

Submission on *Design and Place SEPP* *Explanation of Intended Effect (EIE)*

April 2021

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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 to the Department of Planning, Industry and Environment (DPIE) on the Explanation of Intended Effect (EIE) for the proposed Design and Place State Environmental Planning Policy (SEPP). LGNSW has been consulted and involved in workshops run by the Government Architect NSW (GANSW) to inform its development of a Design and Place SEPP.

The submission is informed by LGNSW's Policy Platform, Annual Conference Resolutions, and our engagement with members on planning and related issues.

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

2. Background

DPIE is exhibiting an EIE for a proposed new Design and Place SEPP that aims to:

- Give effect to the objects in s.1.3 of the *Environmental Planning & Assessment Act, 1979* (EP&A Act) in relation to:
 - facilitating ecologically sustainable development (s. 1.3b)
 - protecting the environment (s. 1.3e)
 - promoting the sustainable management of built and cultural heritage (including Aboriginal cultural heritage) (s. 1.3f)
 - promoting good design and amenity of the built environment (s. 1.3g)
 - promoting the proper construction and maintenance of buildings (s. 1.3h).
- Start with Country as a foundation for place-based design and planning.
- Respond to the relevant Government priorities:
 - Premier's Priorities for a Better Environment (Greener Public Spaces and Greening our City)
 - Net Zero Plan Stage 1:2020-2030
 - Better Placed – An integrated design policy for the built environment of NSW.
- Deliver healthy and prosperous places that support the well-being of people, community and Country through integrating good design process into planning and development to achieve the 5 design and place principles.
- Enable the delivery of quality design, integrated outcomes and innovation for people and places in NSW.

- Create a consistent set of principles, considerations and guidance for the design of the NSW built environment.

The new SEPP proposes to introduce a principles-based planning system focussed around “achieving a desired outcome through a reasoned and considered approach”. It is aimed at moving away from a system governed entirely by prescriptive controls and proposes that the principles will be given effect through matters for consideration and application requirements.

The proposed guiding principles are:

1. **Design places with beauty and character** that people feel proud to belong to.
2. **Design inviting public spaces** to support engaged communities.
3. **Design productive and connected places** to enable thriving communities.
4. **Design sustainable and greener places** for the well-being of people and the environment.
5. **Design resilient and diverse places** for enduring communities.

To support the approach, the proposed SEPP will introduce new provisions for design skills and expertise by requiring certain designs to be designed by suitably qualified designers, a place-based approach that considers the environment beyond the immediate site or precinct and the use of design review processes.

The EIE sets out the proposed application requirements, mandatory matters for consideration and an outline of a new Urban Design Guide. The SEPP will also be supported by proposed amendments to State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development and State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. These will be consolidated within the new Design and Place SEPP.

Councils in NSW have an important role in planning for well-designed buildings and places. They have responsibility in the planning system for the future development of their local areas through the development of guiding plans and strategies, including Local Strategic Planning Statements and Local Environmental Plans. These are supported by more detailed Development Control Plans, precinct plans and masterplans. Councils are also in the process of developing Local Character Statements. Councils develop these in close consultation with local communities and tailor plans and strategies to the local context.

3. Summary of LGNSW Position

LGNSW supports the integration of good design and place considerations in planning policy. Councils welcome improvements to the planning system in New South Wales that help the State government, councils, the private sector, and others to deliver better designed buildings and places for their local communities.

As noted in the EIE, well-designed public and private spaces will help give effect to the objects in s. 1.3 of the EP&A Act. They are also critical to achieving a wide range of liveability, sustainability and economic objectives in District and Regional Plans, Local Strategic Planning Statements and Local Environmental Plans which have been developed with local communities.

3.1 Overall support for the proposed Design and Place SEPP

LGNSW supports the aim to elevate, enhance and simplify design and place considerations in the NSW planning system as intended by the proposed SEPP. This is an important and welcome initiative with potential to address current challenges to consistent delivery of well-designed places and buildings that are responsive to local context.

While the details of the SEPP will be developed over the next 6 months, and it is not fully clear how a principles-based approach will work in practice, LGNSW is generally supportive of key elements of the proposed approach:

- starting with Country as a foundation for place-based design and planning
- increased requirements for registered design professionals
- expansion and improvement of design review processes
- consolidation of existing SEPPs and design requirements
- many of the proposed principles and design considerations that are proposed to be incorporated in the SEPP; and
- enhanced design guidance through an updated Apartment Design Guide, development of a new Urban Design Guide and other toolkits such as the Resilience Toolkit.

3.2 Balance between State-level control and local planning and decision-making

As a major new planning reform, the SEPP provides an important opportunity to strike the right balance between state-level control and local decision-making. The local government sector is witnessing an increasing trend to reduced local oversight and control, with SEPP's and other planning policies, Ministerial directions and regulations overriding locally developed plans and policies and changing assessment processes and pathways. Councils are concerned that this often results in less community input and oversight and developments that are poorly designed or non-compliant and not consistent with local character and infrastructure capability.

Efficient planning systems have important benefits for both proponents, consent authorities and the community. However simply reducing assessment timeframes can hide other costs, particularly when processes do not deliver well-designed and safe buildings or development that contributes to local character. These broader costs are often borne by local communities and future owners and occupants of buildings. The longer-term impacts and costs for councils and local communities of missed opportunities to achieve well-designed buildings and places and dealing with issues such as health and safety associated with non-compliant developments are often not considered when reforms are introduced. Further, as history has

shown, poor planning and building outcomes erode community confidence in the planning system.

As a result of these concerns, LGNSW's policy platform, which consolidates the voice of the local government sector determined by resolutions at the LGNSW annual conference, calls for local government to retain control over the determination of locally appropriate development and for local planning powers not to be overridden by State plans and policies or undermined by misuse of state significant development provisions. This would be avoided if proponents of State significant development and infrastructure were required to seek concurrence of the relevant local council. The absence of sufficient local planning controls and community input in the planning system could paradoxically undermine the desired outcomes which the Design and Place SEPP is ultimately seeking to achieve.

LGNSW welcomed the opportunity to be engaged in preliminary work with the GANSW to develop a Design and Place SEPP. At this stage however, it is unclear how the new Design and Place SEPP will intersect with the existing planning system and Local Environmental Plans and Development Control Plans.

Given there is significant experience and expertise in implementing planning policy and promoting good design outcomes within many councils, we urge GANSW and DPIE to collaborate closely with a range of experienced local government practitioners in formulating the SEPP, taking into account that resources within councils are already stretched due to the extensive planning reforms currently underway.

Recommendation 1: LGNSW recommends that DPIE works with local government to utilise the extensive experience and expertise within councils and to ensure that the Design and Place SEPP achieves an appropriate balance between State-level provisions and guidance and locally-developed plans and provisions.

3.3 Differences between metropolitan, coastal and rural and regional areas

As the proposed SEPP will apply to urban land across NSW, this will include metropolitan areas, major coastal towns as well as inland regional and rural areas. The Design and Place SEPP must take account of the very different planning contexts and urban typologies across the state. One size fits all approaches and provisions are not an effective way of supporting good planning outcomes. Even within metropolitan areas there are significant differences between inner and outer areas.

There are also important differences in the resources available in regional councils that need to be considered. Smaller councils will have very limited capacity, both staff and/or funding, to support implementation of additional requirements proposed in the SEPP. There may also be a shortage of qualified design practitioners in some areas. The limited availability of private certifiers in many regional areas highlights this concern.

Recommendation 2: LGNSW recommends that DPIE give further consideration to the differences between metropolitan, coastal and inland rural and regional areas when developing the detailed provisions of the Design and Place SEPP and the framework for implementation.

3.4 Cost and resourcing implications for local government

The EIE proposes significant changes and enhancements to the planning system such as new assessment processes for developments and planning processes and an increased role for registered architects, urban designers and landscape architects, and design review panels. While LGNSW supports the aims and objectives of the SEPP to improve climate resilience, create great public spaces and ensure good design, implementing these changes will involve new and additional costs for local government. These will include establishing or reforming design review panels in line with the SEPP and operating and servicing them, changing processes and procedures and upskilling and recruiting staff.

The EIE does not discuss costs and resourcing of implementing or supporting the SEPP or consider the capacity of local government to fund these activities within current income constraints. Further consideration must be given to understanding the likely resource requirements and DPIE should work with local government to ensure funding is available to support these important improvements.

Recommendation 3: LGNSW recommends that DPIE work with the local government sector to develop a robust estimate of the additional resources and necessary support associated with implementing the Design and Place SEPP so that adequate provision can be made to properly resource and fund its implementation and ongoing operation.

