Shelter
NEW SOUTH WALES

April 2021

SUBMISSION

Design and Place SEPP

About Shelter NSW

Shelter NSW (Shelter) is a non-profit organisation that conducts housing research and advocacy on behalf of households on ordinary incomes—those in low- and moderately-paid work, in casual or part-time employment, or getting by on government support payments. We were founded in 1975 as a member-based organisation that today represents a diverse network of other organisations and individuals who share our vision of a sustainable housing system that provides a secure home for all. To advance our vision, we engage our members, experts, and partners to advocate reforms to housing policy that are good for our economy, our society, and our environment.

About our submission

Shelter NSW has reviewed the Explanation of Intended Effects from the perspective of households on ordinary incomes who struggle to afford good quality housing that suits their needs. In a housing system where over 95 per cent of dwellings are provided by the private market, our primary concern is that new development of poor quality will ultimately filter down to these households. That is why we see the Design and Place SEPP as so important: it protects these households when they cannot afford an alternative.

To inform our positions in our submission, we have consulted design experts and architects as well as drawn on our own knowledge of the planning system. It follows our earlier submission to a preceding round of consultation on the Design and Place SEPP's structure in 2020. Our latest submission covers the following matters:

1. Our positive impression and perception of risks of the Design and Place SEPP
2. Our uncertainty on the status of 'matters for consideration'
3. Our critique of changes to core amenity in the Apartment Design Guide
4. Our uncertainty about the role and discretion of Design Review Panels
5. Our support for the proposed Urban Design Guide
6. Our call for input from local governments as opposed to just 'industry'
7. Our request to expedite other guides relevant to the forthcoming Housing SEPP

Thank you for reviewing our submission. To discuss any part of it, please contact our CEO John Engeler on 02 9267 5733 or by email at [redacted]

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The Design and Place SEPP sounds good but there are risks

We recognise and welcome that the Design and Place SEPP is a bold policy initiative that aspires to improve the design quality of our homes, neighbourhoods, and public spaces across New South Wales. The consolidation of existing planning instruments, as well as updates and expansion to multiple design guides, is a positive step towards a simpler, more holistic planning system that shapes development into great places.

The move to a 'principle-based system' marks a significant change for how the planning system regulates new development. Principles define what matters and the five spelled out in the EIE resonate with Shelter's own values. However, they are also abstractions - what matters in determining outcomes is how individuals, organisations, and governments stick to their principles.

The Design and Place SEPP therefore needs to **articulate the need for a principle-based system** and **define what a principle-based system means in practical terms.** One interpretation of a principle-based system is that it could mean ditching minimum standards by giving developers more flexibility in what they propose. Without a clear explanation, organisations such as our own—rightly or wrongly—may perceive the SEPP as a watering down of protections in response to lobbying by the development industry.

We perceive **three major risks of introducing greater flexibility into the planning system**: the risk that poor design quality filters down to households who cannot afford an alternative; the risk that local planners do not know how to assess abstract principles as opposed to numeric criteria with clear objectives; and the risk of corruption in approving developments on the basis of interpretation and discretion.

On design quality, we make the point that **minimum standards first and foremost protect households on ordinary incomes**. It may be the case that a flexible design proposal produces a better outcome in a specific context. However, where it does not, the market will price that product at a rate that reflects its poor amenity. High income households can afford alternatives by paying for something better; those on ordinary incomes cannot.

Greater **flexibility may also make it harder to assess development applications**. Muddying the certainty of compliance could extend assessment times which, while not our primary concern, would seem to conflict with ambitions of efficiency for the planning system often expressed by the NSW Government. Similarly, **flexible assessment creates opportunities for corruption**. The NSW ICAC has previously identified this as a known risk within the planning system.[1]

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[1] Independent Commission Against Corruption (ICAC) (2017) *Anti-Corruption safeguards and the NSW Planning System*, ICAC Sydney

We are unclear on the status of 'matters for consideration'

The proposed Design and Place SEPP gives effect to its five principles of good design by establishing 19 'matters for consideration' for when planners assess development applications. This language mirrors that of section 4.15 of the Environmental Planning and Assessment Act which requires planners to consider the provisions of any relevant planning instruments. Matters for consideration mentioned in the EIE are not currently listed under section 4.15 of the EP&A Act and therefore not things that need to be considered. If these are not already intended to be included, Shelter NSW is of the opinion that they should be.

