

7 April 2017

Carolyn McNally  
Secretary  
NSW Planning & Environment  
Level 22, 320 Pitt St, Sydney 2000

(By: [online submission](#))

Dear Ms McNally,

**Re: Draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (Draft SEPP)**

I write as instructed by Concerned Scots Neighbours Inc. (CSN) making a submission with respect to the Draft SEPP. CSN is a community group brought together by concern for the safety of the streets around The Scots College (TSC) in Bellevue Hill, Sydney. CSN have consistently campaigned for TSC to take responsibility for the safety of their pupils and staff by providing safe and adequate drop-off and pick-up points at their various campuses and adequate off street parking.

At a high level CSN agree that, with the growing population of Sydney, there is a need to provide additional childcare and educational facilities to service the needs of growth areas. Childcare and schools need to be placed to service their catchments, avoiding excessive travel times for both teachers and students, encourage walking and bike travel to and from schools. There is a demonstrated need to strategically plan for educational and child care and special use zoning and reservation of land for these limited purposes is the best way to achieve this. There should be planning incentives by HOB and FSR in brown field urban renewal to create new vertical schools.

Not that long ago many public-school sites were sold-off because they were deemed “surplus land” compatibility statements allowing their sale and redevelopment. A classic example in Woollahra’s local government area is the Vaucluse High School site, sold and privately re-developed as an aged care facility<sup>1</sup>.

Now, as if it is a surprise, the exhibited material for this Draft SEPP states:

*“Our schools are also under increasing pressure with an estimated 172,000 new students entering the public-school system by 2031. To meet this demand NSW will 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. As the public system struggles to keep up, there will be increasing pressure on the private sector to assist in meeting this demand.”*

Therefore, the NSW Government, after classifying sites such as Vaucluse High School as “surplus land”, selling it off, making a tidy profit in the process, now wish to address what was never a real surplus, by allowing the intensification of impacts upon existing neighbours to schools.

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<sup>1</sup> JRPP - 2012SYE091 - 2 Laguna Street, Vaucluse (former Vaucluse High School)

What the government should be doing is providing new schools to meet the real demands in the growth areas that are close in proximity to the areas with high residential density increases.

CSN are rightly concerned that allowing private schools to increase their physical capacity without the checks and balances afforded through a proper merit based environmental impact assessment under Part 4 of the *Environmental Planning and Assessment Act 1979* (EPA Act) is retrograde.

It has been the experience of CSN that unacceptable traffic, parking and noise impacts have occurred where new facilities are erected based upon flimsy statements of present intent that 'the new facilities will not result in increased student number and there will be no impacts from the new facilities'. In the case of TSC, these impacts have been assessed with a high degree of rigour by the Land and Environment Court on three separate occasions. The Court has found that the expansion of Scots College at Bellevue Hill was unacceptable in terms of its impact on the surrounding streets. The Court observed that the existing intensity of use was unsafe.

CSN strongly object to the use of exempt development and complying development as a method for allowing more facilities. More facilities mean more students and teachers. More teachers and students make already unsatisfactory and unsafe traffic, parking and noise impacts even more unsatisfactory and unsafe.

### **Background and CSN's Experience**

CSN's concerns are valid and demonstrated by the events that have occurred in the creeping development of TSC in Bellevue Hill. CSN says the expansion of TSC over the past decades breaches its cap and has occasioned adverse environmental effects.

This is not a baseless claim or opinion by CSN. The adverse impacts are irrefutable and articulated by expert evidence detailed within the following judgements of the Land and Environment Court (Court):

[The Presbyterian Church \(New South Wales\) Property Trust v Woollahra Municipal Council \[2014\] NSWLEC 1218](#)

On 28 October 2014, then Senior Commissioner, now Justice Moore, in hearing an appeal against the Council's deemed refusal to grant consent to an expansion of TSC, found that the impacts of the existing use of the school were so intolerable that the proposed intensification of the use was on planning merit unacceptable.

At par 199, Justice Moore, then SC, found:

"....the present parking, traffic and road safety risks from parental behaviour in Kambala Road are unacceptable (despite the hortatory endeavours of the preparatory school to prevent them) and I am unable to be satisfied that there is no likelihood of any increase whatsoever in the safety risks to pupils and parents arising from the present application. Any increase in risk to young children because of risky and/or illegal behaviours (ones regularly warned about and counselled against by the preparatory school and the college) is completely unacceptable. There is no incremental threshold as any such possibility (if there be one - a proposition I would reject) has long been exceeded."

