

# Draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017

City of Sydney submission

April 2017



**CITY OF SYDNEY**   
*city of villages*



**City of Sydney**  
ABN 22 636 550 790  
GPO Box 1591 Sydney NSW 2001 Australia

Town Hall House 456 Kent Street Sydney NSW 2000 Australia  
Phone +61 2 9265 9333 Fax +61 2 9265 9222 TTY +61 2 9265 9276

[council@cityofsydney.nsw.gov.au](mailto:council@cityofsydney.nsw.gov.au)  
[www.cityofsydney.nsw.gov.au](http://www.cityofsydney.nsw.gov.au)  
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## Executive Summary

This submission responds to the NSW Government's proposed *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* (SEPP), the *Draft Child Care Planning Guideline* (Guideline), *Draft Environmental Planning and Assessment Amendment (Schools) Regulation 2017* and *Draft Better Schools Design Guide* (Design Guide). This consultation package was released for comment between 3 February and 7 April 2017.

The City supports the aims of the SEPP, Guideline, Regulation and Design Guide and changes to the policy framework for childcare and education providers to ensure that they develop their sites more efficiently and deliver high quality and well-designed facilities, but only subject to important qualifications. Aligning the planning system with the national childcare quality framework and service approvals will make it easier to develop new centres, but the degree to which schools are to be removed from community engagement and independent professional assessment is not supported.

The City's key recommendations are:

### Schools

1. **Allowing private schools to act as public authorities, does not create 'a level playing field'.** This move is not supported because private schools are commercial entities with no obligation to act in the public interest and being not-for-profit they plough excess funds into property.

Private schools will more often redevelop their support facilities, rather than develop for the expansion of students. The City is concerned that allowing private schools to assess and determine its own development, may lead to impacts on neighbours and the wider community for which there will be insufficient recourse. The City considers that private school development proposals should be assessed through the development application process, in the same way as other commercial businesses.

2. **Matters considered in the determination of a site compatibility certificate for the reuse of state land include the consideration of an alternate public use.** A planning panel should consider, in the context of current and projected demand for public schools or other public facilities, the need to retain the land for an alternate public use, alongside the compatibility of the proposed use and rezoning with surrounding land. This may prevent strategic land opportunities to provide public uses from being irreversibly lost to higher value uses.
3. **The proposal to allow school development of four storeys and 22m in height as complying development is not supported.** New schools and student places are urgently needed to support the new families living in our local government area and the City supports measures to increase capacity in inner-city schools, providing impacts are managed appropriately. There is a significant risk that the proposed 22m high development will be inconsistent with the character of a local conservation area and could have impacts on neighbouring properties and places of heritage significance. This would be inconsistent with the purpose of complying development. As the proposed building setbacks,

overshadowing and privacy standards may not address the impact of a four storey building on surrounding development lower density urban contexts, any building of the proposed scale should be assessed as a development application.

4. **The City of Sydney and CSPC thresholds cannot be the same as the lowest denominator Council.** As a result of its demonstrated experience in assessing complex and high value applications and delegated state significant development, the City requests that state significant development thresholds **not apply** and the Central Sydney Planning Committee be the consent authority for all new schools, alterations to existing schools over \$20 million and the development of tertiary educational establishments over \$30 million in value located in the City. A type of exemption clause, which was in place until 2011, should be reintroduced.

## Childcare

1. **The City supports proposals to establish appropriate controls to facilitate more high quality child care centres.** The City of Sydney has prioritised the provision of childcare. As well as being one of the largest local government providers in NSW, we also work with developers on the inclusion of childcare centres in development applications and through voluntary planning agreements.
2. **The SEPP and the Childcare Planning Guidelines should include specific requirements for fire safety measures.** These are to ensure centre-based childcare in multi-storey buildings facilitate a safe environment and evacuation systems for children, staff and visitors in an emergency situation. These must be considered in addition to the Building Code of Australia (BCA) controls which do not address the special fire-safety needs of children occupying and evacuating a multi-level mixed-use building.
3. **Infant childcare must able to be provided for.** The removal of a Council's ability to make requirements for age group provision could lead to operators choosing not to provide for the under two age group, and an under-provision in service in one or more areas of the City. This would have significant implications for families with working parents with very young children. Requirements for age group provision should be included, or a policy mechanism implemented by the NSW Government to address market failures to provide appropriate places for a range of children.

## Universities and TAFEs

1. **Design quality is critical to the delivery of high quality schools and childcare facilities.** While the SEPP consolidates policy to meet the unique needs and requirements of childcare and education providers, there is an inconsistent approach towards design quality across the childcare, school, university and TAFE sectors that should be resolved. The effective integration of design quality in complying development and development with consent pathways, however is not a requirement for development on universities and TAFE sites. These education sites can accommodate large scale

development and may be within sensitive areas where the requirement to deliver a high standard of architectural, urban and landscape design is most important.

