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ABN 32 353 260 317

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

ALW1(CIS)

9 May 2017

Dear Director, Industry and Infrastructure Policy,

**RE: DRAFT STATE ENVIRONMENTAL PLANNING POLICY  
(EDUCATIONAL ESTABLISHMENTS AND CHILD CARE FACILITIES)  
2017 – NORTH SYDNEY COUNCIL SUBMISSION**

On 7 April 2017, North Sydney Council lodged a 'staff submission' regarding Draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017. On 1 May 2017, this staff submission was considered by the elected Council, which resolved:

1. *THAT Council endorse the attached staff submission (Appendix 4) and the Department of Planning & Environment be notified.*
2. *THAT the submission include commentary in relation to notification of works under the SEPP to surrounding property owners, and the cumulative impacts of development on school sites on public land and adjoining properties.*

Accordingly, please consider the staff submission of 7 April 2017 as Council's formal submission, subject to the following additional feedback.

**1. Notification of works**

Works undertaken under the proposed SEPP should be subject to rigorous notification procedures to ensure stakeholders are properly informed of the basis for 'approval' and the likely impacts, particularly during construction. The notification provisions contained in the draft SEPP should extend not only to occupiers of adjacent land but also to land owners.

**2. Cumulative impacts**

The draft SEPP proposes new 'approval pathways' for a range of works and uses on school sites. Concern exists regarding the potential lack of assessment of the cumulative impact of these works and uses. Cumulative impacts would normally be considered under the assessment of a development application but are not proposed to be assessed under many of the 'approval pathways' proposed by the draft SEPP, particularly complying development provisions.

Thank you for the opportunity to provide feedback on the Draft SEPP. If you have any questions regarding this submission, please contact Alex Williams, Team Leader Policy on 9936 8100.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Marcelo Occhiuzzi', with a stylized flourish at the end.

Marcelo Occhiuzzi

**MANAGER STRATEGIC PLANNING**



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

ALW1(CIS)

7 April 2017

Dear Director, Industry and Infrastructure Policy,

**RE: DRAFT STATE ENVIRONMENTAL PLANNING POLICY  
(EDUCATIONAL ESTABLISHMENTS AND CHILD CARE FACILITIES)  
2017 – NORTH SYDNEY COUNCIL SUBMISSION**

The content of this submission represents the views of staff and is yet to be formally endorsed by Council. The Department of Planning and Environment will be advised of the outcomes of the Council meeting of 1 May 2017 where the content of this submission will be presented for endorsement.

It is acknowledged that the efficient provision of educational infrastructure is a relevant concern for the State and efforts for more efficient delivery of educational infrastructure is welcomed. However, a number of concerns exist regarding Draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (the Draft SEPP) as outlined below:

**1. Child care and early childhood education**

The proposed new definitions for early childhood education and care facilities are considered to be an improvement and better reflect the range of development types that characterise current child care services and facilities. Particularly, the differentiation between school-based childcare and centre-based childcare is welcomed as it allows for targeted approval pathways.

The inclusion of some low impact child care uses and associated works as exempt and complying development, subject to proposed standards being met, is supported as it will likely make it easier to undertake such uses and works in North Sydney, aiding the supply of childhood education and care services.

The requirement for centre-based child care facilities permitted with consent to be the subject of a development application to Council is consistent with current practice and is supported.



The proposed Child Care Planning Guideline prevails over relevant DCP provisions only where stipulated by the SEPP and sometimes defers to DCPs as is the case regarding car parking. The introduction of the Child Care Planning Guideline, therefore, risks complicating the system by increasing the number of documents an applicant or assessing authority needs to refer to in order to prepare or assess a development application.

Another general observation is that the Child Care Planning Guideline contains a degree of duplication or overlap within the document. For example, the design of a centre based child care facilities entry is guided by design criteria under 3C Landscaped area, 3E Public domain interface, 3F Pedestrian and vehicle access and 3G Orientation. Opportunities to further streamline the document for easier use should be pursued.

The majority of proposed non-discretionary development standards, including 'design criteria' within the Child Care Planning Guideline, are consistent with provisions contained within North Sydney DCP 2013. However, there are a number of departures from existing DCP provisions which may have a negative impact on local development outcomes:

***a) Clause 23(2)(c) of the Draft SEPP – Site area, site coverage and site dimensions***

This clause states that 'the development may be located on a site of any size, cover any part of the site and have any length of street frontage or any allotment depth'. This conflicts with site coverage, landscape area and landscaping provisions within North Sydney DCP 2013. The DCP provisions have successfully promoted the existing or desired future character of neighbourhoods including significant landscaping, controlled site densities, maximised retention and absorption of surface drainage water, and delivered mature trees with significant canopy cover. Clause 23(2)(c) should be abandoned such that existing DCP provisions regarding site coverage are respected or the relevant provisions from North Sydney DCP 2013 should be incorporated into the Draft SEPP or Child Care Planning Guideline.

