire risk with the higher efficiency standards and increased wall, floor and ceiling/roof insulation provisions
- Availability of products to meet the new requirements
- Additional weight on ceilings and ceiling battens in achieving increased ceiling insulation
- Added complexity for design, assessment, approval and application of the NCC provisions and ultimately compliance challenges due to the added complexity.

Most of these issues would apply equally to the proposed BASIX changes which are proposed to reflect the parallel NCC stringency increase.

# 2.10 PREFERRED APPROACH TO IMPROVED EFFICIENCY - LOW COST REFORMS

HIA has identified a range of reforms that could be progressed that would result in much lower cost impacts on affordability and build upon our current energy efficiency standards to address the goal of net zero energy (and carbon) ready buildings.

Most of these reforms utilise much of the work both the ABCB, BASIX administrator and NatHERS Administrator have been progressing for NCC 2022 but adjusted to align with the current building fabric stringency setting.

The reforms that could be delivered as a package of reforms alongside NCC 2022 and include:

1. Introduce enhanced BASIX whole of home/energy usage provisions (with the building fabric set at 6-stars)



- 2. Introduce the thermal bridging mitigation measures for both steel and timber framing to provide a true 6-star performance
- 3. Combine the NatHERS house rating tools and whole of house assessment tools incorporating energy usage/building services provisions, building fabric assessment, heating and cooling loads, thermal bridging and building sealing
- 4. Incorporate the new NatHERS climate files into the energy rating tools
- 5. Introduce new enhanced detailed installation of insulation provisions as per later comments in this submission
- 6. Introduce the new condensation provisions and air spaces and building wall wrap permeability requirements and undertake a broader analysis of condensation risks of higher energy efficiency standards and a full cost benefit assessment of all future changes
- 7. Commence a review of the solar panel installation and battery storage Australian Standards and commence the development of associated NCC Deemed to Satisfy Provisions, where PVs and battery storage systems are installed in houses for future incorporation in the NCC to provide single source of truth and location for onsite installation provisions.

### 2.11 GREATER IMPACT IN EMISSIONS REDUCTION FROM EXISTING HOMES

HIA has long called for greater efforts being made to improve the energy efficiency of existing housing stock as a next step in reducing the emissions from the housing sector.

An approach that addresses the hundreds of thousands of homes built before BASIX introduced acceptable minimum standards for energy efficiency would deliver a marked improvement in emissions reductions, as opposed to making incremental and more expensive changes to standards that already do the required heavy lifting for new homes.

The Trajectory for Low Energy Homes Report noted the following in respect to existing buildings:

- 'Existing homes represent the largest potential for energy savings in the residential building sector.'
- 'The vast majority of Australia's housing was built before the introduction of minimum energy efficiency regulations (estimated at 8-10 million homes) for residential buildings in 2005. This means existing (pre-2005) housing will continue to pose large energy costs, health and emission issues for households, regardless of standard increases in the NCC.'
- Based on initial modelling.... By improving the performance of existing buildings by a relatively small amount, the energy savings and benefits roughly double.
- For example, by improving existing housing stock by just 1 per cent could deliver an additional \$1.5 billion in net present value.'

These findings are compelling and supports the reality that there are far greater gains to be had by tackling energy efficiency upgrades in existing housing stock at this point in the transition to a low carbon economy.

HIA believes the NCC should be used as a key part of such a solution for existing housing by setting a minimum deemed to satisfy benchmark for all major renovations. In combination with the introduction of a simple and affordable pathway to introduce mandatory disclosure at the point of sale and rent, rapid change could be delivered in existing housing stock and improve the community understanding of how our homes can be used efficiently.

# 2.12 BROADER IMPLICATIONS FOR CLASS 1 BUILDINGS

Without the energy efficiency changes, NCC 2022 which will be adopted in NSW, is already set to be the largest single amendment to the code since its inception. There are a range significant amendments beyond energy efficiency that will be introduced.

These include:



- Mandatory accessible housing provisions for all new and extensions for Class 1 buildings (by some states and territories)
- More stringent condensation management provisions
- Waterproofing provisions
- Fixing and flashing requirements
- Broad range of Australian Standards changes
- NCC restructuring changes; and
- Performance Solutions changes.

All of these changes add more complexity to the code to be implemented at a single point in time. Ultimately they will collectively have a significant impact on affordability and viability of Class 1 projects. More importantly, each of these changes requires industry to understand, adapt and adopt the changes into their current business operations and their current building designs.

These changes need to be rationalized and not considered as individual reforms. They must be considered as the cumulative package of changes and an assessment of their overall impact must be made for all housing forms in NSW before the changes are implemented.

### 2.13 BROADER IMPLICATIONS FOR CLASS 2 BUILDINGS

Most new Class 2 buildings are constructed as mixed use buildings and the building and manufacturing sector are still adapting to the substantive changes made under NCC 2019 Section J. Many of the changes are only coming online now for projects meaning their substantive impacts on design and material selection are yet to be well understood.

As such prior to progressing further energy efficiency changes to both the individual apartments building fabric and higher building services (energy usage) provisions for Class 2 buildings, the NCC 2019 Section J changes should be given further time to be embedded into designs and construction.

Furthermore, there are other significant changes being proposed for Class 2 buildings under NCC 2022 which follow on from the significant fire safety and other design changes made in NCC 2019 (including mandatory sprinkler provisions and aforementioned Section J changes).

These include:

- Mandatory accessible housing provisions for all Class 2 buildings (in some states and territories)
- Significant more stringent waterproofing and weatherproofing provisions
- Further fire safety provisions changes and restrictions
- More stringent condensation changes
- EV charging future proofing and solar ready zones.

All of these provisions add more complexity, stringency increases and ultimately have significant impact on affordability and viability of Class 2 apartment projects.

These changes need to be rationalized and not considered as individual reforms. Again the cumulative impacts of these changes must be considered.

If a change for the energy efficiency of apartments is to proceed it should be staged and preferably not commence until 2025, giving time for the 2019 changes to be embedded, and time for the upgrading of NatHERS tools to be completed allowing the industry to design new apartment buildings with certainty of their cost and their inclusions well ahead of bringing those projects to market.



# **3. ECONOMIC ANALYSIS OF THE STRINGENCY INCREASES**

HIA has performed a detailed review of the cost-benefit analysis report accompanying the BASIX exhibition. Some gaps have been identified in the cost-benefit analysis carried out, including questions related to the modelling approach taken, as well as real costs that have not been captured.

The findings of the economic analysis support the feedback we have been receiving from industry and the concerns expressed, including that the economic costs of the stringency increases have been significantly underestimated.

The overall proposal is likely to incur costs that strongly outweigh any benefits realised.

Appendix A provides a detailed economic discussion in support of these conclusions.

# 3.1 SUMMARY OF CONCERNS ON COST BENEFIT ANALYSIS (CBA)

### 3.1.1 The CBA finds mandating 7-stars imposes net costs on the people of NSW

The CBA finds the total potential benefits of 'Option A' is \$490.9 million. Total costs are \$1,375.5 million. This means, even if all potential benefits are included, 'Option A' imposes net costs on the people of NSW of at least \$884.6 million. Option A has a benefit cost ratio of 0.36 or below.

The less stringent 'Option B' is hardly an improvement: it imposes net costs of at least \$1,286.3 million. Option B has a benefit cost ratio of 0.16 or below.

HIA supports the finding of the CBA, that the costs associated with increasing the energy efficiency requirements for new homes would significantly outweigh the benefits.

# 3.1.2 There is substantial evidence in the economic literature that the true impact of mandating 7-stars is likely to be worse than the results of the CBA

Notwithstanding the preliminary findings of the CBA, there are a number of concerns with the CBA that require a more detailed analysis. These concerns are supported by evidence from the Productivity Commission, other studies, and other data drawn from the economic literature. These concerns and supporting evidence are explained here.

It is considered if these issues were adequately addressed the net costs created by Option A and Option B would increase in magnitude (the net benefits would become more negative). Overall, available evidence suggests the cost of increasing the stringency of the energy efficiency requirements for all new Class 1 and Class 2 buildings would far outweigh the benefits.

HIA argues the following points:

- The cost assumptions in the computer modelling should be updated to reflect cost increases that have emerged under COVID-19. Based on ABS data and information from members, HIA recommends a 15 per cent cost upgrade.
- The cost estimates should be upgraded to account for the difference between 'computer modelled costs' and 'actual, realised costs'. Computer modelling a limited number of scenarios cannot capture the diversity of preferences, costs and constraints for consumers and builders across thousands of building projects across Australia. The new regulation of 7-stars causes costs to increase via the prism of these preferences, costs and constraints.

Without information on these preferences, costs and constraints, it is difficult for computer modelling to accurately predict cost increases, and the modelling results should be adjusted accordingly. There is substantial evidence that cost increases are higher in reality than in the modelling.

For example, the Productivity Commission notes in relation to energy efficiency standards: 'evidence is now appearing of compliance costs being much higher than expected. For example, the Victorian Government predicted the cost of a new house would rise by 0.7 - 1.9 per cent, but a recent survey shows that the average increase was 6 per cent.'



This implies that, at minimum, realised construction costs for mandated energy efficiency measures are higher than computer-modelled construction costs by a factor of 3X (6 per cent vs 1.9 per cent).

- The costs that reflect margins of retailers and wholesalers (assumed to be 10 per cent of costs in the CBA) should be included. Currently these costs are excluded and should be included in the Final CBA.
- The benefit estimates should be adjusted to reflect actual benefits (not computer modelled benefits). The actual benefits of the regulation are a function of actual behaviour of households, which is difficult to estimate in models. Expert/stakeholder consultations from an ABCB published study on energy efficiency measures concluded that realised benefits from energy efficiency standards are 49-75 per cent of modelled benefits. The benefits in the current study CBA should be adjusted down accordingly.
- The energy saving benefits to households should be removed or significantly discounted. Evidence from the economic literature says mandating 7-stars is likely to create significant costs for households: reduced amenity from smaller windows, reduced amenity from less design choice, and reduced financial capacity to undertake other projects that are preferred. These costs are not included. The CBA should include both the benefits to households and the costs to households. If the costs to households are not included, the benefits to households should be removed too. By including only the benefits the CBA likely overstates the net benefits.
- As a conservative estimate, by incorporating the above points, it is estimated that Option A imposes net costs of \$5,093 million on the people of NSW, with a benefit cost ratio of 0.02. Option B is estimated to impose net costs on the people of NSW of \$7,249 million, with a benefit cost ratio of 0.01.
- New regulation must be justified. The CBA must show that mandating 7-stars is an efficient way
  of solving a demonstrated problem.

The first requirement of RIS guidelines is demonstrating the problem that is being solved by the new regulation. To demonstrate that mandated higher energy efficiency standards make sense, the CBA must provide evidence that there exists a barrier or a problem that stops consumers from choosing higher energy efficiency where they want to. The CBA does not provide evidence that such a barrier exists. The rating tool, the technology and the design and construction capacity exists to deliver a home owner that choose to exceed building standards with that product. Addressing market failure via regulatory tools is intended to be about the industry not being able to deliver the outcome. It is not intended to be about redressing the market not wanting the outcome or more concerningly, the market choosing not to pay more to achieve an outcome.



Benefits and costs of regulatory options (\$ million)			
Item	Option A	Option B	
Items reported in CBA			
Costs	-1,375	5 -1,537	
Benefits (including all potential items)	491	250	
Net benefits	-885	5 -1,286	
BCR (ratio)	0.36	<b>0.16</b>	
Adjustment to costs implied by literatur	re review		
Update computer modelling assumptions	201		
for COVID-19	-203	> -221	
Adjust computer modelled costs to actual,	-2 113	2 _1 745	
realised costs*	-3,113	5 -4,745	
Include costs associated with wholesaler,	-519	-791	
retailer margins	010	, 101	
Adjustments to benefits implied by liter	ature review		
Adjust computer modelled benefits to	150	<b>7</b> 0	
actual, realised benefits	-153	> -/0	
Remove or significantly discount benefits			
to households, as costs to households are	-199	9 -112	
not included			
Remove 'highly uncertain' and	-22	<u>ہ</u> ۔ م	
'speculative' benefits from central case	-22		
HIA adjusted estimates, from literature	review		
Adjusted costs	-5,210	7,300	
Adjusted benefits	117	<b>7</b> 51	
Net benefits	-5,093	3 -7,249	
BCR	0.02	2 0.01	
$^{\ast}$ As discusssed, it possible this assumption covers literature	various issues raised	I in the	
Source: CBA on proposed changes: literature from	Productivity Commiss		

Source: CBA on proposed changes; literature from Productivity Commission, ABCB, and other studies; and HIA analysis



# 4. ANALYSIS OF COST AND MATERIAL CHANGES FOR BASIX STRINGENCY INCREASES

HIA has been provided with a selection of member's projects and analysis from their energy assessors, highlighting the required design and material changes and cost breakdowns that would arise for a range of projects.

We have also performed our own analysis of a standard single storey and a standard two storey home design. Noting that the cost-benefit analysis report neglected single storey house designs in its selection of homes for analysis.

The case studies focus on cost of additional materials; the costings are based on actual costs to the builder and do not include margins/profit/overheads that will add further cost for the final home buyer.

These case studies are also overlaid with information from a range of published reports including the Trajectory report for achieving Low Energy Homes, indicating what the additional capital costs would be for requiring houses and apartments to meet 7-star building fabric requirements.

Appendix B provides details of these case studies and additional information that HIA considers should be taken into consideration in determining whether to proceed with increased energy stringency changes.

### Case studies vs Cost-Benefit Analysis Report

These case studies are not exhaustive examples but provide a comparative assessment against those provided in the cost-benefits analysis report which has been used as the basis for the stringency increases.

It should also be acknowledged that some of the required upgrade changes used in these case studies, may have been able to be altered or changed to a different or alternate approach if there was building design changes, layout/orientations adjustments.

However, it is considered a more representative example in maintaining the same house design at existing NSW BASIX requirements vs the new stringency targets, to assess what the transitional impact of the changes would be.

If house re-designs are required then that would incur other additional comparable costs for re-design, re-verification, additional time by assessor in the assessment and approval and sign off and agreement time from the home buyers.

It should also be noted that neither these case studies, nor the cost-benefit analysis modelling, incorporate the impacts of embodied emissions targets and bans on dark-coloured roofing. These changes were proposed after the stringency changes were placed on exhibition, as part of a separate exhibition on the Design and Place SEPP.

#### Findings of case studies, literature review, and builder feedback

This analysis further supports the assessment outlined in this submission that the costs used in the CBA underestimate the upgrading costs to meet the BASIX increased stringency.

Furthermore, this analysis clearly indicates that the reported costs for upgrading buildings need to be adjusted in the cost-benefit analysis to take account of the real world costings.

This analysis also provides further support to HIA's recommendation that the costings used in the CBA should be based on a realised cost vs a modelled cost approach that the Productivity Commission recommended from their report.

**Note:** The costs used in the section and the cited various other reports were prepared based on the building material prices available at the time. Ongoing supply chain constraints and recent flooding are causing significant changes in construction material costs. These costs would need to be adjusted to account for the material and labour supply increases as outlined in the previous Section of this submission.



# **5. ISSUES WITH INTRODUCTION OF EMBODIED EMISSIONS TARGETS**

In consultation with a broad range of HIA members operating in building, manufacturing and energy efficiency consultation, a range of issues have been raised in relation to the proposed introduction of an embodied emissions target as part of the BASIX reforms.

These issues include concern with a lack of thorough regulatory impact assessment and scale of the change, uncertainty regarding the integration of this requirement with the rest of BASIX and the NCC, a lack of sufficient information and supporting tools to understand the proposal, questions regarding validity of the EPiC database, and operational challenges with implementation of the proposal for both builders and manufacturers.

In general, feedback indicates the proposal is incomplete and not ready for in-depth industry consultation, let alone implementation. The proposal should be postponed until it is more fully developed, and then fully assessed in conjunction with another round of consultation.

### 5.1 LACK OF REGULATORY IMPACT ASSESSMENT

The proposal to introduce an embodied emissions target for buildings (and hence building materials) is a fundamental shift in the technical regulation of new homes in Australia. Such a move will have wide-reaching and significant implications across the housing industry. It will impact upon builders and the wider manufacturing and supply chain, trickling down to impact home buyers in relation to both personal choice and price. The industry as a collective will need to make significant adaptions to incorporate this proposal into 'business as usual'.

The proposal has not been subject to a thorough, public regulatory impact assessment or cost benefit analysis. Concerningly it was not assessed together with the stringency increases as part of the cost benefit analysis for the BASIX stringency exhibition despite the parallel exhibition period.

Any change of this scale must be justified via a regulatory impact statement (RIS). A lack of RIS means the potential impacts of the reforms have not been thoroughly explored, and a net benefit has not been demonstrated to justify the implementation of the target in the way it has been proposed.

It is also inappropriate to assess the impacts of an embodied emissions target separately to the other BASIX stringency reforms.

Regulation of embodied emissions from the materials used in construction will have major interactions with other requirements under both BASIX and the National Construction Code (NCC), some of which will be imposing contradictory demands. For example, a shift to higher thermal stringency targets will trigger a transition to more bulk insulation, double glazed windows, and potentially higher thermal mass materials; however all of these changes will involve higher embodied emission materials, which would then need to be offset in some other way. Effectively a 'double hit' from the reform package.

These issues will add significantly to the redesign and re-engineering costs for buildings and may in some cases force a move away from traditional building methods and materials recognised within the NCC. This will in turn incur higher consulting and compliance costs for those buildings to satisfy the requirements of the NCC; industry upskilling and re-education costs also need to be considered.

The entire system will also require ongoing investment to ensure data underlying the material emissions index and calculations are maintained and updated to remain valid, as the manufacturing industry continues to bring their emission down in line with their own business net-zero 2050 trajectories.

Prior to any further consideration of the introduction of an embodied emissions target, the above issues need to be explored in detail, and a full regulatory impact analysis conducted and provided to industry for further consultation.



# 5.2 SCALE OF CHANGE UNDERESTIMATED

During Design & Place SEPP exhibition it has been implied that the new embodied emission targets represent no change, or only a minor change from current business-as-usual. The following table was presented during one of the consultation meetings:

Dwelling type	Baseline embodied carbon - tCO <sub>2-e</sub> /person	Proposed standard - tCO <sub>2-4</sub> /person	% Reduction compared to BAU
Large detached house	12.9	12.5	2.5
Small detached house	12.0	_	0
Attached house	11.9	_	0
2 bedroom unit	9.6	9.4	1.6
1 bedroom unit	7.9	_	0

When questioned, it was confirmed:

- The baseline data represents the current mean performance for buildings in NSW, based off existing BASIX data over the last 5 years
- The new target will represent the maximum emission level allowed once the reforms are adopted
- % reduction compared to BAU represents the claimed impact
- No further detail was provided about the method for calculating the current-state, or setting the proposed targets.

Without access to the underlying data or calculations used, it is impossible to provide a precise analysis and support this target as appropriate. Simple statistics indicate that setting a target at the current mean or average is not a minor change, or no change, from the current state. In fact, doing so would affect more than 50% of the existing housing stock.

Assuming normally distributed data, and the lower limit on embodied emissions as zero, this can be demonstrated graphically (in this case using the approximate mean and future target for housing):

- The total area under a curve represents 100% of buildings
- The shaded area represents the % of buildings that would require a change to materials to comply with the new requirements.
- The required shift from right to left to sit under the new-target curve represents the scale of change required for any point in the 'current state' curve.





Embodied Emissions (t.CO2-e/person)

# 5.3 THE PROPOSAL IS NOT SUFFICIENTLY DEVELOPED

The information put forward as part of the exhibition is insufficient in detail. It is impossible at this point for industry to develop a thorough understanding of the proposal or assess the impacts, for both building product manufacture and building design. The information provided does not allow for accurate consultation and is far from sufficient to justify implementation of the proposal.

No information or explanation was provided for:

- How the claimed existing performance data was determined and calculated?
- How the targets were set from that data?
- How the future calculation will function?
- How manufacturer life-cycle-analysis (LCA) or environmental product declaration (EPD) data will be incorporated, or fairly compared to the EPiC data; and how the underlying database will be maintained?
- What building materials would be captured within the future calculation of embodied emissions?
  - There are upwards of over 5000 individual products within a house; it is not clear to industry exactly what products will be captured within the embodied emissions calculation.

Associated tools and calculators for assessment of embodied emissions within the BASIX online tool are also unavailable. It was stated the tool will not be available until the second half of 2022.

This is insufficient time for industry to test the functionality of the tool, develop familiarity or to assess and prepare for the impacts ahead of a September 2022 target adoption date.


#### 5.4 THE EPIC DATABASE IS NOT FIT-FOR-PURPOSE

Consultation with industry stakeholders has raised several concerns with the proposed use of the EPiC database to set the materials emission index for a building product.

The EPiC database does not follow the globally accepted process-based standards for emissions calculation, unlike the standard LCA and EPD assessments utilised by product manufacturers. Instead it is based on a hybrid model which incorporates broad-based economic factors. This renders the EPiC database unsuitable as a tool for direct comparison between specific construction products or between buildings.

EPiC only gives a broad average emission factor for a material type. This ignores the significant time and investment manufacturers have already outlaid and continue to invest in emission reduction initiatives. It does not allow for direct comparison between similar products. It also could allow for poorly performing manufacturers to hide their emissions within the average, while better performing manufacturers will not be recognised for their investment in emissions reduction.

Utilising the EPD and LCA data, on the other hand, will allow for a true and fair comparison between different materials, including materials within the same broad material type. However, this comes with costs in both obtaining an LCA or EPD, and in maintaining and updating a database over time.

#### 5.5 IMPLEMENTATION CHALLENGES FOR INDUSTRY

#### 5.5.1 Contractual implications under the proposed timeframe

With construction activity breaking records, the time between signing a construction contract and obtaining construction approval are rapidly increasing. It is likely that thousands of contracts have already been signed between clients and builders, where construction will not be approved or commenced until after September 2022.

These contracts will have been signed with the owners having selected an existing house design, which may not be viable under the new embodied emission requirements, or may cost significantly more than anticipated in the contract.

To alleviate this, any introduction of new requirements under BASIX must be tied to the signing of a new construction contract or agreement, rather than application for a development approval.

#### 5.5.2 Operation under the building approvals process

BASIX is ordinarily applied at development approval stage, whereas other technical regulations are generally applied at the construction approval. There may be significant time between these two stages, and changes may occur either driven by the client, or the market (e.g. unavailability of specified material).

It is unclear how any design variations or product substitutions will function; and how these are to be validated against the original approved BASIX certificate for the purposes of the embodied energy requirement.

It is also unclear how materials or products used are to be validated, or who is responsible for carrying out the validation. Similar materials from different suppliers may be difficult to distinguish once installed within a building.

#### 5.5.3 Obtaining LCA or EPD data

Manufacturers will be looking to have their products assessed under a Life Cycle Analysis to support their use. For total accuracy, the LCA should be conducted for the whole home. However a limited number of qualified professionals are available in Australia meaning this will be a costly exercise and take significant time to complete.

We have been advised that:

- Lead-time under current demand exceeds 6 months.
- Costs are between \$35k-\$40k for a manufacturing facility to be assessed.



• The lead-time and costs will only worsen as demand increases when the proposal is implemented.

While larger manufacturers will be able to bear these costs, they are prohibitive for smaller manufacturers who may be trying to introduce better performing and innovative products. These products will also be unfairly represented in the default EPiC database. Support must be provided for small business to assist with the transition.

On average, NSW builds 55000 new homes each year. For total accuracy and fair comparison, each one of these will need a unique and tailored assessment by an LCA professional if the homes are to be fairly compared. Should the assessment tool offer a more 'deemed to satisfy' pathway for assessment this may alleviate some of this concern, however it would need to be compared against the accuracy of the approach for those materials and buildings that exceed the target, who may be unfairly penalised by such an approach.

#### 5.6 VOLUME OF REFORM IN NSW

This is a significant change to the regulation of buildings in NSW, coming at a time when several other significant reforms are underway. Any one of the reforms will have major impact on the building and construction industry. These reforms industry include:

- NCC 2022 the most significant amendments to the NCC since its inception, with several major revisions, 20+ new or updated Australian Standards, significant restructuring and renumbering, plus various changes across all sections of the code.
- Continued implementation and amendments to the Design & Building Practitioners Regulation for Class 2 buildings, and potential expansion to other building types.
- A complete review and overhaul of the Home Building Act and associated Acts and Regulations
- Implementation of the Design and Place SEPP, which is also introducing a range of design and technical limitations on building construction alongside the embodied emissions proposal

In aggregate the volume of change underway is having a compounding effect, placing significant strain on an industry still suffering the impacts of COVID, and material and labour supply shortages and associated cost increases.

#### 5.7 PREFERRED APPROACH

Introduction of the embodied emissions target should be postponed until such time as all associated tools and calculators have been developed.

Once the tools and calculators have been developed, introduction should proceed on a voluntary basis to allow real-world testing and validation of the outcomes achieved by such a regulation.

This should then be followed by a full reassessment of the function and impact of the proposal, and a regulatory impact analysis assessing the impacts in the context of the broader NCC and BASIX requirements. This should then be followed by further industry consultation.

This should include assessment of where the requirements are to be applied within the building approvals process, as application at DA stage will create numerous issues.

If at that time, the regulatory impact analysis and industry consultation support the introduction of a mandatory embodied emissions target, introduction should be accompanied by an appropriate transition time to allow industry to familiarise and prepare for mandatory requirements. The implementation date should be tied to the construction contract rather than an approval stage, as occurred in 2004 and 2017.

Industry should be supported through training and education on the functionality and implications of the embodied emissions calculations for buildings.



#### **APPENDIX A – DETAILED ECONOMIC DISCUSSION OF CBA ON 7-STARS**

#### A.1 Productivity Commission notes the analysis of energy efficiency requires scrutiny

The 2005 Productivity Commission Enquiry Report on Energy Efficiency mandates notes:

'The Commission is concerned by that the analytical basis for these regulations [minimum energy efficiency standards] (computer simulations of energy loads within buildings in each climate zone) may be flawed.<sup>1</sup>

The Productivity Commission goes on to point various problems with some of the assumptions that analysts use to evaluate energy efficiency standards and concludes that it does not favour these standards as a policy to fix the problems they purport to fix.

It is considered that concerns raised by the Productivity Commission report on analytical basis of modelled energy efficiency assessments and energy loads apply equally to the analysis made in this current CBA. This is discussed in the sections that follow.

#### A.2 Adjust computer modelling cost assumptions to reflect cost increases in COVID-19

Building costs have risen substantially in recent months. The costs used in the CBA, were prepared prior to the current increases in building materials due to supply chain constraints and COVID-19. Moreover, they pre-date the global increases in fuel and additional local pressure on supply chains from the 2022 flooding.

For example, the ABS reports that the cost of building a house increased by 12.0 per cent from the December Quarter of 2020 to the December Quarter of 2021. The cost increase has occurred because supply is constrained from meeting surging demand.

Constrained supply reflects shortages of skilled labour and international supply constraints. Surging demand is driven by low interest rates, government subsidies and a change in consumer preferences towards housing, especially detached housing, under the pandemic.

Available forecasts from building industry experts indicate costs will continue to rise in 2022. Builders consulted by HIA note that suppliers have said that cost increases will continue.

Smaller/medium sized builders consulted by HIA indicate their costs may have increased by more than this. Overall, the ABS data may represent a minimum figure for the cost increase.

The surge in costs is unprecedented in the last decade.

Annual change in House Construction Costs Source: ABS 14.0% 12.0% 10.0% 8.0% 6.0% 4 0% 2.0% 0.0% Dec-2013 Dec-202 Dec-2012 Dec-2015 Dec-2018 Dec-2019 Dec-201 Dec-2014 Dec-2016 Dec-2017 Dec-202(

It is unlikely that costs will return to "pre-COVID levels", even after supply chain issues are resolved. It is likely that at least some of the recent cost increases will be retained.



<sup>&</sup>lt;sup>1</sup> Productivity Commission 2005, *The Private Cost Effectiveness of Improving Energy Efficiency*, see: <u>https://www.pc.gov.au/inquiries/completed/energy-efficiency/report/energy.pdf</u>, pg. 38/554

In response to COVID-19, suppliers are working to add more domestic production, storage and logistics to their supply chain.

This means in the future, supply is likely to be more reliable, but it will also be more expensive. Adding domestic facilities increases reliability because the supply chain becomes shorter. Adding domestic facilities makes supply more expensive because land, labour and energy costs tend to be higher in Australia than offshore.

Therefore, after COVID-19, the supply chain will be more expensive. This means costs will not return to pre-COVID levels (if they fall at all).

The two key pieces of evidence for this are:

Bunnings is a key supplier to the Australian building industry. In response to supply chain disruptions, it notes it's "continued development of domestic supply chain capabilities" <sup>2</sup>

The ABS reports a dramatic increase building approvals for transport buildings, factories, and warehouses since the start of COVID-19. At the national level, this data says that businesses are following the same strategy as noted in Bunning's Annual report: they are shifting more of their supply chain to Australia.



Approvals for domestic supply chain (\$ million, over preceeding 12 months) Note: "Domestic supply chain" is building approvals of transport buildings, warehouses and factories in Australia

There is significant evidence that at least some of the recent cost increases should be treated as 'permanent' and incorporated into the modelling, going forward.

It is recommended that CBA costings should be adjusted to account for the material and labour supply increases – a representative increase of 15% is recommended for the purpose of the CBA assessment based on:

- a range of published reports on this issue
- supplier price increases lists
- industry surveys
- that the specific materials that would be required for the upgrades (glass, insulation, framing, etc.) have been the materials incurring the more significant increases



<sup>2</sup> Bunnings 2021 Annual report, see 33/184 in: https://sitefinity.wesfarmers.com.au/docs/default-source/reports/2021---wesfarmers-annual-report.pdf?sfvrsn=9d9111bb\_2

- further expected material price increases
- labour increases and availability
- on the ground feedback from builders and in particular smaller custom builders; and
- that smaller and custom builders and trade contractors do not have as great control over material prices and buying power with suppliers that larger companies for which the ABS analysis was based off.

With all of these factors combined it is considered that 15% increase is more representative increase percentage to use in the CBA to adjust for construction cost increases, than the 12% noted by the ABS report.

This is particularly relevant as when the proposals would take effect industry and homeowners would be facing these additional price increases, so basing them off pre COVID prices is not accurate or true reflection of the assessment of what the additional cost impacts would be. A recommended adjustment to the CBA is set out in the following table.

Adjust modelling assumptions for COVID-19						
	Option A	Option B				
Computer modelled costs, reported in CBA		1,353	1,515			
Ajdustment factor for computer modelling assumptions, due to cost increases in COVID		+15%	+15%			
Computer modelled costs, adjusted for COVID-19		1,556	1,742			
Implied adjsutment to net benefits in CBA, if COVID-19 impacts are included		-203	-227			
Sources LUA based on ADC date and member information						

Source: HIA, based on ABS data and member information

#### A.3 Use 'actual costs' not 'computer modelled costs'

Even if computer modelling assumptions are updated to latest data, there remains a concern that computer modelling – even if it is very sophisticated – cannot accurately capture how new regulations impact building projects in reality. For example, the 2005 Productivity Commission report noted on past energy efficiency changes and regulatory modelled costs:

'evidence is now appearing of compliance costs [for energy efficiency mandates] being much higher than expected. For example, the Victorian Government predicted the cost of a new house would rise by 0.7 - 1.9 per cent, but a recent survey shows that the average increase was 6 per cent.'<sup>3</sup>

Another example is provided.

This implies that, at a minimum, realised construction costs for mandated energy efficiency measures are higher than computer-modelled construction costs by a factor of 3X (6 per cent vs 1.9 per cent).

Given this issue, and other problems with energy efficiency measures, the Productivity Commission notes there is a 'compelling' case for an after-the-fact review of energy efficiency measures to inform future energy efficiency reforms to use this as a true basis of assessing changes and impacts as opposed to reliance to modelled costs.

HIA raised the same concerns with both the past 5-star and 6-star changes and regulatory analysis and limitations on reliance on computer modelled assessments rather than true post implementation or after-the-fact reviews of mandated energy efficiency standards realized costs and benefits.

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<sup>&</sup>lt;sup>3</sup> Productivity Commission 2005, *The Private Cost Effectiveness of Improving Energy Efficiency,* see: <u>https://www.pc.gov.au/inquiries/completed/energy-efficiency/report/energy.pdf</u>, pg. 37/554

Therefore, following the Productivity Commission's concern on costs, it is considered that the costs provided in the CBA and supporting costs and benefits assessments report underestimate the cost of mandating a change from 6-stars to 7-stars, the equivalent of that being proposed in BASIX. An adjustment to the CBA, in line with the Productivity Commission Report is set out in the following table.

Adjust modelled costs to actual costs						
	Option A		Option B			
Computer modelled costs, including adjustment for COVID-19		1,556		2,373		
Minimum adjustment factor to convert computer modelled costs to actutal/realised costs (from Productivity Commission 2005)		3		3		
Estimate of actual/realised costs		4,669		7,118		
Implied adjsutment to net benefits in CBA, if computer modelled costs are adjusted to actual costs		-3,113		-4,745		
Source: HIA; Productivity Commission (2005)						

#### A.4 Remove cost saving created by the exclusion of margins

It is interpreted from the discussion on pg. 46/143 of the CBA to imply that only 90 per cent of costs are treated as 'real costs'. The CBA excludes the remaining 10 per cent of costs. A footnote explains that 10 per cent of materials costs are 'margins' or 'net profit' charged by wholesalers and retailers.

HIA disputes this approach. Margins and profits earned by retailers and wholesalers are real costs that are compensations for their time and entrepreneurial skill. Put another way: the data quoted in the CBA implies that builders (and other Australian businesses) pay a 10 per cent margin on materials to wholesalers and retailers so they do not have to incur the costs and inconvenience of sourcing, organising and stocking materials themselves. This is not a fair and reasonable assumption.

Further, wholesalers and retailers devote some of their time to understanding changes in market conditions, regulations, and supply sources, so they can offer customers better deals over time. The real cost to customers of receiving this service is the margin the supplier charges.

It is argued that it is not appropriate to exclude these costs. An adjustment to the CBA is set out in the following table.

Adjustment to construction costs to include margin	ns (\$ milli	ion)	
	Option A	Option B	
Actual construction costs (adjusted for COVID, adjusted for actual vs modelled)		4,669	7,118
Actual construction costs, including retailer and wholesaler margins		5,188	7,909
Implied adjsutment to net benefits in CBA, if retailer and wholesaler margins are included		-519	-791

Source: HIA



#### A.5 Use 'actual benefits' not 'computer modelled benefits'

The 2005 Productivity Commission Report on Energy Efficiency notes: "energy standards are not specified in terms of [actual or realised] energy consumption".

This means the Government does not police energy use after the occupant has moved into their new home. There is no mechanism to ensure the actual energy use by the occupant matches the modelled energy use that is used to evaluate the standards.

Given this, the Productivity Commission notes: *"there appears to be serious doubts about the effectiveness of these regulations (energy efficiency mandates) in improving energy efficiency in a systematic way."*<sup>4</sup>

The concern that energy efficiency regulations may not change energy use significantly is the second reason why an-after-the-fact review of energy efficiency mandates for future consideration and analysis of changes and stringency increases is needed to provide a more transparent and measurable understanding of true impacts and realised benefits.

A review was belatedly undertaken in 2013 by CSIRO based on 5 star standard. A similar review has not been undertaken on 6 star homes, meaning decision makers are left to assume that the energy efficiency measures do in fact create the expected benefits.

The CIE evaluated energy efficiency measures for Commercial Buildings as part of the RIS for the NCC 2019 Section J changes. In that assessment the CIE documented various recent studies that show that actual energy savings are less than what is modelled. To deal with this issue, in the 2019 Section J RIS the CIE presented 3 scenarios for benefits:

- Realised benefits are 49 per cent of modelled benefits
- Realised benefits are 75 per cent of modelled benefits, and
- Realised benefits are 100 per cent of modelled benefits.

In that RIS, the CIE noted that consultations suggested the likely two outcomes are either scenario 1 or 2. Submissions to 2019 Section J RIS argued that realised benefits are likely to be between 49 per cent and 75 per cent of modelled benefits.<sup>5</sup>

The CBA presents similar scenarios, but only as sensitivity scenarios. It is considered that this CBA should adopt one of its sensitivity scenarios (realised benefits are 50 per cent or 75 per cent of modelled benefits) as its 'central scenario'.

This change would make analysis in this CBA consistent with that used in the Section J 2019 RIS and the Productivity Commission's view on realised benefits vs modelled benefits. Note, this issue of 'realised benefits' vs 'modelled benefits' applies to all benefits in the RIS.

The CBA notes it assumes there is a 'rebound effect' of 10 per cent. It is understood this assumption partially deals with issue of realised benefits vs modelled benefits. In the following table, we adjust back for the rebound effect the RIS assumes (10 per cent) and then adopt the mid-point of the two scenarios that were argued to be the most likely outcomes in the 2019 Section J RIS (62 per cent: midpoint between 49 per cent and 75 per cent).

<sup>4</sup> Productivity Commission 2005, The Private Cost Effectiveness of Improving Energy Efficiency, see:

https://www.pc.gov.au/inquiries/completed/energy-efficiency/report/energy.pdf, pg 37/554 <sup>5</sup> The CIE 2019, RIS of Energy Efficiency Standards in Commercial Buildings, see:

https://static1.squarespace.com/static/5df9aa078642f943ece6a0b3/t/5f589c857e871053b87e5a58/1599642806 533/Final\_ RIS\_Energy\_efficiency\_of\_commercial\_buildings\_PDF.pdf, pg 17/252



Adjust benefits to actual benefits (\$m)			
	Option A	Option B	
Total benefits reported in CBA (computer modelled, includes 10 per cent rebound)	۷	191	250
Total benefits (computer modelled, without rebound)	5	545	278
Adjustment factor: realised benefits relative to actual benefits	0	.62	0.62
Total benefits (actual or realised)	3	338	172
Implied adjsutment to net benefits in CBA, if modelled benefits are adjusted to realised benefits	-1	153	-78

Source: HIA; The CIE 2019, RIS of Energy Efficiency Standards in Commercial Buildings

# A.6 Benefits to households should be removed or discounted, as the costs to households are not included

Around 60 per cent of the total potential benefits of mandating 7-stars is savings that households make on energy bills.

It is noted that even if mandating 7-stars reduces energy use for households, this does not necessarily mean the value of this benefit can be added to the CBA. Energy savings only add to net benefits if they are greater than any cost that is imposed on households from mandating 7-stars.

It is argued that energy savings to households should be removed from the CBA or significantly discounted. In essence, this is because the CBA does not include the costs that mandating 7-stars imposes on households. If the CBA includes the benefits for households but not the costs, the CBA likely overstates the net benefits of 7-stars.

This section sets out Australian government guidelines and economic literature that support this argument.

The argument that forcing households to adopt 7-stars imposes costs on households comes from four strands of the literature:

- 1. Other reports and analyses that suggest that mandating 7-stars would reduce window sizes, and therefore impose amenity costs on households.
- 2. Industry feedback that suggests mandating 7-stars would make some preferred designs unfeasible, which is costly to rework or replace.
- 3. Evidence that the opportunity cost of the funds used to pay for 7-stars is not measured correctly. Put another way: households have other projects they prefer to spend the money on and incur costs when they cannot pursue these other projects.
- 4. No evidence is presented in the CBA that mandating 7-stars solves a problem for households. There is no barrier that is preventing them from adopting 7-stars if they want to. This implies 7-stars do create costs for households. These costs offset any benefits of 7-stars, which is why many households are choosing not to voluntarily take up 7-stars.



a) Mandating 7-stars imposes amenity costs on households due to smaller windows, which are not in the CBA

A Consultation Regulatory Impact Statement (CRIS) on the costs and benefits of mandating 7-stars was published by the Australian Building Codes Board (ABCB) in 2021. This CRIS notes that homes with 7-stars tend to have windows that are 15 per cent smaller than homes with 6-stars.<sup>6</sup>

HIA argues that it is commonly accepted that homes with a better aspect (NE facing) are more valuable than homes with poorer aspect (South facing). This relates to the amount of natural light they receive. This implies that reducing the amount of natural light into homes (via smaller windows) is costly for households.

Further, a paper for the US Green Building Council, prepared by the University of Oregon, finds that workers in buildings with poorer ratings of light quality and with poorer views use significantly more sick leave hours. In this study, "light quality" refers to natural light quality or "daylighting." The authors introduce their study as an attempt to "place a value on windows."

The authors note the two variables (quality of natural light and quality of view) explained 6.5 per cent of the variation in sick leave use, a statistically significant result.<sup>7</sup> They also conclude that both of the variables, independently, significantly influence sick leave.

This implies that lower natural light quality, via smaller windows, significantly increases sick leave amongst workers. This result could be interpreted two ways. It could be that spaces with poor natural light cause people to become sick. Or it could be that people prefer to be in spaces with better natural light and will take steps to avoid spaces with low natural light. Both interpretations support the conclusion that smaller windows, caused by mandating 7-stars, will create a cost for households.

The amenity cost that mandating 7-stars will impose on households is not included in the CBA. The CBA assumes this cost to be zero.

#### b) Mandating 7-stars imposes design costs on households, which are not in the CBA

A mandate for 7-stars means that many potential new homes will need to be re-designed. This can include layout, material selection type, windows, wall positions etc. Mandating that households must change their home design away from their preferred design imposes a cost on households.

HIA has received feedback from a well experienced, recognised Australian energy assessor. For new homes that are built to 7-stars, the assessor notes that, in addition to changes in window size, some homes will have to be re-oriented. More fundamentally, the energy assessor notes that some home designs and home preferences are simply incompatible with 7-stars. Many home projects will have to start from scratch, with a completely different concept. This is a substantial cost which cannot be ignored. This is particularly relevant for custom homes where the home owner has a specific house design in mind.

It is argued the cost of design changes are a significant cost of mandating 7-stars, which are is not included in the CBA.

It is acknowledged that it is difficult to quantify this impact. However, it is not accurate to assume this cost is zero, as the CBA has done. HIA proposes a simple fix, which would be to increase the allowance for "small and difficult blocks". This cost item is designed to capture the large costs for certain blocks where it is very difficult to comply with 7-stars for physical reasons. The CBA could consider increasing the share of blocks that incur these costs, to account for projects where it is difficult to comply with 7 stars, given the design preferences of the owner alongside the additional design costs for volume builders to update and amend current plans.

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<sup>&</sup>lt;sup>6</sup> See CRIS, pg. 98/328: <u>https://consultation.abcb.gov.au/engagement/consultation-ris-proposed-ncc-2022-residential/</u>,

<sup>&</sup>lt;sup>7</sup> United States Green Building Council, Elzeyadi of University of Oregon, see: https://www.usgbc.org/sites/default/files/OR10\_Daylighting%20Bias%20and%20Biophilia.pdf

c) There is no evidence that mandating 7-stars solves a problem for households - this puts a question mark on the stated benefits

The first question a RIS should ask is: what problem is the policy trying to solve?

It is necessary for new regulatory proposal to solve a problem i.e. a demonstrated failure that requires regulatory intervention. This is so decision makers can be confident that it actually creates the intended benefits. If the regulation does not solve a problem, there is a significant risk it does not create benefits.

The CBA assumes at least 60 per cent of the benefits of changing the mandate from 6-stars to 7-stars in BASIX is savings for the households building new homes. This is a striking result. The obvious question is: if these savings were available to households, why is not everybody implementing 7-stars? And why stop there? Why not 8-stars?

The CBA does not provide any evidence or discussion of problems or barriers that prevent households from obtaining 7-star features.

It is clear from the CBA that 7-star features are available in the market. It is clear that if people think 7star features have merit, over and above all their other priorities, they can add them to their new home. Therefore, if people are choosing not to adopt 7-star features, the CBA should be asking why are they not? Are there any costs from 7-star features that we are missing?

Building or buying a home is the second biggest decision that most of us make (after getting married). It is common sense that Australians carefully consider different options for new build homes. This includes consideration of the benefits and costs of energy efficiency features. If Australians want energy efficiency features beyond the current regulatory settings, and they are not supplied by a builder, they will find a builder that does supply them.

Saving energy and reducing electricity bills are very important issues for Australian households. According to ABS CPI data, electricity prices grew by 5 per cent per year between 2001 and 2021. This is much stronger growth than general consumer price rises in the economy (2.4 per cent per year).

Electricity bills, in one way or another, are always an important feature of Federal Election campaigns. Any policy proposal that can be construed (fairly or not) as 'hiking electricity bills' is treated with deep suspicion by households. The converse of this is common sense: it is likely that Australians will take measures that purport to reduce their energy bills seriously.

The only question is what does it cost? HIA argues that it is likely that households will adopt measures to reduce their energy bills, as long as they believe the costs of the measures are smaller than the value of the savings.

This means that Australians will properly consider energy efficiency measures that are transparently explained.

ABS data for the financial year 2020 reports there are around 75,000 residential building companies in Australia (around 50,000 house builders and around 25,000 multi-unit construction companies). There is great diversity amongst these businesses. Competition creates businesses that are willing and able to install the features that households genuinely prefer. Businesses that do not respond to this competitive pressure will go out of business.

This supports the argument that features that exceed current regulatory settings are not being adopted because households believe they are costly in a way that is not measured in the CBA.

The RIS guidelines require the CBA to identify, measure and include all costs that changing from 6stars to 7-stars imposes on households. These costs must be included so that they can be offset against the benefits. HIA argues the CBA does not do this.

#### d) Summary of these arguments

The preferred outcome is that the CBA properly considers all benefits and all costs of mandating 7stars. To properly include all costs, the evidence from the literature says the CBA should:

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- include the cost of reduced amenity to households due to smaller windows,
- include the cost to households of using non-preferred designs, and
- include the cost to households of diverting funds away from preferred projects (this is achieved by discounting the energy savings benefits to households at the discount rate for households, around 20 per cent, not the assumed 7 per cent),

It is unlikely to be accurate to assume these costs are zero, as the CBA assumes. 7-stars features are available in the market. The fact that some households are choosing not to take them up suggests these costs are significant, and likely offset any benefits to households.

If the benefits to households are retained, but the costs to households are not included, the CBA likely overstates the net benefits. Therefore, if the costs to households cannot be measured, it is argued the most reliable approach is to remove the benefits to households or significantly discount them.

The impact of removing the energy savings benefits to households is set out in the following table.

Remove energy saving benefits to households (\$m)				
	Option A	Option B		
Energy savings benefits to households reported in CBA (computer modelled, including 10 per cent rebound)		289	163	
Actual energy savings to households, adjusting for rebound effect and actual energy use		199	112	
Implied adjsutment to net benefits in CBA, if energy savings to households are removed		-199	-112	

#### A.7 Highly uncertain benefits should be removed from the central case

The CBA notes that the benefit item: health benefits for reduced electricity and gas generation use, is "highly uncertain and speculative". It is argued that "highly uncertain and speculative" benefits should not be included in the central case. The impact of this is set out in the following table.

Remove health benefits from central case (\$m)			
	Option A	Option B	
Public health benefits reported in CBA (computer modelled, includes 10 per cent rebound)		32	13
Public health benefits (adjusting for rebound effect and actual energy use)		22	9
Implied adjsutment to net benefits in CBA, from removing health benefits as they are speculative and uncertain		-22	-9
Source: HIA			,



#### A.8 Include carbon costs from mandating 7-stars

The regulatory change requires additional building materials to be installed in new homes. These additional materials will have to be mined from the ground, manufactured into product and transported to building sites. The financial cost of this activity should be incorporated in actual construction costs.

However, mining, manufacturing and transport are energy-intensive industries. They drive significant CO2 emissions. Mandating a change from 6-stars to 7-stars will require a number of material and construction changes – i.e. double glazing and use of insulated (waffle pod slabs) and the manufacturing and additional transport costs cause increases in CO2 emissions. This cost is not included in the CBA.

#### A.9 Sources of additional costs: computer model vs actual

Section 2.4 (above) notes evidence from the Productivity Commission that actual, realised costs of mandating 7-stars are likely to be above computer modelled costs.

HIA has identified the following issues with cost items in the CBA. If the CBA follows the guidance of the Productivity Commission and scales up computer modelled costs by a factor of 3 to get actual costs, it is not clear whether this adjustment would cover the following issues, or whether these issues are additional. Therefore, to be conservative, HIA notes these issues may be covered by the adjustment implied by the data provided by the Productivity Commission.

#### a) Include transition costs (for example re-design costs)

As noted in the CBA, for some period of time after BASIX is changed from 6-stars to 7-stars, the building industry will incur transition costs. These are costs of re-training people and the cost of re-designing manufacturing processes, supply chains and building designs, building processes and the final product (new build homes) to meet the requirements.

The CBA includes retraining costs but does not include other transition costs.

HIA has been provided with a range of feedback from members which indicates that the costs of redesign of buildings plans, specifications and re-calibration of costs for volume builders is a significant sunk cost both in terms of time and resources. HIA has received feedback from a number of energy assessor that changing from 6 stars to 7 stars will involve significant redesign of dwellings and the majority of all volume home designs. In particular, window sizes, layouts and (in some cases) orientation of dwellings will have to change.

This feedback is consistent with the feedback received from a range of volume builders that changes from 6 stars to 7 stars as the benchmark requirement will result in the need for significant changes to 90-95% of all of their standard house plans. One of Australia's largest volume builders cited that they presently have over 500 standard house plans and 95% of those plans will require changes in some form to adhere to the new requirements if approved. This is not a straightforward change and it's not a matter of only changing or adjusting the plan in many circumstances. The changes will require:

- initial re-design
- re-assessment by an energy assessor in a variety of different orientations
- this would likely involve back and forward with the initial designer and many runs through the energy rating software (which is not expected to be operational and available till 1 September 2022)
- then it is a matter of finalizing the design
- have the revised plan to the estimator and suppliers for costings of the new (or amended) plan
- a completed plan produced
- a standard specification and materials inclusions lists developed
- a scope of works and tender documentation developed for contractors and suppliers; and



• marketing and promotional material updated.

There may also be implications for these designs on:

- current display homes and the need for the subsequent houses to be built as per the display home; and
- subdivisions for which the house designs are based off for lot yield.

Further, these changes are not likely to be made until the final provisions are agreed to by Governments as it means many of the house designs would need to be scrapped and the new ones designed with the 7 star features.

Members have provided the following points to HIA.

- Energy assessment for a standard volume builder home: \$220
- Energy assessment for an architecturally designed, custom build home starts at \$440

In general, architecturally designed homes have more windows. The time that an energy assessor will need to spend on making all houses in all climate zones comply to 7-stars will like take them a lot more time depending on the house design and their scope of role is also broader given the whole of home components.

HIA has obtained data from Rawlinsons, a highly respected and independent quantity surveyor, on the differences in between volume builders and custom builders. Rawlinson's estimate that the unit construction cost (\$cost per square metre of home construction) for a custom builder is 51 per cent higher than a volume builder.

Difference in cost base between volume builder and	custom build	der
	Volume builder	Custom builder
Unit construction cost (\$/sqm): single storey detached home	1,473	2,230
Unit construction cost (\$/sqm): double storey detached home	1,576	2,386
Cost upgrade: volume builder to custom builder		51%

Source: Rawlinsons; HIA can provide a copy of Rawlinsons report, on request

If the BASIX changes mandate that volume built homes achieve 7-stars (up from 6-stars), HIA argues that, with respect to energy efficiency measures, the government will create a situation where volume builders must behave like a custom builder for a period of time. To provide 7-star features, the volume builder must provide cost flexibility, because their normal, low-cost processes are designed around 6-star features and certainty of regulatory settings.

These costs are incurred at least until the change becomes normalised. HIA estimates this transition will take 3 years. Therefore, for 3 years, HIA argues a 51 per cent premium should be added to the costs incurred by volume builders, to adjust from 6-stars to 7-stars. Based on HIA's Housing 100 survey, in 2021/22 volume builders represented around 40 per cent of the home building market. The remaining 60 per cent of the market is made up of custom builders and multi-unit builders.



Transition costs for volume builders (\$ million)					
	Option A	C	Option B		
Total realised construction costs, adjsuted for idle capacity		5,188	7,909		
Share of costs that relate to volume builder homes		0.38	0.38		
Costs relating to volume builder homes		1,971	3,005		
Costs incurred during transition period (3 of 10 years)		591	902		
Transition costs (51 per cent premium)		302	460		
Implied adjsutment to net benefits, in transition cost to volume builders are included		-302	-460		
Source: HIA; Productivity Commission (2005)					

#### b) Include additional compliance and verification costs

HIA argues the complexity of the proposed changes mean that it will be more time consuming and costly for certifiers to verify new homes comply with the code.

For the accessible housing RIS, prepared for the ABCB, the CIE estimated the additional costs of building verification of the compliance of new builds with respect to the new regulations was around \$290 million.<sup>8</sup>

It is argued that the complexity of the required additional verification and design changes for the energy efficiency changes are comparable, if not more challenging, than the accessible housing provisions given the wide variety of house designs and that the design used for the block will be dependent on the orientation. Therefore, similar compliance costs should be included for this RIS.

#### c) Remove discount to costs created by "learning"

In a narrow set of circumstances, it may be appropriate to assume the cost of a new regulation declines over time due to "learning". This is where the introduction of the new regulation (itself) causes the building industry to "learn" about the requirements. This regulation-driven learning causes costs to fall.

The CBA notes that evidence on this type of regulation-driven learning is limited. The CBA notes the previous ABCB Section J energy-efficiency RIS did not include an assumption that costs decline due to learning. The primary reason cited was a lack of evidence on learning that is caused by the regulation.

The CBA notes data from CSIRO dashboard, which shows a trend decline in the capital costs for rooftop solar PVs. CSIRO project this trend to continue. Therefore, the CBA assumes the solar PV component of the costs created by the regulation falls over time.

It is accepted that the costs of the PV industry have fallen and may continue to fall. However, HIA argues this does not mean there is a 'cost reduction' that increases the net benefits in the CBA, as is assumed.

If PV costs, in general, are falling over time, this means both the costs of mandating 7-stars, and the benefits of mandating 7-stars, fall over time.

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<sup>&</sup>lt;sup>8</sup> See Decision RIS for accessibility standards, pg 171/398, see:

https://www.abcb.gov.au/sites/default/files/resources/2021/Final%20Decision%20RIS%20accessible%20housin g\_PDF.pdf

General falls in technology costs reduce the costs of the regulation because it is less costly for builders and homeowners to install the PV cells. General falls in technology costs cause the benefits of the regulation to fall because there are more people who are switching anyway.

Because more people are switching from 6-stars to 7-stars, due to falling solar PV costs, there is less scope for the new mandate to cause people to change from 6-stars to 7-stars. This means the benefits of new mandate are lower.

It does not appear that the CBA has included any reduced benefits due to learning over 20 years of BASIX regulation alongside reduced costs.

Therefore, HIA argues the CBA has likely over-estimated the net benefits, by assuming that costs fall over time, but not making an offsetting adjustment to the benefits.

The most appropriate assumption for the CBA to make is to remove the cost reduction that is created by learning. This will result in both benefit and cost reductions being excluded.

d) Ensure small blocks assumptions incorporate recent trends

The CBA notes it will be more costly to incorporate a mandate of 7-stars, where dwellings are built on narrow and small blocks.

This is based on a difficult blocks report produced by AECOM for the ABCB which noted it was difficult to accurately estimate the prevalence of difficult blocks, though they cited feedback from stakeholders suggests the percentage of difficult blocks in a new housing development could be between 5-40% depending on sub-division design and orientation.

HIA would concur with the stakeholder feedback on the prevalence of difficult and challenging blocks particular in new housing estates, and infill areas where there is a growing trend to address land supply challenges and housing affordability to look at maximising the amount of dwellings that can be incorporated into new housing developments and smaller block sizes.

To try and quantify the percentage of difficult blocks the CBA cites data produced by SGS Economics and Planning that suggests highly conservative percentages of difficult and challenging blocks in states and territories. The report was not able to be reviewed or analysed on how these numbers were derived as part of responding to the CBA.

The CBA reports the SGS data indicates 8.4 per cent of homes in NSW are built on small and difficult blocks. No further data is provided.

In the 2021 accessible housing RIS, CIE cites data from SGS that around 11 per cent of houses and townhouses are built on blocks that are defined as 'small'.

This percentage is higher than what is assumed for the energy efficiency RIS. It is accepted that the definition of 'small and narrow' for energy efficiency may be different from 'small' for accessible housing. However, at the very least, this should be clarified.

More importantly, there is clear downward trend in block size. For example, UDIA report that the median lot size across capital cities has fallen from 519sqm to 420sqm between 2009 and 2020.<sup>9</sup>

It seems unlikely that the proportion of "small and narrow" blocks would remain constant while block sizes are falling. It is recommended that the CBA should provide data on how the proportion of small blocks has trended over time. These insights could be incorporated into the RIS. This would increase estimated costs.

As noted above it is considered that the percentages quoted by SGS are considered to be highly conservative, as per stakeholder feedback. A move to higher portion of townhouses and buildings built boundary to boundary, a more representative yet still likely to be conservative assessment would be 15% of all new housing sites in all states would be considered difficult blocks that adversely affects solar passive design.

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<sup>9</sup> UDIA 2021, see: https://udia.com.au/research/udia-state-of-the-land-2021/

#### A.10 Other costs relating to solar PV cells

There are also questions on the quality of some of the PV products being installed on buildings, as well as their installations compliance. There has been a number of reports of building fires attributed to PVs on roofs, water ingress due to installations, and PVs becoming wind driven debris in high wind events.

Nor does the CBA discuss the issue of damage due to hail events and clean up and insurance costs for replacement of PVs on roofs that has been witnessed in the past few years due to large hail storms.

The CBA does not provide a detailed assessment of these unintended and consequential impacts of higher rates of PVs installations which may outweigh any learning rate savings due to higher numbers of installations of PVs on buildings.

#### A.11 Concluding remarks from Productivity Commission 2005

The Productivity Commission considered all issues that are relevant to energy efficiency measures in its 2005 report. It concluded by noting that, where new regulation can be justified:

'the Commission favours light-handed regulatory responses and information provision, rather than more prescriptive and intrusive approaches: mandatory labelling can be an appropriate way of providing information, but other mandatory measures, such as minimum performance standards, may not be privately cost effective.'<sup>10</sup>

Regulation must be justified. To justify regulation, the first step is establishing that problems that would be solved by the regulation actually do exist. If it is not demonstrated that problems actually do exist, then new regulation cannot be justified.

<sup>10</sup> Productivity Commission 2005, The Private Cost Effectiveness of Improving Energy Efficiency, see: https://www.pc.gov.au/inquiries/completed/energy-efficiency/report/energy.pdf, pg. 45/554



# APPENDIX B – COST AND MATERIAL CHANGES FOR STRINGENCY INCREASES

#### **B.1 Case Study**

#### **Building Thermal Performance Assessments**

HIA undertook thermal performances on the 'HIA Standard House' detached single storey threebedroom home and the four-bedroom double storey home using NatHERS software FirstRate 5.

The assessments for both homes were carried out under NatHERS Climate Zones for Sydney.

#### B.1.1. Single storey HIA Standard House Sydney.

The single storey home shown below is a masonry veneer design, tile roof with a slab-on-ground with aluminium framed windows and 2400mm ceiling height.

The floor area for the main house is 162.5m2 and garage 41.8m2, a total of 204.3m2.

HIA has completed four ratings for the single storey; each rating represents the living areas (Family/Dining) facing that orientation and has provided the costings below to achieve a 7 Star rating from the base 6 Stars.





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HIA Single storey Standard House North					
ITEM	AREA M2	ADDITIONAL COST	COST-6 TO 7 STARS		
Ceiling 1 R-5.0 Ceiling 2 R-3.0	133.50	\$895.00	\$895.00		
Walls external R- 2.5	104.10	\$433.00	\$433.00		
Walls internal R-2.5	14.30	\$71.00	\$71.00		
Glazing	34.00	\$7,668.00	\$7,668.00		
TOTAL			\$9,067.00		

HIA Single storey Standard House South					
ITEM	AREA M2	ADDITIONAL COST	COST-6 TO 7 STARS		
Ceiling 1 R-5.0 Ceiling 2 R-3.0 inc. garage	168.50	\$902.00	\$902.00		
Walls external R- 2.5	104.10	\$433.00	\$433.00		
Walls internal R-2.5	14.30	\$71.00	\$71.00		
Glazing	34.00	\$7,968.00	\$7,968.00		
TOTAL			\$9,374.00		

HIA Single storey Standard House East					
ITEM	AREA M2	ADDITIONAL COST	COST-6 TO 7 STARS		
Ceiling 1 R-6.0 inc garage	168.50	\$1,839.00	\$1,839.00		
Walls external R- 2.5	104.10	\$433.00	\$433.00		
Walls internal R-2.5	14.30	\$71.00	\$71.00		
Glazing	34.00	\$5,647.00	\$5,647.00		
TOTAL			\$7,990.00		

HIA Single storey Standard House West					
ITEM	AREA M2	ADDITIONAL COST	COST-6 TO 7 STARS		
Ceiling 1 R-5.0 Ceiling 2 R-3.0	168.50	\$902.00	\$902.00		
Walls external R- 2.5	104.10	\$433.00	\$433.00		
Walls internal R-2.5	14.30	\$71.00	\$71.00		
Glazing	34.00	\$7,650.00	\$7,650.00		
TOTAL			\$9,056.00		



#### **B.1.2.** Double storey HIA Standard House Sydney.

The double storey home shown below is a masonry veneer design, tile roof with a slab-on-ground with aluminium framed windows and 2400mm ceiling height.

