

THE HILLS SHIRE COUNCIL

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PCU070243

28 March 2017

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



Our Ref: FP85

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 proposed draft Education and Child Care Facilities SEPP 2017 that is currently on exhibition. Council has considered the draft SEPP and associated planning and design guidelines and makes the following comments as its submission:

(a) Reduces Confidence in the Planning System

- i. Objection is raised to permitting centre-based child care development within the R2 Low Density Residential zone due to the potential impact that these uses have on the residential amenity of The Shire's low density residential areas.
- ii. If child care centres are mandated as permitted with consent proposed within low density residential areas, these developments should be capped at 30 places for development permissible as exempt and complying development. Any development that exceeds 30 places should be subject to a development application so that impacts to adjoining properties can be reduced.
- iii. Council's zone hierarchy provides certainty to the community with respect to the type of development envisaged such as low, medium or high density development. Any proposal to subvert local planning policy and permit development which would otherwise be prohibited under a Standard Instrument Local Environmental Plan is not supported.
- iv. It is recommended that a provision is included in the State Policy to cater to the 0-2 years age group.

(b) Impact on Child Protection and Safety

- i. It is recommended that the State Policy be amended to prohibit centre-based child care developments on all land along classified roads, as its proximity to a major/busy road is considered to be unnecessarily risking children's health and safety.
- ii. If the State Policy permits development on classified roads, it is recommended that additional provisions be included in the proposed State Policy that prohibits child play areas to be located on frontages to classified roads and that additional safety barriers be required.

- (c) Impact on Existing Local Character and Amenity
- i. Objection is raised to expanding the complying development provisions to apply to buildings with a height of 4 storeys or 22 metres. Rather, the existing 12 metre (3 storeys) maximum should be retained.
 - ii. It is recommended that the draft Better Schools Design Guide and the draft Child Care Planning Guideline be amended to strengthen controls to minimise amenity impacts to adjoining neighbours such as visual dominance and reduced visual and acoustic privacy, especially in locations where 3-4 storey buildings directly adjoin low density houses.
 - iii. The proposed side and rear setbacks requirements for schools as complying development are not supported. Any development within a rural zone should not have a setback any less than 5 metres.
 - iv. The proposed overshadowing requirements for schools as complying development are not supported. Solar access to any habitable room or principal private open space on an adjoining property should be no less than 4 hours between 9am and 3pm on the winter solstice.
 - v. Object to the application of a 1 metre setback for portable classrooms as exempt development within rural zones. The minimum setback should be no less than 5 metres.
- (d) Broadening the Role of Private Certifiers
- i. Whilst measures to simplify the planning system and streamline/fast-track the assessment and certification of child care centres and educational establishments is supported, any proposal which could increase the role of private certification in the planning system is not supported. Privatisation of approvals is rejected due to inherent conflicts of interest leading to a lack of community confidence in the decision making process. The regulation of the private certification system must be significantly strengthened through the review of the Building Professionals Act.
 - ii. Until the regulation of the private certification system is strengthened, any proposals to expand state-wide complying development provisions, to potentially controversial development types such as school buildings up to 4 storeys is not supported.
 - iii. It is recommended that Councils be nominated as the sole certifying authority for complying development certificates relating to Early Childhood Education and Child Care Facilities, Schools and Tertiary Institutes. As part of the broader planning reforms it is recommended that there should be a clear distinction between the scale of development that a private certifier can certify and the scale of development that Council certifiers can certify.
- (e) Traffic and Parking Impacts
- i. Centre based child care not be permitted to front classified roads due to safety concerns and the potential impact on traffic flow.
 - ii. The Better Schools Design Guidelines should be amended to require off-street car parking to be provided at the rates for educational establishments specified in a DCP that applies to the land.
- (f) Further Complicates the Planning System
- i. The introduction of a new State Environmental Planning Policy is not supported. The proposed amendments should be facilitated through amendments to the Standard Instrument Local Environmental Plan rather than further complicating the planning system with an additional SEPP.
- (g) Uncertainty of Site Compatibility Certificates
- i. It is recommended that the proposed State Policy be amended to ensure site compatibility certificates are valid for no longer than five (5) years.

This will allow for appropriate infrastructure to be planned and provide greater certainty as to when the school will be delivered.

(h) Increased Pressure on Local Infrastructure

- i. The proposed State Policy be amended to include requirements for new schools to provide playing fields and open space. In circumstances where fields cannot be provided the State Government should liaise with Council to develop an agreement with respect to the use of local infrastructure.

Please find attached a copy of Council's report and minute (14 March 2017) on this matter which forms part of the submission on the Proposed Education and Child Care Facilities SEPP and Guidelines. Should you have any enquiries in relation to Council's submission please contact Ashley Cook, Town Planner on 9843 0382.

Yours faithfully



Stewart Seale
MANAGER FORWARD PLANNING

Attachment 1: Council Report and Minute 14 March 2017

ITEM-2	DRAFT SEPP EDUCATIONAL ESTABLISHMENTS AND CHILD CARE FACILITIES 2017 (FP85)
THEME:	Balanced Urban Growth
OUTCOME:	7 Responsible planning facilitates a desirable living environment and meets growth targets.
STRATEGY:	7.2 Manage new and existing development with a robust framework of policies, plans and processes that is in accordance with community needs and expectations.
MEETING DATE:	14 MARCH 2017 COUNCIL MEETING
GROUP:	STRATEGIC PLANNING
AUTHOR:	TOWN PLANNER ASHLEY COOK
RESPONSIBLE OFFICER:	MANAGER FORWARD PLANNING STEWART SEALE

EXECUTIVE SUMMARY

The Department of Planning and Environment is exhibiting State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 as the relevant planning instrument for all schools and child care across the state. The exhibition also includes a draft Better Schools Design Guide and draft Child Care Planning Guideline, which are intended to establish consistent planning and design requirements for child care centres and outline key design principles for schools.

Currently, planning provisions for schools and tertiary institutions are covered within the State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP), while early childhood education and child care facilities are regulated through Local Environmental Plans and Development Control Plans.

