

SUBMISSION REPORT – JULY 2021

What we heard

Design and Place SEPP
Explanation of intended effect

Cover image: Newcastle Civic Park
Inside cover: Winter gum tree

July 2021

Copyright notice

© State of New South Wales (Department of Planning, Industry and Environment) (unless otherwise indicated).

This document contains information, data, pages and images (“the material”) prepared by the NSW Government Department of Planning, Industry and Environment (the Department) and third parties.

The State of New South Wales, operating through the Department, supports and encourages the dissemination and exchange of publicly funded information and endorses the use of the Australian Government’s Open Access and Licensing Framework (AusGOAL). Unless otherwise stated, all Department material available in this document is licensed under the Creative Commons Attribution 4.0 International (CC BY 4.0). Terms and conditions of the licence can be viewed at Creative Commons.

Please give attribution in this form: © State of New South Wales (Department of Planning, Industry and Environment) 2021.

We also request that you observe and retain any copyright or related notices that may accompany this material as part of the attribution.

Material not licensed under the Creative Commons Licence

The Creative Commons Licence does not apply to:

- the State’s Coat of Arms, New South Wales Government logo, Department logo, and any other trademarks, symbols, logos and brands of the State of New South Wales or any Department or agency of the State (unless incidentally reproduced in using an unaltered document under Creative Commons Licence);
- intellectual property (including copyright) owned by third parties which may include photographs, illustrations, drawings, plans, artwork and maps (note such material may not be expressly identified);
- court judgements;
- legislation.

Disclaimer

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

All images courtesy of GANSW, Department of Planning, Industry and Environment, or Destination NSW unless otherwise stated.

The Department of Planning, Industry and Environment acknowledges the Traditional Custodians of the land and pays respect to Elders past, present and future. We honour Australian Aboriginal and Torres Strait Islander peoples’ unique cultural and spiritual relationships to place and their rich contribution to our society. To that end, all our work seeks to uphold the idea that if we care for Country, it will care for us.



Minister's foreword

Great design is everyone's business. It supports safer, healthier and inclusive communities and is fundamental to achieving a more sustainable and prosperous future.

The Design and Place State Environmental Planning Policy (SEPP) aims to put great places and great design at the heart of the planning process.

It will help us design for the future, enable our cities and towns to develop sustainably and adapt to new technologies. While the policy is still in draft, my intention is that when finalised it will help deliver the developments our communities need, in the places they want to live, work and play. It will also set clearer benchmarks for development, leading to more predictable, simpler and clearer approval pathways.

The Explanation of Intended Effect (EIE), on exhibition from February to April, provided the opportunity to get your feedback on the proposed policy. While there was strong support for the principles and ambitions of the policy, there were some concerns about implementation.

We've heard consistently that you want to ensure housing in NSW is not only affordable, but homes are built to support your needs in the long term. The *Design and Place SEPP* aims to set a better benchmark for development across NSW, while the revised Apartment Design Guide supports innovation through flexibility.

What this means is better amenity in the places we live and work, housing diversity, creating cooler and greener urban environments and new vibrant streets and public spaces.

While some support certain elements of the policy, or may like it to go even further, others have expressed concern with the potential impacts on housing affordability and project feasibility. We believe that we can do both – support good design and investment.

To address these concerns, I have asked the Government Architect to continue working with you and develop solutions with councils, industry and peak bodies. I have asked the Department of Planning, Industry and Environment to immediately undertake the following:

- 1. Undertake rigorous cost benefit modelling for the SEPP and supporting guides** in collaboration with the Productivity Commission to ensure we have a full picture of the impacts on development feasibility and make sure these impacts are limited. This modelling must include rigorous testing across a range of scenarios, and measure the economic, environmental, cultural and social costs and benefits of the proposal over the short and long term. The results must also be shared in the public domain when finalised.
- 2. Set clear environmental sustainability targets** and measures that support NSW Government's net zero ambitions. These measures must be able to be applied easily



and consistently and enhance, not undermine, prosperity and quality of life while supporting the acceleration of innovative technologies and best practice.

3. **Clarify the appropriate qualifications and design skills** as outlined in the SEPP to consider consistency with the *Building Practitioners Act* and recognise our most experienced built environment professionals across a range of skills.
4. **Establish clear definitions for precinct thresholds** relative to location, density, and scale. These must be flexible enough to be able to apply a place-based approach to development and decisions. This includes increasing the threshold of 50 lots.
5. **Develop streamlined and consistent processes for design review** to ensure design panels facilitate good and innovative design rather than acting as a bureaucratic hurdle, and continue to engage with stakeholders to provide greater certainty on the format, more predictable timeframes for approvals and greater consistency in local design review panels.
6. **Draft the SEPP to require the flexible application of the revised Apartment Design Guide** and provide more clear and effective guidance to support better and innovative outcomes. We must ensure diversity, quality, affordability and amenity in design outcomes, and that better design leads to faster approvals.
7. **Prioritise consolidating and streamlining policies and guidelines** as part of the integration of the SEPP into the planning process.

In addition to the above, to provide certainty for projects already in the pipeline and continue to support investment, I can confirm that the *Design and Place SEPP* will not apply to proposals that have consent to build, have approval for a stage 1 concept DA, or have been issued with gateway. These savings provisions will ensure the SEPP's impact on approved envelopes is minimised, as well as encouraging proponents to take up the approvals. I also wish to reiterate that the draft policy cannot influence the assessment of any DA that is lodged prior to the SEPP coming into effect.

I am committed to successfully delivering this *Design and Place SEPP* to address the needs of our communities across NSW in a form that responds to the issues you have raised. The SEPP will be introduced through a careful process of transition to ensure that the principles are applied in such a way as to provide confidence, ensuring when it is released, the draft *Design and Place SEPP* will be a welcome change.

Rob Stokes

Minister for Planning and Public Spaces



Executive summary

Between February and April 2021, the NSW Government publicly exhibited an Explanation of Intended Effect for a *Design and Place SEPP*. In the EIE, we shared our intent to deliver a SEPP that streamlines planning processes, encourages innovative design, and maximises public benefit.

The exhibition process has delivered robust and valuable feedback on the EIE. Two things are very clear from the feedback: that there is overarching support for the principles and intent of the *Design and Place SEPP* but we haven't quite got the balance right with its implementation and there is more work to do.

Importantly, the reasons for concerns vary across stakeholder groups – for example, many industry submissions called for less prescription and more flexibility, while many submissions from local government, community and environmental groups expressed concern that the proposed principles-based approach enabled too much subjectivity and gives too much flexibility to the development industry.

Our focus over the next few months will be on working closely with stakeholders



to get a better understanding of their perspectives and ensure that this feedback informs the design of the final SEPP. We will be working towards balancing the tensions identified by stakeholders between the intent of the proposed policy and the potential implications for construction costs and commercial viability in the current market. Better understanding how design can help or hinder the timeframes, costs and commercial viability of development is key to our next steps.

About this report

This report provides an overview of what we have heard from submissions on the EIE.

The purpose of this document is to give you an understanding of the broad and different feedback we have received on the EIE, but also to assure you that we have heard your concerns and issues, and provide you with a roadmap to resolve these issues together.

This document supports continued work to ensure the draft policy strikes the right balance between quality design, public benefit and amenity, sustainability, and commercial viability.

