

Design and Place State Environmental Planning Policy

Industry Insights Report



The Property Council of Australia (NSW)
14 March 2022

Acknowledgement of Country

In the spirit of reconciliation, Astrolabe Group Acknowledges the Traditional Owners of Country throughout Australia and their continuing connections to land, waters and community. We show our respect to elders past and present.

We acknowledge that we stand on Country which was and always will be Aboriginal Land.

About Astrolabe Group

Astrolabe Group are the recognised experts in urban growth and change management with a uniquely empathetic approach to client and community.

This report was prepared for The Property Council of Australia (NSW). In preparing the report, Astrolabe has made every effort to ensure the information included is reliable and accurate. Astrolabe is unable to accept responsibility or liability for the use of this report by third parties.

Contents

Introduction	4
Background	5
Case Study 1 – Frasers Property	10
Case Study 2 – Mirvac	12
Case Study 3 – TOGA Group	14
Key findings from industry	16
Issues and concerns requiring further investigation	18
Suggested Next Steps	19

Report Purpose

Astrolabe Group has prepared this report for the Property Council of Australia (NSW). The report outlines the implications of the Design and Place State Environmental Planning Policy (DP SEPP) 2021 on the development industry's ability to deliver new housing and quality places, which will have further implications for the government and community.

These insights have been developed using desktop research, literature review and industry interviews.

This report also presents the specific insights from three industry stakeholders as case studies to highlight the implications of the DP SEPP on the planning system and development processes.

Introduction

About the draft Design & Place State Environmental Planning Policy

The intention of the DP SEPP is to simplify and consolidate how the planning and development industry addresses the need for sustainable and resilient places and deliver good design for the people of NSW.

This initiative by the Department elevates the considerations of sustainability, quality and vibrancy of places at the forefront of development. A policy response like the DP SEPP enables NSW to take a leading role at a time when around the world, governments, businesses, industry and communities are committed to increasing their efforts to reach net zero emissions.

With the NSW Government's commitment to net zero emissions in *The Net Zero Plan Stage 1: 2020-2030*, guidance is required across all sectors and government portfolios to direct sector-led responses and change to deliver on these commitments.

A planning and development sector response, such as the DP SEPP, needs to be supported by coordinated policy reform and action in other areas of government too, such as across economic development, transport and energy portfolios.

Importantly the NSW Government is also committed to increasing housing supply, particularly in areas where the community is facing challenges around access to housing that is well-located and affordable. The Premier's vision for addressing housing supply is part of delivering this agenda. Policy reform, such as the DP SEPP, needs to be supportive and complimentary of this work. If considered in isolation, the Department risks creating conflicting policies that could diminish housing supply and economic development outcomes in the delivery of places.

As the case studies seek to highlight, the implications of the DP SEPP on the planning system and development processes have not been adequately considered, explained or responded to. These case studies also demonstrate how the DP SEPP will have a significant impact on developers, owners and renters of new homes.

Concerns regarding the proposed implementation timeline and the flow-on effects for the planning system and the market need to be carefully considered. The delivery of an adequate supply of accessible, affordable and safe housing can be at risk and the positive and intended outcomes of the draft DP SEPP won't be realised.

A considered change management approach is required working across government, business, industry, customers and the community to realise the benefits the draft DP SEPP is seeking to provide.

Background

Principles of the draft Design & Place State Environmental Planning Policy

Towards net zero in the development of housing

Better design and development of buildings and our urban places can have a profound impact on the resilience of our communities, the health and wellbeing of individuals and impact on the natural environment.

With the increasing frequency and severity of natural hazards and changes in temperature, we need to direct a renewed focus on the design and management of our urban environments. There needs to be attention given to the design of buildings and open spaces, use of materials, building orientation, the connection between indoor and outdoor spaces, and heating/cooling systems in buildings. The design of buildings and building performance can also encourage awareness and influence individual behaviours towards more sustainable lifestyles such as reducing energy consumption.

Embedding effective and equitable adaptation and mitigation in development planning can reduce vulnerability, conserve, and restore ecosystems, and enable climate-resilient development. This though, is especially challenging in localities with persistent development shortages and limited resources.

Industry is designing, trialling and implementing adaptation responses for urban systems, but their feasibility and effectiveness can be constrained by institutional, financial, and technological access and capacity. Often a coordinated response that is appropriate for the local context is the key to successful implementation.

The draft DP SEPP aims to simplify and consolidate how to address the need for sustainable and resilient places and deliver good design in NSW. Its objective is to put sustainability, resilience, and quality of places at the forefront of development to sustain healthy and thriving communities.

