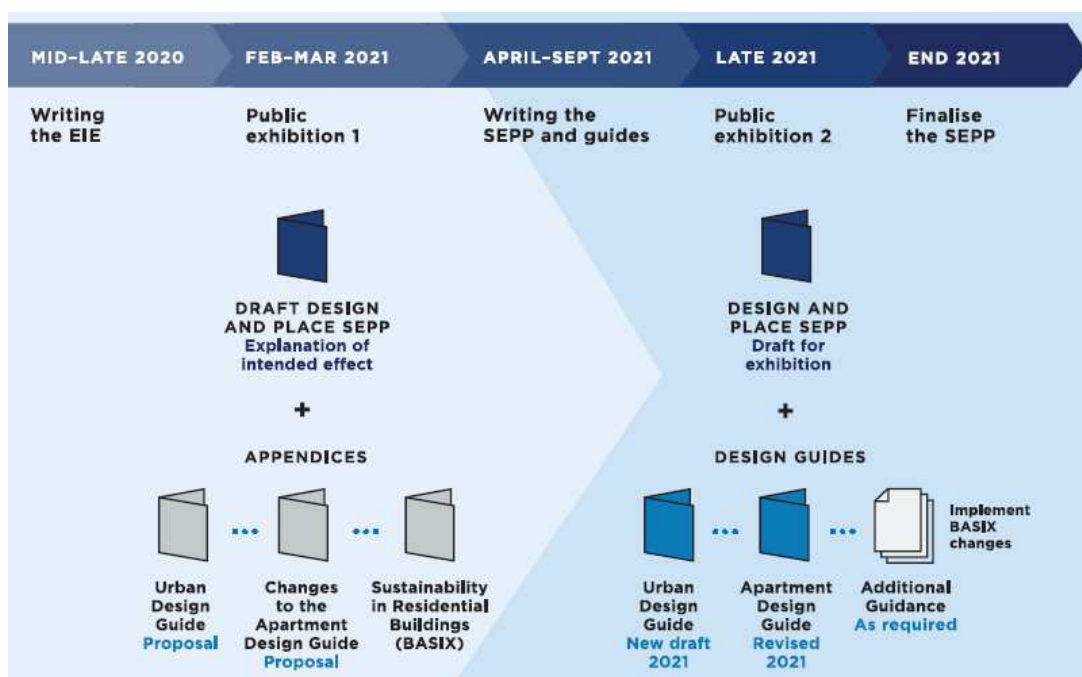


SUBMISSION ON PROPOSED DESIGN AND PLACE SEPP EXPLANATION OF INTENDED EFFECTS

APRIL 2021 - Parts 1 & 2 - PROPOSED SEPP

Section 1.2.2 - Development of the new SEPP

- While the Design & Place SEPP webinar was a good first step, there should have been, and still needs to be, better opportunities provided for community consultation meetings to take place rather than one single webinar for the community, particularly when this one SEPP is to have such an overarching impact on planning in NSW. With the pandemic at a point where thousands of people are now permitted to attend sporting venues, public meetings to allow physical attendance at various centres around Sydney must be factored into the public exhibition timeline.



RECOMMENDATION: Prior to or when the draft Design and Place SEPP is put on public exhibition in late 2021, there should be a series of public face-to-face consultation meetings held in Sydney and in regional centres.

RECOMMENDATION: The consultation process for any future changes to the planning system must involve the community at the beginning of the process. Where "industry" is granted access to relevant Ministers and heads of Department, the same access must be provided for the community to balance any real or perceived bias towards the industry.

- There is significant concern in communities right across NSW that the exhibition process for any change in planning has become little more than ticking the community consultation process box. BPN consistently hears from its member groups that little meaningful change occurs after their submissions are provided. Yet the community hears media reports on a daily basis of a veritable tidal way of back room 'deals' and massive profits being made by property industry representatives who have direct access to Government.

The *Infrastructure Contributions System Improvements - Submissions Report* (excerpt below) is a classic case which illustrates this problem. Even though there was strong comment from "*many councils, peak bodies and community representatives*" to the changes to value capture, the response was that "*it is the Government's policy position*". The comments were clearly not just objections from a handful of individuals, these objections were from the main stakeholder entities that would be affected by the changes. If submissions of that calibre are not heeded then the public exhibition process itself is undermined.

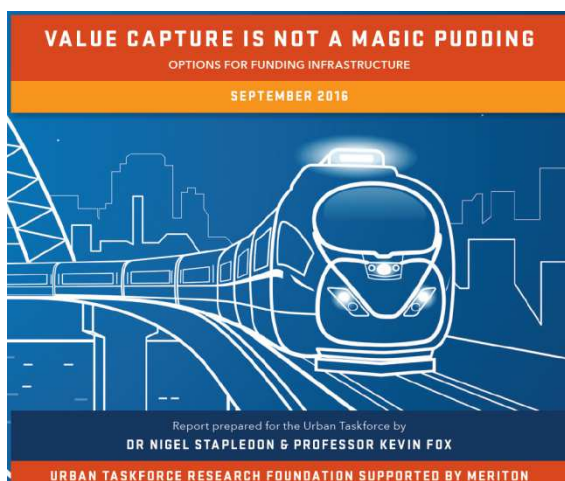
The clarification and position on value capture drew out the strongest comments and opposing positions from stakeholders. Many councils, peak bodies and community representatives objected to the changes, particularly those councils which had operated planning agreement value capture policies. Examples were provided by councils of benefits including flexibility of negotiated outcomes with developers.

3.3 Response

The exhibited position on value capture is maintained, as it is the Government's policy position that planning agreements cannot be used for the primary purpose of value capture for the following reasons:

RECOMMENDATION: The outcomes of exhibitions must be based on submissions made, rather than be a justification process for a predetermined Government policy position.

- This problem is further compounded by Government policy which is being considered by many as simply reacting to and following the development industry's preferred agenda.



Current uncoordinated attempts by different levels of government to capture value uplift from infrastructure investments are raising the costs of development. This can result in less development and hence have an adverse effect on housing affordability, as well as raising costs to businesses. Coordination and clarity are hence required in balancing value capture options with other policy concerns, such as housing affordability.

It is considered unacceptable that the only input that the community is permitted is in the final shaping of a Government policy that has already been determined and which aligns with industry policy papers.

RECOMMENDATION: Councils, peak bodies and community representatives view must have equal weight with property industry representatives in the design of planning policy.

Section 2.3 - Principles of the new SEPP

- **BPN is fundamentally opposed to *"moving away from a system governed entirely by prescriptive controls"*, and instead allowing and encouraging *"innovative and creative approaches to achieve an outcome"*.**

Without prescriptive controls, there can be little if any legal argument made against developments. Development standards will be obsolete, Clause 4.6 Variations for development standards will no longer be needed and councils will have few if any reasons available to reject development applications or planning proposals. Furthermore in Land and Environment Court cases, there would be no development standards on which to base an argument against a development; it will be woolly spin promulgated by well-resourced developers' consultants against resource-stretched councils. An impossible argument to win.

This strategic approach to planning, rather than a prescriptive approach, has long been the goal of the property industry. Any development or proposal can seemingly be justified by creative spin.

- The five design principles against which developments will be judged, are so ill-defined that anything could be described as being consistent with the principles:
 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 wellbeing of people and the environment;
 5. Design resilient and diverse places for enduring communities.-

For instance, no developer in their right mind is going to describe their proposal or DA as being ugly and having no character in their design statement even when the majority of the community thinks otherwise.



- It is disturbing to read that the principles have been designed to align with "*policy papers from industry and academic groups*". The community who will be living in these spaces has not had input into the development of these principles. Any input from "industry" groups, presumably from Urban Taskforce Australia, Property Council of Australia and the like, will necessarily be skewed towards maximising industry profits, not maximising liveability or good design. The biggest stakeholder group is the community and yet their input is only sought after the Government's policy position is decided with input from industry groups.

Without significant community input being sought PRIOR to Government policy decisions being decided, NSW will have increasing numbers of dissatisfied and disaffected communities.

RECOMMENDATION: Additional targeted community stakeholder meetings should be held prior to or during the exhibition period of the draft Design and Place SEPP.

