

14/04/2021

NSW Department of Planning, Industry & Environment - Sydney
GPO Box 39
SYDNEY NSW 2001

By email only: designandplacesepp@planning.nsw.gov.au (via Planning Portal)

Dear Sir/Madam

Submission – Proposed Design and Place SEPP – Explanation of Intended Effect

Thank you for the opportunity to comment on the Explanation of Intended Effect (EIE) for the proposed Design and Place SEPP (the SEPP).

Council generally welcomes the NSW Government's recognition of the importance of good design to local communities and its commitment to simplifying and strengthening this consideration in the NSW planning system.

The current EIE features a considerable amount of content to be reviewed in order for Council to provide a thorough and appropriate response. As you can appreciate, the submission process takes time to coordinate across multiple interested sections in Council. This submission has been endorsed by Council's Development & Environment Committee Meeting on 6 April 2021 (MIN21.181):

That Council make a submission ... to the NSW Department of Planning, Industry and Environment in relation to the proposed Design and Place State Environmental Planning Policy (SEPP).

The timeframes the NSW Government is working under to ensure that the draft SEPP is able to go on exhibition later in 2021 are acknowledged, however, it is critical that future exhibition periods allow sufficient time, at least 6-8 weeks, for the preparation of a properly considered and Council-endorsed response.

Design and Place in Planning

The broad intent of the proposed SEPP to elevate, enhance and simplify design and place considerations in the NSW planning system and establish a consistent approach to design and assessment is generally supported. Council has consistently advocated for good urban design principles in various planning strategies/policies and community feedback indicates that public space and local character are regarded as being of key importance.

However, experience has shown across the State that design principles are not always applied consistently in decisions and are frequently relegated in favour of shorter-term considerations.

One of the major challenges faced by regional councils is communicating the value and importance of good design to property owners, the development industry and the broader community. The design quality of the built environment, whether good or bad, can often have broad lasting effects on the community. Balancing concerns such as local character and the natural environment with the pressures that arise in a growing LGA is an ongoing consideration in Shoalhaven. As such, the higher level aspirations of the SEPP are supported but it will be crucial to see the details in the draft SEPP to properly consider its potential impact and application. It is essential that the SEPP is workable and specifically when considered alongside the ongoing planning reforms that the NSW Government is also continuing to pursue.

The new SEPP's intention to ensure place, character and Country are central to design considerations aligns in principle with Council's stated position on local character. Council supports an approach that does not inhibit development per se but ensures that new development is designed to be not only high quality but also responsive to its context and the needs and aspirations of the local community. Local character is complex and in a large and diverse LGA can be difficult to define and tends to be considered differently by the various relevant stakeholders. There is a need to ensure the variety of local character conditions in a large regional LGA like Shoalhaven are able to be recognised and promoted through existing or locally developed controls and not completely subsumed by a 'one size fits all' State based approach. In this regard, the SEPP must not result in a further weakening of the local level design controls, such as those found in the DCP, which have often been developed in consultation with Shoalhaven's local communities.

Codes SEPP, DCPs and Local Planning

The Minister's comments that historically the introduction of new SEPPs occurs where there is a need to address 'problems' in the planning system are noted. Issues have also arisen following the standardised, fast tracked complying development process and the weakened strength of local DCP controls. The ability for Councils to encourage and influence good design outcomes in the planning process has been somewhat constrained through the expansion of complying development and provisions in the EP&A Act that have reduced DCPs to 'guidance' documents only that can be set aside. Strong DCPs are fundamental in achieving good, context driven design at the local level.

It is noted that the new SEPP is intended to interface with the Codes SEPP but the relationship between the two SEPPs is yet to be determined. It is important to examine whether the existing exempt and complying development provisions in the Codes SEPP are consistent and compatible with the place-based design aspirations of the proposed SEPP. There is a sense that the community is slowly having fewer opportunities to have a say, particularly with regard to legislative changes. The community often does not understand policy or strategic planning but do understand the impact of actual development that is proposed or built in their local area. Notwithstanding these reservations about the current application of complying development in Shoalhaven, the stated intention to better align development permitted under the Codes SEPP with the design principles of the new SEPP is generally welcomed.

Consideration needs to be given to strengthening the role that DCPs can play under the proposed SEPP as they are critical in setting and achieving local planning outcomes. DCP controls are prepared with community input and should not be further diminished by State policy. The ability to 'flexibly apply' these controls does not always result in optimal built outcomes. The flexible, principles-based approach of an overarching SEPP should not further erode the local development controls that are intended to apply. Councils must be able, where needed, to define and realise local place making aspirations and utilise controls developed for that purpose. The new SEPP should not override or reduce the strength of local planning strategies and controls such as the LSPS, Local Character provisions and DCPs but should further enable and support these provisions.

Proposed changes to existing SEPPs and guidance will be further considered when the details of the new SEPP are on exhibition when impacts can be more fully considered and any unintended consequences highlighted. Following a preliminary review of the proposed changes to the Apartment Design Guide (ADG) there is a need to consider whether minimising car parking requirements in the ADG is generally appropriate in regional areas like Shoalhaven given the practical realities of a reliance on car use and the limited public transport options available. An undersupply of car parking can result in both private and public disbenefits. Minimum or maximum car parking requirements must be tailored to local circumstances and not be 'metro-centric' in nature.