The floor area for the main house is 241m2 and garage 41m2, a total of 282m2.

HIA has completed two ratings for the single storey; each rating represents the living areas (Family/Dining) facing that orientation and has provided the costings below to achieve a 7 Star rating from the base 6 Stars.







HIA Double storey Standard House North				
ITEM	AREA M2	ADDITIONAL COST	COST-6 TO 7 STARS	
Ceiling 1 R-7.0	259.00	\$2,471.00	\$2,471.00	
Walls external R- 2.5	110.30	\$0.00	\$0.00	
Walls internal R-2.5	53.50	\$0.00	\$0.00	
Glazing	72.00	\$9,380.00	\$9,380.00	
TOTAL			\$11,851.00	

HIA Double storey Standard House West				
ITEM	AREA M2	ADDITIONAL COST	COST-6 TO 7 STARS	
Ceiling 1 R-7.0	259.00	\$2,470.00	\$2,470.00	
Walls external R- 2.5	110.30	\$0.00	\$0.00	
Walls internal R-2.5	53.50	\$0.00	\$0.00	
Glazing	72.00	\$9,873.00	\$9,873.00	
TOTAL			\$12,343.00	

#### **B.2 Literature Review**

In addition to these case studies in undertaking a literature review of a range of recent reports and other studies on the cost impacts of upgrades required for 6 star vs 7 stars the following reports are cited:

- The Trajectory for Low Energy Homes
- The ABCB Commissioned difficult blocks report
- The Built to Perform report by ClimateWorks

#### **B.2.1. Trajectory for Low Energy Homes assessment**

Table 9 (Appendix C) of Appendix C of the report included a base building typology on base building designs and modelled the capital cost upgrades for both building fabric and regulated services upgrades.

Region	Climate Zone	Capital Costs – Thermal upgrades (\$)	Capital Costs – Appliance Upgrades (\$)	Total Capital Costs (\$)	Annual Energy Bill Savings (\$)
Darwin	1	\$1,356	\$1,960	\$3,316	\$700
Brisbane	2	\$7,444	\$1,960	\$9,404	\$511
Sydney East	5	\$8,168	\$1,960	\$10,146	\$225
Adelaide	5	\$5,681	\$1,960	\$7,641	\$237
Perth	5	\$5,219	\$1,960	\$7,179	\$310
Melbourne	6	\$4,443	-\$702	\$3,741	\$141
Canberra	7	\$1,652	-\$702	\$950	\$770
Hobart	7	\$4,263	\$2,533	\$6,796	\$349



#### **B.2.2. ABCB Difficult Blocks Report**

The ABCB commissioned AECOM to undertake an analysis of difficult blocks in Australia, to examine characteristics and challenges of site constraints in relation to achieving NatHERS 7 Star energy efficiency.

The report broke down the difference between the additional cost to build a 7 star house on a difficult site and a 6 star house on a difficult site based on a 'typical house' design.

The report noted difficult blocks have characteristics such as small areas and challenging proportions, poor solar orientation (relevant to the Climate Zone) and problematic topography.

Regardless of the percentages used, more importantly, the difficult blocks report provided a detailed costs breakdown representing the difference between the additional cost to build a 7 star house and a 6 star house on a difficult site based on the following 'typical house' design.

The costs show that there for some blocks and house designs going to 7 stars will incur substantial additional costs in excess of \$16,000 not including that capital costs for the appliance upgrades/regulated energy usage provisions.

Location	NatHERS Climate Zone	Small area and challenging proportions	Small area, challenging proportions, and poor orientation (East)	Small area, challenging proportions, and poor orientation (West)	Problematic topography
Canberra	24	+\$1770	+\$6160	+\$1950	+\$1100
Western Sydney	28	+\$860	+\$7450	+\$9250	+\$16,110
Newcastle	15	+\$860	+\$9540	+\$11,980	+\$7760
Darwin	1	N/A as both Star ratings result in a decrease in cost from the baseline	N/A as both Star ratings result in a decrease in cost from the baseline	N/A as both Star ratings result in a decrease in cost from the baseline	+\$17,480
Brisbane	10	+\$4120	+\$930	+\$7890	+\$16290
Townsville	5	N/A as both Star ratings result in a decrease in cost from the baseline	N/A as both Star ratings result in a decrease in cost from the baseline	N/A as both Star ratings result in a decrease in cost from the baseline	+\$4190
Adelaide	16	+\$2770	+\$16,780	+\$11,970	+\$12,690
Hobart	26	-\$4160	+\$2460	+\$2460	+\$1090
Melbourne	21	+\$3980	+\$2760	+\$2760	+\$780
Ballarat	66	+\$7460	+\$5520	+\$760	+\$2060
Perth	13	+\$510	+\$1140	+\$560	+\$170
Albany	58	+\$10,220	+\$6750	+\$5420	+\$6340



#### **B2.3 Climate Works Built to Perform Report**

The CRIS as part of establishing the perceived problem notes the ASBEC/Climate Works Built to Perform report. The report which was advocating for changes to the NCC similar to the proposed Trajectory and NCC 2022 proposals.

The report noted that to include these upgrades there will be additional upfront costs for houses and apartments and the report included some indicative cost modelling on an analysis on the additional upfront costs.

The report cited the following (pg 20) additional upfront cost would be approximately:

- \$6,800 for the modelled individual apartment archetype (\$89 per square metre),
- \$8,000 for the attached housing archetype (\$63 per square metre)
- \$14,000 for the detached housing archetype (\$74 per square metre)

#### **B.3 Builder Feedback**

HIA sought feedback on the upgrade costs required from a range of Australia volume home builders and their advice was as follows:

The proposed changes and modelling appear to assume a window area of 22% or less would be acceptable to our customers. We haven't seen any indication this is the case, with owners typically showing preference for a lot of natural light and ventilation.

We expect this will mean significant added cost to upgrade our designs to include double glazing for a significant proportion of windows.

With the proposed changes to BASIX, to meet consumer demand for current design trends we would expect to see an increase to our contract values by circa 3.5%.

As seen across the home building sector over the past twelve months, pressure on our supply chain from both material and labour markets has resulted in home package prices increase anywhere between 15% - 25%. Coupled with rising land prices and delayed registrations, the pressure continues to mount for these first home buyers to achieve home ownership. We anticipate further price rises to the labour market throughout 2022, again applying more pressure to these aspirational home buyers.

Additionally, we have seen lead times for materials double and triple due to shortages which raises more concerns in relation to these proposed changes. Appropriate consideration needs to be made towards the implementation of the proposed new changes, to avoid even further shortages to supply, which in turn blows out our construction timeframes and applies further pressure on pricing.

Direct consultation with building material manufacturers and suppliers is needed to ensure the changes can be implemented within the timeframe without creating material supply problems.

Lastly, the cost of change for a business to implement these new proposals needs to be considered. We have dozens of individual designs that include master architectural plans, master bill of quantities and marketing collateral (both printed and digital) that require additional resources outside standard operations to make these changes.

Three separate project builders provided their costings for the upgrades required to achieve 7-stars, for a selection of the most popular standard home designs currently being delivered to the Sydney market. Four single storey and six double storey designs were modelled, and the cost increases found were:

- \$6935 to \$11145 for a single storey home
- \$11290 to \$17722 for a double storey home

This advice further supports the Productivity Commissions 2005 report analysis that the realised costs are likely to be much higher than modelled costs.

This feedback further supports the outcome of the case studies presented in this submission and in turn the literature review in that the costs indicated in the cost-benefit report for the BASIX higher standards are significantly undervaluing the true cost of implementing the higher energy efficient design requirements and that these need to be reviewed.





#### HOUSING INDUSTRY ASSOCIATION



Submission to NSW Government

The Design and Place SEPP 2021 Consultation Package December 2021

Submission made 24 March 2022

#### HOUSING INDUSTRY ASSOCIATION





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#### ABOUT THE HOUSING INDUSTRY ASSOCIATION

The Housing Industry Association (HIA) is Australia's only national industry association representing the interests of the residential building industry.

As the voice of the residential building industry, HIA represents a membership of 60,000 across Australia. Our members are involved in delivering more than 170,000 new homes each year through the construction of new housing estates, detached homes, low & medium-density housing developments, apartment buildings and completing renovations on Australia's 9 million existing homes.

HIA members comprise a diverse mix of companies, including volume builders delivering thousands of new homes a year through to small and medium home builders delivering one or more custom built homes a year. From sole traders to multi-nationals, HIA members construct over 85 per cent of the nation's new building stock.

The residential building industry is one of Australia's most dynamic, innovative, and efficient service industries and is a key driver of the Australian economy. The residential building industry has a wide reach into the manufacturing, supply, and retail sectors.

Contributing over \$100 billion per annum and accounting for 5.8 per cent of Gross Domestic Product, the residential building industry employs over one million people, representing tens of thousands of small businesses and over 200,000 sub-contractors reliant on the industry for their livelihood.

HIA exists to service the businesses it represents, lobby for the best possible business environment for the building industry and to encourage a responsible and quality driven, affordable residential building development industry. HIA's mission is to:

# promote policies and provide services which enhance our members' business practices, products, and profitability, consistent with the highest standards of professional and commercial conduct.

HIA develops and advocates policy on behalf of members to further advance new home building and renovating, enabling members to provide affordable and appropriate housing to the growing Australian population. New policy is generated through a grassroots process that starts with local and regional committees before progressing to the National Policy Congress by which time it has passed through almost 1,000 sets of hands.

Policy development is supported by an ongoing process of collecting and analysing data, forecasting, and providing industry data and insights for members, the general public and on a contract basis.

The association operates offices in 22 centres around the nation providing a wide range of advocacy, business support services and products for members, including legal, technical, planning, workplace health and safety and business compliance advice, along with training services, contracts and stationery, industry awards for excellence, and member only discounts on goods and services.

#### **1.0 INTRODUCTION**

Thank you for the opportunity to comment on the Design and Place (DP SEPP) consultation package. HIA made an interim submission to the DP SEPP Consultation Package on 28 February 2022, and this letter provides our more detailed comments. An extension of time for our detailed comments was agreed to by the Department of Planning and Environment's (DPE) DP SEPP team.

HIA has observed the drafting of the DP SEPP over the past two years and has participated fully in the stakeholder engagement process. HIA has made submissions and comments on the draft policy during this time, but some important concerns remain. We will address these matters by providing comments under the following sub-headings – cost benefit analysis and housing affordability; adding complexity to the planning system; concerns about changes to BASIX, impacts of future legislation and other matters.

#### 2.0 COST BENEFIT ANALYSIS AND HOUSING AFFORDABILITY

The DP SEPP Overview report included within the consultation package describes (refer page 4) the role of the DP SEPP as putting "sustainability, quality, beauty and vibrancy of places at the forefront of development". However, whilst HIA is supportive of an approach to create sustainable, well-designed, and vibrant developments, this must be balanced against considerations of economic feasibility and impacts on housing affordability. Further, we note on page 4 that that the statement saying that "… our aim is to deliver what the community wants from their local area and their homes while balancing this with continued housing supply", also fails to mention housing affordability.

The housing industry has serious concerns about significant additional costs associated with the implementation of the DP SEPP. The building of new homes will become more expensive, and the additional costs incurred will be passed down the chain to the new home buyer. This is not what the industry and consumer needs at this unprecedented time of recovery from natural disasters and the global pandemic. More information on this is provided in the paragraphs below.

#### **Cost Benefit Analysis**

HIA has serious concerns about development feasibility under the DP SEPP, including the revised ADG. Whilst we are aware that research on the cost impact of the new policy has been undertaken by Deloitte Access Economics for the government, this information has not been made available to industry stakeholders or the community.

The *DP SEPP Overview* report (refer page 6) states that the government has undertaken "*rigorous cost-benefit modelling for the SEPP and supporting guides – completed in partnership with NSW Treasury*". Industry stakeholders would welcome the opportunity to see the full analysis presented within the Deloitte work to understand the true impact of the new policy for our members and new home buyers.

A comment is made in the *DP SEPP Overview* report (also page 6) that "*further testing and economic modelling was done to develop the policy*", as part of the Policy Working Groups (PWGs). However, HIA was represented on all six of the PWGs for industry peak bodies and are not aware of any detailed discussion about economic modelling. The only session dedicated to the cost-benefit analysis work was a 30-minute session on Wednesday 9 February 2022, during which a Government Architect NSW (GANSW) representative, together with a Deloitte Access Economics representative answered a series of pre-submitted questions, with no opportunity provided for open discussion.

During an information session hosted by the GANSW and DPE, about the ADG on Tuesday 14 December 2021, HIA asked a specific question about the economic impact of the DP SEPP on housing prices and affordability. The response provided was that there would likely be a 1 percent increase in apartment prices under the amended ADG, but that this would be more than off-set by other benefits and that it is important to consider amenity value as well as monetary costs.

When HIA asked its membership about cost impacts, we were advised that the increase in construction costs under the amended ADG would more likely, be in the order of 2 to 5 percent, with the following inclusions likely to increase costs:

- Communal space provision
- Deep soil provision
- Canopy trees
- Percentage of 2/3 bed apartments to be larger
- External shading devices
- Rainwater tanks and recycled water infrastructure (filters and pipe work)
- Additional external storage

HIA has noted that the cost-benefit-analysis approach taken by Deloitte Access Economics looked at monetary and non-monetary (intangible) costs and benefits from the point of view of society as-a-whole, including economic, social, and environmental outcomes. However, this does not provide the housing industry with a true measure of cost impact and economic viability, and this continues to be an area of serious concern for HIA.

It is HIA's position that the full Deloitte Access Economics Cost Benefit Analysis be exhibited for stakeholder review and comment, prior to the DP SEPP progressing any further.

#### Housing affordability

The housing industry is in crisis with well-documented and serious shortages of land, building materials, and skilled trades, both in metropolitan and regional parts of the state. This is against the backdrop of recent natural disasters and the global pandemic.

Housing affordability has become a national issue, with the Australian Government recently conducting a Parliamentary Inquiry into housing affordability and supply. An Inquiry spokesperson reported that that:

"...data provided by the Reserve Bank of Australia (RBA), the Treasury and the Australian Bureau of Statistics (ABS) shows, home ownership, one of the building blocks of Australian society, has been falling for the last 30 years ... this represents an urgent moral call for action by governments of all levels to restore the Australian dream for this generation and the ones that follow."

HIA prepares an affordability index for each of the nation's capital cities and regional areas on a quarterly basis taking into account the latest dwelling prices, mortgage interest rates and wage developments. HIA Economics data shows that between December 2019 and December 2021 NSW experienced a decline in housing affordability of 6% in Sydney, and 28% in the rest of the state. Changes in housing affordability across the 10-year period December 2011 to December 2021 is illustrated in the HIA Housing Affordability Index overpage (refer Figure 1).

Figure 1: HIA Housing Affordability Index, New South Wales



#### 3.0 ADDING COMPLEXITY TO THE PLANNING SYSTEM

HIA has serious concerns about the impact of the DP SEPP on the operation of the NSW Planning System. The planning system is already complex for users and adding extra layers of reporting and assessment to planning processes, will likely increase costs and cause further delays in approvals.

Key objectives for the government during this term have been to simplify the planning system, cut red tape and cut costs. The DP SEPP, however, will potentially have the opposite outcome by adding costs and delays through new reporting requirements and new layers for approval processes. Overall, this will likely cause more bottlenecks in a system already under duress.

Proponents for new development will need to prepare Design Verification Statements (DVS)which will be looked at by Design Review Panels (DRP). For this to work successfully there needs to be a pool of suitably qualified design professionals available to prepare reports and sit on panels. Also, there will need to be a skills base within councils to take forward the recommendations of the DRPs for consideration during the approval process.

HIA is acutely aware that councils are already struggling with the volumes of development applications lodged for assessment, with approval timeframes being continually stretched. The recent initiative of DPE's Planning Delivery Unit (PDU) to establish a 'Regional Flying Squad' of skilled planners for regional councils demonstrates the reality of this situation. The question must be asked whether councils can cope with an increased complexity of workload at this point-in-time.

In summary, HIA has serious concerns about the extra burden the DP SEPP will place on the NSW planning system by adding extra layers of reporting and assessment, which will increase costs and likely cause further delays in approvals.

#### 4.0 CONCERNS ABOUT CHANGES TO BASIX

HIA is a member of the BASIX, Sustainability and Resilience Policy Working Group (BASIX PWG), coordinated by DPE. The BASIX PWG has met several times to be briefed and discuss potential changes to the BASIX tool.

HIA notes from the DP SEPP Overview report (page 27), that DPE is proceeding with the proposal to expand BASIX to include new requirements for embodied carbon emissions, and to introduce a requirement to assess and limit the total embodied carbon emissions for building materials used within a residential dwelling. HIA understands that it is intended that this will become part of the BASIX assessment process.

HIA however, believes that there has been insufficient detail provided to industry to be able to understand the embodied carbon proposal, and to assess the impact, for both building design and building product supply.

The information supplied does not allow for adequate consultation and is a long way from being suitable to justify implementation of the proposal, for the following reasons:

- Access to detailed data on how the current mean values were determined, how future targets have been set, and the proposed calculations function, are vital for industry to be able to determine the true impact of the proposal.
  - No detail or data is provided to show how the current mean performance of buildings is assessed, or how proposed targets will be set.
  - No information is provided on how the embodied emission calculation will function, and no clarity is given on what the required inputs or underlying calculations will be.
  - The tools and calculators are not available in any reasonable form to start assessing building designs.
- Potential impacts of the proposal do not appear to have been adequately assessed and put though a comprehensive cost-benefit analysis (BBA) or regulatory impact assessment (RIS).
  - Embodied emissions did not appear to be considered within the BASIX cost-benefit reporting and are not properly addressed in the DP SEPP consultation package. A change of this scale must be supported by a comprehensive RIS.
  - The potential impact of setting the target at the current average performance does not sustain 'business as usual' and have minimal impact, unlike what has been claimed during the consultation.
  - Setting a target at the current mean/median/average performance will potentially result in required changes to more than 50 percent of existing building designs
- The practical application of the proposal has not been assessed in terms of the potentially vast number of materials that this change could apply to.
  - There are upwards of 5,000 individual products used in the building of a house with a limited number of Life Cycle Assessment (LCA) assessors available. The cost and time needed for the assessment of products also appears not to have been considered.

The proposed BASIX embodied carbon changes would also be happening concurrently with other significant industry changes including the National Construction Code (NCC) 2022 and the NSW Design and Building Practitioners Act 2020 Class 2 reforms.

In summary, the proposal to introduce an embodied carbon emissions requirement into BASIX assessments represents a significant change with potentially wide-reaching and major technical and cost impacts across the building industry and its supply chain. In the light of this, any change to BASIX to introduce embodied carbon targets, should be voluntary in the first instance or applied to government projects only, so that the impact can be monitored, and the proposal re-assessed as appropriate.

In addition to the proposed changes to BASIX to introduce targets for embodied energy, there are also many unanswered questions about the methodologies for the proposed updates to the BASIX, being exhibited separately as BASIX Higher Standards. However, HIA strongly submits that this proposal should be deferred as it is not fully developed. HIA is making a separate submission to the government on the BASIX Higher Standards consultation, which includes a strong case for the deferral of this proposal. A copy of this submission will be sent to the Design and Place SEPP Team.

#### 5.0 IMPACTS OF FUTURE LEGISLATION

HIA does not support the proposal within section A.5 (page 12) of the DP SEPP Overview report to amendment other instruments to align with proposed BASIX standards. The proposal is to legislate roof colours within the Codes SEPP and Standard Instrument LEP to mitigate urban heat impact. This is based on the premise that light-coloured roofs have a lower solar absorptance and absorb less heat than dark roofs.

HIA strongly objects to any amendment to the Codes SEPP or Standard Instrument LEP to legislate for light coloured roofs for the following reasons:

- Data shows that whilst the use of lighter coloured roofs and external colours may reflect heat from buildings during the summer, they may also lead to over-cooling of homes during the winter.
- Further, whilst the proposed controls are viewed from the lens of urban heat islands, they should also consider the impact they could have on performance of individual dwellings against the NCC energy and condensation requirements for the relevant climate zone.
- Work on amendments to the NCC is looking at increased condensation build-up on light coloured roofs and the impact that this has on the building.
- The proposed controls should specify solar absorptance values and solar reflective values, rather than colour palettes. Whilst absorptance is correlated to colour, there are also other factors involved, meaning that absorptance levels can vary even with the same or similar colours.

In summary, technical provisions within the DP SEPP and other planning legislation should be seeking to align with the NCC where possible. The NCC 2022 is already proposing to include deemed-to-satisfy provisions to further address energy and condensation, including specification of maximum solar absorptance for roofs and walls for certain climate zones.

#### 6.0 OTHER MATTERS

#### Draft SEPP

There are some specific comments relating to the public consultation draft of the DP SEPP that we wish to raise, as follows:

- Part 1 Preliminary Clause 8 (2) of the public consultation draft should be updated to reflect the name changing of the former Environmental Zones E1, E2 and E3 to Conservation Zones C1, C2 and C3.
- Part 2 Design Principles and Design Considerations sets out highly stringent controls for development assessment which in some cases are unreasonable. For example, Clause 13 (1) specifies that development consent must not be granted for development to which the SEPP applies, unless the consent authority is satisfied that the development is consistent with each one of the five design principles. HIA submits that the wording should be changed to should consider the design principles as decisions about development should not be binary yes or no as there should be some flexibility and merit based application.
- Part 2 *Design Principles and Considerations* also sets out within Clauses 14 to 23, the ten design considerations that the consent authority must consider. However, whilst HIA recognises that the DP SEPP sets out to achieve design excellence, we question whether there are the broad and diverse range of skills available within consent authorities to make assessment against the full set of ten design considerations. This will lead to further delays in development assessment within councils already suffering stress from numbers of applications and planner / skills shortages. This matter was addressed in our commentary above titled *Adding to the complexity of the planning system*.

#### Draft Apartment Design Guide

HIA is mindful that the GANSW and DPE have undertaken extensive consultation around the amended Apartment Design Guide (ADG), and it is pleasing to see that the DP SEPP is now allowing for flexibility in the application of the ADG by proponents, and assessment by consent authorities.

HIA notes that during the consultation some of the more difficult to meet ADG objectives have been reduced to be more practically achievable, such as limits floor plate sizes and more achievable cross ventilation requirements. However, as noted on page 3 of this submission, there are still things that will increase costs, including:

- Communal space provision
- Deep soil provision
- Canopy trees
- Percentage of 2/3 bed apartments to be larger
- External shading devices
- Rainwater tanks and recycled water infrastructure (filters and pipe work)
- Additional external storage

Overall, HIA's serious concerns about development feasibility, as outlined on pages 2 to 4 of this submission, remain first and foremost, and directly relate to the ADG. HIA members consider that the likely cost increase in construction costs under the amended ADG would be in the order of 2 to 5 percent, rather than the 1 percent reported by the GANSW and DPE.

It is HIA's position that the full Deloitte Access Economics Cost Benefit Analysis should be exhibited for stakeholder review and comment, prior to the DP SEPP progressing any further.

#### 7.0 CONCLUDING COMMENTS

In conclusion, HIA makes the following comments about the DP SEPP consultation package:

- 1. HIA has serious concerns about development feasibility under the DP SEPP and the revised ADG. The full economic assessment work and cost benefit analysis, commissioned by the government and undertaken by Deloitte Access Economics was not included in the consultation package and has not been made available to industry stakeholders. It is HIA's position that the full Deloitte Access Economics Cost Benefit Analysis be exhibited for stakeholder review and comment, prior to the DP SEPP progressing any further.
- 2. HIA has serious concerns about the impact of the DP SEPP on the operation of the NSW Planning System. The planning system is already complex for users and adding extra layers of reporting and assessment to planning processes, will likely increase costs and cause further delays in approvals. HIA requests that no further burden is placed on an already congested and difficult to navigate planning system, which is slow in its operation and suffers from delays in assessment timeframes.
- 3. The proposal to introduce an embodied carbon emissions requirement into BASIX assessments represents a significant change for the policy that will potentially have significant technical and cost impacts across the housing industry and its supply chain. Any change to BASIX to introduce embodied carbon targets, should be voluntary in the first instance, or applied solely to government projects, so that the impacts can be monitored, and the proposal re-assessed as appropriate.
- 4. **HIA objects to the proposal to amend other instruments to align with proposed BASIX standards.** The proposal to legislate roof colours within the Codes SEPP and Standard Instrument LEP to mitigate urban heat impact is not supported.
- 5. HIA has serious concerns about the cost impacts of the amended ADG for industry. The amended ADG will potentially make apartment buildings more expensive to build, leading to higher prices for new apartments, and a further decline in housing affordability for home buyers. Data presented in Figure 1 of this submission demonstrates the current NSW housing affordability crisis.

HIA thanks the NSW Government for the invitation to participate in the consultation program for the proposed Design and Place SEPP and we would be pleased to provide more information on any of the matters raised in this submission. Contact details are available on page - i - of this submission.

#### **Claire Krelle**

From:	noreply@feedback.planningportal.nsw.gov.au
Sent:	Monday, 28 February 2022 4:43 PM
То:	PDPS DRDE Design and Place SEPP Mailbox
Cc:	DPE PS ePlanning Exhibitions Mailbox
Subject:	Webform submission from: The Design and Place SEPP 2021
Attachments:	ltr-to-dpiedesign-and-place-sepp28.2.22.pdf

Submitted on Mon, 28/02/2022 - 16:41

Submitted by: Anonymous

Submitted values are:

**Submission Type** I am submitting on behalf of my organisation

### Name

First name Liza

Last name Booth

I would like my submission to remain confidential No

## Info

Email liza.booth@lawsociety.com.au

Suburb/Town & Postcode Sydney

Please provide your view on the project I am just providing comments

Submission file Itr-to-dpie---design-and-place-sepp---28.2.22.pdf

Submission Good afternoon,

Attached is submission from the Law Society of NSW.

Kind regards, Liza Booth, Policy Lawyer

I agree to the above statement Yes



Our ref: EP&D:JvdPlb280222

28 February 2022

Design and Place SEPP Department of Planning, Industry and Environment Locked Bag 5022 PARRAMATTA NSW 2124

Dear Sir/Madam,

#### Design and Place SEPP

The Law Society appreciates the opportunity to comment on the draft *State Environmental Planning Policy (Design and Place) 2021* (DP SEPP) and supporting guides. The Law Society's Environmental Planning and Development Committee contributed to this submission.

We welcome the Department's consultation process and the exhibition of the draft SEPP, as well as the Explanation of Intended Effect which preceded it. We support the principlesbased approach and the inclusion of resource efficiency and emissions reduction as a supporting consideration for one of the five design principles.

We also welcome and support the aim of the DP SEPP to recognise the importance of Country to Aboriginal people and to incorporate local Aboriginal knowledge and culture into new developments as a way of responding to Country. We note that for State significant development over 1 hectare, the design verification statement for master plans will need to verify how Country has informed the design, in specific ways that address some of the current challenges to incorporating living culture – the level of engagement, meaningful action, and protection of intellectual property.

Our comments on some of the sections of the policy package appear below.

#### Section 12 Design principles and design considerations

Section 12(1)(a) of the DP SEPP states that one of the principles for design in NSW is to deliver beauty, amenity and a sense of belonging. Beauty is highly subjective and if the design principles in section 12 are to be read in light of section 13, it could be interpreted that a consent authority would need to be satisfied that the design in respect to the development delivers beauty. In the context of an appeal, it may be difficult for a Court to make a finding as to whether the design delivers beauty as expert opinions may simply differ in this respect.

The inclusion of the "design considerations" term in section 12(2) is confusing, as it does not directly refer to the actual considerations for the consent authority (termed "requirements" in

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section 13(3)) in sections 14-23. The "design considerations" are included in the headings of sections 14-23 but they do not otherwise play a role. This structure could be simplified by removing section 12(2) and the term "design considerations". Instead, sections 14-23 could be consolidated and linked directly to each design principle in section 12(1). This would reduce a three-step interpretation process to a two-step interpretation process, which will be simpler for planners, applicants and consent authorities

## Section 13 Consideration of design principles and design considerations by consent authority

The DP SEPP contains stronger wording than previously, which may lead to less flexibility for consent authorities when considering the design principles. Under the DP SEPP, the consent authority will need to be "satisfied" that the development is "consistent with" the design principles. Previously the wording used was "adequate with regard to" and "take into consideration". A consent authority will now need to undertake a meticulous review of each of the words in the design principles to ensure that they have considered and are satisfied that the development is consistent.

#### Section 14 Design consideration—overall design quality

We suggest that the term "overall" in section 14 is vague and may introduce an element of uncertainty for consent authorities.

#### Section 17 Design consideration—public spaces and public life

Section 17(c) of the DP SEPP requires that the consent authority be satisfied that the development does not result in an adverse impact on, or a net loss of, public open space. It may be difficult for the consent authority to be satisfied as to this requirement, as any minor impact could potentially have an adverse impact, such as minor overshadowing. A qualification may be required such as there be no "unreasonable" adverse impact on public open space so that the test is stricter and clearer for consent authorities when considering the impact on public open space.

#### Section 30 Objectives of the Apartment design Guide (ADG)

We understand that section 30(3)(b) is intended to remove the practice of looking at how the ADG has been applied to nearby developments. However, this isn't initially clear in the drafting of the clause.

## Environmental Planning and Assessment (Design Principles and Considerations) Direction 2022 (Section 1.9 Direction)

Clause 5(a) of the Direction requires a planning authority to ensure that a planning proposal takes into account and is consistent with the principle and design considerations. The level of detail required appears to be similar to that which is required for a development application. This may lead to higher upfront costs and delays when preparing planning proposals due to the level of detail required.

#### Climate change

Finally, we suggest that a definition of 'climate change' would be useful, although we concede that the definition should probably be included in the *Environmental Planning and Assessment Act 1979*, rather than in subordinate legislation.
We appreciate the opportunity to participate in the reform process. If you have any questions about this submission, please contact Liza Booth, Principal Policy Lawyer, at <u>liza.booth@lawsociety.com.au</u> or on (02) 9926 0202.

Yours sincerely,

Joanne van der Plaat President



## FEB 2022

THE

## DRAFT SUBMISSION DESIGN AND PLACE SEPP

PROPOSED DRAFT DP SEPP, DRAFT APARTMENT DESIGN GUIDE AND DRAFT URBAN DESIGN GUIDE

LOCAL GOVERNMENT NSW GPO BOX 7003 SYDNEY NSW, 2001 L8, 28 MARGARET ST SYDNEY NSW 2000 T 02 9242 4000 F 02 9242 4111



Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

## OVERVIEW OF THE LOCAL GOVERNMENT SECTOR



Local government in NSW employs more than **55,000 people** 

Local government in NSW looks after more than **\$136 billion of** community assets

Local government in NSW spends more than **\$1.9 billion each** year on caring for the environment, including recycling and waste management, stormwater management and preserving and protecting native flora and fauna



NSW has 450 council-run libraries that attract more than **34.8 million visits each year** 



Local government in NSW is responsible for about **90% of the** state's roads and bridges



NSW councils manage an estimated **3.5 million tonnes of** waste each year

NSW councils own and manage more than **600 museums**, galleries, theatres and art centres



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## OPENING

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to make a submission on the draft Design and Place State Environmental Planning Policy (DP SEPP) and supporting guides and documents. LGNSW has consulted with councils to help inform the content of this submission.

This is a draft submission awaiting review by LGNSW's Board. Any amendments will be forwarded in due course.

While this submission is focussed on the DP SEPP it is important to understand the wider context in which this reform is proposed. Local government has been pleased to partner with the NSW Government in meeting the challenges posed by the pandemic and a succession of natural disasters. Councils have demonstrated their capacity to effectively channel government funding directly into local community infrastructure and services, helping to create jobs and keep communities strong. Thanks to the pandemic, we all now more fully understand the importance and benefits to health and well-being of investing in local parks, cycle paths and new community facilities, and the intrinsic value of good design of public spaces and the buildings and places where we live and work.

It is in this context - in the face of the pandemic and other global environmental challenges – that, now more than ever, we need to "put sustainability, resilience, and quality of places at the forefront of development"<sup>1</sup>. Local government has a key role in planning for well-designed buildings and places<sup>2</sup>. Across NSW, councils seek to use their local plans and strategies to deliver sustainable and resilient places and sound place-based and building design outcomes.

It is for these reasons that councils have broadly embraced the intent of the DP SEPP and its supporting guides and look forward to working with the NSW Government to enhance and deliver positive design outcomes for the buildings and public places in their local areas.

At the same time, however it must be recognised that the 2022-23 financial year will

<sup>&</sup>lt;sup>1</sup> <u>DPE website</u>

<sup>&</sup>lt;sup>2</sup> Councils develop plans and strategies, including Local Strategic Planning Statements, Local Environmental Plans and local housing strategies, supported by more detailed Development Control Plans, precinct plans, masterplans and Local Character Statements. Councils develop these in close consultation with local communities and tailor their plans and strategies to the local context.



be especially challenging for local government from a budget and resourcing perspective. Following IPART's unprecedented and unanticipated low rate peg determination of 0.7%, every council will be re-casting their 2022-23 budget projections (unless the sector's calls for NSW Government intervention are urgently heeded) which will inevitably require cuts to infrastructure, services and staff - an undesirable outcome for councils, the NSW Government and communities. As discussed in this submission, councils will be looking to the NSW Department of Planning and Environment (DPE) for support and guidance in all facets of transitioning and implementing the DP SEPP.

The draft DP SEPP and its supporting guidelines and the BASIX higher standards have received criticism in the media from the development industry, stating that it will have a "detrimental impact on housing investment, affordability and job creation"<sup>3</sup>. LGNSW urges the NSW Government to not give in to the demands of the development industry and put short-term economic gains ahead of the wellbeing of NSW citizens.

Continuing with the status quo places the cost elsewhere. Onto our health system, onto residents through higher energy bills in the future, onto local government trying to provide services to poorly designed developments and neighbourhoods. It also impacts the greater economy through loss of productivity.

If the DP SEPP and key provisions in its supporting guides and increased BASIX standards are rejected, we sacrifice the foresight to create places where people want to invest, live and work, and we will be locking in poor performing homes that will require retrofitting to meet the NSW Government's net zero emission goal and be unsuitable for a changing climate.

The people of NSW deserve liveable and healthy communities. The people of NSW deserve to have planning policy that puts them first over cheap, easy and profitable development.

The submission is structured in two parts:



**Part A** contains general comments about the overall design and place policy framework, alignment with LGNSW policies and contains recommendations to assist local government during transition and implementation;



**Part B** contains LGNSW's response to selected specific provisions within the DP SEPP, Apartment Design Guide and Urban Design Guide with particular focus on important aspects of LGNSW policy which include sustainability and resilience, green infrastructure, waste management, design review panels and inclusive design.

<sup>&</sup>lt;sup>3</sup> Property Council of Australia, 10 December 2021



## BACKGROUND

The NSW Government is proposing to introduce a new Design and Place State Environmental Planning Policy (DP SEPP). LGNSW made a submission<sup>4</sup> to the Explanation of Intended Effect (EIE) which was exhibited in 2021. Ongoing engagement with local councils and other stakeholders followed the EIE exhibition during 2021 to develop the DP SEPP and supporting guides which have been exhibited for public comment. The DPE has continued to engage with stakeholders during this current exhibition period.

#### The documents on exhibition are:

- 1. Proposed draft Design and Place State Environmental Planning Policy (DP SEPP) 2021
- 2. Proposed changes to the Environment and Planning Assessment Regulation 2021 (EPA Regulation)
- 3. Proposed direction by the Minister under section 9.1 of the Environmental Planning and Assessment Act 1979 (**9.1 Direction**)
- 4. Revised Apartment Design Guide (ADG)
- 5. Proposed new Urban Design Guide (UDG)
- 6. Updates to residential sustainability (BASIX)
- 7. BASIX sandbox tool
- 8. Design Review Panel Manual for Local Government (DRPM)
- 9. Design & Place Cost Benefit Analysis (Summary)

<sup>&</sup>lt;sup>4</sup> LGNSW Submission to Proposed Design and Place SEPP – Explanation of Intended Effect, April 2021.



### **KEY FEATURES OF THE DP SEPP**

#### Principles-based approach

The DP SEPP will introduce a principles-based approach to planning with 5 design principles supported by 2 considerations and specific measures to satisfy each principle<sup>5</sup>.

Principles	Considerations	
1. Deliver beauty and amenity to create a sense of belonging for people	Overall design quality	Comfortable, inclusive and healthy places
2. Deliver inviting public spaces and enhanced public life to create engaged communities	Culture, character and heritage	Public space for public life
3. Promote productive and connected places to enable communities to thrive	Sustainable transport and walkability	Vibrant and affordable neighbourhoods
4. Design sustainable and greener places to ensure the wellbeing of people and the environment	Green infrastructure	Resource efficiency and emissions reduction
5. Deliver resilient and diverse places for enduring communities	Resilience and adaptation to change	Optimal and diverse land use

The stated aims of the draft DP SEPP are:

- a. to provide a consistent set of principles and considerations to guide the design of the built environment
- b. to ensure a high quality and innovative design of the built environment
- c. to create places that support the health and well-being of the community
- d. to integrate good design processes into planning and development
- e. to recognise the economic, environmental, cultural and social benefits of high quality design
- f. to ensure sustainable development and conserve the environment
- g. to minimise the consumption of non-renewable energy and reduce

<sup>&</sup>lt;sup>5</sup> Refer to Part 2 of the DP SEPP public consultation draft.



greenhouse gas emissions

- *h.* to achieve better built form and aesthetics of buildings, streetscapes and public spaces
- *i.* to recognise the importance of Country to Aboriginal people and to incorporate local Aboriginal knowledge, culture and tradition into development.

#### Application of the DP SEPP

The DP SEPP will apply to all of NSW and spans places of all scales from precincts, large developments and buildings, to infrastructure and public space. Land excluded includes some rural land, industrial land, environmental conservation land and waterways. Small scale development such as detached houses and complying development are excluded from the DP SEPP (except for BASIX requirements).

#### Guidance

The DP SEPP gives effect to two guides, a revised Apartment Design Guide and a new Urban Design Guide. Changes to update BASIX are also proposed along with an alternative merit-based assessment pathway to meeting sustainability requirements.

#### **Design Skills**

The DP SEPP also introduces requirements for qualified designers to prepare a design verification statement for a range of developments to verify that they designed or directed the design of proposals and state how it meets the objectives of the DP SEPP and relevant guidance and to justify any alternative design solutions.

#### **Design Review Panels**

Establishment of Design Review Panels, appointed by the Minister, is required for all councils. Panels will be required to adhere to the process set out in a new Local Government Design Review Panel Manual.

#### Timeframe

A delayed commencement of 6 months is proposed following gazettal of the DP SEPP.



# PART A: LGNSW GENERAL COMMENTS

### **Overview**

LGNSW is broadly supportive of the DP SEPP, the strengthening of BASIX, the updates to the Apartment Design Guide and the new Urban Design Guide. LGNSW agrees with the principles and supports the consolidation of policies and guidance within the SEPP.

There is strong alignment between the intent of the policy, to "put sustainability, resilience and quality of places at the forefront of development"<sup>6</sup> and improved design and sustainability outcomes sought by councils and their communities as reflected in the following position statements of the <u>LGNSW Policy Platform</u>. These call for:

Policies and plans that enhance holistic sustainability outcomes in housing by requiring consideration of housing design (including site selection), construction and operation over its lifetime, minimising economic harm and considering economic and social sustainability. (Position Statement 8.7).

Housing growth that meets community expectations, by contributing to place-making and the safety and quality of the built form. (**Position Statement 8.8**)

<sup>&</sup>lt;sup>6</sup> <u>https://www.planning.nsw.gov.au/Policy-and-Legislation/State-Environmental-Planning-Policies/Design-and-Place-State-Environmental-Planning-Policy</u>





The Connecting with Country Framework and the specific aim of the DP SEPP to recognise the importance of Country to Aboriginal people also closely aligns with the LGNSW Policy Platform, as reflected in the following Fundamental Principle<sup>7</sup>:



G. Local government is committed to the principles of:

- Equity fair distribution of resources
- Rights equality for all people
- Access to services essential to quality of life
- Participation of all people in their community
- Recognition of the unique place of Aboriginal people in NSW and the right of Aboriginal people to be involved in all decisions affecting Aboriginal communities.
- Health and safety for all in the community.

With this strong alignment to LGNSW policy, this policy framework presents an opportunity to invest in the state's long-term future and the health and well-being of NSW citizens by embedding better design in the planning system. Councils want to see the draft DP SEPP and its supporting guidelines help deliver sustainable, liveable and healthy communities as NSW grows and develops.

<sup>&</sup>lt;sup>7</sup> LGNSW Policy Platform, p 4



LGNSW commends DPE for its program of engagement on the DP SEPP. Extending the timeframe for developing the DP SEPP to enable more consultation with councils and other stakeholders, together with webinars and forums convened during the exhibition period have helped council staff better understand various components of the DP SEPP. It is disappointing that the timing of the local government elections in December 2021 has limited the opportunity for newly-elected councillors to engage on this important reform.

While there is support for elevating design in the planning system, and the DP SEPP is broadly supported, LGNSW understands councils do have concerns about aspects of the proposed SEPP and its implementation may prove challenging for some, given the other significant planning reforms and the additional costs to councils associated with administering Design Review Panels. These are discussed below.



LGNSW strongly supports the DP SEPP and its intent. The DP SEPP is underpinned by collaborative and considered policy work and recognises the critical need to sustain healthy and thriving communities, and to care for our environment. LGNSW recommends that the DP SEPP be implemented with continued strong engagement and consultation with councils.

### Principles-based approach

The proposed shift to a principles-based approach is a significant change to the planning system. LGNSW recognises that a principles-based approach to assessing development applications and flexibility in applying design controls that regulate development can support good design outcomes, however many councils remain concerned that the pathways for approval and refusal are unclear and this will create uncertainty for owners, applicants and the community and lead to longer assessment timeframes and strain council resources. Further, councils have cautioned that this could also result in an increased risk of court cases.

Some councils are of the view that having transparent minimum standards with merit-assessment for non-compliance would address these concerns. If the DP SEPP is implemented as proposed, these risks will need to be carefully monitored.

It would appear that before the DP SEPP is made, further testing and modelling of the proposed approach is needed to demonstrate that the principles-based approach proposed will not lead to these undesirable outcomes.



02

LGNSW recommends that DPE develop a program to test and model the proposed principles-based approach with local councils prior to making the DP SEPP.

## Relationship between DP SEPP and locally developed plans

While we understand the intent of the DP SEPP to lift design quality and outcomes state-wide, LGNSW is concerned that blanket standardised controls may have the unintended effect of limiting councils' ability to tailor responses to local circumstances. Introduction of the DP SEPP alongside other recent reforms to employment zones and the continued expansion of complying development erodes local community decision-making and place-making.

Councils remain unclear about how the DP SEPP relates to other planning instruments. The relationship between the DP SEPP and guidance (Apartment Design Guide and Urban Design Guide) and other State Environmental Planning Policies, Local Environmental Plans and Development Control Plans and what takes precedence when there is a conflict is one example.

While the DP SEPP principles are supported, and many aspects of guidance are welcome, it is difficult to understand how issues that are particularly important to local communities can be planned for and tailored appropriately. For example, state-wide blanket controls such as those proposed for density in the Urban Design Guide may not be appropriate in different local contexts.



LGNSW recommends that DPE revise the draft DP SEPP in consultation with councils to ensure there is sufficient flexibility and scope for local place-making and clarify the relationship between the DP SEPP and other planning instruments.



# Expanding the scope of the DP SEPP and reviewing complying development

The limited application of the DP SEPP, to sites of 1 hectare and greater will result in variable design and place outcomes. In many locations where development occurs on smaller sites, the DP SEPP will not apply. Further consideration of the 1 hectare threshold and design guidance for lower scale development, aligned to the principles within the DP SEPP is needed to address this gap.

Similarly, the continued expansion of "one-size-fits-all" provisions under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) will erode and undermine good design and place-making. The Codes SEPP provides no opportunity for tailoring planning to local settings which is fundamental to delivering well-designed places "with beauty and character". In many locations a high proportion of development is occurring via this development pathway, not always leading to good outcomes for the local area. Councils continue to raise concerns about the impact of complying development on community input to local planning and their capacity to preserve and enhance local character and amenity.

The absence of sufficient local planning controls and community input in the planning system due to the expansion of complying development could paradoxically undermine the desired outcomes which the Design and Place SEPP is ultimately seeking to achieve.



LGNSW recommends that DPE consult further with councils to determine whether the 1 hectare threshold for application of the DP SEPP should be reduced and that the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 be reviewed as a priority to bring it into alignment with the principles and objectives of the DP SEPP.

### Implementation and resourcing

Introduction of the DP SEPP and elevating design will likely require new skills, additional staff and require establishment of new systems and processes within councils. This will be complex and there are costs associated with implementation which will be exacerbated by current skills shortages across all parts of NSW and councils' financial constraints. The issues arising from the onboarding of councils to the NSW planning portal is illustrative of the complexity and cost of planning system changes for councils.



It is critical that introduction of the DP SEPP is carefully managed and appropriately resourced by both state and local government. LGNSW recommends that a detailed implementation plan be developed jointly with councils before the DP SEPP is finalised. This should map out steps, timeframes and resources needed to ensure that the proposed commencement within 6 months of gazettal is feasible, well-organised and properly resourced.

As with all new policy change, issues will arise, despite the guidance and templates within the Design Review Panel Manual for Local Government which have been developed to support councils to implement the policy. These are certainly a welcome start, but from experience of other planning reforms, the final policy cannot simply be released and left to councils and industry to implement it. The team that has collaborated, nurtured and developed this policy within the department should be re-invented into an implementation/advisory team that is properly resourced and funded to provide proactive real-time support during the transition period and in the first 12 to 18 months of the policy commencing.

Resourcing for implementation should include:

- training for council staff the DPE has indicated it will be putting together a training program, and we urge the department to work closely with the local government sector to identify and understand what technical, professional and administrative training will be needed to support councils;
- one-off grant funding for additional positions or consultants to support the first 1 3 years of implementation and sharing of resources for councils that are unable to fund new positions or have difficulty attracting skilled planners. A \$50 million grant program, for example, would enable \$400,000 per council over 2 years, to fund at least one additional position per annum and system/process changes;
- a facility such as a help desk or hotline within DPE to provide a real-time central point of contact to ensure prompt and consistent responses to queries;
- a support network of councils to enable the sharing of information, documents, templates etc, such as the setting up and operation of panels; and
- an implementation group (or groups) with councils to resolve issues as they arise and support implementation, particularly during the early days of the policy transition and commencement.

The approach developed by the NSW Department of Customer Service to support the commencement of the Design and Building Practitioners Act is an example of this approach. An Industry Consultative Group (with peak bodies) was established in the weeks leading up to and following commencement to test guidance and systems. The meetings were held fortnightly, allowing for issues to be promptly addressed.



05	LGNSW recommends that DPE work with councils to develop an agreed and appropriately resourced implementation plan for the DP SEPP, with consideration of practical real-time support such as training for council staff, a DPE hotline or help-desk, and council support networks and implementation groups.
	LGNSW recommends that:
06	<ul> <li>The department's DP SEPP policy team should be re- invented into an implementation/advisory team that is properly resourced and funded to provide proactive real-time support during the implementation plan for the DP SEPP; and</li> <li>Include a resourcing strategy for councils which commits funding of \$50m over two years to fund at least one additional position per annum and system/process changes. The resourcing strategy should the transition period and in the first 12 to 18 months of the policy commencing and also identify gaps in capacity, guidance and system improvements to support councils.</li> </ul>



## PART B: SPECIFIC COMMENTS ON EXHIBITION DOCUMENTS

LGNSW supports the intent of the exhibition documents including the draft DP SEPP, Draft Apartment Design Guide and Draft Urban Design Guide. The comments below are suggested additions and refinements.

### Response to draft DP SEPP

#### Part 2 Design principles and design considerations

LGNSW notes the DP SEPP Sections 12 and 13 introduce design principles and design considerations that must be considered by the consent authority. LGNSW is supportive of this approach.

#### 20 Design consideration - Green infrastructure

The inclusion of green infrastructure as a design consideration in the SEPP is strongly supported by LGNSW. The SEPP considerations include retaining or improving existing green infrastructure to support natural systems and the intention to maximise tree canopy have wider local government support. Section 20(b) and (c) highlight the importance of ensuring green infrastructure thrives through the provision of deep soil and appropriate maintenance, both fundamental to the successful creation of green spaces.

LGNSW welcomes the inclusion of minimum tree canopy targets across streets, parks and properties as provided in the UDG and ADG. The inclusion of definitions of tree planting rates, prioritising the protection of existing trees, consideration of species diversity to deliver canopy cover and contribute to biodiversity are all supported.

Where trees are not suitable for a site, then greening alternatives, such as green roofs and walls are encouraged to be factored into the design early in the process. The SEPP and its supporting material include strong green infrastructure guidance,



important for local development outcomes, creating cooler and more attractive liveable communities.



LGNSW supports retaining in the final DP SEPP the strong green infrastructure objectives included in the draft SEPP which recognise the essential role of green infrastructure, including tree canopy and other initiatives in creating cooler and more liveable development.

#### 21 Design consideration—resource efficiency and emissions reduction

Section 21(a) excludes as far as practicable, the use of on-site gas for cooking, heating and hot water, for subdivision development. NSW local government supports the NSW Government's commitment to reach Net Zero by 2050. Electrifying development, fostering the use of the most efficient technologies available and sourcing electricity from renewable sources is needed to reach net zero. Given the longevity of development, LGNSW recommends electrifying all new development not just new subdivisions. This is especially important in apartments where the expense of retrofitting is costly.

LGNSW agrees with and supports the intent of Section 21(b) to minimise waste at various lifecycles of the development, however the current wording could be improved to convey the circular economy outcomes and place emphasis on the ongoing waste management of the development.



LGNSW recommends that Section 21(a) of the DP SEPP be amended so that excluding on-site gas for cooking, heating and hot water should apply to all residential development to transition to net zero.

LGNSW recommends the wording of Section 21(b) of the DP SEPP be amended so that its intent is clearer, for example:

- (b) is designed to minimise waste
  - (i) from demolition and construction,
  - (ii) integrating waste management infrastructure to facilitate source separation of waste streams and safe and efficient collection,
  - (iii) by the choice and reuse of building materials.

LGNSW supports Section 21(d) promoting water sensitive urban design and water re-use. Water in the landscape is needed to mitigate urban heat and a push for water efficient landscaping could have perverse outcomes.



#### 22 Design consideration - resilience and adapting to change

LGNSW commends the inclusion of resilience and adaptation as a design principle. This aligns with LGNSW's policy platform advocating for resilience of housing. LGNSW recommends that Section 22 be amended and updated to ensure the SEPP promotes adaptability over time. There are known climate risks that have near term impacts, that could be addressed if resilience features were adaptable over time.

The impact of natural hazards on development can also be mitigated through the building materials chosen. For example, tiled roofs in areas subject to intense hail are more likely to fail than roofs made from Colourbond, or lighter roofs and facades reducing urban heat impacts. The design of the development should also consider the design life of materials chosen to ensure ongoing resilience. This may be addressed through the Resilience Guideline, which is not on exhibition.



#### Part 3 Assessment of development

#### Division 2 BASIX standards for residential development

LGNSW supports the application of higher BASIX standards. Councils would like more flexibility in responding to local risks and the aspirations of their community to set high BASIX standards for their community.

LGNSW welcomes the review of the BASIX standards every three years noting that the water use target is a priority as it was not part of the current review.



LGNSW recommends the DP SEPP be amended to enable local government to set a higher BASIX standard for their community after a community feedback process.

#### Schedule 1 Energy and water use standards for non-residential development

LGNSW commends the inclusion of sustainability standards across non-residential development. LGNSW would like to work with the NSW Government on how implementation of these aspects will impact council assessment processes. There is also a need to understand the verification process and post construction commitments, and a need for training and support for council assessors.



LGNSW recommends that the implementation phase for non-residential sustainability standards in the DP SEPP should fully define the verification processes for sustainability commitments and provide training for a range of stakeholders.

#### Part 4 Design review

Design Review Panels

While some councils already have Design Review Panels, many councils have legitimate concerns and questions about the costs and resourcing associated with administration of these Panels. This is particularly acute in light of the financial plight of councils as discussed in the opening to this submission.

Under the new proposals, many councils, particularly those in regional areas, will be required to establish Design Review Panels for the first time. For regional and rural councils, the cost to establish and operate panels when there is very limited development and under-resourced planning teams is an understandable concern. LGNSW notes that the draft Environmental Planning and Assessment (Design and Place) Regulation 2021 allows for a Panel to be established for two or more councils<sup>8</sup>. This shared panel model as an option is supported and may allay some of these concerns but will require further consideration about how the costs are borne

<sup>&</sup>lt;sup>8</sup> See proposed clause 268B in the <u>Environmental Planning and Assessment Amendment (Design and Place) Regulation</u> 2021 public consultation draft



between councils and other logistics to be worked out. Further flexibility may also be warranted, for example the ability for smaller rural councils with limited development to outsource their design review to another council's panel on a feefor-service basis without having to enter into a formal panel-sharing arrangement.

Councils have differing views about how Panels should be established. Some councils have many years of experience appointing and successfully running Panels and are well-equipped to continue to do so. The DP SEPP and Regulation propose that the Minister appoint Panels in consultation with councils. Local government would like to see these provisions broadened to permit alternative Design Review processes by agreement between local government and the Government Architect NSW, for example, panel members being appointed by council rather than the Minister. Further consultation with local government should occur to agree an approach appropriate to the differing circumstances of councils across the state.



LGNSW recommends that DPE engage with local government to agree a process for establishing Design Review Panels that is responsive to the different circumstances and experience between regional and metropolitan councils and those councils with experience in establishing and operating panels.

#### **Design Verification**

LGNSW is concerned that the definition of "urban designer" is confusing and vague. It is not clear what constitutes 5 years' experience in precinct or master planning. While there are definitions for "architect" and "landscape architect" in the draft EPA (Design and Place) Regulation it does not define a "qualified town planner". It is unclear whether this a recognised planning degree or a qualification recognised by the Planning Institute of Australia.



LGNSW recommends that DPE give further consideration to the definition of 'urban designer' in consultation with local government practitioners and other bodies such as the Planning Institute of Australia prior to the DP SEPP being made.



### Response to the draft Apartment Design Guide

#### Green Infrastructure (ADG, section 1.5)

The Apartment Design Guide (ADG) provides tree canopy targets, defines tree planting rates, considers species diversity and biodiversity in delivering canopy cover. It also prioritises the protection of existing trees. Where trees are not suitable for a site, then greening alternatives, such as green roofs and walls are encouraged to be factored into the design early in the process. This is aligned with LGNSW's advocacy to protect mature urban vegetation and that developments and precincts include measures to alleviate the urban heat island effect.

LGNSW supports the modest increases to deep soil and tree canopy requirements and would support the more stringent requirements that were originally foreshadowed in the EIE.

The ADG refers to trees that should be retained as 'significant trees'. The terminology 'significant tree' is problematic. For most councils this means trees listed on a significant tree list or heritage list, however, there are many other trees in local areas which do not meet the 'significant tree' criteria but are well established and have considerable canopy and other benefits.



LGNSW recommends that the reference to 'significant tree' in the Apartment Design Guide be replaced with 'healthy and well-structured established tree'.

#### Apartment Mix and Diversity (ADG, section 2.3)

The ADG currently requires that a minimum of 20 per cent of apartments incorporate the Liveable Housing Australia (LHA) Liveable Housing Design Guidelines (LHDG) Silver Level universal design features<sup>9</sup>. It is disappointing that the opportunity has not been taken to increase these provisions in the Revised ADG, as was foreshadowed in the EIE for a Design and Place SEPP.

Councils have resolved at an LGNSW Annual Conference to call on:

- the Australian Government to direct the Australian Building Codes Board (ABCB) to make urgent changes to the Building Code of Australia (BCA) to incorporate universal design principles into the design requirements of private residential dwellings;
- the NSW Government to replace all references to Adaptable Housing Standards AS4299 with the Liveable Housing Australia (LHA) Guidelines 'Gold Standard';

<sup>&</sup>lt;sup>9</sup> Apartment Design Guide, July 2015, Objective 4Q-1



• the Australian Government to develop mandatory targets for new dwellings to meet the LHA Gold Standard by 2020.

LGNSW understands that the minimum 20 percent Silver Level has been retained as the NSW Government has determined to opt out of mandating the minimum accessibility provisions for residential housing and apartments in the National Construction Code.

LGNSW is concerned that retaining the current provisions in the revised ADG will exacerbate the existing significant shortfall in accessible dwellings which limits opportunities for people with disabilities and others to access housing suited to their needs in their community. LGNSW policy statement 8.6<sup>10</sup> calls for:



an agreed legislated definition of accessibility incorporating universal design principles,

mandated minimum accessibility standards at the liveable Housing Australia (LHA) Design Guidelines Gold Level (Option 3) or an equivalent standard at this level or higher, linking and alignment of state and federal housing, ageing and disability strategies.



LGNSW recommends the Apartment Design Guide be amended to require new dwellings to meet the Liveable Housing Design Guidelines (LHDG) Gold Standard.

#### Waste (ADG, section 3.3)

NSW councils play a lead role in providing waste, recycling and other resource recovery services to their communities. Waste management is complex, and every council across NSW is required to deliver an increasing range of waste services within their communities, therefore "getting it right" is vital. Where good waste outcomes are not achieved the implications can impact human and environmental health with significant perverse outcomes.

Some of the key considerations impacting councils' ability to deliver waste services include:

 Increasing waste generation rates, according to the NSW EPA in 2018–19 the average NSW household generated 21.75 kg of waste a week



- State and Federal mandates to meet waste diversion rates and emissions reduction targets including the Waste and Sustainable Materials Strategy: 2041
- Increasing community expectations borne out of concern for climate change
- Pressure from population growth and increasing community diversity
- The need to drive forward Circular Economy principles
- Changing waste servicing requirements both in terms of storage and collection

To overcome challenges and meet waste diversion targets and other sustainability objectives a clear regulatory framework is essential. The Waste and Sustainable Materials Strategy (WaSM) 2041<sup>11</sup> will help guide NSW in achieving the ambitious target of an 80% recovery rate from all waste streams by 2030 through the implementation of multiple strategic priorities. To this end, the draft DP SEPP and ADG offer important vehicles to ensure that the NSW State Government can work collaboratively with local government to implement these strategic waste programs and meet the objectives of WaSM specifically with regard to the management of organic waste (food organics/garden organics).

LGNSW acknowledges that the DP SEPP mandates consideration of the ADG and UDG and clarifies that the assessment of new developments is to be against the objectives of the relevant guide. As such we make the following comments regarding the proposed waste objectives contained within the ADG.

#### Objective 3.3.1

Whilst there is minimal change between objective 4W-1 in the current ADG and objective 3.3.1 in the Revised ADG, LGNSW would recommend that the term "waste storage" be replaced with "waste infrastructure" as this term has broader application.

Objective 3.3.1 in its current phrasing also implies that waste storage could impede streetscapes and visual amenity, but this overlooks the opportunity for well-planned infrastructure that is responsive to future needs to be integrated into the overall design of the development so that it contributes to the built form and liveability of the dwelling and surrounds. There is the potential to rephrase this objective to ensure these opportunities are also identified.

#### Objective 3.3.2

LGNSW supports the change from Objective 4W-2 in the current ADG to Objective 3.3.2 which now reflects additional waste streams such as organics. This is essential, considering the organics mandate proposed under the WaSM strategy and with respect to the safe handling of problem household wastes which could include

<sup>&</sup>lt;sup>11</sup> https://www.dpie.nsw.gov.au/our-work/environment-energy-and-science/waste-and-sustainable-materials-strategy LGNSW.ORG.AU



new collection opportunities in the future. To build upon this positive change this objective could in fact be more prescriptive and identify other waste streams including "bulky waste". Bulky waste is problematic when inadequate storage leads to residents placing waste on footpaths and kerbsides, impacting amenity, and is difficult and costly for councils to manage. Whilst many councils have bulky waste collections in place there are several key factors which can influence the efficiency and safety of such collections including appropriate storage and access for service providers.

Objective 3.3.2 could also be expanded to make clear that safe and convenient onsite facilities should represent more than one integrated waste storage area. Such facilities should be present within apartment kitchens to maximise organic and inorganic recycling at the source, include safe, hygienic and accessible waste storage within apartment buildings which have clear carting routes connected to a communal integrated storage area. Feedback from councils has repeatedly indicated that having good opportunities to separate waste at the source typically leads to increased resource recovery, greater participation in waste separation and a reduction in contamination.

LGNSW also recommends a third objective be included in the revised ADG to adequately address waste collection to avoid poor outcomes, including collection vehicles being unable to access waste storage areas. The proposed third objective covering waste collection could be:

Proposed Objective 3.3.3 - *Provide adequate waste storage capacity and access to ensure that the development can be serviced safely and efficiently and to maximise resource recovery.* 

If a third objective is not considered possible, LGNSW recommends that Objective 3.3.1 be expanded further to not only include waste infrastructure but also waste collection services.



#### **Design Guidance for Waste Collection**

Developing appropriate waste servicing arrangements for new developments is a critical aspect of the development application process for councils and the inclusion of council endorsed/standardised (but not mandated) waste servicing plans is one



area which can support council planning staff in ensuring good waste management outcomes.

