

Regulatory, Planning and Assessment. MBisson/PEmmett
Phone: 4974 2000

28 April 2021

Department of Planning, Industry and Environment
Electronic submission via email
designandplacesepp@planning.nsw.gov.au

Dear Sir/Madam

Thank you for the opportunity to provide feedback on the Explanation of Intended Effect (EIE) of the proposed Design and Place SEPP (D&P SEPP), including changes to the Apartment Design Guideline (ADG), BASIX and proposed new Urban Design Guideline (UDG).

City of Newcastle (CN) support many of the positive changes proposed in the D&P SEPP and the benefits this will have for our community and the built environment. The proposed D&P SEPP will bring significant change to the planning system in general, however, it is expected that the SEPP will have the greatest impact on the development assessment process.

CN support the planning system being streamlined to operate more efficiently while achieving the best possible planning and development outcomes for our community. The shift towards a design led and performance-based planning system is considered a positive change towards achieving improved development outcomes; especially given the modern and dynamic issues faced across the State at present. However, the impact the D&P SEPP will have on timely decision making must be further explored. The COVID-19 pandemic has shown that an efficient planning system is integral to support local and State economies to recover. Therefore, further consideration and discussion of the D&P SEPP and its potential to impact on the development assessment process and development industry is warranted.

Detailed consultation with stakeholders such as the development industry, public authorities, Indigenous leaders and Elders and the community is encouraged. The D&P SEPP will have a broad impact on various facets of the planning and development industry and will require a coordinated and comprehensive implementation process.

The submission below has been formatted to reflect the topics listed in the EIE and supporting appendices.

Design and Place SEPP – Explanation of Intended Effect Submission	
Topic	City of Newcastle Comments
Design & Place SEPP	
Aims of the new SEPP	The purpose of the D&P SEPP is seen as a positive step towards giving greater effect to the objects in s.1.3 of the <i>Environmental Planning and Assessment Act 1979</i> (EP&A Act).
Connecting with Country	CN value the importance of creating opportunities to integrate First Nations perspectives in built environment projects. Prior to implementing the SEPP, further guidance is requested regarding how this process will be developed and managed. This should include consultation with the community, developers and professional staff assessing development applications.

	<p>It is unclear what this would involve at the development application stage. The implications on assessment timelines would also need to be considered with the connecting with Country framework.</p> <p>Extensive consultation with Elders and Leaders from each Nation should be undertaken prior to the SEPP being implemented throughout the State. Concern is raised that a set process or framework that is legislated by the SEPP may not be appropriate. The process itself should also consider Country so that it is fit for purpose.</p>
Principles of the new SEPP	<p>CN compared the five principles proposed in the EIE with our own strategic planning direction set through the Local Strategic Planning Statement. Principles proposed generally align, both valuing character, wellbeing, community, green spaces and active transport. Considering climate change resilience and risk in planning decisions also concurs.</p> <p>It is understood that the SEPP <i>“is aimed at moving away from a system governed entirely by prescriptive controls”</i> towards a principles-based system. The SEPP will effectively make the planning process far more performance based. However, many of the prescriptive controls and acceptable solutions present in planning documents are aimed at providing greater certainty for applicants and opportunities for faster decision making.</p> <p>During the pandemic, industry and government recognised the benefits and importance of reducing assessment timeframes for the positive impact it had on the economy. While streamlining the assessment processes is not a new topic, the pandemic has exacerbated the demand for a faster more efficient planning system.</p> <p>CN have concern about the impact the Design and Place SEPP will have on the planning system, particularly regarding assessment timeframes. The proposed SEPP appears to complicate matters for consideration by requiring issues already addressed under other EPIs and DCPs to also be considered under the new SEPP. The SEPP should consolidate these considerations rather than duplicate them.</p> <p>The SEPP will also introduce further subjectivity into the development assessment process. In order for a planner to assess development they will have to evaluate whether a design (and the design process) is appropriate or not for each unique site. This may require either the acquisition of holistic design evaluation skills for individual planners, or additional resourcing for multidisciplinary Design Review Panels. The notion of documentation being completed by qualified professionals is not considered sufficient to negate the need for a detailed and onerous assessment by a planner. The issue of character and attractive built form are often very subjective matters which could result in more applicants appealing decisions in Court.</p> <p>Character was a key contention in Fleetqueen Pty Ltd v Newcastle City Council (2018) NSWLEC 1105. This appeal was upheld, and the Court dismissed the contention of character and stated that <i>‘the</i></p>

