



HOUSING INDUSTRY ASSOCIATION



Submission to NSW Government

**Explanation of Intended Effect  
for a Design and Place SEPP  
February 2021**

Submitted 28 April 2021

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## Housing Industry Association contacts:

David Bare  
Executive Director NSW  
Housing Industry Association  
4 Byfield Street,  
Macquarie Park NSW 2113

Telephone: (02) 9978 3333

Email: [REDACTED]

Cathy Towers  
Assistant Director Planning NSW  
Housing Industry Association  
4 Byfield Street,  
Macquarie Park NSW 2113

Telephone: (02) 9978 3333

Email: [REDACTED]

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## ABOUT THE HOUSING INDUSTRY ASSOCIATION

The Housing Industry Association (HIA) is Australia's only national industry association representing the interests of the residential building industry.

As the voice of the residential building industry, HIA represents a membership of 60,000 across Australia. Our members are involved in delivering more than 170,000 new homes each year through the construction of new housing estates, detached homes, low & medium-density housing developments, apartment buildings and completing renovations on Australia's 9 million existing homes.

HIA members comprise a diverse mix of companies, including volume builders delivering thousands of new homes a year through to small and medium home builders delivering one or more custom built homes a year. From sole traders to multi-nationals, HIA members construct over 85 per cent of the nation's new building stock.

The residential building industry is one of Australia's most dynamic, innovative and efficient service industries and is a key driver of the Australian economy. The residential building industry has a wide reach into the manufacturing, supply and retail sectors.

Contributing over \$100 billion per annum and accounting for 5.8 per cent of Gross Domestic Product, the residential building industry employs over one million people, representing tens of thousands of small businesses and over 200,000 sub-contractors reliant on the industry for their livelihood.

HIA exists to service the businesses it represents, lobby for the best possible business environment for the building industry and to encourage a responsible and quality driven, affordable residential building development industry. HIA's mission is to:

*promote policies and provide services which enhance our members' business practices, products and profitability, consistent with the highest standards of professional and commercial conduct."*

HIA develops and advocates policy on behalf of members to further advance new home building and renovating, enabling members to provide affordable and appropriate housing to the growing Australian population. New policy is generated through a grassroots process that starts with local and regional committees before progressing to the National Policy Congress by which time it has passed through almost 1,000 sets of hands.

Policy development is supported by an ongoing process of collecting and analysing data, forecasting, and providing industry data and insights for members, the general public and on a contract basis.

The association operates offices in 22 centres around the nation providing a wide range of advocacy, business support services and products for members, including legal, technical, planning, workplace health and safety and business compliance advice, along with training services, contracts and stationery, industry awards for excellence, and member only discounts on goods and services.

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## 1.0 INTRODUCTION

### OVERVIEW

The Housing Industry Association (HIA) is pleased to be provided with the opportunity to comment on the Explanation of Intended Effect (EIE) for a Design and Place SEPP (proposed SEPP). The EIE is setting out the framework for some very significant changes in NSW planning policy and the housing industry will be directly and negatively impacted by the changes.

In order to address the range of issues introduced in the EIE, HIA has canvassed the views of its wide membership base including land developers, volume house builders, apartment builders, architects, planners and sustainability experts. The key concerns that our members have expressed about the EIE, relate to the proposed amendments to the Apartment Design Guide (amended ADG), but also about its wider connections to the NSW Planning System.

HIA does not support the public exhibition of the EIE at this time because it is missing detail about important aspects of the proposed SEPP. Serious concerns HIA members have with issues raised in the EIE, but not adequately addressed are:

1. the alignment of the proposed SEPP with complying development
2. the potential overlap of with the Local Character Provision for Local Environmental Plans (LEPs)
3. the purpose and detail of the Unified Housing Design Guide
4. the lack of detail about changes to the BASIX tool

HIA is also very concerned that the additional processes that the proposed SEPP requires will add further red tape, time delays and costs to an already over-burdened planning system.

### AMENDED APARTMENT DESIGN GUIDE

We have serious concerns relating to the revised design criteria and requirements in the amended ADG. In particular, these concerns relate to the design criteria and requirements for building form, building separation, landscaping, deep soil requirements, cross-ventilation, solar access, car parking and bicycle parking, which will result in increased development costs and reduced yields for apartment buildings. These concerns are discussed in detail in section 6.0 of this submission on pages 7 to 13.

In addition, it is our opinion that the detailed design related reporting requirements for the amended ADG will lead to more regulation and cost, and more lengthy timeframes for the development assessment process.

