

4 April 2017

Director Industry and Infrastructure Policy
NSW Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Sir/Madam;

Re: Submission – Draft Infrastructure SEPP

I am writing in response to the Department's public exhibition of *State Environmental Planning Policy (Infrastructure) Amendment (Review) 2016* (the draft Infrastructure SEPP) and *Explanation of Intended Effect: State Environmental Planning Policy (Infrastructure) 2007* (EIE for the draft Infrastructure SEPP).

If made, the amendments would affect the provision of public and private infrastructure and other development throughout NSW, including Mosman. Having reviewed the draft Infrastructure SEPP and associated EIE, it is evident that most of the proposed amendments are relatively minor or seek to more efficiently deliver necessary public infrastructure, and generally no objection is raised to this.

However, some changes proposed would potentially have an adverse impact, such as the proposed expansion of health services facilities provisions, and are not transparent. These issues are addressed below.

1. Health services facilities in zone R2 Low Density Residential

Objection is raised to the proposed change to permit 'health services facilities' on land zoned R2 Low Density Residential under the Infrastructure SEPP. This is a significant change as such uses are not currently permitted in the R2 zone under Mosman Local Environmental Plan 2012 (MLEP 2012), nor were they permitted within the equivalent zone under the former MLEP 1998.

Mosman's R2 zones are primarily characterised by one and two-storey detached dwellings within leafy neighbourhoods on the visually significant slopes around Middle and Sydney Harbours, within heritage conservation areas or with a heritage listing, or adjacent to national parks and bushland reserves. The environmental sensitivity of such land is reflected in MLEP 2012 in land use zoning, clause 6.4 'Scenic protection' and schedule 5 Environmental heritage.

The proposal to allow health services facilities within the R2 zone has the potential to significantly change the neighbourhood character of Mosman's low density residential areas. Issues of concern are:

- Non-residential uses – The definition of 'health services facilities' includes medical centres, community health service facilities, health consulting rooms, patient transport facilities, and hospitals. Under the proposed changes, once established, other non-residential uses may be carried out within the boundaries of an existing health services facility, such as training or education of health and other professionals, commercial premises, an administration building or a carpark,

and – if the site is State land – health and medical research industries, recreation facilities, residential accommodation (includes residential flat buildings and the like) and helipads. The proposed changes are not confined to essential public health infrastructure – a range of non-essential private health services would be facilitated. This expansion of permissible uses within the R2 zone under the Infrastructure SEPP is contrary to MLEP 2012 including R2 zone objectives.

- **Built form** – Buildings would be permitted up to 12 metres in height under the proposed changes, contrary to the 8.5 metre height limit currently applied under MLEP 2012 in the R2 zone. Further, as complying development there would be no regard given to clause 6.4 ‘Scenic protection’ of MLEP 2012. This clause sets out matters for consideration by a consent authority to reinforce the dominance of landscape over built form and ensure development is located and designed to minimise its visual impact within the visually significant slopes around Middle and Sydney Harbours.
- **Traffic** – Allowing health services facilities and other non-residential uses within the R2 zone would result in increased vehicular traffic and on-street parking on local roads. Many of Mosman’s local roads are narrow or divided roads formed along the contours of the land, involving a level-change or other interruption, some with a heritage listing, and would not be suitable for significant increases in traffic.
- **Complying development** – Under the proposed changes, an existing health services facility could, as complying development, expand or be used for a range of non-residential uses up to 12 metres in height and setback 5m from a property boundary, without development approval from council and without consultation with neighbouring land owners. This is unacceptable in a low density residential environment.

The reason given in the Department’s EIE for this and other changes relating to health services facilities is to *“lower costs and reduce timeframes for the delivery of health service facilities”*. However, the potential adverse impact of permitting health services facilities within Mosman’s low density residential zones far outweighs any benefit this change could have.

Health services facilities are currently permitted in a range of zones in Mosman, including zones R3, B2, B6, SP1 and SP2, and are also proposed to be permitted in zone B1 under the draft changes. No objection is raised to this. Health services facilities are more appropriately located within Mosman’s business and special uses zones, sited with other commercial and non-residential uses, with typically a greater density of development and a road network capable of supporting increased traffic and parking volumes.

The proposed change to Division 10 Health Services Facilities of the Infrastructure SEPP to permit health services facilities on land zoned R2 must be omitted.

2. Conservation of local heritage items and heritage conservation areas

Proposed changes to the Infrastructure SEPP include the rewording and deletion of some clauses pertaining to heritage. The proposed change to include new clause 20(2)(e1) to make it clear that exempt development *“must not involve the demolition of a building or work that is, or is part of, a State or local heritage item”* is supported.

