



7 April 2017

Office of the General Manager

Reference File: 17/54073 (F00678)

Director Industry and Infrastructure Policy
NSW Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Sir/Madam

**SUBJECT Submission on proposed amendments to the
Infrastructure SEPP**

This letter details Blue Mountains City Council comments on the proposed amendments to the State Environmental Planning Policy (Infrastructure) 2007 (the Infrastructure SEPP).

Blue Mountains City Council supports the aims to simplify, modernise and improve the effectiveness and usability of State Environmental Planning Policy (Infrastructure) 2007 and recognises the work done to identify opportunities to expand existing provisions and address emerging policy issues with a particular emphasis on improving delivery of social infrastructure.

Council also recognises the importance of ensuring the Infrastructure SEPP continues to meet the objectives of the Environmental Planning and Assessment Act 1979, in particular the provisions of community services and facilities for public purposes and utilities.

In this submission Blue Mountains City Council has identified specific areas of concern where alternations in provisions could result in unacceptable outcomes.

Health Services Facilities

The broad land use term *health services facilities* includes *day surgeries, medical centres, community health services, health consulting rooms, facilities for the transport of patients and hospitals*. Proposed changes include the introduction of both exempt development and complying development categories for the first time and the expansion of permitted uses within new zones.

Expansion of permissible land uses into new zones

The proposed expansion of the broader permitted land use of *health services facilities* into Local Environmental Plans through the Infrastructure SEPP mechanism represents a change of policy for Council and is a continuing concern for the Council.

There is a change in the manner in which health care services are being delivered. In the past, a local GP provided primary medical services to the families within the locality however the current trend is seeing the small GP practice being replaced by larger health services facilities that provide a wide range of health and medical

services from one central suite of rooms. The larger health services facilities are generally located within or close to town centres where they are accessible to the majority of a community and the impacts such as traffic and parking are managed.

Currently, *health services facilities* are permissible in 13 zones including most of the residential zones, most business zones and 3 rural zones. This range of zones allows a wide range of potential locations for such developments.

Blue Mountains LEP 2015 prohibits *health services facilities* and *medical centres* in the R2 Low Density Residential zone. Blue Mountains Council objects to the broader land use of *health services facilities* in the R2 zone as this development is not consistent with the mandated and local zone objectives. While the development application process would consider the range of impacts associated with these land uses it sets an expectation of what land uses are considered appropriate in these zones.

The Council believes that the current provisions in the Infrastructure SEPP addresses the increasing trend towards centrally located larger comprehensive health services facilities.

R1. Blue Mountains City Council objects to the proposed inclusion of health services facilities into the R2 Low Density Residential zone.

In a similar manner, *health services facilities* and *hospitals* are prohibited in B1 Neighbourhood Centre zone in the Blue Mountains LEP 2015 but permitted under the Infrastructure SEPP in the same 13 zones as noted above. The broad land use of *health services facilities* is not compatible with the zone objectives and the application of the B1 zone.

R2. Blue Mountains Council objects to the proposed inclusion of health services facilities into the B1 Neighbourhood centre zone.

New exempt development regime within boundaries of public and private health services

Council has concern on the breadth of new activities as exempt development, especially in relation to landscaping and tree removal. As exempt development, the only controls that apply are those given in the Infrastructure SEPP itself (clause 20) and Schedule 1 of that SEPP. It is a concern how assessment against clause 20 is carried out by both private and public operators. This is especially the case where an operator has facilities across several council areas and those other councils may have no or limited controls around the removal of vegetation. It is considered likely that removal of vegetation outside the DCP provisions will occur under this clause and result in compliance issues for council.

Council also raises the issue of accountability for private operators in the identification of exempt development more broadly. There is generally a clear and transparent mechanism for public authorities in the exercising of rights under SEPPs and in particular the need to consider the relationship between the codes SEPP and the Infrastructure SEPP. It is considered likely that removal of vegetation outside the DCP provisions will occur under this clause and result in compliance issues for council.

