

28 April 2021

Government Architect NSW  
c/o Department of Planning, Industry, and Environment  
GPO Box 39  
Sydney NSW 2001

*Via online portal*

### **Planning Institute of Australia – Submission to Design and Place SEPP EIE**

Thank you for the opportunity to provide a submission to the Design and Place SEPP Explanation of Intended Effects (EIE). The Planning Institute of Australia (PIA) NSW Division has appreciated the ongoing consultation in the development of this policy approach and valued opportunities early in the process to identify reform priorities in the design policy space.

PIA would like to express our support of the general direction of the proposed SEPP and the role of the Government Architect (GA) in improving the quality of design and place. PIA recently joined with industry colleagues the Australian Institute of Architects (AIA) and the Australian Institute of Landscape Architects (AILA) [in writing to the Minister for Planning and Public Spaces](#) to express our support of the general direction of the SEPP.

PIA is pleased to also take this opportunity to provide detailed comments on the SEPP as expressed in the EIE to help shape the best outcome from this policy. You will find PIA's detailed feedback at **Attachment B**. We hope PIA's submission helps create a policy that acknowledges the role of planners in urban design, can be operationalised through the NSW planning system and is ambitious in its approach to sustainability and resilience.

We would be pleased to expand on our submission via a meeting, which can be arranged by contacting Audrey Marsh, Senior Policy and Campaigns Officer on [REDACTED]

Yours sincerely



Juliet Grant RPIA (Fellow)  
**NSW Division President**

## Attachment A – Summary of Recommendations

No.	EIE Ref.	Recommendation
1.1	pg. 25	Recognise Registered Planners with suitable experience as 'qualified designers' for the purposes of master planning and urban design under the Design and Place SEPP.
2.1	pg. 22 pg. 28	Redraft the matters for consideration and thresholds for precinct-level and significant development-level consideration to better reflect the range of urban design considerations relevant in inner-urban, regional and suburban settings.
2.2	pg. 22 pg. 28	Confirm that precinct-level considerations are intended to apply to industrial, commercial, education, health, tourism and other precincts (for instance whether 1000 people is intended to be an employment or visitor figure) and expand upon matters for consideration to reflect a wider range of land uses than residential-dominated precincts.
2.3	pg. 22	Confirm that precinct-level considerations are intended to apply to State Significant Precincts and that these precincts should serve as best practice scenarios for the application of the Design and Place SEPP.
3.1	pg 38	Clarify how the Design and Place SEPP will interact with local planning controls, particularly where multiple or conflicting design criteria exist.
3.2	pg. 38	Prepare guidance on how local place-based design controls will be respected and enhanced by the Design and Place SEPP.
3.3	pg. 21 pg. 41-42	Develop a set of training and guidance material to assist assessment officers, local planning panels and design panels in applying the Design and Place SEPP to ensure predictability of application across the state. This should include how to consider the SEPP at a strategic planning proposal level and at a detailed state or local assessment level.
3.4	pg. 42	Extend SEPP transition period to twelve months as complex DAs can take this long to prepare.
4.1	App. A	Release a more detailed discussion paper highlighting amendments to the ADG and indicating how these amendments will improve design outcomes prior to proceeding with any changes.
4.2	App. A	Include design guidance for housing typologies proposed under the Housing SEPP.

4.3	App. A	The ADG review should address the implementation of the SEPP in achieving the intent of performance-based outcomes, provide alternative design approaches as examples, develop contextually relevant design criteria, and increase deep soil zones.
4.4	App. B	Consider the application of the Urban Design Guide to all development to give specificity to the broader principles of the Design and Place SEPP.
4.5	App. B	Consider how the Urban Design Guide will be useful in providing design criteria relevant to a range of development types and contexts and guide specific sustainability outcomes.
5.1	App. C	BASIX should be improved by utilising future climate projections, ratcheting up carbon performance metrics and implementing regular review and adaptation.
5.2	App. C	The SEPP should specifically address tree canopy and deep soil zones, low carbon precincts and sustainable transport.

## 1. The Design and Place SEPP must acknowledge the role of planners in urban design and master planning

The EIE proposes to align separate legislative references to ‘qualified designer’ throughout the Environmental Planning and Assessment Regulation 2000, SEPP (Educational Establishments and Child Care Facilities) 2017 (Education SEPP) and NSW Design and Building Practitioners Act 2020. PIA supports the rationalisation of these definitions however, the proposed scope of works requiring a ‘qualified designer’ is set to include the master planning of all precincts and significant development.

