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

Submission to the Draft State Environmental Policies for Infrastructure and Educational Establishments and Child Care Facilities

Thank you for the opportunity to comment on the proposed changes to the Draft State Environmental Planning Policy (SEPP) for Educational Establishments and Child Care Facilities 2017 and the Draft State Environmental Planning Policy (Infrastructure) 2007.

We support the Government's initiative in reviewing the SEPPs. Whilst we believe there is inherent merit in the proposed amendments, we believe that the draft SEPPs need to address matters including:

- the social impact of the proposed expansion of police facilities on the local area;
- The impact of permitting home-based child care on bushfire prone land;
- The criteria proposed in the draft Child Care Planning Guideline; and
- Certification of new school developments.

Please refer to the attached submission for detailed comments.

If you wish to discuss any aspect of this submission, please contact Council's Planner, Krishti Akhter on (02) 4732 8197 or via email at krishti.akhter@penrith.city.

Yours sincerely



Natasha Baker
City Planning Manager

Attachment 1 – Penrith City Council Submission

The Department of Planning and Environment (the Department) is proposing a new stand-alone State Environmental Planning Policy (SEPP) for Educational Establishments and Child Care Facilities and various amendments to the SEPP (Infrastructure) 2007 (Infrastructure SEPP). Council's comments on these SEPPs are provided below.

PROPOSED AMENDMENTS TO THE INFRASTRUCTURE SEPP

Division 5 – Complying Development

An amendment is proposed to the Infrastructure SEPP to include requirements for complying development relating to the Aboriginal and archaeological objects uncovered during work.

These requirements must also apply to the draft Education and Child Care SEPP

Division 6 – Emergency Services Facilities and Bush Fire Hazard Reduction

An amendment is proposed to the Infrastructure SEPP to permit police services facilities in the prescribed zones (i.e. the rural, industrial, special purpose and business zones). The proposed changes will also permit Police Services Facilities with consent, on land zoned as RU6 Transition, RE1 Public Recreation, E3 Environmental Management and E4 Environmental Living

Concerns are raised on the proposal to expand police facilities (such as holding cells) as complying development. This will significantly increase the future population held in remand within the Penrith Local Government Area (LGA) and is likely to have a negative social impact. We are seeking clarification on whether councils will be notified of any complying development for police facilities within the prescribed zones and whether councils will be able to provide comments.

Division 10 – Health Services Facilities

The Division 10 – Health Services Facilities section of the Infrastructure SEPP is proposed to be amended to permit health services facilities in the additional R2 Low Density Residential and B1 Neighbourhood Centre zones.

The Infrastructure SEPP should require health services facilities in all prescribed zones to be accessible by regular public transport services.

PROPOSED EDUCATIONAL ESTABLISHMENTS AND CHILD CARE FACILITIES SEPP

The Department is proposing to introduce a new stand-alone SEPP for educational establishments and child care facilities. The Explanation of Intended Effect indicates that the purpose of the proposed SEPP is to:

- simplify and standardise the approval process for child care facilities, schools, TAFEs and universities,
- set out clear planning rules for these developments, and

- Establish state-wide assessment requirements and design considerations.

Early childhood education and care facilities

Standard Instrument Local Environmental Plan

The Education and Child Care Facilities SEPP proposes to amend the Standard Instrument Local Environmental Plan (LEP) to align national definitions of early childhood education and permit centre-based child care in the R2 Low Density Residential and IN2 Light Industrial zones.

No objection is raised to expand the permissibility of centre-based child care as they are already permitted in the R2 Low Density Residential and IN2 Light Industrial zones under the provisions of Penrith LEP 2010.

Provisions to simplify planning approvals

The Department is proposing to introduce exempt and complying development provisions for child care facilities with low amenity impacts. Out-of-school-hours care, including vacation care, for primary school students are also proposed to be permitted as exempt development if they are located within the boundaries of an existing TAFE institute. It is also proposed to permit school-based child care as exempt development subject to obtaining a Service Approval from the Department of Education.

Penrith Development Control Plan (DCP) 2014 contains provisions for out-of-school hours care to provide amenities, playrooms, outdoor play areas, staff and the required car parking. The exempt development provisions in the proposed SEPP should contain provisions on amenities, playrooms, outdoor play areas, staff and the required car parking.