Overall, the amended ADG will have a negative impact on the housing industry's ability to meet housing targets; and it will also impact on housing affordability for consumers.

HIA strongly submits that a regulatory impact assessment is needed to consider economic effects of the proposed SEPP on housing affordability, development feasibility, existing housing projects/businesses, and housing supply.

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## RED TAPE, TIME DELAYS AND IMPACT ON HOUSING AFFORDABILITY

The industry is already weighed down by regulation, delays, uncertainty in decision making and increasing costs that all contribute to making housing in NSW less affordable than anywhere else in Australia.

In 2020, the NSW Productivity Commission published the *Green Paper – Continuing the productivity conversation* which recognised that *overly prescriptive and complex planning regulations can stifle business competition and reduce housing supply*, with a draft recommendation made to continue to *cut red tape to make the planning system more effective and deliver on the Government's goal of reducing assessment times*<sup>1</sup>.

The Centre for International Economics (CIE) undertook research for HIA in June 2019 about delays in the planning systems across Australia. CIE noted that developers face delays which are unreasonable in the government-controlled processes that generate planning approvals. As developers generally use debt to finance land purchases, these unreasonable delays add to the interest costs they incur, which are then passed on to new homebuyers via a commensurate increase in the transfer price for the new home.

The results of the CIE research showed that in Sydney the 'necessary' component of time that a consent authority takes for a development approval for a greenfield subdivision is 8 months, with a further 'unreasonable delay' of 8 months before the approval is issued. For infill development the 'necessary' component of time a consent authority takes for a development approval for building is 7 months, with a further 'unreasonable delay' of 9 months before the approval is issued.

In comparison, the period of 'unreasonable delay' for a development approval for greenfield subdivision and infill building in Melbourne, Brisbane, Perth and Adelaide is less than in Sydney, at 4 months and 5 months respectively.

## STRUCTURE OF SUBMISSION

This submission will provide, where relevant, comments on each part of the EIE, including:

- Principles-based planning and key components of the proposed SEPP
- Relationships with other planning instruments and policies
- Planning pathways
- Proposed amendments to the Apartment Design Guide and SEPP 65
- Proposed new Urban Design Guide
- Sustainability in Residential Buildings

HIA anticipates that proposed SEPP will have a significant impact on the NSW housing industry and we therefore, look forward to continuing to work with the NSW Government Department on the development of new policy over the coming months. In this regard, we understand that the NSW Government is proposing to undertake more focussed engagement with industry over the coming months and HIA requests an invite to participate in these policy working groups.

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<sup>1</sup> NSW Productivity Commission Green Paper – Continuing the productivity conversation (page 24)



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## 2.0 PRINCIPLES-BASED PLANNING AND COMPONENTS OF THE PROPOSED SEPP

### PRINCIPLES-BASED PLANNING

HIA supports a move to principle-based planning and a move away from prescriptive controls. However, we are concerned that without skills-training, consent authorities will continue to apply design criteria in a prescriptive manner. This includes design criteria in an amended ADG, the proposed Urban Design Guide (proposed UDG) and a possible future Unified Housing Design Guide (proposed UHDG).

The idea that guidelines are applied flexibly and not as strict prescriptive rules is sometimes misplaced. HIA members have commented that development assessment officers in councils tend to treat guidelines as strict rules and a change in practice will only occur through means such as education, a change in the culture development assessment practices, and/or through an effective court review and precedent process.

### IMPACT ON COSTS, AFFORDABILITY AND LAND SUPPLY

HIA strongly submits that a regulatory impact assessment is needed to consider economic effects of the proposed SEPP on housing affordability, development feasibility, existing housing projects and housing supply. An increase in development costs and/or reduced yield resulting from some of these changes will lead to the following depending on the circumstances of individual projects:

- an increased cost of housing for consumers; and/or
- a reduced price that is able to be paid to acquire land for housing development, meaning less owners willing to sell their property to developers, less development sites and less housing supply.

There also needs to be clarification on the intent of the proposed considerations in the EIE for cultural and built and cultural heritage, as this in its current drafting will add uncertainty to developers. Items that are not heritage-listed but then determined by the assessment authority to be conserved and protected will lead to this uncertainty.

### SUSTAINABILITY COMMENTS

There appears to be a general blend of prescriptive versus performance design criteria used in the EIE which don't always align well, and this will make the proposed SEPP confusing. The design criteria need to be consistent and align with National Construction Code (NCC) in performance approach and target setting.