	<p><i>proposed development is a respectful development, which achieves the NLEP2012 standards including building height and floor to space ratio and NDCP 2021 controls.</i> As evident in this appeal, it is very difficult to contend the impacts on character when the Court is heavily focused on prescribed controls. The commissioner focused on the word 'respect' and the impact on privacy, as the key issue regarding character assessment.</p> <p>The impact of moving towards a more performance-based system will have on assessment timeframes therefore needs further consideration. Providing an assessment of highly subjective matters cannot be rushed, and conversely, faster planning decisions are often sought by the industry and the Government.</p> <p>Performance based controls allow for innovative and creative approaches to development and this generally occurs at the higher end of the development spectrum such as inner-city locations with higher land values. The risk is that this approach will be used at the lower end of the spectrum in outer suburbs, where the local community want more certainty about development and what can be built on their neighbours' lot. Limited controls in these areas may cause community angst and debates about character leading to more submissions and impacts on assessment timeframes.</p>
Principle 1 - Design Places with beauty and character	<p><i>'Principle 1: Design places with beauty and character'</i> supports amongst other things the elevation of the consideration of local character in design. This correlates with the direction set by 'Better Placed', the 'Draft local character clause' and CN's current work investigating planning for local character. Corresponding 'Proposed consideration 13. Attractive form' relates to this work and is an area inherently highly subjective and difficult to plan for. Therefore, we are interested in the SEPP providing a mechanism to assess how a proposal contributes to local character through 'attractive form'.</p> <p>'Part 5: Relationship with other planning instruments and policies' overlooks the Draft local character clause. This is significant given the potential for local character to be considered through both the LEP and Design and Place SEPP.</p> <p>Clarity is also sought regarding the level of detail the SEPP will prescribe in the specific aspects of design (consideration 13). For example, the provision of waste management and the location of services on a street facade can have significant impact on the attractiveness of a development and relationship to the street. It is recommended that 3D digital models be compulsory for significant development as well as consideration of the public realm interface in the SEPP.</p> <p>Consideration 1 refers to 'areas at risk', it is unclear what this means.</p>
Principle 2 - Design inviting public spaces	<p>Consideration 2 and 3 directs the creation and distribution of accessible, connected and well-designed public space. It is not clear how this will be achieved when the majority of land is in private ownership. This may have the most benefit as part of a planning proposal.</p>

	<p>Matters for consideration 15 and 16 should provide consistency with the Liquor Amendment (24-hour Economy) Bill 2020 and Clause 5.20 of the Standard Instrument. CN support the proposed matters for consideration and the importance of the City's night-time economy. In particular consistent terminology should be adopted with respect to "night-time precincts" rather than vibrant areas.</p> <p>Guidelines on how to deal with the interface between residential uses and the night-time economy areas are needed. These guidelines need to directly address acoustic impact levels for interfaces and mitigation requirements.</p> <p>Acoustic design can be encouraged in mixed use development, however the impacts on sustainability and well-being need to be considered in tandem. For example is it appropriate for a dwelling to have all windows and door closed to minimise acoustic impacts from the nearby pub/restaurant strip, when this has a negative environmental effect through the use of air conditioning and lack of cross ventilation.</p> <p>Consideration 16, requiring minimum activation per frontage has been trialled before in many Sydney local government areas. The principle is good, but its success is driven by the market. A definition of 'activity streets' will need to be included in the SEPP rather than applying to a blanket zone, which may result in a lot of empty ground floor spaces in areas that are undergoing transition or future growth areas. Other issues such as, servicing, waste management and vehicular access need to be considered in the frontage of a site which can impact on compliance with any requirement.</p>
Principle 3 - Develop productive and connected places	<p>Concern is raised by the first intended effect under Principle 3 which proposes baseline residential density targets in urban areas, linked to the viability of infrastructure and access to public transport. CN prioritises housing in areas that have good access to existing services and public transport, but further investment is required from the State to provide the infrastructure required both to existing and greenfield areas.</p> <p>The aim of all housing to be within 20 minutes' walk to local shops, 5 minutes' walk to local public open space and 20 minutes' walk to schools and supermarkets is a great aim but very difficult to achieve. This would rely on substantial investment by the State and local government and private landowners. It may also not be viable for smaller planning proposals to meet all these requirements, particularly in greenfield areas where there are no existing facilities. There is also potential flow on effects regarding housing affordability.</p> <p>Further, despite Principle 3 considering, 'a wider network of jobs, services and attractors, enhance local economies and communities,' transport is only considered regarding the movement of humans. CN is located around an operating Harbour and has multiple freight logistics hubs so the protection of freight movement from incompatible land uses is also an important consideration in</p>