3.5 Risks of a principles-based approach

LGNSW considers that the proposed principles appear to be sound, but it is not clear how a principles-based approach will work in practice. Councils have highlighted several risks and challenges associated with moving away from development standards. These include:

1. A lack of benchmarks or development standards could make it easier to obtain approval for 'bad' designs, resulting in development design and performance qualities being lower than the SEPP is aiming to achieve. Many councils consider that SEPP 65 and the Apartment Design Guide have delivered significant value, upheld design standards, and delivered certainty and quality.
2. Potential for longer assessment processes, greater uncertainty and increased costs and resourcing for both applicants and approval authorities.
3. Issues with interpretation of five broad design principles and 19 matters of consideration, including how conflict or priority between principles will be dealt with.
4. Councils have noted that the place-based approach strongly advocated for in the EIE is more likely to be achieved in established areas by following local council development standards and controls which respond to unique characteristics of places.
5. Inconsistency between the improved design outcomes sought by the proposed SEPP and existing (Exempt and Complying Development Codes) 2008 and zone-based standards in the Standard Instrument Local Environmental Plan which substantially limit design and place-based considerations.
6. The need for strong standards, supported by a clear framework to manage variations using the existing clause 4.6 pathway.
7. A principles-led approach, not backed with some level of development standards or controls, may lead to more adjudication of development through the Land and

Environment Court. This would undermine confidence in the planning system and add costs, time and resources for councils and others.

Recommendation 4: LGNSW recommends that DPIE considers the feedback from councils on the principles-based approach that is proposed to ensure there is a balance between flexibility and clearly defined standards in the Design and Place SEPP and that further consideration be given to bringing the existing (Exempt and Complying Development) Codes SEPP into alignment with the Design and Place SEPP.

3.6 Interactions with the planning system

As noted in the EIE the proposed SEPP will interface with multiple other SEPPs and policies. The EIE and SEPP need far greater clarity about how the principles and the proposed approach interact with existing assessment processes which ensure environmental protection, building quality and alignment with community expectations.

The proposed principles-led approach also needs to consider how local planning instruments, Development Control Plans, strategic plans and local character will be respected and enhanced alongside state-wide design and place principles. Many councils have noted that Development Control Plans for instance already include local place-based design provisions.

There is a risk that if not well thought through, implementation of the SEPP will result in delays as councils and others navigate what is already a complex planning system or deliver unintended outcomes not consistent with the aims and objectives of the SEPP.

Further, at this stage much of the guidance proposed relates to residential development. Application of the SEPP to achieve well designed buildings and places in industrial and commercial precincts is also needed. This could be illustrated through case studies or pilots with councils.

Recommendation 5: LGNSW recommends that DPIE develop a guide to highlight how the Design and Place SEPP will interact with the planning system, particularly at the local level and develop further guidance on how it will support well designed buildings and places in industrial and commercial precincts. This could be illustrated through case studies or pilots with councils.

3.7 New requirements for design processes

Councils recognise the potential for design skills to improve outcomes. Noting this is to be further developed, some questions and potential issues identified by councils include:

- Appropriate training and resources for councils (such as a commitment to ongoing education and up-skilling) to assist Council Planners, Urban Designers, Design Review Panels, and administration staff to ensure that requirements have been interpreted correctly.

- Potential impacts on assessment times for development assessment and planning proposal applications due to the increased volume of information submitted during application lodgement.
- Resourcing constraints of smaller councils may exacerbate the existing skills gap. Joint panels across regions or other alternatives may need to be considered based on an assessment of demand for design panel review.

Importantly, the SEPP must provide for councils to be able to appoint design panels with relevant skill requirements and to define specific local criteria and thresholds appropriate to local circumstances.

Recommendation 6: LGNSW recommends that the Design and Place SEPP provides for local councils to be able to appoint design panels with relevant skill requirements and to define specific local criteria and thresholds.

3.8 Further consideration of the circular economy and waste

The resource efficiency considerations that are proposed in the SEPP do not currently include waste management. Poorly designed and retrofitted waste management practices often lead to poor amenity and resource recovery outcomes.

Circular economy outcomes should also be considered at the precinct level. Different collection models at a precinct scale may be better suited to promoting a circular economy than current local government waste collection services.

Recommendation 7: LGNSW recommends that the Design and Place SEPP provide for waste management systems and services to be an early design consideration at all scales of development and that precinct development is to include waste management solutions/services that can process waste in-situ and/or enhance circular economy outcomes.

4. Specific Comments

Specific, preliminary comments on key elements of the proposed Design and Place SEPP that have been included in the EIE are included at Attachment 1. These comments are provisional pending the final version of the Design and Place SEPP.

5. Summary of Recommendations

The following recommendations are based on the issues outlined in the above discussion and some of the key matters contained in Appendix 1.

Recommendation 1

LGNSW recommends that DPIE works with councils to utilise experience and expertise within councils and to ensure that the Design and Place SEPP achieves an appropriate balance between State-level provisions and guidance and locally developed plans and provisions.

Recommendation 2

LGNSW recommends that DPIE give further consideration to the differences between metropolitan, coastal and rural and regional areas when developing the detailed provisions of the Design and Place SEPP and the framework for implementation.

Recommendation 3

LGNSW recommends that DPIE work with the local government sector to develop a robust estimate of the costs associated with implementing the Design and Place SEPP so that adequate provision can be made to resource and fund its implementation and ongoing operation.

Recommendation 4

LGNSW recommends that DPIE considers the feedback from councils on the principles-based approach that is proposed to ensure there is a balance between flexibility and clearly defined standards in the Design and Place SEPP and that further consideration be given to bringing the existing (Exempt and Complying Development) Codes SEPP into alignment with the Design and Place SEPP.

Recommendation 5

LGNSW recommends that DPIE develop a guide to highlight how the Design and Place SEPP will interact with the planning system, particularly at the local level and develop further guidance on how it will support well designed buildings and places in industrial and commercial precincts. This could be illustrated through case studies or pilots with councils.

Recommendation 6

LGNSW recommends that the Design and Place SEPP provides for local councils to be able to appoint design panels with relevant skill requirements and to define specific local criteria and thresholds.

Recommendation 7

LGNSW recommends that the Design and Place SEPP provide for waste management systems and services to be an early design consideration at all scales of development and that precinct development is to include waste management solutions/services that can process waste in-situ and/or enhance circular economy outcomes.

6. Conclusion

LGNSW commends DPIE for this proposal to elevate design and drive better places. The Design and Place SEPP has potential to deliver significant improvements in the planning system and address current challenges to achieving the improved design outcomes we seek.

As councils play a key role in the planning system and good design outcomes can only be achieved taking local context into account, it is important that the SEPP makes sufficient

provision for locally-developed plans and policies and does not diminish the capacity for councils and their communities to input to decision-making about the development that occurs in their local area.

While there has been limited engagement with councils prior to release of this EIE, LGNSW considers that there will be significant benefit to establishing a collaborative process with local government to prepare the SEPP. Councils have significant experience and expertise and are best placed to advise on how planning policy works in practice.

LGNSW would welcome the opportunity to assist DPIE to work closely with the local government sector on the proposed Design and Place SEPP. To discuss this submission further, please contact Jane Partridge, Strategy Manager, Planning at Jane.Partridge@lgnsw.org.au.

Attachment 1 LGNSW Detailed Comments on Design and Place SEPP EIE

Explanation of Intended Effects	LGNSW Comment
<p>2.2 Aims of the new SEPP</p>	
<p>1. Give effect to the objects in s.1.3 of the EP&A Act</p>	<p>LGNSW is supportive of planning changes that give effect to the objects in the EP&A Act.</p>
<p>2. Start with Country as a foundation for place-based design and planning as set out in the draft Connecting with Country Framework</p>	<p>The proposal to embed the Connecting with Country draft framework in the SEPP is an important and welcome initiative. LGNSW respects and acknowledges the unique culture, societies, history, and traditional lands of Aboriginal peoples in NSW, and upholds policies recognising that Aboriginal peoples retain distinct cultural identities whether they live in urban, regional or remote areas of Australia.</p> <p>Consideration must also be given to the additional resources that may be required for Aboriginal groups to support this approach. LGNSW understands that many are under significant pressure to respond on a range of matters.</p> <p>Further, LGNSW has provided input to the NSW Government on Aboriginal cultural heritage reforms underway. LGNSW acknowledges that Aboriginal heritage is complex and multifaceted and directly intertwined with contemporary expression of cultural identity. In particular, LGNSW welcomes the focus of the new SEPP on promoting sustainable management of Aboriginal cultural heritage but is concerned that SEPP is progressing in the absence of a long-awaited new framework for Aboriginal cultural heritage. LGNSW made a submission in 2018 supporting the intent of the draft Aboriginal Cultural Heritage Bill 2018 to formally recognise that Aboriginal Australians are the custodians of their cultural heritage and would like to see the NSW Government progress these reforms in consultation with stakeholders including Aboriginal people and local government.</p> <p>Guidance on creating opportunities to integrate Aboriginal perspectives in built environment projects is needed. Clarification is sought on how these reforms align with the Connecting with Country framework.</p>
<p>3. Respond to the relevant Government priorities</p> <ul style="list-style-type: none"> - Premier's Priorities for a Better Environment (Greener Public Spaces and Greening our City) - NSW Government's objective to achieve net zero emissions by 2050 as set out in Net Zero Plan Stage 1: 2020–2030 (DPIE 2020) 	<p>LGNSW supports this aim.</p>