This case eventuated out of an attempt by TSC to 'renovate' a three-bedroom dwelling house in a 100% residential area under the guise of private certification as complying development.

Its real intent was exposed when a development application was subsequently submitted, for the newly renovated dwelling house, seeking to allow a change of use for an 80-child pre-school. The development application plans were the same as the privately certified 'residential' plans, however all the rooms were re-named e.g. 'bedrooms' were now 'classrooms'. There was no allowance for parking or internal drop-off.

The evidence put on by TSC that the new facilities would not result in increased student numbers nor change the impacts was simply wrong. The reality is that as new facilities are constructed facilitating increased student populations, student populations simply increase irrespective of the student caps.

Justice Moore, then SC did not accept that the existing use was safe and it was refused and reported by the media. (**Annexure 2 - Scots College expansion rejected by court due to 'unsafe behaviour' of parents**)

[The Presbyterian Church \(New South Wales\) Property Trust v Woollahra Municipal Council \[2015\] NSWLEC 1245](#)

This case deals with student caps placed upon TSC and a 10-year period of expanding the building infrastructure, resulting from the 'backfilling the new buildings' with additional enrolments. This occurred due to what CSN say were disingenuous statements of present intent by TSC. TSC submitting numerous development applications and TSC's continuing mantra that "there would be no increase in the number of students because of these additional facilities".

Conditions imposed upon two development consents (DA 528/2004) and (DA 545/2005) by Woollahra Municipal Council state:

"the maximum student numbers for Scots College shall not exceed 1120 students in accordance with the 1992 master plan. This condition has been imposed to ensure the proposed development does not alter the student numbers, which in turn, will alter the demand for on and off street car parking and the intensification of traffic for Scots College."

After CSN insisted that Woollahra Municipal Council deal with blatant breaches of the 1120 student cap, the School made application to modify condition 2 of the Consents to increase the number of enrolled students at Scots senior school campus by 31%.

The modified condition proposed by Scots was:

"...the maximum number of students enrolled at the Victoria Road campus (east and west) of the Scots College must not exceed 1470 students in accordance with the master plan 2013. This condition has been imposed to manage the traffic and off street parking impacts of the College on surrounding land uses.

The Scots College must provide Council annually with confirmation of student enrolments consistent with the Department of Education and communities non-government schools financial planning and reporting data."

What must be noted is that the 1470 proposed was in addition to the 500 students at the preparatory campus within the same locality. That is the total student population proposed was 1970 students plus teachers and administrative staff.

What this case demonstrates is that the existing school population massively exceeds the 1120 cap. The 1120 cap is required to be implemented to make the impacts upon traffic and parking in this locality acceptable. The traffic engineering evidence from Council, given determinative weight by the Court, was that traffic and parking impacts were beyond capacity for the local road system and dangerous (see attached newspaper articles).

[The Presbyterian Church \(New South Wales\) Property Trust v Woollahra Municipal Council \[2015\] NSWLEC 47](#)

This appeal against the decision of the Senior Commissioner in [The Presbyterian Church \(New South Wales\) Property Trust v Woollahra Municipal Council \[2014\] NSWLEC 1218](#), it was dismissed and reinforces the credibility of the senior commissioners findings that the expansion of Scots College was not acceptable.

What the history of TSC teaches us is that this school has internalised the financial and business benefits of its operations through the creeping expansion of high fee paying student numbers, with the students driving to Bellevue Hill or taking advantage of the Scots private bus system (**Annexure 1 - Scots Bus Routes Map 2016**).

Students of TSC are drawn from all over Sydney and, in the senior school, from overseas as well.

TSC is not a school serving the demands of the local community. TSC proudly advertising that it draws students from not only across NSW and Australia, but internationally. With no proper traffic management plan, no internal drop-offs and minimal on-site parking relative to the student and staff numbers (over 1900 students and almost 400 staff), effectively it is a corporate enterprise with \$65million in revenues in 2015, operating in a residential area.

Thus, it is the neighbouring residents that endure the adverse impacts of this ever-expanding enterprise, which has demonstrated that it will use all means at its disposal (including private certification) to incrementally add facilities and expand its financial base by increasing student enrolments.

This is not a matter of CSN's opinions.

