

18 October 2019

Att: Executive Director
Compliance, Industry and Key Sites
Department of Planning, Industry and Environment
GPO Box 39, SYDNEY, NSW 2001

Dear Sir/Madam,

**Submission on the Explanation of Intended Effects for the Activation Precincts
State Environmental Planning Policy**

EDO NSW is an independent community legal centre specialising in public interest environmental law. We have a long history of providing legal advice on environmental and planning laws in NSW.

We welcome the opportunity to provide feedback on the Explanation of Intended Effects (EIE) for the proposed Activation Precincts State Environmental Planning Policy (**the SEPP**). We note that the Parkes Special Activation Precinct Draft Master Plan (**Parkes SAP Draft Master Plan**) and associated technical documents are also currently on public exhibition, however this submission does not respond to those documents in detail (except to the extent that they are used as to highlight points raised regarding the EIE or Special Activation Precincts more broadly).

Our submission is structured as followed:

- **Overarching comments**
- **Specific comments on the EIE**

1. Overarching comments

We recognise that the rationale for Special Activation Precincts (**SAPs**) is to support economic development and job creation for regional NSW. While we broadly support efforts to assist regional communities, the use of a streamlined planning process to facilitate development and infrastructure in designated 'Activation Precincts' has potential risks, including:

- Reduced environmental protection leading to poorer environmental outcomes;
- Reduced oversight, transparency and accountability in decision-making; and
- Lack of community buy-in when State-led planning processes are perceived to override local planning autonomy.

At the outset, we observe that the new regulatory framework for SAPs is complicated. The EIE provides an overarching explanation of the new framework, but does not provide sufficient detail on the specific provisions of the proposed SEPP or the specific provisions of any amendments to other planning legislation that is foreshadowed. The lack of specific detail means that our ability to provide useful feedback on the legal operation of the proposed framework is limited, and there is a risk of misconstruing some of the policy intentions. We have also identified a number of outstanding questions about the content of the SEPP and the operation of the framework in general.

Our general understanding of the proposed regulatory framework is that the SEPP will facilitate a State-led process for the identification of SAPs, upfront strategic assessments (through the Master Plan process) and fast-tracked approval processes.

EDO NSW cautions against planning processes which use upfront strategic assessment to justify streamlined assessment and approval processes. While we encourage upfront strategic assessment as a means of addressing cumulative impacts and resolving land use conflicts, the extent to which strategic environmental assessment will provide adequate protection for biodiversity and natural resources across the landscape will depend on the criteria considered and the process of assessment. It should not replace site-specific assessment of impacts, especially for high impact projects.

Given the lack of detail, we do not believe that the risks identified above are adequately addressed by the EIE, and we have concerns that they will not be adequately addressed by the final provisions of the SEPP.

In light of the significant and substantial changes being proposed to the assessment and determination process for SAPs and the lack of clarity in the EIE, **we recommend that the Department publicly exhibit a draft SEPP and provide additional explanatory information to the community to assist in understanding the new SEPP and regulatory framework for SAPs.**

We are also concerned that the Parkes SAP Draft Master Plan has pre-empted the SEPP. While the Parkes SAP Draft Master Plan provides an example (in the absence of more detailed information) of how the framework may work, the Plan has been developed outside of a formal process with clear legal requirements regarding environmental impact assessment, content or community participation. **We recommend that the any further progress on the Parkes SAP Draft Master Plan be paused until the SEPP is finalised.**

2. Specific comments on the EIE

In addition to our overarching comments and recommendations above, we provide the specific comments on key elements of the EIE, and the proposed regulatory framework for SAPs relating to:

- *Identification of Special Activation Precincts*
- *Role of business concierge*
- *Role of Regional Growth NSW Development Corporation*
- *Process for developing master plans and delivery plans*
- *Process for developing Design Guidelines*
- *Addition of Schedules to the SEPP*
- *Principle development standards*
- *Community participation requirements*
- *Planning approval pathways and land use table*
- *Designated development and Hazardous and Offensive Development*
- *Regional Enterprise Zones*

Identification of Special Activation Precincts

The process for identifying or electing SAPs is unclear. Our understanding is that a new Schedule will be added to the SEPP for each new SAP, using the existing legislative process for changing SEPPs in the *Environmental Planning and Assessment Act 1979 (EP&A Act)* (EIE, p 13) and in accordance with any relevant provisions of the SEPP. But it is unclear how

the initial decision to identify or elect a new SAP will be carried out, and whether this process will be regulated in the SEPP.

