

7 April 2017

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

RE: SYDNEY CATHOLIC SCHOOLS SUBMISSION ON DRAFT EDUCATION AND CHILD CARE SEPP

Dear Sir/Madam

Introduction

This submission on the public consultation draft of the State Environmental Planning Policy (Educational Establishment and Child Care Facilities) (**Draft SEPP**) has been prepared by Robinson Urban Planning Pty Ltd for Sydney Catholic Schools (**SCS**).

SCS is a key stakeholder in education and child care planning policy as:

- SCS is responsible for 152 schools within a region of Sydney that extends north to the Spit, east to the ocean, south to Engadine and west to Austral
- In 2017, SCS is educating 70,000 school students (K to Year 12)
- In 2017, SCS is providing more than 10,400 jobs including 7,803 teaching roles
- In a typical year, SCS lodges 100 development application (**DAs**) and obtains around 30 complying development certificates (**CDCs**) with the scale of development ranging from new education precincts (K to Year 12) to minor refurbishment of existing schools
- SCS's annual development budget is around \$100 million
- More recently, SCS has been tasked with establishing affordable child care centres on or adjoining existing Catholic schools in areas that are presently under serviced by 'for profit' child care service providers.

Uncertainty and delays in the approval process are major burdens for SCS in terms of its budget and delivery of education and child care. SCS therefore welcomes planning reforms that streamline the approval pathway for schools and child care centres and commends the NSW Government's efforts to improve education and child care planning policy.

SCS particularly applauds the proposal to treat *non-government schools as public authorities* in relation to *exempt development* and *development permitted without consent* and to provide for taller school buildings as complying development.

There are however several aspects of the Draft SEPP, associated exhibition documents and other issues that could be expanded, amended, clarified or introduced to improve the efficacy of the reforms as detailed in this submission. For each matter raised, SCS's recommended amendments are shown in **red**.

Submission

SCS has reviewed the package of reforms and has identified several concerns and recommended improvements as detailed below. Issues are listed in the chronological order referenced clauses (rather than in order of importance to SCS):

1. Schools should be permitted on land in Zone RE2 Private Recreation (clause 13, 14 and 27 of the Draft SEPP)

Government schools and *non-government schools* are permitted in a wide range of prescribed zones.

Pursuant to clause 13 and 14 of the Draft SEPP, government schools enjoy even more land use flexibility as there is a process to provide for land uses permitted on the adjoining land.

Opportunities to extend this process to facilitate development of *non-government schools* should be explored. SCS is presently preparing a DA for a new school at South Hurstville. The land is occupied by a disused lawn bowling club and is in Zone RE2 Private Recreation. The zone prohibits *educational establishments* and Zone RE2 is not a prescribed zone under the existing Infrastructure SEPP or Draft Education SEPP.

A planning proposal is being processed to rezone the site, but has been delayed and did not meet its December 2016 gateway timetable. As a consequence, submission of a DA and delivery of the proposed new school is indefinitely delayed.

As a new school must be the subject of a DA, there is an appropriate environmental assessment process in place.

Recommendation: Clauses 13-14 or 27 of the Draft SEPP should be amended to permit schools on land in Zone RE2 with an appropriate assessment process in place.

2. The Draft SEPP should provide for proposed, but yet to be registered, schools (clause 29 of the Draft SEPP)

The Draft SEPP retains the following existing definitions for an *educational establishment*, *school* and *non-government school*:

- ***educational establishment*** means a building or place used for education (including teaching), being:
 - (a) a school, or
 - (b) a tertiary institution, including a university or a TAFE establishment, that provides formal education and is constituted by or under an Act.
- ***school*** means a government school or non-government school within the meaning of the Education Act 1990.
- Pursuant to the clause 3 of the Education Act, 1990:
non-government school means a registered non-government school.

Reliance on these definitions, in particular the requirement that a *non-government school* be registered, should be reviewed as the definitions and associated land use tables, may inadvertently frustrate approval of new (yet to be registered) schools.