	<p>designing urban areas. Therefore, CN advocates for freight transport to be considered as an aspect of transport connection.</p> <p>Consideration 10 on density, also needs to foresee the potential density that may result after a precinct development approval is granted. For example a large subdivision application may be approved with multiple lots, but what is generally not envisaged is that after the lots have been subdivided owners can then apply for dual occupancies or multi dwelling housing if permissible in the zone, and the overall density and design of the original subdivision can be dramatically altered and the need for open space and local infrastructure can increase substantially.</p> <p>CN requests details on the proposed parking rates in the SEPP prior to the Draft SEPP being placed on exhibition. CN have recently adopted a Parking Plan, which is a 10-year plan to guide parking management in Newcastle and supports the vision of a smart, liveable and sustainable global city. It has been informed by a review of key regional and local strategic documents, research on active transport, parking issues and management, review of local government practices and outcomes of engagement with a wide range of stakeholders. One of the actions of the Plan is to review the Newcastle DCP provisions relating to access, parking and road space location. This includes reviewing rates of parking provision, investigating the potential for parking precincts, park and ride facilities and applying a hierarchy of users in activity centres. As CN is in the early stage of implementing the actions, it would be valuable to be aware of the details proposed for the SEPP to ensure consistency and visions are shared.</p> <p>The Newcastle Climate Action Plan also outlines actions to work with the NSW State Government, electricity network operator (Ausgrid), technology providers, neighbouring Councils and electricity retailers to provide suitable charging solutions for electric vehicle owners (both off street and on street parking).</p>
Principle 4 - Design sustainable and greener places	<p>Consideration 18 is recommended to be prescriptive, as general objectives are currently in place in SEPP 65 and applicants only ever achieve the minimum requirements or request variations. In inner city locations on some sites it is difficult to achieve street trees and other greening alternatives such as green roofs with trees should be prescribed. Other planning mechanisms such as contributions towards street tree planting should be considered.</p>
Principle 5 - Design resilient and diverse places	<p>Principle 5: 'Design resilient and diverse places for enduring communities' is supported by CN as changing weather patterns and increasing natural hazards are affecting communities across the state. As a coastal Local Government Area (LGA) CN is presently working on implementing Coastal Management Programs, and large parts of the LGA are also affected by bushfire prone land.</p> <p>Resilience is one of the new matters for consideration and refers to risks such as coastal erosion and bushfire, however, the EIE does not provide any comment on how the D&P SEPP will interface with the Coastal Management SEPP and <i>Coastal Management Act 2016</i>, or Planning for Bushfire Protection 2018. Further detail should be provided regarding how the SEPP will interface with these</p>

	existing instruments and documents. Implementation of the SEPP should ensure that there is no unnecessary duplication.
Principle 5 - Design resilient and diverse places Housing Affordability	<p>CN advocates for the State's role in the facilitation and provision of affordable housing and welcomes an additional mechanism, cited under Principle 5, for both councils and the Department to facilitate. However, the proposed consideration for a proposal to provide affordable housing in accordance with 'affordable housing targets' (Proposed Consideration 19) will need significant consideration and explanation from the Department. It is assumed for councils outside of Greater Sydney that these targets will be set through SEPP 70, the Design and Place SEPP therefore not changing the current provisions.</p> <p>Like the provision for affordable housing discussed above, CN supports 'Proposed Consideration 11 - Housing diversity' but requires State level leadership to provide a planning mechanism (such as planning incentives, concessions or contributions) in the Standard Instrument for the provision of diverse housing types and tenures; setting it as a principle is unlikely to achieve the objectives.</p>
Development Scales	<p>Further clarification and consideration of the scales of development is requested. The scale 'other development' appears to be broad and encompassing of all development and land uses while the definition for 'significant development' seems too rigid.</p> <p>For example, 'significant development' includes development bounded on all sides by roads. This could lead to instances of small residential developments bounded by roads and laneways on all sides needing to address the requirements for significant development. A recent example of where this would apply at CN is a former service station which was bounded by four streets and was converted to a small scale multi-unit housing development, which would not be typically classified as a significant development. Meanwhile, it would also be possible for larger multi dwelling housing developments to be considered as 'other development' which would have fewer matters for consideration.</p> <p>Clarification on what a 'metropolitan centre' is also required, it is hoped this will match current provisions in the Newcastle LEP for the City Centre that also has specific controls for sites over 1500m².</p> <p>The exclusion of development types should consider the development types in the State and Regional Development SEPP. For example, waste facilities should not trigger the Design and Place SEPP. Consideration needs to be given to education facilities and the potential double up with other instruments such as the childcare planning guidelines called up in the SEPP (Educational Establishments and Child Care Facilities) 2017.</p> <p>Further consideration of development scales is required and should consider the applicability of land use definitions and simple 'triggers' such as the number of dwellings or gross floor area where applicable.</p> <p>Clarification as to whether dwelling houses and alterations and additions will be included in the definition of 'other development' is also requested.</p>

