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7 April 2017

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

Dear Sir/Madam

RE: DRAFT STATE ENVIRONMENTAL PLANNING POLICY (EDUCATIONAL ESTABLISHMENTS AND CHILD CARE FACILITIES) 2017

Please find attached a submission on the Draft Sate Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 prepared on behalf of Catholic Education, Diocese of Wollongong by City Plan Services.

Catholic Education, Diocese of Wollongong thanks you for the opportunity to comment on the proposed changes to the planning controls for schools.

Yours Sincerely,

Robert Hamilton

Finance, Facilities, ICLT and Planning
Catholic Education, Diocese of Wollongong

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7 April 2017

Director, Industry and Infrastructure Policy
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PO Box 39,
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Dear Sir/Madam,

RE: DRAFT STATE ENVIRONMENTAL PLANNING POLICY (EDUCATIONAL ESTABLISHMENTS AND CHILD CARE FACILITIES) 2017

We make this submission on the Draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 ("the draft SEPP") on behalf of the Catholic Education Office - Diocese of Wollongong (CEODoW).

SUMMARY OF SUBMISSION

Our submission relates only to the provisions of the draft SEPP relevant to schools.

The CEODoW supports the general principles of the Draft SEPP and most of its provisions, however, does seek clarification on certain proposals and raises concerns with a few specific proposals that we believe warrant amendment prior to finalising the SEPP.

GENERAL

The Diocese of Wollongong provides a Catholic education to over 19,000 students across 38 schools in the southern Sydney and Illawarra regions. Enrolments in these regions are rapidly increasing and the capacity of existing and newly establishing CEO schools to keep pace with demand is a significant challenge. Under current planning approval processes, new projects, including very minor proposals that fall outside of exempt and complying development provisions, are regularly subject to substantial approvals delays and unreasonably onerous conditions. The delays, costs and inconveniences that result, are ultimately borne by the local school communities (parents, children and staff). It is therefore essential that planning processes for school developments are streamlined. We consider that this can readily be achieved without environmental risk and we believe that the proposals contained in the draft SEPP and associated documents are a positive step in that direction.

So, whilst we support the majority of the provisions of the draft SEPP, we will address our concerns in relation to some specific aspects under the headings of the separate approval pathways in the draft SEPP, as follows.

DEVELOPMENT WITH CONSENT

Design quality principles

Proposals requiring development consent must demonstrate consistency with new design quality principles outlined in Schedule 4 of the Draft SEPP.

Whilst some of these principles may be considered by some consent authorities when currently assessing DA's, not all the principles will be relevant or of equal importance to every proposal.

A consent authority will address these types of principles, as relevant to the particular proposal, as part of its obligatory Section 79C considerations. Usually, if an issue is of little or no relevance to a development, it is not necessary to address it in the council assessment report. In general, only those matters of determinative importance warrant the provision of detailed information from the applicant and specific consideration in the assessment report.

The concern is that in requiring these 7 design quality principles to be specifically considered for school DAs, regardless of their scale, nature or risk, the application and assessment process will become overly and unnecessarily complicated for many 'innocuous' applications.

For example, is it really necessary for a consent authority to make an assessment of the *"whole-of-life-cycle approach underpinned by site wide strategic and spatial planning"*, for what may be minor alterations to a school?

Also, we consider that certain of the principles go to matters of internal design preference and the operational and financial circumstances of individual schools, rather than being matters requiring public regulatory control through the development assessment system.

There is a danger that mandating that consent authorities report against these specific design principles may result in unnecessarily onerous documentation being required to accompany DAs, consent authorities dictating internal school operational outcomes, and a general increase in DA assessment times.

Therefore, we recommend that Clause 29(5) is amended to state:

*"…. in accordance with the design quality principles set out in schedule 4***, as may be relevant to the specific development.***"*

We also recommend that guidance be provided to consent authorities in the form of a Circular, on the manner in which the principles should be applied in various circumstances. There should also be guidance on what matters are appropriately Section 79C 'public interest' considerations and what are matters of 'private preference' that have no external impacts and can and should be left to individual school providers.

