

Council Reference: 31157E (D17/89044)

Draft Education SEPP & Draft Infrastructure SEPP Review
NSW Department of Planning & Environment
GPO Box 39
Sydney NSW 2001

Dear Sir/Madam,

Submission - Draft Education SEPP & Draft Infrastructure SEPP Review

Council welcomes the opportunity to provide comment on this important matter and following consideration of a detailed report resolved on 11 April 2017 to make this submission on the *Draft Education SEPP & Draft Infrastructure SEPP Review*. We also thank you for considering this late submission to accommodate Council reporting timeframes.

General Comments

The proposed Education SEPP and amendments to the Infrastructure SEPP are wide ranging. Considerable documentation was required to be reviewed in order for Council to provide a thorough and appropriate response to the Departments proposals. As you can appreciate, the submission process takes time to coordinate comments from multiple sections in Council. For this reason, it is prudent that in future Council's request for extended timeframes be accepted, not only in order to provide an appropriate submission but to allow the submission to go through the formal Council reporting processes so that it is the endorsed Council position.

At a broad level this proposed SEPP raises concerns about the apparent proliferation of new SEPPs instead of a reduction in the number of SEPPs and the increasing complexity of the planning system at a development assessment level for both Council planners and proponents. It is assumed that someone is checking these changes and the legislation aligns so there is not issues with regard to consistency. With the increasing range of exempt and complying development and development without consent along with the expanding Code SEPP, the community is slowly having fewer opportunities to have a say, particularly with regard to the legislative changes. The community does not often understand policy or strategic planning but do understand when something is built next to them or there are a set of architectural drawings showing what is proposed.

Specific comments on draft Education SEPP provisions

Definitions

Council welcomes the inclusion of the revised definitions for the Standard Instrument. Whilst there will still be Part 4 approvals for new developments, which will help to minimise interpretation issues, Council does seek clarification and raises the following matters in relation to some of the terms.

In the first instance, Council assumes “*early childhood education and care facility*” is the group term, but asks that this be confirmed. Additionally, Council requests that the Department’s LEP Matrix be updated to reflect these amendments to definitions.

There is some confusion around the term “*family day care service*”. According to the definitions, *Centre-based child care* includes;

(e) a family day care service (within the meaning of the Children (Education and Care Services) National Law (NSW),

but does not include;

(f) a building or place used for home-based child care or school-based child care...

However, according to the definition below, a “*family day care service*” is a type of “*home-based child care*”

“*home-based child care*” includes;

(a) a family day care residence (within the meaning of the Children (Education and Care Services) National Law (NSW), or

(b) a dwelling used for the purpose of a home based education and care service (within the meaning of the Children (Education and Care Services) Supplementary Provisions Act 2011

if the number of children (including any children who reside at the dwelling does not at any one time exceed 7 children under the age of 13 years, including no more than 4 who do not ordinarily attend school.

This is very confusing and clarification is sought as to how “*family day care,*” which is a type of “*home-based child care*” is able to be included in “*centre-based child care*”.

Major concerns are also raised in relation to allowing “*home-based child care,*” to be located within areas identified as bushfire prone land. Whilst “*home-based child care,*” is already exempt under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, bushfire prone land currently precludes this exemption.

Council acknowledges that some attempts have been made to implement bushfire safety controls; however, given this will now be included as exempt development, who, if anybody, will be checking these measures. Even if this information is required in order to obtain a Service Approval for a “*home-based child care*” or “*family day care,*” it is unlikely that a Family Day Care Coordinator, issuing the approval, will have the relevant skills to determine the applicable BAL rating or appropriate APZ.

This is likely to result in “*home-based child care*” incorrectly being approved, meaning some of our most vulnerable individuals, small children and babies, could be located in BAL-40 or BAL-FZ areas with restricted ability to evacuate during an emergency situation.