This affected a new SCS school at Austral where the Council would not grant consent to the first stage of the new school until registration of the school was completed (and instead Council approved a temporary use for 12 months).

Recommendation: Clause 29 of the Draft SEPP should be amended to permit proposed, yet to be registered, schools to avoid any delay in obtaining approvals for new schools.

3. The approval pathway for community purposes should be more clearly prescribed (clauses 29(4) and 32(1)(i) of the Draft SEPP)

The use of existing school facilities for community purposes is nominated in the Draft SEPP as follows:

- Development permitted with consent (clause 29(4))
- Exempt development (clause 32(1)(i)).

This is extremely confusing and provides an uncertain approval pathway for the community use of existing school, an acknowledged benefit for the wider community.

Recommendation: Clauses 29(4) and 32(1)(i) of the Draft SEPP should be amended to clarify the approval pathway for use of existing school facilities for community purposes with care taken to facilitate the most streamlined approval process.

4. The approval pathway for portable classrooms should be more clearly prescribed (clauses 30(1)(a)(ii) and 32(1)(l)(ii) of the Draft SEPP)

A portable classroom is nominated in the Draft SEPP as follows:

- Development permitted without consent (clause 30(1)(a)(ii))
- Exempt development (clause 32(1)(l)(ii)).

This is confusing and provides an uncertain approval pathway for the installation of portable classrooms, a very common and important form of school development.

Additionally, a streamlined approval process should be provided for portable buildings accommodating other school uses (for example administration, amenities, libraries). The potential impacts of non-classroom uses in portable buildings are no different to classroom uses.

Recommendation: Clause 30(1)(a)(ii) and/or 32(1)(l)(ii) of the Draft SEPP should be amended to clarify the approval pathway for portable classrooms and to provide for other uses in portable buildings.

5. The approval pathway for demolition should be more clearly prescribed (clause 30(1)(e), 32(1)(m) and 33(1)(a)(viii) of the Draft SEPP)

Demolition is nominated in the Draft SEPP as follows:

- Development permitted without consent (clause 30(1)(e))
- Exempt development (clause 32(1)(m))
- Complying development (clause 33(1)(a)(viii)).

This is extremely confusing and provides an uncertain approval pathway for a very common form of school development.

Recommendation: Clauses 30(1)(e), 32(1)(m) and 33(1)(a)(viii) of the Draft SEPP should be amended to clarify the approval pathway for demolition with care taken to facilitate the most streamlined approval process.

6. The approval pathway for parking should be more clearly prescribed and expanded (clause 30(1)(a)(v)) and 33(1)(a)(xi) of the Draft SEPP)

Parking is nominated in the Draft SEPP as follows:

- A car park that is not more than one storey high is development permitted without consent (clause 30(1)(a)(v))
- An at grade car park is complying development (clause 33(1)(a)(xi))
- There is no streamlined approval pathway for excavated parking or parking under a building (even if the depth of excavation is minor).

Curiously, the more streamlined approval process (being development permitted without consent) applies to the more intense form of development (a one storey parking structure).

Recommendation: Clauses 30(1)(a)(v) and 33(1)(a)(xi) of the Draft SEPP should be reviewed to clarify the approval pathway for parking (including excavated parking and parking under a building) with care taken to facilitate the most streamlined approval process.

7. Inadequate direction is provided in relation to population caps (clause 33(5) of the Draft SEPP and planning circular)

The Draft SEPP (clause 33(5)) states that complying development provisions do not authorise contravention of any conditions of consent, including conditions in relation to the number of students or staff.

The planning circular on exhibition provides some guidance on population caps and notes that:

Proposed development that involves the expansion of existing schools is often restricted by existing cap conditions limiting student and staff numbers on a school site (cap conditions). These cap conditions are an important tool to manage traffic and parking impacts, but can be a major constraint on the growth of the school and the provision of essential school infrastructure. To ensure that these cap conditions are applied consistently and appropriately, a planning circular has been prepared providing best practice guidance to applicants and consent authorities.

