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The Director, Industry & Infrastructure Policy  
Department of Planning and Environment  
PO Box 39  
SYDNEY NSW 2001

Dear Sir/Madam

**Re: Submission to public consultation Draft SEPP (Educational Establishments and Child Care Facilities) 2017 (The draft SEPP).**

Thank you for the opportunity to comment on the Draft SEPP.

I have been involved with development assessment and development of Schools and Child Care Centres for over 40 years.

I was instrumental in preparing the first local Government codes for both these activities in the 1970's at Ku-ring-gai Council, assessed many school and childcare applications in my 30 years in Local Government and prepared many development applications, complying development reports, REF's for development without consent and BER applications for schools (both private and public) in the past 17 years as a private consultant.

I feel I have considerable experience in both the legislation, assessment and provision of schools and child care centres.

SEPP (Infrastructure) (The ISEPP) has been used very successfully to provide fast solutions to school development since its inception for many reasons but has limitations.

The Draft SEPP is welcomed as a recognition of the importance these educational facilities have in land use planning and the need to provide quickly improved and expanded facilities required either by increased population or changes in delivery of education.

The background information recognises that the impact of these educational establishments relates to traffic (pick up and set down), noise and possibly bulk and scale. These basic impacts need to be assessed for such developments whether a new school or increased enrolments as population pressure is put on existing schools to service the education needs.

The Draft SEPP carries across from the ISEPP many of the concepts but also proposes many others that in my experience will not meet the aims of the SEPP and delay approvals or create unnecessary issues.

The equal treatment of schools regardless of whether they are public or private is a very positive step as is the recognition that student number caps cause significant problems.

The Draft SEPP is a good starting point but fails to address a number of issues including Section 94 and 94A contribution impositions, inappropriate zoning of school sites and off site after school care and in my opinion has the incorrect or incomplete solution to other issues such as State Significant Development and reduced use of complying development certificates and student numbers capping.

The following comments are in no particular priority but are based upon the location of the provision in the Draft SEPP firstly and the explanatory document secondly.

### **The Draft SEPP:**

#### **Clause 5 Definitions:**

Centre-based child care includes out of school hours care. While provision is made for easy provision on school sites the issue of off school site out of hours care for school children is omitted or misunderstood. By including this aspect or use in the centre based child care any development to cater for these children for a few hours after school requires a site developed as a child care centre with controls on toilets numbers, indoor and outdoor areas and facilities designed for preschool activities not school aged children. Generally, these services are provided in community halls, scout halls, churches etc in the way as after school lessons are provided for many activities such as music, drama, martial arts etc. Zoning, particularly open space zones, should permit these uses and a complying development process developed to permit these to occur. The requirement to have only centres with full pre-school facilities will be prohibitive and destroy this service. If such facilities are required, it is not viable to build and run for 2-3 hours a day. Any operator would run them as a pre-school and not as an off school site after school service.

It is suggested that a new definition of off school site after hours care (including vacation care) be developed, that use included in zoning and a complying development process be devised.

#### **Clause 28 Student accommodation:**

No satisfactory explanation is given as to why student accommodation for schools is not considered as part of an education establishment. In the over 4 decades I have been involved in planning that use has always been considered as part of a school. If this provision proceeds, those schools requiring or seeking to provide boarding accommodation will be subject to zoning prohibitions where the zoning prohibits boarding houses and be subject to Council DCP 's designed to control traditional boarding houses and requiring car parking. Traditional boarding houses are a very different activity to school boarding houses.

Schools will be required to use the provisions of SEPP (Affordable Rental Housing) 2009 if possible to provide accommodation and if the use is prohibited in the zone either under the local LEP or the Affordable Housing SEPP then locations not ideally suitable for the schools will need to be found. This provision will create a number of existing uses on school sites with boarders of long standing approvals and make expansion prohibited.

This proposal for schools is in my opinion unjustified and should be removed in its present form and the use clarified as permissible with appropriate controls.

#### **Clause 32(j):**

This development can be undertaken under the Codes SEPP without these limitations. For consistency, the setback from boundary is suggested to be as in (l) (ii) of the same clause. A site with a boundary to say Commercial or a freeway does not need this setback.