The report consists of:

- an overview of submissions received and engagement undertaken to date
- a summary of the key issues arising from the submissions received during the EIE's public exhibition in 2021
- a summary of responses to key issues and themes in the EIE including the Apartment Design Guide, Urban Design Guide Connecting with Country, and BASIX (Building Sustainability Index)
- next steps for review of submissions and the development of the *Design and Place SEPP*.

“We commend the Government for its work in bringing the principles of good design to the forefront when building new places in our city, we welcome the move towards a performance-based planning system... However, the Committee is concerned [about the] transition to this new system, and how the SEPP would be implemented.”

COMMITTEE FOR SYDNEY

Contents

Minister's foreword	3
Executive summary	5
Submissions received and engagement to date	6
Overarching perspectives	8
Emerging themes and issues	9
Submissions overview – key themes	11
Next steps	25
Here's how you can get involved	26
Organisations that submitted comments	27

Submissions received

A total of 337 submissions were received from 306 different respondents during the public exhibition of the EIE between 26 February and 28 April 2021.

The submissions included responses from industry, peak bodies, state and local government, environmental and community groups, researchers and individuals (as shown in Figure 1). Page 27 provides a full list of the organisations that made a submission.

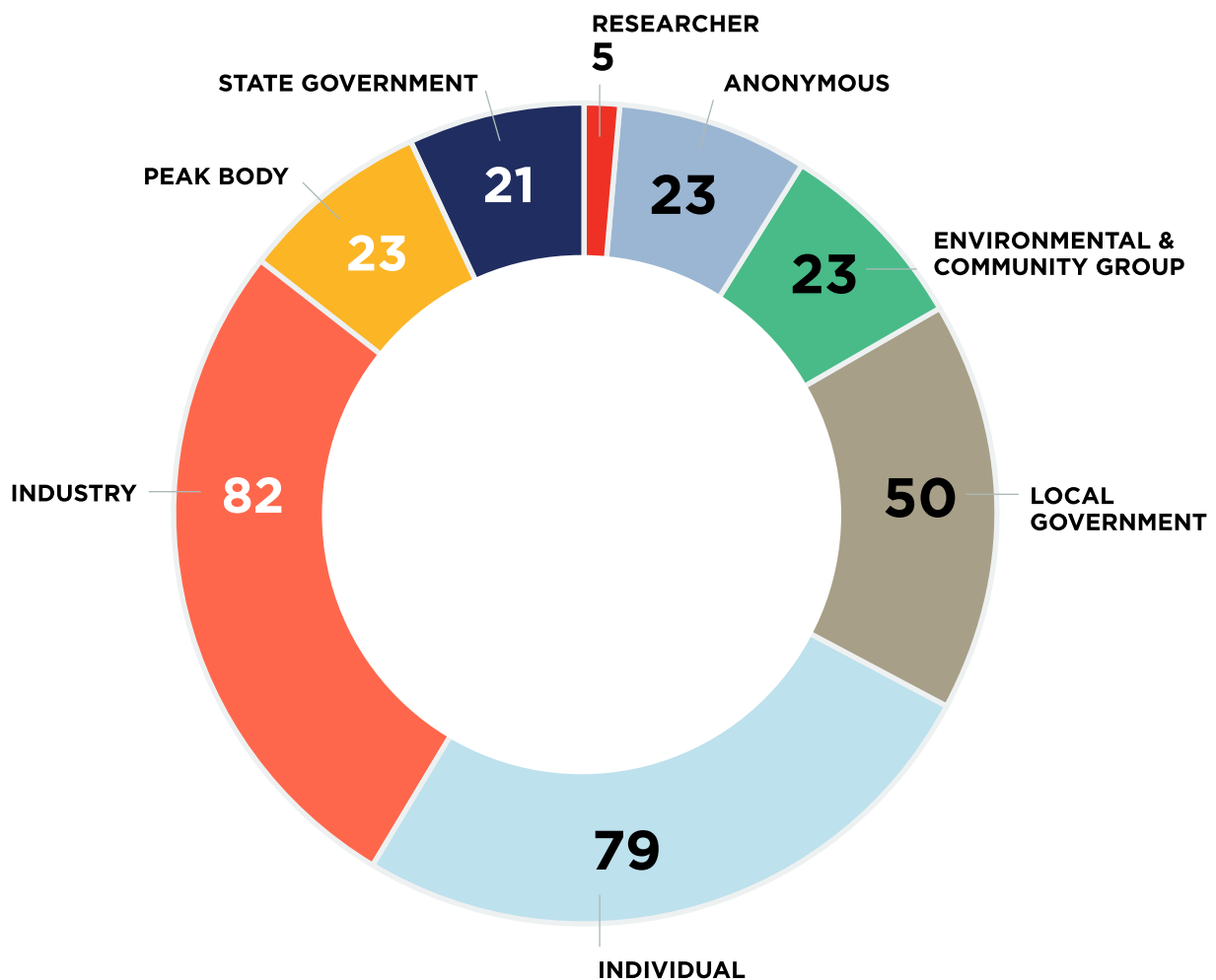


Figure 1: Respondents by stakeholder type

Engagement to date

This report is an overview of what we heard in response to the EIE.

It summarises key issues raised by stakeholders (including industry, councils and local community) in workshops undertaken during the exhibition period.

725

Attendees to a live information webinar (currently available on the website)

158

Local government representatives attended four council forums

118

An industry forum

48

Attendees at a state agency forum

21

Aboriginal community and Local Aboriginal Land Council representatives attended focussed workshops

65,868

People engaged with our social media campaign

337

Submissions received in response to the public exhibition of the EIE

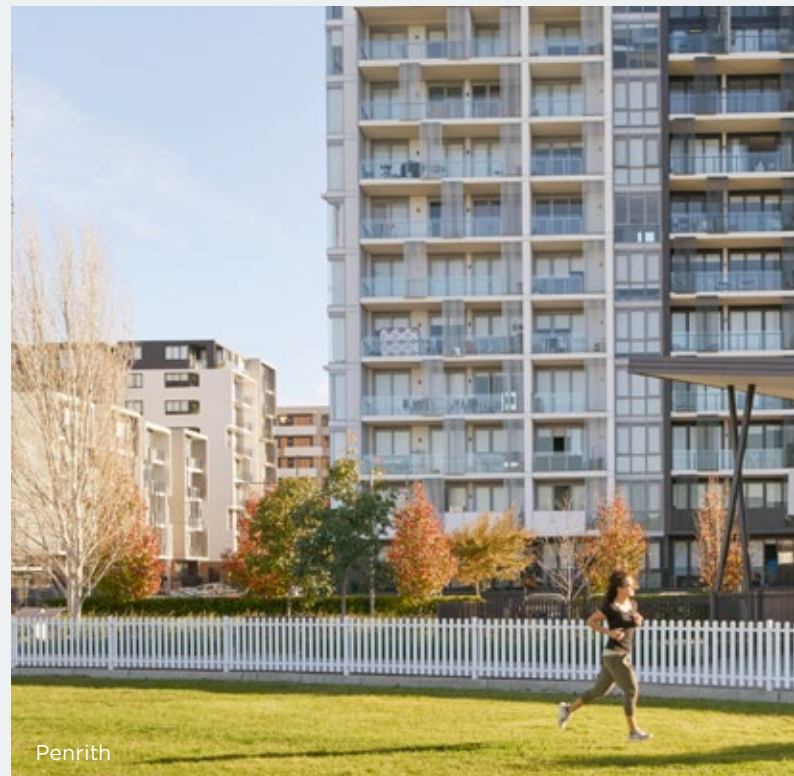
We have now commenced the next phase of engagement with the first round of ten policy working group sessions (structured around key themes and issues we heard from your submissions) already undertaken in June. These policy working groups will continue to be convened on a regular basis through the process of developing and finalising the SEPP. To find out how you can be involved, please see 'Next steps' section of this report.