The proposed SEPP will include amendments to the Standard Instrument that will mandate centre-based child care and respite day care centres as permissible uses within the R2 Low Density Residential zone. The proposed amendments will also broaden the types of development permissible as exempt and complying development for schools and tertiary institutes, including school buildings up to four (4) storeys.

The proposed amendments have the potential to significantly affect residents in our R2 Low Density Residential zone. The key areas of concern relate to the impact on character and amenity (including acoustic and visual privacy), broadening the role of private certifiers to potentially contentious development types, traffic and parking impacts, and further complication of the planning system through the implementation of a new State Policy. In respect of schools, development up to four (4) storeys in low density residential zone does raise issues about compatibility with surrounding scale and character.

In recognition of the potential impact of the proposed amendments, it is recommended that a submission be lodged with the Department of Planning and Environment detailing the key concerns.

BACKGROUND

The Hills is experiencing a high demand for childcare places for residents and workers – particularly for babies aged less than 2 years. This is due to a number of factors including:

- Changing resident profiles and an increase in the households with families plus children;
- Development of new release areas, and redevelopment in existing areas;
- Increasing rents, mortgage rates, and cost of living requiring both parents to work; and
- The higher operational costs of supplying places for children less than 2 years of age.

It is noted that early childhood educators are increasingly finding a correlation between the quality of childcare environments and child development. Marked patterns of negative behaviour that correlate to tight poorly designed spaces are being noted. Well-designed facilities, based on a careful assessment of young children's needs, result in positive responses and behaviour that requires little adult intervention or direction.

REPORT

The purpose of this report is to provide an overview of draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 which is on public exhibition until 7 April 2017.

1. PROPOSED AMENDMENTS

An overview of the proposed changes which will be introduced through the draft SEPP is included below:

a) Child Care Centres

Proposed changes to planning for Early Childhood Education and Child Care Facilities include the introduction of new definitions of child care facilities, including 'centre-based child care', 'early childhood education and care facility', 'school-based child care' and 'home-based child care'. The amendments will mandate *centre-based child care* and *respite day care centres* as permissible uses within the R2 Low Density Residential and IN2 Light Industrial zones.

The proposed State Policy will override Council's Local Environmental Plan and Development Control Plan and outlines the grounds on which a development application for centre-based child care cannot be refused including site area, proximity to another proposed or existing centre, colours and finishes, and design (provided it meets the proposed design guidelines). Should a development application not meet key national requirements, the proposed State Policy provides a concurrence role for the Department of Education.

A number of amendments to the Codes SEPP are also proposed to include an increase in developments types permitted as exempt development and complying development. It is proposed that school-based child care be permitted either as exempt (if no works are proposed) or complying (if works are proposed). Additionally, it is proposed that home-based child care be permitted as exempt development within bushfire prone areas,

where certain standards are met and a 'Service Approval' is obtained by the Department of Education.

The draft Child Care Planning Guideline is intended to support the proposed State Policy by establishing development provisions and design criteria that must be considered when preparing and assessing development applications for centre-based child care. This guideline is discussed further in this report.

b) Public and Non-Government Schools

Planning controls for schools that currently exist within Division 3 of the Infrastructure SEPP are to be repealed and transferred into the draft State Policy. Additional provisions are proposed relating to the delivery of schools including specifying expanded exempt and complying development criteria for schools, including permitting school buildings to be constructed up to four (4) storeys, or 22 metres, as complying development. Currently, complying development criteria only applies to buildings up to a maximum of 12 metres. The proposed exempt and complying development criteria have been substantially broadened and will apply reduced standards to these forms of development. This matter is discussed further in this report. The proposed State Policy also prescribes non-government schools as public authorities to enable them to carry out certain development without consent, using the same process currently afforded to public schools.

The proposed State Policy will also enable the issuing of site compatibility certificates by the Sydney Planning Panel to facilitate more flexible use of school sites. These provisions will permit a school to alter the zoning of adjoining land to enable an expansion of the school, despite the provisions of the applicable LEP. These certificates, in essence, will spot rezone a site to facilitate a school development and can be valid for up to five (5) years or however long is specified on the certificate.

The proposed State Policy will amend the trigger for school developments to be assessed as State Significant Development (SSD). The existing and proposed approval pathways for schools are included within the following table.

	Value	Development Type	Consent Authority
Existing			
New Schools and Alterations and Additions	>\$30 million	State Significant Development	Minister for Planning
	\$5-30 million	Development Application (Local Development)	Sydney Planning Panel
	<\$5 million	Development Application (Local Development)	Council
	N/A	Complying Development	Council or Private Certifier
Proposed			
New Schools	N/A	State Significant Development	Minister for Planning
Alterations and Additions	>\$20 million	State Significant Development	Minister for Planning
	\$5-20 million	Development Application (Local Development)	Sydney Planning Panel
	<\$5 million	Development Application (Local Development)	Council*
	N/A	Complying Development	Council or Private Certifier

Table 1
Comparison of Existing and Proposed Development Avenues

*Exhibition material indicated the possibility of a separate amendment to the Environmental Planning and Assessment Act 1979 to make the relevant Sydney Planning Panel the consent authority for all development applications covering school expansions up to \$20 million.

The draft Better Schools Design Guide is proposed to support the transfer of educational establishments from the Infrastructure SEPP to the proposed Education and Child Care SEPP. This guideline is discussed further in this report.

c) Tertiary Institutes

The Infrastructure SEPP contains provisions for TAFE institutes and limited provisions for universities (under Division 3). It is proposed to transfer these provisions into the draft State Policy to consolidate all stages of educational facilities into one policy document. Additional provisions are proposed relating to the delivery of tertiary institutes including establishing exempt development provisions minor developments such as directional signs, landscaping, amenities building, single storey portable buildings, cycleways and sporting fields at existing tertiary institutes.

Complying development criteria has also been broadened to cover the provision of core facilities at existing sites (including classrooms, libraries and lecture theatres up to 15 metres in height for universities and up to 12 metres in height for TAFE institutes). The proposed SEPP also specifies certain tertiary institute development as being permitted without consent, including certain one (1) storey developments.