2. **Design quality is critical to the delivery of tertiary institutions.** The scale of development on some university and TAFE campuses warrant a competitive design excellence process to ensure that a high standard of architectural, urban and landscape design is achieved. The SEPP should be amended to set a development trigger for NSW Government competitive design excellence processes in the NSW draft 'Better Placed' and the Director General's Design Excellence Guidelines for University and TAFE development.

## 1.0 Schools

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

#### Private schools as public authorities - Environmental Planning and Assessment Amendment Regulation and Clause 30

The *Environmental Planning and Assessment Amendment (Schools) Regulation 2017* proposes that a registered non-government school can act as a public authority to self-approve and carry out development without consent without consent under clause 30 of the Draft SEPP. A draft *Environmental Assessment Code of Practice for Part 5 activities* is proposed to regulate the assessment of development without consent including consultation requirements. The Department proposes to enforce compliance with the Code.

The proposal sets a dangerous precedent of allowing private entities to operate outside the planning system with no protection for the public interest.

Allowing private schools to act as public authorities, does not create 'a level playing field'. This move is not supported because private schools are commercial entities with no obligation to act in the public interest and being not-for-profit they plough excess funds into property. This form of development will not expand schools or increase places and is unlikely to reduce the pressure on public school places.

Private schools will more often redevelop their support facilities, rather than develop for the expansion of students. The City is concerned that allowing private schools to assess and determine its own development, may lead to impacts on neighbours and the wider community for which there will be insufficient recourse. The City considers that private school development proposals should be assessed through the development application process, in the same way as other commercial businesses.

Private schools provide school places for the community, however access to these places is moderated by the community's capacity to pay. Private schools act in the interests of their fee paying students and are not bound to make decisions in the public interest or that of neighbours. Public schools and other government agencies designated as public authorities are bound to act in the public interest and are accountable for their actions to the community through the government of the day. Compliance with the Code of Practice may not always be achieved and the Department's ability to enforce it may at times be limited.

Private schools play an important role in providing school places, and the City supports the redevelopment of their school facilities where it is consistent with planning controls and manages impacts. The City considers that like other commercial enterprises the development application process is the appropriate path to ensure that the impacts of this private development can be balanced against public interests.

#### Recommendation 1.1

Delete the provision in the *Environmental Planning and Assessment Amendment (Schools) Regulation 2017* which prescribes registered non-government schools to be public authorities.



## Disposal of government land - Site compatibility certificates

Site compatibility certificates are included in the *SEPP Infrastructure 2007* and enable government infrastructure land to change use without a formal rezoning. This enables government agencies to dispose of land at a higher value and without a public process. For example a school zoned for that use could adopt the residential zoning of the neighbouring site and could be sold for private development.

Clause 13 outlines the process for issuing a site compatibility certificate and the considerations a planning panel must take into account when determining an application for a certificate. A valid certificate enables additional uses of State land under clause 14. Clauses 13 and 14 facilitate the expansion of a school site and also the disposal of surplus school land and have been transferred from the *SEPP Infrastructure 2007*.

The Government has identified the need for 15 new schools in NSW per year by 2031.<sup>1</sup> If the continued operation of site compatibility certificates is to proceed and be applied to the rezoning and disposal of State land, such as schools, then clause 13 should be reviewed to ensure that the relevant planning panel also considers the need to use that land for schools or other public uses. The need to reserve the land for public use should be considered in the context of existing and projected community demand for public facilities. This will guard against government having to acquire land at market value to meet infrastructure needs in the future.

Within densely populated urban areas, availability of land is restricted by high land values and competing land uses. Strategic opportunities to acquire sites of a suitable size and accessibility for public uses, such as schools, are very limited. The draft SEPP should not facilitate the change of use of public land to a private use, without an independent and robust test of whether the public land is needed for public use.

### Recommendation 1.2

Amend clause 13 to require a relevant planning panel when determining an application for a site compatibility certificate to consider the need to use that land for an alternate public use.

## Development permitted without consent and height – Clause 30

Clause 30(1) (a) outlines development that is permitted without consent and restricts development to one storey.

A height control in metres should be applied in addition to the storey control. This will ensure that one storey development does not have excessive floor to ceiling heights and result in impacts on neighbours. Schedule 2 of the SEPP includes complying development standards with both a height in storeys and a height in metres.

### Recommendation 1.3

For exempt, complying and development permitted without consent for schools, universities and TAFEs, include both a height in metres and height in storey control.

<sup>1</sup> Draft SEPP (Educational Establishments and Child Care Facilities) 2017 Explanation of Intended Effect page3



### Existing schools complying development – Clause 33

The City supports measures to streamline planning approvals for schools, providing impacts are managed appropriately. Our inner city schools are full or close to capacity. New primary and secondary schools and additional student places are urgently needed to support the new families living in our local government area, and the many families who will move into the area following implementation of the NSW Government's urban renewal plans.

