

SUBMISSION

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



1. General

a) Comments

- i. It is understood that Sydney must prepare for a significantly larger population over coming decades.
- ii. With a larger population comes the need to plan for necessary social infrastructure with particular regard to educational establishments and child care.
- iii. Council supports the New South Wales (NSW) Government recognizing the growing demand for educational establishments and child care across the state, and in particular metropolitan Sydney.
- iv. In the Willoughby Local Government Area (LGA), there are numerous existing child care facilities, approximately 14 public and non-public schools, as well as TAFE NSW Northern Sydney – St Leonards (formerly North Sydney) Campus.
- v. Willoughby City Council notes that service usage in the LGA is increasing across day care, family day care, out of hours school (OOSH) care and vacation care.
- vi. There are extensive waiting lists for Council provided child care and out of hours school care. As Chatswood grows demand pressures will increase.
- vii. Section 4.8.1 of the draft North District Plan states that by 2036, significant growth in the primary and secondary school aged population is expected to result in an increase in school enrolments of around 29,000 or 21% based on the current enrolments in government and non-government schools.
- viii. School overcrowding and planning for the future of schools has been an important issue over a number of years in the Willoughby LGA. There remain serious issues with overcrowding.
- ix. Monitoring of demand will be required to ensure a suitable supply response.
- x. Factors such as new apartments and more families residing in apartments will undoubtedly increase demand for school places.
- xi. Existing school premises should not be disposed of, as has been the practice, but kept in public ownership to ensure future flexibility for education uses across all our communities.
- xii. The NSW Department of Planning and Environment review of the current planning framework to encourage provision of social infrastructure is supported. However, care is required in agreeing to the location of new or expanded facilities to protect the amenity of neighbouring properties and the locality.

b) Recommendations

- i. Council recommends that the relevant agencies in the NSW Government work with local government to help balance demand and supply for early education and child care noting demand pressures in the Willoughby LGA.
- ii. Council recommends that Education NSW and relevant NSW Government future planning should provide long-term solutions to school overcrowding. In particular:
 - There should be careful monitoring of demand for school places and facilities, with planning responses to ensure that the supply of school facilities in the Willoughby LGA is aligned with demand.
 - The over-reliance on demountable classrooms at some schools should be phased out as soon as possible, being only acceptable in the short term as an interim solution.
 - School planning should ensure that facilities are suited to the needs of each school e.g. school halls that can accommodate all students in the school and adequate outdoor and sporting spaces.
 - Planning responses for new school infrastructure and possible co-location of schools/co-location of schools with other services etc. will need to consider the constraints in the Willoughby LGA of limited availability of land and the high costs of any land that is available.
- iii. Council seeks involvement in agreeing the location and scale of development of educational establishments and child care facilities within the Willoughby Local Government Area (LGA).
- iv. The Willoughby community expect that while education and child care facilities are to be encouraged, there is a continuing important role for Council in protecting the interests of users and neighbours, and achieving the best outcomes.

The parts referred to in this submission follow the Draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 – Explanation of Intended Effect.

Part A: The educational and Child Care Sector Policy Framework

2. General provisions of the proposed SEPP

a) Simplifying approval processes

- i. The proposed SEPP sets out the different classes of development, what approval pathway should be followed, and what level of assessment and consultation is required.

b) Ensuring design quality and safe and healthy environments

- i. The proposed SEPP provides a range of guidelines and design requirements to ensure appropriate design and location.

c) Allowing for flexibility and multiple uses

- i. The proposed SEPP provides a range of permissible and additional uses on sites, facilitates co-location where appropriate, and encourages flexibility, versatility and adaptability in the design of buildings and sites.

d) Comments

- i. Council supports the simplification of the approval process where appropriate under all assessment streams. However in some instances the proposed changes are considered too ambitious with likely unintended adverse consequences and this is discussed further below.
- ii. The proposed guidelines and design requirements are generally supported. However in some instances the proposed changes as above and this is discussed further below.
- iii. Section 4.8.1 of the draft North District Plan states that as the population grows, the design and configuration of schools may need to change as land becomes scarcer and schools and other social infrastructure may need to be co-located with other services. There is general support for child care and education providers to optimise the use of their existing sites and facilities, and even co-locate with aged care premises as in the case of the Dougherty Centre in Chatswood.
- iv. However there is concern that location, proximity to neighbours, number of people and potential noise are issues that require careful consideration to be successfully achieved.

e) Recommendations

- i. An appropriate approval process, as well as accompanying development standards, should be introduced to ensure a successful balance between the promotion of educational establishments and child care facilities, co-location with other facilities and the amenity of neighbouring properties and the general locality.
- ii. Council has an important role to play in ensuring the amenity of neighbouring properties on larger proposals, and achieving optimal outcomes.

