

6 April 2017

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

Dear Sir/Madam

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

Please find enclosed a submission from the City of Canada Bay regarding draft *State Environmental Planning Policy (Educational Establishments and Child Care Facilities)*, referred to as the draft SEPP. This submission contains Council's response to the draft SEPP, seeks clarification on proposed clauses and raises issues for consideration by the Department of Planning and Environment.

The City of Canada Bay requests the Department of Planning and Environment respond to matters raised by Council before the draft SEPP is put forward to the NSW Government for adoption.

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

Clause 9 – Consultation with councils – development with impacts on local heritage

This clause requires consultation with council for development that is likely to have a “more than minimal” impact on a local heritage item or a heritage conservation area.

The presumption of the clause that development will have a “more than minimal” impact upon a heritage item or a heritage conservation area raises concerns in relation to the suitability of development being carried out without consent. Development should only be permitted on a heritage item or within a heritage conservation area in circumstances where council has confirmed in writing that the proposed works will have an acceptable degree of adverse heritage impact.

Whilst the draft SEPP requires consideration to be given to council's response, there is no obligation for identified concerns to be addressed. This clause should be amended to

require council to grant concurrence to the proposal. Where concurrence is not obtained, a development application should be lodged.

Development should only be permitted to be carried out on a local heritage item or within a heritage conservation area, where the works will have an acceptable degree of adverse heritage impact.

Concurrence of council should be required prior works being undertaken to heritage items or in heritage conservation areas.

Clause 10 – Notification of councils – development on flood liable land

This clause requires consultation with council prior to development being undertaken on flood liable land. The clause applies to development that will change flood patterns “other than to a minor extent”.

Assessment of flood impacts requires the analysis and testing of detailed models. Councils will only be able to undertake a cursory review of submitted information within the 21 day referral period specified in the clause.

The wording of this clause raises concern in relation to permitted development that will have a “other than to a minor extent” flooding impact. Flooding is of particular importance when managing sensitive land uses such as schools and places frequented by young children. Complying Development is unable to consider the impact of cumulative development or whether satisfactory evacuation and risk mitigation measures have been adequately addressed. To enable a robust assessment and review process, all development in a flood planning area should be subject to a development application.

Whilst consideration is required to be given to council’s response, there is no obligation for identified concerns to be addressed. This clause should be amended to require the public authority to demonstrate how council’s concerns have been addressed.

The clause should be reworded to state that all development in a flood planning area should be subject to a development application.

Public authorities should be required to demonstrate how the response provided by the council has been addressed.

The proposed 21 day referral period is insufficient to enable a review of detailed flood models or a robust assessment of flood impacts.

Clause 13 Site compatibility certificates

There are serious concerns regarding the ability of schools to adopt the zoning of the adjoining land, thereby enabling development that is permissible on adjoining land, despite the existing provisions of the applicable LEP.

The City of Canada Bay reviewed all school sites in 2008 to determine the zoning that should be applied to schools. This process involved an extensive assessment of all schools and analysis of each context to determine the appropriate zoning and development controls. The rezoning of school sites occurred through the rezoning provisions of the Environmental Planning and Assessment Act, 1979 with associated community consultation and council endorsement.

These site compatibility certificate provisions will facilitate the disposal of surplus educational sites, reducing land available for the provision of school infrastructure and without due process being followed in relation to the rezoning of land. If the intention of the draft SEPP is to respond to unprecedented pressure on existing school infrastructure, the inclusion of these provisions is counterintuitive.

The Environmental Planning and Assessment Act, 1979 and associated Planning Proposal/Local Environmental Plan Guidelines provide an appropriate method to facilitate the rezoning of land. This process ensures that the rezoning exhibits both strategic merit and site specific merit and enables the community to participate in the rezoning process.

The draft SEPP should be amended to remove provisions in relation to Site compatibility certificates. The rezoning of school land should be subject to the Planning Proposal/Local Environmental Plan process and associated community consultation required by the Environmental Planning and Assessment Act, 1979.

Clause 15 – General Requirements for exempt development

This clause specifies standards that must be met to enable exempt development to be undertaken.

Sub clause (e) states that development may be undertaken to State and local heritage items or within heritage conservation area if it involves no more than minimal impact on the heritage significance of the item or area.

It is queried who will determine what constitutes “minimal impact” and how this will be determined. Unlike *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, the draft Education SEPP does not include criteria for

Exempt development (Schedule 1) to ensure that impacts on heritage items or in heritage conservation areas are minimised.

An alternative approach is to adopt clause 5.10(3) of the Standard Instrument that states:

3) *However, development consent under this clause is not required if:*

(a) the applicant has notified the consent authority of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that the proposed development:

(i) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or archaeological site or a building, work, relic, tree or place within the heritage conservation area, and

(ii) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place, archaeological site or heritage conservation area, or

This approach enables council (not the applicant) to undertake a qualitative assessment of heritage impact and determine whether the proposal is appropriate as Exempt development or should be subject to a development application.

