

## Attachment A – Response to Submissions

Issue	Comment
<p>The scope of what it is looked at by the panel is a little narrow - shouldn't all developments that are designed under SEPP 65 be considered by the panel. Smaller RFBs and the like are often not designed by high calibre architects and therefore to ensure design excellence, a review by the panel for these development types should be considered.</p>	<p>The Design Excellence Panel (DEP) is established by Council to support the legislative provisions for design excellence under the Holroyd Local Environmental Plan 2013 and also to provide broader design advice for significant developments over 25m in height across the Cumberland Local Government Area.</p> <p>The Design Excellence Panel (DEP) was a key project identified in the 2018-19 Operational Plan and Delivery Program to “Establish a Design Excellence Review Panel for High-rise Buildings” and has been established to support Council’s Community Strategic Plan goals for a resilient built environment. In this regard, the DEP is aimed at major “high-rise building” development, such as those that are located in Council’s Town Centre areas. The 25m+ threshold has been chosen in line with the highest tier of buildings referenced in the Apartment Design Guide (ADG) being those that are nine storeys and above (over 25m) (part 2F). Assessment of “smaller RFBs” (residential flat buildings) will continue to be assessed by qualified town planning officers of Council against the applicable planning and design controls.</p> <p>The Panel is also able to consider other applications on a voluntary basis, and Council will explore opportunities to encourage the use of the Panel by applicants.</p>
<p>The ‘Have Your Say’ website references viewing the Policy and Procedures document but only the link to the Policy document is available. And surely the Design Excellence Panel Procedures should be able to viewed – and also uploaded to Council’s website when this Policy is adopted – as they are</p>	<p>The Design Excellence Panel Policy has been publicly exhibited as it is the principal document in establishing Council’s new Design Excellence Panel (DEP). Whilst it is noted that the ‘Have Your Say’ website only provides a link to the Policy document, a copy of the Procedures document was provided to</p>

<p>referenced in the Policy, and need to be accessible. I can locate a Procedure document attached to the Council Business Papers 3/4/19 (Item No: C04/19-45 Cumberland Design Excellence Panel) – but I’m sure other members of the public won’t know this is possible – and besides, this document may already have been updated. Please note: Part 5 of the Apartment Design Guide (ADG) - on page 142 - states the Panel procedures should be placed on Council’s website. So for Council’s Planning Department to recently advise me that procedure documents, unlike policy documents, are generally not publicly available seems to be an incorrect and invalid response – and I can see other Guidelines are uploaded to Council’s website for access by the public.</p>	<p>any resident upon request during the exhibition period. The associated procedures and operations document for Council officers then provides the detailed and specific steps and actions to be followed in order to achieve implementation of the overarching policy.</p>
<p>Part J of the recently amended DCP regarding the Merrylands Station and McFarlane Street Precinct review states: The Cumberland Design Excellence Guidelines provides criteria and procedures that must be followed for developments seeking an incentive bonus in building height of up to an additional 10% and additional floor space ratio of up to 0.5:1. And as a document is referenced in the DCP, then surely that document needs to be displayed on Council’s website – as are other Guidelines. The document cannot be confidential – it needs to be used by the public as a reference point - and the Guidelines were originally placed on exhibition.</p>	<p>The Cumberland Design Excellence Guidelines were previously adopted by Council on 2 August 2017 as part of the 42-44 Dunmore Street, Wentworthville (Wentworthville Mall site) Holroyd Local Environmental Plan (LEP) 2013 amendment. The new expanded Design Excellence Panel Policy and associated Procedures will encompass and supersede the previously adopted Guidelines. In relation to LEP Design Excellence sites, it has been noted that any references to these superseded Guidelines within Development Control Plans (DCPs) will be required to be updated to reference the DEP Policy. This can be undertaken as part of preparations for the new Cumberland DCP. The relevant LEP clauses which outline the criteria that must still be satisfied for any development bonuses.</p>
<p>In comparing the 2 documents, I believe the Cumberland Design Excellence Guidelines have been updated – and translated into / become the Design Excellence Panel Procedures – and the DCP wording in Part J needs to be</p>	<p>Council’s application forms, checklists, application submission guides and a webpage will be updated to encompass relevant information for applicants.</p>