***b) Design Criteria 3B – Building Envelopes – Heights and Setbacks***

The height of buildings on most land in North Sydney is regulated by North Sydney LEP 2013. Provision 3B-2 proposes 'default' heights where no height control currently exists. The 'default' height control of 8.5m for residentially zoned land is consistent with Council's most restrictive height limit for residentially zoned land. The 'default' height control of 12m for other zones potentially conflicts with Council's existing approach where on some land, the height control of the most restrictive adjacent zone is adopted. It is recommended that the 'default' control of 12m be removed and building height be controlled by reference to the most restrictive adjacent zone.

North Sydney DCP 2013 contains more prescriptive side setbacks for non-residential development such as child care centres within residential zones than is prescribed in design criteria 3B-5. North Sydney DCP 2013 generally requires side setbacks to increase as the building increases in height consistent with Council's long applied building height plane principle. North Sydney DCP 2013 also allows for consideration of setbacks on adjoining properties but also draws on the area character statements which allows for outcomes sympathetic to local differences. In a high density and highly developed LGA like North Sydney, a more prescriptive approach which allows for local difference is preferred to maintain acceptable levels of amenity and preservation of local character.

***c) Design Criteria 3D - Local Character and Context***

Design criterion 3D-1 does not consider the desired future character for an area. It is recommended that the required design statement consider local character and context provisions contained within DCPs, for example, the Area Character Statements contained within North Sydney DCP 2013.

***d) Design Criteria 3F – Pedestrian and Vehicle Access***

It is recommended that the Child Care Planning Guideline include design criteria that requires a separate and clearly marked entrance for the child care centre in buildings with multiple uses, consistent with s.5.5(P3) of North Sydney DCP 2013.

***e) Design Criteria 3L – Car and Bicycle Parking***

The Child Care Planning Guideline does not stipulate bicycle parking requirements. This is considered an oversight given the priorities for cycling outlined by bodies including North Sydney Council and the Greater Sydney Commission. This would be a reasonable inclusion and would generally reflect current practice in North Sydney

**2. Public and private schools**

The Draft SEPP proposes to allow 22-metre-high buildings as complying development. The North Sydney Council area has multiple school sites that are subject to LEP height controls more restrictive than 22 metres. Many are subject to an 8.5 metre or 12 metre height control. It is noted that the building setback controls proposed to apply to complying development on school sites adjacent to residential properties are generally greater than would be required under North Sydney DCP2013. However, the proposal to allow 22-metre-high buildings as complying development is a de facto increase in the height control for various sites in the North Sydney Council area without specific and targeted consultation with the stakeholders that will potentially be affected. The provision should be reworded such that buildings must comply with LEP height controls.

While not included in the Draft SEPP, the accompanying Explanation of Intended Effect flags the introduction of a requirement for Council certifiers to have sole responsibility for issuing complying development certificates on school sites. In essence, this would introduce yet another ‘assessment pathway’ into the already complicated NSW planning system. The proposal is an acknowledgement that the private certification system, upon which the complying development system relies, has significant problems. It is unclear why the Draft SEPP seeks to expand the complying development system while tacitly acknowledging that the private certification system isn’t working. Rather than introduce new assessment pathways to bypass the problem, efforts should be on fixing the private certification system. Indeed, the expansion of the complying development system proposed under the Draft SEPP should be postponed until the certification system has been appropriately reformed and trust in the system is rebuilt.

The proposed use of site compatibility certificates to allow additional uses on school sites zoned SP2 duplicates existing rezoning processes thus making the system more complicated and less transparent. Site compatibility certificates should be removed from the Draft SEPP and applications for additional permitted uses should follow existing processes based on stakeholder engagement.

Allowing private schools access to self-assessment under Part 5 of the EP&A Act, raises a conflict of interest and questions of precedent. As private entities, private schools are not charged with serving the public interest in the same manner as public authorities, and their action under Part 5 may not be in the public interest. It is not clear that the proposed Code of Practice will appropriately manage this conflict of interest. Further, if the basis for allowing private schools to access Part 5 is that they provide a service, there are many other industries which could also claim that they should also have access to self-assessment. This is potentially a "slippery slope".

Further, the expansion of self-assessment under Part 5 beyond public authorities further complicates an already complicated planning system. If the type of works envisaged to be undertaken by public schools under self-assessment is considered to be low impact, such works should be investigated for inclusion as exempt development (or complying development subject to reforms to the certification system).

### **3. Tertiary institutions**

The Draft SEPP proposes to allow 15-metre-high buildings as complying development on university land. The main Australian Catholic University site in North Sydney is subject to a height control of 8.5 metres. It is noted that the building setback controls proposed to apply to complying development on university land adjacent to residential properties are generally greater than would be required under North Sydney DCP2013. However, the proposal represents a de facto increase in the height control without specific and targeted consultation with the stakeholders that will potentially be affected. The provision should be reworded such that buildings must comply with LEP height controls.

Thank you for the opportunity to provide feedback on the Draft SEPP. If you have any questions regarding this submission, please contact Alex Williams, Team Leader Policy on 9936 8100.

Yours sincerely,

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Marcelo Occhiuzzi

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