It is a policy that has a vision for improving the lives of the people of NSW, and advocates for the planning industry to find solutions to the climate emergency and to embrace net zero policies and practices. The proposed policy has a significant focus on embodied emissions, the carbon footprint, energy use, water use, and thermal performance standards for BASIX.

Achieving net zero requires integrated, multi-sectoral and inclusive solutions that address physical, natural environment, and social and economic context factors. The commitment for net zero in NSW requires adaptation and change that has long implementation times, requires planning and policy with short and long actions, with an appreciation of the transition process that needs to occur. Critical to the transition in the planning system will be effective partnerships between governments, community, and private sector organisations.

The design and implementation of the draft DP SEPP needs to be cognisant of this transition. It must recognise the critical relationships between the planning system and other sectors and breadth of stakeholders operating in the system that need to be adjusted or redefined to deliver on the change that is needed.

Concerns for application of the draft DP SEPP for industry

While the industry understands the need for this shift towards sustainable developments, and has been leading development and design practices to innovate in this area, there are key concerns about how the DP SEPP will cause negative externalities within the sector and economy. This will mean the intended outcomes of the policy will not be met.

Astrolabe has found, through industry stakeholder engagement, desktop and literature review, that while the draft DP SEPP is an aspirational vision for the future, it inadequately caters for a successful implementation, and more so will cause issues for other stakeholders and the market. Core to this is the over-reliance on the regulation of the developers as the primary lever to deliver net zero for the built environment sector in NSW. Achieving net zero emission targets requires an integrated multi-sector approach in which policies are implemented complementarily to each other.

Supporting this Report, a feasibility model¹ developed by PPM Economics and Strategy shows the costs of the case studies before and after the draft DP SEPP to demonstrate how leveraging only the planning system will not work to achieve net zero emissions.

Current conditions

The draft DP SEPP is being introduced at a time when key social, environmental, and economic issues are being caused by a series of shocks external to the NSW Planning System.

Adjustment to implementing the draft DP SEPP will not be viable under these current conditions and will only exacerbate housing affordability and supply stresses and social and economic impacts on vulnerable communities.

Material prices and skill shortages

With border closures caused by the COVID-19 pandemic, there are major interruptions to the supply chains which saw construction material prices increase and supply decrease. As a result, material prices have increased by 20% in 2021².

The temporary impacts of the COVID-19 pandemic on supply chains, material prices, and skill shortages in the building and construction sector are likely to continue to affect NSW over the coming years. In addition, continual recovery from the Black Summer fires in 2019-20 and now the devastating 2022 summer floods will place additional pressure on the availability of labour and materials.

Housing unaffordability/Housing stress

The COVID-19 pandemic and its associated border closures have affected the settlement patterns, population growth, and consequently, the demand for housing development. The rate of migration and family formation is currently low compared to historic averages. With borders reopening and economic conditions becoming more favourable, demand for housing will accelerate.

¹ PPM Economics and Strategy, 2022, *Economic Analysis of the Proposed Design and Place SEPP*

² Thibault, M., 2022, [Construction material prices soared nearly 20% in 2021: report](#)

By 2061, 11.5 million people will be living in New South Wales, which is about an additional 3.3 million people, up from 8.2 million today – that's 40% more people than today according to NSW Government.³ Natural population increase alone being the number of new people born minus deaths will account for 1.3 million additional people. In addition to natural increase, migration is the second driver of population change. The net migration of people moving into and out from NSW, including net overseas migration (NOM) and net interstate migration (NIM), is expected to average around 48,000 people each year to 2061. Thus, about 2 million people are projected to arrive through net migration.

It is notable that around 90 percent of people arriving into NSW from overseas are projected to be settled in Greater Sydney, Wollongong, and Newcastle, with only 10 percent of people who move to the State settling in regional areas.⁴ This shows the significant impact of population growth on the demographic changes in larger cities across NSW.

More than 1.7 million new households are expected to form from 2022 to 2032⁵, led by growth in lone person households, although ongoing uncertainty about the COVID-19 pandemic means there is a significant risk to the NOM outlook. New household formation is expected to recover strongly from 60,000 in 2022 to 182,000 by 2025. Annual average household growth of around 175,000 is expected over the 10 years to 2032.

Analysis of the trends in the housing market indicates that up to 2060-61, it is projected that NSW will need 1.7 million additional homes for a growing population, equivalent to one new home for every two existing homes. This will require an average of 42,000 additional homes to be added to the housing stock every year⁶.

According to the NHFIC⁷, over the medium term, it is anticipated that the new housing supply remain strong at the national scale, with more than 550,000 net new dwellings expected over the next 3 years. Thus, over the next 3 years, it is expected an average of 184,000 net new dwellings will be constructed per annum, which are historically high levels.

