

30 April 2021

Our Ref: 21/116773
Our Contact: Clare Harley

Abbie Galvin
Government Architect NSW
Department of Planning, Industry, and Environment
GPO Box 39
Sydney NSW 2001

Dear Ms Galvin,

RE: Bayside Council Submission - Design and Place SEPP Explanation of Intended Effect (EIE)

Bayside Council welcomes the opportunity to provide comment on the proposed State Environmental Planning Policy (SEPP) – Design and Place. Bayside Council has reviewed the Explanation of Intended Effect (EIE) and is generally supportive. Notwithstanding, there are a number of matters that require further consideration when drafting the proposed SEPP, which have been detailed in the accompanying submission.

Please note that the following submission is a draft and has not yet been endorsed by Council. It is anticipated that this will be endorsed at a meeting to be held in May 2021, and the Department will be advised immediately following this occurrence.

If you require any further information, please do not hesitate to contact me on (02) 9562 1607.

Yours sincerely



Clare Harley
Manager, Strategic Planning

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

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|-------------------|--|
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| Your Organisation | Bayside Council |
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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 supports the intention to improve the quality of development, through the encouragement of design which considers amenity and wellbeing for community. Notwithstanding, there are a number of matters which require further clarification and should be carefully considered when NSW Government is preparing the draft Design and Place SEPP for public exhibition.

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

The Design Principles

Bayside Council encourages the simplification of process, to promote good design outcomes with consideration for amenity and public spaces. However, there is concern that the lack of minimum standards and metrics will not guarantee good design. The principles may be too abstract to ensure high quality development is delivered. For example, the term 'beauty' is highly subjective, which may cause difficulties in the assessment process. It may also lead to poor quality developments, resulting from the inability of council to enforce controls which protect the public domain from development lacking architectural merit. To ensure that there is some weight given to the 'principles', they should be stated under the objectives of the SEPP.

Connecting with Country

Bayside Council supports the inclusion and prioritisation of Connecting with Country. However, further clarification is required to understand the relevant development typologies, the assessment timeframes, the engagement process, and the roles and responsibilities of stakeholders. In addition, consideration should be given to ensuring that Aboriginal traditional custodians are adequately resourced to respond and engage.

Health and Wellbeing

The built environment has significant impacts on the health outcomes of a community. There is an opportunity to include a stronger emphasis on health and wellbeing in the consideration of design, perhaps as an additional principle, or to be integrated within the existing proposed principles.

PART 3
**Key components of the
new State Environmental
Planning Policy**

The Land and Environment Court

Further information is required to demonstrate how the principles-based approach will integrate with the Land and Environment Court process. Consideration should be given to the potential increase in costs for both parties, as councils and developers will potentially need to utilise expert witnesses to demonstrate the presence, or lack of, design quality in a proposed development.

Application of the SEPP

It is unclear which development typologies this SEPP will apply to. All development scales and typologies should be included under this SEPP, with the mandatory matters applied to each.

Mandatory Matters for Consideration

The term 'consideration' implies that there is some flexibility in achieving each matter. This term should be changed, to ensure that each matter is considered a requirement which must be met, and that the consent authority must be satisfied in order to grant approval.

Place-based approach

Detailed guidance is required to delineate the size of developments, and the stages of involvement with Council. Engagement with Council through a pre-development application or pre-planning proposal should be a requirement for large developments.

Design and assessment skills and evaluation

More information regarding the required skills should be provided so that councils and other consent authorities have adequate time to prepare. This includes clarification of the term 'qualified designer'.

Further information relating to the design review panel process is required to outline whether it is mandatory, and in which instances, and how this process will be funded by councils. Clear and detailed guidelines must be provided to assist design review panels in determining proposals based on matters such as 'attractive form', which is highly subjective. Additionally, mandating that an architect review the development at both the certification and construction phase will ensure that the final build is consistent with the approved design. Further thought should be given to ensuring that the timeframes reflecting complex developments are aligned with reform of the EP&A Act, particularly in terms the 'deemed refusal period' of Clause 113 of the Regulations.

The Department should provide further clarity relating to how the principles should be applied by planners when assessing development applications. Clear templates and procedures should be supplied to ensure that there is consistency in the application of the SEPP guidelines across the state.

Public Space and Density

Council supports the intention to preserve public open space and to restrict any potential negative implications of development, such as encroachment. Further consideration should be given to the State density targets and local housing strategies. This should be aligned with public space requirements, including access to public transportation and other services. Proposing development with higher densities should not be justified simply based on proximity to public space. Additionally, there should be a focus on creating additional 'public open space', not simply 'public space', where possible and necessary.

Local Living and Activation

Bayside Council supports the initiative to encourage walkable neighbourhoods. However, locating housing within a 20-minute walk of local shops and amenities is too far to be considered a comfortable and accessible distance. This should be

revised to align with the 10-minute target that has been outlined within Objective 12 of the 'Greater Sydney Region Plan: A Metropolis of Three Cities', which was also integrated into Planning Priority 12 of the 'Bayside Local Strategic Planning Statement'. Further, a clear definition of the term 'activity streets' relating to activation, should ensure that passive surveillance and potential impacts to the streetscape are adequately addressed.

Sustainability, Resilience and Biodiversity

Bayside Council supports the increase of BASIX and NABERS targets to improve resource efficiency and better reach emissions targets. However, further consideration of resilience to climate change should be included in the draft SEPP, and it should be required that proposals address specific impacts, for example, how the development will reduce the impact of increasing frequency and severity of heat waves through insulation.