Net-zero is discussed as an eventual target but not well defined.

There is tension in the EIE between the use of the terms resilience, embodied energy and operational energy. It is not reasonable to assume extremes of each facet can be met. Reasonable balanced targets need to be established that allow for trade-off between different elements of performance in this (and other) facets of the proposed SEPP. There are already some trade-offs allowed which is good (for example PV), but any trade-offs also need to have reasonable limits set around them.

Whilst more flexibility in the assessment process can be good, it needs to be within limits so that practitioners respect the system.

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### 3.0 RELATIONSHIP WITH OTHER PLANNING INSTRUMENTS AND POLICIES

#### ENVIRONMENTAL PLANNING AND ASSESSMENT ACT

Adding a requirement (refer EIE page 38) for clause 4.6 applications to demonstrate an *improved planning outcome* and *public good* may result in an unnecessary duplication of policy. The Objects (Clause 1.3) of the Environmental Planning and Assessment Act 1979 already set out the principles for good environmental planning outcomes including *to promote the orderly and economic use and development of land* and *good design and amenity of the built environment*. A duplication of requirements will occur as applications for clause 4.6 variations are often aligned with meeting the *Objects of Act*.

#### STATE ENVIRONMENTAL PLANNING POLICY (EXEMPT AND COMPLYING DEVELOPMENT CODES) 2008

Although not yet determined, the EIE opens the door for amendments to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP). This is of great concern to HIA and we request that full consultation is undertaken with industry before any changes are exhibited.

Specific mention is made of a review of the Greenfield Housing Code (GHC) to align it with the Premier's Priorities *Greener Public Spaces* and *Greening Our Cities*. We do note however, that the EIE recognises that any outcomes of the proposed SEPP will need to be tested on the standard development types permitted by the Codes SEPP *to ensure they can be achieved*.

Since the commencement of the GHC in July 2018, HIA members have developed an extensive range of housing product that complies with the Code's requirements. The product has cost the industry many millions of dollars to develop and build in display villages across Sydney's North-West and South-West Growth Areas for new homebuyers to view. The housing product is for a range of one and two-storey homes for different sizes and configurations of blocks, and is designed to be affordable, providing much needed cost savings for families.

#### LOCAL CHARACTER PROVISION EIE – NOVEMBER 2020

The EIE makes no reference to its relationship with the Local Character Provision EIE recently exhibited by the NSW Government. It is most probable that there will be areas of overlap between the proposed SEPP and proposed Local Character Provision and these have not been addressed.

HIA made a submission to the Government objecting to the Local Character Provision on the basis that mechanisms already exist within the NSW Planning System to protect and enhance local character. The planning system already allows for councils to have a multitude of plans and policies to identify and enhance local character and the proposed clause will add another layer of 'red tape' for the housing industry, with time delays and extra costs placed on an already overly complex planning system.

As outlined previously, the NSW Productivity Commission has recently published a *Green Paper – Continuing the productivity conversation* which recognised that *overly prescriptive and complex planning regulations can stifle business competition and reduce housing supply*.<sup>2</sup>

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<sup>2</sup> NSW Productivity Commission Green Paper 2020 – Continuing the productivity conversation (page 24)

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The NSW housing industry is already weighed down by regulation, delays, uncertainty in decision making and increasing costs that all contribute to making housing in NSW less affordable than anywhere else in Australia.

## 4.0 PLANNING PATHWAYS

### LOCAL COUNCILS

We have already commented that the NSW housing industry is weighed down by regulation, delays, uncertainty in decision making and increasing costs that all contribute to making new homes less affordable than anywhere else in Australia.

The results of the CIE research mentioned in the introductory part of this submission showed that in Sydney the '*necessary*' component of time a consent authority takes for a development approval for a greenfield subdivision is 8 months, with a further '*unreasonable delay*' of 8 months, before the approval is issued. For infill development the '*necessary*' component of time a consent authority takes for a development approval for building is 7 months, with a further '*unreasonable delay*' of 9 months before the approval is issued.

### TRANSITIONAL PROVISIONS

Notwithstanding our all of our concerns with the proposed SEPP, HIA would support transitional arrangements to be put in place for the implementation of the SEPP. There is a need for a long implementation timeframe and savings and transitional provisions for these changes to flow through the industry and in particular to not disrupt existing projects in which sites have been acquired for development or are in the planning and design stages of development

It is important to be aware that any planning system changes resulting in increased costs and/or reduced yield in existing planned housing developments may ultimately render projects unviable.



