

## **EIE FOR THE DESIGN AND PLACE SEPP**

Thank you for the opportunity to review and make comment on the proposed Design and Place SEPP Explanation of Intended Effect (EIE). These changes are potentially transformative for the role, status and impact of public space, precinct planning and apartment design in NSW. I am highly supportive of the Department's elevation and action on these key issues of civic importance.

The EIE makes a strong start in changing practice, but could be strengthened by framing the creation and protection of public space as the joint responsibility of governments, authorities, proponents, designers and communities. There are opportunities to engage many more of these stakeholders in the SEPP processes to strengthen its outcomes.

I provide this commentary drawing upon experience working in practice on a range of urban design, public space and multiple residential projects, and as an architectural critic in NSW over the past 25 years.

### **1.0 INTENT OF THE EIE**

My primary response to the public space provisions in the EIE is supportive. The fact that public space has had no status in the planning act has been a serious omission that has impacted greatly on built outcomes in architecture and urban design in NSW. The elevation of the role and status of public space in the planning system is long overdue and I commend you for raising and acting on this critical democratic element of our city.

My primary response to the proposed Apartment Design changes in the EIE is also supportive. Confirmation of the detail of the statutory mechanisms, wording and mandatory controls will obviously come at a later date – but the EIE signals an intent to improve the performance of apartments – particularly in terms of sustainability, and a desire to address some of the poorly performing high impact slab tower models that are causing significant concern in many parts of Sydney. I offer strong support to this intent.

### **2.0 EFFECT OF THE GUIDES, PRINCIPLES AND CONSIDERATIONS**

#### **2.1 Giving effect to the Principles and Considerations**

The EIE outlines a series of Principles and Considerations for Urban Design and Apartment Design, that will be included as future contents of the Urban Design and Apartment Design Guides that accompany the SEPP. It is important to understand how the future text of the SEPP, and other statutory instruments, will give weight and effect to these Principles and Considerations.

The existing Apartment Design Guide is instructive in this regard. Currently its Principles and Objectives are given effect through two mechanisms –

Firstly – the *Environmental Protection and Assessment Regulation* Clause 50(1A) and 50(1B) requires applicants to prepare a design verification statement to confirm that the design quality principles are achieved, and verifies how they are achieved, specifically referencing the objectives of Parts 3 and 4 of the Apartment Design Guide.

Secondly, *SEPP 65 – Design Quality of Residential Apartment Development* in Clause 28, 2(b) requires a consent authority to consider the design quality of an application evaluated in accordance with the Design Quality Principles. It also requires, under Clause 30, 2 (a) and (b) that consent cannot be granted, if the consent authority is of the opinion that the development does not give adequate regard to the design quality principles, and the Apartment Design Guide objectives.

This is important – as being referenced in these instruments elevates the status of key parts of the Apartment Design Guide, shifting them from being advisory, to having the status of a planning instrument. It is critical that the Principles and Considerations in the Revised Apartment Design Guide, and Urban Design Guide are

referenced in both the EPA Regulation and the Design and Place SEPP to ensure that they are legislated as mandatory criteria for assessment, rather than having advisory status only.

## **2.2 Terminology**

The use of the term 'Considerations' is potentially problematic. It infers that consideration only, will be sufficient to discharge professional duties under the SEPP, rather than a need to demonstrate compliance or establish compelling grounds for variation to the standards. It is important to ensure that the terminology isn't taken as a signal that the criteria outlined in the Guides is for cursory 'consideration' only.

## **3.0 PRINCIPLES**

The five key principles of the EIE are uncontroversial and eminently supportable. Importantly, they betray a bias in the document that limits its focus to 'Design'. This is a significant, potential limitation.

In terms of authority and ability to influence urban, architectural and landscape outcomes – designers have limited and decreasing power. In its current form, the EIE for the Design and Place SEPP seems to anticipate a form of 'trickle up' influence. Experience of 25 years in practice suggests that this is optimistic - at best.

Each principle begins with the verb 'Design'. This is not sufficient and is only the barest beginning of the process of making, maintaining and protecting public space. The aim of the SEPP should be to make and protect places with character and beauty, that are inviting, productive, connective, sustainable, green, resilient and diverse. Design is not enough. Places must be designed, documented, procured, constructed and maintained to high standard for this SEPP to achieve real-world physical outcomes consistent with its ambition.

SEPP65 is an important test case that evidences the risks of limiting the assessment and oversight of 'quality' to the design phase only. The need for the introduction of the Building Design and Practitioners Act to address short comings in the construction of apartments conclusively demonstrates that scrutiny of the design phase alone is insufficient for the achievement of quality. SEPP65 and the Building Design and Practitioners Act should not have been separate instruments - as design and realisation should never be considered separately. They are inextricably linked, and these instruments should have been united.

