



22 April 2021

Department of Planning, Industry and Environment
Locked Bag 5022
Parramatta NSW 2124

Dear Sir/Madam

Subject: Lake Macquarie City Council staff submission on Explanation of Intended Effect (EIE) - Design and Place SEPP

Thank you for the opportunity to comment on the EIE for the proposed Design and Place SEPP. This is a Council staff submission and any comments are provided from a staff perspective and do not represent a Council endorsed position or comment. Council staff support the consideration of place and strengthening design considerations for developments, as well as sustainability changes incorporated with the amendments proposed to BASIX. Council staff support the initiative and believes these changes will result in improved urban design outcomes.

Elements of the proposed Design and Place SEPP are commendable including:

- Recognising three separate scales of development, and the importance of planning at the precinct scale.
- Review and updating current BASIX requirements to transition to net zero carbon emission development.
- Recognising Aboriginal perspectives and considering Country.

Whilst Council staff support the direction of the Design and Place SEPP, further details on the operation of this SEPP is needed to enable Council to fully understand the proposed changes, particularly relating to how the Design and Place SEPP will:

- consider development in regional cities and areas. A number of the controls appear to be Sydney based, in particular how the requirement for ground floor commercial/retail use for apartment buildings may impact on development feasibility for narrow infill apartments in residential areas in regional cities. The Design and Place SEPP should consider development in regional cities.

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- work with Council's Development Control Plan, given the Design and Place SEPP will apply to all urban development,
- work alongside the CODES SEPP and apply to smaller development and ensure the Design and Place SEPP design considerations do not significantly increase timeframes or costs for these development types,
- apply to subdivision applications immediately following rezoning applications to ensure unnecessary duplication of Design and Place considerations where site specific Development Controls Plans are prepared for release areas.
- relate to the consideration of Country for all development applications. Lake Macquarie City Council has undertaken sensitive Aboriginal Cultural Landscaping mapping that is considered in the development assessment process. Council would like to continue to use this in development assessment.

Council staff provide detailed comments on the EIE in Attachment 1 for your consideration. Council staff would welcome further consultation as more changes are outlined during the preparation of the SEPP and suggests further engagement with the development industry and an education program so designers and developers are aware of the proposed changes and the new supporting documentation requirements.

Should you require further information, please contact Council's Senior Strategic Planner, Angel Troke, on 4921 0298 or atroke@lakemac.nsw.gov.au.

Yours sincerely



Wes Hain
Manager Integrated Planning



Attachment 1 – Staff comments on Explanation of Intended Effect for new Design and Place SEPP

Connecting with Country

While the consideration of Country within the Design and Place SEPP is supported, more detail on how this would work during the development assessment process is needed. Consultation with Local Aboriginal Land Councils, traditional owner groups and other stakeholders is needed to ensure the Design and Place SEPP functions well and development assessment continues to occur in a timely manner. Council believes these are important steps and considerations to incorporate place and design in new development and will result in improved urban outcomes.

It is considered that consultation with local Aboriginal groups and incorporation of Country is more appropriate at a precinct scale for large scale rezonings, subdivisions, planning for town centres as well as for sites in culturally significant areas or that may contain items.

Design Principles

The 5 principles for design and assessment are supported, along with the intended effect.

Principle 1 - Design places with beauty and character

Support the consideration of design and *Better Placed* for new development and consideration of cultural and built heritage.

Principle 2 - Design inviting public spaces

Support targets for public space and protection of public space assets and delivering green infrastructure as well as consideration of size, orientation, good location, activity, interest, variety which are all important aspects of inviting public spaces. Some consideration to the importance of not only delivering, but preserving green network and canopy trees for shade and amenity could be incorporated into this principle.

Principle 3 – Develop productive and connected places to enable thriving communities.

The new SEPP proposes baseline residential density targets in urban areas, which are consistent with Local and Regional Strategic Plans, however there is a need to ensure the new Design and Place SEPP targets are not only Sydney centric with targets

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aligning to regional plans and identifying the differing scales of urban areas across NSW. Lake Macquarie has a number of larger centres as well as smaller neighbourhood centres and these targets need to consider the various types of centres across NSW.

Support for a needs based car parking assessment methods to consider locations for maximum parking rates, lowering minimum rates and specifying where adaptive travel plans are prepared. This is consistent with the Lake Macquarie Parking Strategy, however State guidance is needed to drive this approach with car parking often being a contentious issue. However consideration of regional requirements is needed.

Support provision of walking and cycling infrastructure.

Principle 4 – Design sustainable and greener place

Support alignment with the NSW Government's Net Zero Plan. This principle could also include consideration of climate change and ensuring a building provides a high living standard throughout its asset life.

Further emphasis on the protection of existing green infrastructure should be considered in this principle.

Principle 5 – Design resilient and diverse places

Support consideration of resilience, housing diversity, social resilience and affordable housing.