The legal status that this language affords these design matters is ambiguous in our view; **are 'mandatory matters for consideration' requirements or discretionary options?** If they are discretionary, what legal weight do they have as grounds to require amendments to, or potentially refuse, a development application?

Similarly, we are unclear as to the status of design criteria in the Apartment Design Guide which the Design and Place SEPP emphasises can be 'flexibly applied'. While we appreciate the value of flexibility where it allows a proponent to achieve a better design outcome in a given context, this assumes the proponent is motivated to achieve a better outcome rather than to cut costs and increase yield. If criteria do not act as controls, and matters for consideration are discretionary, **what safeguards are in place to ensure planners can confidently refuse development of poor amenity?**

We have specific comments and suggestions on the ADG

One concern for Shelter is that the design standards in the SEPP are not just treated as matters for consideration, especially when it comes to people's homes and issues of amenity such as space, light, air, privacy and landscaping. Shelter is concerned that treating design standards through the lens of flexibility will ultimately compromise the way they are assessed.

Regardless of its legal status, the EIE proposes several changes to the Apartment Design Guide that address these core levels of amenity. We have sought expert advice on the effect of these changes which we summarise below with further suggestions.

Apartment size, types and layouts

The EIE observes that current layouts in private apartments are generally not big enough to accommodate families and household storage needs. One way the ADG could begin to address the need for more family-friendly apartments is to require a mix of unit sizes and types. As such, the revised guidance to allocate 20 per cent of units as three-bedroom 'family units' is a positive initiative. In metro areas, this requirement may be even greater as more families are living in rental apartments, rather than standalone dwellings.

Flexible units

We strongly urge that more 'flexible' or 'convertible layouts' are introduced and believe there is merit in applying this beyond social and affordable housing – making it an option for other residential properties too. We encourage the use of construction systems like those employed in commercial buildings in residential development - a concept strongly supported by NSW Chapter of the Australian Institute of Architects. Flexible units become futureproof and allow for additions or alterations to better accommodate the household's changing needs. Currently, families with children live in three- or more bedroom apartments - a premium product and not an affordable option for everyone. Such inflexible buildings limit adaptability and prevent any opportunities for modification.

As a bare minimum, Shelter sees great value in encouraging flexibility of bedroom conversions in social housing apartments. Waiting lists for community and public housing in metropolitan areas show a high demand for 3-bedroom dwellings that can't be met through the current supply. Conversely, many regional towns have a significant shortage of 1- and 2-bedroom dwellings, with a preference by developers to build 3- and 4-bedroom dwellings. Shelter is keen to support any requirement which assists in creating more dwelling diversity to address the unmet housing needs of different populations across both regional and urban centres in NSW. Shelter feels that further work is needed to ensure that the SEPP can support this delivery.

Additionally, we would also like to suggest that example layouts for 'flexible units' be added to the ADG. Whether this approach could be used in existing buildings is questionable, as it's hard to retrospectively fit things. But this concept can be easily adopted for future developments with the assistance of design standards and exemplar layouts.

Solar access

The amended ADG proposes expanding the solar access guidelines from the current hourly range of 9am-3pm, presumably to 8am-4pm. This extra hour of sunlight at the beginning and end of the day comes in at a very low angle however and modelling is required to see if it delivers any additional befits. Furthermore, the cumulative impacts of successive development on solar access should be evaluated, as just extending hours may not actually deliver improved solar access outcomes. An explanation of the intended effect of extending the hours should be clearly articulated.

Natural cross-ventilation

The amended ADG proposes that apartments over 10-storeys no longer be deemed to be naturally ventilated. Instead, it will set a new standard that 70% of units across all storeys be naturally cross-ventilated. Smaller floor plans around lift wells and staircases create more cross-ventilated opportunities. We do think the new criterion for ceilings fans to improve airflow within apartments is constructive.

Building separation

We support the proposed increase in building separation from 24m to 30m in buildings above 25m in height. However, we note that this proposed change is coming off a very low base from the existing ADG compared with provisions in the City of Sydney, for example, which set separation at 60m for buildings of this height. Even with a separation of 60m, there are still issues with overshadowing. Nevertheless, it is an improvement which will prove beneficial in areas such as Parramatta where the separation can be as low as 18m. We recommend that the ADG increase proposed separations in line with best practice under local government controls.

Deep soil landscaping

We support the proposed increase to minimum deep soil zones from 7-to-14 per cent on small sites and up from 15-to-25 per cent on large sites. However, we note that some local government areas set requirements that are more than the proposed increase which means that in some cases the ADG it will override the local provision. In these circumstances, we recommend that the local standard prevail as it has been set in response to its context and therefore more likely to achieve a better outcome.