- While the five design principles might be admirable sounding goals, they cannot be the basis for sound planning. One of the most difficult issues that communities face when confronted with dreadful developments is that many councils have poorly defined objectives for their zones. To have an over-arching SEPP that has principles that are even less well defined will produce even worse outcomes for the community.

RECOMMENDATION: The Principles must contain more specific prescriptive details.

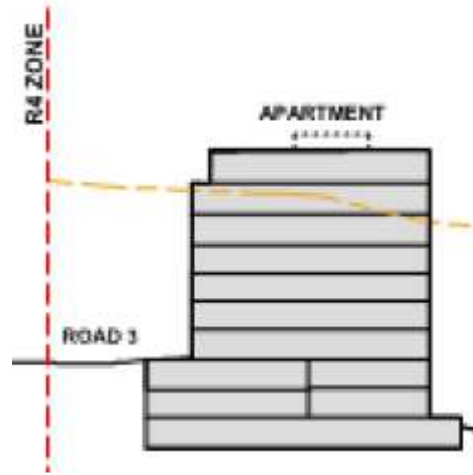
- **Principle 1. Design places with beauty and character that people feel proud to belong to**

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 *attractors*, and powerful tools for economic growth.

- o While it is agreed that attractive built environments are attractors, it does not necessarily follow that the proposed SEPP will produce attractive environments.
- o It is considered that the Design and Place SEPP as written CANNOT "*ensure design quality of new neighbourhoods and precincts, public spaces, new architecture, landscape architecture and the environment*". Without prescriptive controls, there can be no substantiative argument made against even the worst design, as design appreciation by its very essence is subjective. The NSW Government continues to be unable to prevent even the most disastrous of building construction faults. Removing even more controls cannot and will not ensure design quality.

"*Appropriate response*" to context and local character is totally meaningless. The ugliest of designs are promoted even in heritage conservation areas as being an "*appropriate response*" just because the development is a residential dwelling.

"*Suited to a site's unique topography*" is equally meaningless. Where there is sloping topography, instead of following the fall of the land, developers use the topography as an excuse to add in extra storeys, over what is permitted. And then lodge a Clause 4.6 Variation Request on top of that. The proposal below is where the site has recently been rezoned for 6 storeys, provided to BPN by one of its member groups. Somehow that 6 storeys has translated into a 10 storey building.



Stating that the intended effects will be realised through "*mandatory considerations*" is an oxymoron. It gives the impression that some considerations may be mandatory. This is not correct. All this phrase does is make it mandatory for DPIE or for a developer's consultant to SAY they have considered an issue, not necessarily have proper regard for that issue.

The types of SEPP wording referenced above is considered to be the sort of vague wording that communities abhor. Without prescriptive controls the development industry will have virtually carte blanche to build whatever it wants in NSW. The wording must be far more prescriptive.

RECOMMENDATION: The "*mandatory considerations*" must be reworded to read "*mandatory requirements*".

- **Principle 2. Design inviting public spaces to support engaged communities**

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.

- o The Intended Effects of this Principle proposes "*new targets to retain or increase the provision and diversity of public space*", "*new dwellings and workplaces are located in close proximity to public space*" and "*deliver green infrastructure*".

However in the Section 3.2.2 Mandatory Matters for Consideration, the only scale of development that these particular Intended Effects of Principle 2 would apply to is new Precincts. That is not consistent with the Significance of this Principle, which is supposed to ensure equitable access to high-quality public space, not just for residents of new precincts.

As established suburbs become increasingly densified, all developments that increase population density in an area must contribute either with dedicated public space or by financial contribution.

RECOMMENDATION: An additional Mandatory Matter(s) for Consideration must be included regarding public space for established suburbs.

- o The Intended Effects propose "*that new dwellings and workplaces are located in close proximity to public space*". Yet it has been planning doctrine for many years that new dwellings and workplaces should be close to transport corridors and hubs. Again, except in new Precincts built on greenfield sites, the placement of transport, green space, dwellings and workplaces in close proximity to each other is next to impossible.

It is one thing to make an overarching motherhood statement that sounds well and good, it is another thing altogether for those statements to be able to be applied equitably.

RECOMMENDATION: There are only five Principles on which the Design and Place SEPP is based. Therefore for the SEPP to be equitable, each of the Principles must address all three scales of development - new precincts, significant developments and other developments - in the Mandatory Matters for Consideration.

- o The Intended Effects propose that the SEPP will *"ensure that buildings near vibrant areas...do not impact on the ability for those areas to continue to operate"*. The only way for that to equitably occur is for new building regulations that ensure windows and walls are acoustically designed to prevent acoustic disturbance. That will increase the cost of buildings. It would be inequitable for instance, for there to be changes made to current permitted noise levels. The pub and club industry must not be considered as a more important stakeholder than surrounding residents.

RECOMMENDATION: It is considered inappropriate that *"late trading"* and *"licensed premises"* are included in the Mandatory Matters for Consideration for Principle 2 which is supposed to be in regard to *"Design inviting public spaces"*, not protecting private businesses, however much they are enjoyed by the public. That Mandatory Matter must be amended.

- Principle 3. Design productive and connected places to enable thriving communities

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.

- o BPN is fundamentally opposed to the State Government imposing *"baseline residential density targets in urban areas"* through the use of a SEPP, rather than targets being reached in cooperation with local councils.

RECOMMENDATION: The Design and Place SEPP must NOT be used to impose population targets on Local Government Areas. This must be deleted from the SEPP.

- o Street intersection density targets prescribed in a SEPP must not replace the use of SIDRA traffic analysis to determine the capacity of intersections. The SIDRA analyses consider directional movement, pedestrians and capacity beyond a simple intersection density target. Simplification down to a single target will make for worse planning not better.

RECOMMENDATION: Any street intersection density target must reference the use of SIDRA traffic analysis.

- o Prioritisation of *"pedestrians and cyclists"* must not be at the expense of the efficient movement of other traffic, particularly in established areas. Gridlocked traffic increases transport costs, increases fuel usage, increases toxic emissions as well as increasing the stress levels of road users.

RECOMMENDATION: Any *"prioritisation"* of pedestrians and cyclists in established urban areas must be at 'no net loss' to travel times for other road users.

- **Principle 4. Design sustainable and greener places for the wellbeing of people and the environment**

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.

- o This is the only Principle where the words "*(where possible)*" have been introduced into the Intended Effect. In essence, this provides an all encompassing 'get-out-of-jail-free' card for retaining existing green infrastructure. It is particularly unacceptable when this 'get-out-of-jail-free' card is also being applied to "*habitat and significant vegetation*".

This SEPP must NOT provide loopholes for the development industry to use to avoid retaining existing green infrastructure. This Principle also includes "*parks and open spaces*". There is no justification whatsoever for not retaining public parks and open spaces.

RECOMMENDATION: The words "*(where possible)*" must be removed from the Intended Effect reference to "*retain existing green infrastructure (where possible)*", particularly *habitat and significant vegetation*".

- o Encouragement of green roofs and walls is a good initiative. However these MUST NOT been used as replacements for tree targets, only as additional measures. As the Significance of this Principle states "*Trees are an essential part of green infrastructure*". Trees of any significant size cannot be planted on roofs. Shrubs and grasses do NOT produce the same benefits in any substantiative quantity or quality. They do not supply shade and their usefulness in cooling local environments or improving air quality are minimal.

This 'get-out-of-jail-free' card will be used by the development industry to avoid tree planting or retention of existing green infrastructure, by saying there is not enough space for deep soil planting, as many BPN members can attest. There is always enough space for deep soil planting if the size of the development footprint is reduced even marginally. Why is it whenever there is a suggestion of tree retention or replacement, there are loopholes provided to avoid protection of green infrastructure?

RECOMMENDATION: The SEPP must not imply or condone the use of green roofs and walls as an offset for planting trees, the meeting of tree replacement rates or for the retention of existing green infrastructure.

- **Principle 5. Design resilient and diverse places for enduring communities**

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.

It is difficult to see a correlation between the 2019-2020 bushfires and the Intended Effects of this Principle. It is also difficult to see any correlation between climate change and introducing a range of housing types into an area. It is even less understandable to link respect for people from all walks of life to resilience.

The *Design and Place SEPP Explanation of Intended Effects* should have been more specific regarding the content of the proposed SEPP, rather than utilize a whole bunch of fuzzy buzz-words and catch-phrases that appear to bear very little relationship to the purposes of the SEPP.

