



Ku-ring-gai Council Submission

Explanation of Intended Effect

Design and Place SEPP

Ku-ring-gai Council Submission – Design and Place SEPP - EIE

Ku-ring-gai Council welcomes the opportunity to provide feedback on the exhibited Explanation of Intended Effect for the proposed Design and Place State Environmental Planning Policy.

This submission has been prepared by Ku-ring-gai Council staff. Due to the lead time for reporting to Council Meetings, it has not been formally endorsed by Council.

There are a number of matters which are of concern, and others with which there is insufficient information detailed in the Explanation of Intended Effect to determine the full extent of potential implications.

The detailed comments are outlined on the following pages 2 – 10.

If you have any questions regarding this submission, please contact Craige Wyse, Team Leader Urban Planning at cwyse@kmc.nsw.gov.au or 9424 0855.

Part 1. Introduction

1.2 Timeline and next steps

1.2.2 Development of the new Design and Place SEPP

The intended plan to publically exhibit the Draft Design and Place SEPP, as well as the supporting documents such as the revised ADG, new urban design guide and new design review guide in mid to late 2021 is supported. It is crucial for Council to see the complete detail, such as the wording of clauses, contained in the SEPP and Guides in order for Council to determine the full extent of potential implications of the proposed policy.

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

2.2 Aims of the new SEPP

2.2.1 Connecting with Country

The requirement to consider Country, and to create opportunities to integrate Aboriginal perspectives into the design and planning of built environment projects is supported.

Issue

The EIE is not clear whether all scales of development are required to consider Connecting with Country as part of project or whether this is only required for precinct-scale projects. It is also not clear what level of engagement with Traditional Custodians is required, and whether the same level is required for all scales of development.

2.3 Principles of the new SEPP

The EIE places a large emphasis on the new Design and Place SEPP being a 'principles-based' system focusing on the outcomes wanted by moving away from prescriptive planning

controls. The EIE proposes that principles will be given effect through matters for consideration and application requirements and the proposed Design and Place SEPP will require applicants to demonstrate through application requirements that the SEPP principles and consideration have been met.

Issue

There is a concern that a principle based system that does not have specific planning controls in order to assess a development against, but rather broad high level principles, will result in a very subjective assessment of the development outcomes. It is based on one expert opinion against another about whether a development is consistent with or achieves the intended effect of the principle. How will a principle based planning system work alongside, for example, the very specific planning controls contained within the Apartment Design Guidelines? Will a principle based planning system have any implications for Councils planning controls within the LEP and DCP?

Part 3. Key components of the new State Environmental Planning Policy (Design and Place)

3.1 Design Process

3.1.1 Design Skills

The requirement for suitably qualified design professionals to design developments that are three or more storeys, open space over 1000m², and precincts and significant development is supported.

Issue

It is unclear whether this requirement will also extend to Council developments and works assessed under Part 5 of the EP&A Act, including parks and reserves. It is also unclear whether this requirement will also apply to precinct plans/ masterplans within Council's DCPs.

Issue

The NSW Design and Building Practitioners Act is gradually rolling out with Architects and Engineers being the first tranche of practitioners to be 'registered design practitioners'. Landscape Architects and others will be 'registered design practitioners' in 5 years' time. Will the Design and Place SEPP align with these timelines? Or is the requirement for landscape architects and urban designers to prepare design for open space over 1000m² to come into effect upon adoption of the SEPP? Will employees within local government that work on projects which fall within this defined scope of works be required to be registered design practitioners? Will local governments be required to have registered architects employed as Council officers?

3.1.3. Design evaluation and review

Issue

Will the new 'Design Review Guide' for state and local government be in place upon adoption of the Design and Place SEPP? Will the 'required expertise' (page 26 of the EIE)

be the same as the 'registered design practitioners'? Will this mean there will be a requirement to have registered architects and landscape architects within DA assessment teams? Will the new Design Review process have an impact on the assessment and approval time of projects?

3.2 Design and place considerations

3.2.1 Application requirements

The proposal for consistent application requirements is supported.

Issue

Will all the elements of application requirement 3, 'a design statement' be applicable for all development types? For example, matters such as a resilience strategy, embodied energy, dwelling adaptability and safety by design may not be appropriate for smaller scale development such as single dwelling houses. Will this require additional studies to be commissioned to support applications if these matters are to be addressed?

