

Public Exhibition for the Explanation of Intended Effect New State Environmental Planning Policy (Design and Place)

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Stakeholder group	<input type="checkbox"/> Industry <input checked="" type="checkbox"/> Council <input type="checkbox"/> Aboriginal Community <input type="checkbox"/> Community <input type="checkbox"/> State Agency
Age demographic	<input type="checkbox"/> 18-25 <input type="checkbox"/> 26-45 <input type="checkbox"/> 46-65 <input type="checkbox"/> 65+

Your feedback

How to make a formal submission

We welcome your feedback on the Explanation of Intended Effect for a New Design and Place State Environmental Planning Policy. **Submissions close on 31 March 2021.**

Feedback is sought on all parts of the document. Please consider if the proposal:

- Reflects contemporary understanding and practices
- Clearly articulates the intentions of the policy
- Should consider other opportunities.

Explanation of intended effect (EIE)

PART 1 Introduction

Council appreciates the opportunity to comment on the proposed (Design and Place) State Environmental Planning Policy.

PART 2 Proposed new State Environmental Planning Policy (Design and Place)

General Comments

Council supports the move to a principle-based planning system. Council invests significant resources into the strategic planning of the region, including the recently adopted Vision Bathurst 2040: Bathurst Regional Local Strategic Planning Statement.

Council has significant concerns about the application of 'Design statements' inclusive of 'Country, local character, design and place principles, Better Placed objectives; resilience strategy; embodied energy; dwelling adaptability; safety by design; site planning strategy' to 'all other development' as proposed by this EIE (Section 3.2.1.3).

Most development applications Council assess relate to building-lot scale. To place this onerous a requirement on applicants, most of whom may deal with a development application once in their lives is considered unreasonable. Most will need to resort to consultants to address the requirements. This will be a wasteful expense. Many if not all of the mandatory considerations are already applied within strategic planning and development controls. The SEPP as outlined in the EIE will be duplicating these in development assessment.

The Aims of the new SEPP to give effect to the objects in s.1.3 of the EP&A Act with the exception of (g) are already embodied in existing Development Control. The aims of the SEPP related to creating a **consistent** set of principles and guidance to **quantify** good design that is placed based within development assessment is supported by Council.

The EIE foreshadows a proliferation of additional policy and guidance documents. Council welcomes a single **consistent** set of principles and associated guidance to quantify good design and guide design review for development assessment. Council requests that these guidelines are developed in conjunction with Councils, and ready for implementation prior to the notification of the Design & Place (D&P) SEPP.

Council looks forward to commenting on the contents, legal status, and relevance of the proposed Design Review Guides while drawing attention to the already prolific design guidance associated with the seven objectives of the 'better placed' framework.

Council has significant concern around the form, structure and content of this SEPP and how it might override Councils Strategic Planning. In particular the potential application of metro-centric metrics within mandatory considerations and their potential interaction with cl.4.6 of the Standard Instrument (Local Environmental Plans) Order 2006. Council continues to oppose the imposition of state-wide planning controls that are contrary to the long-term strategic work that Councils are required to complete.

Council supports the Department's efforts to link requests for variations to development standards via Clause 4.6 of the Standard Instrument to improved design outcomes. Council is currently making a submission to the Department's *Varying Development Standards: A case for change* documentation which is currently on public exhibition. Council urges the Department to consider the outcomes of both the SEPP (D&P) as well as the review of the Clause 4.6 variations together so that the policies are consistent with each other.

Integration with Country

Council recognises the *Draft Connecting with Country (CwC)*. Council welcomes a guideline that proposes a way to support integrated and successful design response to Aboriginal culture and heritage. Council has significant concern about legislating it into one off engagement processes. Especially its inclusion in the 'design statement' requirement for 'all other development'.

CwC, by its own description, is informed largely by the experiences and knowledges of people who work on, and are from, Countries in and around the Sydney basin. It acknowledges further work is required to

determine the appropriateness of these principles and framework for the other Countries of NSW.

Council recognises Wiradjuri people who are the Traditional Owners and Custodians of the Bathurst Plains. Council also recognises all Aboriginal First Nations people who now call the Bathurst Region home.

Council has existing Protocols that are established with local Aboriginal communities, Lands Councils and recognised Aboriginal knowledge-holders which are **part of long-term relationships rather than one-off engagement processes**. These are reflected in Council's strategic planning and community participation plan.

The objectives within CwC of embedding biophilic design defined through Aboriginal Country-centred values defined by 'Traditional Custodians' could be interpreted as a hegemonic approach.

The majority of development assessment that Council deals with is at a building-lot scale the ability to apply a design response to Aboriginal culture and heritage is therefore limited and would usually be undertaken at the strategic (rezoning) stage.

