

26 April 2017

Our Ref: F10/47
Contact: Josh Ford, 9562 1634

Megan Webb
Acting Director, Planning Frameworks
NSW Department of Planning and Environment
GPO Box 39
Sydney, NSW 2001

Dear Ms Webb,

**RE: Bayside Council Submission – State Environmental Planning Policy
(Infrastructure) Amendment Review 2016**

Thank you for the opportunity to respond to the Department of Planning and Environment's (DP&E) exhibition of the *State Environmental Planning Policy (Infrastructure) Amendment Review 2016*.

Council has reviewed the *SEPP (Infrastructure) Amendment Review 2016*, as well as the accompanying appendices, and has prepared a submission on a number of issues that could affect the Bayside Local Government Area.

In principle, Council supports the DP&E initiative to make improvements to the SEPP. However, Council raises concerns that some of the amendments may have some unintended consequences on Council's ability to influence better amenity outcomes for residents and on Council's local strategic and infrastructure planning objectives.

If you have any queries regarding this submission do not hesitate to contact Council's Project Officer (Urban Planning), Josh Ford, on 9562 1634 or at josh.ford@bayside.nsw.gov.au.

Yours faithfully



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BAYSIDE COUNCIL
Comments on State Environmental Planning Policy (Infrastructure)
Amendment Review 2016

General Comments

Education & Childcare

The separation of education and childcare matters traditionally included in *SEPP (Infrastructure) 2007* into a standalone SEPP for childcare, early childhood education, schools, TAFEs and universities is considered a positive and necessary legislative move, given the growth and focus in planning for that sector.

Simplifying Provisions for Council's Operations

The establishment of further development activities as either exempt development or development permitted without consent enables Council to carry out its infrastructure maintenance and renewal objectives in a more streamlined manner, taking into account established processes for the preparation and acceptance of assessment under Part 5 of the *Environmental Planning & Assessment Act 1979*.

With specific reference to maintenance activities, any broadening of activities into the exempt development category for the purposes of maintenance is strongly supported on the basis that the amendments assist in identifying and implementing maintenance in a timely manner, consistent with community expectations, and responsive to risk management considerations of not achieving maintenance intervention service level standards.

Environmental Implications

Currently, development can only be considered exempt if it is listed under exempt development and will have minimal environmental impact. In light of the additional works that are permitted as exempt development, there needs to be additional information provided on what constitutes "minimal environmental impact", as this term is subjective without any such definition or parameters.

It would be helpful if DPE could provide a guideline for consent authorities outlining criteria that should be considered if works are exempt development, for example, if works are:

- Occurring on unhealthy building land or Class 1-4 Acid Sulphate Soils
- Removing vegetation within endangered ecological communities
- Damaging vegetation listed under the NSW Fisheries Management Act
- Removing vegetation listed under Noxious Weeds Act/Biosecurity Act
- Changing habitat value for threatened/migratory species
- Occurring within riparian corridors or key fish habitats

Attention is drawn to both Clause 58F(b) and Clause 66(3)(b), which state: "*Involves no greater disturbance of native vegetation than necessary*", which is a prime example of a lack of criteria / parameters which could lead to detrimental loss of vegetation on certain land.

Infrastructure Standards & Guidelines

Some clarification should be provided around standards used throughout the SEPP. There appears to be inconsistencies in the application of some standards and how current they are. Some examples are included below.

Clause 65(3)(a)(iv) relating to lighting doesn't mention any reference to restriction associated with lighting close to airports, which is pertinent to the Bayside LGA. An additional reference to air safety guidelines should be added to this subclause.

Clause 66(1)(a)(vii) relating to play equipment doesn't reference Australian Standards in relation to the installation of play equipment which should be included to strengthen this subclause.

Clause 97(1A)(c) contains an incorrect standard, namely:

- (c) *the design of any associated kerbs, access paths and ramps, lighting and signage is in accordance with AS 1482.2 and the Disability Standards.*

The clause should read:

- (c) *the design of any associated kerbs, access paths and ramps, lighting and signage is in accordance with AS 1428 - 2010 Design for Access and Mobility Set.*

Given that Australian Standards are amended and in draft form more frequently than legislation tends to be, it may be preferable to omit the Standards and instead specify the intent of complying with the relevant standards, otherwise the SEPP may be left open for interpretation.

The schedules relating to roads, cycleways and buses make no reference to the Roads Act 1993 or other relevant guidelines such as Bus Stop Guidelines, RMS Guidelines and Supplements or Ausroads Standards that have been adopted nationwide - that also apply to cycleways. References to these documents should be identified at the beginning of each relevant section.