Explanation of Intended Effects	LGNSW Comment
<ul style="list-style-type: none"> - Better Placed – An integrated design policy for the built environment of NSW (GANSW 2017) which sets out key considerations for design of the built environment and defines characteristics of a well-designed built environment 	
<p>4. Deliver healthy and prosperous places that support the wellbeing of people, community and Country through integrating good design process into planning and development to achieve the 5 design and place principles</p>	<p>LGNSW supports this aim.</p> <p>The new SEPP may also include among its aims Crime Prevention Through Environmental Design (CPTED) as an established norm for all projects – particularly projects which include activity at night. Well-designed public spaces are important to ensure feelings of safety. Crime prevention and community safety are an important positive outcome of well-designed public spaces.</p> <p>Universal design is another consideration to be included among the aims of the SEPP. While the home is acknowledged as a critical component of societal wellbeing, Australia still does not have a mandated minimum standard of universal design for dwellings – aiming for housing that is designed to be usable by all people to the greatest extent possible without adaptation or modified design. LGNSW notes the importance of universal and inclusive design principles being incorporated into this process from beginning to end. LGNSW’s Policy Platform, informed by the views of our members, highlights that local government is committed to the principles of equity, access to services essential to quality of life and participation of all people in their community. Accessible housing is a critical requirement of meeting these principles.</p>
<p>5. Enable the delivery of quality design, integrated outcomes and innovation for people and places in NSW.</p>	<p>LGNSW supports this aim.</p>
<p>6. Create a consistent set of principles, considerations and guidance for the design of the NSW built environment.</p>	<p>The aim to “create a consistent set of principles, considerations and guidance for the NSW built environment” is generally supported, however the SEPP must respect the diverse character of places, streets and neighbourhoods across NSW - metropolitan, coastal, regional and rural - and allow for locally-based design considerations and guidance within this framework.</p>
<p>2.3 Principles of the new SEPP</p>	
<p>A principle-based planning system is one that is focused around achieving a desirable outcome through a reasoned and considered approach. It is aimed at moving away from a system governed entirely by prescriptive controls. This allows for, and encourages, innovative and creative approaches to achieve an outcome. It is proposed the principles will be given effect through matters for consideration and application requirements.</p>	<p>The proposed principles appear to be sound but it is not clear how a principles-based approach will work in practice. This is not made sufficiently clear in the EIE.</p> <p>Councils have highlighted several risks and challenges associated with moving away from development standards. These include:</p> <ul style="list-style-type: none"> - A lack of benchmarks or development standards could make it easier to obtain approval for ‘bad’ designs, resulting in development design and performance qualities being lower

Explanation of Intended Effects	LGNSW Comment
	<p>than the SEPP is aiming to achieve. Many councils consider that SEPP 65 and the Apartment Design Guide have delivered significant value, upheld design standards, and delivered certainty and quality.</p> <ul style="list-style-type: none"> - Potential for longer assessment processes, greater uncertainty and increased costs and resourcing for both applicants and approval authorities. - Issues with interpretation of five broad design principles and 19 matters of consideration, including how conflict or priority between principles will be dealt with. - The place-based approach strongly advocated for is more likely to be achieved in established areas by following local council development standards and controls which respond to unique characteristics of places. - Inconsistency between the merit-based approach proposed and the SEPP (Exempt and Complying Development Codes) 2008 and zone-based standards in the Standard Instrument Local Environmental Plan. - The need for strong standards, supported by a clear framework to manage variations using the existing clause 4.6 pathway- - A principles-led approach, not backed with some level of development standards or controls, may lead to more adjudication of development through the Land and Environment Court. This would undermine confidence in the planning system, create more uncertainty and further remove opportunities for community input to planning decisions. It will also add costs, time and resources for councils and others. <p>The proposed principles-led approach needs to consider how local planning instruments, Development Control Plans, strategic plans and local character will be respected and enhanced alongside state-wide design and place principles. Development Control Plans for instance already include local place-based design provisions.</p> <p>The principles of the Design and Place SEPP could also reflect the concepts in DPIE's Local Character and Place Guideline, as well as the Protocol for Homeless People in Public Space. This should include guidance on how to design public space to respect people experiencing homelessness, and at the same time ensure homelessness does not become entrenched.</p>
<p>1. Design places with beauty and character</p> <p><i>that people feel proud to belong to</i></p> <p>Through a considered response to context, character, heritage, culture and Country, well-designed buildings and spaces create places people can engage and connect with. Attractive built environments are <i>attractors</i>, and powerful tools for economic growth.</p>	<p>Refer to the above overall comments about principles.</p>

Explanation of Intended Effects	LGNSW Comment
<p>2. Design inviting public spaces <i>to support engaged communities</i></p> <p>High-quality public spaces are inviting, accessible, diverse and comfortable. They encourage a healthy public life for our communities, fostering active lifestyles and social connections.</p>	<p>Refer to the above overall comments about principles.</p> <p>Principle 2 seeks to ‘ensure that buildings near vibrant areas, such as licensed premises or major public space, do not impact the ability for those areas to continue to operate.’</p> <p>LGNSW supports this principle. LGNSW’s submission to Liquor Act (24-hour economy) amendment Bill in general supported efforts to streamline the regulation of noise from licensed premises. LGNSW has also previously called for the NSW Government to consider application of the agent of change principle in reforms, which places the onus for soundproofing on any new development in an area, rather than any existing businesses.</p> <p>The new SEPP could include a specific focus on noise, as that is a major issue impacting on the ability of vibrant venues to continue operating. The compliance and planning environment for noise attenuation is not clear to councils and the public.</p>
<p>3. Design productive and connected places <i>to enable thriving communities</i></p> <p>Places with sufficient densities, and sustainable and active transport connections to a wider network of jobs, services and attractors, enhance local economies and communities, enabling them to thrive.</p>	<p>Refer to the above overall comments about principles.</p>
<p>4. Design sustainable and greener places <i>for the wellbeing of people and the environment</i></p> <p>Environmentally sustainable places reduce emissions; adopt water, energy and material efficiency; and integrate green infrastructure, including urban tree canopies, to support the health and wellbeing of present and future communities and natural systems, including habitat for biodiversity.</p>	<p>Refer to the above overall comments about principles.</p> <p>Principle 4 could include reference to ‘climate responsiveness’, which also relates closely to the importance of resilient design referred to in Principle 5.</p>
<p>5. Design resilient and diverse places <i>for enduring communities</i></p> <p><i>Resilient places are designed with adaptive capacity to respond to shocks, chronic stresses, and climate change. Diverse, compact neighbourhoods support inclusive, socially resilient communities and ageing in place.</i></p>	<p>Refer to the above overall comments about principles. Principle 5 could also specifically include reference to crime prevention through environmental design (CPTED) and recognise the cumulative impact that creating inclusive and vibrant spaces can have on crime prevention. That is, the more people using a public area, the greater the actual and perceived safety of that area, and the more people will use that area.</p>

Explanation of Intended Effects	LGNSW Comment
	<p>Principle 5 also refers to mandatory considerations for affordable housing. LGNSW supports this consideration and continues to call for minimum targets of 5-10% social and affordable housing across NSW and 25% for government-owned land.</p> <p>Principle 5 refers to mandatory considerations for resilience. Among the strategies and policies required to reduce the risk of climate change impacts are appropriate site selection and planning controls to reduce climate hazards, consideration of building materials, and improved landscaping to ameliorate drought and heat wave impacts. These strategies must factor in the gradual change in climate as well as more frequency and severe extreme weather.</p>
<p>2.4 Application of the new SEPP</p>	
<p>Application of the SEPP where the consent authority is a local or regional planning panel or the Independent Planning Commission, and for proposals made under Part 5 of the EP&A Act, will be determined during development of the Design and Place SEPP. types (such as items 1 to 10 of Schedule 1(State significant development – general) of SEPP (State and Regional Development) 2011. These exclusions will be refined during development of the Design and Place SEPP.</p>	<p>LGNSW considers that the SEPP should apply to all development regardless of consent/approval authority including provisions for some complying development and proposals under Part 5 of the Act. This is necessary to create a level playing field for all developments and avoid proponents seeking to use different approval pathways to avoid dealing with the SEPP.</p>
<p>It is proposed the Design and Place SEPP will apply to urban land in NSW, including in urban and regional places, and to planning and development proposals of different scales and typologies where the consent authority is either State or local government.</p>	<p>LGNSW supports the proposal to apply the SEPP to all urban land in NSW. Particular attention will be needed for its application to urban land in regional and rural areas. There are distinct differences in the local environment between metropolitan areas and rural and regional locations and blanket state-wide conditions are not always appropriate. Further, the availability of qualified design practitioners and the constrained resources within smaller rural and regional councils can be a significant barrier to implementing planning legislation and policy.</p>
<p>Development scales The matters for consideration and application requirements proposed by the Design and Place SEPP will apply to three development scales:</p> <ul style="list-style-type: none"> - precincts - significant development and - all other development. 	<p>LGNSW generally supports different development scales, however some councils have raised concerns about how this will work in practice. For example, in established inner areas, 'precinct' or 'significant development' is less likely given their established dense nature and high number of heritage sites. Most development would fall within 'all other development'. As currently proposed, 11 of the 19 <i>Mandatory Matters for Consideration</i> would not apply.</p> <p>New higher density development on sites smaller than those defined as 'significant development' and other development will benefit from being subject to all matters for consideration. Further consideration should be therefore given to the scales of development and the application of mandatory criteria.</p>
<p>Precinct considerations would apply:</p> <ul style="list-style-type: none"> - wherever a requirement for 'precinct plan', 'precinct study' or 'master plan' is specified in another instrument 	<p>LGNSW notes that setting standard thresholds provides for consistency, however these can be problematic in different urban or regional settings where the scale and density of development varies. Consideration should be given to including flexibility to adapt these for different circumstances, for example different settings in regional areas.</p>