From 2022 to 2023 (cumulatively), new household formation is expected to be broadly in balance with the anticipated supply trends for new housing. However, this is largely driven by lower levels of household formation, owing to COVID-19 – that is people choosing to remain at home in larger households rather than moving out. Once NOM recovers back to pre-pandemic levels by around 2024–25, new household formation is expected to exceed new supply by a cumulative 163,400 dwellings out to 2032. For instance, in Sydney, supply is expected to exceed new household formation by around 12,500 dwellings on average each year from 2022 to 2024, with Sydney's new household formation to exceed supply from 2025 to 2031 by an average of 5,900 dwellings annually. Furthermore, lag times between population growth and new infrastructure delivery are pervasive in new greenfield development areas.

³ NSW Government, 2021, [2021-22 NSW Intergenerational Report](#).

⁴ Australian Bureau of Statistics, Australian Census and Migration Integrated Dataset, Cat. no. 3417.0, 2016; Australian Bureau of Statistics, Australian Census and Temporary Entrants Integrated Dataset, Cat. no. 3419.0, 2016.

⁵ NHFIC, 2022, [State of the Nation's Housing 2021–22](#).

⁶ NSW Government, 2021, [2021-22 NSW Intergenerational Report](#).

⁷ NHFIC, 2022, [State of the Nation's Housing 2021–22](#).

Based on the economic analysis, affordability for renters and first home buyers deteriorated across most cities and regions in 2021 due to relatively strong price growth. Rents are likely to continue to rise in the near term as international border restrictions are relaxed. On the other hand, the housing deposits have become less affordable over recent decades, with the typical time it takes to save for a home deposit increasing from 6.6 years in 1995-96 to 11.5 years in 2019-20.

Accordingly, Sydney is the most unaffordable place in NSW for first home buyers, with the bottom 60% of income earners being able to afford mortgage repayments on less than 10% of the housing stock in the market⁸. This is a further deterioration in affordability since 2020 which leads to the community experiencing housing stress.

The study of Urban Productivity and Affordable Rental Housing Supply in Australian Cities and Regions⁹ highlights that the low-income (Q2¹⁰) households are a critical sector of the workforce, but increasingly struggle to find affordable rental housing near employment centres of Australia's major urban areas. Thus, providing more affordable rental opportunities in locations offering high access to employment would benefit Q2 households currently living in housing stress and support long-term labour market sustainability.

As a result of the above-mentioned trends in the population changes and housing market, it is anticipated that there will be difficulties in accessing new land supply despite demand rapidly outpacing supply in many greenfield markets. Given it can take more than 6 years to get new housing supply to the market in some areas, pulling back on development decisions will exacerbate affordability problems in future years when population growth is expected to return to more normal levels. Thus, if housing authorities actively slow or impede the flow of new housing supply, it can exacerbate upward pressure on rents and prices, something that should be avoided if improved housing affordability is a primary objective.

Given the housing market plays an important role in the State's economic growth, living standards of the community, individuals' quality of life, and well-being, it is significant to solve the housing challenge over the coming decades. Strategies and policies need to be placed to build enough homes for people to live in, to support access to housing that is more affordable, and to ensure that the housing market is flexible enough to respond to people's changing needs and preferences.

The AHURI's study on population growth and mobility in Australia¹¹ demonstrates that improving tenure security, promoting housing supply responsiveness and diversity, alignment of infrastructure with population development, and considering developers' contributions to support local infrastructure delivery are several policy development options that address the housing affordability challenges.

⁸ NHFIC, 2022, [State of the Nation's Housing 2021–22](#).

⁹ AHURI, 2021, [Urban Productivity and Affordable Rental Housing Supply In Australian Cities And Regions](#).

¹⁰ This report uses quintiles which split the national gross household income distribution into five equal parts. Quintile 1 refers to household incomes in the bottom 20 per cent of that distribution (described as Q1 or very low-income); Quintile 2 refers to household incomes between 21 and 40 per cent of that distribution (Q2 or low-income) and Quintile 3 refers to household incomes between 41 and 60 per cent of that distribution (Q3 or moderate income).

¹¹ AHURI, 2021, [Population Growth and Mobility in Australia: Implications for Housing And Urban Development Policies](#).

Climate change

Research has found climate change has unequal distributional effects on regional and remote communities¹², especially those on lower incomes¹³, First Nations people¹⁴, and people of colour. As such, a policy that seeks to address climate change needs to do so with this context in mind if it can consider how to redistribute the impacts of climate change without further harming vulnerable communities. Thus, a policy that will increase house prices (because of the size of lots or mandating larger units in developments) and decrease housing supply will have the most impact on these communities already experiencing inequity.