Decoupling Parking and Car share

Under the revised guidance for car parking, it is suggested that ownership of car parking be separated from dwellings. Decoupling car parking and providing spaces for car sharing services like GoGet however ignores longer term solutions to reach a net zero carbon goal. We recommend that the SEPP proposal respond to longer term energy efficiency and sustainability goals like the introduction of electric charging stations which, if connected to solar, would be able to generate 100% renewable energy and produce no greenhouse emissions. Shelter believes that the intended effect of this strategy should be explored further so that it can also deliver opportunities for charging stations linked with new residential developments.

Core amenities needs to be protected with standards

The key or 'core amenities' (like sunlight, daylight, ventilation, natural cross ventilation, ceiling heights, room depth, unit size, room size, private open space and building separation) are essential qualities for all households that help improve the liveability of residential apartment buildings. These core amenities should not be 'replaced by' or 'traded off for' other features. In fact, we suggest, these should be framed and operate as strong numeric minimum standards with clear objectives that can only be varied, if required, with proper justification.

Shelter's work in the *Communities Plus* space has shown that these joint venture arrangements between the development industry and the NSW Land and Housing Corporation (LAHC), which are based on a model of 70% private and 30% public housing mix in the redevelopment of public housing sites, deliver poor amenity outcomes for future housing tenants.

There are often two components to the poor amenity issue. One is that the 30% public housing component has a high proportion of studios or one-bedroom dwellings, and the other is that these units are usually located on the lower levels, which have the lowest level of amenity in terms of noise, sunlight, cross ventilation and so on. As a result, Shelter is concerned that the amenity rule in the SEPP could result in the public housing component being dominated by poor amenity. To mitigate against such an undesirable impact, Shelter NSW suggests that the majority of *Communities Plus* public dwellings fall within the 70% of dwellings in each development that are required to meet amenity standards.

We strongly support the new Urban Design Guide

The EIE proposes that the Design and Place SEPP give effect to a newly established Urban Design Guide which will provide comprehensive guidance and criteria for the design of high-quality urban environments. In doing so, it applies the concept of precinct-scale planning, overriding local governments on individual design matters. We are very supportive of having this new guide so that the planning system can start to look at new development on a neighbourhood, and not just a site-specific, scale. We do not otherwise have comments about the guide itself, as we believe its introduction is significant enough in its own right.

We support but are unclear about Design Review Panels

The EIE proposes that the Design and Place SEPP will introduce independent panels of design experts to advise on development applications. These Design Review Panels will be supported by a new Design Review Guide which will introduce requirements for design skills, evaluation, and review processes. We are unclear as to the role and authority of Design Review Panels. In response, Shelter would like clear guidance on which matters will go to a Design Review Panel and the circumstances under which this may happen.

We note a lack of emphasis on local government feedback

The EIE makes repeated references to the fact that it is responding to industry feedback, creating the impression that the SEPP may override local government design guidelines. This emphasis is important in considering the relationship between local development planning standards such as floor space ratios and building heights, which are major determinants of design outcomes, and any proposed design criteria in the ADG. The role of local governments and how their land-use controls relate to the Design and Place SEPP should be clarified. The optimum way to address this is to ensure that when new LEPs and DCPs are developed, they incorporate the amenity standards in the ADG. However, Shelter feels that local governments should be given time and funding to support this integration.

Section on future guidance for HD-SEPP housing types

The EIE mentions that future guidance will be provided for housing types covered by the HD-SEPP including student housing, co-living, and boarding houses. There is currently no guidance on these forms of housing and they often suffer from both internal and external design issues. Any design guides for these forms of accommodation must be expedited as another two years of developments being built with very low amenity is highly problematic and, in Sydney City LGA alone, there are now over 11,000 student housing units.

Thank You

We thank you for the opportunity to provide input into the EIE of the Design and Place State Environmental Planning Policy. We welcome the opportunity for continued consultation as the discussion evolves, recognising the criticality of 'getting it right' given its significant scope and the extensive reach of the proposed changes.

We hope that our comments provide some valuable insights to assist with your strategic planning work in the housing space. If you wish to discuss our submission in more detail, please contact Shelter NSW's CEO, John Engeler, on [redacted] or by email at [redacted]

Sincerely Yours,

[redacted]

John Engeler

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