**Clause 33 (ix):**

This matter should be exempt development and part of schedule 1.

**Clause 33 (xi):**

This matter can be constructed without consent under Clause 30(1) (a) (v).

**Clause 51 RMS submission:**

In my opinion this clause requires a better explanation. As written it can be interpreted to require the RMS application for any alteration or addition of a school which has a population over 50 students regardless of whether an increase is proposed or not. The explanatory document clearly shows that is not the case however redrafting might make that intention clearer.

**Schedule 2 School- Complying development, Clause 2 Building height:**

The control in the ISEPP was 12m without reference to storeys. In my experience that control worked quite well.

The draft clause introduces the standard of 4 storeys and 22m from ground level (mean). Clause 23 has setback controls for the height and other controls for overshadowing etc are contained in the legislation. In my opinion if 22m is considered a reasonable height subject to controls on setback etc whether the building of that size has 4, 6 or more storeys is irrelevant.

The height control concept of the ISEPP worked satisfactorily to control bulk and scale, the limitation on storeys is unjustified and should be omitted.

**Schedule 5 Clause 5.2 State Significant Development:**

In my experience making school development State Significant Development (SSD) will not expedite applications.

The requirement for new schools to have a development consent is understood and supported, however for all new schools to be State Significant Development appears excessive.

The legislation should not apply to all schools but only to those schools above either a development figure or population.

For example, a number of schools I have been or am presently engaged in are small with student numbers of less than 200 and less than 100 in an inner city area. These can be dealt with by the local Council and if expedition is required then I suggest application of a time trigger that if not determined by a specified time period the matter is automatically either approved or sent to the regional panel. Rejection within the time period should be reviewed by the Regional Panel with powers to overturn Council's decision to stop councils rejecting application before the due date. These do not warrant the State Significant Development process.

The introduction of capital investment values to trigger SSD is new to the Draft SEPP and not in the ISEPP. Under the ISEPP a number of large developments were undertaken conforming to the controls of complying development. Many of these were indoor sporting centres and costs exceeded the figures in this clause.

It is also considered the values are too low as a trigger and should be higher as these educational establishments require high capital investment.

It is my opinion that these requirements do not simplify the system as existing. Provided that acoustic matters and traffic and parking matters are adequately addressed as well as the

requirements for complying development, cost should not be a trigger to a more complicated and difficult process than a CDC.

A system to vet the application could be introduced in the form of a preliminary meeting with the Department where delegation is granted to specify the proposal does not warrant SSD status and can be dealt with as local development.

**Matters in the explanatory document:**

Most of the concepts of the explanatory document are supported except for the matters listed above and below.

**Traffic certificate from RMS:**

To be effective a fast track system will need to operate in RMS. My experience with RMS indicates that time constraints or deadlines as apply in local government are very different in RMS. Workload will delay this process. The concept however is supported. My suggestion is that a system of certification of registered traffic engineers similar to private certifiers but only for these traffic matters be introduced to expedite these certificates.

These private traffic certifiers could provide the certificate to enable the matters to proceed expeditiously.

**CDC Certification be via Council Certifiers:**

This concept is definitely not supported and defeats the purpose of CDC's. Presently Councils have varying performances on CDC's and many do not actively seek to undertake certification. In my experience, CDC for schools requires greater consideration than CDC's under the Codes SEPP and there exist sufficient private certifiers with that requisite experience.

CDC's were introduced to overcome the long process of Council assessment, introduce certainty of decision under specified guidelines and provide an expeditious decision.

CDC's for schools only at Councils is a retrograde step and will delay the delivery of facilities.

**Planning Panels the consent authority for all other school applications:**

It is accepted that councils have a varied performance in regards to assessment of applications for schools. Often the need for additional facilities arise quickly and require a rapid response. CDC's assist in that matter as do exempt development and development without consent. Matters requiring development consent should only be related to new schools or consideration of student cap numbers. All others should be either development without consent, exempt development, CDC or SSD under the draft SEPP. Possibly the suggestion above of a time frame then automatic referral to the panel could be introduced.

