

**TITLE:** [PR-PC] Draft Design Excellence Guideline

**SUBMITTED BY:** Planning Reforms

**FILE REFERENCE:** GT1/LEP/2012 Pt4



## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- |       |  |
|-------|--|
| 1     | Civic Leadership   |
| 1.5   | Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land  |
| 1.5.2 | Land use plans and development controls will be applied and regulated rigorously and consistently and consider the requirements of development proponents, the natural environment and those in the community affected by the proposed development |
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### SUMMARY OF REPORT:

This report provides Council with a summary of the public exhibition period of the Draft Design Excellence Guideline (draft Guideline). During the public exhibition period 14 submissions were received, which has informed several amendments to the draft Guideline.

A Councillors Workshop was held on this matter on 31 July 2014.

This report concludes that the draft Guideline is now appropriate for adoption. It will provide a more comprehensive guide for any applicant wishing to proceed with a development that attracts the Architectural Design Competition provisions of the Tweed City Centre Local Environmental Plan 2012, and which in turn will better enable its successful implementation by Council.

### RECOMMENDATION:

**That Council:**

- 1. Receives and notes the contents of public exhibition submissions.**
- 2. Endorses the Tweed Shire Council Design Excellence Guideline version 1.1, as amended and provided as an attachment to this report.**

## REPORT:

At its meeting of 19 September 2013, Council considered a report relating to a Draft Design Excellence Policy, now Guideline (the Guideline), resolving to publicly exhibit the Guideline for a period of 28 days and invited submissions for 42 days. By way of background, the referred Council report is provided as Attachment 1.

The public exhibition of the Guideline formally occurred from 14 January to 28 February 2014 and involved the following actions:

- Copies available of Council's website.
- Hard copies available at Council's Murwillumbah and Tweed Offices.
- Individual notification letters sent to affected landowners (97 letters).
- One-on-one stakeholder interviews with interested parties.
- Referral to the NSW Department of Planning and Environment (DP&E).
- Notification to 47 relevant professional bodies and consultancies including:
  - Australian Institute of Architects (Queensland and New South Wales Chapters)
  - Australian Institute of Landscape Architects (Queensland and New South Wales Chapters)
  - Queensland University of Technology
  - University of Queensland
  - Bond University
  - Griffith University

At the close of the 45 days exhibition period a total of 14 submissions were received, six from or on behalf of affected landowners and seven from professional bodies or consultancies and one for DP&E. The specific issues raised within the submissions period is detailed, along with relevant planning comments, within Table 1 below.

**Table 1 - Public Submission Review**

Issue	Planning Comment and Recommendation
<p>The School Facility Standards already ensures high quality education infrastructure is provided to the NSW community and is cost effective and suitable for public schooling needs. Any design competition on the school site would inappropriately affect the established school design standards and would be of little value. I therefore request that Tweed Heads Public School site not be identified as a 'Key Site' in the draft Policy.</p>	<p>The Schools Facilities Standards includes a Design Standard and a Specification Standard. The Design Standard provides a list of site and design considerations, numerical requirements where appropriate and a suite of standard drawings, colour palettes etc (i.e. standard drawings for fences, sinks, colours and carpet types etc.). The Specification Standard deals with contracts and construction.</p> <p>In light of the above, it is not considered that an Architectural Design Competition (ADC) would affect established standards, rather the Schools Facilities Standards would form part of any competition brief as a reference document to be considered by competition entrants.</p> <p>It is not the purpose of the Guideline to identify 'Key Sites'. The purpose of the Guideline is to provide guidance on how to undertake an ADC should the Tweed City Centre Local Environmental Plan 2012 (TCC LEP) require, or the proponent wish to pursue, an ADC.</p> <p><b>Recommendation: No change to the guideline</b></p>