Clause 33 enables development within an existing school to be approved as complying development. Schedule 2 of the SEPP includes the building standards for the complying development, which address fenestration and materials, overshadowing, height, privacy, landscape. The proposed maximum building height for complying development is four storeys and 22m. If the building height is more than 15m high, the proposed setback is 10m from a side or rear boundary of land in a residential zone or 4m from a side or rear boundary of land in any other zone.

The City is concerned that the four storey and 22m height limit will result in development substantially inconsistent with a neighbourhood and with unacceptable impacts on neighbours. The proposed four storeys and 22m in height is a significant increase and almost double the current 12m limit in the *SEPP (Infrastructure) 2007*, and that applying to complying development for TAFE sites (clause 50).

As complying development does not involve merit assessment and is not notified, the impacts of complying development must be known and managed by the complying criteria.

The City considers that the four storey and 22m height building should be assessed as a development application with the complying development height limit reduced as it may result in significant impacts that cannot be appropriately mitigated as complying development and the scale is likely to be inconsistent with that of many local areas. A 22m building is equivalent to a six storey residential flat building generally suited to high density areas. Many school sites are in suburban areas or even older heritage areas where a six storey building would be substantially inconsistent with the scale of a surrounding area. Complying development does not even enable a merit assessment that could determine an appropriate siting and design of higher buildings.

While a 22m school building may be appropriate in high density areas, in lower scale areas, complying development does not allow for the planning and design rigor to achieve an appropriate outcome.

Under section 1.17A of the *SEPP (Exempt and Complying Development Codes) 2008* complying development on school sites is not excluded from conservation areas. A 22m school building constructed in or adjacent to a conservation area will not be sympathetic to the scale of development in a conservation area and result in adverse impacts on heritage significance.

The City recommends a reduction in the building height standard for complying development from four to three storeys, and 22m to 18m height limit to reduce the extent of inconsistency and mitigate impacts. Together with the proposed setbacks, the City considers the reduced building height will strike a better balance between supporting school development and mitigating impacts.

#### **Recommendation 1.4**

Amend Schedule 2(2) Building heights to require the building height to not exceed three storeys and 18m from ground level (mean).

### **Schedule 5 Amendments to State Environmental Planning Policy (State and Regional Development) 2011**

Clause 5.2 of Schedule 5 amends the *SEPP (State and Regional Development) 2011* to make new schools and alterations and additions to an existing school over \$20 million and any other educational establishment development over \$30 million, state significant development.

The City of Sydney and CSPC thresholds cannot be the same as the lowest denominator Council. The Central Sydney Planning Committee (CSPC), with State and City appointees, determines development over \$50 million in value in the local government area. The City has the capacity to assess and determine state significant projects, with the CSPC determining \$2.3bn of development in 2016.

Within the current thresholds, the assessment of applications for educational establishments as state significant development represents an unnecessary use of the Department's resources when these proposals could best be assessed by the City. The City routinely assesses complex, large scale and high value development, yet NSW Government carve outs and low thresholds create a patchwork planning approach that fosters uncertainty and disjointed outcomes.

The City has demonstrated experience in assessing major development, including recent delegations from the Department of Planning for prominent sites in Circular Quay and Macquarie Street. The City, through the CSPC, undertook an integrated assessment of the proposal as a single consent authority. Other proponents have expressed an interest in having applications delegated to the City.

As a result of its demonstrated experience in assessing complex and high value applications and delegated state significant development, the City requests that state significant development thresholds not apply and the CSPC be the consent authority for all new schools, alterations to existing schools over \$20 million and the development of tertiary educational establishments over \$30 million in value located in the City. A type of exemption clause, which was in place until 2011, should be reintroduced.

The City has submitted detailed requests to the Department of Planning and to the previous Minister for Planning to amend relevant SEPPs and make the CSPC the consent authority for educational establishments over \$30 million in the City. The Department should also review existing projects and work with the City to consider appropriate opportunities to delegate proposals to the City to assess and determine.

#### **Recommendation 1.5**

Amend clause 5.2 and the thresholds in the *SEPP (State and Regional Development) 2011* to make the City and CSPC the consent authority for all state significant educational establishments in the City.

## Complying Development

The draft SEPP proposes to make school based childcare centres complying development. To ensure quality design outcomes, design criteria is applied to complying development for centre-based childcare. A certifier will rely on a Design Statement from the designer of the centre when issuing a complying development certificate.

The designers and architects required to prepare the Design Statements are not accredited under the *Building Professionals Act*. Certifiers accredited under the *Building Professionals Act* will be responsible for any issues or non-compliances with the Guideline.

To provide certainty for certifiers, proponents and the community, design statements should be prepared only by registered architects. This will ensure that the person who verifies the design is qualified to do so and is accountable to the NSW Architects Registration Board which has processes to deal with complaints, including disciplinary action.

### Recommendation 1.6

Require the Design Verification Statement to only be completed by Registered Architects.

## Better Schools: A Design Guide for Schools in NSW

The Design Guide, which provides practical guidance on how school projects can apply the design quality principles included in Schedule 4 of the SEPP, is broadly supported. However further upfront emphasis should be given to the master planning phase and the after-hours use of schools as community spaces and facilities.