Explanation of Intended Effects	LGNSW Comment
<ul style="list-style-type: none"> - to any planning proposal under s.3.33 of the EP&A Act greater than 10 ha or 1000 people - to any community scheme subdivision or subdivision into more than 50 lots - to areas identified for local strategic planning including amendments to local environmental plans (LEPs) (that are not planning proposals) - to any other similar plan or spatial arrangement greater than 10 ha or 1000 people. 	
<p>Significant development considerations would apply to:</p> <ul style="list-style-type: none"> - development on a parcel of land within a precinct or on a site bounded by streets on all sides - on a site greater than 4000 m² or 500 people - on a site greater than 1500 m² in a metropolitan centre - State significant development (SSD), as declared in the State and Regional Development SEPP, on urban land - regionally significant development, as declared in the State and Regional Development SEPP, on urban land - State significant infrastructure (SSI) on or adjacent to urban land. 	<p>As per the comment above, consideration should be given to including flexibility to adapt these 'significant development considerations' for different circumstances, for example different settings in regional areas.</p>
<p>Application to complying development will be determined during development of the Design and Place SEPP.</p>	<p>LGNSW welcomes further consideration of the application of the SEPP to complying development. Many councils have raised concern about the impact of complying development on important factors that contribute to local character and seek to achieve key objectives around resilience, for example loss of tree canopy.</p>
<p>Development types</p> <p>In NSW, considerations of design and place quality are addressed variously in the planning system, including through environmental assessment requirements required by the Secretary of the Department of Planning, Industry and Environment (Secretary's environmental assessment requirements: SEARs), design excellence clauses, and in SEPP 65, which apply to a narrow range of development typologies.</p> <p>The Design and Place SEPP proposes to expand the need for design and place quality to a broader range of development typologies, from individual buildings, to public spaces, to whole neighbourhoods, to improve the delivery of well-designed precincts and the buildings and spaces within them.</p> <p>The proposed structure of the Design and Place SEPP will allow for new design requirements to be added in response to different scales and types of development as they arise.</p>	<p>LGNSW supports the application of the SEPP to all development types. Further explanation of how current planning reforms in relation to employment zones and extending complying development to employment areas will contribute to the aims of the SEPP is needed.</p>

Explanation of Intended Effects	LGNSW Comment
3.1 Design processes	
<p>The requirements proposed to enable this process are:</p> <ul style="list-style-type: none"> - provisions for design skills and expertise in the design and review of planning and development proposals - provisions for a design-led, place-based approach to planning and development - provisions for design evaluation and review. 	
3.1.1 Design skills	
<p>Qualified designers are defined by cl.50 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation). The EP&A Regulation identifies the requirement for qualified designers in cl.50(1A) in relation to SEPP 65.</p> <p>The requirement for qualified designers is also identified in SEPP (Educational Establishments and Child Care Facilities) 2017 (Education SEPP). The Design and Place SEPP proposes aligning the existing requirements for qualified designers with the NSW Design and Building Practitioners Act 2020.</p>	<p>The proposal to expand the requirement for qualified designers under the SEPP will likely have significant impacts for councils. It is not clear whether council staff would be required to be registered if they are developing planning proposals or reviewing and assessing applications. Councils may be required to expand their teams or upskill existing staff. Further details are needed for councils to understand how this will work in practice.</p> <p>While the alignment with the requirements for qualified designers with the NSW Design and Building Practitioners Act 2020 is generally supported, ensuring this process is adequately resourced is critical.</p>
<p>To ensure places and spaces are designed by suitably qualified design professionals, the Design and Place SEPP proposes that:</p> <ul style="list-style-type: none"> - a registered architect (qualified designer, same definition as presently used) will be required for all buildings with three or more storeys, and in the case of multiresidential buildings, four dwellings - a registered landscape architect (qualified designer, new definition) will be required for all open space greater than 1000 m² - a qualified designer, i.e. urban designer, architect with master planning skills or landscape architect, will be required for master planning of all precincts - and significant development (qualified designer, new definition). 	<p>As noted above, consideration should be given to whether standards thresholds are applicable, or whether differing thresholds are needed for higher density established areas compared to greenfield or rural and regional areas.</p>
<p>A statement to accompany planning and development applications can be used to verify this requirement. For precincts and significant development, it is proposed this statement also describes the collaboration and integration of design professionals with multidisciplinary skill sets (e.g. architecture and landscape architecture, urban design and planning, engineering, etc.) to achieve high-quality design of the built environment.</p>	<p>Further information on the scope and matters to be included in design verification statements is needed.</p>
<p>The mechanism for other design professionals to be registered and deemed qualified designers will be determined during development of the Design and Place SEPP.</p>	<p>LGNSW considers that the mechanism must be transparent and adequately resourced. Further, as has been highlighted by problems with private certification, consideration must be given to systems and requirements for monitoring and auditing.</p>

Explanation of Intended Effects	LGNSW Comment
3.1.2 Place-based approach	
<p>The proposed Design and Place SEPP will strengthen the correlation between place and site analysis and the design outcome by requiring a clear demonstration of how the information is synthesised and interpreted to inform the site planning strategy, overall design response, and contribution to place through considering Country and addressing the identified principles.</p>	<p>While LGNSW supports strengthened consideration of place-based planning, it is unclear how the SEPP will work with locally developed plans and policies. Many council DCPs have been developed to respond to and support place-based outcomes.</p>
3.1.3 Design evaluation and review	
<p>The NSW Government acknowledges the effectiveness of design review depends on consistent implementation at State and local levels. The Design and Place SEPP presents an opportunity to define a process for design review and to provide new guidance for State and local government through a Design Review Guide (DRG) to ensure this process is undertaken with robustness and consistency across NSW.</p> <p>The DRG will:</p> <ul style="list-style-type: none"> - address the required expertise on design review panels, clarify the scope of a panel's advice and the requirements for consistency of panellists across project reviews - address the role and expertise of a panel chair - clarify the importance of panellist advice being informed by the relevant planning framework - give consideration to review timeframes commensurate with project complexity - clarify the role of the panel as an advisory service to planning assessment teams - provide case studies of exemplar processes and examples. 	<p>While guidance is welcome the SEPP must provide for councils to be able to appoint design panels with relevant skill requirements and to define specific local criteria and thresholds appropriate to local circumstances.</p> <p>The ability for councils in regional areas, and potentially the metropolitan area, to establish design panels with the requisite skills should be considered.</p> <p>The EIE does not consider the cost of establishing and running design review panels. This is an important issue. The capacity of local government to fund these and other components given current funding constraints will be difficult.</p>
<p>To support the use of design review processes in proportion to the impact of a development proposal, additional thresholds for design review will be determined during development of the Design and Place SEPP and may include consideration of:</p> <ul style="list-style-type: none"> - project locations e.g. projects on prominent sites and or sites of heritage / cultural / social significance - project types - capital investment value - development height - site area. 	<p>As noted above, local government must be allowed to define specific local criteria and thresholds.</p>

Explanation of Intended Effects	LGNSW Comment
<p>Thresholds may vary for projects in urban and regional areas and may be set by:</p> <ul style="list-style-type: none"> • the Design and Place SEPP (providing consistency across NSW), or • individual councils (depending on their circumstances and urban condition), or • a combination of both. 	
<p>3.2 Design and place considerations</p>	
<p>The proposed Design and Place SEPP will require applicants to demonstrate through application requirements that the SEPP principles and considerations have been met. It will also inform matters for consideration by the consent authority.</p>	<p>As noted above, further information on how a principles-based approach will work in practice is needed.</p>
<p>3.2.1 Application requirements</p>	
<p>It is proposed the Design and Place SEPP will require applicants to demonstrate through application requirements that the SEPP principles and considerations have been met. Many of these requirements currently exist within the planning system, however they are not consistent in their application. The Design and Place SEPP will enable a consistent and regular approach to submissions which will provide greater certainty for applicants and consent authorities. Those requirements are summarised as:</p>	
<p>site analysis for all development – including site analysis drawings, site planning strategy, phasing or staging plans (where applicable)</p>	
<p>a precinct structure plan for all precincts and significant development – including a green infrastructure map, public spaces map, heritage map, movement and place map and local character area map, and design documentation and phasing or staging plans (where applicable)</p>	
<p>a design statement for all development</p> <ul style="list-style-type: none"> - including consideration of site analysis, Country, local character, design and place principles, Better Placed objectives; resilience strategy; embodied energy; dwelling adaptability; safety by design; site planning strategy; in conjunction with plans, sections and elevations of design, 3D representation (image and digital 3D model) 	

