



28 November 2024

Hon. Paul Scully MP
Minister for Planning and Public Spaces

Dear Minister

Re: NSW Planning Legislation - Changes to Electric Vehicle Charging Infrastructure

The Southern Sydney Regional Organisation of Councils (SSROC) is an association of twelve local and municipal councils in the area south of Sydney harbour. SSROC provides a forum for the exchange of ideas between our member councils, and an interface between governments, other councils and key bodies on issues of common interest. The SSROC area covers central, inner west, eastern and southern Sydney, an area with a population of 1.9 million and contributes much of Sydney's gross domestic product.

I am writing regarding changes to NSW Planning legislation related to electric vehicle (EV) charging infrastructure - State Environmental Planning Policy (Transport and Infrastructure) Amendment (Electric Vehicles) 2023 ("the SEPP"). SSROC understands the Department of Planning, Housing and Infrastructure (DPHI) is in the process of reviewing the SEPP and would like to request that the review includes section 2.124B (Development permitted with consent - residential premises).

NSW and Sydney in particular, are currently in the process of unprecedented shift to electric vehicles and SSROC supports this trend as part of the broader shift to achieving net zero target. Increased availability of sufficient EV charging infrastructure is critical to this transition. Our member councils' General Managers and CEOs established an SSROC EV Charging Infrastructure Working Group to help our member councils respond more effectively to these changes. For example, the group recently developed Electric Vehicles Development Control Plans (EV DCP) provisions for residential and non-residential developments.

SSROC member councils have major concerns about a few sections of the SEPP, particularly s2.124B. Kerbsides perform a multiplicity of often competing uses. State and local government rules around these functional spaces seek to carefully balance the needs, interests, utility, visual amenity and safety for a wide range of stakeholders.

The SEPP confers new development rights and responsibilities for those involved in providing and using EV charging infrastructure. It does this specifically for individual business corporations and residents, and this could be at the expense of the wider community interests, neighbours and the effective functioning of the public domain.

SSROC is committed to engaging with the State Government and agencies for good outcomes for the state, councils and the community as take up of electric vehicles increases and the demand for charging infrastructure rises in coming years.

The case and need for changes to s2.124B are concisely presented in the sections that follow. The purpose of the suggested changes is to make the SEPP implementable in ways that align with the intent of the instrument, while also avoiding unintended consequences for the implementing councils and the community.

Private use of public domain

The use of the kerbside by residents for the installation of private chargers may lead to effectively exclusive use of parking bays by those residents, particularly in areas with high parking demand where it is difficult to park in front of their own homes. This clearly sets a precedent for Council and could lead to difficulty implementing future projects such as cycleways, blurring the distinction between public and private use in kerbside maintenance.

The SEPP will encourage ongoing use of public on-street car parking for private purposes and lead to several challenges and costs for both the resident and Council. For residents, these include, but not limited to, cost for charger purchase and installation, administration fees to Council; bonds for both installation and footpath reinstatement after removal, public liability insurance; and no guarantee of parking adjacent to the pop-up charger. The challenges for Council are costs and resource management of a permit or licence system and annual audits and legal advice to manage permanent private electric vehicles interface controller (EVIC) liability and risks.

The SEPP may force Councils to lease or license spaces to individuals for a private EV charging facility. This would have administrative and legal implications under the Roads Act 1993. Though Council consent is required, the SEPP does not provide any guidance on operational matters such as public liability, insurance, installation, maintenance and removal responsibility or any additional associated costs. Furthermore, the installation of these facilities would be likely to conflict with other services in the road and kerbside.

Equity and conflict of interest concerns

The SEPP will promote inequity and conflict of interest in private use of public assets such as roads, footpaths and car parks. It creates a situation where an individual who owns land adjoining a public road can install and have exclusive use of EV charging facility on public land. This does not deliver public value for that public domain.

This type of installation would create an expectation of exclusive access and present the challenge of residents attempting to reserve the parking spot for their exclusive use using bins and barricades. In many parts of the Eastern Suburbs, CBD and Inner West, it is uncommon for a resident to regularly get a parking spot outside their property.

Liability and insurance for electric vehicle charging facilities

There is unresolved dilemma on who is liable for the private EV charging facilities on public land, including insurances, maintenance and removal of facilities when they are no longer needed. What level of insurance would the resident be required to hold, and would they be requested to create a positive covenant? The SEPP does not identify who would be liable for any accident caused by or damage to the private EV charging facilities on public land.

SSROC member councils are unlikely to accept any liability for those facilities. Consultations with Councils and community on this matter are necessary. Mechanisms such as requiring the owner of EV facility to allow for the registration of a positive covenant obliging them to keep the charger in good repair could be considered.

Visual impacts

A large section of many SSROC member councils has Heritage Conservation Areas. We realise that the visual impact an individual charger installed in the way proposed would be minimal. But the visual impact increases as the number of charges on the street increases, there may be issues with having a street full of chargers.

Complications and potential breach of Electricity Supply Act 1995

It is illegal for anyone but the resident to use the kerbside EV charger, but the sale of electricity by the resident without a retailer licence or exemption and in breach of the Electricity Supply Act 1995 would be possible. Councils will be in a difficult position to be part of a complicating process of ensuring or enforcing compliance of use of kerbside EV charger only for non-commercial purposes in accordance with s2.124B of the SEPP. Councils ought not be exposed to reputational risk,

where they may be seen as privatising the public domain, or potentially being viewed as prohibiting EV chargers if the SEPP creates enforcement challenges for Councils.

EV Charging technology

Clauses (1c) put limitations on the method of charging in so far that it only allows for underground cabling such as [Kerbcharge](#). International research has found that the most efficient, less disruptive and cheapest solution is channel charging such as <https://www.kerbocharge.com/>. It is unclear whether channel charging is underground and consistent with clause (c).

Need to act

The concerns of Councils should be addressed in the SEPP review so that EV charging infrastructure does not constitute unnecessary liability for Council and community and conflict with the stated policy intent of increasing EVs uptake.

As stated in an earlier letter by Ryde Council to the Secretary, Department of Planning, Housing and Infrastructure, that was supported by several Councils, SSROC and regional organisations in greater Sydney, some amendments to the SEPP and other relevant legislation that would be welcomed by Councils. Some of the amends are highlighted below.

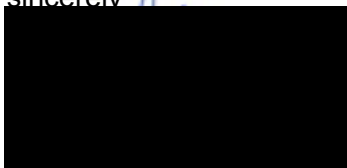
- Adopt the relevant definitions in the Roads Act 1993 for the purpose of the SEPP, for example, “road related area”.
- Consider options and circumstances for allowing private residences to install EV charging infrastructure on public lands. Engaging and working with Councils on approaches, guidelines and locations for shared EV charging infrastructure options.
- Engage with Councils and stakeholders on liability and insurance considerations for EV charging infrastructure
- Prioritise public access and safety in EV charging by provision of state-wide specifications for EV charging providers.

Conclusion

SSROC member councils, like many other stakeholders, support the transition from internal combustion engines to EV and would like to work with NSW Government to ensure it is implemented in a way that achieves the intent of the SEPP.

We look forward to your consideration of the issues raised in this letter and to participating in comprehensive consultation that could enable the SEPP to be implemented in a way that is conducive for Councils and residents.

Yours sincerely

A large black rectangular box redacting the signature of John Faker.

John Faker
Burwood Council Mayor
President, Southern Sydney Regional Organisation of Councils