



7 April 2017

Office of the General Manager

Reference File: 17/56479 (F00678)

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

Dear Sir/Madam

**SUBJECT                      Submission on the Draft Education Establishments and  
Child Care Facilities SEPP**

This letter details Blue Mountains City Council comments on the Draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (draft Education SEPP).

The Council recognises the draft Education SEPP will simplify and standardise the approval process for child care facilities, schools, TAFE's and universities and establishes state-wide assessment requirements and design considerations to improve the quality of these facilities. The draft Education SEPP allows for flexibility and multiple uses, recognising many sites and facilities offer shared services and co-locate with the broader community.

However the draft Education SEPP is a statewide policy substantively based on Sydney metropolitan conditions. The draft SEPP does not consider the application in regional and environmentally sensitive areas such as the Blue Mountains. Of particular concern is how the draft SEPP deals with environmental zones. In the Blue Mountains the environmental zones in the Standard Instrument LEP (SILEP) are used primarily as residential zones. Additionally there is a prevalence of split zones, particularly the E3 Environmental Management and E4 Environmental Living zones split with the E2 Environmental Conservation zone.

This submission will highlight areas of concern that are primarily centered around where the thorough strategic planning work and natural, built and social environments in the Blue Mountains Council may be at risk.

**Child care and early childhood learning**

The draft Education SEPP will introduce physical environmental requirements for early childhood education and care facilities from the National Quality Framework into the NSW planning system. It is proposed that this change will result in new child care facilities being designed and built according to key national standards, giving developers, child care providers and the community more certainty.

#### New land use definitions

The rationalisation of definitions is supported. It is noted that in terms of impact that home-based child care retains the same limit on numbers as currently contained in the SILEP. The introduction of a group term in this area however may have implications should there be mandated land use zones for this group term in the future.

The subset of mobile child care adds a new element, as does the need to consider how such an application would be assessed if it does not meet the requirements of the draft Education SEPP as exempt development, as it is not being introduced into the SILEP as a defined land use term.

In terms of development conditions, mobile Child Care does not limit length of stay, hours or number of children, or consider parking or noise issues, neither does 'Temporary relocation of services due to emergency'. It is noted there is a 12 month operation limit with this proposed term.

*R1. Blue Mountains City Council has concerns around the new term of mobile child care and requests that should the term be introduced into the SILEP, the term have a 'child' status with no mandated land use zones.*

#### New development approval regime

The recognition of home-based child care on bushfire prone land as a separate category is supported. The change in exempt provisions to permit this use for properties with a dwelling with a BAL (Bushfire Attack Level) rating up to 29 will be of great benefit in the Blue Mountains as currently such land use has been essentially prohibited if a property is on the bushfire prone land map, irrespective of BAL rating. The strict controls around these changes are supported.

#### Heads of consideration for centre-based child care on industrial-zoned land

Special provisions are proposed that must be considered when a centre-based child care facility is proposed on IN1 General Industrial or IN2 Light Industrial zoned land. These provisions are designed to minimise the risk of land use conflicts and ensure the safety and health of children, staff and visitors. Council supports this requirement.

#### Concurrence with the Department of Education

A concurrence mechanism is proposed to ensure that development proposals are compatible with key requirements of the National Quality Framework. The primary aim is to overcome the current situation where constructed facilities may require modification after completion in order to meet the National Quality Framework requirements. Council supports this requirement.

#### Non-discretionary development standards

The draft Education SEPP includes non-discretionary standards for centre-based child care. A development application for a centre-based child care cannot be refused by a consent authority on the grounds of location, indoor or outdoor space, design, site area or colour.

While the permissibility of centre-based child care is in the LEP, there are some development standards contained within a DCP that pertain to the grounds given above.

In the case of Blue Mountains DCP 2015, there is a provision that prohibits a child care centre (as currently defined) on a battle-axe allotment or where the access is to be provided via a right-of-carriageway due to the potential for amenity, traffic and noise impacts on adjoining properties.

Blue Mountains Council believes the above development condition has merit and should continue to be used in the assessment of centre-based child care.

- R2. Blue Mountains City Council considers the planning grounds for the control of child care facilities in certain location in Blue Mountains DCP 2015 is valid and requests an amendment in the Draft Educational Establishments and Child Care Facilities SEPP to give Council's control via such exemption in their DCP.*

#### Assessment of applications for centre-based child care

The draft Education SEPP states that Part 2 of the Draft Child Care Planning Guideline must be considered and Part 3 may be considered, when assessing development applications for centre-based child care, ensuring development proposals are assessed against consistent criteria. Blue Mountains City Council supports this requirement.