The City strongly supports design principles and guidance that encourage sharing of school facilities for the community. School buildings and grounds can be used when not required by the school for a variety of community purposes, including sport, performances, markets and meeting spaces. The design of buildings and spaces on a school site should encourage the shared use of these spaces.

Design principles and guidance could also encourage the arrangement of buildings and spaces to maximise opportunities for schools to share community facilities such as adjacent parks and recreation facilities, particularly where these facilities cannot be provided on constrained school sites. The siting and design of schools near public parks and pools will encourage access and connections to these facilities.

The concept of a design champion is supported but requires further clarification. The guidance suggests the champion will be a staff or community member who is appointed to advocate for good design throughout the project. It may be difficult to secure a design champion who has 'a good understanding of educational and architectural quality.' Funding incentives and clear qualifying criteria for the role will be required to ensure that it is taken up and the objectives of a design champion implemented. The guide should also propose the option of engaging an independent expert to be a design champion.

The City's detailed recommendations arising from the review of the design quality principles and guidance and key steps and key activities are set out below:

### Recommendation 1.7

#### Design Quality Principles

- (a) In the section 'Context, built form and landscape' include reference the siting of schools to maximise the potential to use adjacent community parks and recreation areas.
- (b) In the section 'accessible and inclusive' include reference to the design of facilities to maximise the after-hours use of the facilities by the community, and consider siting of schools near public parks and recreational facilities to encourage use by the school.
- (c) In the section 'Health and Safety' include reference to noise and air quality issues which arise from the location of facilities adjacent to busy road, and the road safety impacts of vehicular trips to and from school and the need to consult with RMS.
- (d) In the section 'Whole of life, flexible and adaptive' include reference to a whole community approach to school design.

### Design Guidance

- (e) In the section 'Context, built form and landscape' include a statement that new school development should incorporate outdoor learning opportunities into landscape masterplans.
- (f) Reword guidance under 'Sustainable, efficient and durable' to make explicit reference and give high priority to building in energy efficiency into the design of new school development.
- (g) In the section 'accessible and inclusive' include reference to designing facilities to maximise flexibility of use.
- (h) In the section 'Whole of life, flexible and adaptive' include reference to future community requirements.

### Key Steps' and 'Key Activities'

- (i) Amend 'key steps' and 'key activities' to include:
  - greater emphasis on the master planning phase in the 'key steps' process.
  - under 'Procurement' in the key activities' include 'urban designers' in the list of a design team.
  - reference to funding or incentives to facilitate the appointment of long term design champions, within the staff or school community, or an independent expert.
  - Sustainability outcomes and relevant building rating tools should be referenced in the design review and post-occupancy evaluation stages.

## 2.0 Centre-based Childcare

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

#### Part 3 Early Childhood and Care Facilities – Specific Development Controls – General comment

The City supports integrating the provisions of the *National Quality Framework* and planning considerations into a single policy framework. It will align processes and help make it easier to develop childcare centres.

#### Centre-based child care non-discretionary standards - Clause 23

Clause 23 identifies standards for which a consent authority is prevented from requiring more onerous standards. These standards relate to location, indoor and outdoor space, site area, site coverage and dimensions, colour of building materials or design.

##### Design Excellence

The Sydney LEP 2012 includes design excellence provisions and incentivises competitive design processes to deliver a high standard of architectural, urban and landscape design.

A childcare centre may be proposed as part of a mixed use building which can be awarded floor space for achieving design excellence. There is overlap between the matters council cannot use to refuse a childcare proposal and the considerations for design excellence. If council is restricted from considering design related matters for the entire building it may not be able to award the floor space bonus.

The SEPP should be amended to make clear that clause 23(2) relates only to the part of a building that is for a childcare centre if the centre is part of a mixed use building.

##### Site Coverage

Clause 23(2)(c) relates to 'site area, site coverage and site dimensions' and states that a development can occupy any part of the site and a consent authority cannot require any more onerous arrangement of buildings. This clause removes the application of site coverage provisions which typically aim to preserve parts of a site for open space, such as a rear yard or a front setback.

The clause conflicts with section 3B of the Guideline which requires setbacks and prevents a childcare centre occupying any part of the site. These setbacks minimise overshadowing and privacy impacts and help establish an appropriate building form in a street.

To ensure the SEPP and guidelines are consistent and misinterpretation is avoided, the clause should be amended to refer to the site covering any 'portion' of a site.

##### Design Criteria

Clause 23 (e) states that development must satisfy the design criteria in the Guideline. Clause 21 makes Part 3 a

discretionary consideration in the determination of a development application. It is anticipated that subsection (e) refers to the non-discretionary criteria in Part 2, however to avoid misinterpretation this should be made explicit.

#### Recommendation 2.1

- (a) Amend clause 23 to make it clear that it only applies to the part of a development that is for a centre-based childcare.
- (b) Amend clause 23(2)(c) to refer to development occupying any 'portion' rather than the 'part' of the site to enable appropriate siting and setbacks that address issues raised in the Guidelines.
- (c) Amend 23(2)(c) to clarify which design criteria in the Guideline must be satisfied.