3.2.2 Mandatory matters of consideration

Issue

It is unclear how these mandatory matters of consideration interplay with Councils LEP and DCP controls, particularly when they are considered the same issues such as parking, active street frontages and tree replacement. Will requirements under the Design and Place SEPP override LEP and DCP requirements?

Issues and/or recommendations specific to the individual proposed considerations are outlined below:

1. Cultural and built heritage

The EIE notes that this only applies to precinct scale development. It suggested that this matter should be a mandatory consideration for all scales of development.

4. Local living

The EIE notes a requirement for all housing in urban areas of new precincts to be within 20 minute walk of local shops. 20 minutes (approximately 1,600m) i.e. a 40 minute walking return trip minimum is not likely to be short enough to encourage regular walking for local trips. In order to better encourage walking as a default travel mode, a 10 minute walk (800m) should be required. The catchment of an 800m radius walk is approximately 130-135Ha, depending on street network layout.

Furthermore, this is a different metric to that used within the Greater Sydney Commissions Greater Sydney Region Plan and the North District Plan, which stipulates a requirement of within 10 minutes walking distance. Council recommends that the SEPP use the same 10 minute walking metric to ensure consistency and line of sight through the planning framework.

The EIE notes that 'where possible' housing should be located within 20 minutes walking distance to primary schools, district open space, public transport and supermarkets. Council recommends that it should be a requirement for housing to be in close proximity to as many

of the listed land uses as possible, not an option. As recommended above, the walking time to these uses should be a 10 minute walk.

10. Density

The introduction of baseline residential density targets is not supported. The EIE notes that *'density ranges will be determined during development of the Design and Place SEPP based on a developments location and transport access, with a minimum density capacity of 15 dwellings per hectare'* (page 30 of the EIE) to be considered at Precinct and Significant Development scales. It is not clear how this residential density target is aligned with Council's zoning, floor space ratio and heights. It is also not clear how this target is aligned with Council's Local Housing Strategy. It is noted that the 'Housing Diversity' consideration needs to respond to the Local Housing Strategy, why is this not the same for 'Density'? It is a concern that the introduction of baseline residential density targets could lead to planning proposals using this as justification to seek upzoning or increases in height and floor space ratio that are incompatible with existing and intended future local character.

12. Transport and parking

The proposal to adopt the lower of the RTA guide to Traffic Generating Developments rate and any maximum parking rates or lower minimum rates specified by local controls, maps or guidance is supported. Further to this, parking rates/provision at destination land uses such as retail/shopping centres, office/commercial, food/restaurant, recreation/leisure, community facilities and other land uses need to be reviewed, as generous parking at these destinations will attract car travel independent of the alternative modes of travel available from the source.

15. Impacts on vibrant areas

A definition is required for 'vibrant areas'.

16. Activation

A definition is required for 'active streets'. Council is concerned that the proposed consideration only requires a 'minimum percentage' of site frontage facing activity streets to be non-residential. Council's LEP controls for active street frontages requires the entire ground floor of buildings within business zones to be of non-residential use designed to encourage and enable activation of the street frontage. This proposed consideration is contrary to Council's intended street activation outcomes.

17. Emissions and resource efficiency

Energy use in buildings represents a significant contribution to greenhouse gas emissions in Greater Sydney. City of Sydney has presented pathways for the development of net zero buildings, based on extensive research with industry stakeholders. Presented at the Planning for Net Zero Energy Buildings Briefing on 11 March 2021, the City of Sydney project proposes stronger energy efficiency targets that demonstrated cost-effective opportunities to deliver significant community benefit. As a staged process developed in consultation with industry, there is the opportunity to use the City of Sydney's proposed performance targets, as a minimum starting point for consideration of net zero planning pathways in the Design and Place SEPP.

Although permitted in the NCC, the use of gas over electricity for certain building services presents a barrier to reaching true net zero emission buildings and risks asset owners being stranded with gas dependent appliances/services that are not future proof in a net zero economy.

It is recommended the use of City of Sydney's proposed performance standards (*Planning for Net Zero Energy in Buildings*) as the minimum starting point for examining staged pathways to net zero for the following buildings – offices, shopping centres, hotels, apartment building common areas (for recommended energy performance standards of apartment building tenancies, refer to comments on 4.2.1 and Ku-ring-gai Council's proposed targets).

19. Affordable housing

Council supports the requirement for provision of affordable housing and consistency with the Greater Sydney Region Plan in this regard. The matter for consideration notes that this is to be considered for significant development and all other development, and notes that where there are no affordable housing targets or schemes, the applicant '*may propose a viable amount of affordable housing for the site, and must provide that amount*' (page 32 of the EIE). The affordable housing proposal does not describe any thresholds to determine when affordable housing needs to be provided e.g. the number of dwellings proposed or the monetary value of the development.