## 5.0 PROPOSED AMENDMENTS TO THE APARTMENT DESIGN GUIDE AND SEPP 65

### INTRODUCTION

HIA has formed a project group made up from members of its Apartment Builders Sub-Committee and Planning Committee to review and provide comments on the proposed amendments to the Apartment Design Guide and SEPP 65. These comments are provided below in the chronological order they appear in the EIE.

### COST IMPACT OF PROPOSED ADG DESIGN CRITERIA

Prior to reviewing these comments, it is important to highlight upfront the significant impact that implementation of the proposed ADG Design Criteria will have on development costs and development viability for the housing industry. All members of HIA's project group have raised this as a serious concern and we are able to quantify this with an actual example from a major apartment developer.

This company has modelled the impact of applying the proposed ADG Design Criteria to a recent approval for a 20 storey mixed use development in the City of Sydney Council area, with details provided below.

In December 2020, the City of Sydney issued a deferred commencement approval for a 20 storey mixed use development with 4 basement levels, parking for 120 cars, ground floor retail, 151 residential apartments and communal rooftop terraces on a brownfield site in inner Sydney.

Information provided by the apartment developer shows that if the same development was redesigned to reflect the proposed ADG Design Criteria there would be a significant impact on development cost and viability as shown in the table below.

Building item impacted using proposed ADG Design Criteria*	Cost Impact of proposed ADG Design Criteria
Net Sellable Area loss	-\$650,037
Installation of ceiling fans	-\$62,700
Transfer required for Ground Floor core to allow for new basement carpark arrangements, increased deep soil requirements, additional basement storage areas and bike storage.	-\$250,000 (estimate)
Extra level for basement	-\$1,000,000
Subtotal	-\$1,962,738

\*Does not include new BASIX requirements, performance glazing, new adaptable dwelling requirements, changes in design due to new solar requirements.

The figures represented above include preliminaries and margin, and are an estimate subject to further detail design investigation. The 'Net Saleable Area' loss and the extra level of basement is a result of the deep soil percentage increase and the reconfiguration of the residential apartment corridor.

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## **TABLE A5 SUMMARY OF PROPOSED CHANGES TO THE APARTMENT DESIGN GUIDE IN RELATION TO URBAN DESIGN AND SITE PLANNING**

### ***Landscape and greening***

Consideration should be given to site dimensions, site ratios and context. Deep soil zones can prevent basements from functioning efficiently on constrained sites as they affect the configuration of basements. Tower forms can also be detrimentally impacted on small or constrained sites as a result of deep soil.

A more practical approach needs to be taken by introducing minimum depths of deep soil zones (volumes) so that basements can still be constructed efficiently, and that there are minimum overhead heights across deep soil landscaped areas so that buildings can be constructed over.

We also note that deep soil may not be possible on some sites where the location and building typology have limited or no space for deep soil on the ground (e.g. central business district, constrained sites, high density areas or in centres).

Increasing deep soil would not be feasible in centres and mixed-use zones particularly with commercial uses on ground floor / podium levels, due to typical requirements to build to the street and sometimes side boundaries and the substantial additional basement parking needed for commercial components of development.

There needs to be separate standards / guidelines for medium to high density residential zones and for centres and mixed-use zones.

The guidelines need to clearly specify that in the planning of large development sites and precincts with new public parks on deep soil, the public park will be included in the deep soil calculation.

HIA supports a pro-rata reduction in the targets if retail, commercial and entrances are located on the ground floor for greater than 85% of the building footprint, but that more information on the method of pro-rating is required.

### ***Building Form***

Capping maximum floor plate sizes above nine storeys to 700m<sup>2</sup> is too small. Also capping at 8 units per floor adds to inefficiencies in building design and constructability, adding to construction costs. Such small maximums do not enable sites to achieve their maximum potential. This is of major concern when land is scarce, particularly at locations where people want to live.

There is a shortage of available land in Sydney, so maximising built form on sites needs to be a priority. Flexibility for 8-12 units per floor should remain for all levels above Level 9 (as currently allowed in the existing ADG) and justifications for more than 8 apartments per core per floor should continue to be an option for developers.

The site context needs to be considered when determining maximum floor plates sizes for example, larger sites with greater maximum building heights should not be subject to the same constraints as a site with lower maximum building heights.