Issue	Planning Comment and Recommendation
<p>Design excellence is not only/always achieved through a design competition. There are many highly skilled designers both locally and within Australia who have the ability to achieve design excellence, and do so on a regular basis. The quality of the project brief and the quality of the local and/or state planning documents have as much, if not more effect on the possibility of achieving design excellence.</p>	<p><b>recommended.</b></p> <p>It is agreed that design excellence can be achieved by means other than an ADC, however the Guideline does not mandate such a process. The purpose of the Guideline is to provide guidance on how to undertake an ADC should the Tweed City Centre Local Environmental Plan 2012 (TCC LEP) require, or the proponent wish to pursue, an ADC.</p> <p>It is agreed that the quality of the brief possesses a pivotal role in achieving design excellence. The strength on the brief is critical as it response directly to the subject site, whereas both state and local controls are drafted on a wider application.</p> <p><b>Recommendation: No change to the guideline recommended.</b></p>
<p>The idea of allowing increased GFA or increased building height in order to encourage design excellence is supported. It is highly likely that a 'design excellence' outcome will cost more to construct, therefore allowing some additional return for the developer in this regard is seen as a logical 'carrot' to offer.</p>	<p>Noted.</p> <p><b>Recommendation: No change to the guideline recommended.</b></p>
<p>At Tweed Shire Council it is unclear whether the registered architect who should be on the competition jury, and who should also be on the DA assessment team can somehow take on both roles. Maybe TSC needs to employ external consultant architects to take on one of the roles mentioned, which at this point seem to overlap.</p>	<p>Depending on the nature of the competition, Council may need to engage the services of an external representative. Both the Guideline and DP&amp;E's Director Generals Design Excellence Guideline clearly establish that members of the jury not be a staff member or councillor with an approval role in council's development assessment process.</p> <p><b>Recommendation: No change to the guideline recommended.</b></p>
<p>It needs to be made clear that the level of documentation required for the competition is not sufficient to lodge for the Development Application, and additional fees will need to be paid to the winning architect to upgrade the drawings to a standard suitable for the DA lodgement. The developer needs to be clear that the competition prize money is not the only design fee to pay prior to being able to lodge a development application. If it were, then the winning architect would get paid only 60% of their normal fee for this stage (as the remaining 40% is distributed between the second and third place getters). If this were the case the number of quality architects who would consider taking part in a competition, knowing that even if they won they would not be paid a full fee, would be limited. The winning architect must be paid the full amount of a normal fee for this stage, not just the 60% prize money.</p>	<p>The Guideline establishes that it is the proponent's role, through the brief, to clearly establish the detail of documentation required (Point 10 of Clause 2.2) and the fees they are willing to pay to participants (Point 16 of Clause 2.2). In this regard, it is not role of the consent authority to prescribe those fees or level of documentation required.</p> <p><b>Recommendation: No change to the guideline recommended.</b></p>
<p>The time frames to prepare the design are not adequate. Four weeks to produce a design and presentation for a smaller project may be realistic, but four weeks to produce a design and full presentation for a development potentially worth \$100 million, is not realistic. Maybe the time frame for the competition needs to be considered on a site by site and development by development basis.</p>	<p>The Guideline requires a minimum period of 28 days for the preparation of entries (Point 18 of Clause 2.2). The proponent is responsible for establishing the timeline for entries, however a minimum period of 28 days is afforded. It is agreed that additional time may be required for large projects and this advice may be provided as appropriate by the consent authority.</p> <p><b>Recommendation: No change to the guideline recommended.</b></p>

