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### **Draft Educational Establishments and Child Care Facilities SEPP (2017)**

The National Trust of Australia (NSW) makes the following submission in relation to the exhibition of the new education-based State Environmental Planning Policy, the Draft Educational Establishments and Child Care Facilities SEPP (2017), under the Environmental Planning & Assessment Act 1979.

In summary, the Trust objects to the assumption of the SEPP that all significant heritage places are already listed on SHR and LEP heritage lists, which leaves many significant places vulnerable to exempt and complying development without consent or consideration ways of conserving their heritage significance.

The trust particularly objects to the following provisions:

- Part 2, Division 1, Clause 9 (1) (a) where the effect on the heritage significance of an item is not to be in a way that is “more than minimal”.
- Clause 23 (c) that a childcare centre development may be located on a site of any size, cover any part of a site and have any length of street frontage or any allotment depth.
- Clause 23 (d) that a development may be of any colour or colour scheme unless it is a heritage item or in a heritage conservation area.
- Clause 29(3) that development may be carried out by any person with consent on the following land that is not in a prescribed zone: (a) development for the purpose of a school—on land within the boundaries of an existing school, (b) development for the purpose of the expansion of an existing school—on land adjacent to land within the boundaries of an existing school.
- Clause 30(1)(e) that permits demolition of buildings or structures without consent.
- Clause 30(1)(a)(v) that permits a car park not more than one storey high to be permitted without consent. Only an on-grade carpark should be permitted without consent.
- Clause 30(1)(b) (iii) that alterations or additions to the external facade of a building that do not increase the building envelope (for example, porticos, balcony enclosures or covered walkways) constitute “minor alterations and additions” to a building that should be permitted without consent.
- Clause 32(g) that permits a sporting field, tennis court, basketball court or any other type of court used for sport, and associated awnings or canopies, if the development does not involve the clearing of more than 2 hectares of native vegetation as exempt development.

In conclusion, a thorough heritage survey of educational and childcare places throughout NSW—with resultant heritage listing of relevant significant places currently unprotected—is required before this SEPP is enacted.



## Introduction

This Draft Educational Establishments and Child Care Facilities SEPP (2017) (the SEPP) is wide ranging in its scope and will have a major impact on the built and natural environment in New South Wales. The SEPP is concerned with educational establishments and early childhood education and care facilities throughout the State. It affects:

- Early Childhood Education and Care Facilities
- Schools
- Universities
- TAFE establishments

The SEPP applies to both government and non-government institutions.

## Child Care

According to the Australian Government *mychild.gov.au* website, there are almost 3000 places in NSW offering Long Day Care. Given that under the SEPP “centre-based child care” includes not only long day care but, occasional, out-of-school-hours, preschool and family day care services, the potential impact of this SEPP is enormous. It is assumed that even a church hall that is used for a pre-school centre would fall under the provisions.

## Schools

According to the Australian Schools Directory<sup>1</sup> there are 3,136 schools in NSW, with approximately 1488 schools in Sydney alone. The majority of schools in NSW (approximately 2,200) are government schools. The NSW Department of Education currently has a Heritage Conservation Register to comply with Section 170 of the *Heritage Act 1977*. This Heritage Conservation Register dated 20th July 2016 shows the Department of Education has heritage listed buildings and items on 571 school sites across NSW<sup>2</sup>. Some items are listed on the State Heritage Register, and some are on the relevant Local Environment Plan (LEP).

The Trust acknowledges that the Department has made some efforts to update its Section 170 Conservation Register. In June 2010, there were 529 items listed across the entire Department of Education and Training (this included school, TAFE and administration sites), suggesting that 42 sites have been added to the register since then<sup>3</sup>. Yet there are undoubtedly many government schools of heritage significance that are not on this list. For example, Bathurst High School (1926) is listed on the Bathurst LEP but is not listed on the Department’s own Section 170 Heritage Conservation Register. Such lapses contravene the Heritage Division HAMS guidelines that all items on statutory registers should be included on Section 170 Registers.