### ***Building Separation***

The proposed minimum building separation distance of 30m between habitable rooms for towers of 25+ storeys is not supported. This is an increase from 24m in the current ADG. This will result in sites yielding a lower number of apartments and therefore not maximising the use of a site. This, as outlined above, is of major concern when land is scarce, particularly at locations where people want to

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live. There is a shortage of available land in Sydney, and maximising built-form on sites needs to be a priority.

#### ***Mixed use development and street activation***

The proposal to allocate 40% of the ground floor space for non-residential use in R3 and R4 zones, and centres is not supported.

Consideration needs to be given to site context and location. This cannot be a blanket requirement across all R3 and R4 zones without consideration on commercial viability of the non-residential space, particularly in R3 and R4 zones that may not be located on active streets or close to commercial hubs that will help support the non-residential spaces. If commerciality is not considered, the building will be left with a longer-term issue of empty non-residential spaces as these businesses are not financially viable.

In addition, the requirement for non-residential spaces needs to be aligned with the council's own policies and requirements.

#### ***Clarify Ground Floor ceiling heights***

The requirement for ground floor non-residential ceiling heights to be a minimum 4.2m floor to floor height is not supported. This proposed height is too high and needs to be reduced. Once you include the tenancy services zones (500mm) and slab thickness for the Level 1 slab (200mm), the floor-to-floor height of the ground floor to first floor will be almost 5.0m.

We suggest reducing to the ground floor non-residential ceiling height to a minimum height of 3.0m. A higher ground floor ceiling height, without considering increasing adjusting maximum building heights, will result in sites losing a whole storey of apartments.

These ceiling heights should only apply to non-residential spaces and not residential apartments built on the Ground Floor. It is almost non-existence for a residential apartment to be converted to a commercial tenancy post-completion, as it is not the highest value use.

#### ***Ground Floor activation***

Consideration of site context needs to be given when requiring all ground floor apartments facing a street to have direct access to that street. This requirement would be unsuitable for sites with large falls across the frontage that may result in a Ground Floor slab being well elevated and would require an extensive network of stairs to comply with this requirement.

#### ***Car parking, bicycle parking and mobility storage***

We are generally supportive of measures to encourage sustainable transport options to reduce the dependence on private cars. However, the proposal for 1 bicycle parking space per bedroom is considered to be excessive and will require significant amounts of additional space in the basements and substantially adding to capital investment costs.

From experience, bicycle storage spaces at the current ADG provisions are never fully utilised, so increasing this will result in more empty and under-utilised spaces in the basement which is wasteful. Bicycle parking numbers should reflect actual take up of bicycles in the population.

HIA members have interpreted the design criteria for the mobility scooter parking to be inside the apartment but this needs clarification. HIA considers that mobility parking should be included in the storage calculation for accessible apartments.

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## **TABLE A6 – SUMMARY OF PROPOSED CHANGES TO THE APARTMENT DESIGN GUIDE IN RELATION TO RESIDENTIAL AMENITY**

### ***Solar access***

HIA supports the proposal to increase the range of hours in which a development may achieve solar access, because of the benefits gained including providing warmth in winter, and indoor natural light quality. Following this we support the investigation of measures to simplify the method of calculating solar access.

We do not support imposing a restriction on the number of east-facing / west-facing single-aspect apartments as apartment aspects are determined by orientation of the site, site ratio and any building design constraints.

It appears to HIA that the only way of increasing solar access requirements and avoiding east-west facing apartments in north-south oriented buildings is with dual aspect units with outlooks to both the north and south, which would be possible only by substantially increasing the number of lifts in buildings and thereby substantially increasing cost of development.

### ***Shading and glare control***

HIA does not agree that the amended ADG should provide guidance on the extent of glazing as this should be left to the apartment designer to determine as this will impact the architectural design of the façade and the overall building appearance.

In addition, making the apartment façade solid from the floor upwards of 1 metre will affect solar access calculations and make it more difficult to achieve solar compliance.

### ***Natural Ventilation***

Increasing the natural cross-ventilation requirements to 70% of units would be difficult and involve substantial increase in building cost and / or a reduction in yield. The existing ADG requirement for 60% of units to have natural cross-ventilation is already a high threshold and can be difficult to achieve.