Issue	Planning Comment and Recommendation
<p>The document notes that council will prepare the brief for the competition. Should the developer not be included in this process given it is their building and their risk?</p>	<p>Clause 2.2 of the Guideline states that the consent authority will review the brief, it is the proponents role to prepare the brief.</p> <p><b>Recommendation: To provide clarity, amend the guideline to state that it is the proponent role to prepare the brief.</b></p>
<p>Will there be a minimum standard of qualifications and experience for consultants wishing to enter the competition? There are many young architects out there who could produce fantastic competition entries, however if they are then forced (as part of the rules of the competition) to work for the developer to then produce the actual building they have designed, if they do have the skills or experience to complete the project, the result will be disaster for all parties. Maybe young up and coming designers need to partner with larger more experienced firms as a way of getting both youth and enthusiasm, and experience.</p>	<p>The Guideline does not specify the minimum standard of qualifications or experience for consultants; however the proponent may choose to do so within the brief. It is agreed that many young architects may produce exceptional entries and may wish to team up with established firms to make their entries more robust.</p> <p><b>Recommendation: No change to the guideline recommended.</b></p>
<p>Setting a minimum of five entrants will not necessarily produce a better design outcome. Three good well chosen architects could produce better designs than five less competent architects. Obviously to have a competition there needs to be multiple entrants, however this could be reduced to a minimum of three.</p>	<p>It is agreed that pursuing a greater number of entrants than prescribed within the DP&amp;E's Design Excellence Guideline is superfluous in this instance.</p> <p><b>Recommendation: Amend guideline to prescribe a minimum of 3 entrants within a closed competition, as opposed to 5.</b></p>
<p>Large complex sites such as those identified in this policy will have many difficulties, and even at the competition stage it would be advantageous to have the expertise of secondary consultants providing advice to the designer. This may be in the form of town planning, services, structural and energy efficiency advice. If secondary consultants are involved in the competition entry process, are they also to be paid by the developer, or is their fee paid by the winning architect? Either way this appears to cause issues.</p>	<p>As discussed previously, it is the role of the proponent to establish the fees to be paid. How entrants manage resources expended in creating an entry and any prize money potentially awarded is their responsibility.</p> <p><b>Recommendation: No change to the guideline recommended.</b></p>
<p>The report on this policy notes the jury members would be paid \$300 per hour each. Is there a limit on the number of hours to be spent by the jury? With six, or seven jury members all being paid at that rate, the fees payable by the developer will be substantial, even on the smaller projects. If there is no limit, the developer cannot budget for this cost, which is obviously unreasonable to expect for any business.</p>	<p>The Guideline does not prescribe the payment rate to jury members, nor is it considered appropriate/necessary to specifically do so. The rate of \$300 per hour previously mentioned within the September 2013 Council report was identified only to assist Council and the community understand the potential costs involved.</p> <p><b>Recommendation: No change to the guideline recommended.</b></p>
<p>The document notes that the Design Integrity Assessment is optional. If this policy is adopted then the Design Integrity Assessment process is essential. There are many other factors that need to be considered following the initial competition submission. Some of these factors may require design refinement, some not. An independent panel should assist council in determining which changes are justifiable and which are not. There then remains the question of who pays (at \$300 per hour) for the work of this panel?</p>	<p>The comments are noted and it is agreed that the design integrity of any scheme awarded to exhibit design excellence must be retained through construction drawings and into physical completion. However, should the successful scheme not be modified, or only involve minor modification, a design integrity assessment would be superfluous to the process. Accordingly, it is considered appropriate that the Design Integrity Assessment remain optional and at the discretion of the consent authority, as opposed to mandatory.</p> <p><b>Recommendation: No change to the guideline recommended</b></p>