	<p>A numerical figure greater than “x ha” is a logical trigger for the SEPP to apply to planning proposals. There is no guidance however within the EIE as to why 10 hectares was determined as the threshold.</p> <p>The number of people trigger is more subjective, and it can often not be known for proposals that seek Gateway on a strategic merit basis with only a structure plan and no dwelling numbers detailed. The number of people or equivalent tenements for these types of planning proposals can be determined post Gateway and prior to exhibition, therefore causing pre planning proposal uncertainty about whether the new SEPP will apply. Greater guidance will be required as part of the EIE process for CN to be able to comment on how the number of people trigger will apply.</p>
Design Skills	<p>The new qualified professional requirements are supported, however, extensive notification and consultation with the industry and applicants will be needed to implement the new requirements.</p> <p>Qualified professional requirements should be expanded to apply to all residential development that is not a dwelling house and all new commercial buildings to achieve consistent design outcomes within zones. For example, there are many locations where two and three storey development can occur next to each other. These requirements may also result in two storey developments being preferred by the development industry, due to additional design costs. As mentioned previously, it is considered that a ‘trigger’ based on the number of dwellings is needed to ensure certain developments such as large multi dwelling housing projects are captured by these controls.</p> <p>Clarification on what is considered a storey is also requested in order to remove potential ambiguity associated within internal mezzanines and split levels. Consideration of dual key apartments is also recommended, as many applicants propose to modify applications at a later date where the original application may not be captured under the provisions of the draft SEPP.</p> <p>The design provisions for boarding houses, serviced apartments and student accommodation also needs to be investigated as the quality of proposals vary depending on what planning instrument the applicant proposes it under. The controls for these types of uses varies significantly across the state and impacts on the quality of design and the provision of this accommodation type.</p>
Design Processes	<p>The thresholds for projects requiring Design Panel Review should be consistent across the State. However, individual councils should retain the ability to set specific requirements based on community interest and need.</p>
Design and Place considerations	<p>The requirements for a precinct structure plan needs to be explored in more detail, regarding whether councils will be required to develop the base plans for these. If so, this will have time and resourcing implications for councils as applicants will not have access to green infrastructure and public spaces maps and will seek assistance from councils if no guidelines or parameters are set as part of the SEPP.</p>

	It is recommended that 3D digital models and images be mandatory for significant sites.
Mandatory Matters for Consideration	<p>Substantial engagement with industry and stakeholders is required to notify applicants of new documentation and consideration requirements for applications.</p> <p>The matters for consideration contain a broad variety of matters. While it is understood that the SEPP does not intend to increase the amount of documentation required for applications this does not seem possible. In order to assess an application for development against all the matters for consideration the submission of relevant documentation to Council will be required.</p> <p>Several matters for consideration also appear to overlap with DCP matters. It should be confirmed if the SEPP will override duplicated controls where they also appear in DCPs and other SEPPs.</p>
Relationship with DCPs	<p>Clarifying the design processes and outcomes at all scales against the D&P SEPP is generally supported, however, based on the limited information provided as part of the EIE, CN raises concern.</p> <p>One of the intentions of the SEPP is to provide a single point of reference for design-related considerations and performance criteria in the planning system (pg. 5, EIE), but is not clear how it will relate to Development Control Plans; Council's main tool to control design. Therefore, the relationship between the SEPP and DCP needs to be made clear, including how a State level planning provision can consider the nuances of local planning.</p>
Relationship with Gateway Determination Process	<p>As the Department will be considering the SEPP as part of the Gateway process, clarification is sought as to how the Department will be undertaking this assessment and the information that will be required, noting the Department's new timeframes for planning proposals to be finalized within 12 months.</p> <p>Guidance for the applicant and Council should be developed to ensure that sufficient information is provided pre-Gateway to allow for a satisfactory assessment by the Department to minimise post Gateway conditions and delays in the application. The Department has indicated that a Part 6 Documentation - Precinct structure plan checklist will be provided, however, greater guidance than a checklist will likely be required to ensure good and timely planning outcomes will be achieved.</p> <p>In principle, based on the limited information provided as part of the EIE, clarity around design processes and outcomes will provide value adding outcomes to delivering larger developments. The Department should develop guidance to inform the applicant and Council about how to get the correct weighted value from pre planning proposal engagement with stakeholders. Focus should be on limiting post Gateway conditions and requests for variations.</p>
Relationship with Code SEPP	Clarification of how the proposed SEPP will interface with the Code SEPP should be provided prior to implementation. There is concern that the efforts of the proposed SEPP to influence design and place will be fruitless if complying development is not required to consider the principles and new matters for consideration, particularly for 'other development'.

Relationship with Infrastructure SEPP & Part 5 Activities (REFs)	<p>An opportunity for further discussion and engagement with Councils and public authorities is considered necessary prior to the SEPP applying to Part 5 activities permitted without consent. It is unclear in the EIE to what activities (or scales of activities) the SEPP would apply to and how it will interface with the Infrastructure SEPP and other EPIs that permit such development.</p> <p>Whilst CN see the benefit of a place-based approach being championed, Assets and Projects teams already take a multidisciplinary approach to the development and design of large public domain projects. There are some requirements such as the need for design processes to start with Country, and the need to document the design process itself, which authorities may have to integrate into current methodologies which will take significant resources and time to finesse.</p> <p>It is also not yet possible to comment on the planning pathway impacts for public domain projects. They are usually undertaken through Part 5 of the EP&A Act with the preparation of a Review of Environmental Factors (REF). The EIE states that application of the proposed SEPP when assessing REFs will be a matter determined during development of the SEPP, however, significant lead time may be required to upskill staff and implement changes to processes in order to address new requirements. The areas of councils that undertake REF assessments may not contain planning staff so this requirement will have additional financial implications on local government if such assessments need to be outsourced externally.</p>
Amending Clause 4.6	Amending clause 4.6 of the LEP to require 'improved planning outcomes' and 'public good' to be given more weight is considered a positive step. Careful consideration of the definitions of these terms is required to ensure that it does not result in objections to development standards being easier to justify on these grounds alone. The objectives of the development standards in question should still be given precedent to ensure the hierarchy of centres are protected.
Proposed new Urban Design Guide	
Intent of UDG	Establishing a consolidated guide for precinct planning is supported, however, further opportunity for comment should be provided when the draft Urban Design Guidelines are developed. Standard design criteria, such as the street types provided in the EIE, should be carefully considered as this may be counterintuitive to the outcome and performance-based objective of the SEPP.
Sustainability in Residential Buildings/BASIX	
Application of BASIX	<p>The EIE indicates that the proposed D&P SEPP has missed an opportunity to widen the scope of BASIX to non-residential development. Application of minimum building sustainability commitments should be explored as part of the SEPP's initial implementation in order to address the efficiency of commercial buildings. This should not be left solely as a matter for consideration under the SEPP and should be included as part of the BASIX regime.</p> <p>CN recommends that BASIX includes mandatory and stricter controls for ALL new development or alterations and additions to</p>

