

7 April 2017

Director, Industry and Infrastructure Policy
NSW Department of Planning and Environment
PO Box 39
Sydney NSW 2001

Our Ref: 2017/094877

Dear Sir/Madam

**Submission on the draft State Environmental Planning Policy (Infrastructure)
Amendment (Review) 2016**

Thank you for the opportunity to comment on the draft SEPP (Infrastructure)
Amendment (Review) 2016.

Please find attached Northern Beaches Council's comments on the proposal. The key concerns may be summarised as follows:

- Consultation requirements with Councils are insufficient to ensure potential environmental impacts are identified and addressed.
- Potential for impact on endangered ecological communities and threatened species due to ambiguity of the term 'minimal environmental impact'.
- Absence of a cap on growth and expansion of Police facilities via exempt and complying development pathway creates the potential for significant environmental impacts.
- Potential for establishment and expansion of major hospital development in R2 and B1 zones without an appropriate level of environmental impact assessment.
- Potential to operate non-health service related facilities on health services facility land contrary to the intended purpose of the land.
- Inappropriate setback requirements for development adjoining residential zones.
- E3 and E4 zoned land is not "prescribed" land and is not subject to the same setback and other requirements in the SEPP as residential zones, potentially resulting in negative impacts on low density residential development in these zones.
- Potential for vegetation removal to occur without appropriate assessment of impacts upon ecologically endangered communities and land zoned for environmental protection.
- Insufficient complying development standards to control environmental impacts including: traffic, parking, bushfire, waterway, flooding, open space, excavation/geotechnical engineering, and heritage impacts.
- Impacts on waterways resulting from sewerage works permitted without development consent, and in particular by private operators.

- Absence of requirements to consider coastal processes and hazards in the assessment of infrastructure proposals permitted without development consent or as complying or exempt development.
- Absence of reference to required approvals under the Local Government Act and Roads Act respectively for connection to Council's stormwater system, and for major road and footpath works.

Should you have any enquiries in relation to Council's submission, please contact Amber Pedersen, Strategic Planner on (02) 9942 2600 who will be happy to assist.

Yours faithfully

A handwritten signature in black ink, appearing to be 'DK' followed by a stylized flourish.

David Kerr
Executive Manager Strategic Land-Use Planning

Draft SEPP (Infrastructure) Amendment (Review) 2016

Reference	Concern	Recommendation
Schedule 1 – Consultation and Notification		
[3] Clause 14 Consultation with Councils – Development with impact on local heritage	The requirement to consult with Council only where the proponent considers impacts on heritage items and conservation areas to be more than 'minor' or 'inconsequential' is subjective and could potentially result in unreasonable impacts.	Amend to require consultation with Council concerning all development impacting heritage and not just matters considered "minor or inconsequential".
[4] Clause 14 (2)(b) – Development with impacts on local heritage	The addition of the requirement to include a scope of works is strongly supported. Clarification however is sought to make sure this includes any plans and or reports produced for the proposal, and any other supporting material the applicant has relied upon.	Include clarification of what is to be included in the scope of works.
General Comment – Major footpath infrastructure similar to Clause 14	Similar to Clause 14, the provision of major footpath infrastructure should be subject to a pre-development scope of works detailing the location, design and extent of works and whether tree removal is required. Council's policies and specifications in regard to footpath and road asset creation should be addressed when designing these works and Councils should be given 28 days to comment. Group homes, for example, are often constructed without appropriate pre planning for footpath works. In some cases, these works involve 400m of footpath to the nearest bus stop. The delay in planning has the potential to significantly impact the environment, including the potential removal of many street trees.	Amend to require scope of works and council consultation for major footpath infrastructure.

Reference	Concern	Recommendation
Schedule 2 – Exempt and Complying Development Generally		
[2] Clause 20(2)(e)(e1) – General requirements for exempt development	Exempt development should exclude the demolition of a building or work that forms part of a heritage conservation area.	Amend accordingly.
Comment regarding SEPP (Infrastructure) 2007: Division 4 Exempt Development: Note 1.	The term “minimal environmental impact” is subjective and may result in development which significantly impacts the environment. For example, does an activity impacting on an endangered ecological community or threatened species constitute minimal environmental impact or is it only critical habitat as defined under the Threatened Species Conservation Act? It is recommended the clearing of endangered ecological communities, threatened species or critical habitat should not be considered as ‘minimal environmental impact’.	Clarification is needed regarding what constitutes or is defined as ‘Minimal Environmental Impact’. The clearing of endangered ecological communities, threatened species or critical habitat should not be considered as ‘minimal environmental impact’.
[6] Clause 20B (2) (h) – General requirements for complying development.	The new clause deals with asbestos only and does not include requirements for other contaminants such as lead dust. Inclusion of a provision applying to all complying development certificates is generally supported.	Include requirements for other potential contaminants e.g. lead dust and reference appropriate standards for removal (BCA/NCC or ASNZ Standard etc.)
[8] Clause 20C (8A)-(8D) – General	The addition of the new clauses (8A) and (8B) is strongly supported to help protect European and Aboriginal heritage. However, the success of such clauses is	Reporting of these matters to the Office of

