5 April 2017

PCU070367

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Dear Sir/Madam

RE: SUBMISSION ON DRAFT EDUCATION AND CHILD CARE SEPP

Paynter Dixon Constructions Pty Ltd (**Paynter Dixon**) appreciate the opportunity to provide a submission to the Department of Planning and Environment (**DPE**) on the new draft *State Environmental Planning Policy (Education Establishments and Child Care Facilities) 2017* (**Education and Child Care SEPP**). Paynter Dixon is often engaged by a number of non-government schools in NSW to advise and carry out development on existing school facilities.

Background

1 In providing this submission, we have reviewed the following:

(a) Draft Education and Child Care SEPP which will replace Division 3 of the State Environmental Planning Policy (Infrastructure) 2007 (**ISEPP**);

(b) Draft Environmental Planning and Assessment Amendment (Schools) Regulation 2017 (**Draft Regulation**) which will amend the Environmental Planning and Assessment Regulation 2000 (**EPA Regulation**);

(c) Draft Standard Instrument (Local Environmental Plans) Amendment Order (No 2) 2016 which will amend the Standard Instrument – Principal Local Environmental Plan;

(d) Draft 'Code of Practice for Part 5 activities for registered non-government schools', February 2017;

(e) Draft 'Planning Circular – Regulating expansion of schools' (**Draft Planning Circular**);

(f) Draft 'Better Schools – A design Guideline for schools in NSW'

collectively referred to as the **Reform Package**.

Key Issues and Recommendations

2 Paynter Dixon considers that the following issues and recommendations in relation to the Education and Child Care SEPP should be considered by the Department.

Savings and transitional provisions

3 There are no savings and transitional provisions for development carried out under Division 3 of Part 3 of the ISEPP before its repeal.

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4 **Recommendation:** The repeal of Division 3 of Part 3 of the ISEPP under clause 5.3 of schedule 5 of the Educational and Child Care SEPP should be amended to make it clear that:

(a) The repeal of Division 3 of Part 3 of the ISEPP does not apply to development carried out pursuant to that Division before its repeal; and

(b) The repeal of Division 3 of Part 3 of the ISEPP does not apply to any applications for development consent or a complying development certificate lodged but not determined before its repeal.

Complying development on bush fire prone land

5 Clause 11 of Schedule 2 of the Education and Child Care SEPP sets out a development standard for complying development in respect of bush fire prone land, including in relation to development on a lot that is wholly bush fire prone land. Whilst complying development may be carried out on part of a lot where another part of that same lot is bushfire prone land, under section 100B of the *Rural Fires Act 1997* (NSW) (**RF Act**) development for the purpose of a school cannot be complying development if it is proposed to be carried out on land that is bushfire prone land. Therefore the reference in clause 11 of Schedule 2 to development that is proposed to be carried out on a lot that is wholly on bush fire prone land conflicts with section 100B of the RF Act. Section 100B of the RF Act sets out the requirements of the Commissioner of the NSW Fire Service to issue a Bush Fire Safety Authority for development on bush fire prone land.

6 **Recommendation:** Clause 11 of Schedule 2 of the Education and Child Care SEPP should be deleted. It is an unnecessary clause in circumstances where section 100B of the RF Act already regulates development on bushfire prone land. In the alternative, Section 100B of the RF Act must be amended to reflect the proposed development standard under Clause 11 of Schedule 2 of the Education and Child Care SEPP, and to allow complying development on bushfire prone land subject to compliance with the relevant development standards.

Complying development on land that comprises an item of heritage

7 Clause 17(2)(a) of the Education and Child Care SEPP provides that in order for development to be complying development under the Education and Child Care SEPP, it must '*meet the general requirements for complying development set out in clause 1.17A of the*' Codes SEPP. Clause 1.17A(1)(d) of the Codes SEPP prevents complying development from being carried out on land that comprises a local or State heritage item. Most educational establishments, particularly non-government schools, contain buildings which are listed on the local or State heritage register and as a result often the entire school is mapped or listed as a heritage item for the purposes of the relevant local instrument or the State heritage register.

8 **Recommendation:** The Education and Child Care SEPP should be amended to allow complying development to be carried out on land that contains a State or local heritage item where the development will not have a material impact on the heritage item. This could be achieved by way of a similar clause to that contained in proposed clause 129AA of Schedule 1 of the EPA Regulation (being item 2 of the Draft Regulation). For example, the clause should provide that where development is proposed on land on which a local or State heritage item is located, a complying development certificate can only be issued if the certifying authority has been provided with a written statement by a qualified heritage consultant that verifies that the development will have no more than minimal impact on the heritage significance of the item, and be in accordance with any applicable heritage conservation management plan.

Impact of Codes SEPP on exempt of complying development under the Education and Child Care SEPP

9 As already mentioned, above in paragraph [7] above, clause 17(2)(a) of the Education and Child Care SEPP requires that complying development under the Education and Child Care SEPP must '*meet the general requirements for complying development set out in clause 1.17A of the*' Codes SEPP. Any development able to be carried out as exempt or complying development under the Education and Child care SEPP should be unaffected by the provisions of Division 2 of the Codes SEPP.

10 **Recommendation:** Clause 12(2)(a) of the Education and Child Care SEPP should be deleted. It should also be made clear in the Interpretation provisions of the Education and Child Care SEPP that any development able to be carried out as exempt or complying development under the Education and Child care SEPP is unaffected by Division 2 of the Codes SEPP.