The impacts are demonstrated by all the evidence given to the Land and Environment Court and the resolute position of the Court in the determination of both the merit appeals and point of law appeals against the decision of then Senior Commission, now Justice Moore in in [The Presbyterian Church \(New South Wales\) Property Trust v Woollahra Municipal Council \[2014\] NSWLEC 1218](#). (**Annexure 2 - Scots College expansion rejected by court due to 'unsafe behaviour' of parents**)

## **The efficacy of Exempt and Complying Development for Schools and Childcare**

On 1 July 1998 when private certification commenced in NSW the intent was that most development, that prior to 1 July 1998 would have only required a building approval under section 68 of the *Local Government Act 1993*, would become complying development. Exempt development is as prescribed by the *Environmental Planning and Assessment Act 1979* "development of a specified class or description that is of minimal environmental impact is exempt development.

The 1 July 1998 privatisation sought to address the knee jerk reaction of local government and the rapid expansion of neighbour notification following *Porter v Hornsby SC* (1989) 69 LGRA 101 that slowed determination times for work previously approved relatively quickly under the more simplistic, but nevertheless effective, single building application process.

It was never the intent, when introducing Exempt and Complying Development in NSW, that Complying Development be extended to higher impact development. It was to apply simple prescriptive requirements to houses and smaller ancillary uses and allow works like office fit outs etc.

On 17 October 1997, as recorded in Hansard, The Hon. Brad Hazard said, very accurately, when attacking the then Planning Minister Craig Knowles' second reading speech for the *Environmental Planning and Assessment (Amendment) Bill 1997*:

*"The Minister for Urban Affairs and Planning [Planning Minister Craig Knowles] would be concerned to find that the development next door to him has been constructed which he wished he had known was going to be built, so that he could have some say in it. That is a key issue in respect of this legislation. It is about the community's right to know what is happening in the local area.*

*There has to be more that satisfies local residents that they will have an ongoing say such that they can approve or not approve of a particular development on their very boundary.*

*The Minister should hang his head in shame. He should have been embarrassed to introduce this legislation into this House.*

*But the legislation will not guarantee that any development undertaken by the Minister's next-door neighbour will suit him. In effect, the Minister has killed community consultation.*

*When a private certifier is ticking off the boxes for some development next door to the Minister, the Minister will acknowledge that he got it wrong."*

It is CSN's submission that it is bad enough that successive NSW government introduced deregulation of the building approval process from 1 July 1998, then propped it up by hundreds of amendments to the EPA Act and Regulation, on the basis that approval would be quicker.

In the race to quicker approvals, the result has been a race to the bottom of environmental assessment. The further knee-jerk reaction of local government was to limit exempt and complying development. This was addressed by the Codes SEPP and the Infrastructure SEPP increasing the scope of complying development. The draft work the Department are doing on

the missing middle also seeks to expand complying development to Manor home and larger scale residential development.

This draft SEPP now seeks to extend this failed system to higher impacting development.

This Draft SEPP is not in the public interest. It is not in the public interest that complex and potentially highly impacting developments be subject to private certification.

The slow creep of expanded complying development does not promote the objectives under section 5 of the EPA Act nor the objectives under section 5 that would result from the *Environmental Planning and Assessment Amendment Bill 2017*.

The Draft SEPP does not accord with 2.23 of *Environmental Planning and Assessment Amendment Bill 2017* *ibid*:

(2) A planning authority is to have regard to the following when preparing a community participation plan:

- (a) The community has a right to be informed about planning matters that affect it.
- (b) Planning authorities should encourage effective and on-going partnerships with the community to provide meaningful opportunities for community participation in planning.
- (c) Planning information should be in plain language, easily accessible and in a form that facilitates community participation in planning.
- (d) The community should be given opportunities to participate in strategic planning as early as possible to enable community views to be genuinely considered.
- (e) Community participation should be inclusive and planning authorities should actively seek views that are representative of the community.
- (f) Members of the community who are affected by proposed major development should be consulted by the proponent before an application for planning approval is made.
- (g) Planning decisions should be made in an open and transparent way and the community should be provided with reasons for those decisions (including how community views have been taken into account).
- (h) Community participation methods (and the reasons given for planning decisions) should be appropriate having regard to the significance and likely impact of the proposed development.

The expansion of Exempt Development and Complying Development into private schools, many of whom are motivated by profit and growth, irrespective of the impacts they externalise upon their neighbours, goes against the purported legislative agenda of the NSW Government to require and provide for meaningful public consultation.