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conditions for complying development certificates.	unclear due to the self-reporting nature of the provisions. Their operation should therefore be monitored and appropriate guidance provided to the public about the importance of the requirements and penalties for non-compliance.	Environmental Heritage should be monitored. In addition, appropriate written guidance should be provided to the public about the importance of these requirements and penalties for non-compliance
[14] Schedule 1– Exempt Development General (matter relating to carports).	The amendment to increase the maximum area for carports as exempt development from 20sqm to 36sqm has the potential to negatively impact local streetscapes, particularly in streets characterised by front setback areas that are landscaped open space without parking structures.	Maintain 20sqm maximum carport provision.
[19] Schedule 1- Exempt Development General (matters relating to fences (other than security fences or fences covered by the Swimming Pools Act 1992)).	The current detailed standards for fences in residential zones, i.e. 1.2m high for front fencing and 1.8m for side and rear are appropriate but should also apply to E4 Environmental Living and E3 Environmental Management zones.	Amend to apply the fencing requirements to E4 and E3 zones in addition to residential zones.
Schedule 6 – Electricity Transmission or Distribution		
[7] Through to [10] – “Primary Purpose”.	The requirement that the ‘primary purpose of the development is not to increase the capacity of their network’ is subjective and may result in significant increases in the capacity of the network being undertaken through other work.	Amend to provide further definition about the meaning of “primary purpose” and include a cap on increases in

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Schedule 7 – Emergency and Police facilities		
[10] Clause 48 – additions to Police stations	The proposed clause would allow a 10% increase in police staff numbers every year without limit, with potential impacts on the environment, particularly traffic, parking demand, and noise impacts. Given this is a self-assessment process, (Part 5 of EP&A Act), an absolute cap on staff increases should be included.	Amend to include an absolute cap on staff increases based on a point in time e.g. at the commencement of the amendments.
Schedule 9 - Health Service Facilities		
[1] Clause 56 Definitions.	There is no definition of a 'community health service' under either the current version of the SEPP or the Standard Instrument. Currently community health services appear to sit between the definitions of a 'health facility' and a 'community' facility. A new definition is recommended to be included in the Standard Instrument. Due to the lack of definition of 'community health service' its suitability as a use within the R2 and B1 zones is difficult to assess.	A definition of 'community health service' is included in the Standard Instrument.
[2] Clause 56, Definition of 'prescribed zone' (R2 Low Density Residential).	Permitting health service facilities (specifically: hospitals and medical centres) in the R2 low density residential zones conflicts with and undermines the intention of the zone. Health consulting rooms are already permitted in the R2 Zone under the Pittwater, Warringah and Manly LEPs. They are considered appropriate for the zone as their limited size (by definition) means potential impacts are minimised.	Amend to prohibit health service facilities (specifically: hospitals and medical centres) within the R2 Zone.
[3] Clause 56, Definition of 'prescribed zone' (B1 Neighbourhood Centre).	Permitting health service facilities (specifically: hospitals) within the B1 Zone has the potential to conflict with residential development (shop top housing) and low density development within the B1 zone (which has similarities to the low density nature of the R2 low density residential zone). Medical centres are already permitted uses across B1 zoned land under the	Amend to prohibit health service facilities (specifically: hospitals) within the B1 Zone.

