



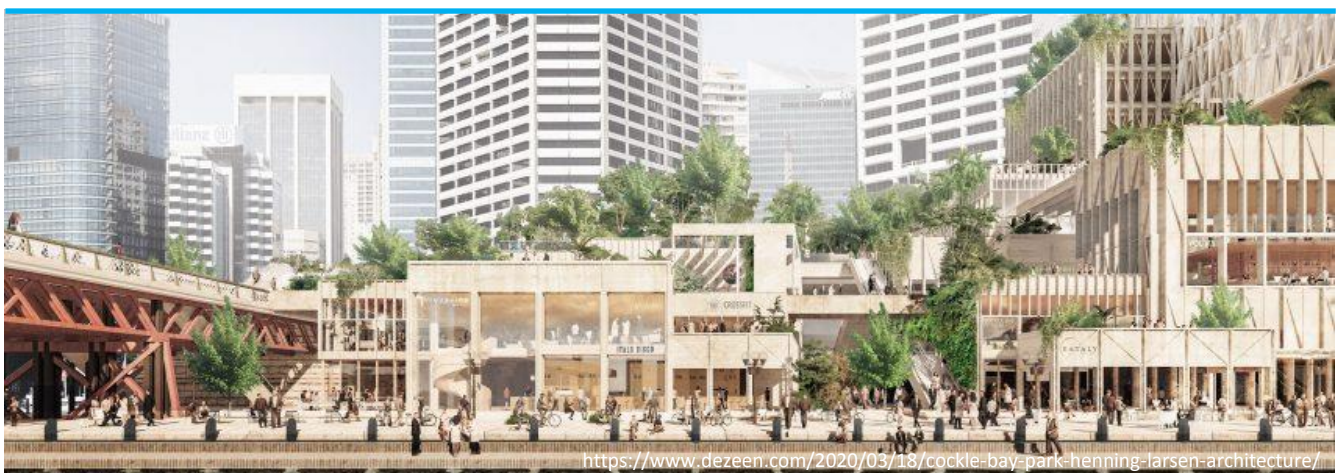
Australian  
Institute of  
Architects

# Design and Place State Environmental Planning Policy – Request for Preliminary Input

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Submission to  
Government Architect NSW

Submission issued  
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NSW Chapter  
Australian Institute of Architects

## SUBMISSION BY

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## PURPOSE

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- This submission is made by the Australian Institute of Architects' NSW Chapter (the Institute) in response to a Request for Preliminary Input by the Government Architect NSW on behalf of the Department of Planning, Industry and Environment (DPIE). I
- Comments have been prepared with the assistance of the NSW Chapter's Built Environment Committee and NSW Policy and Advocacy Manager, Lisa King.
- At the time of this submission, the Chapter President of the Institute is Kathlyn Loseby.
- The State Manager is Kate Concannon.

## INFORMATION

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The Australian Institute of Architects (Institute) is the peak body for the architectural profession in Australia. It is an independent, national member organisation with around 12,000 members across Australia and overseas. More than 3,000 of these are based in NSW.

The Institute exists to advance the interests of members, their professional standards and contemporary practice, and expand and advocate the value of architects and architecture to the sustainable growth of our communities, economy and culture.

The Institute actively works to maintain and improve the quality of our built environment by promoting better, responsible and environmental design.

## Introduction

We understand a new principle-based Design and Place SEPP is being developed to combine both new and existing requirements into a single, comprehensive policy. The Institute appreciates the opportunity provided by the Government Architect NSW (GANSW) to assist in informing the way forward for the Department of Planning, Industry and Environment (DPIE) in this crucial strategy. Accordingly, we are very interested to work with GANSW to ensure high quality outcomes for the built environment that deliver strong public benefit.

Our responses are provided in accordance with **Attachment A – Response Template** as provided by GANSW.

Additionally, we include below generalised feedback on the current system as provided by our Working Group of members selected as representative of architectural practitioners engaging with the current and proposed SEPPs.