Customer & Community

The draft DP SEPP will only be as good as its delivery and take up. The potential costs and changes to lifestyle on customers and community needs to be well understood to enable any successful change.

More so, it is the market that is assumed to be the interface between customers and developers, thus for the market to potentially be replaced with a prescriptive policy such as the draft DP SEPP, it becomes difficult for the developer to meet the customers' needs and respond to place-based context.

¹² National Rural Health Alliance Inc., 2014, [Rural Health Impacts of Climate Change](#).

¹³ Global Citizen, 2020, [Why Climate Change and Poverty Are Inextricably Linked](#)

¹⁴ Lansbury Hall N, Crosby L, 2022, [Climate Change Impacts on Health in Remote Indigenous Communities in Australia](#)

Case Study 1 – Frasers Property

About Frasers Property

Frasers Property Australia develop residential land, housing, and apartments and have delivered over 140,000 homes. They develop build-to-rent, commercial, retail and mixed-use properties. Their activities also encompass the ownership and management of investment property, incorporating property and asset management services.

Sentiments regarding the draft DP SEPP

Frasers Property stated that they understood the purpose of this draft DP SEPP was to create a planning system that was flexible and would provide certainty to support intended outcomes. However, the terminology used throughout the DP SEPP has transformed it into a rigid and uncompromising policy. They also raised concerns relating to how it will impact other facets of the planning system, the market, and the public.

Frasers have also outlined their concern in their own submission to the Department.

Frasers' core concern of the draft DP SEPP is its practicality and complexity of implementation. The draft DP SEPP does not accommodate context and would "drive an increase in rigid development assessment" due to the terminology used throughout the policy. Frasers demonstrated this by engaging Government Architects to walk through their Chippendale development and review the building using the principles of the draft DP SEPP. They found that despite the provision of amenity and public value (e.g. access to Central Railway Station, a public park), the Chippendale development would still not have met the guidelines of the proposed DP SEPP.

Frasers' Chippendale development case study demonstrates that the draft DP SEPP is too rigid and cannot deliver on quality place outcomes by seeking to direct and solve problems from a single point-of-view. The policy neutralises opportunities that developers have been taking to deliver a holistic systems approach that negotiates different agency priorities and policies for a place that is in balance with other demands placed on developers such as development and financial feasibility. A multi-sector approach is critical.

'Centrale' – 1-17 Delhi Road, North Ryde

The 'Centrale' development in North Ryde highlights key issues concerning the inflexibility of the draft DP SEPP and how it fails to accommodate the context of the site. Specific to Fraser's experience of the rigidity of the policy was the prescription of amenity, which removes the contextual possibilities and nuances of each site and discretion on what design response would be appropriate to that context to create spaces and enhance public value.

Frasers had an opportunity to design the development to leverage the government's multi-billion dollar metro investment, creating a seamless commuter experience and better place outcomes, such as better connections and ease of access between the development and North Ryde railway station.

In the case of Centrale, Frasers could deliver high density living and a place design that allocated a quarter of the site for public amenity. However, the draft DP SEPP does not provide flexibility and would limit Frasers' ability to deliver such a design while accommodating all other requirements and delivering a feasible development. Application of the draft DP SEPP would undermine the Government's benefits realisation relating to its multi-billion dollar metro investment.

Frasers considered that because the draft DP SEPP would make it unviable for them to continue with numerous developments, the immediate flow on effect would be driving mid-tier firms out of the market which would, in turn, impact the diversity of dwelling types and prices available on the market.

Next steps

Frasers support the vision of this draft DP SEPP and appreciate its intent, however, further engagement of multiple stakeholders and implementation planning is required to ensure it is viable.

Frasers stated the draft DP SEPP requires a more informed implementation framework that outlines a staged approach and staged deliverability of objectives. This framework should map responsibilities for each stakeholder and potential impacts to each stakeholder ensuring that housing supply is maintained.

Case Study 2 – Mirvac

About Mirvac

Mirvac is an Australian property group with a clearly defined purpose to reimagine urban life. By creating beautiful homes, inspiring workplace precincts and thriving shopping centres, Mirvac aims to make a positive contribution to our cities and communities.

Mirvac was founded in 1972, growing from a small joint venture to become a thriving ASX-listed property group that leads the way in innovation, sustainability and placemaking.