2. DRAFT DESIGN GUIDELINES

a) Draft Child Care Planning Guideline

The draft Child Care Planning Guideline will be introduced to support the proposed State Policy by establishing development provisions and design criteria that must be considered when preparing and assessing development applications for centre-based child care, similar to the Apartment Design Guide under SEPP 65. The Guidelines are given power through the proposed State Policy and, in the case of any inconsistencies with Council's Development Control Plans, the State Policy and Guidelines prevail.

A key difference between the proposed State Policy/Guidelines and Council's controls is that it would not prohibit centre-based child care on land along classified roads. Additionally, the minimum lot size for a child care centre under Council's DCP is 1,000m², which is considered an appropriate site area for a 30 place centre-based child care development. The design controls within the Guidelines indicate a "typical" minimum land area of 858m² to obtain consent for a single storey, 30-place centre-based child care. Given site areas within established R2 Low Density Residential areas have a minimum lot size of 700m², with some as low as 450m², a development of this scale is likely to occur. Notwithstanding this, the proposed SEPP would permit a large scale centre (90 places), however it would require a site area of approximately 2,100m². It is also noted that the State Policy has non-discretionary development standards, which allow centre based child care on a site of any size.

It is noted that the Guidelines will require development to be compliant with Council's car parking rates. Council's DCP provides controls relating to hours of operation, with child care centres within residential and rural zones to only operate Monday to Friday 7:00am to 6:30pm. Hours of operation controls are not provided within the proposed SEPP or associated Guidelines. A condition relating to hours of operation can be placed on any consent issued for a development application for a centre-based child care.

However, as school-based child care developments (with no building works) fall under exempt development, there would be no opportunity to place hours of operation conditions on the development's consent.

A Design Statement is required to be prepared by a building designer or architect to explain how the overarching and specific design criteria within the Guidelines are achieved. If the design criteria are not met, the statement should describe how an alternate solution meets their intent, possibly supported by reports or diagrams. However, it is noted that the State Policy and Guideline do not define 'building designer' or stipulate the required qualification or experience level a person would require in order to be considered a 'building designer'.

For any new development or development that includes alterations to more than 50 percent of the existing floor area, the Guidelines require a 2 metre acoustic wall to be constructed along any boundary where the adjoining property contains a residential use. Further, these developments will need to be certified by a suitably qualified professional to ensure acoustic privacy. No such measures are required where either no, or minor, alterations are required.

It is worth noting that these guidelines focus on new "purpose built" childcare facilities and do not adequately deal with "retro fitting" existing buildings that were designed for a different purpose. As a result, the amenity impacts on adjoining uses in our established areas are not adequately addressed.

b) Draft Better Schools – A design guide for schools in NSW

The draft Better Schools Design Guide will support the transfer of educational establishments from the Infrastructure SEPP to the proposed Education and Child Care SEPP. The Design Quality Principles are included as Schedule 4 of the proposed State Policy and are required to be considered when designing and assessing for development applications and complying development certificates. The draft State Policy also requires that a qualified designer must verify that the development achieves the design quality principles before a complying development certificate can be issued for certain types of school developments. However, the draft SEPP does not provide a definition as to what qualifications and experience a qualified designer should have. Additionally, the design guide does not require proposed development to address amenity impacts to adjoining impacts such as visual and acoustic privacy on sensitive adjoining uses.

3. KEY ISSUES FOR THE HILLS SHIRE

The specific matters that are considered to be of significant importance to The Hills Shire are listed below:

- (a) Reduces Confidence in the Planning System;
- (b) Impact on Child Protection and Safety;
- (c) Impact on Existing Local Character and Amenity;
- (d) Broadening the Role of Private Certifiers;
- (e) Traffic and Parking Impacts;
- (f) Further Complicates the Planning System;
- (g) Uncertainty of Site Compatibility Certificates; and
- (h) Increased Pressure on Local Infrastructure.

Comments relating to each of the abovementioned issues are set out below.

a) Reduces Confidence in the Planning System

The current permissibility of uses under LEP 2012 is considered to provide an appropriate degree of certainty to the community with respect to the type and intensity of uses envisaged within each zone. Any proposals which seek to permit higher impact developments within zones where lower density development is envisaged, is strongly opposed.

During the preparation of The Hills Local Environmental Plan 2012, consideration was given to appropriate land uses within the low density residential environment. Due to the potential impacts of child care centres on residential character, amenity and traffic generation on local streets the child care centres were listed as prohibited in the R2 Low Density Residential zone. Council did this following years of contentious proposals and the difficulty dealing with noise, traffic and parking issues in neighbourhood locations. Larger scale child care centres were not in keeping with the infrastructure and amenity of low density environments. Whilst this approach was taken, it is important to note that LEP 2012 permits these uses within all rural zones (with the exception of the RU1 Primary Production zone), R1 General Residential, R3 Medium Density Residential, R4 High Density Residential, all business zones, all industrial zones and the RE1 Public Recreation zone.

The proposed State Policy will include amendments to the Standard Instrument that will mandate centre-based child care and respite day care centres as permissible uses within the R2 Low Density Residential zone. It is also noted that there will be no restriction on the proximity of a facility from any other existing or proposed child care facility. Furthermore, there will be no restriction in the minimum site area, site coverage, site dimension and nor will there be any restriction on building colour, building material or shade structures (with the exception of heritage items).

The proposed amendments do not propose to apply a cap on the number of places that a child care centre can have, so long as it meets the internal and external space requirements. This is of considerable concern as the amendments will effectively be permitting high intensity uses within areas where such uses have not been anticipated, whilst providing minimal measures to ensure that the amenity of adjoining sites is appropriately maintained.

Residents living in, or purchasing land in, the R2 Low Density Residential zone are entitled to a high degree of confidence that a four (4) storey school building, school-based child care or retrofitted centre-based child care development won't adjoin their property, without the proper amenity and traffic mitigation. This could include capping the number of places for retrofitted centre-based child care and school-based child care developments at 30 places. As these developments are proposed to be permitted as exempt and complying development, Council's ability to mitigate amenity and traffic impacts are limited. Capping the number of places permitted as exempt and complying development under the proposed State Policy will provide a greater degree of certainty and confidence that any future development will be of an appropriate scale. Any development that exceeds 30 places should be subject to a development application so that impacts to adjoining properties can be reduced.

