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28 March 2017

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

Dear Sir/Madam

Comments on proposed changes to the Infrastructure SEPP and the new Education SEPP

[In response, please quote File Ref: 2017/266364]

Thank you for the opportunity to comment on proposed changes to *State Environmental Planning Policy (Infrastructure) 2008* and the new *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*.

Please note that the views expressed in the attached joint submission are those of Council officers and have not been reviewed by the elected Council. Council will consider these matters at its meeting of 18 April 2017. If any changes are required, a revised submission will then be made.

If you require any further explanation of the issues raised, please contact Beth Morris (Infrastructure SEPP) at 9710 0376, or Leah Wedmore (Education SEPP) at 9710 0633.

Yours sincerely

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Manager Strategic Planning

Submission: Proposed changes to the Infrastructure SEPP and new Education SEPP

Please note that this is an interim submission by Council officers and has not been reviewed by the elected Council. Council will consider these matters at its meeting of 18 April 2017. If any changes are required, a revised submission will then be made.

Council appreciates the State Government's aim of reducing complexity and streamlining the approval process for key facilities needed by a growing population. However, many elements of the changes have the potential to jeopardise neighbourhood character, streetscape quality and local amenity. The changes will undermine Council's ability to tailor controls to balance development with community priorities. Council strongly objects to the proposed changes because they are yet another step in removing councils from local development decisions. As elected representatives, Council is the best placed to understand the importance of local issues and to negotiate outcomes that balance development with neighbourhood amenity. It is considered that a more appropriate approach for the SEPP with respect to both child care centres and schools, is to tailor controls by zones. There is no reason why the controls could not respect the principal development standards in LEPs.

Key points are discussed below:

Infrastructure SEPP

1. Health services facilities into the R2 Low Density and B1 Neighbourhood Centre zones

For the residents of Sutherland Shire the greatest implication of proposed changes to the SEPP is the expanded permissibility for *health services facilities* into the R2 Low Density and B1 Neighbourhood Centre zones. As defined in the Standard Instrument, *health service facilities* include any of the following: a *medical centre, community health service facilities, health consulting rooms, patient transport facilities* and a *hospital*. The form and character of these uses are very different from low density residential dwellings. The SEPP also proposes to introduce associated uses as permissible with consent within the boundaries of existing health service facilities. These include *health research (or development) industries, commercial premises, community facilities, recreation facilities (indoor and outdoor), residential accommodation, or a building or place used for the training or education of health and other professionals*.

The maximum height of facilities is proposed to be 12m, with 5m setback from any property boundary. No floor space ratio or site coverage requirement is specified. As complying development, no community consultation will occur.

Zone objectives for the B1 and R2 zones in Sutherland Shire Local Environmental Plan 2015 (SSLEP2015) are largely taken from the Standard Instrument. Their purpose is to inform community expectations regarding the range of uses and the intensity of those uses within the zones. In the B1 zone, the zone objectives include:

- *to provide a range of small-scale retail, business and community uses that serves the needs of people who live or work in the surrounding neighbourhood.*

Similarly, in the R2 Low Density Residential zone, objectives include:

- *to provide for the housing needs of the community within a low density residential environment, and*
- *to enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The objectives of each zone talk to a scale and intensity of development ensuring that new development fits in its immediate local context. At 8.5m and 9m respectively, the maximum building heights in the R2 and B1 zones under SSLEP2015 are consistent with these expectations because it establishes a two storey building height. In the R2 zone, this is reinforced by a 35% landscaped area requirement and an FSR of .55:1.

The intensification of development proposed by the SEPP in the R2 and B1 zones is unreasonable. There are no controls on the density or form of buildings erected as complying development, and as such they will not respect neighbourhood character or the established landscape setting. Health services facilities will take the form of large commercial buildings without the benefit of landscaped front or rear landscaped setbacks. At 12 metres health services facilities could be up to four storeys in height. This will result significantly degrade amenity for neighbouring properties where the expectation is reasonably for low-intensity, 2 storey buildings in a landscaped setting.

Given the significant potential impacts these changes would have on residents in low density residential zones, or residents adjacent to B1 zones, this scale of change should not be facilitated as complying development. Community consultation is appropriate. A more appropriate and transparent approach to facilitating the delivery of health care and associated facilities is through the rezoning process. Council strongly objects to the development standards in SSLEP 2015 being overridden because they were developed in partnership with the community and reflect desired future neighbourhood character.

