

Submission
No 9

INQUIRY INTO ENVIRONMENTAL PLANNING INSTRUMENTS (SEPPs)

Organisation: Planning Institute of Australia (PIA)

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24 May 2021

The Hon. Mick Veitch, MLC
Chair, Regulation Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000

Via email: Regulation.Committee@parliament.nsw.gov.au

Dear Chair,

Planning Institute of Australia Submission to Inquiry into EPIs (SEPPs)

Thank you for the opportunity to provide a submission to the Upper House Committee inquiry into whether environmental planning instruments (EPIs) should be disallowable by the Legislative Council.

The Planning Institute of Australia (PIA) is the national body representing planning and the planning profession. PIA currently represents approximately 5,300 members nationally and internationally and connects with more than 10,500 planners annually. The PIA NSW Division has reviewed the terms of reference for this Inquiry and is pleased to provide feedback for consideration of the Committee.

As per the Regulation Committee term of reference 1(b), PIA NSW have considered the utility of making State Environmental Planning Policies (SEPPs) disallowable instruments under the *Interpretation Act 1987*. PIA understands the background to this proposal and having reviewed the Second Reading Speech of The Hon. Mark Banasiak in relation to his Private Members Bill *Environmental Planning and Assessment Amendment (Review of Land Decisions) Bill 2020* is familiar with the problem that this solution seeks to address.

PIA NSW agrees that the community should have a deeper understanding of SEPPs and the ways in which they impact land use decisions, design outcomes and environmental management throughout NSW. PIA NSW is concerned, however, that making SEPPs disallowable instruments would represent a significant change to the operation of the NSW planning system that should not be pursued in isolation.

Currently, SEPPs are currently used for a wide range of purposes, from the broadest level (such as the proposed Design and Place SEPP which will impact design outcomes in every community)

to more targeted policy (such as the Canal Estate Development SEPP which was developed to specifically prohibit canal estate developments). SEPPs may require rapid amendment when an unexpected land use outcome arises and a swift solution is required to prevent an adverse result. As Farrier and Stein note, "In practice, SEPPs are not policy in the strictest sense of the word"¹, they have a more complex local planning function which speaks to their classification as environmental planning instruments.

As SEPPs continue to be reviewed and consolidated, PIA NSW believes they should be simplified and expressed by theme for instance design or housing. SEPPs should enable the place outcomes adopted in strategic plans, such as Regional Plans, District Plans and Local Strategic Planning Statements to be achieved. The process of making SEPPs could also be clarified and made more transparent through appropriate changes to the *Environmental Planning & Assessment Act 1979*. For additional detail on PIA's positions on strategic planning and planning systems principles, refer to the linked attachments to this letter.

PIA NSW has no established position on whether there is a role for a class of statutory instrument guiding statewide planning which should be capable of disallowance by the NSW Parliament. However, retrofitting the existing SEPP system with such a feature is likely to reduce certainty, delay critical planning policies and impact local planning outcomes. Any alternative approach should form part of a wholesale review of the NSW planning system.

PIA notes that this discussion has arisen as a result of calls for greater community input into SEPPs. PIA supports this approach and offers the following suggestions, addressing the Regulation Committee term of reference 1(a), to improve community input into SEPP making:

- Updates to the NSW Department of Planning, Industry and Environment (DPIE) **Community Participation Plan** and associated legislation if required to provide multiple formalised pathways for SEPP consultation. While SEPPs with minor geographic or regulatory impact may not require a complex community engagement process (for instance those with a minor geographic or legislative impact) those with major impact should be subject to more detailed requirements. Appropriate levels of engagement should be required on a graduating scale considering impact.
- Provision of **multiple opportunities for community input** into SEPP making. Currently, it is common practice at DPIE to publish an Explanation of Intended Effects (EIE) in relation to major SEPPs and then make the SEPP without exhibiting the final instrument for feedback. SEPPs should be exhibited at the EIE and instrument stage to ensure adequate opportunities for feedback as legislative detail is developed.
- **Extension of exhibition periods** for major SEPPs to allow adequate opportunity for feedback.
- The preparation of a **Community Engagement Report** for all major SEPP exhibitions to allow understanding of how feedback was or was not incorporated in final instruments.

PIA NSW supports the work of DPIE in preparing comprehensive planning policy and appreciate our ongoing engagement with their teams. We hope the above suggestions help to formalise

¹ Farrier and Stein, *The Environmental Land Handbook*, 5th edition, Redfern Legal Centre Publishing, pg. 101

appropriate community engagement pathways while also balancing the need for efficiency in SEPP development and delivery.

Yours sincerely

Audrey Marsh
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Attachments

[PIA National Policy 'What is Good Planning?'](#)

[PIA National Planning System Principles](#)

[PIA NSW Policy 'A Trusted Planning System'](#)

[PIA NSW Submission to Draft Updates Environmental Planning and Assessment Bill \(2017\)](#)