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Department of Planning, Industry and Environment

Submitted online: <https://www.planningportal.nsw.gov.au/design-SEPP-2021>

National Trust Submission on Design and Place SEPP 2021

The National Trust of Australia (NSW) wish to take the opportunity to provide comment on the draft State Environmental Planning Policy (Design and Place) 2021 (DP SEPP) and supporting guides. The National Trust submitted a detailed response to the earlier Explanation of Intended Effects document for this SEPP on 28 April 2021, and we remain concerned by aspects of the proposal.

The Trust indeed wish to see “sustainability, resilience, and quality of places at the forefront of development”, and note the way in which our existing historic environments embody these values almost by their very nature, however the proposed move towards a principle-based approach has high potential to create additional complexity in the planning system, and will result in loopholes and adverse impacts for the heritage of NSW.

The DP SEPP has many noble aims, particularly in its ambitions for improved sustainability and environmental outcomes, the need to acknowledge the cultural significance of Country from an Aboriginal perspective, and a desire to make well-designed and well-connected places for people, however the underlying assumption of this DP SEPP is that the current rules-based system does not allow for such outcomes and restricts creativity. Nothing could be further from the truth, and all of the great urban outcomes across the world’s great cities – from Paris’ height limits to New York’s solar access controls – have benefited from having appropriate, and enforceable, frameworks in which to operate.

The Trust earlier raised concerns that exhibiting a policy, its supporting guides and other documents all together would make for a complex and confusing public exhibition period, and this has proved to be the case. Our submission attempts to comment on these various documents separately.

Our approval authorities rely on being able to enforce detailed controls, not kindly asking proponents to address a set of principles. Not every project will have an enlightened client, an appropriate budget, a skilled designer or a community-minded developer - yet this is the assumption put forward in this document that applies across the entire state of NSW.

The National Trust can see the benefit of the proposed principles supplementing the existing planning legislation in NSW, and making in effect a series of heads of consideration, yet it is our great concern that the proposed DP SEPP cannot replace these existing controls. This is particularly the case for identified heritage items and conservation areas, which we feel will have their protections greatly eroded by this legislation.



Proposed draft State Environmental Planning Policy (Design and Place) 2021 (DP SEPP)

The DP SEPP will be the primary source of design principles and considerations for development applications on all urban land for the whole of NSW. It is a document of great importance, yet it at times appears mostly geared towards large scale new development on a greenfield sites at the expense of existing, fine-grain built environments.

The DP SEPP (13.1) requires that consent must not be granted unless the authority is satisfied that it is *consistent with five “Design Principles”*, and that in order to satisfy these principles the authority must *take into account “Design Considerations”*.

The National Trust do not see how the proposed five general design considerations will “enable a consistent approach to design and place challenges.”¹ The five design principles introduced by the DP SEPP are commendable, but to rely on these to actually create good place-based outcomes is a dangerous approach. Already in NSW, the National Trust has pointed out time and again cases where actual listing of a place or building on the State Heritage Register or a Local Environment Plan has not offered protection against demolition. It is difficult to see how a “consideration” of *culture, character and heritage* as part of a “principle” to *deliver inviting public spaces* is going to offer a stronger protection, if any, to some of our most important assets.

The recent (approved) proposal for the Atlassian Tower at Sydney’s Central Station – a 211m tall building that is built within the State Heritage Register boundary of this site, on top of a heritage item, on the northern side of a pedestrian plaza, and which will overshadow Railway Square every morning – is but one example of what the Trust fear is the “greater flexibility” in this approach which promotes “alternative solutions” for any place, justified by a swathe of consultant reports. With the Heritage Act being effectively “turned off” time and again for SSDA projects, and heritage but a “consideration” under the DP SEPP, we fear that there will be little to no meaningful heritage protection left in NSW, especially when “future planning proposals, including LEPs, and future DCPs will also need to take into account the DP SEPP and the UDG respectively.”²

The DP SEPP (Part 2 – Design Principles and design considerations) is fraught with danger from a heritage perspective. For example, does a new building that responds to the “desired character” (14a and 16a) of a surrounding area refer to the existing historic state heritage-listed precinct of Queen Street in Campbelltown, or the “desired” high rise character in the 2020 Masterplan produced by the Council?

