

## Article Information

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## Proposed Design & Place Framework: Design and Place State Environmental Planning Policy 2021

*This insight is the second part of our series on the proposed Design & Place framework. [Part 1](#) provided an overview of the proposed framework.*

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The core instrument in the proposed framework is the draft *Design and Place State Environmental Planning Policy 2021 (DP SEPP)*. As a State Environmental Planning Policy, the requirements under the DP SEPP will be a mandatory consideration for a consent authority when assessing whether to grant consent to developments to which the DP SEPP applies.<sup>[1]</sup> This is because a State Environmental Planning Policy is an environmental planning instrument made under *Environmental Planning and Assessment Act 1979 (NSW) (EP&A Act)*.

The new requirements are considerable and detailed and will place regulatory pressure on developers to respond to changing societal attitudes towards our built environment. The DP SEPP will require new developments to be designed, built and certified in a fashion that reflects the stated aims of the policy.

### Aims of the Policy

The aims of the DP SEPP demonstrate a clear focus on quality design of the built environment and the social, cultural, environmental and economic benefits that flow from consistent and integrated design processes.<sup>[2]</sup> The DP SEPP also purports to ensure sustainable development and conserve the environment, noting the importance of minimising the impact of the built environment on climate change by reduce the use of non-renewable energy.<sup>[3]</sup>

There is a particular focus interspersed through the framework of incorporating local Aboriginal knowledge, culture and tradition into the design fabric of new developments and this is reflected in the aims of the DP SEPP.<sup>[4]</sup>

The prevailing sentiment behind the DP SEPP is that the places we design and develop are crucial to supporting the health and well-being of the community.

### Affected Land

The DP SEPP applies to all of the State other than as specified in the policy.<sup>[5]</sup>

The DP SEPP provides an exhaustive list of the developments which will not be affected by the new requirements.<sup>[6]</sup> Notably, the DP SEPP will not apply to developments on land wholly within a number of zones, including:

- RU1 Primary Production, RU2 Rural Landscape, RU3 Forestry or RU4 Primary Production Small Lots;
- IN3 Heavy Industrial;
- E1 National Parks and Nature Reserves, E2 Environmental Conservation or E3 Environmental Management; and
- Zones W1 Natural Waterways, W2 Recreational Waterways or W3 Working Waterways.

### Design Principles and Considerations

As alluded to earlier, quality design is at the forefront of the DP SEPP. In formulating an understanding of what constitutes quality design, the DP SEPP will establish a series of design principles to be implemented in development proposals.<sup>[7]</sup>

Consent will not be granted to a development subject to the DP SEPP unless the consent authority is satisfied the development is consistent with the design principles.<sup>[8]</sup> In determining whether the development is consistent with the principles, the consent authority will be required to take into account the design considerations.<sup>[9]</sup> A summary of the design principles and considerations is set out below:

### DESIGN PRINCIPLES

Deliver beauty and amenity to create a sense of belonging for people

Delivering inviting public spaces and enhanced public life to create engaged communities

Promote productive and connected places to enable communities to thrive

Deliver sustainable and greener places to ensure the well-being of people and the environment

Deliver resilient, diverse places for enduring communities

### DESIGN CONSIDERATIONS

Overall design quality

Comfortable, inclusive and healthy places  
Culture, character and heritage

Public space for public life  
Vibrant and affordable neighbourhoods

Sustainable transport and walkability  
Green infrastructure

Resource efficiency and emissions reduction  
Resilience and adapting to change  
Optimal and diverse land use

Further, the DP SEPP sets out detailed requirements for a consent authority to consider in relation to each of the design considerations.<sup>[10]</sup> Those requirements are relevant to the particular nature of the consideration. For instance, in considering the overall design quality, among other matters, the consent authority must take into account the aesthetic of the proposal relative to the desired character of the area.<sup>[11]</sup>

### Consent Requirements

The DP SEPP expands the matters for a consent authority to take into account when evaluating a development application. The renewed scope places further restrictions on the freedom of proponents to design their projects in their desired way.

In addition to the requirement for developments to be consistent with the design principles,<sup>[12]</sup> there are complex and more specific provisions applying to different types of development. By way of example, the matters relevant to a consent authority's assessment of residential apartment developments and an urban design development differ in their content and nature.

### Urban Design Developments

An urban design development is defined in the DP SEPP as:<sup>[13]</sup>

- Development on land that is not in an industrial zone that has a site greater than 1 hectare;<sup>[14]</sup>
- Development on land in an industrial zone with a capital investment value of \$30 million or more and with a site area greater than 1 hectare; or
- Development in relation to which an environmental planning instrument required a development control plan or master plan to be prepared for the land affected before development consent can be granted.

Urban design developments are often described as precinct-style developments.