An example of the type of controls that could be applied is those used by Fairfield City Council (FCC), which currently prohibits centres greater than 40 places, located in any residential zone. Additionally, to address the general shortage in the provision of child care places for the 0-2 years age group, FCC requires centre-based child care with 31-40 places to provide a minimum ratio of 1:8. In all non-residential zones, 30% of the group is required to cater to this age group for centres with more than 40 places. If State

Government is attempting to meet demand for quality child care, it is recommended that a similar provision is included in the State Policy to cater to the 0-2 years age group.

Recommendations

- Objection is raised to permitting centre-based child care development within the R2 Low Density Residential zone due to the potential impact that these uses have on the residential amenity of The Shire's low density residential areas.
- If child care centres are mandated as permitted with consent proposed within low density residential areas, these developments should be capped at 30 places for development permissible as exempt and complying development. Any development that exceeds 30 places should be subject to a development application so that impacts to adjoining properties can be reduced.
- Council's zone hierarchy provides certainty to the community with respect to the type of development envisaged such as low, medium or high density development. Any proposal to subvert local planning policy and permit development which would otherwise be prohibited under a Standard Instrument Local Environmental Plan is not supported.
- It is recommended that a provision is included in the State Policy to cater to the 0-2 years age group.

b) Impact on Child Protection and Safety

At its meeting of 12 September 2006, Council resolved to prohibit child care centres on all land along classified roads, except for land within rural zones. While the proposed Guidelines state that a centre-based child care facility should not be located adjacent to incompatible uses that could negatively impact on child protection and safety and children's health, it does not stipulate that centres are prohibited along classified roads.

Recommendations

- It is recommended that the State Policy be amended to prohibit centre-based child care developments on all land along classified roads, as its proximity to a major/busy road is considered to be unnecessarily risking children's health and safety.
- If the State Policy permits development on classified roads, it is recommended that additional provisions be included in the proposed State Policy that prohibits child play areas to be located on frontages to classified roads and that additional safety barriers be required.

c) Impact on Existing Local Character and Amenity

Permitting centre-based Child Care in R2 Low Density Residential Zone

Child care centre developments should reflect the character of the location in terms of design, be sympathetic to the amenity and privacy needs of adjoining owners, and be well located within the Shire to serve the needs of families. The provision of high quality child care is an essential service for the community and the operation of child care centres must be appropriately managed to ensure that the needs of all land owners are considered.

The primary concern with permitting centre-based child care in the R2 Low Density Residential zone is scale, the more places a centre has the greater the impacts. This has been demonstrated with home-based child care, which currently permits up to seven (7) places as exempt development, and tends to have lower amenity impacts and generates fewer complaints. While a small scale centre-based child care of up to 30 places could be supported by Council, it is considered that a large scale (potentially 90 place) centre-based child care would significantly impact the existing local character and amenity.

The Community Child Care Cooperative, the peak body for community childcare services in NSW, advises that small centres provide the best quality of care for children. Group size affects noise levels, amount of stimulation children get, and the level of confusion in play areas. While smaller centres have been shown to provide better quality of care, and reduced impacts on neighbours, the viability of these small-scale developments must be considered. Studies and inquiries in relation to centre viability reveal that staffing costs is a key issue driving the lack of places for children under 2 years of age in most locations as they require a higher ratio of staff to children. The cost of providing this care can discourage "for-profit" operators from including more than a 0-2yr places. While there is some evidence that smaller centres are better for children, the viability of the centre must be considered.

Purpose built centre based child care developments tend to have fewer amenity and traffic impacts than retrofitted developments. The measures proposed to minimise amenity impacts within the proposed Guidelines are considered to be ineffective for large scale centres, as many acoustic privacy mitigation measures do not apply to retrofitted developments where extensive development works are not required.

Council receives ongoing noise complaints from an existing centre-based child care located in an R2 Low Density Residential Zone (Figure 1). This 33 place centre-based child care development was Court approved in February 2009. Condition 62 of Development Consent 87/2009/HA required a noise management plan to be submitted to demonstrate how children are to be divided when in the external play areas to alleviate possible noise issues. Condition 62 specifically states:

62. Noise Management Plan

The noise management plan shall be updated so as to demonstrate how children are to be divided when in the external play areas to alleviate possible noise issues. The updated plan shall be prepared and submitted into Council prior to the issue of an occupation certificate.

The Noise Management Plan prepared and submitted in accordance with Condition 62 of Development Consent 87/2009/HA was submitted to minimise the impact of the development on the surrounding residents. The Plan also included details which were recommended within the Acoustic Report prepared by RSA Acoustics to ensure sufficient noise attenuation. In part this included:

- The operators shall encourage quiet relaxed activities in outdoor play areas;
- The operators shall closely supervise children when in the outdoor play area ensuring that active play does not become excessively noisy; and
- Operators shall remove a child or children from external play areas should noise levels become excessive and uncontrollable, returning the children to the dedicated internal play areas.

**Figure 1**

Photographs of Existing Centre-Based Child Care from Carpark

These examples indicate that, even when acoustic barriers and noise management plans are in place, Council still has to manage amenity impacts to properties adjoining centre-based child care developments.

Exempt and Complying Development

The proposed amendments will broaden the exempt and complying development criteria applying to schools and tertiary institutes. Exempt development should only apply to the type of structure that the community consider to be minor. These are generally small in scale and would have negligible impact on adjoining properties. On the other hand, complying development has the potential to impact on amenity of adjoining residents if the standards, such as acoustic/visual privacy, solar access and views, are inadequate.