Additionally, concerns are raised in relation to the number of children able to be cared for within a “*home-based child care*” or “*family day care*,” at any one time. Seven children seems excessive, particularly given a standard car only seats 5 people, which would make evacuation difficult.

Divisions 2 & 3

The draft Education SEPP has different flexible zoning provisions to the draft Infrastructure SEPP in that it will override SLEP 2014 and will therefore apply in the Coastal Zone. Whilst this will require a compatibility certificate issued by JRPP and the process will include consultation with Council, the referral timeframe will be limited to only 21 days.

It would seem that this is proposing an inconsistency between the draft Education SEPP and the draft Infrastructure SEPP. The clause in the Education SEPP relates to all prescribed State land and is not confined to Education Department land. Council is concerned that as a result, this SEPP could be used in order for other State land to overcome the restrictions in the Infrastructure SEPP – clarification on this issue is required.

Additionally, this arrangement may well leave Council with a need to carry out housekeeping LEP amendments with no resources from the Department. For example - SP2 land could be developed as a residential subdivision where it is no longer needed for education purposes, whilst flexible zone provisions could be used to consider development of this nature, an amendment to the LEP zoning is usually required to ensure that future development on that land can be undertaken i.e. complying development and other residential development.

Part 3 Early Childhood Education & Care Facilities

Clause 20 requires Council to assess any proposal against National Regulations. If the proposal does not comply, then the application is required to be forwarded to the *Regulatory Authority* within 7 days for concurrence with details outlining how the proposal needs their concurrence - this requirement is incredibly onerous on Council staff and it will be difficult to meet such tight time frames from the date an application is received.

Council suggests a similar approach to that which is required of *SEPP 65 – Design Quality of Residential Apartment Development* be applied. To this end a design guide could be developed detailing how ‘childhood education and care facilities’ meet the SEPP’s design quality principles and the National Regulations. Proposed developments would need to be designed by a qualified designer, in accordance with the design guide and a design verification certificate or Statement of Compliance submitted to the consent authority with any application. This would avoid Councils having to assess applications within 7 days, as well as significantly reduce the requirements for concurrence.

The draft SEPP essentially overrides any Council DCPs in relation to this type of land use and replaces them with the draft State-wide Guidelines. On initial review, these guidelines appear reasonable, providing enough flexibility to accommodate different geographical areas, including our regional area.

However, a closer review of the Guidelines identifies a mix of mandatory and optional components, located in Part 2 and Part 3 of the guide required by Clause 21 of the SEPP.

Part 2, the mandatory component of the guide, relates to the internal requirements needed to meet the national guidelines, presumably in line with the National Framework requirements. Whilst Part 3 of the guidelines, the optional requirements, relates to planning related matters such as how a development will be designed and assessed for impacts on the surrounding built environment, including built form, amenity, safety, landscaping and sustainability. Council has major concerns that those aspects in Part 3, that are considered to result in good planning outcomes, and which more closely reflect what would generally be included in a DCP are “optional.” Whilst Council has the option of still having a DCP, the criteria in Part 2 of the guidelines and Clause 24 of the SEPP will over-ride any DCP controls that are inconsistent with the guidelines. Even more concerning is that a proposal cannot be refused based on the criteria in Part 3. It is assumed that the aim of this guide is to provide consistency by standardising child care facilities across NSW, however, given the criteria in Part 3 is optional, consistency would be undermined and additionally, poor planning outcomes are likely.

Additionally, centralised controls are likely to create confusion for both applicants and assessment staff, with regard to what controls apply to ‘any’ application, which is unhelpful. Council does not see anything within this part that could not be added to the Standard Instrument LEP, rather than a SEPP. It does not provide any variation to permissibility of uses and only applies development standards.

The inclusion of “*centre-based child care*” in *IN1 General Industrial* and *IN2 Light Industrial* zonings, prompts concerns regarding both existing and future land uses. Industrial zones allow for a wide range of land uses, a number of which would be considered incompatible with child care centres. It is acknowledged that some local government areas already permit child care centres in *IN2 Light Industrial* zonings; however, Shoalhaven Local Environmental Plan 2014 currently prohibits child care centres in the IN1 and IN2 zone.