This is core business for many of our members and any definition of ‘qualified designer’ which does not recognise the role of suitably experienced planners in master planning will essentially exclude planners from undertaking this work. The EIE states: “The mechanism for other design professionals to be registered and deemed ‘qualified designers’ will be determined during development of the Design and Place SEPP”, however consultation with the Government Architect NSW has indicated planners are not currently proposed to be recognised.

There is no specific certification or professional recognition of urban designers at present. The PIA Policy for the Accreditation of Australian Planning Qualifications requires that the planning curriculum of accredited qualifications must achieve three core competencies (emphasis added):

1. Professional and Ethical Planning Practice
2. Plan making, Land Use Allocation and Management, and **Urban Design**
3. Governance, Planning Law, Plan Implementation and Planning Administration

Urban design is also a stated supporting knowledge area for planning qualifications, requiring the competency: *“Planners take a collaborative role in the production and implementation of urban design plans, whether these are discrete urban design documents or components of other plans, or by providing urban design analyses of others’ plans or actions”*. To ensure this competency, the following performance indicators are applied:

1. *Knowledge of the role of urban design as a discipline in the improvement and management of the public realm and urban spaces and places.*
2. *Capacity to read and understand drawings and plans, including visualisation of the items represented, and to recognise and be able to critique inadequate drawings and representations.*
3. *Capacity to produce basic urban design plans at a level showing understanding of the main components of urban design plan production and implementation.*
4. *Capacity to write policy and draft controls relevant to achievement of urban design outcomes.*

Accordingly, planners holding PIA accredited qualifications have received a detailed urban design education and hold unique skills required in the development of urban designs and master plans. By comparison, urban design education is not a requirement of the National Standard of Competency for Architects nor the Australian Institute of Landscape Architects Accreditation Standards and Procedures Policy.

Registered Planners are Full Members of PIA with five years professional experience who can demonstrate competency in categories experience, which include:

- Plan making, including strategic planning, master planning and structure planning.
- Place-making and urban design.
- GIS / Spatial design including the use of data for city analytics.
- Project management of planning related matters.

Appropriately experienced Registered Planners have a deep understanding of plan making, master planning, structure planning, urban design, spatial design and project management. These are professionals entirely capable of satisfying the requirements of 'qualified designer' for the purposes of master planning under the Design and Place SEPP.

### **Recommendation 1.1**

Recognise Registered Planners with suitable experience as 'qualified designers' for the purposes of master planning and urban design under the Design and Place SEPP.

## **2. The Design and Place SEPP should retain its strategic approach to design but ensure it works at different scales and contexts**

PIA welcomes the precinct-scale approach taken to design outcomes. This is a welcome policy direction which acknowledges that design, amenity and liveability don't end at site boundaries and the community experiences places cohesively. PIA particularly supports mandatory consideration of Country, connectivity, green infrastructure, housing diversity, affordable housing and resilience.

### **Application of matters for consideration to different development contexts**

PIA is concerned however that the precinct-approach outlined in the EIE may not be appropriately scalable. At one end of the spectrum, existing dense urban areas in inner-city areas are unlikely to have many sites available for precinct-level development and regional communities are unlikely to have development typologies to which these matters for consideration would readily apply. The precinct-scale and significant-development scale thresholds, examples and infographics and matters for considerations should be reviewed to ensure they can respond to different development contexts, particularly acknowledging the significant difference between precinct-level development in regional, rural, inner-city and suburban contexts.

### **Recommendation 2.1**

Redraft the matters for consideration and thresholds for precinct-level and significant development-level consideration to better reflect the range of urban design considerations relevant in inner-urban, regional and suburban settings.

### **Application of matters for consideration to different development types**

PIA notes that the standard threshold for precinct-scale considerations is 10 ha or 1000 people. While this may be an appropriate threshold for some residential contexts, it is unclear how such a threshold would apply to commercial or industrial contexts. More broadly, the matters for

consideration appear to reflect predominately residential precinct considerations. Commercial or industrial precincts (if the SEPP is intended to apply to these) would also require consideration of issues such as commuter movements, night-time economies, employment generating land uses and worker amenity. Similarly, even more specialised precincts including education, health and tourism will require specific precinct-level considerations which do not appear to be reflected in current thresholds or matters for consideration.