## What works

There are many positive aspects evident in the way development is currently assessed, the statutory framework and the engagement and input of design professionals. These include:

- **Legislative support for basic amenity provisions** – SEPP 65 provides the regulatory framework for basic amenity standards in housing and the consideration of context and place.
- **Broad design principles** – SEPP 65 and Seniors SEPP provide broad design principles that are transferable to all development forms and contexts, however, are not always considered in the assessment of other development types by planners as this is currently not required by regulation. The Apartment Design Guide framework allows design review panels to assess each project against the objectives.
- **The Design Review Panel process** – This process works and could be expanded to all development types and new subdivisions and planning proposals (so councils provide an expanded role for their panels already). The keys to successful design review panels are:
  - o Clear terms of reference
  - o Early adoption in the concept stage to establish key relationships and responses to the ‘place’ and immediate context
  - o Retaining consistency in panel members
  - o Quick turn-around in comments
  - o Provide expertise so that alternative designs can be interrogated and tested against principles – to avoid ‘design by numbers’
  - o Mix of specialist skills represented on panels – architecture, landscape, urban design
  - o Briefing by Council disciplinary experts to ensure the panel is informed of context
  - o Reinforcement of need for good design motivates applicants to find skilful design teams and supports architects raising the bar and challenging their clients.
- **Policies and process that support design teams** – When panels and design standards work well, they provide the tools to ‘push back’ on some client’s insistence on yield when this insistence unduly diminishes amenity or other design objectives.
- **We have good design guides** – Despite minor niggles and drafting errors, NSW has an excellent set of design guides that provide demonstrated improvements in design quality. Many aspects within the guides have been hard fought, particularly in respect to amenity: access to daylight and sunlight, natural ventilation and storage. We need to make sure changes to policy retain this appropriate standard.

Understanding the intent behind objectives (through the design guidance) allows architects to challenge the design criteria to provide good amenity appropriate for the context.

## What doesn't work

Often it is not what the controls say, but the manner in which they are applied that is problematic.

- **Strict application of numerical controls** – DCPs and the Apartment Design Guide are not intended to be treated inflexibly (the s4.15(3A) of the Act requires reasonable alternate solutions to be allowed by the consent authority). However, in practice this is rarely the case. A 'tick box' approach is not the answer as the metrics in many guides and DCP do not work well in all contexts.

While a base metric is needed to establish the expectation or standard to which an objective is met, the appropriateness of applying the metric needs to be considered for the particular context. The strict application of controls in many instances can actually lead to poorer amenity or environmental outcomes rather than seeking a balanced approach (eg. removal of summer sun shading to meet minimum requirements for winter solar access).

It is noted that while DCP's are meant to be flexible guidelines, the LEC places greater weight on them when they are consistently applied which favours a more regulatory approach.

- **Design review panel advice often overridden and ignored** – This has been noted in particular where the advice may be contrary to a numerical control.
- **Ignoring context** – Often the same numerical controls are applied to urban areas as those in suburban contexts where there is landscape and large spaces between building. Floor space ratios can be an imperfect tool which raise development expectations on sites which can be constrained by other factors such as flood, heritage, bushfire, threatened species, etc.
- **Small site / fine grain / topography** – Many controls are designed assuming large scale amalgamation and utopian development sites, ignoring the irregular and fine grain land ownership in most of NSW, and challenges of topography.
- **Conflict between design and engineering advice** – Often design advice provided by the panel and initial discussions are derailed by requirements of councils' development engineers late in the assessment process – often resulting in poor design outcomes. Examples include: requiring removalist vehicles and garbage trucks into basements on small sites, OSD tanks in front setback and driveway crossings that are larger than necessary for smaller developments, and applying flood requirements too late in the development assessment process resulting in poor street and public domain outcomes.
- **Too many layers of control and inconsistencies** – In many areas requirements of LEP DCP, ADG overlap and provide competing controls or outcomes. A clear demarcation of the responsibility and of each instrument is needed.

