



File Ref: 2021/401736

16 March 2021

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

RE: Proposed Design and Place SEPP

Dear Sir/Madam,

Sutherland Shire Council welcomes the opportunity to make a submission in response to the proposed Design and Place SEPP Explanation of Intended Effect. Sutherland Shire Council supports the aims of the proposed SEPP to improve the design quality and performance of development across the State. However, it does this by centralising control of planning policy in ways which are not respectful of the diverse priorities of local communities. The new provisions will ultimately lessen Council's ability to reflect local character through nuanced development controls.

Sutherland Shire Council has a detailed planning framework developed through extensive consultation with its local community. As a result development standards reflect the issues that are important to residents. It is considered that local priorities should be respected by the State Government. Enforcing a "one size fits all" approach is at odds with DPIE's initiatives to respect local character.

Council particularly takes objection to the following specific elements of the reform package:

- A 'one-size-fits-all' policy will hinder Council's ability to tailor controls to reflect issues that are important to the local community. Council objects to a SEPP that could ultimately override Council's own planning provisions, including local environmental plan provisions for height, floor space ratio, minimum landscaped area, lot size and density provisions contained in Sutherland Shire Local Environmental Plan 2015, and nuanced planning controls in the associated Development Control Plan 2015. These provisions are the core tools available to Council to maintain the unique local character of Sutherland Shire. Local Character Statements require an extremely complex and lengthy process, and are yet to be proven as a successful instrument to retain local character in established areas.
- Limiting the provision of car parking in development to the lowest amount required by either the RTA Guide to Traffic Generating Development, Council's DCP, or a site specific travel plan provided by the applicant. The infrastructure, topography and size of the Sutherland Shire means that residents are highly car dependent. One of the most frequently received complaints from the community is that new development does not cater to the parking demand it generates, exacerbating competition for limited on-street parking, as well as general public and commuter

parking. Failure to address this issue will lead to sustained vocal opposition by the community to increased density.

- Setting minimum residential density controls by zone and mandating minimum non-commercial percentages in R3 and R4 zones. Sutherland Shire is predominantly a low density residential area and the current planning controls reflect local character and community expectations. Applying mandated density standards across Sydney is contrary to the Department's initiatives to support local character and unlikely to be suitable across Sydney. It should be noted that commercial uses in the R3 and R4 zones are generally prohibited and do not form part of the character of our suburban local areas. Mandating such uses is unacceptable.
- Demanding the use of registered architects for buildings as small as 3 storeys and registered landscape architects for open space designs as small as 1000m². Three storey single dwelling development (2 floors and a basement – which is defined as a storey) is becoming more common in Sutherland Shire. Requiring architect statements is onerous.
- Mandated standards for ceiling heights will result in pressures to vary height controls. A mandated 4.2m ceiling height (ADG) to accommodate commercial development is problematic. Council is reluctant to vary height limits for structures on the roof due to impacts on views. Council's height and FSR controls are finely tuned to work in concert. These provisions will lead to unwarranted requests for variations.
- Mandated standards for covered outdoor areas may result in poor outcomes. Mandating a covered communal space accessible from the street is problematic, particularly given the scale required. This would most likely be at the expense of landscaped space which is critical to provide the success of new development. Most communal space is provided on the roof and additional structures on the roof will impact on views.
- It is acknowledged that requiring architects and landscape architects to be registered is an attempt to improve design outcomes. However, applying such restrictions to public authorities designing and assessing applications is onerous. Design Review Panels are appropriately resourced. However, few practitioners in-house in local government maintain their registration. Mandating the use of registered designers to undertake park design, precinct planning and masterplans will further strain councils' limited resources to undertake projects.
- Embedding the Connecting with Country Framework into the planning framework is supported, however its application needs to be carefully considered so that onerous requirements are not imposed on minor projects. It is unclear if the framework will result in increased costs associated in the design and delivery of projects. Greater State support is needed for both councils and Local Aboriginal Land Councils to better address meaningful engagement.

This SEPP is proposing centralisation of planning policy without having undertaken the extensive community engagement to ensure it reflects what people want. Average residents do not understand what this policy will mean for development next door to them. It is not until a development application or complying development occurs that they will appreciate the changes proposed in this draft SEPP. Greater meaningful consultation is needed with the wider community.