“UDIA is committed to assist in creating a principle-based approach to high quality urban design that results in affordable and accessible great places for the people of NSW... All proposed changes must be considered against their potential to increase costs, and any added costs should be offset.”

**URBAN DEVELOPMENT INSTITUTE
OF AUSTRALIA**

“The inclusion of clear, measurable performance standards as design controls in the SEPP would be helpful for ensuring design quality... We recognise the SEPP is aimed at moving away from a system governed entirely by prescriptive controls, however, the inclusion of performance-based standards is still congruent with this intent.”

GREEN BUILDING COUNCIL OF AUSTRALIA



Overarching perspectives

Aspects of the proposed *Design and Place SEPP* that we heard you broadly support:

- We want strong principles that prioritise peoples' health and wellbeing in the design of our cities, towns and streets
- We want to prioritise public space to promote inclusive, greener and healthier places
- The ambition to streamline and reduce complexity in the planning system
- Prioritising precinct-scale planning to ensure we get the basic elements of a great place right
- Updating BASIX requirements so they are fit for purpose and reflect contemporary targets
- Strengthening sustainability objectives to align with the NSW Government's commitment to net zero
- Recognising and celebrating Aboriginal culture and heritage, starting with Country to support the health and wellbeing of all of us
- Embracing flexibility to enable innovation and achieve the best possible design outcomes
- Updating requirements for design skills to ensure that good design is available to everyone.

Some of the concerns and issues we have heard that we need to work through in partnership with local government, industry and the community include:

- The potential for added costs of development, impacting housing affordability
- We need to clarify the role of Design Review at state and local levels to ensure consistency and good value
- We need to review precinct thresholds and development scales, and differentiate metro and regional areas to ensure relevance to varying contexts
- We need to analyse the impacts of removing standards as part of a principle-based approach so that we can address:
 - Potential for increased ambiguity
 - Potential for 'trade-offs' and allowing too much discretion in design - potentially resulting in reduced quality and outcomes
 - Potential for a 'building-first' perspective, with too much emphasis on process rather than outcomes of good design
- Risk of legal enforcement challenges in defending principle-based compliance, and/or increased appeals.

As well as outlining aspects that were supported or those that raised concern, many submissions suggested ways to achieve the overall intent of the SEPP via alternative solutions. More detail on the intent and interpretation of the principles, including metrics to measure successful delivery was suggested as a way to manage some of these risks and to clarify the outcomes sought. Some of you suggested giving the principles statutory weighting to support enforcement.

Emerging themes and issues

In reviewing the submissions responding to the EIE, many of your comments raise questions that fall within one of several key issue areas:

CERTAINTY AND FLEXIBILITY

How will the SEPP resolve the tension between certainty and flexibility? Will a principle-based approach remove protections and lead to more disputes, slowing down development? Conversely, how will a rigid application of 'guidance as rules' be avoided (which may compromise design outcomes)? How will the Guides be applied and how will local government be supported to take a place-based, flexible approach to assessment and decision making? These questions were raised in submissions from a range of diverse stakeholders. They relate particularly to the principle-based approach; a desire for measurable standards; consequences of the Apartment Design Guide (ADG) review; and a desire to incentivise or promote innovation.

COMMERCIALITY AND FEASIBILITY

Will the changes outlined in the EIE put unnecessary pressure on construction cost, housing affordability and application requirements? How will cost implications associated with proposed ambitions be mitigated? Mainly, this relates to ADG & BASIX review, sustainability objectives, density and affordable housing targets.

SUSTAINABILITY AND AMBITION

Will the proposed SEPP be able to enforce higher environmental and sustainability targets and better outcomes while also allowing for innovation? How will the SEPP enable sustainable and resilient communities? How will the revised BASIX be applied in a more holistic way and keep pace with technological advances? This relates to BASIX, the ADG review and differentiated targets across development types.

QUALITY AND AMENITY

Will the proposed principle-based approach be able to protect amenity as well as quality outcomes for the long term benefit of the community? How will the SEPP encourage the delivery of housing diversity for a range of household types including families with children through to older people, particularly in light of how the COVID-19 pandemic has changed the way we live and work? This relates to the principles, the ADG and BASIX review, and sustainability and health targets.

DESIGN REVIEW

How can design review be improved and better integrated in the assessment pathway to ensure it adds value? This relates to developing a consistent terms of reference for all Design Review Panels (DRPs); alignment with the ADG; reviewing relevant design review thresholds; typologies; project stage; accreditation of panellists; state and local panels; quality, consistency and authority of advice.

DESIGN SKILLS

Are there opportunities to include a wider range of accreditation and skills that currently practice within the built environment industry, and will there be support for growing the skill sets of assessing officers? This relates to the proposed requirements for accredited design professionals for certain scales of development, as well as concerns about the capacity of councils to adapt to new principles-based assessment.

METRO AND REGIONAL DIFFERENTIATION

How will the SEPP accommodate different development contexts (e.g. metro and regional, inner city and suburban or greenfield)? This includes the EIE's proposed development definitions, particularly precinct thresholds and scales, density targets and urban land definition.

HIERARCHY OF INSTRUMENTS

How will the hierarchy of the proposed SEPP be clarified? This includes interaction with other SEPPs (e.g. Growth Centres and Greenfield Code); interaction with Local Environmental Plans (LEPs), Development Control Plans (DCPs), the role of supporting guidance; interaction with other legislation (e.g. Cultural Heritage).

CONNECTING WITH COUNTRY

How will contemporary practice of living culture be reflected as well as cultural heritage? How will industry and government be supported to improve processes and protocols for more meaningful and appropriate engagement with Aboriginal people? How will Aboriginal communities be supported to respond to increased requirements for participation in planning, design and delivery of projects?

A photograph of a person walking on a paved path next to a fenced sports field at sunset. The person is wearing a light-colored coat and dark pants. The field is enclosed by a tall black fence with a chain-link mesh. The sun is low on the horizon, casting a warm glow over the scene. A large tree with green leaves is in the upper left corner. A blue rectangular overlay with white text is positioned in the upper left quadrant of the image.

Submissions overview – Key themes

Peel Reserve, Rouse Hill

Certainty and flexibility

We heard a broad range of views on how best to balance certainty and flexibility in this principles-based approach and those views are strongly held.

For local government, community and individuals, this issue centres on the risks of ambiguity, subjectivity and too much industry discretion, coupled with challenges for legal enforcement and the likely resource implications. While many in industry welcomed increased flexibility, others raised concern about the risk of too much prescription, potential restriction of creativity, potential delays, financial implications of new requirements, and the potential related impacts on housing affordability.

Enabling flexibility in the application of the ADG

The ADG and its sometimes stringent application was one of the most commented aspects of the EIE. We heard significant concern about the need to strike the right balance between flexibility and certainty and varied views about where this balance lies. Generally, there was support from local government, industry and peak bodies for a more flexible outcomes-based approach, the main concern being the extent of flexibility enabled.