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[4] Clause 57 Development permitted with consent.	Warringah, Manly and Pittwater LEPs and are considered to be appropriate. The expansion of permitted uses on health services facility land has the potential to result in the loss of land for the purpose for which it was reserved. Allowing the training of "Other professionals" may open the door to professions that are not medically related, resulting in a significant change in use without appropriate strategic consideration.	Amend to ensure land continues to be utilised for the primary purpose for which it has been reserved.
[5] Clause 58 (1) - Development permitted without consent.	There is potential for significant impacts from overdevelopment of small, privately owned sites e.g. 12 metre height development. It is recommended that only public hospitals be subject to the new clause. However, all remaining health services facilities should retain the current clause which prevents expansion of such facilities above 10% of the current number of staff or patients.	Amend to apply to public hospitals and not other health services facilities
[5] Clause 58(1) (f) - Development permitted without consent.	The proposal to allow 12m high health service facilities with 5m boundary setbacks (without consent) will potentially impact adjoining low density residential developments, particularly as no landscaping requirements are included.	The control is replaced by a control similar to the development specifications outlined in the NSW Apartment Design Guide – 2F Building Separation. Alternatively, a minimum 6m property boundary setback is required.
[5] Clause 58(2) (a) – Development permitted without consent.	Amendments to allow vegetation removal by or on behalf of a public authority on any land to facilitate a Health Care Facility may result in potentially detrimental environmental outcomes. Many Health Service Facility sites over the Northern Beaches adjoin land with various environmental sensitivities, including ecologically endangered communities and land zoned for environmental protection e.g. Manly Hospital. Council request confirmation that the provisions of cl58 (2) (a) will only apply to land that is in the 'prescribed zones' for Division 10.	Council requests confirmation that the provisions of cl58 (2) (a) will only apply to land that is in the 'prescribed zones' for Division 10.
[6] Clause 58B -	Concern is raised with the potential expansion of exempt development for private	Amend to apply to

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Exempt Development.	health services facilities resulting in negative environmental impacts. It is recommended that only public hospitals can utilise the exempt provisions.	public hospitals and not other health services facilities.
58C - Complying Development.	There is a high risk that the standards proposed are insufficient to ensure protection of the community from major redevelopment with associated impacts These provisions would permit, for example, the replacement of an existing small scale private or public 'health consulting room' within a house and comprising no more than 3 health care professionals, with a medical centre; hospital; community health service facility etc. with associated commercial premises &/or childcare facility via complying development. This new development could be built to three (3) storeys in height with 5m boundary setbacks, with no development requirements to manage, for example: • Staff and visitor carparking provisions • Local traffic generating impacts • Garbage or medical waste facility provisions • Development on bushfire prone land • Development on flood prone land • Development within 40m of a watercourse • Amenity / safety / view impacts • Bulk and scale –considering height and density requirements for development in the surrounding area • Landscaped open space provisions • Excavation / geotechnical considerations • Stormwater and sewerage system management • Consultation with surrounding landowners • Demolition of a heritage item	Remove proposed provision providing for expansion of complying development provisions to include health service facilities.
Schedule 13 – Port, wharf or boating facilities		
[12] Clauses 69 (3-	This proposed amendment has the potential to undermine the zoning of waterway	Delete this clause.

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5) – Development permitted with consent.	and foreshore land covered by the Pittwater LEP. The proposed wording is also subjective, with no restriction on the size of the facility.	
Schedule 16 – Roads and Traffic		
[15] Clause 97 (1A) - Construction of bus stops or bus shelters as Exempt Development.	It would appear that a private operator can construct bus stops or shelters as exempt development with no requirement to consider: • Minimising impact on on-street parking • Minimising lighting and acoustic impacts on adjoining residential dwellings • Consultation with Council's Local Traffic Committee	Include additional requirements for consideration to minimise development impacts.
[16] Clause 97A – Development on land within boundaries of existing bus depot as Complying Development.	The expansion of complying development for all bus operators will exceed current height limits under Council's LEPs and will potentially result in traffic and parking impacts. There is no definition for 'bus depot' in the Standard Instrument LEP. This creates difficulty interpreting proposed Clause 20B(2)(b) associated with Clause 97A, where Clause 20B(2)(b) requires that <i>to be complying development, the development must: (b) be permissible with consent, under an environmental planning instrument applying to the land on which the development is carried out</i> In this regard, it is also unclear whether Clause 20B(2)(b) only applies to: (a) the umbrella term 'bus depot' (currently not a standard LEP definition) or (b) must be applied to each complying development listed under Clause 97A, i.e. office premises must be permissible with consent in the zone in order to undertake it as complying development via Clause 97A(a) If it is (b), concern is raised that many of the uses listed as complying development under proposed Clause 97A are also not defined land uses in the standard instrument LEP (they appear to be ancillary uses to a 'bus depot' – i.e. shed, garage, fence, gate, switch room, security booth, natural gas refuelling installation; underground petroleum storage tank etc.)	Remove the clause. However, should it be implemented: • clarify the application of proposed Clause 20B (2) (b) in relation to Clause 97A. • Update Standard Instrument LEP to include definition of "Bus Depot" • Amend complying development requirements to manage development impacts.