Page 4 of the EIE provides that key locations (for SAPs) will be identified having regard to:

- Alignment with economic enablers in *A 20 Year Economic Vision for Regional NSW*;
- Presence of market failures;
- Catalyst opportunities or key infrastructure projects;
- Growth opportunities for industry specialisation and emerging industries;
- Projected population and jobs growth, and the benefits to the community; and
- Alignment with Federal, State and local government plans and policies.

We recommend that consideration of environmental constraints should also inform the identification of key locations for SAPs.

It is unclear whether these criteria will be in the SEPP, or whether there will be any legal obligation to apply these criteria or to consult with the community before 'announcing' a new SAP.

In the case of Parkes and Wagga Wagga, it is unclear what process led to those areas being identified as SAPs. The EIE suggest that "the creation of Special Activation Precincts aligns with the existing NSW Government Regional Plans and Regional Economic Development Strategies" (EIE, p 2) however there does not appear to be any reference to the Parkes SAP in the *Central West and Orana Regional Plan* or to the Wagga Wagga SAP in the *Riverina Murray Regional Plan*. There is also no mention of the Parkes SAP in the *Mid-Lachlan Regional Economic Development Strategy* or of the Wagga Wagga SAP in the *Eastern Riverina Regional Economic Development Strategy*.

It therefore appears that there is currently no formal process for identifying SAPs and it is unclear whether any formal process will be included as part of the SEPP. While we recognise there may be consultation at later stages of the process (e.g. on amending the SEPP to add a new Schedule), this is after an initial decision regarding the location of SAPs. A lack of a clear process means that there are no legal parameters around what can be 'announced' as a SAP and no opportunity for community engagement at this early stage of strategic planning. Although the community has been engaged in the development of Regional Plans, and the intention appears to be that SAPs align with those plans, it is unclear whether there will be any legal requirement for that to be the case. We also note that the Government views SAPs as State-led initiatives.

Given the lack of a clear process for the initial identification of SAPs, there is a real risk of lack of community buy-in to the SAP process. We suggest that the SEPP could include provisions relating to the initial identification of SAPs, including as a minimum, the list of criteria for identifying key locations in the SEPP.

Role of business concierge

Page 5 of the EIE states that:

"A business concierge service will actively manage Precinct investor support. This support will include project management, industry investment, infrastructure delivery, environmental regulation, planning and certification".

From this limited information it is unclear exactly what role the business concierge would have in relation to environmental regulation, planning and certification, including legal powers and functions. However page 14 of the EIE suggests that the business concierge would be part of the Regional Growth NSW Development Corporation (**RGNSWDC**), so it is

assumed that any environmental regulation, planning or certification functions would be those of the RGNSWDC (see further our comments on the RGNSWDC below).

Role of Regional Growth NSW Development Corporation

The EIE outlines the responsibilities of the RGNSWDC, which includes providing proponents with Proposal Certificates and reviewing and publishing monitoring data, however it is unclear how those functions will be established.¹ Detailed information should be provided regarding any legislative changes that are required to create or facilitate the anticipated functions of the RGNSWDC.

Process for developing master plans and delivery plans

The EIE outlines that a Master Plan and Delivery Plan will need to be prepared for each SAP. It also includes information that should be included in a Master Plan (EIE, page 9), but less detail on what should be included in a Delivery Plan.

