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

Our Ref:  
File:  
Date:

Z17/83318  
ESP-100.07.001  
6 April 2017

Dear Sir/Madam

**DRAFT STATE ENVIRONMENTAL PLANNING POLICY (EDUCATIONAL ESTABLISHMENTS AND CHILD CARE FACILITIES) 2017**

Thank you for the opportunity to provide feedback on the Draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 ('Education SEPP') and associated exhibited documents.

This submission has not been formally considered and endorsed at a Council meeting. However, a range of potential implications resulting from the draft SEPP have been identified that Council would urge the Department to carefully consider prior to finalising the Policy. Detailed comments on the Draft Policy are provided in the attachment.

Please contact myself or David Green, Land Use Planning Manager on 4227 7465 should you require further information.

**This letter is authorised by**

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**Director Planning & Environment**  
Wollongong City Council  
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*Attach*

## WOLLONGONG CITY COUNCIL SUBMISSION

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

Wollongong City Council's submission begins with comments relating to the Explanation of Intended Effect (EIE). It is thereafter organised according to the proposed structure of the Education SEPP. The additional supporting documents (e.g. Draft Environmental Code of Practice) are addressed at the end of the submission.

#### Explanation of Intended Effect (EIE)

The EIE states that to meet the "unprecedented" increasing demand for education in NSW there will be a need to build 15 new schools a year, and refurbish or replace a further one-third of school assets that will be in poor condition or worse by 2031. It is therefore surprising to read on page 21 of the EIE that provision in the Education SEPP has been made to "facilitate the disposal of surplus educational sites".

If, as would appear to be the case from this statement and experiences in our region, the Government is pursuing a policy of selling off a number of centrally located existing primary schools and having fewer, bigger schools in the future, then this policy should be publically announced so that community views on this issue can be ventilated and taken into account.

It is important to acknowledge that there are numerous options available to DEC to meet increasing demand, including the investment of resources into schools with declining numbers to improve their appeal and to change existing school catchment boundaries to redistribute numbers. This region has numerous primary schools with declining numbers and underutilised infrastructure in very close proximity to schools that are at capacity.

#### Additional reforms required - new schools in new land release areas should be earmarked early

The EIE infers on page 4 that the introduction of the Education SEPP will enable the "planning system" to better "respond to the increasing demand for education services", and aim 3(a) of the draft SEPP refers to improving efficiency. In order to achieve these aims, additional reforms are required to ensure that the NSW Department of Education and Communities (DEC) is supported to participate in timely strategic planning processes for new school development in land release areas.

New schools in new growth areas, which will add to the total number of schools in the state, should be strategically located within village centres, *with land earmarked early* (at least 3 years before existing schools are predicted to reach capacity)<sup>1</sup> to ensure that they form part of the fabric of the local community, are within easy walking distance of a significant proportion of the school catchment area (thereby supporting healthy lifestyles and a healthy environment), can serve as a civic meeting place and can generally contribute positively to neighbourhood amenity, in accordance with school design principles (Schedule 4).

West Dapto in the south-west of the Wollongong LGA, will be home to an additional 19,500 dwellings by 2060. However at this stage, no school site has been earmarked by DEC. In DEC correspondence to Wollongong City Council on 12 March 2015, it stated that no new school sites would be chosen until existing schools had reached their full capacity.<sup>2</sup> This is despite DEC's own estimated lead time of 3 years between the Department's decision to build a new school and the opening of the school doors. This apparent lack of strategic planning on behalf of DEC appears to sit at odds with DEC's own guideline which places significant emphasis on the need for "smarter up-front urban planning" (page 8) and the Department of Planning & Environment's stated objectives in relation to the proposed draft Education SEPP reforms. Therefore statutory reforms at the strategic end of school planning are urgently required.

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<sup>1</sup> DEC's estimate for the lead time required to build a new school facility.

<sup>2</sup> Dapto Public School currently has 682 students enrolled, making it the Primary School with the largest student population in the Wollongong LGA <http://www.schools.nsw.edu.au/gotoschool/nswps-finder/index.html>.

In this regard, the Regulations need to be amended to provide a specific trigger for DEC to identify and reserve school sites in appropriate locations within new release areas, to allow, among other advantages, opportunities to be realised for co-locating community facilities and sports ovals with schools, for public transport infrastructure to be planned and built to service the future school; and for other complimentary land uses to be built up around the proposed school site.

Additionally, clause 10 of the Regulations should be amended to prevent the DEC from not issuing concurrence to be the acquisition authority for new school sites, on the basis of funding. Within the West Dapto Release Area the DEC did not give its concurrence to be the acquisition authority for an identified school site, even though funding was available through the Special Infrastructure Contribution levy (SIC).

## **Draft Education SEPP**

### **Part 1 Preliminary**

#### **Clause 3 Aims of Policy**

The EIE makes numerous references to the need for schools to be “well located”. This goal should be reflected in one of the aims of the SEPP.

