

Minister Anthony Roberts,
NSW Department of Planning Industry and Environment
Locked Bag 5022,
Parramatta NSW 2124

28th February 2022

Re Draft Design & Place State Environment Planning Policy Submission (Amended comments on Urban Design Objectives 3 and 15)

Dear Minister Roberts,

Thank you for the opportunity to respond to the Draft Design & Place State Environment Planning Policy (DP SEPP). We have reviewed all the documents and have a number of concerns, or areas for improvement.

Friends of the Ku-ring-gai Environment (FOKE) is a community based organisation aimed at protecting and conserving the natural and built heritage of our area.

FOKE supports the intent of each of the 5 principles underpinning the DP SEPP.

1. Deliver beauty and amenity to create a sense of belonging, through improved overall design and comfortable, inclusive and healthy places
2. Deliver inviting public spaces and enhanced public life, through addressing culture, character and heritage
3. Promote productive and connected places through sustainable transport and walkability, supporting vibrant and affordable neighbourhoods
4. Design sustainable and greener places for the wellbeing of people and the environment through inclusion of green infrastructure and resource efficiency and emissions reduction.
5. Deliver resilient and diverse places that are adaptable to climate change and optimal and diverse land use.

The areas we particularly support are:

- The requirement for a Design Verification Statement within the Apartment Design Guide (ADG) and for mid to large scale urban developments under the Urban Design Guide (UDG)
- The experience and qualification requirements of the persons preparing the Design Verification Statement for the Review Panel
- The focus on sustainability and the updated Basix requirements for all developments. Especially the inclusion of green spaces, and increased tree canopy to mitigate the heat island effect in existing and future residential and non-residential developments.

However, we have serious concerns regarding the ability of the DP SEPP and the associated Policy document to meet these objectives without amendment.

Key areas within the DP SEPP that require improvement are:

Increased Density and LEP override

We strongly object to Objective 3 which states “Compact and diverse neighbourhoods connect to good amenity”. There is no support for the statements that achieving a minimum residential density in itself will guarantee a vibrant urban area or high amenity.

Objective 3 effectively ignores current LEPs, environmental, heritage considerations and will impose a blanket density over the entire municipality that will leave extinguish any individual characteristics.

We refer to the Landcom Density Guide which states that Residential density can be measured in five ways: *site, net, gross, urban and metropolitan*. It needs to be better defined in the UDG.

We also strongly object to Objective 15 of the Urban Design Guide. This recommendation to allow apartment buildings in the same block as detached houses, overriding the local Council zoning plans will destroy the integrity of established suburbs and LGAs, such as Ku-ring-gai. R4 High Density and R3 Medium Density should not be allowed within R2 Low Density Residential on lots over 1ha in metropolitan and regional urban areas. This applies to whether they are higher density greenfield areas or consolidated lots in established suburbs.

We also object to the recommendation within Objective 15 to override any current zoning and reduce detached dwellings to only 30% in areas where the number of dwellings per hectare is currently 15 dwellings or greater.

Again, this is an assault on the current character of existing suburbs and puts increased density as the key aim of this Policy. It is apparent this policy is not about better design and a quality sense of place.

This objective totally contradicts ALL of the 5 principles of this SEPP, and is in conflict with Objectives 16 and 17 of the Urban Design Guide and needs to be removed.

The UDG is much too general and the outcome of Objectives 3 and 15 will be to blanket areas with a mixture of building heights and site coverage without any guarantee of retaining any distinguishing character between suburbs and will fail in delivering good design or vibrant neighbourhoods.

Recommendation 1: UDG OBJECTIVES 3 AND 15 MUST BE REMOVED FROM THE URBAN DESIGN GUIDE

Resilience and Sustainability

Without a strengthening of the minimum requirements to meet these ambitious climate change mitigation reforms, any improvement above current levels will not be met.

The continued NSW Planning Policy of allowing emission reduction targets to be treated as 'matters for consideration' rather than enforceable will not lead to any significant improvement over and above the current environmentally irresponsible approach of many developers.

The SEPP documents state that there are currently no minimum performance standards and verification methods for energy and water for new non-residential projects. This must be addressed as a matter of priority in line with the application of the DP SEPP.

Recommendation 2: Embed minimum emission reduction, water use, thermal comfort and climate change mitigation targets in the DP SEPP for all new and updated developments, both residential and non-residential, in any updated BASIX requirement. Usage of words such as 'preference' or 'consider' to be replaced by 'include' and 'action'.

