

# **Tweed Shire Council Submission on the Draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017**

**To the NSW Department of Planning and Environment**

**By electronic submission to [education.sepp@planning.nsw.gov.au](mailto:education.sepp@planning.nsw.gov.au)**

Tweed Shire Council welcomes the opportunity to comment on the proposed suite of draft legislation, policy updates and design guidelines pertaining to child care, early childhood and ongoing education. It also gives thanks for the opportunity to participate in the roadshow workshop held in Ballina on Friday 10<sup>th</sup> March 2017.

Tweed Shire Council is generally supportive of the intent behind the proposed changes and the mechanisms by which they will be implemented, however has identified some areas of concern on which it would like to make comment and recommendation, as outlined in the 11 points and additional comments on the following pages of this submission.

Further, in light of the points raised at the workshop and the apparent potential for significant changes to be made to the Policy in response to the consultation and feedback process, Tweed Shire Council respectfully requests that the final Draft be re-exhibited prior to adoption.

## *1. Aims of the Policy*

The third Aim of the DRAFT SEPP is *establishing consistent State-wide assessment requirements and design considerations.....to minimise impacts on surrounding areas*. Whilst Council supports the intention of the Aim, concern is raised regarding the ability of the mechanisms within the policy to achieve the desired outcome of *minimising impacts on surrounding areas*. There are mechanisms in the Draft SEPP that openly facilitate development that would be largely inconsistent with the existing and desired future built form of some areas of the Tweed. In particular, allowing new school buildings up to 22m in height as complying development in low density residential areas. In the Tweed Shire, the maximum building height on R2 land is 9m. Building height is a sensitive issue in the Tweed and the LEP development standards relating to such are held in high regard by the broader community, thus any buildings beyond the maximum heights mandated by the LEP are unlikely to be well received by the community, and would be perceived as resulting in significant impacts on surrounding areas.

**Recommendation: The mechanisms within the Policy are reviewed to better achieve the aims and objectives. See later discussion regarding building height.**

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## *2. Clause 7 – Review of Policy*

Clause 7 requires the provisions of the Policy be regularly reviewed, however does not describe how it will take place, or what will inform the review process.

The overarching aims of the policy change are noted, being to provide a faster and easier approvals process to facilitate increased provision of child care and education services, along within incorporating good design into built form. Tweed Shire Council supports the initiative, however questions *how* the success of the policy will be monitored, particularly with respect to achieving quality design through the complying development pathway, or meeting the design quality principles of Schedule 4 of the Draft SEPP. Policy review and evaluation theory points towards identifying measurable Key Performance Indicators that are clearly linked to the objectives of the Policy and setting out a system for collecting **data/evidence against which the success of the Policy's performance can be measured**. This further informs the review process by identifying the aspects of the Policy that are not performing, thereby providing drivers for change within the next review process.

**Recommendation: A monitoring and evaluation element is included in the policy package, identifying KPIs, how data will be measured, collected and analysed to inform future review on the success of the policy and whether it is meeting its aims objectives.**

**Provide this within Clause 7, or in a supporting document referred to within the SEPP.**

## *3. Non-mandatory consideration of Child Care Planning Guideline*

Clause 21 gives effect to the Child Care Planning Guideline as the principal guiding document in relation to building design, however specifies that the consent authority *must* take into account Part 2, *may* take into account Part 3 of the Guide, and *may not* apply criteria more onerous than any included in the Guide (regardless of existing and established local provisions). It appears the intent of the wording *must* and *may* is to give the consent authority the ability to apply less onerous provisions (than Part 3) should they be preferred. This mechanism is not dissimilar to the current relationship between SEPP 65 / Apartment Design Guide (ADG) and local provisions relating to residential flat buildings.

Whilst Council appreciates that compliance with Part 2 provisions is mandatory in order to align new development with the National Quality Framework, it considers the uncertainty over the weight of Part 3 criteria to be an issue that requires rectification. Experience has shown through application of SEPP 65 and the ADG, the flexibility intended for consent authorities through the use of the words *may consider* ultimately leads to exploitation by designers and developers who view the ADG as a guide only tout their entitlement to variations and relaxations. Tweed Shire Council has concerns that a similar mantra would

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arise from the non-mandatory application of Part 3 of the design guides associated with the Draft Educational Establishments and Child Care Facilities SEPP.

**Recommendation: *may be considered* is replaced with *shall be considered* in relation to Part 3 of the Child Care Planning Guideline when assessing Development Applications, giving it greater weight. Inclusion of an additional clause requiring departures from Part 3 provisions (i.e. variations requested) to be justified with respect to the objectives of the design theme in question.**

#### *4. Expanding opportunities through additional exempt and complying provisions – impact on infrastructure*

Comment: Development that is exempt or does not require consent, such as the installation of temporary classrooms or offices, may pose a significant load on infrastructure. As the SEPP will permit developments such as the installation of temporary class rooms without consent, it essentially allows the imposition of significant loads on infrastructure without the owner and operator of the infrastructure being advised and hence being able to plan for the infrastructure required to service the class rooms, or having the opportunity to levy developer contributions for the additional loads. Further developments may pose a risk to Councils water and sewerage infrastructure if the development is not assessed by Council. As an example water mains could become contaminated if appropriate back flow prevention is not installed, or excessive loads could be placed on sewerage resulting in overflows etc.