The complexity of waste servicing is set to increase for many councils with the WaSM Strategy setting out priorities for organic waste diversion and a mandated separate collection of food and/or garden organics for all NSW Councils by 2030. This will result in an increase of kerbside bins for all residential properties, meaning greater requirements for internal waste infrastructure to store and relocate organic waste, capacity within waste storage areas for a third type of bin, along with an increase in the area available for bin presentation to the kerb (where applicable). This will be coupled with an increase in waste truck movements to service a third bin.

To provide adequately sized infrastructure, the waste generation calculation needs to be based on local waste data however LGNSW supports a minimum standard within the ADG. Waste generation rates may be impacted by population age, diversity and a range of other social variables including size of households and councils should have an opportunity to provide input into this process to determine a localised calculation based upon their specific community profile. Councils may have higher specifications for their community.

Safe access to integrated waste storage rooms is essential and is not fully prescribed within the revised ADG. Although reference is made to safety and limiting residents access to chutes and compactors, the guidance should go further to refer to the safety of service staff including cleaners, building managers and waste collection staff. Furthermore, the guidance could refer to the relevant Australian Standards as they apply to waste collection services and reference better practice options such as the nose in/nose out waste collection vehicle movements which many councils recommend ensuring pedestrian and service staff safety.

Section 1.3 of the revised ADG refers to site access and speaks to design considerations which may minimise conflicts between pedestrians, vehicle access and movement routes adjoining the site. LGNSW notes that this could be expanded to make specific reference to ensure waste infrastructure and servicing requirements are integrated into the overall design if the development is to avoid poor amenity and environmental outcomes as displayed in *Images 1 and 2*. In the case of large apartment buildings this would include facilitating access by a heavy rigid waste collection vehicle collecting from the site on multiple occasions per week. As such the potential amendment could read: *Minimise conflicts between pedestrians, vehicle access, service vehicles (such as waste collection vehicles) and movement routes adjoining the site.* 







*Image 1 & 2*: pedestrian access and safety impacted plus poor amenity outcomes from inadequate planning for waste collection services.

#### Design Guidance for Waste Storage

As previously identified, appropriate waste storage infrastructure is critical to ensuring waste is separated at the source, leading to higher rates of resource recovery and lower contamination within apartment buildings. LGNSW makes the following comments and recommendations based upon feedback received from councils regarding the opportunities to strengthen the design guidance around waste storage.



The revised ADG expands the reference to options for waste separation at the source and LGNSW supports this, especially the direct reference to providing two days' worth of storage in apartment kitchens to allow for organics and recycling to be separated from residual waste. There is strong support from within the sector that where the infrastructure exists to make waste separation easy the result is a higher uptake by residents and less contamination.

LGNSW concurs with the need to separate commercial waste infrastructure in mixed-use developments both to ensure the safety of residents and tenants and for effective resource recovery.

There are some concerns across the local government sector regarding waste chutes in Figure 3.3.1. It is clear from LGNSW's consultation that councils have varying preference to the operation of waste chutes. Whilst waste chutes can offer spatial efficiencies, reference to the individual waste streams should be removed and a more general comment aligning with better practice would potentially be more useful and allow councils the flexibility to manage this based on the waste services available.

Waste chutes in residential apartment buildings (especially for organics) can lead to hygiene issues as well as potentially increasing contamination rates when used incorrectly. Several councils have provided feedback suggesting that a FOGO collection area rather than a chute is a more appropriate option within apartment buildings. Further to this, any storage and disposal option sited within a corridor should be very carefully considered to determine the appropriate mix of chutes and storage along with the method by which stored waste is transported to the integrated area.

Figure 3.3.1 refers to diverter systems which councils have found problematic. Councils have also found issues with the operation of turntables in apartment buildings and prefer to allow front in/front out access for collection vehicles. LGNSW recommends removal of the reference to diverter systems and for councils to have the flexibility to recommend these at the council planning level where appropriate.

Both waste storage in residential corridors and integrated waste rooms should be well designed and meet all accessibility standards to ensure the safety of residents and service staff. Access doors should be a minimum double door and/or 2 metres in width to allow for maximum manoeuvrability of the bins within the room and allow bin movements to ensure bins are not overflowing and are easy to access.

Figure 3.3.3 does not necessarily reflect the preference of councils regarding waste room design and potentially should be removed in favour of enabling councils to recommend the design of the room at the council planning level. The revised ADG could refer to the key features that should be considered as part of waste storage design and these may include (but not limited to); minimum door width of 2m/double doors to allow for access, minimum floor size upward of 9m<sup>2</sup> to cater for recycling, organics and residual waste as well as allowing provision for future waste collections of textiles, e-waste, soft plastics as well as providing for a general bulky waste collection area. Resident and service staff amenity and safety can be impacted by poor design, as shown in *Image 3*. In addition to the size of integrated



waste storage rooms, we concur with the recommendation contained in the design guidance covering the need to include hot and cold water for washing, access to sewer, excellent ventilation and lighting and other measures such as tiling of floors to ensure hygiene and safety.



*Image 3*: inadequately sized bulky waste storage room.

LGNSW recommends that minor updates should be made to the design guidance in the Apartment Design Guide for waste collection and waste storage to ensure good waste outcomes can be achieved.

### Response to the draft Urban Design Guide

LGNSW supports the objectives of the Urban Design Guide and the place-based framework. This aligns with LGNSW's advocacy around achieving improvements in liveability and sustainability of our communities.

### Objective 4 Place-based risks are mitigated and ecological values sustained to ensure resilient communities

LGNSW advocates for developments and precincts to include measures to alleviate the urban heat island effect. Heat kills more Australians than any other natural disaster yet is not specifically mentioned as a risk under Objective 4. For heat mitigation to be incorporated into the design phase, assessment guidance is



needed. LGNSW, in partnership with the NSW Government, has funded Western Sydney Regional Group of Councils to develop the Cool Suburbs Tool to identify the most appropriate urban heat interventions to existing and new developments which may provide useful guidance for proponents and assessors.

LGNSW recommends that the Urban Design Guide be amended to strengthen the coherence and implementation of Objective 4: Identify heat as a natural hazard e.g. To reduce the impacts of hazards such as *heat*, bushfire, drought or flooding, whether natural or human-induced. Provide assessment guidance for addressing urban heat 0 at the precinct scale. Including references to other hazard related guidance 0 including the Floodplain Management Manual and Planning for Bushfire Protection 2019 Guide. Provide proponents and assessors with appropriate 0 tools such as the flagged 'design for resilience' template and accompanying guideline.

### Objective 10 Tree canopy supports, sustainable liveable and cool neighbourhoods

Objective 10.1 of the UDG relates to enhancing urban tree canopy and includes point 5: Consider site-specific constraints and requirements when planting trees and ensure future flexibility. LGNSW seeks a strengthening of the wording of 'future flexibility'.

LGNSW recommends that the wording of objective 10.1 point 5 in the Urban Design Guide be amended to read:
Consider site-specific constraints and requirements when planting trees and ensure well designed and constructed spaces for mature trees.

Species selection is included in point 6 of objective 10.1. It is suggested that this section could also be strengthened by the addition of *species diversity*, not just biodiversity, which focused on native flora and fauna.



LGNSW recommends that the wording of objective 10.1 point 6 in the Urban Design Guide be amended to read:

 For species selection, gain maximum benefits from the urban canopy by considering species suitability for the site attributes and constraints, species diversity and contribution to biodiversity.

The placement of trees to allow for maximum canopy growth is covered in objective 10.4 requiring the appropriate selection of tree species to *avoid new tree placement that blocks high-amenity views*. However, a 'high amenity view' could be defined and interpreted in many ways and apply to a range of views from water to bushland and city views. Given the complexity of this definition, and the possibility of a wider than anticipated scope, LGNSW suggests this point be deleted.



LGNSW recommends that objective 10.4 point 2 in the Urban Design Guide be deleted to remove the reference to 'high amenity views'.

### Objective 18 Built form enlivens the ground plane and activates and frames public space

Urban heat islands are also influenced by hard, sealed surfaces in the public streetscape. Urban heat could be addressed through *18.5 Consider the impacts of material choices* by listing light finishes or avoiding materials with a low Solar Reflectance Index.



## CONCLUSION

LGNSW and our member councils applaud the intent of the new DP SEPP framework to "put sustainability, resilience and quality of places at the forefront of development"<sup>12</sup>. There is strong alignment between the intent of the policy to elevate design and drive better places and the improved design and sustainability outcomes sought by councils and their communities (as reflected in LGNSW's Policy Platform<sup>13</sup>). The draft SEPP's Connecting with Country framework is also consistent with LGNSW policy. We commend the DPE's collaborative and widespread engagement of all stakeholders in what has been a sophisticated, open and highly detailed policy development journey resulting in an arduous balancing act.

There is no doubt this policy has generated controversy, with the development industry claiming<sup>14</sup> it is 'unworkable' and will impact the viability of new housing. Housing supply and affordability may be top-of-mind for some, but 'shelter' is the lowest order of need, and simply building more and cheaper houses under the guise of 'affordability' is short-sighted in the extreme and is not in the long-term interests of NSW citizens, who expect more than 'baseline' standards.

The reality that people live in *places*, not just *buildings* or *houses* must not be overlooked when determining the final shape and provisions of this new policy framework. LGNSW has maintained throughout this submission the need to aspire to do better, anticipate, plan for and respond to future needs. There is no more graphic example of this than in the way we consider and plan for managing waste generated from our households, buildings, streets and suburbs. This submission has illustrated how poor design for waste has led to exceedingly poor outcomes that literally spill onto our streets. The same principle can be applied to other important design considerations, such as provision of green infrastructure and resilient buildings that reduce urban heat impacts.

Councils strive to offer great places to their communities that will attract investment. The DP SEPP framework supports those objectives and is welcomed by local government. Councils will play a key role in implementing the vision and policies in this framework. This submission has highlighted that councils must be well-supported by the department through a DPE implementation/advisory team, funded resources, training and other tools if the policy is to transition smoothly to become embedded in the planning system and deliver the outcomes sought.

Encouraging and attracting investment has been a consistent theme across all the reforms in the NSW Government's far-reaching planning reform agenda. This particular reform presents an opportunity to *invest* in the state's long-term future and the health and well-being of NSW citizens by embedding better design in the

<sup>&</sup>lt;sup>12</sup> https://www.planning.nsw.gov.au/Policy-and-Legislation/State-Environmental-Planning-Policies/Design-and-Place-State-Environmental-Planning-Policy

<sup>&</sup>lt;sup>13</sup> LGNSW Policy Platform

<sup>&</sup>lt;sup>14</sup> Property Council of Australia, 10 December 2021



planning system. Its endorsement by Business NSW<sup>15</sup> gives a nod to the business investment benefits this new framework can bring. The importance of what is being sought here is well-captured in the department's own words:

"Great design is everyone's business – It's more than how things look, it's fundamental to better lives, better places, better returns on investment, and a more sustainable and resilient future."<sup>16</sup>

Reform must be more than generating short-term construction jobs and housing that does not respond to future needs. We urge the NSW Government not to lose sight of "our shared responsibility to sustain healthy and thriving communities, and to care for our environment"<sup>17</sup> which has underpinned this collaborative, sophisticated policy work to reach this point.

\* \* \*

To discuss this submission further, please contact Jane Partridge, Strategy Manager, Planning at jane.partridge@lgnsw.org.au or on 02 9242 4093.

<sup>&</sup>lt;sup>15</sup> <u>https://youtu.be/QCXfyo3lcqg</u>

<sup>&</sup>lt;sup>16</sup> Design and Place SEPP Overview, p 15

<sup>&</sup>lt;sup>17</sup> DPE website



# SUMMARY OF RECOMMENDATIONS

#### General recommendations (Part A of this submission)

#### **Recommendation 1**

LGNSW strongly supports the DP SEPP and its intent. The DP SEPP is underpinned by collaborative and considered policy work and recognises the critical need to sustain healthy and thriving communities, and to care for our environment. LGNSW recommends that the DP SEPP be implemented with continued strong engagement and consultation with councils.

#### **Recommendation 2**

LGNSW recommends that DPE develop a program to test and model the proposed principles-based approach with local councils prior to making the DP SEPP.

#### **Recommendation 3**

LGNSW recommends that DPE revise the draft DP SEPP in consultation with councils to ensure there is sufficient flexibility and scope for local place-making and clarify the relationship between the DP SEPP and other planning instruments.

#### **Recommendation 4**

LGNSW recommends that DPE consult further with councils to determine whether the 1 hectare threshold for application of the DP SEPP should be reduced and that the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 be reviewed as a priority to bring it into alignment with the principles and objectives of the DP SEPP.

#### **Recommendation 5**

LGNSW recommends that DPE work with councils to develop an agreed and appropriately resourced implementation plan for the DP SEPP, with consideration of practical real-time support such as training for council staff, a DPE hotline or help-desk, and council support networks and implementation groups.



#### **Recommendation 6**

LGNSW recommends that:

- The department's DP SEPP policy team should be re-invented into an implementation/advisory team that is properly resourced and funded to provide proactive real-time support during the implementation plan for the DP SEPP, and
- Include a resourcing strategy for councils which commits funding of \$50m over two years to fund at least one additional position per annum and system/process changes. The resourcing strategy should the transition period and in the first 12 to 18 months of the policy commencing and also identify gaps in capacity, guidance and system improvements to support councils.

#### Specific recommendations (Part B of this submission)

#### **Recommendation 7**

LGNSW supports retaining in the final DP SEPP the strong green infrastructure objectives included in the draft SEPP which recognise the essential role of green infrastructure, including tree canopy and other initiatives in creating cooler and more liveable development.

#### **Recommendation 8**

LGNSW recommends that Section 21(a) of the DP SEPP be amended so that excluding on-site gas for cooking, heating and hot water should apply to all residential development to transition to net zero.

#### **Recommendation 9**

LGNSW recommends the wording of Section 21(b) of the DP SEPP be amended so that its intent is clearer, for example:

- (b) is designed to minimise waste
  - (i) from demolition and construction,
  - (ii) integrating waste management infrastructure to facilitate source separation of waste streams and safe and efficient collection,
  - (iii) by the choice and reuse of building materials.

LGNSW supports Section 21(d) promoting water sensitive urban design and water re-use. Water in the landscape is needed to mitigate urban heat and a push for water efficient landscaping could have perverse outcomes.

#### **Recommendation 10**

LGNSW recommends the DP SEPP be amended to include the word 'anticipate' in Section 22(a)(i) and introduce design life considerations in Section 22(b) as follows:

22 Design consideration - resilience and adapting to change

The consent authority must be satisfied that the development is resilient to natural hazards by



- a) incorporating measures to
  - i) anticipate, avoid or reduce exposure to natural hazards, and
  - ii) mitigate and adapt to the risks of natural hazards, including risks of climate change and compounding risks, and
- b) mitigate the impact of expected natural hazards through the siting and design of the development *including materials selection*.

#### Recommendation 11

LGNSW recommends the DP SEPP be amended to enable local government to set a higher BASIX standard for their community after a community feedback process.

#### **Recommendation 12**

LGNSW recommends that the implementation phase for non-residential sustainability standards in the DP SEPP should fully define the verification processes for sustainability commitments and provide training for a range of stakeholders.

#### **Recommendation 13**

LGNSW recommends that DPE engage with local government to agree a process for establishing Design Review Panels that is responsive to the different circumstances and experience between regional and metropolitan councils and those councils with experience in establishing and operating panels.

#### **Recommendation 14**

LGNSW recommends that DPE give further consideration to the definition of 'urban designer in consultation with local government practitioners and other bodies such as the Planning Institute of Australia prior to the DP SEPP being made.

#### **Recommendation 15**

LGNSW recommends that the reference to 'significant tree' in the Apartment Design Guide be replaced with 'healthy and well-structured established tree'.

#### **Recommendation 16**

LGNSW recommends the Apartment Design Guide be amended to require new dwellings to meet the Liveable Housing Design Guidelines (LHDG) Gold Standard.

#### **Recommendation 17**

LGNSW recommends that the Apartment Design Guide be amended to:

- Expand waste objective 3.3.1 to refer to waste infrastructure;
- Expand objective 3.3.2 to cover a wider range of waste types; and


 Include a new (third) objective 3.3.3 to adequately address waste collection to better support councils with waste management service delivery.

#### **Recommendation 18**

LGNSW recommends that minor updates should be made to the design guidance in the Apartment Design Guide for waste collection and waste storage to ensure good waste outcomes can be achieved.

#### **Recommendation 19**

LGNSW recommends that the Urban Design Guide be amended to strengthen the coherence and implementation of Objective 4:

- Identify heat as a natural hazard e.g. To reduce the impacts of hazards such as heat, bushfire, drought or flooding, whether natural or humaninduced.
- Provide assessment guidance for addressing urban heat at the precinct scale.
- Including references to other hazard related guidance including the Floodplain Management Manual and Planning for Bushfire Protection 2019 guide.
- Provide proponents and assessors with appropriate tools such as the flagged 'design for resilience' template and accompanying guideline.

#### **Recommendation 20**

LGNSW recommends that the wording of objective 10.1 point 5 in the Urban Design Guide be amended to read:

• Consider site-specific constraints and requirements when planting trees and ensure well designed and constructed spaces for mature trees.

#### **Recommendation 21**

LGNSW recommends that the wording of objective 10.1 point 6 in the Urban Design Guide be amended to read:

• For species selection, gain maximum benefits from the urban canopy by considering species suitability for the site attributes and constraints, species diversity and contribution to biodiversity.

#### **Recommendation 22**

LGNSW recommends that objective 10.4, point 2 in the Urban Design Guide be deleted to remove the reference to 'high amenity views'.

#### **Claire Krelle**

From	poroply@foodback planningportal new gov au
FIOIII.	norepry@reeuback.planningportal.iisw.gov.au
Sent:	Monday, 28 February 2022 9:40 AM
То:	PDPS DRDE Design and Place SEPP Mailbox
Cc:	DPE PS ePlanning Exhibitions Mailbox
Subject:	Webform submission from: The Design and Place SEPP 2021
Attachments:	220228_sub_dpsepp_tecncc.pdf

Submitted on Mon, 28/02/2022 - 09:39

Submitted by: Anonymous

Submitted values are:

**Submission Type** I am submitting on behalf of my organisation

### Name

First name Jacquelyn

Last name Johnson

I would like my submission to remain confidential No

### Info

Email jjohnson@nature.org.au

Suburb/Town & Postcode Chippendale

Please provide your view on the project I support it

Submission file 220228\_sub\_dpsepp\_tecncc.pdf

**Submission** Submission is attached

I agree to the above statement Yes





28 February 2022

Via email: <u>designandplacesepp@planning.nsw.gov.au</u>

#### Submission on the draft Design and Place State Environment Planning Policy

The Nature Conservation Council of New South Wales (NCC) is the state's peak environment organisation. We represent over 160 environment groups across NSW. Together we are dedicated to protecting and conserving the wildlife, landscapes and natural resources of NSW.

TEC is the state's long standing campaign group across a range of natural and urban environmental issues. Established in 1972 it has participated in multiple metro and planning developments and strategies; and has been currently focused on protecting green spaces, net zero communities and expansion of the tree canopy.

Our cities and towns have not been planned and developed with efficiency and environmental sustainability in mind. This has condemned many NSW residents to poor living standards, hot homes in summer, very cold homes in winter and very high energy use year-round. Our natural environment is declining, and that trajectory will be worsened by global warming.<sup>i</sup>

When Sydney hosted the 2000 'Green' Olympic Games the NSW Government committed to far reaching Environmental Guidelines. It was hoped these guidelines would set the benchmarks for all future development. The most significant advance was BASIX, which has served the state well. However, much more could have been done.

The Design and Place State Environment Planning Policy (DP SEPP) offers the opportunity to take those extra steps.

It is concerning that the property development sector is calling for the SEPP to be removed from public consultation and weakened, if not withdrawn completely. This would be an outrageous assault on the environment and living conditions of millions of current and future residents. The DP SEPP must go through the public consultation process as intended.

While the draft DP SEPP could have gone even further, we regard this policy as the best chance in a generation to set our cities and towns on a course to responsible environmental and urban management across individual lots, sites, precincts and larger developments. Discretion





around compliance with any standards must only be applied to improve best practice standards, not to side-step them.

Your key contact point for further questions and correspondence is Jacquelyn Johnson, Strategy and Operations Director, available via jjohnson@Nature.org.au and 02 9516 0461. We welcome further conversation on this matter.

Yours sincerely,

Jeff Angel Director Total Environment Centre

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Chris Gambian Chief Executive Nature Conservation Council





### Summary of recommendations

Our submission seeks the implementation of the following principles in the DP SEPP:

- 1. Strong, mandatory environmental performance standards exclude developer loopholes.
- 2. Protect, enhance and increase biodiversity in urban areas. Maximise mature tree and bushland retention, canopy cover and green space. Effective walkability criteria.
- Maximise use of energy efficiency and renewable energy to achieve net zero emissions for all new buildings. Require full electrification – no new fossil fuel gas connections. Require comprehensive electric vehicle charging and cycling infrastructure.

It further recommends that:

- standards are finalised with greater clarity, certainty, and enforceability overall.
- the DP SEPP must apply to developments of five or more class 1a buildings.
- improvements are made to vegetation and deep soil requirements.
- walkability criteria be reduced to ten minutes to essential services in neighbourhoods.
- compliance requirements that require stronger energy efficiency standards than to the National Construction Code are used in the final SEPP.





# NSW Nature Conservation Council and Total Environment Centre submission on the draft Design and Place SEPP

# 1. To achieve its objectives, the DP SEPP requires strong, mandatory environmental performance standards that exclude all developer loopholes.

Throughout the development of the draft DP SEPP, NCC and TEC have observed tension between stakeholders wanting significant discretion and others seeking to minimise loopholes. It is our experience that consent decision making opens the door to developers "gaming" the system to the disadvantage of the community and environment. The DP SEPP should not be a toothless tiger.

We are concerned with the discretion implied in the use of the term "must consider" in clauses 14, 15, 16, 18, 19, 20, 21. The term is applies to a range of important aspects. Discretion is also implied by the phrase to "be consistent with" the design principles in 13 (1). This is undermined in 13 (2) as meaning 'taking into account". Other clauses utilise the stronger term; "must be satisfied" (17, 22, 23).

We note that the test for discretion in Cl 24 is the "neutral or beneficial outcome", but only as an alternative to the weaker "meeting the applicable design criteria set out in the Urban Design Guide, to the extent possible".

Taken together, the above creates confusion at a minimum and more generally will open loopholes. We recommend greater clarity, certainty, and enforceability overall.

We object to Cl 8 (2)(e) which directs that SEPP does not apply to development involving the erection of 24 or less class 1a buildings. Twenty-four building developments are not small or inconsequential developments in the towns of NSW. We recommend reducing this to five buildings.

#### 2. The DP SEPP must protect, enhance and increase biodiversity in urban areas, maximise mature tree and bushland retention, canopy cover and green space. It must include effective walkability criteria.

Clause 20, Green Infrastructure, Objective 10 of the Urban Design Guide (UDG) and 1.5 of the Apartment Design Guide (ADG) applies to very important issues that have in the past been effectively ignored.





Retention of existing biodiversity and increasing tree canopy are vital to help combat increasing urban heat and loss of fauna species. While we appreciate the level of detail contained in the draft, such as minimum canopy and deep soil targets, several improvements can be made:

- Replace the phrases "must consider" with "must be satisfied" in Clause 20.
- Include specific requirements in the UDG and ADG on retaining existing vegetation, in particular mature trees, for "greenfield" development, to prevent extensive clearing.
- Require greater species diversity.
- Include stronger guidance on minimising deep soil impacts, for example by locating underground car parking away from deep soil assets.
- Place a stronger onus of proof on designers that alternatives such as green walls and roofs are necessary for so-called constrained sites.
- Remove "permeable pavements" as an alternative.

Open space is essential to the livability of a precinct. While we support the criteria for a minimum of 15% public open space, a higher proportion should be strongly encouraged. The UDG must include a criteria that 45-55% of urban land should be for public space including streets and land for community and public facilities but excluding regional open space, environmental land and infrastructure.

We also have concerns about the 15 to 20-minute walkability criteria for neighbourhoods. For the more frequent trips to small parks, schools, supermarkets, small shops and bus stops, the rule should be 10 minutes one way. This is in accord with best practice.

3. Maximise the use of energy efficiency and renewable energy to achieve net zero emissions for all new buildings. Require full electrification – no new gas connections. Require comprehensive electric vehicle charging and cycling infrastructure.

The investment in and construction of new buildings sets the scene for future greenhouse gas emissions. It is vital that net zero is embedded in as many buildings as soon as possible. This is not a "must consider" issue, but an essential one.

We are not confident with the veracity of the future proofing that the DP SEPP will achieve if it uses the National Construction Code (which embraces gas) for compliance. We recommend that for office, hotel and retail the DP SEPP support the use of:

- NABERS Energy rating with a Commitment Agreement.
- maximum energy intensity (kWh/yr/m<sup>2</sup>) with third party verification by the NABERS Independent Design Review Panel,





- Green Star Buildings rating meeting Credit 22: Energy Use requirements,
- or equivalent.

We understand the City of Sydney has a more appropriate net zero approach to performance standards and development thresholds and suggest this is incorporated.

The NSW community cares about sustainable developments. Cramped, treeless suburbs and towns designed by developers focused solely on profit hurt residents' quality of life and increase the cost of living.<sup>ii</sup> Putting nature and climate at the centre of the planning system, through a robust and enforceable DP SEPP would be a big step in the right direction.

### References

NSW Environmental Protection Agency, 2022, State of the Environment

https://www.soe.epa.nsw.gov.au/

<sup>&</sup>lt;sup>ii</sup> Srinivasan, P & Souisa, H, 2021, As backyards get smaller and trees are removed, urban heat islands could be making suburbs hotter, ABC News online, November 11, available: <u>https://www.abc.net.au/news/2021-11-11/townhouses-development-heat-island-effect-australian-suburbs/100588334</u>



25 March 2021

Government Architect NSW c/o Department of Planning, Industry, and Environment Locked Bag 5022 Parramatta NSW 2124

Via online portal

Dear Ms Galvin,

Thank you for the opportunity to provide a formal submission to the exhibition of the Design and Place Statement Environmental Planning Policy (DP SEPP). The Planning Institute of Australia NSW Division (PIA NSW) have appreciated the opportunity to have been deeply engaged in the DP SEPP consultation up to this point.

PIA NSW applauds the DP SEPP as a critical element in embedding quality design and place outcomes in communities across the state. The Premier has been clear in his desire for a "liveable, workable, beautiful" Sydney, and we hope that the DP SEPP has the potential to extend such a vision across NSW.

PIA NSW have structured our detailed feedback across chapters, with each addressing the key elements of the DP SEPP. PIA NSW have also drawn on expert members – across social planning, regional membership and Young Planners – to form additional views from these specialised groups.

Planners want to play their part in achieving the best design outcomes for NSW. We look forward to working as partners to advance and refine the DP SEPP and to enable the industry to fulfil the potential of this policy.

Should you wish to discuss any elements of our submission further, please contact Audrey Marsh, Advocacy and Campaigns Manager on 0431 019 989 or audrey.marsh@planning.org.au.

Yours sincerely

Sharon Smith RPIA (Fellow)
PIA NSW President

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#### **KEY FEEDBACK**

PIA NSW supports the DP SEPP and its role in bringing together different relevant policies from across the planning system and encouraging superior design to create a "liveable, workable, beautiful" state. PIA NSW wants to ensure that the DP SEPP achieves its potential by being simple to administer, easy to interpret and used to lift the design and place outcomes of all development.

PIA NSW has consulted with members across consulting, local government, state government and academia to formulate a series of recommendations that we believe will improve the operation of the SEPP.

#### Strengthening the relationship with existing planning policy and process

There are likely to be significant overlap with the DP SEPP and existing, well-established local provisions. PIA NSW members do not want the DP SEPP to complicate existing systems or delay assessments but instead complement processes and improve outcomes. Throughout this submission we have provided a variety of recommendations intended to create a more seamless integration between the DP SEPP and existing planning policy and process, including:

- Not requiring local DCPs to become consistent with the specific numeric controls contained with the Urban Design Guide.
- Noting that existing local provisions that conflict with provisions of the Urban Design Guide prevail to the extent of any inconsistency.
- Restructuring the Apartment Design Guide to clarify which elements are key matters for assessment and which matters are guidance or best practice advice.

Additionally, the DP SEPP will need to integrate with judicial and merits appeals processes. As such, this submission provides several areas where consistency in language and clarity in statutory weight are required. These include in the SEPP instrument and Apartment Design Guide. It is critical that the DP SEPP will be consistent in its application and that language is clear, otherwise there is a risk that an increased number of applications will be appealed to the Land and Environment Court. This will put pressure on the planners, Council resources and may create significant delays in assessment timeframes.

#### Equipping planners with the tools they need

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To implement the DP SEPP, those preparing applications and assessing officers will be required to utilise new skills, assess new information and make decisions more flexibly. As such, new tools and guidance will be required to provide confidence and to make good decisions. This submission provides recommendations including a Quick Reference Guide for the updated Apartment Design Guide and BASIX Technical Guide.

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Additionally, both the Urban Design Guide and Apartment Design Guide should be enhanced with case studies, diagrams and greater detail on where alternative solutions are acceptable. This information should also provide examples of alternative solutions which are not acceptable and will lead to refusal.

In rural and regional locations, specific assistance will be required in establishing local design review panels, as these processes have not previously been in place. This submission recommends a dedicated service be established over coming years to support Councils in sourcing experts, establishing processes and resourcing panels.

Most critically, a detailed program of training is required. This should be an ongoing program of work that equips planners in government and private practice to interpret the DP SEPP with confidence and to understand the intent behind provisions so they can apply policy flexibly and consistently. PIA NSW would be pleased to discuss ongoing opportunities, including the designation of highly trained SEPP Champions who are resourced to undertake training and act as an internal advisor and advocate for the policy.

#### **Tailoring policy to suit different contexts**

PIA NSW believes that the DP SEPP and associated documents like the Urban Design Guide will provide a significant and long-term benefit to NSW. However, given the huge range of development types and development contexts across the state, it is important that policy is nuanced to local conditions.

As such, PIA NSW has recommended the staged roll out of the Urban Design Guide. The intention of this recommendation is to first test the provisions in urban greenfield development contexts and then to partner with industry and local government to finesse the Urban Design Guide to different locations and development types.

Additionally, a number of key considerations for the role of the Urban Design Guide in regional and rural contexts is provided at Appendix X.

#### Getting the regulation of urban designers right

The DP SEPP attempts to define who is an urban designer. This will be the first definition of the profession of its kind in NSW. Given the flow on effects of such a definition, it is important that the specific wording of such a definition does not inadvertently exclude skilled designers or diminish the specialised skills of urban designers. As such, this submission proposes a number of pathways that could be pursued to finalise this definition, including deferral, altering terminology and requiring the demonstration of higher skills.

#### Maintaining a progressive policy direction

PIA NSW understands that the refinement and development of the DP SEPP will occur over coming months. The DP SEPP includes many existing well-established and critically important tools in planning – including the Apartment Design Guide and BASIX. As refinement occurs, existing tools should be maintained and any future iteration of the policy should not remove tools which already play a critical role in the NSW planning system.

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#### SEPP INSTRUMENT, REGULATION AND MINISTERIAL DIRECTION

### PIA NSW supports the creation of the DP SEPP and the development of a structured approach to the consideration of design across NSW.

#### State Environment Planning Policy (Design and Place) 2021

#### Commencement

It is proposed that the SEPP commence 6-months after publication. PIA NSW is concerned that this may be an insufficient period to give local government, planners and designers time to reskill and shape new internal processes.

#### Recommendation

A 12-month transitional period should be provided, to provide industry, including local government assessment officers and panel members, ample time to undertake training and implement new internal procedures (e.g. templates, referral processes).

#### **Policy aims**

PIA NSW supports the aims of the DP SEPP and applauds particularly the focus on good design processes, emissions reductions and connection to Country.

#### **New definitions**

Three new definitions are proposed in the DP SEPP – residential apartment development, urban design development and non-residential development. To ensure consistency in language across the DP SEPP and other instruments like the Standard Instrument Local Environmental Plan. Particularly, the phrasing of the new definition of urban design development should be reconsidered. This definition suggests that urban design is a form of development, rather than a process that should be embedded in every development. As such, alternate definitions like precinct or masterplanned development should be considered.

#### Recommendation

Undertake a stocktake of the relationship of DP SEPP with other existing definitions under the Standard Instrument Local Environmental Plan. Reconsider the definition 'urban design development' with a more specific definition for developments intended to be captured.

#### Applicability

The DP SEPP refers to E1, E2 and E3 zones which have been renamed as C1, C2 and C3 zones. Additionally, the exclusion of the C3 Environmental Management and RU2 Rural Landscape zone may exclude tourism development from being captured under the SEPP. For instance, eco-tourist facilities or hotel and motel accommodation are permissible in the C3 Environmental Management zone under the *Blue Mountains Local* 

*Environmental Plan 2015* and RU2 Rural Landscape zone under the *Singleton Local Environmental Plan 2013*.

#### Recommendation

Correction the E zone to C zone drafting error and consider whether tourism development in some excluded zones should be included in the SEPPs remit.

#### **Design principles and considerations**

PIA NSW supports the inclusion of the design principles and their relationship to design considerations. Concern has been raised however, that the current drafting of the design considerations may operate in practice as a series of legal tests. Particular concern has been raised with the phrasing 'The consent authority must consider whether overall' and other versions including 'must consider whether' or 'must be satisfied of the following'. These different introductory sentences are likely to be confusing in operation.

#### Recommendation

Redraft the introductory sentence in Clauses 14 to 23 to read 'In determining whether this design consideration has been satisfied, the consent authority may consider-'.

#### **Urban Design Guide**

Clause 25 states that development consent must not be granted to urban design development unless a development control plan (DCP) applies. It is unclear in this drafting whether this means that any DCP can apply (for instance an LGA-wide DCP) or whether it is intended that a site-specific DCP be drafted in each instance.

#### Recommendation

Clarify the intent of Clause 25 to ensure that any relevant DCP applies.

#### Amendment of Environmental Planning and Assessment Regulation 2000

#### Definition of urban designer

In response to the Explanation of Intended Effects, PIA NSW put forward a position that Register Planners with suitable experience should be regarded as 'qualified designers' for the purposes of master planning and urban design under the DP SEPP. PIA NSW thank Government Architect NSW for identifying that masterplanning and urban design is work undertaken by a range of professionals, including experienced planners.

In the draft policy currently on exhibition, the seeks to define 'urban designer'. This has been defined as a qualified town planner, landscape architect or architect with at least five years experience in precinct and master planning. This would be the first time that 'urban designer' was defined in NSW and would have ramifications far beyond the DP SEPP, likely to impact membership on panels, expert witnesses to the Land and Environment Court and general urban design practice.

PIA NSW does not believe the current definition will operate as expected, as it is likely to exclude many expert designers from varying backgrounds and sets the bar too low on who can practice urban design (requiring the self-assessment of only five years experience).

Ongoing discussion with expert urban designers across many professional bodies should be pursued to clarify the role of urban design both in the DP SEPP and across other functions in our planning system.

#### Recommendation

Remove the current definition of urban designer for a period collaborate with key professional bodies to create a new regulatory solution OR remove the definition of 'urban designer' and instead look to define 'qualified designer for the purposes of the DP SEPP' and raise the experience timeframe to 10 years.

*NB: Regardless of how this definition evolves, retain the inclusion of suitably experienced and qualified planners.* 

#### **Relationship between UDG and DCPs**

The current drafting of Clause 16(3) could be interpreted to suggest all DCPs should become consistent with the specific standards of the UDG. This would be a poor outcome given the place-based and site-specific controls of importance found in DCPs.

Recommendation

Amend Clause 16(3)(b) to refer to the objectives of the Urban Design Guide.

**Embodied energy** 

Please refer to the BASIX chapter of this submission.

**Constitution of design review panels** Please refer to the Local Government Design Review Panel of this submission.

#### **Connecting with Country Framework**

PIA NSW applauds moves towards deeper incorporation of knowledge and information about Country into planning processes. A staged approach which first captures state significant development to which the Urban Design Guide applies is a sensible way to transition processes. Support for proponents inside and outside government who seek to fulfil this requirement should be offered to ensure that consultation and knowledgesharing is managed with confidence, humility and cultural safety.

#### Recommendation

Develop a partnership and advice service for proponents inside and outside government seeking to fulfil new requirements to respond to Country and incorporate knowledge from Aboriginal stakeholders.

#### **Environmental Planning and Assessment Direction 2022**

PIA NSW supports the consideration of the DP SEPP in planning proposals. However, this Direction applies very broadly, essentially to all planning proposals over 1ha. This is likely to capture administrative amendments and comprehensive LEP reviews. It is a perverse outcome to require minor administrative amendments to ensures consistency with the DP SEPP or be referred to a relevant design review panel. Similarly, comprehensive LEP reviews should be informed by a range of place-based and locationally-specific studies which require their own bespoke process.

#### Recommendation

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Ensure that the Ministerial Direction does not apply to comprehensive LEP reviews or administrative amendments.

#### **APARTMENT DESIGN GUIDE**

PIA NSW believe that the Apartment Design Guide has been a critical step change for apartment development in NSW and provided all NSW residents with a reasonable base standard of apartment amenity, design quality and comfort.

#### Structure

The Apartment Design Guide is a critical document in the NSW planning system. It is vital for assuring the quality of future development and ongoing trust in the sector It is used regularly by designers, development proponents and assessing officers. As such, it needs to be easy to communicate and identify key provisions and be usable by a range of parties.

The current proposed structure of the Apartment Design Guide could be reconsidered to better visually identify those key provisions that will be critical to assessment and those which provide best practice advice to designers.

Currently, a range of information is intermingled throughout the Guide. A clear hierarchy of information should be created utilising a) Objective b) Design Criteria and c) Design Guidance d) Alternative Design Solutions.

The purpose and statutory weight of each element should be clarified in the introduction of the ADG and its structure should highlight the relative importance of each element.

Key diagrams in the guide have been shown to be critical in creating a shared understanding of the criteria and the desired outcome. Consider reducing the number of large photographs and increasing the size and clarity of key diagrams.

#### Recommendation

Restructure the draft ADG to create a hierarchy of information more clearly from those elements which are critical in the assessment processes (design criteria) to those that provide design standards or technical notes for designers.

#### **Recommendation**

Support the interpretation of information with more diagrams which are larger and more clearly displayed

On the following page, a page from the Apartment Design Guide has been extracted and different elements noted to illustrate how information is currently displayed and where reforms could be made.

Flexibility	Family-friendly apartments	
Design apartment layouts to provide flexibility over time and opportunities for future reconfiguration. Lightweight	Provide 20 per cent of 2-, 3- and 4-bedroom apartments as family-friendly apartments to accommodate the needs of families with children. Design solutions include:	Clarify as a key design consideration
<ul> <li>Figure 2.3.2</li> <li>Figure 3.3</li> <li>Figure 3.3</li> <li>Figure 3.3</li> &lt;</ul>	<ul> <li>greater than minimum apartment sizes</li> <li>location in lower levels of the development to allow easy access to open space and reduce dependency on corridors and lifts</li> <li>multiple living rooms or main bedrooms</li> <li>wider than minimum hallways and entry zones to allow for manoeuvring of prams and other bulky children's equipment</li> <li>larger than minimum areas for living rooms and private open spaces, including areas for play that are visible from the kitchen</li> <li>consider co-locating family friendly apartments and attached private open space with communal open space on ground level or podiums to allow intervisibility from kitchen to common play space</li> <li>for private open space consider the safety of children, e.g. use integrated planters that eliminate climbing hazards</li> <li>at least one bedroom with sufficient size to provide space for furniture like study desks and cribs (see Figure 2.3.4)</li> <li>bedroom sizes and layouts that suit various configurations of children's furniture including 2 single beds, bunk beds, space for play, and space for desks</li> <li>bathroom sizes and layouts that accommodate a parent and child using a bathroom with a bathtub</li> <li>greater acoustic separation between apartments and communal spaces, as well as botween bedrooms and between apartments and communal spaces, as well</li> </ul>	Clarify as design objectives Extract as design solutions or best practice guidance
3-bedroom unit 2-bedroom u	nit 1-bedroom unit	Make larger with more







explanatory detail

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#### New or amended provisions

Given the large range of amendments made, PIA NSW has focused our feedback on key design criteria.

ADG Criteria	PIA Feedback
Building separation	<ul> <li>Consider adding new criteria for another category above 9 storeys, given the increasing number of buildings significantly higher than 9 storeys. Consider retaining the requirement for an additional 3m separation distance where the apartments are located on boundary with a lower density land use.</li> </ul>
Building height	<ul> <li>Specify the height of buildings in metres and the numbers of storeys similar to the current ADG not just the number of storeys as the impact of a building relates to both the overall height and the number of storeys.</li> </ul>
Deep soil and tree canopy	<ul> <li>Support the that higher local deep soil controls take precedence.</li> <li>Provide tools to assist calculation of a percentage tree canopy target, particularly to assist assessors in reviewing and assuring provided calculations.</li> <li>Support the inclusion of tree canopy targets.</li> </ul>
Car parking	<ul> <li>Clarify the 400m/800m distance is a walking distance. For example, areas of Balmain are 800m from the new Barangaroo Metro Station but the station is not within an 800m walking distance.</li> </ul>
Communal open space	<ul> <li>Support the inclusion of an 8sqm measure as well as a 25% site area measure.</li> <li>Clarify the inclusion of language "At any time" and what this change is intended to achieve.</li> </ul>
Apartment sizes	<ul> <li>Non-discretionary standards should also be labelled as design criteria for consistency.</li> </ul>
Ceiling heights	<ul> <li>Justification for the reduction of kitchen ceiling heights should be provided.</li> <li>Support the inclusion of Table 1.2.2 which provides recommended floor-to-floor heights in mixed use buildings to maximise future flexibility. Floor to ceiling heights shown in Table 2.4.2 should be consistent with Table 1.2.2</li> <li>Recommend retaining the minimum ceiling heights of residential ground floors at 3.3m not reducing to 2.7m</li> <li>Suggest updating Fig 1.2.8 to shows 2.7m floor to ceiling not floor to floor.</li> </ul>
Balcony size	• Support the increase of 2-bed balcony size to 2.4m.

Solar access	<ul> <li>Support the inclusion of Gosford given the changing demographics and urban form of this LGA.</li> </ul>
Natural ventilation	<ul> <li>Support this existing provision and the clarity provided in the draft ADG.</li> </ul>
Storage	<ul> <li>Support the increase in volume.</li> </ul>
Electric vehicle	<ul> <li>Support the inclusion of provisions, it should be elevated to a design criterion.</li> </ul>
Bicycle Parking	<ul> <li>Support the inclusion of minimum parking rates however 1 space per dwelling is low. Consider increased rates for apartments with 2 or more bedrooms. Commercial rates should also provide both worker and visitor parking.</li> </ul>

#### Recommendation

Consider the following amendments to the revised ADG:

- Creating new building separation criteria for buildings over 9 storeys and retaining the additional 3m requirement for developments on boundary of a lower density use.
- Specify the height of buildings in metres and the numbers of storeys.
- o Clarify ceiling heights for residential and mixed use buildings
- Provide greater clarity on how to calculate tree canopy percentage.
- Clarify that car parking proximity distances are for walking distances.
- o Consider increasing minimum bicycle rates for residential and commercial uses.
- Clarify the intention of 'at any time' in communal open space solar access requirements.
- o Identify non-discretionary development standards as design criteria.
- Clarify the intention behind lowering kitchen ceiling heights.

A number of key numeric standards are currently located in design guidance which is likely to undermine their significant. The following design guidance should be elevated to design criteria:

- Tree planting rates
- Bicycle parking rates
- o Communal open space dimensions and shading
- Dwelling mix
- o Universal housing rates
- o Living area sizes
- Key natural ventilation design guidance
- Electric vehicle charging

#### Recommendation

Elevate key numeric provisions to design criteria.

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#### **Assessment processes**

PIA NSW supports attempts to move away from utilising the Apartment Design Guide as a 'checklist' for development and instead as a tool to achieve high-quality development. However, assessing officers and design review panels (and assessment planning panels) will still require clarity in language and statutory weight of different elements. As per the above section, PIA NSW supports changes to the hierarchy and structure of the ADG to better highlight key provisions that will be important in assessment decisions. Key criteria should be highlighted in a quick reference guide to assist in pre-DA and design meetings.

#### Recommendation

Create an ADG Quick Reference Guide featuring key design criteria to assist in pre-DA and design meetings.

Additionally, in order to clarify the statutory weight of different elements of the ADG language should be clarified and refined. A combination of words, which could be subject to legal test without clarification, are used throughout. These include "minimum required", "recommended", "best practice to", "provide" and "consider".

#### Recommendation

Planning Institute of Australia

Undertake a stocktake of language used in the ADG,

#### **URBAN DESIGN GUIDE**

# PIA NSW supports the creation of an Urban Design Guide which links the DP SEPP with clear provisions that can be delivered in developments across the state.

#### **Assessment processes**

The Urban Design Guide will be a useful resource for designers and assessors, providing assessment guidance and clear considerations for urban design development. To work effectively, however, the Urban Design Guide needs to clarify its relationship with other planning policy. It is highly likely that design criteria and assessment guidance will be replicated in development control plans (DCP). Conflicting provisions are likely to confuse assessment processes and delay timeframes.

It is suggested that for each provision that includes a key numeric control includes a note that where it conflicts with a local provision, that the local provision prevails to the extent of any inconsistency. This will be critical to ensure that carefully developed and locally responsive controls are not overridden as the Urban Design Guide rolls out and develops nuance in different locations. Existing DCP provisions have been developed in response to local contexts and in response to preferred development outcomes in different communities.

#### Recommendation

Include a note for each numeric provision that where it conflicts with an existing local control that the local provision prevails to the extent of any inconsistency.

#### **Application and rollout**

PIA NSW believe that the Urban Design Guide will create great outcomes, however as currently drafted applies most directly to urban greenfield development and relates less closely to other developments including inner urban infill, commercial development, industrial development and rural and regional development. While it is understood that the Urban Design Guide is not intended to set hard rules and is to be flexible, key density and locational provisions are nor relevant or translatable across all to regional and rural locations.

PIA NSW believes that a staged rollout of the Urban Design Guide would be effective and would allow for nuance across different geographies and development contexts. General urban design guidance without geographic specificity should be extracted and form the central element of the document. Numeric controls and provisions that relate directly to specific development types or geographies should form a series of chapters under the Urban Design Guide.

It is recommended that the Urban Design Guide apply first to urban greenfield development and a staged policy development program be pursued for other

development types and contexts. These additional chapters should be drafted in partnership with local government and urban design professional experienced in those developments and localities.

#### Recommendation

Stage the rollout of the Urban Design Guide, applying first to urban greenfield development. Pursue a staged policy development process in partnership with urban design professionals and local government.

It is noted that the Young Planners have provided alternative suggestions in Appendix C where it relates to rural and regional contexts.

#### New or amended provisions

Given the length of the UDG PIA NSW has focused our feedback on key design criteria.

UDG Criteria	PIA Feedback
Neighbourhood density	<ul> <li>A net density could be a stronger control. Gross residential density is more useful at the neighbourhood scale as it includes surrounding streets, shops, open spaces and school. The targets for gross residential density are high for suburban and rural locations and low for inner urban locations. The Landcom Residential Density Guide (2011) provides helpful advice on density.</li> <li>Consider making this within Xm walking distance of neighbourhood shops, neighbourhood centres or local centres, within Xm walking distance of strategic and metropolitan centres, regional towns and cities and within Xm walking distance of high-frequency public transport. Small centres without public transport don't have the level of amenity needed for this density</li> </ul>
Walkable	<ul> <li>Consider making this "All homes are within Xm walking</li> <li>distance of a collection of local shops, a primary school, public</li> </ul>
neighbournoous	transport <b>and</b> a supermarket or grocery store."
Walkable block lengths	<ul> <li>Consider revising this criterion to require smaller blocks up to maximum of 130m long. It is also noted walkability is linked to the width and length of the block so consider also including a maximum block size.</li> </ul>
Mid-block connections	<ul> <li>Require mid-block connections and through-site links for pedestrians are provided no more than 60 m apart</li> </ul>
Public space	<ul> <li>Create a new criterion that ensures new developments provide a minimum percentage of public space, streets and public facilities.</li> </ul>

#### **BASIX AND SUSTAINABILITY IN RESIDENTIAL BUILDINGS**

# The ratcheting up of BASIX standards is a critical element of the Design and Place SEPP that PIA NSW firmly supports.

#### **BASIX standards**

PIA NSW strongly supports the ratcheting up of BASIX standards. This is a policy change supported as part of our national campaign for climate-conscious planning systems and is long overdue. While sustainability experts are best placed to advise on the specifics of standards, PIA NSW is pleased to provide advice on process updates and alignment with planning practice.

Generally, alignment with the National Construction Code should be created (noting ongoing discussion and critique of NCC standards by relevant stakeholders).

Overall, a supporting guide should be provided to support the new standards. This should explain more clearly how new standards can be met, the rationale for standards to support those pursing alternative pathways and greater detail on embodied emissions.

#### Recommendation

Produce a BASIX and Sustainability in Residential Buildings Technical Guide to assist proponents, assessors and designers.

#### **Review of BASIX standards**

The inclusion of a mandatory review period is supported, however there should also be a clear timeframe for execution of any resulting updates.

#### Recommendation

Include a s 28(c): Any updates arising from the review should be implemented no more than one year after the review concludes.

#### **Relationship with competing provisions**

The ability for local competing provisions to supersede BASIX standards where they achieve superior results is supported. However, the drafting of the relevant provision in the DP SEPP is unclear and may not align with the spirit in which local provisions are drafted.

Some provisions will likely simply require certain standards to be adopted and so the use of the language 'encourage' or 'incentivise' may create confusion. Additionally, it is unclear how identification of competing provisions that go "beyond the measures

required by provisions of the kind..." is intended to occur. This language should be clarified to confirm it relates directly to the achievement of high performance or sustainability standards.

#### Recommendation

Update s29(3)(b) to read:

Apply to competing provisions that require, encourage or incentivise the adoption of measures that will achieve a higher performance or sustainability standard than the kind contained within Schedule 2 to which subsection (2) applies.

#### **Merit assessment pathways**

There may be some policy rationale to the establishment of merit assessment pathways, however insufficient information is provided as to how this pathway will operate and how strong outcomes will be assured. To be effective, this process should be supported by:

- A strong governance framework
- An audit process for proposals via the merit assessment pathway
- A template for what information is required to be provided
- Clarification on how professionals and software utilised will be accredited

Prior to the commencement of the merit assessment pathway the proposed Merit Assessment Pathway Modelling Rules should be finalised as part of the recommended BASIX and Sustainability in Residential Buildings Technical Guide. The Merit Assessment Pathway should not result in less transparent or less sustainable design outcomes and monitoring of results must be ensured to guarantee that no perverse outcomes occur.

#### Recommendation

Clarify the governance, audit and information requirements for the merit assessment pathway as part of the recommended BASIX and Sustainability in Residential Buildings Technical Guide.

#### **Embodied energy**

PIA NSW supports the inclusion of embodied energy in principle. However, there are concerns that insufficient information is provided in the material to easily integrate these calculations into existing processes. Particular areas needing clarification include:

- Integration of embodied carbon emissions elements into the BASIX Tool
- Calculation methodologies in line with existing work being undertaken by industry

- Design elements or materials that can be used to improve embodied energy score
- The per person metric and the rationale in calculations and methodology

Calculation of embodied energy should be simple and design solutions that can be included to address embodied energy should be easily picked up and incorporated. The above clarifications and additional information will support this process.

#### Recommendation

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Expand the embodied energy provisions to be integrated into existing tools with clear methodologies, design systems and calculations.

#### LOCAL GOVERNMENT DESIGN REVIEW PANEL MANUAL

PIA NSW supports a consistent, transparent and well-resourced process for design review and welcomes the Local Government Design Review Panel Manual as a way to support this process.

#### **Application of design review panels**

While a consistent framework for which projects are required to go to a design review panel may be useful, the current thresholds are likely to see a very high number of projects required to go to a design review panel in urban locations.

While rural and regional local government areas may not see a large volume of projects that fall within these thresholds, local government areas like City of Sydney, Waverley and Parramatta will have a likely unworkable volume of projects required to go to a design review panel. Without significant additional resourcing, this is likely to create a blow out in assessment timeframes.

#### Recommendation

Note that thresholds on pg. 4 are recommended and will be finalised in partnership with each local government area and made publicly available prior to the commencement of the DP SEPP. GANSW should work with each local government area to determine any nuance that may be required based on development types and existing design review processes.

#### **Application of the manual**

PIA strongly supports the creation of a consistent process for design review around NSW and clarification of process. Particularly useful is protocols for good review, processes to avoid and the assignment of roles and responsibilities. As currently drafted, it appears that the manual is an advisory document only and is not mandatory in its application.

#### Recommendation

Clarify that the Local Government Design Review Panel Manual is not just 'advice' but a 'process to be followed'.

#### Support for constitution of panels

While many Councils already have design review panels and a pool of experts who meet the criteria outlined under Section 2.5, some local government areas are likely to require assistance in forming panels. This may be due to a smaller pool of local experts in rural and regional areas or a lack of internal resourcing to help service the panels. This is likely true even where many rural or regional Councils work together on the formulation of a Regional Design Review Panel.

#### Recommendation

Planning Institute of Australia

Establish a dedicated function within GANSW associated with existing design review operations to assist Councils in formulating, supporting and maintaining local design review panels. This should include the ability to take concerns or queries during the operation of panels.

#### **APPENDIX A: YOUNG PLANNER PERSPECTIVE**

#### This Appendix has been authored by Chloe Boyd, Nicola Viselli, Carlo Hilton, Hugo Walton and Thomas Beckerton from the NSW Young Planners Committee.

The PIA NSW Young Planners Committee supports the Design and Place SEPP (DP SEPP) and the important role it plays in encouraging a more placed-based and principlesbased planning system in NSW. This as an important shift from the current compliancebased system and is a change which will ensure the design of high-quality places across the State; it is critical to realising more inclusive, liveable and sustainable planning outcomes.

As the NSW planning system progresses towards principles-based planning, it is important to consider the impact of this on the application of planning by professionals in the field. Moving away from a compliance-based planning system presents some risks that planning professionals may feel their skills in design and principles-based planning are underdeveloped, causing inconsistent outcomes through the application of the DP SEPP and its supporting documents. Additionally, community members and industry groups may struggle to understand how to achieve or interpret the outcomes presented by proponents in applications subject to the DP SEPP. However, with additional support for planning professionals, industry and community, including through educational and training opportunities, the DP SEPP will be able to achieve its objectives in a way in which all stakeholders engaging in the planning system can understand.

The following points are considered critical to encourage the positive and effective implementation of the DP SEPP and its supporting documents. We have provided recommendations for each point, which we believe will assist the transition from a compliance-based planning system to a principles-based planning system.

- 1. Understanding the implementation of the DP SEPP package in metropolitan versus regional contexts is key to ensuring good design outcomes occur across the State (please refer to Appendix C.
- 2. Engaging with the broader community and providing opportunities for education on the planning system is key to community buy-in and their understanding of why and how planning decisions are made.
- 3. Providing additional support for planning and development industry professionals will ensure the desired outcomes of the DP SEPP package are achieved, because the planners making the decisions will have a good understanding of principles-based planning and its application.

We strongly encourage the Department of Planning and Environment (DPE) and the Government Architect NSW (GANSW) to consider our recommendations below and the ways in which the implementation of the DP SEPP can be best managed to ensure positive, meaningful outcomes are experienced by key stakeholders.

#### Educating and engaging with the broader community

There are a number of elements in the DP SEPP package which emphasise principlesbased planning, rather than compliance-based planning. Examples include:

- Reducing reliance on compliance tables in council assessments
- Enabling and encouraging alternative design solutions
- Prioritising walking and cycling infrastructure
- Minimising parking.

The NSW Young Planners Committee supports the proposed approach, which encourages place-based and principles-based planning - it is a positive progression for the NSW planning system. However, it does present the risk of alienating the community in the planning system, largely by altering the methods recognised by the community as the hallmarks of 'good planning' (such as strict compliance to planning controls).

Public participation is already a key part of the NSW planning system; however, *informed* public participation is critical to designing good places, managing impacts from developments, and enabling the community to be heard throughout the planning process.

Community participation has previously been able to rely upon planning controls to inform their understanding of a development. While the DP SEPP does not remove this element, the concept of a principles-based planning system changes the role of strict compliance somewhat, particularly at the PP and large-scale development level. It creates a risk that, as the community is generally not trained in urban planning, it may be more difficult for the community to understand how good planning and design outcomes are being achieved for their neighbourhood.

Additionally, a community's understanding of place and the planner's understanding of place can differ, given the different lived experience and training held by both groups. Elements such as prioritising walking and cycling infrastructure and minimising parking makes sense to planners as principles of good urban design and place-making. However, to the community, this may not reflect their lived experience of, for example, struggling to find a parking space where they need it, or not using existing cycling infrastructure because they feel it is unsafe. Engaging with the community and providing opportunities for education within key community groups is crucial to enabling a positive, principles-based planning system, as proposed by the DP SEPP. Following the SEPP's introduction, ongoing educational opportunities should be provided across NSW, to both hear the community and encourage the community to understand the balance between encouraging better planning outcomes and their lived experience.

#### Recommendation

That the relevant departments and government agencies (such as DPE and GANSW) work with key community groups and interested community members to provide educational sessions and resources regarding principles-based planning and place-making. This should be targeted, in the first instance, towards community groups who frequently engage in the planning system (such as through submissions or representations to panels).

#### Additional support for planning and development industry professionals

The draft DP SEPP shift towards a principles-based policy is generally supported. However, there is a concern that there is insufficient support and guidance for planning and industry professionals to successfully implement the design considerations and principles of the draft policy, regulations and supporting Urban Design Guide (UDG) and Apartment Design Guide (ADG). This is particularly relevant in relation to new planners who do not necessarily have extensive design experience and who may not fully understand the implications of the requirements of the DP SEPP or the impacts of alternative solutions on built form and place.

Examples of proposed clauses in the DP SEPP where greater clarity is required:

- Clause 15 references "inclusive design measures"; however, this term is not defined in the policy, which could result in inconsistent interpretation of the clause and the delivery of sub-optimal outcomes.
- Clause 20 (as it is currently written) requires greater clarity as to what constitutes adequate restoration and regeneration of natural systems, and the optimal amount of deep soil to support the tree canopy.

It is critical that appropriate skills and knowledge on the various subject matters is provided and obtained so planning professionals can adequately prepare and assess development applications and planning proposals in accordance with the requirements. Further, additional support and training will assist assessment planners to confidently evaluate proposed alternative solutions under the UDG and ADG, to ensure future development is capable of achieving the desired outcomes. Overall, all planning and industry professionals that interact with the policy will need to upskill in design and principles-based thinking. This should be a collaborative approach that lifts the standard across the board, not just relying on "qualified designers" as implied in the draft DP SEPP.

#### Recommendation

That DPE facilitate training sessions that work through detailed examples of the application of the Design Considerations and that explore principles-based planning. One element of the training may include specific sessions for each clause of the DP SEPP, conducted by industry experts. This would be a pragmatic approach to the training sessions, ensuring the skills learnt are applicable within the planning system.

We strongly support DPE's commitment to Net Zero Emissions by 2050. However, sustainability requirements are scattered throughout the DP SEPP package and planning framework; it lacks a clear and cohesive approach for its implementation. Planning professionals typically feature heavily in one aspect of the development process, which presents a knowledge gap in understanding resulting policy and design implications. Support is required for assessment officers to provide the skills needed to understand how the net zero initiatives are implemented from feasibility through to construction. Additional training will help professionals to prepare, assess, and interrogate compliance with performance standards and Net Zero Statements. Without this support, these requirements under the DP SEPP could be treated as a tick-box exercise and fall short on achieving its 2050 targets.

#### Recommendation

That DPE, in collaboration with organisations such as the Green Building Council of Australia, deliver external training tailored to suit planning professionals, covering documentation and information requirements for compliance with the DP SEPP. This should include practical case studies that showcase examples of "Net Zero" developments, incorporating lessons learnt from planning approval and development challenges.

#### Recommendation

Planning Institute of Australia

That DPE and GANSW facilitate lectures to planning and development industry courses in universities across NSW, covering different design aspects captured in the DP SEPP; for example: green infrastructure, inclusive design and sustainable urban design.

#### **APPENDIX B: SOCIAL PLANNER PERSPECTIVE**

# This Appendix was prepared in consultation with the PIA NSW Social Planners Network.

#### Design considerations

In relation to Design Consideration – Comfortable, Inclusive and Healthy Places, the following feedback is provided:

- Inclusive design (at subsection b) has a range of meanings and should be defined somewhere (either within the SEPP or supporting guides).
- A provision is required to better address the need for planning for health as existing considerations do not address this. A subsection addressing planning for health is required.
- The need for accessible, comfortable and walkable design should be a consideration beyond open space (at subsection c).

#### Recommendation

Revise Design Consideration – Comfortable, Inclusive and Healthy Places to refer to a definition of inclusive design, better address planning for health and expanding developments that should be accessible, comfortable and walkable.

In relation to Design Consideration – Culture, Character and Heritage, the following feedback is provided:

- A provision is required to better address culture beyond heritage and conservation including developing an understanding of local culture, including culturally and linguistically diverse communities, women and people with disabilities.
- Clarification is required in relation to subsection c to ensure that submissions made to both the applicant and the consent authority by Aboriginal stakeholders must be taken into account.