Through current planning processes land use conflict can be addressed and if necessary, refused. Despite clause 22 of the proposed SEPP containing provisions relating to land use conflicts within these zones, this clause is essentially diminished by Part 3 (optional) of the draft State-wide Guidelines as a consent authority cannot refuse an application based on criteria (including location) within Part 3. Council acknowledges that there may be some instances where child care centres are acceptable in the IN1 or IN2 zones, however there needs to be appropriate development controls and consideration through the appropriate development assessment process to determine any land use conflicts or impacts on supply of industrial land. A specific criteria for the suitability of a childcare centre in an industrial zone should be included in the proposed SEPP as well as the ability for Council to refuse the application if necessary.

The State Government sets targets regarding employment lands, many of which are located within industrial zones. Allowing child care centres within industrial zonings not only diminishes lands for industrial uses but will likely sterilise lots containing “*centre-based child care*,” given adjoining land uses will need to be compatible. This also creates additional resourcing issues for local governments, whilst DCP’s for child care centres will essentially be replaced by the draft State-wide Guidelines, significant amendments will be required to industrial lands DCP’s as well as Employment Lands Strategies.

Similarly, concerns are raised in relation to the permissibility of “*centre-based child care*” within R2 Low Density Residential areas. Whilst this land use is already permissible within this zone, the diminishment of Council DCP’s by the draft State-wide Guidelines will severely limit Council’s ability to refuse applications that are not appropriate within existing residential locations. Considerations relating to car parking and setbacks are again located within Part 3 (optional) of the draft State-wide Guidelines, to reiterate again, criteria in this Part is non-mandatory and applications are unable to be refused on criteria within this section. This is likely to cause significant problems within existing residential zones, in relation to car parking, noise and amenity, to name just a few.

Part 4 Schools

Exempt Development has been expanded significantly but is consistent with other exempt development.

Complying Development has also been expanded significantly and more particularly the development standards have been revised with some of the more relevant ones being:

- Building height increased from 12 metres to 22 metres (and four storeys)
- Increased setbacks
- Overshadowing more detailed and brought in line with planning principle
- Bushfire and Flood Prone land dealt with in a similar way to Code SEPP

Building heights for schools seems excessive and there is confusion with regard to the heights stated. The SEPP specifies a maximum of 4 storeys or 22 metres; however a 22 metre building is approximately 6 storeys. Additionally, the Height of Buildings referred to in Council’s LEP restricts height in metres, not storeys. Lift access would be required for a building of this nature and this raises evacuation and duty of care concerns. Class sizes range between 20-28 students, generally a teacher would be required to make 2 trips with a class of this size, leaving small children unsupervised. The ability of small children to safely descend 6 storeys of stairs in the event of an emergency is also questionable.

Although these heights may have little impact within city areas, the SEPP does not limit these building to city locations. The development of multi storey buildings in regional areas raises bulk and scale issues and would considerably impact on the character of certain regional locations. Broader issue with regard to the Department of Education’s Strategic Planning and future asset planning are raised. Rather than investing in new land release areas, the Department of Education is preferring to utilise existing sites and building up. The feasibility of this direction is also questioned, particularly when the Department of Education is selling its land parcels in some regional areas without accommodating for increased growth or urban release areas.

With regard to the term “qualified designer” Council suggests this be amended to “qualified architect” to ensure the highest quality of design and functionality. This would avoid inappropriately qualified designers undertaking such development that must prove functional, robust and attractive for many years. Additionally public certifying authorities should be limited to Council Certifiers in order to ensure consistency and compliance, particularly with the SEPP allowing private schools to become public authorities, meaning school principals, who generally may not have any experience in this area may now be running such projects.

RU1 Primary Production has been included in the prescribed zones which has the potential to create land use conflicts with viable agricultural land and rural land uses.