#### Schools

Planning controls for schools currently exist in the Infrastructure SEPP and will be repealed from the Infrastructure SEPP and transferred into the draft Education SEPP. Additional provisions are also proposed in order to assist in the delivery of essential school infrastructure.

#### Development with consent

Under the draft Education SEPP an existing school will be able to expand into adjacent land even if not in a prescribed land use zone. Within the Blue Mountains, split zonings are relatively common in response to the sites characteristics. Typically this occurs on allotments adjoining bushland where part of the site is zoned E2. Many of the schools in the Blue Mountains have split zones, often where one zone is a prescribed zone and the other not.

- R3. Blue Mountains City Council raises concerns about the implications of expansion of schools into adjoining non-prescribed land use zones and requests that this position be clarified.*
- R4. Blue Mountains City Council requests that the Draft Educational Establishments and Child Care Facilities SEPP prohibits expansion into land zoned E2 Environment Conservation.*

The draft Education SEPP appears to prescribe that any new school, or major modifications to schools, would be considered either as State Significant Development if above a certain monetary value, or be decided by the relevant Sydney Planning Panel or Joint Regional Planning Panel.

- R5. Blue Mountains City Council raises concerns to the change in development application determination and how the role of Council should be considered in the proposed process and requests that the current position remain unchanged*

#### Caps on development consent

The draft Practice Note prescribes how cap conditions are to be considered and when development consent is required, reliant on an existing cap being set. However it is unclear what is required when there is no development consent with a cap for a school.

- R6. *Blue Mountains City Council requests clarity be provided where there is no development approval for schools and TAFE's. The Council requests that where proposed work, nominated under the Draft Educational Establishments and Child Care Facilities SEPP must have development approval and, if no such development approval exists, that it must be obtained prior to commencement of any such work.*

#### Zoning of school sites

The draft Education SEPP includes provisions for site compatibility certificates to facilitate more consistent zonings and flexible use of school sites with special use zonings. These provisions will permit a school site to adopt the zoning of adjoining land to enable development that is permissible on adjoining land to also be carried out on the school site despite the provisions of the applicable LEP.

- R7. *Blue Mountains City Council requests clarification in relation to the issuing of compatibility certificates where developments are located in zones other than a prescribed zone.*

#### Design of schools

Council generally supports the design quality principles for schools in Schedule 4 which are now included in the draft Education SEPP.

#### Traffic issues associated with school development

Traffic impacts, demand for parking and road safety in the traffic network surrounding schools are key concerns arising from development occurring at schools. This increase in scope of referral proposed additionally for complying development is supported.

#### Development without consent

The Council have concerns with the change in development permitted without consent compared with that currently permitted in the equivalent clause in Infrastructure SEPP. As an example, portable classrooms are currently permitted as development without consent if the classroom is located more than five metres from the property boundary. Under the proposed clause this is now 5m only for residential zones and 1m to all other zones. As previously noted, environmental land use zones in the Blue Mountains are applied to land used for residential purposes, and in many instances adjoin schools.

- R8. *Blue Mountains City Council requests that a minimum 5m side and rear setback be required for all school, universities and TAFE buildings.*

The Council also has concerns with respect to broader issues around cumulative actions undertaken using these clauses. While these clauses operate only when the development to be carried does not increase student or staff numbers by 10%, that 10% is only set in comparison with the year before. With no caps on development undertaken without consent, multiple increases in development over a number of years can be undertaken which could significantly increase school size and adversely impact on the surrounding locality.

- R9. *Blue Mountains City Council requests that the criteria for increases in student or staff numbers be increased to an average of numbers for the past 5 years for school and TAFE developments.*

The expansion to non-government schools raises concerns that are only partially addressed by the stated action of preparing an *Environmental Assessment Code of Practice* to assist non-government schools with environmental assessment and determination. It is likely that even with supporting material that issues around complaints and associated compliance action will fall to Councils.

- R10. *Blue Mountains City Council notes the potential for issues around compliance and transparency of decision making, on when to operate under the Draft Educational Establishments and Child Care Facilities SEPP, remain. It is requested the SEPP comprehensively brings all potential issues and references into a single document.*

#### Exempt development

The Council have concerns regarding what appear to be significant changes in how landscaping and clearing can be carried out as exempt development.

As an example, landscaping works have previously been limited to be in conjunction with another exempt development type and not by itself. There are no associated development standards in Schedule 1 to the draft Education SEPP for Exempt Development and there is no limit prescribed on the extent of such landscaping works or how that may be defined.