Additional design principles could be considered in the SEPP relating to sustainability such as:

- Achieve no net loss of biodiversity
- Achieve net zero carbon emissions over the full lifecycle of the building and its operation.

Application of the new SEPP

Council staff support the proposal for the new SEPP to apply to all types of development and supports different controls and requirements for the three types of development – precinct, significant development and all other development. The principles and matters for consideration are supported. Although this SEPP is intended to apply to “all urban land”, it is not clear how and where it will apply.

Considerations need to be given to how the Design and Place SEPP will work alongside the CODES SEPP and apply to smaller development and ensure the Design and Place SEPP design considerations do not significantly increase timeframes or

costs for these development.

Subdivision applications

It is noted that precinct considerations will be provided to all subdivisions of 50 or more lots. The design consideration for subdivisions appear more onerous than for other development types with precinct considerations applying to other projects such as rezonings of 10ha or 1000 people. A subdivision of 50 lots is likely to result in a development of approximately 150 people and be located on 3-4ha of land. Further reasoning of the difference in land size areas for subdivisions compared to other development is needed.

Consideration also needs to be given to how the Design and Place SEPP considerations will apply to a subdivision immediately following a rezoning application and preparation of Development Control Plans for urban release areas. The rezoning application and Development Control Plan will consider all the precinct considerations and Council questions whether there will be a system to fast track subdivision applications that have considered precinct consideration through rezoning and preparation of Development Control Plans.

Application requirements

Support consistent application requirements. Further detail will need to be provided on how applicants should address the application requirements and information and guidance provided on site analysis, precinct structure plans and design statements catering for different development types from the smaller development to precinct and significant development. Example maps such as local character area maps should be included to identify the level of detail required for these various areas. Council believes these are important steps and considerations to incorporate place and design in new development and will result in improved urban outcomes.

The EIE notes that the Design and Place SEPP will establish processes for good design at an early stage of the development process. This is a shift in current assessment practice with generally development design being well developed before applicants come to Council. A pre lodgement process with a focus on the site analysis and site planning design phase and detailed guidance and engagement with the development industry is likely needed to shift the focus to align with the Design and Place SEPP.

Whilst Council supports the consideration of Country, Council is unclear how this will work in practice for smaller development applications and more details is requested on this issue.

Design, evaluation and review – thresholds for Design Review

The EIE identifies that thresholds may vary for projects in urban and regional areas and may be set by either the Design and Place SEPP, local councils or a combination of both. Council supports consideration of different thresholds for urban and regional areas and Council would welcome involvement in identifying thresholds for their local area for design review.

Mandatory matters for consideration

Support the mandatory matters for consideration. Comments on some of these are provided below.

4. Local Living

Whilst the intention of providing housing in new precincts within a five minute walk of local public open space is supported, it is noted the Greater Newcastle Metropolitan Plan has targets of 90% of housing being within a 10 minute walk of open space and question whether precincts outside of Sydney should be reaching a 10 minute target instead, noting areas outside of Sydney generally have larger private open space and housing is not as dense.

5. Street design

Support the intention of this consideration for direct, safe and connected walking and cycling infrastructure, however need to ensure the proposal considers differing types of development and how these may vary in street intersection density and maximum block length.

7. Green infrastructure and 18. Tree Canopy

Support the consideration of green infrastructure. However, by allowing the removal of significant/moderate existing trees and specifying the replacement ratio of 2:1, the SEPP may support further, ongoing removal of tree canopy. The importance of retaining existing trees needs to be emphasised. Consider specifying that a minimum percentage (50%/20%) of significant/moderate trees must be retained. Consider incorporating the definition of 'significant'/'moderate' tree.

The stated preference for indigenous and Australian native tree species in urban areas is not necessarily an industry-wide accepted recommendation. There are many non-native tree species suitable for growing in an urban context.

Consider specifying the definition of significant/moderate tree.

The proposed requirement to have each proposal demonstrate the use of greening alternatives where tree canopy targets cannot be met. This could be potentially be

improved by specifying a scalable minimum mandatory use of green roofs and green walls at the project scale.

In relation to the consideration of biodiversity and urban green spaces, the SEPP should consider the regulatory mechanisms for maintaining these important values, and in particular the objectives and provisions of SEPP (Vegetation in Non-rural Areas) 2017.

8. Resilience

Support the consideration of resilience. Council looks forward to receiving further information on the requirements for sustainability plan and resilience risk assessment and to the release of the proposed Resilience Toolkit.

19. Affordable Housing

This matter for consideration identifies within Greater Sydney, targets of 5-10% affordable housing should be achieved and where no targets or schemes are in place, the applicant may propose a viable amount of affordable housing. Stronger guidance from the State Government for areas outside of Sydney is requested with input from the regional offices of the Department of Planning, Industry and Environment for the differing areas with concern that Councils may face a challenge identifying what is viable.