The imposition of "*requiring development to provide a range of housing and tenure types*" should not be hidden in feel-good phrases. It is doubtful that the development industry was provided with such platitudes when the intended effects were explained to them. The community is able to recognise spin when it reads it. This EIE should have been far more explicit.

RECOMMENDATION: The *Design and Place SEPP Explanation of Intended Effects* is deficient in its explanations of actual effects. It is high on spin and low on facts. The SEPP must not utilize the type of jargon used in this EIE. It must be clear, concise and precise.

Section 2.4 - Application of the new SEPP

- Rural Zones (RU1 - RU6) must be exempted from sections of the Design and Place SEPP. However that by itself is not sufficient. Environmental zones (E1 - E4), Recreation (RE1 & RE2), Waterways, and Tourist (SP zones) must also be considered for partial exemption.
- As the SEPP itself has not yet been released, it is not possible to ascertain which sections of the SEPP these zones need to be exempted from.
- It is difficult to understand why the above zones have not been considered for exemption while Items 1 to 10 of Schedule 1 of the SEPP (State and Regional Development) are being considered for exemption, particularly when Industrial zones are apparently also not being considered for exemption. Many of the industries in Items 1 to 10 of Schedule 1 of the SEPP (SRD), such as food and beverage processing as well as chemical manufacturing, are not dissimilar to industrial zone industries, the only difference being the capital investment value.

RECOMMENDATION: When the final Design and Place SEPP is put on public exhibition, submissions concerning exemptions to the SEPP must be properly and transparently considered.

Section 2.4.1 - Development scales

- The definition of a "Precinct" is considered to be too small. Almost every new land release in greenfield areas would be greater than 10ha. Most subdivisions in transitional zones and many brownfield sites would be more than 50 lots. Almost every site surrounding transport hubs would have more than 1,000 people.

RECOMMENDATION: Either a new methodology of defining a "Precinct" must be sought, or the numerical levels must be greatly increased.

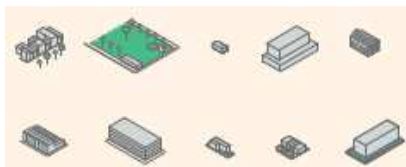
- The definition of a "Significant Development" as being greater than 1,500 m² (0.15ha) in a metropolitan centre is absolutely ridiculous. That is less than two blocks of land in most established suburbs. If a 2-block site is within a Precinct (such as land surrounding a station), then housing diversity will be able to be applied, reduced parking provisions, higher regulated densities, "safeguarding" late trading and a whole host of other "Mandatory Considerations" will apply.

The definition of "Significant Development" as being greater than 4,000 m² (0.4ha) on any other parcel of land within a precinct or site bounded by streets, is also totally ludicrous. Virtually every one of the 100 planning proposals that were approved using the recent Fast Track Assessment process would have met that definition. It should not be the Intended Effect of this SEPP to create yet another approval system for these types of planning proposals, allowing less trees to be planted, reduced parking provisions, higher densities and more types of residential development, to name just a few impacts of this definition.

The definition of a "Significant Development" has either not been properly thought through to the obvious conclusions and loopholes it will create, or the Intended Effect is to completely gut the controls that councils currently have left available to them.

RECOMMENDATION: The methodology of numerical controls must be reconsidered and replaced with a more equitable definition for "Significant Development".

- The definition of "All Other Development" includes single residential dwellings, units, townhouses, manor houses, churches, parks, warehouses and other unidentifiable rectangular blocks -



The inclusion of residential dwellings (including medium density residential) within this SEPP will mean that council policies for green offsetting to ensure tree replacement will be over-ridden. Likewise population density controls, parking space minimums and affordable housing. Changes to BASIX will also apply to single residences. Not only will council LEPs be gutted but also their DCP guidelines. Councils that have struggled to maintain their tree canopy will be at the mercy of this one size fits all SEPP.

RECOMMENDATION: Single dwellings and low rise medium density residential must be removed from the Design and Place SEPP altogether.

Section 3.1 - Design Process

- The EIE proposes that the Design and Place SEPP will be "*aligning the existing requirements for qualified designers with the NSW Design and Building Practitioners Act 2020*". However it appears that landscape architects, who will be required for all open space greater than 1000m², are not nominated as design practitioners under the Act or Regulation. Therefore the same requirements would not be imposed on landscape architects as on other disciplines. Likewise the new definition of a "Qualified Designer" may not be covered under the Act or Regulation.

RECOMMENDATION: All classes of designer that are to be proposed as "qualified designers" must be included in the NSW Design and Building Practitioners Act and Regulation 2020. If amendments to the Act and Regulation need to occur, that must happen concurrently with this SEPP.

- Given the continuing difficulties with compliance in the development industry, it is considered that a "*statement to accompany planning and development applications can be used to verify this requirement*" of a suitably qualified design professional, is insufficient.

RECOMMENDATION: A copy of designers' registration must accompany planning and development applications to ensure the authenticity and qualifications of the professional.

Section 3.1.2 - Place based approach

- BPN agrees with the theory of Place-based Approach, whereby *"a holistic understanding of the place that development will impact and shape is critical"*. However the supposition that the proposed *"Design and Place SEPP will strengthen the correlation between place and site analysis and the design outcome"* by requiring statements from the proponent that the identified principles have been considered and the information *"synthesised and interpreted"*, is fundamentally flawed.

Reports can always be written by the proponent's consultants that will meet subjective criteria if no or few prescriptive controls are imposed. It will become difficult if not impossible for local councils to reject inappropriate development if developers are simply required to provide the best possible spin. A typical example is where a proponent's heritage consultant will state that the only feasible way to protect a heritage building into the future is to virtually gut it, otherwise the building might, repeat might, be demolished even though there are heritage controls that could prevent that from occurring .

RECOMMENDATION: Prescriptive controls and guidelines including LEPs, DCPs, heritage, local green offset codes etc must not be subsumed by a subjective approach in the SEPP.

Section 3.1.1 - Design evaluation and review

- This section states that *"industry feedback has indicated the approach taken to achieve this aim (design quality outcomes) can vary, including the scope of the review, who sits on the panel, the consistency of panel members, and how advice is provided"*. Of course the development industry does not like having a panel of independent designers that critique the design quality of a developers' proposal.

RECOMMENDATION: The design review process *"is a widely accepted form"* of *"improving the design quality of projects"* and it should not be restricted in any way just because the development industry does not like the process or its outcomes.

- It is proposed that a new *Design Review Guide* (DRG) will address the following list. Concerns regarding the criteria are individually listed below.

The DRG will:

- 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.

- o Address the required expertise on design review panels - Currently the local design review panels can include qualified council staff. The criteria for *the "required expertise"* must not exclude council staff, who have local knowledge, from the design review panels. However all Panels for State and local government planning and development proposals must still include at the minimum one external expert in architecture and urban design and one external expert in landscape architecture. **Given the parlous state of construction, one external expert in structural engineering would be a sensible addition to the Panels' expertise.**

RECOMMENDATION: The required expertise for design review panels must not prevent qualified council staff from being on the panels. All Panels must include at the minimum one external expert from each of the following disciplines - architecture & urban design, landscape architecture and structural engineering.

- o Clarify the scope of a panel's advice - This must NOT be used to limit the scope of advice that a Panel can provide, which for all intents and purposes, it sounds like this criteria will do. The seven key objectives of the design reviews are -
 - Better fit - contextual, local and of its place
 - Better performance - sustainable, adaptable and durable
 - Better for community - inclusive, connected and diverse
 - Better for people - safe, comfortable and liveable
 - Better working - functional, efficient and fit for purpose
 - Better value - creating and adding value
 - Better look and feel - engaging, inviting and attractive.

One of the peak industry bodies, Urban Taskforce Australia, has repeatedly said that if an expert such as an architect is designing a building, then they do not need micro details to adhere to being included in SEPPs. The same argument could reasonably be applied in this situation, if not more so in the case of design experts that are Government appointed to design review panels. **If the NSW Government is appointing architects and urban designers etc to review developments, it should not then be providing micro details of what they are allowed to comment on.**

RECOMMENDATION: The scope of a Panel's advice must not be limited by restrictions being included the Design and Place SEPP.