We also suggest that clarification is required in relation to which specific developments these principles apply to. We note that they do not apply to Clause 29(2), which relates to types of school development that may be undertaken as complying development. We assume that since such development is also permitted under the more general provisions of Clauses 29(1) and (3), a distinction can be made. Our assumption is that the principles do **not** require specific assessment (even though requiring general assessment where relevant under Section 79C) if they are the specific forms of school development described in Clauses 33(1) and 34(2), whereas every other form of school development requires their specific consideration. In the absence of some form of note to that effect, it is highly likely that consent authorities will

consider themselves obliged to assess the design principles for say a classroom or administration building within the boundaries of an existing school because it is also "development for the purpose of a school" in the terms of Clause 29(1). If our assumption above is correct however, this would not be the case.

We recommend these requirements are clarified via a note to the clause in the SEPP.

State significant development

The proposal to classify any new school, and alterations and additions to existing schools with a capital improvement value of over $20mil, as "state significant development" (SSD) requires some clarification and possible adjustment. CEODoW supports in principle school development of a significant scale becoming SSD and the proposal to grant consent despite variations to LEP development standards.

However, clarification is sought in relation to what constitutes a "new school". For example, the CEODoW recently lodged an application for a temporary school comprising demountables, on a greenfield site in a release area, to establish a presence for the growing community ahead of a future application for the permanent school. As this is technically a "new school", the proposed SSD provisions appear to be triggered. However, as a relatively small, innocuous and low risk proposal, it would not appear to warrant the statutory processes and State government level involvement inherent with SSD.

We consider that a more appropriate threshold for any school development, new or additions to an existing school, to be SSD, is $30 mil.

Planning panels

The explanatory document exhibited with the draft SEPP states that: *"It is also being considered that a further option could be to make a separate amendment to the EP&A Act to make the relevant planning panels the consent authority for all other development applications relating to schools."*

We submit that the current $5 mil threshold for school development determinations by planning panels is reasonable and appropriate and should be maintained. The additional planning panel timeframes and processes are generally not necessary for minor school development that can be expeditiously dealt with under Council delegations in most cases.

However, an additional provision that we support would be to enable the applicant to request a school development less than $5 mil that has not been determined by the Council within 90 days, to be determined by the planning panel.

DEVELOPMENT WITHOUT CONSENT

CEODoW strongly supports the proposal to bring non-government schools into line with government schools in relation to school development that may be undertaken without consent.

COMPLYING DEVELOPMENT

Types of complying development

CEODoW strongly supports the proposal to expand the range of school development that may be undertaken as complying development and the development standards relating to that development.

However, we recommend that internal roads are made an additional category of complying development. This could be subject to a requirement that the road does not involve a new connection to an external public road. New school buildings or facilities sometimes require an extension to the existing internal school road system. Such roads generate no additional traffic external to the school site and have no greater impacts than other categories of complying development such as at grade car parks.

RMS Certification

We are concerned with the proposal to require CDC applications for schools involving 50 additional students to be accompanied by a certificate *"certifying that any impacts on the surrounding road network as a result of the development are acceptable or will be acceptable."*

Our concerns are twofold. Firstly, on what basis will the RMS make decisions as to the "acceptability" of the development? The inclusion of the term "or will be acceptable" could also imply the potential for the RMS to require the road network to be upgraded by the school to make it acceptable. We question on what basis such upgrades could be implemented.

Secondly, from an administrative viewpoint, many developers and Councils experience difficulties with obtaining timely responses from the RMS on development matters. This remains an issue despite provisions relating to integrated development and referrals under the ISEPP that enable matters to be determined if no response has been received from the RMS within a specified time (21 days).