Part B: Early Childhood Education and care Facilities

3. New definitions

a) General

- i. It is intended to align national definitions of early childhood education and care services into the NSW planning system, by including new and updated definitions.

b) Comments

- i. It is noted that the group term “early education and care facility” is to be introduced to cover the three types of child care facilities – home based child care, school based child care and centre based child care.

c) Recommendations

- i. The new definitions will provide consistency between levels of government and are supported.

4. Provisions to simplify planning approvals

a) Exempt Development

- i. It is noted that the following low impact child care developments may be permitted as exempt development:
 - Home-based child care.
 - School based childcare, as long as no works are required.
 - Mobile child care.
 - Emergency or temporary relocation of child care facilities.
- ii. Development standards are proposed to be established to allow home based child care on bushfire prone land as follows:
 - Provision of an Asset Protection Zone around the dwelling;
 - Preparation of a Bush Fire Emergency Management and Evacuation Plan; and
 - The dwelling in which the care is provided must not be located in bushfire attack level – 40 (BAL -40) or the flame zone (BAL-FZ) land.
- iii. Prior to operating a home based child care service, a Service Approval must be obtained from the Department of Education to ensure the safety of children cared for in the dwelling.
- iv. Prior to operating school based child care, mobile child care or emergency or temporary relocation of child care, a Service Approval must be obtained from the Department of Education.

b) Comments

- i. The proposed development standards and service approval requirements are considered necessary as there will be no further assessment prior to operation as exempt development.

c) Recommendations

- i. No recommendation is made.

5. Complying Development

a) General

- i. It is noted that under the SEPP, school based childcare involving new development will be permitted as general requirements for complying development where:
 - It is within the boundaries of an existing school and on land that is not bush fire prone.
 - The existing school is operating as a lawful use and is not an existing use.
 - It meets the requirements for complying development in Clause 1.17A of the Codes SEPP (ie, it is not a heritage item).
 - It does not contravene any existing conditions of a development consent that may apply.

b) Comments

- i. The general requirements, general conditions of complying development certificates and service approval requirements are considered necessary as there will be no further assessment prior to operation as complying development.

c) Recommendations

- i. The general requirements, general conditions of complying development certificates and service approval requirements are supported.

6. Development with consent

a) General

- i. The proposed SEPP requires all centre-based child care developments to be assessed through the local development application process.

b) Comments

- i. It is noted that Council will be the consent authority in the majority of cases.
- ii. Development applications that do not meet the National Quality Framework's indoor and outdoor space controls will require the concurrence of the Secretary of the Department of Education before the application can be determined.
- iii. Prior to operating a centre based child care service, a service approval must be obtained from the Department of Education.

c) Recommendations

- i. The development with consent process is supported.

7. Expanding Childcare in permissible zones

a) Comments

- i. Amendments are proposed to permit centre based child care with development consent on R2 Low Density Residential and Industrial zones.
- ii. Additional matters for consideration are proposed regarding centre based child care in industrial zones which are vital and should include whether the cumulative effect of childcare facilities will erode the supply of important employment and urban services land.
- iii. Willoughby Local Environmental 2012 currently permits child care centres in the R2 and IN2 zones, as well as the IN1 zone, but care in location and to ensure safety in operation as well as retention of scarce employment and urban services land is required.
- iv. The Draft North District Plan identifies these lands as vital for future city growth.

b) Recommendations

- i. The permissibility of centre based child care in the R2 Low Density Residential zone is supported, with qualified support in industrial zones.
- ii. The proposed development standards for centre based child care developments in industrial zones should be strengthened as suggested.
- iii. The cumulative impact of educational establishments and child care facilities on scarce employment and urban services industrial zoned land should be addressed.