There should be mandatory minimum requirements for green infrastructure, which encourage the inclusion of native plants and trees, to ensure that biodiversity targets are met. Tree canopy targets should also integrate other forms of vegetation, with clear guidance on determination of proposals which cannot meet the requirements. It should also be stated that less impactful alternatives to tree and vegetation planting, such as green walls, should only be used in rare circumstances, and when other targets cannot be met. Requirements for both public and private domain should be considered in planning interconnected networks of open space, particularly at a precinct level.

PART 4

Relationship to complying development.

The relationship between the proposed SEPP and complying development should be addressed, particularly in terms of how increased flexibility should be applied in development assessment. Strong guidance through clearly defined matters for consideration and the principles should be provided.

PART 5

Relationship with other planning instruments and policies

Environmental Planning and Assessment Act 1979

It should be made clear whether the application requirements within the Design and Place SEPP will align with those included in the EP&A Act.

Local Environment Plans

The relationship between the proposed SEPP, and the alignment of LEP targets should be clarified in terms of the process and the expected timeframes. Standard Instrument definitions, such as Gross Floor Area, should be reviewed to avoid confusion related to the interpretation of development requirements.

PART 6

Planning pathways

Planning Proposals

Improved focus on design and place is encouraged, however the corresponding framework needs to ensure it can be funded. The expectation placed on local government to provide community infrastructure greatly exceeds the capacity for what can realistically be delivered. Additionally, the recommendations put forward in the recent Review of Infrastructure Contributions, will further impact council's capacity to fund and provide infrastructure due to the limited opportunities to receive adequate development contributions. While council is supportive of the initiative to improve design and amenity that is envisioned in the Design and Place SEPP, it is unlikely that these will be realised without access to appropriate levels of funding.

Transitional provisions

A minimum 3-month transitional period would be required to prepare for implementation after the SEPP has been gazetted.

APPENDIX A

Proposed Amendments to the Apartment Design Guide and SEPP 65

Bayside Council supports the proposed improvements to amenity that are to be included in the Apartment Design guidelines. Namely, the inclusion of more adaptable apartments for diverse households, the minimum bedroom size of 12m², minimum depths for private open space, acoustic separation, and the proposed natural cross-ventilation requirements. However, there are several items which should be further considered.

Universal Design

Council supports the recommendation to increase the percentage of universal design to the Liveable Housing Design silver performance level. However, the 'silver' level is quite limited, so there should additionally be a minimum percentage of 'gold' level, that is included.

Mixed-use Development and Street Activation

There are concerns relating to the proposed requirement to allocate 40% of ground floor space for non-residential use in R3 and R4 zones, and centres. While council supports the recommendation to include more community spaces, enforcing a requirement to allow for a retail space in an unsuitable area may result in a large proportion of vacant shop fronts, which would detract from the streetscape. Notwithstanding, council encourages a requirement to include a range of facilities in apartment development for residents to enjoy, where necessary.

Sustainability

There is an opportunity to include a requirement to provide more passive measures for improving sustainability in building design, for example, non-mechanical elements such as awnings and eaves to provide shading.

Parking

The intention to minimise parking requirements is not supported by Bayside Council. Reducing the number of private parking spaces will impact the availability of parking in the public domain. Additionally, it is unclear whether the decoupling of parking will be separately rated, and this should be clarified.

Bicycle Parking Rates

Bayside Council supports the proposed new bicycle parking and mobility storage requirements.

Ceiling heights

Further consideration should be given to the increase of non-residential ceiling height from 3.3m to 4.2, in terms of the potential negative impact on yield and feasibility for certain sites, particularly in the context of LEP controls.

APPENDIX B

Proposed New Public Spaces and Urban Design Guide

Local Character Statements

Council supports the proposed design criteria which requires development to demonstrate a consideration of place and local character. However, further information is needed to understand the requirements in LGA's which do not have a local character statement in place, as the preparation of these documents can often be fairly resource intensive and time consuming for councils.

APPENDIX C

Sustainability in Residential Buildings

SEPP (Building Sustainability Index: BASIX) 2004

Council agrees with the view that the current BASIX system is outdated and requires a refresh. However, a revision of BASIX needs clear parameters to ensure consistency of application. Allowing the use of alternative tools to meet BASIX requirements may affect compliance and result in delayed development assessment. An approved list of measurement tools should be outlined so that assessment of these requirements is not overly complicated, and that consistency of meeting the objectives can still be achieved. In addition, targets should be based on future climates, to ensure that developments are prepared to withstand the impacts of climate change.

Additional comments

Bayside council believes that the response time allocated to provide feedback to the draft Design and Place SEPP may be too close to the planned finalisation of the document and guidelines. The proposed SEPP, and other upcoming reforms to Clause 4.6, complying development, employment zones, and infrastructure contributions, are each interrelated. DPIE should be carefully consider each reform in relation to each other, particularly in terms of any potential gaps that may arise from weakening controls that are currently in place to protect the public from poorly planned and constructed development. Limited in-house resourcing combined with very short response timeframes has impacted Council's availability to comment, and deeply consider the details proposed. The review timeframe should be extended to instil confidence in stakeholders that the feedback provided, and any potential adverse consequences will truly be considered by DPIE, particularly in relation to the other proposed reforms.

Thank you for your time in preparing this submission.