However, the EIE outline fails to specify what specific requirements for making a master plan or delivery plan will be included in the SEPP. For example:

- Will the SEPP contain provisions regarding the content of Master Plans and Delivery Plans (including the criteria listed on page 9)?
- Will the SEPP identify what technical studies will be required to underpin the Master Plan? For example, technical documents that informed the development of the Parkes SAP Draft Master Plan are also currently on exhibition.² The requirement to undertake these technical assessments should be a requirement in the SEPP for each new SAP.
- Will there be mandatory community participation as part of process for developing Master Plans and Delivery Plans? We note that there may be consultation on the Master Plan during the process of adding a new Schedule to the SEPP, however we do not think that process is sufficient (see our comments on community participation below).
- Page 16 of the EIE also suggests that changes will be made to the *Environmental Planning and Assessment Regulation 2000 (EP&A Regulation)* to facilitate Master Plans, but does not explain what those changes would be.

We suggest that the SEPP or EP&A Regulation include specific requirements regarding the preparation of draft Master Plans, including in relation to content, technical assessments required to underpin the masterplan and community participation. Similarly, we suggest that there should be similar mandatory requirements with respect to the preparation of draft Delivery Plans.

Process for developing Design Guidelines

The EIE envisages that the RGNSWDC will develop Design Guidelines that will be endorsed by the Secretary of the Department of Planning, Infrastructure and Environment (**Planning Secretary**) but again, there is little detail on the legislative process, if any, for developing these guidelines (e.g. content, mandatory considerations, community participation requirements).

¹ For example, the EIE indicates that the RGNSWDC will not have any administrative functions under the EP&A Act (p17), but also indicates that the EP&A Regulation will include the requirements to obtain a Proposal Certificate from the RGNSWDC (p16).

² These include Air Quality and Odour Assessment; Biodiversity Assessment Stage 1; Bushfire Constraints and Opportunities Assessment; Community and Social Infrastructure Needs Assessment; Economic Analysis Report; Environmental, Heritage and Sustainability Assessment Summary Report; Environmentally Sustainable Development Plan; Flood and Water Quality Management Study; Geology, Soil and Contamination Preliminary Site Investigation; Groundwater Desktop Study; Infrastructure and Transport Plan; Noise and Vibration Assessment; Parkes Special Activation Precinct Structure Plan.

Addition of Schedules to the SEPP

The text on page 9 and 13 of the EIE explains that a new Schedule to the SEPP will be prepared for each SAP and will include a land use table, Principle Development Standards (PDSs) and a Master Plan for each Special Activation Precinct. This is also outlined in Figure 1 on page 7 of the EOE. Based on that information:

- We take this to mean that even though the Parkes SAP Draft Master Plan is being consulted on as a separate document, a final version would form part of a Schedule to the SEPP.
- It is unclear why the EIE includes a set of PDSs on pages 10-12. This implies that a single set of PDSs will apply consistently to all SAPs (in which case it would be assumed that they would be included in the main body of the SEPP). However based on the information highlighted above it appears that an individual, customised set of PDS is required within each Schedule for each SAP.
- It is also unclear as to whether there will be any mandatory community participation requirements in relation to new Schedules (see our comments on community participation below).

Principle development standards

As noted above, it is unclear whether the PDSs included in the EIE will be included in the SEPP and apply to all SAPs. This needs to be clarified. We also note that the PDSs in the EIE do not include standards that relate to the protection of biodiversity or natural resources.

Community participation requirements

The EIE does not clearly explain community participation requirements.

As noted above, we are concerned about the lack of detail regarding community participation on the initial selection of SAP sites, on Master Plans and Delivery Plans, and on the development of Design Guidelines.

