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NSW Department of Planning, Industry and Environment  
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## Re: Draft Local Character Clause

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Thank you for the opportunity to make a submission to the exhibition of the proposed Local Character provision as set out in the Explanation of Intended Effect (EIE) to enable the amendment of local environmental plans. The local character is a vitally important consideration for our communities and our councils' planning controls.

The Southern Sydney Regional Organisation of Councils Inc (SSROC) is an association of eleven local councils in the area south of Sydney Harbour, covering central, inner west, eastern and southern Sydney. 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. Together, our member councils cover a population of about 1.7 million, one third of the population of Sydney.

SSROC seeks to advocate for the needs of our member councils and bring a regional perspective to the issues raised around better assessing projects deemed to be of State significance.

SSROC population and housing data<sup>1</sup>, in the period from 2011 to 2016, reveals a very diverse socio-economic area marked by rapidly rising numbers of dwellings and underlying growth in the number of households in the area. The estimated resident population increased by over 150,000 during this five year census period.

Unlike other vested sectional interests, local councils perform a wide-ranging integrating function with ongoing responsibility for balancing the needs of their local government area, their communities and organisations doing business in their area. They can bring a unique holistic approach grounded in local evidence with positions informed by mandated public consultations that are specifically geared to informing land use, environmental protections, as well as infrastructure and service planning.

### ***Our Understanding***

The Department of Planning, Industry and Environment (DPIE) is exhibiting a draft Local Character Clause which is proposed to be included in the Standard Instrument Local Environmental Plan.

Character is what makes a neighbourhood distinctive and is key to the identity of a place. It encompasses the way a place looks and feels. It is created by a combination of land, people, the natural and built environment, history, culture and tradition, both Aboriginal and non-Aboriginal, and it looks at how they interact to create an area's distinctive character.

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<sup>1</sup> Source: Australian Bureau of Statistics, Census of population and Housing 2011 and 2016, compiled by id  
<https://profile.id.com.au/ssroc/>

The proposed clause will allow a council to adopt a map overlay which identifies the boundaries of a local character area and will require the council (and other consent authorities) to consider its local character statement when addressing development applications.

A local character statement is required to be developed in accordance with the Local Character and Place Guideline, and will describe an area's existing character and detail its desired future character. It will also set out how future growth will be consistent with the identified character. Local character overlays were identified as a way to embed local character into the planning framework in the January 2018 *Planning Circular PS 18-00 respecting and enhancing local character in the planning system*.

The department released a Discussion Paper – Local Character Overlays for public exhibition in February 2019, which explored a proposed approach for introducing local character overlays into the Standard Instrument Local Environment Plan. Submissions received have been used to inform the development of the draft Local Character Clause.

The DPIE is proposing a two-tier approach to Local Character Overlays (LCO), where they can be used to create a greater and more rigorous level of protection in an LEP where exemptions to the Low Rise Housing Diversity (LRHD) Code extend the protections of local character to more housing types.

### **Overview of the submission**

This SSROC submission is organised in two sections:

1. General Comments
2. Specific issues

The second section makes a number of recommendations along with supporting rationales.

### **1.0 General Comments**

SSROC welcomes the opportunity to comment on the Department of Planning, Industry and Environment's (DPIE) proposed Local Character Provision as set out in the Explanation of Intended Effect (EIE). SSROC strongly supports a strengthened approach to promoting local character through the proposed pathway for introducing draft local character overlays, clauses and associated policies.

#### *The state of play*

Local character is a key consideration in strategic planning for councils across NSW. It is important to ensure that the places we plan today, become the much-loved places of the future. The development of Local Strategic Planning Statements (LSPSs) gave communities and Local Councils a key role in defining existing character and shaping a desired future character for their local area.

In recognition of the value of local character, the NSW Government in February 2019 published the Local Character and Place Guideline to support councils and communities to consider and nurture the unique identity of a place, while at the same time meeting the needs of a changing context.

After following the Government's lead, many Councils are now well advanced in developing Local Character Areas to be introduced into their LEPs, supported by Local Character Statements that have been produced in accordance with the published Guideline. While noting that a Local

Character Statement is an optional document to provide a statement of an area's existing and desired character.

For various competing priorities, the key mechanisms to enable local character to be recognised in the planning system stalled. In response to this uncertainty, a letter was written by the President of SSROC, Cr John Faker, to the DPIE. On 10 July 2020, the department advised SSROC that there was currently no statutory mechanism to insert local character clauses or maps into LEPs. Furthermore, there was no timeframe given for this to occur.

