



Our Reference: F2013/00173

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

7 April 2017

Dear Sir/Madam,

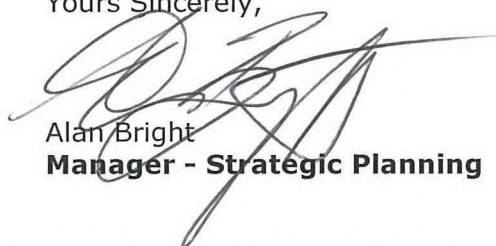
Re: Draft SEPP – Educational Establishments and Childcare Facilities 2017

Thank you for the opportunity to comment on the *draft SEPP – Educational Establishments and Childcare Facilities 2017* and associated documentation.

Randwick City Council's submission on the draft SEPP is enclosed.

If you have any questions, please do not hesitate to contact Asanthika Kappagoda, Senior Strategic Planner on telephone 9093 6895.

Yours Sincerely,



Alan Bright
Manager - Strategic Planning



<p>English</p> <p>If you need help to understand this letter, please come to Council's Customer Service Centre and ask for assistance in your language or you can contact the Telephone Interpreter Service (TIS) on 131 450 and ask them to contact Council on 9399 0999.</p>	<p>Greek</p> <p>Αν χρειάζεστε βοήθεια για να καταλάβετε αυτή την επιστολή, παρακαλείστε να έρθετε στο Κέντρο Εξυπηρέτησης Πελατών της Δημαρχίας (Council Customer Service Centre) και να ζητήσετε βοήθεια στη γλώσσα σας ή τηλεφωνήστε στην Τηλεφωνική Υπηρεσία Διερμηνέων (Telephone Interpreter Service – TIS) τηλ. 131 450 και να ζητήσετε να επικοινωνήσουν με τη Δημαρχία τηλ. 9399 0999.</p>	<p>Italian</p> <p>Se avete bisogno di aiuto per capire il contenuto di questa lettera, recatevi presso il Customer Service Centre del Municipio dove potrete chiedere di essere assistiti nella vostra lingua; oppure mettetevi in contatto con il Servizio Telefonico Interpreti (TIS) al 131 450 e chiedete loro di mettersi in contatto col Municipio al 9399 0999.</p>
<p>Croatian</p> <p>Ako vam je potrebna pomoć da biste razumjeli ovo pismo, molimo dodite u Općinski uslužni centar za klijente (Council's Customer Service Centre) i zatražite pomoć na svom jeziku, ili možete nazvati Telefonsku službu tumača (TIS) na 131 450 i zamoliti njih da nazovu Općinu na 9399 0999.</p>	<p>Spanish</p> <p>A la persona que necesite ayuda para entender esta carta se le ruega venir al Centro de Servicios para Clientes [Customer Service Centre] de la Municipalidad y pedir asistencia en su propio idioma, o bien ponerse en contacto con el Servicio Telefónico de Intérpretes ["TIS"], número 131 450, para pedir que le comuniquen con la Municipalidad, cuyo teléfono es 9399 0999.</p>	<p>Vietnamese</p> <p>Nếu quý vị không hiểu lá thư này và cần sự giúp đỡ, mời quý vị đến Trung Tâm Dịch Vụ Hướng Dẫn Khách Hàng của Hội Đồng Thành Phố (Council's Customer Service Centre) để có người nói ngôn ngữ của quý vị giúp hay quý vị có thể liên lạc Dịch Vụ Thông Dịch qua Điện Thoại (TIS) ở số 131 450 và yêu cầu họ liên lạc với Hội Đồng Thành Phố (Council) ở số 9399 0999.</p>
