



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: EP&D:JvdPlb280222

28 February 2022

Design and Place SEPP
Department of Planning, Industry and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Dear Sir/Madam,

Design and Place SEPP

The Law Society appreciates the opportunity to comment on the draft *State Environmental Planning Policy (Design and Place) 2021* (DP SEPP) and supporting guides. The Law Society's Environmental Planning and Development Committee contributed to this submission.

We welcome the Department's consultation process and the exhibition of the draft SEPP, as well as the Explanation of Intended Effect which preceded it. We support the principles-based approach and the inclusion of resource efficiency and emissions reduction as a supporting consideration for one of the five design principles.

We also welcome and support the aim of the DP SEPP to recognise the importance of Country to Aboriginal people and to incorporate local Aboriginal knowledge and culture into new developments as a way of responding to Country. We note that for State significant development over 1 hectare, the design verification statement for master plans will need to verify how Country has informed the design, in specific ways that address some of the current challenges to incorporating living culture – the level of engagement, meaningful action, and protection of intellectual property.

Our comments on some of the sections of the policy package appear below.

Section 12 Design principles and design considerations

Section 12(1)(a) of the DP SEPP states that one of the principles for design in NSW is to deliver beauty, amenity and a sense of belonging. Beauty is highly subjective and if the design principles in section 12 are to be read in light of section 13, it could be interpreted that a consent authority would need to be satisfied that the design in respect to the development delivers beauty. In the context of an appeal, it may be difficult for a Court to make a finding as to whether the design delivers beauty as expert opinions may simply differ in this respect.

The inclusion of the "design considerations" term in section 12(2) is confusing, as it does not directly refer to the actual considerations for the consent authority (termed "requirements" in

section 13(3)) in sections 14-23. The “design considerations” are included in the headings of sections 14-23 but they do not otherwise play a role. This structure could be simplified by removing section 12(2) and the term “design considerations”. Instead, sections 14-23 could be consolidated and linked directly to each design principle in section 12(1). This would reduce a three-step interpretation process to a two-step interpretation process, which will be simpler for planners, applicants and consent authorities

Section 13 Consideration of design principles and design considerations by consent authority

The DP SEPP contains stronger wording than previously, which may lead to less flexibility for consent authorities when considering the design principles. Under the DP SEPP, the consent authority will need to be “satisfied” that the development is “consistent with” the design principles. Previously the wording used was “adequate with regard to” and “take into consideration”. A consent authority will now need to undertake a meticulous review of each of the words in the design principles to ensure that they have considered and are satisfied that the development is consistent.

Section 14 Design consideration—overall design quality

We suggest that the term “overall” in section 14 is vague and may introduce an element of uncertainty for consent authorities.

Section 17 Design consideration—public spaces and public life

Section 17(c) of the DP SEPP requires that the consent authority be satisfied that the development does not result in an adverse impact on, or a net loss of, public open space. It may be difficult for the consent authority to be satisfied as to this requirement, as any minor impact could potentially have an adverse impact, such as minor overshadowing. A qualification may be required such as there be no “unreasonable” adverse impact on public open space so that the test is stricter and clearer for consent authorities when considering the impact on public open space.

Section 30 Objectives of the Apartment design Guide (ADG)

We understand that section 30(3)(b) is intended to remove the practice of looking at how the ADG has been applied to nearby developments. However, this isn’t initially clear in the drafting of the clause.

Environmental Planning and Assessment (Design Principles and Considerations) Direction 2022 (Section 1.9 Direction)

Clause 5(a) of the Direction requires a planning authority to ensure that a planning proposal takes into account and is consistent with the principle and design considerations. The level of detail required appears to be similar to that which is required for a development application. This may lead to higher upfront costs and delays when preparing planning proposals due to the level of detail required.

Climate change

Finally, we suggest that a definition of ‘climate change’ would be useful, although we concede that the definition should probably be included in the *Environmental Planning and Assessment Act 1979*, rather than in subordinate legislation.

We appreciate the opportunity to participate in the reform process. If you have any questions about this submission, please contact Liza Booth, Principal Policy Lawyer, at liza.booth@lawsociety.com.au or on (02) 9926 0202.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Joanne van der Plaat', with a long horizontal stroke extending from the end of the name.

Joanne van der Plaat
President