

## INQUIRY INTO ENVIRONMENTAL PLANNING INSTRUMENTS (SEPPs)

**Organisation:** Nature Conservation Council of NSW

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## Nature Conservation Council

The voice for nature in NSW

21 May 2021

Regulation Committee  
Legislative Council  
Parliament of NSW

Submitted via email: [Regulation.Committee@parliament.nsw.gov.au](mailto:Regulation.Committee@parliament.nsw.gov.au)

To whom it may concern,

### **Submission to the Regulation Committee inquiry into SEPPs**

The Nature Conservation Council of New South Wales (NCC) is the state's peak environment organisation. We represent over 160 environment groups across NSW. Together we are dedicated to protecting and conserving the wildlife, landscapes and natural resources of NSW.

We thank the Regulation Committee for establishing this inquiry into State Environmental Planning Policies (SEPPs) and welcome the opportunity to contribute.

This inquiry is both important and timely.

#### **SEPPs are a key mechanism the state government can use to mitigate or exacerbate the environmental impacts of development in NSW.**

SEPPs can determine where planning controls do and don't apply, what does and does not require development consent, what matters must be considered in determining a development consent and who the consent authority is. These are high stakes for our urban and natural environment.

#### **The current legal requirements for making SEPPs involves excessive Ministerial discretion and inadequate community consultation provisions.**

The provisions for the making of a SEPP in Division 3.3 of the Environmental Planning and Assessment Act (1979) are very broad and specify no standard procedure – relying upon *'the opinion of the Minister'*.

There is also no requirement for public consultation, with the Minister deciding if it is *'appropriate or necessary'* to exhibit an explanation of intended effects or draft SEPP and receive submissions.

#### **The making and breaking of SEPPs can be highly political.**

In September 2020, we saw tensions flare in the Liberal National coalition over the Koala SEPP. Since, the government has switched between different Koala SEPPs, seeking a politically acceptable fix. Greater parliamentary and community oversight is needed to ensure SEPPs are being made in the public interest.

**The NSW Government continues to pursue a program of SEPP consolidation in efforts to simplify the planning system.**

Most recently, an explanation of intended effects has been on exhibition for the proposed Design and Place SEPP (DP SEPP). This will replace several existing SEPPs, including the BASIX SEPP, which has played a central role in improving sustainability performance of new residential buildings across the state since 2004.

NCC is working with the Total Environment Centre to highlight the serious detrimental effects the proposed Design and Place SEPP could have on environmental standards in the built environment.

The DP SEPP moves away from prescriptive standards to flexible principle-based planning controls. It seeks to establish 'mandatory matters for consideration' covering resilience, green infrastructure, emissions and resource efficiency and tree canopy. Developers and decision makers will need only to consider these matters in the assessment and approval process. In other words, they are completely discretionary.

The risks posed by the DP SEPP highlight the need for more systematic scrutiny of SEPPs as they are developed and implemented.

**SEPPs can be used to remove decision making power from local government.**

Prevailing over Local Environmental Plans (LEPs), SEPPs have often been used to override local planning controls and disempower local councils and communities. An example of this is the Gosford City Centre SEPP (2018), which lifted building restrictions for large developers. Cases like this raise important questions around whether SEPPs should only be introduced for matters that apply across the state, rather than geographically targeted intervention.

The making of SEPPs should be disallowable by the Parliament and require mandatory community consultation. Making SEPPs disallowable would be consistent with other subordinate legislation - increased parliamentary oversight of SEPPs is entirely appropriate.

We look forward to reviewing the findings of the Committee's investigation into this important issue. We would welcome the opportunity to speak at a hearing of this inquiry.

Your key contact point for further questions and correspondence is Ishbel Cullen, Policy and Outreach Coordinator, available via [redacted] and [redacted]. We welcome further conversation on this matter.

Yours sincerely,

**Chris Gambian**  
**Chief Executive**  
**Nature Conservation Council**