Unfortunately, as the draft SEPP is yet to be exhibited, it is difficult to make detailed comments on the provisions. It is therefore important that the community be fully consulted on the drafted changes, and it is made clear what council's own instruments (LEP and DCP) will be able to address. Councils seek to protect local character, amenity and meet the local community's expectations. The draft SEPP should recognise these long established and well regarded provisions.

Councils provide democratic and consultative mechanisms for communities to plan their own places. The more that planning policy is centrally controlled, the less room there is for innovation, local democracy and genuine local character.

Attached are more detailed comments, in the format required by the DPIE consultation. The exhibition period did not allow the elected Councillors sufficient time to formally consider the matter at a Council meeting. Consequently this submission has been prepared by staff in the interim and authorised by the chairperson of the Strategic Planning Committee. A formally endorsed submission will be provided following the Council meeting in April 2021.

Should you require any further information please contact Mark Carlon, Manager Strategic Planning on 9710 0523.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M Carlon', with a long horizontal line extending to the right.

Mark Carlon
Manager Strategic Planning



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

Your Name	Mark Carlon
Your Organisation	Sutherland Shire Council
Postcode	2232
Phone	9710 0523
Email	mcarlon@ssc.nsw.gov.au
Stakeholder group	<input type="checkbox"/> Industry <input checked="" type="checkbox"/> Council <input type="checkbox"/> Aboriginal Community <input type="checkbox"/> Community <input type="checkbox"/> State Agency
Age demographic	<input type="checkbox"/> 18-25 <input type="checkbox"/> 26-45 <input checked="" type="checkbox"/> 46-65 <input type="checkbox"/> 65+

Explanation of intended effect (EIE)

Summary

Councils want to lead the design and place based planning of their communities. The proposed SEPP will impose blanket controls via centralised planning policy, which will disempower local communities.

Timeframe

Council has commenced detailed centres planning and in the process of development of a 10 year+ housing strategy. This process will soon involve an initial consultation, and more substantial community consultation on detailed provisions in late 2021. A new planning proposal is expected to be submitted for a Gateway in 2022.

PART 1

Introduction

The draft SEPP will trigger the 'precinct planning' requirements when Council is part way through the process. Adding such requirements has not been resourced and would only add time and complexity to an already complex process that is well underway. The proposed SEPP must have regard to Council processes already in train and include suitable transitional provisions. The SEPP should not apply until after Council has had an opportunity to undertake nuanced planning controls - being delayed until at least 2023.

It is not clear whether the professional requirements to be precinct designers in accordance with the proposed SEPP apply to Council staff. It is difficult for architects and landscape architects to meet and sustain the requirements for registration while in public service employment. This means that Council would rely heavily on external consultants to undertake amendments to its own planning documents adding time, costs, and complexity.

Principles

The proposed principles are supported.

PART 2

Proposed new State Environmental Planning Policy (Design and Place)

Application of the SEPP

The proposed definitions of Precincts and Significant Development are too broad as different scales and impacts of development will be captured.

- The **Precinct** definition could capture a 50 lot residential subdivision, or a 1000 person residential flat building or even a Council LEP amendment to implement a direction of the LSPS such as a zone permissibility adjustment (e.g. the current Planning Proposal for the ex-Toyota land at Woolloomare Bay).

-
- The **Significant Development** definition is also very broad because it includes Regional Development as defined under the State and Regional Development SEPP. This can include Council developments as small as \$5 million and other development as small as \$10 million. This will result in added complexity, added costs and assessment delays.

The proposed application requirements and mandatory matters for consideration do not appear to respond to the diversity of applications and proposals which could be captured. Council projects of relatively modest scale and ambition may be subject to more demanding planning and design requirements which will increase costs to the community and introduce delays.

The SEPP must also consider the possibility that a development application classification may change as a result of modifications, plan changes after lodgement or assessment delays. Councils must have sufficient autonomy under the SEPP to decide which category is appropriate.

Design Skills

Requiring the participation of registered architect in all development at or above 3 storeys or 4 or more dwellings does not necessarily guarantee a good planning outcome and will increase the costs of affected development.