So, in following up on 27 October 2020, the President of SSROC wrote this time to the Minister for Planning and Open Spaces, Rob Stokes MP, and advocated for the long-awaited model clause to be exhibited and/or legislated as a matter of priority. The correspondence noted that this was now needed as part of supporting the work of many Councils to deliver the housing indicated in their GSC-assured LSPSs.

Accordingly, SSROC now welcomes and commends the department placing on public exhibition a local character overlay and draft local character clause that will allow councils to insert a reference to local character in their LEP via a Local Character Statement and map in November 2020.

#### *The appropriate scope of local character in the planning system*

SSROC supports a simple, workable and effective planning mechanism for SSROC member councils and others wanting to introduce Local Character Statements. Consistent with simplicity in the design, it is also appropriate that conceptions of local character are encompassing for a valued and recognised place.

Conceptually, the value of local character exists and extends across all densities and residential zonings. It extends across development approval processes regardless of whether this is via a complying development or by development application. This is entirely consistent with the principles approach to place-based planning that is set to underpin a new Design and Place SEPP, that seeks to avoid as much as possible rules that prevent good design outcomes. In an outcomes focused system maintaining the integrity of local character becomes a key goal along with the provision of a diverse range of housing.

It is noted that the draft model clause refers to all land covered by the Local Character Map (the overlay). This proposed holistic approach is consistent with the one flagged for the new Design and Place SEPP development currently under discussion<sup>2</sup>.

Accordingly, it is appreciated and highly appropriate that in certain circumstances there is capacity for an exemption from the LRHD Code in recognition that local character extends across different housing types.

However, a key specific concern of many of our councils about the proposed arrangements is the lack of application of the local character provision to the General Housing Code. This is at odds with the above mentioned principles approach. SSROC is concerned that there is currently not a similar exemption, nor a compliance provision planned, for the General Housing Code for houses and extensions undertaken as complying developments. Without this measure, it will be very difficult, if not impossible, to retain and shape many locations' local character even though local character may be highly prized by communities and has been recognised and embedded in the adopted LSPS.

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<sup>2</sup> "The Design and Place SEPP will apply a principle-based approach to ensure that design outcomes properly consider local character. Care will be taken to align the SEPP with existing local character guidelines and planning instruments, including Local Environment Plans and Development Control Plans."

A tiered approach to Code exemptions in Local Character Areas is likely to offer a workable and flexible mechanism so that areas with higher or more unique character values are better protected and enhanced and not eroded. Right sizing protections of areas with special local character can avoid devastating and irreversible damage to much loved places and streetscapes. The level and extent of protective measures should be enabled to vary.

## 2.0 Specific issues and recommendations

### 2.1 Application to Complying Development

As noted above, a key concern of many of our councils about the proposed arrangements is the lack of application of the local character provision to the General Housing Code.

A fundamental issue is that an approved Local Character Statement (and overlay) should have influence over houses that are assessed and approved by a private certifier. Local character considerations need to be more than advisory for the building designer and the certifier.

Councils in NSW issue a planning certificate (Section 10.7 (2) and (5) certificate) to show whether complying development under the Codes SEPP can be carried out on a particular lot of land. This is an easy way for applicants and their designers/builders to find out whether the Codes SEPP can be used on their land.

Applicants should obtain the full Section 10.7 (2) and (5) certificate. This will provide a comprehensive list of planning matters and constraints affecting the subject lot, including local character controls.

Fast tracking development should not be at the expense of local character, nor does it need to be.

There will be circumstances where exemptions from the General Housing Code or Commercial and Industrial (New Buildings and Additions) Code will be appropriate.

Perversely the creation of Local Character overlays (LCOs) without exempting broader elements of the Code SEPP could create detrimental outcomes for local character, where applicants will be motivated to seek a CDC pathway to avoid the expected increased rigor of development assessment associated with an LCO. Code assessment as it currently stands is at odds with protecting and enhancing local character, as new complying development can bypass any character considerations outlined in an overlay and thus undermine the purpose of these overlays.

#### *Recommendation:*

The assessment of complying development under the General Housing Code must include a planning mechanism to take in Local Character provisions.

This provision could require consistency with key elements of the Development Control Plan identified in the Local Character Statement (e.g., demolition, setbacks, building height, FSR, landscaping, tree preservation).

There are several options that could be considered to achieve this outcome. They would, however, probably have different implications for development approval timeframes and come with tailored assurances for housing supply and diversity.

One option is to amend the Housing Code to require applicants/designers and certifiers of complying development proposals to support the desired future character outlined in an applicable Local Character Area Statement. Discrete and strictly limited elements, reflecting those contained in the DCP, could be set out in the related Local Character Statement. They would need to be readily assessable and verifiable by certifiers. For example, they might include demonstrating that

tree canopy preservation measures were taken, or avoiding complete dwelling demolition to protect unique streetscapes.