Heritage and conservation registers include assets of state and local heritage significance. The *Heritage Act* requires that a State agency include in its register items of the environmental heritage which are:

- listed on the State Heritage Register;
- listed in an environmental planning instrument under the Environmental Planning and Assessment Act 1979 as an item of the environmental heritage;

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<sup>1</sup> <http://www.australianschoolsdirectory.com.au/sydney-schools.php>

<sup>2</sup> <https://education.nsw.gov.au/media/asset-management/sites-heritage-listed-buildings-items.pdf>

<sup>3</sup> <http://www.dec.nsw.gov.au/detresources/about-us/statistics-and-research/key-statistics-and-reports/heritage.pdf>



- subject to, or could be subject to, an interim heritage order or to listing on the State Heritage Register. In other words, items of potential local or State heritage significance.



Bathurst High School, 1926

Other significant buildings do not appear on either the Department's Register or on the LEP. An example is the former Alexander Mackie College of Advanced Education (1975–1980), now the Georges River College Oatley Campus. This highly significant complex of buildings (Project Architect Colin Still, Landscape Architect Bruce Mackenzie) received an RAIA Merit Award in 1980 and has been extensively published. Under the Draft SEPP this entire complex of buildings could be demolished without consent.



Georges River College Oatley Campus

#### **TAFE**

There are over 130 TAFE sites in NSW<sup>4</sup>. According to the 2010 Heritage and Conservation Register for the then Department of Education and Training only 27 of these sites were heritage listed.

#### **Universities**

The total number of Universities in NSW is hard to quantify. Many universities have multiple campus locations, and some operate in multiple states. According to Universities Australia<sup>5</sup> there are ten universities with their primary campus in NSW, although establishments such as the University of Notre Dame Australia (based in Western Australia) and the Australian Catholic University now have significant campuses in the State. Across Australia, universities are seeking to expand. Much real estate is currently held by Universities that has been purchased subsequent to their establishment (eg: areas of Newtown and Glebe owned by Sydney University,

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<sup>4</sup> <https://www.tafensw.edu.au/find-campus>

<sup>5</sup> <https://www.universitiesaustralia.edu.au/australias-universities/university-profiles#.W00dqyN95FR>



and areas of Kensington owned by UNSW). These places (often in residential areas) would now be subject to the Draft SEPP.

Heritage listing of universities is rarely achieved and it is difficult to assess the extent of listings for these places. A search of the NSW Heritage Register shows only two university locations in NSW listed on the State Heritage Register (Women's College at Sydney University, and the Mount St Mary Campus of the Australian Catholic University in Strathfield). The Great Hall and Main Quadrangle of Sydney University (of National significance as the first of its kind) is currently being progressed for listing at a State level. This is reflective of the poor quality of heritage protection generally afforded to university establishments. In September 2013 several educational buildings and campuses were endorsed by the NSW Heritage Council for priority listing on the State Heritage Register under the Modern Movement listings theme. These included the former UTS Lindfield campus, the Macquarie University campus, the Chemistry Building and Fisher Library at the University of Sydney and Pennant Hills High School, however none of these are being progressed to date. Under the Draft SEPP all these buildings could be demolished without consent, although they have been deemed likely to be of state significance.

### **National Trust concerns with the SEPP**

The National Trust notes that under the SEPP, the following definitions apply:

**heritage conservation area** means land identified as a heritage conservation area or place of Aboriginal significance (or by a similar description) in an environmental planning instrument.

**local heritage item** means: (a) a building, work, place, relic, tree, archaeological site or Aboriginal object that is identified as a heritage item (or by a similar description) in a local environmental plan, or (b) an item of local heritage significance, as defined by the *Heritage Act 1977*, that is the subject of an interim heritage order in force under that Act or is listed as an item of local heritage significance on the State Heritage Inventory under that Act.