The Council requests that any such landscaping be compliant with the provisions of the Blue Mountains DCP 2015 or at the very least development standards be included in Schedule 1 for landscaping works addressing matters such as the retention of existing trees which are of ecological, aesthetic or cultural significance, that any landscaping is designed, constructed and maintained to appropriately manage the interface with adjoining land and that minimises bushfire risk.

- R11. *Blue Mountains City Council considers the planning grounds for landscaping and vegetation clearing in Blue Mountains DCP 2015 is valid and requests an amendment in the Draft Educational Establishments and Child Care Facilities SEPP to give Council's control via such exemption in their DCP.*

The Blue Mountains contains rich biodiversity values and natural resources due to its unique setting within the Greater Blue Mountains World Heritage Area, and a network of bushland connecting the towns and villages. The natural areas are comprised of unique landscape and geological features, environmentally sensitive areas including rock outcrops, watercourses, wetlands, swamps, heath and scrub, woodland and forest vegetation.

Within the Blue Mountains the clearing of up to 2 hectares of vegetation is not considered minor works and it is requested that this control remain as development without consent with the need to consider environmental impacts remaining a consideration. Weakening of environmental controls could result in increased removal of vegetation without due consideration to the specific characteristics of individual sites.

The Council also notes concerns around the impacts of such exempt development on riparian and sloping lands, all of which are prevalent site constraints in the Blue Mountains region.

There is also no guidance as to the use of the clearing 2 hectares provision multiple times. It could be the case that each individual clearing act would be less than 2 hectares but over a period of a few years it could total well in excess of that amount.

*R12. Blue Mountains City Council request the 2 hectare clearing control remain as development without consent for schools and universities*

#### Complying development

The Council has significant concerns that the development standards have been changed greatly from those contained in the current Infrastructure SEPP.

As an example, the current maximum building height is 12m and under the draft this will change to 22m, an increase of over 80%. This provision will apply irrespective of the Height of Buildings noted in the LEP or consideration of site characteristics or developments on adjacent or adjoining sites.

*R13. Blue Mountains City Council requests LEP Height of Building provisions remain the development standard.*

Compared to the current Infrastructure SEPP provisions, the draft Education SEPP proposes significantly reduced setbacks from 5 metres to 1m, except from residential zoned land, for building up to 12m. For buildings up to 22 metres the setback would be 10 metres to a residential zone and 4 metres to other zones.

One scenario could be new buildings up to 22m in height being set back 4m from an environmental zone such as E2 Environmental Conservation. This setback provision would similarly apply to E3 Environmental Management and E4 Environmental Living zones. Within the Blue Mountains LEP 2015, the E3 and E4 zones are applied to land suitable for residential purposes that are situated just beyond the town centres. Many of the schools in the Blue Mountains adjoin land with an environmental zone and the setbacks proposed as a major concern for the Council. This concern is captured as part of the earlier R8 recommendation.

The Council have concerns regarding the new requirement around landscaping as the 3 metres of landscaping along the property is only for R1 to R4 zones and not for any other zones. As noted above, the E3 and E4 zones in the Blue Mountains contain dwellings.

*R14. Blue Mountains City Council requests that the requirement for 3 metres of landscaping along the property boundary be required where any adjoining property is developed for a residential purpose.*

#### Universities

Currently, the Infrastructure SEPP has limited provisions applying to universities. It is proposed to transfer these provisions into the proposed draft Education SEPP, and include additional provisions for exempt and complying development.

Similar to exempt development for schools, Blue Mountains City Council have concerns regarding what appear to be significant changes in how landscaping and sporting fields can be carried out as exempt development.

#### Development without consent

The Council notes concern regarding setback distances specifically from an adjoining environmental zone. As noted above environmental zones in the Blue Mountains are

applied to land used for residential purposes. This concern is captured as part of the earlier R8 recommendation.

#### Exempt development

The Council notes concern regarding the absence of development standards in Schedule 1 for landscaping works. As noted above in “schools”, Council requests that development standards for landscaping be compliant with the relevant provisions of the Blue Mountains DCP 2015. This concern is captured as part of the earlier R11 recommendation.

As previously discussed, the Council requests that the 2 hectare clearing control be development with consent due to the environmentally sensitive landscape in the Blue Mountains region. This concern is captured as part of the earlier R12 recommendation.

#### Complying development

The Council has significant concerns that inappropriate building heights can be achieved as complying development irrespective of LEP 2015 provisions or existing adjacent developments. This concern is captured as part of the earlier R13 recommendation.

As noted previously, the Council has concerns regarding the reduced setback from adjoining properties and particularly from environmental zones. This concern is captured as part of the earlier R8 recommendation.

The Council have concerns regarding the requirement that 3 metres of landscaping along the property is only for R1 to R4 zones and not for any other zones. This concern is captured as part of the earlier R14 recommendation.