<p>Polish</p> <p>Jeśli potrzebujesz pomocy w zrozumieniu treści tego pisma, przyjdź do punktu obsługi klientów (Customer Service Centre) przy Radzie Miejskiej i poproś o pomoc w języku polskim, albo zadzwoń do Telefonicznego Biura Tłumaczy (Telephone Interpreter Service – TIS) pod numer 131 450 i poproś o skontaktowanie się z Radą Miejską (Council) pod numerem 9399 0999.</p>	<p>Indonesian</p> <p>Jika Anda memerlukan bantuan untuk memahami surat ini, silakan datang ke Pusat Pelayanan Pelanggan (Customer Service Centre) Pemerintah Kotamadya (Council) dan mintalah untuk bantuan dalam bahasa Anda, atau Anda dapat menghubungi Jasa Juru Bahasa Telepon (Telephone Interpreter Service - TIS) pada nomor 131 450 dan meminta supaya mereka menghubungi Pemerintah Kotamadya pada nomor 9399 0999.</p>	<p>Turkish</p> <p>Bu mektubu anlamak için yardıma ihtiyacınız varsa, lütfen Belediye'nin Müşteri Hizmetleri Merkezi'ne gelip kendi dilinizde yardım isteyiniz veya 131 450'den Telefonla Tercüme Servisi'ni (TIS) arayarak onlardan 9399 0999 numaradan Belediye ile ilişkiye geçmelerini isteyiniz.</p>
<p>Hungarian</p> <p>Amennyiben a levél tartalmát nem érti és segítségre van szüksége, kérjük látogassa meg a Tanácsház Ügyfél Szolgálatát (Customer Service Centre), ahol magyar nyelven kaphat felvilágosítást, vagy hívja a Telefon Tolmács Szolgálatot (TIS) a 131 450 telefonszámon és kérje, hogy kapcsolják a Tanácsházat a 9399 0999 telefonszámon.</p>	<p>Czech</p> <p>Jestliže potřebujete pomoc při porozumění tohoto dopisu, navštivte prosím naše Středisko služeb pro veřejnost (Council's Customer Service Centre) a požádejte o poskytnutí pomoci ve vaší řeči anebo zavolejte Telefonní tlumočnickou službu (TIS) na tel. číslo 131 450 a požádejte je, aby oni zavolali Městský úřad Randwick na tel. číslo 9399 0999.</p>	<p>Arabic</p> <p>إذا أردت مساعدة لفهم هذه الرسالة، نرجوكم الحضور إلى مركز خدمة عملاء المجلس واطلب المساعدة في لغتك، أو يمكنك الاتصال بخدمة الترجمة الهاتفية (TIS) على هاتف رقم ١٣١ ٤٥٠ واطلب منهم الاتصال بالمجلس على رقم ٩٣٩٩ ٠٩٩٩.</p>
<p>Chinese</p> <p>如果你需要人幫助你了解這封信的內容，請來市政會顧客服務中心要求翻譯服務，或者與電話傳譯服務 (TIS) 聯係，號碼是 131 450。請他們幫助你打電話給市政會，號碼是 9399 0999。</p>	<p>Russian</p> <p>Если Вам требуется помощь, чтобы разобраться в этом письме, то, пожалуйста, обратитесь в Муниципальный Центр Обслуживания Клиентов и попросите оказать Вам помощь на Вашем языке или же Вы можете позвонить в Телефонную Службу Переводчиков (TIS) по номеру 131 450 и попросить их связаться с Муниципалитетом по номеру 9399 0999.</p>	<p>Serbian</p> <p>Ako vam treba pomoć da razumete ovo pismo, molimo vas da dođete do Centra za usluge mušterijama pri Opštini (Customer Service Centre) i zamolite ih da vam pomognu na vašem jeziku, ili možete nazvati Telefonsku prevodilačku službu (TIS) na 131 450 i zamolite ih da vas povežu sa Opštinom na 9399 0999.</p>



Randwick City Council Submission:

**Draft SEPP
(Educational Establishments
and Childcare Facilities)
2017**

7 April 2017

Introduction

Randwick City Council is pleased to forward this submission on the *draft State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017* (draft SEPP) and associated documentation.

As an overarching comment, the State Government's initiative to increase the supply of childcare and education facilities is commendable, recognising the integral role such facilities play in the development and well-being of children, in improving employment opportunities, and delivering strong economic growth.

