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31 July 2020

Abbie Galvin
NSW Government Architect
Department of Planning, Industry and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Email – designandplacessepp@planning.nsw.gov.au

Dear Ms Galvin

Request for Input – Design & Place State Environmental Planning Policy

The Property Council of Australia welcomes the opportunity to provide comments to the Government Architect on the framework of the proposed Design and Place State Environmental Planning Policy (Design & Place SEPP).

Our initial response to this request is to question the timing of this review and ask whether it is appropriate to embark on such a major review at this time. The scope that has been identified by the Government Architect is very large and will involve the dedication of considerable resources within Government and key stakeholders to provide an adequate response. We have serious concerns about the added regulatory complexity arising from the proposed Design & Place SEPP. In particular bringing together multiple guidelines and manuals into the statutory planning process through reference in the policy.

Given the NSW Government is also undertaking a significant review of infrastructure contributions at the same time, it will be challenging for interested groups to participate in both reviews. An alternative approach could be to manage the development of the Design and Place SEPP as a staged project that can be conducted over a longer timeframe that would permit stakeholders to manage their involvement in the entire process.

Notwithstanding the above issues, the attached table provides the Property Council's response to the proposed parts of the Design and Place SEPP as set out in Attachment A of your letter dated 6 July 2020.

We look forward to engaging with your office further on this issue at the external stakeholder workshop to be convened for September 2020. At that workshop there should be more detail provided about how the Property Council and our members can be more engaged and given suitable time to provide input into the process when there is a more substantial document to review.

Should you have any question regarding the content of this submission, do not hesitate to contact Troy Loveday, Senior Policy Adviser, on 0414 265152or tloveday@propertycouncil.com.au

Yours sincerely

A handwritten signature in black ink, appearing to read 'Belinda Ngo', with a stylized flourish at the end.

Belinda Ngo
Acting NSW Executive Director
Property Council of Australia

Representative Body: Property Council of Australia
 Delegate: Belinda Ngo, Acting NSW Executive Director
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Design and Place SEPP proposed parts	Comments:
Part 1: Preliminary	<p>The preliminary section of the SEPP needs to clearly articulate the aims and objectives of the new policy. An important question is whether the policy will involve a comprehensive review of the provisions of the current policies or will it be a consolidation of current provisions into a new instrument.</p> <p>The coverage of the draft policy (which involves several State Planning Policies and associated guides) is very broad and has potential to make it a very complex exercise. The scope of this review may make its intended objectives difficult to achieve. Is there potential for it to be implemented in stages rather than all at once?</p> <p>In this part of the SEPP, the Government Architect should carefully consider the relationship of the new policy to other instruments (SEPPs), particularly State and Regional Development SEPP, State Significant Precincts SEPP, Infrastructure SEPP and Sydney Region Growth Centres SEPP.</p> <p>We recommend the need for a savings and transitional clause to be implemented so that current development applications made prior to commencement of the policy are preserved.</p> <p>Commencement date – will the SEPP commence on publication or will there be a lengthy period before it commences (say 3-6 months).</p>
Part 2: Design Process	<p>The Government Architect should focus on how the new policy will apply in the early stages of a project's design. The policy should seek to maximise opportunities to utilize the input of council design review panels and design competitions to deliver better designed buildings and places.</p> <p>It is important to embed a process for design panels to provide expert design advice to proponents when projects are being designed. Design panels make a positive contribution towards the design of a building</p>