Sentiments regarding the draft DP SEPP

Mirvac do not support the draft DP SEPP in its current form or to the implementation of the policy, as currently proposed. They see it will have a negative impact on outcomes with an increase in timeframes for planning proposals and applications, increase costs to developers and customers, and increase uncertainty given the complexity of the policy and the subjective terminology used throughout. These impacts were seen as having greater social and economic impacts on the increased provision of housing stock and affordable housing.

In addition, Mirvac is aware of activity within other government agencies considering issues such as street widths, verge planting which will have an impact on the industry's approach to designing and delivering new development. In turn, the industry is looking for clarity and consistency across government in relation to all aspects of policy change that affects development.

The draft DP SEPP appears to not appreciate the role of the developer in meeting customer needs and the significance of these needs in determining the product design and mix. Despite the expected increases in lot size to accommodate tree canopy, the missing narrative is that customers often compromise on lot size for the type of house they want. The draft DP SEPP does not acknowledge the substitution new home buyers make and the adjustments to the design of housing products developers make to provide people with viable options that match their ability to pay.

Mirvac are concerned that the draft DP SEPP will not solve the issues it has set out to address and that the original vision behind the call for new policy cannot solely rely on changes to the planning system – rather a greater policy and cultural shift is needed.

Alex Avenue Schofields

Mirvac's Alex Avenue development in Schofields has delivered 313 lots. Mirvac explained this development as a case study on the application of the draft DP SEPP and modelled redesign options that would meet the requirements of the policy. Mirvac found the requirements very difficult to meet.

Using the objectives and principles of the draft DP SEPP – particularly the design consideration to ensure tree canopy cover – the rear setback of general sized greenfield lots would be reduced, from an average of five metres to ten metres. This extended setback would allow for a mature eight metre diameter tree to be planted which would provide 50 square metres of canopy cover. As a result, the redesign of this development would result in a reduction in lots and estimated loss of 20%

of housing yield. In addition, despite this significant redesign, the design still would not meet all policy requirements.

This increased lot size would impact the customer and the community. In terms of the customer the added cost of this increase, using conservative estimates, would equate to \$137,000 per lot. In terms of the community, this increase would mean 48 lots would be lost, this is in addition to a loss of 21 lots due to the requirement that would see an increased size of the public park. Thus, a development that has delivered 313 lots would be reduced to 244 lots.

For Mirvac this equates to a significant loss of revenue as they lose approximately 20% of housing yield for this site. For the NSW Government the means to recover the lost yield and to continue delivering for the State's housing needs and new home buyers will be to create opportunities to deliver higher housing development in other suburbs or an expansion of urban release areas. The implications of the draft DP SEPP on the ability to deliver new housing in one area needs to be considered alongside the ensuing demand on land in other areas.

Despite the increase to lot sizes, and major decrease to provision of stock, these measures would still not meet the 40% tree canopy draft DP SEPP requirement rather it would only achieve 28%.

There are various concerns that emerge from this review of the draft DP SEPP for Mirvac. Most notably, is the conflicting requirements and policies across government that convey there is no consolidated objective of how these principles and objectives work together or how they will ensure an efficient and progressive move towards net zero. The immediate increased cost to the customer and the decrease in housing supply is in direct conflict with the NSW government's move to increase housing affordability and supply.

Next steps

Mirvac has several concerns regarding the impact of the DP SEPP including the requirement for larger lots and the cost implications of these lots in greenfield release areas for the customer. Larger lots both reduce the supply of housing (fewer lots per hectare) and increase prices (compared to smaller parcels of land). Requirements for parklands, landscaping and deep soil planting do not extend to other forms of development such as code assessable development potentially creating confusion in the market and inconsistent delivery to the community.

It is unclear how the reduction of yield, in the order of 20-35% due to the DP SEPP will be accommodated to deliver housing for a growing Sydney. Recovering lost development potential will require an expansion of the urban footprint and/or increases in height for other development sites, it is unclear how this has been considered in the cost benefit analysis for the DP SEPP and how this will be supported by the planning system.

A Regulatory Impact Statement should be developed for the DP SEPP and have regard to the impact on supply, typology, costs, access to housing and the likely additional development potential required across NSW to recover lost housing development opportunities.

Case Study 3 – TOGA Group

About TOGA Group

TOGA has contributed to the growth and changing shape of the Australian, New Zealand and European cityscapes for nearly 60 years. TOGA create homes, hotels, commercial and retail spaces, enriching communities and providing unique experiences to create a lasting legacy. Their philosophy is a commitment to creating and shaping meaningful spaces for life.

Sentiments regarding the draft DP SEPP

In its current form, TOGA does not support the draft DP SEPP as it will encourage Councils in greater Sydney to use this as a tool to enforce compliance, rather than a set of guidelines to negotiate with developers.