If a CDC application cannot be lodged without a RMS certificate, in the absence of any statutory obligation on the RMS to issue those certificates within a specified period, CDC application lodgement could be indefinitely delayed or thwarted.

We believe an alternative process of obtaining RMS input to major traffic generating school development must be adopted.

"Contravention" of conditions of consent

It is proposed that CDCs cannot allow development "in contravention" of any existing conditions of development consent applying to any part of the school relating to hours of operation, noise, car parking, vehicular movement, traffic generation, loading, waste management, landscaping or student or staff numbers.

We are concerned as to how a certifier may interpret what constitutes a "contravention" of a condition and as a consequence, feel constrained to issue a CDC. For example, a pre-existing consent for a school may contain the fairly standard condition that the development must be carried out in accordance with an approved landscape plan. If that landscape plan shows vacant 'green space' on the part of the schools site where a proposed CDC building is to be located, could that be considered to not be consistent with that condition of consent?

Such a provision may also encourage some Councils to impose very specific and restrictive conditions on school consents that could severely inhibit future use of CDC provisions on those sites.

We consider that further consideration of these provisions is required to avoid these potential problems.

Council-only CDCs

The explanatory document exhibited with the Draft SEPP states that *"one option being considered as part of the reforms is that all applications for complying development certificates for school infrastructure be issued by council certifiers. This proposal would ensure that councils still have some oversight and involvement in the development of school infrastructure in their local area."*

We strongly disagree with this suggestion and urge that it not be implemented. We do not understand the motivation as outlined in the above excerpt. CDCs (with the possible exception of the proposal for design quality overview for buildings over 12 metres high), do not involve any merit assessment; they are essentially a 'check-a-box' approval mechanism for development categories deemed by the SEPP to be relatively low impact and low risk. In those circumstances, how does Councils "involvement" add value to the system? They cannot seek to alter proposals that comply with the relevant development standards. They would be simply implementing the same administrative processes that can be performed equally well by a private certifier.

The suggestion of providing Councils with "some oversight" of school CDCs appears to imply a lack of trust in private certifiers. Apart from calling into question the integrity of the whole private certification system that the government has championed as a means of streamlining planning approvals in NSW, it is not clear why schools, in particular, warrant such "oversight" more than other forms of development.

Cap on students

The Draft Circular on student caps appears to be a reaction to a concern that consent authorities will impose unreasonable or unnecessary caps on student numbers to limit the potential future utilisation of CDCs on school sites. This concern is likely to be realised in some (but not all) council areas and we are not confident that a Circular, which carries little statutory weight in development assessment, will overcome that concern.

We recommend further consideration is given to avoiding the potential imposition of unreasonable or unnecessary caps on students, or by providing a mechanism to allow CDCs to be issued, subject to safeguards, despite exceeding a cap (particularly if the cap is demonstrably unnecessary).

We note the following comment in the explanatory document:

"Alternatively, if future proposed works are likely to be outside the scope of the complying development or development without consent provisions, the applicant should consider lodgement of a stage development application under section 83B of the EP&A Act. This seeks consent for an overall concept or masterplan for the site, with a maximum number of student and staff numbers based on factors including population and enrolment forecasts and the maximum operating capacity of the site. Subsequent development applications to carry out works in accordance with the Concept Approval would then need to be lodged as required."

We seek clarification as to whether, in the case of staged development that has been commenced so as to be an "existing school", a CDC can be used in lieu of future staged DAs. If the situation is not already clear in this regard, we suggest that it be made so in the final documentation. We suggest that it is appropriate that CDCs should be able to substitute for subsequent stages of a concept approval.

EXEMPT DEVELOPMENT

CEODoW strongly supports the proposal to expand the range of school development that may be undertaken as exempt development.

Thank you for the opportunity to comment on the proposed changes to planning controls for schools. Should you require further clarification or information in relation to the content of this submission, please do not hesitate to contact the undersigned on 8270 3500.

Yours Sincerely,

David Ryan
Executive Director