It is suggested that sub aim 3(c) be amended as follows:

*Establishing consistent state-wide assessment requirements and design considerations for educational establishments and early childhood education and care facilities to improve the quality of **learning environments** delivered and to minimise impacts on **the environment** and **neighbouring** areas.*

The overarching aim of the draft SEPP is stated to be to “facilitate the effective delivery of educational establishments and early childhood education and care facilities across the state”. Clause 3(d) is one of seven mechanisms by which the aim of the policy is intended to be achieved. Clause 3(d) provides that the overarching aim will be achieved, in part, by “allowing for the efficient development, redevelopment or use of surplus government owned land”. It is unclear how the latter helps to achieve the former. In addition, this sub-aim, does not relate specifically to ‘educational establishments and early childhood education and care facilities’. It is suggested that this sub aim be removed from the Education SEPP. An almost identical aim is already provided in the State Environmental Planning Policy (Infrastructure) 2007 (clause 2(d)).

It appears that Division 3 “Additional Uses of State Land” is the division referred to in the EIE, which is intended to facilitate the redevelopment, use and sale of “surplus government owned land”. Once again, clause 14 will clearly have broader application than to land which is currently being used for the purposes of education, and is similar to clause 18 of State Environmental Planning Policy (Infrastructure) 2007. Clauses 14 and 18 interact directly with LEPs and are not dependent upon the current uses of land. It is unclear why more than one SEPP needs to contain such a provision. It is submitted that either clause 14 be removed from the Education SEPP, or if it is included in the Education SEPP, be put in identical terms as the corresponding provision in the Infrastructure SEPP, to avoid unnecessary complexity.

The provisions of clauses 14 and 18 of the Education and Infrastructure SEPPs respectively are designed to permit redevelopment of any prescribed state land or land adjacent to prescribed state land, other than in accordance with local land use zonings, subject to the limited exceptions provided and where relevant, the requirement for a site compatibility certificate. The provisions have the potential to increase the market value of, and provide economic incentives for the sale of public land. This raises the issue of whether aim 2(d) in the Infrastructure SEPP and clauses 14 and 18 of the Education and Infrastructure SEPPs respectively, accord with the objects of the *Environmental Planning & Assessment Act 1979*. Section 5 provides that the objects of the EP&A Act are to encourage (relevantly):

- (a) (ii) *the promotion and co-ordination of the orderly and economic use and development of land,*
- (iv) *the provision of land for public purposes,*
- (vii) *ecologically sustainable development, and*

*(c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.*

Some may argue that object 5(a)(ii) can be used to justify policies which seek to facilitate the sale of public land. However, this object relates to use and development of land, not its sale. It covers both public and private land, across a vast array of tenures. It does not specifically apply to Government land. Furthermore, the sale of public land directly contradicts the explicit object of 5(a)(iv) which encourages the provision of land for public purposes.

Further, given the implications that the sale of public land has for intergenerational equity<sup>3</sup> and the fact that our population is increasing, not decreasing, policies which seek to “facilitate the disposal of surplus” government land should only be enacted where there is explicit legislative authority to do so, and be subject to far greater public scrutiny than Education and Infrastructure SEPPs are subject to.

In the vast majority of cases, it will be in the public interest for centrally located existing neighbourhood schools to be retained and if existing buildings are no longer fit for purpose, redevelopment should occur within existing sites. In accordance with the principles of Ecologically Sustainable Development (ESD), the economic value of the land should be properly weighed against the social and long term environmental benefits of retaining the existing centrally located school, which often possess heritage and other important community values.

In this regard it is noted that, in areas outside the Sydney Metropolitan Area, there are significant opportunities available to the Department of Education and Communities to meet increasing demand, other than through the provision of new infrastructure. Additional resources could be invested into existing schools on large sites with declining student numbers to improve their community appeal and/or to change existing school catchment boundaries to redistribute numbers. The distribution of student numbers in public schools in NSW is very uneven, with some schools losing teachers for want of enough students in 2017, while others, just a short distance away are at capacity.

The sale of public land aside, object 5(c) of the EP&A Act is to provide increased opportunity for public involvement and participation in environmental planning and assessment. Yet at the same time as the EP&A Act is being amended to increase public participation in planning and development decisions, clauses such as clause 14 proposed by the Education SEPP are being used to override local planning controls which have been created following a high degree of input from the local community.

## **Part 2 General**

### **Division 1**

In clause 9, the words “by a suitably qualified heritage consultant” should be inserted after the word “prepared” in cl.9(2)(a).

### **Division 5**

It is important that a provision be inserted which requires that prior to the issue of a complying development certificate, a section 149 certificate must be obtained from Council, so that a thorough review of land constraints applying to the subject land can be undertaken. Without such a certificate being obtained, the proponent cannot properly discharge obligations under the SEPP such as (but not limited to) those provided by cl.9, cl.10 and cl 11 or determine which approval pathway applies to their proposal.

To promote consistency and provide a ‘one-stop-shop’ for proponents of school based developments, Council supports the inclusion of conditions for complying development certificates in the SEPP itself. However, it is suggested that specific conditions relating to demolition should also be set out. These can be based on the conditions specified in *Schedule 9 Conditions applying to complying development certificates under the Demolition Code*,<sup>4</sup> however an additional condition to those contained in Schedule 9 is also required:

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<sup>3</sup> One of the key principles contained within the definition of ESD adopted by the EP&A Act 1979.