The majority of industry (and a smaller number of local government) submissions supported the principles-based approach but called for even greater flexibility in meeting performance requirements, and more clarity on how performance-based assessment will be done. Some in industry also requested baseline targets and standards to enable a 'compliance' based pathway for assessment to ensure certainty of approvals and to minimise time delays.

Design and Place SEPP in the planning system

Many of you commented on the need for clarity, consistency and ease of use for the *Design and Place SEPP*. We heard that you felt that successful implementation of the *Design and Place SEPP* would depend on it being accessible and legible for all. Some of your submissions suggested a structured hierarchy that establishes statutory order within the *Design and Place SEPP*, its associated guides, and with other policies.

Providing greater certainty around Implementation and timing

A substantial number of your submissions commented on the implementation and timing process of the *Design and Place SEPP*. For the development industry, having certainty around the timing of implementation, as well as early detail around savings provisions is important to provide investors and the banks with security. For councils, many submissions highlighted the importance of having adequate time to adjust to the policy change, including the need to provide adequate training and support to assessment and strategic planning teams.

Ensuring the Design and Place SEPP structure is simple and streamlined

Many of you commented on the need for clarity, consistency and ease of use for the *Design and Place SEPP*. We heard that you felt that successful implementation of the *Design and Place SEPP* would depend on the ability of all practitioners to navigate the suite of documents that describe clear outcomes and follow an accessible and legible working order. Some of your submissions suggested a structured hierarchy that establishes statutory order within the *Design and Place SEPP*, and with other policies.

“The DP SEPP establishes expectations across a wide range of factors aligned with its principles... They become ‘mandatory matters for consideration’ that developers and decision makers have to consider in the assessment and approval process... This approach is problematic because ‘flexibility’, ‘trade-offs’ and ‘moving away from prescriptive controls’ gives rise to a fundamental conflict of interest; developers seeking to profit maximise should not be deciding their own sustainability requirements.”

NATURE CONSERVATION COUNCIL AND TOTAL ENVIRONMENT CENTRE (JOINT SUBMISSION)

“Mirvac not only strongly supports this move towards providing greater flexibility in existing design criteria but also advocates that this fundamental premise is essential for the revised policy to achieve this intent. We support the design objectives of the ADG but we do not support the way in which the document is applied.”

MIRVAC

“PIA strongly supports the operation of the Apartment Design Guide (ADG) as an important tool for planners, panels and the Land and Environment Court. The proposed guides should improve the way it is applied and interpreted.”

PLANNING INSTITUTE OF AUSTRALIA

What we need to consider

Overall

- Providing sufficient detail to support successful implementation and assessment against the principles, and to reduce ambiguity and risks relating to cost, financing, project delays and legal challenges
- Providing detail on savings and transitional provisions early to ensure greater certainty for proposals and applications that are already in the pipeline
- Engaging with councils to understand potential resource implications and ways to manage and mitigate impacts
- Developing methods of assessment and evaluation that will help decision makers to apply the principles to assess and support place-based design solutions
- Providing clarity on the hierarchy between the different elements of the *Design and Place SEPP* and associated guides
- Ensuring the suite of *Design and Place SEPP* documents are easy to read and use for all stakeholders.

ADG

- Improve the way the ADG is applied and interpreted by clarifying its role as a guide
- Provide a robust framework to meet the objectives of the ADG that enables proposals and assessments that are place-led and achieve the best results for place and amenity
- Use case studies to demonstrate where and when variation from the ADG would achieve a better place-led outcome.

Commerciality and feasibility

There is concern amongst industry that the proposals outlined in the EIE would put unnecessary pressure on development yield, construction cost and housing affordability. The majority of your concerns were related to the proposed provisions in the ADG and BASIX, particularly the potential to impact Gross Floor Area (GFA), sustainability objectives, density targets and the consequent viability of affordable housing provisions.

A revised ADG that balances costs and benefits

The greatest concern industry had with the EIE, was the potential impacts of revisions to the ADG on yield, the most commented on elements were changes to floorplate sizes, separation between towers, natural cross ventilation, and deep soil requirements. Despite these concerns from industry, submissions from councils, community and environmental groups highlighted the value of improving sustainability and design standards for longer term cost of living benefits, and especially in light of the COVID-19 pandemic with more of us working from home.

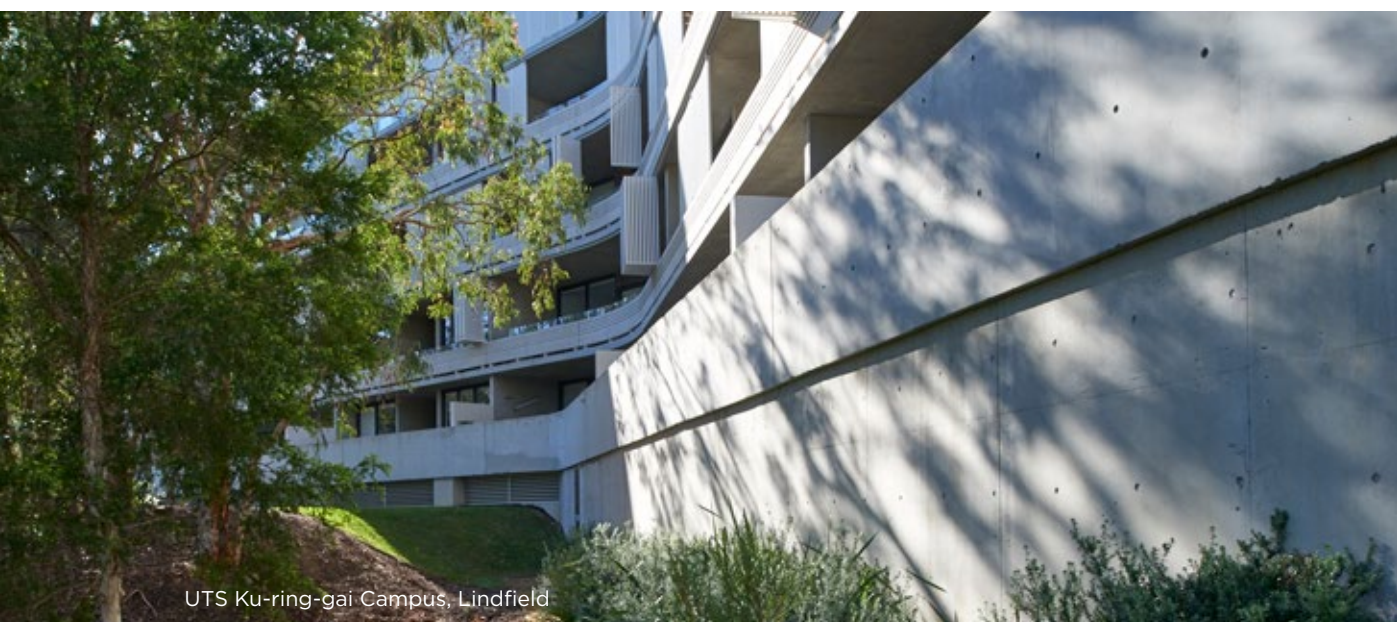
Having a positive impact on housing affordability

Many of you noted concern relating to affordable housing provision and targets and how these would be impacted by the SEPP. Many from industry pointed out a conflict between the design considerations within the EIE, and the current demand for affordable housing – noting that the design considerations may increase construction and delivery costs, thereby increasing apartment prices, and limit industry's ability to provide housing for those trying to enter the wider housing market.