Explanation of Intended Effects	LGNSW Comment
<p>precinct planning supporting documents for all precincts and significant development – including a design statement, draft planning controls, local character statement, travel plan, needs assessment of public space and green infrastructure, sustainability plan, and a resilience risk assessment and implementation plan.</p>	
<p>3.2.2 Mandatory matters for consideration</p>	
<p>It is proposed the initiatives and guidance outlined in this EIE are mandatory matters for consideration for the purposes of s.4.15 of the EP&A Act and will be required to be considered as part of the development assessment process.</p>	<p>The mandatory matters for consideration are generally supported, however as referred to earlier in this table, consideration should be given to application of the mandatory matters to all scales of development. Additional matters for consideration should be developed to address health, safety and accessibility, activation and culture and arts. For example, community safety is critical, especially in the planning of a night-time economy. This can be supported through proactive design and planning, compliance, and regulation.</p>
<p>Similar to the operation of SEPP 65, requirements to refer applications to design review panels and consider their advice, minimum design skills, and the use of certain guides will be set out in the Design and Place SEPP and associated instruments. The highest priority matters for consideration identified to give effect to the principles are set out in Table 1 below and will be refined during development of the Design and Place SEPP. Wording of the considerations set out in Table 1 is subject to change during the SEPP drafting process.</p>	<p>LGNSW requests that DPIE consult further with councils to consider the proposed design and place considerations set out in Table 1 of the EIE and how they will be applied.</p>
<p>Table 1. Design and Place Considerations 1 . Cultural and built heritage Areas of cultural and built importance are celebrated, conserved and protected, including heritage items or areas at risk, and a corresponding strategy has been developed to ensure community use and enjoyment of these.</p>	<p>This is supported - areas of cultural and built heritage are critical to place-making and local character.</p>
<p>2. Public Space Equitable distribution of accessible, well-designed public space has been provided on land fit for purpose with no loss of public space.</p>	<p>Whilst supported, consideration should be given to opportunities to increase open space, particularly in areas that currently have little or no open space.</p>
<p>3. Connectivity Connectivity has been provided where possible between green infrastructure including landscape corridors, recreational walking and cycling networks, and the network of public space.</p>	<p>The concept of connectivity should apply to biodiversity as well as to people.</p>

Explanation of Intended Effects	LGNSW Comment
<p>4. Local living All housing in urban areas of new precincts is within:</p> <ul style="list-style-type: none"> - 20 minutes walk of local shops, and - 5 minutes walk of local public open space - Where possible, housing is also within 20 minutes walking distance to primary schools, district open space, public transport, and supermarkets or groceries. 	<p>Further consideration should be given to whether these metrics are applicable in all urban contexts and for all people in the community. While a 20 minute walk may be suitable for a lot of people, it may not be for some older people, people with disability as well as those caring for children.</p>
<p>5. Street design The precinct:</p> <ol style="list-style-type: none"> 1.0 contains safe, direct, accessible and comfortable walking and cycling routes including continuous paths, crossings on key desire lines, and locations for end-of-trip facilities 2.0 meets a minimum street intersection density (to be determined during development of the Design and Place SEPP) 3.0 does not exceed a maximum block length between intersections (to be determined during development of the Design and Place SEPP). 	<p>This could include consideration of other factors such as services, shade and cooling.</p>
<p>6. Water management The precinct contributes to water security, urban cooling and local irrigation by providing water systems that minimize potable water for non-potable uses, maximise water re-use, and preference natural methods for stormwater control and run off.</p> <p>Precinct-scale water detention and re-use strategies have been integrated such as through integrated water management framework where required.</p>	<p>Water management should be relevant for all three development scales. While precinct-level water management is supported councils have noted that currently there are barriers to precinct-scale water recycling.</p>
<p>7. Green infrastructure The precinct retains, where possible, and provides additional green infrastructure by:</p> <ol style="list-style-type: none"> 1.integrating urban development andgreen infrastructure 2.contributing to a green grid by establishing an interconnected network ofopen space, waterways and biodiversity 3. retaining or enhancing existing significant and moderate tree canopy or replacing any removed moderate or significant trees with at least two trees or precinct DCP/council replacement rate, whichever is higher. In Greater Sydney the tree canopy target specifiedby council or in the Greener Places Design Guide (if not specified) is to be delivered (whichever is higher) 4. giving preference to locally Indigenousand Australian native plant species. 	<p>The replacement of any moderate/significant trees with at least two trees or precinct DCP/council replacement rate, whichever is higher is supported. Councils note that at a lot scale, BASIX currently rewards low water use and indigenous/native plant species but this is not resulting in the planting of large trees and shrubs for shading.</p>
<p>8. Resilience An integrated approach to site-specific risks has been taken, and strategies taken to reduce or avoid occupants' vulnerability to those risks, particularly bushfire, flooding, extreme heat</p>	<p>The inclusion of resilience as a factor for consideration is supported. Councils would welcome the opportunity to help develop the specifics of this consideration.</p>

Explanation of Intended Effects	LGNSW Comment
<p>and coastal erosion. Ensures a risk-based approach to design and adaptation to future risks and vulnerabilities from natural hazards, increasing preparedness for, and mitigation or avoidance of, those vulnerabilities. Fosters climate change adaptation by design</p>	
<p>9. Fine-grain movement Proposed walking and cycle links connect to designated walking and cycling networks at the site boundary, and provide publicly accessible through-site links for walking and cycling so that no street frontage between paths is greater than the maximum block length set out in Consideration 5: Street design.</p>	<p>This consideration is generally supported.</p>
<p>10. Density The massing (height and floor space ratio) and zoning of precincts and significant development on urban-capable land, is capable of achieving the target gross residential densities in R1 to R4 zones (general, low, medium and high density residential zones). Density ranges will be determined during development of the Design and Place SEPP, based on a development's location and transport access, with a minimum density capacity of 15 dwellings per hectare.</p> <p>This consideration must be read together with Consideration 10: Housing diversity, in relation to the need for a range of housing types and tenures within residential areas.</p>	<p>Considerations regarding density and diversity (below) must be linked to local housing strategies and locally developed plans. Housing needs and challenges and the opportunities to respond to them vary across local government areas.</p>
<p>11. Housing diversity The proposal responds to the local housing strategy and provides an equitable distribution of housing type and tenure for the demographics of the local area to enable ageing in place.</p>	<p>Diversity should also consider the cost and affordability of housing.</p>
<p>12. Transport and parking The proposal minimizes car parking using the lowest of:</p> <ul style="list-style-type: none"> - the rates specified in the Guide to Traffic Generating Developments (RTA 2002 (or when revised and retitled, the Guide to Traffic Impact Assessment), - any maximum parking rates or lower minimum rates specified by local controls, maps or guidance, and - any further reductions due to site-specific strategies including unbundling, or the preparation of adaptive travel plans. 	<p>Linking parking requirements to the level of public transport and access to services and infrastructure is supported.</p>
<p>13. Attractive form The development has, on balance, positive design qualities, and supports beautiful places (including contributing to the local character, where described), as determined against a number of specific aspects of design, including:</p>	<p>Further detailed guidance will be required to determine how this consideration will be interpreted. In addition, further information on how this SEPP will interact with Local Character Statements is needed.</p>

Explanation of Intended Effects	LGNSW Comment
<ul style="list-style-type: none"> - massing - articulation - diversity and mix - scale, views and vistas - 3D expression - entries and setbacks to public space - details and materials - wayfinding, paths and common areas. 	
<p>14. Impacts on public space There is no encroachment on existing public open space, and adverse impacts from adjoining built development, with no net loss of public space.</p>	Noted.
<p>15. Impacts on vibrant areas If in or near 'vibrant areas' (including night-time economy areas, major public space and licensed premises) the proposal demonstrates:</p> <ul style="list-style-type: none"> - siting, massing and acoustic design of residential buildings and mechanisms that safeguard future operation of the area - ground floor uses adjacent to vibrant areas enhance the prevailing uses, and - natural light access to major public space is safeguarded and shade provided to activity streets. 	This aligns with the work that LGNSW has done alongside the NSW Night Time Economy Councils' Committee supports retaining and creating vibrant areas, especially at night.
<p>16. Activation There is non-residential activation on a minimum percentage of frontage of sites facing activity streets, with adequate lighting and passive surveillance (percentage to be determined during development of the Design and Place SEPP).</p>	DPIE should engage further with councils on this issue.
<p>17. Emissions and resource efficiency The development meets or exceeds the relevant National Australian Built Environment Rating System (NABERS) targets set by the Design and Place SEPP, for:</p> <ul style="list-style-type: none"> - offices (base building energy) - shopping centres (whole building energy) - hotels (whole building energy) - apartment buildings including common areas (common property energy) - all buildings being 'ready for net zero' from 2030 <p>The development meets or exceeds the relevant BASIX targets for:</p> <p>all new homes (water, energy, thermal comfort).</p>	Consider that the energy performance standards and timing developed by the City of Sydney with industry and government which propose that developments transition to net zero energy by 2026.