- o Consistency of panellists across project reviews - In principle this is agreed with. However there may be situations where further expertise is needed, particularly additional engineering expertise.

RECOMMENDATION: The SEPP should not prevent the Panels from calling in additional expertise where needed.

- o Clarify the importance of panellist advice being informed by the relevant planning framework - The intent of this guidance is unclear. If a panellist is a Government appointed expert in the field of architecture, urban design, landscape or engineering, surely that acknowledged leader in their field would have clear knowledge of the relevant planning framework. If something so obvious needs to be stated, then potentially there is a different intent behind this.

RECOMMENDATION: The intent of this guidance must be clarified in the SEPP.

- o Give consideration to review timeframes commensurate with project complexity - This is a major bone of contention within the community. It is a common stalling tactic for proponents to fail to provide sufficient information on which to make an assessment or review of a design. Even repeated requests frequently do not secure sufficient or complete information. If timeframes are based solely on so-called "complexity" and no other requirements, proponents can force a review or an assessment to be undertaken without the Panel having all relevant information.

RECOMMENDATION: The SEPP must clarify that timeframes for determination will not commence until the delegated authority and the review Panel are satisfied that all relevant and necessary information has been provided by the proponent.

- o Clarify the role of the panel as an advisory service to planning assessment teams - **There seems little if any point in having a design review panel whose advice can simply be ignored** by both the proponent and the delegated authority. The review panel is then essentially more show than substance; a way of looking like the panel has some authority whereas in fact it has none. If the Government is going to include reference to the Government appointed design review panels as a method of "ensuring" good design, then it must provide the necessary authority for their decisions to be applied.

RECOMMENDATION: The Design and Place SEPP must ensure the Design Review Panels have more authority than just as an "advisory service".

- To support the use of design review processes, additional thresholds for design review are being proposed. These "may" include project locations, project types, capital investment value, development height and site area. The thresholds for the use of the design panels must not be so excessive that virtually no development or proposal is referred to the panels, which is what is most likely to occur. Other threshold criteria must be included that impact on the amenity of the locality, particularly those such as density, traffic and environmental impacts.

RECOMMENDATION: The basic minimum of thresholds contained in the SEPP must include project locations, project types, capital investment value, development height, site area, density, environmental and traffic impacts. Individual councils must be permitted to add to that list of thresholds. Thresholds must not be set so high as to exclude the majority of proposals and developments.

- It is proposed that thresholds may vary for projects in urban and regional areas.

RECOMMENDATION: Individual council must be allowed to set their own thresholds, not be beholden to a one-size-fits-all SEPP that CANNOT be fit for purpose for all LGAs.

Section 3.2.1 - Design and place considerations - Application requirements

- The requirements for all development are the most limited set of requirements ever seen. They fall far below the requirements set in the EP&A Regulation 2000. All that is required is one site analysis and one design statement.

If ever DPIE wanted to ensure ATROCIOUS development, this is the singular way to ensure it.

In the "design statement" and "site analysis" for "all development" -

- o "Local character" is to be included but no Heritage Impact Assessment is required;
- o "Better Placed objectives" are included but no Environmental Impact Assessment and no Arboricultural Impact Assessment are required;
- o "Safety by design" is included but no geotechnical report, engineering report, hydrological report, nothing;
- o "Site planning strategy" is included but no traffic report or inclusion of information on structures or environment on adjacent land.
- o NOT EVEN A BUSHFIRE ASSESSMENT is required for fire prone lands for risk assessment.

Just two simple documents that will be full of developer spin. In other words, a developer's dream. As this stands, the SEPP will override all council requirements for documentation. The community doesn't want to know about "resilience". It wants to know what damage the development is going to do to their local environment, what impact it will have on their amenity and what risks are inherent. The State Government must stop trying to reduce local councils' responsibilities to gutters and garbage.

PRIORITY: This section must be removed from the Design and Place SEPP in its entirety. It has no place within the SEPP. The documentary requirements for "all development" must be left with individual councils.

Section 3.2.2 - Mandatory Matters for Consideration

- It is very concerning that all of these essential elements of good design and planning are being reduced to simply "considerations" in the Design and Place SEPP. Proponents will just employ consultants with the willingness to provide reports with such wording as to show that a matter has been "considered".

A classic example regarding the use of public open space, was the March 2021 report for *AusCycling Mountain biking in Australia: An Economic and Participation Analysis*. Under "Environmental Benefits" the report states "*As tools for conservation, trails preserve important natural landscapes, provide links between fragmented habitats and offer opportunities for protecting plant and animal species*". In contrast, a 2020 expert report by a council heavily impacted by mountain bike trails stated that mountain bikes -

have been shown to have significant impacts within bushland areas, effectively increasing the critical distances of edge effects into bushland. The impacts include:

- increased soil erosion and sedimentation
- vegetation clearing and reduced ground layer biomass
- unforeseen extent of impact due to creation of informal tracks
- increased risk of introduction of domestic pets and/or predators to site
- increased noise levels
- increased introduction and spread of pathogens e.g. *Phytophthora cinnamomi*

Mountain bike tracks have also been shown to introduce more severe impacts including:

- damage from the construction of unauthorised tracks and jumps
- increased erosion from rutting, skidding and wheel spin
- increased native fauna flight initiation distances and escape behaviour

Night access into sensitive areas by both pedestrians and bikes using head torches is known to impact successful breeding and raising of young by *Ninox strenua* Powerful Owl.

The cumulative impact of regular switchbacks on steep terrain and exclusive separate pedestrian, vehicle and bike tracks can physically cover a substantial area of vegetation clearing multiplying the effect significantly.

Quite a contrast between a paid consultant's findings and the findings of the local council. In terms of the Key Findings of Economic Benefits the AusCycling report became rather more hazy. On the one hand it states -

Limited data currently exists that quantifies participation in mountain biking, or the benefits associated with the activity, likely due to the difficulties in data collection

On the other hand it has no idea of the number of mountain bikers, giving the astoundingly large range of somewhere between 73,000 and 837,000. A guesstimate was arrived at of 341,000.

Participation in mountain biking nationally is estimated to be between 73,823 and 837,352. The large range in the participation estimate is due to bias in the survey results. It is likely that total participation is closer to the AusPlay participation estimate of 341,900.

Without even quantifying how many mountain bikers there are, the report confidently estimates -

On average, mountain bike riders spend \$2,282.90 annually when they go mountain biking within their local areas, and through their local trails. This works out to be approximately \$27.10 each time someone goes mountain biking.

The whole report, including the economic analysis of the sport, was written without knowing at all the key determinant - participation rates. This is the sort of 'expert' report DPIE can expect to see if it insists that mandatory matters are not in fact mandatory, they are only matters to be considered.

RECOMMENDATION: The title of Section 3.2.2 must delete the phrase "for consideration", instead is must read just "Mandatory Matters".

- *"Wording of the considerations set out in Table 1 is subject to change during the SEPP drafting process".* BPN trusts that DPIE will seriously consider submissions made on this section as some of the wording is quite unacceptable.
- 1. Cultural and built heritage - It is unacceptable that this applies only to a "Precinct" and not any "Significant Development" or "Other development". As the SEPP applies to all urban land of all development scales, making cultural and built heritage only apply to precinct developments will mean that not even significant developments will have to consider heritage, including aboriginal heritage. That would nullify Principle 1 - to design places with beauty and character.

RECOMMENDATION: Cultural and built heritage must be a mandatory matter for consideration for precinct, significant development and all development.

The phrase *"to ensure community use and enjoyment of these"* implies that a strategy must be developed to permit 'adaptive reuse' of heritage items. Adaptive reuse is frequently not in the best interest of preserving heritage items or areas, the worst examples of which are the trend towards 'facadism' whereby only the front facade of a heritage building is retained; or slightly better (but not much), where period features are removed and the whole internals of the building gutted and modernised.

RECOMMENDATION: The wording must be changed to read *"to ensure continued use and enjoyment of these"*.

2. Public Space - Mandatory consideration of the distribution of public space only at a Precinct level is not equitable. The will bias the provision of public space towards greenfield areas, whereas the densification of existing suburbs creates an even greater need for public space.

Whatever the mechanism is for the provision of public space in or near to significant developments (eg Voluntary Planning Agreements), it must at least have the provision considered. The only way to ensure *"the creation of new public space (is directed) to areas of greater need"* is to also apply this mandatory consideration to significant developments as well.