The inconsistency in the process and feedback of existing design review panels has been noted in the feedback to the SEPP.³ When Councils are required to give detailed reasons for departing from the recommendations of the Design Review Panel, a body that is surely as subjective as the “principles” they will be enforcing, there is a very real concern that the voice of the community and organisations such as the National Trust will be made ineffective. Not all Councils will have the skills or resources to argue their case effectively, and some may struggle to constitute one prior to the DP SEPP taking effect.

The National Trust recommends

- The protection of heritage, in particular Conservation Areas, be formally included in the aims of the policy (3.1)
- Design Consideration 16 (culture, character and heritage) refers to the NSW Government Architect’s *Design Guide for Heritage*
- Existing, highly detailed, well-considered, location-specific heritage principles and controls within current DCPs and LEPs continue to be observed and enforced, not replaced with a single, generic *consideration* that development “incorporates or responds to heritage items or conservation areas.”

¹ Design and Place SEPP Overview, p.15.

² Design and Place SEPP Overview, p.21.

³ Design and Place SEPP Overview, p.19.



Proposed new Urban Design Guide (UDG)

The Trust note that the Urban Design Guide (UDG) is a resource to improve the planning and design of urban environments across NSW.⁴ From the outset, when former Minister Stokes quotes Jan Gehl in his foreword that the approach must be “first life, then spaces, *then* buildings”, it is clear that this document is focussed upon the creation of new urban space, rather than the reactivation of existing spaces.

It is equally clear from the Government Architect’s foreword that this document has been produced specifically to support the DP SEPP,⁵ and not as part of the otherwise very good recent publications series produced by that office, namely:

- Better Placed
- Draft Greener Places Design Guide
- Connecting with Country
- Design Guide for Heritage
- Urban Design Guide for Regional NSW

The fact that any urban space less than 1 hectare in size is not considered to be within the realm of the Urban Design Guide, which promotes a “place-based approach”, speaks volumes. On this basis, the new Urban Design Guide for NSW would not even apply Sydney’s Town Hall Square (at approximately only 0.3 hectares) – surely one of the places in NSW most desperate for urban design guidance. In fact, most of the sample sites provided in the document, such as Paddington Reservoir Gardens and Marrickville Library forecourt, would not be applicable under this guideline.

From a heritage perspective, particularly in conservation areas, this is a major oversight. The guidance itself (Objective 16) for “heritage and culture” does not actually provide any advice on the best way to respond to heritage buildings and landscapes. Providing guidance to “retain built features” and “adaptively re-use heritage buildings that are no longer in use” is insufficient



Town Hall Square and Marrickville Library – too small to be considered in the Urban Design Guide

The National Trust recommends

- The Urban Design Guide be re-written to be applicable to urban spaces under 1 hectare in size.

⁴ Design and Place SEPP Overview, p. 8.

⁵ “I am committed to ensuring the DP SEPP, together with its supporting guides, will deliver better housing and urban design outcomes for communities across NSW”, Draft Urban Design Guide, p.5.



The Local Government Design Review Panel Manual (LGDRPM).

The National Trust is greatly concerned about the integrity and authority of design review panels, especially where they apply to heritage conservation items and areas.

While this DP SEPP recognises the issues and proposes changes that seek to address these concerns, it opens up new issues. Of particular concern is the clause (35.2) which removes the requirement that consent must not be granted unless a design review panel has reviewed the development. This clause states that an architectural design competition jury, in effect, will become a consent authority.

Architectural design competitions are generally reserved only for major projects in NSW. Recent design competition juries for the Parramatta Powerhouse Museum and the Sydney Harbour Bridge Northern Cycleway would thus not require any design review panel input, or even Heritage Council input, even though design competitions are generally for only high level concepts.

The National Trust recommends
<ul style="list-style-type: none">• Clause 35(2) be removed.

Summary

Whilst the National Trust of Australia (NSW) commends the high-level objectives and principles of the DP SEPP, we remain concerned that it will fail to meet these objectives, give adequate weight to heritage or understand the complex planning system heritage operates within.

The National Trust of Australia (NSW) expresses its strong objections to the Design and Place SEPP, which we feel will reduce heritage protection in NSW.

Yours sincerely,

David Burdon
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