Explanation of Intended Effects	LGNSW Comment
<p>18. Tree canopy The proposal retains moderate and significant trees and significant vegetation where possible. Any removed moderate or significant trees have been replaced with at least two trees, or the precinct development control plan (DCP) / council replacement rate, whichever is higher.</p> <p>If in Greater Sydney, the proposal delivers the minimum number of trees to give effect to the tree canopy target specified by the local council or, if not specified, set out in the Greener Places Design Guide, whichever is higher.</p> <p>The proposal demonstrates the use of greening alternatives (such as green roofs, walls, softscape, etc.) particularly where tree canopy targets cannot be met.</p>	<p>The retention of tree canopy is supported. Some councils have noted that there have been reductions in tree canopy due to infill development and replacement of large trees with smaller trees. Consideration could be given to incentives for larger trees to be planted on public and private land or other greening, for example roof-top gardens and green walls.</p>
<p>19. Affordable housing The proposal provides affordable housing in accordance with affordable housing targets or schemes. Where there are no targets or schemes, the applicant may propose a viable amount of affordable housing for the site, and must provide that amount.</p> <p>Within Greater Sydney, targets generally in the range of 5–10% of new residential floor space are viable and should be delivered (Greater Sydney Region Plan Objective 11).</p>	<p>The Design and Place SEPP should provide a framework for achieving the affordable housing targets set out in District and Regional Plans. It is also not clear why it is applied to all other development and not applied to precinct development.</p>
<p>3.3 Guidance</p>	
<p>To support the proposed Design and Place SEPP, a suite of existing and proposed guidance (revised and new) has been identified. The guidance is intended to complement the principles and considerations in specialist areas by setting:</p> <ul style="list-style-type: none"> - objectives relating to specific development typologies and outcomes - criteria relating to outcomes, including performance-based criteria where possible - minimum criteria where required and desirable to help assessment. 	<p>LGNSW strongly supports the development of guidance for the proposed SEPP. Guidance should also be developed to show how the proposed SEPP will intersect with many parts of the planning system.</p>
<p>3.3.1 Existing guidance</p>	
<p>Greener Places – An urban green infrastructure design framework for NSW (GANSW 2020) Practitioner’s Guide to Movement and Place – Implementing Movement and Place in NSW (TfNSW and GANSW 2020) Local Character and Place Guideline (DPIE 2019).</p>	

Explanation of Intended Effects	LGNSW Comment
<p>3.3.2 Guidance to be revised</p>	
<p>Draft Connecting with Country – A draft framework for understanding the value of Aboriginal knowledge in the design and planning of places (GANSW 2020) Draft Evaluating Good Design – Implementing Better Placed design objectives into projects (GANSW 2018)</p> <p>Draft Government Architect’s Design Excellence Competition Guidelines (GANSW 2018) Apartment Design Guide – Tools for improving the design of residential apartment development (DPE 2015) and proposed revisions. Further detail is provided in Appendix A.</p> <p>Guide to Traffic Generating Developments (RTA 2002), to be revised and retitled Guide to Traffic Impact Assessments (TfNSW)</p> <p>BASIX website and tools (DPIE).</p>	
<p>3.3.3 New guidance</p>	
<p>Draft Greener Places Design Guide (GANSW 2020 and DPIE) – to provide information on how to design, plan, and implement green infrastructure in urban areas throughout NSW including strategies, performance criteria, and recommendations to help consent authorities, designers, and developers to deliver green infrastructure. Draft NSW Public Spaces Charter (DPIE 2020) – identifies ten principles for quality public space, developed through evidence-based research and discussions with a diverse range of public space experts</p> <p>Proposed Design Review Guide (DPIE) – to establish consistent terms of reference for the operation of design review panels and the provision of design quality evaluation</p> <p>Proposed Urban Design Guide (DPIE) – to provide design guidance and criteria for large-scale developments, and to complement the revised Apartment Design Guide. Further detail is provided in Appendix B</p> <p>Proposed Resilience Toolkit – to guide identification of risks to address resilience, and to assess compliance with the resilience priority, and requirements of the SEPP</p> <p>Proposed strategic guide to planning for natural hazards in NSW (DPIE) – to inform the preparation of regional, district and local strategies and proposals to rezone land.</p>	<p>LGNSW supports new guidance including a proposed Urban Design Guide. Resources and experience within councils can inform development of the guides proposed. For example, many councils have undertaken work in relation to climate resilience and urban heat effects. Further engagement with councils to help develop the guides is recommended.</p>

Explanation of Intended Effects	LGNSW Comment
<p>4.1 State Environmental Planning Policy No 65</p> <ul style="list-style-type: none"> - Design Quality of Residential Apartment Development 	
<p>The Design and Place SEPP will subsume SEPP 65 by:</p> <p>replacing the SEPP 65 process for design review, including panels and the application of principles, with the Design and Place SEPP process</p> <p>replacing the SEPP 65 design quality principles with the principles of the proposed Design and Place SEPP</p> <p>incorporating the revised ADG as a matter for consideration under the Design and Place SEPP</p> <p>removing precinct-scale considerations from the ADG including key considerations, criteria, and guidance for DCPs, and incorporating these into the UDG</p> <p>clearly distinguishing between key considerations, criteria, and guidance for apartment development.</p>	<p>LGNSW recommends that DPIE engage closely with councils that have experience with application of the Apartment Design Guide (ADG) to inform the review of this guide.</p>
<p>4.2 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</p>	
<p>4.2.1 The Design and Place SEPP proposes to transfer and repeal the provisions from the BASIX SEPP.</p> <p>A trajectory for new homes is planned to be implemented through cost effective increases to minimum energy performance standards in the National Construction Code (NCC), starting in 2022. However, in NSW residential energy efficiency standards for new homes and alterations and additions are set by BASIX, not the NCC. Implementing the trajectory will align with the NSW Net Zero Plan Stage 1: 2020–2030, which indicates the NSW Government’s commitment to improve BASIX as a pathway to deliver cost-effective, low-emission outcomes for residential buildings.</p> <p>In summary, the following key provisions are proposed to be transferred to the new Design and Place SEPP:</p>	<p>Consolidating provisions in the Design and Place SEPP is supported.</p> <p>Councils generally support continued application of BASIX as a delivery mechanism for residential development in NSW provided the scheme governance is significantly improved. As many councils have undertaken work in this area, LGNSW recommends engagement with councils to progress this work. Mechanisms to allow councils some flexibility to set their own targets is supported.</p>

Explanation of Intended Effects	LGNSW Comment
<ul style="list-style-type: none"> - the policy will continue to apply to NSW and Lord Howe Island for all residential development including alterations and additions that meet or exceed a certain value (currently \$50,000), or install a pool or spa of 40,000 L or more competing provisions in any other environmental planning instrument or DCP will not have effect, maintaining the current policy position - sustainability targets that are currently embedded in the online BASIX tool will be included in the Design and Place SEPP - to promote consistency across the State, councils are currently not able to set their own higher or lower BASIX targets. This provision will continue to apply and is proposed to be transferred to the Design and Place SEPP. However, mechanisms to allow councils some flexibility in this area will be explored during development of the Design and Place SEPP. <p>Following regulatory impact and cost–benefit analysis in early 2021, updated sustainability targets will feature in the exhibited and final Design and Place SEPP.</p> <ul style="list-style-type: none"> - The policy will continue to apply for all residential development including alterations and additions that meet or exceed a certain value (currently \$50,000) 	
<ul style="list-style-type: none"> - 4.2.2 In addition to the BASIX provisions being transferred to the Design and Place SEPP, broader reforms to help support sustainability in residential buildings are being developed. These are detailed in Appendix C, which outlines the key areas of reform providing more flexibility in the available assessment pathways to demonstrate a design meets sustainability performance requirements - aligning sustainability performance requirements with the principles of the Design and Place SEPP - measuring and reporting sustainability performance requirements in a consistent way to other jurisdictions - improving customer experience and promoting innovation. <p>Some of these will form part of the proposed new Design and Place SEPP while others are proposed to be delivered separately to complement the principles such as:</p> <ol style="list-style-type: none"> 1. improved customer experience in using tools 2. recognising emerging technologies 3. biannual tool updates. 	<p>Please refer to detailed comments on Appendix C.</p>

Explanation of Intended Effects	LGNSW Comment
5.1 EP&A Act and EP&A Regulation	
<p>No amendments to the EP&A Act are proposed. Amendments to the EP&A Regulation to enable implementation of the new Design and Place SEPP, including requirements relating to DCPs, design skills and verification statements and provision of additional information, will be determined and refined during development of the Design and Place SEPP.</p>	<p>Noted</p>
<p>LEPs and DCPs</p> <p>It is proposed the new Design and Place SEPP will have no immediate impact on existing LEPs and DCPs. However, when these plans are undergoing five-year review in accordance with statutory requirements it is likely they will be revised where necessary to align with the Design and Place SEPP and for consistency across NSW. As part of developing the Design and Place SEPP, consideration will be given to amending cl.4.6 of the Standard Instrument (Local Environmental Plans) Order 2006 to reflect the need to demonstrate that any variation to development standards will result in an improved planning outcome and public good. State or council design review panels may be involved in determining this.</p>	<p>As noted previously, it is not clear how the proposed SEPP will intersect with other SEPPs, as well as LEPs and DCPs. LGNSW requests greater clarification. Councils have invested significant resources to develop Local Strategic Planning Statements, update LEPs and prepare related studies. If substantial changes are required, either before or at the 5-year review, additional resourcing should be provided to councils.</p> <p>LGNSW notes the current proposal to CI 4.6 variations. A clear framework to manage variations using the existing clause 4.6 pathway is needed.</p>
5.2 Other environmental planning instruments impacted by the new SEPP	
<p>5.2.1 State Environmental Planning Policy (Sydney Region Growth Centres) 2006 The Design and Place SEPP is likely to supplement other precinct SEPPs when they are updated in the next one to three years including:</p> <p>SEPP (Sydney Region Growth Centres) 2006 by: updating existing precinct controls by a certain date to align with the Design and Place SEPP precinct-scale considerations</p> <p>inserting Design and Place SEPP principles in cl.16 of the Growth Centres SEPP as matters for consideration</p> <p>updating vegetation and cultural heritage considerations to align with the Design and Place SEPP considerations.</p>	<p>Alignment of design and place considerations across SEPPs is supported.</p>
5.2.2 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	