Clause 30 should be amended to require written confirmation from Council prior to works being undertaken as Exempt Development on heritage item or in heritage conservation areas.

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

This clause specifies requirements, standards and controls that do not apply to development for the purpose of centre-based child care. The clause states that controls in relation to operational or management plans or arrangements (including hours of operation) do not apply for the purpose of the draft SEPP.

Plans of management are an important tool utilised by Council to ensure that the impacts arising from Child Care Centres on the surrounding locality can be managed. Without the ability to address matters such as drop-off and pick up times, hours of operation and associated management of the centre, it is unlikely that council will be able to adequately control the impact arising from child care centres in sensitive residential settings.

The draft SEPP should be amended to remove clause 24(b) to enable council to require the preparation of operational or management plans (including hours of operation).

Clause 30 – Schools – development permitted without consent

This clause states that the number of students and staff can increase by 10% each year. In extreme examples, this could result in the school population increasing by 50% over a 5 year period with limited opportunity for council to comment (other than the 21 day comment period) and no opportunity for the affected community to comment.

Whilst written notice is required to be given to the council, the 21 day comment period is considered unsatisfactory to replace the assessment and regulatory process that applies to development applications. The consultation process cannot replace a thorough assessment or ensure that appropriate conditions are imposed to control the ongoing impacts of development.

Clause 30(2) should be removed from the draft SEPP to ensure that significant changes to student and staff numbers are subject to development consent.

Clause 36 – State significant development for the purpose of schools – application of development standards in local environmental plans

This clause enables consent to be granted for State significant development even though the development would contravene a development standard imposed by a local environmental plan.

The *Explanation of Intended Effect* that accompanies the draft SEPP states that the applicant will be required to justify the departure from the development standard and demonstrate that there are sufficient environmental planning grounds to support the contravention. This requirement is not contained in the draft SEPP and there will be no statutory obligation on the applicant to justify departures from standards in Local Environmental Plans.

Clause 4.6 of the Standard Instrument already addresses the issue of departures to development standards and it is therefore unclear why a specific clause needs to be included in the draft SEPP to address this issue. Where appropriate justification exists to depart from a development standard, the applicant should be required to justify the departure through the existing statutory arrangements. In this regard, Clause 4.6 of the Standard Instrument already provides an appropriate process for applicants to justify departures to development standards.

Clause 36 permits the contravention a development standard in a LEP. The clause does not require the applicant to justify the departure to the development standard or demonstrate that there are sufficient environmental planning grounds to support the contravention.

Clause 36 should be amended to state that development standards in LEPs do apply and that departures should be justified in accordance with a similar manner as that referenced under Clause 4.6 of the Standard Instrument.

Overshadowing Controls

The draft SEPP states that work on schools, universities and Tafe sites that is undertaken as Complying Development is required to adhere to the specified overshadowing controls (Schedule 2 (5), Schedule 3 (8) and Clause 50(3)(d)).

Review of overshadowing impacts requires both a numerical and qualitative assessment and it is argued that not all Private Certifiers have the ability to determine whether a development meets the requirements of the control. Whilst the *Explanation of Intended Effects* states that a qualified designer is required to verify the design, this requirement is not reflected in the draft SEPP. It is argued that the applicant and their consultants should not play a role in the assessment of their own application.

The draft SEPP extends the scope of complying development far beyond what it was originally intended for, that is, straightforward works with minimal environmental impact. Development permitted as Complying Development in the draft SEPP should be limited to one storey with remaining development being subject to a Development Application.

Buildings facilitated as Complying Development under the draft SEPP should be limited to one storey or a maximum of 4.0 metres in height.

Schedule 1 – Exempt development – general

The draft SEPP includes a schedule of Exempt development types. The following comments are provided in relation to specific provisions:

- Security Fences – 3.0 metres is considered to be excessive for a security fence. It is requested that security fences be limited to a maximum height of 1.8 metres.
- Retaining walls – Filling above ground level (existing) of 2.0 metres is considered to be excessive. It is requested that filling for the purpose of retaining walls be permitted up to 0.5 metres above ground level (existing).
- Signs – Signage should not be animated, flashing or moving.

Council certification

The *Explanation of Intended Effects* states that the Department of Planning and Environment is considering allowing only Council certifiers to issue complying development certificates for school infrastructure. Whilst retaining Council in the assessment process is supported, this requirement does not appear to be reflected in the amendments to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* or the draft SEPP.

It is requested that Department of Planning and Environment confirm the role of Council in relation to the processing of Complying Development Certificates for School infrastructure.

Council appreciates the opportunity to comment on the draft SEPP and looks forward to a response from the Department of Planning and Environment on the key issues raised in this submission.

If you have any questions in relation to this submission, please contact my office on 9911 6400.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Tony McNamara', with a stylized flourish at the end.

Tony McNamara
Director, Planning & Environment