Density provisions

Most of your submissions requested that minimum density targets for specific residential zones should not be included in the *Design and Place SEPP*. While the EIE expressed an intention to determine density ranges, many were concerned that minimum density provisions would lead to maximum density provisions, impacting future commerciality and feasibility.

You noted that access to transport should not be the only criteria in informing appropriate density considerations, and other matters such as level of service/frequency of transport, access to open space and proximity to social infrastructure should also be key considerations.



UTS Ku-ring-gai Campus, Lindfield

“...the package of proposals that was placed on exhibition will make the development process more complex, onerous and costly, which will have a significant impact on housing affordability and the feasibility of residential development projects.”

PROPERTY COUNCIL OF AUSTRALIA

“The Institute is keen to support any requirements which assist in creating more diversity in the size of apartments currently available to purchase or rent.”

AUSTRALIAN INSTITUTE OF ARCHITECTS

“Urban Taskforce recommends the removal of minimum apartment sizes and unit mix prescriptions as these run counter to housing affordability and choice.”

URBAN TASKFORCE

What we need to consider

Overall

- Undertaking economic modelling to determine the impacts to commercial feasibility and the long term benefit
- Testing and clarifying matters for consideration, the need (or otherwise) for inclusion of metrics, and the option for identifying a hierarchy of discretionary / non-discretionary matters
- Reconsidering proposals to provide minimum density targets within the *Design and Place SEPP* and considering the role of local government in defining these targets
- Providing further detail around affordable housing definitions and requirements
- Balancing productivity and feasibility in requirements for design and sustainability considerations, particularly in relation to the ADG and housing affordability
- Transitional provisions that will enable planning and management of future change on development
- Increasing opportunities to incentivise better design through accelerated approval processes.

ADG

- Undertaking economic modelling to determine the impacts to commercial feasibility and the long term benefit
- Review and test the ADG elements to ensure targets and metrics will achieve the outcomes desired and limit extra costs on development.

Sustainability and ambition

Responding to climate change

The emphasis on resilience and sustainability within the EIE was supported by most of you. Some of you suggested that the NSW Government should take the lead in addressing climate change, and drive the shift from minimising impacts to establishing hard targets for net zero and regeneration. Many of you feel that climate change was not sufficiently covered in the EIE.

Promoting green infrastructure, public space and biodiversity

Green infrastructure was also a key topic, particularly in local government, community and individual submissions. There was broad support for the emphasis of the EIE on the benefits of green infrastructure, including the importance of public open space and tree canopy cover. Some individuals called for even greater emphasis particularly on benefits such as reduction in the urban heat island effect, habitat regeneration and the value of 'Connecting with Country'.

The importance of rehabilitating natural habitats in a systematic way was also highlighted, as was effective water management to support urban greening. A number of submissions from industry focussed on public open space, seeking greater acknowledgement of its importance in relation to sustainability outcomes. You also asked for clearer definition of 'public domain' relative to private space.

“Given the stakes, the long-term public interest, and certainty of best practice outcomes across the board, need to be firmly at the centre of all planning reform. These realities are recognised ... However, we have serious concerns regarding if and how these principles, intended to produce sustainability and wellbeing outcomes, will be implemented in practice.”

NATURE CONSERVATION COUNCIL AND TOTAL ENVIRONMENT CENTRE (JOINT SUBMISSION)

Modernising BASIX

The Building Sustainability Index (BASIX) currently regulates the sustainability requirements for residential development in NSW. The EIE proposes to improve how BASIX works, to explore new pathways and consideration of a staged and incremental increase in sustainability targets. Many of you provided comment on BASIX and its application, with mixed views on the proposals.

We heard support from councils for expanding the scope and detail of BASIX to consider sustainability in a more nuanced and holistic way (for example, moving beyond basic consideration of water and energy to incorporate stormwater run-off, embodied energy and green infrastructure, or applying to more than residential projects). We also heard broad support for providing more detailed guidance and information on environmental requirements and applicability, and ensuring they align with state and national sustainability strategies, tools and targets.

We heard general support, particularly from councils and community, for increasing the level of sustainability ambition to ensure policy is adequately addressing climate change and aligned with NSW's net zero targets. Some of you in industry did note that the possible increase in cost and space requirements associated with sustainability objectives required considerations of commercial viability and staged implementation to support transition. Others queried whether higher targets would align with the overall ambitions of flexibility and innovation.

“More controls are needed in order to create environmentally sustainable places, reducing emissions, adopting water saving and recycling, reducing the carbon footprint of each building, energy & material efficiency, increased areas of deep soil and tree canopy.”

INDIVIDUAL SUBMISSION

Alternative pathways to BASIX

Industry submissions expressed support for considering alternative assessment pathways, to enable flexibility, to support innovation in sustainable design, and to enable more ambitious outcomes.

Conversely, there was significant concern, particularly from community and individuals that the EIE's proposals represented a dilution of sustainability requirements and would undermine efforts in strengthening BASIX, resulting in less sustainable outcomes at a time when we need to be contributing to our net zero commitments. We heard strong concerns about the possibility of trade-offs, particularly the risk that these would erode quality and amenity provisions (such as thermal comfort) in favour of short term development interests. The risk of inadequately regulated, skilled, audited and accredited assessors using any new pathway was raised, in several local government and peak body submissions. Several local government submissions expressed concern about the extra layers of policy, and the potential for inconsistency.

“The components of well-designed built environments set out within the EIE are supported by HIA... integrating networks of public spaces (including streets, open spaces, and community facilities) and green infrastructure for greater social, cultural, and ecological connectivity”

HOUSING INSTITUTE OF AUSTRALIA

“[We are] supportive of holistic assessment and integrated assessment which will likely expand opportunities to meet BASIX targets.”

STOCKLAND

What we need to consider

Overall

- Exploring opportunities to strengthen the NSW Government's position on climate change, including reviewing setting building energy performance standards, and better demonstrate the importance of design solutions in responding to climate change
- Further developing green infrastructure and tree canopy cover considerations, to ensure these are integrated throughout, and the many benefits articulated
- Clearer alignment between the SEPP and related guides on sustainability ambitions and targets.

BASIX

- Further refining the approach to ensuring the *Design and Place SEPP* supports NSW in achieving net zero and other climate change targets
- Evaluating the scope of BASIX, and identifying any areas for further detail to be provided, particularly around topics noted above
- Reviewing the more flexible approach proposed for assessing sustainability of residential development to ensure it maintains sustainable outcomes
- Consider requirements to ensure that alternative pathway assessments are undertaken by suitably skilled and qualified professionals.

Quality and amenity

We heard a consistent and passionate commitment to the quality of the built environment, and the impacts of design and development on our communities as well as support for the SEPP to champion good design and amenity in all our places.

Delivering quality places and homes

Many of you strongly support the ambition to lift the level of quality of buildings, our urban environments and public space in order to provide better places for people. Specifically, the proposed requirements for bike parking, increased storage and more apartments appropriate for family households were supported. However, there was some doubt about how the proposed quality improvements would be achieved, especially considering the different and specific requirements of our diverse communities. You raised concerns about the ability of decision-making authorities to protect quality outcomes and called for clear performance indicators or metrics.