It is envisaged that this measure could have a positive impact on the assessment of development applications, through the requirement of a 'statement of consistency', that would introduce a level of rigor to the consideration of the immediately surrounding character area.

Another option is to incorporate an additional layered exemption of Local Character Overlays from the General Housing Code. The exemption of LCOs from complying development could occur in a way similar to the way heritage conservation areas are exempt from complying development. This option could include exempting elements of the Code SEPP such as housing and demolition.

## *2.2 The tree canopy remains a key part of local character that is highly valued by their communities as well as providing a social, environmental and economic good.*

The General Housing Code was developed before urban heat effects were so pronounced and well recognised, and the redevelopment of some suburbs was occurring so rapidly. The General Housing Code has looked at home building on a site-by-site basis when the heat island effect is a cumulative effect. It is time to update the General Housing Code and or to enable Local Character provisions to protect and enhance the existing tree canopy to better reflect the Government's priorities and enhance local character.

Current practice under the Code often enables the complete removal of the existing tree canopy on many blocks, quickly counteracting and undermining the Premier's priority for *Greening our city*. While there are some exceptions and existing protections, a number of owners, demolishers and private certifiers have let many untoward things happen.

### **The Premier's Priority: Greening our city**

*Increase the tree canopy and green cover across Greater Sydney by planting 1 million trees by 2022.*

"These priorities represent our commitment to making a significant difference to enhance the quality of life of the people of NSW. They aim to tackle many of the issues that have been put in the too hard basket, for too long. Each priority has an ambitious target."<sup>3</sup>

"Trees improve **local character** and enhance property values. They extend habitat, increasing the biodiversity of cities serving as a home for animals and birds. Air quality is improved by removing fine particles from the air and trees mitigate the impact of climate change, acting as a storehouse for carbon dioxide."<sup>4</sup>

Interestingly the Greenfield Housing Code intentionally tries to foster the development of a neighbourhood tree canopy using setbacks.

Potentially applicants when obtaining the full Section 10.7 (2) and (5) planning certificate could be informed of local character provisions as these provide a comprehensive list of planning matters and constraints affecting the subject lot. If the applicant proposes to remove or prune any existing mature trees, they must contact their council first to make sure they do not need approval for this.

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<sup>3</sup> <https://www.nsw.gov.au/premiers-priorities/greening-our-city>

<sup>4</sup> Ibid

For example, a local character “exemption” could cover most species of tree with a height greater than 5m and/or with a crown spread greater than 3m and require a permit to prune or remove it. For balance in those affected areas, it could also note that the 10/50 Vegetation Clearing Scheme provides for NSW residents who live near bushland, to better prepare their homes for potential bush fires.

*Recommendation:*

Assessment of complying development under the General Housing Code must support Local Character provisions that are designed to promote the protection and extension of the current and future neighbourhood tree canopy, helping to counter those unavoidable losses of canopy as a result the (re)development.

This would be entirely consistent with the aim of enhancing the urban canopy of Greater Sydney and creating more attractive, liveable spaces. This is an important reform area where the built and place based outcomes frequently produced by the Code are inconsistent with the desired future character for a denser but greener suburban Sydney.

### *2.3 Strengthen the draft to provide clear direction for the consent authority*

The Public consultation draft clause states:

(3) Development consent must not be granted to development on land in a local character area unless the consent authority has taken into account the *Local Character Areas Statement* for the land.

The language ‘taking into account’ is not considered sufficiently strong or clear enough for the parties determining compliance. The alternative wording “satisfied that it is consistent with<sup>5</sup>” allows flexibility as well as assuring compliance based on merit.

*Recommendation:*

The model clause be strengthened to change the wording from “unless the consent authority has taken into account” to “unless the consent authority is satisfied that development is consistent with Local Character Area Statement.”

### *2.4 Timeframes for Councils introducing a local character overlay*

With the Government’s greater focus on accelerating development and providing certainty for communities and development proponents, Councils need guidance on the timeframes for the DPIE assessment of their Planning Proposals.

The provision of early advice about the adequacy of previous community consultations about local character by Councils should become a standard part of departmental practice to shorten timeframes, where this has merit.

The process to gain exemptions to the LRHD Code will take some time, particularly given that additional documents beyond Local Character Statements must be prepared, for instance urban design studies, and Planning Proposals finalised. Given the LRHDC is currently operational across NSW, there is significant potential for unsympathetic development to occur in the interim.

