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# Regulating expansion of schools

This circular provides guidance to consent authorities and applicants on the application of certain conditions of consent that regulate the expansion of schools.

## Introduction

NSW is experiencing significant population growth and subsequent increased school enrolments both in public and non-government schools. To assist in delivering additional school capacity, changes are being made to the planning framework applying to school development through the draft *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* (the draft SEPP).

The draft SEPP will allow various alterations, additions and expansion of school facilities as exempt development, complying development, development with consent, or development without consent under Part 5 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Many existing schools have conditions on development consents that currently limit the intensification of the school development through caps on both student and staff numbers (cap conditions). These cap conditions are an important tool to manage traffic and parking impacts, but can be a major constraint on the growth of the school and the provision of essential school infrastructure. Therefore they should only be applied in circumstances justified by a comprehensive and evidence-based assessment of relevant planning issues such as traffic and parking.

The purpose of this circular is to:

- explain how the planning provisions in the draft SEPP relate to any cap conditions in existing Part 4 consent conditions for school developments; and
- provide advice to consent authorities regarding the appropriate application of caps on student and staff numbers in conditions of consent.

## Expansion of schools using the draft SEPP

The draft SEPP allows for development to be carried out for new schools and on existing schools sites, however the draft SEPP sets out limits to this

development and imposes controls on carrying out this development.

The draft SEPP provides expanded planning pathways for both government and non-government education providers. This allows both sectors to meet the increased demand for education infrastructure across NSW.

The draft SEPP permits very minor developments that will have minimal environmental impact to be undertaken as '*exempt development*'. Such works do not require any assessment or approval under the EP&A Act.

Some types of school developments will be permitted as '*complying development*' provided that certain pre-determined standards are complied with, including height limits and setbacks requirements. This includes the construction of additional classrooms, but only if the works do not contravene any existing conditions on development consents relating to student or staff numbers that apply to the land within the boundaries of an existing school.

The draft SEPP will also permit certain low impact developments to be carried out without development consent, however the proponent must first assess the environmental impacts of that development in accordance with Part 5 of the EP&A Act. Additional classrooms will be permitted to be constructed without consent, provided that the limitations on height and setbacks are met and the resulting development does not contravene any existing conditions on development consents relating to student or staff numbers that apply to the land within the boundaries of an existing school.

## Increasing student numbers capped by development consent conditions

*Complying and Development Without Consent* provisions in the draft SEPP cannot therefore be used to increase the number of staff and students at an existing school beyond the maximum numbers

permitted in a development consent. If a school wishes to increase student or staff numbers above the number capped by a development consent condition, an application to modify that consent or a new development application must be made to seek approval for the increase. This restriction will apply to any proposed increases to student and staff numbers that may result from new development at the site or from intensifying the use of existing buildings at the site, even if no building works are proposed.

In addition, complying development and development without consent provisions in the draft SEPP cannot be used to carry out development that would contravene other existing conditions of a development consent relating to hours of operation, car parking, vehicular movement, traffic generation, loading, waste management and landscaping.

### **Applying for development consent under Part 4 of the EP&A Act –best practice for applicants**

Schools can experience fluctuations in staff and student numbers for various reasons, and flexibility to accommodate additional students is required in order to deliver the best level of access to education for children. Before applying for development consent, applicants of school developments should look beyond the immediate student and staff numbers and instead consider the future projected student and staff numbers and the maximum operating capacity of the school site and incorporate these matters into their development application so that they can be considered by the consent authority.

If development consent is granted for a maximum number of students above current needs, when the demand for additional capacity arises development can be readily undertaken at the site using the complying development or development without consent provisions in the draft SEPP without the need to lodge a new development application or to request a modification of the existing development consent.

Alternatively, if future proposed works are likely to be outside the scope of the *complying development* or *development without consent* provisions, the applicant should consider lodgement of a stage development application under section 83B of the EP&A Act. This seeks consent for an overall concept or masterplan for the site, with a maximum number of student and staff numbers based on factors including population and enrolment forecasts and the maximum operating capacity of the site. Subsequent development applications to carry out works in accordance with the Concept Approval would then need to be lodged as required.

Projects should be designed to anticipate any expected future expansion of the school, including catering for the future needs that may affect student and staff numbers, hours of operation, noise, car parking, vehicular movement and traffic generation. Development applications should clearly demonstrate

that the proposed expansion and increase in staff/student numbers can be accommodated through measures such as (but not limited to):

- appropriate access and car parking arrangements, and consideration of any future roadworks that may be required if the capacity of a school is increased. Development applications should be supported by a traffic impact assessment, prepared by an appropriately qualified professional, addressing these issues;
- appropriate siting and design of buildings, facilities and play areas to minimise visual and amenity impacts (including noise) on surrounding areas. Where relevant, applications should be supported by a noise impact assessment, prepared by an appropriately qualified professional; and
- appropriate stormwater management and other environmental measures, supported by reports prepared by appropriately qualified professionals.

Further, when applying for development consent, applicants should demonstrate adequate and appropriate arrangements to address the traffic and parking needs generated by the development. This may include:

- supervised and managed student drop off/pick up zones and procedures;
- efforts undertaken by the school to reduce private vehicle trips including measures such as carpooling and, provision of dedicated school bus services;
- availability and increased use of public transport; and
- facilities to encourage walking and cycling.