Council has concerns about how Planning Assessment teams and more broadly Council can identify and determine that the Aboriginal Country-centred values have been adequately identified and reflected in the design. Representation on Council does not reflect representation of the Aboriginal community. The local Aboriginal community is a plural community. Council has examples where the Local Land Council and Elders have had opposing opinions on projects.

Council has reservations about this process. It will be difficult to develop CwC with the Aboriginal Community if the relationship between the different parties is fractious.

The position of having to approve or deny a design based on its interpretation of Aboriginal Country-centred values in the case of varying viewpoints within the Aboriginal community, will damage Council's working relationships with the Aboriginal Community.

Principles

The principles proposed here seek to bear on precinct wide, significant and individual development. Council suggests that this scope across all levels of development is too broad for a Principal based approach and duplicates the objects of the EP&A Act. It will lead to significant duplication in demonstrating satisfaction of the 'mandatory considerations' at both the planning proposal and later DA phase. Even after the separate considerations as outlined in Table 1 are applied.

Principle 2, 3 & 5.

The significance of these principles is already integrated into Councils strategic planning. Council invests significant resources into the strategic planning of the region and expresses concern that metro-level targets may be developed within the mandatory considerations of these principles that when applied to regional areas will result in undesirable outcomes.

Application – Land Definition

Council notes the intent to apply the SEPP to urban land. In regards to Rural Residential, this would invoke the precinct planning considerations for relatively minor planning proposals (>10 ha). In regards to excluding RU5 Village, this may exclude land that would benefit from precinct planning, particularly on land which is in a Heritage Conservation Area.

Mandatory Consideration 17. Emissions and resource efficiency should be applied to residential development within rural lands.

Application – Precinct

Council expects to review the more detailed package of amendments related to planning proposals and precinct considerations which will include potential changes to the EPA Regulation and the Ministerial Directions.

Application – Significant development

The definitions as proposed here for ‘development on a parcel of land’ will invoke the SEPP a second time where the parcel has already been assessed under precinct development. An assessment at both scales would be appropriate, assuming steps will be taken to remove duplication by applying considerations by development type.

Development Types

Council suggests a consistent application of design and place principles could be better applied through identified development types. This would reduce duplication, however a one size fits all across the State may be inappropriate.

Design Skills

Council welcomes broadening of the definition of ‘qualified designers’ and the developments that they are required for. The requirements for design skills & a place-based approach as outlined in the EIE is supported. As a Regional Council we often receive development applications with designs replicated from elsewhere. These are advocated for by ‘suitably qualified design professionals’ as detailed in this EIE. A suitable framework for design evaluation and review is required to complement the design skill requirement. It should be noted that access to qualified architects in regional and rural areas is much limited as compared to metropolitan areas. Bathurst, for example, has many skilled draftspersons that are not registered architects.

Design Evaluation and Review

The EIE implies thresholds may be established for Design Review Panels (DRP) for regional areas within the Design and Place SEPP. Council faces considerable difficulty in populating a consistent design review panel given the number of local practitioners and their likely involvement in development to be assessed and therefore the potential for conflicts of interest. There would be a very small number of DA's that will require this level of design review within the Bathurst Region. Who will bear the cost of the Design Review Panels? Perhaps access to an independent external consultant expertise, akin to the NSW Heritage Office Heritage Advisory program would better suit rural and regional locations, supported by funding from the State Government.

As a DRP will not be readily available to provide advice to planning assessment teams. Council would welcome a framework from which planning assessment teams & Councillor's can ensure the adequacy of a 'design statement' from the development's designer. Specialists are particularly difficult to secure within Regional NSW, and this may result in delays in the process.

Design and Place Considerations

3.2.1 Application Requirements

Council has concerns about the content of the 'design statement' as proposed within 3.2.1.3 for reasons outlined in Part 1. As raised earlier application requirements have considerable duplication of matters already considered in Council's strategic planning and development assessment.

3.2.2 Mandatory matters for consideration

Mandatory matters for consideration have considerable duplication of matters already addressed by Council's strategic planning, planning proposals & development assessment.

Consideration 7 Green Infrastructure & 18. Tree canopy; The minimum metric replacement rate of 1:2 for removed trees proposed. Tree replacement is already addressed in Council's development controls. Consideration 10,11, 12 & 19. Should metro-level metrics be mandated these will undermine Council's strategic planning and create undesirable outcomes.

Consideration 14,15 & 16. Are already considered in Council's development assessment.

Consideration 17. Emissions and resource efficiency are recognised as replacements of current BASIX considerations.

3.3 Guidance

Council repeats its earlier comment;

The EIE foreshadows a proliferation of additional policy and guidance documents. Council looks forward to commenting on the contents, legal status, and relevance of these while drawing attention to the already prolific design guidance associated with the seven objectives of the 'better placed' framework.