## What could be improved

- **Amenity standards don't apply to all housing** – Apartment buildings are the only form of housing to which amenity controls typically apply. Universal amenity standards should apply to all forms of market housing. In particular boarding houses, student houses and medium density housing.
- **Implement a 'good design' clause in the standard LEP** – This would require Councils to contemplate how good design relates to their context and trickle down into DCP controls and regulatory processes such as Design Review Panels, increased design expertise in Councils and the validation of Design expertise in the Land and Environment Court.
- **Place based vs universal controls** – Universal controls offer the benefit of familiarity, so knowledge and skills become portable between localities, and many amenity aspects – in particular solar access, ventilation, room sizes, privacy and storage – are appropriate for universal application. However, DCPs should be the key tool that shapes and forms the built environment and the importance of the role of the DCP could be better understood. Place-specific controls have the advantage of tailoring design to support local character and optimal place making. While guides can deal broadly with a typology and universal amenity aspects, DCPs need to indicate

what elements of the guides are appropriate given context and character. There needs to be clear guidance as to how DCPs can do this and funding to support this. Additionally, DCP's can be subject to local politics and can be influenced by other drivers which may not lead to good design outcomes.

- **Simplicity and clarity.** Limit the number of documents that need to be referred to in preparing and assessing an application. Provide clarity and simplicity within the guides without weakening the intent. A limited number of well-understood specific metrics help to bring certainty. Avoid duplication, different meanings and overlap between SEPP, LEP DCP and GUIDES.
- **Expertise and Training** – Additional, focussed training for both architects and planners in how to use the existing guides and apply them to the assessment of development applications would deliver significant benefits for built outcomes. There are many Councils in NSW lacking the design expertise which often forms the bridge between planners and architects and is required for more flexible application of controls.

## Structure of new document

It will be important to have the opportunity to comment on the structure of the document being proposed when the context is more fully understood.



## Attachment A – Response Template

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## Design and Place SEPP proposed parts:

### Guidance for strategic planning

The existing planning system is focussed mostly on the assessment of development applications under Part 4.15 of the Act. This is the day to day interaction that most practitioners have with the planning system. It is concerned with seeking consent for a particular development on a single site.

The Institute is a strong supporter of the planning system taking a comprehensive strategic design approach and has been supportive of the changes to the Act that have increased the role of strategic planning.

The existing suite of GANSW's documents are high level and not currently in a format that is appropriate to apply to a project at development application stage. It is important that consideration is given to the issues further along the strategic process to ensure a holistic approach is taken.

A large proportion of the principles and guidance provided in current design guidelines is best placed to inform the transformation of existing neighbourhoods, precincts and urban structure.

We raise for consideration the questions of whether the SEPP could be used to support place-based strategic planning and whether placed-based DCPs should be considered in tandem with the delivery of the 'Standard DCP template', noting that ideally DCPs should be 3D and place-based.

## Part 1: Preliminary

**This part should provide clarity about when and how the SEPP is to be used, including:**

- What parts are to be considered when preparing a local strategy or assessing a planning proposal?
- What parts are to be considered when making a precinct plan or DCP?
- What parts are to be considered when assessing a development application?
- Does it apply to all or only some development types?
- What is the role of design professionals in reviewing or approving all of the above?
- How existing guides noted in Attachment C would be incorporated for statutory consideration. (We note that many guides are too high level for use in development assessment and risk being misused, mis- interpreted or not used, or they are deemed as excessive and unnecessary reporting to demonstrate compliance.)

**This part should establish a clear and universal set of design principles**

- A clear universal set of design principles could be established in the SEPP to apply to all development. The principles in the Apartment Design Guide, Medium Density Design Guide and objectives in Better Placed are a good starting point.

## Part 2: Design Process

**We make the following recommendations for this part:**

- Apartment Design Guide Part 3A is a valuable tool in informing the design process through consideration of site conditions and context. It is recommended this is retained and transferred into the Design and Place SEPP.
- Design process should apply to all developments
- Panels do not need to be constituted by the Minister (this was delegated immediately after the SEPP was made) and panel sizes may vary depending on scale of project
- Reference 'best practice' procedures
- Consider providing greater consistency between different LEPs' design excellence provisions in times

## Part 3: Sustainability and resilience

**BASIX should continue to be utilised, with further development of this tool**

- The Institute supports BASIX as a tool for ensuring minimum performance requirements, however, recognizes that community and professional expectations have evolved since BASIX was implemented and society now demands increased action on climate change.
- There is a need for an aligned planning pathway (to complement voluntary actions on individual or best practice projects) that articulates how targets will increase in future years to achieve Net Zero. Minimising disruption and building industry acceptance requires lead times so that changes to minimum standards can be incorporated in feasibilities for future projects.