Issue	Planning Comment and Recommendation
<p>The Tweed City Centre LEP 2012 requires an Architectural Design Competition to be held in accordance with the Director General's Design Excellence Guidelines. Council's Draft Policy does not have statutory force and would serve only to duplicate and add complexity to the process. There are inconsistencies between the Director General's Design Excellence Guidelines and the Draft Policy. For that reason we query the need for the Policy at all.</p>	<p>A review by Council officers found that the Director General's Design Excellence Guidelines contained information gaps, which could result in ambiguity for those undertaking an ADC. Council officers identified that it was desirable to minimise these information gaps to reduce the timelines and risk for those involved in an ADC.</p> <p><b>Recommendation: No change to the guideline recommended.</b></p>
<p>The draft policy makes reference to "Tweed Local Environmental Plan". This is inconsistent with the LEP that applies to the Tweed City Centre.</p>	<p>These comments are noted and minor amendments to the Guideline are warranted.</p> <p><b>Recommendation: To provide clarity, amend the guideline to refer to the applicable Local Environmental Plan.</b></p>
<p>The Director General's Design Excellence Guidelines contains an Exemptions Clause whereby the requirement for a Design Competition may be waived.</p> <p>We also note that since the Draft Policy does not contain an exemption clause, the Draft Policy purports to be applicable to a proposal even it a waiver is provided by the Director General under Clause 6.10(5) of the LEP. This is considered to be an essential mechanism.</p> <p>The Policy relates to all land and development identified in the "Design Excellence" clause within Tweed Local Environmental Plan. In other words, the Draft Policy would require an Architectural Design Competition for development comprising erection of a new building or external alterations to an existing building, of any type, anywhere within the area to which Tweed City Centre LEP 2012 applies. We assume that this is not the intent of the Draft Policy.</p>	<p>Subclause (5) of the Design Excellence clause within the TCC LEP enables the Director-General to certify that an architectural design competition is not required. In addition, the Guideline is to be read in accordance with the Director General's Design Excellence Guidelines and as such those provisions referred remain relevant.</p> <p>The purpose of the Guideline is to provide guidance on how to undertake an ADC should the TCC LEP require, or the proponent wish to pursue, an ADC. Accordingly, minor amendments are recommended to clarify that the Guideline does not apply when a competition is not being undertaken, such as when the Director General has granted a waiver.</p> <p><b>Recommendation: To provide clarity, amend the guideline to apply to any development that involves an ADC.</b></p>
<p>This is a modified version of the requirements of the Director General's Design Excellence Guidelines. There does not appear to be a benefit in duplicating and making more onerous requirements.</p> <p>The various additional requirements within the Draft Policy include:</p> <ul style="list-style-type: none"> <li>• That the Jury comprise a majority of Registered Architects;</li> <li>• The "winning" Architect is to be appointed as the Design Architect and control all documentation and supervision of construction;</li> <li>• On larger sites the Design Architect is to nominate other competitors to design other buildings.</li> </ul> <p>These variations from the Director General's Design Excellence Guideline remove rights of the landowner to properly control the development of their land and are considered to be onerous and unnecessary.</p>	<p>The provisions mentioned have been adopted within like policies prepared by other LGAs to ensure the jury is appropriately qualified to determine design excellence, provide greater certainty of design integrity through the detailed documentation and construction phase and to distribute competition fees into deliverable (via commission fees) on larger sites.</p> <p>After discussion with DP&amp;E staff, amendments are proposed to the Guideline to clarify the expertise and experience of the jury. Likewise, as the consent authority has the ability to pursue a Design Integrity Assessment, it is not considered mandatory to require the winning architect be appointed as the Design Architect, or nominate other competitors involvement. Accordingly, it is recommended that the Guideline be amended to encourage this action, as opposed to form a requirement.</p> <p><b>Recommendation: Amend the Guideline requirements relating to the experience and expertise of the jury. Amend the Guideline to encourage, rather than prescribe, engaging the winning architect as the Design Architect. Delete the provisions relating to larger sites (greater than 20,000sqm).</b></p>
<p><i>Within an "invited" architectural design competition,</i></p>	<p>It is agreed that pursuing a greater number of entrants</p>