Complying development for student accommodation and boarding houses

11 The Education and Child Care SEPP does not allow schools to obtain a complying development certificate for boarding houses or student accommodation, nor do the permissibility provisions of the SEPP apply to student accommodation including boarding houses. Boarding houses and student accommodation are ancillary to the use of educational establishments and are often an integral part of a non-government school and therefore it is appropriate that they be included as part of a 'school' for the purposes of the Education and Child Care SEPP.

12 **Recommendation:** The draft Education and Child Care SEPP should be amended to expressly incorporate boarding houses and student accommodation in the definition of 'school'. This is suggested given the increasing demand for student accommodation in NSW and the often complex zoning controls that exist in relation to such a use where such a use is categorised as a 'boarding house'.

Demolition and complying development

13 It is not clear on whether the '*construction of*' works or activities that are capable of being carried out as complying development under clause 33 of the Education and Child Care SEPP includes demolition. For example, it is not clear whether a library can be constructed in the place of an existing classroom under clause 33 of the Education and Child Care SEPP where the construction of the library would necessitate the demolition of the classroom. If schools are given the flexibility to construct a library as complying development under clause 33 of the Education and Child Care SEPP, they should also be given the flexibility to demolish if a building that is in the place of a proposed library in accordance with clause 33 of the Education and Child Care SEPP.

14 **Recommendation:** The Education and Child Care SEPP should be amended to allow schools to carry out demolition if it is carrying out complying development in accordance with clause 33 of the Education and Child Care SEPP. Clause 5(3) of the Education and Child Care SEPP clarifies that '*construction works*' that may be carried out *without consent* includes demolition. That clause could be amended to also clarify that '*construction works*' carried out as complying development includes demolition.

Requirement for certificate from RMS for developments leading to an increase of 50 students or more

15 Under the Draft Regulation a complying development certificate cannot be issued in respect of a development within a school that will enable the school to accommodate 50 or more additional students, unless the RMS has first issued a traffic certificate. The traffic certificate is required to certify that any impacts on the surrounding road network as a result of the proposed development are acceptable if specified requirements are met.

16 This requirement to refer developments to RMS is likely to lead to delay for applicants in the determination of applications for complying development certificates.

17 **Recommendation:** This clause should be deleted from the Draft Regulation due to the additional 'red tape' and delay that it will create for schools in seeking to obtain complying development certificates for certain forms of development. If the clause is to remain in the Draft Regulation, a timeframe should be included in the regulation by which the RMS have to provide a traffic certificate – it is suggested that 5 days is sufficient given the timeframes for the provision of complying development certificates. In the event that a traffic certificate is not provided within this time frame, it should be considered to be a 'deemed approval' by RMS and a complying development certificate may then be issued by the accredited certifier or council.

Responsible body for issuing complying development certificates

18 The guidance document released with the draft Education and Child Care SEPP indicates that the Department is considering an amendment to the EPA Regulation to restrict accredited certifiers from issuing complying development certificates in relation to schools. This would means that Council certifiers will be the only responsible body for issuing complying development certificates for schools. In our view this proposal will defeat the purpose of complying development certificates and only slow down the process. In many circumstances due to the limited resources in Councils it is far quicker for a proponent to get an accredited certifier to certify development, rather than going through Council. Furthermore without additional resources, it is difficult to see how Councils would be able to meet the 10 or 20 day time frame for the determination of complying development certificate applications if all applications for certain types of development had to be made to Councils rather than proponents also having the option of accredited certifiers. If there is any concern regarding the decisions or processes of accredited certifiers, this matter should be raised with the Building Professionals Board rather than being dealt with through restrictions on proponents.

19 **Recommendation:** Complying development certificates for schools should be capable of being issued by a private certifier.

Complying development for underground development

20 Clause 33(6) of the new Education and Child Care SEPP specifically provides that complying development cannot involve underground development. As such a school cannot construct an underground car park or underground classroom as complying development. However, a school can construct a car park or classroom as complying development in accordance with clause 33 of the new Education and Child Care SEPP.

21 **Recommendation:** Given that a school can construct a car park and classroom as complying development, a school should not be restricted from constructing a car park or class room underground. The Education and Child Care SEPP should be amended to allow a school to construct a underground classroom or car park, with appropriate development standards if necessary.

Distance of development from the property boundary of land in another zone

22 There are clauses under the Education and Child Care SEPP such as, clauses 30(1)(a), 32(1)(a), (j) and (l)(ii), clause 3 of Schedule 2, clause 6(c) of Schedule 2 and clause 4 of Schedule 3 that prevents development on a school from occurring within a specified distance of a boundary of land zoned residential and or another zone. Schools often own adjoining lots of land within an existing school. A school should not be prevented from carrying out development within a specified distance of a boundary of land that is zoned residential and/or another zone in circumstances where it owns that adjoining land.

23 **Recommendation:** The Education and Child Care SEPP should be amended so that a school is not prevented from carrying out development within any distance of a boundary of land that is zoned residential or any other zone in circumstances where it owns that adjoining land. In the alternative, a school should not be prevented from carrying out development within any distance of land in any other zone other than a residential zone in circumstances where it owns that land.

We would be happy to discuss any aspect of this submission with you in more detail if required.

Yours sincerely
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