Explanation of Intended Effects	LGNSW Comment
<p>The relationship between the existing Codes SEPP and the new Design and Place SEPP is to be determined. The types of development currently permitted through the Codes SEPP will remain unchanged, but the requirements will be aligned with the principles of the Design and Place SEPP to enable this type of development to contribute to a greener, well- designed built environment. This includes reviewing the Greenfield Housing Code to align its objectives with the Premier’s Priorities Greener Public Spaces and a Greening our City. The greening, design and quality outcomes intended by the Design and Place SEPP will need to be tested on the standard development types permitted by the Codes SEPP to ensure they can be achieved.</p>	<p>The Design and Place SEPP highlights the inconsistency in the proposed expansion of the Exempt and Complying categories of development. The Design and Place SEPP describes the need for better design, skill and review. Experience with the Codes SEPP indicates that this does not support this outcome. LGNSW recommends review of the Codes SEPP to bring it into alignment with the proposed Design and Place SEPP.</p>
<p>5.2.3 Proposed Housing Diversity State Environmental Planning Policy</p>	
<p>The proposed Housing Diversity SEPP will consolidate existing state-level planning provisions relating to a range of less common housing types for special social, economic and accommodation needs into a single instrument. This includes housing types currently facilitated by:</p> <p>SEPP (Affordable Rental Housing) 2009</p> <p>SEPP (Housing for Seniors and People with a Disability) 2004. It is intended the Apartment Design Guide will apply to residential apartment development (as currently defined), including the clauses of SEPP 65 and subsequently the clauses transitioned to the Design and Place SEPP. This would include new provisions for market-led housing development and tenure models including student accommodation, co-living and build- to-rent, where accommodated in residential apartment development, with specific provisions to be added for these typologies where appropriate.</p>	<p>LGNSW supports consolidation of planning provisions and guidance on housing. Currently design guidance is variable across housing typologies.</p> <p>Councils represented on the Boarding House Working Group established by DPIE recommended design guidance be developed for boarding houses and other (proposed definitions) of housing such as student housing and co-living.</p>
<p>5.3 Planning circulars and practice notes</p>	<p>Circulars should be reviewed and updated to align with the new SEPP.</p>
<p>5.4 Ministerial directions</p>	<p>Ministerial directions should be reviewed and updated to align with the new SEPP.</p>
<p>5.5 Better Placed</p>	
<p>Better Placed was released in late 2017 to support the new objects of the EP&A Act, in particular the promotion of good design and amenity of the built environment, by setting out good design processes and outcomes, and introducing seven design objectives. Better Placed will be updated to reflect developments since its introduction, and to ensure it functions as a complementary policy to the Design and Place SEPP.</p>	<p>LGNSW supports the use of Better Placed as a complimentary policy to the Design and Place SEPP.</p>

Explanation of Intended Effects	LGNSW Comment
<p>6.1 Development Under Part 4 of the EP&A Act</p>	
<p>6.1.1 State significant development and precincts Development applications that are deemed State significant (development and/ or precincts) to which the Design and Place SEPP applies, will be required to demonstrate how principles have been met through considerations relevant to the scale of the proposal. The template SEARs will be updated to align with application requirements in Section 3.2.2.</p> <p>Consideration of the Design and Place SEPP is required throughout the SSD process.</p> <p>Where a development is sited on urban land, it is recommended the SDRP process is incorporated into the preliminary scoping stage. Early engagement with local Aboriginal community members including Traditional Custodians prior to public exhibition is recommended to appropriately respond to the design principles of the proposed Design and Place SEPP. The principles and considerations of the proposed Design and Place SEPP, and the advice of the SDRP (where applicable) will need to be considered as part of any assessment.</p>	<p>LGNSW considers that State significant developments and precincts should be required to address the requirements of the Design and Place SEPP in the same way as other development.</p>
<p>6.1.2 Local council Development applications where council is the consent authority and to which the Design and Place SEPP applies, will be required to demonstrate how design principles have been met through initiatives relevant to the scale of the proposal, this may include early engagement with the local Aboriginal community including Traditional Custodians. If the proposal is expected to require a design review or design excellence process, input should be provided by the relevant design review panel in alignment with the Design Review Guide as part of the pre-application consultation process. The advice of the design review panel (where applicable) should be given in a timely manner and considered as part of the development application assessment.</p>	<p>As noted earlier additional guidance regarding best practice engagement with local Aboriginal communities will be of benefit to councils.</p>
<p>6.2 Development under Part 5 of the EP&A Act</p>	
<p>6.2.1 State significant infrastructure Development applications that are deemed SSI (and critical SSI) to which the Design and Place SEPP applies, will be required to demonstrate how principles have been met through considerations relevant to the scale of the proposal. The template SEARs will be updated to align with the application requirements in Section 3.2.2.</p> <p>Consideration of the Design and Place SEPP is required throughout the SSI process. Where a development is sited on urban land, it is recommended the NSW SDRP process is incorporated into the preliminary scoping stage. The preparation of the environmental impact</p>	<p>LGNSW considers that State significant infrastructure should be required to address the requirements of the Design and Place SEPP in the same way as other development.</p>

Explanation of Intended Effects	LGNSW Comment
<p>statement will typically involve assessing the impacts of the project in accordance with the SEARs and relevant government legislation, policies and guidelines including the proposed Design and Place SEPP.</p> <p>Targeted engagement with local Aboriginal community members, including Traditional Custodians, as part of public exhibition may be required. The principles and considerations of the proposed Design and Place SEPP, and the advice of the NSW SDRP (where applicable) will need to be considered as part of any assessment.</p>	
<p>6.2.2 Review of environmental factors A review of environmental factors (REF) is undertaken in accordance with Part 5 of the EP&A Act, where the applicant is both a public authority applicant and the determining authority. REFs are prepared in accordance with cl.228 of the EP&A Regulation and include consideration of the relevant legislation and policies applying to the subject land and proposed development or activity, as well as an assessment of the potential impacts of the development or activity on the natural and built environments. Application of the proposed Design and Place SEPP as a matter for consideration when assessing REFs will be determined during development of the SEPP.</p>	<p>Development subject to an REF must be required to address the SEPP in the same way as all other development including being subject to design review.</p>
<p>6.3 Planning proposals</p>	
<p>As part of the planning proposal process, any SEPPs relevant to a planning proposal (including the proposed Design and Place SEPP) must be identified and the relationship of the planning proposal must be discussed. In some instances, it may be necessary to a undertake a preliminary assessment to demonstrate how the proposal will satisfy the requirements of the proposed Design and Place SEPP.</p> <p>Gateway assessment will include consideration of the proposed Design and Place SEPP (where relevant) and conditions may include requirements to address consistency with the proposed Design and Place SEPP.</p> <p>Targeted engagement with the local Aboriginal community including Traditional Custodians may be required if relevant.</p> <p>These requirements may be given effect through Secretary's requirements under s.3.33(3) of the EP&A Act.</p>	<p>The requirement for preliminary assessment of planning proposals (that affect more than use) is supported.</p>

Explanation of Intended Effects	LGNSW Comment
<p>6.4 Transitional provisions</p> <p>It is proposed transitional arrangements will be put in place for implementation of the proposed Design and Place SEPP to:</p> <ul style="list-style-type: none"> - allow industry stakeholders to mobilise and get ready for any additional provisions that will be applied under the SEPP - allow councils and other consent authorities to ensure appropriate skills are in place to meet the assessment requirements under the SEPP - allow qualified designers (and other potential design verification experts) an opportunity to ensure appropriate skills are in place to meet the requirements of the SEPP - ensure savings provisions are in place in relation to applications that have already been lodged and are being considered - ensure the consistency and clarify the hierarchy between SEPPs, particularly given the Design and Place SEPP is proposed to include SEPP 65 and BASIX. <p>The Department is seeking feedback on the lead time required by stakeholders for the components of this SEPP to inform the making of these transitional provisions.</p>	<p>A transitional period is critical. Preparation of the SEPP and its implementation will require significant further work. A plan or roadmap detailing the next steps and phases of implementation would assist all stakeholders prepare for introduction of the SEPP. Councils consider that resourcing required to meet the requirements of the SEPP may be significant and depending on final requirements, processes and resources could take up to 6 months to put in place. This may vary across councils. LGNSW recommends that this be discussed with councils when the SEPP is developed.</p>
Appendix A: Apartment Design Guide	
<p>A.1.2 Recent lessons learnt</p> <p>In relation to economic factors, the Productivity Commission Green Paper and parts of industry call for greater flexibility in SEPP 65 and the 2015 ADG to achieve design quality through removing strict development controls and clarifying where discretion can be applied in assessing development applications.</p> <p>A review of recent principle-based planning system reforms across key national and international jurisdictions reveals the need to balance potential uncertainty and costs to both industry and government where clear numeric criteria are not provided (including increased reporting requirements to justify outcomes) against providing the appropriate level of discretion for innovation in development applications, as well as assessment and decision-making processes.</p>	<p>Many councils are of the view that the current SEPP 65/ADG framework does in fact provide significant flexibility and have raised their concern about an approach that removes development controls. LGNSW understands councils with experience of the ADG are generally supportive of changes that are proposed to improve design outcomes in regard to factors such as solar access, natural ventilation and universal design. Specifically, LGNSW supports mandating minimum accessibility standards at the Liveable Housing Australia (LHA) Design Guidelines Gold Level (Option 3) or an equivalent standard (rather than the Silver Level proposed).</p> <p>It is important that the review is not at the expense of good design and quality. DPIE must engage closely with relevant councils in addition to the development industry, on the specific aspects of the ADG.</p>