		<p>any development (over the cost of \$50 000) Including but not limited to:</p> <ul style="list-style-type: none"> • Double glazing • Natural cross ventilation • Solar Panels (and / or small-scale wind turbines) and battery system • Passive solar design • Controls on the % of artificial heating and cooling systems. • Increased landscaping • Minimum requirements for roof top landscaping • Mandatory collection of rainwater for use in all toilet and irrigation systems. • Minimum requirements for EV charging
Climate Change		<p>Amendment to BASIX must consider climate change and the impact increasing temperatures will have on thermal comfort and energy use due to high levels of mechanical cooling. BASIX should also be used to dissuade new developments from being gas dependent and promote all electric developments which are offset by renewable energy such as solar panels provided onsite where possible.</p> <p>Targets should be increased to enable better and future-proofed performance of new buildings. The scope of consideration for BASIX should also be expanded to include to other site conditions such as landscaping, surrounding development and embodied energy to address issues such as urban heat island effect and net zero emissions as much as possible.</p>
Merit Assessment	Based	<p>Councils and the development industry should be engaged with further in regard to the potential merit-based BASIX assessment. Without highly audited and regulated consultants there is concern that this process would lead to undesirable outcomes unless planners are significantly upskilled to understand the various methodologies and calculations associated with the merit-based assessment.</p>
Guidelines/Educational Material		<p>A guideline should be developed to provide greater education to applicants and homeowners that address the design principles associated with building sustainability and liveability. The SEPP should empower people to gain knowledge on what creates a sustainable and liveable building so that they can make informed decisions when designing their home and choosing materials.</p> <p>Greater understanding of the principles of building sustainability will improve the function and application of BASIX. The present regime appears to many applicants as another hurdle and expense to address before they can lodge an application.</p>
General Comments		
Guidelines Documents	and	<p>Recently the State has released numerous documents and guidelines relating to planning and development matters, some of which support existing SEPPs and other policies. The proposed SEPP will result in further guidelines being released. It is requested that the State provides a user friendly and reliable way for the public and industry to access current up-to-date versions of these documents in a single location rather than various Department</p>

	<p>webpages. This would be best achieved by linking directly to these guidelines in the relevant SEPP via the NSW Legislation website. There is also benefit seen in a separate webpage being provided by the Department which may include guidelines without legislative effect. It would also be beneficial to provide a single status information page for all these guiding documents so that determining the legislative effect, currency and applicability of each guideline is fast and efficient.</p> <p>In addition, the suite of existing and proposed guidance materials that will be exhibited concurrently with the draft SEPP contains 15 documents, of varying context and expertise. The resource implications on councils to review and provide constructive comment on these guidelines must be considered.</p>
Other DPIE Projects	<p>It is requested that the Department provides greater coordination and consistency when engaging with stakeholders regarding the various projects presently being pursued in relation to the planning system. The absence of a clear schedule of all projects the State is pursuing makes it difficult to rationalise and provide feedback on the direction and content of proposed policy changes. Without a clearer blueprint of the policy changes proposed it is not possible to provide valuable feedback that considers all the issues and implications this may have on Councils, particularly the development assessment process.</p> <p>In this regard, further clarification is requested as to how the Design and Place SEPP will interface with amendments to the Code SEPP for commercial and industrial development, the Employment Zones Reform, proposed Local Character Clause and future Local Character Statements. Providing feedback on each individual project without a clear understanding of the full combined impact each change to the planning system will have is not ideal.</p>
Transitional Provisions	<p>The Department is seeking comments on the leadtime for various components of the SEPP. As discussed above a clear schedule of all projects that the Department is undertaking is required so that CN can provide more detailed comments on this issue. The numerous planning changes and the eplanning portal is currently having resource implications on CN, as well as the general push for decreasing development assessment and planning proposal timeframes.</p> <p>It will not be possible to comment on the Draft SEPP, the three design guides and the 15 guidance documents in a two-week time period. An extended notification or staged approach is requested.</p> <p>There is substantial training and upskilling required of staff and Design Panels for the Draft SEPP, as well as communication with the industry. It is recommended that the Department hold training seminars with practical examples when the Draft SEPP is exhibited, rather than just webinars. A standard submission template on the SEPP, with key issues that the Department is seeking comment on will assist as well as the exhibition period and training not coinciding with school holidays when staff resources are lower. Exhibition in late November or December is also not recommended, as this is traditionally a very busy time for Councils and will be particularly so as Council elections will be held in September 2021. The Draft</p>