The Design and Place SEPP need not repeat this mistake. This document has the opportunity to correctly frame public space as the joint responsibility of Authorities, Clients, Designers, Proponents and Managers – and to engage, regulate and assess the involvement of all parties, at all stages, of the process.

## **4.0 OTHER KEY DECISION MAKERS + STAKEHOLDERS**

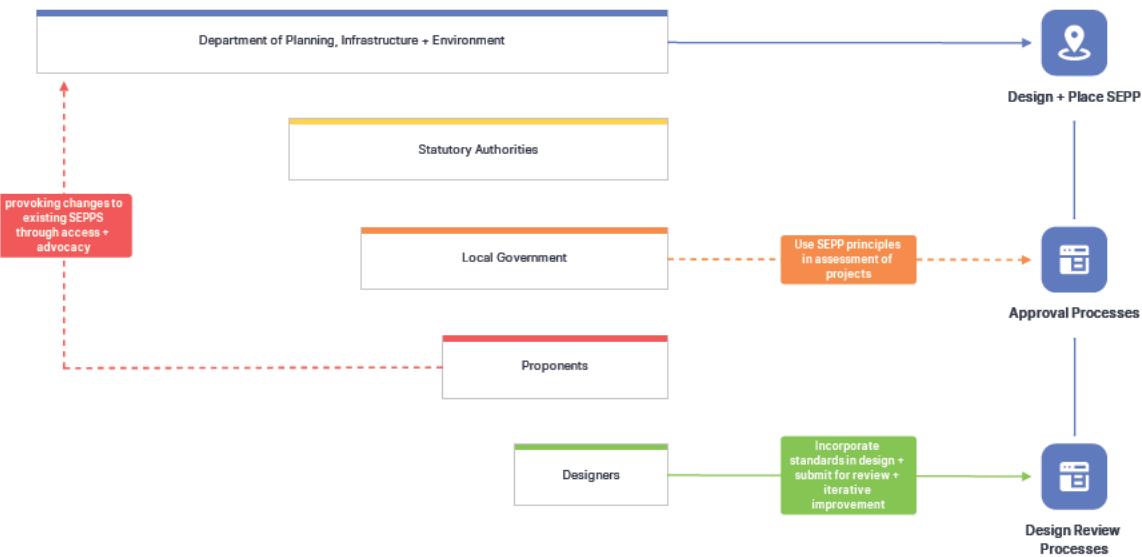
Statutory Authorities, Local Government and Proponents have significant, and often much greater influence and control of design outcomes on precinct and public space projects than designers. In our experience -

- Planning frameworks drafted by Local Authorities are imperfect instruments. In many instances we have found them to impede good and fair urban and public outcomes.
- The assumptions in Environmental Impact Statement Reference Designs and Business Cases as executed by Statutory Authorities can impede the design process by setting inflexible limits that don't anticipate future complexity, and can't be altered during subsequent design phases.
- Even in instances where design quality is assessed, proponents can significantly undermine the realisation of quality through poor procurement choices and methods, and unsophisticated and unregulated value management processes.

There are opportunities for the SEPP to more effectively engage and share responsibility between all stakeholders and phases of urban and public projects as set out in Figure 1 below.

EXISTING FRAMEWORK

Engaging with limited stakeholders and phases of public space delivery



PROPOSED FRAMEWORK

Strengthened - to engage with multiple stakeholders and all phases of public space design and delivery