Part 4. Proposed amendments to existing State Environmental Planning Policies

4.1 State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development

Issue

The EIE notes the intention to replace the SEPP 65 design quality principles with the principles of the proposed Design and Place SEPP. The proposed five principles of the new Design and Place SEPP are not as relevant or easy to understand as the current 9 design quality principles contained in SEPP 65. This replacement could lead to weakening of design quality requirements for apartment buildings.

4.2 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

4.2.1 Sustainability in residential buildings

The proposal to update sustainability targets within the Place and Design SEPP is supported. The EIE notes that the provision preventing councils from setting their own higher or lower BASIX targets are to continue to apply, but also notes that mechanisms to allow councils some flexibility will be explored during the development of the SEPP. Council strongly encourages the incorporation of mechanisms that permit councils to set their own higher BASIX targets, where the increase can be supported by a strong evidence base.

Issue

Existing sustainability targets within BASIX do not provide sufficient level of performance to deliver on the objective of the net zero emission targets. Numerous councils, including Ku-ring-gai Council (Sustainable Residential Building – internal study) and the City of Sydney (*Planning for Net Zero Energy Buildings*) have undertaken extensive cost-benefit analysis of BASIX targets for net zero pathways. These analysis have determined that higher targets would deliver significant community benefits in a cost-effective manner with attractive paybacks.

The use of gas over electricity for certain building services presents a barrier to reaching true net zero emission buildings and leads to building owners being stranded with gas dependent appliances/services that are not future proof in a net zero economy.

Recommended changes

Council supports a cost benefit analysis of options for updated sustainability targets – including analysis by local councils such as Ku-ring-gai Council and City of Sydney. Council recommends the following changes:

- As a first stage, adopt the energy and water performance standards developed by Ku-ring-gai Council and presented in the *Sustainability Residential Building Study* (internal study).
 - BASIX Energy 55 and BASIX Water 50 for all residential flat buildings (up to 15 storeys)
 - BASIX Energy 80 and BASIX Water 50 for all townhouses
 - BASIX Energy 80 and BASIX Water 50 for all single dwellings
- Similar to City of Sydney's Planning for Net Zero Energy Buildings, adopt a second stage of BASIX target adjustments, which incorporate the procurement of offsite renewable energy to reach net zero building objectives.
- Review options for BASIX to require electrification of services over gas use in order to ensure buildings are future proof for the net zero emissions economy, and to facilitate development of true zero emissions buildings.
- Review and adapt BASIX every three years in line with National Construction Code to ensure currency with industry practice and advances in technology.

4.2.2 Other reforms

Council supports aligning sustainability performance requirements with the principles of the Design and Place SEPP.

Issues

Research undertaken by Randwick, Woollahra and Waverley Councils (*Future Proofing Residential Development To Climate Change*), has demonstrated that use of historical climate data by the current BASIX framework, produces buildings that fail to provide appropriate levels of cooling thermal comfort in the near future (to 2030) and beyond (to 2070) – due to the trajectory of rising temperatures in the Sydney region. For example, thermal comfort cooling loads increased by an average of 70% for all dwelling types to 2030, and thermal comfort cooling loads increased by an average of 308% to 2070. This research concluded that climate responsive design is possible with existing design and construction measures and is necessary to ensure buildings designed under the current compliance regime, do not fail those compliance targets in the next decades.

The results from WSROC's Urban Heat research program have identified thermal autonomy, and thermal safety, as a key aspect of community resilience in the face of increasing average temperatures and more frequent extreme heat events.

Recommended changes

Council recommends the following changes:

- Incorporate Design and Place SEPP Principle 5 (*Design resilient and diverse places for enduring communities*), into the objectives of sustainability reforms, so as to elevate the need for climate responsive design within the BASIX framework
- Require climate files used in NatHERS, BASIX or any other modelling tool eligible for use under the Design and Place SEPP to be grounded on future climate projections (e.g.2030, 2050, 2070) to ensure all residential and commercial development approved today is safe for the future, hotter climate.
- Review design and technology options for realising BASIX thermal comfort targets, in order to include industry methods that are currently excluded, and that are suited to future climate scenarios
- Incorporate a performance target for thermal safety/thermal autonomy (as described in the WSROC Urban Heat Planning Toolkit) into the BASIX objectives.
- Review and adapt BASIX every three years in line with National Construction Code (NCC), to ensure adaptability incorporating developments in both industry practice and climate trajectories.
- Ensure that thermal comfort targets remain separate to energy efficiency targets, in order to provide for thermal autonomy/safety.