	SEPP will also require amendments to assessment templates and websites which must be factored into the resource implications.
--	---

The proposed review of State Environmental Planning Policy No. 65 Design Quality of Residential Apartment (SEPP 65) and the Apartment Design Guide (ADG) is supported. Comments are provided below on specific sections of the proposed changes. If no comments have been provided on specific sections, CN is supportive of the changes subject to further review when the Draft SEPP is exhibited.

Appendix A – Proposed Amendments to the Apartment Design Guide and Repeal of SEPP 65	
General Comment	
<p>The existing SEPP 65 design quality principles will be replaced with the principles of the proposed Design and Place SEPP. The Design and Place SEPP principles are too high level for use in development assessment and risk being misused, mis-interpreted or not used.</p> <p>SEPP 65 currently assists in achieving better outcomes for development and prescriptive controls assist with key aspects such as cross ventilation, solar access, storage and landscaping. The proposed revisions and increased requirements on these provisions are supported.</p> <p>Concern is raised regarding the effort that occurs at development application stage to comply with SEPP 65. This can be eroded at later stages in the construction side of the process. Conditions on the consent state that a design verification statement is to be submitted and this can be approved by a Certifier. There is too much opportunity for the design and materials to be downgraded at the construction certificate stage, which may not actually meet the original intent or SEPP 65 requirements. This can also happen with modification applications and when architects are charged during the process. A more rigorous process to ensure the original design intent flows onto the built form is encouraged via the Draft SEPP.</p>	
A.2.2 Urban design and site planning	
Response to place	
<p>New objectives are proposed to require apartment development “to demonstrate a consideration of Country and positive contribution to place, local character and planning aspirations as well as integration with urban and natural systems.”</p> <p>More information is required regarding how an applicant would demonstrate the development has a “consideration of Country”. Presumably this would require submission of specific documentation supporting the development application, but further details on what form this documentation would take (written report, diagrammatic analysis, consultation with Aboriginal community), and who would be qualified to prepare such documentation, needs to be considered.</p> <p>CN is conscious that the guidance provided needs to be tailored for the purpose of development assessment. How would an assessing officer determine not only if the documentation provided is suitable, but also if the design response of the development itself had provided an acceptable response to Country.</p>	
Landscape and greening	
<p>CN’s experience contrasts with the preliminary findings indicated in the EIE that currently more deep soil is delivered than the minimum 7% of site area as a result of the communal open space design criteria.</p>	

Instead, it is our experience that greater areas of landscaping are currently being delivered as a result of 'coupling' of the communal open space design criteria. This is typically the case in the Newcastle City Centre where the dense urban area and/or small lot sizes preclude the delivery of deep soil areas entirely, in which case landscaping and communal open space is often provided on the structure at podium or roof level.

In this regard, CN's finds it problematic that the same numerical controls are applied to urban areas (city centres) as those in suburban contexts where landscape and large spaces between building are desired.

The requirement for a landscape maintenance plan is supported. However, concerns are raised regarding its implementation and compliance as once the dwellings are sold and the ownership changes, enforcement of such a plan by council will be problematic.

Clarify ground floor ceiling heights

CN recognise the importance of ensuring a suitable floor to floor heights is provided for ground floor levels to facilitate adaptability for future non-residential uses. However, the provision of necessary ceiling heights to accommodate commercial services alone is ineffective if the service connections are not also provided in the initial build. For example, it is difficult to retro fit mechanical ventilation for a ground floor restaurant where the discharge of exhaust air needs to occur above the building to meet environmental requirements if suitable service risers are not provided in the design and construction of the residential building above.

Building form

The building form and separation requirements would need to be tested to consider the financial viability of a development. The introduction of tower footprints and the increase in building separation, would need to be considered against the maximum floor space ratio for the site to consider whether these amendments to the controls have weight and will achieve the objectives rather than discouraging development.

Mixed use development

As previously mentioned, Consideration 16 of the Draft SEPP requires a minimum activation per frontage. The requirement for 40% of ground floor space for non-residential uses may result in a lot of empty ground floor spaces in areas that are undergoing transition or future growth areas. Details on whether the areas for services are excluded from this calculation is required.

Mixed use development also needs to consider issues such as acoustic impacts, separation of wastes, mechanical ventilation and privacy impacts.

Car parking

Several options for revising car parking rates are proposed.