<sup>4</sup> *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*

### **Public health risks associated with accumulated contaminated roof cavity dust and contaminated insulation**

A condition is needed requiring the testing, and where relevant, removal of, roof dust prior to demolition commencing. The demolition of, or alterations and to, older existing school or tertiary institution buildings, particularly those located adjacent to main roads or within the air quality of catchment of industrial land uses (whether past or present) could give rise to occupational and public health risks associated with accumulated contaminated roof cavity dust and contaminated insulation.

A condition relating to this issue should be added to clause 19 and should also apply to demolition permitted without consent clause 30(1)(e). Similarly, this public health issue needs to be addressed in the Environmental Assessment Code of Practice. This is a matter which urgently needs to be addressed in relation to complying and exempt development generally. There is a low level of public awareness about this issue and where accumulated roof dust is encountered, people are unlikely to know how to deal with it safely.

### **Part 3 Early childhood education and care facilities – specific development controls**

Council supports the intent of standardising provisions for child care facilities in the SEPP. The Child Care Planning Guideline is a thorough document and the plan to apply its requirements consistently across the State is applauded. Most of the provisions of the Guideline are already contained in the Childcare Chapter of Wollongong DCP 2009 which was written to implement the Education and Care Services National Regulations. No centre approved by development consent by this Council since the introduction of this DCP has ever been refused a licenced or had to make post-consent modifications to the centre. Therefore the proposition that the Guideline, when strictly adhered to, will support a smoother approval pathway which delivers a quality, safe environment for young children is supported by this Council.

#### **Clause 20**

Council strongly objects to the inclusion of the provisions provided by clause 20. Compliance with the indoor and outdoor unencumbered space requirements provided in the Education and Care Services National Regulations should be compulsory. Making it compulsory keeps the playing field level, helps to ensure children are occupying healthy learning environments and removes the need for concurrence from the Department of Education and Communities. By removing this additional step (noting that should the option of non-compliance be provided, many proponents are likely to apply for it), the approval process will be streamlined and assessment timeframes reduced by up to 28 days,<sup>5</sup> thereby serving one of the Department of Planning and Environment's stated objectives in introducing these reforms: *"to reduce frustrating approval delays to deliver ... high quality early childhood education and care."*

We can see no reason why the unencumbered space requirements cannot be applied by Council development assessment officers as part of the assessment of each development application for an early childhood education and care facility. Non-compliance with the requirements would give rise to the need for the application to be amended to reduce the number of children that the centre can service at any one time (as is the case under the current regime). The situation should be simple, if compliance with minimum standards for space ratios cannot be achieved, the number of children which can be accommodated at the centre will need to be reduced. This is what the National Quality Framework expects.

Notwithstanding this very strong objection, if the Department is committed to providing room for non-compliance, then the reasoned basis for this provision needs to be made clear. Further, criteria needs to be established which can be used by an assessing officer to determine whether non-compliance in each individual circumstance should be permitted. Without such criteria, the process will take on a rather arbitrary character.

Finally, it is submitted that even if non-compliance with unencumbered space requirements is going to be permitted on a case by case basis, the determination of this aspect of the development does not need to be

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<sup>5</sup> Clause 20(5) allows 28 days for DEC to return written notice to the consent authority.

made by a Regulatory/concurrence authority. Councils, as consent authorities, have the necessary expertise required for the proper assessment of development for the purpose of child care centres. Indeed, Councils currently perform these approval functions, which are far more time-efficient than referrals to external agencies.

#### Clause 21

Clause 21 gives authority to the **Child Care Planning Guideline**, making it a relevant matter for consideration. It provides that **Part 2** of the Guideline must be taken into consideration, whilst the matters in **Part 3** may be considered. As outlined in detail below, it is submitted that most of the matters in Part 3 be transferred to Part 2 so that they must be considered by a consent authority.

As noted, the Child Care Planning Guideline is a thorough document and the proposition that the Guideline, when strictly adhered to, will support a smoother approval pathway which delivers a quality, safe environment for young children is supported by this Council. However, in order for this potential to be reached, some fundamental shifts are required to some parts of the document.

### Child Care Planning Guideline - Part 2

#### 2.7 Outdoor Environment

##### *Simulated outdoor environments*

The application of this part is not clear. The only reference to a restriction on when simulated outdoor environments are permissible is located in the caption of Figure 2-33. This needs to form part of the substantive text under the heading. It is not clear at present how the simulated outdoor environments relate to the requirements for unencumbered outdoor space. For example, on page 24 it says “Where site constraints *restrict* the provision of outdoor play areas, indoor areas may be calculated *as part of* the required outdoor space” (emphasis added). This suggests that simulated outdoor environments can only account for *part of* the outdoor space requirement. There needs to be quantity based guidance around how much of the outdoor space requirement can be satisfied in this way.