HIA considers that there are design options available to increase the proportion of apartments with cross flow ventilation, but that the implications of them in terms of cost, market appeal, yield and adaptability would be significant, as follows:

- dual-aspect units, which would be possible only by substantially increasing the number of lifts in buildings and substantially increasing cost of development
- cross-over units (i.e. units one and a half storeys with internal stairs), which do not meet access and adaptable unit standards and have very limited market appeal
- building indents or nooks to create a side-part to units, result in an increased external wall area and subsequent build cost, reducing yield
- clerestory roof windows or roof ventilation elements for top floor units, which prevent use of roof top terraces for common open space
- smaller buildings with far less numbers of units per floor, which increases wall area and build cost, and massively reduces gross floor area and yield, making projects unviable

HIA also supports measures to reduce the demand for air-conditioning and consequently energy consumption. It should be noted that ceiling fans are not always viewed favourably by the market in regard to appearance and the perception of being a safety hazard. Not all Apartment occupants

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would like a ceiling fan and may prefer portable fans. The cost implications of adding a ceiling fan to all habitable rooms with of least 2.7m ceiling heights is also significant.

#### ***Liveable housing targets through universal design***

There is insufficient information provided in this section for HIA to make meaningful comment.

#### ***Apartment size and apartment layout***

HIA supports the no change approach to the current ADG minimum apartment sizes, although the additional design criteria proposed in the proposed amendments to the ADG will result in larger apartments. Sales prices are largely determined by apartment size so an increase in size will result in higher price points for apartments and this will have a detrimental impact on housing affordability.

Apartment builders are already familiar with varying market requirements for different apartment sizes and will offer these apartment types if they believe they will meet buyer demand. Therefore, HIA would argue that it is preferable to let the market decide the appropriate apartment size and layout for a development, rather than impose fixed requirements on every development which may not suit all buyers across all locations.

We are aware that the ADG currently allows for departures from minimum apartment sizes, including smaller apartments, based on merit assessment at the discretion of the consent authority. However, from our experience, we have found that consent authorities do not often depart from the ADG for minimum apartment sizes, and would therefore support the inclusion of additional guidance on how the merit assessment can be applied.

#### ***Local planning considerations***

In addition to the housing policy set out by local governments within their Local Strategic Planning Statements (LSPS) and Local Housing Strategies (LHS), apartment developers also need to respond to market demand. Requirements within the LSPS and LHS therefore need to be flexible enough to respond to changes in market needs and choice.

#### ***Private open space***

Maintaining the total areas for private open space, whilst increasing to the minimum depths of private open space for apartments is generally supported. However, not allowing air-conditioner condenser units and hot water units on balconies will add to the capital investment costs of the building as more complex services solutions will be required. Centralised air-conditioning and hot water systems require more complex billing arrangements adding again to apartment costs. As an alternative, we propose that condenser units should continue to be permitted on balconies and with guidance provided to mitigate their visibility from the street.

If there are any changes made to the design criteria for balconies and wintergardens that affect the calculations of gross floor area, the definition of gross floor area will also need to be amended so that the developer is not penalised.

#### ***Apartment storage***

The proposal to increase external storage for apartments is not supported as it would require larger basement areas which would add to the cost of the development and ultimately impact housing affordability.



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### ***External noise and pollution***

HIA recommends that reference to the Building Code of Australia (BCA) is also needed if new design criteria is added for development adjacent to road and rail corridors. The design criteria should be aligned with BCA requirements to minimise any regulatory inconsistency.

### ***Acoustic separation***

HIA understands that as more people are now working from home there may be opportunities to provide home working spaces in apartments. However, the industry requires further details about what is being proposed. Does 'acoustic separation' mean that bedroom walls are to be acoustically insulated and open studies now to be fully enclosed and is there a requirement for access to natural light. Further detail needs to be provided in this section and as above, the design criteria need to be aligned with the BCA to minimise any regulatory inconsistency.

Adding requirements for acoustic separation will also increase the cost of the development and once again ultimately impact housing affordability.

## **TABLE A7 – SUMMARY OF PROPOSED CHANGES TO THE APARTMENT DESIGN GUIDE IN RELATION TO COMMON SPACES AND VERTICAL CIRCULATION**

### ***Communal open space***

If the intention of the proposed design criteria is to provide covered communal space accessible from the street for the non-residential uses in a mixed-use development, then the non-residential uses should contribute to the maintenance costs of these spaces (by way of strata levies or out-goings). However, the non-residential uses may not want to have access to or financially contribute to these spaces.

The proposed ratio requires a minimum 2.5% of a development's gross floor area for non-residential uses to be allocated to communal open space (to be accessible from the street). This is not financially feasible for smaller projects.