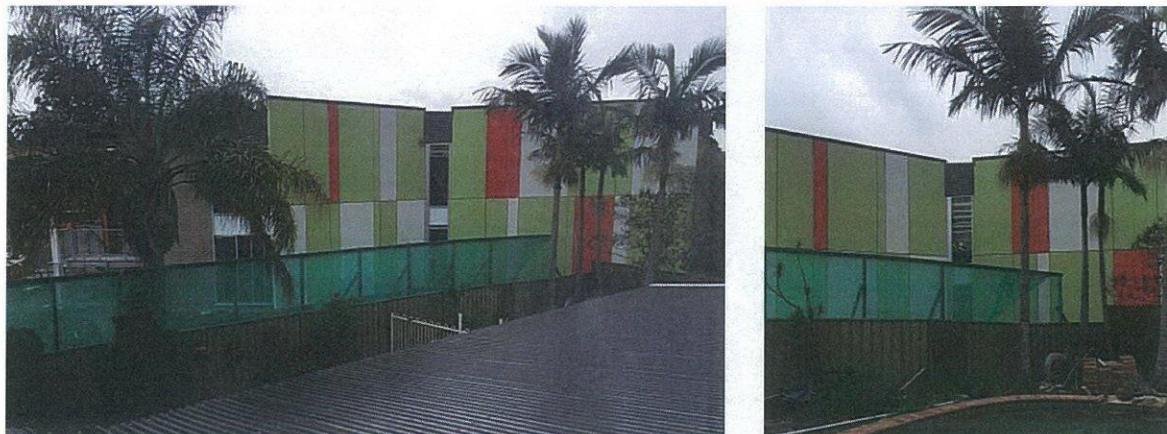
Schools - Complying Development

The proposed amendments would include permitting school based child care and school buildings up to 4 storeys (22 metres) as complying development. Coupled with inadequate development provisions and design requirements, it is highly likely that this will result in highly undesirable developments which will significantly impact on the amenity of surrounding properties. Additionally, schools are permitted to fill, for the purpose of development, up to two (2) metres above existing ground level.

Significant concern is raised to the broadening of complying development contentious development types. As an example, the construction of a new classroom building at a school in Baulkham Hills has resulted in a highly inadequate planning outcome, which has significantly impacted on the amenity of residents adjoining the school. The works were approved under the Infrastructure SEPP and were carried out under a Complying Development Certificate in November 2015.

The Complying Development Certificate was issued by a private certifier as the proposed works were deemed to meet the requirements of State Environmental Planning Policy (Infrastructure) 2007. As the works were approved under this pathway Council was not part of, or responsible for, the decision. Adjoining residents notified Council about their concerns with the visual impact of the works being undertaken when viewed from their property. Residents were concerned that the works were impedingly visible and impacted on the privacy of their backyard, shown in Figure 2.

Council then had to assist the residents in providing measures that the land owners could take to improve the visual separation between the building works and the adjoining residential properties.

**Figure 2**

Photographs of School Extension from Adjoining Property

As can be seen there are already issues with respect to the current complying development criteria. Broadening the complying development criteria to increase the permissible height to 22 metres and to reduce the associated controls including overshadowing and setbacks, will further increase the potential amenity impacts of these developments. Additionally, as these developments will be complying development there will be limited scope for any redesign to account for concerns of adjoining residents or Council. For this reason any proposal to expand the complying development criteria for schools to permit structure up to 22 metres (4 storeys) as complying development is not supported.

With respect to setbacks, the proposed complying development criteria incorporate a sliding scale as follows:

- Building height up to 12 metres: 5 metre setback within a residential zone and 1 metre setback for any other zone;
- Building height 12-15 metres: 8 metre setback within a residential zone and 2.5 metre setback within any other zone;
- Building height 15-22 metres: 10 metre setback within a residential zone and 4 metre setback within any other zone.

The above setbacks are not supported and are considered to be highly inadequate especially for development that will be subject to a fast tracked assessment process. It is considered likely that a development of 12 metres or more will have significant impacts on adjoining residential properties, even when located five (5) to 10 metres from a boundary, unless appropriate landscaping is used to provide visual and acoustic privacy and reduce visual dominance. Additionally, one (1) metre setbacks to properties adjoining rural zones is considered inappropriate and should be increased to no less than five (5) metres. Fast-tracking these developments does not enable the appropriate level of assessment warranted for such a development and does not provide opportunities to reduce impacts to adjoining properties.

With respect to overshadowing, the complying development criteria requires that new buildings must not overshadow any adjoining residential accommodation so that solar access to any habitable room or principal private open space on an adjoining property is less than 3 hours of solar access between 9am and 3pm on the winter solstice. It is recommended that this be amended to require at least 4 hours of solar access. This would be more in line with Council's existing solar access requirements and is more reasonable when considering these sites should be of a sufficient size to ensure that the

built form of future development will not result in a substantially negative impact on adjoining owners.

To address these concerns the draft Better Schools Design Guide and the draft Child Care Planning Guideline and complying development provisions should be amended to strengthen controls to minimise amenity impacts to adjoining neighbours through the regulation of built form, visual and acoustic privacy and overshadowing. This can be done by recommending the use of narrow, translucent or obscured windows on facades overlooking neighbours living spaces. Further, the guidelines should encourage the use of acoustic walls and landscaping along boundaries, especially where outdoor play areas are located.

Schools - Exempt Development

The exempt development criteria for schools permit single storey portable classrooms within 5 metres from any property boundary within land zoned residential and at least 1 metre from any property boundary with land in any other zone. Having a 1 metre setback, especially on rural land, could result in significant amenity impacts and would be out of character with the areas wherein the development is proposed. In this regard it is recommended that the minimum setback requirement for portable classrooms as exempt development shall be no less than 5 metres.

Recommendations

- Objection is raised to expanding the complying development provisions to apply to buildings with a height of 4 storeys or 22 metres. Rather, the existing 12 metre (3 storeys) maximum should be retained.
- It is recommended that the draft Better Schools Design Guide and the draft Child Care Planning Guideline be amended to strengthen controls to minimise amenity impacts to adjoining neighbours such as visual dominance and reduced visual and acoustic privacy, especially in locations where 3-4 storey buildings directly adjoin low density houses.
- The proposed side and rear setbacks requirements for schools as complying development are not supported. Any development within a rural zone should not have a setback any less than 5 metres.
- The proposed overshadowing requirements for schools as complying development are not supported. Solar access to any habitable room or principal private open space on an adjoining property should be no less than 4 hours between 9am and 3pm on the winter solstice.
- Object to the application of a 1 metre setback for portable classrooms as exempt development within rural zones. The minimum setback should be no less than 5 metres.

d) Broadening the Role of Private Certifiers

Council has continually raised concern with respect to any reform of the planning system which seeks to broaden complying development criteria to potentially contentious development types as this will significantly increase the role of private certifiers. The private certification system has been a constant problem since its introduction in 1998. The inherent conflicts of interest, problems with accreditation and the lack of responsive investigation and enforcement by the Building Professionals Board have led to a lack of confidence in the system.