Further as stated above with regard to clause 20, there needs to be very clear criteria set out to guide decisions about when to permit a reduction in outdoor space. It must be born in mind that some children spend 10-12 hours a day, 5 days a week in childcare, so the provision of outdoor space in centres that provides for access to sunlight, fresh air, natural landscape elements such as real trees and wildlife such as insects and birds can be of paramount importance.

This part of the planning package needs to be revisited. Any regulatory framework which allows the same space to be counted as both indoor and outdoor open space, that allows centres to be built which do not meet the minimum standards for indoor and outdoor unencumbered space or that allows developments with no actual outdoor environment, is strongly objected to.

#### 2.10 Emergency and Evacuation

The requirements in this section need to be explicit. For example, under what circumstances would “evacuation from multi-storey buildings and mixed use developments” be required to employ “additional fire safety measures?” What are those measures? If the measures are contained in the Regulation, a specific reference to the section should be provided. Further, in the last sentence under the heading ‘Fire Stairs’, the word “can” should be replaced with “should” or “must”.

The wording under the heading ‘Mixed Use and multi-storey buildings’ is too weak. A separate emergency escape route must surely be provided to safeguard children, both from being accidentally knocked over by other users (or conversely slowing others down), or being placed at risk of inappropriate contact or abduction. It is unclear how a ‘safe haven’ that is located on an upper floor of a multistorey building (as shown in Figure 2-41) can serve as an alternative to a separate emergency escape route from the building. If the building is on fire, the safe haven only serves as a temporary assembly area “during the initial stages of a fire alert or other emergency”, evacuation using an adjoining fire exit, is still required.

Similarly, there are often warning signs which say “In case of fire, do not use lift”, so it is unclear how a lift provides a safe alternative to a safe emergency escape route.

The staff in the case of fire will have to evacuate large numbers of children who are unable to walk, cannot negotiate stairs, or can only do so very slowly. Staff may have to carry babies and assist toddlers who are learning to walk and just walking, and children with disabilities. It is therefore unlikely that in a multi-Storey building those children will be evacuated safely in a timely manner.

This part of the planning package needs to be revisited. Due to concerns about the feasibility of child care staff being able to safely evacuate small children and babies from multistorey buildings, whether by way of lift or stairs, it is submitted that the idea of centres located in multistorey buildings being subject to different limits on the number of places should be very seriously considered. Alternatively, to reduce unacceptable risk, the Education SEPP could specify that a child care centre cannot be located above a certain level (say second storey) of a multistorey building. It could go further still to safeguard children's safety and provide that child care centres can only be provided on the ground level of multi – storey buildings.

There should be a requirement that Emergency Evacuation Plan (EEP) be referred to the NSW Fire and Rescue or an alternative external agency for review.

#### 2.12 Soil Assessment

Second dot point – change the requirement to “a copy of that assessment report”. Note: if the assessment report is greater than 5 years old, a new assessment will be required.

Third dot point - the provision of a statement provided to the best of someone's knowledge is totally inadequate in this context. The applicant may have very little knowledge of the history of the site and is unlikely to have the expertise required to form a view one way or another about whether or not the site is “likely to be contaminated in a way that poses an unacceptable risk to the health of children.” Children are more sensitive to toxins than adults and are extremely vulnerable to exposure to soil contamination because they play in and ingest dirt as part of everyday activities. Past and current uses of adjoining land can also be a relevant consideration. For example, heavy metals such as lead can accumulate in soil on land alongside main roads and highways.

#### **Child Care Planning Guideline - Part 3**

It is submitted that the following matters from Part 3 be placed in Part 2 so that they must be considered by the consent authority. Wollongong LGA provides a case study for the successful application of these matters as mandatory considerations (in addition to those outlined in the Guideline in Part 2) for at least the past 5 years:

##### 3F Pedestrian and Vehicle Access

The car park is the most dangerous part of a centre in terms of the potential for fatalities. The entirety of this section (pp44&45) should be moved to Part 2. Figure 3-8 provides excellent practical guidance on how to separate pedestrian and vehicular movements and is an essential feature of the guideline. The photograph provided at Figure 3-10 however should be replaced with one that shows access between the parked car and the walkway. The photo provided is not a good example because it features a complete row of plants that will become a hedge barrier in the future. Pedestrians should be able to alight directly from the car onto the pathway therefore gaps in the planting in between each car park need to be provided.

##### 3H Visual Privacy

This is a child protection issue and needs to be a mandatory consideration.

##### 3J Noise and Pollution

Consideration of noise and pollution is of critical importance.

Council suggests removal of two dot points: limit number of openings facing noise sources and locate cot room away from external noise sources. Whilst this may be a good idea within some designs and sites to mitigate impacts, they potentially contradict other requirements such as solar access, the interaction between indoor and outdoor space and fire egress. It should be clear that some sites are simply not suitable for childcare centres.

3K Accessible Design Design criteria 1 and 2 should be combined as they seek to achieve the same outcome and cover the same specifications.

