

Council Reference:
Your Reference:



13 April 2017

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Dear Sir / Madam

**Review of proposed amendments to the State Environmental
Planning Policy (Infrastructure) 2007**

I refer to telephone communication between Council's Senior Planning Applications Officer, David Hannah, and the Department's Sabine Miller concerning a request for an extension in time to lodge a submission concerning the proposed amendments to the State Environmental Planning Policy (Infrastructure) 2007 (the ISEPP). Tweed Shire Council appreciates the opportunity to provide a submission on the proposed 2016 amendments to the ISEPP and wishes to thank the Department for the extension which was subsequently granted to lodge a submission before the 14 April 2017.

Since its commencement in 2008 Council has utilised the ISEPP as a regulatory tool for a range of essential public infrastructure the organisation develops, operates and maintains. Council has also continued to develop its internal environmental impact assessment procedures and policies in response to the ISEPP provisions, including for development permitted with and without consent and also exempt development. Although our review highlights proposed further amendments and clarifications, it is clear that the 2016 amendment includes many changes that aim to ensure the ISEPP remains an efficient and pragmatic planning instrument that facilitates the efficient delivery of public infrastructure.

Please find below comments and suggestions on the proposed 2016 amendments to the State Environmental Planning Policy (Infrastructure) 2007:

Community Facilities

Public Authorities such as Tweed Shire Council have become much more active in the provision and service of community facilities and activities. With a directorate committed to Community and Natural Resources, Council is aware of the importance the community in general places on having new and redeveloped facilities important to their physical, social, cultural and intellectual development and welfare. Such facilities include libraries, meeting rooms, community markets amongst other accessible facilities essential to modern public benefit.

At present, the ISEPP does not allow for the provision of Community Facilities on Public Land under Part 5 of the Environmental Planning and Assessment Act 1979 (the Act). Consequently, such council infrastructure projects are required to be assessed under Part 4 of the EP&A Act. Given the range of built and other development that can be performed without consent and as exempt development under the ISEPP, it is reasonable that Community Facilities be permitted without consent under Division 12 of the ISEPP. Given such, Council requests that the Department:

- Give consideration to introducing development controls within the ISEPP that would allow the environmental assessment of Community Facilities under Part 5 of the Act, and where deemed to be of minimal environmental impact, as exempt development.

Notification of Councils and State Emergency Service

Regarding the amendment to Clause 15 Notification of Councils and State Emergency Service (SES) - Development on Flood Liable Land, it is noted that very large areas of the Tweed Shire are located on Flood Liable Land. There are concerns that this additional consultation requirement with SES may delay projects in the event that the SES has insufficient resources to review and respond to Council in a meaningful way. It is noted that Council already consults extensively through a floodplain management committee of which the SES are part of. This amendment is seen to be a doubling up of consultation that has already taken place. Council requests that the Department:

- Reconsider or amend the amendment to consider the limited resources of the SES and also, in the event that a floodplain network exists, that duplication of this consultation is not required.

Water and Waste Water

Tweed Shire Council is represented on the NSW Water Directorate and reiterate and endorse the following suggestions prepared by some of its members:

It is noted that for the erection of a building or a change of use of a building the water utility requirements would be covered under Subclause 20C(13) of the ISEPP:

(13) Post-works requirements if:

- (a) the development involves the erection or change of use of a building within a water supply authority's area of operations, and
- (b) the water supply authority requires a certificate of compliance to be obtained with respect to the erection or change of use of the building, the building cannot be occupied before such a certificate has been obtained.

As this subclause refers only to "erection or change of use of a building" it may not specifically apply to additions to a building. It is therefore proposed that 20C(13) be amended to read:

- (a) the development involves the erection, enlargement or extension of a building or the placing or relocating of a building or change of use of a building within a water supply authority's area of operations, and

Proposed change to clause 107(c)(viii) – while the change in this clause from “pumping station component” to “sewerage system component” is supported, a concern is that the current ISEPP specified that exempt development included “maintenance, repair, renewal or replacement”, while the amendments to the ISEPP is proposing to have the exemption applying only to “maintenance or replacement”. It is noted that the proposed definition change in Clause 5(2) indicates “maintenance includes repair”, the removal of the word “renewal” would mean that renewal of sewerage system components which does not involve replacement (e.g. relining) would not fit the definition of exempt development.

Recommendation: The new clause 107(c)(viii) be expanded to indicate “maintenance, renewal or replacement”.

Division 24 (Clauses 124 to 127) – it is noted that none of the exempt or complying development provisions in this division applies to persons licensed under the Water Industry Competition Act, 2006 and therefore under the proposed Clause 126A they require consent.

Proposed change to clause 127(b) – the reason given for deleting the current clause is inconsistent with retaining Clause 107(b).

Proposed change to clause 127(l)(m) – while the change in this clause from “pump station components” to “water supply systems” is supported, again a concern is that the current ISEPP specified that exempt development included “maintenance, repair, renewal or replacement”, while the draft ISEPP is proposing to have the exemption applying only to “maintenance or replacement”. Again the removal of the word “renewal” would mean that renewal of water supply system components which does not involve replacement (e.g. relining) would not fit the definition of exempt development.

Recommendation: The new clause 127(1)(m) be expanded to indicate “maintenance, renewal or replacement”.

Proposed Clause 127(1)(m1) – the addition of water meters to exempt development is strongly supported.

Proposed Clause 127(l)(m2) – adding telemetric equipment as exempt development is supported, but the width limit of 300mm is considered too small and it is suggested it should be at least 1000mm.

Proposed Clause 127(n)(vi) – the addition of slope stability works to exempt development is strongly supported.

Proposed Clauses 130-132 – It is noted that these only relate to the Sydney Water Corporation and Hunter Water Corporation area of operations and hence have no relevance to LWUs.

Waterway and Foreshore Management Activities

It is noted that waterway and foreshore management activities are being removed from the ISEPP and would be replaced within the draft Coastal Management SEPP. A significant amount of work in the Tweed Shire is related to riverbank and foreshore

activities and consequently, clarification is sought that such work would still be permitted without consent under Part 5 without a Coastal Zone Management Plan or Programme, especially as an interim arrangement. This is particularly relevant given the recent flooding in the far north coast resulting in an enormous amount of imminent infrastructure works.

I reiterate Council's appreciation for the opportunity to make a submission and the extension granted. Should a Department officer wish to discuss this matter further please contact David Hannah on (02) 6670 2528.

Yours faithfully

Paul Morgan
MANAGER - DESIGN