Better accommodating diverse households

Some of you highlighted the importance of ensuring that the SEPP provides for diverse households, ranging from singles, through to families, older people and people with disability.

Some submissions highlighted how important it is to ensure apartments better suit the needs of families with children, noting that with increased affordability pressures, the idea of upsizing to a detached house is being challenged, and more children now live in high density than ever before. You also emphasised the need to design for children across the whole development, considering opportunities for children to use and play in communal areas, for example.

Ensuring provision of adaptable apartment design that enables families to downsize and for people to age in place was also suggested.

Ensuring health and amenity

There was clear support for emphasising the importance of people's health and wellbeing to be improved through better design quality and good amenity, and for including resilience considerations in the principles.

We heard some concerns with the specific language of the principles, and several suggestions for improvements, including:

- additional separate principles (e.g. health and wellbeing, equity, climate change, and circular economy)
- further integration of specific considerations in relation to each principle
- support provisions of active transport networks with mechanisms to deliver critical infrastructure for walking and cycling early and at the precinct scale
- principles acknowledge that design is one means of ensuring quality, and acknowledge the role of other project process stages
- reconsider subjective words such as 'beauty' or 'inviting' that will be challenging to measure.

“[Our] research found that 40 per cent of potential downsizers would consider moving if there were suitable housing options in their preferred location. The research identified a significant unmet demand for smaller houses with two to three bedrooms (except for social housing residents who wanted larger housing) in neighbourhoods with high amenity... One option is to develop alternative home ownership options to improve security of tenure and facilitate ageing in place.”

**AUSTRALIAN HOUSING AND
URBAN RESEARCH INSTITUTE**

“Moving the planning and development system away from a compliance based... towards a what really matters to our community – better designed, more productive and sustainable neighbourhood and buildings – is something the Committee has been championing for years... however the Committee is concerned how the planning system would transition... It is critically important that industry, local government, and the community understand and have confidence in the new system...”

COMMITTEE FOR SYDNEY

What we need to consider

- Flexible ways to promote a diversity of housing product through the ADG – particularly increasing the opportunity for diverse households to live in more affordable and adaptable places (balancing provision of larger apartments for families and more compact ones for individuals)
- Developing clear method for evaluating place-based responses to ensure quality and amenity as well as health and wellbeing
- Developing definitions or criteria to assess more subjective terms, such as ‘beauty’ and ‘inviting’ and expanding on the principles to include more detailed understanding of their objectives to ensure the intended outcomes are able to be met.

“We strongly support the EIE’s reference to health and wellbeing ... Off the back of bushfires and floods around the state, the 2020 COVID-19 pandemic experience has demonstrated that the future health and wellbeing of individuals and communities is paramount...”

NORTHERN NSW LOCAL HEALTH DISTRICT

Design Review

Greater consistency and transparency in the Design Review process including on expertise and decision making was raised by many of you. Some questioned whether the proposed Design Review Guide (DRG) would add another layer to an already established process, and expressed concern about the need for additional resources and funding.

Some submissions from local government and industry stressed the importance of design review as a tool in assessing merit of design proposals, and the need for council involvement throughout. Many of these submissions requested greater clarity on the proposed DRG, including:

- programming and integrating design review in the assessment process
- approaches to consistency
- the roles of different parties
- the relationship to minimum building standards and their enforcement.

Some of you gave detailed commentary on what the DRG should require, including:

- panels to include multidisciplinary members
- inclusion of quantitative measures to enable government agencies to effectively undertake and justify merit assessments
- design review panel recommendations be made mandatory requirements for developers.

What we need to consider

- Further defining and improving the process for design evaluation and review in the Design Review Guide (including relevant assessment thresholds, roles and responsibilities of Design Review Panels and relationship to existing processes)
- Further defining the role and weight of design review panel advice in relation to planning decisions
- Providing education and training for current and future design review panel members in local DRPs
- Increasing capacity of State Design Review Panel (SDRP) to review significant projects in individual councils based on need
- Establishing a mechanism to ‘share’ panels between smaller councils (e.g. members of organisations of councils could collectively establish a panel)
- Providing clarity at the pre-DA process regarding when and how design review should occur.

“As a general principle, GPT is supportive of design evaluation and review... It is recommended though that when reviewing the triggers and types of development to which design review is necessary, that consideration be made to the potential for this process to unnecessarily delay projects.”

GENERAL PROPERTY TRUST (GPT)

Design skills

The EIE introduces an emphasis on good design process, including an emphasis on skills and design review.

It sets out a proposal for certain types of development to be designed by suitably qualified design professionals – defined by clause 50 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation).

We heard clear concern about the proposed introduction of this requirement beyond its current inclusion in existing SEPPs from local and state government, industry and peak bodies. Many in industry suggested that the proposed list of suitably qualified professionals may currently be too narrow, potentially excluding other experienced professionals, and should be expanded to include more such as building designers and land surveyors.

Some of you made recommendations that design skills be required in planning authority assessment teams. A small number of local government submissions noted that while the requirements for suitably qualified professionals were supported, they do not necessarily guarantee better design outcomes – stressing an emphasis on outcomes not process is required.

Several local government submissions raised concerns about the resourcing required to provide good development assessment services under the *Design and Place SEPP*. They also stressed the potential for increased regulatory burden.

“Recognise registered planners with suitable experience as ‘qualified designers’ for the purposes of master planning and urban design under the Design and Place SEPP.”

PLANNING INSTITUTE OF AUSTRALIA

What we need to consider

- Include wider range of accreditation and skills in the design process, and expand the definition of suitably qualified professionals
- Opportunities to provide support for assessment and local officer skill sets through training and education.

“While Council is supportive of a planning system that encourages innovation... Significant resourcing into professional development will need to be provided for both development assessment and strategic planning officers, should the proposed SEPP be implemented.”

LIVERPOOL CITY COUNCIL

Metro and regional differentiation

While the EIE notes that metro and regional differentiation will be further defined in development of the *Design and Place SEPP*, we heard the need for further clarity on what land and development types the *Design and Place SEPP* will apply to.

Requests for clarification included:

- The definition of ‘urban lands’, the differentiation between urban (including infill), and non-urban (including greenfield) development contexts and how the SEPP will apply in the context of rural land
- The status of coverage of state significant development areas containing environmental sensitive land, for example bushfire buffers, environmental corridors and drainage corridors
- The characteristics of various development types.

There was support from some of you for the new *Design and Place SEPP* to be broadened to apply to all types of land and developments. However, submissions also included suggestions that, where this might occur, requirements be differentiated for regional, rural and urban lands, to reflect the different contexts for development.

“We support, in principle, the aims of the Design and Place SEPP to improve the design quality and performance of development across the state, however are concerned that a one size fits all policy may hinder Council’s ability to tailor controls to reflect issues that are important to the local community.”

BLACKTOWN CITY COUNCIL

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

AUSTRALIAN INSTITUTE OF ARCHITECTS

What we need to consider

- Developing clearer definition of the land, development types, and development scales to which the SEPP will apply
- How the SEPP will relate to non-urban or rural contexts
- Refining the definitions of ‘precincts’ and ‘significant development’ to ensure the proposed scale is reasonable in terms of the location and function of those developments which are captured.



Newcastle foreshore

Hierarchy of instruments

While we heard general support for the overall intent of streamlining the planning system, we also heard concerns about the relationship between the *Design and Place SEPP* and other instruments, policies and plans.