### 3L Car and Bicycle Parking

Design criteria – this is the only design criteria to refer back to a DCP. In the interests of providing a one-stop shop for users, Point 1 should be removed. To reduce the uncertainty provided by point 4, it is suggested that it read:

For small neighbourhood centres in areas with convenient and safe on-street parking space, this parking may be considered as an offset to off-street parking so that a minimum off street rate of 1 space per 6 children is achieved.

Point 8: No tandem staff-parking is to be permitted. Staff arrive in shifts – e.g. early shift arrive at 7am and park in the first tandem space, then middle shift arrives at 8am and park behind the 7am shift staff. When the 7am shift leave at 2pm the 8 am shift staff member has to also leave to move their car to allow the 7 am person to leave. Parking in tandem means that two staff at one time need to leave the centre to move cars. This is likely to lead to inadequate staff/child ratios and therefore puts children at risk. Tandem parking also adds to congestion in carparks with two cars needing to reverse at once.

### **Clause 22**

Council objects to the proposal to permit centre-based child care in the IN2 (Light Industrial) zone in the *Standard Instrument (Local Environmental Plans) Amendment Order (No 2) 2016*. Allowing such a sensitive land use in an industrial zone is highly likely to lead to land use conflicts and place unnecessary restrictions on the future uses to which industrial lands can be put. This could lead to a restriction on the growth of active employment lands and have far reaching negative consequences for the economic development of towns. As indicated by page 49 of the Childcare Planning Guideline itself, Child-Care Centres and industrial premises are not compatible land uses and mandating that child care centres be a permissible use in industrial zones is contrary to land use planning principles. Additionally, within the Wollongong LEP 2009, child care centres are permitted land uses in the Residential, Business, Rural and Open Space zones, so there is plenty of opportunity to establish new centres. The Industrial zones are under pressure to be occupied by other land uses because the land tends to be cheaper. Increasing the permissibility within the Industrial zones, will impact on the viability of employment uses.

It is conceded that it may be beneficial to allow centre-based child care as an ancillary component to large industrial operations to cater for the children of workers at that facility (say sites greater than 10 hectares with more than 200 employees). In this context, land use conflicts within the development could be more easily managed. However, the child care centre would need to meet the requirements contained in 3J (which we have submitted need to be promoted to Part 2 - matters requiring mandatory consideration).

### **Clause 23**

Council supports non-discretionary development standards being applied in this context and has no objection to subclauses a) b) and e). However subclause c) with respect to site coverage goes too far and potentially contradicts the requirement for unencumbered outdoor space. Front and side boundary setbacks should be able to be applied to suit the local context. Without such controls/discretion, there are likely to be streetscape impacts and issues of overshadowing/loss of solar access to neighbouring properties. Further, the potential to mitigate noise impacts within the site will also be reduced if built structures are not set back from potential noise sources to allow for planting or other acoustic barriers.

### **Clause 24**

A DCP should be able to place restrictions on hours of operation. The SEPP could set some parameters around this e.g. *a DCP cannot require operating hours to be commencing later than 7:30am or cease early than 6pm.*

## **Part 4 Schools – specific development controls**

### **Schedule 4 Schools – design quality principles**

Council fully supports the contents of Schedule 4 -School design quality principles. However, it is submitted that, given the critical role that the principles will play in guiding ‘complying development’, it is imperative that they include more objective standards so that ‘achievement’ of the principles (as required by draft clause 129AA of the Regulations) can be properly determined.



#### *Principle 4-health and safety*

It is submitted that *Principle 4-health and safety* could be reworded to emphasise the role that design can play in creating safe and healthy environments and provide specific practical examples. For example, toilet blocks in schools are often places which students seek to avoid because they are unpleasant or hubs for unsafe or unsociable behaviours. Schedule 4, under Principle 4 could provide:

*Students should have access to well-designed, safe and attractive toilets which suit the needs of all types of users. To reduce risks to students when using these areas, they should be designed to provide 'lines of sight' into wash basin areas to permit supervision by teachers from outside of the toilet facility, without breaching privacy needs.*

A sample, 'deemed to satisfy', floor plan could also be provided.

Some examples of attractive toilet blocks with 'lines of sight' are provided below.



Toilet in a school with 'vision panel' from corridor ('Building 4 Education')<sup>6</sup>



Public toilet at Pirrama Park, Pyrmont

In general, there appears to be a vast difference between the detailed and prescriptive minimum standards specified in the National Quality Framework and the associated National Regulation, and the Standards and Guidelines which apply in NSW to school developments. For example, we have not been able to locate any reference to toilet designs which promote student safety in the NSW Department of Education and Communities Educational Facilities Standards and Guidelines (EFSG). Therefore it is necessary for Schedule 4 to be expanded to include specific performance based standards and/or for the EFSG to be updated.