Key drivers for the reforms are noted to be the current critical demand for childcare, greater uptake of education services and aging infrastructure which is placing pressure on existing facilities. These issues are considered paramount given projected population growth which is likely to continue fuelling demand for such infrastructure into the future.

The proposed changes aim to make it easier to deliver new and upgraded facilities by simplifying and streamlining the planning system to create greater certainty for applicants and reduce development approval delays. Key components include broadening the range of development types to be undertaken as Exempt and Complying Development and establishing state-wide assessment requirements and design considerations.

While the intent of the reforms is supported in principal, we strongly contend that any intervention in the planning system to facilitate new childcare and education developments should be contingent on achieving sound environmental planning and land use outcomes. To this end, concerns are raised that a number of the proposed changes may have far reaching impacts on our local community, particularly in terms of residential amenity and the character of our neighbourhoods.

The following matters are accordingly raised for your consideration.

Part 2 – General Provisions

Clause 11 - Consultation with Public Authorities other than Councils

The draft SEPP requires that for Complying Development proposals resulting in an additional 50 or more students must be supplemented by a certificate from the RMS confirming that impacts on the surrounding road network are acceptable, or would be acceptable if stipulated conditions are met. If this certificate is not issued, the applicant would be required to lodge a DA.

Comments

Cumulative Impacts

Concerns are raised that the draft provisions fail to consider the cumulative impacts of Complying Development proposals. While a single application may not necessarily create significant impact, the same cannot be said for several proposals being undertaken separately in the same locality over time.

For instance, as noted above, the requirement for an RMS certificate is only applicable to those developments resulting in 50 or more additional students. These provisions fail to address the cumulative impacts of several proposals, which individually may propose less students than the RMS threshold requirement, but collectively may have a greater impact on the local road network in terms of on street parking, traffic generation and amenity of residential neighbourhoods. This example highlights the need for appropriate mechanisms to be introduced to consider and monitor the cumulative effects of Complying Development over time.

RMS Referral Process

In regards to the RMS referral mechanism, it is considered that Council's Local Traffic Committee (comprising Council officers, NSW Police, RMS and local members) is better placed to assess impacts of development on the local road network. The Local Traffic Committee has the benefit of local knowledge about local road conditions as well as other DAs in the immediate area, therefore providing an opportunity to identify potential cumulative impacts on the local road network.

Consultation with the Local Traffic Committee would also provide a more streamlined approach to assessing impacts on the local road network. The RMS referral process particularly for smaller proposals is likely to be more resource intensive and time consuming, contradicting the purpose of a more streamlined approval pathway.

Clause 13 -Site Compatibility Certificates

Division 2 of the draft SEPP includes provisions for site compatibility certificates to be issued by a regional planning panel to permit a school site to adopt the zoning of adjoining land. Subject to specified criteria, a site compatibility certificate would enable development that is permissible on the adjoining site to also be carried out on the school site, regardless of the provisions of the applicable LEP.

Comments

Council strongly objects to this proposal, as it provides greater potential for school sites (some of the largest parcels of land in the area) to be redeveloped, removing the need for rezoning and undermining local land use planning provisions.

The *Randwick Local Environmental Plan 2012* (RLEP 2012) applies an SP2 Infrastructure zoning to public schools, to help ensure they are kept for their required purpose as essential infrastructure for the community. Any further redevelopment of these sites under the SP2 zoning would then be subject to an investigation of the costs and benefits to the community via the rezoning process.

Concerns are raised that the draft provisions undermine Council's local planning provisions and may ultimately lead to the closure of schools without Council or community input. This is a critical issue given the past trend of declining numbers of government schools in Randwick while demographic trends show continued growth in local school-aged children. The proposed provisions contradict the aims of the Policy (to facilitate the effective delivery of educational establishments) by allowing for land deemed to be 'surplus' to be disposed of for non-educational purposes.