This was a key area of concern in submissions from local government, especially those managing growth areas which may be subject to their own SEPP. Some of these local governments were also concerned that the *Design and Place SEPP* might reduce council involvement in the assessment process.

Many of you asked for more clarity on how the *Design and Place SEPP* will operate in practice.

Local government submissions asked for clarification about the process that would be undertaken in instances when the *Design and Place SEPP* conflicts with local policy, and given a conflict, how a review may be funded. Both local government and industry raised concerns that the *Design and Place SEPP*, rather than streamlining process, could add further layers of policy that may risk slowing development progress and job creation.

A small number of industry submissions suggested the role of the *Design and Place SEPP* be expanded to include ongoing assurance and procurement requirements to acknowledge the role of design as part of a larger planning ecosystem, and to safeguard the principles of good design throughout the planning and delivery process.

What we need to consider

- The relationship between the *Design and Place SEPP* and other planning policy and legislation at the local and state level, including a hierarchy of instruments to ensure that together, the policies deliver improved design and place outcomes
- The impact of the *Design and Place SEPP* on local government powers and controls, to provide a clear balance between state and local policy
- How the ongoing design and planning process can be influenced or guided to ensure principles are carried through to development.

“The premise of aligning the new SEPP with other local and state legislation and documents is supported and understood. However, further details are needed regarding the proposal to amend LEPs, DCPs and LSPSs to understand how this will be undertaken and who will be responsible for amending each of these documents.”

WOLLONDILLY SHIRE COUNCIL

Connecting with Country

We heard widespread support for the emphasis on Connecting with Country and incorporating it in the planning system. You also noted the importance of Country to improving the health and wellbeing of the Aboriginal community.

Aboriginal Land Councils and communities noted that the term 'Aboriginal cultural heritage', used in the EIE, does not capture the 'living' element of Aboriginal culture, and stressed that the *Design and Place SEPP* should be seen as an opportunity to acknowledge both past and contemporary aspects of culture.

While we heard general support for meaningful and early incorporation of local Aboriginal knowledge in design and planning processes, this was qualified by concern about the practical implications of proposed engagement requirements – from industry as well as Aboriginal organisations.

Many of you suggested approaches to improving consideration of Aboriginal cultural heritage and Connecting with Country within the *Design and Place SEPP*, including:

- Ensure Connecting with Country is understood as a holistic principle through planning and design, rather than a by-product of design
- Ensure that the process of evaluating Connecting with Country be consistent and frequent, and consider that it may be best managed by Local Aboriginal Land Councils, Indigenous groups and/or councils, rather than individual developments.

What we need to consider

- Continuing our ongoing engagement with Aboriginal communities, Aboriginal Land Councils and Traditional Custodians to appropriately reflect connection to Country, including:
 - Opportunities to provide further certainty and guidance, in relation to implementing the SEPP, as well as clarity about the value of a Connecting with Country approach (e.g. informing engagement protocols)
- Consideration of reasonable requirements in the context of resource and financial costs as well as the burden of responsibility and capacity placed on Knowledge Holders and community representatives by these requirements
- Opportunities to acknowledge the living nature of Aboriginal culture.



“Deerubbin is supportive of policies which seek to improve design outcomes in urban areas and developments... in line with the principles and overarching aims of the Design and Place SEPP... [however] attribution of meaning and other aspects of Aboriginal knowledge of ‘Place’ and ‘Country’ (among other matters) is often contested by members of the Aboriginal community, particularly in Western Sydney. In Deerubbin LALC’s experience, both as an Aboriginal organisation and as individuals, there is often disagreement and/or differences in interpretation with respect to such matters among members of the Aboriginal community and those differences only serve to heighten existing conflicts in the community.”

DESIGN COLLABORATIVE ON BEHALF OF DEERUBBIN LOCAL ABORIGINAL LAND COUNCIL (LALC)



Maitland Levee, photography by Simon Wood

Next steps

Many of you have requested clarity on how your comments will be addressed, and certainty on next steps.

We have clearly heard that you want to be involved in consultation and engagement at all stages of drafting the *Design and Place SEPP*, including at exhibition of the draft *Design and Place SEPP*.

Collaboration and consultation are instrumental to the success of the *Design and Place SEPP*. We are committed to collaborating and continuing to listen to colleagues and experts across state government agencies, local government, the community, environment groups, and industry.

We have established policy working groups with key stakeholders to review and workshop key issues and themes and to continue the conversation about how best to implement the intent of the SEPP.

Before being finalised, the Draft *Design and Place SEPP* will be exhibited for at least six weeks in late 2021. Drafting and exhibition of the revised ADG, BASIX, and new Urban Design Guide (UDG) (as well as other guidance identified to support the *Design and Place SEPP*) is also proposed for late 2021. This will provide stakeholders with further opportunity to make submissions that will be considered before releasing a finalised SEPP.

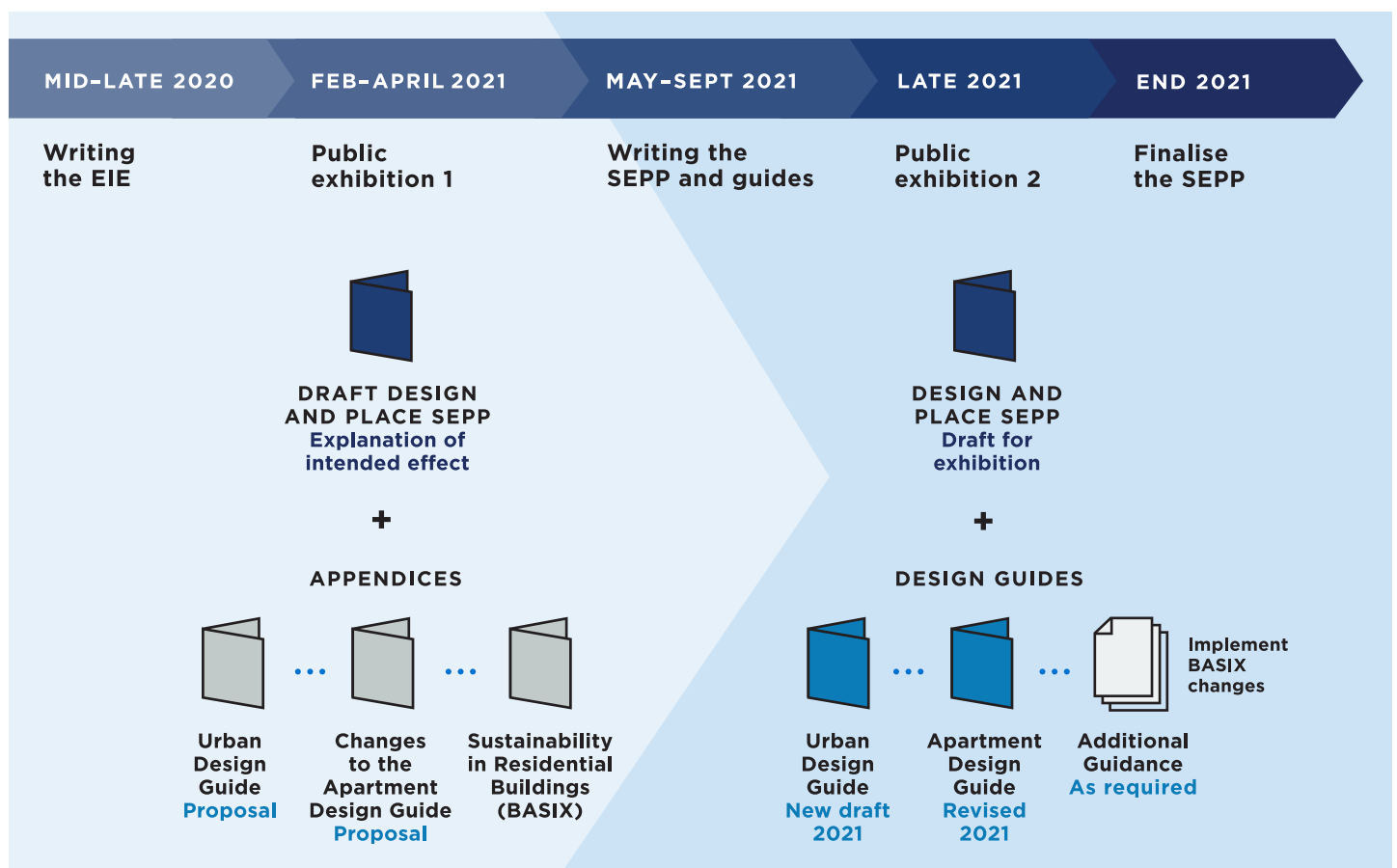
An implementation plan and transition period will be developed in consultation with stakeholders before coming into effect to help councils and industry effectively integrate the *Design and Place SEPP* into their planning processes. For updates and more information visit planning.nsw.gov.au and search *Design and Place SEPP*.