R3. Blue Mountains City Council recommends a guideline for private health care operators be developed, similar to that proposed for non-government schools as part of the Education SEPP changes.

Notification to carry out certain development without consent

It is also noted there is no requirement to notify land owners, only occupiers of adjoining land and this should be clarified. Notification to adjacent land owners is generally included in such a clause and it is recommended that this be included.

- R4. Blue Mountains City Council recommends adjacent land owners be notified for development without consent as well as occupiers.*

This new notification to Council requirement is seen as a better outcome for the community with Council able to provide comment in this period. However there still appears to be no mechanism through which the comments provided during this notification period are to be considered in the development plans.

- R5. Blue Mountains City Council requests that the mechanisms through which the comments provided during the notification period are intended to be considered are included in the Infrastructure SEPP.*

New development without consent – vegetation clearing

It is proposed that preliminary clearing of vegetation is permissible as exempt development. It is of concern that there appears to be no qualifier that such works should, or must have minimal impact or that alternate locations are considered.

- R6. Blue Mountains City Council request clause 58(2)(a) be included in clause 58A((1) whereby Council is to be notified and responses considered prior to undertaking any clearing of vegetation.*

New complying development - height of buildings

The proposed provision of a 12m height limit for complying development will be an issue in residential areas of the Blue Mountains where building heights are generally single or double storey. As an example there could be a complying development for a 12m building in a R2 Low Density zone which has a maximum height limit of 8m, a 50% increase. Blue Mountains City Council requests that the existing LEP 2015 provisions prevail or alternatively a tiered approach to building height may be appropriate based on zone and existing mapped controls on height of buildings.

- R7. Blue Mountains City Council requests LEP Height of Building provisions remain the development standard.*

New complying development – expanded purposes

The current equivalent provision only operates in “a land use zone identified by another environmental planning instrument as a “special use” zone for a health services facility”. This control is proposed to be lifted and the expanded list of development types could then occur in any existing publicly operated health services facility in a prescribed zone, which now includes R2 Low Density Residential and B1 Neighbourhood Centre zones.

Additionally, the number of development types to be permitted is greatly expanded. As an example, where previously multi dwelling housing was permitted this has been increased to include all residential accommodation, which includes residential flat buildings and hostels. Also, the “business premises or retail facilities” category is proposed to also now include various recreation and community facilities. While these uses may already be permitted in some of the prescribed zones this is not the case for all zones.

R8. *Blue Mountains City Council notes continuing concern of the expansion of permitted land uses into LEP's through SEPP mechanisms.*

Police services facilities and police stations

It is proposed to introduce new provisions to cater for NSW Police Force facilities. These changes would allow the NSW Police Force to access the same provisions as the Ambulance Service of NSW and Fire and Rescue NSW.

Expansion of permissible land uses into new zones

This amendment will bring police service facility into equivalence with the current provisions for an emergency services facility which includes Ambulance Service of New South Wales, Fire and Rescue NSW and the NSW Rural Fire Service.

As is currently the case under the Infrastructure SEPP, all police and emergency services facilities that are permitted without consent will continue to require consultation with the relevant council and occupiers of any adjoining or adjacent land. Council supports this amendment.

Expansion of land uses as development without consent

The proposed changes which will allow alterations and additions to existing police and emergency services buildings, where there is no significant adverse impact on the amenity of the locality, are seen as appropriate and provide certainty in terms of impact on the amenity of the locality.

Expansion of land uses as development with consent

The proposed changes would require development consent for police services in residential zones, RE1, E3 and E4 zones. Council supports this amendment.

Council operational land

Blue Mountains City Council supports the proposed amendments.

Railways and commuter hubs

It is proposed to introduce new provisions for railway stations, transport interchanges, commuter carparks, bus stops and bus depots, that are intended to assist transport operators with constructing and optimising infrastructure, and to benefit transport users by providing more services and conveniences at commuter hubs.

Expansion of land uses as permissible with consent

It is proposed to introduce *Tourist and visitor accommodation* above a railway station and to permit "retail and business premises" on the ground floor level of commuter car park buildings. Council raises the following concerns with response to the proposal.