- Basement parking, or habitable rooms in attics in a two storey dwelling will trigger the requirement as the building is three storey (as a basement is defined as a storey). It is onerous to require a registered architect design a basement or attic conversion in single dwellings.
- Manor home developments (up to 4 dwellings) would trigger the higher design skills requirements as a DA (architect), but can also be approved via complying development under the Low Rise Housing Diversity Code. It is unclear whether these provisions will apply to the Complying Development process.
- The threshold for requiring a registered landscape architect or architect could be triggered by public authority works, including minor works affecting the use or configuration of existing buildings, or public open space. Council employed landscape architects and architects generally do not maintain formal registration. An exemption to the requirements should be provided for public authorities in order to prevent delays and additional costs.

Design Evaluation and Review

Design review panels (DRF) add rigour to the assessment process for larger developments. However they also add to the length of the assessment process (lead times) and costs (more panel meetings). Delays may make it harder for councils to achieve benchmarks imposed by the Public Spaces Legacy grants program, and may increase the number of 'deemed refusal' appeals in the Land and Environment Court. It is considered that councils should be able to determine (and adjust) the thresholds and triggers for referral in line with community expectations and as priorities change.

Mandatory Matters for Consideration

The proposed SEPP would make each of these matters a mandatory consideration for the purposes of s4.15 of the Act. Many of these matters are already part of Council's assessment through the LEP or DCP processes. However the provisions will limit the ability of councils to set their own requirements, reflecting local character and community expectations. The following are specific comments on the draft provisions:

1. Cultural and built heritage

Supported. This is broadly appropriate when a new precinct is being planned. The challenge will be in integrating cultural and built heritage in existing urban

contexts, especially where engagement has not been forthcoming. Greater State support of LALC is needed.

2. Public Space

Supported. This is an excellent consideration which aligns with Council's stance on preservation of open space as part of major projects, like the M6 corridor.

3. Connectivity

Supported. This aligns with Council's existing DCP which requires development to contribute to the development of the Shire's cycleway network.

4. Local Living

Supported. This is sensible requirement which requires that new precincts must consider walkability.

5. Street Design

Supported, but with some reservations. In existing urban areas like town centres the capacity to add new streets or even through-block links can be very limited. These benchmarks should be flexible enough to accommodate existing urban areas in all their diversity and complexity.

6. Water Management

Supported, but with some reservations. In established urban areas there are infrastructure constraints and limits on financial viability which can make more advanced water management techniques complex. Greater incentives for applicants are required to address the significant costs of water recycling and re-use in established areas.

7. Green Infrastructure

Supported. This aligns with Council's adopted Green Grid policy and the vegetation controls in Council's DCP.

8. Resilience

Supported. This aligns with Council's adopted LSPS and existing State Policy like Planning for Bush Fire Protection and the Coastal Management SEPP.

9. Fine-grain movement

Supported. This aligns with Council's existing DCP which requires development to contribute to the development of the Shire's cycleway network.

10. Density

Strongly Opposed. Councils have used zones differently and in ways appropriate to their local contexts. Sutherland Shire Council has applied the R4 zone to a diverse range of zones where residential flats have been constructed, and comprises a range of densities (from 1:1 to 2:1). Council should not be prevented from using appropriate density controls commensurate with the established and desire future local character. Increases in density (beyond what has been adopted in LEPs) result in significant changes to local character and this should not occur without widespread consultation with the local community. These provisions are contrary to local character guidelines developed by DPIE.

11. Housing Diversity

Supported. This aligns with Council's approach to previous housing strategies and would empower Council to better shape development to meet the needs of the local community.

12. Transport and Parking

Strongly Opposed. Parking and traffic are the most vexed issues facing the local community. Sutherland Shire has high car dependency created by an established pattern of suburban development (far from public transport) and hilly topography. Accordingly residents have high demands for car parking and this should be able to be accommodated. It is unclear whether additional parking would be included in GFA.

13. Attractive Form

Supported. This aligns with Council's LEP and DCP provisions which have provisions which encourage high quality design that is respectful of local character.