Here's how you can get involved

If you have further suggestions for consideration in the development of the SEPP, please email designandplacesepp@planning.nsw.gov.au for dates and further information.

The proposed timeline of the *Design and Place SEPP* is set out in Figure 2.

Figure 2: Key dates and documents



Organisations that submitted comments

Thank you to the following organisations that provided formal submissions in response to the 2021 public exhibition of the EIE. Responses were also received from 79 individuals and 23 anonymous sources (not listed here) – and we thank them too.

Local and regional government and regional organisations of councils:

Albury City Council
Ballina Council
Bathurst Regional Council
Bayside Council
Blacktown City Council
Blue Mountains City Council
Burwood Council
Campbelltown Council
Canada Bay Council
Canterbury Bankstown Council
Central Coast Council
City of Newcastle Council
City of Parramatta Council
City of Sydney Council
Coffs Harbour City Council
Fairfield City Council
Georges River Council
Goulbourn
Mulwaree Council
Hornsby Shire Council
Hunters Hill Council
Hunter Water
Inner West Council
Kingspan Council
Ku-ring-gai Council
Lake Macquarie Council
Liverpool Council
Maitland Council
Midcoast Council
Muswellbrook Shire Council
North Sydney Council
Northern Beaches Council
Orange Regional Council
Penrith Council
Port Stephens Council
Queanbeyan-Palerang Regional Council (QPRC)
Randwick City Council
Richmond Valley Council
Shellharbour Council
Shoalhaven City Council
Southern Sydney Regional Organisation of

Councils (SSROC)
Sutherland Shire Council
Sydney Coastal Councils Group (SCCG)
Tamworth Regional Council
The Hills Shire Council
Waverley Council
Western Sydney Regional Organisation of Councils
Willoughby Council
Wingecarribee Council
Wollondilly Council
Wollongong Council
Woollahra Municipal Council

Peak bodies:

AIA
AILA
ASBEC
Australian Building Sustainability Association
BDAA
Better Planning Network
Building Designers Association of Australia
Business Sydney
CHIA
Committee for Sydney
Design Matters National
Floodplain Management Australia
Green Building Council of Australia
HIA
Local Government NSW (LGNSW)
Nature Conservation Council, Total
Environment Centre
NSW Young Lawyers
Planning Institute of Australia
Play Australia
Property Council Australia
Shelter NSW
Urban Development Institute of Australia
Urban Taskforce

State government:

Board of Surveying and Spatial Information (BOSSI)
Cancer Council
Cancer Institute NSW

Department Premier and Cabinet
DPIE Climate Resilience and Net Zero Emissions
DPIE Local Strategies and Plan Making
Health NSW
Heritage Council NSW
Heritage NSW
Nationwide House Energy Rating Scheme (NatHERS)
Northern NSW Local Health District
NSW Aboriginal Cultural Heritage Advisory Committee
NSW Environment Protection Authority (EPA)
NSW Health Infrastructure
NSW Ports
Public Spaces Division
School Infrastructure NSW
Strategic Planning and Heritage Unit within Place Management NSW
Sydney Water
Water NSW

Environmental and community groups:

Activism Group
Australia Air Quality Group
Australian Parents for Climate Change
Australian Plants Society NSW
Berry & District Historical Society
Byles Creek Valley Union Inc
Canada Bay Council Environmental Sustainability Committee
Canopy Keepers
Canterbury Greens
Centre for Universal Design Australia
Claireville and Bilgola Plateau Residents Association
Climate Change Action Group
Deerubbin Local Aboriginal Land Council
Design Collaborative
Friends of Fernhill and Mulgoa Valley Inc
Friends of Ku-ring-gai Environment Inc (FOKE)
Home

Friends of Narrabeen Lagoon Catchment
Hunter's Hill Flora and Fauna Preservation Society
Mosman Parks & Bushland Assoc
Mulgoa Valley Landcare Group
National Trust
New England Greens
Paddington Society
Residents for Responsible Ettalong Development
Saving Sydney's Trees
Submissions Activism Group
The Glebe Society
The Green Space Alliance NSW (GSA NSW)
WalkSydney
Willoughby Environmental Protection Association

Researchers:

Australian Housing and Urban Research Institute (AHURI)
University of NSW
University of Sydney
University of Technology Sydney
University of Western Sydney

Industry:

30Please
Accredited Access Consultant
ACSNSW
Architectus
Arup
Association for Berowra Creek
BC Architecture
Bennett and Trimble Architects
Billbergia
BRD Group
Brown+Krippner
Cedar Designs
Celestino
Cities for Play
City Planning Works
City West Housing
Conybeare Morrison International
Country Surveyors Association
Davy Watt and Associates
Design Collaborative
Design Matters National (DMN)

DFP Planning
DHW Architects
Doherty Smith +Assoc
Dream Design Build
Enviroecture
Ethos Urban
Frys Energywise
GAP Designers
General Property Trust
Greystar
Group GSA
Gurner
Highlands Design
Hill Thalys
Hopkins
Idizin
JMHLiving
Keylan Consulting on behalf of The Billbergia Group
LafargeHolcim
Leamac Property Group
LJB Planning
Manché Designs
Meriton
Mirvac
NatHERS professional
Combined submission from Oxford, Investa, Ethos Urban, Group
GSA Architects
Paul Dolphin Designs
Picket & Co
Rawson Communities
Rezidraft
RLA Building Design
Rodney Albert
Yannakis & Assoc.
Sekisui House Australia
Stephen Pearse
Architect p/l
Stockland
Studio GL
System Architects
TOGA
UI Building Studio
Urbis
Walsh Analysis
WSP

Five individual architect/designers
23 Confidential respondents
79 Individual respondents.



dpie.nsw.gov.au