<p>amended to reflect reference to the Design Excellence Panel Procedure, not the Guidelines. And only the Procedures (not the Guidelines) need to be placed on Council's website. And again I point out that Part 5 of the ADG - on page 142 - states the Panel procedures should be placed on Council's website. (And in this way everyone will know how the process works and how to utilise it – and also the process is then quite transparent).</p>	
<p>Part 5 of the ADG includes templates to aid the operation of a design review panel – and in particular: - Development Assessment Overview Template - Design Quality Test Template Refer Attachment 3 (Design Review Panel Operational Guidelines), Business Paper 5/12/18 Item No: C12/18-250 Design Excellence Panel. I suggest these 2 templates be included in the Design Excellence Panel Procedures because as the ADG states, their use will help ensure Panels operate in a consistent manner, not only in NSW – but, most importantly, within our LGA – and this could be particularly important as Council will be drawing on a pool of 9 panel members. Council's Design Excellence Panel Procedures contains a template for the Design Excellence Certificate – but the Procedures have no recommended templates that will aid and transparently reflect how that decision was made. The 2 templates mentioned above will surely assist with this, particularly as page 137 of the ADG states a full copy of the advice should be placed on Council's website.</p>	<p>The Cumberland DEP is not limited in scope to SEPP65 affected development proposals and has a broader scope relating to all building over 25m. The provisions of the ADG are therefore not strictly applicable. Given that this is a Design Excellence Panel, the focus is different to that of a SEPP65 Design Review Panel and thus a template relevant to applicable design excellence considerations will be prepared by staff in consultation with the Panel members. In regards to consistency of Design Panels throughout NSW, it should be noted that various Councils employ different models for Design Review and Design Excellence, with some Councils adopting a Design Excellence Referral panel whereby applications of a certain height are referred to one consultant from a pool of panellists. Most Councils in NSW which have Design Panels have separate supporting operational procedures that is not identical to the ADG toolkit.</p>
<p>Part 5 of the ADG - on page 143 - states that SEPP 65 requires the Panel's advice be made publicly available and accessible and placed on Council's website within 7 days of receipt from the panel. It is apparently intended that the publication of this advice will contribute to the understanding and improvement of design quality - refer SEPP 65,</p>	<p>The Cumberland DEP is not a dedicated Design Review Panel constituted under SEPP65 as the scope of the DEP is not limited to residential flat building development, but instead relates to all development proposals exceeding 25m in height. The Design Excellence Panel is an advisory body and will provide design advice to inform the assessment</p>

<p>Division 2, 27 (1) (e) Functions of Panels. Yet I cannot see this important requirement referenced in either the Policy currently on exhibition – or in the Panel Policy Procedures attached to the Business Paper 3/4/19. I suggest the requirement to publish the advice (that will explain, foster and facilitate design quality) needs to be added to the Policy and Procedures documents.</p>	<p>of relevant applications and where relevant the assessing officer may provide the Panel's comments to the applicant. The DEP is treated in a similar manner to other internal referral bodies such as engineering and health where expert technical advice is considered as part of the assessment process and comments are conveyed to applicants where relevant.</p>
<p>I understand that all applications involving buildings over 25 metres in height will be referred to the Panel for review and only the target sites referenced in the LEP will be able to access the additional building heights and FSRs that can be granted for design excellence.</p> <p>And I note the LEP clause 6.11 regarding Design Excellence only references 2 locations where development consent must not be granted unless the consent authority considers that the development exhibits design excellence:</p> <ul style="list-style-type: none"> <li>• Dunmore Street in Wentworthville – for buildings greater than 30 metres in height</li> <li>• The Merrylands Station and McFarlane Street Precinct - for buildings greater than 55 metres in height</li> </ul> <p>But as the Design Excellence Panel is only advisory, how will Council enforce design excellence criteria for all development proposals incorporating buildings with a height greater than 25 metres, if this 25 metre design excellence control isn't documented in the LEP or DCP? (And even then, from my experience of development approvals, it seems all controls, even LEP and DCP controls can be so easily varied anyway).</p> <p>When I expressed this concern to Council's Planning Department, Council's Planning Department advised: Referral of affected development applications would be required in order to</p>	<p>For LEP design excellence sites, referral to the DEP is mandatory as correctly stated. For other applications triggered by the DEP Policy, referral of development with a height greater than 25m to the DEP is enforced and mandated through the adopted Council Policy. The Design Excellence Panel is advisory and the advice of the DEP will contribute to the assessment of relevant applications.</p>

comply with the provisions of a publicly exhibited and adopted Council Policy.

But as this only references the referral, and the Panel is only advisory, surely it is still an issue that Design Excellence for all development proposals incorporating buildings with a height greater than 25 metres cannot be enforced - if there's nothing referenced or mandated in the DCP or LEP?

Clause 6.11 of the LEP regarding Design Excellence states: The objective of this clause is to ensure that development to which this clause applies exhibits the highest standard of architectural and urban design as part of the built environment.

But the intention of the clause will have no bearing on developments before the Design Excellence Panel that are not in the 2 designated areas of Merrylands and Wentworthville.

Likewise Part J of the DCP (clause 14.6.2) makes reference to Design Excellence Provisions but they only refer to the Merrylands Station and McFarlane Street Precinct.

And, to me, this seems peculiar – that there is no reference to design excellence controls in the DCP or LEP for development proposals incorporating buildings with a height greater than 25 metres. And if I was a developer (or community member) perusing the LEP and DCP for advisement on Design Excellence, I would deem there to be no criteria except for the 2 nominated areas in the LEP – and the one nominated area in the DCP.