### ***Daylight and Ventilation***

HIA supports the initiative to introduce a new requirement to provide adequate daylight and natural ventilation to all common circulation spaces.

## **TABLE A8 – SUMMARY OF PROPOSED CHANGES TO THE APARTMENT DESIGN GUIDE IN RELATION TO ENVIRONMENTAL PERFORMANCE**

Measures to improve the environmental performance of buildings will increase the capital investment value of the building and therefore the price of the apartments at the point of sale, and likely impact affordability. This includes the energy efficient measures, electric vehicles, heating and cooling infrastructure proposed within Table A8:

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## TABLE A9 - UNIFIED HOUSING DESIGN GUIDE

HIA notes that clause 2 (Table A9) talks about *the intent to extend the consideration of design quality to development types other than residential apartments*, with clause 3 (Definitions) introducing the concept of a *Unified Housing Design Guide* (UHDG). The information provided is minimal but we note that the proposal is to restructure the ADG to enable guidance for other typologies. This appears to be the case implied by the following statement on page A30:

*...it is intended the ADG will be revised over time to combine all housing design guidance into a single design guide to be used with the Housing Diversity SEPP and Design and Place SEPP.*

We request that we are fully consulted on the drafting of the UHDG as this document has the potential to significantly impact the business operations of our members. HIA's volume house builder members have developed a range of housing product specifically to comply with the development standards of code-based development, and have heavily invested in building display homes to demonstrate these products for consumers.

In addition, there are already design guides in place for medium density housing approved using either a development application or complying development pathway. There is no information provided about the future role of these existing design guides alongside a UHDG.

### PROPOSED RELATIONSHIP TO AN URBAN DESIGN GUIDE

In principle, HIA supports the development of an Urban Design Guide (UDG) for the master planning of precincts and larger sites. As discussed in the following section, planning for well-designed built environments at the master planning stage is key to creating future communities, where people will be proud to live.

If developed, it is critical that the UDG is applied flexibly and not as prescriptive rules. As outlined previously in this submission, the idea that the content of legal instruments or guidelines themselves will be applied flexibly and not as strict prescriptive rules could be misplaced. In our members' experience, council development assessment officers frequently treat guidelines as strict rules and this can be culturally entrenched.

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## 6.0 PROPOSED NEW URBAN DESIGN GUIDE

### SERVING THE COMMUNITY

The components of well-designed built environments set out within the EIE are supported by HIA, as follows:

- *creating greener and more walkable streets and public spaces that facilitate sustainable mobility and raise mental and physical health across the local population*
- *integrating networks of public spaces (including streets, open spaces, and community facilities) and green infrastructure for greater social, cultural, and ecological connectivity*
- *developing more resilient built environments that address extreme weather events and climate change with sustainable and regenerative design*
- *delivering a more equitable distribution of housing types and tenures, and opportunities to access everyday living needs, infrastructure, and services throughout cities and towns.*

As outlined above, HIA in principle supports the development of an Urban Design Guide (UDG) for the master planning of precincts and larger sites. However, we request that we are fully consulted on the development of the UDG as this guide has the potential to impact the business operations of our members, and particularly those involved in land development.

The framework presented for the UDG discusses ‘urban grain’ including the proposal to introduce requirements for lot dimensions (depth and width) where *the intent is to facilitate compact urban form and better match subdivision of lots to the housing typologies sought.*

In addition, information on page B12 sets out the proposed design criteria for the UDG including:

- *limiting the amount of single use residential zones within new precincts to less than 50 per cent, and the minimum non-residential ground floor space required in R3 and R4 zones and centres*
- *dwelling lot sizes, including a lot width design criteria that relates to housing typology, and a lot depth design criteria that relates to lot width and rear lane access*
- *front and rear setbacks relating to street type, land use and urban setting*
- *side setbacks, including a mechanism for neighbours to reduce side setbacks to zero by agreement*
- *guidance on how to calculate residential density in R1 to R4 zones to support Consideration 10: Density of the Design and Place SEPP*

The above are all important design criteria that HIA would wish to be consulted on.

To mirror our comments about the application of the ADG and UHDG, it is critical that the UDG is applied flexibly and not as prescriptive rules. As outlined previously in this submission, the idea that the content of legal instruments or guidelines themselves will be applied flexibly and not as strict prescriptive rules by development assessment planners could be misplaced. For example, the last ADG review did not change the practice of guidelines being treated as strict rules.