Part 5 – Relationships with other planning instruments and policies

Currently the interaction between this SEPP, legislative requirements, and other land use planning objectives is difficult to gauge. Council looks forward to receiving further information on the new Design and Place SEPP and how it will operate in practice.

- *Relationship to CODES SEPP*

Although it appears to primarily affect large residential developments, the extent to which the Design and Place SEPP will affect housing code requirements or exempt and complying development is not outlined. The EIE identifies application to complying development will be determined during development of the Design and Place SEPP. In light of this, further consideration to how the Design and Place SEPP will apply to development applications for dwelling housing that may not be assessed under the CODES SEPP due to minor variances is needed. There is a need to ensure the requirements for dwelling houses are not cumbersome and are largely consistent with the requirements for dwelling housing being considered under the CODES SEPP.

- *Relationship to LEPs*

The EIE notes that consideration will be given to amending clause 4.6 of the Standard Instrument and that State or Council design review panels may be involved in determining these. Council staff believe current assessment process by staff works well and design review panel of minor variances is unnecessary.

- *Relationship to Development Control Plans*

The Design and Place SEPP states it will have no immediate impact on existing LEPs and DCPs. However, these plans will be revised as part of five yearly reviews where necessary to align with the Design and Place SEPP. Despite this statement, a key issue for determining authorities is how the SEPP provisions will relate to Council's Development Control Plan provisions, given the design and place SEPP will apply to all development in urban areas, which DCPs currently contain controls for.

- *Relationship to Coastal Management*

Is there a relationship between the Design and Place SEPP and the Coastal Management Framework and Coastal Management SEPP beyond the stated links with the processes and coastal geography considerations set out in the Draft NSW Coastal Design Guidelines and the proposed strategic guide to planning for natural hazards in NSW?

Comments on revised Apartment Design Guidelines:

The following comments are provided on the Apartment Design Guidelines:

Urban Design and Site Planning

Design Criteria 1 – Contribution to place

Further details should be provided as how apartment buildings will demonstrate a consideration of Country.

Design Criteria 2 – Landscape and greening

The intent is acknowledged but more detail is needed on this as the SEPP develops

Design Criteria 5 - Mixed use development and street activation

Council raises concern over *proposed design criteria 5* – Lake Macquarie City Council has significant areas of R3 Medium Density residential zoned land that is currently not developed for medium density residential use. As part of the Lake Macquarie Housing Strategy, Council is trying to facilitate more infill development in our R3 zones. The proposal to allocate 40% of ground floor space for non-residential use in the R3 zone would likely restrict development of R3 land.

Consultation with the development industry in the Lake Macquarie LGA has identified that requiring mixed use development and commercial/office use in residential flat buildings reduces the market feasibility of this development. Whilst it is acknowledged this criteria would work well in Sydney, it is unlikely to work well in areas not achieving the same level of density as Sydney. Suggest this control is tied to development of a certain number of storeys to allow flexibility for smaller residential flat buildings of 3-4 storeys to not require this.

Council supports a number of the changes being proposed including the car parking changes and increasing Liveable Housing targets.

Environmental performance – Design criteria 5. Building and landscape maintenance

The requirements for obtaining maintenance plans during the development application are not supported as this will hold up determination. Instead conditions requiring this as part of the consent conditions are supported.

Comments on changes to BASIX and incorporating BASIX into the Design and Place SEPP

- The incorporation on BASIX into the Design and Place SEPP is supported. However as BASIX applies to all scale of development and it is unclear how the Design and Place SEPP will apply to CODES SEPP development, it is important to ensure that the BASIX tools and guidance will be easy to find for smaller development and CODES SEPP development.
- Support the upgrade and regular maintenance of BASIX tool to include consideration of updated climate data/projections for baseline and over asset life.
- Additional attention should be given to design criteria for achieving zero carbon emission development, which could include, minimum building design life, and natural ventilation standards.
- In terms of carbon emissions, the SEPP appears to focus on building performance, rather than considering the full lifecycle emissions including embodied energy, opportunities for building reuse and renewal, and locational and accessibility issues or supporting infrastructure requirements. This should be an important part of any precinct based design approach.

Statement of Intended Effects Glossary

The definitions of 'biodiversity' and 'tree' should be updated to reflect current practice, and to improve effectiveness of the document. 'Biodiversity' should be defined along the lines in the Biodiversity Conservation Act 2016 as the variety of life: the different

plants, animals and microorganisms, the genes they contain and the ecosystems of which they form a part. It is also important to recognise that conservation of biodiversity is a fundamental principle of ecologically sustainable development. 'Tree' should be defined having regard to conventional use of this term in planning instruments and as included within the definition of vegetation as recognised in State Environmental Planning Policy (Vegetation in Non-rural Areas) 2017.