**Recommendation: Consistent with the Exempt and Complying Development SEPP, any complying development, exempt development or development not requiring consent should be required to seek and address the water authority's requirements before development can occur.**

#### *5. Expanding opportunities through additional exempt and complying provisions – ecological impact*

The Draft SEPP allows *a sporting field, tennis court, basketball court or any other type of court used for sport, and associated awnings or canopies, if the development does not involve the clearing of more than 2 hectares of native vegetation* as exempt development. However the general requirements for Exempt Development state it *must not involve the removal or pruning of a tree or other vegetation that requires a permit or development consent for removal or pruning, unless that removal or pruning is undertaken in accordance with a permit or development consent.*

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Tweed Shire Council currently regulates native vegetation removal (not regulated under the Native Vegetation Act) via Clause 5.9 of the TLEP and via provisions within a dedicated development control plan. Thus under the current regime, it appears that there would be limited opportunity for development for the purposes of sport fields to occur under the Exempt Development pathway as proposed, given the compulsory exclusion of clearing that requires consent or permit.

However, the information delivered to the workshop on the proposed Vegetation SEPP indicated that Clause 5.9 is to be removed from the Standard Instrument LEP, elevating vegetation clearing activities that are currently regulated at a local level to being regulated at **the State level under a new Vegetation SEPP, whereby limiting Council's abilities to manage** vegetation clearing within their own local government area.

Notwithstanding the above, and regardless of any additional provisions that may be included for exempt development, Council considers unregulated clearing of 2 hectares of native vegetation at any time to facilitate development of school based sporting facilities and ancillary works (earthworks and drainage) to be excessive in a shire of rich biological diversity that has previously experienced historic high levels of over-clearing. Additionally, there are other site constraints that have failed to be considered including (but are not limited to) acid sulfate soils, waterways and steep slopes.

**Recommendation: Sporting Field, tennis court, basketball court or any other type of court used for sport, and associated awnings or canopies be removed from the Exempt Development pathway under the proposed SEPP.**

## *6. Schools to 4 storeys (or 22m from ground level) as complying development*

Schedule 2 of the Draft SEPP facilitates development that would be largely inconsistent with the existing and desired future built form of many areas in the Tweed by way of allowing new school buildings up to 22m in height as complying development. Schools are permitted in the R2 low density residential zone, and in the Tweed the maximum building height on R2 land is 9m. Building height is a sensitive issue in the Tweed and the LEP development standards relating to such are held in high regard by the broader community. Any buildings beyond the maximum heights mandated by the LEP are unlikely to be well received by the community, and would be perceived as resulting in significant impacts on surrounding areas.

It appears that this mechanism is aimed at increasing the ability for schools in metropolitan areas to expand where land supply is under pressure. Tweed Council acknowledges the need for this mechanism in urban areas, however questions the consequences of including it in a state wide approvals pathway which will ultimately allow intensive development in areas, such as the Tweed, where land supply is not an issue however protecting neighbourhood amenity and character is of paramount importance to the community.

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The Schedule 4 design quality principles state, in the context of built form, that a school should be designed to *respect and respond to its physical context, neighbourhood character, streetscape quality and heritage*. Tweed Council questions how this would be achieved through allowing 22m buildings in low density residential areas that are bound by a 9m height limit.

Tweed Council acknowledges that the Draft SEPP requires schools 12m in height or greater to provide verification that the Schedule 4 design quality principles have been achieved (see additional comments in Pont 7 below). However, the Draft SEPP thus provides the opportunity for 11.99m high buildings to be approved as complying development without any design verification, in residential zones with a 9m height limit. This has the potential to result in significant amenity impacts and be poorly received by the community.

**Recommendation: 4 storey or 22m maximum height to apply only where existing LEP maximum building height development standards allow for buildings up to 22m. In areas where maximum building height as prescribed by the LEP is less than 22m, complying development to adhere to the existing local development standard.**

**AND**

**ALL complying development shall be evaluated against the Schedule 4 design quality principles and verification required by a *qualified designer* (definition amended as proposed below).**

**Further Recommendation: Allow rural and regional Councils to opt in/opt out of those provisions that, whilst aimed at facilitating development in higher density urban areas, open a pathway for significant impact and poor outcomes in smaller centres and rural areas.**

## *7. Verification by a qualified designer*

Clause 129AA of the proposed Environmental Planning and Assessment Amendment (Schools) Regulation 2017 states that a certifying authority must not issue a complying development certificate for proposed development that would result in a building of more than 12 metres unless they have been provided with a written statement by a *qualified designer* that verifies that the development achieves the design quality principles set out in Schedule 4 of the Draft SEPP.