Issue	Planning Comment and Recommendation
<p><i>the developer invites a minimum of five competitors to participate.....</i></p> <p>Generally, a minimum of three entrants is required to achieve a diverse range of design concepts for the jury to consider. The applicant can invite more entrants should this be desired.</p>	<p>than prescribed within the DP&amp;E's Design Excellence Guideline is superfluous in this instance.</p> <p><b>Recommendation: Amend guideline to prescribe a minimum of 3 entrants within a closed competition, as opposed to 5.</b></p>
<p><i>... half the members nominated by the consent authority, who have no pecuniary interests....</i></p> <p>All jury members should have no pecuniary interest, including those nominated by the consent authority and the developer. This should be stated in the policy.</p> <p>We suggest amending Section 3.1 of the Draft Policy to include the wording contained on Page 5 of Council's Business Paper (outlined below) regarding the role and composition of jury members.</p> <p>Selected jury members must not:</p> <ul style="list-style-type: none"> <li>• Have pecuniary interest in the development proposal;</li> <li>• Be an owner, shareholder or manager associated with the proponent or proponent's companies'</li> <li>• Be a staff member or councillor with an approval role in council's development assessment process.</li> </ul> <p>Finally members of the jury must have relevant design expertise and experience, and collectively the jury will include the following skills base:</p> <ul style="list-style-type: none"> <li>• Architecture,</li> <li>• Planning,</li> <li>• Urban Design,</li> <li>• Heritage,</li> <li>• Landscape architecture,</li> <li>• Local and regional issues appreciation</li> </ul>	<p>Noted and agreed. It is considered beneficial to clarify and simplify the jury requirements.</p> <p><b>Recommendation: Amend guideline to detail as follows:</b></p> <p><b>Selected jury members must not:</b></p> <ul style="list-style-type: none"> <li>• <b>Have pecuniary interest in the development proposal;</b></li> <li>• <b>Be an owner, shareholder or manager associated with the proponent or proponent's companies'</b></li> <li>• <b>Be a staff member or councillor with an approval role in council's development assessment process.</b></li> </ul> <p><b>Finally members of the jury must have relevant design expertise and experience, and collectively the jury will include the following skills base:</b></p> <ul style="list-style-type: none"> <li>• <b>Architecture,</b></li> <li>• <b>Planning,</b></li> <li>• <b>Urban Design,</b></li> <li>• <b>Heritage,</b></li> <li>• <b>Landscape architecture,</b></li> <li>• <b>Local and regional issues appreciation</b></li> </ul>
<p><i>The presentation must be no longer than 15 minutes followed by questions from the jury.</i></p> <p>From our experience, 30 minutes is generally required per entrant, followed by questions.</p>	<p>Noted and agreed, extending the time available based on DP&amp;E's experience is warranted.</p> <p><b>Recommendation: Amend guideline to detail presentations are to be generally 30 minutes in length, followed by questions from the jury.</b></p>
<p><i>On sites over 20,000sqm, the design architect will nominate particular buildings for the other competitors to design (thus absorbing their competition fee within the commission fee).</i></p> <p>The requirement for different architects to design different buildings on larger sites is supported in principle. If the other competitors did not achieve design excellence however, we question why they should be granted the opportunity to design other buildings within the same site?</p> <p>A Concept Plan may be required to strategically plan for large sites. Separate design competitions could be held for each individual building on the large site, with the requirement that each building achieves its</p>	<p>Noted. It is not considered that prescribing this provision within the Guideline is necessary. Such as process may still be considered by a proponent, or encouraged by the consent authority or DP&amp;E on an as needs basis.</p> <p><b>Recommendation: Amend guideline to delete this provision.</b></p>

Issue	Planning Comment and Recommendation
<p>own individual identity yet is identifiable and integrated with one another site layout, similar architectural features, materials, landscape, public domain etc. The design principles would be established in the Concept Plan.</p> <p>Alternatively, if a design competition was held for the whole site, the winning architect could design all of the individual buildings but is encouraged to apply a difference architectural style/approach to each building. Each building could be reviewed by the Design Integrity Assessment panel process.</p>	
<p>We commend Council on the preparation of the Draft Policy.</p> <p>What an excellent initiative and a real game changer for a part of Tweed Heads destined for big buildings. The draft policy looks to be thought through. Good design outcomes are so very important to maintaining land values, creating desirable public spaces and contributing to new innovation. Well done to the strategic planning team for getting this one up and running.</p> <p>I am thrilled that this level of design control is going to be legislated in the Tweed.</p> <p>It is good to see Council seeking high quality architectural projects and provide design leadership for the built environment</p> <p>We would like to take this opportunity to congratulate you on preparing a fantastic Policy. It is a very well structured document with clear and concise objectives, procedures and desired outcomes.</p>	<p>Noted.</p> <p><b>Recommendation: No change to the guideline recommended.</b></p>

In addition to the abovementioned recommended amendments several housekeeping amendments have been made, such as grammatical and spelling errors. Further, amendments have been made to consistently reference the Guideline, as opposed to interchanging the terms 'policy' and 'guideline', reflecting the actual status and role of the Guideline.