#### Centre-based child care development control plans - Clause 24

Clause 24 restricts the use of DCP controls to encourage the provision of childcare places for certain age groups. Since 2005, the City's *Child Care Centres DCP 2005* controls have encouraged new centres to provide a third of places for 0-2 year old children. This has been based on a comprehensive council-wide needs assessment. In 2013 the City's Needs Analysis found:

*Almost all Early Childhood Education Centre (ECEC) directors interviewed indicated that demand is high for children under two years of age. Across the City, around 28% of all ECEC places are provided for children aged under two years while the proportion of resident children in the City aged under two years is around 44%. The proportion of ECEC places is slightly lower than in 2005 when approximately 30% of places were for under twos.<sup>2</sup>*

The Needs Analysis also acknowledged the provision for the under two age group is more onerous and expensive for an operator to provide. The under two age group requires the provision of more space and staffing than older age groups. Prioritising older children is more profitable for operators but may also be used cross-subsidise younger children.

It is acknowledged the planning system may not be the appropriate policy lever to address the undersupply of places for age groups and that any regulation on ages could have an unintended effect of making centres unviable for any places. However, the problem of under-provision for a certain age groups remains and this affects families and workforce participation.

In the absence of policy levers for local government, the NSW government needs to implement a policy mechanism to ensure the market provide appropriate places for a range of children.

#### Recommendation 2.2

Amend clause 24 to allow consent authorities to address in DCPs the number and age groupings of provision in a proposals for a centre-based childcare, or provide an indication of how the Government will ensure the provision of centre-based childcare for the under two age group.

<sup>2</sup> City of Sydney Child Care Needs Analysis 2013, Cred Community Planning.  
[http://www.cityofsydney.nsw.gov.au/data/assets/pdf\\_file/0007/189835/CCNA-7-Nov-2013.PDF](http://www.cityofsydney.nsw.gov.au/data/assets/pdf_file/0007/189835/CCNA-7-Nov-2013.PDF)



### **Mobile child care exempt development - Clause 25**

Clause 25 allows mobile childcare (which is defined as an education and care service that visits premises or an area or place for the purpose of providing child care) as exempt development if it meets criteria relating to car parking, impacts on ground or surface water flow, ground stability and separation distances.

This clause does not include a requirement to provide sanitary facilities to support the mobile service. The provision of adequate sanitary facilities for children associated with mobile services is important as, unlike adults, children cannot self-regulate fluid intake when using temporary structures for short-term temporary uses or events where facilities are not available. The clause should require the provision of, or access to sanitary facilities as part of the provision of mobile childcare services.

The clause should include the requirement to obtain consent for the use of public or private facilities to support the mobile childcare, and guard against the use of inappropriate facilities to support the mobile operation. The City is aware of incidents of mobile childcare operators attempting to book community facilities and not disclosing that the use is for a mobile preschool.

The City understands mobile preschools are needed in regional and rural areas, however is concerned that in an urban area a mobile childcare operator may use buildings which comply with the BCA requirements for exempt development in clause 15, on a permanent rather than short term basis. This could undermine the intention of the clause and facilitate more permanent childcare uses with significant impacts which have not been subject to the appropriate assessment.

#### **Recommendation 2.3**

Amend clause 25 to:

- include the provision of, or access to adequate and convenient sanitary facilities available for use by children and carers using the mobile child care service.
- ensure that in urban areas where a mobile operation results in potential amenity impacts that it is subject to assessment through the DA process.
- clarify the need for land owners consent for the use of appropriate support facilities to support the mobile use
- ensure in urban areas that the use of other support facilities is on a short-term basis.

### **Specific development controls for school-based childcare - Clause 34**

Clause 34 allows new development for school-based childcare if it is within the boundaries of an existing school and not on bush fire prone land, a lawful use, not a heritage item or contrary to a condition on an existing development consent. Any proposals for alterations or additions to school-based care must comply with the standards set out in Schedule 2 of the SEPP which address height, design and materials, privacy, landscaping, setbacks, overshadowing among other matters.

The inclusion of this school-based childcare in the complying development pathway to facilitate increased provision in existing facilities where the principle of the education use is already established, is supported. This provision will simplify processes and allow schools to increase their child care capacity and make the best use of existing facilities with minimal impacts on surrounding development.

The safe egress and evacuation of children in a fire emergency is not addressed in Schedule 2. The evacuation requirements of a childcare facility are different to those for school facilities and school age children, and should be addressed separately.

The lack of mobility of small children and babies, the ratio of staff to children and the ability of staff to move groups of babies and children out of a stand-alone or multi-storey building in an emergency situation are critical factors which must be considered in the design of safety features in a building. The Building Code of Australia (BCA) does not adequately address the special needs of children in relation to fire-safety, including egress of children from a childcare facility in an emergency. As a result, detailed design measures must be included in the SEPP. Given the Department's proposed four storey and 22m high building under complying development additional fire safety measures are likely to be needed, including ensuring carers can evacuate children and babies safely.