To this end, it is strongly recommended that the subject provisions allowing for the adoption of zoning of adjoining land be removed from the draft SEPP.

Part 3: Childcare Centre and Early Childhood Education

Clause 21 - Draft Childcare Planning Guidelines

The reforms propose to consolidate national regulations (under the National Quality Framework-NQF) with standards and planning controls into a single state-wide guideline document. The resulting draft Guidelines contain planning and design criteria generally dealt with at the DA stage, together with detailed physical requirements presently considered at the licensing stage (e.g. the size of nappy changing facilities, toilets etc.).

Under the proposed changes, the consent authority is to take into consideration the draft Guidelines when assessing a childcare centre proposal, with the controls contained therein given legal effect by the draft SEPP. The key objective is to ensure that all relevant proposals across NSW are assessed against consistent criteria, and that a

building is fit for service approval under National Law prior to it being approved and constructed.

Comments

There is broad agreement that the planning and regulatory system for childcare facilities and services is complex, confusing and time consuming being regulated by a suite of overlapping and conflicting standards, controls and planning provisions, imposed at the Local, State and National levels.

Under the current system proposals for childcare facilities are assessed under Council's planning framework, and it is at the subsequent licensing stage, where compliance with the detailed physical requirements of the *Education and Care Services National Regulation* (Regulation) must be demonstrated. In this regard, there is merit in considering the physical aspects of the NQF upfront at the DA stage, in terms of reducing opportunities for non-compliance with the physical requirements of the Regulation and the need for retro-fitting post construction.

Notwithstanding the benefits of consolidation, concerns are raised about the extent of detail required for consideration under the draft guidelines, and the flow-on effects on the DA process by way of assessment timeframes and added complexity. It is worth noting that the draft Guidelines contain in excess of 54 pages of criteria and controls (under Parts 2 and 3 alone), substantially exceeding the 14 pages of provisions under Council's DCP.

While the draft Guidelines address most of the planning considerations contained in Council's DCP, the level of detail required on certain matters including, but not limited to, toilets, size of nappy change facilities, laundry arrangements, emergency and evacuation requirements and Building Code of Australia requirements are beyond what is usually contemplated under a section 79C assessment of the EP&A Act. Assessment under the draft guidelines will not only be time consuming, but places an onerous burden on assessment staff, requiring the consideration of matters outside their expertise, and effectively transferring licensing and building issues into the DA process.

The high level of detail in the draft Guidelines is also likely to be problematic during the consultation phase, as objectors may seek to oppose every non-compliance, irrespective of whether it is a planning or amenity issue (e.g. size of nappy changing facilities). This will not only add to further delay in assessment, but notably contradicts the intent of the reforms which is to create efficiencies in the development process.

To ensure that the draft Guidelines remain useful and relevant, as well as to reduce unnecessary complexity, it is recommended that one of the following options be considered:

- The draft guidelines be made for applicants' use only as a guidance tool, together with a separate guide for councils addressing key planning and design matters; or
- That councils be provided with additional financial and/or human resources to assess childcare centre DAs under the proposed draft Guidelines; or
- Childcare centres be classified as 'integrated development' requiring referral to the Department for licensing. This would ensure that a detailed assessment is undertaken by the Department against National guidelines concurrently with the DA being assessed by the council.

Clause 23- Centre Based Childcare - Non-Discretionary Development Standards

The draft SEPP provisions for centre based child care identify a number of 'non-discretionary' standards that if complied with, prevents the consent authority from requiring more onerous standards for those matters.

Under clause 23 'design' is a non -discretionary standard if the proposal complies with Part 3 of the *Child Care Planning Guide* (Design Criteria). The other non-discretionary development standards (location, indoor or outdoor space, site area and colour) are clear and easily measured.

Comments

Concerns are raised about the inclusion of the design criteria of the *Child Care Planning Guide* as a non-discretionary standard, when the standard is non-prescriptive and difficult to quantify. For instance, when determining whether a location is suitable for a childcare centre (criteria 3A), Council officer would find it difficult to establish with certainty that a proposal will present an unsafe risk to children, staff and visitors from matters such as vehicle pollution.