### **Recommendation 2.2**

Confirm that precinct-level considerations are intended to apply to industrial, commercial, education, health, tourism and other precincts (for instance whether 1000 people is intended to be an employment or visitor figure) and expand upon matters for consideration to reflect a wider range of land uses than residential-dominated precincts.

### **Application of matters for consideration to State Significant Precincts**

PIA notes that significant-development considerations specifically apply to:

- *State significant development (SSD), as declared in the State and Regional Development SEPP, on urban land*
- *Regionally significant development, as declared in the State and Regional Development SEPP, on urban land*
- *State significant infrastructure (SSI) on or adjacent to urban land*

This is a positive step that indicates the need for state-significant development to consider design and place outcomes at a strategic level. It is unclear, however, whether precinct-level considerations will apply to State Significant Precincts. This should be made explicitly clear to demonstrate a broad commitment to the Design and Place SEPP at a state government level. State Significant Precincts should be exemplars of how best to apply the matters for consideration under the Design and Place SEPP.

### **Recommendation 2.3**

Confirm that precinct-level considerations are intended to apply to State Significant Precincts and that these precincts should serve as best practice scenarios for the application of the Design and Place SEPP.

## **3. The Design and Place SEPP must integrate with existing planning systems and not abandon effective local development standards**

While the principles included in the proposed Design and Place SEPP address a range of relevant concerns for design and place, it is unclear how this principles-led approach will integrate with existing planning systems. PIA supports the broad principles of beauty and character, inviting public spaces, productivity and connection, sustainable and green places and resilience, however, holds concerns that unless carefully designed through existing planning mechanisms the SEPP may become ineffectual during planning assessment processes.

### **Interaction with local strategic and place-based design guidance**

PIA supports a place-based approach to planning and design, something which may be difficult to achieve via statewide design regulation. There appears to be a point of tension between the Design and Place SEPP and the large range of environmental planning instruments, development controls plans (DCPs) and other local masterplans.

It is noted that the EIE states: *“It is proposed the new Design and Place SEPP will have no immediate impact on existing LEPs and DCPs. However, when these plans are undergoing five-year review in accordance with statutory requirements it is likely they will be revised where necessary to align with the Design and Place SEPP and for consistency across NSW.”* While PIA supports greater consistency in the form of local environmental plans (LEPs) and DCPs, the intervening period between the introduction of the Design and Place SEPP and the review of LEPs and DCPs will likely reduce certainty for the community and development proponents.

Almost all matters for consideration proposed under the SEPP will be duplicated in local LEPs and DCPs. These place-based controls currently in effect across the state have been carefully crafted to achieve design outcomes in line with community expectations. The creation of state-wide design guidance should enhance rather than override local controls. Proponents and assessment officers will require guidance to understand how to apply both the Design and Place SEPP and local controls, which will take precedence in determining applications and how proponents should develop design outcomes which reflect both.

#### **Recommendation 3.1**

Clarify how the Design and Place SEPP will interact with local planning controls, particularly where multiple or conflicting design criteria exist.

#### **Recommendation 3.2**

Prepare guidance on how local place-based design controls will be respected and enhanced by the Design and Place SEPP.

### **Improving capacity to interpret Design and Place SEPP principles in assessment processes to ensure consistency**

The introduction of a principles-based design approach will require significant upskilling of assessment officers and local planning panels. In order to ensure consistency and predictability for proponents, they need to be able to rely on a consistent interpretation of the principles in the Design and Place SEPP. PIA notes that application of the SEPP where the consent authority is a local or regional planning panel or the Independent Planning Commission (IPC), and for proposals made under Part 5 of the *Environmental Planning and Assessment Act 1979*, will be determined during development of the Design and Place SEPP. This should be determined as a matter of priority to ensure all relevant determination authorities have the understanding and skills necessary to consider the Design and Place SEPP.

It would be a poor outcome if a proponent who operates across multiple local government areas received different feedback from local planning panels, regional planning panels or design panels on how the Design and Place SEPP is applied to development. Assessment officers, planning panels and design panels will require training and guidance material to help them interpret the Design and Place SEPP and ensure that the flexibility offered by a principles-led



approach does not result in a lack of predictability in assessment outcome. Such training and guidance should address prioritisation and interaction of design principles and the determination of satisfactory design outcomes.