#### **TAFE establishments**

Currently planning provisions applying to TAFE NSW institutes are contained within the Infrastructure SEPP. It is proposed to transfer these provisions into the draft Education SEPP, and include some minor additional provisions for exempt and complying development.

#### Development without consent

The Council notes concern regarding setback distances specifically from an adjoining environmental zone. As noted above environmental zones in the Blue Mountains are applied to land suitable for residential purposes. This concern is captured as part of the earlier R8 recommendation.

The Council have concerns with respect to broader issues around cumulative actions undertaken using these clauses. While these clauses operate only when the development to be carried does not increase student or staff numbers by 10%, that 10% is only set in comparison with the year before. This concern is captured as part of the earlier R9 recommendation.

The draft Practice Note prescribes how cap conditions are to be considered and when development consent is required, reliant on an existing cap being set however it is unclear what is required when there is no development consent. This concern is captured as part of the earlier R6 recommendation.

#### Exempt development

The Council notes concern regarding the absence of development standards in Schedule 1 for landscaping works. As noted above in “schools” Council requests that

development standards for landscaping be compliant with the relevant provisions of the Blue Mountains DCP 2015. This concern is captured as part of the earlier R11 recommendation.

#### Complying development

The Council has significant concerns that inappropriate building heights can be achieved as complying development irrespective of LEP 2015 provisions or existing adjacent developments. This concern is captured as part of the earlier R13 recommendation.

As noted previously, the Council is concerned regarding the reduced setback from adjoining properties and particularly from environmental zones. This concern is captured as part of the earlier R8 recommendation.

#### **Conclusion**

Blue Mountains Council supports the aims to simplify and standardise development assessment process and recognises the work done to address the issues facing educational and child care establishments to allow this sector to be more responsive to changes in demand.

However, the underlying issue remains that the proposed State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 is a State wide policy which does not recognise the differences between metro Sydney and regional areas.

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.

Blue Mountains City Council makes the following recommendations in response to the community consultation of the Draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017:

- R1. *Blue Mountains City Council has concerns around the new term of mobile child care and requests that should the term be introduced into the SILEP, the term have a 'child' status with no mandated land use zones.*
- R2. *Blue Mountains City Council considers the planning grounds for the control of child care facilities in certain location in Blue Mountains DCP 2015 is valid and requests an amendment in the Draft Educational Establishments and Child Care Facilities SEPP to give Council's control via such exemption in their DCP.*
- R3. *Blue Mountains City Council raises concerns about the implications of expansion of schools into adjoining non-prescribed land use zones and requests that this position be clarified.*
- R4. *Blue Mountains City Council requests that the Draft Educational Establishments and Child Care Facilities SEPP prohibits expansion into land zoned E2 Environment Conservation.*
- R5. *Blue Mountains City Council raises concerns to the change in development application determination and how the role of Council should be considered in the proposed process and requests that the current position remain unchanged.*
- R6. *Blue Mountains City Council requests clarity be provided where there is no development approval for schools and TAFE's. The Council requests that where proposed work, nominated under the Draft Educational Establishments*



*and Child Care Facilities SEPP must have development approval and, if no such development approval exists, that it must be obtained prior to commencement of any such work.*

- R7. Blue Mountains City Council requests clarification in relation to the issuing of compatibility certificates where developments are located in zones other than a prescribed zone.*
- R8. Blue Mountains City Council requests that a minimum 5m side and rear setback be required for all school, universities and TAFE buildings.*
- R9. Blue Mountains City Council requests that the criteria for increases in student or staff numbers be increased to an average of numbers for the past 5 years for school and TAFE developments.*
- R10. Blue Mountains City Council notes the potential for issues around compliance and transparency of decision making, on when to operate under the Draft Educational Establishments and Child Care Facilities SEPP, remain. It is requested the SEPP comprehensively brings all potential issues and references into a single document.*
- R11. Blue Mountains City Council considers the planning grounds for landscaping and vegetation clearing in Blue Mountains DCP 2015 is valid and requests an amendment in the Draft Educational Establishments and Child Care Facilities SEPP to give Council's control via such exemption in their DCP.*
- R12. Blue Mountains City Council request the 2 hectare clearing control remain as development without consent for schools and universities*
- R13. Blue Mountains City Council requests LEP Height of Building provisions remain the development standard.*
- R14. Blue Mountains City Council requests that the requirement for 3 metres of landscaping along the property boundary be required where any adjoining property is developed for a residential purpose.*
- R15. 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 further information please contact Will Langevad, Director Development & Customer Services on 4780 5000.

Yours faithfully



LUKE NICHOLLS  
Acting General Manager