The EIE indicates that only the Minister for Planning and Public Spaces can approve amendments to the SEPP and that the requirements for making changes to the SEPP and any subsequent community consultation requirements will be consistent with the EP&A Act.³

Given the lack of information, we are concerned that there will be no clear mandatory community participation requirements in the SEPP, and that existing community participation requirements for making SEPPs will be the main process for community participation on proposed new SAPs. This is concerning because:

- Consultation, including any relevant timeframes or whether the consultation should occur at all, is at the discretion of the Minister.⁴ Given the substantial content that would be involved with the addition of each new Schedule, there must be mandatory community participation requirements.
- If the Minister decides to consult, the Minister is only required to publicise an Explanation of Intended Effects. This means that in the case of new SEPP Schedules, the detailed land use table, PDSs, and master plan would not need to be exhibited. Further even if the draft text of a Schedule was exhibited, there is still no obligation to

³ We note that Division 3.3. of the EP&A Act, which relates to the making of SEPPs, does not refer to the amendment of SEPPs, but that section 3.24 of the EP&A Act provides that an environmental planning instrument may be amended or repealed by a subsequent environmental planning instrument, whether of the same or a different type.

⁴ Division 3.3 of the EP&A Act.

make associated technical documents publicly available (as they do not form part of the Schedule).

- As noted above, it may be appropriate to engage the community at other stages (including initial identification of SAPs, on development of master plans, and on Design Guidelines).

We strongly recommend that mandatory and robust community participation requirements are included in the SEPP or EP&A Regulation, for each relevant stage of the SAP process.

Planning approval pathways and land use table

Information in the EIE regarding planning approval pathways is unclear. We note that:

- Page 4 of the EIE provides that “the land use table will outline the approval pathways for land uses, including exempt, complying and prohibited development”. However the draft Land Use table for the Parkes SAP (EIE, p 20) lists simply ‘Permissible’ and ‘Prohibited’ development. It is unclear if ‘Permissible’ development is intended to be exempt or complying development if it meets certain parameters (e.g. consistency with Master Plan, Delivery Plan etc).
- The text on page 8 explains that the SEPP “proposes to simplify planning and environmental approval” and that “(a)ny development within a Special Activation Precinct must be consistent with the Master Plan”.
- Page 8 also provides that changes are being introduced to require proposals to obtain a Proposal Certificate from RGNSWDC to provide assurance that a proposal is consistent with the relevant land use table, PDSs, Master Plan and Delivery Plan. However the relationship between the Proposal Certificate and planning approval pathways is unclear. Again, the EIE does not explain which proposal pathway will be used if a Proposal Certificate is issued. For example, if a Proposal Certificate is issued does this mean the development can be carried out as exempt or complying development?

Given that a ‘fast-tracked’ approval process is one of the key features of the SAP framework, a clearer explanation of planning approval pathways is required. We also reiterate our comments made earlier in our submission that upfront strategic assessment should not replace robust environmental assessment at a site scale and we are therefore concerned that the EIE intends for a significant range of development to be treated as exempt and complying development within a SAP.

Designated development and Hazardous and Offensive Development

The EIE envisages that development in SAPs that meets PDSs will not trigger designated development provisions (EIE, p16). Designated development is high-impact development that triggers additional environmental assessment, consultation and appeal provisions. The SEPP also proposes that Potentially Hazard Industry and Potentially Offensive Industry can be undertaken as complying development and that PDSs will set out the requirement for any potentially hazardous or potentially offensive industry proposal that triggers provisions similar to those set out in *SEPP 33 – Hazardous and Offensive Development* (EIE, p 17).

High-impact development such as designated development or potentially hazardous or offensive industries should not be fast-tracked as exempt or complying development, as it is not appropriate for this type of development to be carried out without proper, site specific environmental assessment and community participation.

Regional Enterprise Zones

The EIE envisages a new Regional Enterprise Zone that will be included in SAPs, but there is little detail about how that new zone will operate (e.g. objects, development controls etc.) More detail is needed to explain what this zoning means.

In light of the concerns raised in our submission, including concerns regarding the lack of detailed information and clear explanations in the EIE, we strongly encourage the Department to undertake further consultation, including on a draft SEPP.

Should you have any questions, or require any additional information, please do not hesitate to contact Cerin Loane, Senior Policy and Law Reform Solicitor, on [REDACTED] or [REDACTED]

Yours sincerely,
EDO NSW

A handwritten signature in blue ink, appearing to read 'C. Loane', with a horizontal line extending to the right.

Cerin Loane
Senior Policy and Law Reform Solicitor