The EIE does not state how the SEPP will be considered as part of applications where the consent authority is a local or regional planning panel, IPC and for Part 5 proposals. It is also relatively unclear how the SEPP will be considered in planning proposal assessments or in the determination of SSD applications. Each of these different planning pathways has a unique assessment process and the integration of a SEPP with such a wide policy remit will require a bespoke approach. To facilitate predictable outcomes for proponents, there should be greater and more specific guidance on when consideration of the Design and Place SEPP is required and how proponents can demonstrate it has been satisfied.

### **Recommendation 3.3**

Develop a set of training and guidance material to assist assessment officers, local planning panels and design panels in applying the Design and Place SEPP to ensure predictability of application across the state. This should include how to consider the SEPP at a strategic planning proposal level and at a detailed state or local assessment level.

International experience with principles-based planning systems, for instance the UK National Planning Policy Framework, indicates that a culture of regular appeal to courts can occur to clarify inconsistent interpretations of vague language. Members have raised concerns that the Design and Place SEPP provisions, without adequate specificity in interpretation and application, may be regularly appealed to the Land and Environment Court where proponents and consent authorities have differing views on the interpretation of a principle. It would not be an ideal outcome if the interpretation of the Design and Place SEPP became subject to a series of planning principles set down by the Land and Environment Court.

PIA will seek further opportunities to consult on the potential role of the SEPP to set out alternative or streamlined assessment pathways in precincts covered by an adopted masterplan prepared in conformance with the principles. If reform of assessment pathways (or complying development) is anticipated there should be public scrutiny at an early stage.

### **Transitional provisions**

It can take up to twelve months to prepare a complex development application, as such transitional arrangements should exist for 12 months.

### **Recommendation 3.4**

Extend SEPP transition period to 12 months as complex DAs can take this long to prepare.

## **4. The Apartment Design Guide and Urban Design Guide should be developed as useful tools for planners**

PIA strongly supports the operation of the Apartment Design Guide (ADG) as an important tool for planners, panels and the Land and Environment Court. The proposed guides should improve



the way it is applied and interpreted. PIA also supports the introduction of the Urban Design Guide for all development.

### **Apartment Design Guide**

Any attempts to provide additional flexibility in the application of the ADG should not undermine performance. Before requiring detailed comment on specific amendments proposed to the ADG, more detailed information on the changes should be released to demonstrate how amended criteria will result in enhanced design outcomes.

#### **Recommendation 4.1**

Release a more detailed discussion paper highlighting amendments to the ADG and indicating how these amendments will improve design outcomes prior to proceeding with any changes.

The review of the Apartment Design Guide should also take up opportunities to reflect new housing typologies proposed under the Housing SEPP. A number of these new housing typologies were slated to include design guidance, and this should be included as part of the Design and Place SEPP – particularly student accommodation, boarding houses and co-living.

#### **Recommendation 4.2**

Include design guidance for housing typologies proposed under the Housing SEPP.

The Apartment Design Guide review should seek to rectify identified issues with its implementation from a planning perspective:

- The culture of implementation of the ADG as a prescriptive checklist rather than guidance. It is positive to see the EIE note the need to delineate mandatory metrics to be achieved and those which are for guidance only. The ADG should also include examples of where alternative design approaches may result in better outcomes.
- The ADG should be tested against a range of development scenarios – for instance setback criteria which may suit development lots in greenfield sites in Penrith LGA would likely not be achieved on infill sites in Inner West LGA – and provide contextually relevant design criteria.
- Deep soil zones should be increased to reflect the urgent need for greater urban tree canopy. It is concerning to see the potential winding back of deep soil provisions signalled in the EIE.

#### **Recommendation 4.3**

The ADG review should address the implementation of the SEPP in achieving the intent of performance-based outcomes, provide alternative design approaches as examples, develop contextually relevant design criteria, and increase deep soil zones.

### **Urban Design Guide**

The creation of an Urban Design Guide is seen as a positive step that will assist planners and decision-makers in assessing proposals from an urban design perspective and proponents in understanding how to embed design. The Urban Design Guide could develop practical ‘rules of thumb’ related to urban design and give a practical focus to the high quality guidance already

prepared, for instance *Better Placed*. PIA looks forward to the ability to provide more detailed commentary when additional details regarding the Urban Design Guide is made available.