The proposed DP SEPP will sterilise sites from redevelopment and increase the time and costs required to achieve approvals for development. It further introduces points of debate between councils and developers and relies on capable and experienced officers and developers to subjectively review, negotiate, and agree the best development outcome based on a set of principles, and the current planning system is not set up for such a process across the Greater Sydney area. This could lead to the unintended consequence of the proposed ADG to be used as a strict checklist. Ultimately, it will significantly impact housing supply and affordability across greater Sydney.

137 Anzac Parade, Kensington

TOGA has calculated that all projects will lose Gross Floor Area, including their Anzac Parade development in Kensington, due to the additional requirements specified in the draft DP SEPP.

Initially, TOGA anticipated it would lose approximately 9% of yield for this development, but introducing further controls such as cross ventilation would reduce their yield by 33%. If TOGA loses yield because of the change in apartment mix, there are two significant flow-on effects:

1. Construction costs rise
2. Unfeasible development margin to satisfy financiers (i.e., banks) to re-design projects to meet new controls. This can result in existing sites not being developed.

The draft DP SEPP was meant to be an integrated policy that understood the nuance and context of development sites; however, approaching every site as a stock standard exacerbates site-specific issues and impacts on the ability to negotiate design outcomes for the site with infrastructure providers and other stakeholders.

This lack of consideration of site specific context is considered a risk to developers. They are concerned that councils may use these controls in a highly prescriptive manner given their subjective position, so instead of using the draft DP SEPP as a set of guidelines to work towards the intended outcomes of the draft for sustainable, quality and vibrant places, it will rigidly define

development standards. TOGA also viewed this as a risk to increased approval time, which is currently averaged at 12 months.

TOGA can also see an impact of the draft DP SEPP on the market and new home buyers. Developers need to be able to respond to the market and provide dwellings that customers want to buy. The draft DP SEPP is too prescriptive and doesn't allow for a diversity of stock. As such, designing and developing new housing stock as per policy prescriptions and not to market preferences will impact housing products brought to market, which in turn will reduce the supply of options at a lower price.

Finally, TOGA observed there are many changes happening in the planning system currently and time is needed to map and understand how these changes affect planning and development. Specifically, the NSW Building Commissioner on 8 June 2021 introduced the *Building Legislation Amendment Act 2021 (Amending Act)* which made several key changes to the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act* and the *Design Building Practitioners Act*. This comes alongside changes to infrastructure contributions. TOGA sees value in not just industry involvement in achieving the intended outcomes stated in the draft DP SEPP but a need for whole-of-government approach in light of various policy reform agendas being considered.

Next steps

The implementation of the draft DP SEPP, or the full realisation of benefits, has not been considered or understood adequately enough to allow developers to support the implementation of the draft DP SEPP as it currently stands. This is exacerbated by external factors, such as COVID-19 impacting borders, supply chains, material costs, and access to labour.

The draft DP SEPP requires more work upfront for the developer, it relies on people implementing the policy, and for councils and the Department to be experienced and capable of having an informed discussion about how criteria and context come together to develop the right product. TOGA is concerned about the following implementation issues:

- Councils do not have adequate resources with the required skills and experiences, they need training and education on how to interpret and implement the draft DP SEPP
- There is a risk that over the next 5 years, while waiting for education and training to catch-up, development approvals will be made using the rigid checklist in the draft DP SEPP.

There is currently no holistic approach taken for policy and reform in the planning system and the government needs to implement a toolkit to transition to net zero without solely relying on the *Environment Planning and Assessment Act 1979* to direct this transition for the state, led solely by the development industry.

There needs to be a clear roadmap that integrates the objectives the Premier has outlined (housing affordability and supply) and how the draft DP SEPP can help to achieve these.

Key findings from industry

Through our interviews, we found industry support for the intent of the DP SEPP and that the focus of concern was in relation to the implementation of the policy. Further work is required to ensure that the DP SEPP is practical, feasible and delivers on its intended outcomes.

The following summarises the key findings expressed through research and industry engagement:

The draft DP SEPP reduces yield and will increase costs which will limit short-term delivery undermining benefit realisation

The loss in yield for developers would halt current and future developments from progressing. In turn, a proportion of the benefits presented by the draft DP SEPP would not be realised meaning there would be upkeep in sub-optimal and ageing stock. On top of this, a reduction in new development projects would reduce the supply of housing undermining other state objectives. As such, better implementation planning is essential.