However, concern is raised regarding the proposed change to clause 14 in respect of development that may be carried out without consent under the Infrastructure SEPP. Currently, clause 14(1)(a) requires a public authority or person acting on behalf of a public authority to consult with council if the development *“is likely to have an impact that is not minor or inconsequential on a local heritage item (other than a local heritage item that is also a State heritage item) or a heritage conservation area”*.

This is proposed to be changed to: *“is likely to affect the heritage significance of a local heritage item, or of a heritage conservation area, that is not also a State heritage item in a way that is more than minor or inconsequential”*

The consequence of the proposed change in terminology – from *“impact that is not minor or inconsequential”* to *“affect... in a way that is more than minor or inconsequential”* – is unclear, however concern is raised that this change does not address the fundamental issue that a public authority or person on behalf of a

public authority has the responsibility, with no involvement from council, for making a decision regarding the impact or affect of development on a local heritage item and whether or not to refer the development to council under clause 14.

An example of this recently occurred in Mosman with the proposed development of a security fence at the Mosman Police Station. The police station is a heritage item and located within the Bradleys Head Road Heritage Conservation Area listed under MLEP 2012. Council became aware that a fence was proposed to be built on the site and, after requesting further information, negotiated an amendment to the location of the fence to reduce its heritage impact to the satisfaction of both parties. Without Council's intervention, the fence would likely have been constructed in its original intended location having a detrimental impact on the heritage significance of the heritage item and heritage conservation area.

Clause 14(1) of Division 1 Consultation of the Infrastructure SEPP should be amended to require consultation with councils for any development that is likely to have an impact on, or affect, a local heritage item or heritage conservation area – with the responsibility for determining whether this impact or affect is minor, inconsequential or other to reside with the council.

3. Reducing complexity and increasing transparency

Amendments to the NSW planning system which reduce its complexity and increase transparency are supported. For example, it is proposed throughout the Infrastructure SEPP to update definitions and land use terms to be consistent with the *Standard Instrument–Principal Local Environmental Plan*. It is also proposed to transfer provisions in Division 4 Electricity Generating Works or Solar Energy Systems to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* to ensure provisions for solar panels and the like are more accessible to homeowners.

However, there is a fundamental problem within the Infrastructure SEPP which obscures transparency and yet this is not addressed in the current raft of proposed changes.

The Infrastructure SEPP identifies land on which development for the purpose of infrastructure may be carried out, e.g. “prescribed zones”. This overrides any provisions in a council's local environmental plan (LEP) as a result of the hierarchy of environmental planning instruments under the NSW planning system. For example, a health services facility or public administration building may be permitted in a zone by virtue of the Infrastructure SEPP, despite being prohibited in that zone in the LEP.

Enabling the delivery of infrastructure is essential for the well-being of communities – however there must be transparency in this. The *Standard Instrument (Local Environmental Plans) Order 2006* introduced over ten years ago mandated a standardised LEP template for all NSW councils, including certain land uses mandated as permitted without consent, permitted with consent or prohibited in zones. This approach provides transparency for communities in understanding the types of land uses that could be developed in an area.

The Department should take the opportunity to be consistent with this approach as part of the draft Infrastructure SEPP changes, omitting “prescribed zones” in the SEPP and mandating land uses as permitted in zones within LEPs as relevant, facilitated by the Standard Instrument.

4. Clarification re police services facilities

As mentioned above, it is proposed throughout the Infrastructure SEPP to update definitions and land use terms to be consistent with the *Standard Instrument–Principal Local Environmental Plan*.

However, clarification is sought from the Department regarding the proposed change to transfer provisions relating to police stations from Division 14 Public Administration Buildings to Division 6 Emergency Services Facilities, and introduction of a new definition for ‘police services facilities’.

Specifically:

- Is the new definition of 'police services facility' introduced into the Infrastructure SEPP also to be included in the Standard Instrument (and therefore all council principal LEPs)?
- Will the current definition of 'public administration building' in the Infrastructure SEPP and Standard Instrument be amended to omit reference to it including "*a police station*"?

This may have a bearing on how the Mosman Police Station is to be identified on the MLEP 2012 zoning map.

Thank you for the opportunity to comment on this proposal. Please do not hesitate to contact me on 9978 4058 or k.lynch@mosman.nsw.gov.au if you would like to discuss these issues further.

Yours sincerely

A handwritten signature in black ink, appearing to read 'K. Lynch', is placed on a light blue rectangular background.

Kelly Lynch
SENIOR STRATEGIC PLANNER