Part 5. Relationship with other planning instruments and policies

5.1 EP&A Act, EP&A Regulation, local environmental plans and development control plans

Issue

The EIE provides context from SEPP level down, but does not provide any detail or consideration of the planning framework above, i.e. does not consider the relationship between the SEPP and the Greater Sydney Region Plan, the North District Plan or the Local Strategic Planning Statement.

5.1.2. LEPs and DCPs

Issue

The EIE notes that it will have no immediate impact on existing LEPs and DCPs but during the 5 yearly reviews they will be revised to align with the Design and Place SEPP. There is concern that LEPs and DCPs will also be required to move to a principles-based' system and remove prescriptive planning controls. Prescriptive and specific planning controls particularly at the LEP and DCP level are essential to ensure good development outcomes and ensure that development is consistent with the local character elements by providing clear direction. An alternative 'principles based system' will be subjective and open to different interpretation, which does not set a clear direction, and could result in designs that not necessarily meet the objective of the control.

There are specific concerns with the potential impacts on Ku-ring-gai's existing deep soil and site planning provisions. See response to A2.22 below for further detail on this issue.

Issue

The EIE notes that consideration will be given to amending Clause 4.6 to include the need for developments to demonstrate that any variation will result in an improved planning outcome and public good. This seems similar to existing Clause 4.6 requirements for 'public interest' and 'better outcomes'. It is difficult to comment on the potential implications of this proposed amendment without seeing the drafting of the amended clause. Council reinforces the importance of the draft Design and Place SEPP and Guides to be publically exhibited prior to adoption.

5.2 Other environmental planning instruments impacted by the new SEPP

5.2.2 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

Issue

The EIE notes that '*the relationship between the existing Codes SEPP and the new Design and Place SEPP is to be determined*' (page 29 of the EIE). It is apparent that due to the nature of the Codes SEPP (tick box of meeting minimum standards) that there can be no relationship between these two SEPPs. The outcomes and principles sought by the new Design and Place SEPP cannot be delivered through a complying development pathway.

Part 6. Planning pathways

6.3 Planning Proposals

Issue

The EIE notes that '*in some instances it may be necessary to undertake a preliminary assessment to demonstrate how the requirements of the proposal will satisfy the requirement of the proposed Design and Place SEPP*' (page 42 of the EIE). There needs to be consideration of the level of detail provided at the Planning Proposal vs. Development Application stage. Some of the matters of consideration (such as attractive form, emissions and resource efficiency and tree replacement) cannot be assessed during a Planning Proposal, as that level of detail is not available. It is crucial for Planning Proposals to be maintained as amendments to the LEP, and the level of detail required to be submitted and considered in the assessment is entirely separate to that of a Development Application.

Appendices

Appendix A. Proposed Amendments to the Apartment Design Guide and SEPP **65**

A.2 Key components of this revision

A.2.2 Urban design and site planning

Issue

Under the proposed design criteria for mixed-use development and street activation, the EIE proposes to allocate 40% of ground floor space for non-residential use in R3, R4 zones and Centres, in response to the need for ground floor, non-residential uses to serve higher populations in predominantly residential areas. It is unclear how this works with Councils zoning, land use table and existing controls relating to ground floor activation. For example, in Ku-ring-gai there are limited non-residential uses permitted within the R3 and R4 zones and neighbourhood shops are limited to 100sqm. Will this mean every development is required to provide non-residential uses at the ground floor? Ku-ring-gai also has existing LEP provisions which require the whole of the ground floor within the centres to be used for non-residential uses, compared to the 40% proposed. It is crucial to clarify the relationship between the Design and Place SEPP and local planning controls.

Issue

The proposal to increase the minimum deep soil landscaping requirements for residential flat buildings from 7% to ranges of 14-18% and 21-25% is commendable. However, we strongly object to the proposal to make deep soil zones non-discretionary development standards as per the existing cl 30 of the SEPP 65 as it would have significant implications for Ku-ring-gai.