8. Concurrence of Department of Education

a) Comments

- i. Development applications that do not comply with national standards will require the concurrence of the Department of Education.

b) Recommendations

- i. The proposed new concurrence role of the NSW Department of Education is supported.
- ii. The period of 1 week for the consent authority (Council) to refer a development application to the Department of Education is considered difficult to achieve, therefore a 2 week time frame is requested.
- iv. Appropriate resources will need to be provided to the Department of Education to ensure it is able to provide comments within the 28 day response period.

9. Non-discretionary development standards

a) Comments

- i. The proposed SEPP includes non-discretionary standards for centre based child care. This means that a development application for a centre based child care cannot be refused by a consent authority on certain grounds:
 - Location – the development may be located at any distance from an existing or proposed early childhood and education and care facility
 - Site Area, site coverage and site dimensions – 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 allotment depth.
 - Colour of building materials or shade structures – the development may be of any colour scheme, except where the development is a heritage item or in a conservation area.
- ii. Concern is raised that centre based child care facilities can be located within close proximity to other such centres. This above concern is based on the potential impacts on traffic in the street in question and the amenity of neighbouring properties.
- iii. Concern is raised that centre based child care facilities can be located on sites with any width of street frontage. Willoughby Development Control Plan currently requires a minimum 20 metre frontage. The objectives behind this requirement are:
*“To ensure child care centres are compatible with the surrounding residential neighbourhood in terms of siting, landscaping and access arrangements for both vehicles and pedestrians.
To identify preferred sites for child care centres on regular lots with a wider frontage.
To ensure access for emergency vehicles and evacuation options / routes.”*
- iv. Concern is raised that the colour of such centres, as they face the street, are not required to be sympathetic to neighbouring residential development, including heritage items or conservation areas that may be visible from the site. It is understood that bright colours not normally typical of residential areas are typical of child care centres.

b) Recommendations

- i. Development applications should be able to be assessed on individual merits and have regard to the particular circumstance of a case.
- ii. It is considered a development application should be able to be refused if the minimum frontage of the site is not considered sufficient (being either 20 metres or dependent on the circumstances of the case).
- iii. It is considered that centre based child care facilities should be limited in colour when presenting to the street in order to protect the existing character of the street and the amenity of neighbouring properties, including heritage items or conservation areas that may be visible from the site.

10. Controls in development control plans

a) Comments

- i. It is proposed that certain matters for consideration are no longer to be included in development control plans, but rather be based on the Australian Government’s National Quality Framework with further explanation and detail provided in the draft Child Care Planning Guideline. This includes:
 - Reference to ages, age ratios, groupings, numbers or the like of children.

- Proximity of facility to other early childhood education and care facilities.
- Space requirements – indoor space.
- Space requirements – outdoor space (including natural environment and shade).
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b) Recommendations

- i. No objection or recommendation is made.
- ii. It is considered that certain matters may remain relevant as development standards in development control plans, such as minimum frontage size.

Part C: Schools

11. Exempt Development

a) General

- i. Under the SEPP, the exempt development provisions for schools are provided to enable minor works to be undertaken within school grounds without planning approval, including:
 - Single storey portable classrooms.
 - Out of hours care for primary school aged children provided in existing buildings.
 - Play equipment, sporting fields and courts.

b) Comments

- i. Development standards have been proposed to address issues that may arise and are generally supported.
- ii. Concern remains with any proliferation of one storey portable classrooms and the amount of time they are required, based on the quality of the facility and the occupation of otherwise precious space (often recreational space). Discussion of such exempt development for TAFEs includes the reference 'temporary', and it is considered this should also be used in the context of one storey portable classrooms in schools.
- iii. It is noted that lighting of sporting fields is not included as Exempt Development. It is considered that lighting of sporting fields and resultant impacts on neighbouring properties should require consent.

c) Recommendations

- i. One storey portable classrooms are only supported as a short term solution.
- ii. Reference to one storey portable classrooms should include the reference 'temporary.'