Home based child care on bushfire-prone land

The Department is proposing to permit home-based child care as exempt development on bushfire prone land subject to certain standards, and consequently amend the SEPP (Exempt and Complying Development) 2008 (Codes SEPP). This will include the provision of an Asset Protection Zone around the dwelling, preparation of a Bush Fire Emergency Management and Evacuation Plan and a requirement that the development is not located in the bushfire attack level-40 or the flame zone.

The proposed changes to home-based child care centres is not supported due to evacuation concerns. Any proposal that involves the caring and teaching of children, whether in a centre-based child care or home-based child care, should require a merit assessment, so that matters such as evacuation and safety can be fully considered. In this regard, the Department should also seek and consider the advice of the NSW Rural Fire Service.

Heads of Consideration for centre-based child care on industrial-zoned land

The Department is proposing to include heads of consideration that must be considered by the consent authority when a centre-based child care facility is proposed on IN1 General Industrial or IN2 Light Industrial zoned land. These are set out in Clause 22 of the Draft Education and Child Care SEPP. The heads of consideration include:

- ensuring that the proposed development is compatible with neighbouring land uses,
- whether it has the potential to restrict the operation of existing industrial land uses and
- whether the location of the proposed development will pose a health or safety risk to children, staff or visitors.

The introduction of the 'heads of consideration' for centre-based child care centres in industrial zones is supported. The criteria proposed in Clause 22 of the draft SEPP should apply to all zones, and not just the industrial zones.

Clarity should be provided in relation to compatible neighbouring land uses and additional land uses such as premises that require liquor licences, telecommunication towers, electricity easements and the like. We recommend that these land uses be explicitly identified for consideration.

Draft Child Care Planning Guidelines

The Education and Child Care SEPP will require the consent authority to take into consideration the *Child Care Planning Guideline* (CCP) when assessing DAs for early childhood education and care facilities.

Overall comments:

The CCP Guideline does not reference the document "*Playing safe: guidelines for the installation and maintenance of **playground equipment***" – published by the NSW Department of Education and Training. We suggest that this document be added in *Section 4.2 Submitting a Development Application* as a requirement for applicants to consider prior to lodging a DA.

Locational Criteria (Part 3A)

The CCP Guideline appears to focus more on the internal design of facilities rather than the compatibility of the child care facilities with the surrounding land uses. It is recommended that the CCP Guideline require the centre-based child care centre to also consider the development's compatibility with the surrounding land uses and the suitability of the site for that development.

The CCP Guideline should also focus on the site's proximity to other social infrastructure and public transport/pedestrian connections. They should also require the applicant to consider the site's location in the context of restricted premises and other hazards such as overhead electricity transmission easements and mobile phone towers.

Council's DCP applies additional controls in relation to certain land uses located on land below the flood planning level. A major concern is the effective evacuation of people and facilitate development on land below the 1 in 100 ARI flood event. The CCP Guideline should reinforce and provide guidance on compatible adjoining land uses in this section. It should also reinforce and provide guidance on compatible and adjoining land uses.

Certification

The CCP Guideline provides mandatory and advisory requirements that are quite detailed. Therefore, it is recommended that certification by a suitably qualified person supports a DA to a consent authority.

Development Control Plans for Centre-Based Child Care

Certain provisions in a DCP will not apply to centre-based child care if they are covered by the SEPP. Amongst other things, this will make redundant any DCP provision that require applicants to submit operational or management plans or arrangements such as hours of operation. This could mean that centre-based child care can operate outside Council's restricted standard 7am to 7pm hours of operation.

The SEPP and CCP Guideline will need to preserve the ability of councils to require applicants to demonstrate they have an appropriate complaint handling processes in place and consider the potential after-hours impacts of the centre on neighbouring residents. This opportunity may be undermined by the requirements of Clause 24 of the proposed SEPP.

Non-discretionary development standards

The Department is proposing to introduce non-discretionary development standards for centre-based child care. This means that a DA for a centre-based child care cannot be refused on these development standards. These include location, indoor or outdoor space, design, site area, site coverage, site dimension and the colour of the building materials or shade structures (except of heritage items or heritage conservation areas).