Critical Infrastructure – Gas Pipelines

The APA Group high pressure gas transmission pipelines extend through the Bayside LGA. There are concerns that the proposed amendments in the Draft SEPP could permit certain developments as exempt or complying development within, or in close proximity to, the easements and Measurement Lengths of the APA pipelines, without due consideration to the risks to the pipeline and associated infrastructure.

Housekeeping Amendments

General

Council considers the amendments involving updating definitions and references to reflect current legislation, Australian Standards and notes to be practical, logical and a legal necessity.

Part 1 Preliminary

Council supports the proposed amendments outlined under this Division.

Part 2 Division 1: Consultation

Council supports the proposed notification requirements, including provision of the scope of works to any appropriate public authorities (such as the SES or Mine Subsidence Board) involving development without consent. The proposal to extend these consultation

provisions to cover land zoned E1 National Parks and Nature Reserves is considered appropriate.

Division 2: Additional Uses on State Land

Council supports improvements to the interpretation of this clause, however, it is not clear in either the *Explanation of Intended Effect* document or the Draft instrument itself, what those exact changes are. Council does note that the amendments will not alter the policy intent or operation of the existing provisions.

Division 3: Site Compatibility Certificates

Council would like to see the *minimum* consultation for Site Compatibility Certificates (SCCs) extended to 28 days. The Department should acknowledge that the projects included under SCCs are often at odds with the provisions of Council's LEPs in relation to zoning and development standards. Many are quite complex and while it is obvious that more than 14 days' notice is required to respond to SCCs, a minimum of 28 days allows appropriate time for Council's Planners to consider internal technical officer comments in relation to such proposals.

When considering that Gateway determinations typically have a minimum 28 day consultation period and they too affect land use in a locality, the fact that an alternative mechanism exists for site specific land use change under the SEPP should not change the consultation timeframe for the community and government agencies to assess SCCs.

Division 4: Exempt Development

Council supports the proposed amendments outlined under this Division.

Division 5: Complying Development

Council supports the proposed amendments outlined under this Division.

Part 3 Division 1: Air Transport Facilities

There are significant environmental impacts like noise, vibration, air pollution and traffic associated with "Tourist and Visitor Accommodation" in proximity to Air Transport Facilities. As such, a thorough planning assessment is required to determine the appropriateness of such development in proximity to airports. Local Environmental Plans (LEPs) provide for certain zones in which these types of uses are deemed appropriate on planning merit, and Development Control Plans (DCPs) typically include provisions relating to such areas/uses. This is considered to be the best way to manage these types of development, rather than introducing them *within* airport sites themselves. Sydney International Airport is an example by where land adjoining an airport accommodates Tourist and Visitor Accommodation in very close proximity to the airport itself.

It is considered that Council's LEPs, particularly the *Botany Bay LEP 2013*, has zoned sufficient land surrounding the airport for "Tourist and Visitor Accommodation", which has resulted in the development of a significant number of serviced apartments and hotels within Mascot. Accordingly, it is not considered necessary to permit "Tourist and Visitor Accommodation" in proximity to Air Transport Facilities through the SEPP.

If the intent is on improving convenience in international and domestic travel, it may be more appropriate for the Department to survey where tourists prefer to stay during their holidays or work related travel, since the appropriate demand for this use within airport sites needs to be established to present the relevant justification for change. If, however, this is a means

for the State government to capitalise on government-owned land within airport sites, it is the wrong planning message to send to the community and will not deliver any planning efficiencies beyond that which current Council LEPs & DCPs deliver.

Division 2: Correctional Centres

Council does not support the proposed amendment outlined under this Division as it would result in no consideration of heritage conservation areas, by virtue of omitting the current provisions of this Division and instead relying on those listed in Clause 1.17A of *SEPP (Exempt and Complying Development) 2008*.

Division 3: Educational Establishments

Council supports the proposal to transfer the provisions for Educational Establishments into a new standalone Draft Educational Establishments and Child Care Facilities SEPP.

Division 4: Electricity Generating Works or Solar Energy Systems

Council supports the proposed amendments outlined under this Division.

Division 5: Electricity Transmission or Distribution Networks

Whilst the operation of electricity networks is clearly critical to local communities and businesses, there may be impacts on residents and businesses in urban areas where the installation of electricity infrastructure, maintenance for substations and associated works are undertaken. As a minimum, notification to adjoining residents and businesses should be provided where works are likely to have significant impacts or cause significant inconvenience to residents and businesses.