The expansion of exempt and complying development to high impact developments such as childcare and educational facilities will thwart the independent oversight and determination of development consents by Councils and increasingly by Independent Hearing and Assessment Panels.

Cases such as *Bankstown City Council v Bennett & Anor* [2012] NSWLEC 381 have demonstrated failures in the extension of complying development to include high impact development.

The only way a resident can intervene upon purported Complying Development is an action under section 123 of the EPA Act in class 4 of the Court's jurisdiction.

The expansion of Exempt and Complying Development into these types of high impacting land uses will only encourage action under section 123 of the *Environmental Planning and Assessment Act* 1979, in class 4 of the Land and Environment Court's jurisdiction, at greater expense to the community. In areas of lower socio-economic means schools will run roughshod over the community and in areas of higher socio-economic means residents and organised associations will take on the schools for breaches of process in Class 4 proceedings. Neither are satisfactory outcomes. Both can be avoided by a full and proper assessment under Part 4 of the EPA Act.

The NSW Government's *Environmental Planning and Assessment Amendment Bill* 2017, proposes to amend section 5 of the *Environmental Planning and Assessment Act* 1979 providing objective:

“(h) to provide increased opportunity for community participation in environmental planning and assessment.”

The need for proper public participation in the assessment of development was highlighted by The Hon. Paul Stein AM QC in presenting the Mahla Pearlman Oration March 2013:

*“In my experience of public participation in the approval process over thirty years as a Judge, as an Independent Panel Chair and JRPP member appointed by Councils, the participation of the public has enhanced decision-making.”*

*“In the absence of public participation these issues may not be apparent to the decision-maker.”*

The Draft SEPP fails to give any weight to the value of public participation and does not meet the objectives of the *Environmental Planning and Assessment Act* 1979 as it exists today and as the NSW Government proposes to amend it.

## **Design Guides**

When one reviews Land and Environment Court cases with respect to schools and childcare centre appeals, the pervasive issues in contention are traffic, parking and noise.

Our review of the design guides has disclosed no meaningful provisions that address these issues within the Draft Better Schools Design Guide.

The Draft Better Schools Design Guide contains one reference to “parking” and that is parking for bicycles at p.14.

At p.15, this guide states “Respond to the findings of a site appraisal including (but not limited to) in-ground conditions, contamination, flora and fauna, flooding, drainage and erosion, noise and traffic generation.”

Unlike the detailed Apartment Design Guide under SEPP 65, The Draft Better Schools Design Guide is vague and unhelpful. The guide if it is to be meaningful must provide for best practice outcomes and these necessarily mean that schools be design to internalise rather than externalise traffic, parking and noise impacts.

The Draft Child Care Planning Guideline contains far more detailed provisions for parking (Design Criteria 3F) that would see parking provided within the site at a rate of 1 per 10 children near stations and 1 per 4 in other locations, plus one space per 30 complying with accessibility requirements (Design Criteria 3L).

The lack of any parking requirement for schools within the guide is not acceptable.

It is the failure of schools, like The Scots College, to provide sufficient on-site parking, proper traffic management and management of noise impacting neighbours that has caused major adverse impacts upon neighbours. Further, best practice school designs internalise the drop-off and pick-up and traffic management including staggering drop-off and pick up allow environmental capacity of the roads servicing schools and childcare centres.

Examples of schools that have made a concerted effort to address these issues are:

1. Cranbrook Junior School in the Dangar Precinct of Rose Bay where the design by Professor Alec Tzannes' had full regard for the need to internalise the impacts of cars by creating an internal loop road for drop-off and pick-up, and a parking management plan. The campus also includes on-site parking for 70 cars.
2. Kincoppal at Rose Bay provided onsite drop-off and pick up with an underground car park - accommodating more than 50 cars - when undertaking works for new facilities. This relieved traffic congestion on Vacluse Road and reduced service level impacts at the intersection of Vacluse Road and New South Head Road.

The guides fail to give prominence to the importance of design which addresses these issues as the intensity of use of Schools increases. The importance of schools and childcare centres using qualified architects, traffic engineers and acoustic engineers to assist in the early design stages is given no prominence. Further, the guide should encourage direct consultation between proponents, neighbours, councils (especially Council traffic engineers) and the RMS where main roads are affected.

The design guide for schools is inadequate.