RECOMMENDATION: Mandatory consideration of public space must also apply to significant development.

3. Connectivity - As this consideration is proposed to only apply to precinct developments, we can see no reason for the inclusion of the words *"Connectivity has been provided **where possible** between green infrastructure"*. Given the size of precinct development, connectivity would almost certainly be able to be provided at this scale of development. The inclusion of the words "where possible" is the ultimate get-out-of-jail-free-card with proponents able to come up with a variety of excuses why connectivity is not possible.

Green infrastructure includes such things as street trees so there is no reason whatsoever for connectivity to not be considered. Landscape corridors across precincts will link with and via surrounding streets. It is not just for walking and cycling that connectivity is needed, it is also for biodiversity.

RECOMMENDATION: The proposed consideration must be worded to remove the words "where possible", so that the consideration reads as "Connectivity has been provided between green infrastructure including landscape corridors ... (etc)".

4. Local living - Agree with this point. However by including the words "where possible" with regard to proximity to primary schools and public transport, it deflects the need for infrastructure to be built prior to the establishment of large new greenfield precincts.

RECOMMENDATION: The proposed consideration must be worded to remove the words "where possible".

6. Water Management - It is concerning that large-scale detention of rain and stormwater is being proposed for new precincts. Consideration must also be included for a some of the stormwater being able to bypass the large-scale detention to facilitate environmental flows into local waterways and creeks. Otherwise there will be no riparian landscape corridors to connect to. If all stormwater, which is what feeds Sydney's creek systems, is detained then the waterways will fail as will the biodiversity that is dependent upon them.

RECOMMENDATION: In the proposed consideration, a new point must be included - "Environmental flows from stormwater and rain into any local waterway are maintained".

7. Green Infrastructure - Again the words "where possible" must be deleted from the sentence *"The precinct retains, where possible, and provides additional green infrastructure ... (etc)"*. At a precinct level, again this mandatory matter for consideration is invariably possible. The only thing preventing retention of green infrastructure at a precinct level, is the proponents' desire for larger profits. That should not override the need to retain green infrastructure.

RECOMMENDATION: The proposed consideration must be worded to remove the words "where possible".

Precincts MUST provide (not just consider providing) integrated urban development and green infrastructure and contribute to a green grid by establishing an interconnected network of open space, waterways and biodiversity.

It is essential for mental and physical health that green infrastructure is available to residents as soon as they move into the precincts, not years later when replacement trees reach maturity. Replacing mature trees with two saplings does not provide green infrastructure for decades and it totally destroys all biodiversity for even longer. While it is cheaper for developers to clear-fell sites and then plant trees, with no requirement for maintenance to ensure they survive, it is the antithesis of providing green infrastructure. **Precincts must retain existing green infrastructure.**

It must not be "*retaining or enhancing*" existing tree canopy, it must be "*retaining and enhancing*."

RECOMMENDATION: The proposed consideration must be reworded as "*retaining and enhancing existing significant and moderate tree canopy*", followed by a separate sentence "*Any tree removed will be replaced with at least two trees or council replacement rate, whichever is higher*". This will ensure that there is no either/or in the statement.

Green Infrastructure must not be only applied at precinct level, it must also be applied at significant development level. Otherwise what is left of the urban forest will be decimated. **The NSW State Government must stop pretending that planting one million unwatered saplings will somehow mitigate the significant impacts of the destruction of the existing mature urban tree canopy.**

RECOMMENDATION: Mandatory consideration of green infrastructure must also apply to significant development.

"*Giving preference to locally Indigenous and Australian native plant species*" continues the legacy of the 1970s which has seen individual eucalyptus trees planted where their growth habit of dropping branches causes significant concerns. In their natural habitat of hundreds of trees in a stand, the likelihood of large branch failure is far less. While it is agreed that preference should be given to locally Indigenous and Australian native plant species, if there is not a requirement for Arboricultural Impact Assessments, Landscape Architects (who are NOT arborists) will continue to select inappropriate species for areas of medium to heavy pedestrian and cyclist traffic.

If large shade trees are required, quite often the most appropriate selection would be non-native species. These have the advantage of not dropping limbs as they grow. A mixture of exotic and native species must be considered.

RECOMMENDATION: The last sentence in this mandatory consideration should read "*giving preference to locally Indigenous and Australian native plant species where appropriate*".

8. Resilience - If this SEPP wants strategies taken "*to reduce or avoid occupant's vulnerability to those risks, particularly bushfire, flooding, extreme heat and coastal erosion*", removing the requirement for reports on these risks is not a sensible method of doing so.

RECOMMENDATION: The mandatory consideration must include a list of expert reports that will be required to be produced and considered, including but not limited to structural engineering, bushfire, landslip, flood, arboricultural and ecological reports.

RECOMMENDATION: Mandatory consideration of resilience must also apply to significant development.

10. Density - The minimum density capacity of 15 dwellings per hectare is far too high for significant developments in established suburbs. That equates to 666m² per block, not including streets, footpaths, open space and community facilities in R2 zones. It is unacceptable to use this SEPP to override council minimum lot size maps.

RECOMMENDATION: The minimum density capacity of 15 dwellings per hectare must be removed from this mandatory consideration.

Increasing density is supposedly going to *"reduce further sprawl and retain arable land on the urban fringe for food security"*. However that is clearly not the case because greenfield areas on the urban fringe continue to be swallowed up by urban sprawl, as far as south as Appin and up to Hawkesbury in the north west. The community no longer believes that densification reduces sprawl, it occurs concurrently as we lose vast swathes of arable land. The photo below is the legacy of years of unchecked urban sprawl while massive high rise continue to be built. It's not one or the other, urban and regional centres have both sprawl and highrise foisted upon them by unachievable density targets promoted and supported by the development industry.



11. Housing Diversity - Similarly the furphy of that housing can be offered at different pricepoints for greater affordability if a range of housing types, units, manor houses (essentially 4 units) and skyhigh unit blocks are foisted on urban areas, is considered by the community to be nothing but industry spin.

One only has to consider the continuing huge rise in residential prices, despite tens of thousands of units being built, to see that the supposed drive for different pricepoints are pointless if property prices continue to skyrocket. Adding to the problem is that developers won't build anything but units in R3 zones unless forced to because unit blocks are more profitable than anything else. In addition, it is not the lack of available dwellings that impacting on housing affordability, it's low interest rates and land banking by the development industry.

There is nothing equitable about imposing a range of housing types (nice words for unit blocks small and large) onto established suburbs. **Local housing strategies should not be superseded by this SEPP in a thinly disguised attempt to usurp council decisions on appropriate density. Just because Ku-ring-gai Council pointed out that the Minister did not have the authority to impose housing targets on their LGA, is no reason to enshrine housing targets in this SEPP.**

RECOMMENDATION: The mandatory consideration must remove the reference to housing types, equitable distribution and the next furphy, ageing in place, so that it reads simply *"The proposal responds to the local housing strategy"*.

12. Transport and parking - Public transport does not and cannot replace demand for driving in many urban areas. Consideration must be given to the provision of multi-storey car parks at transport hubs within precincts, to minimise the distance driven. For State significant infrastructure or State significant development delivered by the State Government, provision of multi-storey car parks at transport hubs must also be considered.

RECOMMENDATION: Include consideration of multi-storey car parks at transport hubs within precincts and for State significant infrastructure or State significant development delivered by the State Government.

13. Attractive form - The words "on balance" should be removed. It is not a matter of positive design qualities outweighing bad design. The development should quite simply have positive design qualities.

RECOMMENDATION: The proposed consideration must be worded to remove the words *"on balance"*.

RECOMMENDATION: The list of specific aspects of design must also include (but not be limited to), landscaping including tree retention and deep soil planting, setbacks to neighbouring properties, overshadowing and response to local character.

RECOMMENDATION: Mandatory consideration of attractive form must also apply to precinct development.

14. Impacts on Public Space -

RECOMMENDATION: Mandatory consideration of impacts on public space must also apply to precinct development.

15. Impacts on Vibrant Areas - Agreed, except there should also be reverse conditions included whereby development in the designated night-time economy areas has a responsibility to mitigate impacts on existing residential buildings.