All Sutherland Shire hospitals (public and private) are currently zoned SP1 Health Services Facility, and are adjoined at least in part, by R2 zoned land. Under the draft SEPP, there is nothing to prevent an existing hospital from acquiring neighbouring R2 zoned land and expanding into this zone at a height of 12m. Again, this extent of change goes beyond what a resident would reasonably expect in a low density residential neighbourhood.

Proposed changes also allow public authorities to lop/remove trees without consent within the boundaries of an existing health service facility. Removal of vegetation may also result in reduced amenity for surrounding residents and loss of local habitat.

2. Noise attenuate residential development on main roads

The SEPP proposes to increase the requirement to noise attenuate residential development on main roads. This will result in improved amenity for residents, but greater costs for homeowners, developers and purchasers. The provisions refer to roads where traffic exceeds 20,000 AADT (Annual Average Daily Traffic) as identified

on the RMS website. However, RMS only has data for State maintained roads. There are Council roads that also meet this standard and where noise attenuation for residents would be of benefit. The inconsistency in the application of the policy should be corrected.

Education SEPP

Using the new SEPP to align planning provisions for child care centres with the National Quality Framework is a positive step towards improving the quality of child care services throughout NSW. As such, it is strongly supported. However, the following matters of concerns are noted.

1. Centre-based child care in Zone IN1 or IN2 – additional matters for consideration by consent authorities

The following comments are relevant to *Clause 22 Centre-based child care in Zone IN1 or IN2 – additional matters for consideration by consent authorities*. Specifically, the following subclause:

...(2) The consent authority must consider the following matters before determining a development application for the purpose of centre-based child care on land in Zone IN1 General Industrial or Zone IN2 Light Industrial.
(a) whether the proposed development is compatible with neighbouring land uses, including proximity to restricted premises, sex services premises or hazardous land uses.

Given that sex services premises and hazardous land uses are catered for in most industrial zones, it is unclear what practical guidance the wording of this clause provides a DA assessment officer. Clearer direction is required.

The clause is worded so that only existing incompatible uses are considered. How should Council consider future proposals? Should Council refuse development consent for a concrete batching plant due to the presence of a childcare centre nearby? If so, where will concrete batching plants locate, given that they are a critical urban service needed throughout Greater Sydney.

2. Non discretionary development standards

Clause 23 Centre-based child care – non discretionary development standards sets out criteria that, if complied with, prevent the consent authority from requiring more 'onerous' standards. The following extract shows the extent of this clause:

Site area, site coverage and site dimensions – the development may be located on a site of any size, cover any part of the site and have any length of street frontage or any allotment depth.

This essentially means that a council cannot refuse an application on any of these key matters. These provisions will apply in low-density residential zones and override the development standards in *SSLEP 2015* and DCP provisions establishing setbacks

and landscaping. Floor space ratio and landscape area controls are designed to work together to ensure that the bulk and scale of development is compatible with its context and locality. *SSLEP 2015* clause 6.4 (5) already acknowledges the challenges of balancing the specialised spatial requirements for child care centres with local amenity concerns by stipulating a reduced minimum landscape area for child care centres. It must also be acknowledged that not all locations are appropriate for child care centres with respect to child safety and local amenity.

Sutherland Shire is witnessing a growth in the scale of child care centres such that they extend over several lots and appear as large commercial buildings. However, Council is currently able to work with applicants so that the impacts of scale and density on the amenity of neighbours and the streetscape can be mitigated through setbacks and landscaping. Clause 23 effectively removes any negotiating power from Council because the development may cover "*any part of a site*". Similarly, this would seem to override development standards for landscape area and DCP street setback controls.

While Council understands the importance of providing quality child care places to a growing population, it also understands the need for balance. The controls governing neighbourhood amenity were developed after extended community consultation. They respond to what Council heard from the community and are not considered to be 'onerous'. It is considered that the controls set out in Clause 23 (2) (c) are ill-advised and inappropriate in a low density residential setting, such as the R2 Low Density Residential zone in Sutherland Shire.