#### Recommendation

Revise Design Consideration – Culture, Character and Heritage to expand the relationship to culture and clarify submission requirements regarding Aboriginal stakeholder feedback.

In relation to Design Consideration – Vibrant and Affordable Neighbourhoods, the following feedback is provided:

- Digital inclusion, telecommunications and smart city technology should be considered holistically in relation to subsection a.
- A definition of walking distance is required for both the DP SEPP and other document to make clear that walking pathways must be safe to travel to be eligible (i.e. clear and safe pedestrian pathways).

- A definition of town centre for the purposes of subsection c is required.
- The crime prevention through environmental design principles should be called out more specifically in relation to subsection d.

#### **Connection between local strategy and UDG considerations**

In relation to both public facilities and open space, Urban Design Guide requirements should specifically call out the need for early and upfront conversations with local authorities and for new facilities or space to directly relate to established local strategy.

Councils have existing projects that require support and funding. Rather than a range of distinct projects development per precinct or development, preference should be given to funding identified projects in line with existing strategy.

Additionally, early conversations should be held about funding, delivery and maintenance of proposed facilities.

#### Recommendation

Planning Institute of Australia

Include provisions in the Urban Design Guide to require new open space and facilities to include up front conversations with local planning authority and link with local strategy and existing identified projects.
### **APPENDIX C: REGIONAL PLANNER PERSPECTIVE**

PIA NSW and GANSW held a joint workshop to discuss key issues in relation to the DP SEPP. Below is a summary of key issues raised and resulting recommendations.

Issue	Recommendation
There is concern about the resourcing of	Refer to pg. 21-22
council areas.	
There is concern about the application of key metrics in the Urban Design Guide.	Refer to below section from Young Planners.
There is a need for specific support for rural and regional local government.	Any education program or designation of SEPP Champions should include a specific focus on rural and regional Councils. A dedicated service within GANSW should be established for a period to provide advice and interpretative assistance in transitioning.
There are different property players with different levels of design sophistication working across the state. There is a need for clear minimum standards to be in play across the state.	The Apartment Design Guide and other supporting SEPP material should include clarity around non-negotiable minimum standards. This could be achieved by creating quick reference guides or highlighting more prominently key design criteria. For more information refer to page 11-12.

### Young Planners Perspective – Rural and regional matters

# This section has been authored by Chloe Boyd, Nicola Viselli, Carlo Hilton, Hugo Walton and Thomas Beckerton from the NSW Young Planners Committee.

The DP SEPP package appears to be prepared with an emphasis on improving the quality of both development and urban design; however, it does not appear to distinguish the varied needs of major urban centres, outer metropolitan areas, regional centres, towns, rural areas and remote settlements.

The Urban Design Guide (UDG) needs to offer flexibility for implementation to account for differences of scale and intensity of development between urban and regional contexts. Objective 3 of the UDG 'Compact and diverse neighbourhoods connect to good amenity', notes a recommended density of 30 dwellings per hectare. The recommended density of 30 dwellings/ha may have strategic merit in inner urban and new regional developments adjoining public and active transport nodes, but in a smaller regional centre, such densities may be difficult to achieve, where R1 General Residential and R2 Low Density Residential lands where urban blocks are often 1000m2 (0.1ha), or larger.

There is a need to work closely with regional councils to determine an appropriate residential density, as an appropriate density for infill development in a well-established centre will differ from greenfield development adjoining existing residential areas. Important considerations include low residential densities in legacy planning instruments, limited public or active transport connectivity, and managing increasing community demands to maintain larger lot sizes and minimise urban encroachment. Where these concerns can be addressed, a higher residential density in regional centres may be much more appropriate.

A 'hard and fast' minimum density for new residential development in regional areas could result in denser residential development surrounding a low-density urban core. This could result in negative outcomes, with the risk of decentralising town centres, already under pressure from large format retail premises, reduced uptake of walking and cycling and increased demand for parking in town and city centres.

Differentiating between smaller regional centres and larger strategic regional centres that can accommodate density in their cores would allow councils to plan accordingly for the needs of their communities and encourage the right development that complement the changing character of area. The need to reduce demand for parking and shift to sustainable transport modes is an important one and will require significant social and cultural change. In regional and outer metropolitan areas, however, there are expectations that require behavioural change such as:

- The expectation of customers being able to park right in front of a business
- Accepting that not being able to park in their preferred location does not indicate a shortage of parking
- Reducing reliance on private vehicle being the dominant transport mode, as many short journeys could be completed by walking and cycling

Cross-agency support by GANSW, DPE and TfNSW will need to be provided to councils to encourage these policy changes, through the review of council plans and strategies, as well as when providing agency concurrence where needed, and further community education.

#### Recommendation

Tailor elements of the UDG to reflect different contexts (urban, outer urban, regional and rural). The application of the UDG at a state-wide level is broad and creates uncertainty on the document's relevance for regional developments. Alternatively, DPE should provide an opt-out scheme where councils can prove that the UDG density recommendations are unsuitable for residential development adjoining the urban core, and appropriate density standards should be outlined in the LSPS and LHS, endorsed by DPE. A key opportunity in distinguishing between strategic regional centres and other regional communities would give clarity for both development and placemaking.

An alternate model to consider is a model LEP clause, allowing Regional Councils to opt in/opt out of the density recommendations of the UDG via an optional model LEP clause (under miscellaneous provisions) through a housekeeping amendment, or a selfrepealing SEPP that amends all LEPs (as was done for the Employment Zones Reform). For example:

5.2x State Environmental Planning Policy (Design and Place) 2022 dwelling density requirements

(1) The objective of this clause is to ensure new residential developments are proposed with regard to density that responds to local needs.

The minimum density for new developments within the R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential and R4 High Density Residential is XX dwellings per hectare

OR

The minimum density for new developments within the R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential and R4 High Density Residential is consistent with State Environmental Planning Policy (Design and Place) 2022.

OR

Planning Institute of Australia

[Not adopted]



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### Australia's property industry Creating for Generations

14 March 2022

Mr Mick Cassel Secretary Department of Planning & Environment

Submitted via the NSW Planning Portal

### Re. The draft Design and Place SEPP 2021 - exhibition package

The Property Council is writing regarding the draft *State Environmental Planning Policy* (*Design and Place*) 2021 (DP SEPP) and supporting documents, currently on public exhibition by the Department of Planning and Environment (the Department).

The Property Council's members are the leaders across every asset class of Australia's biggest industry which employs 1.4 million Australians and contributes 13 percent of Gross Domestic Product. Our members shape Australia's cities and towns as the owners, managers of and investors in residential homes, office buildings, hotels, and shopping centres among many other asset types.

We note the Draft *Design and Place State Environmental Planning Policy* exhibition package (DP SEPP) comprises the following documents:

- Design and Place SEPP Overview December 2021
- Draft State Environmental Planning Policy (Design & Place) 2021
- Draft Environmental Planning and Assessment Amendment (Design and Place) Regulation 2021
- Draft Environmental Planning and Assessment (Design Principles and Considerations) Direction 2022 (the Ministerial Direction)
- Proposed Design and Place SEPP Environmental Planning Policy, Cost Benefit Analysis, 7 December 2021, prepared by Deloitte Access Economics
- Draft Apartment Design Guide 2021
- Draft Urban Design Guide 2021
- Draft Local Government Design Review Panel Manual
- Design and Place SEPP Sustainability in Residential Buildings (proposed changes to BASIX).

As we have indicated in our previous discussions and correspondence with the Department and form er Minister for Planning & Public Spaces, the Hon. Rob Stokes, the Property Council and its members are supportive of the objectives of the DP SEPP to create great places and deliver good design outcomes. These are essential elements to ensuring the long-term success and sustainable growth of our cities and regional areas. We also acknowledge the significant effort, time, and resources that the Department, particularly the NSW Government Architect, have put into the development of the DP SEPP and the comprehensive engagement process with stakeholders.

We support select elements of the DP SEPP proposing changes to the BASIX Sustainability Index tool, details of which are outlined in our attached commentary. We recommend these aspects of the DP SEPP relating to these reforms should be extracted from the DP SEPP and consulted on separately and progressed to finalisation when appropriate.

However, as a package we <u>do not</u> support the DP SEPP in its current form. The DP SEPP imposes a substantial regulatory and cost burden upon the property industry and consent authorities, imposing an additional 51 issues for consideration for Development Applications and Rezoning Proposals – a significant regulatory burden which will greatly impact the industry's ability to provide a sustainable long-terms supply of housing for the people of NSW, and impose greater workloads upon consent authorities.

Given the NSW economy and the property and construction industry is still recovery from the long-term impacts of the COVID-19 pandemic, now is not the time to introduce policies such as the DP SEPP, which incur additional costs to housing production, undermine investor confidence, and deter investment and development in NSW. The 14-page Cost Benefit Analysis provided is insufficient evidence to justify the \$2.3 billion cost burden set to be imposed upon the development industry and homebuyers should the DP SEPP be implemented.

The Property Council engaged Astrolabe Consulting to undertake a review of the proposed DP SEPP package and provide a report outlining the potential impacts of the DP SEPP upon housing supply and affordability (see full report at Appendix 1). The following summarises the key findings expressed through research and industry engagement:

- The draft DP SEPP reduces yield and will increase costs which will limit short term delivery undermining benefit realisation
- A need to release a detailed Cost Benefit Analysis as part of a Regulation Impact Statement
- The Draft SEPP was meant to allow flexibility, instead, it risks being even more restrictive
- The draft DP SEPP cannot be the only tool relied on for encouraging and creating this shift to net zero.

The Report also found that the draft DP SEPP package failed to investigate or account for the following options and issues:

- Possible incentives to overcome the loss of yield and increase in costs to housing development
- Impact of the DP SEPP upon remote and regional markets
- Resourcing, education and training necessary to support and implement the SEPP

We note Premier Dominic Perrottet has recently highlighted the urgent need to prioritise housing supply and affordability in NSW, stating that 'housing affordability was one of the biggest challenges in a generation'<sup>1</sup> and committing to drive housing affordability and supply. The DP SEPP works directly against these priorities and will hinder the Government's ability to address these issues.

Given the negative impacts of the DP SEPP, we request the Minister for Planning and the Department withdraw the DP SEPP from public exhibition as soon as possible and set it aside. The *Environmental Planning and Assessment Act 1979* gives statutory weight to, and requires the consideration of, draft policies such as the DP SEPP when considering planning proposals and development applications and

<sup>&</sup>lt;sup>1</sup> 24 October 2021, *Dominic Perrottet<u>says scare campaigns won't stop housing reforms</u>, Sydney Morning Herald* 

even in its draft form the DP SEPP will continue to post a threat to housing supply and industry confidence.

We are happy to continue engagement and discussions with the Department and Minister for Planning on the DP SEPP package. To discuss these issues further, please contact Annie Manson, NSW Policy Manager on email at <u>amanson@propertycouncil.com.au</u> or phone on 0422 131 741.

Yours sincerely

MB

Luke Achterstraat NSW Executive Director Property Council of Australia

### Property Council recommendations- Draft DP SEPP 2021 exhibition package

### **Recommendations:**

- 1. The DP SEPP is withdrawn from public exhibition
- 2. The aspects of the DP SEPP relating to the reform of the BASIX Building Sustainability Index are extracted and progressed separately
- 3. The DP SEPP is disseminated and subject to a rigorous and comprehensive review before any aspect of the DP SEPP is progressed further.

Should the DP SEPP proceed to implementation, we provide the following recommendations:

- 4. The Department should review and reconsider the extent of documentation required to accompany Development Applications and Rezoning Proposals
- 5. The Department should develop a targeted program of training for stakeholders should be delivered, in particular for consent authorities, to address the existing skillset disparity and resource shortages that challenge the viability of introducing additional assessment metrics and criteria.
- 6. Clauses 13(1) and 13(2) of the draft DP SEPP be amended to read: 'the consent authority is satisfied that the development *has taken into consideration* the design principles *and DP SEPP aims*' and the prefacing requirement to consider or be satisfied with each design consideration be deleted.
- 7. The number of additional points of assessment (51) should be reviewed, reduced and consolidated.
- 8. The DP SEPP should be amended to clarify that it does not apply to modification applications.
- 9. CI.38(1)(b) should be amended to delete the 2-year cut of timeframe for existing approved concept plans. The savings provisions should protect existing concept approvals indefinitely and should clearly state that the savings provisions also apply to any subsequent modifications or associated development applications.
- 10. The Department should provide access to the complete BASIX sandbox tool for both freestanding homes and apartments/townhouses to the property industry and other stakeholders to review and provide meaningful commentary.
- 11. A scale of improvement below the NABERS 5.5-star rating should be applied be applied to renovations of existing non-residential buildings (for example, an uplift of 1.5-2 stars).
- 12. We recommend that the Department undertake industry engagement prior to the introduction of the increased energy targets to investigate the possible need to introduce separate energy performance metrics for Build-to-Rent residential projects, to ensure that this new and emerging asset class is not negatively impacted.
- 13. The Property Council recommends that the NABERS embodied carbon measurement tool, currently under development, is likely become the industry standard in the future and provisions should be put in place for the DP SEPP to reference this framework once it is completed
- 14. The intent of CI.57C Draft *EP&A Amendment (Design and Place)* 2021 should be clarified and details of the 'online calculator' made available for industry comment and review.
- 15. We request the Department ensures any metrics used for the measurement of embodied emissions are transparent and to consider how standards can be drafted and applied in consultation with industry to deliver the best possible outcomes for all stakeholders and the environment.

- 16. The Department should provide more detail around the thermal performance and energy use aspects of the BASIX tool to obtain meaningful industry feedback.
- 17. The Department should develop transparent reporting of the proposed Merit Assessment Pathway outcomes, including how the process will be verified, enforced, and audited to provide greater certainty to stakeholders and build confidence in the MAP.
- 18. The Department should undertake consultation with industry to determine the skills, experience and qualifications a 'suitably qualified' person must have to undertake and approve a MAP assessment, as well as develop a list of acceptable energy assessment software products.
- 19. The Department should continue consulting with industry to develop other methods for assessment that can be recognised by BASIX, for apartments, mixed use development and homes.
- 20. The Department should undertake a rigorous analysis of the impact of the DP SEPP upon first home buyers.
- 21. The Department of Planning release the full Deloitte report for public consideration
- 22. The assumptions and data underlying the CBA should be made publicly available should be subject to a rigorous peer review, as well as by industry participants so that the actual costs to real world developments can be assessed.
- 23. Further consideration be given to the full range of costs and benefits which are likely to arise from the implementation of the DP SEPP
- 24. Detailed information be provided as to the calculation of each value of each of the costs and benefits considered in Table 3.1 and 3.2 of the Deloitte CBA modelling.
- 25. Further consultation be undertaken with industry and stakeholders to gain a clear, accurate and quantifiable picture of the costs and benefits which are likely to arise as a result of the DP SEPP.
- 26. The Department should prepare a comprehensive 'Better Regulation Statement' as required by Treasury Circular TC 19-02.

### **Draft Apartment Design Guide 2021**

- 27. The ADG should be amended to remove criteria for building separation distances and guidance should be provided to rely on Council DCP setbacks.
- 28. The ADG should be amended to retain existing floor to floor height requirements.
- 29. Objective 1.3.1 should be reviewed to provide clarification on the priority of pedestrian use within through-site links.
- 30. The wording for 'design guidance' should be reviewed to remove any subjective language that may be misinterpreted.
- 31. The existing deep soil requirements within the ADG should be retained.
- 32. The wording of the deep soil area guidance should be reviewed to allow for alternate solutions compliance with the criteria is not reasonably or practically possible.
- 33. The ADG should be amended to remove numerical bicycle parking requirements and require bicycle parking to be provided and assessed on merit.
- 34. The Design Guidance should be reviewed for further clarification on the use of common stairs.
- 35. The natural ventilation requirements should be reviewed to permit controlled mechanical systems where a better outcome is achieved.
- 36. The communal open space requirements should be reviewed to account for alternate design solutions where compliance with the criteria is not reasonably or practically possible.
- 37. The ADG should be amended to remove criteria for apartment mix, with mix to be determined based on market demand.

- 38. The ADG should be amended to remove the criteria for family-friendly apartments and require these apartments are to be provided based on market demand.
- 39. Solar access criteria should be reviewed to only require 50% of apartments to meet solar access requirements, and/or removal of criteria and enforcement of a merit-based approach.
- 40. Solar access criteria should be amended to extend the solar access window from 8am to 4pm.
- 41. Shading and glazing guidance should be revised to remove metric control and provide further clarity.
- 42. The criteria for natural ventilation to be revised to provide clarity on the design requirements.
- 43. The guidance on the measurement of natural ventilation should reviewed.
- 44. The storage area requirements should be amended to retain the existing requirements within the current ADG.

### Draft Urban Design Guide 2021

- 45. As with the ADG, the terminology used is 'absolute' and facilitates a prescriptive approach to implementing the UDG. We recommend that the terms "minimise" and "Maximise" are replaced throughout the document with language that allows greater flexibility.
- 46. We recommend that consistent is replaced with "consideration" in order to allow for planners to take advice from design review panels into consideration.
- 47. Increase the threshold whereby the UDG applies to non-industrial development on sites with an area of 10 hectares or greater AND industrial development to sites that are 10 hectares or greater with a CIV that is \$50 million or more.
- 48. The establishment of public space networks must involve early planning during the strategic planning process for a site when the planning controls and development contributions for a site are being prepared by the relevant council.
- 49. Providing green and blue corridors through private land to connect with nearby public land must be coordinated through the strategic planning process (LEP/DCP) for a site.
- 50. Planning for new areas of open space and recreation facilities need to be integrated into a council's strategic planning process and any land or works required can be zoned through the LEP and funds costed in a contributions plans.
- 51. Provision of active transport facilities and infrastructure such as local cycle and pedestrian connections should be identified within the planning controls (LEP/DCP) for a site so that any requirements are known early in the development process
- 52. There should be an automatic process for State Government to step in and look at planning controls along the route of new linear transport projects such as railways, busways, light rail and the like.
- 53. The identification of freight networks and adequate transport corridors to allow for movement of goods and resources between cities and regions must be planned at the regional level (Regional/District Plans) and any land required to support provision of vital infrastructure must be identified in LEP/DCP and contributions plans.
- 54. The threshold where the requirement for a 'network of centres' applies must be appropriate to ensure it is relevant and effective.
- 55. The UDG must acknowledge that the location of land use is often determined when a Strategy Plan is developed for a precinct undergoing change and that the location of key land uses have already been determined.
- 56. The 'Integration of urban networks with broader context and overcome barriers'\_should be addressed through the strategic planning process and identified in the LEP/DCP and where land or works are required, a funding source provided in the relevant s7.11 or 7.12 contribution plan.

- 57. The design guidance to 'address mitigate and respond to risks' should be primarily considered in the strategic planning process (LEP/DCP) and if not suited to managed habitation an alternative land use should be identified in the LEP zoning table.
- 58. Any design guidance concerning safety and risks must be consistent with other established processes for managing those risks.
- 59. The strategic planning process must consider impacts on environmental issues such as biodiversity and provide adequate zones, densities and setbacks the reflect the land's capacity to accommodate growth.
- 60. Planning bodies such as councils and the Department of Planning need to consider the land use zones and densities needed to achieve the criteria for 'walkable neighbourhoods' when Planning Proposals and comprehensive LEP/DCP are being prepared.
- 61. The status of the design criteria for 'public open space accessibility' needs to be clear, and it should only be regarded and applied as an aspirational goal when assessing a development application
- 62. The creation of 'neighbourhoods with vibrant centres' requires coordination of functions of local councils and various State agencies (TfNSW, Sydney Water). The proposed maximum block length for industrial areas should be removed.
- 63. The requirement for a variety of block sizes is proposed to be based on size, orientation and access arrangements. 'Type of uses' that a site will accommodation (for example warehouses, logistics centres and intermodal-terminals) should also be considered.
- 64. It is not clear how the design requirements for 'urban environments to be adaptable for future change' will be applied. Further clarification is required.
- 65. There must be more clarity and certainty provided regarding how the Assessment Guidance in the Urban Design Guide will be implemented.
- 66. Any targets for provision of certain types of green infrastructure must be appropriate for the site and location. Excessive obligations to provide landscaping should be avoided.
- 67. The terminology and language used in respect of the tree canopy targets should be reassessed to ensure that a flexible approach is adopted for the achievement of the guide's objectives.
- 68. The Property Council supports the enhancement of tree canopy in established areas and for new areas undergoing development. The use of numerical targets (expressed as percentage of site area) is not supported and should be reassessed to deliver a more flexible approach to meeting the guide's objectives.
- 69. The use of numerical targets (expressed as percentage of site area) for the enhancement of urban tree canopy is not supported and should be reassessed to deliver a more flexible approach to meeting the guide's objectives
- 70. Acknowledge that high-density residential areas and business centres have limited opportunities to provide deep soil planting and that there must be a flexible approach permitted to achieve the objective.
- 71. The UDG should be amended to reflect the appropriate process for the identification, planning, acquisition and funding of local and district open spaces.
- 72. Local councils should be required to contribute towards the delivery of 'sports and active and passive recreation' in conjunction with the development industry.
- 73. The UDG must consider the barriers and retrofitting solutions to delivering comfortable street and places in established areas that are more constrained than greenfield areas.
- 74. The UDG must recognise and consider the impediments that limit the ability for the objective of 'landscaped tree-lined streets that integrate services' to be achieved in areas where there are prohibitive costs associated with coordination of relocation of services, difficulty obtaining agency approvals and issues with obtaining agreement from other landowners.

- 75. The strategic planning process must be the primary mechanism to identify needs for public facilities and plan the delivery and funding of any new infrastructure to provide community services.
- 76. The UDG must acknowledge the barriers for the delivery of genuine mixed-use developments and how those carriers can be overcome or addressed to allow for true mixed-use centres to be developed.
- 77. The UDG must acknowledge the role played by market forces in the size and type of lots and dwellings provided in some areas. The role of prescriptive planning controls must also be accepted and the need for greater flexibility to encourage more innovation and diversity.
- 78. The UDG must acknowledge the importance of development feasibility when the scale of side and rear setbacks is being considered.
- 79. The UDG must be consistent with the relevant strategic planning process and DA assessment process that applies to significant heritage sites and the consultation role undertaken by heritage bodies (Heritage Council and local councils). It must also acknowledge the cost of preserving and adapting heritage fabric for reuse and how that can impact on project feasibility
- 80. The UDG should provide a series of examples of projects that exhibit the intended consideration of heritage issues and avoiding negative impacts.
- 81. Areas undergoing transition under new planning controls (heights and densities) should recognise that future desired character may not be consistent with existing local character.
- 82. The UDG should enable flexibility in respect to the application of local planning controls (LEP/DCP) that have not been prepared with a place-based approach.
- 83. The UDG must enable a flexible approach in respect of certain local planning controls that do not provide for development that is consistent with the objectives of the guide or the SEPP
- 84. The UDG should be applied having regard to LEP planning controls and avoiding any unreasonable limitations on development occurring in high and medium density areas
- 85. The UDG must clearly identify the requirements in 17.5 are intended as desirable guidelines and not prescriptive targets that must be achieved.
- 86. The UDG must clearly identify the site coverage standards provided in 17.6 are for guidance purposes only and not to be applied as prescriptive planning controls.
- 87. The UDG must provide a flexible approach to the requirements for active street frontages to take into account any site-specific characteristics
- 88. Measures to minimise embodied carbon in building materials should be developed in consultation with the development industry, having regard to the impacts this may have upon the construction and development process.
- 89. The application requirements for State Significant Development should be changed to remove the requirement for further justification of a change to an application when the change is not consistent with strategic planning.
- 90. The UDG should be amended to provide a DA process flowpath for a residential subdivision and clearly indicate where the UDG should be applied in each step of the DA process
- 91. Public open space guidelines in Appendix 2 should be removed from the UDG and should form a standalone document that sits within a toolbox for greenfield land release areas.
- 92. The prescriptive urban tree canopy targets indicated in Appendix 3 of the UDG should be removed and a performance-based approach should be developed to achieve the principles and objectives of the guide.
- 93. Further consultation on the application of Appendix 4 of the UDG must take place between Transport for NSW and local councils to ensure that the guidelines are fit for purpose and do not lead to any unintended consequences.

### 1. General Comments

### Impact on housing affordability

The DP SEPP clearly prioritises design and sustainability outcomes without sufficient consideration of the impacts housing affordability and supply and the current market conditions that demonstrate significant undersupply and increased pricing of homes across NSW.

The DP SEPP introduces an additional 51 'issues for consideration' for Development Applications (DAs) and Rezoning Proposals, as well as more steps, studies and referrals. It will not only be more expensive to undertake development, but it will also take significantly longer to obtain the necessary approvals. Given that that time taken to currently run the planning process in NSW is the single biggest factor impacting project feasibility, and the NSW planning system is ranked the slowest and most complicated system in Australia<sup>2</sup>, this policy will further impose feasibility constraints residential development in NSW should it be implemented.

The DP SEPP will also introduce significant uncertainty to an already uncertain and lengthy process. These factors contribute to the housing supply equation, which together with cost implications will correlate with a further reduction in housing affordability and shifting of investment away from NSW to other jurisdictions where it is easier and quicker to obtain the approvals to undertake development.

### NSW is in still in post- COVID economic recovery

Many individuals and businesses are struggling to recover from the impact of the COVID-19 pandemic. The property industry has faced several years of construction lockdowns, worker shortages, supply chain issues and escalating costs for building materials. The impact of the pandemic to the construction industry and resultant loss of jobs, is a challenge that is only beginning to appear. We have seen several well-established organisations and businesses collapse under these pressures, most recently ProBuild<sup>3</sup>. These impacts will see a decrease in housing supply, worsening affordability and decline in state productivity. The additional cost and uncertainty of the DP SEPP will add further burden to an industry which has already sustained substantial setbacks and still in the process of recovery.

#### **Recommendations:**

Recommendation 1: The DP SEPP is withdrawn from public exhibition

Recommendation 2: The aspects of the DP SEPP relating to the reform of the BASIX Building Sustainability Index are extracted and progressed separately

# Recommendation 3: The DP SEPP is disseminated and subject to a rigorous and comprehensive review before any aspect of the DP SEPP is progressed further.

### Workforce Capabilities and Resourcing

The DP SEPP includes 51 new metrics and criteria for DA's and Rezoning Proposals. Several additional specialist consultants will be required to provide services to support the lodgement of these applications an additional cost incurred by the developer which will add to the cost of housing production.

The Property Council has concerns regarding the ability of consent authorities to assess additional specialist reports in a timely manner. The number, and complexity of the additional requirements for the

<sup>&</sup>lt;sup>2</sup> State Development Comparisons: A comparative review of the NSW Planning system, prepared on behalf of NSW Treasury, *Mecone* (July 2019)

<sup>&</sup>lt;sup>3</sup> <u>Probuild plunged into administration, with \$5b worth of unfinished projects around Australia</u>, *Nine News, 24 Febryary 2022* 

lodgement of DA's and Rezoning Proposals will lead to additional delays in determination, or to a more convoluted planning pathways where consent authorities will be requiring applications are withdrawn, rather than negotiating outcomes. We note that the Department of Planning has recently announced the deployment of 'Flying Squads' to assist councils in rural and regional areas who are struggling to find appropriately skilled resources to undertake complex planning assessment and strategic planning.

### Should the DP SEPP be implemented, we provide the following recommendations:

Recommendation 4: The Department should review and reconsider the extent of documentation required to accompany Development Applications and Rezoning Proposals

Recommendation 5: The Department should develop a targeted program of training for stakeholders should be delivered, in particular for consent authorities, to address the existing skillset disparity and resource shortages that challenge the viability of introducing additional assessment metrics and criteria.

### Additional up-front costs and risk

The DP SEPP will result in significant additional up-front costs for developers, through increased and ongoing referrals to design review panels, the expanded list of items for consideration, consultant expertise required for lodgement, and the lengthy determination timeframes that the DP SEPP will give rise to. Frontloading the design component of a project only shifts this cost to the point of greatest risk in the development process – when pursuing approval through the planning pathway.

### Drafting of the Design and Place State Environment Planning Policy and associated legislation

The subjectivity of the principles and consideration, and sheer number of additional points of assessment (51) introduced through the DP SEPP are likely to be problematic. The removal of the weight afforded to the five principles within the SEPP, and a rationalised version of the considerations and sub-clauses would help provide a more simplified planning framework, without diluting the aims and objectives of the framework.

The DP SEPP uses strong terminology which is not conducive to allowing proponents and consent authorities to benefit from the flexibility and merits-based assessment that the DP SEPP aims to provide.

Recommendation 6: Clauses 13(1) and 13(2) of the draft DP SEPP be amended to read: 'the consent authority is satisfied that the development *has taken into consideration* the design principles *and DP SEPP aims*' and the prefacing requirement to consider or be satisfied with each design consideration be deleted.

Recommendation 7: The number of additional points of assessment (51) should be reviewed, reduced and consolidated.

#### **Modification Applications**

The DP SEPP should <u>not</u> apply to <u>any</u> modification application no matter when made, only to new development. Modification applications already need to satisfy the "substantially the same" development test and will already comply with the policy through that mechanism.

Recommendation 8: The DP SEPP should be amended to clarify that it does not apply to modification applications.

#### Staged Development Applications and Savings and Transitional Provisions

Should the DP SEPP proceed to implementation, Property Council strongly recommends that appropriate savings and transitional provisions be introduced to the draft legislation to provide certainty

for projects that have already been assessed and approved. In particular these provisions should be applied to master planned sites with Concept DA (or Part 3A) approvals. The introduction of the draft legislation has the potentially to materially impact the feasibility of these long-term approvals, upon which our members have made significant financial investments.

CI. 38 of the draft SEPP does provide some savings and transitional provisions. However, this is limited to development applications and modifications lodged within 2 years after the original development consent was granted. The lifespan of a masterplan consent is often over 10 years and therefore a 2-year savings and transitional period is insufficient to ensure the long-term success of the project. It is inappropriate to impose the requirements of the Draft SEPP upon existing masterplans. While this may provide some improvement to the quality of the dwellings, this approach gives no consideration to the economic and social implications of retrospectively applying these requirements upon large long-term development consents.

Recommendation 9: CI.38(1)(b) should be amended to delete the 2-year cut of timeframe for existing approved concept plans. The savings provisions should protect existing concept approvals indefinitely and should clearly state that the savings provisions also apply to any subsequent modifications or associated development applications.

### 2. BASIX requirements

The Department has integrated several BASIX-related changes into the DP SEPP. These are:

- A new BASIX materials index to assess the embodied greenhouse gas emissions of the material used to build a home.
- Rebuilding and integrating the BASIX tool with the Planning Portal (a sand box version is currently available to test for freestanding homes).
- Updated BASIX methodologies.
- A new '*merit assessment pathway*' by which recognised professionals can complete a sustainability assessment of a proposed development using accredited modelling software and submit it with a development application as an alternative to a BASIX assessment.

#### Increase in BASIX energy performance standards

The Property Council is generally supportive of increasing BASIX energy performance standards for homes in alignment with the National Construction Code 2022. However, we note that the BASIX tool and resources have not been included in the exhibition package or provided to the industry in order to understand the implications of the proposed changes.

It is difficult to determine what the impacts may be for built form and design without access to the full range of sandbox tools and knowing the full extent of the new requirements. The BASIX sandbox tool for freestanding dwellings is incomplete, there are still many gaps in information and unknowns, and the BASIX sandbox tool for town houses and apartments is yet to be released.

# Recommendation 10: The Department should provide access to the complete BASIX sandbox tool for both freestanding homes and apartments/townhouses to the property industry and other stakeholders to review and provide meaningful commentary.

#### Energy and water standards for non-residential development

The Property Council supports the NSW Government inclusion of NABERS and Green Star as pathways for demonstrating compliance with energy and water use standards for non-residential development. The

notable exclusion of terminology that allows for 'equivalence' rather than independently verified outcomes will lead to measurably better outcomes.

The third pathway provided for in the DP SEPP and outlined at **Schedule 1** is the JP1 energy use standard. This is the only enforceable method under the NCC. Targets for JP1 have been added, but as it is currently drafted, it is unclear how these have been determined and no guidance has been provided for how these should be tested and compliance ensured. The units for the JP1 targets make reference to 'annual hours of operation'. The Property Council is concerned that using this metric is problematic and opens this pathway up to 'gaming' and abuse as there is no way to determine the actual hours of operation and no verification process in place to check that projects using this pathway have met the targets.

There is also a lack of clarity regarding the equivalence between the three pathways proposed. If one of these pathways, for example the JP1 method, does not have the same rigor and governance of the Green Star or NABERS pathways, it is likely that a subsection of industry will gravitate towards the least rigorous pathway.

Further, this policy applies equally to new developments and "substantial redevelopment or refurbishments of an existing building" – this is a significant issue for building owners and managers in the non-premium or A-grade. The financial implications of refurbishing a building from a low rating to the mandated 5.5-star rating are significant. A building that currently has a 1.5-star NABERS rating may be discouraged from undertaking renovations that would lift it to a rating below the 5.5-star rating but nonetheless higher than its original rating.

# Recommendation 11: A scale of improvement below the 5.5-star rating be applied to existing non-residential buildings (for example, an uplift of 1.5-2 stars).

#### **Build-to-Rent products**

We note that 'Build-to-Rent' is an up-and-coming development product which is in the process of establishing in the NSW property market. As outlined above, there is a lack of transparency around how the energy score is calculated within the existing tool and whether this methodology will be retained.

Typically, Build-to-Rent residential projects have a significantly larger common area when compared to build-to-sell projects, given the focus on community and shared amenity. To assist in predicting the impact on future Build-to-Rent projects it is important for developers of this product to understand how the common area ratio affects the energy score, i.e., if the score based on a 'per person' metric is to be retained. Should this be the case, Build-to-Rent residential projects will generally be penalised when compared to equivalent to build-to-sell projects and may become unfeasible to develop.

Recommendation 12: We recommend that the Department undertake industry engagement prior to the introduction of the increased energy targets to investigate the possible need to introduce separate energy performance metrics for Build-to-Rent residential projects, to ensure that this new and emerging asset class is not negatively impacted.

#### **Embodied energy**

Embodied energy requirements will need to be disclosed as part of BASIX certification submitted with development applications, using the supplied 'online calculator'.

This will require developers to identify, specify and confirm most of their building materials at the DA stage. This is generally not how building projects operate. Most projects will allow the design development

phase to inform the selection and specification of building materials. This requirement may result in the need for additional (otherwise unnecessary) amendments to development consents, and delays to project delivery.

We note that the Draft *EP&A Amendment (Design and Place) 2021* placed on public exhibition as part of the DP SEPP package, outlines in cl.57C a reference to an online calculator 'as in force from time to time'. The intent of this clause should be clarified. We note that the exhibited documents do not include the detail of the proposed calculator and we highlight that the ability for industry stakeholders to comment in detail on the requirements to calculate the embodied energy of development is therefore limited at this stage.

Any proposed increase in stringency will need appropriate notice and transitional arrangements should be made to allow for the industry to prepare itself. The requirement for 5-year renewable energy supply agreement is a good idea in theory, however, it will be difficult to manage unless it is purchased up-front by the developer in line with the design energy model (which does not necessarily match actual energy use by the end consumer). This could become problematic as the actual management of the requirement would be challenging. For example, a five-year term may be too short. In residential developments, there is legislation in place which restricts developers from entering any energy contract for a term longer than three months.

Schedule 2, Part 4 of the Draft EP&A Amendment provides the standard for embodied emissions for BASIX affected buildings as 12.5 tonnes or carbon dioxide for each occupant of the building for prescribed residential accommodation, and 9.4 tonnes of carbon dioxide for each occupant of the building for residential flat buildings and shop-top housing, While the standard is clear, how it should be measured and assessment is not outlined in the DP SEPP itself. Some information about BASIX Materials Index can be found in the DP SEPP policy overview and the Sustainability in Residential Buildings document. This indicates that the embodied emissions of a dwelling will be calculated by:

- Estimating the volume of different materials used in the home's construction, based on materials selected.
- Applying an emissions factor for that material.

There is no information provided as to who the baseline will be calculated for the index and whether data such as the volume of different materials for a residential building will be known at the Development Approval stage and/or how it will be ensured that proponents are entering any required data accurately. It is also not clear how certifiers and council employees will be resourced and trained to check compliance with these requirements. The lack of information about which materials will or will not be included and which lifecycle assessment environmental product declaration and / or Australian Standards will be applied to the BASIX Materials Index makes it difficult to provide constructive feedback.

The Property Council supports the inclusion of embodied emissions considerations in the DP SEPP but urges the NSW Government to ensure any metrics used are transparent and to consider how the standards can be drafted and applied in consultation with industry and leading experts in this field for the best possible outcomes.

The Property Council notes that the inclusions relating to embodied energy (also described as embodied emissions) as currently drafted in the DP SEPP need further consideration. The data and calculations within the proposed embodied carbon calculator may not be based on the best or full extent of relevant data available. We urge the NSW Government to be transparent about the data and metrics used in the development of the calculator. welcomes the opportunity to work together with DPE, NABERS and other industry and research leaders to develop an industry-aligned approach to calculating and reducing

embodied energy that will be appropriate for inclusion in future iterations of the DP SEPP. The Property Council is aware that there is a NABERS embodied carbon measurement tool currently under development. This tool is likely to become the industry standard in the future and provisions should be put in place for the DP SEPP to reference this framework once it is completed.

Recommendation 13: The Property Council recommends that the NABERS embodied carbon measurement tool, currently under development, is likely become the industry standard in the future and provisions should be put in place for the DP SEPP to reference this framework once it is completed.

Recommendation 14: The intent of CI.57C Draft *EP&A Amendment (Design and Place)* 2021 should be clarified and details of the 'online calculator' made available for industry comment and review.

Recommendation 15: We request the Department ensures any metrics used for the measurement of embodied emissions are transparent and to consider how standards can be drafted and applied in consultation with industry to deliver the best possible outcomes for all stakeholders and the environment.

#### Thermal performance

The Property Council acknowledges that BASIX is a complex tool and commends efforts to increase targets for thermal performance and improve the alignment of the tool with the National Construction Code. We support the intention to lift requirements within BASIX to align with 7 Star NatHERS and the proposed changes to the National Construction Code 2022.

Greater transparency about how the new energy use calculations differ from the existing calculations would provide more confidence to industry and the community that the changes are substantive. It is also unclear what design and or technology changes are required for dwelling categories to meet the requirements of the new policy, in particular building envelope design, hot water, lighting, air conditioning and renewable energy.

Recommendation 16: The Department should provide more detail around the thermal performance and energy use aspects of the BASIX tool to obtain meaningful industry feedback.

#### Alternative Merit Assessment pathway

The Merit Assessment Pathway (MAP), a proposed alternate route to compliance, is described by the Department as an alternative to a BASIX assessment. It is understood that the MAP is intended to align with the NCC. We suggest that the MAP should reference the NCC directly if it is to provide genuine alignment.

The Property Council supports the inclusion of the MAP in principle, as it will be particularly helpful and suitable option for more complex mixed-use developments, which will becoming increasingly common for Class 2 buildings. We urge the Department to ensure that the MAP is transparent, rigorous, and practical method of demonstrating compliance.

It is a concern that the MAP can only be signed off by certain officers within the Department following a review process. This is likely to cause delays and uncertainty making this option unattractive to many builders and developers. A Department commitment to transparent reporting of MAP assessment and outcomes may give industry more confidence in this process.

With regards to energy efficiency and thermal performance, appropriately skilled and qualified practitioners are essential to the delivery of building quality as well as to ensure standards that deliver functionality over the life of a building. The lack of detail regarding governance and guidance for undertaking a BASIX assessment (such as prescribing the skills, experience, and qualifications that a 'suitably qualified' person must possess and acceptable energy assessment software) must be addressed.

Recommendation 17: The Department should develop transparent reporting of the proposed Merit Assessment Pathway outcomes, including how the process will be verified, enforced, and audited to provide greater certainty to stakeholders and build confidence in the MAP.

Recommendation 18: The Department should undertake consultation with industry to determine the skills, experience and qualifications a 'suitably qualified' person must have to undertake and approve a MAP assessment, as well as develop a list of acceptable energy assessment software products.

### **BASIX and Class 2 Buildings**

Many in industry have noted that BASIX is not an adequate fit for Class 2 buildings (generally multi-storey apartments) as the thermal comfort benchmarks are the same as those for single dwellings despite having so much more shared fabric and the relative differences to exposure of the external envelope. In the absence of significant changes to BASIX to address this, more flexibility in applying appropriate methods of assessment is desired.

Recommendation 19: The Department should continue consulting with industry to develop other methods for assessment that can be recognised by BASIX, for apartments, mixed use development and homes.

### 3. Cost Benefit Analysis

The Property Council remains unconvinced that the costs and benefits outlined in the *Proposed Design* and *Place SEPP Environmental Planning Policy, Cost Benefit Analysis,* 7 December 2021, prepared by Deloitte Access Economics (the CBA) are a full and fair assessment of the economics impacts of the DP SEPP.

We note the CBA is a 14-page summary of a larger report, however despite requests to see additional detail, including the full Deloitte report and associated datasets and information, no further detail has been given. Providing the full report and accompanying datasets would provide assurance to the industry that the value of the costs and benefits in the CBA have been appropriately determined. In particular, we would like more detail around the value attributed to items which are more difficult to quantify such as 'improved social cohesion' and 'increased walkability and health benefits.'

To maintain the confidence of the industry, stakeholders and wider community, it is essential that these findings are made public to ensure the transparency and rigour of government's policy-making processes.

#### Impact on new home buyers

In the absence of any further information, it is impossible to recast the cost-benefit analysis to show the impact on developers and new home buyers. However, what is known is that Deloitte CBA has shown the impact of the DP SEPP on *society*. Overwhelmingly, the changes in the DP SEPP will *benefit* the whole of society, but the *costs* will fall on the development industry, and subsequently new home buyers.

This will result in further disincentives for development in NSW, and additional barriers to home ownership for the people of NSW. First home buyers purchasing new homes will be particularly impacted.

The cost benefit analysis suggests that the DP SEPP will reduce construction costs. Industry participants have suggested that many of the requirements of the DP SEPP and amended Apartment Design Guide (ADG) will increase the construction, design and regulatory costs associated with development projects in NSW. New costs will likely come from increased design consultant costs, increased regulatory and approval timeframes (including more subjective provisions that will make negotiations with approval authorities longer). Some developers have suggested that there will be no savings due to reduced car parking because buyers of houses and apartment value them.

Within the Deloitte CBA table 3.1 shows the quantified cost categories that were considered in their analysis. The table shows the impact of the costs. However, it did not show the incidence of the costs – who bears the impact of these costs.

In analysis commissioned by the Property Council from PPM Economics (Appendix 2) confirmed that these additional costs would be initially borne by developers, which would in due course be passed on to first home buyers in the price of new housing. While the costs will be borne by developers, new home buyers and landowners, the benefits will be attributed to society.

Some of the perceived benefits, such as decreased risk, will depend upon implementation. Where Councils are responsible for the implementation of new policies, they are often interpreted in a manner that restricts yields rather than expands them. Councils are likely to be reluctant to implement the changes that benefit developers/new home buyers/landowners as, in general, they are reluctant to increase their populations due to pressures placed on infrastructure as a result.

It is also reasonable to note that some of the benefits that will be derived by new home buyers may not be affordable, or may not be desired, particularly by first home buyers. While some of these items (such as increased green space aesthetics) may be "nice to have", they are not essential to a first home buyer who may be faced with save larger deposit to contemplate a purchase. For some first home buyers, it may be enough to push them out of the new home market and concentrate them in the already unaffordable secondary home market.

Recommendation 20: The Department should undertake a rigorous analysis of the impact of the DP SEPP upon first home buyers.

#### 3.1 Costs and benefits included in the study

Table 3.1 and Table 3.2 below summarise the costs and benefits quantified in this analysis.

Table 3.1: Quantified cost categories considered in this analysis

Cost category	Description	Impact category
Higher administrative costs: design review	Additional number of dwellings (for LGAs who do not currently have a design review panel) to undergo design review panel and local council approval process	Build requirements / due diligence
Higher compliance costs (including indigenous engagement)	Additional cost to developer and regulators for complying with regulatory requirements, applied on a per precinct/large site project basis. Not applicable to approved master plans.	Build requirements / due diligence
Construction costs – (estimated from WT)	Higher construction costs from changes to the ADG quantified by WT estimates.	Build requirements / due diligence
Higher construction cost - design	Higher construction costs arising from energy efficiency improvements.	Environment - energy, water and emissions
Higher construction costs - greenspace	Higher construction cost from those initiatives that increase open space requirements and impose higher quality standards. Green infrastructure costs arising from additional tree requirements to improve urban design.	Environment - other
Higher construction costs - noise attenuation	Higher construction cost arising from noise attenuation measures applied to residential developments that are in centres located in the night-time economy.	Environment - other
Cost of public open spaces	Construction cost associated with providing private versus public open spaces to residents.	Environment - other
Cost of car parking	Construction cost change associated with changes to car parking requirements under option 3.	Build requirements / due diligence
Cost of EV car parking provision	Additional construction cost associated with infrastructure to provide 'EV ready' car parks.	Environment – energy, water and emissions

Source: Deloitte Access Economics

#### Table 3.1: Quantified Cost Categories considered in this analysis

The CBA operates on the assumption that the DP SEPP will result in significantly reduced construction costs. There is no detail provided to support this assumption and the Property Council, through its own research and discussions is of the view that many of the requirements of the DP SEPP and amended ADG will increase the construction, design and regulatory costs associated with development projects in NSW.

Table 3.1:

- does not appear to consider the increased design consultant costs which would likely to be associated with the more stringent design requirements proposed in the DP SEPP across all development types,
- does not appear to consider the increased regulatory and approval timeframes which are likely
  to result from more stringent design requirements proposed in the DP SEPP across all
  development types, as well as the flexibility provisions which have potential to make the approval
  process more subjective and therefore more protracted in terms of timing, and
- Considers a reduction in construction costs resulting from reduced car parking requirements, however in this instance a direct reduction in the sale price of lots without parking has not been considered and is likely to represent a significant cost to development projects.

Table 3.2: Quantified benefit categories considered in this analysis

Benefit category	Description	Impact category
Realised reserve development capacity	Increased yield due to increase in density regulations	Build requirements / due diligence
Reduced developer risk	Reduce uncertainty in building requirements such that the developers can mitigate against unexpected costs/project contingencies during the approval process.	Build requirements / due diligence
Reduced build cost	Reduction in car parking requirements will reduce number of parks built – reducing construction costs.	Environment – energy, water and emissions
Reduced crime	Passive design requirements which seek to improve walkability and connectivity, help reduce crime.	Environment - other
Reduced urban heat island	Reduced urban heat island effect due to additional tree canopy and deep soil requirements.	Environment - other
Improved green space aesthetics	Aesthetic value of additional trees per dwelling on urban realm. This relates only to the aesthetic value of street tress in urban spaces.	Environment - other
Increased walkability and health benefits	Initiatives geared at improving walkability and connectivity will also serve health benefits for residents.	Mobility/Connectivity
Lower operational costs	Improvements to amenity as a result of increased energy efficiency – calculated as a premium for green buildings and associated lower operational costs. Considers the reduction in embodied carbon emissions.	Environment – energy, water and emissions
Reduced greenhouse gas emissions	Reduction in greenhouse gases due to a reduction in residential car spaces.	Environment – energy, water and emissions
	Reduction in greenhouse gasses due to increased walkability.	
Improved social cohesion	Considers the mental health and social interaction benefits for residents from improvements to urban and apartment design.	Social and cultural considerations
Improved connection to place	Increased connection to place with reference to consideration for country and Indigenous engagement.	Social and cultural considerations
Improved private amenity	In comparison to other benefits, this particular benefit captures the impact of four amenity features considered in the study were access to outdoor open space (courtyard or balcony), orientation, cross- ventilation, and open views on apartment prices	Amenity
Energy efficiency benefits	Energy cost savings for residents resulting from additional guidance on energy efficient buildings.	Environment – energy, water and emissions

Source: Deloitte Access Economics

With regards to **Table 3.2: Quantified benefit categories considered in this analysis;** the Property Council provides the following commentary:

- Reduced developer risk is not considered to be a benefit of the proposed DP SEPP as the flexibility provisions are likely to create more subjectivity in the approval process and increase uncertainty and risk across development projects,
- Many of the benefit items are difficult to attribute value to, and no detail has been provided in the CBA as to how the value of these items was quantified and to what extent each benefit item contributes to the overall benefit considered in the summary of the report.

The Property Council makes the following recommendations:

Recommendation 21: The Department of Planning release the full Deloitte report for public consideration

Recommendation 22: The assumptions and data underlying the CBA should be made publicly available should be subject to a rigorous peer review, as well as by industry participants so that the actual costs to real world developments can be assessed.

Recommendation 23: Further consideration be given to the full range of costs and benefits which are likely to arise from the implementation of the DP SEPP

Recommendation 24: Detailed information be provided as to the calculation of each value of each of the costs and benefits considered in Table 3.1 and 3.2 of the Deloitte CBA modelling.

Recommendation 25: Further consultation be undertaken with industry and stakeholders to gain a clear, accurate and quantifiable picture of the costs and benefits which are likely to arise as a result of the DP SEPP.

Section 3.2 of the CBA outlines the results of the analysis and suggests that the implementation of the DP SEPP will generate a \$980 million benefit across NSW. However, the results shown in Table 3.3 are vague and no justification of the claimed benefit has been provided in the report.

In addition, the results of the CBA refer to only one scenario, however Section 2.6 of the report claims that a total of four options had been tested to fully understand the impacts of the proposed DP SEPP. As no results for the other scenarios have been provided, there is no way for stakeholders or the community to make an informed assessment as to the costs and benefits of each option and which scenario would provide the best outcome to NSW.

It would be useful for industry to review and understand the findings of the CBA for all four options to enable a full and informed assessment of the impacts of the proposed DP SEPP.

In summary, while the CBA provides an indication of the possible costs and benefits of a single regulatory scenario, there are significant shortfalls in relation to the detail, case studies, assumptions and data which support the analysis, as well as a lack of clarity regarding the finds of the CBA itself. Further information could be provided in relation to the CBA and additional consultation with stakeholders and the community should take place to ensure that a comprehensive and accurate assessment is made in relation to the costs and benefits of the implementation of the proposed DP SEPP. Until such time as this is completed and further information provided, it is considered that the CBA exhibited alongside the DP SEPP is insufficient to justify the implementation of the proposed DP SEPP.

### Compliance with Treasury Circular TC 19-02

We note that the Cost Benefit Analysis provided fails to demonstrate compliance with <u>Treasury Circular</u> <u>TC 19-02, issued 22 January 2019</u>. This Circular requires the following:

- A Better Regulation Statement is required for all 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

The14-page Cost Benefit Analysis Summary does not constitute a 'Better Regulation Statement', and in particular this document is not 'proportionate to the significance of the proposal.' Given the DP SEPP will incur an additional \$2.3 billion of cost on the development industry and new homebuyers, the provided 14-page document is insufficient analysis and information to justify this.

Failure to comply with the requirements outlined above is an oversight that undermines the confidence of the industry, stakeholders, and the community that the NSW Government is giving adequate consideration of the social and economic impacts of regulatory changes.

Recommendation 26: The Department should prepare a comprehensive 'Better Regulation Statement' as required by Treasury Circular TC 19-02.

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### 4. Detailed commentary

Detailed commentary is provided below for the:

- Draft Design and Place (State Environmental Planning Policy) 2021
- Draft Environmental Planning and Assessment Amendment (Design and Place) Regulation 2021
- Draft Apartment Design Guide 2021
- Draft Urban Design Guide 2021
- Draft Local Government Design Review Panel Manual 2021.

### Draft Design and Place (State Environmental Planning Policy) 2021

Clause	Suggested Wording/Change	Reason
6 Meaning of 'urban design	6 Meaning of 'urban design	Paragraph (c) of the definition
development'	development'	of "urban design development"
(1) In this Policy, <i>urban</i>	(1) In this Policy, <i>urban</i>	because it could capture
design development	design development	developments that are not new
means the following	means the following	i.e. developments where the
development –	development –	relevant planning instrument
(a) Development on land that is	(a) Development on land that	requires a DCP or master plan
not in an industrial zone	is not in an industrial zone	but that DCP or master plan
that has a site area greater	that has a site area greater	already exists. It should be
than 1 hectare	than 1 hectare	limited to only new
(b) Development on land in an	(b) Development on land in an	developments where a DCP or
industrial zone that has -	industrial zone that has -	master plan is required that
i. Capital investment	i. Capital investment	DCP/master plan is yet to
value of \$30 million	value of \$30 million or	come.
or more, and	more, and	
ii. A site area greater	ii. A site area greater than	
than 1 hectare,	1 hectare,	
(c) Development in relation to	(c) Development in relation to	
which an environmental	which an environmental	
planning instrument	planning instrument	
requires a development	requires a development	
control plan or master plan	control plan or master plan	
to be prepared for the land	to be prepared for the land	
before development	before development	
consent may be granted for	consent may be granted for	
the development.	the development, and that	
	DCP or masterplan does	
	not yet exist and is yet to	
	be prepared.	
7 Meaning of 'non-residential d	levelopment'	The definition of 'non-
In this Policy, non-residential de	evelopment means development	residential development'
tor the following purposes –		outlined in cl. / could capture
(a) The erection of office premise	es with a net lettable area of at	any development declared to
least 1,000 square metres ( <b>p</b>	rescribed oπice premises),	Development under the State
(b) The erection of retail premise	s with a gross lettable area of at	Environment Plenning Policy
(a) The erection of hotel or metres (p	rescribed retail premises)	State and Regional
(c) The election of note of mote	l accommodation with at least	Development) (poting the
		exemptions listed in cl 8(2)

<ul> <li>State significant development that does not include development for residential purposes (non-residential state significant development)</li> </ul>	This has hugely broad reach which is most likely not intended
8 Land to which Policy applies	The exemptions in clause
<ul> <li>(1) This Policy applies to the State, except as otherwise provided by this section</li> </ul>	8(2)(c) to a range of development types under the
(2) This Policy does not apply to the following:	SRD SEPP seem unevenly
(a) development on land wholly in any of the following	applied for example the SEPP
zones'	will not apply to development
(i) Zones RU1 Primary Production, RU2 Rural	for the purpose of "Chemical.
Landscape, RU3 Forestry or RU4 Primary	manufacturing and related
Production Small Lots.	industries" or "Port facilities and
(ii) Zone IN3 Heavy Industrial	wharf or boating facilities".
(iii) Zones E1 National Parks and Nature	5
Réserves, E2 Environmental Conservation or E3	However, it will apply to
Environmental Management	development for the purpose of
(iv) Zones W1 Natural Waterways, W2	"Other manufacturing
Recreational Waterways or W3 Working	industries", "Air transport
Waterways.	facilities" and "Rail and related
(b) development that is permitted with or without consent	transport facilities"
or exempt or complying development under –	
(i) State Environmental Planning Policy (Exempt	
and Complying Development Codes) 2008, or	
(ii) State Environmental Planning Policy (Mining,	
Petroleum Production and Extractive industries)	
(c) Development of a kind specified in State	
Environmental Planning Policy (State and Regional	
Development) 2011, Schedule 1, clauses 1-10, 18 and 20-	
dovelopment	
(d) development involving only	
(i) minor subdivision within the meaning of the	
Environmental Planning and Assessment	
Regulation 2000 clause 2561 or	
(ii) a strata subdivision	
(iii) the subdivision involving less than 1 hectare of	
land.	
(e) development involving the erection of less than 24 or	
less class 1a buildings under the Building Code of	
Australia, or of a class 7a or 10 building, if the buildings do	
not form part of mixed used development to which this	
Policy applies.	
(3) Part 3, Division 3 applies to the development specified in	
subsection (2)(a), (c)(i), (e) and (g) if the development is BASIX	
affected development.	
12 Design principles and design considerations	The 'Design Principles' and Design Considerations in cl.2
(1) The principles for design in New South Wales are the	will be incredibly limiting and
following:	difficult to achieve with many
(a) To deliver beauty and amenity to create a sense of	types of development.
belonging for people,	

<ul> <li>(b) To deliver inviting public s to create engaged communities to thrive</li> <li>(c) To promote productive an communities to thrive</li> <li>(d) To deliver sustainable and well-being of people and the second s</li></ul>	spaces and enhanced public life unities ad connected places to enable d greener places to ensure the the environment se places for enduring the implementation of the vs- and amenity to create a sense	Industrial development, which will soon include fully automated facilities will find it particularly difficult to adhere to these all principles and considerations.
Design Considerations: Overall de inclusive and healthy places.	esign quality. Comfortable,	
<b>Design Principle:</b> Deliver inviting public life to create engaged comp <u>Design Considerations</u> : Culture, c space for public life.	public spaces and enhanced munities. haracter and heritage. Public	
<b>Design Principle:</b> Promote produce nable communities to thrive. <u>Design Considerations</u> : Vibrant and Sustainable transport and walkable	nctive and connected places to nd affordable neighbourhoods. ility.	
<b>Design Principle:</b> Deliver sustain ensure the well-being of people an <u>Design Considerations</u> : Green inf and emissions reduction.	nable and greener places to nd the environment. rastructure. Resource efficiency	
<b>Design Principle:</b> Deliver resilien communities. <u>Design considerations</u> : Resilience Optimal and diverse land use.	et, diverse places for enduring	
13 Consideration of design	13 Consideration of design	CI 13 uses excessively strong
principles and design considerations by consent	principles and design considerations by consent	terminology which is not conducive to allowing
authority	authority	proponents and consent
<ol> <li>Development consent must not be granted for development to which this Policy applies unless the consent authority is satisfied that the development is consistent with the design principles.</li> <li>In determining whether development in consistent with the design principles</li> </ol>	(1) Development consent must not be granted for development to which this Policy applies unless the consent authority is satisfied that the development is <u>'has taken</u> <u>into consideration</u> the design principles <u>and DP</u> <u>SEPP aims.'</u>	flexibility and merits-based assessment that the DP SEPP aims to provide. The suggested change provided in the middle column will simplify the planning framework without diluting the aims and objectives of the framework of the DP SEPP.

the consent authority must take into account the design considerations for each design principles.	(2) In determining whether development in consistent with the design principles, the consent authority must take into account the design considerations for each design principles.	
<b>14 Design Consideration –</b> <b>overall design quality</b> The consent authority must consider whether overall –	14 Design Consideration – overall design quality The consent authority must take into consideration the proposed development's consistency with the following design objectives and criteria.	Requiring the consent authority to consider whether 'overall' the development achieves certain criteria may require a new test to be applied. This could be better phrased to require consideration of the proposed development's consistency with design objectives and criteria.
16 Design Consideration – culture, character and heritage The consent authority must consider whether –	16 Design consideration – culture, character and heritage The consent authority must consider whether:	'The desired character of the area' is difficult to define and open ended. A consent authority with an anti-growth agenda could easily use this clause to prevent or delay development.
(a) The development detracts from the desired character of the area	(a) The development detracts from the desired character of the area	
17 Design consideration – public spaces and public life The consent authority must be satisfied of the following -	17 Design consideration – public spaces and public life The consent authority <u>must</u> give adequate regard to the following:	The current wording is too limiting and should be changed to allow exceptions where necessary.
<ul> <li>19 Design consideration – sust walkability</li> <li>The consent authority must consideration (a) Contributes to minimising care i. Supporting access to ii. Minimising private cate (b) Minimises the impact of care performed (c) Supports increased opportune integrating or improving context of the performance of the performance</li></ul>	ainable transport and der whether the development – trips and car travel distances by- public transport, and ar parking, and parking on public space, and ities for walking and cycling by ections to existing walking and end of trip facilities, and frastructure for charging electric	This clause should be made specifically clear that the proponents of individual development proposals are not responsible for upgrading or providing infrastructure to meet the design criteria and objectives which require elements outside of the site. For example, offsite power to support electric vehicles, cycle paths to provide connectivity,
21 Design consideration – resource efficiency and emissions reduction	21 Design consideration – resource efficiency and emissions reduction	open space to improve green infrastructure. The wording 'minimise' and 'maximise' is very onerous. 'Reasonable feasible measures

The consent authority must consider whether the development –	The consent authority must consider whether the development –	to minimise/ maximise' is considered more reasonable.
<ul> <li>(a) For urban design development involving subdivision – minimises, and excludes as far as practicable, the use of on- site gas for cooking, heating and hot water, and</li> <li>(b) Is designed to minimise waste from associated</li> </ul>	<ul> <li>(a) for urban design development involving subdivision – <u>takes</u></li> <li><u>reasonable feasible</u></li> <li><u>measures to minimise</u>, and excludes as far as practicable, the use of on- site gas for cooking, heating and hot water, and</li> </ul>	A clear definition for 'net zero' should also be provided in the DP SEPP.
demolition, construction and during the ongoing use of the development, including by the choice and reuse of building materials, and	<ul> <li>(b) <u>Takes reasonable feasible</u> <u>measures to minimise</u> waste from associated demolition, construction and during the ongoing use of the development,</li> </ul>	
<ul> <li>(c) Minimises greenhouse gas emissions, as part of the goal of achieving net zero emissions by 2050, including by incorporating the following: <ol> <li>Passive design,</li> <li>Energy efficiency</li> <li>The use of renewable energy, and</li> </ol> </li> <li>(d) Uses water sensitive urban design and maximises water re-use.</li> </ul>	<ul> <li>including by the choice and reuse of building materials, and</li> <li>(c) Takes reasonable feasible measures to minimise greenhouse gas emissions, as part of the goal of achieving net zero emissions by 2050, including by incorporating the following:         <ol> <li>Passive design,</li> <li>Energy efficiency</li> <li>The use of renewable energy, and</li> </ol> </li> </ul>	
	(d) Uses water sensitive urban design and <u>uses</u> <u>reasonable feasible</u> <u>measures to maximise</u>	
22 Design consideration –	22 Design consideration –	There are likely to be
resilience and adapting to change	resilience and adapting to change	circumstances where it is unnecessary for a development to incorporate measures to
The consent authority must be	The consent authority give	avoid or reduce exposure to
satisfied that the development	adequate regard to the	natural hazards, unless this is
is resilient to natural hazards	proposed development's	very broadly defined.
by-	<u>consistency with the</u> following criteria:	
24 Objectives of Urban Design	Guide	No comment.
25 Development control along	lan unhan daalam davalanmaat	This alouge should be revised
25 Development control plans	or urban design development	to make it absolutely clear that

<ul> <li>(1) Development consent mudesign development unle applies to the land on wh carried out.</li> <li>(2) A development control is involves alterations to an</li> </ul>	ust not be granted to urban ss a development control plan ich the development is to be not required if the development existing building only.	this does not require a site specific DCP in all instances. This clause has the effect of requiring a development control plan be prepared for all non- industrial development of greater than 1 hectare. We consider one hectare to be an inappropriate scale of development to impose this requirement upon. Additional criteria should apply so that other types of development (not just non-industrial) are exempt from this. We note the exemption in section 4.23 of the EPA Act allows a concept plan in place of a DCP in certain circumstances, which may reduce some of the adverse impacts of this requirement.
<ul> <li>32 Non-discretionary development</li> <li>apartment development</li> <li>(1) This section identifies develop matters relating to residential</li> <li>(2) If the standards are complied cannot require more onerous</li> <li>(3) The following are non-discret <ul> <li>(a) The car parking for the bugreater than, the lesser of i.</li> <li>The recommended parking specified or</li> <li>ii. The minimum an under an applica instrument or develop (b) The internal area of each greater than, the recommended for the relevant apartment ty Design Guide</li> <li>(c) The ceiling heights for the greater than, the recommended for the relevant apartment or develop (a) and a specified in the Apartment or the relevant apartment for the greater than, the recommendation of the relevant apartment for the greater than, the recommendation of the greater than the provide of the greater than the pro</li></ul></li></ul>	ent standards for residential oment standards for particular apartment development. with, the consent authority standards for the matters ionary development standards: uilding must be equal to, or f ed minimum amount of car l in the Apartment Design Guide, nount of car parking required ble environmental planning velopment control plan. apartment must be equal to, or ended minimum internal area for pe specified in the Apartment e building must be equal to, or ended minimum ceiling heights t Design Guide.	CI.32(3) imposes a non- discretionary development standard that car parking is to be equal to or greater than certain minimum standards. However, cl.19(a)(ii) requires the consent authority to consider whether the development minimises private car parking. These two requirements are not inherently incompatible but more guidance on how much additional car parking above the minimums can be provided before the development is not taken to minimise private car parking would provide clarity and prevent confusion.
Part 4 Design Review 34 Application of Part	Part 4 Design Review 34 Application of Part	Often development is carried out by parties on behalf of the

<ol> <li>This Part applies to the following development</li> <li>State significant development to which this Policy applies,</li> <li>Development with a capital investment value of more than \$30 million</li> <li>Development with a capital investment value of between \$5 million and \$30 million if the development will be carried out by a council or the Crown.</li> </ol>	<ul> <li>(1) This Part applies to the following development</li> <li>(a) State significant development to which this Policy applies,</li> <li>(b) Development with a capital investment value of more than \$30 million</li> <li>(c) Development with a capital investment value of between \$5 million and \$30 million if the development will be carried out by <u>or on behalf of</u> a council or the Crown.</li> </ul>	Council or the Crown. The original wording is too limiting and should be expanded to reflect this.
<b>34 Application of Part</b> (2) This Part does not apply to de subsection (1)(c) if the consent au development will not have a signi domain.	evelopment specified in uthority is satisfied that the ficant impact on the public	Clause 34(2) requires a consideration of whether a development will have "significant impact on the public domain" however there does not appear to be any guidance on what would constitute a "significant impact", nor is there clarity on the extent of "the public domain".
<ul> <li>38 Savings and transitional pro- (1) This Policy does not apply to (a) A development application lo- before the commencement da (b) A development application if the lodged within 2 years after the granted to the concept develor (c) An application for modification under the Act, section 4.55 or i. Lodged or not finally detection commencement date, or ii. Lodged within 2 years after consent was granted, reg application for the original lodged or determined.</li> <li>(2) In this section – Commencement date means the commences.</li> </ul>	the following- dged but not finally determined ate, at is part of a concept e development application is e development consent was opment application, n of a development consent r 4.56 that is- ermined before the ter the original development lardless of when the development l development consent was	Currently developments which have been granted a concept approval, are only exempt from the SEPP if subsequent DA's and Modifications are <i>lodged</i> <i>within 2 years after the</i> <i>development consent was</i> <i>granted.</i> This will cause substantial problems for developers who have concept approval but are planning to roll the project out in stages through flow-on Development Applications, often over a period of up to 10 years.