Development with consent now requires Councils to take into consideration the design quality principles – these principles really go beyond normal development standards and some relate more to the use of the school by the community which would be difficult to assess in a development application or for Council's to require through conditions of development consent – typical examples:

- *School design should consider future needs and take a whole-of-life-cycle approach underpinned by site wide strategic and spatial planning; and*
- *Schools should actively seek opportunities for their facilities to be shared with the community and to cater for activities outside of school hours.*

Universities and TAFE's have been provided for similarly but with different maximum heights for complying development and it is difficult to understand the rationale between the differences, for example:

- Universities 15 metre and three storeys
- TAFE 12 metre and no storey limit

In general terms, building heights relating to schools, TAFE's and university should be reversed, with Universities having the ability to build to 22 metres, TAFE's 15 metres, and schools 12 metres from a common sense perspective, however Council still believes the height limits provided may be excessive.

Part 5 Assessments

NSW Code of Practice for non-government schools Part 5 assessment – the expansion of Part 5 assessment to non-government agencies is a concern on principle with the risk of decisions being made more on economic considerations and not having public officer oversight with an independent perspective.

INFRASTRUCTURE SEPP

Council has reviewed its initial comments provided to the Department of Planning & Environment prior to the review of the Infrastructure SEPP Review (see Council's letter dated 22 May 2016). It appears that the majority of Council's comments have been incorporated into the current draft of the Infrastructure SEPP, however Council still requests that additional provisions be included to incorporate the following Council Infrastructure including:

- Animal shelters;
- Cemeteries and extensions to existing cemeteries;
- Equestrian centres and pony clubs;

The inclusion of additional provisions for waste or resource management facilities for extensions to those facilities is supported.

The comments provided below are provided on the Infrastructure SEPP EIE document and Appendix A – draft policy.

Schedule 7 - Emergency and police services facilities and bush fire hazard reduction

Clause 48(1) specifically excludes NSW Rural Fire Service as a public authority that may carry out development. Council questions why this emergency service provider is excluded from exempt or development without consent for minor alterations, additions and demolition of emergency service facilities in Division 6 of the current Infrastructure SEPP when all other emergency services authorities are included.

Schedule 9 - Health Services Facilities

Clause 56

Includes the R2 Low Density Residential zone into prescribed zones for permissibility with consent of health service facilities. There is the potential for significant planning conflicts in low density residential areas – currently only health consulting rooms are permitted.

Council has various examples of medical centres that cause conflict in residential areas and can provide further comment on these concerns if required.

Clause 58

A broad range of development permitted without consent has been expanded significantly – includes additions & alterations; replacing accommodation or administration; demolition; car parks; helipads; new buildings up to 12 metres in height and vegetation removal. Council is concerned that without the need for development consent, a number of planning issues cannot be considered or addressed, particularly in regional areas with additional environmental constraints i.e. native vegetation, flood prone land, agricultural land, bush fire prone areas, land use conflict etc.

Clause 58(c)

A broad range of complying development within and existing health service facility including an additional health services facility; training & education buildings; commercial premises providing services to the facility; demolition; admin bldg.; car park or child care including any of these buildings up to 12 metres in height.

Schedule 12 – Parks & Other Reserves

The changes proposed are supported to increase Council's ability to carry out its operational functions and improvements to Parks & Reserves. Council also supports the inclusion of Crown Reserves where work can be carried out without consent by the Council where it is a crown reserve or a reserve trust and is managed by the Council – cl 65(2)(d) which is also supported by Council.

Schedule 13 – Port, Wharf or Boating Facilities

Council supports to changes to reflect the definitions in the Standard Instrument LEP for *port facilities* and *wharf or boating facilities* to provide clearer and consistent definitions.

Clause 69(1) replaced with a simpler clause that clearly allows retail, business or industrial development within a port development that are not related to the operation of the port or wharf with consent in prescribed zone or unzoned – this will have specific application in Ulladulla Minor Port area and will overcome the current restrictions on some of these types of development in IN4 zone.

