



7 April 2017

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

Dear Sir / Madam

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

On 6 February 2017, the Department of Planning and Environment (DPE) released the following for consultation:

- a) Draft *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* ("**Draft SEPP**") which will replace Division 3 of the *State Environmental Planning Policy (Infrastructure) 2007* ("**ISEPP**");
- b) Draft *Environmental Planning and Assessment Amendment (Schools) Regulation 2017* ("**Draft Regulation**"), which will amend the *Environmental Planning and Assessment Regulation 2000* ("**EPA Regulation**");
- c) Draft *Standard Instrument (Local Environmental Plans) Amendment Order (No 2) 2016* which will amend the Standard Instrument – Principal Local Environmental Plan;
- d) Draft 'Code of Practice for Part 5 activities for registered non-government schools', February 2017;
- e) Draft 'Planning Circular – Regulating expansion of schools';
- f) Draft 'Better Schools – A design Guideline for schools in NSW'.

We understand that the Draft SEPP will be a standalone State Environmental Planning Policy for education and child care providers.

The Council of Newington College has considered the Draft SEPP and wishes to make the following comments and recommendations as a submission for consideration by the Department:

1. Changes to student and staff caps

The DPE has issued a new Planning Circular in relation to student caps which provides that a condition of consent limiting student and staff numbers at a school should only be imposed if it is necessary to impose such a condition for a valid planning reason supported by strong evidence, such as traffic impacts.

Under the Draft Regulation a Complying Development Certificate cannot be issued in respect of a development within a school that will enable the school to accommodate 50 or more additional students, unless the Roads & Maritime Services (RMS) has first issued a traffic certificate. The traffic certificate is required to certify that any impacts on the surrounding road network as a result of the proposed development are acceptable if specified requirements are met.

This requirement to refer developments to RMS is likely to lead to delay for applicants in the determination of applications for Complying Development Certificates.

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The College recommends that this clause be deleted from the Draft Regulation due to the additional bureaucratic limitations and possible delays that will eventuate for schools in seeking to obtain Complying Development Certificates for certain forms of development. If the clause is to remain in the Draft Regulation, a timeframe should be included in the regulation by which the RMS have to provide a traffic certificate.

2. Updated Development Standards for Complying Development and distance of development from the property boundary of land in another zone

The Development Standards for complying development set out in Schedule 2 of the Draft SEPP include, amongst others, the following standards:

- (a) Building Height – Maximum 4 storeys and 22m
- (b) Setbacks:
 - i. Building height up to 12m - 5m from land zoned residential and 1m from all other land;
 - ii. Building height up to 15m - 8m from land zoned residential and 2.5m from all other land;
 - iii. Building height up to 22m - 10m from land zoned residential and 4m from all other land.

Schools sometimes own adjoining lots of land within or alongside the school. A school should not be prevented from carrying out development within a specified distance of a boundary of land that is zoned residential and/or another zone in circumstances where it owns that adjoining land.

The College recommends that the Draft SEPP be amended so that a school is not prevented from carrying out development within any distance of a boundary of land that is zoned residential or any other zone in circumstances where it owns that adjoining land.

3. Provisions that permit multiple categories of development as development without consent provided it is on land in a prescribed zone and in connection with an existing school, including non-government schools and demolition

It is our understanding that certain developments are permitted without consent. The following are understood to be examples of development that will be permitted without consent provided an environmental assessment of the likely impacts of the proposed development has been carried out in accordance with Part 5 of the *Environmental Planning and Assessment Act 1979*:

- (a) One storey buildings, such as, library, administration, classroom, tuckshop, cafeteria or bookshop;
- (b) A car park not more than one storey high;
- (c) Minor alterations or additions to existing buildings.

However, it is not clear if the construction works or activities that are capable of being carried out as complying development under clause 33 of the Draft SEPP includes demolition. It would seem that demolition is permissible to build certain permissible buildings (as noted above) but it is not clear.