Considerations for Design Excellence - which match those in Clause 6.11 (4) (a-e) of the LEP - were added to the Design Excellence Panel Policy in the Council Meeting 3/4/19 - through the suggestion of Councillor Lake. And surely these considerations / criteria should be listed in the LEP and DCP for development proposals incorporating buildings with a height greater than 25 metres. Otherwise how can there be any

<p>compliance or enforcement of Design Excellence</p>	
<p>And I do focus on compliance and enforcement of Design Excellence as when Council originally introduced the concept of Design Excellence, it was to enable developers to access an incentive bonus if meeting Design Excellence criteria, and it was only intended for major development proposals in town centres e.g. Merrylands – with the targeted sites referenced in the LEP.</p>	<p>Noted and addressed above.</p>
<p>I understand all development applications over 25 metres will be charged the \$3000 fee for referral to the Design Excellence Panel for review. But I'm concerned the \$3000 fee will not offset the cost of the 3 or 4 panellists selected for each development review and meeting – particularly when it seems some of the costs involved will be for a panel that cannot enforce design excellence for developments out of the scope of the current LEP and DCP. And my concerns have not been allayed because the Planning Department has only said: This fee will substantially offset the cost to Council associated with the operation of the DEP. Noting that Panellists will be remunerated on a "per meeting" basis, the cost recovery associated with each panel meeting will vary depending on the number of matters being considered at each meeting.</p>	<p>The DEP operates in a similar manner to a Design Review Panel under SEPP 65 and thus clause 248 of the Environmental Planning and Assessment Regulation, which prescribes a maximum fee for referral to a design review panel of \$3000, has been utilised as a benchmark. Fees and charges will continue to be reviewed from time to time. Whilst the DEP is advisory, the advice provided by the Panel will be considered in the assessment and determination of relevant applications</p>
<p>Cost concerns and budget stretching seem even more of an issue when it's remembered that the height criteria for assessing design excellence was dropped from 30 metres to 25 metres in the Council Meeting 5/12/18. And the number of panellists granting design excellence certificates as per the criteria mandated in the LEP was increased from</p>	<p>These issues have been addressed in the earlier comments. The operating budget stated in the report to Council on 5 December 2018 is an estimate only and operating costs will vary year to year depending on the number of applications referred to the DEP. A more accurate calculation will be evident after operation begins and if required, budget and</p>

<p>3 to 4 members in the Council Meeting 3/4/19. So Council's budgeted figure of \$30,000 per annum presented in the Business Paper 5/12/18 surely needs to be re-evaluated – and increased?</p>	<p>costing will be assessed in the 12 month review.</p>
<p>On 3/4/19 Council increased the Design Excellence Panel to 4 members where exceedance of the LEP development standards is sought through the issuing of a Design Excellence Certificate (as opposed to design advice). Council increased it in size from the 3 members originally recommended 5/12/18. And as NSW Planning, in the ADG, state only 3 members are necessary, why does Council want to incur an extra cost through the extra member? Is this a bit of overkill from no panel, to a 4-member panel - when the ADG suggests a 3-member panel is adequate? (And, after all, there is a pool of 9 panel members, which will avoid overburden or any overload for these members).</p>	<p>The original report to Council on 5 December 2018 recommended 3 members for quorum plus a representative from the NSW Government Architects office or a nominee of the Australian Institute of Architects for development to which the LEP Design Excellence provisions applies. This remains unchanged in the current proposal. The presence of a representative from the NSW Government Architects office or their nominee for LEP design excellence development especially where development bonuses are sought, will provide an extra layer of rigour to the process.</p>
<p>I have concerns that several planning applications may have to be reviewed by both the Design Excellence Panel and also the Cumberland Local Planning Panel. (Design Excellence, after all, has to include LEP and DCP controls, built form, setbacks etc. – and vice versa for the assessment panel). If so, isn't this incurring 2 sets of costs for ratepayers? And if so, it seems a waste of resources to have 2 panels of experts being used by Cumberland Council – providing a similar service, both assessing design and development controls - when surely only one overarching holistic panel is needed – at a cheaper cost to Cumberland ratepayers. I note at the 5/12/18 Council Meeting, Council resolved to: Review the operation of the (Design Excellence) Panel 12 months after the formal commencement - and I believe the</p>	<p>The DEP and the Cumberland Local Planning Panel (CLPP) will provide different services and will not result in duplication. The DEP established by Council is intended to provide design advice for key development types, including all buildings having a height over 25m. Design advice provided by the DEP will occur at an early stage and will inform the design outcomes for development through the pre-lodgement application process and prior to a development application being lodged with Council. Panellists for the DEP are experts in the design field whilst panellists for the CLPP have a broader range of expertise that is not necessarily design-centric. The CLPP does not have any role in providing design advice and is responsible only for determination on development applications at the conclusion of the assessment process.</p>

<p>operation, costings and any duplications of these 2 Panels should be presented to Council - in an open meeting - so that the community, and developers, are cognizant of Council's evaluation.</p>	<p>The operations of the Design Excellence Panel will be reviewed and any issues that may arise will be considered by the Council officers and reported to Council.</p>
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