Principles Based Planning System

The direction of the five identified principles is generally supported in principle. For example, Council supports embedding resilience in design considerations where relevant. Resilience is highly relevant to Shoalhaven: bushfires, floods, and COVID have caused various economic, social and environmental impacts across the LGA. Shoalhaven's LSPS and Adaptation Plan identify resilience building as a priority for the LGA. The new SEPP and proposed Resilience Toolkit have the potential to help ensure resilience is considered through the design process but these documents must provide clarity about requirements of Councils and also applicants.

'Principles' are welcomed but further detail on how they are interpreted and applied is needed and this should be included in the SEPP and its supporting guidance. The rollout of a principles-based planning system and its possible influence on outcomes for the built environment in Shoalhaven will be monitored and it is likely that there still be a need to also have firm design controls and metrics in place where appropriate/required that have been tailored to respond to unique local circumstances. A principles-based approach and flexibility should enable the application of these tailored controls for local development, not entirely set them aside.

Simplifying and Consolidating Policies and Guidance

Council has previously expressed concern over the proliferation of new SEPPs and guidelines and therefore supports efforts to simplify the current NSW planning system through consolidation or reduction of the number of SEPPs.

Whilst it is appreciated that this is a work in progress, the status of some existing design guidance documents that are relevant to Shoalhaven, such as Urban Design for Regional NSW and Coastal Design Guideline (draft), is unclear in the EIE. Thus, Council would like clarity on how the SEPP relates to or operates with existing and proposed guidelines to avoid any confusion. Ideally a further rationalisation of these and other guidelines or

policies currently in operation will occur and they could be included in one clear Urban Design Guide (UDG).

There is also concern that the new SEPP could place additional compliance burdens on Council officers and add to an already complex planning framework in NSW. The release of the draft SEPP later in the year will provide an opportunity to consider whether this reform makes the planning system more complex/challenged or assists and is of value to the system.

Assessment, Engagement and Resourcing

It is acknowledged that the additional requirements for assessment could be instrumental in achieving better design outcomes in Shoalhaven. However, there is a need to consider resourcing for those Councils who do not have design specialists (architects, urban designers or other design professionals) on staff.

Councils Development Assessment Planners often currently do not have the required expertise or practical design skills to meet the proposed design review requirements being considered for the SEPP. Council currently already bears additional costs obtaining independent advice from external urban design consultants. The Department may need to consider providing funding for Council positions or the establishment of a pool of appropriately qualified design professionals to meet this resourcing gap for regional (or other applicable) Councils. The Council Joint Organisations may be a mechanism to help deliver this. In the formation of any future Design Review Panel, consistent guidance via the Design Review Guide will be helpful, although input from Council as to the thresholds for design review would also be appropriate in Shoalhaven, rather than a State-wide one size fits all approach. Other information or resources to assist assessment staff may also be required and would be welcomed.

If the SEPP includes a new requirements for engagement with Aboriginal groups, consideration must be given to the additional burden this will place on these groups and any organisations representing Aboriginal voices. Council broadly supports the creation of opportunities to integrate Aboriginal perspectives in built environment projects and to engage with and utilise Indigenous knowledge in place making across Shoalhaven. However, recent feedback from Local Aboriginal Land Councils (LALCs) in Shoalhaven has indicated that these organisations are operating in a resource constrained environment and already under significant pressure to provide responses to current development proposals and a range of other matters. Increasing the consultation burden on LALCs is likely to exacerbate this situation and the Department should also give consideration as to how this pressure may be ameliorated.

The SEPP should not impose unreasonable burdens and costs on development. It is noted that further testing and detailed economic analysis will also be undertaken in the drafting of the SEPP. Robust feasibility analysis would be welcomed and an important tool in promoting the benefits of the SEPP to developers operating in Shoalhaven. Just as there is a need to practise sustainability with regard to the natural environment, there is also a need to sustain economic growth and a viable local construction industry.

Conclusion

It is important that the proposed draft SEPP is publicly exhibited and made available with sufficient time to comment (at least 8 weeks due to the scope), as the technical detail is

where many of the unintended consequences of proposed legislation could lie and can be picked up.

Thus Council again requests that this and other future planning reform exhibitions/consultations allow sufficient time to fully consider the material presented and obtain endorsement from the elected Council for a submission.

The EIE provides a high-level overview of the proposed SEPP with several key elements yet to be fully determined. It is not possible to comment with any certainty on the efficiency or future operation of the proposed SEPP, nor can any future challenges or issues be fully assessed at this level of detail. We also note that there appears to be only a short, albeit unspecified, window between exhibiting the draft SEPP and its finalisation by the end of 2021. An additional workshop or presentation delivered to Council staff before the SEPP is made might also enable closer interrogation of detailed provisions to better understand any potential unintended planning implications.

Thank you again for the opportunity to comment on the EIE for the proposed Design and Place SEPP. Council appreciates the Department and Government Architect's consideration of the comments made in this submission and looks forward to seeing the draft SEPP. We remain available to discuss the content of this submission further, if required in the meantime.

If you need further information about this matter, please contact Richard Carter, City Futures on (02) 4429 3482. Please quote Council's reference 31157E (D21/145175).

Yours faithfully

A handwritten signature in black ink that reads "Gordon Clark." The signature is written in a cursive, flowing style.

Gordon Clark
Strategic Planning Manager