- BASIX provides an easy to use interface that allows flexibility in how the targets are to be achieved.
- BASIX was originally designed to incorporate additional targets – Landscape, Transport, Materials we would encourage this development together with Energy, Water and Waste.
- How do sustainability objectives interact with other objectives (eg optimising solar access for winter passive heating may be counter to built form defining street edges, a compact thermal envelope may not address architectural articulation requirements, achieving a low energy building may be difficult to achieve with heritage buildings)?
- What is appropriate to consider for different scale projects?

## Part 4: Context and place

### Comments and recommendations for this part are as follows:

- There are potentially multiple meanings of terms – such as context, place and locality – that require clarification in order for those using the instrument to address questions such as how a new development fits within the existing context and the intended outcome for a place, or how to define and create a locality.
- The Character and Place guidelines begin to provide a framework for consistent and detailed analysis of place.
- Different scales of development need different levels of analysis and will contribute to and be influenced by place differently.
- This part should explain what needs to be considered in the assessment of a development application, in what format, and what role these inclusions are to play in determining an application.
- What is the relationship with the local strategic planning statement?

## Part 5: Urban Structure

- The urban structure should be determined by a DCP prior to the development application being submitted. This section should really contain guidance to be considered when creating an LEP, DCP or assessing a planning proposal.

## Part 6: Urban Grain

- In many instances it is the role of the DCP to define the urban grain at the street and block level and how future development will integrate or transform the existing patterns.
- This section could be combined with urban structure.

## Part 7: Built form and spaces

### Comments and recommendations for this part are as follows:

- This section would be operative at the development application stage and would replicate Part 4 of SEPP 65 in that it requires the consent authority to consider the design principles and any referenced guideline.
- Referenced guidelines need to be tailored for the purpose of development assessment. They should have clear objectives that need to be met - the design criteria (or performance criteria) .
- Guidance should be provided that explains the objectives, how the objectives can be met, and how to prepare alternate solutions (alternatives to meeting any metrics or numerical controls), which would be reviewed by the design review panel.
- Guidance provided here should not overlap with other considerations – eg. DCP placed-based controls – however could resolve hierarchy for consideration.

## Timing

As you are aware it is a difficult time in the industry, and aside from the disruptions caused by COVID-19 there is already significant regulatory change underway in the building industry. We recognise the benefits and aspirations of the Design and Place SEPP, but also recognise that getting it right is both important if we want to see progressive change and a positive direction for place-based outcomes.

We would recommend a staged approach to implementation that gives all stakeholders time to properly research and develop each section of the SEPP to avoid further uncertainty. Providing long implementation periods will assist – the time from acquisition to obtaining consent could be in excess of two yrs.

An achievable first stage could include:

- Design principles to be considered in the assessment of all development applications (certain development types such as single dwellings, agriculture etc should be excluded)
- Design review panels for all development over a certain value or scale, and to review development control plans. It is critical to ensure panel members possess a high level of relevant skills.
- Require pre-DA panels at early conceptual stage and give weight to design review panel advice – particularly where reviewing an alternative to complying with metrics
- Adopt the existing Apartment Design Guide, and Medium Density Design Guide, Design Guide for Schools, Child Care Guidelines. Ensure the SEPP requires consideration only of the objectives. Over time, amend and expand existing guides in a consistent framework to cover all development types. Guidance can assist the assessment of applications in different contexts.

We thank GANSW for the opportunity to provide preliminary input into the Design and Place State Environmental Planning Policy. We welcome the opportunity for continued consultation as the discussion evolves and we offer the Institute's support in assisting GANSW and DPIE to achieve a high quality, place-based framework for delivering quality built environment outcomes for all.