

LGNSW Submission to NSW Department of Planning, Industry and Environment on the Draft local character clause and overlay

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1. Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to make a submission on the draft local character clause and overlay.

This submission was endorsed by the LGNSW Board in February 2021.

2. Background

The Department of Planning, Industry and Environment (DPIE) is proposing to introduce a local character overlay and draft local character clause that will allow councils to insert a reference to local character in their Local Environmental Plan (LEP) via a Local Character Statement and map.

The proposed provisions are intended to elevate consideration of local character in the planning system by giving statutory weight to local character in decision-making.

The **Explanation of Intended Effects (EIE)** notes that the objectives of the proposed provision are to:

“provide a consistent way for councils to elevate local character into their local environmental plans

empower development controls within the DCP for a proposed development within the character area

be mandatory for councils seeking to exclude limited local character areas from the Low Rise Housing Diversity Code”.

The provisions build on guidance for planning for local character provided in the January 2018 ***Planning Circular PS18-00 respecting and enhancing local character in the planning system***, and the ***Local Character and Place Guideline*** which was published by DPIE in February 2019.

3. LGNSW Position

LGNSW supports provisions that allow for councils to plan for their community. This is consistent with our policy platform which advocates for a planning system that ensures the voice of local communities is heard. LGNSW therefore welcomes the general intent to give statutory weight to the consideration of local character by enabling local character provisions to be included in the Standard Instrument LEP.

Councils and their communities have been concerned for some time about the impact of code-based development on local character and the need for strategic plans and processes that help to maintain, enhance and cultivate the unique character and identity of places.

LGNSW acknowledges that the approach outlined in the EIE is an important step towards achieving strategic plans and processes that respond to this concern. However, having consulted with councils, we do have some concerns. These are outlined below.

Expanding exemptions to additional complying development codes

Councils support the provision for seeking exemption from the Low Rise Housing Diversity Code (LRHDC), however councils have also advised that exemptions from other codes, in particular the General Housing Code, will also be important to achieving and implementing local character statements in certain areas.

One of the impacts of the General Housing Code is the loss of tree canopy. Under this Code, councils observe that general practice is the complete removal of existing trees which not only has a significant impact on local character but also undermines other important state and local objectives. As awareness, concern and evidence about the urban heat island effect has developed, local and state government objectives to retain tree canopy and provide for additional tree canopy are increasingly important for preserving and improving health and amenity.

Extending exemptions to other complying development codes is needed to allow councils to develop overlays that address the incidences where broad-based provisions in the Codes SEPP will undermine the outcomes set out in local character statements.

Recommendation 1

LGNSW recommends that the provisions allowing councils to seek exemption from the LRHDC be expanded to other complying development codes where it can be demonstrated that the application of the codes will undermine local character areas.

Lead times for operationalising exemptions to the LRHDC

Councils understand the importance of demonstrating the need for exemptions, but the process proposed, including requirements for additional and detailed analysis and further studies such as urban design studies and a planning proposal, will take considerable resources and time.

The process proposed appears to be at odds with broader reforms to streamline the planning system. There is no indication in the EIE of timeframes for consideration of exemptions or any explicit commitment to expediting planning proposals that councils develop.

Critically, as the Codes SEPP is already in place and the LRHDC is now operational, there is considerable potential for development that undermines local character to occur in the intervening period, while councils are doing the strategic planning work for their local character overlays and then await approval through DPIE's planning proposal process. LGNSW encourages further dialogue with councils to consider suitable mechanisms to address this concern. For example, in areas which councils have identified for potential local character

overlays and work is underway, consideration should be given to having measures to forestall commencement of development that would be inconsistent with a local character clause.

Recommendation 2

LGNSW requests that DPIE:

- work with councils to determine how to address the immediate impact of the Codes SEPP on local character while planning proposals are being developed,
- commit to clear timeframes for consideration of exemptions and assessment of planning proposals; and
- further consider opportunities to streamline the process.

Relationship between this policy and the proposed Design and Place SEPP

LGNSW understands that DPIE is engaging with stakeholders to develop a Design and Place SEPP. As it is likely this SEPP will also consider provisions that impact on local character it is important that there is alignment between the proposed process for local character overlays and the Design and Place SEPP.

Changes to existing or new policies that require councils to redo strategic work, particularly when this has involved extensive community consultation, is inefficient and costly for councils and impedes progress towards implementing the regional and local planning outcomes we are seeking to achieve.

Recommendation 3

LGNSW recommends that DPIE ensure there is alignment between the proposed local character provisions and the final Design and Place SEPP to ensure the SEPP does not undermine the work councils undertake to develop and implement local character statements in the interim.

4. Conclusion

LGNSW welcomes the emphasis being placed on local character as a key part of the strategic planning process for all areas across Greater Sydney and NSW. Local government and their communities are central to developing an effective framework for planning that respects the unique characteristics of places and enhances local character. LGNSW welcomes the proposed local character overlays and recommends considering a measured approach to expand these to other complying development codes. LGNSW requests ongoing dialogue between DPIE and councils to further refine approval processes so as to ensure local character objectives can be achieved in a timely manner. Thank you for the opportunity to provide feedback to the exhibition of the local character clause and overlay.

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To discuss this submission further, please contact LGNSW Strategy Manager - Planning, Jane Partridge on 02 9242 4093 or at jane.partridge@lgnsw.org.au.