### Draft Environmental Planning and Assessment Amendment (Design and Place) Regulation 2021

Current	Suggested Change	Issue
PROSPERITY	JOBS   STRON	G COMMUNITIES

<ul> <li>57C Embodied Energy <ul> <li>(1) A development application for development to which the State Environmental Planning Policy (Design and Place) 2021 applies must:</li> <li>(a) Disclose the amount of embodied emissions attributable to the development using the <u>calculator published on the NSW planning portal as in force from time to time.</u></li> </ul> </li> </ul>	We note that the Draft <i>EP&amp;A</i> <i>Amendment (Design and Place)</i> provides cl.57C refers to an online calculator 'as in force from time to time'. The intent of this clause should be clarified. We note that the exhibited documents do not include the detail of the proposed calculator and we highlight that the ability for industry stakeholders to comment in detail on the requirements to calculate the embodied energy of development is therefore limited at this stage.
	at this stage.

### Draft Apartment Design Guide 2021

Draft Apartment Design Guide 2021	
Proposed Changes	Commentary
Part 1 Designing for the site	
1.1 Site and context analysis (previously 3A,	
1A, 1B and 1C)	
Combines sections relating to surrounding	The Property Council supports the
context and apartment building types to	amalgamation of these sections to provide
establish a single point for guidance on site and	succinct guidance for site and context
context analysis.	analysis.
1.2 Built form and siting (previously 2A, 2B,	
2C, 2D, 2E, 2F, 2G, 2H, 3B and 4C)	
Combines sections relating to built form design	The Property Council supports the
and siting to provide criteria in a succinct way.	amalgamation of these sections, however,
Alternative design reasonance are provided	does not support the guidance for building
where criteria are not able to be mot	separation and noor to noor neights.
	The building congration distances have been
Recommended floor to floor heights for ground	retained and formerly made criteria within the
and first floor uses of mixed-use development	draft ADG. This is not supported by the Property
included.	Council The separation distances are not
	considered appropriate as they disregard setback
	controls within Council DCPs that Councils have
	devised based on their locality, to inform the most
	appropriate building footprints. The ADG
	separation distances require extended setbacks,
	and in our member's experience, these distances

<b>Γ</b>	
	are applied rigidly, regardless of a lack of evident privacy impacts.
	The Property Council requests that the separation distances be removed, and that Council DCPs take precedence.
	Notwithstanding the above, the Council does acknowledge and support the incorporation of alternative design response provisions relating to building separation and setbacks, and although the separation distances are not supported, the guidance to provide alternative responses is.
	The guidance increases floor to floor heights from 4m to 4.2m for Ground Floor non-residential uses, and from 3.3m to 4m for first floor residential use. Council members have noted that these increases in conjunction with other guidance on building height, will have significant yield impacts in regards to the viability of a development.
	As such, it is requested that the existing floor to floor heights be retained.
	Recommendation 27: The ADG should be amended to remove criteria for building separation distances and guidance should be provided to rely on Council DCP setbacks.
	Recommendation 28: The ADG should be amended to retain existing floor to floor height requirements.
1.3 Site access and address (previously 3C, 3G and 3H)	
Combines sections relating to pedestrian and vehicle access to a site. Alternative design responses are provided where criteria is not able to be met.	The Property Council supports the amalgamation of these sections to provide succinct guidance for site access.
	The Council requests Objective 1.3.1 to be clarified, as in its current form, it prioritises both walking and cycling within pedestrian links. It is recommended that pedestrian prioritisation is clarified, whilst still cycle use is still permitted.
	Further revision is requested in the language of design guidance of the section, specifically where reference is made to a site being 'sufficiently sized' to provide through site links. This language is highly subjective and may lead to the potential misapplication by the relevant Consent

	Authorities. Furthermore, it is not considered appropriate to rely entirely on a sites area for the provision and design of through-site links, and site specific characteristics and constraints should be considered. The Property Council fully supports and encourages the incorporation of alternative design response provisions relating to street entries. <b>Recommendation 29: Objective 1.3.1 should</b> be reviewed to provide clarification on the priority of pedestrian use within through-site links.
	Recommendation 30: The wording for 'design guidance' should be reviewed to remove any subjective language that may be misinterpreted.
1.4 Relationship to the street (previously 3C, 4L, 4S and 4T)	
Combines sections relating to street frontages and how development address and interact with the public domain.	The Property Council supports the amalgamation of these sections to provide succinct guidance for the public domain interface and street activation.
1.5 Green infrastructure (previously 3E, 4O and 4P)	
Combines sections relating to landscaping, tree planting, and deep soil area. Changes are proposed in regard to deep soil area, tree size identification and tree planting rates	The Property Council fully supports the amalgamation of these sections to provide succinct guidance for green infrastructure. The Property Council supports maximising
Deep soil requirements have been made as design criteria and increased to 10% for sites with an area <1500m <sup>3</sup> and 15% for sites with an area >1500m <sup>3</sup> , with 3m minimum dimensions. Minimum canopy areas have also been introduced to require 15% for sites <1500m <sup>3</sup> and 20% for sites >1500m <sup>3</sup> .	deep soil area, however the changes to the deep soil area requirements are not supported and are considered to be unattainable blanket requirements which are applied rigorously regardless of site-specific constraints. The new requirements only apply to two broad site area categories and require increased deep soil area, up to 8% more than the current provisions.
	The design guidance within this section promotes consideration of deep soil areas across boundaries to allow tree canopies of large trees. The Council requests that clarification be included to allow for the calculable tree canopy to be inclusive of canopy cover across boundaries. The guidance for retaining trees on a site requires building envelopes, basements, and driveways to be located in order to maximise the number of existing trees to be retained. The Council

	acknowledges and supports the importance of retaining site significant trees, however, note that the guidance language used is too simplistic, and does not nominate tree size, native species or ecological value, and does not allow for well- justified site-specific considerations. It is requested that the design guidance be amended to recognise that under certain circumstances tree removal is necessary and may be appropriately offset.
	The Property Council does support the guidance which acknowledges that some sites are incapable of meeting the deep soil requirements. It is however requested that the language of the guidance be amended to state 'not reasonably or practically possible', as the deep soil provision will always be possible, but the result may render a site unviable.
	Recommendation 31: The existing deep soil requirements within the ADG should be retained.
	Recommendation 32: The wording of the deep soil area guidance should be reviewed to allow for alternate solutions compliance with the criteria is not reasonably or practically possible.
1.6 Parking (previously 3J and 3H)	
New bicycle parking requirements for residential and commercial uses. Alternative design responses are provided where criteria are not able to be met.	The bicycle parking rates provided are not supported by the Property Council. It is not considered appropriate that a minimum parking rate be applied on a broad, one size fits all scale, where the nature of a development, its location and other site and locality characteristics are not taken into consideration.
	The Property Council fully supports and encourages the incorporation of alternative design response provisions relating to parking.
	Recommendation 33: The ADG should be amended to remove numerical bicycle parking requirements and require bicycle parking to be provided and assessed on merit.
Part 2 Building Design	
2.1 Common circulation (previously 4F)	

New provisions have been included which require common circulation spaces to achieve minimum natural ventilation and solar access requirements. Alternative design responses are provided where criteria are not able to be met.	The design guidance for common stairs encourages that common stairs including fire stairs, are capable of daily use. The Property Council does not consider this to be a suitable solution in high-rise towers, nor is a transition from a fire enclosed stair to a hybrid arrangement at the lower levels as is suggested. The draft change has potential to confuse the primary function of the fire stair to safely direct residents to open space. Therefore, it is recommended that the guidance is clear in its application to low rise development.
	The Property Council does not support the natural ventilation and solar access requirements proposed for common circulation spaces. The location of common circulation spaces is secondary to the location of apartments to ensure residential amenity, and in some cases achieving quality ventilation and daylight access to these spaces is not attainable. The guidance requires at least two sources of natural ventilation to common circulation spaces. This requirement will have significant impacts on floorplate efficiencies, cost, and overall housing affordability. In relation to the ventilation of apartment building lobbies, natural ventilation via operable windows is not considered appropriate due to environmental conditions, the extent of attendance within a lobby compared to a dwelling, and pressurisation issues and wind noise created by naturally ventilated lobbies in taller buildings. Furthermore, natural ventilation would also necessitate the windows to automatically close in the event of a fire to ensure there is no interference with smoke hazard management. The Property Council's preferred method for naturally ventilating lobbies in larger apartment buildings is via controlled mechanical systems that deliver a superior outcome and avoids the additional challenges and detrimental effects inherent to providing openable windows.
	Recommendation 34: The Design Guidance should be reviewed for further clarification on the use of common stairs.

	Recommendation 35: The natural ventilation requirements should be reviewed to permit controlled mechanical systems where a better outcome is achieved.
2.2 Communal spaces (previously 3D and 4F)	
The communal open space criteria require 8m <sup>2</sup> per dwelling, up to 25% of the site area.	The Property Council does not support the communal open space area requirements. Communal open space should be relative to the size of a site and take into consideration other site constraints and characteristics in relation to the densely urban areas, the need for roof plant, equipment and solar panels, the provision of private open space, proximity to public open spaces etc. whilst also considering development feasibility. The provision of communal open space should not be a definitive numerical control, and rather should give weight to other aspects of a development. As such, it is requested that the guidance be amended to require communal open space only where practically possible. Recommendation 36: The communal open space requirements should be reviewed to account for alternate design solutions where compliance with the criteria is not reasonably or practically possible.
2.3 Apartment mix and diversity (previously 4K and 4Q)	
New provisions have been incorporated which place numerical requirements on apartment mix, including the provision of family friendly apartments. For a development with more than 20 dwellings, a minimum of 3 different dwelling type is required, with no less than 10% of dwellings are one type, and no more than 50% of dwellings	Whilst the Property Council supports the need for housing diversity, it does not support numerical requirements placed on developments of greater than 20 dwellings. As further stated within this section of the guide, the apartment mix of a development should be determined on market demands and the needs of the community, and a standard dwelling mix should not be rigidly applied across the state.
are studios or 1-bedroom units. The guidance requests that 20% of 2-, 3- and 4- bedroom apartments as family-friendly apartments to accommodate the needs of families with children. Alternative design responses are provided where criteria is not able to be met.	The same can be said for the new family friendly apartment provisions, which should not be applied broadly, and rather encouraged based on demand. Furthermore, the guidance is considered to be overly prescriptive, and assume that existing 2-, 3- and 4-bedroom apartments do not cater for families, families can afford larger apartments at additional cost, and that families only wish to

	reside in lower levels of a building, and not where better outlook and solar access is provided.
	The Property Council recommends revision of the guidance to acknowledge that where family apartments are to be provided, they are not required to be limited only to the lower levels of a building, since lift access and rooftop open space can equally and equitably cater to family units.
	Recommendation 37: The ADG should be amended to remove criteria for apartment mix, with mix to be determined based on market demand.
	Recommendation 38: The ADG should be amended to remove the criteria for family- friendly apartments and require these apartments are to be provided based on market demand.
2.4 Apartment configuration (previously 4C and 4D)	
Minimum living area requirement introduced.	The Property Council supports and encourages the incorporation of alternative
Alternative design responses are provided where criteria are not able to be met	design response provisions relating to
2.5 Private open space and balconies	
(previously 4E)	
Additional design guidance is provided, including in relation to wintergardens and protected balconies.	The Property Council supports and encourages the incorporation of alternative design response provisions relating to private open space and balconies.
Alternative design responses are provided	
2.6 Sunlight, daylight, shade and thermal comfort (previously 3B, 4A and 4U)	
Alternative design responses are provided where criteria are not able to be met.	The Property Council supports and encourages the incorporation of alternative design response provisions relating to solar
The time interval for sunlight access has been extended by one hour (between 8am and 3pm) for sites where potential sunlight access us limited by site constraints.	access and shading control as it recognises that site specific factors may prevent the guidance being met.
Where the solid material on an apartment facade in an individual aspect is 70% or more, no additional shading is required for glazing on that aspect. Performance glazing is no longer acceptable.	Despite this, the Property Council does not support the requirement for 70% of apartments to achieve the solar access requirements. This provision, as proven by previous developments in which Council members have been involved, significantly impacts the mix and location of apartments whereby additional 1-bedroom apartments are
provided at the northern elevations to achieve compliance with the 70% requirement. As a result of this, the larger 2- and 3-bedroom apartments, are located on southern elevations, and the amenity in these apartments is quite poor, despite the development complying with the solar access requirements. Whilst the alternative design solutions seem like they offer flexibility in meeting the criteria, the experience of members is that consent authorities are inflexible and rigidly apply the criteria, disregarding unit spread across north and south facing apartments.	
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As such, the Property Council consider an overall better development outcome would be if the solar access requirements were not so rigidly applied and that great consideration is taken of site constraints and the design of the development in terms of apartment mix and layout. A more suitable solar access arrangement would be for 50% of apartments to achieve the minimum requirement, and for this to be applied as a guideline rather than a strict control.	
Furthermore, the Property Council believes that it needs to be made abundantly clear that a more even unit-mix across north facing and south facing aspects is desirable and can in some circumstances prevail over strict numerical compliance.	
The Property Council supports the increased timeframe for solar access, however, are of the opinion that the time interval for solar access requirements should be further extended to 4pm to better represent true solar exposure to apartment users. The extension to 4pm would facilitate better design outcomes, whilst also reducing negotiation during DA assessment, with a caveat to allow consent authorities to require compliance with 3pm if there were adverse impacts on neighbouring properties.	
The Property Council considers the draft criteria for shading to present a highly specific and blunt requirement whereby a façade with 30% glazing requires no sunshade, yet one with 31% is subject to the criteria. This definitive metric may result in sub-optimal design outcomes, and more specifically may limit the design potential for apartment buildings in densely urban locations, since it requires building envelopes to be covered	

in external shading devices. It is understood that this is further covered in the appendices but the Council request that clarity provided within this section through rewording of the guidance.
Recommendation 39: Solar access criteria should be reviewed to only require 50% of apartments to meet solar access requirements, and/or removal of criteria and enforcement of a merit-based approach.
Recommendation 40: Solar access criteria should be amended to extend the solar access window from 8am to 4pm.
Recommendation 41: Shading and glazing guidance should be revised to remove metric control and provide further clarity.
The criteria for natural ventilation remains unchanged with respect to the requirement for 60% of naturally cross ventilated apartments within the first 9 storeys. It is suggested this criteria is further clarified by stating that these 9 storeys are above ground level to mitigate consent authorities who may otherwise take the view that cross ventilation criteria should apply to the first nine residential storeys in a mixed use development. A more appropriate response would be applying natural cross ventilation requirements to the first 25m of a building's height above ground level rather than by storeys since the different impacts of wind relate to height, rather than storeys. The Property Council consider that the guidance for natural ventilation and the calculation of equivalent open area (EOA) is onerous and once the impact of flyscreens has been taken into account (the applicability of this is questionable in high rise apartments), this will result in excessive areas of operable windows in the façade to provide the resultant EOA. The alternative of louvered windows, whilst effective in meeting this, is unlikely to provide the required weather tightness and will not therefore satisfy BCA requirements under the Design and Building Practitioners Act (D&BP Act). The D&BP Act specifies that only awning windows are deemed compliant.

	Furthermore, Property Council consider the 225 degree metric is fundamentally flawed. Diagram 1 in Figure A4.2.2 on page A24 shows an inset window at the back of the balcony with a wind exposure angle labelled 'B3'. The B3 angle is approximately 90 degrees however if the window were to be at the balustrade of the balcony the exposure angle would be 180 degrees while the apartment layout would be unchanged (other than the deletion of the balcony). Since cross ventilation requires the window to be open, the location of the window is irrelevant as the window (or barrier) effectively does not exist once it is open. As such the method measurement does not make sense in certain circumstances since airflow through the apartment will be the same regardless of where the open balcony window is located - whether it be out at the edge of the balcony or further back within the apartment where the angle would be even more acute. The Property Council supports and encourages the incorporation of alternative design response provisions relating to natural ventilation and cross-ventilation. Recommendation 42: The criteria for natural ventilation to be revised to provide clarity on the design requirements. Recommendation 43: The guidance on the measurement of natural ventilation should reviewed.
2.8 Acoustic privacy, noise and pollution (previously 4H and 4J)	
General restructure and additional guidance. Alternative design responses are provided where criteria are not able to be met.	The Property Council supports and encourages the incorporation of alternative design response provisions relating to acoustic privacy.
2.9 Visual amenity (previously 3F)	• •
General restructure and additional guidance. Alternative design responses are provided where criteria are not able to be met	The Property Council supports and encourages the incorporation of alternative design response provisions relating to visual amenity
2 10 Storage (previously 4G)	
External storage volumes are increased to	The additional storage area required will have a
require an additional 2m <sup>3</sup> for each dwelling type.	significant impact on the size of basements, where the majority of external storage is located
Alternative design responses are provided where criteria are not able to be met for certain developments.	increase to basement storage would subsequently increase the construction costs of a

	development which would be passed on to purchasers and adversely further impact affordability. It is recommended that the storage area requirements be retained as per the current ADG.
	Recommendation 44: The storage area requirements should be amended to retain the existing requirements within the current ADG.
2.11 Building articulation (previously 4M, 4N and 4R)	
Combines sections relating to building facades,	The Property Council supports this section of
roor design and adaptive reuse.	
Part 3 Environmental considerations	
Part 3 Environmental considerations           3.1 Energy efficiency	
Part 3 Environmental considerations         3.1 Energy efficiency         General restructure and additional guidance.	The Property Council supports this section of the draft ADG.
Part 3 Environmental considerations         3.1 Energy efficiency         General restructure and additional guidance.         3.2 Water	The Property Council supports this section of the draft ADG.
Part 3 Environmental considerations         3.1 Energy efficiency         General restructure and additional guidance.         3.2 Water         Specific rainwater tank sizes, recycled water required.	The Property Council supports this section of the draft ADG. The requirement to retain and reuse rainwater is something already required under BASIX and any adjustment to it should be reflected in that.
Part 3 Environmental considerations         3.1 Energy efficiency         General restructure and additional guidance.         3.2 Water         Specific rainwater tank sizes, recycled water required.         3.3 Waste	The Property Council supports this section of the draft ADG. The requirement to retain and reuse rainwater is something already required under BASIX and any adjustment to it should be reflected in that.
Part 3 Environmental considerations         3.1 Energy efficiency         General restructure and additional guidance.         3.2 Water         Specific rainwater tank sizes, recycled water required.         3.3 Waste         General restructure and additional guidance.	The Property Council supports this section of the draft ADG. The requirement to retain and reuse rainwater is something already required under BASIX and any adjustment to it should be reflected in that. The Property Council supports this section of the draft ADG.
Part 3 Environmental considerations         3.1 Energy efficiency         General restructure and additional guidance.         3.2 Water         Specific rainwater tank sizes, recycled water required.         3.3 Waste         General restructure and additional guidance.	The Property Council supports this section of the draft ADG. The requirement to retain and reuse rainwater is something already required under BASIX and any adjustment to it should be reflected in that. The Property Council supports this section of the draft ADG.

#### Draft Urban Design Guide 2021

#### Draft Urban Design Guide 2021

General Comments on the Draft Urban Design Guide 2021

The draft Urban Design Guide (UDG) is a good document, and we recommend it should be supported subject to changes outlined in this submission. Across NSW there is a need for better understanding of urban design and how development responds to the unique character of a place and the nature of a development proposal. A single guide that attempts to combine these must provide a very strategic and flexible approach and avoid focussing on fine-grained details. Consideration should be given to moving parts of the UDG into the regional plans covering regional NSW and the greater Sydney region with a very specific place-based focus.

The UDG has clearly been prepared as a guide and we support that approach. Our concerns primarily relate to the way the guide may be applied during the assessment of development applications under Section 4.15 of the Environmental Planning and Assessment Act 1979. The Apartment Design Guide (and the Residential Flat Design Code prior to the change in name) has been an issue for almost 20 years. It is critical that the terminology used throughout the UDG provides clarity to ensure it is correctly applied and makes a positive contribution to the design of our cities, neighbourhoods, and places.

Consistency with the guide's objectives should be an assessment consideration and not become a pre-condition of consent that objectives must be met. The language used through the guide should provide for a clear understanding of the objective's purpose and what outcome should be delivered.

Several the objectives have been expressed vaguely. It is our view that the objectives need to be qualities and quantities and have a performance nature so that the proposal can be tested against the objective.

Finally, the application of the guide should be limited to preparation of strategy documents for precincts undergoing change, new DCPs, Concept development applications and large SSD applications where there are opportunities to apply its objectives. Application of the guide to single development applications (such as a single warehouse building on a large 10 hectare site) would be difficult and delay the assessment process for very little benefit.

Issue	Commentary		
About this guide			
Application of the Urban Design Guide	The Property Council acknowledges the draft UDG has been prepared as a guidance tool that will, if used appropriately, contribute to better design outcomes. It should provide designers and other practitioners with a set of common language for assessment of themes and development of concepts.		
	We are concerned that the UDG may be incorrectly applied and used as another code during the assessment of development applications and contribute to significant delays in the assessment process. We believe the document should not be used as an assessment tool but rather be a guide for designers and appoint of reference for Design Review Panels on development applications for certain sites.		
	Recommendation 45: As with the ADG, we consider the terminology used is 'absolute' and facilitate a prescriptive approach to implementing the guide. We recommend that the terms "minimise" and "Maximise" are replaced throughout the document with language that allows greater flexibility.		
	The requirement for stand-alone Design Verification Statements (DVS) is onerous given the intended purpose of the UDG is to serve as a guide. The EP&A Amendment sets out that the DVS must "explain how the design is consistent with the design review panel advice". The use of the word "consistent" has the effect of removing flexibility that consent authorities may have otherwise had regard to design panel advice.		

Urban Design Development The SEPP defines Urban Design Development as the following development types: (a) development on land that is not in an industrial zone that has a site area greater than 1 hectare (10,000m <sup>2</sup> ), (b) development of land in an industrial zone that has a CIV of \$30 million or more, and the site area is greater than 1 hectare (c) development in relation to which an EPI	Recommendation 46: We recommend that consistent is replaced with "consideration" in order to allow for planners to take advice from design review panels into consideration. The Property Council supports the proposed thresholds for application of the UDG as they relate to commercial, retail and residential development – being a site area of 10 hectares or greater. The proposed threshold for industrial development being development with a CIV of \$30 million and a site area over 1 hectare should be increased to apply to developments on land over 10 hectares and a CIV in excess of \$50
requires a DCP or masterplan to be prepared for the land before development consent may be granted for development	million. Recommendation 47: Increase the threshold whereby the UDG applies to non-industrial development on sites with an area of 10 hectares or greater AND industrial development to sites that are 10 hectares or greater with a CIV that is \$50 million or more.
Part 1 A Place-based approach	
1.1 Importance of Place in urban design	The Property Council recognises and supports the role of place in urban design. The place-based approach of the DP SEPP is supported.
1.2 Public space as an urban design outcome	The Property Council is supportive of the formal recognition given to public space through the UDG. It is appropriate for larger developments (Master Planned communities, urban renewal precincts, larger subdivisions) to consider new public spaces within the site and relationship with existing public spaces around the site.
1.3 Components of successful places	The identification of five key components that collectively provide a framework for the UDG's objectives. The Property Council supports the classification of the assessment criteria into these five groupings.
Part 2 Objectives for good urban design	
URBAN STRUCTURE Urban structure is the arrangement of green and b movement, pedestrian permeability and cycling in and streets that connects activity centres and pub	blue networks, public open spaces, paths of frastructure integrated into the pattern of blocks lic transport nodes to form urban neighbourhoods.
Objective 1 – Projects start with nature, culture and public space	
Design Guidance	

1.1 Base design decisions on comprehensive	The Property Council supports the use of a site analysis and reference to the region's
the site's contextual opportunities and	strategic plans to inform high-level design
constraints.	planning of large urban design development is
1.2 Identify, integrate and support the	appropriate. The Property Council supports the intention
topography and landscape of the site in the structure of renewed or new places.	to consider landscape and topography in the site planning of large greenfield and urban renewal sites. The identification of significant areas of biodiversity and opportunities for waterway rehabilitation where large sites are concerned is a logical process early in the design phase.
1.3 Identify and protect significant Aboriginal heritage and environmental values (tangible and	The Property Council supports the identification and protection of known
intangible)	Aboriginal heritage.
1.4 Establish connected public space networks that integrate and support natural features.	The Property Council supports the establishment of public space networks in larger developments in principle. Where possible these should be identified through the strategic planning process for the site and any land required for acquisition or dedication should be identified and quantified up front and taken into consideration as part of the infrastructure contributions process. The need for dedication of public spaces to local authorities should be identified and early
	Recommendation 48: The establishment of public space networks must involve early planning during the strategic planning
	process for a site when the planning controls and development contributions for a site are being prepared by the relevant council.
1.5 Provide an integrated and connected blue and green infrastructure network.	The Property Council supports the provision of an integrated and connected blue and green infrastructure network. In the development process, there are limited opportunities for identification of land required for blue and green corridors. Ideally, these should be factors that are considered by a planning proposal authority when it reviews any planning proposal for the land or updates its comprehensive LEP for a LGA.
	Recommendation 49: Providing green and blue corridors through private land to connect with nearby public land must be coordinated through the strategic planning process (LEP/DCP) for a site.

1.6 Integrate a high quality public open space network into the urban structure to provide a forum for public life.	The Property Council supports the integration of a high-quality open space network into the urban structure and we consider the appropriate process for planning for new or upgrade open space facilities is as part of a Council's LSPS, Recreation & Open Space Strategy and through its Section 7.11 and Section 7.12 Plans. Avoiding the need for requests for land for new open space to be dedicated at the Development Application stage which is costly and contributes to long application processing times.
	Recommendation 50: Planning for new areas of open space and recreation facilities need to be integrated into a council's strategic planning process and any land or works required can be zoned through the LEP and funds costed in a contributions plans.
1.7 Integrate a water cycle management strategy at the neighbourhood scale.	The Property Council supports neighbourhood level water management strategies. The planning for water capture, storage and reuse in the development of large master planned sites is appropriate. Coordination of site landscaping and water management is acceptable.
Objective 2 – District and local routes provide transport choice and accessibility	
2.1 Align with existing and planned transport networks.	The Property Council supports the alignment with existing and planned transport networks as outlined in the design guidance. The identification of existing and planned transport nodes and routes (especially large transport infrastructure projects) as part of the site planning of large precincts that are captured by the <i>urban</i> <i>design development</i> category is appropriate.
2.2 Provide a diversity of transport modes and prioritise active and public transport connections.	The Property Council supports the provision of diverse transport modes for larger developments in accessible locations. Where active transport is an appropriate mode for local and regional journeys provision of infrastructure and facilities to encourage its take up should be required.
	Recommendation 52: Provision of active transport facilities and infrastructure such as local cycle and pedestrian connections should be identified within the planning controls (LEP/DCP) for a site so that any requirements are known early in the development process.

2.3 Locate and integrate development with highly accessible public transport.	The Property Council considers it is appropriate to locate development and provide opportunities for growth near new transport infrastructure. When decisions are made to provide new transport infrastructure such as railways, busways, light rail and cycleways there should also be a trigger for the State Government to step in and review the land use planning controls in the precincts surrounding the new infrastructure as has bene the case along the route of the North West Metro and the CBD Metro stations between North Sydney and Waterloo. We support the intention to locate commercial centres and transport interchanges
	Recommendation 52: There should be an automatic process for State Government to step in and look at planning controls along the route of new linear transport projects such as railways, busways, light rail and the like.
2.4 Ensure movement networks consider the existing conditions and environment.	The Property Council supports this design guidance. The consideration of existing movement routes and corridors in the planning of new neighbourhoods or sites is essential.
2.5 Provide for efficient movement of goods to minimise the impact on places.	The Property Council supports the inclusion of freight movement into the strategic planning of large master planned sites. This is particularly important for land that is located near employment precincts (WSEA, Mamre Road, Port Botany etc), inter-model terminals and highway corridors that provide vital infrastructure for the movement of goods and resources.
	Recommendation 53: The identification of freight networks and adequate transport corridors to allow for movement of goods and resources between cities and regions must be planned at the regional level (Regional/District Plans) and any land required to support provision of vital infrastructure must be identified in LEP/DCP and contributions plans.
Objective 3 – Compact and diverse neighbourhoods connect to good amenity	
3.1 Provide a network of centres that supports a compact urban form.	The Property Council supports the design guidance to provide a network of centres that supports a compact urban form in principle. The UDG has identified an important planning concept that should be required at the regional and precinct level rather than at an individual site level. Many developments on large sites will generally only provide a single centre that will

	support new dwellings. This is more relevant for planning authorities preparing strategic plans for precincts such as the Western Sydney Aerotropolis or an Activation Precinct (eg Wagga Wagga or Parkes) than it is for single developers undertaking urban renewal of a single site. <b>Recommendation 54: The threshold where the</b> requirement for a 'network of centres' applies must be appropriate to ensure it is relevant and effective
3.2 Ensure key land uses are well-sited and integrated for amenity, safety and productivity.	The Property Council supports the intention to manage the location of key land uses to provide for amenity, safety and productivity. Often many large sites are subject to Precinct Master Plans (such as the Greater Macarthur 2040, Crows Nest St Leonards Plan 2036 and French Forest 2041 Place Strategy) and these determine the location of key land uses. When a landowner prepares a DA for a site the location of uses and zones have already determined. Recommendation 55: The UDG must acknowledge that the location of land use is
	often determined when a Strategy Plan is developed for a precinct undergoing change and that the location of key land uses have already been determined.
3.3 Provide mixed and diverse neighbourhoods with high amenity.	The Property Council supports efforts outlined in the UDG to encourage a diversity of housing types and tenures. We also support the locating of increased density in areas of high amenity close to activity centres and transport hubs. It is important that these objectives are not stifled by other planning policies and controls.
3.4 Connect and integrate urban networks with the broader context and overcome barriers.	The Property Council supports the intention to connect and integrate urban networks with broader context and overcome barriers. Recommendation 56: The 'Integration of urban networks with broader context and overcome barriers' should be addressed through the strategic planning process and identified in the LEP/DCP and where land or works are required, a funding source provided in the relevant s7.11 or 7.12 contribution plan.
3.5 Provide a compact urban footprint that minimises impact on adjacent productive sites.	The Property Council acknowledges that urban densities and compact urban footprint are relevant to both urban renewal areas and greenfield locations. This design guidance is significant and must be given a weighting that reflects its importance.

Objective 4 – Place-based risks are	
mitigated, and ecological values are sustained to ensure resilient communities	
4.1 Address, mitigate and respond to risks	The Property Council supports the implementation of a strategic process to consider the risks associated with natural hazards including assessing risk of flood, bushfire, coastal hazards, etc. Ideally land that is not suited to intense development is identified during the strategic planning process and set aside for less intense uses such as open space and conservation.
	Recommendation 57: The design guidance to 'address mitigate and respond to risks' should be primarily considered in the strategic planning process (LEP/DCP) and if not suited to managed habitation an alternative land use should be identified in the LEP zoning table.
4.2 Ensure safety and resilience underpin new communities	The Property Council is concerned that this design guidance could encourage inappropriate types of development in areas of high risk. The EP&A Act provides established processes to manage risks such as flooding, bushfire, coastal hazards and it is important that the UDG is consistent with those processes.
	Recommendation 58: Any design guidance concerning safety and risks must be consistent with other established processes for managing those risks.
4.3 Protect natural ecology as a system	The Property Council supports the protection of natural ecology and it is important the new developments, particularly those located near sensitive habitats avoid adverse impacts on biodiversity. As with other design criteria in this section, it is important that any land rezoned for urban development has been through a detailed assessment of environmental impacts during the rezoning process and the relevant LEP or other zoning instrument provides zones for development and zones for conservation (C1, C2 or RE1).
MOVEMENT AND CONNECTION	Recommendation 59: The strategic planning process must consider impacts on environmental issues such as biodiversity and provide adequate zones, densities and setbacks the reflect the land's capacity to accommodate growth.

Objective 5 vibrant and	<ul> <li>Walkable productive</li> </ul>	neighbou	rhoods are	
Design Criteria				
<u>Walkable neighbourhoods</u> All homes are within 15 to 20 minutes' walk of a collection of local shops, a primary school, public transport, a supermarket or grocery store		es' walk of a school, grocery store	The Property Council agrees that all new homes should be within 15 to 20 minutes' walk of essential services. It is important that when land use zoning for large sites and precincts is being considered that there are the required zonings to facilitate the placement of shops, schools and public transport nodes.	
				Recommendation 60: Planning bodies such as councils and the Department of Planning need to consider the land use zones and densities needed to achieve the criteria for 'walkable neighbourhoods' when Planning Proposals and comprehensive LEP/DCP are being prepared.
Public open space accessibility Access to public open space is provided as follows:		vided as	The Property Council supports the concept that all new residential developments should be located close to open space to meet the	
DEVELOP- MENT TYPE	NET DWELLING DENSITY	PROVIDE ACCESS TO	MINIMUM CATCHMENT AND MODE	needs of future residents. Providing a small park or local park for larger <i>urban design</i> <i>developments</i> can be within the control of a land
All new residential, commercial and mixed-use	All new esidential, commercial ind nixed-use levelop- nent	developer and these are sometimes the responsibility of the developer (funded through local Infrastructure contributions, a Special		
develop- ment		as Works in Kind). In most cases, providing walking access to a district park (1.6km) or a regional park (within 5km) is not within the control		
	All densities	District park	1,600 m (20 min. walk)	of a land developer. It is imperative that this criterion is treated as an inspirational goal and not
		Regional park	5 km (cycle, drive or public transport)	the assessment of a development application. Recommendation 61: The status of the design
Design Guidance				criteria for 'public open space accessibility' needs to be clear, and it should only be regarded and applied as an aspirational goal when assessing a development application.
5.1 Deliver neighbourhoods with a vibrant centre		vibrant centre	The Property Council supports the creation of neighbourhoods with vibrant centres. Many of our members have been involved with the development of liveable and desirable neighbourhoods across Sydney and NSW. As an intended outcome, this design guidance is very important. It is critical that the implementation of this is well managed by local councils and State agencies responsible for delivery of infrastructure.	

	Recommendation 62: The creation of 'neighbourhoods with vibrant centres' requires coordination of functions of local councils and various State agencies (TfNSW, Sydney Water).
5.2 Support the local night-time economy and provide more varied, well-integrated entertainment uses	The Property Council supports the protection of established entertainment facilities and the provision of facilities within open space areas for outdoor cultural and community activities.
Objective 6 – Block patterns and fine grain street network define legible, permeable neighbourhoods	
Design criteria	
<u>Walkable block lengths</u> Maximum block lengths for industrial areas are between 220-250 metres. Maximum block length for residential and mixed- use development is 160m-220 metres.	The Property Council understands the intention of walkable block lengths is to provide a fine-grained street network which is desirable in business and residential areas where walking any cycling are essential modes for movement and a highly permeable street network contributes to amenity and vibrancy.
	However, the UDG proposes mandating a numerical distance for block length in industrial zones which is a concern for our members. In many industrial and logistics precincts larger block lengths are necessary to support large warehouse developments and parking for freight vehicles. <b>We do not support this aspect of the</b> <b>UDG.</b>
	Recommendation 63: The proposed maximum block length for industrial areas should be removed.
Assessment Guidance	
A variety of blocks (sizes, orientations and access arrangements are provided)	The requirement for a variety of blocks (based on their size, orientations and access arrangements) is supported and should be considered having regard to site topography, solar orientation and natural vegetation.
Design Guidance	
6.1 Provide a street network with a legible hierarchy.	The Property Council supports the provision of a street network with a legible hierarchy that can be delivered with a new residential and mixed-use subdivision.
6.2 Create a fine-grain street layout that facilitates ease of access to key destinations.	The Property Council agrees that the creation of a fine-grained street network facilitates good accessibility to destinations for residents. Many of our members have delivered award winning new communities that display

	these attributes and are offer high amenity to the
	occupants.
6.3 Provide a diversity of block patterns to suit a variety of uses	The requirement for a variety of blocks (based on their size, orientations and access arrangements) is supported and should be considered having regard to site topography, solar orientation and natural vegetation. Recommendation 64: The requirement for a variety of block sizes is proposed to be based on size, orientation and access arrangements. 'Type of uses' that a site will accommodation (for example warehouses, logistics centres and intermodal-terminals) should also be considered.
6.4 Design urban environments to be adaptable for future change.	The Property Council in-principle supports new urban areas being designed to be adaptable for future changes. As can be seen from the redevelopment of former industrial areas such as Green Square, Rhodes and Macquarie Park, it can be difficult to achieve a new fine- grained unless redevelopment of the precinct is coordinated and adjoining sites are developed together. It is not clear what is expected from the owner of a site redeveloping their land. In many cases trying to retrofit an existing precinct for future changes is not feasible or practical.
	design requirements for 'urban environments to be adaptable for future change' will be applied. Further clarification is required.
Objective 7 – Walking and cycling is	
prioritised, safe and comfortable for people	
of all abilities	
Design Criteria	
<u>Mid-block connections</u> Mid-block connections and through-site links for pedestrians are provided no more than 130m apart within walking catchments of key destinations such as centres, public open spaces, transport nodes and schools.	The Property Council acknowledges the benefits that are gained from mid-block pedestrian connections, and we support the identification of places where they should be encouraged.
Dedicated footpaths are provided on both sides of street carriageways (excluding shared accessways).	
Design Guidance	
7.1 Provide fine-grained pedestrian permeability	The Property Council supports this outcome particularly in residential and mixed-use precincts and close to transport corridors.

7.2 Provide pedestrian priority and amenity	The Property Council agrees that redeveloped precincts should generally encourage the prioritisation of pedestrian movement above cars but there will be areas where vehicle access is essential and will need to be maintained such as close to transport nodes for buses and taxis, servicing facilities for shops and offices and close to retail centres for the collection of bulky goods.
7.3 Provide low-traffic and slow-traffic streets	The Property Council acknowledges that there are certain streets in residential precincts that should be low-traffic and/or slow-traffic. These streets can be designed and engineered to encourage outdoor lifestyle activity such as dining, markets and passive recreation.
7.4 Integrate safe cycling	The Property Council encourages active transport in locations where it contributes to a healthy lifestyle and reduction in traffic congestion. The planning and design of new residential and mixed-use centres precincts should consider opportunities for safe cycling.
Objective 8 – Parking is minimised, adaptable and integrated	
Assessment Guidance	
<ul> <li>Car parking is minimised,</li> <li>Where feasible, maximum parking rates are encouraged in setting development controls</li> <li>All parking controls and outcomes are aligned with the place vision,</li> <li>Electric vehicles are supported through charging infrastructure</li> </ul>	The Property Council generally supports these requirements being applied to Urban Design Development through the strategic planning process (LEP/DCP controls) and when development applications are reviewed. It is important that there is flexibility in the implementation of these criteria from planning officers and determining authorities. It is not clear how this guidance will be implemented in the assessment of a proposal.
	Recommendation 66: There must be more clarity and certainty provided regarding how the Assessment Guidance in the Urban Design Guide will be implemented.
Design Guidance	
8.1 Integrate parking into urban form	The Property Council supports efforts to better integrate parking into urban form. There are many examples across Sydney and other areas of NSW where our members have provided innovative design and management solutions to manage the visual impacts of the carparking.
8.2 Minimise parking, manage demand and explore strategies to accommodate new technologies	The Property Council supports the consideration of the types of actions identified in this design guidance to better manage on and off-street carparking in centres and close to transport nodes.

<ul><li>8.3 Consolidate access to parking and minimise conflicts.</li><li>8.4 Screen above-ground parking</li></ul>	The Property Council supports consolidated access to parking as a desirable outcome where it is feasible, and landowners can reach agreement to consolidate vehicle entry points. The Property Council supports the provision of above-ground carparking that is hidden from view by active land uses such as
8.5 Make parking more adaptable and sustainable.	The Property Council accepts that there is merit in consideration being given to investigating how above-ground carparking areas can be easily retrofitted for adaption to other land uses.
NATURAL SYSTEM	
Objective 9 – Landscape features and microclimates enhance human health and biodiversity	
Assessment Guidance	
<ul> <li>The proposal demonstrates adequate amenity and human comfort can be achieved.</li> <li>Public open spaces include features to support human comfort and mitigate against negative sensory experiences.</li> </ul>	The Property Council acknowledges the importance that natural areas support human health and amenity. The application of these guidance requirements during an assessment process can be very subjective and difficult to quantify. Our concern is that these could be used by planning authorities as reasons to reject a particular development that it does not support.
Design Guidance	
9.1 Use green infrastructure to improve human health and biodiversity.	The Property Council understands the importance of green infrastructure in new developments and most planning instruments (LEP/DCP) provide for minimum landscaped areas and deep soil planting areas to achieve this outcome. Many of our members have delivered award winning developments that have displayed design excellence that has included innovative and attractive green infrastructure. Our concern is that there must be flexibility offered in the way that this is achieved as this is an issue where one size does not fit all and the implementation of green infrastructure targets should be appropriate. Recommendation 67: Any targets for provision of certain types of green infrastructure must be appropriate for the site and location. Excessive obligations to provide
	landscaping should be avoided.
9.2 Use nature to provide delight.	The Property Council notes the guidance to use nature to provide delight and accepts the benefits delivered in terms of human health

	and amenity from access to nature and wilderness areas.
Objective 10 – Tree canopy supports sustainable, liveable and cool neighbourhoods	
Design Criteria	
<ul> <li><u>Tree canopy targets</u></li> <li><u>Urban tree canopy is enhanced and supported in accordance with the benchmarks provided on pages 50 and 51.</u></li> <li>(a) Public open space tree canopy targets (Minimum 45% canopy cover)</li> <li>(b) Street tree canopy targets (between 40% and 50%)</li> <li>(c) Large development tree canopy targets (between 35 and 45% canopy cover)</li> <li>(d) Development category canopy targets (varies between 25% and 35%)</li> </ul>	The Property Council generally supports the need for better tree canopy coverage in urban areas. History has shown that many areas development in the 1970s and 1980s were provided with very low tree cover and that has contributed to the heat island effect that many areas experience in the summer months. The identification of numerical targets in the UDG will establish a requirement to fully comply with those targets with no consideration of the unique character of a place and its capacity to meet the targets.
	Recommendation 68: The terminology and language used in respect of the tree canopy targets should be reassessed to ensure that a flexible approach is adopted for the achievement of the guide's objectives.
Design Guidance	
10.1 Enhance urban tree canopy	The Property Council supports the enhancement of tree canopy in established areas and for new areas undergoing development. The use of numerical targets (expressed as percentage of site area) is not supported and should be reassessed to deliver a more flexible approach to meeting the guide's objectives.
	Recommendation 70: The use of numerical targets (expressed as percentage of site area) for the enhancement of urban tree canopy is not supported and should be reassessed to deliver a more flexible approach to meeting the guide's objectives.
10.2 Support urban tree canopy with deep soil	The Property Council acknowledges the benefits of deep soil planting to support tree growth. In most low and medium density areas providing deep-soil areas for tree canopy is easily achieved. In high-density areas there must be some recognition that deep-soil planting areas may be smaller and limited to certain parts of a site such as around the periphery. The guide should acknowledge the limits on providing deep-soil planting areas in high density residential areas and business centres.

10.3 Provide an interconnected soil network	Recommendation 71: Acknowledge that high- density residential areas and business centres have limited opportunities to provide deep soil planting and that there must be a flexible approach permitted to achieve the objective. The Property Council notes the benefits of an
	interconnected soil network across a site or larger precinct.
10.4 Place trees to allow for maximum canopy growth	The Property Council supports the planning of site landscaping to deliver maximum tree canopy coverage.
10.5 Ensure a diversity of street types enable tree planting	The Property Council supports consistency in tree canopy specifications for street trees provided in new precincts and large redevelopment sites. These requirements must be coordinated with the relevant local council to ensure that they are consistent with local character requirements.
Objective 11 – Water is retained and water quality improved in urban places	
Assessment Guidance	
<ul> <li>Water is retained in place to support urban tree cover and contribute to reducing the urban heat-island effect</li> <li>Water (particularly run-off and stormwater) is retained on site or managed within the neighbourhood</li> </ul>	The Property Council supports initiatives such as Water Sensitive Urban Design (WSUD) and Our members have delivered many award-winning development projects that exhibit the highest quality water retention and re-use systems
Design Guidance	
11.1 Retain water in the landscape and contribute to urban cooling	The Property Council supports initiatives to retain water in the landscape.
11.2 Reduce water consumption, reduce stormwater run-off and improve water quality.	The Property Council supports initiatives to reduce water consumption and stormwater run-off in urban environments such as those indicted in the UDG.
PUBLIC SPACE	
Objective 12 – Public open space is high- quality, varied and adaptable.	
Design Criteria	
Public open space provision For development over 5ha, deliver a minimum of 15% of the net developable land (NDL) as freely accessible public open space, with the majority of this as dedicated RE1 zoned land (small, local, district and linear parks) Regional open spaces are excluded from this 15% calculation. For all development, deliver open spaces of	The Property Council generally supports the benefits of access to open space and appropriate outdoor areas, this has been particularly evident during the COVID-19 pandemic. However, we do not support a blanket requirement for 15% of a site to be dedicated to the local authority for open space.
varying sizes within walking distance of all residents and workers as follows:	There should be a requirement for open space to be identified during the strategic planning process

	OPEN SPACE TYPE	MEDIAN SIZE	MINIMUM SIZE	WALKING DISTANCE (CATCHMENT)	for a precinct or LGA through its LSPS, recreational needs study and implemented through the LEP process where land is identified		
	Small park	0.45 ha	0.15 ha	200 m	through the LEP process where land is identified		
	Local park	2.5 ha	0.5 ha	400 m	mechanism also needs to be administered		
	District park	10 ha	5 ha	1.600 m	through the s7.11 or s7.12 plans or alternatives		
	Green	15 m mi	n. width	400 m	such as Special Infrastructure Contributions or		
	corridors and linear parks	400 m r length	min.		Voluntary Planning Agreements to deliver local infrastructure.		
	Solar access a	nd shad	ing for pul	olic open space	The UDG should only set an aspirational target that land use planners in local councils can follow as they update their strategic planning documents (LSPS, strategies, LEP and contribution plans). Recommendation 72: The UDG should be amended to reflect the appropriate process for the identification, planning, acquisition and funding of local and district open spaces. The Property Council supports the		
<ul> <li>50% of the public open space, including public squares and plazas has sunlight access for a minimum of 4 hours between 9am and 3pm on 21 June, demonstrated by shadow diagrams.</li> <li>20% of the public open space, and public squares and plazas, is protected from direct sunlight on 21 December, to provide protection against ultraviolet radiation.</li> <li>Public open space is protected from adverse wind conditions, wherever</li> </ul>			olic open s and plaza inimum of and 3pm o by shadow olic open s and plaza alight on 2 tion agains pace is pro conditions	space, including as has sunlight 4 hours on 21 June, v diagrams. space, and as, is protected 1 December, to st ultraviolet tected from , wherever	identification of benchmark sun/shade targets for important public spaces such as open space and squares and plazas in urban centres.		
	Design Guida	nce					
(	12.1 Locate pu connected.	blic opei	n space to	be visible and	The Property Council supports the design guidance intended to enable open space to be more visible and connected.		
12.2 Design public open spaces that are safe and accessible for all people.			n spaces eople.	that are safe	The Property Council supports the design guidance intended to enable open spaces to be safer and more accessible for all people.		
12.3 Provide for landscaping and enhance tree canopy in public open space.			aping and space.	l enhance tree	The Property Council supports the design guidance intended to enable better landscaping and tree canopy to be provided in open space areas.		
12.4 Provide for sports and active and passive recreation.			and activ	e and passive	The Property Council supports the design guidance intended to provide for sporting and active/passive recreation areas. As local councils prepare local recreation needs strategies to meet their LSPS requirements, it is important for councils to identify locations for open space		

	and to develop funding mechanisms that allow for open space infrastructure to be delivered for local communities.
	Recommendation 73: Local councils should be required to contribute towards the delivery of 'sports and active and passive recreation' in conjunction with the development industry.
12.5 Provide flexible, adaptable and resilient public open space.	The Property Council supports the provision of flexible, adaptable and resilient open space areas. We recognise that there is a role for local councils and State government to implement this design guidance in consultation with the development industry when land is being dedicated for open space.
12.6 Develop design measures to protect public open space.	The Property Council agrees that open space should be designed to provide protection for users from natural elements such as overshadowing and wind.
Objective 13 – Streets are safe, active and attractive spaces for people	
Design Criteria	
Sufficient 'dwell space' is provided for activities, pedestrians, landscape and buffers in accordance with the local council requirements or as set out in Appendix 4: Street dwell space – whichever is the greater.	The Property Council generally supports the concept of providing 'dwell space' in public areas.
Design Guidance	
13.1 Provide varied street types that respond to street hierarchy and place qualities.	The Property Council supports the provision of varied street types that are a direct response to land use, the nature of development and the differing characteristics of a place.
13.2 Create comfortable streets that are visually pleasing and designed to encourage social interaction.	The Property Council supports the concept of comfortable streets that provide high amenity. The design guidance is considered to be appropriate for some contexts such as greenfield areas. However, but it does not readily adapt to the retrofit of an established area that is undergoing transformation where there may be site constraints or other factors such and noise sources (road/rail), hazards (overland flooding). These elements may challenge the creation of the type of public places that the UDG is seeking to achieve. <b>Recommendation 74: The UDG must consider the barriers and retrofitting solutions to</b>
	delivering comfortable street and places in

	established areas that are more constrained
	than greenfield areas.
13.3 Provide landscaped tree-lined streets that integrate services	The Property Council generally supports the concept of providing tree-lined streets that are integrated with above and below ground utility services. The difficulty in many existing areas in Sydney and other parts of NSW is the prohibitive cost and barriers to achieving the objective. In many cases where this type of outcome has been attempted, there have been issues identified with altering the location of services, agreement of utility providers, overcoming objections from State agencies (former RMS and Sydney Trains) and coordinating other affected landowners.
	Recommendation 75: The UDG must recognise and consider the impediments that limit the ability for the objective of 'landscaped tree-lined streets that integrate services' to be achieved in areas where there are prohibitive costs associated with coordination of relocation of services, difficulty obtaining agency approvals and issues with obtaining agreement from other landowners.
13.4 Create streets which are safe, walkable and accessible.	The Property Council supports design guidance which aims to create streets which are safe, walkable and accessible.
13.5 Design active and defined streets	The Property Council supports design guidance for active and defined streets and recognises the role of urban design professionals to provide input into the design of precinct masterplans and landscaping strategies to achieve the outcome.
Objective 14 – Public facilities are located in	
key public places, supporting community and place identity	
Assessment Guidance	
<ul> <li>Specialist analysis of existing and future demographic needs has been undertaken and supports the proposal – using relevant best practice benchmarks, council strategies and guidance.</li> </ul>	The Property Council acknowledges that the planning and delivery of public facilities is an important element of the delivery of new communities and that local councils (with State government assistance) are well placed to identify the types and locations of new public facilities.
<ul> <li>Public facilities meet the needs of the existing and proposed community (which may differ by option) and are aligned with relevant strategic plans.</li> </ul>	

- Public facilities are co-located with	
complementary uses and have direct	
and active interfaces with the public	
realm.	
Design Guidance	
14.1 Identify public facilities to meet the needs of the community.	The Property Council appreciates there when new communities are developed there will be additional demand placed on existing public facilities. Often the strategic planning process will be appropriate planning mechanism to identify additional needs for public facilities, where surplus capacity exists, where there is a need to augment the facilities or develop new public facilities. The strategic planning process and identify land that is required for facilities (and ensure that the land is reserved through the LEP) and provide for a funding mechanism to coordinate the efficient delivery of enabling and building works.
	Recommendation 76: The strategic planning process must be the primary mechanism to identify needs for public facilities and plan the delivery and funding of any new infrastructure to provide community services.
14.2 Provide public facilities that are connected and safe.	The Property Council agrees that public facilities must be well-connected (to open space, waterways and natural systems) and safe for users.
14.3 Co-locate public facilities so they activate the public realm.	The Property Council supports the concept of locating public facilities with other complementary uses such as parks, town squares and plazas. Where practical the location of schools and public facilities should be shared.
14.4 Make public facilities visible civic spaces.	The Property Council supports design guidance to make public facilities visible civic spaces.
BUILT FORM	
Objective 15 – The lot layout supports green neighbourhoods and a diversity of built form and uses	
Assessment Guidance	
<ul> <li>A mix of lot types and sizes is provided that supports a range of building types,</li> <li>A mix of lots within each residential block is provided</li> <li>A mix of building types is provided.</li> </ul>	The Property Council supports the concept of diversity of lot types, building types and tenues within urban areas and where practical all developments should aim towards consistency with these guidelines.
Design Guidance	
15.1 Design lots to support desired character and topography	The Property Council supports the concept of designing lots to reflect desired character and

	<b>topography</b> . The factors identified in the UDG are relevant for the design of low-density residential subdivisions and larger urban renewal precincts with higher densities.
15.2 Support mixed use.	The Property Council supports the establishment of mixed-use buildings in precincts where the planning controls allow them. Often the challenges for providing genuine mixed-use developments aren't design related but determined by other factors that include planning controls, feasibility and location.
	Recommendation 77: The UDG must acknowledge the barriers for the delivery of genuine mixed-use developments and how those carriers can be overcome or addressed to allow for true mixed-use centres to be developed.
15.3 Provide a mix and diversity of lots and buildings.	The Property Council supports the concept of providing a mix of lots and dwelling types to allow for more housing diversity. There needs to be some recognition of the role of the market in determining the size and type of lots and houses that are produced in some areas. Prescriptive planning controls can also have a significant impact on the delivery of housing in some locations.
	Recommendation 78: The UDG must acknowledge the role played by market forces in the size and type of lots and dwellings provided in some areas. The role of prescriptive planning controls must also be accepted and the need for greater flexibility to encourage more innovation and diversity.
15.4 Provide setbacks that support green cover and tree canopy.	The Property Council accepts that provision of landscaping and tree canopy are desirable features of neighbourhoods. The scale of side and rear setbacks allowing for provision of deep soil landscaping and tree canopy must be considered in terms of the other planning controls applying to the land so that development feasibility is not severely impacted.
	Recommendation 79: The UDG must acknowledge the importance of development feasibility when the scale of side and rear setbacks is being considered.
Objective 16 – There is a strong sense of place structured around heritage and culture.	