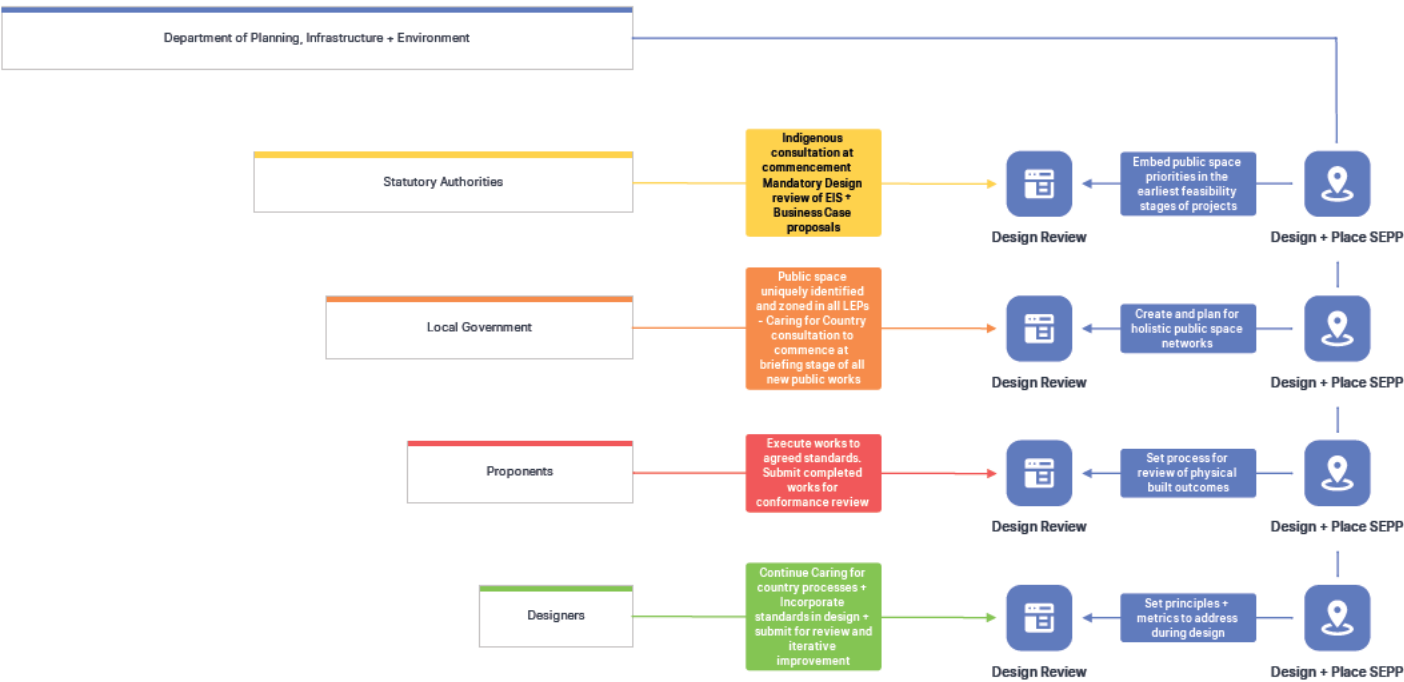


Figure 1 – Diagram showing interpretation of the current framework, with suggestions for how to strengthen the SEPP's impact and relevance to all stakeholders

## **5.1 THE ROLE OF STATUTORY AUTHORITIES**

### **5.1.1 Early design review**

In our experience of public space and urban structure design, there are often key physical limitations that have been 'set in stone' by government authorities before detailed design works commence. The reference designs that underpin EIS and Business Case processes for new infrastructure can unintentionally impose limits that impede future design excellence in precinct and public space design.

If authorities such as the Departments of Transport, Health, and Education, and energy and water utility authorities were required to have their reference projects for EIS and Business Cases reviewed at a high level for their design performance – it would help to ensure that key decisions in early feasibility and planning anticipate, rather than prevent, Design + Place SEPP aims being achieved during ensuing detailed design phases.

### **5.1.2 Earlier Indigenous engagement**

The SEPP also has the opportunity to ensure that Indigenous consultation begins at the EIS and/or briefing stage of project – to direct and guide the assessment of appropriateness, site selection, profiles, landscape relationships and impacts.

We observe a tendency towards Caring for Country being included in project briefs as part of a 'design checklist' - rather than as a principle that holistically guides all works and decision making on projects. Indigenous knowledge should inform the earliest decisions in projects, made by all clients and stakeholders, not only designers. Realistic project time frames need to be set that allow for this engagement to continue, meaningfully, through all stages of briefing, design, procurement, realisation and custodianship.

## **5.2 THE ROLE OF LOCAL GOVERNMENT**

### **5.2.1 Public space network status and protection**

Public space is not a collection of singular projects – but a cohesive and enduring civic network. Existing public space should be identified in all LEPs and a specific Public Space zoning designation added to the Standard Instrument. That designation should reference the need for compliance with the requirements of the Design and Place SEPP and should define public space as that held in public ownership.

Recent examples of Local Government authorities ceding ownership of public space in lieu of 'easements' or 'access covenants' should be explicitly prohibited by the SEPP. If Developers and Proponents are being asked to make public space – public authorities must meet their responsibility for coordinating, managing and maintaining it. While publicly accessible private open space is to be encouraged – it is no substitute for legislatively defined and protected public space. The life of places can be enlivened and augmented by publicly accessible private open space – but should not be reliant on it for achieving the minimum requirements under the future SEPP benchmarks – particularly in terms of public space quantum, walkability and the like.

Each Local Government area should be tasked to review their public space networks and structures to

- identify and appropriately adjust the zoning of land
- identify deficiencies and opportunities in their public space networks, and
- target sites where public domain improvements could improve, expand or repair their networks.

This could follow a similar process or model to the Local Strategic Planning Statements prepared for each LGA.

Targetted development incentives to achieve future public domain outcomes should be flagged in key statutory documents - to ensure that the SEPP requires Local Authorities to support the creation of public space 'networks', rather than just individual public space 'elements'. The acquisition, transition and linking of land to make public space networks can take many years. It is important that this is planned early, actively prompted and signalled prominently in LEP mapping.