### **Setting caps on development consents – best practice for consent authorities**

A consent authority has the power under s80A of the EP&A Act to impose conditions that relate to the development. Cap conditions have been held to be valid conditions under the EP&A Act, and can be associated with other conditions that require traffic and parking management actions as well as a trigger to require further assessment if it is proposed to increase the intensity of the school use.

However, if the consent authority considers it necessary to impose a condition limiting student and staff numbers at the school site, the numerical cap imposed should be for a valid planning reason supported by a strong evidence base. The Department recommends applying the following principles when considering whether to place numeric caps for staff or students on school consents:

#### **1. Apply outcome based consent conditions**

The consent authority should consider whether an outcome-based condition would mitigate the impact, rather than a prescriptive, numerical cap. Section 80A of the EP&A Act allows conditions to be expressed as an outcome or an objective, so long as there are clear criteria against which achievement of the outcome or objective can be assessed.

If a cap on student numbers is considered warranted, the condition should be drafted to require delivery of the desired outcome of the cap. For example, a cap condition placing an upper limit of student and staff numbers above current enrolment needs could be applied and the condition drafted to require certain measures to be implemented progressively prior to any increase in student numbers. This could include a condition requiring the applicant to submit revised traffic and pedestrian management plans to the consent authority to reflect the increased number to the satisfaction of the approval of the consent authority, or requiring certain road works to be undertaken when numbers reach a specified level. This approach delivers an absolute limit to growth at the school but provides flexibility for incremental increases up to the limit permitted by the cap condition to address future operating needs without the need for a new application.

## 2. Caps should be evidence-based

If caps on student or staff numbers are to be applied, they are to be based on clear evidence that the operational capacity of the school should be limited according to the environmental constraints of the site and/or the surrounding locality.

Conditions imposing caps should not be arbitrary or based on matters unrelated to planning impacts. The maximum number imposed in the consent condition should be based on what the evidence suggests the site and surrounding area can cope with. Application of the upper limit of these measures is recommended in any consent conditions, so as to avoid unnecessarily limiting the usability of the site.

For example, a traffic impact assessment will indicate the actual capacity of a site in terms of traffic generation and parking requirements having regard to the threshold of traffic volumes in adjoining roads, the availability of parking, proximity to public transport options and mitigation measures that can be applied through an on-site traffic and pedestrian management plan. A traffic study can also consider cumulative impacts of development, and examine potential growth scenarios that can also be taken into account when applying a numerical cap.

Similarly, a broad approach to considering whether there is sufficient passive and active play space for the proposed student population should be adopted. For example, instead of requiring a specified amount of space per student, management measures such as staggered recess and lunch times, and the use of nearby open space and sporting facilities will enable the recreational needs of students to be met despite the size of the site.

Such measures also support Principle 1 above, in relation to applying outcome-based conditions that give applicants options and flexibility in how they address impacts and achieve the desired outcome.

## 3. Mitigate impacts directly

Caps on development consents should not be used as a mechanism to address planning impacts that can be reasonably addressed through amendments in the application (as negotiated during the assessment) and other conditions of consent.

Negotiated outcomes and any conditions of development consent should focus on how the development is carried out, after the impacts and amelioration options have been assessed and determined. If conditions to mitigate an impact are required, then these conditions should seek to address the identified impact through the most direct means available.

For example, if the concern relates to the impact of increased traffic on existing road infrastructure, then the conditions on the consent could require the traffic impacts to be addressed directly through roadworks to improve the road network or management plans to regulate traffic flow instead of relying only on a cap condition to indirectly reduce levels of traffic and parking demand. Caps on student and staff numbers should not be placed on consents if there are clearer, more effective ways of regulating the impact that is of concern to the council or consent authority.

## 4. Flexibility required for school developments

The consent authority should recognise the need for flexibility when limiting staff and student numbers. Public schools are legally required to accommodate all children within their local catchment, and intake can fluctuate considerably between years and may be hard to predict.

Non-government schools can also experience similar fluctuations in enrolments due to changes in population and parental preference. Staff numbers may also fluctuate at schools depending on student numbers and specialist learning needs of the school.

Should a consent authority determine that a cap is required, then it should also consider how the cap may be reasonably implemented with sufficient flexibility to allow the school to meet increased student enrolment demands.

## Applying the Principles

The Department recommends that consent authorities apply the above principles when considering whether it is necessary to place a condition on a consent that will impose a numerical limit on student and staff numbers at the school site.

The principles will also be applied by the Department to any school Crown development applications (DAs) that are referred to the Minister by the council or a regional panel for resolution. If a Crown DA dispute between the council or regional panel and the applicant relates to student and staff caps at the school, the Department will consider whether it is appropriate to recommend to the Minister that other alternative controls be placed on the development in

order to address planning concerns, rather than applying a numerical cap on student and staff numbers at the school.

For both private and public school development proposals that are also State significant development (SSD), the Department will apply these principles before making recommendations to the Minister on the determination (and subsequent conditioning) of school SSD applications.

## Further Information

For further information please contact the Department of Planning and Environment's information centre on 1300 305 695.

Department of Planning and Environment circulars are available from [planning.nsw.gov.au/circulars](http://planning.nsw.gov.au/circulars)

### Authorised by:

**Carolyn McNally**  
**Secretary**

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**Important note:** This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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