#### **Recommendation 2.4**

Review and expand Schedule 2 to provide clear requirements for additional fire safety measures for any building over one storey.

# Draft Childcare Planning Guidelines

## Part 2 Guide for Complying with the National Regulations

### Indoor space – Clause 2.2

This section should include requirements that indoor space comprise different rooms for each age group to avoid single large open rooms being proposed to accommodate activities of all age groups. If large open rooms are used to accommodate all of the children in a centre without walls or partitions to separate or contain each group, the noise and distraction created will not meet the children's educational needs and undermine the delivery of an effective service.

#### Recommendation 2.5

Amend clause 2.2 to require in indoor activity areas the separation of age groups with walls or partitions, to avoid the use of single open rooms to accommodate all children in a centre.

### Outdoor Environment - Clause 2.7

Section 2.7 should address outdoor space in high density environments. As briefly referenced in Part 3A, criteria (2), outdoor space at ground or podium levels in the vicinity of tall buildings are likely to be affected by wind and building down drafts. If wind effects are too strong it may make outdoor play spaces unusable or even dangerous. Awnings, pergolas and shade structures can assist in shielding children from these effects. The section should require consideration of the wind effects of tall buildings on the ability for children to play in the designated outdoor space.

Outdoor play space in large centres accommodating over 90 places should ensure that as provision grows exponentially that the design of the centre remains appropriate and that impacts of increased numbers can be appropriately mitigated. The clause should state that centre-based childcares with more than 90 places should ensure there is flexibility in the use of that space to address the needs of under two and the three-five age groups.

#### Recommendation 2.6

Amend clause 2.7 to:

- require in indoor activity areas the separation of age groups with walls or partitions, to avoid the use of single open rooms to accommodate all children in a centre.
- require landscape designs which maximise the use of the space, create visual interest, and encourage exploration and experience of the natural environment.
- require where a child care centre is located in the vicinity of tall buildings that outdoor play areas are designed to protect children from adverse wind and other climatic conditions that could restrict play.
- ensure that centre-based childcares with more than 90 places demonstrate flexibility in the use of outdoor space to address the needs of under two and the three to five age groups.

## Emergency and Evacuation - Clause 2.10

The City strongly supports the inclusion of fire safety and emergency evacuation measures in the Guideline. Clear guidance for fire safety measures will facilitate more childcare supply opportunities in high density environments that are safe for children.

The City agrees with the statement in the Guidelines that compliance with the BCA for egress and evacuation may not be sufficient to provide for safe evacuation and that multi-storey buildings and mixed-use buildings may require additional fire safety measures. Fire safety and effective evacuation systems are essential to ensure children and staff can be evacuated safely from a centre. The lack of mobility of small children and babies, the ratio of staff to children and the ability of staff to move groups of babies and children out of multi-storey building are critical factors which must be considered in the design of safety features in a building.

The absence of appropriate provisions in the BCA to address the safe egress of children, a vulnerable occupant group, from multi-storey and mixed-use buildings is a significant deficiency which is particularly concerning as more applications are made for childcare centres in high density areas. Appropriate fire and evacuation controls for these situations should be included in the BCA to ensure that proposals are not approved that could put the safety of children and carers in childcare centres at risk. This issue is not specific to NSW. It is of relevance to high density areas nation-wide, where options to provide childcare centres in ground level or standalone buildings are limited or not available and therefore should be addressed by the Australian Building Codes Board.

Similar to health and aged care facilities where occupants are extremely vulnerable with limited mobility and where higher level fire safety measures are required, a childcare centre should also be subject to an increased level of fire safety control to ensure safe evacuation. Clause 2.10 should include key considerations in the design of the building to accommodate the needs of children and carers such as the height of a building and the distance it will take to evacuate, and the return journeys required to evacuate all children.

The City urges the Department to raise this matter with the Australian Building Codes Board (ABCB) office through its representation on both the Board and the Building Codes Committee, with an aim to amend the BCA to address the special safety needs of children occupying multi-storey and mixed-use buildings. The City also suggests that the Minister for Planning table the matter at the Building Ministers Forum and request that the ABCB administration consider amendments to the BCA to deal more effectively with this growing issue.

In addition to measures outlined in clause 2.10, the following should be included to provide options for proponents to ensure the safe evacuation of children:

- *Early warning systems* to alert occupants of fire and initiate prompt movement of carers and children to safe havens or exits before evacuation routes become untenable from the effects of fire and smoke. These must include a smoke alarm system complying with AS3786, which is interconnected throughout the centre and located in playrooms, sleeping rooms, storerooms, nappy change rooms, kitchens and offices.
- *Automatic fire suppression systems* in buildings exceeding two-storeys to give greater protection to children and staff to ensure the safe and effective evacuation of a centre.
- *Smoke seals* on all doors that open to a fire-isolated exits.