12. Complying Development

a) General

- i. Under the SEPP, certain development is proposed to be approved as complying development based on development standards to facilitate rapid installation in response to student numbers, including:
 - Buildings for educational uses such as classrooms, a library, administration, school hall, gymnasium, canteen or a child care facility.
 - Minor alterations or additions to existing buildings.
- ii. Detailed development standards have been proposed, including:
 - Maximum height of 4 storeys and 22 metres.
 - For buildings up to a height of 12 metres, a setback of 5 metres from any side or rear boundary where adjoining residential zoned land, and 1 metre all other land use zones.
 - For buildings up to a height of 15 metres, at least 8 metres from any side or rear boundary where adjoining residential zoned land, and 2.5 metres all other land use zones.
 - For buildings up to a height of 22 metres, at least 10 metres from any side or rear boundary where adjoining residential zoned land, and 4 metres all other land use zones.
 - External walls to be constructed of non-reflective materials.
 - Proposed school buildings must not reduce the solar access to habitable rooms and private open space of adjoining residential properties to less than 3 hours between 9am and 3pm on the winter solstice.
 - Windows to be designed or treated to preserve the privacy of adjoining residential dwellings.
 - An area 3 metre wide along the property boundary with an adjoining residential property is to be landscaped with planting achieving a mature height of at least 3 metres.
 - Other standards relate to waste, earthworks, tree removal, drainage, bush fire prone land and flood prone land.

b) Comments

- i. Concern is raised with the extent of development permitted in the above development standards and the potential impacts on the amenity of neighbouring properties.
- ii. There is concern regarding the protection of heritage buildings on school sites
- iii. It is understood that the Department of Planning and Environment is considering allowing only Council Certifiers to issue Complying Development Certificates under the complying development criteria.

c) Recommendations

- i. If the proposed complying development standards are to be supported, Council supports only Council Certifiers be authorised to issue Complying Development Certificates under the complying development criteria.
- ii. The requirement that a certifying authority not issue a complying development certificate unless a statement has been obtained by a qualified designer verifying that school buildings more than 12 metres in height achieve the design quality principles contained in Schedule 4 of the SEPP is supported.
- iii. The requirement that any complying development increasing student numbers by more than 50 students is required to be referred to the RMS for certification is supported.
- iv. In regards certification from the RMS, appropriate resources will need to be provided to the RMS to ensure appropriate consideration occurs and timeframes maintained.
- v. Clarification should be provided on the policy regarding protection of heritage buildings on school sites.

13. Development without consent

a) General

- i. Small scale development will be permitted without development consent, but will require an environmental assessment to be carried out by the proponent in accordance with Part 5 of the EP and A Act. This small scale development will include:
 - One storey buildings for school purposes.
 - Minor alterations and additions.
- ii. The intention is that development undertaken without consent will only allow for a minor expansion of schools, being no greater than 10% of the numbers at the school during the previous 12 months.
- iii. Non-government schools will be prescribed as public authorities to enable them to carry out work without development consent.

b) Comments

- i. Council is supportive of enabling schools to carry out minor works as the need arises.
- ii. Council is supportive of the development without consent process involving the requirement that work cannot contravene any existing condition of development consent and will be required to meet the development standards in Schedule 1.
- iii. There is concern that the notification of carrying out of certain development without consent only requires a proponent to notify and Council and adjoining land. A notification may need to include a wider area.
- iv. There is concern that any submissions following notification are assessed by the proponent and not any independent authority. The requirement is that any response is "taken into consideration." This could mean that a valid response is taken into consideration and still dismissed by a proponent.
- v. There is concern regarding minor expansion in schools being included in 'development without consent' category. There is concern regarding potential incremental 10% increases in development undertaken without consent. A school may be able to embark on a series of 10% increases without full development application assessment, and without the potential impacts on neighbouring properties and the surrounding locality being considered.
- vi. There is concern that non-government schools will be prescribed as public authorities to enable

them to carry out work without development consent. Non-government schools are not bound by the checks and balances of government schools, with the Department of Planning and the Minister for Education. It would seem that redefining a non-government school to a public authority increases complexity in a planning system that the current review is seeking to simplify.

c) Recommendations

- i. Minor expansion in schools should be removed from the 'development without consent' category and placed in the 'development with consent' category to ensure appropriate assessment.
- ii. Non-government schools should not be prescribed as public authorities to enable them to carry out work without development consent.