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	Concern is also raised that the following bus depot developments impacts will not be managed via these complying development requirements, for example: (c) Complying development should not modify existing bus parking and/or staff parking provisions on the site (d) Complying development should not increase the staff numbers on the site (e) Shared use of bus and staff parking spaces is not supported (f) Development on bushfire prone land (g) Development on flood prone land (h) Development within 40m of a watercourse (i) Local traffic generating impacts (j) It is highly likely that increases in bus movements generated from a bus depot would have adverse impacts on intersections of classified roads even if the site is more than 90m away from a classified road (k) No landscaped open space provisions (l) 97A (a); (b) and (c) – side and front boundary setbacks (m) 97A (g) (iii) & (h) (iii) what is a residence?, what about setbacks from childcare centres?, commercial premises? (n) Demolition of a heritage item or in a heritage conservation area.	
Schedule 17 – Sewerage Systems		
[2] Clause 106 Development permitted with or without consent.	The proposed new clause (3B) permits private operators who hold a license under the <i>Water Industry Competition Act 2006</i> to construct sewerage reticulation systems without consent on any land. The expansion of the clause to private operators has the potential to negatively impact the environment and Council's many waterways. Northern Beaches Council has, for example, been working closely with the Department of Planning on the Ingleside Land Release. This includes managing potential impacts on downstream waterways such as the Pittwater Waterway flowing to the Hawkesbury River. Currently any sewerage works in the area must comply with Sydney REP 20 –	Maintain provisions of the Sydney Regional Environmental Plan No 20 – Hawkesbury-Nepean River (No 2 - 1997) with regard to sewerage works to protect downstream impacts Northern Beaches Council waterways.

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	Hawkesbury-Nepean River REP, which requires consent to be given, and under Part 3 Development Controls (17) Sewerage systems or works and under Subclause C, the following to be taken into consideration; (c) <i>The likely effect of any on-site disposal area required by the proposed development on:</i> • any water bodies in the vicinity (including dams, streams and rivers), or • any mapped wetlands, or • any groundwater, or • the floodplain Council would prefer these considerations under the REP to be remain, especially given the expected future development at Ingleside and potential downstream impacts on Pittwater and the Hawkesbury.	
Schedule 21 – Waste or resource management facilities		
[2] 121AA Exempt Development.	A number of illegal waste dumps/recycling facilities have previously operated in the Northern Beaches LGA. It is therefore recommended that this clause be amended to apply only to existing approved operations.	Amend 121AA (1) to state: "Any of the following development is exempt development if the development is carried out in conjunction with an existing approved waste or resource management facility".
Schedule 25 – Exempt and Complying Development SEPP		
General comment on provisions.	Moving these standards to SEPP Exempt and Complying Development is supported. However, there is a general concern that the E4 and E3 Environment Zones are not included as prescribed residential zones. These zones are predominantly residential areas in the Northern Beaches.	Amend the clause to include E3 and E4 zones within the Northern Beaches

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		Council area as prescribed residential zones.
Additional Comments		
Regarding Coastal Processes and Hazards	Coastal processes and hazards are not given appropriate consideration in the assessment of infrastructure proposals in the coastal zone. It is recommended that the following clause be inserted into the 'development permitted without consent' provisions of: • Division 7 Flood Mitigation Works • Division 12 Parks and other public reserves • Division 13 Port, wharf or boating facilities • Division 17 Roads and traffic • Division 18 Sewerage systems • Division 20 Stormwater management systems • Division 23 Water supply systems • Division 25 Waterway or foreshore management activities <i>"If a coastal zone management plan or coastal management program is in force in relation to the land on which the development is to be carried out—the public authority (or person carrying out the works on behalf of the public authority) must consider the provisions of that plan or program before carrying out the development and ensure the proposed activity it consistent with the Coastal Management Act 2016".</i>	Amend to include the suggested clause in recommended development without consent provisions.
Regarding works connecting to Council stormwater infrastructure or on Council footpaths	The SEPP makes no reference to requirements for the following approvals: • Drainage approval for connection to Council's stormwater infrastructure in accordance with Section 68 of the Local Government Act • Major road and footpath works approval in accordance with Section 138 and 139 of the Roads Act.	Amend to include reference to required approvals and referrals to Council under the Local Government Act and Roads Act.