The Regulations define a qualified designer as *a person registered as an architect in accordance with the Architects Act 2003. Note. A building designer may be able to be registered as an architect in accordance with the Architects Act 2003 even though the person may have no formal qualifications in architecture.*

Whilst verification by a *qualified designer* (as currently defined) may provide some reassurance that the building has reached the minimum benchmark in relation to specific



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building elements, it would do little to address broader planning issues for which many building designers may be qualified in accordance with the current definition, but lack the knowledge and/or competence to assess and provide expert advice on broader contextual issues and impacts.

**Recommendation: The definition of *qualified designer* in the Environmental Planning and Assessment Regulations 2000 be amended to omit building designers who are not qualified in architecture or urban design**

**OR a new definition for qualified designer be included in the Draft SEPP which requires qualifications in architecture or urban design.**

8. *Introduction of a clause in the SEPP to enable the consent authority to vary development standards in a LEP to provide flexibility to cater for future built forms of schools.*

Comment: It appears this flexibility in development standards is aimed towards encouraging development in urban areas where land supply is under pressure. In regional areas such as the Tweed Shire, land supply is not an issue; therefore protecting existing development standards within local provisions is paramount to achieving new development consistent with the strategic vision for the Shire. Inclusion of such flexibility in rural and regional areas undermines the existing planning framework and local provisions that have been shaped according to locally significant issues.

**Recommendation: The ability to vary development standards in relation to the provision of educational establishment infrastructure be limited to urban Councils. Regional and rural Councils be given the option to ‘opt in’ or ‘opt out’ of this clause.**

9. *Consideration is being given to restricting the issuing of complying development certificates for school infrastructure to council certifiers. This proposal would ensure that councils still have some oversight and involvement in the development of school infrastructure in their local area*

Comment: Tweed Shire Council is supportive of this restriction and upholds the notion that Councils should be fully involved in the assessment of new school buildings within their local government areas. Consequently, we question the reasons why these development types are being included in the complying development pathway at all, if they are of a scale where the potential ramifications of poor development are serious enough that certifying authority is limited to Councils in order to deliver quality development. Why not keep it simple and continue to require development consent for these types of development?

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**Recommendation:** Tweed Shire Council is fully supportive of this restriction and recommends its inclusion for all complying development, however suggests re-visiting the inclusion of new school buildings as complying development.

*10. CI 38 - Excluding student accommodation from development for the purposes of a school or university or TAFE*

Comment: How this exclusion to be enacted with the high likelihood that 'student accommodation' could be interpreted as development ancillary to a school, university or TAFE.

**Recommendation:** define student accommodation in the SEPP and in the Standard Instrument LEP, and provide clarification that it shall not be considered ancillary development.

*11. Proposed changes to Standard Instrument (LEP) Order 2006 including creating new definitions: early childhood education and care facilities (group definition), centre-based child care, school-based child care, home-based child care, and mobile child care.*

Comment: It appears Council has discretion regarding *school-based* and *home-based child care* permissibility. *School-based child care* relates to child care services on school sites, so can only be permitted where schools are also permitted, but does not have to be. Similarly, *home-based child care* can only be permitted where residential accommodation is permitted (noting *home-based child care* is to become universally exempt under amendments to the Codes SEPP). It is unclear whether any amendments to the LEP Land Use Tables in this regard would require a planning proposal or if there is a mechanism for these to occur alongside the automatic mandatory amendments.

**Recommendation:** Provide Councils with direction within the amendment documents on the mechanisms to update LEPs in regard to flow on effects from mandatory definition and land use table updates.

## *Additional Comments / Questions:*

- The Office of Environment and Heritage recently delivered the NSW Climate Change Policy Framework, committing to achieving a net-zero carbon emission target for buildings by 2050. It appears there is missed opportunity within the recent suite of

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legislation updates and reform from the Department of Planning & Environment to address these emissions targets within the proposed new planning framework.

- Where do mobile child care centres sit in the new definition hierarchy?
- It is noted that a 12 metre maximum building height standard applies to TAFE buildings – where is the justification for this when schools are permitted up to 22m?
- What is the justification for including a storey limit when building height development standards have transitioned to metres?

## **Draft Design Guide for Schools in NSW**

- Design response considerations should be expanded to include natural features such as native vegetation, threatened species habitat, waterways and wetland areas
- The guideline appears to lack detail. No specific design criteria or development standards have been prescribed.
- The existing School Facilities Standards – Landscape Standard as referenced under the Infrastructure SEPP should be updated and included as a component of any detailed guideline
- Draft Child Care Planning Guideline – Planning and designing quality child care facilities in NSW.
  - Whilst the overarching design principles appear to have been drafted to ensure development responds and contributes to a sites key natural values, specific design criteria and standards to achieve this have been overlooked. Existing natural values and the context of the site should be given priority consideration in siting a child care facility. As such section 3A and 3D should be amended to reflect this.