#### *Principle 5-amenity*

The EFSG provides the important principle that buildings should be "*age and stage appropriate*", however it does not appear to contain any specific requirements as to how, say an early stage 1 classroom may differ from a stage 3 classroom. Similarly, the second paragraph of Principle 5 states that "*Schools should include appropriate, efficient, stage and age appropriate indoor and outdoor learning and play spaces, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage and service areas.*" While this principle is supported, being able to unequivocally state that a development does or does not 'achieve' this design principle would be impossible. Specific performance based standards similar to the one below are required to demonstrate how achievement of this principle can occur:

*Classroom environments for early stage 1 (Kindergarten) students need to meet the following minimum requirements:*

- a) Be located on the ground floor with no stairs (or lift) between classroom and the emergency assembly area;*
- b) Have windows that open and be fitted with fans so that the classroom is not reliant on air-conditioning<sup>7</sup>;*

<sup>6</sup> <http://b4ed.com/Article/how-to-design-school-washrooms-to-prevent-bullying>.

<sup>7</sup> Note: this can be inferred by the home base specifications in the EFSG, but should be made explicit.

- c) *Be serviced by a toilet and basin that is proximate to the classroom (i.e. within 6 m of entrance/exit of classroom) and where the teacher has a clear line of sight between the entrance of the toilet facility and inside the classroom;*
- d) *Have an amount of unencumbered indoor space that complies with a ratio similar to that required for child-care centres; and*
- e) *Have an immediately adjacent outdoor space (of a minimum area) which is defined by landscape features such as garden beds, seating or trellises and that can perform many functions including but not limited to, allowing students to investigate elements of a natural environment such as growing plants or creatures in the soil (for the purposes of scientific inquiry), undertake small scale gardening activities or as an outdoor break-out space for group work and which:*
  - i. *can be freely accessed directly from the classroom (preferably from a secondary door rather than the main entrance);*
  - ii. *is serviced by a water tap;*
  - iii. *does not form part of a path of travel between any other classroom/home base and communal areas of the school; and*
  - iv. *has a clear line of site into most areas of the classroom and vice versa.*

#### **Expansion of an existing school**

The relationship between clause 14 (2) & (3), 29 and 30 is not clear. To maximise compliance and ensure that the stated objectives of the SEPP relating to reducing delay can be achieved, the instrument should be easy to navigate and interpret. Users should not need to resort to obtaining legal advice in order to apply the SEPP.

Clause 30 appears to permit development to expand beyond boundaries of an existing school. If the expansion is into adjoining land and that adjoining land not in a prescribed zone, then it appears that clause 29(3)(b) applies and consent will be required. The practical circumstances under which would clause 14(2) operate are unclear.

#### **Demolition**

The risk associated with contaminated dust that accumulates in the roof spaces of older buildings, particularly those situated along main roads or within the air quality catchment of industrial uses needs to be addressed. This issue needs to be addressed in the Codes SEPP but should also be referred to in the Code of Practice and Planning Guideline/Design guide and in the list of conditions to be applied to complying development certificates (see below).

Also, the relationship between cl.30 (Development without consent) and clause 33 (Complying development) with respect to demolition needs further clarification. Under clause 30, demolition of buildings or structures generally is permitted without consent (so will be subject to an 'in-house' assessment in accordance with the Environment Assessment Code of Practice). Clause 33 provides that demolition of non-heritage items is complying development if the building footprint is no greater than 250 sq m.

In general, demolition permitted without consent should be more limited in extent than demolition which qualifies as complying development. This is because there are more regulatory safeguards in place for complying development and conditions can be applied to complying development certificates. Further, demolition of a heritage item or of a building or structure within a conservation area should not be permitted without consent.

#### **Clause 30 Schools – development permitted without consent**

There needs to be a reference made here to the Environmental Assessment Code of Practice.

#### **Clause 32 Existing schools – exempt development**

Section 76(2) of the EP&A Act provides that an environmental planning instrument may provide that development of a specified class or description *that is of minimal environmental impact* is exempt development. Draft clause 32 sub clause (1)(g) provides that a sporting field or any type of court used for sport, and associated awnings or canopies are exempt development "if the development does not involve the clearing of more than 2 hectares of native vegetation".

The clearing of 2 hectares of native vegetation would not, by any contemporary standard, fit the description of development that is of minimal environmental impact. Further it contradicts the limitation on exempt development imposed by clause 15(3)(g). Therefore, this draft clause requires revision.

### **Clause 33 Existing Schools – complying development**

There is strong objection to the proposed 4-storey/**22m** complying development height limit on new buildings within the boundaries of an existing school. The current building height standard for complying development within existing schools and TAFE establishments under clause 31A(4)(a) of the SEPP (Infrastructure) is **12m**.

This objection to the proposed new height standard for complying development is founded in four main areas:

- Student safety when using lifts<sup>8</sup> and in the event of a fire;
- Impact on teaching practices for classes occupying the third and fourth floors;<sup>9</sup>
- Neighbourhood impacts where surrounding development is low or medium density; and
- Lack of opportunity for community involvement when development is the subject of a complying development pathway.

Overall, whilst it is accepted that in some limited cases *in metropolitan areas*, after appropriate consultation and thorough Part 4 or 5 assessment by a consent authority, well designed, 'state of the art' 4-storey teaching and learning facilities may be acceptable for secondary school settings, and in even more limited cases, primary school settings, the building height standard for complying development should be left at the current height of 12m.

The proposition presented during workshops that unprecedented increasing demand for education in NSW justifies this state wide regulatory change to complying development, is not accepted.