The design guide for schools should reflect the same general requirements as for Child Care Planning with respect to parking and deal with the need for a Parking Management Plan as part of the Schools Master Plan and General Plan of Management.

**The provision of on-site drop-off and pick-up as well as promotion of basement parking should be reflected in the design guide for schools. Parking rates should be clear within design criteria.**



## Plan of Management

A Plan of Management (PoM) should be required for each school and childcare centre consistent with the NSW Land and Environment Court's planning principles for PoM found in *Renaldo Plus 3 Pty Limited v Hurstville City Council* [2005] NSWLEC 315 at 53-55 and *Amazonia Hotels Pty Ltd v Council of the City of Sydney* [2014] NSWLEC 1247, at (72).

There is insufficient rigour in these guides as to how schools should internalise rather than externalise their traffic, parking and noise impacts.

The statement at page 64 of the Childcare guide "The above information could be provided in a collated single Plan of Management for submission with the application for a service approval.", should be amended to "must be provided in a collated single Plan of Management". The guides and any required by the PoM must also deal with traffic and parking management as well as management of noise.

There should be a prescribed condition that requires each school and childcare centre to publish their plan of management on their website in PDF format.

We note that the Draft Better Schools Design Guide make no reference to PoM at all. This reinforces our submission that the Draft Better Schools Design Guide is fundamentally flawed.

The SEPP and the guide should pay attention to the outcomes of real world Class 1 and Class 4 matters determined by the Land and Environment Court. If one studies case outcome for schools and childcare centres in greater detail, the impacts that need most attention and most guidance are not give any or enough consideration with the Draft Guides. The real impacts are traffic, parking and noise from schools and childcare centres.

## Noise

With respect to noise The Association of Australian Acoustical Consultants (AAAC) recommend that the criteria at receivers close to child care centres should be background L90+10dB(A) provided that outside play area does not exceed a total of two hours per day. This is consistent with the following cases:

### **Coruhlu v Blacktown City Council [2009] NSWLEC 1270**

It is the case that the Court has in certain circumstances adopted background plus 10dB(A) for childcare centres where generally the noise is intermittent and for limited periods.

### **Universal Childcare Pty Limited v Pittwater Council [2007] NSWLEC 665**

"Mr Cooper also explained the requirements for the duration for free play and the noise that is generally accepted. That is for 1.5 hours of free play the background plus 10dB(A) and for 2.5 hours of free play it is background plus 7dB(A) and above 2.5 hours of free play the background plus 5dB(A) is the relevant standard."

### **Hepburn Pty Limited v Hornsby Shire Council [2007] NSWLEC 169**

25 The experts agreed that if the criteria of background plus 5 dB(A) is applied, there needed to be no limitation on the use of the outdoor play areas. However, the experts agreed that if the less stringent criteria of background plus 10 dB(A) is adopted the use

of the outdoor play areas for active play should be limited to 1.5 hours per day. To achieve this the number of children using the rear play area would need to be restricted to a maximum of 15 children aged 3 to 5 and 10 children aged 0 to 2 in the front play area.

The design guides need to address noise criteria that must be applied to childcare and school facilities and the design criteria must in our opinion be based upon relevant case outcomes in the Court.

## **Conclusion**

We submit that the proposal to expand exempt and complying development to higher impacting developments including childcare and educational facilities is retrograde and there can be no faith that the impacts CSN have observed, as reinforced by judgements of the Court, will be anything but worse under the privatisation proposal now on exhibition.

The history of dealing with TSC indicates that the removal of local government oversight and neighbour involvement in how these major educational institutions expand their facilities and enrolments, will open the floodgates to uncontrolled expansion. There will be no opportunity for a third party to ask the simple question "What impact will this expansion have on the safety of children and residents?"

A one of NSW's most learned environmental lawyers and justices, The Hon Paul Stein AM QC hit the nail on the head in delivering the Mahla Pearlman Oration March 2013. There is unquestionable value in having proper public consultation within the Part 4 DA process. This should not be removed, by amendments to the Act or by allowing expansion of complying development to higher impacting proposal.

All applications that seek to provide additional facilities will increase the capacity of any school. Irrespective of any statement of present intent, by any school, that student numbers will not increase, are in CSN's experience hollow words that, through development creep, occasion adverse environmental and safety impacts.

The fact is that new facilities provide additional capacity. Once the investment is made in increased capacity, the value of that capacity, especially in the case of high fee paying private schools, is recouped by increasing student numbers irrespective of any caps or related development consent conditions.