RECOMMENDATION: Consider the inclusion of mandatory considerations for impacts on existing residential buildings of new developments within night-time economy areas.

RECOMMENDATION: Mandatory consideration of impacts on vibrant areas must also apply to precinct development.

16. Activation - The minimum percentage of non-residential activation on street frontages should be no less than 75%. The term "adequate lighting" is inadequate - reference must be made to the relevant Australian Street & Public Space Lighting Standard, AS/ANS 1158:2005, or as updated.

RECOMMENDATION: A minimum 75% percentage of non-residential activation must be applied. Consideration could be given to a lower percentage for *"All other development"*.

RECOMMENDATION: "Activity streets" and "adequate lighting" must be well defined.

RECOMMENDATION: Mandatory consideration of activation must also apply to precinct development.

17. Emissions and Resource Efficiency - Alternate pathways must meet or exceed the performance standards, not just the targets, of BASIX. Private systems such as Greenstar are not equivalent. It must not just apply to "*all new homes*", it must apply to all development.

RECOMMENDATION: The proposed consideration must include the phrase "performance standards" and delete the phrase "all new homes", so that it reads "The development meets or exceeds the performance standards and relevant targets of BASIX".

RECOMMENDATION: Mandatory consideration of Emissions and Resource Efficiency must also apply to precinct development.

RECOMMENDATION: Competing provisions in other environmental planning instruments or DCPs should be allowed to exceed the current policy position standards if they are designed to provide better environmental outcomes.

RECOMMENDATION: Sustainability targets currently embedded in the online BASIX tool should be converted to mandatory requirements.

RECOMMENDATION: The SEPP's applicability should be for all development including alterations and additions that exceed a value which is LESS THAN the current \$50,000 and for the installation of a pool or spa of more than say 30,000 L but no more than 40,000 L.

RECOMMENDATION: Although the requirement for development to meet or exceed relevant NABERS targets for emissions reductions by 2030, 2040 and 2050 is supported, these targets should be made a mandatory minimum rather than "*where possible*", as the "*zero net emissions by 2050 target*" is assessed by the United Nations Intergovernmental Panel on Climate Change to still give an unacceptably high 33% chance of exceeding a dangerous runaway 2°C global warming.

RECOMMENDATION: The proposed use of "thermal comfort" is opposed as it is too subjective and should be replaced by the measurable use of "thermal performance".

RECOMMENDATION: Newly proposed measures for BASIX compliance must be designed to result in better measurable local outcomes.

RECOMMENDATION: The current BASIX process for energy and water benchmarking should be continued rather than transferring it to the weaker national standard of NatHERS.

RECOMMENDATION: The new SEPP should include enforceable standards for stormwater retention in all developments while providing for environmental flows.

RECOMMENDATION: There are many other design features that should be required or at least recommended in all new developments such as green roofs and walls (where they are in addition to and do not replace tree planting or retention), as in Biophilic Design rather than all too frequent heat absorbing dark coloured roofs and unshaded walls.

18. Tree Canopy - The words "*where possible*" must be deleted. All proponents claim that it is not possible to retain trees. Little if any effort is made to design developments so that they retain existing mature trees. Clear felling the site is always the preference. Even when Arboricultural Impact Assessments are provided, they are usually in the form of which trees will be removed to accommodate the building, not which trees must not be removed.

RECOMMENDATION: The proposed consideration must be worded to remove the words "*where possible*".

RECOMMENDATION: The term "*significant trees*" must not just apply to Australian native trees.

Green roofs, walls and softscape landscaping are NOT alternatives to retaining or replacing mature trees. They do not provide shade, sufficient cooling effects, habitat, transpiration or oxygen release. **They should never, ever be used as alternatives to trees.**

They may be used in conjunction with tree targets to provide additional benefits but they must not be used to reduce the number of trees retained or replaced. The only reason tree canopy targets cannot be met is that greedy developers want to maximise their profit. If DPIE allows this developers' dream, then the State Government CANNOT be said to be in any way serious about maintaining or increasing the urban forest tree canopy.

It is particularly galling that the wording appears to suggest that the SEPP wants the proposal to demonstrate the use of alternatives. Whether the wording is deliberate or just plain sloppy, it's only "*particularly*" where targets cannot be met. In other words, it's fine for any other excuse too.

Don't waste time on the Premier's Priority of planting one million saplings, it is useless when faced with the stupendous rate of mature tree loss across urban areas. **One Sydney LGA alone is losing 15,000 mature trees per year** across the public and private realm, according to its Urban Forest Strategy. Despite that Council planting 25,000 trees in 3 years at a staggering ratepayer cost of over \$1,000,000 there will still be a deficit of 20,000 trees at the end of 3 years. And that doesn't take into account that the tree loss is mature trees, the replacement trees are saplings, or that a significant percentage of the saplings die because they are not watered.

PRIORITY: The following sentence must be obliterated entirely from the mandatory considerations - "~~The proposal demonstrates the use of greening alternatives (such as green roofs, walls, softscape, etc.) particularly where tree canopy targets cannot be met~~". It makes a mockery out of any State Government tree planting scheme, particularly the Premier's Priority.

Mitigation of heat and other greening benefits CANNOT be realised through alternatives to tree canopy. That is NOT borne out by any research, it is regurgitated developers' spin. How can a bunch of shrubs and some synthetic grass on a rooftop ameliorate the loss of shade, oxygen production and cooling transpiration? It cannot.

PRIORITY: The following sentence must be obliterated entirely from the mandatory considerations - "~~Recognises that mitigation of heat and other greening benefits can be realised through alternatives to tree canopy, such as green roofs~~".

PRIORITY: Mandatory consideration of Tree Canopy must also apply to precinct development.

19. Affordable Housing - It is notable that there is no definition of "Affordable Housing" in the Glossary. However the NSW State Government Family & Community Services definition is *"Housing that is appropriate for the needs of a range of very low to moderate income households and priced so that these households are also able to meet other basic living costs such as food, clothing, transport, medical care and education"*. Good luck with that anywhere in Sydney.

That being said the mandatory considerations state that the proposal should provide *"affordable housing in accordance with affordable housing targets or schemes"*. As no information is provided on the number of LGAs that have affordable housing targets or whether they are being met, it appears *"the applicant may propose a viable amount of affordable housing for the site"*. It is doubtful whether any applicant would consider even 5-10% of new residential floor space is viable if the NSW Government FACS definition is applied. The sale price and subsequent profit ratio would be far too low. There is zip chance that a very low income household could afford a mortgage on anything but a tin shed in Sydney or regional areas.

RECOMMENDATION: Affordable housing targets must be MANDATORY, not just something to be "considered".

Section 3.3

- It would be preferable if the proposed new guidance (the Urban Design Guide) was exhibited PRIOR to the proposed Design and Place SEPP. At the very least it MUST be exhibited no later than concurrently with the proposed Design and Place SEPP.



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SUBMISSION ON DESIGN AND PLACE SEPP EXPLANATION OF INTENDED EFFECTS

APRIL 2021 - Appendix B - PROPOSED URBAN DESIGN GUIDE

Section B.1 - The need for an Urban Design Guide

It is understood that the Urban Design Guide applies to precincts and significant developments (sites over 0.4ha in urban areas and over 0.15ha in metropolitan centres) but not to all other developments (eg unit blocks up to 4 storeys, individual dwellings, townhouses, manor houses, warehouses churches, parks etc).

Section B.1.2 - Serving the Community

- The section begins with *"Well-designed built environments have a strong positive influence on people's quality of life"*. However it is considered that the proposed Design and Place SEPP and accompanying Urban Design Guide will not provide the quality of built environment that the community needs, wants and expects. By moving away from prescriptive controls towards subjective, strategic, flexible planning, it is considered that the most positive influence will be on the development industry by means of market (industry) driven planning and design that maximises profits rather than benefits for the community.

No amount of nice words can deflect attention from the fact that the industry will have far less controls imposed under the proposed Design and Place SEPP. The community is well aware of the financial detriment experienced by many unfortunate buyers who have been subjected to the laissez faire attitudes of many in the development industry. Reducing planning controls and objectives even further will only exacerbate this problem. While the NSW State Government may be determined to push forward with even more market-driven (industry) policies, these must be shaped and tempered with sensible, practical application.