This definition leaves a large number of worthy buildings and items of potential heritage significance totally unprotected by heritage legislation. No list is complete. It is readily demonstrated that the State Heritage Register is inadequate as a complete record of State Significant educational institutions. The majority of Local Environment Plans are incomplete insofar as proper recording of the significance of items affected by the proposed SEPP. The proposed SEPP has no credibility in terms of heritage protection. At the very minimum, the Heritage Conservation Registers required under the *Heritage Act 1977* for each Department should be thoroughly reviewed and updated and those items recorded included within the SEPP definition of "heritage items". Such an expanded definition would of course still leave a large number of non-government schools and other "educational establishments" and "early childhood education and care facilities" (as defined by the SEPP) without heritage protection.

The Trust also has concerns with Part 2, Division 1, Clause 9 (1) (a) where the effect on the heritage significance of an item is not to be in a way that is "more than minimal". The definition of "minimal" is not recognised heritage language and it is open to unsympathetic interpretation. A poorly prepared assessment of the heritage impact (the SEPP does not define who should prepare such an assessment), and notification to Council (who in some cases may not have a heritage adviser able to respond within the mandated 21 days, given that many regional councils employ such an adviser on a monthly basis) does not equate to adequate Council consultation.

The Trust has major concerns with the general requirements within the SEPP for Exempt Development (Division 4, Section 15). As has been outlined above, the reliance on heritage lists (SHR and LEP) without any recourse to s.170 Registers (albeit incomplete ones) leaves many significant buildings vulnerable.

**As the Trust has stated before, just because a building is not heritage listed does not mean it is not significant and should not be conserved. A thorough heritage survey of educational and childcare places**



**throughout NSW—with resultant heritage listing of relevant significant places currently unprotected both on the Department’s Section 170 Register and on relevant LEPs and the State Heritage Register—is required before this SEPP is enacted.**

### **Child Care Centres**

The Trust has concerns with a number of aspects of Part 3 of the SEPP.

The Trust does not support Clause 23 (c) that a childcare centre development may be *located on a site of any size, cover any part of a site and have any length of street frontage or any allotment depth*. This non-discretionary development standard may leave areas of significant vegetation or archaeological potential liable to destruction.

The Trust does not support Clause 23 (d) which states that a development *may be of any colour or colour scheme unless it is a heritage item or in a heritage conservation area*. Many childcare centres are located within suburban areas and their colour scheme should be consistent with the streetscape, regardless of heritage protection.

### **Schools**

The Trust does not support Clause 29(3) which states that *development may be carried out by any person with consent on the following land that is not in a prescribed zone: (a) development for the purpose of a school—on land within the boundaries of an existing school, (b) development for the purpose of the expansion of an existing school—on land adjacent to land within the boundaries of an existing school*. This provision would mean that many pieces of land (in particular, adjacent houses that have been purchased by non-government schools) would effectively be re-zoned and subject to development without consent under the SEPP. Many streetscapes where schools have purchased adjacent historic houses would potentially be dramatically altered under this provision.

The Trust does not support Clause 30(1)(a)(v) that permits a *car park not more than one storey high* to be permitted without consent. Only an on-grade carpark should be permitted without consent.

The Trust does not support Clause 30(1)(b) (iii) which states that *alterations or additions to the external facade of a building that do not increase the building envelope (for example, porticos, balcony enclosures or covered walkways)* constitute “minor alterations and additions” to a building that should be permitted without consent. Many buildings have had their significance compromised through unsympathetic balcony enclosures, window replacements, and doorway modifications etc. Heritage buildings (whether listed or not) are particularly vulnerable to such modifications.

The Trust strongly opposes Clause 30(1)(e) that permits *demolition of buildings or structures* without consent. With such a large number of significant school buildings not currently assessed or listed on LEP instruments, this provision will allow for wholesale destruction of hundreds of buildings on both government and non-government school sites. At risk are not only purpose-built school buildings, but also any other structures owned or purchased by a school. Many LEP listings for a school only include one building on the site, and do not consider any other buildings on the site, some of which may in fact be older or of greater significance. This is simply because many LEP inventories are a result of a “drive-by” heritage survey, and some buildings are not immediately visible from the street.