All applications seeking to embellish facilities including demountable classrooms and other facilities should be subject to a development application and a proper environmental assessment by the relevant consent authority under Part 4 of the EPA Act, which provides for proper public consultation and requires that the consent authority give proper consideration to public submissions.

The Department in reviewing submissions and the draft guides needs to consider guidance on :

- The consideration of the environmental capacity of the roads and parking servicing schools and childcare centres.
- Road safety audits from RMS Accredited Safety Auditors addressing the existing impacts and the proposals impacts given likely traffic, parking and pedestrian movements. RMS Accredited Safety Auditors should be employed by the design team at the design stage

so the design addresses the impacts. RMS Accredited Safety Auditor should consult directly with Council's traffic committee, traffic engineers and the RMS as necessary. See: <https://www.roadsafetyregister.com.au>

- A requirement that schools and childcare centre should have a drive-through facility for drop-off and pick-up and RMS concurrence should be required for all schools and childcare centres including section 96 or DA that seek to add new facilities or increase the capacity of the facilities irrespective of whether the section 96 or DA seeks to alter any student caps.
- Designs to address the need to shield neighbours from noise sources within schools.
- Requirements for a Plan of Management, incorporating traffic management and parking management and its publication on the web.

Finally, the Department should give significant weight to the achievement of the current section 5 and proposed section 5 objects under the EPA Act, including critically, the NSW Government's *Environmental Planning and Assessment Amendment Bill 2017* amendment to section 5 of the EPA Act:

(h) to provide increased opportunity for community participation in environmental planning and assessment.

This Draft SEPP does not achieve the current or proposed objects under the EPA Act.

Please don't hesitate to contact me on 0408 463 714 or by email [brett@daintry.com.au](mailto:brett@daintry.com.au).

Yours faithfully,



Brett Daintry, MPA, MAIBS, MEHA  
Director



# Bus Routes

The Scots College

- 1 Mona Vale / Pittwater / Lower North Shore
- 2 Manly / Seaforth
- 3 Mosman 1 and 2
- 4 Beauty Point
- 5 Roseville / Chatswood / Lane Cove / Greenwich
- 6 East Lindfield / Roseville / Northbridge / Cammeray
- 7 Hunters Hill / Balmain
- 8 Glebe / Pyrmont / Walsh Bay / Circular Quay / Paddington
- 9 Little Bay / Malabar / Coogee / Randwick / Queens Park / Bondi Junction
- 10 Banksmeadow / Botany / Marouba Junction / Kensington / Waterloo / Moore Park / Surry Hills
- 11 Clovelly / Bronte / Bondi Beach / Dover Heights / Watsons Bay
- 12 Cronulla
- 13 Sutherland / Blakehurst
- 14 Woolloomooloo / Potts Point
- 15 Bondi Junction / Double Bay / Edgecliff



# Scots College expansion rejected by court due to 'unsafe behaviour' of parents

Leesha McKenny

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The "uncontrollable unsafe behaviour" of parents at one of Sydney's most prestigious private schools has cost it in the courtroom.

The Scots College has failed in its legal bid to expand its preparatory school in Bellevue Hill in Sydney's east due to the "risky and/or illegal" conduct of parents while dropping off or collecting their children.



An image from the court judgment showing pedestrians "in conflict with a vehicle driving along the footpath element of the service road". Photo: Supplied



The school launched the court challenge earlier this year after Woollahra Council failed to meet a deadline to determine whether it could convert a house in Kambala Road into an 80-student early learning centre.

Scots had bought the property for \$4.8 million in 2009.



This picture shows "a conflict between vehicles using the service road and residents exiting a house with a frontage to the service road", the judgment found. Photo: Supplied

The council nonetheless rejected the application in June on planning grounds, particularly due to a requirement for an on-site drop-off and pick-up area.

But the NSW Land and Environment Court found the council's planning controls provided no basis to refuse the application.

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However, the conduct of the school's parents did.

Senior Commissioner Tim Moore concluded that he was not satisfied that there would be no increased safety risk, "given the present human resources situation" if the application was approved.