Assessment Guidance	
<ul> <li>Adaptive reuse of heritage buildings is considered.</li> <li>Historical street patterns are considered and reinstated where possible.</li> <li>Solar access is adequately protected.</li> </ul>	The Property Council generally supports the concepts for protecting heritage and culturally significant places. Many of our members have delivered award-winning projects that have involved the restoration and adaptive reuse of significant heritage items and landscapes.
	This guidance needs to be clearer in the fact that it relates items that are listed heritage only. The subjectivity around opinions on what is and should be heritage cause concern and uncertainty around how this may be applied. The heritage registers and process has been set up to ensure that due consideration is given to what is and is not heritage. The language is reasonable in its flexible principal-based application.
Design Guidance	
16.1 Retain and integrate elements of history to enhance the place.	The Property Council supports the retention and adaptive reuse of significant items of local and State heritage. Where there is a requirement to protect heritage items and elements of industrial heritage, there must be clear guidance provided by the local council or State government about the which elements are important and the extent of change that is allowed. Recommendation 80: The UDG must be consistent with the relevant strategic planning process and DA assessment process that applies to significant heritage sites and the consultation role undertaken by heritage bodies (Heritage Council and local councils).
	preserving and adapting heritage fabric for reuse and how that can impact on project feasibility.
16.2 Respond to natural and built heritage values.	The Property Council supports the concept of new development responding to a location's natural and built heritage values. There are many examples of projects undertaken by our members to demonstrate where a good outcome of this has been delivered. This guidance could be improved with some examples of where new development and heritage can co-exist without significant adverse impacts.
	Recommendation 81: The UDG should provide a series of examples of projects that exhibit

	the intended consideration of heritage issues and avoiding negative impacts.
Objective 17 – Scale and massing of built form responds to desired local character.	
Assessment Guidance	
<ul> <li>Local conditions, datums lines and materials have informed the design of the built form.</li> <li>The scale, massing and height of new development responds positively to adjoining buildings, the topography, views, vistas and landmarks to reinforce a coherent local identity.</li> <li>The proposal demonstrates adequate amenity and human comfort is maintained for local public space.</li> </ul>	The Property Council supports consideration of a detailed site analysis when investigating the development potential of a site. Many of our members have delivered award-winning projects that have provided an appropriate response to the desired future character of an area. Areas and precincts undergoing transition and renewal must focus on the future state conditions rather than the density and height of existing buildings to guide new development.
<ul> <li>Materials and detailing respond to the local character of adjacent streetscapes and parks.</li> <li>Setbacks are appropriate to local conditions and deep soil (where required).</li> <li>Built form elements have appropriate orientation, proportion, composition and articulation</li> </ul>	Recommendation 82: Areas undergoing transition under new planning controls (heights and densities) should recognise that future desired character may not be consistent with existing local character.
Design Guidance	
17.1 Ensure built form layout responds to natural and built conditions of the place to maximise amenity.	The Property Council supports the concept of maximising amenity by ensuring built form responds to natural and built conditions of the place. The UDG should provide an opportunity to achieve a truly place-based design outcome by identifying local planning controls that have not been developed in response to local conditions of the place. Prescriptive building setbacks and heights that ignore local topography and orientation should be applied flexibly to achieve superior amenity.
	Recommendation 83: The UDG should enable flexibility in respect to the application of local planning controls (LEP/DCP) that have not been prepared with a place-based approach.
17.2 Manage built form (scale and massing) transitions at edges and within the development to fit the context.	The Property Council acknowledges that in many cases a LEP or a DCP may establish the primary built form controls for a site and those controls may not provide the transition of building heights and scale across a precinct or a site. The UDG provides for an opportunity for better design outcomes to be

	delivered with greater flexibility in the application of planning controls.
	Recommendation 84: The UDG must enable a flexible approach in respect of certain local planning controls that do not provide for development that is consistent with the objectives of the guide or the SEPP.
17.3 Consider human scale.	The Property Council supports the design guidance that prioritises the consideration of human scale.
17.4 Design massing and setbacks appropriate for adjacent public space	The Property Council generally supports the intention to provide for appropriate massing and setbacks for land adjacent to open space. It is important that where any DCP is inconsistent with the UDG that inconsistency is resolved. The application of this section of the UDG has the greatest potential for inflexible application at the development application stage of a major development. The advice provided by design panels should have regard to LEP planning controls that will usually determine building heights and densities.
	Recommendation 85: The UDG should be applied having regard to LEP planning controls and avoiding any unreasonable limitations on development occurring in high and medium density areas.
17.5 Create positive climatic conditions through layout, siting and appropriate built form.	The Property Council generally supports the intention to provide for appropriate climatic conditions through layout, siting and appropriate built form. Our members have delivered many award-winning projects that have considered local climate (solar access, winds) in their design. We would be concerned where the design guidance provided in the UDG is applied in a prescriptive way that removes opportunity for innovative and create design outcomes.
	Recommendation 86: The UDG must clearly identify the requirements in 17.5 are intended as desirable guidelines and not prescriptive targets that must be achieved.
17.6 Ensure site coverage provides a balance of indoor and outdoor space.	The Property Council generally supports the intention to ensure that site coverage provides an appropriate balance of indoor and outdoor space. Any new requirements concerning site coverage must be considered having regard to the relevant planning controls for the site in the LEP and DCP which may already provide objectives and standards for site

	coverage. The UDG has identified 50 to 70% for low density detached housing. It is important that these site coverage requirements are considered in terms of other planning requirements such as
	densities, setbacks and landscape requirements.
	Recommendation 87: The UDG must clearly identify the site coverage standards provided in 17.6 are for guidance purposes only and not to be applied as prescriptive planning controls.
17.7 Use materials that are appropriate for the local area and will reduce urban heat.	The Property Council supports design guidance for the use of material that are appropriate for the local area and will reduce urban heat.
Objective 18 – Built form enlivens the	
ground plane and activates and frames	
public space.	
Assessment Guidance	The Property Council supports the objectives
neighbourhood centres, and public open spaces are fine grain and provide	associated with assessment guidance of built form adjacent to the public realm. Many of our
active frontages.	members have delivered award-wining projects
<ul> <li>Materials make a positive contribution</li> </ul>	that exhibit superior relationship to the adjacent
Design Guidance	
18.1 Design public-private interfaces to support	The Property Council supports public-private
the public realm.	interfaces that support the public realm. It is
	important that any DCP provision applying to a
	site or precinct is consistent with this guideline
	and if not, the UDG must resolve the conflict.
18.2 Vary and articulate built form.	The Property Council supports built form that is varied and articulated. It is important that any DCP provision applying to a site or precinct is consistent with this guideline and if not, the UDG must resolve the conflict.
18.3 Design active frontages.	The Property Council supports the concept of
	designing for active frontages. The UDG
	should be provided in a development. The ability
	of a development to conform to those targets and
	standards will be limited by site specific
	characteristics such as topography, orientation,
	flood affectation and sources of noise such as
	busy roads. The UDG must provide a flexible
	standards for active frontages
	Recommendation 88: The UDG must provide a flexible approach to the requirements for

	active street frontages to take into account any site-specific characteristics.
18.4 Integrate services and infrastructure.	The Property Council supports the need for better integration of services and infrastructure where possible and practical. This will require agreement of multiple utility service providers (council, water supply authority, energy supply authority, telecommunications provider, gas supplier, waste collection contractor, etc).
18.5 Consider the impacts of material choices.	The Property Council acknowledges the importance of having regard to the impacts of material choices. Appropriate guidance around the advantages and disadvantages or certain types of materials would be useful to better help understanding of benefits and costs of particular external materials and finishes.
Objective 19 – Developments use resources efficiently, reduce embodied emissions, and consider onsite energy production.	
Assessment Guidance	
<ul> <li>The proposal is a sustainable development.</li> <li>The development has considered and committed to emissions targets through to implementation and considered onsite renewable energy equivalent to 20 per cent of the annual electrical energy demand.</li> <li>Smart technologies and infrastructure have been integrated into the development</li> </ul>	The Property Council supports the objectives associated with assessment guidance for the developments to use resources efficiently, reduce embodied emissions, and consider onsite energy production. Many of our members have delivered award-winning projects that exhibit superior sustainability performance and have incorporated innovate technology to reduce embodied emissions and take up of alternative energy generation.
19.1 Reduce energy consumption and support renewable energy generation.	The Property Council supports measures that encourage the reduction of energy consumption and renewable energy generation where it is both practical and feasible.
19.2 Deliver net zero emissions neighbourhoods	The Property Council supports measures that encourage the delivery of net zero emissions neighbourhoods where it is both practical and feasible.
19.3 Minimise embodied carbon in materials.	The Property Council supports intent of the measure to minimise embodied carbon in material. However, the planning system is not the efficient place to deliver real outcomes in embodied energy. The selection and quantification of materials at this early stage of the development is inappropriate. Quantities would be approximate at best, and further design development may result in significant changes in

	construction systems – that result in assessment needing to be repeated.
	Recommendation 89: Measures to minimise embodied carbon in building materials should be developed in consultation with the development industry, having regard to the impacts this may have upon the construction and development process.
19.4 Consider integrating smart technologies and solutions	The Property Council supports the development of smart cities technology where it is both practical and feasible.
Part 3 – Implementing good design practice	
3.1 Importance of good urban design process	The Property Council supports good urban design and an effective process to achieve good urban design is essential to achieve a highly desirable urban environment.
3.2 The process in practice	The Property Council supports the need to document the outputs from the urban design process to illustrate the journey from ideas to final design. The level of detail must be appropriate for the scale of the project concerned to avoid unnecessary details being submitted.
3.3 Good urban design process	This section of the guide provides a step-by-step description of the urban design process, including design preparation, design development and design delivery. We welcome the detailed explanation of the urban design process and expect that proposals that can demonstrate they have followed a detailed design process will be considered favourably by design review panels.
3.4 DP SEPP and UDG requirements	Table 3.1 of this section sets out the typical urban design DA requirements for the affected categories of development. The Property Council is concerned that the application requirements set out in Table 3.1 are indicative only and require further consideration before the UDG is finalised. Stakeholders involved with preparing development applications will require further clarification on the submission requirements for a broad range of development types. It is important that the submission requirements are clear and practical to avoid confusion and unnecessary additional documentation.
State Significant Development (SSD)	
	Section 3.4 indicates where a SSD is supported by strategic planning it will require a Master Plan,

	a DCP and a Design Verification Statement. The UDG indicates where SSD is not supported by strategic planning the case for change requires further justification. As SSD is determined by a SEPP and may not be identified in strategic planning framework, the requirement for justification of the change should not be required. <b>Recommendation: 90 The application</b> requirements for State Significant Development should be changed to remove the requirement for further justification of a change to an application when the change is not consistent with strategic planning.
Subdivision Development Applications	Section 3.4 indicates where a Subdivision Development Application is supported by strategic planning it will require a Master Plan and a Design Verification Statement. Where a subdivision proposal is not supported by strategic planning, the case of change will require further justification. As residential subdivision requires a change to a permissible zoning and minimum lot sizes, most subdivisions will have been through a LEP change which in most cases cannot occur unless the proposal is consistent with the relevant strategy document (eg a residential or settlement strategy). This is supported.
	Recommendation 91: The UDG should be amended to provide a DA process flowpath for a residential subdivision and clearly indicate where the UDG should be applied in each step of the DA process.
Other Development Applications (DA)	Section 3.4 indicates where a DA is supported by strategic planning (Regional Plan, District Plan or local strategy) it will require Design Verification Statement and, depending on the complexity of the project, a Master Plan and DCP. The UDG indicates the level of detail and applicability of these will be defined on a case-by-case basis. Subject to further detail being prepared to explain where a Master Plan and DCP is needed, this is supported.
Planning Proposals	The Property Council understands that a
	Ministerial Direction will require that planning proposals on land greater than 1 hectare (10,000m <sup>2</sup> ) consider the Design and Place SEPP

	and the UDG. It is appropriate that the DP SEPP and the UDG are considered early in the redevelopment of a precinct or development site undergoing transformation or renewal. Where there has been consideration of the UDG as part of a planning proposal and a rezoning is supported, it is appropriate that this is recognised as part of the consideration of any subsequent development applications within the precinct or site.
Appendix 1 – Application Requirements	
Appendix I – Application Requirements	The Bronerty Council generally surgests the
	release of a Design Verification Statement template and notes that it is intended to serve as a guide for design professionals to prepare a DVS for their projects. We understand that architects and urban designers have been provided with workshops to address various aspects of the D&P SEPP package including the UDG. It is important that the content of these statements have been considered and discussed with the members of those groups.
Appendix 2 – Public Open Space	The content of Appendix 2 provides a useful tool for planning open space areas in greenfield land release areas. The criteria and methodology for the provision of open space in new neighbourhoods will be of greatest value to land developers and councils in those areas under development. The relevance of this information to other places and development scenarios is limited. We would suggest that this should be a stand-alone document that would form part of the toolbox for these areas rather than sitting within the UDG. <b>Recommendation 92: Public open space</b> guidelines in Appendix 2 should be removed from the UDG and should form a standalone document that sits within a toolbox for greenfield land release areas.
Appendix 3 – Providing urban tree capony in	
large developments	
Method for setting large-scale development tree canopy targets	The use of prescriptive targets for urban tree canopy is not supported. A more flexible approach is preferred where a desired outcome is stated, and several performance-based criteria established to measure if the principles and the objectives has been met.

	Recommendation 93: The prescriptive urban tree canopy targets indicated in Appendix 3 of the UDG should be removed and a performance-based approach should be developed to achieve the principles and objectives of the guide.
Appendix 4 – Street dwell space	The Property Council notes the work undertaken to consider the need for footpath space for a range of activities including outdoor dining, socialising and movement. These are all considered essential features of our cities and centres and in many cases our footpath have not been designed for those uses.
	We encourage the Government Architect to continue working closely with Transport for NSW and local councils to ensure that the guidelines consider a broad range of factors including pedestrian safety, amenity, and the suitability of certain locations where vital infrastructure prevents the use of footpath and roadside spaces for passive uses.
	Recommendation 94: Further consultation on the application of Appendix 4 of the UDG must take place between Transport for NSW and local councils to ensure that the guidelines are fit for purpose and do not lead to any unintended consequences.

#### Draft Local Government Design Review Panel Manual 2021

Draft Local Government Design Review Panel Manual (the 'Manual')	
Issue	Commentary
General	The Property Council welcomes a guide to provide consistency between Design Review Panel experiences. However, it is our view that the Manual places disproportionate weight on the role of design review panels.
	Many of our members have considerable experience dealing with design review panels since they were initially established under SEPP 65 in 2002. The operation of panels needs to focus to provide written feedback that is delivered efficiently, does not conflict with the rights of a proponent to lodge a development application and is carried out in an independent manner.
	We would be grateful for these comments to be taken into consideration as the Manual is refined and finalised.

Part 1 Understanding design review panels	The Property Council supports the guidance provided within Part 1 of the Manual and the clear indication that the recommendations of a design review panel are advisory only.
Part 2 Establishing a design review panel	The Property Council has noted Part 2 of the Manual is intended for councils as they establish a local design review panel.
	2.3 addresses the costs of operating a panel and we welcome the statement made that all parties should be mindful of the cost of conducting design review using a design review panel.
	2.5 provides the set of skills that a member of a design review panel member should have. It is essential that member of panels have extensive professional experience across a range of sectors relevant to the main types of projects found in the LGA.
	2.7 covers the council resources provided to support the design review panel. It is vital that local councils adequately resource and support their design review panels. 2.3 indicated that the fees paid by the proponents do not fully cover the council's costs of running a design review panel. This should not cause significant delays in panel operations.
	Recommendation: We recommend Desing Review Panel members are required to demonstrate extensive professional experience across a range of sectors relevant to the main types of projects found in the relevant LGA.
Part 3 Design review panel operations	The Property Council welcomes the guidance provided in 3.2 and 3.3 to explain the steps that can be expected during the design review panel process. An important issue that the Manual has identified is the consistency of panel members from one review to the next. It is essential that panel members remain consistent for the duration of a review and changes should be avoided wherever possible.
	Consideration should be given to councils providing proponents with a fact sheet explaining how the panel process operates when they submit a development application online using the Planning Portal.
Part 4 Deliverables, application and governance	The Property Council supports the content of part 4 of the Manual – Deliverable, application and governance. In particular, the time for the design advice letter (section 4.1) to be issued is critical and delays in providing this feedback should be avoided where possible. The advice content should follow a consistent layout and style with recommendations clearly stated so that proponents and council planners both understand the advice provided by the panel.

	The requirement for a design review report to be prepared by the proponent is supported. Given the considerable time and effort that is spent preparing Design Review Reports, these must be included in the assessment planner's detailed consideration of projects and indicate where the design advice is supported or not supported.
Part 5 Case studies	The Property Council welcomes the inclusion of six (6) case studies to provide real examples of how design review panels have provided constructive advice that has led to outstanding design outcomes being delivered. Consideration should also be given to expanding the case studies section of the Manual to describe scenarios or situations that should be avoided in the design review panel process (councils and proponents should be de-identified in those cases). It would assist councils to understand what aspects of the design review panel process did not work or failed.

#### Conclusion

The Property Council does not support the DP SEPP package in its current form due to the negative impacts upon:

- Housing affordability through increased uncertainty and more complex approval processes; and
- Ongoing and sustainable housing supply
- Investor confidence
- The NSW economy's recovery post COVID-19

Elements of the DP SEPP package relating to proposed reforms to the BASIX Building Sustainability Index are supported.

#### We recommend.

- The DP SEPP is withdrawn from public exhibition
- The aspects of the DP SEPP relating to the reform of the BASIX Building Sustainability Index are extracted and progressed separately
- The DP SEPP is disseminated and subject to a rigorous and comprehensive review before any aspect of the DP SEPP is progressed further.

#### **Design and Place State Environmental Planning Policy**

**Industry Insights Report** 



The Property Council of Australia (NSW) 14 March 2022



#### **Acknowledgement of Country**

In the spirit of reconciliation, Astrolabe Group Acknowledges the Traditional Owners of Country throughout Australia and their continuing connections to land, waters and community. We show our respect to elders past and present.

We acknowledge that we stand on Country which was and always will be Aboriginal Land.

#### **About Astrolabe Group**

Astrolabe Group are the recognised experts in urban growth and change management with a uniquely empathetic approach to client and community.

This report was prepared for The Property Council of Australia (NSW). In preparing the report, Astrolabe has made every effort to ensure the information included is reliable and accurate. Astrolabe is unable to accept responsibility or liability for the use of this report by third parties.
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## **Report Purpose**

Astrolabe Group has prepared this report for the Property Council of Australia (NSW). The report outlines the implications of the Design and Place State Environmental Planning Policy (DP SEPP) 2021 on the development industry's ability to deliver new housing and quality places, which will have further implications for the government and community.

These insights have been developed using desktop research, literature review and industry interviews.

This report also presents the specific insights from three industry stakeholders as case studies to highlight the implications of the DP SEPP on the planning system and development processes.

## Introduction

## About the draft Design & Place State Environmental Planning Policy

The intention of the DP SEPP is to simplify and consolidate how the planning and development industry addresses the need for sustainable and resilient places and deliver good design for the people of NSW.

This initiative by the Department elevates the considerations of sustainability, quality and vibrancy of places at the forefront of development. A policy response like the DP SEPP enables NSW to take a leading role at a time when around the world, governments, businesses, industry and communities are committed to increasing their efforts to reach net zero emissions.

With the NSW Government's commitment to net zero emissions in *The Net Zero Plan Stage 1: 2020-2030*, guidance is required across all sectors and government portfolios to direct sector-led responses and change to deliver on these commitments.

A planning and development sector response, such as the DP SEPP, needs to be supported by coordinated policy reform and action in other areas of government too, such as across economic development, transport and energy portfolios.

Importantly the NSW Government is also committed to increasing housing supply, particularly in areas where the community is facing challenges around access to housing that is well-located and affordable. The Premier's vision for addressing housing supply is part of delivering this agenda. Policy reform, such as the DP SEPP, needs to be supportive and complimentary of this work. If considered in isolation, the Department risks creating conflicting policies that could diminish housing supply and economic development outcomes in the delivery of places.

As the case studies seek to highlight, the implications of the DP SEPP on the planning system and development processes have not been adequately considered, explained or responded to. These case studies also demonstrate how the DP SEPP will have a significant impact on developers, owners and renters of new homes.

Concerns regarding the proposed implementation timeline and the flow-on effects for the planning system and the market need to be carefully considered. The delivery of an adequate supply of accessible, affordable and safe housing can be at risk and the positive and intended outcomes of the draft DP SEPP won't be realised.

A considered change management approach is required working across government, business, industry, customers and the community to realise the benefits the draft DP SEPP is seeking to provide.

# Background

# Principles of the draft Design & Place State Environmental Planning Policy

### Towards net zero in the development of housing

Better design and development of buildings and our urban places can have a profound impact on the resilience of our communities, the health and wellbeing of individuals and impact on the natural environment.

With the increasing frequency and severity of natural hazards and changes in temperature, we need to direct a renewed focus on the design and management of our urban environments. There needs to be attention given to the design of buildings and open spaces, use of materials, building orientation, the connection between indoor and outdoor spaces, and heating/cooling systems in buildings. The design of buildings and building performance can also encourage awareness and influence individual behaviours towards more sustainable lifestyles such as reducing energy consumption.

Embedding effective and equitable adaptation and mitigation in development planning can reduce vulnerability, conserve, and restore ecosystems, and enable climate-resilient development. This though, is especially challenging in localities with persistent development shortages and limited resources.

Industry is designing, trialling and implementing adaptation responses for urban systems, but their feasibility and effectiveness can be constrained by institutional, financial, and technological access and capacity. Often a coordinated response that is appropriate for the local context is the key to successful implementation.

The draft DP SEPP aims to simplify and consolidate how to address the need for sustainable and resilient places and deliver good design in NSW. Its objective is to put sustainability, resilience, and quality of places at the forefront of development to sustain healthy and thriving communities.

It is a policy that has a vision for improving the lives of the people of NSW, and advocates for the planning industry to find solutions to the climate emergency and to embrace net zero policies and practices. The proposed policy has a significant focus on embodied emissions, the carbon footprint, energy use, water use, and thermal performance standards for BASIX.

Achieving net zero requires integrated, multi-sectoral and inclusive solutions that address physical, natural environment, and social and economic context factors. The commitment for net zero in NSW requires adaptation and change that has long implementation times, requires planning and policy with short and long actions, with an appreciation of the transition process that needs to occur. Critical to the transition in the planning system will be effective partnerships between governments, community, and private sector organisations.

The design and implementation of the draft DP SEPP needs to be cognisant of this transition. It must recognise the critical relationships between the planning system and other sectors and breadth of stakeholders operating in the system that need to be adjusted or redefined to deliver on the change that is needed.

## Concerns for application of the draft DP SEPP for industry

While the industry understands the need for this shift towards sustainable developments, and has been leading development and design practices to innovate in this area, there are key concerns about how the DP SEPP will cause negative externalities within the sector and economy. This will mean the intended outcomes of the policy will not be met.

Astrolabe has found, through industry stakeholder engagement, desktop and literature review, that while the draft DP SEPP is an aspirational vision for the future, it inadequately caters for a successful implementation, and more so will cause issues for other stakeholders and the market. Core to this is the over-reliance on the regulation of the developers as the primary lever to deliver net zero for the built environment sector in NSW. Achieving net zero emission targets requires an integrated multi-sector approach in which policies are implemented complementarily to each other.

Supporting this Report, a feasibility model<sup>1</sup> developed by PPM Economics and Strategy shows the costs of the case studies before and after the draft DP SEPP to demonstrate how leveraging only the planning system will not work to achieve net zero emissions.

## **Current conditions**

The draft DP SEPP is being introduced at a time when key social, environmental, and economic issues are being caused by a series of shocks external to the NSW Planning System.

Adjustment to implementing the draft DP SEPP will not be viable under these current conditions and will only exacerbate housing affordability and supply stresses and social and economic impacts on vulnerable communities.

### Material prices and skill shortages

With border closures caused by the COVID-19 pandemic, there are major interruptions to the supply chains which saw construction material prices increase and supply decrease. As a result, material prices have increased by 20% in 2021<sup>2</sup>.

The temporary impacts of the COVID-19 pandemic on supply chains, material prices, and skill shortages in the building and construction sector are likely to continue to affect NSW over the coming years. In addition, continual recovery from the Black Summer fires in 2019-20 and now the devastating 2022 summer floods will place additional pressure on the availability of labour and materials.

### Housing unaffordability/Housing stress

The COVID-19 pandemic and its associated border closures have affected the settlement patterns, population growth, and consequently, the demand for housing development. The rate of migration and family formation is currently low compared to historic averages. With borders reopening and economic conditions becoming more favourable, demand for housing will accelerate.

<sup>&</sup>lt;sup>1</sup> PPM Economics and Strategy, 2022, *Economic Analysis of the Proposed Design and Place SEPP* 

<sup>&</sup>lt;sup>2</sup> Thibault, M., 2022, <u>Construction material prices soared nearly 20% in 2021: report</u>

By 2061, 11.5 million people will be living in New South Wales, which is about an additional 3.3 million people, up from 8.2 million today – that's 40% more people than today according to NSW Government.<sup>3</sup> Natural population increase alone being the number of new people born minus deaths will account for 1.3 million additional people. In addition to natural increase, migration is the second driver of population change. The net migration of people moving into and out from NSW, including net overseas migration (NOM) and net interstate migration (NIM), is expected to average around 48,000 people each year to 2061. Thus, about 2 million people are projected to arrive through net migration.

It is notable that around 90 percent of people arriving into NSW from overseas are projected to be settled in Greater Sydney, Wollongong, and Newcastle, with only 10 percent of people who move to the State settling in regional areas.<sup>4</sup> This shows the significant impact of population growth on the demographic changes in larger cities across NSW.

More than 1.7 million new households are expected to form from 2022 to 2032<sup>5</sup>, led by growth in lone person households, although ongoing uncertainty about the COVID-19 pandemic means there is a significant risk to the NOM outlook. New household formation is expected to recover strongly from 60,000 in 2022 to 182,000 by 2025. Annual average household growth of around 175,000 is expected over the 10 years to 2032.

Analysis of the trends in the housing market indicates that up to 2060-61, it is projected that NSW will need 1.7 million additional homes for a growing population, equivalent to one new home for every two existing homes. This will require an average of 42,000 additional homes to be added to the housing stock every year<sup>6</sup>.

According to the NHFIC<sup>7</sup>, over the medium term, it is anticipated that the new housing supply remain strong at the national scale, with more than 550,000 net new dwellings expected over the next 3 years. Thus, over the next 3 years, it is expected an average of 184,000 net new dwellings will be constructed per annum, which are historically high levels.

From 2022 to 2023 (cumulatively), new household formation is expected to be broadly in balance with the anticipated supply trends for new housing. However, this is largely driven by lower levels of household formation, owing to COVID-19 – that is people choosing to remain at home in larger households rather than moving out. Once NOM recovers back to pre-pandemic levels by around 2024–25, new household formation is expected to exceed new supply by a cumulative 163,400 dwellings out to 2032. For instance, in Sydney, supply is expected to exceed new household formation by around 12,500 dwellings on average each year from 2022 to 2024, with Sydney's new household formation to exceed supply from 2025 to 2031 by an average of 5,900 dwellings annually. Furthermore, lag times between population growth and new infrastructure delivery are pervasive in new greenfield development areas.

<sup>&</sup>lt;sup>3</sup> NSW Government, 2021, <u>2021-22 NSW Intergenerational Report</u>.

 <sup>&</sup>lt;sup>4</sup> Australian Bureau of Statistics, Australian Census and Migration Integrated Dataset, Cat. no. 3417.0, 2016; Australian Bureau of Statistics, Australian Census and Temporary Entrants Integrated Dataset, Cat. no. 3419.0, 2016.
<sup>5</sup> NHFIC, 2022, State of the Nation's Housing 2021–22.

<sup>&</sup>lt;sup>6</sup> NSW Government, 2021, <u>2021-22 NSW Intergenerational Report</u>.

<sup>&</sup>lt;sup>7</sup> NHFIC, 2022, <u>State of the Nation's Housing 2021–22</u>.

Based on the economic analysis, affordability for renters and first home buyers deteriorated across most cities and regions in 2021 due to relatively strong price growth. Rents are likely to continue to rise in the near term as international border restrictions are relaxed. On the other hand, the housing deposits have become less affordable over recent decades, with the typical time it takes to save for a home deposit increasing from 6.6 years in 1995-96 to 11.5 years in 2019-20.

Accordingly, Sydney is the most unaffordable place in NSW for first home buyers, with the bottom 60% of income earners being able to afford mortgage repayments on less than 10% of the housing stock in the market<sup>8</sup>. This is a further deterioration in affordability since 2020 which leads to the community experiencing housing stress.

The study of Urban Productivity and Affordable Rental Housing Supply in Australian Cities and Regions<sup>9</sup> highlights that the low-income (Q2<sup>10</sup>) households are a critical sector of the workforce, but increasingly struggle to find affordable rental housing near employment centres of Australia's major urban areas. Thus, providing more affordable rental opportunities in locations offering high access to employment would benefit Q2 households currently living in housing stress and support long-term labour market sustainability.

As a result of the above-mentioned trends in the population changes and housing market, it is anticipated that there will be difficulties in accessing new land supply despite demand rapidly outpacing supply in many greenfield markets. Given it can take more than 6 years to get new housing supply to the market in some areas, pulling back on development decisions will exacerbate affordability problems in future years when population growth is expected to return to more normal levels. Thus, if housing authorities actively slow or impede the flow of new housing supply, it can exacerbate upward pressure on rents and prices, something that should be avoided if improved housing affordability is a primary objective.

Given the housing market plays an important role in the State's economic growth, living standards of the community, individuals' quality of life, and well-being, it is significant to solve the housing challenge over the coming decades. Strategies and policies need to be placed to build enough homes for people to live in, to support access to housing that is more affordable, and to ensure that the housing market is flexible enough to respond to people's changing needs and preferences.

The AHURI's study on population growth and mobility in Australia<sup>11</sup> demonstrates that improving tenure security, promoting housing supply responsiveness and diversity, alignment of infrastructure with population development, and considering developers' contributions to support local infrastructure delivery are several policy development options that address the housing affordability challenges.

<sup>&</sup>lt;sup>8</sup> NHFIC, 2022, State of the Nation's Housing 2021–22.

<sup>&</sup>lt;sup>9</sup> AHURI, 2021, <u>Urban Productivity and Affordable Rental Housing Supply In Australian Cities And Regions</u>.

<sup>&</sup>lt;sup>10</sup> This report uses quintiles which split the national gross household income distribution into five equal parts. Quintile 1 refers to household incomes in the bottom 20 per cent of that distribution (described as Q1 or very low-income); Quintile 2 refers to household incomes between 21 and 40 per cent of that distribution (Q2 or low-income) and Quintile 3 refers to household incomes between 41 and 60 per cent of that distribution (Q3 or moderate income).

<sup>&</sup>lt;sup>11</sup> AHURI, 2021, Population Growth and Mobility in Australia: Implications for Housing And Urban Development Policies.

### **Climate change**

Research has found climate change has unequal distributional effects on regional and remote communities<sup>12</sup>, especially those on lower incomes<sup>13</sup>, First Nations people<sup>14</sup>, and people of colour. As such, a policy that seeks to address climate change needs to do so with this context in mind if it can consider how to redistribute the impacts of climate change without further harming vulnerable communities. Thus, a policy that will increase house prices (because of the size of lots or mandating larger units in developments) and decrease housing supply will have the most impact on these communities already experiencing inequity.

### **Customer & Community**

The draft DP SEPP will only be as good as its delivery and take up. The potential costs and changes to lifestyle on customers and community needs to be well understood to enable any successful change.

More so, it is the market that is assumed to be the interface between customers and developers, thus for the market to potentially be replaced with a prescriptive policy such as the draft DP SEPP, it becomes difficult for the developer to meet the customers' needs and respond to place-based context.

<sup>&</sup>lt;sup>12</sup> National Rural Health Alliance Inc., 2014, <u>Rural Health Impacts of Climate Change</u>.

<sup>&</sup>lt;sup>13</sup> Global Citizen, 2020, <u>Why Climate Change and Poverty Are Inextricably Linked</u>

<sup>&</sup>lt;sup>14</sup> Lansbury Hall N, Crosby L, 2022, <u>Climate Change Impacts on Health in Remote Indigenous Communities in Australia</u>

# **Case Study 1 – Frasers Property**

## **About Frasers Property**

Frasers Property Australia develop residential land, housing, and apartments and have delivered over 140,000 homes. They develop build-to-rent, commercial, retail and mixed-use properties. Their activities also encompass the ownership and management of investment property, incorporating property and asset management services.

## Sentiments regarding the draft DP SEPP

Frasers Property stated that they understood the purpose of this draft DP SEPP was to create a planning system that was flexible and would provide certainty to support intended outcomes. However, the terminology used throughout the DP SEPP has transformed it into a rigid and uncompromising policy. They also raised concerns relating to how it will impact other facets of the planning system, the market, and the public.

Frasers have also outlined their concern in their own submission to the Department.

Frasers' core concern of the draft DP SEPP is its practicality and complexity of implementation. The draft DP SEPP does not accommodate context and would "drive an increase in rigid development assessment" due to the terminology used throughout the policy. Frasers demonstrated this by engaging Government Architects to walk through their Chippendale development and review the building using the principles of the draft DP SEPP. They found that despite the provision of amenity and public value (e.g. access to Central Railway Station, a public park), the Chippendale development would still not have met the guidelines of the proposed DP SEPP.

Frasers' Chippendale development case study demonstrates that the draft DP SEPP is too rigid and cannot deliver on quality place outcomes by seeking to direct and solve problems from a single point-of-view. The policy neutralises opportunities that developers have been taking to deliver a holistic systems approach that negotiates different agency priorities and policies for a place that is in balance with other demands placed on developers such as development and financial feasibility. A multi-sector approach is critical.

## 'Centrale' - 1-17 Delhi Road, North Ryde

The 'Centrale' development in North Ryde highlights key issues concerning the inflexibility of the draft DP SEPP and how it fails to accommodate the context of the site. Specific to Fraser's experience of the rigidity of the policy was the prescription of amenity, which removes the contextual possibilities and nuances of each site and discretion on what design response would be appropriate to that context to create spaces and enhance public value.

Frasers had an opportunity to design the development to leverage the government's multi-billion dollar metro investment, creating a seamless commuter experience and better place outcomes, such as better connections and ease of access between the development and North Ryde railway station.

In the case of Centrale, Frasers could deliver high density living and a place design that allocated a quarter of the site for public amenity. However, the draft DP SEPP does not provide flexibility and would limit Frasers' ability to deliver such a design while accommodating all other requirements and delivering a feasible development. Application of the draft DP SEPP would undermine the Government's benefits realisation relating to its multi-billion dollar metro investment.

Frasers considered that because the draft DP SEPP would make it unviable for them to continue with numerous developments, the immediate flow on effect would be driving mid-tier firms out of the market which would, in turn, impact the diversity of dwelling types and prices available on the market.

## **Next steps**

Frasers support the vision of this draft DP SEPP and appreciate its intent, however, further engagement of multiple stakeholders and implementation planning is required to ensure it is viable.

Frasers stated the draft DP SEPP requires a more informed implementation framework that outlines a staged approach and staged deliverability of objectives. This framework should map responsibilities for each stakeholder and potential impacts to each stakeholder ensuring that housing supply is maintained.

## Case Study 2 – Mirvac

## **About Mirvac**

Mirvac is an Australian property group with a clearly defined purpose to reimagine urban life. By creating beautiful homes, inspiring workplace precincts and thriving shopping centres, Mirvac aims to make a positive contribution to our cities and communities.

Mirvac was founded in 1972, growing from a small joint venture to become a thriving ASX-listed property group that leads the way in innovation, sustainability and placemaking.

## Sentiments regarding the draft DP SEPP

Mirvac do not support the draft DP SEPP in its current form or to the implementation of the policy, as currently proposed. They see it will have a negative impact on outcomes with an increase in timeframes for planning proposals and applications, increase costs to developers and customers, and increase uncertainty given the complexity of the policy and the subjective terminology used throughout. These impacts were seen as having greater social and economic impacts on the increased provision of housing stock and affordable housing.

In addition, Mirvac is aware of activity within other government agencies considering issues such as street widths, verge planting which will have an impact on the industry's approach to designing and delivering new development. In turn, the industry is looking for clarity and consistency across government in relation to all aspects of policy change that affects development.

The draft DP SEPP appears to not appreciate the role of the developer in meeting customer needs and the significance of these needs in determining the product design and mix. Despite the expected increases in lot size to accommodate tree canopy, the missing narrative is that customers often compromise on lot size for the type of house they want. The draft DP SEPP does not acknowledge the substitution new home buyers make and the adjustments to the design of housing products developers make to provide people with viable options that match their ability to pay.

Mirvac are concerned that the draft DP SEPP will not solve the issues it has set out to address and that the original vision behind the call for new policy cannot solely rely on changes to the planning system – rather a greater policy and cultural shift is needed.

## **Alex Avenue Schofields**

Mirvac's Alex Avenue development in Schofields has delivered 313 lots. Mirvac explained this development as a case study on the application of the draft DP SEPP and modelled redesign options that would meet the requirements of the policy. Mirvac found the requirements very difficult to meet.

Using the objectives and principles of the draft DP SEPP – particularly the design consideration to ensure tree canopy cover – the rear setback of general sized greenfield lots would be reduced, from an average of five metres to ten metres. This extended setback would allow for a mature eight metre diameter tree to be planted which would provide 50 square metres of canopy cover. As a result, the redesign of this development would result in a reduction in lots and estimated loss of 20%

of housing yield. In addition, despite this significant redesign, the design still would not meet all policy requirements.

This increased lot size would impact the customer and the community. In terms of the customer the added cost of this increase, using conservative estimates, would equate to \$137,000 per lot. In terms of the community, this increase would mean 48 lots would be lost, this is in addition to a loss of 21 lots due to the requirement that would see an increased size of the public park. Thus, a development that has delivered 313 lots would be reduced to 244 lots.

For Mirvac this equates to a significant loss of revenue as they lose approximately 20% of housing yield for this site. For the NSW Government the means to recover the lost yield and to continue delivering for the State's housing needs and new home buyers will be to create opportunities to deliver higher housing development in other suburbs or an expansion of urban release areas. The implications of the draft DP SEPP on the ability to deliver new housing in one area needs to be considered alongside the ensuing demand on land in other areas.

Despite the increase to lot sizes, and major decrease to provision of stock, these measures would still not meet the 40% tree canopy draft DP SEPP requirement rather it would only achieve 28%.

There are various concerns that emerge from this review of the draft DP SEPP for Mirvac. Most notably, is the conflicting requirements and policies across government that convey there is no consolidated objective of how these principles and objectives work together or how they will ensure an efficient and progressive move towards net zero. The immediate increased cost to the customer and the decrease in housing supply is in direct conflict with the NSW government's move to increase housing affordability and supply.

## **Next steps**

Mirvac has several concerns regarding the impact of the DP SEPP including the requirement for larger lots and the cost implications of these lots in greenfield release areas for the customer. Larger lots both reduce the supply of housing (fewer lots per hectare) and increase prices (compared to smaller parcels of land). Requirements for parklands, landscaping and deep soil planting do not extend to other forms of development such as code assessable development potentially creating confusion in the market and inconsistent delivery to the community.

It is unclear how the reduction of yield, in the order of 20-35% due to the DP SEPP will be accommodated to deliver housing for a growing Sydney. Recovering lost development potential will require an expansion of the urban footprint and/or increases in height for other development sites, it is unclear how this has been considered in the cost benefit analysis for the DP SEPP and how this will be supported by the planning system.

A Regulatory Impact Statement should be developed for the DP SEPP and have regard to the impact on supply, typology, costs, access to housing and the likely additional development potential required across NSW to recover lost housing development opportunities.

# Case Study 3 – TOGA Group

## **About TOGA Group**

TOGA has contributed to the growth and changing shape of the Australian, New Zealand and European cityscapes for nearly 60 years. TOGA create homes, hotels, commercial and retail spaces, enriching communities and providing unique experiences to create a lasting legacy. Their philosophy is a commitment to creating and shaping meaningful spaces for life.

## Sentiments regarding the draft DP SEPP

In its current form, TOGA does not support the draft DP SEPP as it will encourage Councils in greater Sydney to use this as a tool to enforce compliance, rather than a set of guidelines to negotiate with developers.

The proposed DP SEPP will sterilise sites from redevelopment and increase the time and costs required to achieve approvals for development. It further introduces points of debate between councils and developers and relies on capable and experienced officers and developers to subjectively review, negotiate, and agree the best development outcome based on a set of principles, and the current planning system is not set up for such a process across the Greater Sydney area. This could lead to the unintended consequence of the proposed ADG to be used as a strict checklist. Ultimately, it will significantly impact housing supply and affordability across greater Sydney.

## 137 Anzac Parade, Kensington

TOGA has calculated that all projects will lose Gross Floor Area, including their Anzac Parade development in Kensington, due to the additional requirements specified in the draft DP SEPP.

Initially, TOGA anticipated it would lose approximately 9% of yield for this development, but introducing further controls such as cross ventilation would reduce their yield by 33%. If TOGA loses yield because of the change in apartment mix, there are two significant flow-on effects:

- 1. Construction costs rise
- 2. Unfeasible development margin to satisfy financiers (i.e., banks) to re-design projects to meet new controls. This can result in existing sites not being developed.

The draft DP SEPP was meant to be an integrated policy that understood the nuance and context of development sites; however, approaching every site as a stock standard exacerbates site-specific issues and impacts on the ability to negotiate design outcomes for the site with infrastructure providers and other stakeholders.

This lack of consideration of site specific context is considered a risk to developers. They are concerned that councils may use these controls in a highly prescriptive manner given their subjective position, so instead of using the draft DP SEPP as a set of guidelines to work towards the intended outcomes of the draft for sustainable, quality and vibrant places, it will rigidly define

development standards. TOGA also viewed this as a risk to increased approval time, which is currently averaged at 12 months.

TOGA can also see an impact of the draft DP SEPP on the market and new home buyers. Developers need to be able to respond to the market and provide dwellings that customers want to buy. The draft DP SEPP is too prescriptive and doesn't allow for a diversity of stock. As such, designing and developing new housing stock as per policy prescriptions and not to market preferences will impact housing products brought to market, which in turn will reduce the supply of options at a lower price.

Finally, TOGA observed there are many changes happening in the planning system currently and time is needed to map and understand how these changes affect planning and development. Specifically, the NSW Building Commissioner on 8 June 2021 introduced the *Building Legislation Amendment Act 2021 (Amending Act)* which made several key changes to the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act* and *the Design Building Practitioners Act*. This comes alongside changes to infrastructure contributions. TOGA sees value in not just industry involvement in achieving the intended outcomes stated in the draft DP SEPP but a need for whole-of-government approach in light of various policy reform agendas being considered.

## **Next steps**

The implementation of the draft DP SEPP, or the full realisation of benefits, has not been considered or understood adequately enough to allow developers to support the implementation of the draft DP SEPP as it currently stands. This is exacerbated by external factors, such as COVID-19 impacting borders, supply chains, material costs, and access to labour.

The draft DP SEPP requires more work upfront for the developer, it relies on people implementing the policy, and for councils and the Department to be experienced and capable of having an informed discussion about how criteria and context come together to develop the right product. TOGA is concerned about the following implementation issues:

- Councils do not have adequate resources with the required skills and experiences, they need training and education on how to interpret and implement the draft DP SEPP
- There is a risk that over the next 5 years, while waiting for education and training to catch-up, development approvals will be made using the rigid checklist in the draft DP SEPP.

There is currently no holistic approach taken for policy and reform in the planning system and the government needs to implement a toolkit to transition to net zero without solely relying on the *Environment Planning and Assessment Act 1979* to direct this transition for the state, led solely by the development industry.

There needs to be a clear roadmap that integrates the objectives the Premier has outlined (housing affordability and supply) and how the draft DP SEPP can help to achieve these.

# Key findings from industry

Through our interviews, we found industry support for the intent of the DP SEPP and that the focus of concern was in relation to the implementation of the policy. Further work is required to ensure that the DP SEPP is practical, feasible and delivers on its intended outcomes.

The following summarises the key findings expressed through research and industry engagement:

# The draft DP SEPP reduces yield and will increase costs which will limit short-term delivery undermining benefit realisation

The loss in yield for developers would halt current and future developments from progressing. In turn, a proportion of the benefits presented by the draft DP SEPP would not be realised meaning there would be upkeep in sub-optimal and ageing stock. On top of this, a reduction in new development projects would reduce the supply of housing undermining other state objectives. As such, better implementation planning is essential.

The average loss in housing yield per site for each developer, had their development been revised alongside the draft DP SEPP, is in the order 20-35%. Frasers found the lack of context the draft DP SEPP accounted for meant their award winning designs would not have met requirements. Mirvac saw a loss of 20% yield and increase of \$137,000 for individual customers, and TOGA calculated a 33% loss in yield.

Given these losses, the draft DP SEPP could push mid-tier firms out of the market. This is a key concern as a diversity of firms is needed to provide a diversity of needs. More so, it creates issues around market competitiveness

# A need to release a detailed Cost Benefit Analysis as part of a Regulatory Impact Statement

The cost-benefit analysis is not sufficiently detailed enough to explain where benefits accrue and where the burdens lie. Without this detailed analysis there is no public discussion about the reasonableness of the relationship between benefit and burden and how the use of tools outside of the draft DP SEPP can be utilised to address any potential imbalance.

A regulatory impact statement, in tandem with a change management approach, would allow for a clearer plan on how to manage the impacts on stakeholders while delivering the policy's objectives. Within this statement, it would allow a clearer and more certain understanding of how value will be provided to stakeholders and how it is funded.

# Need for a "wayfinding" and change management to interpret and implement the draft DP SEPP

The package would have benefitted from more clarity and direction for stakeholders on how to navigate the package as a whole – i.e. the draft DP SEPP, updates to the Apartment Design Guide, Urban Design Guide and BASIX.

The draft DP SEPP has been introduced in the context of other changes and reforms to the planning industry, specifically the introduction of the Residential Apartment Buildings (Compliance

and Enforcement Powers) Act 2020 (NSW) and the Design and Building Practitioners Act 2020 (NSW) This unstaggered introduction and implementation demonstrates there is a lack of alignment with other planning and infrastructure decisions which has flow-on effects that will increase the time and costs it will take to deliver projects.

This situation calls for a change management approach, in which implementation becomes an integrated, multi-instrument, multi-sectoral approach, that prioritises execution and delivery.

# The draft DP SEPP was meant to allow flexibility, instead, it risks being even more restrictive

The use of rigid and subjective terminology in the drafted clauses have concerned developers about how the draft DP SEPP will be interpreted. The concern is this terminology does not build certainty but instead creates uncertainty and risk. More so, it is unclear how objectives will be interpreted by individual Councils and whether there are other avenues to challenge these decisions without the need for using the Land and Environment Court.

There needs to be a regulatory framework that allows for a clear and transparent interpretation of the draft DP SEPP, so it can become a practical and stable, instrument for the industry to use.

Without this clarity, Fraser's argued, it becomes a restrictive policy that does not consider context and diminish the space for innovation and creativity. TOGA shared this sentiment that the rigidity of the policy means it will become a prescriptive checklist instead of a dynamic set of guidelines that can actively respond to the context of development.

# The draft DP SEPP cannot be the only tool relied on for encouraging and creating this shift to net zero

Transitioning the built environment to a net-zero economy requires policies from all departments and agencies to align under the unified vision of net zero. This significant transition cannot be the burden on the planning system and led by the development industry alone. Transition requires a cultural shift that shapes social and economic policy and appreciates both the economic and distributional impacts of reforms.

## Issues and concerns requiring further investigation

In the process of developing this paper, Astrolabe Group identified the following consistent issues through our own research and engagement for the industry. We see a key component to delivering the draft DP SEPP is to better communicate how these issues have been considered and how they will be addressed across the immediate and through to longer-term.

# What incentives will be offered to help developers overcome a loss of yield and increase in costs relating to the built environment's transition to net-zero developments?

It is well known that developers use a residual land valuation model to calculate how much they can pay for land and still develop with a reasonable rate of return. It is less clear how long it takes for landowner expectations to change when developers lose yield and incur higher development costs. More work is required to demonstrate that development sites will continue to be made available to the market in locations and price points to meet housing needs.

Research has found that in order to improve the adoption of zero-carbon houses, state governments should consider providing financial incentives to development stakeholders and customers.<sup>15</sup>

### How will the draft DP SEPP impact remote and regional markets?

The reduction in yield and increase in costs creates a typology of products that may find support in submarkets with pre-existing high amenity value, hosting consumers with higher income levels. There needs to be further work done to show how this draft DP SEPP will and can be implemented outside of Metropolitan Sydney and consider site-specific context of Regional NSW.

# What education and training will be provided to help implement the draft DP SEPP?

There needs to be a strong regulatory framework and provision of resources that reduces the risk of divergent interpretations of clauses in the draft DP SEPP. These resources must go beyond capability building to also consider capacity and timely decision making. The government needs to ensure agencies and Councils have the capacity and resources to translate this instrument into a set of practical tools that facilitate development.

<sup>&</sup>lt;sup>15</sup> Li et al., 2022, Towards zero carbon housing in Victoria, Australia: A policy and incentive framework

# **Suggested Next Steps**

This report shows that for the draft DP SEPP to be effective and practical, further considerations, including working with industry and taking a broader systems view, are required to successfully deliver the intent of this policy. The following points summarise key industry sentiments and suggestions on how the proposed policy can either be progressed or further refined:

#### Industry supports the proposed changes to the BASIX sustainability tool.

• The provisions around these should be extracted from the DP SEPP and progressed separately.

### The rest of the DP SEPP in its current form is not supported by industry.

• Time should be set aside to undertake a comprehensive review and develop a change management plan to be rolled out alongside it.

## Insights from significant policy change

There are examples of other visionary and complex policies where the process of implementation could be useful for consideration in working towards policy changes that create sustainable and resilient places and deliver good design in NSW.

A transformational policy that also strived for significant change in a complex operating environment is the introduction of a superannuation guarantee. Here we see an acknowledgement of the complexity with a staged approach to the implementation of policy setting. Complexity requires time, deliberation and a clear, detailed process of implementation with stakeholders.

Governments understood that superannuation required a whole system approach that engaged both industry and customer. Customers are a crucial part of this design implementation as they are the users of it. This staggered implementation demonstrates further how it is a policy that has continuously evolved<sup>16</sup> in order to align with the needs of the customer and industry, making it a responsive and actively managed instrument.

Using this experience, a possible next step to ensuring the draft DP SEPP achieves the vision it has for people and place in NSW, is an integrated multi-sectoral approach that harnesses the whole of government for change, as illustrated in Figure 1. The unintended consequence of first enacting the draft DP SEPP will mean it will not have the impact it is striving for. Rather it needs to be one part of a whole systems approach to creating a policy and cultural shift that will see net zero policies integrated across government activity.

To further consider how our research and engagement with industry could be transformed into a staged implementation, see Figure 2.



Figure 1 Whole systems approach (this page) Figure 2 Implementation Plan (next page)

<sup>&</sup>lt;sup>16</sup> Nielson L. & Harris, B., 2010, Chronology of superannuation and retirement income in Australia

## **IMPLEMENTATION ROADMAP**

2022	NSW GO	VERNMENT	COUNCILS	LANDOWNERS	DEVELOPERS	DESIGNERS & PLANNING PROFESSIONALS	CUSTOMER & COMMUNITY
	Undertake a regulatory impact statement to guide implementation Work with Councils	Consider using other government instruments and additional tools/incentives	Clarify implementation resourcing implications	Whole of system r developr Analysis on where re low to purc	modelling on changes in nent feasibility esidual land values are too hase and develop	Develop training/short courses	Engage customer segments and explain the implications of the approach on quality, time and cost
	to understand resourcing requirements	Develop a benefits realisation plan	to cost, capability and capacity	Education campaign c impact on a develop	on the new schemes and the pers ability to pay for land		Confirm the role of customer preference
	Consider a staged approach to implementation	Consider distributional implications	on time taken to assess given finite		Co-design of regulatior implications on housing s deliverabili	n and testing of supply and policy ity	regulation Acknowledge spatial
,	Develop a change management plan Work with industry to	Review the package to ensure it is deliverable	Confirm position on flexibility vs certainty				and distributional impacts of the policy on the community
	Release detail on the showing both where and the bury Show that the poli elements into acco maximise ben	e cost benefit analysis benefits are accrued den of costs. icy has taken these ount in its design to efits realisation					Undertake and publish modelling on the implications on the household including rent, and utility bills
			Сог	nfirm benefit measurement	framework		
2023 2028		Beginning of staged co	ommencement - should inclu	de grandfathering of clause	es to enable development that has	s commenced to proceed	
				5 yearly review			

### **Claire Krelle**

From:	noreply@feedback.planningportal.nsw.gov.au
Sent:	Monday, 28 February 2022 6:21 PM
То:	PDPS DRDE Design and Place SEPP Mailbox
Cc:	DPE PS ePlanning Exhibitions Mailbox
Subject:	Webform submission from: The Design and Place SEPP 2021
Attachments:	280222udia-nswsubmissiondesign-and-place-sepp-(final.docx

Submitted on Mon, 28/02/2022 - 18:19

Submitted by: Anonymous

Submitted values are:

**Submission Type** I am submitting on behalf of my organisation

## Name

First name Michael

Last name Murrell

I would like my submission to remain confidential No

## Info

Email mmurrell@udiansw.com.au

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Submission file 280222---udia-nsw---submission---design-and-place-sepp-(final.docx

#### Submission

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CONTACT For further information about any matter raised in the submission please contact: Michael Murrell, Planning Policy Manager mmurrell@udiansw.com.au 0413 221 195

#### ABOUT THE UDIA

Established in 1963, the Urban Development Institute of Australia NSW (UDIA) is the peak industry body representing the leading participants in urban development in NSW. Our more than 450 member companies span all facets of the industry including developers, consultants, local government and state agencies. We have a strong commitment to good growth in the regions. A quarter of our members are based in regional NSW, and we have active Chapters in the Hunter, Central Coast, and Illawarra Shoalhaven. Our advocacy is based on creating liveable, affordable and connected smart cities.

#### EXECUTIVE SUMMARY

The Design and Place State Environmental Planning Policy (DP SEPP) is the most comprehensive reform of the NSW planning system since the unsuccessful 2013 White Paper: A new planning system for NSW. It attempts to introduce a principles-based framework to drive design and environmental outcomes across development of all scales and typologies in NSW. It will impact on strategic planning (rezoning) and development applications alike across metropolitan, infill and greenfield locations, and regional and rural locations. Attempting to provide blanket controls for the entire state of New South Wales (NSW).

UDIA has worked constructively with Government, the NSW Government Architect (GANSW) and the NSW Department of Planning and Environment (DPE) with a taskforce of members to address the major issues with the DP SEPP since the exhibition of the Explanation of Intended Effect (EIE) in February/March 2021. We commend the level of consultation that has occurred with industry and stakeholders since that period. However, the package as exhibited fails to address our major concern, being the impact on development feasibility, and will be disastrous for housing supply and delivery in NSW, adding time, cost and complexity to an already broken system. As such the DP SEPP is not supported by UDIA NSW. We are calling on the Government to cancel the policy due to its unacceptable impacts on housing supply and affordability.

UDIA modelling has shown that to meet the increased BASIX standards (thermal requirements) alone will add an additional \$30,000 or more to the cost of building a new home. The imposition of new standards under the Apartment Design Guide (UDG), the introduction of the new Urban Design Guide (UDG) and requirement to prepare a site-specific Development Control Plan (DCP), the requirement for more detailed technical information upfront for Design Review Panels (DRP) and demonstrating compliance with the SEPP will increase costs and complexity of development proposals and add up to 6 months to the process. This will contribute further to the NSW planning systems reputation as the worst in the country.

UDIA remains a strong advocate for improved design outcomes, advancing Aboriginal cultural heritage and the move towards Net Zero and increased environmental standards. We will continue to work with Government to proceed with aspects of the reforms which have merit, but on the whole the DP SEPP and supporting package fail to have adequate regard to development feasibility and the impact on housing supply and delivery.

#### UDIA NSW is calling on Government to:

• Immediately cancel the Design and Place SEPP and supporting package due to the disastrous impact it will have on housing supply and delivery in NSW.

• Work with industry to develop a pathway to deliver improved design outcomes, increased Aboriginal cultural heritage and increased environmental standards aligned with the plan for NetZero that has regard to development feasibility and the impact on housing supply and delivery.

Our submission provides a detailed analysis of the impact of the DP SEPP and supporting package, drawn from the experiences of our 450 members in many sectors including, development, consultancy, local government, and state agencies. We have constructively engaged with Government during the development of the DP SEPP. However, the package as exhibited fails to acknowledge our main point of concern, that being the impact it will have on new housing supply, delivery and household affordability. We have critically assessed each component of the DP SEPP and supporting package and have provided recommendations to proceed where possible, noting the cancellation of the policy is the best course of action for NSW.

If the policy is not immediately cancelled, this submission recommends amendments that must be implemented to ensure the worst impacts on housing supply and delivery are avoided. The policy must be delayed until such time as these recommendations are adopted and a pathway forward mapped out in consultation with industry.

#### Recommendations: Draft Design and Place SEPP:

1. Delay the introduction of the DP SEPP until such time as revised principles can be developed which are practical and achievable under the NSW system.

2. The DP SEPP be amended to reinstate 'consideration' with the design principles as the appropriate test for consent authorities when determining an application.

3. Implement an extensive and ongoing education program for local government assessing officers to provide them with the skills and confidence to apply the ADG in a flexible outcome-focused manner.

4. The DP SEPP be updated to reference the new Employment Zones currently being transitioned to by local government.

5. The savings and transitional arrangements be redrafted to ensure the DP SEPP does not apply to a development application that is part of a concept development consent, or to a modification if the original consent was issued prior to the commencement of the DP SEPP.

6. Establish an industry working group to define 'urban design development' having regard to the significant requirements of the DP SEPP and UDG and scale, type and geographical location of development.. Environmental Planning and Assessment Amendment (Design and Place) Regulation 2021:

7. The definition of urban designer be expanded to include a person who has a qualification in urban design with 10 years' experience in precinct or master planning and a 'registered surveyor' with 5 years' experience in precinct or master planning.8. The requirement for who can prepare a design verification statement involving public and common space, irrespective of size, be expanded to include urban designers, architects and town planners.

9. Government should work with industry to establish a pathway forward for increased environmental standards, including the uptake of electric vehicles, which has regard to development feasibility and the impact on housing supply and delivery.

Section 91 Direction:

10. DPE coordinate its internal teams to avoid the potential undermining of the reforms of one team by the efforts of the DP SEPP team, improving the planning proposal/rezoning process without introducing new complexity into the process. Furthermore, DPE to work with industry to development an improved planning proposal/rezoning process which makes NSW more competitive.

Revised Apartment Design Guide (ADG):

11. Remove the 225° test as it creates perverse outcomes and does not deliver the desired intent to establish a simple DTS solution for natural cross ventilation.

12. Clarify what the intent of study room requirements are and whether only those defined as a habitable room, meeting the width and size criteria and having a door, are acceptable and added to the minimum apartment size.

13. The solar access window be extended to 4pm on 22 June.

Urban Design Guide (UDG):

14. Do not proceed with the UDG as drafted under the DP SEPP due to the added time, cost and complexity and impact on housing supply and delivery.. Reinstate the UDG principles as guidance to inform early precinct planning and master planning processes without statutory weight.

15. Industrial development be excluded from strict compliance with the UDG and the design criteria and guidance be used to inform design rather than restrict it.

16. Use the widely accepted Net Developable Area as the basis to determine residential density and open space provisions.

Residential Sustainability (BASIX):

17. The increased environmental standards and update to BASIX should be paused until an industry working group is established to develop a staged pathway forward having greater regard to development feasibility and the impact on housing supply and delivery.

18. See recommendation 17.

19. A revised cost benefit analysis be undertaken in conjunction with industry once a refined pathway forward for increased standards is prepared and all detail is made publicly available.

20. Not proceed with the increased standards until such time as the Materials Index is made available to industry, its impacts can be tested and a staged introduction which has regard to feasibility mapped out.

21. Establish an industry working group to co-design an approach to improving resilience in the NSW planning system.

22. The update to BASIX be halted until such time as the NatHERS software tools are released and the climate files updated.

23. The increased environmental standards be put on hold until such time as a pathway for implementation can be developed with industry and adequate savings and transitional arrangements finalised to limit the impact on development feasibility.

Design Review Panel Manual for Local Government:

24. Do not require industrial developments to undertake a design review process due to the limited benefit this would add to outcomes while increasing time and cost.

Connecting to Country

25. Work with industry to map a process where DPE and a local government lead engagement on Aboriginal cultural heritage, as part of the preparation of Local Environmental Plans and Strategic Plans.

#### BACKGROUND

Throughout the course of the past 12 months UDIA has expressed ongoing concerns that the policy does not have adequate regard for development feasibility and would be disastrous for housing supply and delivery in NSW. The policy continues to focus on overly ambitious design outcomes even after internal modelling for the proposed ADG changes has demonstrated the devastating impact this would have on development feasibility. Good public policy must balance the introduction of new provisions to deliver on the desired intent, with the negative impacts associated with the new requirements. The development of the DP SEPP failed to do this from the outset. The Cost Benefit Analysis (CBA) exhibited in support of the policy, is a high-level summary and affords little to no detail on the assumptions that underpin the modelling. It provides industry and stakeholders with no ability to adequately interrogate the results. We have on numerous occasions through numerous routes, requested access to the complete CBA. This has been refused. As such UDIA cannot support the outcomes of this modelling and is calling on Government to act according to their own commitment to public consultation and release the full detailed analysis.

The release of the policy could not come at a worse time for NSW as we are struggling to recover from the impact of the COVID-19 pandemic, construction shutdowns, worker shortages, supply chain issues and increased cost of materials. The increased cost of materials alone is having a devastating impact on development throughout NSW. Developers of all sizes are not immune to these impacts. The DP SEPP runs the very real risk of significant damage to the construction industry and resultant loss of jobs, decrease in housing supply, worsening affordability and decline in state productivity. This is a dramatic statement and we do not make it for effect. Our members across all sectors are telling us this.

The inadequate consultation, lack of transparency in the process and exhibition material are cause enough for the policy to be cancelled. If the package is not cancelled the introduction of the provisions must be delayed until such time as all the detailed material, including the CBA modelling and environmental standards, are released and can be critically assessed. A genuine assessment will enable all the trade-offs (environment, affordability, design benefit etc.) to be evaluated.

The policy, to be workable, must be amended to ensure it does not devastate an already fragile housing supply. UDIA remains committed to working with Government to ensure a path forward for the beneficial aspects of the reform, such as improved environmental performance. Industry alongside Government can seek to deliver on the intent of the reforms in a way that truly improves the NSW planning system, reduces timeframes, costs and complexity and encourages investment in NSW. A simpler and more efficient system will promote confidence, reduce red tape and risk, and in turn reduce upfront costs, including those incurred by increasing fees and charges, technical requirements and holding costs.