**Student Cap:**

This matter is a most pressing issue and one which causes considerably delay and angst.

Caps on student numbers have traditionally been applied based upon the figures included in the development application to control parking, toilet facilities and playground areas. In the past, the numbers remained consistent with the numbers applied for. However as acknowledged in the draft circular density pressures in Sydney not only impact upon residential demand for housing and transport infrastructure but educational facilities also.

These other demands are being dealt with albeit with mixed success.

Expansion of schools creates conflict between residents and schools in regards to traffic and parking (including parent behaviour) and to a lesser but related degree noise.

In many cases, schools have existed in their present locations for decades and in some cases centuries. Most residents surrounding these schools have purchased knowing the school is there and sometimes for the benefit of that location educationally for their children. Many residents do not accept changes in the locales of schools due to increased numbers.

The draft circular for increasing student numbers is an excellent start but more should be done and a quick method of evaluation of the traffic and parking and noise issues against an accepted and established criterion such as the concept of complying development should be established. A development application each time student numbers pressure arises would presently take nearly a year at Council to resolve and then be outdated.

A fast and efficient method of increasing student numbers is required which considers the issues above. Parking and traffic issues at schools is generally 1 hour per day for approximately 200 days per year occurring out of pm peak period and occurring at the same time daily.

#### **Centre-based Child Care;**

As stated above the table on page 11 (table 1) of the explanatory document should have a new category of out of school site child care located between school-based child care and mobile child care on that table and controls and consent processing devised appropriately.

These facilities should not be required, as suggested on page 15 of the document, to meet the requirements of child care planning as that is not the appropriate standard and caters for different age groups and use.

These uses should be permissible in zones where community facilities are located and permissible such as RE zones and some Special uses.

#### **Zoning:**

The issue of zoning of school sites has been a problem for some time with an inappropriate policy requiring schools of long term establishment formerly zoned special uses school to be the same as the adjoining zone. Often schools are not permissible in those zones and had to rely upon the ISEPP to undertake development. Zoning schools R2 or R3 is inappropriate as controls such as height and FSR applicable to low density or medium density housing are applied. Also, the aims of the zone do not reflect the school use. This then requires applications to justify on existing sites greater heights than the LEP (often 8.5m when the ISEPP has 12m as complying development) and greater FSR using clause 4.6. School buildings are generally of very different form to housing and these requirements to justify are unnecessary and a waste of resources when SP2 zones should apply.

The justification in the explanatory document is unjustifiable. Zoning land in case it may need to be sold off later defies the very concept of zoning to reflect the desired use of the land. If that concept applied across the board there would be only 1 zone based upon the highest use possible. The present situation is that school sites are expanding into adjoining sites and not seeking to sell lands. The ISEPP and Draft SEPP acknowledge this expansion concept not a contraction. If the issue of adjoining land uses being permissible on school sites is of such importance, then a variation of the Standard Instruments clause on Development near zone boundaries would be more appropriate rather than zoning the school sites inappropriately.

In regards to Child Care Centres and off site out of hours school care, the SEPP should include a table of prescribed zones as in clause 27 for Schools or this prescribed zone clause

moved to the general section. The prescribed zone should include RE1 and RE2 for child care and after school care.

**Issue not addressed: S 94 & s 94A contributions:**

CDC's and Development applications to councils attract s 94 and s 94A requirements. These are applied equally to Government and non government schools although the Minister can strike out the condition on a Crown application but not a CDC.

If a s 94 contributions plan shows a nexus between the use and required improvements, then such a contribution could be justified.

Many Councils apply a s 94A contribution which has no nexus and can only be termed a development tax.

In growth areas, the Minister issues directions that these contributions plan do not apply to schools.

The application of these contributions plans is a considerable financial burden on developments and in areas of increasing density some are double dipping as the residential developments have paid for the facilities already.

It is suggested that this matter be addressed either by a Ministerial direction or change in legislation.

Should you require any further assistance on this matter please do not hesitate to contact me on 9674 3759, mobile 0408 474 967 or email [chris.cyplan@gmail.com](mailto:chris.cyplan@gmail.com) .

Yours sincerely

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