The Trust strongly opposes Clause 32(g) that permits a *sporting field, tennis court, basketball court or any other type of court used for sport, and associated awnings or canopies, if the development does not involve the clearing of more than 2 hectares of native vegetation* as exempt development. The clearing of up to 2 hectares of native vegetation as exempt development is totally unacceptable.

### **Universities**

The Trust does not support Clause 40(1)(a) *Development for any of the following purposes may be carried out by or on behalf of a public authority without consent on land in a prescribed zone if the development is in*





*connection with an existing university: (a) construction, operation or maintenance, more than 5 metres from any property boundary with land in a residential zone and more than 1 metre from any property boundary with land in any other zone.* Many universities are located in significant landscape settings, with defined views and zones. Such a clause could see the insertion of new buildings or structures in a way that has a major negative (intrusive) impact on the significance of a university campus and/or building. Many universities are also located adjacent to public parkland (i.e. land that is not zoned residential) and thus this provision would have a major detrimental impact upon adjacent property, in particular public parkland.

The Trust does not support Clause 40(1)(a)(v) that permits a *car park not more than one storey high* to be permitted without consent. Only an on-grade carpark should be permitted.

The Trust strongly opposes Clause 40(1)(d) that permits *demolition of buildings or structures* without consent. With such a large number of significant university buildings not currently assessed or listed on LEP instruments, this provision will allow for wholesale destruction of hundreds of buildings on university sites. At risk are not only purpose-built university buildings, but also any other structures owned or purchased by a university. Significant university landscape features (tree avenues, fountains etc.) would also be at risk under this provision. The Trust is also concerned that University residential Colleges of high heritage significance would be placed at risk under such a proposal.

The Trust does not support Clause 40(2) that *if the development involves an alteration or addition to a building: (i) does not extend the gross floor area of the existing building by more than 50%, and (ii) does not result in the building having a gross floor area of more than 2,000 square metres, and (e) if the development is on a site with an area of: (i) 2,000 square metres or less—does not result in the floor space ratio for all buildings on the site exceeding 1:1, or (ii) more than 2,000 square metres— does not extend the existing gross floor area for all buildings on the site by more than 2,000 square metres.* Permitting significant increases in floor area to a building without consent (up to 50%) is totally unacceptable in heritage terms. Many buildings that are of major heritage significance (whether listed or not) could be adversely affected by such a proposal, which would significantly alter their form, proportion and setting.

The Trust opposes Clause 42(c) that permits *landscaping, including irrigation schemes (whether using recycled or other water)* to be carried out as exempt development. Many universities are in significant landscape settings of high heritage value (Newcastle, Macquarie and Sydney Universities for example). These landscapes should be afforded equal heritage protection to significant buildings and any alteration must be subject to consent and review.

The Trust strongly opposes Clause 42(g) that permits a *recreation facility (outdoor), including a playing field (but not including a grandstand or other viewing structure), if: (i) the development does not involve the clearing of more than 2 hectares of native vegetation, and (ii) any structure is located at least 200 metres from any property boundary with land in a residential area* as exempt development. The clearing of up to 2 hectares of native vegetation as exempt development is totally unacceptable.

The Trust opposes Clause 42(h) that permits a *viewing platform: (i) with an area not exceeding 100 square metres, and (ii) with a height above ground level (existing) not exceeding 3 metres, and (iii) that is located behind the building line, and (iv) that is set back at least 5 metres from any boundary with land in a residential zone* as exempt development. Such viewing platforms appear unnecessary and with a height of three metres will appear as a building structure in a landscape setting.