The EIE seems to imply both 'better placed' and the SEPP Guides will be applicable. Council would welcome a **singular succinct** consistent set of principles and associated guide or guides for their consideration. Council does not consider 'better placed' to be succinct.

Council looks forward to providing detailed commentary when 'mandatory considerations' and the Guidance Framework are fully articulated and the form they will take in development assessment drafted.

PART 4

Proposed amendments to existing State Environmental Planning Policies

See comments in Appendix sections below.

PART 5

Relationship with other planning instruments and policies

Council looks forward to committing on the following matters during exhibition of the draft Design and Place SEPP;

- Amendments to the EP&A Regulation
 - Interaction with cl.4.6 of the Standard Instrument.
 - Interface with complying development, infrastructure, educational establishments, childcare facilities and Housing Diversity SEPPs.
 - Relationship to existing Codes SEPP.
 - Better Placed and its relationship to the functions of this SEPP.
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[Development Under Part 4](#)

Council for reasons outlined in part 1 of this response has concerns over the proposed requirements for one-off engagement processes with Aboriginal community and Traditional Custodians within Development Assessment. Council looks forward to commenting on proposed requirements during exhibition of the draft Design and Place SEPP.

[Development Under Part 5](#)

Council supports the application within Part 5 of the EPA Act where the applicant is a public authority and determining authority. Unless all decision-making authorities are required to have the same regard to the design considerations according to the relevant development scale, this creates a risk of inconsistent decision making.

PART 6

Planning pathways

[Planning Proposals](#)

Council expects to review the more detailed package of Gateway assessment changes for precinct considerations and the proposed mechanism (possibly Secretary's requirements) to include engagement with the local Aboriginal community including Traditional Custodians.

[Transitional Provision](#)

Council considers a period of at least 12 months an appropriate timeframe to ensure appropriate skills are in place to meet the assessment requirements under the SEPP. It should be noted that rural and regional councils in particular have limited resources and access to design skills as compared to metropolitan areas.

APPENDIX A

Proposed Amendments to the Apartment Design Guide and SEPP 65

Council supports the proposed incorporation, refinement and replacement of the objectives and mechanisms of SEPP 65 proposed.

Council supports the intent to include other recent market-led housing development and tenure models including student housing, co-living, and build-to-rent housing, and housing types currently facilitated by SEEP (Affordable Rental Housing) and SEPP (Housing for Seniors and People with a Disability) within the Apartment Design Guideline, but not at the expense of Councils own planning controls and strategic planning priorities.

APPENDIX B

Proposed New Public Spaces and Urban Design Guide

The consolidation of current prolific design guidance available under both the State Government Architect and Department of Planning, Industry and Environment into the Urban Design Guide is supported.

Council seeks the opportunity to comment on a completed draft of the guide. In particular

- Scope and relationship to forms of development and current planning processes.
 - Any proposed metrics, Council repeats its concerns that metro-based metrics will produce undesirable outcomes in regional areas.
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APPENDIX C

Sustainability in Residential Buildings

Council reinforces previous advice to the Department that it has cause to exceed the minimum requirements within BASIX for local imperatives particularly water security. The (BASIX) 2004 SEPP and the implementation proposed in the Design and Place SEPP will continue to prevent Council applying (or incentivising) a higher than BASIX standard.

Council broadly supports;

- providing more flexibility (expanding tools beyond BASIX) in the available assessment pathways to demonstrate a design meets sustainability performance requirements. Inclusive of Passive House standard, Green Star Homes Standard and 'Whole-of-Home' tools by NatHERS.
 - the introduction of an independent, merit assessment pathway, where a suitably qualified professional such as a member of the Australian Institute of Architects or Engineers Australia or a Nationwide House Energy Rating Scheme (NatHERS) accredited assessor provides a report and documentation. Subject to a detailed implementation plan and successful pilots.
 - the inclusion of embodied energy, green infrastructure, and stormwater run-off assessment at the building-lot scale.
 - the updating of requirements to enhance align with NCC reform, and NatHERS thermal comfort.
 - requirements, improvement in user experience and integration with the NSW Planning Portal.
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Council understands the intent behind allowing thermal comfort to be traded off by increasing energy performance but questions its suitability in relation to environmental sustainability in general.

Council looks forward to commenting on proposed sustainability targets, mechanisms for tradability between targets and merit assessment pathways when these are drafted.

Additional comments

As a sequel to the matters discussed here, Council is providing a response to the Department's discussion paper on reforms to clause 4.6 variations.

Council asks that the Department consider the cumulative impact of all its consultation and exhibition timeframes when drafting new legislation and planning reforms. The Department has issued a considerable volume of material currently and recently for comment. Given the time and skill constraints that all local governments operate within, the feedback that the Department is receiving may not address all relevant concerns that local government may be facing.

Thank you for your time in preparing this submission.