The vast majority of private certifiers are competent and responsible and carry out their duties in accordance with their statutory obligations. However, there have been numerous instances where Council has been forced to act as a result of errors made by private certifiers. In some instances buildings have been incorrectly certified as complying with the Building Code of Australia (BCA) which jeopardises the life and safety

of the occupants of the premises. This is having a great impact on Council resources and a substantial financial impact on the owners of these properties.

Councils have the responsibility of rectifying these problems even when they have no involvement in the certification process for these developments. In this regard, Councils are required to enforce the requirements of the consent or issue orders where a private certifier refuses or fails to adequately act on complaints. Legal action often needs to be instigated at Council's expense.

The Building Professionals Board, as a Statutory Body, is required to investigate complaints and audit accredited certifiers in their certification role. The investigation of these complaints, which are often referred by local councils to the Building Professionals Board, is poor. The complaints lodged by Council are often merely referred to the certifier who disputes the facts. This is where the investigations generally conclude.

Recommendations

- Whilst measures to simplify the planning system and streamline/fast-track the assessment and certification of child care centres and educational establishments is supported, any proposal which could increase the role of private certification in the planning system is not supported. Privatisation of approvals is rejected due to inherent conflicts of interest leading to a lack of community confidence in the decision making process. The regulation of the private certification system must be significantly strengthened through the review of the Building Professionals Act.
- Until the regulation of the private certification system is strengthened, any proposals to expand state-wide complying development provisions, to potentially controversial development types such as school buildings up to 4 storeys is not supported.
- It is recommended that Councils be nominated as the sole certifying authority for complying development certificates relating to Early Childhood Education and Child Care Facilities, Schools and Tertiary Institutes. As part of the broader planning reforms it is recommended that there should be a clear distinction between the scale of development that a private certifier can certify and the scale of development that Council certifiers can certify.

e) Traffic and Parking Impacts

The proposed State Policy would permit centre-based child care on classified roads, which is not encouraged under The Hills Development Control Plan. This development type is considered to be unsuitable on sites with a frontage to classified roads due to safety concerns for the children and would negatively impact the flow of traffic. Traffic entering and leaving the site from classified roads will unduly slow the flow of traffic and may result in traffic collisions.

The Guideline for childcare centres requires off-street car parking to be provided at the rates for child care facilities specified in a DCP that applies to the land, which is supported. However, the draft State Policy and associated Better Schools Design Guidelines do not provide any off-street parking requirements for schools. In this regard clarification is required to ensure that Council's parking requirements for schools would continue to apply.

Recommendations

- Centre based child care not be permitted to front classified roads due to safety concerns and the potential impact on traffic flow.
- The Better Schools Design Guidelines should be amended to require off-street car parking to be provided at the rates for educational establishments specified in a DCP that applies to the land.

f) Further Complicates the Planning System

As part of the on-going Planning reforms, Council has consistently lobbied for the implementation of measures to simplify the planning system and reduce the number of planning instruments through the repeal of SEPPs and the inclusion of relevant provisions within local environmental plans. Measures to improve the clarity and understanding of the planning system are supported. However, it is considered that this would best be achieved through the Standard Instrument LEP with development provisions focused on local context rather than a blanket approach. This approach would integrate and rationalise codes under the various existing plans and enable state and local planning controls to be locally refined and located in one place.

Recommendations

- The introduction of a new State Environmental Planning Policy is not supported. The proposed amendments should be facilitated through amendments to the Standard Instrument Local Environmental Plan rather than further complicating the planning system with an additional SEPP.

g) Uncertainty of Site Compatibility Certificates

The proposed SEPP permits the issuing of Site Compatibility Certificates (SCCs) by the relevant Sydney Planning Panels. These certificates can be issued if a school is considered to be a compatible land use with surrounding land uses and can be valid for 5 years or such a time as specified on the certificate. This process could further undermine Council's zoning hierarchical framework as it essentially permits a spot rezoning, with little certainty as to the scale of future development on the site.

Currently, during assessment of site compatibility, the Department is required to provide a copy of the application to the council concerned. For projects under the Infrastructure SEPP, the Department must then take into account all comments received from the council in the two weeks following the application's lodgement date before issuing an SCC. Once issued, an application can then be lodged with the consent authority, within the stipulated time frame. Assuming the SCCs under the proposed SEPP operate the same way, Council will be consulted upon lodgement.

Recommendations

- It is recommended that the proposed State Policy be amended to ensure site compatibility certificates are valid for no longer than five (5) years. This will allow for appropriate infrastructure to be planned and provide greater certainty as to when the school will be delivered.

h) Increased Pressure on Local Infrastructure

The draft State Policy and Better Schools Guidelines does not include any requirements for playing fields to be incorporated into the design of new schools. In this regard, it is recommended that the proposed State Policy be amended to emphasise the importance of open space as a key design element. As existing local infrastructure is already generally at capacity, schools should not simply be relying on existing local infrastructure to offset their open space demand.

Whilst it is recognised that in certain circumstances playing field may not be able to be provided within a development site, in these situations the Department should liaise with Council to develop an agreement with respect to the use of local infrastructure.

Recommendations

- The proposed State Policy be amended to include requirements for new schools to provide playing fields and open space. In circumstances where fields cannot be provided the State Government should liaise with Council to develop an agreement with respect to the use of local infrastructure.

CONCLUSION

It is acknowledged that child care and educational establishment are essential uses, and measures to improve the speed and efficiency of their delivery are supported. However, it is noted that these are generally not low impact development and can often have a considerable amenity impacts, especially in low density residential areas where lower intensity uses are anticipated. For this reason, it is imperative that these uses are restricted to appropriate locations and are subject to strict design requirements to ensure that potential impacts of these uses (including, visual and acoustic privacy and traffic) are appropriately mitigated.