- The SEPP as proposed will not create greener public spaces as the public understands them. The term "greener" is being bandied about as a buzz word to dissipate real concerns over the loss of the urban forest, with all the problems that loss brings with it, including poorer air quality, the heat island effect and shade loss. Next we'll see walls painted green to meet the lax criteria.
- The proposed Design and Place SEPP and accompanying Urban Design Guide consistently refers to *"more equitable distribution of housing types"*, without providing details of how that distribution is going to be imposed on established urban areas with regard to significant developments. A lot less spin and a lot more detail would better serve the exhibition process.

- It is difficult to see how *"more resilient built environments"* can be developed under this proposed SEPP. **It appears that the requirement for proponents to provide consultants' reports has been removed and instead what will be required is a design statement that everything meets the SEPP's criteria.** What could possibly go wrong? Everything.

While it is conceded that it may be a misunderstanding of the planning jargon used in the proposed Design and Place SEPP and accompanying Urban Design Guide, the logical reasoning behind the above statement is as follows -

- o The proposed Design and Place SEPP applies to precincts, significant developments and all other developments. The application requirements (documentation) are as follows -

➤ For precincts and significant development -

1. site analysis
2. a precinct structure plan
3. a design statement
4. precinct planning supporting documents

No consultants reports for bushfire impact assessment, environmental impact assessment, aboricultural impact assessment, hydrological assessment, geotechnical assessment, flood mitigation assessment, traffic assessment, heritage impact assessment, et al

➤ For all (other) development -

1. site analysis
3. a design statement

None of the above consultants' supporting assessments at all

If the SEPP does not require the consultants' assessments to be provided for any development, only a "design statement" (similar to the old Statement of Environmental Effects that can be written by anybody), then how can the community be assured that *"more resilient built environments"* can be developed under this proposed SEPP?

There is not even a requirement for "a suitably qualified person" to write the design statement. What could possibly go wrong? Absolutely everything. Whole new precincts could be more often consumed by floods (Penrith) or bushfire because the developer would be allowed to hide the consultants' reports.

Currently, applicants provide flagrantly incorrect and misleading consultants' reports where the inconsistencies are only flagged by objectors. Or if the delegated authority has some local knowledge, perhaps they might be aware of any false information provided. If the SEPP does not require consultants' reports then misleading information will only come to light after it is too late.

RECOMMENDATION: It must be stated in the proposed Design and Place SEPP, and supported in the proposed Urban Design Guide, that the relevant consultants' assessments MUST be provided with the application or proposal.

- Furthermore, it appears from the proposed Design and Place SEPP that -
- o The proposed Design and Place SEPP applies to precincts, significant developments and all other developments. A series of mandatory matters for consideration apply to developments -
Proposed considerations **1 to 8** apply to precincts only
Proposed considerations **9 to 11** apply to precincts and significant developments only
Proposed consideration **12** applies to precincts, significant developments & all other development
Proposed considerations **13 to 19** apply to significant developments & all other development only

- Therefore as the Design and Place SEPP applies to precincts, significant developments and all other developments, mandatory consideration is **NOT** required for -
 - Cultural and built heritage, public space, connectivity, local living, street design, water management, green infrastructure or resilience in significant developments & all other development;
 - Fine-grain movement, density or housing diversity in all other developments;
 - Attractive form, impacts on public space, impacts on vibrant areas, activation, emissions & resource efficiency, tree canopy and affordable housing in precincts.

It appears then that cultural and built heritage (including aboriginal heritage) does NOT have to be considered for significant developments and all other developments. As Council LEPs are to be updated to align with this SEPP, then it is only DCP Guidelines that will provide any heritage considerations. As Guidelines only, DCPs have no statutory standing in planning law or in the Land and Environment Court.

Likewise tree canopy and impacts on public space do NOT have to be considered for precincts, even though these large scale developments are often the ones most in need of these considerations. What is even worse, **affordable housing does not have to be considered for precincts**, the very large scale developments where consideration on affordable housing would be the most economically viable.

We are unsure if this is an unintended outcome of a poor Explanation of Intended Effects, or if it is the Government's intention to remove virtually ALL heritage legislative protection, and consign affordable housing into all other smaller developments instead. Whatever the reason, this must be amended.

RECOMMENDATION: Important issues must not be ignored or overlooked in the mandatory matters for consideration. They are important for all scales of development and therefore Considerations 1 to 19 must apply to precincts, significant developments and all other developments alike. This must be stated in the proposed Design and Place SEPP, and supported in the proposed Urban Design Guide.

Section B.1.3 - Developing Guidance

- It is extremely disappointing for the community to read that the State Government paid heed to "*industry peak body engagement*" (Urban Taskforce Australia et al) when it "identified" the need to consider gross dwelling density. Well of course the development industry peak body would. It is the whole raison d'être for their existence - to build, build, build.

RECOMMENDATION: Land use zoning, height and floor space ratio must be determined in individual councils' LEPs, not prescribed in this SEPP.

- It is even more disappointing to read yet another of Urban Taskforce's proposals in this draft SEPP - that of limiting design criteria (hand the industry the keys to the bank while you're at it). "*Contextual controls*" such as DCPs is an oxymoron. DCPs are NOT controls, they are guidelines only, as DPIE well knows. **In other words, there will be limited design criteria in the SEPP, LEPs will be amended in line with the SEPP, and DCPs have no legislative planning weight as they are not development standards ie carte blanche for the industry.** What could possibly go wrong? Bilpin bushfires or Nepean floods anyone?

RECOMMENDATION: All relevant design criteria must be included in either the SEPP or in LEPs. They must NOT be removed from both.

Section B.1.5 - Delivering Value

- It is concerning to read repeated references to *"greater urban density"*. The Design and Place SEPP and Urban Design Guide should not be including "guidance" on lot sizes. Efficient allocation of land for housing should not automatically mean smaller and smaller lot sizes, where there is no room for canopy trees and insufficient private open space for children to play and adults to gather together.

RECOMMENDATION: Lot sizes should not be included in the SEPP or UDG, whether it is "guidance" or otherwise.

Section B.2.3 - Establishing Good Design Approaches

- A *"holistic and uniform consideration of local place context in site analysis"* and *"creating design criteria for foundational urban structuring elements"* cannot establish a good design approach if the criteria for doing so are a limited and uniform one-size-fits-all set of considerations. Setting expectations for these elements in one SEPP that applies across all urban areas in the State is not only taking planning powers from local councils who know their constituents best, it is a blunt stick approach to planning. The State Government might know the industry stakeholders well and know what they want; local councils know what their communities and ultimately voters want.

RECOMMENDATION: Uniform design is not good design. The alignment of LEPs to the SEPP must be considered very carefully in the context of each LGA.

- The most encouraging statement anywhere in this Explanation of Intended Effects is ***"guiding the alignment of stages of development with the provision of public amenity and services"***. Unfortunately nobody believes for one moment that will occur. It has not happened at any time in the past decade, so there is no reason to be confident it will occur in the future just because the statement is made. Tens of thousands of people are still waiting for schools and hospitals in the south-western and north-western growth areas.

Toss out every other idea in this SEPP and get that one single concept to work and the residents of NSW might, just might, start to believe the feel good statements in documents like this.

RECOMMENDATION: Stages of development MUST align with the provision of public amenity and services. No public amenity and services, no development.

Section B.2.4 - Applying consistent design processes

- It is unclear whether *"engagement with the community"* is to be codified in this SEPP. Councils have their own Community Engagement Plans and other plans are utilised for differing scales of development. There should not be a process for community engagement enshrined within this SEPP.

RECOMMENDATION: There must be no community engagement codified within this SEPP.

Section B.2.5 - Delivering amenity through urban design

- Again we read *"strategic decisions on where and how to intensify existing areas"*. **Most existing areas do not want to be intensified. Residents in these areas are faced daily with the increasing problems caused by the State Government's policy of intensifying established suburbs** - traffic gridlock, overcrowded schools, lack of public transport, diminishing tree canopy, never-ending subdivision of larger blocks, changing character, lack of access to services, distant and overcrowded hospitals, over-shadowing, lack of privacy; the list is never ending.

Yet the State Government thinks that the answer is to stuff more and more and more people into established suburbs, calling it *"delivering amenity through urban design"*. Most people call it destroying Sydney for developers' profits.