### **Additional Concerns**

In addition to the matters raised within Table 1, a number of submissions raised concern with the requirement for certain development to undertake an ADC prior to the issue of development consent. These submissions are not strictly relevant to the Guideline as the Guideline establishes the process of conducting an ADC, whereas it is Clause 6.10(4) of the TCC LEP which requires an ADC be undertaken.

Concerns raised primarily related to the cost, time delays, increased risk, perceived loss of landowner control and 'red tape' that an ADC would present. Concerns were also raised that these influences would deter investment from Tweed Heads and stifle its revitalisation.

Whilst the loss of landowner control of outcomes was mentioned by several objectors, one objector called on Council to be the design leader, facilitating area specific competitions that establish specific aesthetic, design and connection with both the landscape and surrounding buildings, reducing developer risk as a detailed vision for individual buildings will have been realised and endorsed by Council. Alternatively, one submission detailed that the development 'bonuses' simply be negotiated between the proponent and Council, void of the ADC process.

Ultimately the abovementioned concerns relate to the TCC LEP provisions, which were comprehensively exhibited on two separate occasions in 2010 and 2011. Within those two exhibition periods a submission was received, which requested the threshold for requiring an ADC be amended, which was supported and the TCC LEP amended accordingly. Any amendment to when an ADC is required would necessitate a separate Planning Proposal, which would likely require a review of the full suite of integrated controls that are applicable to ADC sites. This project is not currently identified within Planning Reforms work program, however once the TCC LEP has matured sufficiently and its performance can be properly examined, a review will be recommended to Council by Planning Reform staff.

An ADC is a new concept to the Tweed Shire, however has been used effectively throughout Australia, including Tweeds' northern neighbours, the Gold Coast. The strength and quality of the brief is likely to be a distinguishing factor in the success of developments undertaking an ADC. In this regard, the Guideline provides specific guidance, however the proponent is responsible for the briefs' preparation, enabling them to retain primary control of the outcomes and ensure competitors deliver concepts that can be implemented.

### **NSW Department of Planning & Environment Correspondence**

On 8 July 2014, Council received correspondence from DP&E seeking Council's views on the potential delegation to Council the functions of:

1. Considering design competition waiver requests, and
2. Granting concurrence where development is seeking a height or floor space bonus.

A copy of the correspondence is provided as Attachment 2 of this report. Council officers are reviewing the request and will prepare a separate Council report on this matter.

### **OPTIONS:**

1. Adopt the Design Excellence Guideline as amended and provided as an attachment to this report, or,
2. Reject the Design Excellence Guideline and rely upon the Department of Planning & Environment's Director General's Design Excellence Guidelines.

Council officers recommend Option 1.

### **CONCLUSION:**

In order to facilitate the effective implementation of the Tweed City Centre Local Environmental Plan 2012 (TCC LEP), minimise information gaps and reduce developer risk, a Design Excellence Guideline (the Guideline) has been prepared by Planning Reform staff to be utilised in concert with NSW State Government Guidelines. The Guideline has been publically exhibited and amendments made to facilitate an efficient process for development undertaking an Architectural Design Competition (ADC), and therefore assist with the implementation of the aims of the TCC LEP, particularly as it relates to key sites and tall buildings.

The Guideline is now considered appropriate for Council adoption, which is recommended within this report.

### **COUNCIL IMPLICATIONS:**

#### **a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

The adoption of the Guideline is not anticipated to generate any significant costs to Council as the processes detailed within the Guideline are predominately facilitated and funded by the proponent.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

**Consult-**We will listen to you, consider your ideas and concerns and keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1            Design Excellence Guidelines, Version 1.1 (ECM 3417547)

Attachment 2            NSW Department of Planning & Environment correspondence (ECM 3417550)