It is recommended that a submission be made to the Department of Planning and Environment opposing the proposed changes on the basis of the key issues and recommendations set out in this report.

IMPACTS**Financial**

This matter has no direct financial impact upon Council's adopted budget or forward estimates.

The Hills Future - Community Strategic Plan

Community Strategic Direction 7.2 requires Council to manage new and existing development with a robust framework of policies, plans and processes that is in accordance with community needs and expectations.

The proposed changes have the potential to take planning powers away from Council which in turn may have the potential to force decisions which are inconsistent with Council's adopted local strategies, objectives and policies. Further, Council has worked extremely hard to protect The Hills Shire Council character and quality of life and has actively sought to protect local amenity.

RECOMMENDATION

This report and the following recommendations form the basis of The Hills Shire Council's submission to the Department of Planning and Environment on the draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 and associated planning and design guidelines:

(a) Reduces Confidence in the Planning System

- i. Objection is raised to permitting centre-based child care development within the R2 Low Density Residential zone due to the potential impact that these uses have on the residential amenity of The Shire's low density residential areas.
- ii. If child care centres are mandated as permitted with consent proposed within low density residential areas, these developments should be capped at 30 places for development permissible as exempt and complying development. Any development that exceeds 30 places should be subject to a development application so that impacts to adjoining properties can be reduced.
- iii. Council's zone hierarchy provides certainty to the community with respect to the type of development envisaged such as low, medium or high density

development. Any proposal to subvert local planning policy and permit development which would otherwise be prohibited under a Standard Instrument Local Environmental Plan is not supported.

- iv. It is recommended that a provision is included in the State Policy to cater to the 0-2 years age group.

(b) Impact on Child Protection and Safety

- i. It is recommended that the State Policy be amended to prohibit centre-based child care developments on all land along classified roads, as its proximity to a major/busy road is considered to be unnecessarily risking children's health and safety.
- ii. If the State Policy permits development on classified roads, it is recommended that additional provisions be included in the proposed State Policy that prohibits child play areas to be located on frontages to classified roads and that additional safety barriers be required.

(c) Impact on Existing Local Character and Amenity

- i. Objection is raised to expanding the complying development provisions to apply to buildings with a height of 4 storeys or 22 metres. Rather, the existing 12 metre (3 storeys) maximum should be retained.
- ii. It is recommended that the draft Better Schools Design Guide and the draft Child Care Planning Guideline be amended to strengthen controls to minimise amenity impacts to adjoining neighbours such as visual dominance and reduced visual and acoustic privacy, especially in locations where 3-4 storey buildings directly adjoin low density houses.
- iii. The proposed side and rear setbacks requirements for schools as complying development are not supported. Any development within a rural zone should not have a setback any less than 5 metres.
- iv. The proposed overshadowing requirements for schools as complying development are not supported. Solar access to any habitable room or principal private open space on an adjoining property should be no less than 4 hours between 9am and 3pm on the winter solstice.
- v. Object to the application of a 1 metre setback for portable classrooms as exempt development within rural zones. The minimum setback should be no less than 5 metres.

(d) Broadening the Role of Private Certifiers

- i. Whilst measures to simplify the planning system and streamline/fast-track the assessment and certification of child care centres and educational establishments is supported, any proposal which could increase the role of private certification in the planning system is not supported. Privatisation of approvals is rejected due to inherent conflicts of interest leading to a lack of community confidence in the decision making process. The regulation of the private certification system must be significantly strengthened through the review of the Building Professionals Act.
- ii. Until the regulation of the private certification system is strengthened, any proposals to expand state-wide complying development provisions, to potentially controversial development types such as school buildings up to 4 storeys is not supported.
- iii. It is recommended that Councils be nominated as the sole certifying authority for complying development certificates relating to Early Childhood Education and Child Care Facilities, Schools and Tertiary Institutes. As part of the broader planning reforms it is recommended that there should be a clear distinction between the scale of development that a private certifier can certify and the scale of development that Council certifiers can certify.

(e) Traffic and Parking Impacts

- i. Centre based child care not be permitted to front classified roads due to safety concerns and the potential impact on traffic flow.
- ii. The Better Schools Design Guidelines should be amended to require off-street car parking to be provided at the rates for educational establishments specified in a DCP that applies to the land.

(f) Further Complicates the Planning System

- i. The introduction of a new State Environmental Planning Policy is not supported. The proposed amendments should be facilitated through amendments to the Standard Instrument Local Environmental Plan rather than further complicating the planning system with an additional SEPP.

(g) Uncertainty of Site Compatibility Certificates

- i. It is recommended that the proposed State Policy be amended to ensure site compatibility certificates are valid for no longer than five (5) years. This will allow for appropriate infrastructure to be planned and provide greater certainty as to when the school will be delivered.

(h) Increased Pressure on Local Infrastructure

- i. The proposed State Policy be amended to include requirements for new schools to provide playing fields and open space. In circumstances where fields cannot be provided the State Government should liaise with Council to develop an agreement with respect to the use of local infrastructure.

ATTACHMENTS

Nil.

MINUTES of the duly convened Ordinary Meeting of The Hills Shire Council held in the Council Chambers on 14 March 2017

ITEM-1 CONFIRMATION OF MINUTES

A MOTION WAS MOVED BY COUNCILLOR THOMAS AND SECONDED BY COUNCILLOR HASELDEN THAT the Minutes of the Ordinary Meeting of Council held on 28 February 2017 be confirmed.

THE MOTION WAS PUT AND CARRIED.

96 RESOLUTION

The Minutes of the Ordinary Meeting of Council held on 28 February 2017 be confirmed.

APOLOGIES

A MOTION WAS MOVED BY COUNCILLOR HARTY OAM AND SECONDED BY COUNCILLOR THOMAS THAT the apologies from Councillors Dr Lowe and Hay OAM be accepted and leave of absence granted.

THE MOTION WAS PUT AND CARRIED.

97 RESOLUTION

The apologies from Councillors Dr Lowe and Hay OAM be accepted and leave of absence granted.

COMMUNITY FORUM

There were no addresses to Council during Community Forum.