The notes on the safe haven diagram should be amended as follows:

- show the safe haven in the cross-sectional diagram on level 4 or lower
- doorways are to have a minimum clear width of 850mm and circulation in accordance with AS 1428.1-2009 'Design for Access and Mobility'
- doors are to be self or automatic closing fire doors fitted with smoke seals
- doors within a multi-storey building must have a fire resistance level of -/120/30 minutes

The notes on the emergency lift diagram should be amended to replace the statement that emergency lifts are to be 'used where there is no safe haven' with emergency lifts may need to be 'used for centres on the fourth floor and above'.

#### **Recommendation 2.7**

- (a) The Department request that the Minister for Planning raise the inadequacies of the BCA to effectively address the special safety needs of children in multi-storey Class 9b early education centres and mixed use buildings at the Building Ministers Forum, and seek a review of the BCA provisions applying to early childhood centres.
- (b) The Department through its representation on the ABCB Board and the Building Code Committee, work with the ABCB administration to review the current BCA provisions applying to early childhood centres and seek amendments to the Code to address child safety in multi-level centres and centres within multi-storey mixed use buildings.
- (c) Amend section 2.10 to provide additional options and guidance on fire safety measures including early warning systems, fire suppression systems, safe havens and emergency lifts as described in this submission.

## Part 3 Matters for Consideration and Design Criteria

### Location - Part 3A

This clause should be amended to refer to other health and amenity risks that nearby uses can impose on a centre including injecting rooms, drug treatment clinics, sex services premises, cooling towers, gas/fuel tanks, mobile phone towers and electricity substations.

#### Recommendation 2.8

Include in Part 3A (4) the need for separation from injecting rooms, drug treatment clinics, sex services premises, cooling towers, gas/fuel tanks, mobile phone towers, electricity substations and other similar infrastructure.

### Building envelopes – heights and setbacks - Clause 3B

Part 3B is not clear about the application of setbacks in a DCP. The preamble states that where there are no setback controls in a DCP they are encouraged to be consistent with existing character. The design criteria then sets a minimum 10 metre setback to a classified road requires the average setback of the two closest buildings for other roads with no reference to DCP setbacks.

While in some circumstances using the existing development as a basis for setbacks may be appropriate, setbacks in a DCP can correct a pattern of setbacks which do not create good outcomes or establish setbacks for a new form of development in an urban renewal area.

Design criteria 3B should be amended so the setbacks in the criteria apply if there are no setbacks in a DCP. This is consistent with the preamble statement and the design criteria for height.

#### Recommendation 2.9

Amend Design Criteria 3B so that the setbacks in the criteria apply if there are no setbacks in a DCP.

### Orientation - Clause 3G

This section states that living room windows more than 3 metres from a property boundary will be protected from overshadowing from a centre-based childcare. Where the criteria is not satisfied, development must not reduce a neighbour's direct solar access by more than 20 per cent.

This provision addresses windows more than 3 metres from the boundary and does not protect solar access to windows within 3m of a boundary. This is a significant concern for the City, as heritage areas feature sites with narrow buildings close to boundaries and setbacks much less than 3m. This is also relevant to other areas as the General Housing Code permits dwellings with side setbacks as small as 0.9m. The proposed guidance allows for solar access to be reduced in every circumstance for buildings within the 3m setback. This approach is unreasonable and appropriate controls should be developed for sites with buildings within the 3m setback.

It is recommended appropriate criteria developed for buildings within the 3m setback. This may include a clear statement that a council's DCP controls apply.

#### **Recommendation 2.10**

Amend Design Criteria 3F to:

- Set appropriate controls for overshadowing of windows to habitable rooms for dwellings located within 3m of a property boundary, including whether a council's DCP controls will apply

#### **Acoustic Privacy – Criteria 3I**

The City supports the provisions of Part 3I which emphasise and encourage the adequate siting and design of a childcare centre to ensure acoustic privacy between the childcare centre activity rooms and outdoor areas and neighbouring properties. Requirements imposed on consents to monitor the level and activity of children using an outdoor space and adjust operational procedures to reduce noise impacts on neighbours are not effective measures and should not be encouraged.

The City is aware of acoustic reports that have recommended stringent acoustic controls on large childcare centres to ensure that they comply with the prescribed noise levels indicated in the Guideline. Some of these controls have sought to limit the number of children in a play area at one time, restrict the sound levels of voices and require all windows to be closed. These controls are onerous and unreasonable, and make it difficult for an operator to meet the children's educational, health and amenity needs in a reasonable or flexible manner.

#### **Recommendation 2.11**

Amend Design Criteria 3I to acknowledge that acoustic controls which require changes to behaviour of users of the centre and operational procedures may undermine the operation of the service and should not be imposed.

#### **Noise and Pollution - Criteria 3J**

This section requires outdoor play areas to have a background noise level not exceeding 55dBA (LA90 24 hrs). The City is concerned about this requirement as many childcare centres do not operate over a 24 hour period. It may add complexity and cost in assessing and designing to a performance standard that is influenced by noise levels at times when a centre is not operating. It may also miss qualifying occupants' actual exposure to noise during the hours they spend outside.