Most of the railways stations in the Blue Mountains are listed in Schedule 5 of LEP 2015 Environmental Heritage. While the development application process would consider a range of impacts associated with these developments it sets an expectation this land use is appropriate in this location.

R9. *Blue Mountains City Council requests that properties listed in Schedule 5 of Blue Mountains LEP 2015 Environmental heritage be exempt from the provisions for railways and commuter hubs.*

In the Blue Mountains, most of the commuter car parking facilities are at capacity on weekdays and Council is concerned that the proposed developments of retail or commercial land uses will increase the demand for parking. Similar to the above

point, while the development application process would consider a range of impacts associated with these developments it sets an expectation this land use is appropriate in this location.

R10. Blue Mountains City Council requests that any development proposed under the provisions for railways and commuter hubs must be for commuters only with no increase in parking demand.

The land containing railway stations, and most of the land containing commuter parking facilities, in the Blue Mountains have no associated development standards around height of building or floor space ratios.

R11. Blue Mountains City Council requests the proposed amendment does not come into effect until relevant development standards for railways and commuter hubs are introduced into the Blue Mountains LEP 2015.

Expanded range of land uses as exempt development

Council's concern with the expansion of land uses as exempt development is the potential for incremental demand on parking spaces in commuter car park areas. This is particularly the case with the use of part of a railway building up to 200m² for a shop, office, community facility or public administration which need not necessarily be associated with the commuter market but seek to attract additional non-commuter users.

R12. Blue Mountains City Council objects to any exempt development land use for railways and commuter hubs where there is any increase in the demand for non-commuter parking.

New complying development regime

Council supports the proposed new complying development regime for works at existing bus depots for public authorities and certain accredited bus service operators.

Lead-in water and sewerage infrastructure

It is proposed to introduce new provisions in the Infrastructure SEPP in order to simplify the assessment and approval process for minor lead-in sewerage and water infrastructure. These new complying development provisions will assist both private developers and private infrastructure providers. Public authorities can continue to undertake these works under Part 5 as presently provided for.

Clause 20B states that development cannot be done as complying development under the SEPP if it involves the clearing of vegetation, or removal of a tree, that requires approval or a permit under a LEP. As previously noted, DCP 2015 specifically prescribes where approval is required and this will therefore limit the application of these new provisions. Council considers it likely that removal of vegetation outside the DCP provisions will occur under this clause and result in compliance issues for council.

R13. Blue Mountains City Council is concerned about how assessment against clause 20 is carried out as part of the process of issuing a complying development certificate through a private certifier.

Operational and Housekeeping amendments

There is a range of what are referred to as operational and housekeeping amendments and those that have relevance to Council are discussed below.

Relationship with Codes SEPP

It is proposed that an existing note in the legislation that currently makes a clear reference that such exempt development 'must be of minimal environmental impact' has been amended to refer only to the Act where this requirement is noted.

While this may be seen as a removal of duplication with another Act, and that the reference is still there, the result of this change is likely to be a further reduction and exposure of this key primary control from the SEPP

It also remains a concern that key provisions about when any development may be considered exempt or complying development are contained in the Codes SEPP. In practice this first step can be missed and reliance placed only on the Infrastructure SEPP. In relation to heritage items this is of particular concern.

R14. Blue Mountains City Council objects to the amendment of Note 1 in Part 2 Division 4 Exempt development and requests that the note be retained as existing.

Correctional Facilities

It is proposed to remove heritage items and Heritage Conservation Areas (HCAs) from the exemptions from complying development for existing correctional centres and complexes. This is being proposed in order to rely on the restrictions to complying development within the Codes SEPP.

The Codes SEPP identifies heritage items and HCAs as excluded from complying development however the amendment proposed to remove this exclusion. The Council requests that this exclusion remain.

R15. Blue Mountains City Council objects to the removal of Clause 26B(1)(c) & (d) and retain the provision that correctional centres and correctional complexes are not complying development if it affects a State or local heritage item or is not within a heritage conservation area.