14. Development permitted with consent

a) General

- i. School development that is not exempt development, complying development or permitted without consent will require development consent.
- ii. All school development with a project cost of more than \$20 million is proposed to be categorised as State Significant Development. Currently this figure is \$30 million. Such applications are lodged with the Department of Planning and Environment.

b) Comments

- i. Concern is raised with increasing the amount of school development able to be considered as state significant development. It is considered that local Councils are best positioned to understand the issues involved and this amendment will take further school development away from Council consideration. There is concern that

c) Recommendations

- i. The project cost of \$30 million for school development to be considered as state significant development should remain.

15. Caps on Development Consents

a) Comments

- i. Cap conditions are currently permitted to be placed on development consents regarding maximum staff and student numbers for schools. This is continued to be permitted under the draft SEPP.
- ii. Cap conditions are supported by Council as such controls represent potential means to manage impacts arising from school development with particular regard to traffic and parking.

b) Recommendations

- i. Cap conditions on development consents should remain.

16. Zoning of school sites

a) Comments

- i. Under Willoughby Local Environmental Plan 2012, the majority of schools within the Willoughby LGA were zoned the adjacent zone.
- ii. Although this is not an approach that is favoured by Council as it renders invisible key social infrastructure sites such as schools from local environmental plan maps, it is welcomed that there is still a development process within which the voice of Council and community may be heard.
- iii. It is noted that the SEPP requires, prior to utilising the provisions of an adjacent zone, that a Sydney Planning Panel has certified in a site compatibility certificate the particular development is compatible with the surrounding land uses and the district plan. Council supports this checking process in order to ensure that school or school related development always occurs on school sites.
- iv. However Council raises a general concern with any development on a school site that is not school related or in the sale of any school land. All school related land in the Willoughby LGA is considered needed for the current and future expected student population.

b) Recommendations

- i. All school land in the Willoughby LGA must remain in public ownership for education purposes and not sold for other purposes.
- ii. All development on school land must be for education purposes.

Part D: Universities

Not applicable to the Willoughby Local Government Area.

Part E: TAFEs

17. Exempt Development

a) General

- i. Under the SEPP, the exempt development provisions for TAFE NSW Institutes are intended to enable minor works to be undertaken within TAFE grounds without planning approval. The types of exempt development are similar to that allowed for schools as outlined above.

b) Comments

- i. Development standards have been proposed to address issues that may arise and are generally supported.
- ii. Concern remains with any proliferation of one storey portable temporary classrooms, offices or amenities and the amount of time they are required, based on the quality of the facility and the occupation of otherwise precious space (often recreational space).

c) Recommendations

- i. One storey portable temporary classrooms, offices or amenities are only supported as a short term solution.

18. Complying Development

a) General

- i. Under the SEPP, certain development is intended to be approved as complying development based on development standards. This would include development such as:
 - Recreation facilities (indoor and outdoor).
 - Office premises related to the tertiary institution.
 - Community facilities.
 - Centre based child care.
 - Minor alterations or additions to existing buildings.
- ii. It is noted the development standards that apply include a height limit of 12 metres and minimum side and rear setbacks.
- iii. Amendments are to be made to the Codes SEPP to enable a TAFE to access change of use provisions to allow change from a commercial or industrial premises to an educational establishment.

b) Comments

- i. It is considered the development standards are appropriate to protect the amenity of neighbouring properties.
- ii. The provision of tertiary education services beyond campuses in office and industrial buildings as required is supported.

c) Recommendations

- i. No recommendation made.

19. Development without consent

a) Comments

- i. The relevant clause of the Infrastructure SEPP is to be transferred to the proposed SEPP Educational Establishments and Child Care Facilities.
- ii. Notification of such work is required.

b) Recommendations

- i. No recommendation made.

20. Development with consent

a) Comments

- i. The relevant clause of the Infrastructure SEPP is to be transferred to the proposed SEPP Educational Establishments and Child Care Facilities.

b) Recommendations

- i. No recommendation made.