Design Criteria 3G - Orientation

Under the draft guidelines (Design Criteria 3G – Orientation), proposals are required to ensure that neighbouring properties (located more than 3m from the boundary) receive more than 2 hours of solar access between 9am and 3pm on the winter solstice. These requirements are notably less stringent than Council's DCP controls for low density residential areas which require a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June to neighbouring properties (Clause 5.1 Solar Access and Overshadowing).

Comments

Concerns are raised that the draft Guidelines will result in lower levels of solar access to neighbouring properties than is currently the case under existing DCP provisions for the R2 Low Density zone, substantially impacting upon residential amenity.

It is well recognised that natural sunlight is critical to the health and amenity performance of dwellings and their private open space, especially during winter seasons. Therefore any reduction in solar access to adjoining dwellings resulting from the draft guidelines is not supported.

It is contended that proposals for centre based childcare facilities located in low density residential areas should be subject to the same solar access controls required for a new dwelling house. This is particularly pertinent as childcare centres in low density zones are required to have a scale and form that is similar to a dwelling house to maintain the low density characteristics of the locality.

On this basis it is recommended that the draft Guidelines be amended to require that the less stringent solar access controls contained therein apply only in those circumstances where a DCP does not specify such controls.

Design Criteria 3I- Acoustic Privacy

The draft Guidelines (Design Criteria 3I- Acoustic Privacy) contain design criteria aimed at minimising the impact of childcare facilities on the acoustic privacy of neighbouring residential properties.

The acoustic privacy criteria apply only to proposals for new development, or alterations and additions to more than 50 percent of the floor area, on sites located adjacent to residential development. Proposals are required to install a 2m acoustic fence at the boundary and ensure that outdoor play areas are located at least 10m away from the boundary fence.

Comments

While the proposed acoustic privacy criteria are considered reasonable for those limited circumstances outlined above (i.e. new developments or proposals involving more than 50 percent of floor space), concerns are raised that they do not adequately recognise the diverse site/development contexts that have a bearing on the acoustic privacy of neighbouring properties.

For instance, Randwick City regularly receives DAs for existing childcare centres located adjacent to residential properties where the alterations relate to less than 50 percent of the existing floor area but which still pose considerable acoustic privacy impacts for adjoining residential sites.

Similarly, Council has received applications for child centres on the roof tops of mixed use developments, where the residential component of the building is adjacent and higher than the roof of the commercial side where the proposal is located. In such circumstances, the application of the 2m acoustic fence requirement would be inappropriate and ineffective.

Given these issues highlighted above, it is recommended that mitigation measures be incorporated into the draft Guidelines to cover all developments as each site and building design can vary greatly.

It is further recommended that a suitably qualified consultant be required to undertake an acoustic assessment and make appropriate recommendations at the design stage for childcare centre proposals.

Design Criteria 3I- Acoustic Privacy (Noise Assessment)

The draft Guidelines require that the noise level of a proposal be certified by a suitably qualified acoustic professional. The criteria require that the assessment be undertaken from inside any habitable room of any affected neighbouring residence. This criteria applies only to proposals for new development, or alterations and additions to more than 50 percent of the floor area, on sites located adjacent to residential development.

Comments

The proposed acoustic controls fail to address sound level impacts in the outdoor areas of neighbouring properties. Concerns are raised that if a development complies with the indoor acoustic privacy criteria, then Council will not be able to give adequate weight to acoustic impacts on private open space.

It is considered more appropriate to undertake the noise measurement at the boundary of the affected property. This will help in assessing the impact on the privacy open space of neighbouring properties and is also consistent with how noise measurements are taken in accordance with the Local Government Noise Guide and Industrial Noise Policy.