Division 6: Emergency Services Facilities and Bush Fire Hazard Reduction

While Council largely supports the proposed amendments outlined under this Division, the definition of "broader alterations and additions" to Emergency Services Facilities permitted without consent should be clarified. There may be impacts on residents in urban areas where such works are undertaken. As a minimum, notification to adjoining landowners should be provided where works are of more than a "minor" impact.

Council notes that new provisions proposed for NSW Police Force facilities will enable the NSW Police Force to access the same provisions as the NSW Ambulance Service and Fire and Rescue NSW currently have access to under the existing SEPP. Council is supportive of this approach.

It is also noted that any such emergency services facilities permitted without consent will continue to require consultation with Council.

Division 9: Gas Transmission or Distribution and Pipelines

Council supports the proposed amendments outlined under this Division, noting that these amendments are in the interests of both the community and gas pipeline operators/owners.

Division 10: Health Services Facilities

Council is supportive of the intent of the SEPP amendments relating to health services facilities and the proposition of lowering costs and reducing timeframes for the delivery of these services. It is noted that expanding the residential and business zones in which certain development may be permitted will not preclude the relevant government agency consulting Council, or Council responding to, any such proposal.

The proposal to amend the definition of "Health Services Facilities" to be consistent with the Standard Instrument LEP definition is both necessary and logical.

Division 12: Parks and Other Public Reserves

Expanding development permitted with consent provisions to land that has been acquired as well as land that has been reserved for acquisition under the *National Parks and Wildlife Act 1974* is considered a reasonable and practical approach.

Council is supportive of amending the development permitted with consent provisions applying to Crown reserves so as to be consistent with the Scheme in the *Crown Land Act 1989* relating to Crown reserves.

The amendments to the SEPP which will enable additional uses to be carried out on public reserves under the control of, or vested in, Council are viewed as beneficial to Council's delivery of community assets and infrastructure. Council is supportive of proposed amendments to the SEPP that would enable development permitted without consent on Council's operational land to include uses such as roads, cycleways, landscaping, and amenities.

Division 13: Port, Wharf or Boating Facilities

In relation to permitting dredging or bed profile levelling of existing navigation channels, or to create new navigation channels without development consent, it is advised that any such provisions dictate that all relevant marine authorities (Crown Lands, RMS, NSW Marine Estate, the Port Authority of NSW etc) and adjoining councils be notified about such works.

The alignment of this component of the SEPP with the *SEPP (Three Ports) 2013* is considered logical and will result in more consistent provisions.

Division 14: Public Administration Buildings and Buildings of the Crown

There should be minimum notification requirements detailed in the SEPP for public authorities to notify councils and any relevant government agencies affected by any broader alterations and additions to public administration buildings, regardless of whether such development is permitted without consent. The community can be affected by such works and will likely contact Council about any affectations on them.

Council does not object to the proposal to permit occupation of existing buildings by public authorities without the need for development approval, where the exempt development provisions that are proposed in the amendment to *SEPP (Exempt and Complying Development Codes) 2008* for change of use can be met.

Division 15: Railways

Council raises concern over the proposal to amend the SEPP to include "temporary crushing plants or temporary concrete batching plants" in or adjacent to rail corridors as development permitted without consent. This is likely to introduce significant environmental impacts for residents adjoining rail corridors and in proximity to rail corridors. It is not considered appropriate for such intrusive uses to be permitted without consent.

Council agrees that the remediation of significantly contaminated land should not be permitted as development without consent and that land which is significantly contaminated should undergo due remediation processes. However, clarity needs to be provided around

the word "significantly" in this context. A clear measurement or standard needs to be provided here so that the appropriate legislative interpretation can be implemented under the SEPP.

The proposed amendments to introduce minor ancillary uses that are for the convenience of commuters and railway station users is supported. However, the proposal to permit Tourist and Visitor Accommodation with consent above railway stations is not supported, given the significant environmental impacts (such as noise and vibration) associated with these types of major development. There is good reason that Council has an LEP for the purpose of assessing such proposals within *relevant* zones. Similarly, retail and business premises proposed to be permitted with consent in a railway complex should not be of a nature that would more appropriate for business zoned land, as this too undermines the objectives of the LEP.

Division 17: Roads and Traffic

Council raises concern over the proposal to include provisions that permit "narrowing" of existing roads without development consent. Residents experiencing road closures, road narrowing or any interruptions to the road network are likely to contact Council and vent their concerns if such works are allowed to be undertaken without any consent or consultation. This is deemed unreasonable and unfair to local residents, as well as inconvenient and unreasonable for Council when considering Council's Delivery Program, capital works program, budgets and infrastructure planning for roads generally.