14. Impacts on Public Space

	<p>Supported. This consideration aligns with Council's stance on preservation of open space as part of major projects.</p> <p>15. Impacts on Vibrant Areas</p> <p>Supported. This consideration ensures that developments must consider the sustainability of the night-time economy in centres.</p> <p>16. Activation</p> <p>Supported. This consideration ensures that developments provide space for employment and related economic activities in centres.</p> <p>17. Emissions and Resource Efficiency</p> <p>Supported, but does not provide details nor go far enough. There is no mention of waste management in the operation of development in this consideration. The NSW Government has a 20 year Waste Strategy which is not mentioned anywhere in the EIE and has not been addressed in another matter for consideration. Technologies and planning decisions which might make a significant difference to energy use may only be possible at the precinct scale.</p> <p>18. Tree Canopy</p> <p>Supported. This aligns with Council's adopted Green Grid policy and the vegetation controls in Council's DCP. More guidance is required on how specific canopy targets can be practically achieved in the various contexts in compliance with the other controls in the SEPP and at the FSRs typically used in suburban, commercial and CBD environments.</p> <p>19. Affordable Housing</p> <p>Supported. Council has not chosen to implement an affordable housing scheme, and the design of this consideration is flexible enough to accommodate that.</p>
PART 4 Proposed amendments to existing State Environmental Planning Policies	<p>Broad support for the proposed changes to SEPP 65 and BASIX, integrated into the proposed SEPP.</p>
PART 5 Relationship with other planning instruments and policies	<p>The relationship between the proposed SEPP and the Exempt and Complying Development Codes SEPP must be clarified.</p> <p>The relationship with the Housing Diversity SEPP must also be clarified. It appears that a dwelling house at 3 storeys is subject to the Design and Place SEPP but a boarding house at 7 storeys is not.</p>
PART 6 Planning pathways	<p>The Application of the proposed SEPP to SSD and SSI is welcome. The application of the proposed SEPP to Council REFs under Part 5 of the Act may be more problematic. Where an activity may be caught by the SEPP, it would be up to the Council to determine the extent of relevance and action required to comply. There should be greater accommodation of the limited resources most local governments can apply to routine design.</p> <p>The application of the SEPP to planning proposals is also problematic, both because of the timing of Council's own comprehensive LEP work and the unclear relationship between the precinct definition and Council initiated LEP amendments in general. Phased introduction of the application to Council projects as part of the savings provisions is important to ensure that crucial planning work is not disrupted, delayed or downscaled to avoid triggering the SEPP.</p>

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

Proposed ADG Changes:

Status of the ADG

The ADG is an effective planning tool because its development standards set an enforceable minimum requirement. The proposed changes to increase the flexibility of the ADG may create uncertainty for developers and reduce the ability of Council to ensure development actually achieves the required standard. Please do not make the ADG unenforceable.

Urban Design and Site Planning

1. Contribution to place

Supported. The development should show how it contributes to the planning aspirations of the community it will serve.

2. Landscape and greening

Supported with reservations. Increases to deep soil zones are important, however these provisions may conflict with Council's existing adopted SSLEP2015 landscaped area development standards. For example SSLEP2015 requires 30% deep soil landscaped area in the R4 zone. Any reduction in landscaped area would appear to be inconsistent with achieving the canopy targets required by the SEPP.

3. Building form

Supported. Slender towers with adequate separation at height are a better design outcome.

4. Building separation

Supported. Slender towers with adequate separation at height are a better design outcome.

5. Mixed use development and street activation

Not supported. The R3 and R4 zones are residential zones which are not intended as mixed-use zones with extensive business activity. This requirement could result in over provision of commercial spaces which cannot economically supported and result in significant changes to local character. Please do not make radical changes to the function of zones without extensive community consultation.

6. Clarify ground floor ceiling heights

Supported with reservations. While this makes sense for some commercial uses, increased ground floor heights will drive height limit exceedances and may limit the realisation of built floor space within existing LEP height limits. Council's height and FSR controls are finely tuned to work in concert. These provisions are likely to result in height exceedances. Councils will either be forced to accept greater building heights or force applicants to accept reduced residential yield to stay within the height limit.

7. Ground floor activation

Supported. Consideration should be given to ground floor resident privacy and amenity expectations in these developments by the use of landscaping, fencing and elevation of the ground floor rooms.

8. Car parking

Not Supported. Reducing the provision of car parking in these developments in a blanket way across Greater Sydney is not acceptable. Sutherland Shire's suburban areas are highly car dependent. Parking provision should respond to local needs and markets. Parking provision should be regulated by Council's DCP.

9. Bicycle parking and mobility storage

Supported.

