



# Nature Conservation Council

The voice for nature in NSW

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

7 April 2017

## **NCC Submission on the draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017**

Dear Sir/Madam,

The Nature Conservation Council of New South Wales (**NCC**) is the state's peak environment organisation. We represent over 150 environment groups across NSW. Together we are dedicated to protecting and conserving the wildlife, landscapes and natural resources of NSW.

We welcome the opportunity to comment on the draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (draft Education SEPP) that is part of a package of documents relating to planning controls for universities and TAFEs, public and private schools, and childcare facilities. The other documents on exhibition include:

- The *Environmental Planning and Assessment Amendment (Schools) Regulation 2017* (the Regulation), and
- The NSW Code of Practice for Part 5 Activities for registered non-government schools (the Code).

Our members have a strong interest in planning and environment decisions across the State and in their local areas. Land-use planning and development is intrinsically linked with environmental protection, nature conservation and natural resource management. Effective planning can help us tackle our most pressing environmental challenges, including: loss and fragmentation of native vegetation and wildlife habitat; degradation of rivers, wetlands and water catchments; urban sprawl, traffic congestion and urban air pollution; and carbon pollution and impacts of climate change.

NSW needs robust planning laws that truly implement the principles of ecologically sustainable development and deliver positive outcomes for the environment and communities. The draft Education SEPP will not achieve this.

We urge the Government to reconsider proposals in the draft Education SEPP that will override important environmental protections and reduce transparent decision making. These changes will contribute to ongoing community dissatisfaction with the planning system.

Yours sincerely,

Kate Smolski  
Chief Executive Officer

# **NCC SUBMISSION ON THE DRAFT STATE ENVIRONMENTAL PLANNING POLICY (EDUCATIONAL ESTABLISHMENTS AND CHILD CARE FACILITIES) 2017**

## **GENERAL COMMENTS**

The *draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* (draft Education SEPP) is part of a package of documents relating to planning controls for developments that are universities and TAFEs, public and private schools, and childcare facilities. The other documents on exhibition include:

- The *Environmental Planning and Assessment Amendment (Schools) Regulation 2017* (the Regulation), and
- The NSW Code of Practice for Part 5 Activities for registered non-government schools (the Code).

In this submission we include comments in relation to the two latter documents as well as the draft Education SEPP.

NCC is concerned that making many types of educational development either exempt or complying development removes the opportunity of local communities to have input into decision-making in relation to issues such as:

- the suitability of sites for specified new or expanded educational facilities,
- the environmental impacts of specified development such as the clearing of native vegetation, and
- the loss of neighbourhood amenity for example from increased noise or traffic, or overshadowing.

We consider that Council should be the certifier for all complying development certificates issued pursuant to the draft Education SEPP. This should ensure better compliance with requirements for complying development consent and greater consistency in the application of these provisions across the State. The public does not have confidence in private accredited certifiers to adequately oversee complying development nor enforce provisions of complying development certificates.

We are also concerned that many types of development are made development without consent. Although this may require an environmental impact statement to be prepared where a determining authority considers that there is likely to be a significant environmental impact, if the determining authority does not consider this to be so, there may not public consultation about the development. Accordingly, we consider that the types of development made development without consent should require development consent.

We have concerns about provisions in the SEPP, Regulation and Code relating to registered non-government schools. In particular, NCC considers that the requirements of the Code provide an inadequate and inappropriate scheme for both the assessment of environment impacts of the proposed development and the making of submissions on a proposal (see below). We consider that it would be appropriate that development carried out by registered non government schools should require development consent or be assessed in the same way as Government schools. We consider that either of these options would provide more transparent and consistent requirements for public consultation and assessment of projects.

The draft Education SEPP also aims to streamline assessment of educational facilities and primarily does this by reducing public participation in the assessment of developments by making development exempt or complying development or development without consent, as discussed above. However, the time that would be involved in seeking and assessing public input on projects is small and is offset by the benefits of allowing the public to comment on developments. Allowing the public to consider and have input into projects in their local area helps people to “own” the project and is likely to reduce future conflicts over amenity and other issues arising after development is completed.

The draft Education SEPP, the Regulation and the Code further complicate the planning scheme under the *Environmental Planning and Assessment Act* making it more opaque and less accountable to the community. We consider it would be simpler and more transparent to include mandatory provisions of the Code in the SEPP or the Regulation as appropriate (see below) and replace the Code with a document that is a guide for making applications for relevant types of development). We consider that the complexity of the draft Education package does not increase certainty in the planning system.