Clauses 69(3-5) add new development classes with consent. Council has concern with the existing Clause 69 (3) provision allowing dredging by any person on any land as well as the addition of facilities for maintaining development. The Department should ensure that any development proposed to be permitted through Clause 69 does not allow development that

is prohibited via SEPP 50 – Canal Estate. Facilities for maintaining vessels should be limited to appropriate Standard Instrument LEP definitions.

Council is concerned with the increased range of exempt development for port areas permitted in Clause 70 as this includes demolition, geotechnical investigations, washbays and rainwater, greywater or bilge water tanks up to 20 kilolitres.

Clause 71 complying development is extended significantly to include new buildings up to 500m² and 12 metres high – which is above most height of building standards in Shoalhaven LEP 2014.

Schedule 16 Roads & Traffic

The amendments provide clear provisions for bus stops and shelters and makes it clear that advertising on bus shelters is not exempt development.

Council is concerned with the extensive provisions for exempt and complying development for bus depots that will apply to *accredited bus service operators* (defined in schedule) as well as public authorities and will allow buildings up to 500m² and 12 metres high.

Clause 102 significantly reduces traffic vehicle count trigger for noise attenuation for non-road development adjoining road corridor from 40,000 to 20,000. This may have some significant effect if any parts of the Princes Highway corridor has counts between 20,000 & 40,000.

Schedule 19 – Telecommunications

The significant issue Council sees here is the adoption of more up to date *Electromagnetic Radiation – Human Exposure* standards from 2003 to 2014 – it is not clear at this stage the significance of this change in standards. More guidance should be provided to assist Council consider applications for telecommunications towers.

Schedule 24 – Miscellaneous and General

Clause 18 adds in a flexible zoning provision for all prescribed State land, however this clause suggests it will not apply the Shoalhaven LGA except for land that is not covered by SLEP 2014 as it is a Standard Instrument LEP as set out in 18(1)(a) – in which case clause 5.3 of our SLEP 2014 makes provision for flexible zoning provisions except in coastal zone. This has proven to be conflicting where this clause was thought to apply to State land in Mollymook Beach, however due to the land being in the coastal zone the clause was not able to be applied. Council has already raised this issue in the submission to the draft Coastal SEPP as the restriction on flexible zone provisions for land in the coastal zone provides an unnecessary restriction on the use of this clause.

Schedule 25 – Amendment of Codes SEPP

The exempt and complying provisions for solar energy systems and wind turbine systems is to be transferred from Infrastructure SEPP to Codes SEPP – this is generally positive as it relates mainly to domestic scale systems and at least puts the exempt development together. The provisions have been amended significantly in the changeover and now include heritage conservation areas in the exempt however this should also explicitly exclude complying development.

Draft State Environmental Planning Policy (Infrastructure) Amendment (Sport and Recreation) 2013 (draft SEPP (Sport and Recreation))

The material exhibited included the *Draft State Environmental Planning Policy Infrastructure 2007 Sports and Recreation Maps* with no information included in the exhibition material to explain the exhibition of the land application maps.

Following a discussion with the Department of Planning & Environment, it was advised that the land application maps were exhibited as a change to the *draft State Environmental Planning Policy (Infrastructure) Amendment (Sport and Recreation) 2013* which will be notified with the wider Infrastructure SEPP Amendment.

Council supports the introduction of the land application maps to clearly identify the sport and recreation land but is still concerned with two (2) of the additional permitted uses being: medical centres and caravan parks. This issue was raised in Council's submission to the draft SEPP (Sport and Recreation) dated 20 January 2014. Please refer to this submission for further detail.

If you need further information about this matter, please contact Peta Brooks, Planning Environment & Development Group on (02) 4429 3228. Please quote Council's reference 31157E (D17/89044).

Yours faithfully



Gordon Clark
Strategic Planning Manager
13/04/2017