#### CONSULTATION PROCESS

The development of the DP SEPP and supporting package, has been a failure in stakeholder consultation and is at odds with the NSW Governments own stated commitment to public engagement. The policy direction was set prior to the exhibition of the EIE, prioritising design with little regard to development feasibility. It seeks to deliver subjective enhanced aesthetic outcomes through the introduction of additional complexity, increased costs and time, in an already broken planning system.

To the Government's credit, we acknowledge that the consultation process following the exhibition of the EIE was improved, through the introduction of policy working groups and UDIA and its members responded to this with a full commitment to participate. However, the working groups were poorly coordinated, affording little to no opportunity to comment on policy changes prior to each session. Ultimately, the process felt like a tokenistic attempt to appease industry, rather than and offer of genuine engagement to develop and improve policy. The Apartment Design Guide (ADG) policy working group was a notable exception to this. However meaningful changes only occurred following internal financial modelling that corroborated what industry had been stating all along, that the original proposed changes would have made apartment development in NSW unfeasible.

The additional policy working groups on the new Urban Design Guide (UDG), changes to the design review panel process and increased environmental standards (BASIX) afforded little to no detailed information to engage with and respond to. The development of the DP SEPP and supporting package was rushed through to exhibition behind closed doors, without addressing the fundamental concerns of industry, that it will negatively impact the supply and delivery of housing in NSW.

It is damning to note that the information released as part of the exhibition of the DP SEPP and supporting package, still lacks fundamental details required for industry and all stakeholders to critically assess the policy. The detailed cost benefit analysis undertaken by Government, and in accordance with NSW Treasury requirements Better Regulation Statement, has not been made available. Rather a summary of the modelling has been provided which highlights increased costs to individuals and utilises the Wider Economic Benefits (WEBs) to society to justify the policy. This lack of transparency is alarming and supports the cancellation of the policy until such time as this is released and can be adequately assessed.

The increased environmental standards (via BASIX) has also failed to provide all necessary information for assessment during this exhibition period. The BASIX sandbox tool, which is the beta version of the BASIX tool, has not been released for multi-dwellings at the time of writing this submission. It is critical to understand the impact of the proposed increased standards across all development types. UDIA has been supportive of environmental standards which deliver improved outcomes for the environment, homeowner and community, however this failure to release the sandbox tool makes it impossible to support the changes at this time.

UDIA NSW remains supportive of the intent to deliver improved design, Aboriginal cultural awareness and environmental outcomes. We are committed to working with Government to progress certain aspects of the reform, having greater consideration to development feasibility and the impact on housing supply and delivery. In order to do this, Government must act on its commitment to genuinely engage with industry and map a pathway forward which has greater regard to development feasibility.

#### DRAFT DESIGN AND PLACE SEPP 2021

Introduction of a Principles Based Policy in NSW

The DP SEPP is attempting to be the first principles-based SEPP in NSW, introducing detailed design and environmental principles into the policy to promote consistent outcomes across the state. While the intent to improve design and environmental outcomes and promote consistency across the state is supported, the DP SEPP will ultimately fail to achieve this. The policy and supporting package fail to acknowledge the huge impost this will have on local planning authorities, in particular the level of resourcing and training that would be required to upskill assessing officers and the need for monitoring to ensure any inconsistency in the nature in which principles will be applied is avoided.

In an attempt to provide more information, the DP SEPP includes detailed design considerations for each of the design principles. However, these considerations are worded in such a way that an assessing officer will have little to no chance of determining if a development is consistent with them and ultimately the design principles.

For example:

16 Design consideration-culture, character and heritage

The consent authority must consider whether-

(a) the development detracts from the desired character of the area, and

For areas where a Local Character Statement has not been prepared, vacant greenfield locations or areas experiencing change, an assessing officer could not reasonably make this determination. In established areas, assessment is equally fraught. The definition of "Desired Future Character" has been subject to numerous NSW Land and Environment Court (LEC) matters and the many judgments and case law demonstrate the contested nature of this issue. This will lead to conflict and greater discrepancies as different authorities determine 'consistency' in their own jurisdiction. This will likely result in in more development applications being referred to the LEC to make a judgement and set a precedent as to how the principles are considered and consistency determined.

UDIA recommends:

1. Delay the introduction of the DP SEPP until such time as revised principles can be developed which are practical and achievable under the NSW system.

Consent authority to be satisfied that development is consistent with Design Principles

The Draft DP SEPP elevates the test for consent authorities when assessing a proposal against the design principles. The current wording in State Environmental Planning Policy No 65 – Design Quality of Residential Apartment development (2002 EPI530) requires a consent authority to take into consideration the design quality in accordance with the design quality principles prior to issuing a consent.

28 Determination of development applications

(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration)—

(a) the advice (if any) obtained from the design review panel, and

(b) the design quality of the development when evaluated in accordance with the design quality principles, and

(c) the Apartment Design Guide.

The wording in the Draft DP SEPP elevates the consent authority's assessment from 'consideration' of the design principles to being 'consistent' with the design principles.

13 Consideration of design principles and design considerations by consent authority

(1) Development consent must not be granted for development to which this Policy

applies unless the consent authority is satisfied that the development is consistent

with the design principles.

This is a major elevation in the test to comply with the design principles. It will cause significant difficulty for assessing officers to determine consistency and provides for no flexibility. For example, how will a Planning Authority be satisfied that the subjective principle of "aesthetics" has been satisfied? Planning Panel advice is only one opinion. Flexibility is a fundamental requirement in a principles-based policy, as it needs to acknowledge the differing scope and breadth of developments across the entire state and allow instances where a departure from one of the stated principles will result in a better design or environmental outcome. UDIA recommends:

2. The DP SEPP be amended to reinstate 'consideration' with the design principles as the appropriate test for consent authorities when determining an application.

Flexible application of the Apartment Design Guide (ADG)

The DP SEPP seeks to ensure the flexible application of the ADG through the inclusion of the following provisions in the SEPP.

30 Objectives of Apartment Design Guide

(3) In determining whether development meets the objectives of the Apartment Design Guide, the consent authority must—
(a) apply the design criteria and design guidance set out in the Apartment Design Guide flexibly and consider alternative solutions, and

(b) consider the objectives of the Apartment Design Guide only in relation to the particular development application.

While the intent to ensure the ADG is applied flexibly is strongly supported, UDIA remains concerned that the inclusion of these provisions will do little to ensure that flexibility is considered during the application process. The ADG advises that the objectives can be achieved by meeting the design criteria and guidance which include metrics that set minimum base line standards for design and environmental outcomes. An assessing officer who is unable or unwilling to make a judgement-based merit assessment, is likely to default to the stated metrics when determining an application. This situation already prevails in many

planning authority assessments with the current ADG and it is likely that it will continue to be the case even with the inclusion of the proposed provisions.

To ensure the flexible application of the ADG is used to its fullest extent, an extensive and ongoing education program is required to upskill assessing officers to give them confidence to make merit-based decisions. This will require a cultural change within planning in NSW, from a system which is risk adverse, to one that is outcome focused. UDIA Recommends:

3. Implement an extensive and ongoing education program for local government assessing officers to provide them with the skills and confidence to apply the ADG in a flexible outcome focused manner.

#### New Employment Zones

The DP SEPP makes reference to the existing business and industrial zones.. Local Governments are currently in the process of transitioning to the new employment zone framework introduced by DPE back in May 2021. The DP SEPP was exhibited seven months after this.

#### UDIA recommends:

4. The DP SEPP be updated to reference the new Employment Zones currently being transitioned to by local government.

#### Savings and transitional provisions

The savings and transitional provisions for concept development applications and modifications to a development consent outlined within the DP SEPP are inadequate and will cause significant harm to the realisation of projects and housing supply and delivery. UDIA does not support these provisions as drafted.

Concept DAs are often lodged for large scale multiple stage developments. Each stage can require multiple years to proceed to the development application stage, rolled out sequentially from the initial concept approval. The proposed provisions would require DAs lodged more than 2 years after the concept approval to apply the new provisions of the DP SEPP. This may require a significant reworking of the proposal to comply with the new provisions and will add to the time and cost to deliver projects. It will impact on development feasibility and certainty, and slow down the delivery of housing in NSW.

The application of the DP SEPP provisions to modifications of consent lodged after 2 years from the original development consent, is also not supported. This will have the same impact as the concept approval concern we note above. It will require a significant reworking of projects to comply with the new provisions. This will deter applicants from lodging modifications to improve development outcomes, as the application of the new provisions will add time and cost to a proposal. UDIA Recommends:

5. The savings and transitional arrangements be redrafted to ensure that the DP SEPP does not apply to a development application that is part of a concept development consent, or to a modification if the original consent was issued prior to the commencement of the DP SEPP.

#### Meaning of Urban design development

The definition of 'urban design development' as proposed with the DP SEPP is too broad.

6 Meaning of "urban design development"

(1) In this Policy, urban design development means the following development-

(a) development on land that is not in an industrial zone that has a site area greater than 1 hectare,

(b) development on land in an industrial zone that has-

(i) a capital investment value of \$30 million or more, and

(ii) a site area greater than 1 hectare,

(c) development in relation to which an environmental planning instrument requires a development control plan or master plan to be prepared for the land before development consent may be granted for the development

Notwithstanding this confused phraseology, the use of a single metric for non-industrial sites greater than 1 hectare is not appropriate in all circumstances. In rural and regional locations this will capture very basic subdivisions of possible 2 or 3 lots and require compliance with the Urban Design Guide (UDG) and likely preparation of a site-specific Development Control Plan (DCP). The metric will also capture procedural subdivisions where the subdivision will occur on 'paper' but have no material development. This will add time, cost, and complexity to these basic subdivisions, impacting not only the proponents who have to prepare additional information but also the consent authority that needs to assess the application and the community, as housing supply and delivery is impacted.

The definition also captures development on land in an industrial zone with a Capital Investment Value (CIV) of \$30 million or more and a site area greater than 1 hectare. Many basic warehouse type industrial developments will meet these requirements and be subject to the DP SEPP and UDG provisions. Industrial developments of this scale largely consist of warehousing and distribution facilities which have a consistent 'big box' form. The need to comply with the provisions of the UDG will significantly impact development yield, increase costs and delay the delivery of these projects which are crucial to the state's economic function (employment, servicing communities and state GDP).

UDIA recommends:

6. Establish an industry working group to define 'urban design development' having regard to the significant requirements of the DP SEPP and UDG and scale, type and geographical location of development.

#### ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (DESIGN AND PLACE) REGULATION 2021

#### Definition of urban designer

The definition of an urban designer proposed will only include a qualified town planner, landscape architect or architect with 5 years' experience in precinct or master planning.

urban designer means the following-

(a) a qualified town planner with at least 5 years' experience in precinct or master planning,

(b) a landscape architect with at least 5 years' experience in precinct or master planning,

(c) an architect with at least 5 years' experience in precinct or master planning.

This definition should be expanded to include someone who is a qualified urban designer and who has 10 years relevant experience in urban design irrespective of whether they have a planning, architecture, or landscape architecture qualification. The additional experience is recognition of the lack of a professional body specific to urban designers.

Many Registered Surveyors also have extensive experience in precinct and master planning. A Registered Surveyor with 5 years' experience in this area should be included in the definition of urban designer.

#### **UDIA Recommends:**

7. The definition of urban designer be expanded to include a person who has a qualification in urban design with 10 years' experience in precinct or master planning and include a 'registered surveyor' with 5 years' experience in precinct or master planning.

#### Design verification statement

The requirements under Clause 57 outlining when a design verification statement (DVS) is needed and who can prepare one are overly prescriptive. Clause 57 (4) provides that only a landscape architect can prepare a design verification statement for a development involving public or common space of more than 1,000sqm. This will require engaging separate consultants, all at added expense and time, to prepare separate aspects of the DVS. An urban designer, architect or town planner, as defined within the regulations, should be sufficiently capable of preparing a DVS for public or common open space irrespective of the size.

#### UDIA recommends:

8. The requirement for who can prepare a design verification statement involving public and common space, irrespective of size, be expanded to include urban designers, architects and town planners.

#### Condition relating to charging facilities for electric vehicles

The inclusion of conditions of consent requiring car parking to be electric vehicle ready, is an upfront cost on development which may not deliver any tangible benefit to its residents in the short term. While UDIA support 'future proofing' development the uptake of electric vehicles in Australia is slow and any benefit in providing the infrastructure to support future charging is offset by the increased cost to development and impact on housing supply and delivery in the short term. Government should work with industry to establish a pathway forward for increased environmental standards, including the uptake of electric vehicles, which has regard to development feasibility and the impact on housing supply and delivery. Future benefits need to be assessed against immediate additional costs.

#### UDIA recommends:

9. Government should work with industry to establish a pathway forward for increased environmental standards, including the uptake of electric vehicles, which has regard to development feasibility and the impact on housing supply and delivery.

#### **SECTION 91 DIRECTION**

#### Application of the Direction

The Ministerial Direction seeks to ensure the provisions for DP SEPP and in particular the UDG are considered early in the planning process, including during planning proposals. Furthermore, the broad application of the Direction to apply when a planning authority prepares a planning proposal affecting land greater than 1 hectare in area and within an existing or proposed residential, commercial, mixed use or industrial zone, will capture a large proportion of development in the state. It will ensure the additional requirements of the DP SEPP and UDG must be considered and assessed as part of a planning proposal. However, it will come at a huge administrative expense, extended timeframes and effort for all parties. Rather than improving the NSW planning system, these requirements only add to the complexity of the system, introducing new processes and requirements, adding to cost and time delays.

Of significance, the development of the Draft DP SEPP and Ministerial Direction appear to have been done without regard to DPEs own reform program to improve the planning proposal/rezoning process. This work needs to be aligned, as any improvement to the planning proposal process will be undermined by the introduction of additional requirement under the DP SEPP. UDIA recommends:

10. DPE coordinate its internal teams to avoid the potential undermining of the reforms of one team by the efforts of the DP SEPP team, improving the planning proposal/rezoning process without introducing new complexity into the process. Furthermore, DPE to work with industry to development an improved planning proposal/rezoning process which makes NSW more competitive. Further explanation of the major issues with the application of the Ministerial Direction are contained in the DP SEPP and UDG sections of this submission.

#### REVISED APARTMENT DESIGN GUIDE (ADG)

As noted earlier in this submission the development of the revised ADG was a singular point of constructive engagement in the development of the DP SEPP. While the worst aspects of the proposed ADG have been removed, the UDIA remains concerned

about a number of proposals which remain. These are further explained below.

A full assessment of the proposed ADG changes is attached as Appendix A. It highlights areas where the ADG will still have an impact on development feasibility.

Natural Cross Ventilation

The exhibited ADG requires that for an apartment to meet the deemed to satisfy (DTS) solution for natural cross ventilation, they must be either:

• a cross-through, corner and roof-window,

• or it must provide 225° wind exposure to openings; AND have limited obstruction to the wind from the building form; AND have opening distribution and sizes that satisfy EOA 5% etc.

This was demonstrated to be an impractical test during the policy working groups and subsequent follow up meetings, where many award-winning apartment projects would not comply.

The 225° test does not allow for any designs with 7 or more apartments with a single core and a rectangular floorplate to be a DTS solution. Every building will either automatically require 2 cores or must go down the alternative pathway of wind testing. This will be detrimental for all building designs but extremely high impact for for mixed use buildings with several residential buildings on top of a podium (where the intent is to minimise the impacts of lifts/stairs through the non-residential floorplates). Such dramatic building requirements will further impact development yield and feasibility, housing supply, delivery and affordability.

Ironically, the requirements are so severe they will now require Masterplan and building design to prioritise wind as the first goal. Other equally important goals (e.g solar access, public domain, open space, streetscape and good urban outcomes) will be relegated to a distant second. It will deliver perverse outcomes and is the opposite of how good urban design should be thought about.

UDIA recommends:

11. Remove the 225° test as it creates perverse outcomes and does not deliver the desired intent to establish a simple DTS solution for natural cross ventilation.

Study Rooms as a Habitable Room

The proposed ADG provisions are not clear as to what the requirements are for a study room. The provisions as drafted appear to require Study Rooms to be a minimum width of 2.4m, be a minimum 7sqm and to have a door to be considered a habitable room. GANSW has also stated that the 'habitable room' would need to be added on top of the minimum apartment size. Applying this logically would mean that a study nook without a door can be more flexible in size and width and doesn't need to be added on top of the minimum apartment sizes.

This may lead to perverse outcomes whereby removing a door or window or having the study space completely internal with borrowed light would be a more acceptable solution under the proposed DP SEPP.

UDIA recommends:

12. Clarify what the intent of study room requirements are and whether only those defined as a habitable room, meeting the width and size criteria and having a door, are acceptable and added to the minimum apartment size.

Solar access

The GANSW acknowledged the advice of industry during the policy working groups and extended the solar access provisions from 9am to 8am. This is a meaningful and practical change which will deliver improved design and environmental outcomes. However, GANSW have been steadfast in its refusal to extend the provisions from 3pm to 4pm. This refusal is unjustified.. The increased hour in the afternoon will not increase overshadowing of adjacent properties. It only seeks to give more flexibility in the apartment designs for west orientations and less reliance on angling walls just because the site orientation is not ideal. UDIA recommends:

13. The solar access provisions be extended to 4pm on 22 June. URBAN DESIGN GUIDE (UDG)

The introduction of the Urban Design Guide (UDG) is not supported. The consultation process following the EIE and during the development of the guide was grossly inadequate. Little to no detail was provided during the consultation stage, affording no opportunity to critically assess what was proposed and provide constructive feedback. Accordingly, the UDG which has been exhibited will increase time, cost and complexity in the system and negatively impact housing supply and delivery.

While it is imperative that urban design outcomes are considered during a precinct planning and master planning process, these considerations should guide outcomes rather than be mandated through state policies. Industry alongside government is already incorporating these principles into their design and delivering good outcomes without the need for added complexity and red tape in the system.

Application of UDG to Development Applications

The introduction of the UDG will significantly increase approval timeframes, particularly in areas which are already subject to site specific DCPs and neighbourhood plans. Guidance contained in the UDG are considerations during precinct planning and master planning processes, which is the appropriate time to consider high level strategic outcomes across any given area. The application of the UDG at the development application stage will only add to time, cost and complexity of the system. In greenfield precincts it will add an unnecessary third step: DCP; Neighbourhood Plan and then UDG. A single development application should not be subject to duplicitous provisions which serve little benefit to the broader community. The impost on proponents and assessing authorities alike will be substantial.

Furthermore. Some provisions will result in reduced yields due to tree canopy requirements up to 40%, maximum block lengths of 250 metres and mid-block connections of no more than 130 metres apart, requiring additional time and costs for engaging consultants and added assessment timeframes. This runs contrary to the stated intent to improve the NSW planning system and create a more streamlined process.

Consideration of urban design outcomes during precinct planning and master planning processes is appropriate and the UDG could be used to guide discussion during early stages of these processes. However, it should not be given statutory weight through a state policy and not be applied at the DA stage.

UDIA recommends:

14. Do not proceed with the UDG as drafted under the DP SEPP due the added time, cost and complexity and impact on housing supply and delivery. Reinstate the UDG principles as guidance to inform early precinct planning and master planning processes without statutory weight.

Impact of the UDG on Industrial Development

As stated above the application of the UDG will require extensive additional assessment and documentation, adding to DA timeframes and cost. This is especially true for industrial development. Many of the UDG objectives and criteria are inappropriate to the industrial/warehouse building typology, but will apply, nonetheless.

The UDG is clearly drafted with a primary focus on commercial and residential development. It includes requirements such as reduced site areas to support walkability and permeability; street activation and parking required to rear of the site which are problematic or inappropriate for industrial developments to comply with.

The requirements for 15% deep soil and 25% to 35% canopy cover required for industrial/warehouse sites will require significantly more land to deliver a warehouse of the same Gross Floor Area (GFA). This will ultimately result in additional and unsustainable urban sprawl. The requirement for additional land further reduces the competitiveness of industrial/warehouse development in NSW compared with other states. Efficient land use consolidation, rather than requiring more site area to deliver industrial/warehouse uses, would free up land for higher order alternative uses or public recreation.

The additional land needed to deliver the same industrial development outcome will increase the cost in delivery of employment activities in NSW, which will be passed on to the sector in rents or sales and ultimately be felt by end users. Importantly, it will make NSW uncompetitive for footloose investment that can simply "vote with its feet" and invest and locate in neighbouring states that are more welcoming.

The additional deep soil and canopy cover requirements, particularly for brownfield/infill site redevelopment, would remove incentive for replacing old contaminated industrial development with cleaner more sustainable warehouse development.

#### UDIA recommends:

15. Industrial development be excluded from strict compliance with the UDG and the design criteria and guidance are used to inform design rather than restrict it.

#### Gross developable Area

Th use of Gross Developable Area (GDA) as the basis to determine density and open space provisions, rather than the universally used Net Developable Area (NDA) is not supported.

NDA has now been adopted throughout Precinct planning in NSW. It is embodied in legislation, LEPs, DCPs and VPAs. Using a gross figure will create unnecessary confusion. Importantly, it will cause different sites to provide disproportionate open space and densities, due to other land uses being permitted within the GDA definition. Density and open space should only really apply to residential land uses. The density requirements using GDA would see development outcomes inconsistent with the type of built form.

#### UDIA recommends:

16. Use the widely accepted Net Developable Area as the basis to determine residential density and open space provisions.

#### RESIDENTIAL SUSTAINABILITY (BASIX)

UDIA NSW is a strong advocate for improved environmental outcomes and recognises and supports the NSW Government's pathway to NetZero. Our members are leaders in providing energy and water efficient developments that benefit residents and the broader community alike. While we are calling for the cancellation of the DP SEPP and the supporting package, including the increased environmental standards and update to BASIX, we are committed to working with Government to establish a pathway forward on this agenda, which has greater regard to development feasibility. Working with industry will enable a staged approach which delivers improved outcomes and a more timely and efficient manner, without negatively impacting on housing supply and delivery.

#### UDIA recommends:

17. The increased environmental standards and update to BASIX should be paused until an industry working group is established to develop a staged pathway forward having greater regard to development feasibility and the impact on housing supply and delivery.

Inadequate exhibition material

As discussed earlier in this submission the material provided as part of the exhibition package for the increased environmental standards and the update to BASIX are inadequate. They do not make it possible to critically assess the impact of the changes and therefore cannot be support. The sandbox tool for multi-dwellings has not been released as part of the exhibition package. It is now stated that this will be released later in 2022. Industry needs to assess the impact of the proposed changes utilising the sandbox tool now, before any increased standards can be supported.

In addition to the sandbox tool the introduction of a materials index which has regard to embodied emissions is a huge change for NSW and will have significant ramifications for developers, builders, manufactures and supply chains. This is not a proposal that can be rushed to adoption without significant consideration and industry collaboration. Industry needs to be involved in the development of the materials index to ensure it is introduced appropriately, affording time to test and develop materials, alter supply chains and understand the impact on building costs. Introducing this at a time when the cost of building materials is skyrocketing will further worsen the housing supply and affordability crisis. UDIA recommends:

18. (Recommendation 17) The increased environmental standards and update to BASIX should be paused until an industry working group is established to develop a pathway forward having greater regard to development feasibility and the impact on housing supply and delivery.

Cost Benefit Analysis

Th Cost Benefit Analysis prepared by ACIL ALLEN in support of the increased BASIX standards states that for an average home to meet the higher BASIX standards it will cost an additional \$7,000 AUD with the benefits to be recouped over the life of a mortgage. However, any additional upfront costs will have an impact on development feasibility. Development feasibility does not, and cannot, consider long term Lifecyle costs. The developer generally exits the development upon completion of construction. They take their profit at that time and any lifecycle savings are not realisable. Furthermore, purchasers rarely consider Lifecyle costs as the average length of ownership (if a dwelling) is only 7 years and lifecycle costs play no role in the consideration of price by either a vendor or purchaser. To compound matters, where a property is an investment that generates income, lifecycle costs are depreciated further negating their contribution to a genuine cost benefit analysis.

Ultimately, at a time when industry is facing massive supply chain disruptions and rapidly increasing cost for materials as a result of the COVID-19 pandemic, adding costs to construction is illogical. These costs will squeeze margins and may make development unviable, reducing the supply of housing in NSW and worsening the affordability crisis. The notion that costs can be passed on to home purchasers and accepted is not supported.. Home purchasers are already financially overextended due to rapidly increasing house prices and do not have the means to absorb continued added costs. Should interest rates and inflation increase in the foreseeable future, as expected, this crisis will worsen.

Internal modelling detailed in Appendix B highlights that to meet the increased thermal requirements alone, this may add an additional \$30,000 AUD to an average home. This discrepancy in financial modelling outcomes demonstrates why it is crucial for industry to be involved in determining the pathway forward for increased environmental standards. Industry has the experience and expertise to test scenarios and deliver improved outcomes, while having regard to development feasibility which is at the core of their business.

#### UDIA recommends:

19. A revised cost benefit analysis is undertaken in conjunction with industry once a refined pathway forward for increased standards is prepared and all detail is made publicly available.

Introduction of a Materials Index

The exhibition package proposes to introduce a Materials Index but provides very little information. The introduction of a Materials Index without any detail is of great concern to the development of class 1 buildings due to its potential cost and supply implications. It is imperative that industry has access to the materials index to assess changes required for proposed compliance and impact on procurement pipelines.

Time is also needed for manufacturers to understand the Index and ensure their products can meet the desired standards or know the future standards to which new products will be measured and the transition timeframes associated. UDIA recommends:

20. Do not proceed with the increased standards until such time as the Materials Index is made available to industry, its impacts can be tested and a staged introduction which has regard to feasibility mapped out.

#### Design for Resilience

Very little information has been released on designing for resilience. This is an extremely important matter for industry and the community and something which needs to be introduced correctly. The impacts of recent fires, floods and the pandemic are front and centre of public debate and the industry is grappling to understand what direction Government wishes to take with this initiative. UDIA is supportive of initiatives to improve designs which incorporate resilience, but to date not enough information has been provided.

UDIA recommends:

21. Establish an industry working group to co-design an approach to improving resilience in the NSW planning system.

#### NatHERS

Most of the NatHERS software tools have not been provided as part of the exhibition and therefore there is no ability to test the impacts against the updated climate files and star bands. Furthermore, the updated standards are using climate files from 1990 – 2015. These are grossly out of date and need to be updated.

22. The update to BASIX be halted until such time as the NatHERS software tools are released and the climate files updated.

#### Implementation and transition to Increased standards

The transitional and savings arrangements for the increased environmental standards and the changes to BASIX are unclear. It is not defined when the changes would be introduced or how this would impact on modifications and/or contracts. Many new home purchasers are signing contracts for builds to be completed over the next 12 to 18 months. The increased environmental standards when introduced will have an immediate impact on the cost of delivering these new homes and must be worn by either the developer or new home buyer. Therefore it is crucial the savings and transitional arrangements are appropriately worked through to enable industry to assess the full impacts of the changes and map a pathway forward which has the least impact on housing supply and delivery.

UDIA recommends:

23. The increased environmental standards be put on hold until such time as a pathway for implementation can be developed with industry and adequate savings and transitional arrangements finalised to limit the impact on development feasibility.

#### DESIGN REVIEW PANEL MANUAL FOR LOCAL GOVERNMENT

#### Design Review Panel Requirements for Industrial Development

Industrial/warehouse developments are a typology with limited architectural options. They generally consist of a warehouse, hardstand, car park and perimeter landscaping. These parameters are set by their function. Therefore, the value that would be added by a Design Review Panel is questionable.

The role of the Panel Assessment would essentially be a façade design exercise. As there are limited architects with Industrial experience, it is questionable whether Panel members will have relevant experience to appropriately assess industrial/warehouse development.

There is also a genuine concern that a Panel, with limited understanding of the functional requirements of industrial/warehouse development, may assess the DA through the lens of commercial or residential developments and provide inappropriate feedback on design which would be problematic to address in proposed schemes. Due to the limited value the DRP process would add, compared to the time and cost impost, it should not be applied to industrial developments.

It should be noted that due to the competition amongst industrial developers to provide market leading products to attract customers, and the fact that ownership is often retained, there is increasing incentive for warehouses to present as attractively as possible with good amenity and landscaping. Blue chip architects are increasingly being used to design warehouse facades. As the industry is motivated to provide state of the art facilities, it further questions the need to have local Panels scrutinise proposed designs.

Finally, as we note in earlier comments above, the NSW industrial development sector competes with other states for investment and industry location. Importantly, it will make NSW uncompetitive for footloose investment that can simply "with its feet" invest and locate in neighbouring states that are more welcoming and offer shorter approval times and cheaper buildings. UDIA recommends:

24. Do not require industrial developments to undertake a design review process due to the limited benefit this would add to outcomes while increasing time and cost.

#### CONNECTING TO COUNTRY

UDIA is supportive of the intent to improve and promote Aboriginal cultural heritage and awareness through the NSW planning system. We acknowledge the draft Connecting to Country framework, and principles of partnering with and working with the appropriate First Nations representatives in the collation and assessment of cultural heritage in a Local Government Area. The value of respecting Aboriginal connection to country through the planning system cannot be understated and is supported. However, the framework does have issues to overcome. Currently there are inadequate resources in the consultant space to deal with the issues appropriately and have adequate respect for the local First Nations representatives. To improve the process DPE and/or a local government should lead the process, guiding development in their respective areas as part of the preparation of their Local Environmental Plans or Strategic Plans.

#### UDIA recommends:

25. Work with industry to map a process where DPE and a local government lead engagement on Aboriginal cultural heritage, as part of the preparation of Local Environmental Plans and Strategic Plans.

#### CONCLUSION

UDIA remains supportive of the intent to improve design and environmental outcomes and elevate Aboriginal cultural awareness in the planning system. We have worked constructively with Government, GANSW and DPE to reshape the DP SEPP and supporting package into a positive policy for NSW. However, the package as exhibited has failed to address our fundamental concerns and will be disastrous for housing supply and delivery in NSW.

The DP SEPP must not be proceed at this time while industry and the community seek to recover from the impacts of the COVID-19 pandemic, construction shutdowns, worker shortages, supply chain disruptions and rising material costs. To do so would cripple housing supply and delivery in NSW, have a significant impact on the State's economy and only worsen the housing affordability crisis.

UDIA is committed to working with Government to support the introduction of the beneficial aspects of the policy in a considered and practical way, which has regard to development feasibility and supports an increase in housing supply and delivery.

Should you have any questions or wish to arrange a meeting to further discuss a path to proceed with the policy, please contact Michael Murrell, UDIA NSW Planning Policy Manager at mmurrell@udiansw.com.au or 0413221195..

#### APPENDIX A

DETAILED ASSESSMENT OF PROPOSED ADG PROVISIONS AND UDIA RECOMMENDATIONS Current ADG 2015 Exhibited ADG 2021 Impact on feasibility UDIA recommendation About this guide

#### Application of the design quality principles

The SEPP 65 design quality principles must be considered by design professionals when designing residential apartment development, by design review panels when giving advice on proposals and by consent authorities. About this guide

Apartment development must be consistent with the DP SEPP

Residential apartment development in NSW must be consistent with the DP SEPP principles and considerations.

The Apartment Design Guide objectives are derived from the DP SEPP principles and considerations and provide further detailed guidance applicable to the design and assessment of residential apartment development.

The ADG along with the DP SEPP must be redrafted to remove the requirement to demonstrate 'consistency' as this is a significant elevation of the test for assessing officers and revert back to having consideration. Site and context analysis 1B Local Character and context &

1C Precincts and individual sites

3A Site analysis 1.1 Site and context analysis No comment

Building separation 2F Building Separation 3F Visual Privacy

Up to 4 storeys (approximately 12m):

6m between non-habitable rooms

9m between habitable and non-habitable

- 12m between habitable rooms/balconies
- 5 to 8 storeys (approximately 25m):
- 9m between non-habitable rooms12m between habitable and non-habitable
- 18m between habitable rooms/balconies
- 9 storeys and above (over 25m):
- 12m between non-habitable rooms
- 18m between habitable and non-habitable
- 24m between habitable rooms/balconies 1.2 Built form and siting Design Criteria

No change in minimum separation distances. See comments relating to 'building height' and Figure 1.2.7 Building height and proportion separation 2F Building Separation

3F Visual Privacy

2F. Increase building separation proportionally to the building height to achieve amenity and privacy for building occupants and a desirable urban form

1.2 Built form and siting - Building Height

Figure 1.2.7 shows 25m (not 24m) separation for a 17-18 storey building and notes "Setbacks and minimum building separation distances should increase proportionally to the building height"

Accommodate the following within the permissible building height: rooftop communal open space including lift and stair access and shade structures articulated roofs designed to enhance design quality.

Table 1.2.2 and Figure 1.2.8 and Table recommend 3.6m floor to floor height for first floor residential in mixed-use High

Redraw Fig 1.2.7 to approx. correct proportions and delete misleading doted V-line between the buildings. Text should be "Minimise multiple steps in tall buildings."

Exempt rooftop communal open space from LEP heights.

Correct Figure 1.2.8 by deleting 2.7m floor to floor height for Residential habitable at 2nd floor. Site access and address 3G Pedestrian access and entries 1.3 Site access and address No comment Relationship to the street 3C Public domain interface 1.4 Relationship to the street No comment

Deep soil 3E Deep soil zones - Design Criteria

Deep soil 7% of site area Minimum dimensions for site area: <650m2 - n/a650m2 - 1,500m2 = 3m> 1,500m2 = 6m

Design Guidance Deep soil 10% of site area 650m2 – 1,500m2 Deep soil 15% of site area > 1,500m2 1.5 Green Infrastructure – Design Guidance

Deep soil per site area < 1,500m2 Minimum dimension = 3m Deep soil = 10% of site area Minimum canopy target = 15% site area

>1,500m2 Minimum dimension = 3m, with 6m wide contiguous portion for at least 25% of the minimum deep soil area Deep soil = 15% of site area The increased criteria and design guidance will have a significant impact on development yield.

The provisions should revert back to those contained in the current 2015 ADG.

Tree canopy and retention 4O Landscape design - 'recommendation'

<850m2 site area: 1 medium/ 50m2 deep soil (@ 7% = 1 tree) 850m2 – 1500m2 site area: at least 1 large or 2 medium trees/ 90m2 deep soil (@ 10% = 1-2 large or 2-4 medium trees) >1500m2 site area: at least 1 large or 2 medium trees/ 80m2 deep soil (@ 15% = >3 large or 6 medium trees ) Objective 4O-2 Design guidance Significant landscape features should be protected by: tree protection zones appropriate signage and fencing during construction 1.5 Green Infrastructure – Design Guidance

Tree canopy

<650m2 site area: at least 1 small tree for every 350m2 or part thereof 650m2 – 1500m2 site area: at least 1 medium trees for every 350m2 or part thereof >1500m2 site area: at least 1 large or 2 medium tree for every 575m2 or part thereof

Low - similar to 2015 ADG

No comment

Retaining trees

Retain and protect existing trees, including those on adjoining sites.

Locate building envelopes, basements and driveways in order to maximise the number of trees able to be retained on site. HIGH if taken too literally – how is maximised to be defined? A better word may be 'optimised'. Explicitly state 'retain where developmentally feasible' and allow for Tree Replacement Ratios from 1:1 as an option otherwise Planting on structure 4P Planting on structures

Ground covers require min 300-450mm soil depth 1.5 Green Infrastructure - Design Guidance

Planting on structures Table 1.5.4

Similar requirements to 2015 ADG

300-450mm for ground covers is inconsistent with extensive Green roofs which are generally less than 300mm deep.

Amend Ground covers to 200-450mm.

Car parking 3J Bicycle and car parking 3H Vehicle access

Minimum car parking rates in the Guide to Traffic Generating Developments (RTA 2002) or Council rates (which ever is less). 1.6 Parking – Design Guidance Car parking

No change in minimum

Make provision for 'EV-ready' connections for all residential car parking spaces as outlined in Part 3.1: Energy efficiency. Provide a shared EV connection to 10% of visitors spaces, or 1 space if <10 spaces

Ensure safe movement by:

providing pedestrian pathways separate to vehicular access where possible, to minimise use of vehicular ramps by pedestrians marking pedestrian crossing zones over vehicle circulation and using bollards Requirements for car parking remain unclear and need to be developed with industry having regard to development feasibility.

Bicycle parking No min bicycle parking requirement 1.6 Parking – Design Guidance Bicycle parking

Provide minimum 1 bicycle parking/ dwelling or DCP requirement, whichever is greater located at Ground, L1 or Basement 1.

Residential - 1 space/ dwelling. Class A or B

Commercial - 1 space/ 200m2. Class B

Visitor – 1 space/ 10 dwellings. Class C

Low This provision should support reduce parking rates. The requirements for Class A contributes to residential storage requirements (outside of apartments) runs contrary to the decision to require electric vehicle readiness.

DPE should remove metrics and rather have generic guidance.

Lifts/ apartments 4F Common circulation and spaces - Design criteria

The maximum number of apartments off a circulation core on a single level is eight For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40 Where design criteria 1 is not achieved, no more than 12 apartments should be provided off a circulation core on a single level 2.1 Common circulation – Design guidance

Lift handling capacity and anticipated waiting times, demonstrated in a vertical transportation report to ISO 8100-32:2020 Lifts for the transportation of persons and goods – Part 32:

average waiting time: 60 seconds or less handling capacity: 7 per cent or more No change to preferred maximum 8 - 12 apartments/core

Require access and circulation spaces to achieve Liveable Housing Australia silver performance level. Common and fire stairs No criteria for natural light and ventilation to fire stairs 2.1 Common circulation – Common stairs

locate and design common stairs (including fire stairs) for ease of movement and with adequate amenity for daily use, including natural light and ventilation. High Remove proposed provision.

Added construction cost and reduced affordability as it uses valuable façade area, requires upgraded finishes.

Improved amenity in fire stairs is not a worthy pursuit during a housing supply and affordability crisis.

Risks health and safety.

Common circulation daylight and natural ventilation 4F Common circulation and spaces - Design guidance

Daylight and natural ventilation should be provided to all common circulation spaces that are above ground Windows should be provided in common circulation spaces and should be adjacent to the stair or lift core or at the ends of corridors 2.1 Common circulation – Design guidance

For daylight and natural ventilation, provide:

min glazed area of 10% and equivalent open area (EOA) of 2% of the common circulation floor area served 2+ sources of natural ventilation/ daylight for floorplates > 7 apartments

where glazing is to a slot or façade indent the width-to-length ratio 1:3 or wider and be open to the sky DPE to provide examples of how to achieve design guidance

Communal open space 3D Communal and public open space

Communal open space has a minimum area equal to 25% of the site.

Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hour. 2.2 Communal spaces

8m<sup>2</sup>/ dwelling up to 25% of the site area.

At 21 June 9am-3pm, achieve minimum 2h solar access to 50% of communal open space

At 21 Dec 9am-3pm, achieve minimum 2h shading to 50% of communal open space

Min dimension 4m for sites <650m2, 6m for sites >650m2

Doesn't have to be collocated with deep soil High

Demonstrated to be unachievable especially in master planned sites where open space has been provided outside of the new site boundaries.

Develop new guidance having regard to broader precinct and master plan outcomes.

Apartment Mix 4K Apartment mix

No mininimun and maximum apartment mix 2.3 Apartment mix & diversity - Apartment mix

Development > 20 dwellings, provide min 3 different dwelling types.

Where the development includes only three dwelling types, provide a mix of the types so: Each type >10% of the total Studio + 1 bed < 50% of total Min 20% to Liveable Housing Australia (LHA) Design Guidelines Silver Level High Blanket requirement has no consideration for market characteristics, consumer preferences and locale.

Allow market to determine bedroom mix.

Promote greater diversity of apartments through incentives such as floor space or height bonuses. Family Friendly Apartments 4K Apartment mix 4L Ground floor apartments

N/A requirement for larger apartments 2.3 Apartment mix & diversity - Family friendly apartments

Provide 20% of 2+ bedroom apartments as family-friendly apartments to accommodate the needs of families with children. Design solutions could include:

> min apartment sizes

1 bedroom sized >12m2 clear to accommodate a study desk or crib

Multiple living rooms or main bedrooms

Allow market to determine preference for apartment sizes.

Promote greater diversity of apartments through incentives such as floor space or height bonuses. Study Rooms 4K Apartment mix

No minimum study area or dimensions 2.3 Apartment mix & diversity – Study Rooms

minimum 7m2 and 2.4m clear if to be considered a habitable room High Delete this section as it is overly prescriptive and provides no benefit at all – it will reduce layout diversity and amenity. Apartment configuration 4D Apartment size and layout 2.4 Apartment configuration

Minimum internal sizes not changed

Kitchens not regarded as habitable rooms for ceiling heights

Where minimum apartment sizes and room dimensions are not achieved, demonstrate apartment planning is efficient, usable and functional, as indicated by realistically scaled furniture layouts and circulation areas

Kitchen provisions are Positive.

Minimum apartment size provisions may be a positive outcome if councils accept the alternative solution. Private open space 4E Private open space and balconies

Studio apartments

• Minimum area = 4m2

Minimum depth = n/a

1 bedroom apartments

- Minimum area = 8m2
- Minimum depth = 2m
- 2 bedroom apartments
- Minimum area = 10m2
- Minimum depth = 2m
- 3+ bedrooms apartmentsMinimum area = 12m2
- Minimum depth = 2.4m 2.5 Private open space and balconies

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).

Design single aspect balconies so they do not project beyond the façade

Clothes drying areas, storage are in addition to the minimum areas A/C units are to be located away from POS High Additional requirements will increase costs and reduce affordability if there is no flexibility.

Address communal space strategically across a development/ precinct.

Allow consumer choice and support apartments at various price points.

Allow for design elements to deal with wind mitigation. Solar Access 4A Solar and daylight access

70% solar access (2h/3h) 9am-3pm 21 June and max 15% south facing apartments

No provisions for mandatory shading to facades 2.6 Sunlight, daylight, shade & thermal comfort

No change to solar access and south facing apartments, but window extends to 8am in certain circumstances

Where glazing > 30% of the apartment facade on any aspect (measured on internal face), provide external sun shading to max 30% of the exposed glazing in a wall to block 30% of summer sun.

Where solid material on an apartment facade in an individual aspect is >70 % no additional shading is required for glazing on that aspect.

Where a covered balcony min 1m depth extends across the length of a glazed facade or opening, this is considered to provide the shading necessary for all facade orientations apart from +/- 30° of west.

For all balconies oriented +/- 30° of west, incorporate operable shading to protect glazing >30% of facade

Extend solar access window to 4pm in same circumstances as that for 8am.

Natural Ventilation 4B Natural ventilation

Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line 2.7 Natural ventilation

No change to 60% for 9 storeys and deemed c/v > 10 storeys, however:

At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed

No slots or façade indentations are deemed to generate natural cross-ventilation An EOA of 5% of floor area served must include allowances for flyscreens and opening restrictors Courtyards or building indentations require a width to depth ratio <2:1

Apartments DTS natural cross-ventilation are: Cross-through, corner and roof-window. Otherwise apartments must provide 225° wind exposure to openings; AND Have limited obstruction to the wind from the building form; AND Have opening distribution and sizes that satisfy EOA 5% etc High

Retain existing ADG standards and delete 225° test as it is not possible to pass the test and not 1 example has been provided of a DTS 8 apts/single core/ regular floorplate or apartment that isn't a DTS type that can pass the 225° test.

Confirm that ratio is depth: width and not width: depth. Acoustic amenity 4H Acoustic privacy 4J Noise and pollution 2.8 Acoustic privacy, noise and pollution

Appears to be similar to ADG 2015

Apartments requiring an alternative natural ventilation solution to meet acoustic amenity requirements can be excluded from calcs for cross-ventilation and solar access No comment No comment

Visual amenity 3F Visual privacy

2.9 Visual amenity N/A N/A Storage 4G Storage

Studio = 4m3 1 Bedroom = 6m3 2 Bedroom = 8m3 3+ Bedrooms = 10m3 2.10 Storage

Studio = 6m3 (min 2m3 int) 1 Bedroom = 8m3 (min 3m3 int) 2 Bedroom = 10m3 (min 4m3 int) 3+ Bedroom = 12m3 (min 5m3 int)

One storage space must have min dims: Studio/1 Bed: 0.6D x 0.9W x 2.4H 2 Bed+: 0.6D x 1.2W x 2.4H

Decrease the minimum amount to be provided inside to 1/3 (from 50%) (i.e. the additional amount can be provided outside the unit).

DA drawings need to highlight, dimension and label volume of int/ext. storage. High Increased storage will require more basement area/depth and put more pressure on deep soil, increasing costs and reducing affordability.

Retain existing ADG standards. Building Articulation 4M Facades 4N Roof Design 2.11 Building articulation N/A N/A All-electric building N/A 3.1 Energy efficiency – All-electric building

Use low-carbon, low-emission systems, construction processes and materials to deliver energy-efficient apartment developments, where possible

Locate heat pumps in a central location to reduce urban heat-island effects.
This cannot be reasonably confirmed at this stage of design and even if proposed may change post consent. This should be removed.

No comment

Rooftop solar N/A 3.1 Energy efficiency - Rooftop solar

Provide maximum solar energy generation on roof space that is not allocated to common open space or roof gardens On low-rise, large-footprint buildings, rooftop solar panels should be provided for each apartment, directly connected to provide power behind the meter

Electric vehicles 3J Bicycle and car parking

Conveniently located charging stations are provided for electric vehicles, where desirable 3.1 Energy efficiency – Electric vehicles

(see 1.6 Parking) Make provision for EV-ready connection for each car parking space allocated to residents: Provide sufficient size/ quantity of EV DBs in each storey of car park complete with charging control system and connection to main switchboard.

Provide space for cable trays to support future installation of 32A single-phase final subcircuits for each EV parking space.

Locate EV DBs so any future EV charger requires a cable < 50 m from parking bay to the EV-ready connection.

Provide a shared EV connection for all carshare spaces.

Where EV-ready provision is made for visitor parking, a minimum of 7 kW AC EV chargers should be installed Likely to add cost with little benefit to residents.

Revert to existing ADG guidance and develop a pathway for increased environmental standards.

Water management 4V Water management and conservation

Rainwater should be collected, stored and reused on site.

A number of the following design solutions are used:

runoff is collected from roofs and balconies in water tanks and plumbed into toilets, laundry and irrigation porous and open paving materials is maximised

on site stormwater and infiltration, including bio-retention systems such as rain gardens or street tree pits 3.2 Water

Connect rainwater to all non-human contact uses (third pipe or purple pipe), including toilets and washing machines. Laundry tubs should be connected to potable water.

Size rainwater tanks to intercept a 10% annual exceedance probability (AEP) 6-hour storm and to allow full use of all rainwater collected in this event.

In metropolitan areas, enable top-up of rainwater to be switched to recycled water infrastructure with min. cost and disruption. Medium

Address water management at the precinct level. These are the matters the UDG should address and not burden individual development sites which may be part of a broader plan or constrained. Waste management 4W Waste management

3.3 Waste – Waste collection

Integrate all waste management facilities and collection infrastructure within the built form of the development to improve amenity for residents and the neighbourhood.

Waste storage

Locate collection infrastructure for council waste collection services wholly within the development's basement and within close proximity to the onsite loading dock to permit unobstructed access for collection contractors.

Taking trucks down to a basement will increase basement sizes and excavation depths

Remove requirement for collection infrastructure to be located in basements when ground level in a podium would meet the same objectives. Building and landscape maintenance 4X Building maintenance

General design guidance provided. 3.4 Materials and maintenance

Require a Building and Landscape Maintenance schedule (Appendix 7) to document maintenance regimes showing: maintenance paths and entry points to access building facade, roof, landscaped areas and outdoor communal spaces.

Include a description of any maintenance equipment that will need to move through these spaces, including vehicles where required.

Landscape maintenance tasks seasonally.

Detail the maintenance requirements for green walls or roofs Remove requirement. Ongoing management of building and maintenance is not a planning matter. This is an overreach.

APPENDIX B

7 STAR HOMES PRICE TABLE - FEBRUARY 2022

I agree to the above statement Yes



# Design and Place State Environmental Planning Policy

**UDIA NSW Submission** 

February 2022

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# CONTACT

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# **ABOUT THE UDIA**

Established in 1963, the Urban Development Institute of Australia NSW (UDIA) is the peak industry body representing the leading participants in urban development in NSW. Our more than 450 member companies span all facets of the industry including developers, consultants, local government and state agencies. We have a strong commitment to good growth in the regions. A quarter of our members are based in regional NSW, and we have active Chapters in the Hunter, Central Coast, and

Illawarra Shoalhaven. Our advocacy is based on creating liveable, affordable and connected smart cities.

# EXECUTIVE SUMMARY

The Design and Place State Environmental Planning Policy (DP SEPP) is the most comprehensive reform of the NSW planning system since the unsuccessful 2013 White Paper: A new planning system for NSW. It attempts to introduce a principles-based framework to drive design and environmental outcomes across development of all scales and typologies in NSW. It will impact on strategic planning (rezoning) and development applications alike across metropolitan, infill and greenfield locations, and regional and rural locations. Attempting to provide blanket controls for the entire state of New South Wales (NSW).

UDIA has worked constructively with Government, the NSW Government Architect (GANSW) and the NSW Department of Planning and Environment (DPE) with a taskforce of members to address the major issues with the DP SEPP since the exhibition of the Explanation of Intended Effect (EIE) in February/March 2021. We commend the level of consultation that has occurred with industry and stakeholders since that period. However, the package as exhibited fails to address our major concern, being the impact on development feasibility, and will be disastrous for housing supply and delivery in NSW, adding time, cost and complexity to an already broken system. As such the DP SEPP is not supported by UDIA NSW. We are calling on the Government to cancel the policy due to its unacceptable impacts on housing supply and affordability.

UDIA modelling has shown that to meet the increased BASIX standards (thermal requirements) alone will add **an additional \$30,000 or more to the cost of building a new home**. The imposition of new standards under the Apartment Design Guide (UDG), the introduction of the new Urban Design Guide (UDG) and requirement to prepare a site-specific Development Control Plan (DCP), the requirement for more detailed technical information upfront for Design Review Panels (DRP) and demonstrating compliance with the SEPP will increase costs and complexity of development proposals and **add up to 6 months to the process.** This will contribute further to the NSW planning systems reputation as the worst in the country.

UDIA remains a strong advocate for improved design outcomes, advancing Aboriginal cultural heritage and the move towards Net Zero and increased environmental standards. We will continue to work with Government to proceed with aspects of the reforms which have merit, but on the whole the DP SEPP and supporting package fail to have adequate regard to development feasibility and the impact on housing supply and delivery.

UDIA NSW is calling on Government to:

• Immediately cancel the Design and Place SEPP and supporting package due to the disastrous impact it will have on housing supply and delivery in NSW.

• Work with industry to develop a pathway to deliver improved design outcomes, increased Aboriginal cultural heritage and increased environmental standards aligned with the plan for NetZero that has regard to development feasibility and the impact on housing supply and delivery.

Our submission provides a detailed analysis of the impact of the DP SEPP and supporting package, drawn from the experiences of our 450 members in many sectors including, development, consultancy, local government, and state agencies. We have constructively engaged with Government during the development of the DP SEPP. However, the package as exhibited fails to acknowledge our main point of concern, that being the impact it will have on new housing supply, delivery and household affordability. We have critically assessed each component of the DP SEPP and supporting package and have provided recommendations to proceed where possible, noting the cancellation of the policy is the best course of action for NSW.

If the policy is not immediately cancelled, this submission recommends amendments that must be implemented to ensure the worst impacts on housing supply and delivery are avoided. The policy must be delayed until such time as these recommendations are adopted and a pathway forward mapped out in consultation with industry.

#### **Recommendations**:

Draft Design and Place SEPP:

- 1. Delay the introduction of the DP SEPP until such time as revised principles can be developed which are practical and achievable under the NSW system.
- 2. The DP SEPP be amended to reinstate 'consideration' with the design principles as the appropriate test for consent authorities when determining an application.
- 3. Implement an extensive and ongoing education program for local government assessing officers to provide them with the skills and confidence to apply the ADG in a flexible outcome-focused manner.
- 4. The DP SEPP be updated to reference the new Employment Zones currently being transitioned to by local government.
- 5. The savings and transitional arrangements be redrafted to ensure the DP SEPP does not apply to a development application that is part of a concept development consent, or to a modification if the original consent was issued prior to the commencement of the DP SEPP.
- 6. Establish an industry working group to define 'urban design development' having regard to the significant requirements of the DP SEPP and UDG and scale, type and geographical location of development.

Environmental Planning and Assessment Amendment (Design and Place) Regulation 2021:

7. The definition of urban designer be expanded to include a person who has a qualification in urban design with 10 years' experience in precinct or master planning and a 'registered surveyor' with 5 years' experience in precinct or master planning.

- 8. The requirement for who can prepare a design verification statement involving public and common space, irrespective of size, be expanded to include urban designers, architects and town planners.
- 9. Government should work with industry to establish a pathway forward for increased environmental standards, including the uptake of electric vehicles, which has regard to development feasibility and the impact on housing supply and delivery.

#### Section 91 Direction:

10. DPE coordinate its internal teams to avoid the potential undermining of the reforms of one team by the efforts of the DP SEPP team, improving the planning proposal/rezoning process without introducing new complexity into the process. Furthermore, DPE to work with industry to development an improved planning proposal/rezoning process which makes NSW more competitive.

**Revised Apartment Design Guide (ADG):** 

- **11.** Remove the 225° test as it creates perverse outcomes and does not deliver the desired intent to establish a simple DTS solution for natural cross ventilation.
- 12. Clarify what the intent of study room requirements are and whether only those defined as a habitable room, meeting the width and size criteria and having a door, are acceptable and added to the minimum apartment size.
- 13. The solar access window be extended to 4pm on 22 June.

Urban Design Guide (UDG):

- 14. Do not proceed with the UDG as drafted under the DP SEPP due to the added time, cost and complexity and impact on housing supply and delivery. Reinstate the UDG principles as guidance to inform early precinct planning and master planning processes without statutory weight.
- **15.** Industrial development be excluded from strict compliance with the UDG and the design criteria and guidance be used to inform design rather than restrict it.
- 16. Use the widely accepted Net Developable Area as the basis to determine residential density and open space provisions.

**Residential Sustainability (BASIX):** 

- 17. The increased environmental standards and update to BASIX should be paused until an industry working group is established to develop a staged pathway forward having greater regard to development feasibility and the impact on housing supply and delivery.
- 18. See recommendation 17.
- 19. A revised cost benefit analysis be undertaken in conjunction with industry once a refined pathway forward for increased standards is prepared and all detail is made publicly available.
- 20. Not proceed with the increased standards until such time as the Materials Index is made available to industry, its impacts can be tested and a staged introduction which has regard to feasibility mapped out.
- 21. Establish an industry working group to co-design an approach to improving resilience in the NSW planning system.
- 22. The update to BASIX be halted until such time as the NatHERS software tools are released and the climate files updated.
- 23. The increased environmental standards be put on hold until such time as a pathway for implementation can be developed with industry and adequate savings and transitional arrangements finalised to limit the impact on development feasibility.

**Design Review Panel Manual for Local Government:** 

24. Do not require industrial developments to undertake a design review process due to the limited benefit this would add to outcomes while increasing time and cost.

#### **Connecting to Country**

25. Work with industry to map a process where DPE and a local government lead engagement on Aboriginal cultural heritage, as part of the preparation of Local Environmental Plans and Strategic Plans.

#### BACKGROUND

Throughout the course of the past 12 months UDIA has expressed ongoing concerns that the policy does not have adequate regard for development feasibility and would be disastrous for housing supply and delivery in NSW. The policy continues to focus on overly ambitious design outcomes even after internal modelling for the proposed ADG changes has demonstrated the devastating impact this would have on development feasibility. Good public policy must balance the introduction of new provisions to deliver on the desired intent, with the negative impacts associated with the new requirements. The

development of the DP SEPP failed to do this from the outset. The Cost Benefit Analysis (CBA) exhibited in support of the policy, is a high-level summary and affords little to no detail on the assumptions that underpin the modelling. It provides industry and stakeholders with no ability to adequately interrogate the results. We have on numerous occasions through numerous routes, requested access to the complete CBA. This has been refused. As such UDIA cannot support the outcomes of this modelling and is calling on Government to act according to their own commitment to public consultation and release the full detailed analysis.

The release of the policy could not come at a worse time for NSW as we are struggling to recover from the impact of the COVID-19 pandemic, construction shutdowns, worker shortages, supply chain issues and increased cost of materials. The increased cost of materials alone is having a devastating impact on development throughout NSW. Developers of all sizes are not immune to these impacts. The DP SEPP runs the very real risk of significant damage to the construction industry and resultant loss of jobs, decrease in housing supply, worsening affordability and decline in state productivity. This is a dramatic statement and we do not make it for effect. Our members across all sectors are telling us this.

The inadequate consultation, lack of transparency in the process and exhibition material are cause enough for the policy to be cancelled. If the package is not cancelled the introduction of the provisions must be delayed until such time as all the detailed material, including the CBA modelling and environmental standards, are released and can be critically assessed. A genuine assessment will enable all the trade-offs (environment, affordability, design benefit etc.) to be evaluated.

The policy, to be workable, must be amended to ensure it does not devastate an already fragile housing supply. UDIA remains committed to working with Government to ensure a path forward for the beneficial aspects of the reform, such as improved environmental performance. Industry alongside Government can seek to deliver on the intent of the reforms in a way that truly improves the NSW planning system, reduces timeframes, costs and complexity and encourages investment in NSW. A simpler and more efficient system will promote confidence, reduce red tape and risk, and in turn reduce upfront costs, including those incurred by increasing fees and charges, technical requirements and holding costs.

## **CONSULTATION PROCESS**

The development of the DP SEPP and supporting package, has been a failure in stakeholder consultation and is at odds with the NSW Governments own stated commitment to public engagement. The policy direction was set prior to the exhibition of the EIE, prioritising design with little regard to development feasibility. It seeks to deliver subjective enhanced aesthetic outcomes through the introduction of additional complexity, increased costs and time, in an already broken planning system.

To the Government's credit, we acknowledge that the consultation process following the exhibition of the EIE was improved, through the introduction of policy working groups and UDIA and its members responded to this with a full commitment to participate. However, the working groups were poorly

coordinated, affording little to no opportunity to comment on policy changes prior to each session. Ultimately, the process felt like a tokenistic attempt to appease industry, rather than and offer of genuine engagement to develop and improve policy. The Apartment Design Guide (ADG) policy working group was a notable exception to this. However meaningful changes only occurred following internal financial modelling that corroborated what industry had been stating all along, that the original proposed changes would have made apartment development in NSW unfeasible.

The additional policy working groups on the new Urban Design Guide (UDG), changes to the design review panel process and increased environmental standards (BASIX) afforded little to no detailed information to engage with and respond to. The development of the DP SEPP and supporting package was rushed through to exhibition behind closed doors, without addressing the fundamental concerns of industry, that it will negatively impact the supply and delivery of housing in NSW.

It is damning to note that the information released as part of the exhibition of the DP SEPP and supporting package, still lacks fundamental details required for industry and all stakeholders to critically assess the policy. The detailed cost benefit analysis undertaken by Government, and in accordance with NSW Treasury requirements Better Regulation Statement, has not been made available. Rather a summary of the modelling has been provided which highlights increased costs to individuals and utilises the Wider Economic Benefits (WEBs) to society to justify the policy. This lack of transparency is alarming and supports the cancellation of the policy until such time as this is released and can be adequately assessed.

The increased environmental standards (via BASIX) has also failed to provide all necessary information for assessment during this exhibition period. The BASIX sandbox tool, which is the beta version of the BASIX tool, has not been released for multi-dwellings at the time of writing this submission. It is critical to understand the impact of the proposed increased standards across all development types. UDIA has been supportive of environmental standards which deliver improved outcomes for the environment, homeowner and community, however this failure to release the sandbox tool makes it impossible to support the changes at this time.

UDIA NSW remains supportive of the intent to deliver improved design, Aboriginal cultural awareness and environmental outcomes. We are committed to working with Government to progress certain aspects of the reform, having greater consideration to development feasibility and the impact on housing supply and delivery. In order to do this, Government must act on its commitment to genuinely engage with industry and map a pathway forward which has greater regard to development feasibility.

# DRAFT DESIGN AND PLACE SEPP 2021

#### Introduction of a Principles Based Policy in NSW

The DP SEPP is attempting to be the first principles-based SEPP in NSW, introducing detailed design and environmental principles into the policy to promote consistent outcomes across the state. While the intent to improve design and environmental outcomes and promote consistency across the state is supported, the DP SEPP will ultimately fail to achieve this. The policy and supporting package fail to acknowledge the huge impost this will have on local planning authorities, in particular the level of resourcing and training that would be required to upskill assessing officers and the need for monitoring to ensure any inconsistency in the nature in which principles will be applied is avoided.

In an attempt to provide more information, the DP SEPP includes detailed design considerations for each of the design principles. However, these considerations are worded in such a way that an assessing officer will have little to no chance of determining if a development is consistent with them and ultimately the design principles.

For example:

#### **16 Design consideration—culture, character and heritage** The consent authority must consider whether— (a) the development detracts from the desired character of the area, and

For areas where a Local Character Statement has not been prepared, vacant greenfield locations or areas experiencing change, an assessing officer could not reasonably make this determination. In established areas, assessment is equally fraught. The definition of "Desired Future Character" has been subject to numerous NSW Land and Environment Court (LEC) matters and the many judgments and case law demonstrate the contested nature of this issue. This will lead to conflict and greater discrepancies as different authorities determine 'consistency' in their own jurisdiction. This will likely result in in more development applications being referred to the LEC to make a judgement and set a precedent as to how the principles are considered and consistency determined.