Residential Amenity

1. Solar access

Not Supported. Extending the hours in which a development may achieve solar access is not good for resident amenity. It ultimately reduces the amount of solar access residents will have, because at lower sun angles (winter) direct sunlight is more likely to be blocked by obstacles. Use of west and east facing aspects (where the sunlight will be in those extended hours) will exacerbate the problems of glare and heat, especially in summer.

Shading and glare control

Supported.

2. Natural ventilation

Supported. This will ensure more apartments are naturally ventilated.

3. Liveable Housing targets through universal design

Supported. The rate required should reflect Council's DCP or housing strategy to ensure the needs of the community are met.

4. Apartment size

N/A. No change proposed.

5. Apartment layout

Supported. Apartments need to be more flexible and adaptable.

6. Local planning considerations

Supported. This will ensure Council's Housing Strategy can actually shape housing to meet the needs of our community.

7. Private open space

Supported. This will ensure private open space is more useful.

8. Storage

Supported. More storage space will help ensure parking spaces are used for their intended purpose.

9. External noise and pollution

Supported. The conflict between natural ventilation and minimising noise transmission is not well resolved at present.

10. Acoustic separation

Supported. Apartments must also be places where people can work.

Common Spaces and Vertical Circulation

1. Communal open space

Not supported. A new approach to calculating communal open space cannot be supported without knowing what it will actually be, and whether it will cater to the suburban context and residents of the Sutherland Shire. Covered open space may lead to developments exceeding LEP building height limits if it is located on rooftops, or be at the expense of trees and landscaping if it is at ground level.

2. Daylight and ventilation

Supported with some reservations. Fresh air and light to common areas is very important in the context of Covid19. Common area breezeways contribute to the overall bulk and scale of development, but do not count as gross floor area. A clearer statement in the ADG, or the definition of gross floor area, or design parameters could better address impacts on bulk and scale.

3. Lift requirements

Supported. Lifts should be cable of serving the needs of the residents who are forced to rely on them.

4. Building access, common circulation and spaces

Supported.

Environmental Performance

1. Energy Efficiency

Supported. These are simple measures which will help residents save energy.

2. Energy Efficiency – electric vehicles

Supported. Apartment buildings must at a minimum provide sufficient capacity in their grid connections, meters and wiring to provide for future installation of electric vehicle charging at each private parking space.

3. Heating and cooling infrastructure

Supported. Heating and cooling units often dominate the balconies and facades of apartment buildings to the detriment of resident amenity.

4. Water management

Supported. Minimum water efficiency standards are welcome.

5. Building and landscape maintenance

Supported. This may assist developments and off-the-plan purchasers to better estimate future strata fees.

6. Environmental performance of materials

Supported. Enforcement of this will be difficult, but the intent is good.

7. Waste management

Supported, but does not go far enough. Waste management should go beyond recycling to consider the handling of green waste, food waste and standards for collection facilities. A best practice standard for this in flat buildings and high density precincts should be developed and implemented through the ADG. Many Councils have struggled to resolve this issue well. A challenge exists between standard bins and waste collection vehicle fleets that work well in suburban areas, but overwhelm the street when used at higher densities.

APPENDIX B

Proposed New Public Spaces and Urban Design Guide

The proposed urban design guide appears to have significant overlap with Council's DCP controls for new residential subdivisions and the Public Domain Design Manual. It is difficult to tell whether the proposed development standards and considerations will deliver a better outcome without any of the detail being presented.

Minimum streets widths must consider the needs of suburban Councils and their service vehicle fleets. Street designs which are too narrow for kerbside waste collection should not be supported by the Urban Design Guide unless alternative arrangements for waste collection are made the by the development.

APPENDIX C

Sustainability in Residential Buildings

Broadly supported, but as always the details will be important.

Additional comments

This proposed SEPP is proposing centralisation of planning policy without having undertaken the extensive community engagement to ensure it reflects what people want.

Average residents do not understand what this policy will mean for development next door to them. It is not until a development application or complying development occurs that they will appreciate the changes proposed in this draft SEPP. Greater meaningful consultation is needed with the community. Councils provide democratic and consultative mechanisms for communities to plan their own places. The more that planning policy is centrally controlled, the less room there is for innovation, local democracy and genuine local character.
