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

Online submission via: planspolicies.planning.nsw.gov.au

Dear Sir/Madam

**City of Sydney comments on proposed changes to
*State Environmental Planning Policy (Infrastructure) 2007***

I refer to the Department of Planning and the Environment's public exhibition of proposed changes to *State Environmental Planning Policy (Infrastructure) 2007* (the Draft SEPP). I write to provide the City of Sydney's comments on the Draft Infrastructure SEPP.

The City provided preliminary comments on issues related to the SEPP in June 2016. While a number of issues have been incorporated into the Draft SEPP, the City understands that those relating to solar energy systems and air quality from vehicle emissions will be addressed in separate legislative updates.

Issues arising from road and traffic noise, public authority works, minor works and shade structures in parks and reserves and stormwater management provisions remain unresolved and are discussed in further detail below.

Road and traffic noise

The City supports the proposal to reduce the threshold for requiring a development to attenuate noise from an adjoining road corridor, from 40,000 to 20,000 vehicles per day.

There are however roads in the City that receive less than 20,000 vehicles per day and generate traffic noise which has a significant impact on adjoining residential development. These are roads used by heavy vehicles such as trucks and buses. Examples are Bourke Road and Lachlan Avenue in Alexandria and Chalmers Street and Elizabeth Street in Surry Hills.

The City would welcome the opportunity to work with the Department to develop a strategy to manage the noise impacts from heavy vehicles on these roads.

Recommendation 1

- (a) Retain clause 102 which reduces the threshold for requiring attenuation of noise from an adjoining road corridor from 40,000 to 20,000 vehicles per day.
- (b) Consult with the City to develop a strategy to manage noise impacts from heavy vehicles on roads which receive less than 20,000 vehicles per day.

Public authority works not relevant to core duties

The City is concerned about the ability of public authorities to approve works on City land under the SEPP despite the works not relating to the core functions of the authority.

Clause 49 of the Regulations requires landowners consent for development applications but not for development that is exempt or permitted without consent. Landowners consent is only required for other classes of development if it is required in the relevant public authority's legislation.

The ability for one authority to approve works on another authority's land has implications for ongoing management of the land which should be addressed in the Draft SEPP.

An example is the construction of bollards as 'development without consent' under clause 94 of the Draft SEPP on the public footway by NSW Government agencies that are not the roads authority. Clause 94 provides that development for the purpose of a road or road infrastructure facilities (including footpaths and associated facilities) may be carried out by or on behalf of a public authority without consent on any land. It is understood there is no requirement for land owner's consent for a Part 5 application.

It is not sufficient to rely on other legislation to ensure that landowners are involved in the development and approval of projects that affect their land and its ongoing management.

If planning approval is obtained without landowners consent, this can raise expectation that the works can proceed and prejudice processes for obtaining lawful access to land undertaken later under other legislation.

Other legislation includes provisions which enable disputes between agencies to be resolved by one or more Ministers or the NSW Premier. This can include disputes about whether a public authority agrees to grant landowners consent to another public authority. For example section 261 of the *Roads Act 1993*, states that if there is a dispute between two or more public authorities, this may be resolved by Ministers responsible for those public authorities, or if agreement cannot be reached, by the Premier. If the applicant is the Premier's department, it is likely that the Premier would direct another public authority to grant consent.

The Draft SEPP should require all landowner interests to be taken into account in the redevelopment to infrastructure at the planning assessment stage. To provide greater certainty landowners will be aware of and have a say in development proposals affecting their land, clause 94 should be amended to require public authorities to obtain landowners consent when projects are being assessed under Part 5 on land which is not in their ownership.

Recommendation 2

- (a) Amend the SEPP to establish a process to ensure ongoing management issues for the public authority which is the land owner are addressed, and
- (b) Amend clause 94 of the Draft SEPP to require that landowners consent be obtained if works by one public authority includes or impacts upon land which they do not own, regardless of whether those works require development consent.

Parks and Reserves - Minor works

Most of the minor works the City undertakes in parks are carried out under clauses 65 and 66 as 'development permissible without consent' or 'exempt development'.

The City has received conflicting advice in relation to minor works in parks such as the demolition of existing park structures, community garden and urban ecology works, amenity buildings, environmental water reuse, tanks and irrigation works.

While 'development without consent' may provide for these works, given their minimal impact it is considered that the works could be defined as exempt development under clause 66 of the SEPP.

This issue is not unique to the City, and addressing these works in the SEPP will provide clarity for councils across NSW.

Recommendation 3

Amend the Draft SEPP to include the following works as exempt with appropriate criteria:

- Demolition of certain park structures
- Community gardens and urban ecology works
- Tool sheds (as a type of maintenance depot) and amenity buildings
- Compost bins

Parks and Reserves - Shade Structures

Shade structures are permitted as exempt development under clause 66(1)(a)(i) however their size is limited to 20 square metres and 2.4 metres high by the criteria for 'awnings, canopies, pergolas and storm blinds' in Schedule 1.

The size and height restricts the effectiveness of a shade structure over a playground, which can be carried out to any size subject to setbacks from a fence. This means that a shade structure over a playground may require consent but the playground does not.

It is recommended the SEPP is amended to enable a shade structure of a more practical size to be carried out as exempt development.

Recommendation 4

Amend clause 66(a)(i) to increase the size of shade structure to facilitate more practical use in a playground.

Stormwater management systems

Division 20 of the SEPP sets out what type of stormwater management works are exempt or permitted without consent. Some stormwater drainage works that the City undertakes, and which have minimal impact, are not captured in the SEPP's existing exempt development provisions. It is not clear whether they are captured in the 'development permitted without consent' provisions.

Clause 97 addresses stormwater works under roads as exempt development. However some stormwater works may be in areas other than roads and are not covered. Clause 112 should be amended to include stormwater works in areas other than roads as exempt development.

Recommendation 5

Amend clause 112 to include the following additional development as exempt development:

- The maintenance, repair or replacement of pipelines, culverts, drainage pits, gross pollutant traps and raingardens that are required for the asset renewal purposes.
- The installation, maintenance, repair or replacement of a culverts, drains and other works to improve the quality or control of stormwater runoff that is related to localised stormwater quality or control issue that require no more than 20m of pipework to connect to the existing stormwater management system.

Solar energy systems

The City understands that the solar energy provisions are not proposed to be amended and will be transferred to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* and reviewed at a later date.

The exempt and complying development thresholds should be included in the future review of solar energy systems to remove the barriers to implementing systems. Currently photovoltaic electricity generation is capped at 10kW for exempt development and 100kw in residential area (excluding heritage conservation areas) for complying development.

The future review of solar energy system provisions should consider an increase in the thresholds, as changes may facilitate increased installation of solar energy systems. Any review of exempt and complying provisions will need to balance the need to facilitate the use of solar energy against the need to manage the visual impacts of installation in sensitive areas.

I thank you for your consideration of our comments. If you have any questions about the City's submission, please contact me on 9265 9945 or at GJahn@cityofsydney.nsw.gov.au

Yours sincerely

A handwritten signature in black ink, appearing to be 'GJahn', with a large loop at the bottom.

Graham Jahn AM
Director
City Planning | Development | Transport