It is the College's recommendation that the Draft SEPP be amended to allow schools to carry out demolition if it is carrying out complying development in accordance with clause 33 of the Draft SEPP.

4. Complying development on bush fire prone land

Clause 11 of Schedule 2 of the Draft SEPP sets out a development standard for complying development in respect of bush fire prone land, including in relation to development on a lot that is wholly bush fire prone land. Whilst complying development may be carried out on part of a lot where another part of that same lot is bushfire prone land, under section 100B of the *Rural Fires Act 1997 (NSW)* (RF Act) development for the purpose of a school cannot be complying development if it is proposed to be carried out on land that is bushfire prone land. Therefore, the reference in clause 11 of Schedule 2 to development that is proposed to be carried out on a lot that is wholly on bush fire prone land conflicts with section 100B of the RF Act. Section

100B of the RF Act sets out the requirements of the Commissioner of the NSW Fire Service to issue a Bush Fire Safety Authority for development on bush fire prone land.

The College recommends that Clause 11 be deleted as it is contradictory to the RF Act and is unnecessary and confusing.

5. Complying development for student accommodation and boarding houses

Boarding schools and student accommodation have been excluded from the Draft SEPP.

The Draft SEPP does not allow schools to obtain a Complying Development Certificate for boarding houses or student accommodation, nor do the permissibility provisions of the SEPP apply to student accommodation including boarding houses. Boarding houses and student accommodation are ancillary to the use of educational establishments and are often an integral part of a non-government school and therefore it is appropriate that they be included as part of a 'school' for the purposes of the Draft SEPP.

The College strongly recommends that the Draft SEPP should be amended to expressly incorporate boarding houses and student accommodation in the definition of 'school'. This is suggested given the often complex zoning controls that exist in relation to such a use where such a use is categorised as a 'boarding house'.

6. Complying development on land that comprises an item of heritage

Clause 17(2)(a) of the Draft SEPP provides that in order for development to be complying development, it must 'meet the general requirements for complying development set out in clause 1.17A of the Codes SEPP. Clause 1.17A(1)(d) of the Codes SEPP prevents complying development from being carried out on land that comprises a local or State heritage item.

Many educational establishments, particularly non-government schools, contain buildings which are listed on the local or State heritage register and as a result often the entire school is mapped or listed as a heritage item for the purposes of the relevant local instrument or the State heritage register.

The College recommends that the Draft SEPP be amended to allow complying development to be carried out on land that contains a State or local heritage item where the development will not have a material impact on the heritage item.

7. Responsible body for issuing Complying Development Certificates

The guidance document released with the Draft SEPP has indicated a proposal, as an amendment to the EPA Regulation, that Council certifiers will be the only responsible body for issuing Complying Development Certificates for schools.

In our view, this proposal will defeat the purpose of Complying Development Certificates and only slow down the process. In many circumstances due to the limited resources in Councils it is far quicker for a proponent to get an accredited certifier to certify development, rather than going through Council. Furthermore, without additional resources, it is difficult to see how Councils would be able to meet the 10 or 20 day time frame for the determination of Complying Development Certificate applications if all applications for certain types of development had to be made to Councils rather than proponents also having the option of accredited certifiers.

The College recommends that Complying Development Certificates for schools should be capable of being issued by a private certifier.

8. Complying development for underground development

Clause 33(6) of the Draft SEPP specifically provides that complying development cannot involve underground development.

As such a school would not be able to construct an underground car park as complying development. However, a school can construct a car park or classroom as complying development in accordance with clause 33 of the Draft SEPP. Given that a school can construct a car park and classroom as complying development, a school should not be restricted from constructing a car park or class room underground.

The College recommends that the Draft SEPP should be amended to allow a school to construct an underground classroom or car park, with appropriate development standards if necessary.

We trust that you will give each of these issues and recommendations due consideration.

Kindly contact the undersigned if you have any questions.

Yours faithfully

Peter Yates
Head of Corporate Services



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