Council welcomes the requirement in the SEPP for Councils and the community to be made aware of certain projects within their local area, by requiring notification of certain development with consent to Council and owners and occupiers of adjoining land for "commuter car parks, car parking stations associated with a transit way, bus depots, and permanent road maintenance depots and associated infrastructure." This should be extended to all road and traffic items included under the SEPP.

The revised threshold of a 20,000 vehicle count per day instead of the current 40,000 vehicle per day threshold to provide noise attenuation is considered a positive inclusion that will serve to provide improved amenity for residents and sensitive land uses located on roads with high traffic volumes. The standards used to set minimum noise attenuation requirements should be the most current Australian Standards.

Council is supportive of provisions to ensure that public authorities consult with the RMS when undertaking works as "development without consent" under Schedule 3 of the SEPP.

Providing consistency in definitions between Schedule 3 of the SEPP and the Standard Instrument is strongly supported by Council.

The SEPP is confusing in that *Schedule 3 (Traffic Generating Development to be referred to Roads and Maritime Services)* sits beneath *Schedule 16 Roads and Traffic*, which may mean that it is confused with the earlier Schedule 3 of the SEPP, being *Air Transport Facilities*. The useability of the SEPP will be impaired if two Schedule 3's are included in it.

Division 18: Sewerage Systems

Council does not raise any objection to simplifying the assessment and approval process for minor lead-in sewerage and water infrastructure. However, where infrastructure

improvements are in close proximity to residential areas, notification should be provided to residents of any disturbances to residential amenity that may result during maintenance or replacement of sewerage system components. Therefore, allowing provisions to enable these as exempt development may not be appropriate.

The requirement for a Part 5 environmental assessment regardless of whether water industry infrastructure can be undertaken without development consent is considered a necessary and more robust approach than simply allowing such development to be exempt or complying in the absence of an environmental assessment.

Division 20: Stormwater Management Systems

Council supports the proposed amendments outlined under this Division.

Division 21: Telecommunications and other Communication Facilities

Where the replacement or upgrading of existing telecommunications facilities by public authorities on land reserved under the *National Parks and Wildlife Act 1974* or acquired under Part 11 of that Act has any amenity impacts on nearby residents, Council and other relevant public authorities, along with the affected residents should be consulted. Issues like visual impact, noise or aerial obstructions could potentially result from such development and Council and the community should be kept informed of any such proposals. Exempt development tends to result in little to no notification of such development types.

Council acknowledges the complying development provisions in Schedule 3A Item 5 regarding new towers being located more than 100 metres from a dwelling.

Division 23: Waste or Resource Management Facilities

Council supports the proposed amendments to permit emergency works and routine maintenance etc under certain criteria, observing that the amendments will allow for the more timely delivery of assets and works to support the operation of waste management facilities.

Division 24: Water Supply Systems

Council generally supports the proposed amendments outlined under this Division, particularly those amendments that are to support the operation and maintenance of water supply system assets.

Further clarity should be provided around the approvals and regulations process involving the delivery of water reticulation systems and water treatment systems, including relevant government agency referrals and the ongoing monitoring and compliance that would enable entities other than Sydney Water (or Hunter Water Corporation) to deliver and maintain these assets. It is understood, after all, the intent of the amendment.

Division 26: Special Provisions

N/A to the Bayside LGA.

New Division for State Sport and Recreation Centres

N/A to the Bayside LGA.

Schedule 1

Council supports the proposed amendments outlined under this Division, particularly those that recognise the importance of heritage items, heritage conservation areas and general site management provisions.

Schedule 3

As stated earlier in this submission, Council is not supportive of permitting "Tourist and Visitor Accommodation" within airport sites. Please refer to *Part 3 Division 1: Air Transport Facilities* earlier in this submission for further information.

Schedule 3A

Refer to comments provided earlier in this submission under *Division 21: Telecommunications and other Communication Facilities*.

Consequential and Other Amendments

Council notes that these minor consequential amendments to the SEPP are proposed in order to provide consistency with other legislation as a result of this Review.

Savings and Transitional Provisions

Council acknowledges the need for these provisions as a result of this Review.

Mapping under the Infrastructure SEPP

The inclusion of maps relevant to the SEPP on DPE's website and the Planning Portal is considered logical and practical by Council, as this will improve the useability of the SEPP.

The transport maps proposed to be removed from the SEPP do not affect the Bayside LGA.