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<sup>5</sup> This reference to ‘consistency’ also mirrors the explanatory wording provided in the DPIE guidance *Local Character Clause; Frequently Asked Questions*, page 2 [https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/master-test/fapub\\_pdf/00+-+Planning+Portal+Exhibitions/Local+Character+/faqs+Local+character+exhibition+2020+11.pdf](https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/master-test/fapub_pdf/00+-+Planning+Portal+Exhibitions/Local+Character+/faqs+Local+character+exhibition+2020+11.pdf)

In a more streamlined and accountable planning approval system, it is entirely fitting for DPIE to provide Local Councils with expected indicative timeframes for the DPIE assessment of Planning Proposals which comply with the Local Character Guidelines. This will help Councils plan and coordinate local character initiatives with other planning and approval workflows related to remaking their LEPs and meeting major planning reform deadlines set by the department.

Reference to such timeframes should be included in an updated Guideline.

A more streamlined process for developing broad local character and design provisions in LEPs should be considered as part of the Place and Design SEPP process.

*Recommendation:*

Councils should have greater certainty around the DPIE assessment process and timing for Council Planning Proposals that introduce overlays into their LEPs, where there is compliance with the Guideline.

### *2.5 Maintaining Local Character Statements*

The EIE provides useful information as to how Local Character Statements and LCOs can be embedded in planning legislation but does not consider how these will be managed in the long term. A revised Local Character Guideline should include recommendations on how to monitor and review how local character areas are being changed, maintained and/or enhanced. This will help to prevent future points of contention if the overlay becomes out of date. It would also help to ensure that new development is enhancing local character in the way it was envisioned.

*Recommendation:*

Departmental guidance is provided to councils about managing and monitoring their Local Character planning provisions over time.

### *2.6 Size and Scope of Areas covered by Overlays*

Local Character can be recognised everywhere. Given the value and ubiquitousness of local character, and that local character provisions are not designed to prevent development but to support it, the size of local character areas should be at the discretion of the Council and their community.

It is however envisaged that Code exemptions may also impact on the scale and scope of map overlays. Further guidance would be of assistance to Councils.

*Recommendation:*

More departmental guidance is provided to Councils about the selection of the size of local character areas that are designated limited change, enhanced and transformative.

### *2.7 Training for designers and certifiers*

Training should be provided to building designers and private certifiers using the Housing Code to promote understanding of local character provisions and to incentivise them to support the adopted local character provisions in their developments. This should be funded by the State Government which has responsibility for registering designers and auditing the performance of private certifiers and administering the SEPP.

*Recommendation:*

If new Local Character provisions are adopted, DPIE and Fair Trading NSW facilitate the training of building designers and private certifiers using the General Housing Code to assist with the provision's introduction.

### 3.0 Conclusion

SSROC member councils cover a large portion of Greater Sydney. As place managers, Local Councils have a direct interest in supporting the introduction of local character overlays within their LEPs to elevate and maintain the important role local character plays within many communities.

As many councils have already included local character within their Local Strategic Planning Statements, the Government's adoption of this measure should help to build community trust and confidence in the ability of the NSW planning system to protect local character as new development occurs.

SSROC strongly supports the identification of local character areas through the application of the draft local character clause to promote the desired future character of local character areas. A strengthened clause where 'development consent must not be granted to development on land in a local character area unless the consent authority is satisfied that development is consistent with Local Character Area Statement for the land' is also strongly supported<sup>6</sup>.

For these measures to be meaningful and effective, local character provisions will require application to all development to land covered by the overlay. This includes land subject to complying development codes (both the LRHD Code and the Housing Code) where the outcomes of the Code will be inconsistent with local character and desired future local character. Accordingly, Local Character Statements as a standalone separate policy could be referenced for both Development Applications and Complying Development Certificate Applications.

It is paramount that the new clause gives effect to the objectives of the Environmental Planning and Assessment Act and the Premier's Priorities for a Better Environment. The retention and enhancement of tree canopy in and adjacent to housing developments being one notable local, regional and State priority.

In order to make this submission within the timeframe for receiving comments, it has not been possible for it to be reviewed by councils or to be endorsed at a formal meeting of SSROC. I will contact you further should any issues arise as it is reviewed.

If you have any queries please do not hesitate to contact me or Mark Nutting, SSROC's Strategic Planning Manager on 8396 3800.

Again, thank you for the opportunity to comment on the draft Local Character Provision and we are keen to participate in any further consultations about changes that will particularly impact on Local Councils.

Yours faithfully

A handwritten signature in black ink, appearing to read "H Sloan", is positioned below the text "Yours faithfully".

Helen Sloan  
**Acting General Manager**  
**Southern Sydney Regional Organisation of Councils (SSROC) Inc**

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<sup>6</sup> Modified Public Consultation draft local character clause (2)