### **5.2.1 Design review of planning documents**

Local Government should also be subject to Design Review. Local Government planning controls in the form of LEPs, DCPs, Precinct Plans, Master Plans and guidance documents that involve or impact public space should be subject to Design Review prior to finalisation, exhibition and adoption. This is important - as planning documents are subject to strong electoral pressures and can prioritise the views/desires/feedback of existing residents over future needs and best practice.

Public space belongs to everybody – residents of course, but also to workers, visitors and future generations. Independent design review can ensure that the needs of these important ‘silent’ voices are also considered, and inappropriate short-term political pressure resisted, in the interests of long-term planning and decision making.

### **5.3 THE ROLE OF PROPONENTS**

In estate and precinct planning, it is increasingly common for responsibility for the creation of public space to be placed onto the private sector. It is therefore appropriate that the SEPP sets principles, benchmarks and standards for not only the design, but also the realisation of public space. This could involve a review process that confirms that the quality and quantity of public space committed to during design (potentially in the proposed Implementation Plan) are delivered to an appropriate, benchmarked standard.

Authorities and utility providers regularly require the payment of bonds to secure assurance that works that affecting public spaces or utilities will be undertaken without harm or damage – or can be rectified if required. Given the critical importance of public space, it does not seem unreasonable that we would also give ‘future’ public space similar protection.

A public space bond would ensure that proponents take seriously their obligation to meet the quality and quantity of public space promised in the design phase. It would ensure that staged public infrastructure was treated carefully during the construction process. It would also enable local government authorities to undertake rectification works, such as replanting or repair – in the event that the public space or canopy planting did not conform to the guarantees made in the approval processes.

A bond could be released progressively as works are completed in a given estate or precinct. Representatives from the local government authority (or public agency tasked with future ownership/maintenance) and the Government Architects Office representative overseeing design review, would most logically undertake these reviews and approvals.

### **5.4 THE ROLE OF DESIGNERS**

The EIE signals an intent to provide designers with processes, principles and benchmarks to consider in their design responses. These appear to be generally progressive, and supported, and I look forward to seeing further detail in subsequent exhibition periods.

## **6.0 APPENDIX 1 - APARTMENT DESIGN**

### **6.1 Positive changes**

I support the proposed amendments to the apartment design provisions.

The provisions relating to reducing basements and car parking numbers are progressive and welcome. Basement parking has high environmental and affordability impacts. It is important to promote change.

I also support the initiatives included to limit the footprint, and number of apartments per core for towers above 9 storeys. Large, unrelieved slab towers are a form of housing that is causing mistrust and alarm across the metropolitan area - making Sydneysiders unnecessarily fearful of density. I strongly support the initiatives that limit the impact of these coarse typologies in favour of slimmer tower forms. I also support the promotion of housing diversity and am keen to understand how the SEPP will support this aim.

A more finely tuned approach to the interpretation and application of solar controls by increasing the range of access hours is also appropriate and supported.

## **6.2 Mandatory targets and discretion**

'Innovation' is a word that always raises a sceptical eyebrow. It is hoped that the stated desire for 'flexibility' to achieve 'innovation' is not code for maintaining loopholes for poor practice.

The stated intent for the inclusion of mandatory targets and metrics is strongly supported. SEPP65 has given designers some leverage in terms of convincing clients and authorities of the need for better practice via reference to requirements under legislation but, in our experience, is only taken seriously when phrased in mandatory form.

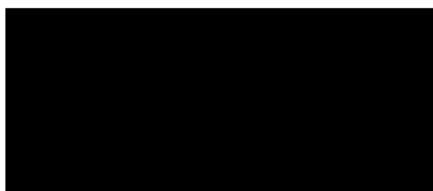
Discretion is highly appropriate and absolutely necessary, but it does not remove the need for mandatory controls and targets. Discretion is most appropriately exercised by panels formed of eminent and qualified practitioners (with experience of all phases of design, procurement and construction) who have the ability, confidence, and authority to permit relaxation of the mandatory controls when presented with sufficient evidence of atypical or particular conditions and successful alternate solutions.

This is the approach that is well established in the National Construction Code. Mandatory targets are set. Alternate pathways, processes and assessment regimes permit flexibility where, and only where, it has been rigorously assessed as being appropriate. It appropriate for the Design and Place SEPP to model itself on this approach.

## **7.0 SUMMARY**

It is important that the Department is seeking to elevate Public Space within the planning system and to further improve the quality of Apartment Design. I strongly support this effort.

The document limits its potential efficacy by focusing solely on design. I hope that the Department can give consideration to the potential for this SEPP to engage with all stakeholders and phases of public space delivery to ensure that good quality public spaces are not only designed - but delivered well and protected over time – for the use and enjoyment of all.



Laura Harding  
*B Arch, B Sc Arch*