In our members’ experience, development assessment planners in most if not all cases tend to treat guidelines as strict rules and this can be culturally entrenched. A change in practice will only occur through other means such as education, a change in the culture of development assessment in planning authorities, and/or through an effective court review and precedent process.

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## 7.0 SUSTAINABILITY IN RESIDENTIAL BUILDINGS

### GENERAL COMMENTS

HIA's general comments on environmental performance were introduced in section 2.0 of this submission. However, we understand that there will be focussed industry consultation on the BASIX Tool over the coming months and we request that we are included as part of this.

Our preliminary comments on the sustainability in residential buildings section of the EIE and BASIX changes are provided below:

Overall, there isn't enough detail in the EIE to assess the full impact on BASIX, although we are aware that the BASIX team are working on the detail over the next few months.

There appears to be a general blend of prescriptive versus performance design criteria used in the EIE which doesn't always align well, and this will make the proposed SEPP confusing. The design criteria should be consistent with and align with the National Construction Code (NCC) in performance approach and target setting.

Net-zero is discussed as an eventual target but not well defined.

There is tension in the EIE between the use of the terms - resilience, embodied energy and operational energy. It is not reasonable to assume extremes of each facet can be met. Reasonable balanced targets need to be established that allow for trade-offs between different elements of performance in this (and other) facets of the proposed SEPP. There are already some trade-offs allowed which is good (for example PV), but any trade-offs also need to have reasonable limits set around them.

While more flexibility in the assessment process is also good, it needs to be within limits so that practitioners respect the system.

The assessment processes need to be well understood by all parties (for example, certifiers already struggle with existing BASIX pathway in some instances) so training and upskilling is needed.

Assessment of performance is still lacking - improvements work in theory but build quality is a key factor.

Frequent updates are good if they just improve the calculations and add more technical information as it becomes available, but updates to the BASIX targets should align with NCC 3-year target, together with at least a year's notice given to industry. Also, if the BASIX tool is updated biennially – builds could become non-compliant between date of approval and completion of project.

BASIX targets need to be consistent across local government areas, as we do not want individual councils to be able to set different targets. Established rules for target setting need to be consistent across the state. For efficiency and effectiveness industry requires certainty in the application of BASIX targets.

There is concern there is too much emphasis on planning and pre-construction and virtually nothing on the actual compliance of the installation, for example:

- a. rain water tanks not correctly installed or bridging pieces installed when pumps fail
- b. gaps in insulation
- c. air leakages

If governments and industry checked on compliance of installation there may be more improvement in housing performance.

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## 8.0 CONCLUSIONS

HIA has welcomed the opportunity to comment on the EIE for the proposed Design and Place SEPP but has serious concerns relating to the proposed amendments to the Apartment Design Guide, and the proposed SEPPs wider connections to the NSW Planning System. The EIE is setting the framework for some very significant changes in NSW planning policy and we are concerned that the NSW housing industry will be directly and detrimentally impacted by those changes.

There are serious concerns relating to the revised 'design criteria' in the amended ADG including building form, building separation, landscaping, deep soil requirements, cross-ventilation, solar access, car parking and bicycle parking, resulting in increased development costs and reduced building yields. In addition, it is considered that the more detailed design related reporting requirements for the amended ADG will lead to longer timeframes for supporting document preparation, and development assessment completion times by the consent authority.

Overall the amended ADG will have a negative impact on the housing industry's ability to meet housing targets; and it will also impact on housing affordability for consumers. In the light of this, HIA strongly submits that a regulatory impact assessment needs to be prepared to consider the economic effects on housing affordability, development feasibility, existing housing projects/businesses, and housing supply.

In addition, there are other serious concerns that HIA members have raised, with proposed regulatory changes and new guidelines mentioned in the EIE, but not adequately addressed. These concerns include:

- the alignment of the proposed SEPP with complying development
- the potential overlap of with the Local Character Provision for Local Environmental Plans (LEPs)
- the purpose and detail of the Unified Housing Design Guide
- the lack of detail about changes to the BASIX tool

HIA is also concerned that the new processes and policy guidelines introduced by the proposed SEPP will add further red tape, time delays and costs to an already over-burdened planning system.

In conclusion, HIA is aware that proposed SEPP will have a significant impact on the operation of the housing industry and we therefore request that we continue to be consulted on the development of proposed SEPP over the coming months. In this regard, we understand that the NSW Government is proposing to undertake more detailed engagement with industry, with policy focussed working groups established.

Thank you again for the opportunity to comment on this important piece of planning policy reform and we look forward to hearing about further consultation opportunities.