The average loss in housing yield per site for each developer, had their development been revised alongside the draft DP SEPP, is in the order 20-35%. Frasers found the lack of context the draft DP SEPP accounted for meant their award winning designs would not have met requirements. Mirvac saw a loss of 20% yield and increase of \$137,000 for individual customers, and TOGA calculated a 33% loss in yield.

Given these losses, the draft DP SEPP could push mid-tier firms out of the market. This is a key concern as a diversity of firms is needed to provide a diversity of needs. More so, it creates issues around market competitiveness

A need to release a detailed Cost Benefit Analysis as part of a Regulatory Impact Statement

The cost-benefit analysis is not sufficiently detailed enough to explain where benefits accrue and where the burdens lie. Without this detailed analysis there is no public discussion about the reasonableness of the relationship between benefit and burden and how the use of tools outside of the draft DP SEPP can be utilised to address any potential imbalance.

A regulatory impact statement, in tandem with a change management approach, would allow for a clearer plan on how to manage the impacts on stakeholders while delivering the policy's objectives. Within this statement, it would allow a clearer and more certain understanding of how value will be provided to stakeholders and how it is funded.

Need for a “wayfinding” and change management to interpret and implement the draft DP SEPP

The package would have benefitted from more clarity and direction for stakeholders on how to navigate the package as a whole – i.e. the draft DP SEPP, updates to the Apartment Design Guide, Urban Design Guide and BASIX.

The draft DP SEPP has been introduced in the context of other changes and reforms to the planning industry, specifically the introduction of the Residential Apartment Buildings (Compliance

and Enforcement Powers) Act 2020 (NSW) and the Design and Building Practitioners Act 2020 (NSW) This unstaggered introduction and implementation demonstrates there is a lack of alignment with other planning and infrastructure decisions which has flow-on effects that will increase the time and costs it will take to deliver projects.

This situation calls for a change management approach, in which implementation becomes an integrated, multi-instrument, multi-sectoral approach, that prioritises execution and delivery.

The draft DP SEPP was meant to allow flexibility, instead, it risks being even more restrictive

The use of rigid and subjective terminology in the drafted clauses have concerned developers about how the draft DP SEPP will be interpreted. The concern is this terminology does not build certainty but instead creates uncertainty and risk. More so, it is unclear how objectives will be interpreted by individual Councils and whether there are other avenues to challenge these decisions without the need for using the Land and Environment Court.

There needs to be a regulatory framework that allows for a clear and transparent interpretation of the draft DP SEPP, so it can become a practical and stable, instrument for the industry to use.

Without this clarity, Fraser's argued, it becomes a restrictive policy that does not consider context and diminish the space for innovation and creativity. TOGA shared this sentiment that the rigidity of the policy means it will become a prescriptive checklist instead of a dynamic set of guidelines that can actively respond to the context of development.

The draft DP SEPP cannot be the only tool relied on for encouraging and creating this shift to net zero

Transitioning the built environment to a net-zero economy requires policies from all departments and agencies to align under the unified vision of net zero. This significant transition cannot be the burden on the planning system and led by the development industry alone. Transition requires a cultural shift that shapes social and economic policy and appreciates both the economic and distributional impacts of reforms.

Issues and concerns requiring further investigation

In the process of developing this paper, Astrolabe Group identified the following consistent issues through our own research and engagement for the industry. We see a key component to delivering the draft DP SEPP is to better communicate how these issues have been considered and how they will be addressed across the immediate and through to longer-term.

What incentives will be offered to help developers overcome a loss of yield and increase in costs relating to the built environment's transition to net-zero developments?

It is well known that developers use a residual land valuation model to calculate how much they can pay for land and still develop with a reasonable rate of return. It is less clear how long it takes for landowner expectations to change when developers lose yield and incur higher development costs. More work is required to demonstrate that development sites will continue to be made available to the market in locations and price points to meet housing needs.

Research has found that in order to improve the adoption of zero-carbon houses, state governments should consider providing financial incentives to development stakeholders and customers.¹⁵

How will the draft DP SEPP impact remote and regional markets?

The reduction in yield and increase in costs creates a typology of products that may find support in submarkets with pre-existing high amenity value, hosting consumers with higher income levels. There needs to be further work done to show how this draft DP SEPP will and can be implemented outside of Metropolitan Sydney and consider site-specific context of Regional NSW.

What education and training will be provided to help implement the draft DP SEPP?

There needs to be a strong regulatory framework and provision of resources that reduces the risk of divergent interpretations of clauses in the draft DP SEPP. These resources must go beyond capability building to also consider capacity and timely decision making. The government needs to ensure agencies and Councils have the capacity and resources to translate this instrument into a set of practical tools that facilitate development.