SCS concurs with the statement that population caps can be a *major constraint on the growth of the school and the provision of essential school infrastructure*. In many instances, just obtaining past consents from Councils (which are often decades old) to determine if there is a population cap is a time consuming and complex exercise.

For this reason, the planning circular provides a welcome guide, but it is SCS view that it lacks enforcement power and that Council's will continue to impose caps without adequate justification. In some instances, new caps are imposed on consents, even when the development itself does not involve any change in population capacity. This is currently happening for a DA for minor alterations and additions in Woollahra.

Recommendation: The Draft SEPP should be amended to provide clear limitations on the imposition of population cap conditions to ensure that Council's do not unfairly limit the growth of schools.

8. The overshadowing standard) should be amended to align with the Apartment Design Guide (Schedule 2 of the Draft SEPP)

The Draft SEPP Schedule 2 includes an overshadowing standard that requires adjoining residential accommodation to receive at least 3 hours solar access between 9am and 3pm in mid-winter and no increase where solar access is less than 3 hours.

To provide a consistent environmental assessment process for all forms of development in the State, the overshadowing standard in the Draft SEPP should be amended to align with the Apartment Design Guide (ADG) objectives and design guidance in relation to overshadowing of neighbouring properties which state (in part):

- ADG Objective 3B-2

Living areas, private open space and communal open space should receive solar access in accordance with sections 3D Communal and public open space and 4A Solar and daylight access which states:

- Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of **2 hours** direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas
- In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of **3 hours** direct sunlight between 9 am and 3 pm at mid-winter.

- ADG Objective 4A-1

Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%.

Recommendation: Draft SEPP Schedule 2, 5 Overshadowing should be amended to match the solar access design guidance set out in the ADG, Objectives 3B-2 and 4A.

9. Local development the subject of DAs to Council's should not be subject to development standards in local environmental plans (clause 36 of the Draft SEPP)

Pursuant to the Draft SEPP; exempt development, development without consent, complying development and State significant development for school infrastructure will not be subject to development standards in local environmental plans. SCS suggests that the same provisions should apply to local development.

This is an important recommendation as many school sites are subject to low density height (8.5m) and floor space ratio (0.5:1) standards, which bear no relationship to the existing built form on the school site.

Recommendation: Clause 36 (or a new clause) of the Draft SEPP should be amended to provide that development standard in local environmental plans do not apply to local development.

10. The requirement to refer certain development to the Roads and Maritime Services (RMS) will cause unreasonable uncertainty and delays (clause 51 of the Draft SEPP)

Pursuant to clause 51 of the Draft SEPP, all DAs proposing works capable of accommodating 50 or more students would be referred to the Roads and Maritime Services (**RMS**). SCS is concerned that:

- The RMS will be unnecessarily consulted in relation to local roads
- The relevant capacity of 50 students is too low (less than two class groups) and will be unnecessarily triggered for relatively small developments
- Obtaining RMS comments will lead to unreasonable delays and create uncertainty.

Recommendation: Clause 51 of the Draft SEPP should be deleted or the relevant threshold for RMS referrals should be substantially increased (to say 250 students).

11. The reforms should provide more certainty in relation to the side and rear setback standard to ensure that it is not applied to any road frontages (Schedule 1 of the Draft SEPP)

The Draft SEPP Schedule 2 should confirm that the side and rear setback development standard does not apply to secondary street frontages. This has affected the issuing of CDCs for some SCS projects and more clarity is required to avoid confusion. One solution would be to clearly state that the "side and rear setback" standards do not apply to "primary road" or "secondary road" frontages (adopting the terms and definitions

used in *State Environmental Planning Policy (Exempt and Complying Development) 2008 (Codes SEPP)*, clause 1.5).

Recommendation: Draft SEPP Schedule 1 should be amended to state that the side and rear setback standard does not apply to “primary road” and “secondary road” frontages as defined in the Codes SEPP, cl. 1.5.

