

6 April 2017

Carolyn McNally
The Secretary
NSW Department of Planning & Environment
GPO Box 39
Sydney NSW 2001

Attn: Felicity Greenway – Director of Industry & Infrastructure Policy

Dear Felicity

**SUBMISSION TO DRAFT EDUCATION AND CHILD CARE SEPP
WENONA SCHOOL, NORTH SYDNEY**

This submission has been prepared by Wenona School Limited. Established in North Sydney in 1886, Wenona is a non-selective, independent, non-denominational day and boarding school for girls from Kindergarten to Year 12. The school's vibrant learning environment includes a blend of heritage and new spaces comprising a Junior School, Middle School and Senior College.

Wenona School is located at 176 Walker Street and 255 – 265 Miller Street, in the North Sydney Local Government Area (LGA), on the northern edge of the North Sydney CBD. The site is located approximately 800m north of North Sydney Station and 350m north of the planned Victoria Cross Metro Station. The school campus extends over a number of sites with the total landholdings being approximately 1.7 hectares.

Wenona School supports the initiative of the Department of Planning & Environment in reviewing *State Environmental Planning Policy Infrastructure 2007* (Infrastructure SEPP) and the proposed introduction of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* (draft Education SEPP). In particular, the focus on simplifying the planning process to assist in the efficient delivery of high quality education facilities is commended. Wenona School, however, wish to raise some potential issues with respect to the draft Education SEPP and how these issues may impact on the draft SEPP's useability and effectiveness for future development at their school campus and other educational facilities across the state.

Reference to Existing Schools

The draft Education SEPP makes a number of references to the term 'existing school' to define the land on which certain provisions of the draft SEPP apply. This is the case for both clause 32(1) relating to exempt development and clause 33(1) relating to complying development. This terminology can result in unintentional exclusions to the use of exempt and complying development at schools due to the difficulties involved in demonstrating that the land or building where works are proposed are classified as an 'existing school'.

The onus is placed on the school to prove the existing school use through obtaining historical development consents. However, this can be problematic as many of the state's schools are longstanding institutions (Wenona School itself dates back to 1886) and it can therefore become exceptionally difficult to obtain historic consents that demonstrate the existing land use of a proposed development site. Wenona has previously experienced this situation whereby development consent could not be located for an individual building outside of the main school campus. Despite the building being used for educational purposes associated with the school for a number of years, the school was unable to use the complying development provisions of the Infrastructure SEPP because of this wording.

This requirement conflicts with the objectives of streamlining the delivery of new schools and the upgrading of existing facilities by precluding low impact development from benefiting from the exempt and complying development provisions. Consideration should therefore be given to amending the terminology to instead refer to 'land owned by a school', particularly when the land has been owned and/or used by a school for a long time. Doing so would allow greater efficiency in the system by preventing the need to trace historic development consents while ensuring only schools can exercise the exempt and complying provisions of the draft SEPP.

Heritage Exclusions

In January 2017, there were 571 heritage listed buildings and items on NSW Department of Education and Communities sites across the State¹. This represents a significant limitation to the use of the complying development provisions of the draft Education SEPP as Division 5 refers back to clause 1.17(A) of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Codes SEPP). Clause 1.17(A) prevents complying development from being undertaken on sites that are identified as an item of environmental heritage in an environmental planning instrument. The clause only prevents development on the part of the land that is both described and mapped on the instrument, however in practice, entire sites are often described and mapped on the instrument which prevents any complying development from being undertaken.

To overcome this issue, it is suggested that provisions be included that enable complying development to be carried out on heritage listed sites where a heritage consultant has provided advice confirming that the works will have no more than a minimal impact on the item. This would be similar to the provisions around tree removal and bushfire and clauses 42(1)(v) and schedule 3, clause 14 of the draft Education SEPP, respectively.

Height of Buildings

Clause 2 of Schedule 2 of the draft Education SEPP proposes to allow new school buildings, including classrooms, halls and offices, up to 22m in height to be approved as complying development. However, the clause also limits the number of storeys allowed as complying development to four storeys which, based on general industry benchmarks, is usually significantly lower than 22m.

The maximum height limit is the development standard that most influences the impact of a development. For example, a building of 22m will cause the same amount of shadowing whether it is four or five storeys in height. The relevance of the four storey height limit is questioned and limits the application of the complying development provisions of the draft SEPP. Accordingly, it is considered that the provision should only impose the 22m height limit without arbitrarily limiting the number of storeys to four.

Earthworks

The carrying out of earthworks for the purposes of development is proposed to be capped at a depth of 1m below existing ground level for land identified as Classes 3 or 4 acid sulfate soils and 3m below existing ground level for land not identified as Classes 3 or 4 acid sulfate soils. A school building of up to 22m in height is most likely to be built in an urban area where space is limited and parking, or other school facilities, are therefore required to be placed within a basement. As such, it is questioned whether the proposed 3m limit on excavation would accommodate appropriate school facilities due to the clearance heights and structural support required. This would result in a large proportion of development in urban areas not making best use of the site or requiring a development application regardless of the intent of the proposed complying development provisions. Accordingly, the allowable excavation depth should be amended to allow for at least one basement level in order to support a building of up to 22m in height, and preferably permit excavation equivalent to the permitted above ground development.

¹ NSW Department of Education and Communities: Heritage and Conservation Register

It is noted that the proposed maximum excavation depths are based on the need to avoid acid sulfate soils. To ensure that any risks associated with acid sulfate soils are avoided, schools could be required to obtain a certificate from an appropriately qualified person to confirm that the land is not identified as a risk for acid sulfate soils. A clause could be added after clause Schedule 2, clause 9(1) stating that:

- ...(2) *Despite subclause (1), a complying development certificate may be issued for the carrying out of works involving up to a single basement level if:*
- (a) a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the works, and*
 - (b) the preliminary assessment has been provided to the certifier and the certifier has confirmed the assessment by notice in writing to the person proposing to carry out the works.*

Application of Development Standards

Clause 36 of the draft Education SEPP states that consent can be granted for State Significant Development even if the development contravenes a development standard, such as maximum height or floor space ratio, contained within a local environmental plan. The Explanation of Intended Effects further states that the applicant will be required to justify the departure from the development standards and demonstrate that there are sufficient environmental planning grounds to support the contravention.

Whilst the flexibility provided by this draft clause is supported, clarification of the difference between this clause and the provisions of clause 4.6 of the *Standard Instrument—Principal Local Environmental Plan* seems desirable and necessary to ensure the worthwhile intent and value of this Clause is maintained.

Conclusion

Wenona School welcomes the review of the Infrastructure SEPP and would like to thank the Department for the opportunity to provide input into this important initiative. Wenona is generally supportive of the draft amendments and the introduction of the Education SEPP, however suggests these modifications be considered to ensure the objectives of streamlining and simplifying the delivery of educational facilities are best realised.

This submission has been made with the assistance of JBA Urban Planning. Please do not hesitate to contact me on 9409 4408 should you have any queries and one of JBA or myself would be happy to respond to your query.



Andrew Leake
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