One of the non-discretionary standards relate to colour schemes on buildings that are not heritage items or in a heritage conservation area. Permitting *any* colour of building is not appropriate in some cases. The colour of building schemes or shade structures is often crucial to community acceptance of centre-based developments in residential areas. We are concerned that 'gaudy' centre-based facilities will emerge, for example brightly coloured centres, which will deter from the streetscape value. This non-discretionary standard should be amended to require centres to be 'compatible' with the surrounding development rather than permit 'any colour or colour scheme'.

Concurrence with the Department of Education

The Education and Child Care SEPP proposes to provide a concurrence role for the Department of Education to review development applications that do not meet key national requirements for unencumbered indoor and outdoor space for children. These requirements are set out in Part 3, Clause 20(1) and Clause 23(2)(b) of the draft Instrument and require at least 3.25m² of unencumbered indoor space and at least 7.0m² of unencumbered outdoor space per child.

Concern is raised about the trend towards centre-based child care centres providing staggered play/share play spaces as an alternative to providing the total required unencumbered play areas. Applicants may argue that only the number of children outside

at any one time need to be counted. Preference should always be for sufficient and natural play spaces. We seek assurance that this will not become a precedent.

The Design Template in Appendix 1 of the CCP Guideline should also be supported by a certification that the CCP Guideline has been complied with as these may form or inform fundamental design elements.

Heritage concerns

Under Council's LEP, a Heritage Impact Statement (HIS) is required to be provided for development on land that contains a heritage item and submitted with a DA. A HIS is required to demonstrate the site's heritage significance is retained and compatible with the proposed land use.

Under clause 9(2)(c) of the draft SEPP, a proponent undertaking development on behalf of a public authority has to "take into consideration" council's response on a development that will affect a local heritage item. In this regard, council's response would only be advisory. It is recommended that the SEPP require the proponent to adhere to council's recommendation which is derived from a Heritage Advisor.

Schools

Exempt and Complying Provisions

The Department is proposing to permit single storey portable classrooms to be permitted as exempt development.

The SEPP also proposes to permit new school buildings up to four storeys (or 22m) in height to be approved as complying development overriding Council's local height provisions if the relevant development standards are met. These standards relate to minimum setbacks, materials, overshadowing, privacy and landscaping.

In relation to the exempt development provisions for portable classrooms, it is recommended that minimum development standards be proposed in consultation with Council prior to finalising the SEPP.

In relation to the proposed changes to permit new school buildings up to four storeys (22m) as complying development, with consideration of the *Better Schools: A Design Guide for Schools in NSW*; Council's Local Traffic Committee and the professional knowledge of local issues is being removed from the assessment process. The impacts on the local context require a merit assessment, especially where buildings greater than one storey are proposed.

It is understood that the Department is considering to only permit council certifiers to issue complying development certificates for school infrastructure as part of these reforms. We strongly support this, particularly if schools up to four storeys (22m) would be permitted as complying development and exceed Council's maximum building heights in the LEP. It is recommended that the Department formalise this through the finalisation of the SEPP to ensure Council would still have some oversight and involvement in the development of school infrastructure in the Penrith LGA.

The suggestion that the designer of state significant school developments be a qualified architect is also supported.

State Significant Development and Regional Development

The Department is proposing to reduce the capital investment value for schools to be assessed as a State Significant Development from \$30 million to \$20 million. The Department is also considering amending the Environmental Planning and Assessment Act to make relevant planning panels the consent authority for all other DAs (i.e. schools with less than \$20 million capital investment value). This is to provide a comprehensive and coordinated assessment, especially those requiring separate approvals from other agencies.

Council's processes and procedures are effective in assessing these matters efficiently and in the local context. Council has not been given reasons to otherwise indicate that determination functions be removed from this scale and category of development and would allow further opportunity to engagement on developments that affect the local area.

Tertiary Institutions

The Department is proposing to expand the exempt development provisions for tertiary institutions. It is proposed to permit new university buildings up to three storeys as complying development, subject to meeting the development standards. These include building heights, gross floor area, setbacks, design and materials, and development on bushfire prone land and flood control lots.

The Department is also proposing to amend the Codes SEPP to permit tertiary institutions to access the change of use provisions to enable tertiary educational establishments to occupy commercial premises as complying development.

The Department must include satisfactory provisions to address matters such as car parking, acoustic performance, compliance with the Building Code of Australia, traffic concerns, and land notations on s149 Planning Certificates (e.g. flooding, bushfire).