The principles outlined in the Design and Place SEPP Explanation of Intended Effects should be translated into mandatory requirements and standards in an expanded regulatory framework under BASIX.

Community Engagement

'The heart of the document is a Place-Based approach to design that 'requires understanding the physical, environmental, social and cultural attributes of a location.' (Page 7 UDG)

However, The SEPP sidelines input from councils and community engagement at critical stages of the process.

The community is a key stakeholder in the determinant of place. Site analysis and context are essential, but so is the social and cultural history of a place, what the community values and how it interacts with the area.

'Place is the interdependent relationship of people and their environment, made unique by local conditions.

The successful design, planning, development and management of place is a sustained and complex collaboration between stakeholders, including government, developers, built environment and landscape professionals and the community.

A vital role for the urban designer is to establish a common understanding of a place with these many stakeholders to help shape the desired future. Great places recognise local characteristics and the qualities people value.' (DP SEPP UDG)

In the Design Process in Practice (Page 88 UDG), the community is to be consulted in the Pre-design and the Design Preparation stage, but not then re-engaged as the process continues. References to Stakeholders at various stages do not specifically include the community. The references to community consultation are always cited as separate to stakeholders in the Process phases.

The community's objectives, contribution and concerns need to be included as part of each stage in the development process. How can one say that the community has benefited if the end result has been irrevocably changed during the various stages of stakeholder engagement that excludes the community?

Even more startlingly, the ADG lacks any requirement for community engagement in the site analysis or design process, even though the ADG covers a range of publicly accessible communal space objectives and large-scale developments. The site analysis is predominantly based on physical characteristics and does not include the social and cultural history of the area or how the neighbourhood interacts with the target area.

A process that requires the community engagement to assess the linkages to, and interaction with, the neighbourhood environment as part of its design should be mandatory.

Recommendation 3: For a 'place-based' approach, the community needs to be at the heart of any design and development process. The community must be core to the engagement process and needs to be included in the steps to progress a project from design to development, whether residential or not. The DP SEPP should add additional community consultation in the requirements for the UDG and include community consultation as part of the ADG.

Heritage Protection

Objective 16 in the UDG highlights the guidance to preserve our cultural heritage places.

- To adaptively reuse heritage buildings where appropriate
- To consider historical street patterns and reinstate where possible
- To protect solar access to places of heritage and cultural significance
- Provide positive transitions and interfaces to areas of heritage with appropriate setbacks.
- Respect and integrate historic lot layouts, street patterns, streetscapes and landscapes into the design.

In areas with high levels of built heritage, such as Ku-ring-gai, with both heritage items and heritage conservation areas, it is essential that the Design Review Panel incorporates experts with the skills to protect, conserve and respect the heritage of an area.

The cultural heritage of an area needs to be elevated into the 'place-based' approach. The documents highlight the need to understand Aboriginal cultural history, but built European Heritage items and Heritage Conservation Areas need to be more fully addressed in the analysis and approvals for a Design Verification Statement.

Recommendation 4: In areas of high levels of built heritage it is essential that at least one member of the Design Review Panel has accreditation, skills and experience in heritage conservation at all stages of the review.

Heritage is an essential, and irreplaceable, character element in a number of suburbs and towns. It is essential that development is not allowed to isolate pockets for development that will impact on the character of the heritage district.

Recommendation 5: Add to the Design Verification objectives across the UDG and ADG that the integrity of the greater area encompassing a number of and/or close proximity to Heritage Conservation Areas, Heritage items, or heritage cultural landscapes are preserved as a larger cultural entity without intrusive or new development 'cherry-picking' sites within the larger heritage area.

Ecology and Greener spaces

Objective 4 of the UDG aims to strengthen the protection of ecological values. To date, irresponsible development has damaged ecologically sensitive communities and habitats, increasing the number of animals and plants on NSW's threatened and endangered reports.

The local community which has often raised the issues of the impact of development and particularly the cumulative impacts on these areas of ecological value have most often been ignored. This has been to the detriment of our natural environment and its resilience.

The SEPP allows loss of existing tree canopy to be offset by green walls or rooves or small trees. This is inconsistent with environmental sustainability.

The retention of existing high quality tree canopy is essential to a strong local ecology. Open space targets should be mandatory and not offset by weak alternatives.