At present parking (vehicle, motorbike and bicycle parking) for the CN is controlled through the DCP. The EIE states that for development where the Apartment Design Guide will apply parking rates need to be reviewed. The justification is that at present development currently does not consider public transport amenity or alternatives, and this is contributing to development costs and oversupply of parking. CN shares the Departments objectives of addressing the key theme of parking to encourage sustainable transport options, discourage private car ownership, reduce development costs and promote cycling. CN as part of Actions of the adopted Parking Plan 2021 and Cycling Plan 2021 are reviewing the DCP parking rates with an aim to promote the needs of pedestrians and cyclists over vehicles, including parking, and encouraging the increased uptake of public transport. This review will consider all development across the LGA.

Concern is raised with the EIE seeking to provide additional macro level focus through SEPP planning controls that may conflict with the CN DCP intent and understanding of development for the local community and our city. The intent of the EIE for sustainable transport and lower cost development is shared by CN, however, it is strongly viewed that CN can deliver these outcomes not only for development covered by the new SEPP but for all development types across the LGA. It is recommended parking is not included as an additional control in the new SEPP and that parking objectives regarding rates (ie Objective 3J-1) are removed from the new Apartment Design Guide.

If the parking rates are applied to the Draft SEPP, this philosophy should also apply to state significant developments. Recent state significant proposals in CN have proposed excess car parking and the Government's position on this issue is needed immediately as the supply of parking is currently driven by market demand.

The unbundling of parking could be problematic and cause social fragmentation in buildings, where the wealthier owners/tenants control the parking for the building or ownerships of parking is traded with individuals and companies, thus leading to unsustainable deficiency for the development use and potential impacts on the community. Problems are also envisaged with strata titling of these spaces and management of the spaces. Consultation with strata management firms and Land and Property Information would be recommended before any options on this issue are further explored.

Bicycle parking and mobility storage

New bicycle parking requirements are proposed which would require the provision of one bicycle space per bedroom (i.e. 2- & 3-bedroom apartments will have to provide 2 & 3 secure spaces respectively). Having regard to the proposed additional storage provisions, this may prove onerous owing to space constraints. Thus, the requirements for bicycle storage and mobility needs are to be embedded in the design requirements.

A.2.3 Residential amenity

Liveable Housing targets through universal design

The existing ADG requirements for a specified Liveable Housing Australia level and percentage will be increased if NSW government research supports higher standards. CN supports the use of 'Liveable Housing targets' and the initiative of the State to undertake further research to support higher liveable housing standards. A key finding of the State endorsed Newcastle Local Housing Strategy was the clear need for affordable, accessible and adaptable housing to suit the range of needs across the population.

CN suggests that further research should include a social/demographic analysis, as well as an economic feasibility analysis, in order to determine the right Liveable Housing level (silver, gold or platinum) and percentage of apartments/units required to meet the Liveable Housing Guideline's universal design features. This research could also draw on findings from existing Local Housing Strategies.

The EIE seeks specific feedback regarding options for enabling more adaptable apartments for diverse households, including families, and to support working from home through larger bedrooms. The EIE also states that increasing the percentage of universal design to the Liveable Housing Design silver performance level is desired. It is noted that providing larger bedrooms links to the Liveable Housing Design objectives to provide increased circulation space for ease of accessibility. It is therefore supported that apartments are designed to

achieve at minimum the silver standard for Liveable Housing Design. This will allow for spaces to cater for diverse households and various activities, such as people with accessibility needs, working from home, and families, by making them more spacious and therefore more adaptable. This will also help achieve Housing Priority 3 of the Newcastle Local Housing Strategy, which is to increase the availability of accessible and adaptable housing.

Currently, adaptable housing is addressed under Part 4Q – Universal Design of the ADG. Objective 4Q-1 of the ADG, in particular, requires that *'universal design features are included in apartment design to promote flexible housing for all community members'*. More specifically, the ADG requires that *'developments achieve a benchmark of 20% of the total apartments incorporating the Liveable Housing Guideline's silver level universal design features'*.

CN supports requirements for a higher percentage of apartments/units to incorporate the Liveable Housing Guideline's silver level universal design features. A minimum number of adaptable dwellings such as 25-33% would require developments that have less than five dwellings to provide at least one that incorporates the Liveable Housing Guideline's silver level universal design features. The higher the percentage of apartments/units required to meet the Liveable Housing Guideline's silver level universal design features, the more it will benefit the community, especially the ageing population and people with mobility needs.

CN also supports requirements for new developments to incorporate a higher Liveable Housing Australia level, such as gold or platinum level, as these levels incorporate universal design features that would better accommodate people wanting to age in place and people with higher mobility needs.

In addition, it is important that it is made clear in the ADG and guidance material that in order to comply with the liveable housing and universal design requirements, all universal design features need to be met and not only some of the features. It is not effective to provide dwellings that achieve only some of the adaptable housing features.

Objective 4Q-2 of the ADG requires that *'adaptable housing should be provided in accordance with the relevant council policy'*. This requirement can be useful; however, concern is raised that without a clear and specific control in the ADG the industry will continue to seek modifications and reprieves from the requirements when they impact the overall design of projects. Adaptable and accessible housing requirements should instead be a primary control so that it is factored into the preliminary design of apartments rather than after a development application has been lodged.