UDIA recommends:

1. Delay the introduction of the DP SEPP until such time as revised principles can be developed which are practical and achievable under the NSW system.

#### Consent authority to be satisfied that development is consistent with Design Principles

The Draft DP SEPP elevates the test for consent authorities when assessing a proposal against the design principles. The current wording in *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment development (2002 EPI530)* requires a consent authority to take into consideration the design quality in accordance with the design quality principles prior to issuing a consent.

#### 28 Determination of development applications

(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration)—

(a) the advice (if any) obtained from the design review panel, and

(b) the design quality of the development when evaluated in accordance with the design quality principles, and

(c) the Apartment Design Guide.

The wording in the Draft DP SEPP elevates the consent authority's assessment from 'consideration' of the design principles to being 'consistent' with the design principles.

#### **13** Consideration of design principles and design considerations by consent authority

(1) Development consent must not be granted for development to which this Policy applies unless the consent authority is satisfied that the development is consistent with the design principles.

This is a major elevation in the test to comply with the design principles. It will cause significant difficulty for assessing officers to determine consistency and provides for no flexibility. For example, how will a Planning Authority be satisfied that the subjective principle of "aesthetics" has been satisfied? Planning Panel advice is only one opinion. Flexibility is a fundamental requirement in a principles-based policy, as it needs to acknowledge the differing scope and breadth of developments across the entire state and allow instances where a departure from one of the stated principles will result in a better design or environmental outcome.

UDIA recommends:

2. The DP SEPP be amended to reinstate 'consideration' with the design principles as the appropriate test for consent authorities when determining an application.

#### Flexible application of the Apartment Design Guide (ADG)

The DP SEPP seeks to ensure the flexible application of the ADG through the inclusion of the following provisions in the SEPP.

#### 30 Objectives of Apartment Design Guide

(3) In determining whether development meets the objectives of the Apartment Design Guide, the consent authority must—

(a) apply the design criteria and design guidance set out in the Apartment Design Guide flexibly and consider alternative solutions, and

(b) consider the objectives of the Apartment Design Guide only in relation to the particular development application.

While the intent to ensure the ADG is applied flexibly is strongly supported, UDIA remains concerned that the inclusion of these provisions will do little to ensure that flexibility is considered during the application process. The ADG advises that the objectives can be achieved by meeting the design criteria and guidance which include metrics that set minimum base line standards for design and environmental outcomes. An assessing officer who is unable or unwilling to make a judgement-based merit assessment, is likely to default to the stated metrics when determining an application. This situation already prevails in many planning authority assessments with the current ADG and it is likely that it will continue to be the case even with the inclusion of the proposed provisions.

To ensure the flexible application of the ADG is used to its fullest extent, an extensive and ongoing education program is required to upskill assessing officers to give them confidence to make meritbased decisions. This will require a cultural change within planning in NSW, from a system which is risk adverse, to one that is outcome focused.

UDIA Recommends:

3. Implement an extensive and ongoing education program for local government assessing officers to provide them with the skills and confidence to apply the ADG in a flexible outcome focused manner.

#### New Employment Zones

The DP SEPP makes reference to the existing business and industrial zones. Local Governments are currently in the process of transitioning to the new employment zone framework introduced by DPE back in May 2021. The DP SEPP was exhibited seven months after this.

UDIA recommends:

4. The DP SEPP be updated to reference the new Employment Zones currently being transitioned to by local government.

#### Savings and transitional provisions

The savings and transitional provisions for concept development applications and modifications to a development consent outlined within the DP SEPP are inadequate and will cause significant harm to the realisation of projects and housing supply and delivery. UDIA does not support these provisions as drafted.

Concept DAs are often lodged for large scale multiple stage developments. Each stage can require multiple years to proceed to the development application stage, rolled out sequentially from the initial concept approval. The proposed provisions would require DAs lodged more than 2 years after the concept approval to apply the new provisions of the DP SEPP. This may require a significant reworking of the proposal to comply with the new provisions and will add to the time and cost to deliver projects. It will impact on development feasibility and certainty, and slow down the delivery of housing in NSW.

The application of the DP SEPP provisions to modifications of consent lodged after 2 years from the original development consent, is also not supported. This will have the same impact as the concept approval concern we note above. It will require a significant reworking of projects to comply with the new provisions. This will deter applicants from lodging modifications to improve development outcomes, as the application of the new provisions will add time and cost to a proposal.

UDIA Recommends:

5. The savings and transitional arrangements be redrafted to ensure that the DP SEPP does not apply to a development application that is part of a concept development consent, or to a modification if the original consent was issued prior to the commencement of the DP SEPP.

#### Meaning of Urban design development

The definition of 'urban design development' as proposed with the DP SEPP is too broad.

#### 6 Meaning of "urban design development"

(1) In this Policy, urban design development means the following development-

(a) development on land that is not in an industrial zone that has a site area greater than 1 hectare,

(b) development on land in an industrial zone that has-

(*i*) a capital investment value of \$30 million or more, and (*ii*) a site area greater than 1 hectare,

(c) development in relation to which an environmental planning instrument requires a development control plan or master plan to be prepared for the land before development consent may be granted for the development

Notwithstanding this confused phraseology, the use of a single metric for non-industrial sites greater than 1 hectare is not appropriate in all circumstances. In rural and regional locations this will capture very basic subdivisions of possible 2 or 3 lots and require compliance with the Urban Design Guide (UDG) and likely preparation of a site-specific Development Control Plan (DCP). The metric will also capture procedural subdivisions where the subdivision will occur on 'paper' but have no material development. This will add time, cost, and complexity to these basic subdivisions, impacting not only the proponents who have to prepare additional information but also the consent authority that needs to assess the application and the community, as housing supply and delivery is impacted.

The definition also captures development on land in an industrial zone with a Capital Investment Value (CIV) of \$30 million or more and a site area greater than 1 hectare. Many basic warehouse type industrial developments will meet these requirements and be subject to the DP SEPP and UDG provisions. Industrial developments of this scale largely consist of warehousing and distribution facilities which have a consistent 'big box' form. The need to comply with the provisions of the UDG will significantly impact development yield, increase costs and delay the delivery of these projects which are crucial to the state's economic function (employment, servicing communities and state GDP).

UDIA recommends:

6. Establish an industry working group to define 'urban design development' having regard to the significant requirements of the DP SEPP and UDG and scale, type and geographical location of development.

# ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (DESIGN AND PLACE) REGULATION 2021

#### Definition of urban designer

The definition of an urban designer proposed will only include a qualified town planner, landscape architect or architect with 5 years' experience in precinct or master planning.

# [1] Clause 3 Definitions urban designer means the following— (a) a qualified town planner with at least 5 years' experience in precinct or master planning, (b) a landscape architect with at least 5 years' experience in precinct or master planning, (c) an architect with at least 5 years' experience in precinct or master planning.

This definition should be expanded to include someone who is a qualified urban designer and who has 10 years relevant experience in urban design irrespective of whether they have a planning, architecture, or landscape architecture qualification. The additional experience is recognition of the lack of a professional body specific to urban designers.

Many Registered Surveyors also have extensive experience in precinct and master planning. A Registered Surveyor with 5 years' experience in this area should be included in the definition of urban designer.

UDIA Recommends:

7. The definition of urban designer be expanded to include a person who has a qualification in urban design with 10 years' experience in precinct or master planning and include a 'registered surveyor' with 5 years' experience in precinct or master planning.

#### Design verification statement

The requirements under Clause 57 outlining when a design verification statement (DVS) is needed and who can prepare one are overly prescriptive. Clause 57 (4) provides that only a landscape architect can prepare a design verification statement for a development involving public or common space of more than 1,000sqm. This will require engaging separate consultants, all at added expense and time, to prepare separate aspects of the DVS. An urban designer, architect or town planner, as defined within the regulations, should be sufficiently capable of preparing a DVS for public or common open space irrespective of the size.

UDIA recommends:

8. The requirement for who can prepare a design verification statement involving public and common space, irrespective of size, be expanded to include urban designers, architects and town planners.

#### Condition relating to charging facilities for electric vehicles

The inclusion of conditions of consent requiring car parking to be electric vehicle ready, is an upfront cost on development which may not deliver any tangible benefit to its residents in the short term. While UDIA support 'future proofing' development the uptake of electric vehicles in Australia is slow and any benefit in providing the infrastructure to support future charging is offset by the increased cost to development and impact on housing supply and delivery in the short term. Government should work with industry to establish a pathway forward for increased environmental standards, including the uptake of electric vehicles, which has regard to development feasibility and the impact on housing supply and delivery. Future benefits need to be assessed against immediate additional costs.

UDIA recommends:

9. Government should work with industry to establish a pathway forward for increased environmental standards, including the uptake of electric vehicles, which has regard to development feasibility and the impact on housing supply and delivery.

# **SECTION 91 DIRECTION**

#### Application of the Direction

The Ministerial Direction seeks to ensure the provisions for DP SEPP and in particular the UDG are considered early in the planning process, including during planning proposals. Furthermore, the broad application of the Direction to apply when a planning authority prepares a planning proposal affecting land greater than 1 hectare in area and within an existing or proposed residential, commercial, mixed use or industrial zone, will capture a large proportion of development in the state.

It will ensure the additional requirements of the DP SEPP and UDG must be considered and assessed as part of a planning proposal. However, it will come at a huge administrative expense, extended timeframes and effort for all parties. Rather than improving the NSW planning system, these requirements only add to the complexity of the system, introducing new processes and requirements, adding to cost and time delays.

Of significance, the development of the Draft DP SEPP and Ministerial Direction appear to have been done without regard to DPEs own reform program to improve the planning proposal/rezoning process. This work needs to be aligned, as any improvement to the planning proposal process will be undermined by the introduction of additional requirement under the DP SEPP.

UDIA recommends:

10. DPE coordinate its internal teams to avoid the potential undermining of the reforms of one team by the efforts of the DP SEPP team, improving the planning proposal/rezoning process without introducing new complexity into the process. Furthermore, DPE to work with industry to development an improved planning proposal/rezoning process which makes NSW more competitive.

Further explanation of the major issues with the application of the Ministerial Direction are contained in the DP SEPP and UDG sections of this submission.

## **REVISED APARTMENT DESIGN GUIDE (ADG)**

As noted earlier in this submission the development of the revised ADG was a singular point of constructive engagement in the development of the DP SEPP. While the worst aspects of the proposed ADG have been removed, the UDIA remains concerned about a number of proposals which remain. These are further explained below.

A full assessment of the proposed ADG changes is attached as Appendix A. It highlights areas where the ADG will still have an impact on development feasibility.

#### Natural Cross Ventilation

The exhibited ADG requires that for an apartment to meet the deemed to satisfy (DTS) solution for natural cross ventilation, they must be either:

- a cross-through, corner and roof-window,
- or it must provide 225° wind exposure to openings; AND have limited obstruction to the wind from the building form; AND have opening distribution and sizes that satisfy EOA 5% etc.

This was demonstrated to be an impractical test during the policy working groups and subsequent follow up meetings, where many award-winning apartment projects would not comply.

The 225° test does not allow for any designs with 7 or more apartments with a single core and a rectangular floorplate to be a DTS solution. Every building will either automatically require 2 cores or must go down the alternative pathway of wind testing. This will be detrimental for all building designs but extremely high impact for for mixed use buildings with several residential buildings on top of a podium (where the intent is to minimise the impacts of lifts/stairs through the non-residential floorplates). Such dramatic building requirements will further impact development yield and feasibility, housing supply, delivery and affordability.

Ironically, the requirements are so severe they will now require Masterplan and building design to prioritise wind as the first goal. Other equally important goals (e.g solar access, public domain, open space, streetscape and good urban outcomes) will be relegated to a distant second. It will deliver perverse outcomes and is the opposite of how good urban design should be thought about.

UDIA recommends:

# **11.** Remove the **225**° test as it creates perverse outcomes and does not deliver the desired intent to establish a simple DTS solution for natural cross ventilation.

#### Study Rooms as a Habitable Room

The proposed ADG provisions are not clear as to what the requirements are for a study room. The provisions as drafted appear to require Study Rooms to be a minimum width of 2.4m, be a minimum 7sqm and to have a door to be considered a habitable room. GANSW has also stated that the 'habitable room' would need to be added on top of the minimum apartment size. Applying this logically would mean that a study nook without a door can be more flexible in size and width and doesn't need to be added on top of the minimum apartment sizes.

This may lead to perverse outcomes whereby removing a door or window or having the study space completely internal with borrowed light would be a more acceptable solution under the proposed DP SEPP.

#### UDIA recommends:

12. Clarify what the intent of study room requirements are and whether only those defined as a habitable room, meeting the width and size criteria and having a door, are acceptable and added to the minimum apartment size.

#### Solar access

The GANSW acknowledged the advice of industry during the policy working groups and extended the solar access provisions from 9am to 8am. This is a meaningful and practical change which will deliver improved design and environmental outcomes. However, GANSW have been steadfast in its refusal to extend the provisions from 3pm to 4pm. This refusal is unjustified. The increased hour in the afternoon will not increase overshadowing of adjacent properties. It only seeks to give more flexibility in the apartment designs for west orientations and less reliance on angling walls just because the site orientation is not ideal.

UDIA recommends:

#### 13. The solar access provisions be extended to 4pm on 22 June.

### URBAN DESIGN GUIDE (UDG)

The introduction of the Urban Design Guide (UDG) is not supported. The consultation process following the EIE and during the development of the guide was grossly inadequate. Little to no detail was provided during the consultation stage, affording no opportunity to critically assess what was proposed and provide constructive feedback. Accordingly, the UDG which has been exhibited will increase time, cost and complexity in the system and negatively impact housing supply and delivery.

While it is imperative that urban design outcomes are considered during a precinct planning and master planning process, these considerations should guide outcomes rather than be mandated through state policies. Industry alongside government is already incorporating these principles into their design and delivering good outcomes without the need for added complexity and red tape in the system.

#### Application of UDG to Development Applications

The introduction of the UDG will significantly increase approval timeframes, particularly in areas which are already subject to site specific DCPs and neighbourhood plans. Guidance contained in the UDG are considerations during precinct planning and master planning processes, which is the appropriate time to consider high level strategic outcomes across any given area. The application of the UDG at the development application stage will only add to time, cost and complexity of the system. In greenfield precincts it will add an unnecessary third step: DCP; Neighbourhood Plan and then UDG. A single development application should not be subject to duplicitous provisions which serve little benefit to the broader community. The impost on proponents and assessing authorities alike will be substantial.

Furthermore. Some provisions will result in reduced yields due to tree canopy requirements up to 40%, maximum block lengths of 250 metres and mid-block connections of no more than 130 metres apart, requiring additional time and costs for engaging consultants and added assessment timeframes. This runs contrary to the stated intent to improve the NSW planning system and create a more streamlined process.

Consideration of urban design outcomes during precinct planning and master planning processes is appropriate and the UDG could be used to guide discussion during early stages of these processes.

However, it should not be given statutory weight through a state policy and not be applied at the DA stage.

UDIA recommends:

14. Do not proceed with the UDG as drafted under the DP SEPP due the added time, cost and complexity and impact on housing supply and delivery. Reinstate the UDG principles as guidance to inform early precinct planning and master planning processes without statutory weight.

#### Impact of the UDG on Industrial Development

As stated above the application of the UDG will require extensive additional assessment and documentation, adding to DA timeframes and cost. This is especially true for industrial development. Many of the UDG objectives and criteria are inappropriate to the industrial/warehouse building typology, but will apply, nonetheless.

The UDG is clearly drafted with a primary focus on commercial and residential development. It includes requirements such as reduced site areas to support walkability and permeability; street activation and parking required to rear of the site which are problematic or inappropriate for industrial developments to comply with.

The requirements for 15% deep soil and 25% to 35% canopy cover required for industrial/warehouse sites will require significantly more land to deliver a warehouse of the same Gross Floor Area (GFA). This will ultimately result in additional and unsustainable urban sprawl. The requirement for additional land further reduces the competitiveness of industrial/warehouse development in NSW compared with other states. Efficient land use consolidation, rather than requiring more site area to deliver industrial/warehouse uses, would free up land for higher order alternative uses or public recreation.

The additional land needed to deliver the same industrial development outcome will increase the cost in delivery of employment activities in NSW, which will be passed on to the sector in rents or sales and ultimately be felt by end users. Importantly, it will make NSW uncompetitive for footloose investment that can simply "vote with its feet" and invest and locate in neighbouring states that are more welcoming.

The additional deep soil and canopy cover requirements, particularly for brownfield/infill site redevelopment, would remove incentive for replacing old contaminated industrial development with cleaner more sustainable warehouse development.

UDIA recommends:

**15.** Industrial development be excluded from strict compliance with the UDG and the design criteria and guidance are used to inform design rather than restrict it.

#### Gross developable Area

Th use of Gross Developable Area (GDA) as the basis to determine density and open space provisions, rather than the universally used Net Developable Area (NDA) is not supported.

NDA has now been adopted throughout Precinct planning in NSW. It is embodied in legislation, LEPs, DCPs and VPAs. Using a gross figure will create unnecessary confusion. Importantly, it will cause different sites to provide disproportionate open space and densities, due to other land uses being permitted within the GDA definition. Density and open space should only really apply to residential land uses. The density requirements using GDA would see development outcomes inconsistent with the type of built form.

UDIA recommends:

16. Use the widely accepted Net Developable Area as the basis to determine residential density and open space provisions.

# **RESIDENTIAL SUSTAINABILITY (BASIX)**

UDIA NSW is a strong advocate for improved environmental outcomes and recognises and supports the NSW Government's pathway to NetZero. Our members are leaders in providing energy and water efficient developments that benefit residents and the broader community alike. While we are calling for the cancellation of the DP SEPP and the supporting package, including the increased environmental standards and update to BASIX, we are committed to working with Government to establish a pathway forward on this agenda, which has greater regard to development feasibility. Working with industry will enable a staged approach which delivers improved outcomes and a more timely and efficient manner, without negatively impacting on housing supply and delivery.

UDIA recommends:

17. The increased environmental standards and update to BASIX should be paused until an industry working group is established to develop a staged pathway forward having greater regard to development feasibility and the impact on housing supply and delivery.

#### Inadequate exhibition material

As discussed earlier in this submission the material provided as part of the exhibition package for the increased environmental standards and the update to BASIX are inadequate. They do not make it possible to critically assess the impact of the changes and therefore cannot be support. The sandbox tool for multi-dwellings has not been released as part of the exhibition package. It is now stated that this will be released later in 2022. Industry needs to assess the impact of the proposed changes utilising the sandbox tool now, before any increased standards can be supported.

In addition to the sandbox tool the introduction of a materials index which has regard to embodied emissions is a huge change for NSW and will have significant ramifications for developers, builders, manufactures and supply chains. This is not a proposal that can be rushed to adoption without significant consideration and industry collaboration. Industry needs to be involved in the development of the materials index to ensure it is introduced appropriately, affording time to test and develop

materials, alter supply chains and understand the impact on building costs. Introducing this at a time when the cost of building materials is skyrocketing will further worsen the housing supply and affordability crisis.

#### UDIA recommends:

18. (Recommendation 17) The increased environmental standards and update to BASIX should be paused until an industry working group is established to develop a pathway forward having greater regard to development feasibility and the impact on housing supply and delivery.

#### Cost Benefit Analysis

Th Cost Benefit Analysis prepared by ACIL ALLEN in support of the increased BASIX standards states that for an average home to meet the higher BASIX standards it will cost an additional \$7,000 AUD with the benefits to be recouped over the life of a mortgage.

However, any additional upfront costs will have an impact on development feasibility. Development feasibility does not, and cannot, consider long term Lifecyle costs. The developer generally exits the development upon completion of construction. They take their profit at that time and any lifecycle savings are not realisable. Furthermore, purchasers rarely consider Lifecyle costs as the average length of ownership (if a dwelling) is only 7 years and lifecycle costs play no role in the consideration of price by either a vendor or purchaser. To compound matters, where a property is an investment that generates income, lifecycle costs are depreciated further negating their contribution to a genuine cost benefit analysis.

Ultimately, at a time when industry is facing massive supply chain disruptions and rapidly increasing cost for materials as a result of the COVID-19 pandemic, adding costs to construction is illogical. These costs will squeeze margins and may make development unviable, reducing the supply of housing in NSW and worsening the affordability crisis. The notion that costs can be passed on to home purchasers and accepted is not supported. Home purchasers are already financially overextended due to rapidly increasing house prices and do not have the means to absorb continued added costs. Should interest rates and inflation increase in the foreseeable future, as expected, this crisis will worsen.

Internal modelling detailed in Appendix B highlights that to meet the increased thermal requirements alone, this may add an additional \$30,000 AUD to an average home. This discrepancy in financial modelling outcomes demonstrates why it is crucial for industry to be involved in determining the pathway forward for increased environmental standards. Industry has the experience and expertise to test scenarios and deliver improved outcomes, while having regard to development feasibility which is at the core of their business.

UDIA recommends:

19. A revised cost benefit analysis is undertaken in conjunction with industry once a refined pathway forward for increased standards is prepared and all detail is made publicly available.

#### Introduction of a Materials Index

The exhibition package proposes to introduce a Materials Index but provides very little information. The introduction of a Materials Index without any detail is of great concern to the development of class 1 buildings due to its potential cost and supply implications. It is imperative that industry has access to the materials index to assess changes required for proposed compliance and impact on procurement pipelines.

Time is also needed for manufacturers to understand the Index and ensure their products can meet the desired standards or know the future standards to which new products will be measured and the transition timeframes associated.

UDIA recommends:

20. Do not proceed with the increased standards until such time as the Materials Index is made available to industry, its impacts can be tested and a staged introduction which has regard to feasibility mapped out.

#### Design for Resilience

Very little information has been released on designing for resilience. This is an extremely important matter for industry and the community and something which needs to be introduced correctly. The impacts of recent fires, floods and the pandemic are front and centre of public debate and the industry is grappling to understand what direction Government wishes to take with this initiative. UDIA is supportive of initiatives to improve designs which incorporate resilience, but to date not enough information has been provided.

UDIA recommends:

# 21. Establish an industry working group to co-design an approach to improving resilience in the NSW planning system.

#### **NatHERS**

Most of the NatHERS software tools have not been provided as part of the exhibition and therefore there is no ability to test the impacts against the updated climate files and star bands. Furthermore, the updated standards are using climate files from 1990 – 2015. These are grossly out of date and need to be updated.

UDIA recommends:

# 22. The update to BASIX be halted until such time as the NatHERS software tools are released and the climate files updated.

#### Implementation and transition to Increased standards

The transitional and savings arrangements for the increased environmental standards and the changes to BASIX are unclear. It is not defined when the changes would be introduced or how this would impact on modifications and/or contracts. Many new home purchasers are signing contracts for builds to be

completed over the next 12 to 18 months. The increased environmental standards when introduced will have an immediate impact on the cost of delivering these new homes and must be worn by either the developer or new home buyer. Therefore it is crucial the savings and transitional arrangements are appropriately worked through to enable industry to assess the full impacts of the changes and map a pathway forward which has the least impact on housing supply and delivery.

UDIA recommends:

23. The increased environmental standards be put on hold until such time as a pathway for implementation can be developed with industry and adequate savings and transitional arrangements finalised to limit the impact on development feasibility.

# **DESIGN REVIEW PANEL MANUAL FOR LOCAL GOVERNMENT**

#### Design Review Panel Requirements for Industrial Development

Industrial/warehouse developments are a typology with limited architectural options. They generally consist of a warehouse, hardstand, car park and perimeter landscaping. These parameters are set by their function. Therefore, the value that would be added by a Design Review Panel is questionable.

The role of the Panel Assessment would essentially be a façade design exercise. As there are limited architects with Industrial experience, it is questionable whether Panel members will have relevant experience to appropriately assess industrial/warehouse development.

There is also a genuine concern that a Panel, with limited understanding of the functional requirements of industrial/warehouse development, may assess the DA through the lens of commercial or residential developments and provide inappropriate feedback on design which would be problematic to address in proposed schemes. Due to the limited value the DRP process would add, compared to the time and cost impost, it should not be applied to industrial developments.

It should be noted that due to the competition amongst industrial developers to provide market leading products to attract customers, and the fact that ownership is often retained, there is increasing incentive for warehouses to present as attractively as possible with good amenity and landscaping. Blue chip architects are increasingly being used to design warehouse facades. As the industry is motivated to provide state of the art facilities, it further questions the need to have local Panels scrutinise proposed designs.

Finally, as we note in earlier comments above, the NSW industrial development sector competes with other states for investment and industry location. Importantly, it will make NSW uncompetitive for footloose investment that can simply "with its feet" invest and locate in neighbouring states that are more welcoming and offer shorter approval times and cheaper buildings.

UDIA recommends:

24. Do not require industrial developments to undertake a design review process due to the limited benefit this would add to outcomes while increasing time and cost.

## **CONNECTING TO COUNTRY**

UDIA is supportive of the intent to improve and promote Aboriginal cultural heritage and awareness through the NSW planning system. We acknowledge the draft Connecting to Country framework, and principles of partnering with and working with the appropriate First Nations representatives in the collation and assessment of cultural heritage in a Local Government Area. The value of respecting Aboriginal connection to country through the planning system cannot be understated and is supported.

However, the framework does have issues to overcome. Currently there are inadequate resources in the consultant space to deal with the issues appropriately and have adequate respect for the local First Nations representatives. To improve the process DPE and/or a local government should lead the process, guiding development in their respective areas as part of the preparation of their Local Environmental Plans or Strategic Plans.

UDIA recommends:

25. Work with industry to map a process where DPE and a local government lead engagement on Aboriginal cultural heritage, as part of the preparation of Local Environmental Plans and Strategic Plans.

# CONCLUSION

UDIA remains supportive of the intent to improve design and environmental outcomes and elevate Aboriginal cultural awareness in the planning system. We have worked constructively with Government, GANSW and DPE to reshape the DP SEPP and supporting package into a positive policy for NSW. However, the package as exhibited has failed to address our fundamental concerns and will be disastrous for housing supply and delivery in NSW.

The DP SEPP must not be proceed at this time while industry and the community seek to recover from the impacts of the COVID-19 pandemic, construction shutdowns, worker shortages, supply chain disruptions and rising material costs. To do so would cripple housing supply and delivery in NSW, have a significant impact on the State's economy and only worsen the housing affordability crisis.

UDIA is committed to working with Government to support the introduction of the beneficial aspects of the policy in a considered and practical way, which has regard to development feasibility and supports an increase in housing supply and delivery.

Should you have any questions or wish to arrange a meeting to further discuss a path to proceed with the policy, please contact Michael Murrell, UDIA NSW Planning Policy Manager at <u>mmurrell@udiansw.com.au</u> or 0413221195.

# APPENDIX A

	Current ADG 2015	Exhibited ADG 2021	Impact	UDIA recommendation
			feasibility	recommentation
	About this guide	About this guide		
	Application of the design quality principles The SEPP 65 design quality principles must be considered by design professionals when designing residential apartment development, by design review panels when giving advice on proposals and by consent authorities.	Apartment development must be consistent with the DP SEPP Residential apartment development in NSW must be consistent with the DP SEPP principles and considerations. The Apartment Design Guide objectives are derived from the DP SEPP principles and considerations and provide further detailed guidance applicable to the design and assessment of residential apartment development.		The ADG along with the DP SEPP must be redrafted to remove the requirement to demonstrate 'consistency' as this is a significant elevation of the test for assessing officers and revert back to having consideration.
Site and context analysis	1B Local Character and context & 1C Precincts and individual sites 3A Site analysis	1.1 Site and context analysis		No comment
Building separation	<ul> <li>2F Building Separation</li> <li>3F Visual Privacy</li> <li>Up to 4 storeys</li> <li>(approximately 12m):</li> <li>6m between non- habitable rooms</li> <li>9m between habitable and non- habitable</li> <li>12m between habitable</li> <li>12m between habitable</li> <li>5 to 8 storeys</li> <li>(approximately 25m):</li> <li>9m between non- habitable rooms</li> <li>12m between habitable rooms</li> <li>12m between habitable and non- habitable and non- habitable</li> <li>18m between habitable rooms/balconies</li> </ul>	<ul> <li>1.2 Built form and siting – Design Criteria</li> <li>No change in <u>minimum</u> separation distances.</li> </ul>		See comments relating to 'building height' and Figure 1.2.7

#### DETAILED ASSESSMENT OF PROPOSED ADG PROVISIONS AND UDIA RECOMMENDATIONS

	Current ADG 2015	Exhibited ADG 2021	Impact on feasibility	UDIA recommendation
	<ul> <li>9 storeys and above (over 25m):</li> <li>12m between non- habitable rooms</li> <li>18m between habitable and non- habitable</li> <li>24m between habitable rooms/halconies</li> </ul>			
Building height and proportion separation	2F Building Separation 3F Visual Privacy 2F. Increase building separation proportionally to the building height to achieve amenity and privacy for building occupants and a desirable urban form	<ul> <li>1.2 Built form and siting – Building Height</li> <li>Figure 1.2.7 shows 25m (not 24m) separation for a 17-18 storey building and notes "Setbacks and minimum building separation distances should increase proportionally to the building height"</li> <li>Accommodate the following within the permissible building height: rooftop communal open space including lift and stair access and shade structures articulated roofs designed to enhance design quality.</li> <li>Table 1.2.2 and Figure 1.2.8 and Table recommend 3.6m floor to floor height for first</li> </ul>	High	Redraw Fig 1.2.7 to approx. correct proportions and delete misleading doted V-line between the buildings. Text should be "Minimise multiple steps in tall buildings." Exempt rooftop communal open space from LEP heights. Correct Figure 1.2.8 by deleting 2.7m floor to floor height for Residential habitable at 2 <sup>nd</sup> floor.
Site access	3G Pedestrian access and entries	1.3 Site access and address		No comment
Relationship to the street	3C Public domain interface	1.4 Relationship to the street		No comment
Deep soil	3E Deep soil zones – Design Criteria Deep soil 7% of site area Minimum dimensions for site area: <650m2 – n/a 650m2 – 1,500m <sup>2</sup> = 3m > 1,500m <sup>2</sup> = 6m Design Guidance	1.5 Green Infrastructure – Design Guidance Deep soil per site area < 1,500m <sup>2</sup> Minimum dimension = 3m Deep soil = 10% of site area Minimum canopy target = 15% site area >1,500m <sup>2</sup>	High	The increased criteria and design guidance will have a significant impact on development yield. The provisions should revert back to those contained

	Current ADG 2015	Exhibited ADG 2021	Impact on feasibility	UDIA recommendation
	Deep soil 10% of site area 650m2 – 1,500m2 Deep soil 15% of site area > 1,500m <sup>2</sup>	Minimum dimension = 3m, with 6m wide <u>contiquous</u> portion for at least 25% of the minimum deep soil area Deep soil = 15% of site area Minimum canopy target = 20% site area		in the current 2015 ADG.
Tree canopy and retention	40 Landscape design – 'recommendation' <850m <sup>2</sup> site area: 1 medium/ 50m <sup>2</sup> deep soil (@ 7% = 1 tree) 850m <sup>2</sup> – 1500m <sup>2</sup> site area: at least 1 large or 2 medium trees/ 90m <sup>2</sup> deep soil (@ 10% = 1-2 large or 2-4 medium trees) >1500m <sup>2</sup> site area: at least 1 large or 2 medium trees/ 80m <sup>2</sup> deep soil (@ 15% = >3 large or 6 medium trees ) Objective 40-2 Design guidance Significant landscape features should be protected by: tree protection zones appropriate signage and fencing during construction	1.5 Green Infrastructure – Design Guidance Tree canopy <650m <sup>2</sup> site area: at least 1 small tree for every 350m <sup>2</sup> or part thereof 650m <sup>2</sup> – 1500m <sup>2</sup> site area: at least 1 medium trees for every 350m <sup>2</sup> or part thereof >1500m <sup>2</sup> site area: at least 1 large or 2 medium tree for every 575m <sup>2</sup> or part thereof	Low - similar to 2015 ADG	No comment
		Retaining trees Retain and protect existing trees, including those on adjoining sites. Locate building envelopes, basements and driveways in order to maximise the number of trees able to be retained on site.	HIGH	if taken too literally – how is maximised to be defined? A better word may be 'optimised'. Explicitly state 'retain where developmentally feasible' and allow for Tree Replacement Ratios from 1:1 as an option otherwise
Planting on structure	4P Planting on structures	1.5 Green Infrastructure – Design Guidance		300-450mm for ground covers is inconsistent with

	Current ADG 2015	Exhibited ADG 2021	Impact	UDIA recommendation
			feasibility	recommendation
	Ground covers require min 300-450mm soil depth	Planting on structures Table 1.5.4 Similar requirements to 2015 ADG		extensive Green roofs which are generally less than 300mm deep. Amend Ground covers to 200- 450mm.
Car parking	3J Bicycle and car parking 3H Vehicle access Minimum car parking rates in the Guide to Traffic Generating Developments (RTA 2002) or Council rates (which ever is less).	<ul> <li>1.6 Parking – Design Guidance Car parking</li> <li>No change in minimum Make provision for 'EV- ready' connections for all residential car parking spaces as outlined in Part</li> <li>3.1: Energy efficiency. Provide a shared EV connection to 10% of visitors spaces, or 1 space if &lt;10 spaces</li> <li>Ensure safe movement by: providing pedestrian pathways separate to vehicular access where possible, to minimise use of vehicular ramps by pedestrians marking pedestrian crossing zones over vehicle circulation and using hollards</li> </ul>		Requirements for car parking remain unclear and need to be developed with industry having regard to development feasibility.
Bicycle parking	No min bicycle parking requirement	1.6 Parking – Design Guidance Bicycle parking Provide minimum 1 bicycle parking/ dwelling or DCP requirement, whichever is greater located at Ground, L1 or Basement 1. Residential – 1 space/ dwelling. Class A or B Commercial – 1 space/ 200m <sup>2</sup> . Class B Visitor – 1 space/ 10 dwellings. Class C	Low	This provision should support reduce parking rates. The requirements for Class A contributes to residential storage requirements (outside of apartments) runs contrary to the decision to require electric vehicle readiness. DPE should remove metrics and rather have generic guidance.

	Current ADG 2015	Exhibited ADG 2021	Impact on feasibility	UDIA recommendation
Lifts/ apartments	4F Common circulation and spaces – Design criteria The maximum number of apartments off a circulation core on a single level is eight For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40 Where design criteria 1 is not achieved, no more than 12 apartments should be provided off a circulation core on a single level	<ul> <li>2.1 Common circulation – Design guidance</li> <li>Lift handling capacity and anticipated waiting times, demonstrated in a vertical transportation report to ISO 8100-32:2020 Lifts for the transportation of persons and goods – Part 32:</li> <li>average waiting time: 60 seconds or less handling capacity: 7 per cent or more No change to preferred maximum 8 - 12 apartments/core</li> <li>Require access and circulation spaces to achieve Liveable Housing Australia silver performance level</li> </ul>		
Common and fire stairs	No criteria for natural light and ventilation to fire stairs	2.1 Common circulation – Common stairs locate and design common stairs (including fire stairs) for ease of movement and with adequate amenity for daily use, including natural light and ventilation.	High	Remove proposed provision. Added construction cost and reduced affordability as it uses valuable façade area, requires upgraded finishes. Improved amenity in fire stairs is not a worthy pursuit during a housing supply and affordability crisis. Risks health and safety.
Common circulation daylight and natural ventilation	4F Common circulation and spaces – Design guidance Daylight and natural ventilation should be provided to all common	2.1 Common circulation – Design guidance For daylight and natural ventilation, provide: min glazed area of 10% and equivalent open area (EOA)		DPE to provide examples of how to achieve design guidance

	Current ADG 2015	Exhibited ADG 2021	Impact	UDIA
			on feasibility	recommendation
	circulation spaces that are above ground Windows should be provided in common circulation spaces and should be adjacent to the stair or lift core or at the ends of corridors	of 2% of the common circulation floor area served 2+ sources of natural ventilation/ daylight for floorplates > 7 apartments where glazing is to a slot or façade indent the width-to- length ratio 1:3 or wider and be open to the sky		
Communal open space	3D Communal and public open space Communal open space has a minimum area equal to 25% of the site. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hour.	2.2 Communal spaces 8m <sup>2</sup> / dwelling up to 25% of the site area. At 21 June 9am-3pm, achieve minimum 2h solar access to 50% of communal open space At 21 Dec 9am-3pm, achieve minimum 2h shading to 50% of communal open space Min dimension 4m for sites <650m <sup>2</sup> , 6m for sites >650m <sup>2</sup> Doesn't have to be collocated with deep soil	High	Demonstrated to be unachievable especially in master planned sites where open space has been provided outside of the new site boundaries. Develop new guidance having regard to broader precinct and master plan outcomes.
Apartment Mix	4K Apartment mix No mininimun and maximum apartment mix	2.3 Apartment mix & diversity – Apartment mix Development > 20 dwellings, provide min 3 different dwelling types. Where the development includes only three dwelling types, provide a mix of the types so: Each type >10% of the total Studio + 1 bed < 50% of total Min 20% to Liveable Housing Australia (LHA) Design Guidelines Silver Level	High	Blanket requirement has no consideration for market characteristics, consumer preferences and locale. Allow market to determine bedroom mix. Promote greater diversity of apartments through incentives such as floor space or height bonuses.
Family Friendly Apartments	4K Apartment mix 4L Ground floor apartments N/A requirement for larger apartments	2.3 Apartment mix & diversity – Family friendly apartments Provide 20% of 2+ bedroom apartments as family- friendly apartments to		Allow market to determine preference for apartment sizes. Promote greater diversity of

	Current ADG 2015	Exhibited ADG 2021	Impact	UDIA
			0n feasibility	recommendation
		accommodate the needs of families with children. Design solutions could include: > min apartment sizes 1 bedroom sized >12m <sup>2</sup> clear to accommodate a study desk or crib Multiple living rooms or main bedrooms		apartments through incentives such as floor space or height bonuses.
Study Rooms	4K Apartment mix No minimum study area or dimensions	2.3 Apartment mix & diversity – Study Rooms minimum 7m <sup>2</sup> and 2.4m clear if to be considered a habitable room	High	Delete this section as it is overly prescriptive and provides no benefit at all – it will reduce layout diversity and amenity.
Apartment configuratio n	4D Apartment size and layout	<ul> <li>2.4 Apartment configuration</li> <li>Minimum internal sizes not changed</li> <li>Kitchens not regarded as habitable rooms for ceiling heights</li> <li>Where minimum apartment sizes and room dimensions are not achieved, demonstrate apartment planning is efficient, usable and functional, as indicated by realistically scaled furniture layouts and circulation areas</li> </ul>		Kitchen provisions are Positive. Minimum apartment size provisions may be a positive outcome if councils accept the alternative solution.
Private open space	<ul> <li>4E Private open space and balconies</li> <li>Studio apartments <ul> <li>Minimum area = 4m2</li> <li>Minimum depth = n/a</li> </ul> </li> <li>1 bedroom apartments <ul> <li>Minimum area = 8m2</li> <li>Minimum depth = 2m</li> </ul> </li> <li>2 bedroom apartments <ul> <li>Minimum area = 10m2</li> </ul> </li> </ul>	<ul> <li>2.5 Private open space and balconies</li> <li>No change to total area.</li> <li>Increase min. depth of private open space: studio units min = 1 m</li> <li>1-bed units min = 2 m (no change)</li> <li>2-bed units min = 2.4 m</li> <li>3+ bed units min = 2.4 m (no change).</li> </ul>	High	Additional requirements will increase costs and reduce affordability if there is no flexibility. Address communal space strategically across a development/ precinct. Allow consumer choice and support

	Current ADG 2015	Exhibited ADG 2021	Impact	UDIA
			on feasibility	recommendation
	<ul> <li>Minimum depth = 2m</li> <li>3+ bedrooms apartments</li> <li>Minimum area =</li> </ul>	Design single aspect balconies so they do not project beyond the façade		apartments at various price points.
	<ul><li>12m2</li><li>Minimum depth = 2.4m</li></ul>	Clothes drying areas, storage are in addition to the minimum areas A/C units are to be located away from POS		Allow for design elements to deal with wind mitigation.
Solar Access	4A Solar and daylight access 70% solar access (2h/3h)	2.6 Sunlight, daylight, shade & thermal comfort No change to solar access		Extend solar access window to 4pm in same
	9am-3pm 21 June and max 15% south facing apartments	and south facing apartments, but window extends to 8am in certain circumstances		circumstances as that for 8am.
	No provisions for mandatory shading to facades	Where glazing > 30% of the apartment facade on any aspect (measured on internal face), provide external sun shading to max 30% of the exposed glazing in a wall to block 30% of summer sun.		
		Where solid material on an apartment facade in an individual aspect is >70 % no additional shading is required for glazing on that aspect.		
		Where a covered balcony min 1m depth extends across the length of a glazed facade or opening, this is considered to provide the shading necessary for all facade orientations apart from +/- 30° of west.		
		For all balconies oriented +/- 30° of west, incorporate operable shading to protect glazing >30% of facade		
Natural Ventilation	4B Natural ventilation At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building Apartments at	2.7 Natural ventilation No change to 60% for 9 storeys and deemed c/v > 10 storeys, however: No slots or façade indentations are deemed to	High	Retain existing ADG standards and delete 225° test as it is not possible to pass the test and not 1 example has been provided of a

	Current ADG 2015	Exhibited ADG 2021	Impact on	UDIA recommendation
			feasibility	
	ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed Overall depth of a cross- over or cross-through apartment does not exceed 18m, measured glass line to glass line	generate natural cross- ventilation An EOA of 5% of floor area served must include allowances for flyscreens and opening restrictors Courtyards or building indentations require a width to depth ratio <2:1 Apartments DTS natural cross-ventilation are: Cross-through, corner and roof-window. Otherwise apartments must provide 225° wind exposure to openings; AND Have limited obstruction to the wind from the building form; AND Have opening distribution and sizes that satisfy EOA 5% etc		DTS 8 apts/single core/ regular floorplate or apartment that isn't a DTS type that can pass the 225° test. Confirm that ratio is depth: width and not width: depth.
Acoustic amenity	4H Acoustic privacy 4J Noise and pollution	2.8 Acoustic privacy, noise and pollution Appears to be similar to ADG 2015 Apartments requiring an alternative natural ventilation solution to meet acoustic amenity requirements can be excluded from calcs for cross-ventilation and solar access	No comment	No comment
Visual	3F Visual privacy	2.9 Visual amenity	N/A	N/A
amenity				
Storage	4G Storage Studio = 4m <sup>3</sup> 1 Bedroom = 6m <sup>3</sup> 2 Bedroom = 8m <sup>3</sup> 3+ Bedrooms = 10m <sup>3</sup>	2.10 Storage Studio = 6m <sup>3</sup> (min 2m <sup>3</sup> int) 1 Bedroom = 8m <sup>3</sup> (min 3m <sup>3</sup> int) 2 Bedroom = 10m <sup>3</sup> (min 4m <sup>3</sup> int) 3+ Bedroom = 12m <sup>3</sup> (min 5m <sup>3</sup> int) One storage space must	High	Increased storage will require more basement area/depth and put more pressure on deep soil, increasing costs and reducing affordability. Retain existing
		have min dims:		ADG standards.

	Current ADG 2015	Exhibited ADG 2021	lmpact on feasibility	UDIA recommendation
		Studio/1 Bed: 0.6D x 0.9W x 2.4H 2 Bed+: 0.6D x 1.2W x 2.4H Decrease the minimum amount to be provided inside to 1/3 (from 50%) (i.e. the additional amount can be provided outside the unit). DA drawings need to highlight, dimension and label volume of int/ext. storage.		
Building Articulation	4M Facades 4N Roof Design	2.11 Building articulation	N/A	N/A
All-electric building	N/A	3.1 Energy efficiency – All- electric building Use low-carbon, low- emission systems, construction processes and materials to deliver energy- efficient apartment developments, where possible Locate heat pumps in a central location to reduce		This cannot be reasonably confirmed at this stage of design and even if proposed may change post consent. This should be removed. No comment
Rooftop solar	N/A	urban heat-Island effects. 3.1 Energy efficiency – Rooftop solar Provide maximum solar energy generation on roof space that is not allocated to common open space or roof gardens On low-rise, large-footprint buildings, rooftop solar panels should be provided for each apartment, directly connected to provide power behind the meter		
Electric vehicles	3J Bicycle and car parking Conveniently located charging stations are provided for electric vehicles, where desirable	3.1 Energy efficiency – Electric vehicles (see 1.6 Parking) Make provision for EV-ready connection for each car parking space allocated to		Likely to add cost with little benefit to residents. Revert to existing ADG guidance and develop a pathway
		residents:		tor increased

	Current ADG 2015	Exhibited ADG 2021	Impact	UDIA
			on	recommendation
			feasibility	
		Provide sufficient size/ quantity of EV DBs in each storey of car park complete with charging control system and connection to main switchboard.		environmental standards.
		Provide space for cable trays to support future installation of 32A single-phase final subcircuits for each EV parking space.		
		Locate EV DBs so any future EV charger requires a cable < 50 m from parking bay to the EV-ready connection.		
		Provide a shared EV connection for all carshare spaces.		
		Where EV-ready provision is made for visitor parking, a minimum of 7 kW AC EV chargers should be installed		
managemen t	and conservation Rainwater should be collected, stored and reused on site. A number of the following design solutions are used: runoff is collected from roofs and balconies in water tanks and plumbed into toilets	Connect rainwater to all non- human contact uses (third pipe or purple pipe), including toilets and washing machines. Laundry tubs should be connected to potable water. Size rainwater tanks to intercept a 10% annual exceedance probability (AEP) 6-bour storm and to allow		management at the precinct level. These are the matters the UDG should address and not burden individual development sites which may be part of a broader plan or constrained.
	plumbea into tollets, laundry and irrigation porous and open paving materials is maximised on site stormwater and infiltration, including bio- retention systems such as rain gardens or street tree pits	full use of all rainwater collected in this event. In metropolitan areas, enable top-up of rainwater to be switched to recycled water infrastructure with min. cost and disruption.		
Waste managemen t	4W Waste management	3.3 Waste – Waste collection Integrate all waste management facilities and collection infrastructure		Recognise that for smaller developments this

	Current ADG 2015	Exhibited ADG 2021	Impact on feasibility	UDIA recommendation
		within the built form of the development to improve amenity for residents and the neighbourhood.		may not be possible.
		Waste storage Locate collection infrastructure for council waste collection services wholly within the development's basement and within close proximity to the onsite loading dock to permit unobstructed access for collection contractors.	Taking trucks down to a basement will increase basement sizes and excavatio n depths	Remove requirement for collection infrastructure to be located in basements when ground level in a podium would meet the same objectives.
Building and landscape maintenanc e	4X Building maintenance General design guidance provided.	3.4 Materials and maintenance Require a Building and Landscape Maintenance schedule (Appendix 7) to document maintenance regimes showing: maintenance paths and entry points to access building facade, roof, landscaped areas and outdoor communal spaces. Include a description of any maintenance equipment that will need to move through these spaces, including vehicles where required. Landscape maintenance tasks seasonally. Detail the maintenance requirements for green walls		Remove requirement. Ongoing management of building and maintenance is not a planning matter. This is an overreach.
## APPENDIX B

#### 7 STAR HOMES PRICE TABLE – FEBRUARY 2022

Single Storey				
Item	Material/Product	Area m2	Additiona	al Cost to 7 Stars
Ceiling Insulation (E/O from our current Basix package)	R7.0	205	\$	5,839
External Walls (E/O from our current Basix package)	R2.7	120	\$	1,286
Internal Walls	R2.5	80	\$	1,365
Glazing	Double Glazing	Yes	\$	6,345
			\$	14,835

Double Storey					
Item	Material/Product	Area m2	Additional Cost to 7 Stars		
Top Floor Ceiling Insulation (E/O from our current Basix package)	R7.0	180	\$	5,127	
GF Ceiling	R2.7	130	\$	5,352	
External Walls (E/O from our current Basix package)	R2.7	198	\$	2,122	
Internal Walls	R2.5	140	\$	3,672	
Glazing	Double Glazing	Yes	\$	10,857	
			\$	22,003	

KDR Double					
Item	Material/Product	Area m2	Additional Cost to 7 Stars		
Top Floor Ceiling Insulation (E/O from our current Basix package)	R7.0	205	\$ 5,839		
GF Ceiling	R2.7	205	\$ 8,440		
External Walls (E/O from our current Basix package)	R2.7	260	\$ 2,786		
Internal Walls	R2.5	190	\$ 4,983		
Glazing	Double Glazing	Yes	\$ 14,241		
			\$ 30,450		

#### Notes

All pricing includes builders margin & GST

\*\* R2.7 internal wall insulation does not fit within a 70mm stud wall

For current Basix assessment no internal wall or ground floor ceiling insualtion is required which is why this cost is so high

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## **Claire Krelle**

From:	noreply@feedback.planningportal.nsw.gov.au
Sent:	Monday, 28 February 2022 2:42 PM
То:	PDPS DRDE Design and Place SEPP Mailbox
Cc:	DPE PS ePlanning Exhibitions Mailbox
Subject:	Webform submission from: The Design and Place SEPP 2021
Attachments:	220228-urban-taskforce-submissiondraft-design-and-place-sepp.pdf

Submitted on Mon, 28/02/2022 - 14:41

Submitted by: Anonymous

Submitted values are:

**Submission Type** I am submitting on behalf of my organisation

# Name

First name Aleksandar

Last name Mitreski

I would like my submission to remain confidential No

# Info

Email aleksandar@urbantaskforce.com.au

Suburb/Town & Postcode Sydney 2001

Please provide your view on the project I object to it

Submission file 220228-urban-taskforce-submission---draft-design-and-place-sepp.pdf

Submission Please see attached.

I agree to the above statement Yes

The Urban Taskforce represents Australia's most prominent property Urban Taskforce Urban and planning of the urban environments to engage in constructive dialogue with government and the community.

28 February 2022

Department of Planning, Industry and Environment Locked Bag 5022 Parramatta NSW 2124

Online submission

## **Draft Design and Place SEPP 2021**

To whom it may concern

I write in relation to "The draft Design and Place SEPP 2021" exhibition package (draft Design and Place SEPP), prepared by the Department of Planning and Environment (DPE), which has been made available for industry comment until 28th February 2022.

The draft Design and Place SEPP exhibited package is not supported.

The draft Design and Place SEPP was initially promoted by former Minister Stokes as a means to deliver the rationalisation of the Apartment Design Guide (ADG) to a simple set of guidelines allowing greater flexibility and opportunity for design flexibility. The Urban Taskforce welcomed this initiative.

The currently exhibited draft Design and Place SEPP did not meet expectations. It is a document that, if implemented, would add costs, adversely affect yields and feasibilities, extend assessment timeframes, and introduce fresh uncertainty into the planning system and for future development projects.

Ultimately, the measures that should be applied to this proposed policy change are simple:

- Does it result in increased costs?
- Does it adversely impact affordability?
- Does it create uncertainty?
- Does it result in decreased productivity? •

If yes to any of these tests, the policy should not be progressed. Unfortunately ... the answers to all these questions is YES!

Regrettably, having many Urban Taskforce members participated, over months, in numerous D&P SEPP working sessions, to improve/ameliorate the regressive draft provisions. Urban Taskforce urges the NSW Government to completely abandon the draft Design and Place SEPP.

#### Cost Benefit Analysis: the detailed workings have been hidden

Urban Taskforce has repeatedly called on NSW Government to release the working detail behind the draft Design and Place SEPP Cost Benefit Analysis (CBA). The full CBA has not been made public.

The only exhibited document in relation to the CBA is a summary, entitled "*Proposed Design and Place State Environmental Planning Policy: Cost Benefit Analysis.*" This document has a lot of introductory content and barely any detail of the on the inputs and assumptions to this analysis.

Despite numerous assurances by DPE that the CBA analysis will be made public we have not seen the underpinning workings of this analysis. As a result, we are unable to review this work and make an informed, constructive and intelligent comment.

The property development industry has very real concerns that there will be significant costs associated with the implementation of the draft Design and Place SEPP. They deserve more than a cursory summary of conclusions for the impact of this draft SEPP.

The CBA is a critical document which needs to explain which costs have been considered, how high are they and who pays those costs. The benefits need to also be clearly explained so industry understands who benefits from every additional dollar spent by a developer. All of this must be presented in a transparent way and every additional cost should be justified.

Housing providers need to be satisfied that the analysis has been undertaken in a robust manner that clearly shows the impact on cost of delivery and yield. For the development community to have the confidence they need to borrow money and make investments in land (or the consolidation of existing land parcels), they need to also have reasonable confidence in the anticipated yield. Certainty is key.

Urban Taskforce and our members **oppose the draft Design and Place SEPP and its implementation** as we cannot see any evidence that the costs and imposts on the property development community have been seriously considered, or justified.

## Cumulative effect on feasibility

The draft Design and Place SEPP, if progressed, will have a significant impact and add costs to future developments. For example, the new SEPP includes requirements for provision of public open spaces, tree canopy, storage requirements and requires qualified designers to prepare a design verification statements for development projects which will add costs and extend the time of development, and much more.

Development projects are already subject to considerable fees and charges, some of which may increase this year due to ongoing reforms and policies. Their cumulative effect must be considered for any new policy that has the potential to increase development costs.

Such assessment should consider a number of policies that have either recently been introduced or are currently being finalised. This includes the Local infrastructure contributions reforms, Regional Infrastructure Contributions, the Housing SEPP, the D&BP Act & Regulations, the RAB Act, and others.

In the context of rapidly increasing costs caused by labour and material shortages issues with the construction materials supply chain over the last 12 months, this is not the time to be adding costly and time consuming new processes to the NSW planning system. Construction costs have seen the highest growth on record for NSW over the last 12 months. According to CoreLogic, the costs have risen the fastest since the introduction of the GST.

Urban Taskforce members report that the construction costs have dramatically increased for construction of the structure (e.g. concrete), façade (e.g. windows), finishes and fit out (e.g. tiling and carpentry) and services (e.g. plumbing and electrical). The price of containers has risen by 600% (plus) as a result of COVID and other supply chain constraints around the world. The annual increase in the cost of building materials has risen by well over 10%.

The cumulative impact of rising construction costs, increased infrastructure contributions and charges to planning policy (and the instruments thereof) are rendering development of new housing supply unfeasible.

The draft Design and Place SEPP is **not supported** as it does not properly consider the time and costs it will have on development projects within the broader context of the NSW planning system.

#### **Extended assessment timeframes**

The Urban Taskforce has serious concerns about the efficacy of the proposed draft Design and Place SEPP and its associated guidelines. Our members advise that the overly prescriptive documents will lead to extensive additional assessment and documentation, adding to DA timeframes and cost.

The draft Design and Place SEPP package has a large number of new prescriptions which will need to be considered, firstly in preparation of the DA by the developer, and then during the assessment process by the relevant authority.

A slower planning system will lead to further deepening the housing affordability crisis by preventing additional supply to reach the market in the shortest time possible.

Extended timeframes translate into holding costs for industry. For residential developers, the holding costs are significant. Urban Taskforce members report that just 3 months of additional approval duration results in tens of thousands of holding costs per unit.

#### Impact on Industrial Development

The current draft Design and Place SEPP proposes extending design review to industrial developments such as warehouses.

Warehouses have limited architectural options – warehouse, hardstand, car park, perimeter landscaping – and their design is led by functionality and structure. A Design Review Panel cannot add much value other than provide feedback on the façade. It is unclear why this requirement is necessary as the competitive nature of the market already leads to innovative and attractive designs of warehouses.

As there is no real need or value arising from this new proposed process, industry has a real concern that the added layer of assessment which will result in multiple design reviews, additional requirements and uncertainty of the process and extended timeframes.

Urban Taskforce members advise that the combination of Design Review Panel process and the application of the new Urban Design Guide to DAs is estimated to add around a 6 months to the DA preparation thereby adding significant cost both in time expended and in the preparation of numerous iterations of design documentation.

In an ill-conceived attempt to increase green spaces, the Urban Design Guide will result in more land required for development, exacerbating urban sprawl and costs. For example, the new requirement for 15% deep soil and 25% and 35% canopy cover required for industrial and warehouse sites respectively will result in using significantly more land to deliver the warehouses of the same GFA.

Further, Urban Taskforce members advise that the additional deep soil and canopy cover requirements would remove incentive for replacing old contaminated industrial development with cleaner more sustainable warehouse development.

Due to the extension of time caused by the multiple design reviews, associated costs and additional requirements, the draft Design and Place SEPP and the associated guidelines are not supported.

Abandoning the draft SEPP will give the planning system the capacity to better focus on the delivery of approvals, without the additional layering and complexity that the proposed draft Design and Place SEPP would bring.

## **BASIX Higher Standards**

As part of the draft Design and Place SEPP, the Government is also proposing higher BASIX standards.

The Urban Taskforce notes that the CBA for the BASIX Higher Standard is separate from the draft Design and Place SEPP. Just as in the case of the draft Design and Place SEPP, there is no evidence that the BASIX CBA has taken into account the cumulative impact of the draft Design and Place package and all other planning reforms. Further, developers and builders have not been properly engaged during the development of the CBA on the BASIX Higher Standards.

According to DPE's own analysis, this policy will result in an average increase per dwelling of \$7,152 and "an average high-rise apartment unit an additional \$831 to \$953 to satisfy the

higher standards." Urban Taskforce members have advised that the actual costs will be significantly higher – particularly given the recent spike in the costs of construction inputs, as discussed above.

Industry is unable to objectively verify the actual costs associated with the proposed changes. The updated BASIX sandbox tool has not yet been made available and there is no verifiable way to test the conclusions of the CBA and translate the BASIX Higher Standards into accurate costs for development projects.

Urban Taskforce appreciates the time it takes to develop complex tools such as the BASIX tool. However, it is unclear why this policy is rushed when the preparations and testing have not yet been completed.

Proceeding with the BASIX Higher Standards without verifying the assumed costs to developers and builders carries significant risk to the feasibility of development projects, causing a negative impact on housing supply.

The Urban Taskforce is concerned about the likely negative impact on feasibility and increased uncertainty over the actual impact to development projects. We recommend that the BASIX Higher Standards **are postponed** to allow time for the verification of the estimated costs impact through industry testing of the revised Sandbox tool, fulsome consultation and engagement between government and industry to take its course.

#### **Missed opportunity**

In addition to the significant flaws and deficiencies of the draft Design and Place SEPP document suite, there are a lot of missed opportunities that could have been considered in the drafting process.

Some of those missed opportunities would have increased the housing diversity, spread the burden of the additional costs and provide incentives so that there are more affordable housing options in NSW. Examples of this include:

#### Remove apartment size

The current draft of the Apartment Design Guide proposes no change to the minimum apartment sizes. The same requirements apply as the ADG 2015.

In order to achieve greater housing diversity and affordable housing options, a new Apartment Design Guide should remove or reduce the minimum unit size requirements. This would be more in line with international or even Victorian standards where smaller more affordable units are permissible.

Urban Taskforce has previously supported the removal of minimum apartment sizes and unit mix prescriptions as these run counter to housing affordability and choice.

## Spreading the cost of the Urban Design Guide

All costs associated with the new Urban Design Guide will ultimately be paid by new homeowners. New homebuyers are already expected to pay record-high price for homes in Sydney and regional NSW.

As noted above, Urban Taskforce members also have significant concerns about the implications of the new Urban Design Guide on greenfield development and funding requirements of providing green space and places. If these costs and responsibilities are not reasonably shared by government(s) and developers, the burden of these costs will be unreasonably borne by the new home buyer.

Urban Taskforce supports the establishment of an enhanced green canopy – but this will benefit all of Sydney. It is reasonable that those who have already bought homes where canopy has not been required (or has been destroyed) to also contribute the revitalisation of the lungs of the city.

#### Incentives are necessary, not just additional costs

If the Government is genuinely committed to encouraging optimum sustainability outcomes, development incentives should also be explored. Without incentives, furthering sustainability outcomes becomes an additional cost, impacting the affordability of new homes.

In the interests of sustainable and feasible building outcomes, any proposed changes to BASIX could have been extended to specifically include incentivising adaptive re-use of existing buildings by allowing for additional floor space and height where the existing building envelope is primarily retained.

## The way forward

The exhibited draft Design and Place SEPP will increase the costs of delivering new development and will seriously impact the industry's capacity to create much needed new jobs and homes. A likely consequence is the exacerbation of the existing housing affordability crisis and/or other States and Territories flourishing - at NSW's expense - by presenting more attractive investment opportunities and more affordable homes for new home purchasers.

Accordingly, the Urban Taskforce and our industry members call for the **complete abandonment draft Design and Place SEPP**.

Postponing the Design and Place SEPP is not an option preferred by the Urban Taskforce because it creates uncertainty on what might happen in the future. At present, developers are continually needing to re-visit project feasibilities and programming due to changes in planning processes, requirements, fees, charges, timeframes and building related costs. The very existence of the Draft SEPP has and will have the effect of "spooking the industry" so critical to ensuring a pipeline of housing supply.

If the draft SEPP is not abandoned, the looming threat of its implementation may influence decisions by the private sector investors to finance projects. Similarly, in the absence of clear legal

direction to the contrary, some NSW councils may consider the draft Design and Place SEPP as part of the assessment processes in anticipation of its future implementation.

Should the draft Design and Place SEPP be completely abandoned, industry would welcome the opportunity to work with DPE on what was initially planned – a cut down version of the draft SEPP, the removal of prescription, reduction of unnecessary costs and assessment timeframes and, as a result, increased certainty for developers.

Yours sincerely

**Tom Forrest** Chief Executive Officer