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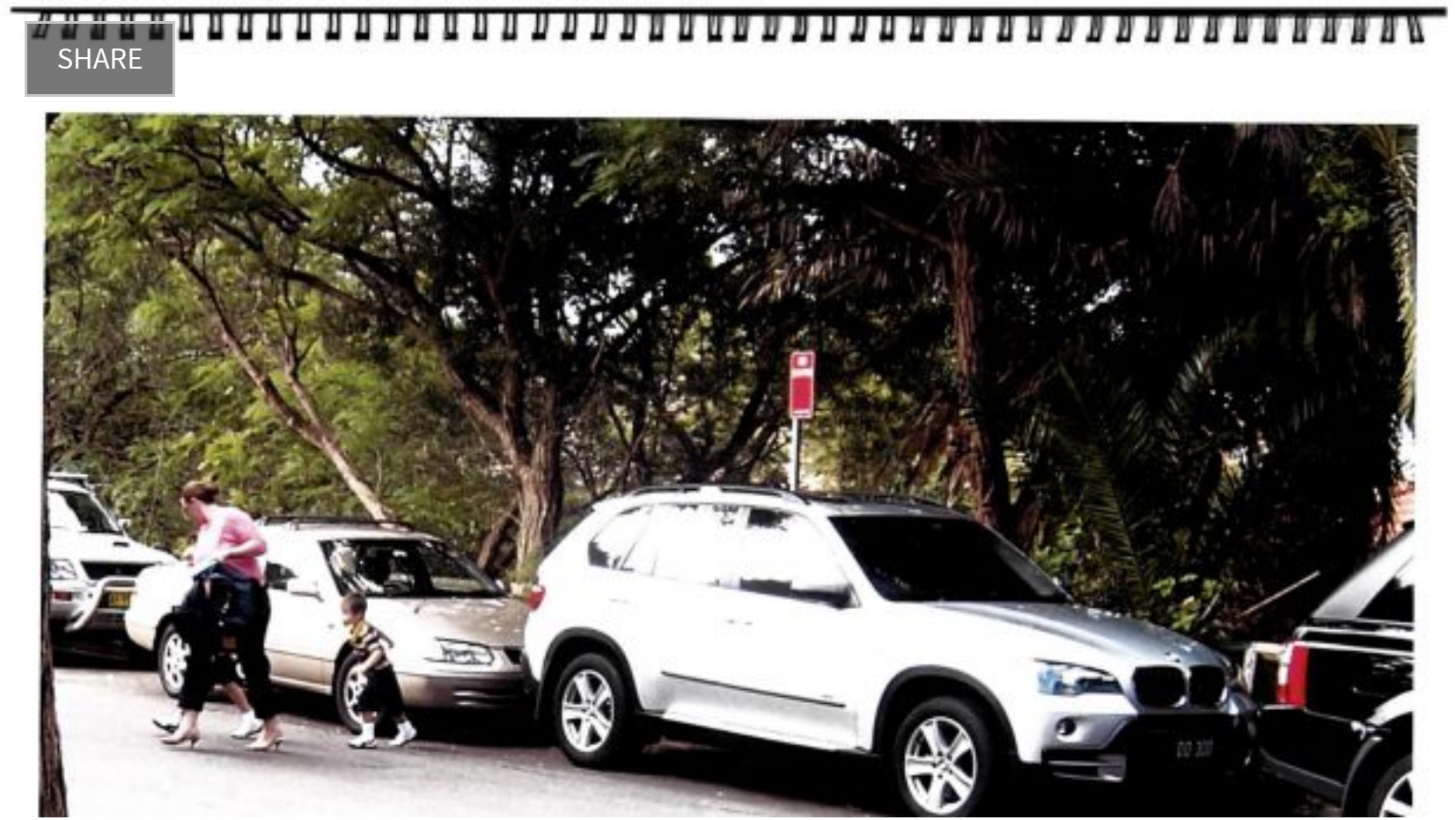
dangerous parental activities", if the application was approved.



An image in Commissioner Tim Moore's judgment shows activity "directly opposite the Kambala Road access handle to the Mansion Road campus". Photo: Supplied

"A significant number of parents dropping off and/or picking up children from the preparatory school pay no regard to the law, child safety or the instructions given by the preparatory school," [said the judgment](#), which based its assessment on evidence from nearby residents, including photos, and the preparatory school's "own limited traffic survey".

The commissioner noted that the consequences of a car colliding with someone – particularly a very young child – were "potentially catastrophic".



Another image in the judgment showing activity in the area. Photo: Supplied

"Any increase in risk to young children because of risky and/or illegal behaviours (ones regularly warned about and counselled against by the preparatory school and the college) is completely unacceptable."