It is noted that the Urban Design Guide is intended to apply to precinct and significant-development scale development. Given there is likely to be fewer of these developments than 'all other development' it may be useful for the Urban Design Guide to have a broader use beyond design criteria. Where the principles of the Design and Place SEPP may be seen as guiding concepts, the design criteria of the Urban Design Guide could apply to all development and provide a greater level of detail, guidance and certainty for proponents and consent authorities. The Urban Design Guide is seen as a positive step, but its application to only precinct and significant development types means it may not achieve its potential.

#### **Recommendation 4.4**

Consider the application of the Urban Design Guide to all development to give specificity to the broader principles of the Design and Place SEPP.

The Urban Design Guide as currently outlined appears relatively limited in its focus, mostly applicable to greenfield precinct development. The Urban Design Guide would be most useful where it acknowledges the range of contexts in which it may be applied, including inner urban, regional and suburban contexts and a range of development types including residential, commercial, educational, industrial, health and tourism. This would require a range of street sizes, urban design considerations, densities, block sizes and setbacks. Additionally, criteria should be developed which address built form, access, passive design, active transport options and urban vegetation measures to mitigate carbon and adapt to projected changes. The Urban Design Guide should also consider its relationship the Regional Urban Design Guide.

#### **Recommendation 4.5**

Consider how the Urban Design Guide will be useful in providing design criteria relevant to a range of development types and contexts and guide specific sustainability outcomes.

### **5. The Design and Place SEPP should be more ambitious in its sustainability targets and make BASIX fit-for-purpose**

#### **The future of BASIX**

The Design and Place SEPP should be more ambitious and explicit in its sustainability targets. The review of BASIX is a critical opportunity that should not be missed and the EIE in its current form indicates the Design and Place SEPP has some way to go in achieving its full potential. The combination of BASIX and SEPP 65 provides a key opportunity to link site-specific design to achieving environmental outcomes, which should be expanded upon further in new documentation and the revision of the BASIX tool.

BASIX parameters are not fit for purpose under future climate change scenarios (e.g. urban heat) – now is the time to recalibrate and strengthen them. The SEPP should take the opportunity to significantly improve BASIX and advance the tool beyond its original scope, rectify fundamental flaws and raise standards. BASIX must be grounded on future climate projections (e.g. 2050 or 2070 heat projections) to ensure all development approved today is safe for future climates.

Recent evidence<sup>1</sup> supports the following reforms:

- Improve BASIX and NatHERS regulatory tools with reference to future climate data.
- Review BASIX considering the NSW Government's net zero carbon emissions targets and facilitate the ratcheting up of carbon performance metrics to achieve carbon neutrality of all new buildings by 2030.
- Optimise the BASIX tool to recognise the potential of design to achieve improved environmental outcomes (i.e. a passive solar design will minimise overall energy consumption).
- Ensure a monitoring and evaluation protocol that ensures that BASIX is reviewed and adapted every three years.
- Ensure that revenue from BASIX is utilised for tool maintenance and enhancement.

The Design and Place SEPP should seek to strengthen the operation of BASIX and caution against alternative assessment pathways that would reduce the expertise involved in assessment, reduce the quality of outcomes or impose a burden on local government.

#### **Recommendation 5.1**

BASIX should be improved by utilising future climate projections, ratcheting up carbon performance metrics and implementing regular review and adaptation.

#### **Broader sustainability and resilience measures**

More broadly, PIA supports the integration of the following into the Design and Place SEPP:

- The expansion tree canopy and deep soil zones – particularly issues of applicability to the Low Rise Medium Density House Code and Greenfield Housing Code.
- The use of the SEPP's precinct-scale focus to set the framework for low and zero carbon precincts. The SEPP should set out a framework for the rules and definitions to be adopted for low and zero net carbon precincts.
- Increasing attention to the ways in which developments can support sustainable transport, e.g. limiting parking provision and increasing requirements for bicycle parking.

#### **Recommendation 5.2**

The SEPP should specifically address tree canopy and deep soil zones, low carbon precincts and sustainable transport.

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<sup>1</sup> Waverley Council et al (2021) *Future Proofing residential Development to Climate Change Project*