Design and Place SEPP proposed parts	Comments:
Part 3: Sustainability and Resilience	<p>We understand the key aspect of this part will be the inclusion of BASIX in the draft policy. We have provided detailed commentary on the BASIX tool below.</p> <p>We are also aware that the policy will update the BASIX tool – will it adopt the current design related provisions or will the policy widen its scope to include incentives for projects that incorporate innovative sustainability measures and rewards for greater innovation in sustainability. It is important to understand whether BASIX will be maintained as a tool to assess residential development only or will it be expanded to include other sectors such as commercial and industrial buildings.</p> <p>In terms of resilience, will this cover existing design matters (design standards) related to hazards such as bushfire, flooding and coastal hazards? Are these best managed at a local level through council policies? Can these be consolidated into a single place? How important is climate adaption and resilience in the planning and design process? Should projects submit Climate Adaption Assessments to identify key risks to a particular development and be obliged to confirm major risks have been addressed at Construction Certificate or Occupation Certificate stages.</p>
Part 4: Context and Place	<p>We understand that this part will focus on how development responds to place through design.</p> <p>How can these matters be applied to a regulatory SEPP environment as we would suggest this is the place of a Development Control Plan (DCP) and other local planning controls. Could this be a matter that is led by councils with specific local character requirements? Is this Part intended to interact with consideration of streetscape and heritage related matters?</p>

Design and Place SEPP proposed parts	Comments:
Part 5: Urban Structure	We are not sure what this Part of the SEPP is trying to achieve. How will the draft policy respond to different types of urban contexts – such as CBD, suburban and regional cities where there are very different issues of context and character at play. There is a risk that the policy will be very repetitive with several areas of duplication.
Part 6: Urban Grain and Character	<p>How does this Part of the proposed SEPP relate to the interim local character and place guidelines that were released by the then Department of Planning and Environment in early 2019 (https://www.planning.nsw.gov.au/Policy-and-Legislation/Local-Character/Local-character-and-place-guideline)?</p> <p>There is the potential that this Part will be employed by local councils to undermine development currently allowed by a LEP and the zoning of the land. It should be possible to develop land zoned for residential development without the threat of a local character overlay being imposed that prevents any form of change.</p>
Part 7: Built Form and Spaces	This Part of the proposed SEPP is a very broad area and it is not clear whether it is possible to consolidate the content of the other design guidelines in force, including the low rise medium density housing code, CPTED planning guidelines, small lot housing, subdivisions, complying development housing codes and the many publications released by the NSW Government Architect. Does this part address the relationship between a building and the public domain? Landscaping, open space, streetscape, etc.

Supporting Guidance and Tools	Comments:
Apartment Design Guide	<p>The Property Council has previously communicated a number of concerns with the ADG to the NSW Government Architect. These concerns were based on how a proponent must satisfy the Council that a project fully complies with the requirements of the ADG, rather than using it for design guidance. This is increasingly a problem as many Council planners and planning panels require full compliance with its numerical standards for solar access, overshadowing, ventilation and deep soil planting. We have provided the Government with a paper that outlines these concerns.</p> <p>The current ADG addresses aspects of urban design to support amenity in urban environments related to residential apartment buildings. The aspects of the ADG which relate to daylight access in dwellings however, has the adverse effect of encouraging designs that are not optimal for energy efficiency, thermal comfort and therefore, sustainability. In order to support designs that aim to maximise sustainable outcomes through better thermal performance of the apartments, the SEPP should enable an alternative compliance route to complying with the strict numerical standards recommended by the ADG.</p>
BASIX Tool	<p>With regards to BASIX, the SEPP should take into consideration proposed changes to the National Construction Code (NCC 2022), which aim to impose tighter energy efficiency provisions on residential building design. ASBEC is currently doing a significant piece of work to form the updates to the NCC, including the development of a tool which will enable residential development in other states to be assessed in the planning process in a similar manner to BASIX in NSW. The SEPP should be formed in a manner which enables adoption of the NCC requirements should they be considered to exceed or improve upon current BASIX requirements. It may be preferable to align NSW residential requirements with the rest of the country with the adoption of the proposed changes to the NCC, rather than expand upon/change/improve the BASIX tool.</p> <p>Should there be any consideration of expanding BASIX to other development types beyond residential, this would be a significant undertaking. A similar mechanism of achieving a similar sustainable outcome would be the introduction of minimum water efficiency standards for building types other than residential. We note that the equivalent of the Thermal Comfort and Energy sections of the BASIX tool could be considered adequately assessed by the 2019 version of Section J of the NCC for class 3-9 buildings.</p>