If, notwithstanding stated objections, the Department is minded to increase the height standard for complying development, it is strongly recommended that:

- a) the Guidelines in Schedule 4 require that early stage 1, stage 1 students and students with disabilities which affect their mobility must be accommodated on the ground floor of multistory buildings. There should be no exceptions to this requirement; and
- b) this change only apply in defined metropolitan areas.

Draft clause 33(2)(4) provides that clause 17(2)(g) regarding tree removal does not apply to the class of complying development specified in clause 33(2)(a). The rationale for this exclusion is queried.

## **Part 5 Universities – specific development controls**

Universities are more than just education establishments, indeed they can effectively be a small suburb. As well as providing education, universities provide retail facilities (including supermarkets), bars, sporting facilities, residential development (student accommodation), function centres, libraries and a range of other facilities that can be accessed by both the students and surrounding community.

The draft SEPP proposes to address only the education function of Universities, which means the other functions and land uses will be assessed as local development under an LEP. The draft SEPP makes specific mention of Student Accommodation, as not being covered, but is not clear on the other uses within a university campus. The SEPP should clearly indicate that other uses not covered by the SEPP, remain local development and the relevant LEP or environmental planning instrument applies.

It is noted that the definition of Universities in the Higher Education Act 2001 is just a list of universities, and does not actually define what a university is, even to the extent of its education role. It is suggested that a definition of universities should be included that more accurately defines its land use function.

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<sup>8</sup> Lifts cannot accommodate a full class of 25 or 30 students, meaning that teacher's ability to supervise students will be seriously compromised.

<sup>9</sup> The causal link between learning environments, teaching and learning practices and learning outcomes is now widely accepted. Teachers on the third and fourth will be dissuaded from facilitating outdoor learning experiences for their students, contrary to the principles of Education for Sustainability.

As part of a recent review of section 94A development contributions for tertiary facilities, within the Wollongong LGA, Council divided the uses into the following three categories, which could be used as a basis for defining universities:

*An application by or on behalf of a tertiary education provider:*

- (i) Full exemption may be allowed for facilities that are directly required by the main function of the educational facility, such as – classrooms, lecture theatre, training facility, administrative office, research facility.*
- (ii) Partial (50%) exemption may be allowed for developments that are not directly required by the main function of the educational facility but will provide support to its main function, such as student accommodation, car park, sports facility, playgrounds, food-court, display facility, function centre, convention hall, auditorium, community centre.*
- (iii) Nil exemption for developments that are not directly required to the main function of the educational facility and/or have potential to create additional demand for public services and amenities. Development such as but not limited to – shops, supermarket, shopping centre, office for lease, business park, commercial centre, child care centre, entertainment facility.*

It is also suggested that a clear definition of 'Student Accommodation' be provided either within the Draft SEPP, or included within the Standard Instrument.

A review of recent JRPP decisions relating to student accommodation across NSW indicates that student accommodation development is considered permissible only as ancillary development, or incidental to a University or educational establishment in several land use zones. Council would encourage further engagement with NSW Universities regarding the matter of permissibility of Student Accommodation developments at existing University Campuses.

Council supports the proposed amendments outlined in Schedule 5, allowing tertiary institutions to access the change of use provisions in Clause 5.3 of the Codes SEPP.<sup>10</sup> In order to increase the potential practical effect of this change, it is suggested that consideration be given to increasing the maximum floor area restriction from 60m<sup>2</sup> to 100m<sup>2</sup>.

Regarding the proposed approval pathways for centre-based child care, once again, if the goal is to simplify the regulatory framework (page 12 of the EIE), then there needs to be consistency across the sectors. Schools, universities and TAFEs should all be required to lodge a development application for centre-based child care. The community reasonably expects consistency in the standards and assessment processes which apply to centre-based child care, irrespective of where they are occurring.

## **Part 6 TAFE Establishments – specific development controls**

### Development standards relating to complying development

The rationale for complying development for the purpose of a TAFE being subject to a different range of development standards than universities and schools, is unclear. For consistency and ease of navigation, the development standards for complying development under clause 50(3) should be provided in a schedule in the same way that the standards are set out for schools and universities (Schedule 2 and 3 respectively). In addition, the standards should generally cover the same matters. Schedules 2 and 3 cover a comprehensive range of standards on matters relating to waste management, drainage, flooding, earthworks and bushfire (to name but a few). There appears to be no practical reason why these standards should not apply equally to development within boundaries of an existing TAFE establishment.

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<sup>10</sup> Change of use to another complying use permitted: cl.43(2) Uni and cl.50(2) TAFE.

## Submissions which relate to Schools, Universities and TAFEs

### Approval pathway for centre-based child care

The point is reiterated that the proposed approval pathways for centre-based child care across the three sectors should be consistent. Schools, universities and TAFEs should all be required to lodge a development application for centre-based child care and the entire development assessment process should take place within Councils, with the DEC being responsible for the issue of Service Approvals.