Explanation of Intended Effects	LGNSW Comment
A.2 Key components of this revision	
<p>A.2.5 Environmental performance The revision of the ADG intends to update design objectives and guidance and introduced new design criteria in the following areas:</p> <ul style="list-style-type: none"> • Energy efficiency • Electric vehicles • Heating and cooling infrastructure • Water management • Green infrastructure • Environmental performance of materials • Waste management 	<p>No design criteria for waste management has been proposed. Well-designed waste management systems support resource recovery, circular economy and net zero emission outcomes. Waste management needs to be escalated early in the design phase to enable well designed communities.</p> <p>Waste collection is an essential service provided by local government and badly designed apartments have led to significant impacts for developments and the broader community including:</p> <ul style="list-style-type: none"> • Apartment waste services areas being inaccessible by collection trucks • Increased illegal dumping • Increased presentation of bins on the street • Insufficient areas to sort and store recycling.
Appendix B: Urban Design Guide	
<p>Developing guidance Reviews of current design and planning processes and industry peak body engagement have identified a range of domains where urban-scale design guidance is desirable, including:</p> <ol style="list-style-type: none"> 1. the need to consider, and methods for measuring, gross dwelling density; this is achievable through planning controls (including land use zoning, height, and floor space ratio) 2. a common place-based approach to design at urban scales, including site and context analysis and mapping 3. structuring networks of public space and green infrastructure, to ensure urban environments are more permeable, sustainable, responsive to climate change, and adaptable to change over time 4. planning precincts to ensure that new housing is within walking distance of local and district open spaces, shops, fresh food, schools, and public transport 5. guiding the design of public space (complement by the Greener Places Design Guide). 	<p>The development of an Urban Design Guide is supported. LGNSW notes the matters to be included and will provide detailed comments when a more fully developed draft is available for comment.</p> <p>On one point, the proposed new Urban Design Guide proposes a Connecting with Country design consideration, for relating with and responding to Country in precinct planning. The Draft Aboriginal Cultural Heritage Bill 2018 defined Aboriginal cultural heritage for the purposes of the Bill as ‘the living, traditional and historical practices, representations, expressions, beliefs, knowledge and skills (together with the associated environment, landscapes, places, objects, ancestral remains and materials) that Aboriginal people recognise as part of their cultural heritage and identity.’</p> <p>This broad definition, including places and landscapes, may impact on precinct planning in terms of Connecting with Country design considerations. As recommended above, the NSW Government should progress long awaited Aboriginal cultural heritage reforms in consultation with stakeholders, to ensure reforms align with the intent of the proposed new Urban Design Guide.</p>
Appendix C: BASIX	
C.2 Objectives of sustainability reforms	<p>Supported. The tool and policy framework, since inception, was designed to enable regular review of targets and technologies and especially to signal changes to industry ahead of implementation such</p>

Explanation of Intended Effects	LGNSW Comment
<p>Staged and incremental increase in sustainability targets to enable industry to plan for future change and implementation in line with the NSW Government's Net Zero Plan.</p>	<p>that developers could work out most cost-effective compliance pathway even before new targets were introduced. Biannual review of the tool is entirely appropriate and long overdue.</p> <p>Target setting to align with NCC Trajectory for Low Energy Buildings is logical but should not be locked into the SEPP, in terms of BASIX Numerical targets.</p> <p>The NSW government must also retain options to review targets outside NCC implementation timeframes which have often been adjusted (deferred) at short notice. Energy Efficiency uplift in the residential sector is commercially viable and deferral of increased targets undermines the NSW Net Zero Target.</p>
<p>Providing more flexibility in the available assessment pathways to demonstrate a design meets sustainability performance requirements</p>	<p>New pathways must be demonstrably fit for purpose – via a transparent process. There was no transparency around most recent changes to BASIX tool. It is essential that DPIE continues to maintain the data capture functionality of BASIX, which has never been used optimally, yet which captures extensive valuable data relating to residential development, including completion rates. Any alternative pathway must still require applicant to register a project in BASIX and enter highest level (not technical) detail (postcode, number of buildings, number of apartments) and also require Certifiers to use the BASIX Completion receipt process so the NSW Government knows when a project's final occupancy certificate is issued. To not capture these fundamentals would be a significant backward step.</p>
<p>C.2.1.1 An independent, merit assessment pathway</p>	<p>LGNSW supports an approach where sustainability outcomes are matched or exceeded by using different assessment tools. However, independent merit assessment pathways must have rigour demonstrated through evidence as well as a transparent governance process. If a proposal was to use an alternative assessment pathway, key data would still need to be collected within the BASIX tool so that developments can be analysed collectively.</p> <p>LGNSW considers that if an alternative assessment pathway is used generation of a BASIX certificate and BASIX completion certificate is still required to capture the data from all assessment pathways.</p>
<p>C.2.1.3 Allowing a tailored approach for thermal comfort and energy performance</p>	<p>Extreme heat kills more Australians than any other natural disaster. NSW councils have also identified extreme heat as their highest risk to manage through their climate change risk assessments. LGNSW is opposed to any trade off of thermal performance of the building envelope by installing more energy efficient appliances or solar PV.</p> <p>The thermal safety of the occupants needs to be maintained by the building envelope as we are already seeing instances where people cannot afford to turn on their air conditioning. Also grid reliability in extreme heat may be affected, and appliances and solar PV will not be able to operate during an electricity blackout.</p>

Explanation of Intended Effects	LGNSW Comment
	<p>There should be no trade-offs with thermal comfort targets to protect human health and wellbeing. The thermal performance of housing under BASIX is inadequate for future climate projections both in the near future (2030) and far future (2070) as identified in WSP's 2020 report on Future Proofing Residential Development to Climate Change. The reliance of BASIX and Nationwide House Energy Rating Scheme (NaTHERS) on historical climate data (1970-2004) when the 10 hottest years on record occurred after 2004 means that houses built today will be very reliant on mechanical cooling in the future. BASIX, NaTHERS, National Construction Code or any other tool that the Design and Place SEPP allows must be based on future climate projections (both near and far future) to ensure the thermal safety of occupants in this changing climate.</p>
<p>C.2.2 Aligning sustainability performance with Design and Place SEPP principles</p>	<p>LGNSW supports expanding the sustainability requirements to include the embodied energy of buildings, green infrastructure and stormwater run-off. We note that there are local planning provisions that already cover these additional aspects. Clause 3.3 of BASIX 'overriding provisions of other environmental planning instruments and DCPs' will void local community input and local climate adaptation strategies on these issues. LGNSW would support a situation where a minimum standard was applicable across NSW, however a mechanism to apply higher local targets and conditions is a requirement to support local adaptation that may require a different response to other areas across NSW.</p>
<p>C.2.3 Sustainability assessment consistent with other jurisdictions</p>	<p>The BASIX benchmark provides a consistent point to compare reduction target outcomes and progress over time. It also contributes to the transparency and governance of BASIX.</p> <p>LGNSW supports keeping the 2004 benchmark to support accountability and transparency.</p>
<p>C.2.4 Improving the customer experience</p>	<p>Governance and transparency are fundamental to improving the customer experience and efficacy of BASIX. In its 15 years of operation, the BASIX target has only been reviewed once and the tool has only had some minor adjustments. The review process itself was lengthy, taking a number of years for an outcome to be resolved. Fees are collected for this purpose but there is no transparency that this occurs.</p> <p>BASIX should be appropriately funded to be reviewed every 3 years aligned to the NCC review process. Any changes proposed to the tool through the review process be based on an evidenced-based and transparent process.</p>

Explanation of Intended Effects	LGNSW Comment
Other matters	
	<p>There have been recent local and international high-profile examples of buildings, structures and infrastructure that have highlighted where statutory controls have not been implemented or enforced leading in some cases to loss of life, injury and cost.</p> <p>BASIX compliance must be funded to ensure the integrity of the program and that efficiency targets are realised. This could involve random sampling by the BASIX Assessor Accrediting Organisations. Local government has concerns that BASIX favours natural gas systems for heating and cooking rather than electric alternatives, such as heat pumps and induction cooking. This is inconsistent with the NSW Government's net zero emissions target. BASIX must be more flexible in determining low emissions technologies to assist in meeting net zero emissions by 2050.</p>