¹⁵ Li et al., 2022, [Towards zero carbon housing in Victoria, Australia: A policy and incentive framework](#)

Suggested Next Steps

This report shows that for the draft DP SEPP to be effective and practical, further considerations, including working with industry and taking a broader systems view, are required to successfully deliver the intent of this policy. The following points summarise key industry sentiments and suggestions on how the proposed policy can either be progressed or further refined:

Industry supports the proposed changes to the BASIX sustainability tool.

- The provisions around these should be extracted from the DP SEPP and progressed separately.

The rest of the DP SEPP in its current form is not supported by industry.

- Time should be set aside to undertake a comprehensive review and develop a change management plan to be rolled out alongside it.

Insights from significant policy change

There are examples of other visionary and complex policies where the process of implementation could be useful for consideration in working towards policy changes that create sustainable and resilient places and deliver good design in NSW.

A transformational policy that also strived for significant change in a complex operating environment is the introduction of a superannuation guarantee. Here we see an acknowledgement of the complexity with a staged approach to the implementation of policy setting. Complexity requires time, deliberation and a clear, detailed process of implementation with stakeholders.

Governments understood that superannuation required a whole system approach that engaged both industry and customer. Customers are a crucial part of this design implementation as they are the users of it. This staggered implementation demonstrates further how it is a policy that has continuously evolved¹⁶ in order to align with the needs of the customer and industry, making it a responsive and actively managed instrument.

Using this experience, a possible next step to ensuring the draft DP SEPP achieves the vision it has for people and place in NSW, is an integrated multi-sectoral approach that harnesses the whole of government for change, as illustrated in Figure 1. The unintended consequence of first enacting the draft DP SEPP will mean it will not have the impact it is striving for. Rather it needs to be one part of a whole systems approach to creating a policy and cultural shift that will see net zero policies integrated across government activity.

To further consider how our research and engagement with industry could be transformed into a staged implementation, see Figure 2.

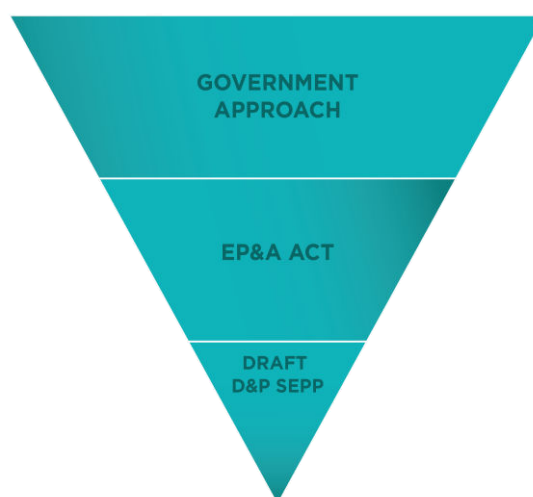


Figure 1 Whole systems approach (this page)

Figure 2 Implementation Plan (next page)

¹⁶ Nielson L. & Harris, B., 2010, [Chronology of superannuation and retirement income in Australia](#)

IMPLEMENTATION ROADMAP

2022

NSW GOVERNMENT

- Undertake a regulatory impact statement to guide implementation
- Work with Councils to understand resourcing requirements
- Consider a staged approach to implementation
- Develop a change management plan
- Work with industry to understand feasibility
- Release detail on the cost benefit analysis showing both where benefits are accrued and the burden of costs.
- Show that the policy has taken these elements into account in its design to maximise benefits realisation

- Consider using other government instruments and additional tools/incentives
- Develop a benefits realisation plan
- Consider distributional implications
- Review the package to ensure it is deliverable

COUNCILS

- Clarify implementation resourcing implications
- Confirm response to cost, capability and capacity
- Confirm implications on time taken to assess given finite resources
- Confirm position on flexibility vs certainty

LANDOWNERS

- Whole of system modelling on changes in development feasibility
- Analysis on where residual land values are too low to purchase and develop
- Education campaign on the new schemes and the impact on a developers ability to pay for land

DEVELOPERS

- Co-design of regulation and testing of implications on housing supply and policy deliverability

DESIGNERS & PLANNING PROFESSIONALS

- Develop training/short courses

CUSTOMER & COMMUNITY

- Engage customer segments and explain the implications of the approach on quality, time and cost
- Confirm the role of customer preference and choice vs regulation
- Acknowledge spatial and distributional impacts of the policy on the community
- Undertake and publish modelling on the implications on the household including rent, and utility bills

Confirm benefit measurement framework

2023

Beginning of staged commencement - should include grandfathering of clauses to enable development that has commenced to proceed

2028

5 yearly review