It is also noted that referring to a Council policy can create confusion for developers and Council staff when assessing development applications if the relevant Council policy has different requirements for adaptable housing/universal design than what is prescribed under the ADG, a revised version, or other State guidance. Amendments to the ADG would therefore need to make clear which document would take precedence if there are any discrepancies between local and State policies regarding adaptable housing/universal design.

The ADG should also clarify the level of detail required at development application stage to ensure applicants are aware of submission requirements. Generally, a draft set of construction detail type plans of several dwelling schemes are required to determine if they can achieve the universal design requirements or alternatively an assessment by an

accessibility consultant. While the later provides certainty that the development achieves the Liveable Housing Guideline or Australian Standards, detailed plans are still considered necessary to ensure that these design requirements are not overlooked at the construction stage. Specific conditions of consent are also generally required to make the adaptable housing requirements obvious as part of the approval.

Ensuring that there is clear and traceable documentation around the design features of adaptable and accessible housing is paramount to the effectiveness of providing such housing in the first place. It is recommended that as part of the ADG revision the State investigates a consistent way to record adaptable and accessible housing features across the State so that they are known to the first and subsequent occupants/owners. Without clearly documenting these design features they may not be utilised in the future when the dwelling is on-sold or re-let to a different occupant/owner. Having the detailed construction plans readily available would also allow health professionals such as Occupational Therapists to easily identify ways to adapt dwellings for an occupant needs and when applying for National Disability Insurance Agency (NDIA) funding for home and living supports.

CN also encourage that the State investigates amendments of the ADG to consider emergency egress from high rise buildings for people with disabilities, as this is an important issue that has not yet been discussed. This could relate to the placement of accessible units in buildings having regard to proximity to ground floor exits, stairwells and other factors that influence safe egress. Thought should also be given to including safe passing bays in stairwells to allow people to safely stop and shelter in place until they can be rescued while allowing for others to safely and efficiently pass.

Overall, CN supports the initiative of the State to undertake research that would support higher standards of universal design and adaptable housing. However, it is believed that in order to change perspectives of the industry, stronger State-based controls are required.

Apartment layout

A requirement to provide 20% of two or more-bedroom units as 'family units' with 12m² bedrooms for all bedrooms is proposed. CN acknowledges and supports the intention of the "family units". However, without an increase to the minimum apartment sizes, CN is concerned this requirement will likely result in a 'trade-off' for the amenity of the living areas within the apartment with developers often being reluctant to provide apartment sizes greater than the minimums] specified (the additional sqm provided within the apartment bedrooms will essentially be 'taken' from the sqm of the living/ dining/ kitchen areas).

Acoustic separation

A requirement to provide 'acoustically separable' areas from the main living space within the apartment is proposed to support people working from home or studying.

Similar to the "family unit" requirement above, CN is concerned this requirement will likely result in a 'trade-off' for the amenity of the living areas within the apartment with developers often being reluctant to provide apartment sizes greater than the minimum specified (the additional sqm provided within the apartment bedrooms will essentially be 'taken' from the sqm of the living/ dining/ kitchen areas).

Consideration is required about how councils would ensure the minimum level of acoustic separation suggested for these areas is achieved, given acoustic separation of 'study' or 'work' areas within an apartment is not a BCA requirement.

A.2.5 Environmental Performance

Energy efficiency

New and updated requirements to address energy use in residential apartment buildings is proposed.

To avoid duplication, different meanings and overlap, consideration should be given to removing the proposed energy and water efficiency provisions from the new ADG and incorporating these into BASIX.

Water management

New and updated requirements to address water use, grey water reuse and management in residential apartment buildings is proposed.

To avoid duplication, different meanings and overlap, consideration should be given to removing the proposed energy and water efficiency provisions from the new ADG and incorporating these into BASIX.

Environmental performance of materials

A requirement to provide a materials schedule is proposed. Consideration is required about how Council would practically ensure the specific materials selected and detailed in such a "material schedule" are ultimately used in the building's construction.

Currently, under Section 161 of the Environmental Planning and Assessment Regulation 2000 a certifier can be satisfied as to certain matters carried out in connection with the erection of a building, this includes "any matter that relates to the external finish of a building". This means, despite any requirement of the conditions of a development consent that relates to the external material selections (for example, a requirement for the development to comply with an approved material schedule), changes can be made during the construction detailing stage if the certifier is 'satisfied'.

In summary, CN acknowledges the importance of design and place and commends the Department for this initiative. The Department's guidance and clarification on the issues raised above is required as part of the next stage of the process. CN is also willing to be involved in any additional training sessions or workshops on the Draft SEPP.

Thank you for the opportunity to comment on the Explanation of Intended Effect for a Design and Place SEPP. If you require any further information, please contact Priscilla Emmett, Section Manager Development Assessment on (02) 4974 2765 or Michelle Bisson, Manager Regulatory, Planning and Assessment on (02) 4974 2793.

Yours faithfully



Michelle Bisson
MANAGER REGULATORY, PLANNING AND ASSESSMENT