ITEM-2 DRAFT SEPP EDUCATIONAL ESTABLISHMENTS AND CHILD CARE FACILITIES 2017 (FP85)

A MOTION WAS MOVED BY COUNCILLOR DR GANGEMI AND SECONDED BY COUNCILLOR HASELDEN THAT the Recommendation contained in the report be adopted.

THE MOTION WAS PUT AND CARRIED UNANIMOUSLY.

98 RESOLUTION

This report and the following recommendations form the basis of The Hills Shire Council's submission to the Department of Planning and Environment on the draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 and associated planning and design guidelines:

- (a) Reduces Confidence in the Planning System
 - i. Objection is raised to permitting centre-based child care development within the R2 Low Density Residential zone due to the potential impact that these uses have on the residential amenity of The Shire's low density residential areas.

MINUTES of the duly convened Ordinary Meeting of The Hills Shire Council held in the Council Chambers on 14 March 2017

- ii. If child care centres are mandated as permitted with consent proposed within low density residential areas, these developments should be capped at 30 places for development permissible as exempt and complying development. Any development that exceeds 30 places should be subject to a development application so that impacts to adjoining properties can be reduced.
- iii. Council's zone hierarchy provides certainty to the community with respect to the type of development envisaged such as low, medium or high density development. Any proposal to subvert local planning policy and permit development which would otherwise be prohibited under a Standard Instrument Local Environmental Plan is not supported.
- iv. It is recommended that a provision is included in the State Policy to cater to the 0-2 years age group.

(b) Impact on Child Protection and Safety

- i. It is recommended that the State Policy be amended to prohibit centre-based child care developments on all land along classified roads, as its proximity to a major/busy road is considered to be unnecessarily risking children's health and safety.
- ii. If the State Policy permits development on classified roads, it is recommended that additional provisions be included in the proposed State Policy that prohibits child play areas to be located on frontages to classified roads and that additional safety barriers be required.

(c) Impact on Existing Local Character and Amenity

- i. Objection is raised to expanding the complying development provisions to apply to buildings with a height of 4 storeys or 22 metres. Rather, the existing 12 metre (3 storeys) maximum should be retained.
- ii. It is recommended that the draft Better Schools Design Guide and the draft Child Care Planning Guideline be amended to strengthen controls to minimise amenity impacts to adjoining neighbours such as visual dominance and reduced visual and acoustic privacy, especially in locations where 3-4 storey buildings directly adjoin low density houses.
- iii. The proposed side and rear setbacks requirements for schools as complying development are not supported. Any development within a rural zone should not have a setback any less than 5 metres.
- iv. The proposed overshadowing requirements for schools as complying development are not supported. Solar access to any habitable room or principal private open space on an adjoining property should be no less than 4 hours between 9am and 3pm on the winter solstice.
- v. Object to the application of a 1 metre setback for portable classrooms as exempt development within rural zones. The minimum setback should be no less than 5 metres.

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- i. Whilst measures to simplify the planning system and streamline/fast-track the assessment and certification of child care centres and educational establishments is supported, any proposal which could increase the role of private certification in the planning system is not supported. Privatisation of approvals is rejected due to inherent conflicts of interest leading to a lack of community confidence in the decision making process. The regulation of the private certification system must be significantly strengthened through the review of the Building Professionals Act.
- ii. Until the regulation of the private certification system is strengthened, any proposals to expand state-wide complying development provisions, to potentially controversial development types such as school buildings up to 4 storeys is not supported.

MINUTES of the duly convened Ordinary Meeting of The Hills Shire Council held in the Council Chambers on 14 March 2017

- iii. It is recommended that Councils be nominated as the sole certifying authority for complying development certificates relating to Early Childhood Education and Child Care Facilities, Schools and Tertiary Institutes. As part of the broader planning reforms it is recommended that there should be a clear distinction between the scale of development that a private certifier can certify and the scale of development that Council certifiers can certify.

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- ii. The Better Schools Design Guidelines should be amended to require off-street car parking to be provided at the rates for educational establishments specified in a DCP that applies to the land.

(f) Further Complicates the Planning System

- i. The introduction of a new State Environmental Planning Policy is not supported. The proposed amendments should be facilitated through amendments to the Standard Instrument Local Environmental Plan rather than further complicating the planning system with an additional SEPP.

(g) Uncertainty of Site Compatibility Certificates

- i. It is recommended that the proposed State Policy be amended to ensure site compatibility certificates are valid for no longer than five (5) years. This will allow for appropriate infrastructure to be planned and provide greater certainty as to when the school will be delivered.

(h) Increased Pressure on Local Infrastructure

- i. The proposed State Policy be amended to include requirements for new schools to provide playing fields and open space. In circumstances where fields cannot be provided the State Government should liaise with Council to develop an agreement with respect to the use of local infrastructure.

Being a planning matter, the Mayor called for a division to record the votes on this matter

VOTING FOR THE MOTION

Clr Keane
Clr Preston
Clr Dr Byrne
Clr Tracey
Clr Thomas
Clr Harty OAM
Clr Haselden
Clr Dr Gangemi

VOTING AGAINST THE MOTION

None

ABSENT

Clr Dr Lowe
Clr Hay OAM
Clr Taylor MP

5

A MOTION WAS MOVED BY COUNCILLOR HARTY OAM AND SECONDED BY COUNCILLOR HASELDEN THAT Items 3, 5, 6 and 7 be moved by exception and the recommendations contained in the reports be adopted.

99 RESOLUTION

Items 3, 5, 6 and 7 be moved by exception and the recommendations contained in the reports be adopted.

100 RESOLUTION

- ## 101 RESOLUTION

Council adopt the recommendations of the Local Traffic Committee for February 2017 as detailed in the report.

102 RESOLUTION

1. Council consent to the removal of a record of a Planning Agreement from the title of the residential lots being created by the subdivision of Lots 15, 16, 17, 18, 21, 40, 41, 43 and 44 DP 255616 (3 to 7 and 6 to 8 Cataract Road, 7 to 9 Red Gables Road and 11 to 13 Janpieter Road, Box Hill), and the request documents be authorised for execution under Council seal.