Recommendation 6: The DP SEPP should ensure that as part of any site analysis in areas of high ecological value, local expertise and consultation with community groups supporting the local ecology are included as mandatory.

Recommendation 7: Tree loss should not be negotiable except with replacement of "like for like". The retention of mature trees must be mandatory. A loss of mature trees in any development must be limited to 5%.

Recommendation 8: Also under Objective 4, it is essential to add to the Guidance to 'Locate density away from bushfire prone areas where access and evacuation remain an issue. Specifically minimise density near National Parks and Reserves within Sydney.'

The SEPP does not specifically address fire management and density development which is a major omission in NSW urban areas.

Apartment Design Guide

Having compared the Explanation of Intended Effects (EIE) with that of the ADG, we are disappointed to note the number of areas where the recommendations within the EIE have been reduced or omitted in this final Draft ADG.

Recommendation 9: These are areas critical to the objectives of the DP SEPP, and should be reviewed again for inclusion. They go to the heart of the Place Based Principle underpinning this SEPP.

These are:

- **Building Separation:** The separation for buildings with 25+ storeys to increase to between 24 and 30 metres has been ignored. The ADG Guidance states that setting back higher levels of buildings will improve solar access and bulk among other benefits.
- **Building Form:** A recommended maximum tower floorplate of 700 m² has been ignored, though more slender towers are proven to provide better air circulation and use of common grounds.
- **Solar Access:** Recommendation of extended time for solar access to apartments to increase from 2 hours in midwinter ignored. When the efficient use of natural resources and reducing emissions is a core objective of this SEPP, this change is obviously developer driven rather than targeting any reduction in energy usage.
- **Natural cross ventilation:** Require ceiling fans for habitable rooms with 2.7m ceilings. Plus more kitchen and bathrooms with windows. EIE recommendations have been ignored in the latest draft, though the DP SEPP stresses the improvements in sustainable living incorporated in its objectives. These are missed opportunities.
- **Acoustic issues raised in the EIE:** Improvements in external noise and pollution on busy roads, to use latest glass/glazing technology. Acoustic privacy and separation for working from home or study areas. Both issues now included only as 'to consider' rather than as a requirement as intended.
- **Wheelchair access in common areas:** EIE recommendation for all apartment buildings to allow appropriate width of common areas to enable enough turning room for wheelchairs has been ignored.

Essential Additional Recommendations:

These are two areas that have not been clearly outlined in any of the documents and are essential to meeting the DP SEPP objectives and building community trust in the planning system.

Recommendation 10: The Design Review Panel and the preparation of the Design Verification Statement to accompany a Development Application should NOT include any persons or company associated with the proponent of the Development. **The Design Review Panel must be rigorously independent of any Development applicant.**

Recommendation 11: All State Significant development over which the Minister has discretion, must also comply with the rigour of the UDG and ADG. In essence it must adhere to the DP SEPP design principles and considerations, be considered by an independent design review panel, and meet the full requirements of a Design Verification Statement.

Conclusion

Though the aims of the Design and Place SEPP appear to be well-meaning, we cannot support it in its current format as it is obvious that its primary objective is higher density throughout metropolitan areas. All other objectives now conflict with this. Only with the removal of Objective 15 of the Urban Design Guide and its associated higher density objectives, will FOKE be able to support a SEPP that better respects the principles of place based design without the overarching emphasis on higher density.

A concern is that without mandated minimum standards, especially with regard to apartments, developers will be free to depart from the provisions and the intended objectives will not be achieved. Community confidence in the planning system will be further eroded.

Offsets, flexibility and loss of prescriptive controls leave the development industry free to circumvent any requirements. Non-discretionary standards should be set to give certainty to the community and to assure the intended principles of the SEPP are achieved.

The essence of the place-based approach requires collaboration with the industry but equally with the community as key stakeholders. Compliance and enforcement are also required to meet an objective of quality design and delivery to promote a city that supports and enhances a 'mosaic of different places'.

Our recommendations are aimed at improving the DP SEPP to meet these objectives.

We look forward to your response.

Yours sincerely,

Kathy Cowley
PRESIDENT

cc Mayor and Councillors
cc The Hon Jonathan O'Dea MP Member for Davidson
cc The Hon Alister Henskens SC MP Member for Ku-ring-gai
cc The Hon Paul Fletcher MP Member for Bradfield