This week's ruling is a serious blow for the college, [which has taken the council to court](#) in a separate bid to increase the number of students covered by an enrolment cap at its nearby Victoria Road campus by 350 pupils. That matter resumes on Monday.

The school's growth has [also prompted legal action](#) by residents' group, Concerned Scots Neighbours, which welcomed Mr Moore's

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decision.

"This judgment goes to the heart of the duty of care that a school has - not only for their students inside their grounds, but as they arrive and leave," the group's spokesman Paul Blanket said.

"For a reputable school like Scots to have a judgment that calls into question their attitude to the safety of their students, it is very worrying."

Scots College principal Ian Lambert, who said "the safety and wellbeing of our boys is always our primary concern", described the judgment as "extremely disappointing on a number of levels".

"At the suggestion of Woollahra Council, the college included improvements to the drop-off and pick up zone on Kambala Road in its application," Dr Lambert said.


"It is undeniable that this improvement - at no cost to ratepayers - would have improved the safety and amenity of students and local residents.

"In practical terms, this decision means that the current situation continues without the prospect of the improvements to safety and amenity we had desired."

Dr Lambert said the school would carefully consider the judgment "before making any further decisions".

Woollahra Council said it was awaiting an analysis of the judgment before making any comment.

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The principle said "..this decision means that the current situation continues without the prospect of the improvements to safety and amenity we had desired." So is he saying there is a safety issue that he is currently ignoring and will only fix it if he can bully the council into granting an increase in their revenue base? He doesn't ge ... [MORE](#)

**Nick** Sydney, Oct 31 2014 at 9:23am

Since when is it a schools responsibility to enforce traffic regulations? Surely the council has some eager to earn traffic wardens that would make a fortune here?

Sounds like the council needs to pull its figure out and start enforcing the regulations it has put in place and stop trying to pass the buck on to the school.

Also parents need ... [MORE](#)

**Peter** Sydney, Oct 31 2014 at 10:23am

Its obvious that the parents are not willing to abide by the law to allow safety for pedestrians of adults and children. The photos of the cars driving on the foot path and so close to pedestrians is just appalling and inexcusable. This is setting up a very bad example for children. Why pay all that money for private schooling to learn ag ...

[MORE](#)**hurry up & slow down** Oct 31 2014 at 10:31am

here's an idea, why not walk the kids to school ?

**hurry up & slow down** Oct 31 2014 at 10:33am

can't the school afford school buses & make them compulsory ?

**not sure** Oct 31 2014 at 10:36am

a few \$500 or \$1000 parking fines would probably do the trick.

Bump up your parking fines council, these people can obviously afford it.

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**Gino** Sydney, Oct 31 2014 at 10:48am

Its about time parents are held responsible for their own kids... We all have to drive at 40km an hour around schools adding an extra 30 min driving time to people like me, driving past many schools on the way to work all because parents can not look after their own kids and children run out onto the road... Well no wonder they do when th ...

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**Terry** Sydney, Oct 31 2014 at 10:55am

Since when is it a council's job to enforce traffic regulations @Nick? Parking regulations maybe, but police are the ones who enforce the road rules. Wouldn't it be good if people just took some responsibility and did the right thing for a change, rather than having to have someone make them do it.

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**MJ** Sydney, Oct 31 2014 at 11:00am

It is NOT within the standard of a landowner to make changes to traffic infrastructure or indeed any infrastructure outside the border of its lands. Council is abrogating its responsibility to provide a solution to this issue and instead "passing the buck" onto an entity which is already, one assumes, paying significant taxes to the body.

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**Tony (NOT aBBOT)** Rose Bay, Oct 31 2014 at 12:00pm

Hello,

I live on the Cranbrook Lane and I think it is unacceptable that the school is proposing to expend in the area. Current traffic mess every day is caused by the school, parents and the students (generally parents who are not complying by the traffic rules and the kids throwing out their garbage in the area). I think the council shoul ...

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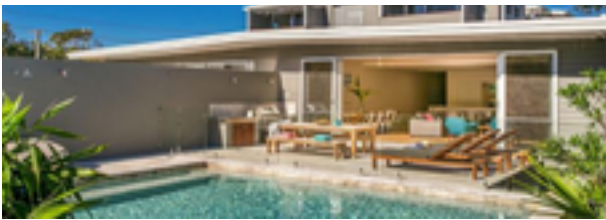
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