## **SPECIFIC CONCERNS**

### **The Code**

We question why registered non government schools (RNSs) should have different requirements for carrying out consultation, assessment and determination of development without consent than governmental schools.

We are concerned that mandatory provisions will be included in the Code and not in the draft Education SEPP or the Regulation as appropriate. We consider that including the mandatory provisions in the Code may preclude third parties from bringing legal proceedings for breaches of these provisions. This curtails communities’ ability to take action in respect of breaches of the Code and makes them reliant on the DPE to prosecute for breaches of mandatory provisions of the Code. We also consider that the maximum penalty for a breach of the Code should be significantly greater than the maximum allowable under a penalty notice.

We note that RNSs are not currently required under the draft Education SEPP to comply with either clauses 8-11 or 31 of the draft Education SEPP that require public authorities to consult with councils and other public authorities in specified circumstances. Instead the RNS is able to determine which public authorities it considers are relevant. We consider this totally unacceptable. Similarly, the RNS determines which if any neighbours it consults with.

NCC considers that the relevant provisions in the Code should be amended to require that the RNS to consult (where applicable) with:

- the same government agencies as other public authorities under cl 8-11 of the draft Education SEPP and any other Government agency whose interests may be impacted by the proposed development;
- the local council under cl 31 of the draft Education SEPP; and

- any neighbour who may be impacted by the development.

The Code should also refer to consultation requirements in Clause 18A (2) of State Environmental Planning Policy (Sydney Region Growth Centres) 2006

Alternatively, that the types of development which are subject to the Code be made development with consent with the local council as consent authority. This approach we consider preferable because councils can impartially determine who should be consulted and have qualified staff to assess submissions relating to the development.

The Code should also:

- require that preparation of assessment documents is done by an independent consultant or consultants,
- indicate that environmental issues such as noise, impacts on native vegetation and fauna, heritage items or traffic should be carried out by people with appropriate qualifications to carry out such assessments

No employee or agent of the company should be involved in the assessment of likely impacts of the proposed development as there is a clear conflict of interest in them doing so. The consultant(s) rather than an employee or agent of the RNS should certify that the contents of the REF comply with the Code and relevant provisions of the *Environmental Planning and Assessment Regulation* and that the information is neither false nor misleading.

We support the determination being done by a separate person/body to the assessment. We consider that this person should also be independent of the RNS to avoid any conflict of interest and should be suitably qualified to evaluate issues raised in the assessment.

We support the REF being made available on the RNS' website before the commencement of development but we also consider that:

- a copy of the REF should be provided to the Department of Planning and Environment (DPE) and be made available for public inspection and/or be made available on the DPE website;
- any neighbour or public authority who makes a submission should be advised by the RNS when the REF is able to be viewed; and
- neighbours and public authorities should be allowed to make submissions on the REF before final determination of the proposed development.

## **Exempt development**

We consider that the provisions relating to exempt development should include a note similar to that after cl 1.15(2) of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* to make proponents aware of the provisions of s. 76 of the EP&A Act relating to exempt development.

## **Vegetation clearing provisions**

Provisions cl 29 of the State Environmental Planning Policy (Infrastructure) 2007 that were development without consent have been made exempt development in proposed cl 32, 42 and 49 of the draft Education

SEPP. We are particularly concerned by the subclauses that permit clearing of up to two hectares of native vegetation for specified recreation facilities as exempt development. NCC disputes that clearing of 2 hectares of native vegetation will be of minimal environmental impact, particularly, in heavily cleared urban environments. Clearing on this scale should be development with consent or development without consent.

## **Hazard reduction in coastal wetlands**

NCC objects to cl 52 of the draft Education SEPP that permits maintenance of fire trails and bush fire hazard reduction works in “coastal wetlands” as defined in the draft Education SEPP for the protection of educational establishments. We consider that educational establishments should have asset protection zones included within the land on which the facilities are located. We consider that this clause encourages educational establishments to be approved without adequate and appropriate asset protection zones. We consider it should be deleted.

## **CONCLUSION**

Overall, the NCC does not support the draft Education SEPP, the Code or the Regulation for reasons set out above. We urge the Government to revise it to ensure that:

- local communities have meaningful input on educational facilities in their area; and
- there are adequate safeguards to ensure protection of the environment and the amenity of communities.