## **TAFEs**

The Trust does not support Clause 47(1)(a) *Development for any of the following purposes may be carried out by or on behalf of a public authority without consent on land in a prescribed zone if the development is in connection with an existing TAFE establishment: (a) construction, operation or maintenance, more than 5 metres from any property boundary with land in a residential zone and more than 1 metre from any property boundary with land in any other zone.* Many TAFEs are located in significant landscape settings, with defined views and zones. Such a clause could see the insertion of new buildings or structures in a way that has a major



negative (intrusive) impact on the significance of a TAFE campus and/or building. Many TAFEs are also located adjacent to public parkland (ie: land that is not zoned residential) and thus this provision would have a major detrimental impact upon adjacent property, in particular public parkland.

The Trust does not support Clause 47(1)(a)(v) that permits a *car park not more than one storey high* to be permitted without consent. Only an on-grade carpark should be permitted.

The Trust strongly opposes Clause 47(1)(d) that permits *demolition of buildings or structures* without consent. With such a large number of significant TAFE buildings not currently assessed or listed on LEP instruments, this provision will allow for wholesale destruction of hundreds of buildings on TAFE sites, many designed by significant architectural firms. At risk are not only purpose-built TAFE buildings, but also any other structures owned or purchased by a TAFE. Significant TAFE landscape features (tree avenues, fountains etc) would also be at risk under this provision.

The Trust opposes Clause 49(c) that permits *landscaping, including irrigation schemes (whether using recycled or other water)* to be carried out as exempt development. Many TAFEs are in significant landscape settings of high heritage value. These landscapes should be afforded equal heritage protection to significant buildings and any alteration must be subject to consent and review.

The Trust strongly opposes Clause 49(g) that permits *a recreation facility (outdoor), including a playing field (but not including a grandstand or other viewing structure), if the development does not involve the clearing of more than 2 hectares of native vegetation* as exempt development. The clearing of up to 2 hectares of native vegetation as exempt development is totally unacceptable.

The Trust opposes Clause 42(h) that permits *a viewing platform: (i) with an area not exceeding 100 square metres, and (ii) with a height above ground level (existing) not exceeding 3 metres, and (iii) that is located behind the building line, and (iv) that is set back at least 5 metres from any boundary with land in a residential zone* as exempt development. Such viewing platforms appear unnecessary and with a height of three metres will appear as a building structure in a landscape setting.

### **Additional Concerns**

The Trust has significant concerns with Schedule 1 *Exempt Development- General* and its potential heritage impacts. Provisions regarding:

- *Building external alterations including re-cladding roofs or walls (repair or renovation, or painting, plastering or other decoration, of building)*
- *Building internal alterations (replacement of doors, wall, ceiling or floor linings or deteriorated frame members with equivalent or improved quality materials)*
- *Car parks (cut or fill more than 1m below or above ground level (existing))*
- *Carports associated with an existing building (Height must not exceed 3.5m above ground level)*
- *Decks (unroofed and attached to a building that is not located on bush fire prone land and surface area must not exceed 10m<sup>2</sup>)*
- *Demolition of buildings or structures the erection of which is exempt development under this Policy*
- *Fences—erection of security fences (for infrastructure facility and erected along road frontage or non-road boundary, height must not exceed 3m above ground level)*



- *Pergolas and storm blinds (Surface area must not exceed 20m<sup>2</sup>, height must not exceed 2.4m above ground level)*
- *Retaining walls (retaining of fill to height above ground level (existing) of more than 2m or excavation to depth below ground level (existing) of more than 1m)*
- *Sheds (free-standing, prefabricated and constructed of non-reflective materials, must not result in shed with a total floor area exceeding 30m<sup>2</sup>)*

These will all have a major impact upon heritage values of educational places and spaces. The erection of a pergola, replacement of doors, ceiling and floors, raising of ground levels with retaining walls, construction of a carport and building of a 30sqm shed on a property with high heritage value (but possibly without LEP listing) all have the potential to seriously degrade and impact upon our heritage.

The Trust strongly opposes this SEPP and again advocates for stronger heritage protection of our State's precious educational, natural and cultural heritage. The current provisions within this SEPP are totally inadequate for the protection of heritage (both government and non-government owned) that will be affected by this legislation.

Yours sincerely,

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