### Building Height standards for complying development

The following maximum building height standards are proposed by the draft SEPP (Education):

Educational Setting	Height (m)	No. Storeys	Reference	Notes/Qualification
Schools	22	4	Schedule 2 (2)	However, CDC cannot be issued for a building >12m unless the certifying authority has 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 Education SEPP (proposed cl.129AA Regs).
University	15	3	Schedule 3 (2)	
TAFE	12	Not specified	cl.50(3)	

These height restrictions appear to have an inverse relationship to the relative purpose of the buildings to which they apply. Whilst the proposed height limits for Universities and TAFEs are supported, the 4 storey/22m height limit for complying school development is strongly opposed. Given that the vast majority of existing school sites in the State are surrounded by established low and medium density land uses, the proposed controls will promote development which is likely to be out of character with surrounding neighbourhoods.

Whilst there may be exceptional circumstances in metropolitan areas where a 4 storey school development is warranted, such development should be subject to a local development or state significant development approval pathway, rather than a complying development pathway which excludes community consultation. The building height standard for complying development for the purpose of a school should be retained at 2 storey/12m.

## Part 7 General development controls

### **Draft Environmental Assessment Code of practice for Part 5 activities for non-government schools**

Given the aims of simplifying and standardising planning approval pathways and the desire to minimise impacts on the environment and surrounding neighbourhoods, it is submitted that the Environmental Assessment Code of Practice should apply equally to development permitted without consent undertaken by both public and private schools. The assessment pathway will necessarily be the same in substance irrespective of school ownership and we can see no reason why the REF provisions of the code (at least), should not also apply to Government schools.

In general policy terms, there is a risk in ascribing public status to non-public entities because such entities are not bound by the public law principles of procedural fairness and natural justice or subject to the same legislative transparency and accountability requirements as Government Departments. It is appreciated that attempts have been made through proposed provisions in the Code to address this risk, however the following additional requirements are suggested for consideration:

### **Reviews of Environmental factors**

Consent authorities like councils have dedicated experts within their organisations that perform assessment and ensure that the responsibilities under the act are carried out. Given the core business schools (whether Government or non-Govt), these expertise are rarely available (p.11 Code of Practice). Therefore regardless of whether development requires consent, schools will be reliant on expensive consultants to undertake their environmental assessments. Even with the support of the Code of Practice, the 'without consent' assessment pathway continues to be a complex one.

Page 14 should be updated to refer to *Biodiversity Conservation Act 2016* which is due to commence in June/July 2017.

Page 16 of the Code should specifically list 'the Local council of the LGA within which school site is located' and any other Government agencies considered relevant (and the code should mirror exactly what clause 31 provides to avoid confusion).

Council encourages the inclusion of the Education SEPP consultation provisions in the final Code of Practice, so that Schools are made aware of all mandatory consultation and notification provisions in the one document (this idea is referred to on page 16).

With regard to section 3.5.1 on page 20, the decision statement should be published not just on the RNS website, but also on the planning portal so that this portal fulfils its purported function as a central source of development information for applicants, planners and the community. The SEPP should stipulate that the 'decision statement' and a copy of the REF (and any SIS) should be published on the Planning Portal website a minimum of 14 days prior to the commencement of works. If this requirement is imposed, then notification of the determination will have been effected.

A determination that a proposed activity cannot proceed, or requires an SIS or EIS, should not be excluded from the list of documents that are required to be kept for a minimum of 5 years (page 23). This is to prevent a potential abuse of process whereby an REF concluding that an EIS or SIS is required is discarded in favour of a modified REF pertaining to the same proposal that makes a different conclusion.

Council supports the suggestion in the EIE that all applications for complying development certificates for school infrastructure be issued by council certifiers. This proposal would ensure that councils still have some oversight and involvement in the development of school infrastructure in their local area.

## **Schedule 5**

### **SEPP (Exempt and Complying Development) 2008**

The move to allow home-based childcare on bushfire prone land is not supported.

Clause 34 of the *Family Day Care and Home Based Child Care Services Regulation 1996* provides, in regards to the Number of Children:

- (1) The licensee of a family day care service must ensure that the number of children for whom a service is provided by any carer of the service does not (together with the number of children related to the carer cared for by the carer) at any one time exceed 7 children under the age of 12 years.
- (2) The licensee of a home based child care service must not provide a service for a number of children that (together with the number of children related to the licensee cared for by the licensee) at any one time exceed 7 children under the age of 12 years, 5 of whom have not started school.

The idea that one adult can be expected to safely evacuate 7 children from a dwelling at risk of bush fire attached is unreasonable. Children who have not started school (i.e. who are less than 6 years of age) are required to be seated in a child restraint when travelling in a vehicle. Even if a carer had a vehicle that was large enough to transport 7 children plus themselves (and there is no requirement that this be the case), the chance that this vehicle could fit, and that the carer would have, the necessary 5 to 7 child restraints is very remote indeed.

## **Standard Instrument (LEP)**

A definition for 'respite day care centres' should be included in the *Standard Instrument (Local Environmental Plans) Amendment Order (No 2) 2016* as this use will be specifically referred to in the land use table. There is no mention of respite day care centres in the draft Education SEPP.

A definition for student accommodation should be provided.