Consent must not be granted to urban design development unless it meets the objectives of the *Urban Design Guide*.<sup>[15]</sup> The objectives are met by satisfying the relevant criteria in the *Guide* "to the extent possible" or by finding an alternative solution which the consent authority considers to achieve a neutral or more beneficial outcome than meeting the criteria.<sup>[16]</sup>

### Residential Apartment Developments

A residential apartment development is defined in the DP SEPP as development with a residential accommodation component that are at least 3 storeys in height and is proposed to contain at least 4 dwellings.<sup>[17]</sup>

Development consent must not be granted for residential apartment development unless it meets the objectives of the *Apartment Design Guide*.<sup>[18]</sup> Similar to urban design developments, the objectives are met by satisfying the relevant criteria in the *Guide* "to the extent possible" or by finding an alternative solution which the consent authority considers to

achieve a neutral or more beneficial outcome than meeting the criteria.<sup>[19]</sup>

However, developments only involving class 1a or 1b building under the *Building Code of Australia* are expressly excluded from the definition.<sup>[20]</sup>

### **Design Review Panels**

The framework will formally enshrine the requirement for a Council to create a design review panel. The *Environmental and Planning Assessment Amendment (Design and Place) Regulation 2021*, which will be covered in Part 3 of this series, details the function and constitution of a design review panel.

Under the DP SEPP, a design review panel is required to review a development proposal and provide advice to the relevant consent authority.<sup>[21]</sup> If the consent authority has not taken into account the panel's advice, consent cannot be granted.<sup>[22]</sup>

However, this only applies to the following developments:<sup>[23]</sup>

- State significant development to which this Policy applies;
- Development with a capital investment value of more than \$30 million;
- Development with a capital investment value of between \$5 million and \$30 million if the development will be carried out by a council or the Crown;
- Development with a site area of at least 1 hectare;
- Residential apartment developments; and
- Other development specified by another environmental planning instrument as being development to which this section applies.

### **Savings and Transitional Arrangements**

It is worth mentioning the savings and transitional arrangements which provide that the DP SEPP will not apply to development applications lodged but not determined before the official commencement of the DP SEPP.<sup>[24]</sup> Further, the DP will not apply to development applications part of a concept development if the subsequent application was lodged within 2 years after consent was granted to the concept development itself.<sup>[25]</sup> These savings extends to undetermined modification applications and modification applications lodged within 2 years after the original development consent was granted.<sup>[26]</sup>

### **Key Takeaways**

The DP SEPP will place more rigorous guidelines on proponents to environmentally-friendly design into their proposals. Further, consent authorities will have greater powers than ever to refuse proposals which are at odds with local amenity and design.

The following State Environmental Planning Policies would also be repealed, meaning that they will no longer apply once the DP SEPP is finalised:<sup>[27]</sup>

- *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*; and
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.

Finally, the DP SEPP prevails to the extent of any inconsistency with other environment and planning instruments.<sup>[28]</sup> As a result, the policy has vast and wide reaching potential to regulate new developments in NSW. Proponents should be aware of the proposed requirements and begin incorporating the design principles and considerations into their proposals if their development applications are not covered by the savings and transitional arrangements.

*This insight has been written for general educational purposes only and is not to be taken as legal advice. This insight has not covered all of the proposed requirements. Should you require legal advice on your specific situation, **please contact Paul Vergotis on +61 2 9253 3880 or <pvergotis@piperalderman.com.au>**.*

<sup>[1]</sup> *Environmental Planning and Assessment Act 1979* (NSW) s 4.15(1).

<sup>[2]</sup> Draft *Design and Place State Environmental Planning Policy 2021* cll 3(1)(b), 3(1)(d), 3(1)(e) ('DP SEPP').

<sup>[3]</sup> Ibid cll 3(1)(f)-(g).

<sup>[4]</sup> Ibid cl 3(1)(i).

[\[5\]](#) Ibid cl 8(1).

[\[6\]](#) Ibid cl 8(2).

[\[7\]](#) Ibid cl 12(1).

[\[8\]](#) Ibid cl 13(1).

[\[9\]](#) Ibid cl 13(2).

[\[10\]](#) Ibid cll 14-23.

[\[11\]](#) Ibid cl 14(a).

[\[12\]](#) Ibid cl 13(1)

[\[13\]](#) Ibid cl 6.

[\[14\]](#) "Industrial zone" includes Zones IN1 General Industrial, IN2 Light Industrial and IN4 Working Waterfront.

[\[15\]](#) DP SEPP (n 2) cl 24(1).

[\[16\]](#) Ibid cl 24(2).

[\[17\]](#) Ibid cl 5(1).

[\[18\]](#) Ibid cl 30(1).

[\[19\]](#) Ibid cl 30(2).

[\[20\]](#) Ibid cl 5(3).

[\[21\]](#) Ibid cl 35(1)(a).

[\[22\]](#) Ibid cl 35(1)(b).

[\[23\]](#) Ibid cl 34(1).

[\[24\]](#) Ibid cl 38(1)(a).

[\[25\]](#) Ibid cl 38(1)(b).

[\[26\]](#) Ibid cl 38(1)(c).

[\[27\]](#) Ibid cl 37.

[\[28\]](#) Ibid cl 9.