The statement *"the creation of new neighbourhoods in areas where it will be difficult to service new housing or provide connectivity to existing urban areas"* says it all. The Government is unwilling to reduce development industry profits by ensuring that a sufficient percentage of land value uplift goes to providing services for new neighbourhoods. Likewise it has not provided sufficient infrastructure that would be needed to provide connectivity from decentralised towns outside the Sydney Basin to existing urban areas.

RECOMMENDATION: The SEPP must not enshrine intensification of existing areas.

Section B.3.1 - Scope

- A wider range of land use zones must be excluded from the SEPP, not just Items 1 to 10 of Schedule 1 of the S&RD SEPP. All RU zones including the RU6 Transition zones, RE1 & RE2 Recreation zones, all E1 to E4 Environmental zones as well as the Waterways zones, at the very least, must be excluded from the SEPP.

RECOMMENDATION: A wider range of land use zones must be excluded from the SEPP.

Section B.3.3 - Proposed Structure

RECOMMENDATIONS: Minimum recommended inclusions and deletions are listed below -

- **Part 1: Understanding Place and Country**
 - **Expand natural environment context**
 - **Expand character to include heritage**
- **Part 2: Structure**
 - **Include active transport**
- **Part 3: Grain**
 - **Delete recommended dimensions (must be LGA LEP & DCP considerations)**
- **Part 4: Form**
 - **Include disability (inclusive) access**
- **Part 5: Environmental Performance**
 - **Include green infrastructure (increase thereof)**
- **Part 6: Documentation**
 - **Wider range of documentation needed (as detailed previously)**

Section B.3.4 - Design considerations

Part 1 - Understanding Place and Country

- Again there is reference to *"compact urban form"*. This time the supporting reason is *"greater potential for ... efficient local economies"*. No matter how many times this is dressed up, how many faux reasons are given, this is still a policy focus on cramming more people into areas when it is only the development industry that is pushing this overdevelopment. Whether it's a "jobs, jobs, jobs" mantra, or a COVID economic response justification, the result is the same. Higher density in established areas.

RECOMMENDATION: The "intention" of the Guide should not be to guide designers to deliver higher densities.

- Effective *"risk assessment"* starts by obtaining expert reports on what the risks are for any particular precinct or significant development. Without that information, *"developing strategies for ongoing resilience"* will only provide overarching doctrine, not factual information.

RECOMMENDATION: The UDG must state that the basis of resilience risk assessment is the obtaining of relevant risk assessment reports.

Part 2 - Structure

- It is good to read the statement that the *"Urban tree canopy provides shade, visual appeal, and mitigates urban heat for human health, wellbeing, and comfort - as well as providing habitat and ecological diversity"*. However oxygen production/carbon dioxide intake and carbon sequestration must also be included as they are even greater essential factors for human health.

RECOMMENDATION: In light of the above UDG statement, all suggestion of replacing trees with green roofs or walls, or softscaping (shrubs and grasses), to compensate for failure to meet tree canopy targets, must be deleted from the SEPP and UDG as these measures provide little if any of the attributes referenced above.

RECOMMENDATION: Blue infrastructure must also be included - connecting waterways and green infrastructure through the protection and reinstatement of riparian zones.

- While streets may be considered to be public spaces, they are hardly the *"framework for civic and social life"*, nor are they places that are conducive to casual socialising. Therefore establishing a benchmark for open space based on the amount of land dedicated to streets is not a reasonable benchmark to use, nor is any benchmark that includes streets. If 25% of urban-capable land is considered reasonable for streets alone and 40% for streets, open spaces and community facilities, then it is to be assumed that DPIE considers 15% of land would be reasonable for open spaces and community facilities. Therefore a more transparent and useful benchmark would be a minimum of at least 20% for open spaces and community facilities in a precinct plan.

RECOMMENDATION: A benchmark to be set of at least 20% of urban-capable land to be dedicated to open spaces and community facilities in any precinct plan.

- The UDG uses a new phrase *"inclusionary zoning"* which is not in the Glossary. All planning jargon must be included in the Dictionary/Glossary of the SEPP or UDG. That being said it appears to mean that a range of development types will be permitted in various zones. It does not appear to be that this *"inclusionary zoning"* will only apply to precincts but also to significant developments, because it is not stated that this zoning only applies to precincts.

In addition to "fostering" these inclusionary zones, it is also proposed that the SEPP prescribes the "*setting a maximum percentage of 'single use' zones such as low-density residential*". It is disturbing that the SEPP & UDG intention is to not only reduce planning controls for the development industry but to impose controls over local council decision making such as density, lot size, lot dimensions, percentage area of certain zones and setbacks. **It can only be assumed from this that it is NSW State Government policy to remove planning decisions from local councils and allow the decisions to be made by the property industry instead.** What could possibly go wrong? Hong Sydney Kong comes to mind.

RECOMMENDATION: The UDG and SEPP must not impose planning controls that override Council strategic and local planning decisions. Controls such as density, lot size, lot dimensions, percentage area of certain zones and setbacks must remain under the control of local councils, not form part of an overarching SEPP & UDG.

Part 3 - Grain

- Again the State Government seeks to impose fine grain control on councils while providing carte blanche to the development industry. Having a SEPP stipulate requirements (requirements you'll note this time, not guidance) for the depth and width of a lot is patently ridiculous.

RECOMMENDATION: The UDG and SEPP must not impose planning controls that override Council strategic and local planning decisions. Lot dimensions must not be determined by the UDG or the SEPP.

Part 4 - Form

- Now we've got the State Government determining setbacks from road frontages, with the excuse that the "*development engages with the street*". Most people don't want their property to "engage" with the street, they want privacy. The even better excuse is to provide "*space for canopy tree planting*". The minimum lot sizes proposed (666 m² less streets, footpaths, open space and community facilities) won't allow space for a dog kennel let alone "*space for a canopy tree*".

There will also be controls for car parking and dimensions of certain open space types.

RECOMMENDATION: The UDG and SEPP must not impose planning controls that override Council strategic and local planning decisions. Building setbacks from road frontages must not be determined by the UDG or the SEPP, nor must car parking or open space dimensions.

Part 5 - Environmental Performance

RECOMMENDATION: Water re-use must not reduce environmental flows into the urban creek systems. Maintenance of parks and sports fields must not preference the use of synthetic turf over natural grass. New precincts must underground all utilities including power and communications.

Part 6 - Documentation

RECOMMENDATION: It must be stated in the proposed Design and Place SEPP, and supported in the proposed Urban Design Guide, that the relevant consultants' assessments MUST be provided with the application or proposal.

RECOMMENDATION: Precinct planning must ENSURE that the amenity of public spaces is safeguarded, not just consider it. It is less than worthless simply including this into DCP guidelines.

Section B.3.5 - Intended effects

Proposed design criteria

- Now the State Government is introducing "specific metrics" (numerical controls) on
 - o **total public space area**
 - o **average block size**
 - o **maximum single block size**

In other words, the controls that local councils currently have in their LEPs, the State Government wants to wrest from them and instead include them in this UDG which supports the SEPP.

RECOMMENDATION: The UDG and SEPP must not impose planning controls that override Council strategic and local planning decisions. Total public space area, average block size and maximum single block size must not be determined by the UDG or the SEPP.

- The State Government also intends to limit the amount of single use residential zones within new precincts. It also intends to limit the lot depth, front and rear setbacks, as well as facilitating side setbacks to zero.

RECOMMENDATION: The UDG and SEPP must not impose planning controls that override Council strategic and local planning decisions. Limits on lot depth, front, rear and side setbacks, as well as limiting the amount of single use residential zones, must not be determined by the UDG or the SEPP.

Section B.3.6 - Unintended effects

To really annoy the community. Let's get this straight. While removing virtually all development controls on the development industry, the Design and Place SEPP and accompanying Urban Design Guide will impose the following controls on local council decisions for sites greater than 0.4ha or 0.15ha for metropolitan centres -

Total public space area, open space dimensions, inclusionary zoning, baseline residential density targets, percentage of single dwellings, average block size, maximum single block size, lot dimensions (lot width and depth, front, rear and side setbacks, including ability for zero side setbacks), car parking, street width and tree replacement. Also the amount of documentation required for DAs and probably most heritage controls. Are there any other controls that are buried in these documents that have been missed in this list?

RECOMMENDATION: Leave local planning controls to local councils.