Conclusion

Blue Mountains City Council supports the aims to simplify, modernise and improve the effectiveness and usability of State Environmental Planning Policy (Infrastructure) 2007 and recognises the work done to identify opportunities to expand existing provisions and address emerging policy issues with a particular emphasis on improving delivery of social infrastructure. Council recognises the importance of ensuring the Infrastructure SEPP continues to meet the objectives of the Environmental Planning and Assessment Act 1979, in particular the provisions of community services and facilities for public purposes and utilities.

In this submission Blue Mountains City Council has identified specific areas of concern where a weakening of provisions could result in unacceptable outcomes. However, the underlying issue remains that the amendments proposed in the State Environmental Planning Policy (Infrastructure) Amendment (Review) 2016 is a State wide policy which at times does not recognise the importance of local context.

Lastly and importantly, Blue Mountains City Council continues to strongly object to the planning interventions being employed by the Department of Planning and Environment through state-wide instruments that effectively override local planning provisions prepared in consultation with the community. In particular, the use of state

wide planning processes to expand permitted land uses into Local Environmental Plans through the State Environmental Planning Policy mechanism.

Blue Mountains City Council makes the following recommendations in response to the community consultation of the State Environmental Planning Policy (Infrastructure) Amendment (Review) 2016:

- R1. *Blue Mountains City Council objects to the proposed inclusion of health services facilities into the R2 Low Density Residential zone.*
- R2. *Blue Mountains Council objects to the proposed inclusion of health services facilities into the B1 Neighbourhood centre zone.*
- R3. *Blue Mountains City Council recommends a guideline for private health care operators be developed, similar to that proposed for non-government schools as part of the Education SEPP changes.*
- R4. *Blue Mountains City Council recommends adjacent land owners be notified for development without consent as well as occupiers.*
- R5. *Blue Mountains City Council requests that the mechanisms through which the comments provided during the notification period are intended to be considered are included in the Infrastructure SEPP.*
- R6. *Blue Mountains City Council request clause 58(2)(a) be included in clause 58A((1) whereby Council is to be notified and responses considered prior to undertaking any clearing of vegetation.*
- R7. *Blue Mountains City Council requests LEP Height of Building provisions remain the development standard.*
- R8. *Blue Mountains City Council notes continuing concern of the expansion of permitted land uses into LEP's through the SEPP mechanism.*
- R9. *Blue Mountains City Council requests that properties listed in Schedule 5 of Blue Mountains LEP 2015 Environmental heritage be exempt from the provisions for railways and commuter hubs.*
- R10. *Blue Mountains City Council requests that any development proposed under the provisions for railways and commuter hubs must be for commuters only with no increase in parking demand.*
- R11. *Blue Mountains City Council requests the proposed amendment does not come into effect until relevant development standards for railways and commuter hubs are introduced into the Blue Mountains LEP 2015.*
- R12. *Blue Mountains City Council objects to any exempt development land use for railways and commuter hubs where there is any increase in the demand for non-commuter parking.*
- R13. *Blue Mountains City Council is concerned about how assessment against clause 20 is carried out as part of the process of issuing a complying development certificate through a private certifier.*
- R14. *Blue Mountains City Council objects to the amendment of Note 1 in Part 2 Division 4 Exempt development and requests that the note be retained as existing.*
- R15. *Blue Mountains City Council objects to the removal of Clause 26(1)(c) & (d) and retain the provision that correctional centres and correctional complexes are not complying development if it affects a State or local heritage item or is not within a heritage conservation area.*
- R16. *Blue Mountains City Council strongly objects to state-wide planning interventions being employed by the Department of Planning and Environment that effectively override local planning provisions prepared in consultation with the community.*

Should you require any additional information or wish to discuss this submission further, please contact Will Langevad, Director Development and Customer Services, on 4780 5000.

Yours faithfully

A handwritten signature in black ink, appearing to be 'L. Nicholls', with a large, sweeping initial 'L' and a horizontal line extending to the right.

LUKE NICHOLLS
Acting General Manager