While the inclusion in the SEPP of a performance requirement for outdoor noise areas is supported, this could exclude many urban environments which have high daytime transient working populations, but have a significant need for childcare facilities. It is recommended that the passive recreational area noise criteria in the current version of the NSW industrial noise policy be used.



#### **Recommendation 2.12**

Delete the requirement in section (1) of Design Criteria 3J for outdoor play areas to have a background noise level of 55dBa, and include reference to the passive recreational area noise criteria in the *NSW EPA Industrial Noise Policy*.

#### **Car and Bicycle Parking - Clause 3L**

Many City areas are walkable and well served by public transport which reduces the need for car parking and supports the development of childcare centres. The objective of the design criteria in Part 3L should be amended to reflect the need to provide parking given the location and accessibility of the centre.

Criteria (1) states that on-street car parking should be provided according the rates in a DCP that apply to the land. This should be amended to also refer to the rates included in an LEP as the City includes parking rates in Sydney LEP 2012.

#### **Recommendation 2.13**

- (a) Amend the first statement in Design Criteria 3L to state that the objectives of the design criteria is to provide parking as needed to satisfy the travel demand generated by the centre.
- (b) Amend Criteria (1) of Part 3L to refer to LEP car parking rates.

## 3.0 Universities and TAFEs

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

#### Student Accommodation - Clauses 38 and 45

The City strongly supports the exclusion of student accommodation from university and TAFE development. Given the identified demand for high quality tertiary education facilities, the use of university and TAFE sites should be prioritised for education, and not encroached by residential uses. Identifying student accommodation as a separate use will ensure that higher value residential accommodation uses do not erode land needed for educational uses.

#### University and TAFE complying development - Clauses 43 and 50

The Department's *Explanation of Intended Effect* document notes that restricting complying development for universities to SP1 and SP2 zoned land is being considered. The City supports this restriction as the generous complying development allowances would create an uneven playing field for other uses in commercial centres and may leave legacy built form issues as the building built under complying development may be later subject to a change of use. Complying development on campuses zoned for education uses also allows impacts on neighbours to be better managed.

Schedule 3 requires that side and rear setbacks for university buildings, up to three storeys and 15m in height be set back 1m from any side or rear property boundary in any non-residential zone. Many areas zoned B4 feature a significant amount of residential development. The City is concerned that overshadowing, visual and privacy impacts of a 15m high building on an adjacent site will not be mitigated by a 1m setback, particularly in conservation or local areas. Further, 1m setbacks for 15m buildings creates a poor built form. A 5m setback as proposed for development adjacent to residential properties will achieve a better separation. Schedule 3 should be amended to require a 5m setback to all zones.

Similarly, Clause 50 requires that side and rear setbacks for TAFE buildings, up to 12m in height be set back 1m from any side or rear property boundary in any non-residential zone. To ensure that the impacts can be mitigated, a 5m setback is recommended for all zones.

#### Recommendation 3.1

- (a) Retain the exclusion of student accommodation from consideration as a university or TAFE use.
- (b) Retain the proposal to restrict university complying development to the SP1 and SP2 zones.
- (c) Amend Schedule 3(4)(1) and clause 50(3)(b) to require a 5m side and rear setback to adjacent land in all zones.

#### TAFE and University development permitted with consent - Clauses 39 and 46

Clause 39 and 46 address development with consent that can be undertaken by a university and a TAFE respectively. The City is concerned there are no design quality principles that apply to that university and TAFE development, despite the potential for development on these sites to accommodate large scale development with sensitive designations and have significant impacts on the surrounding development.

Development on university and TAFE sites should be required to achieve a high quality of architectural, urban and landscape design and subject to the same requirements as other major developments in the City. On sites accommodating buildings higher than 55m in Central Sydney or 25m elsewhere the LEP requirement for a competitive design excellence process is applied.

It is anticipated that development permitted with consent would meet the threshold of state significant development. As detailed in section 1 of this submission, the City has a demonstrated ability to assess high value, large scale and complex applications, including recent delegations to the CSPC to assess and determine state significant development. The City has requested a review of state significant development thresholds and that the City and the Central Sydney Planning Committee be the consent authority for education establishments over \$30 million in value.

Notwithstanding the City's request for a review of the state significant development thresholds, the NSW design excellence policy<sup>3</sup> should apply to university and TAFE development. Clause 39 should include reference to the need to consider design quality of development proposals and when competitive design excellence provisions are triggered.

#### **Recommendation 3.2**

Amend clauses 39 and 46 to require the consideration of design quality in new developments and set a development threshold to trigger competitive design excellence processes for university and TAFE development.

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<sup>3</sup> NSW Director General's Design Excellence Guidelines and Draft '*Better Placed: a design-led approach to developing an architecture and design policy approach for NSW*'