Deep soil landscaping is a key and important element that defines Ku-ring-gai's urban character. The Ku-ring-gai DCP currently requires all residential flat buildings to provide a minimum of 50% deep soil landscaping. The proposal to make the lower ADG minimum deep soil requirements non-discretionary will effectively result in a reduction in deep soil provision of 50% for sites greater than 3000sqm and a reduction in excess of 64% for sites of 3000sqm or less.

Ku-ring-gai's urban character is predicated on the quality of its landscape, and has in place, detailed development objectives and controls for all setbacks, site coverage, total landscape area, deep soil and tree removal that ensure all development of every scale sits within a dominant landscape setting characterised by canopy trees and deep soil planting. The removal of Council ability to apply its existing landscape controls will be a regressive step that will not only impact on local character but also Council's ability to address urban heat, stormwater management and maintenance of soil integrity.

Recommended changes

The revised ADG and accompanying Design and Place SEPP should include provisions that allow for the enforcement of local planning instruments and controls for urban design and site planning that are over and above the minimum standards set by the ADG.

A.2.3 Residential amenity

Issue

Under the proposed design criteria for apartment layout, the EIE notes requiring 20% of 2 or more bedroom units to be 'family units' providing a minimum of 12m² bedrooms for all bedrooms and encourage non-structural walls which are capable of being modified to suit occupant needs, in order to support people working or studying from home. These requirements do not seem substantial enough to support the likely ongoing trend of people working from home and combat the increased pressure on internal and common areas of

dwelling and the need for space within apartments for work stations which is highlighted on page 55 of the EIE. It is counterintuitive to only require a minimum bedroom size, without an associated increase of minimum apartment sizes, as the increase in bedroom size for the small percentage of 2 bedroom units could likely result in the reduction of living area space.

A.2.4 Common spaces and vertical circulation

Issue

Under the proposed design criteria for communal open space, the EIE notes that the site area metric will be replaced with an occupancy/unit mix metric. Clarification should be provided on how this will be achieved? For example, a 2 bedroom unit may have between 1 and 4 occupants and the occupancy of dwellings is not static and will change over time.

Appendix B. Proposed New Urban Design Guide

B.3.4. Design considerations

Issue

Under Part 2 – Structure - Distribution and intensity of uses, the EIE notes *‘the guide intends to foster inclusionary zoning and mixed communities through setting a maximum percentage of ‘single use’ zones (such as low density residential) as well as guiding the activation of ground floor uses in medium density and high density residential zones to inform site planning, such as non-residential ground floors in new apartment development.’* (page 90 of the EIE). It is unclear what implications this has for Council’s existing LEP land use tables and land zoned for low density residential, as well as the impact of the requirements for ground floor uses in medium and high density zones and non-residential ground floors in new apartment developments as discussed above under A.2.2.

Appendix C. Sustainability in Residential Buildings

C.2. Objectives of sustainability reforms

C.2.1 Providing more flexibility in the available assessment pathways

The EIE notes that it seeks to provide more flexibility in the available assessment pathways – instead of BASIX, which includes a proposed independent, merit assessment pathway. If this is to be pursued, then there is a need to ensure that the sustainability outcomes achieved are equivalent to the minimum BASIX standards and that the independent assessment is prepared by suitably qualified professional. The documentation needs to be able to be comprehensible to and authorised by the person undertaking the assessment as well as certifiers.

C.2.1.3 Allowing a tailored approach for thermal comfort and energy performance

Issue

The use of onsite solar PV to offset thermal comfort cooling loads would fail in the objective of providing minimal thermal comfort/thermal safety in the instances of electricity grid failures. This is because onsite solar PV systems must self-disable, when there is an electricity blackout. This creates an issue in that the building’s passive thermal performance is what remains to provide thermal autonomy and thermal safety (refer comments on 4.2.2, above) for occupants in such an event (despite the presence of onsite solar PV). Given the trajectory for increased temperatures and frequency of extreme heat days, allowing a trade-

off between thermal comfort performance and inclusion of onsite solar PV, will have a negative impact on resilience to these trends.

Additionally, if cooling thermal comfort targets are offset by onsite solar PV, this adds to the level of urban heat sources as it increases the level of mechanical cooling within the urban environment. As the research in WSROC's Urban Planning Toolkit has demonstrated, the heat rejection from mechanical cooling systems is a key source of urban heat, and so the objectives of internal thermal comfort and urban heat are inseparable.

Recommended changes

Require thermal comfort performance to remain independent of energy performance within BASIX, to ensure a minimum level of thermal safety/autonomy for building occupants, and to avoid increasing urban heat sources through higher levels of mechanical cooling in the urban environment.