12. Side/rear boundary setback standards should not apply to internal boundary within school sites and the reforms should clearly explain this (clauses 30(1)(a)(ii) and 32(1)(l)(ii) and Schedule 1 of the Draft SEPP)

Many school sites expand over time and comprise multiple allotments of land. Existing and new buildings (including portable buildings) often straddle these internal allotment boundaries. In SCS’s experience, certifiers interpret the Infrastructure SEPP side/rear setback standards (for portable and other buildings) differently with some enforcing the setback standards to internal boundaries and others not. This is an unacceptable situation as compliance with setback development standards should not be open to interpretation.

In SCS’s opinion, portable and other building setback standards should not apply to internal boundaries as no amenity issues arise for adjoining residents/occupants. Adopting SCS’s recommendation in relation to internal boundaries would reduce school infrastructure costs and delays while still achieving an appropriate built form and protecting amenity.

Recommendation: Draft SEPP Schedule 1 should be amended to state that the side/rear setback standards for portable buildings and other buildings do not apply to internal site boundaries.

13. The Schedule 4 design quality principles are unreasonably subjective (Schedule 4, clause 29(1), (3) of the Draft SEPP and (4) and clause 129AA Draft Amendment of Environmental Planning and Assessment Regulation 2000)

Schedule 4 design quality principles in the Draft SEPP would apply to DAs that rely on the permitted with consent provisions at clause 29(1) (3) and (4) of the Draft SEPP and to CDCs proposing a new building or alterations/additions with a height of more than 12m.

SCS assumes that the design quality principles would not apply to DAs that are permitted with consent pursuant to a local environmental plan or CDCs for buildings with a height of 12m or less.

In any event, SCS considers that:

- The design quality principles are subjective and it is not appropriate to introduce subjective tests to the complying development assessment process
- Principle 7 should be reworded as it is unreasonably subjective. The words “aesthetically pleasing” are particularly vague and open to a wide range of interpretations.

Recommendation: Care should be taken in introducing the Schedule 4 design quality principles to avoid the introduction of subjective complying development tests.

14. There should be no restriction on who can certify CDCs for school infrastructure (Explanation of Intended Effect, p. 7)

The Explanation of Intended Effect on exhibition suggests that an idea being explored is that CDCs for school infrastructure be issued by Council certifiers only. SCS strongly objects to this suggestion and notes that the potential restriction is unwarranted for the following reasons:

- CDC assessments involve a technical assessment, with no qualitative analysis. Given this, the assessment can be effectively carried out by private or Council certifiers (that is the current system) and there is no value to providing a Council oversight role

- Many Councils are unlikely to have the resources to determine CDCs in a timely manner, noting that private certifiers are able to determine most CDCs for school infrastructure in 7 days
- Delays incurred by such a suggestion may undermine any improvements achieved by the Government's past and planned efforts to streamline education infrastructure approval processes.

Recommendation: Existing legislation that provides for the issuing of school complying development certificates by Councils and private certifiers should be preserved.

15. Care should be exercised if the relevant planning panels are to be the consent authority for school DAs that are not State Significant (Explanation of Intended Effect, p. 7)

The Explanation of Intended Effect on exhibition suggests that consideration is being given to making relevant planning panels the consent authority for school DAs that are not State significant. SCS asks that care is taken in relation to this suggestion as the potential to issue consents using Council staff delegations should not be lost.

Recommendation: Care should be taken if relevant planning panels are to be the consent authority for school DAs that are not State Significant to preserve the ability to use staff delegations to determine applications.

16. The reforms should provide more clear direction on the carrying out of complying development where sites are partly heritage listed

The provisions relating to application of the Codes SEPP to heritage items (cl. 1.17A) were amended on 22 February 2014 to enable the issuing of a CDCs for development on any part of a site that is not "described and mapped" as a heritage item. This amendment was welcomed by SCS as many of its school sites include just one heritage item, amongst many buildings that are not heritage items.

Unfortunately, the amendment did not provide sufficient certainty as:

- Local environmental plans typically map entire sites as a heritage item, even when the heritage schedule lists a building or small group of buildings
- Planning certificates still treat such sites as heritage items in full and note that complying development is not available.