3. Prohibition on requirement to demonstrate need or demand for child care services

Competition within the child care sector is an important concern with real and serious impacts for service provision where there is oversupply. Currently, there is no mechanism in place to force child care providers who spend a great deal of money to establish a centre, to demonstrate the need for the service. An oversupply leads to a lower level of quality in respect to the service provision, as providers will reduce staffing & other resources to maintain viability. Therefore, where no planning exists, the quality of child care can be affected. Unlike a coffee shop or other like businesses, child care involves the care & education of our next generation. It is absolutely vital that every measure is put into place to ensure the services are of the highest standard. There needs to be a social responsibility associated with the planning of child care provision in NSW.

In Sutherland Shire, we know there is an oversupply of places for the 3-5 year range, yet Council continues to receive DAs for child care centres to cater for children in this age group. Barring the identification of any serious deficiencies, these child care centres will likely be approved. At the same time, there is a demonstrable shortage of child care places for the 0 – 2 age group, with no planning mechanism to provide incentives to cater for this group.

While Council acknowledges that this is a difficult issue, it calls for further work on this matter. Better solutions are needed to the problem of aligning the demand for child care places with supply through the planning framework. With regard to *Clause 24 Centre-based child care – development control plans*, it is recommended that subclause (c) *demonstrated need or demand for child care services* is deleted.

4. Home-base child care on bushfire prone land

Council does not support the proposal to amend *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* to allow *home-base child care* on bushfire prone land as exempt development. It is considered that the proposed standards, which are subject to self-assessment only, may be too complex for some providers or not fully complied with by others. Indeed, it is also conceivable that some providers may not even be aware of the requirements.

As the development standards proposed in 2.46 are essentially the same as those in the existing Clause 3.36B, which is for complying development on bushfire prone land, the same rigour with regard to compliance is recommended. It is Council's view that home base child care on bush fire prone land should be included as complying development in the Codes SEPP.

5. School height under complying development

The construction of public or private schools as complying development under the new SEPP is of significant concern to Council because it will erode local amenity in residential zones. The *Infrastructure SEPP* currently in force sets the maximum school building height at 12m. The new *Education SEPP* proposed a maximum building height 4 storeys or 22m from ground level with a sliding scale of setbacks.

This change is likely to have dramatic consequences in Sutherland Shire, particularly where private schools are on constrained sites surrounded by low density residential neighbours. There is already a high level of community concern regarding the growth of some private schools and considerable pressure to expand existing schools in residential zones, where building heights are generally 8.5m. Allowing 22m buildings within the context of a neighbourhood built to 8.5m does not create harmonious transitions in building scale. Concerns are further exacerbated by consequent traffic congestion on local streets. Moreover, the absence of public consultation, a hallmark of the complying development process, provides no avenue for neighbours to negotiate a better outcome. Once again, the proposed controls seem out of step with public sentiment.

A height limit of 22m would allow a building of equivalent height to a seven storey residential flat building. While it is noted that there is also a 4-storey limit, the two standards do not seem to work together. Perhaps the controls may be appropriate in dense urban settings, but for the majority of public and private schools in Sutherland

Shire, the introduction of increased height limits creates an unacceptable impost on adjoining neighbourhoods and is not supported.

6. Definitions – Clause 5

The proposed definition of *centre based child care* includes a *family day care service* but then specifically excludes, *A building or a place used for home based child care and an office of a family day care service*. This definition associated to a *family day care service* seems to contradict the definition of what is not *centre based child care*.

Further clarification of what is intended of a *family day care service* is needed, as this terminology is not used within the National Regulations and Law. Within the National Legislation, an *approved family day care venue* means a place other than a residence where an approved family day care service is provided. The definitions in both pieces of legislation need to match.

7. Concurrence of Regulatory Authority – Clause 20

The concurrence approach between Council and the Regulatory Authority is an excellent step forward. However, this is currently limited to services that do not meet the indoor & outdoor space requirements. It is recommended that this approach is adopted more broadly to enable Council to focus on the building approval and the regulatory authority to focus on the quality aspects required under the National Quality Framework. The proposed SEPP and existing practice relies on Council officers to assess quality. When the applicant submits a service approval, the Regulatory Authority may place limitations on service numbers or request design changes which are too late in the process. For example, an applicant may receive a DA approval for a 120 place centre, as the service met all the requirements under the SEPP, however when gaining a service approval the regulatory authority limits the numbers to 80. This impact can have serious implications on the applicant, which could be avoided if the Regulatory Authority was involved concurrently with Council.

8. Conditions of consent

It is recommended that any conditions of consent are incorporated into the service approval process with the Regulatory Authority so ongoing monitoring is conducted and compliance is maintained.