Recommendation: Reforms should be explored to provide for more sophisticated heritage mapping in local environmental plans and planning certificate notations to ensure that heritage restrictions on the carrying out of complying development do not inadvertently apply to non-heritage listed buildings/areas.

17. Planning certificates should include a notation stating whether or not complying development may be carried out under the Education SEPP

The *Environmental Planning and Assessment Regulation, 2000 (EP&A Reg)*, Schedule 4 prescribes matters to be specified in a certificate under section 149 (2) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*. Item 3 - complying development requires Council's to state whether complying development may be carried out under the Codes SEPP. There is no requirement to specify whether complying development may be carried out under the existing Infrastructure SEPP and there is no reform suggesting a notation in relation to the Draft Education SEPP. This frustrates determination of the planning pathway for education projects, incurring additional costs and time delays.

Recommendation: To provide assistance to the education sector, the EP&A Reg Schedule 4 should be amended to require planning certificates to state that matters to be addressed in a planning certificate include whether or not complying development may be carried out under the Education SEPP.

18. The Department should carry out training to registered non-government schools (RNS) on the self-assessment process for Part 5 determinations

The NSW Code of Practice for Part 5 Activities for registered non-government schools (on exhibition) provides a useful and detailed guide on the assessment process for development without consent carried out by RNS. SCS also suggests that the Department should carry out training workshops for interested RNS to ensure that the obligations are fully understood.

Recommendation: The Department should carry out comprehensive workshops to train RNS on the assessment process for development without consent.

19. The draft package of reforms should be critically reviewed to aid interpretation, with simplified checklists prepared to aid schools, professionals, councils and agencies

As exhibited, the package of reforms is complex and difficult to navigate. Some of SCS concerns would be addressed by implementing the recommendations set out in this submission, but a critical review of the entire package is warranted. The preparation of detailed checklists would also assist education providers, certifiers and consent authorities. Recommended checklists would include:

- Category of development checklist: This checklist would provide instruction to determine the relevant category of development (exempt, development without consent, complying development, local development, regional development and state significant development) noting the relevant standards
- Process checklist: This checklist would set out the approval, assessment and referral pathway for each category of development.

Recommendation: The drafting of the Draft SEPP and package of reforms should be critically reviewed to address the SCS concerns listed in this submission and to improve clarity. Checklists should be prepared to aid determination of the correct planning pathway, the relevant standards and processes for each category of development.

20. Consents for school infrastructure should not be subject to conditions requiring the payment of s. 94 and s. 94A contributions (noting that the Minister can issue a s. 94E direction)

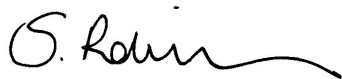
As noted in the Draft SEPP exhibition material, NSW needs to invest in high quality and cost effective school infrastructure. To maximise the prospects of achieving this, fees and charges incurred at the development stage should be minimised and consents for school infrastructure (CDCs, DAs and SSDs) should not be subject to conditions of consent requiring the payment of s. 94 or s. 94A contributions noting that:

- Schools are typically self-contained, therefore there is limited nexus between school infrastructure and many works funded through s. 94 and s. 94A (community facilities, child care centres and parks)
- Local infrastructure upgrades related to school infrastructure improvements (including roads, intersections, footpaths, street trees and drainage) can be appropriately carried out through properly constructed conditions of consent
- SCS families typically live close to their schools and as such contribute to the cost of local infrastructure upgrades through residential s. 94/94A contributions and/or rates.

Recommendation: As part of the reform package, a s. 94E direction should be issued by the Minister preventing the imposition of s. 94 and s. 94A conditions of consent for school infrastructure, as was done on 9 September 2009 when consent authorities were directed by the Minister to not impose conditions pursuant to s. 94 and s. 94A in respect to Building Education Revolution projects.

SCS trust that the Department will fully consider the issues and recommendations set out in this submission and would welcome an opportunity to discuss its concerns directly with the relevant Department Officers. Please do not hesitate to contact the undersigned should you require any additional information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Robinson', with a long, sweeping horizontal line extending to the right.

Sandra Robinson BTP (Hons) MPIA
Director