Council often receives acoustic validation reports that are based on predicted noise measurements rather than the actual measure of noise (i.e. using the maximum number of children permitted in the outdoor area). Validation reports based on the actual noise measurements are a more accurate indicator of acoustic privacy impacts.

It is therefore recommended that the draft Guidelines be amended to require that validation reports be based on actual noise measurements (as opposed to predicted noise measurements). Actual noise measurements should be taken within 1 month of commencement of operation at full capacity of the centre and with the maximum number of children in the outdoor area.

Design Criteria 3J – Noise and Pollution

The draft Guidelines require the submission of a Noise Management Plan only in those circumstances where a centre based facility is proposed in a location affected by external noise sources (e.g. on industrial zoned land, along a railway/mass corridor etc).

Comments

The requirement for a Noise Management Plan is strongly supported. It is recommended that this requirement be extended to all proposals for centre based childcare to help mitigate against adverse impacts on neighbouring properties.

Other Environmental Health Issues

Hazardous Building Materials

Council has received many DAs for child care centres to operate in existing buildings. While minimal work may be proposed for the fit out, due to the age of the building hazardous building materials may be present on site.

Examples of hazardous building materials include asbestos (whether it is in the main building or a structure in the rear yard) or the presence of lead in lead based paints. These materials present a potential health risk to the occupants.

It is accordingly recommended that the draft Guidelines include relevant criteria to ensure appropriate assessments are undertaken by suitably qualified consultants to assess site suitably and provide recommendations.

Food Safety

The drafts Guidelines do not include any criteria for food safety requirements. Council often receives DAs which indicate a kitchen will be part of the centre but details of design and layout are not always provided.

As such, it is recommended that the draft Guidelines include requirements to:

- Comply with the Food Act 2003, Food Regulation 2015, Food Safety Standards
- Comply with Australian Standards 4674 - Design Construction and fit-out of food premises
- Comply with Australian Standards 1668 - Ventilation and air conditioning in buildings
- Provide a floor plan of the kitchen detailing the layout and design of all food preparation and food storage areas

Clause 25 -Mobile Childcare

The draft SEPP provisions propose to make it easier to establish 'mobile childcare' services by classifying such uses as 'Exempt Development', and thereby not requiring development approval for their operation. The draft SEPP broadly defines mobile childcare as '*an education and/or child care service that visits a premise area or place for the purpose of providing childcare*'.

The draft SEPP sets out a broad set of Exempt Development criteria for mobile childcare requiring that temporary structures not restrict car parking access nor the flow of surface/ground water, be sited on firm surfaces and comply with LEP separation distances to adjoining land.

Comments

Concerns are raised about the implications of permitting mobile childcare as Exempt Development, particularly as the provisions fail to articulate clear parameters to control extent and intensity of operation. For instance, the draft provisions do not stipulate a

threshold on the maximum number of children to be cared for, nor specify hours of operation. Similarly, no guidance is provided on the suitability of a site or location where a mobile childcare service could potentially operate.

Whilst mobile childcare services are more common in rural areas, the ambiguous nature of the proposed Exempt Development provisions, compounded with the omission of locational criteria, has the potential to encourage such uses in areas that are inappropriate, such as highly urbanised suburbs. This in turn has significant amenity implications such as traffic generation, on-street parking and noise.

Mobile childcare should be clearly defined, with established development standards to control intensity of operation. As a minimum, Exempt Development provisions should focus on locational criteria and site suitability, duration and hours of operation, as well as drop off and pick up arrangements, staffing, and maximum number of children. Alternatively the provisions could be amended to clarify that mobile childcare services are only permitted in the rural zones.

Clause 26 - Emergency Relocation of Childcare Facilities

The draft SEPP classifies the relocation of childcare facilities in the event of an emergency as Exempt Development. The intent is to provide for continuity of service and to facilitate rapid relocation without being subject to a lengthy development approval process. Under the draft SEPP provisions, relocation can only be carried out if the development has owners consent and the facility only has service approval to operate for no longer than 12 months.

Comments

Concerns are raised that the Exempt Development provisions relating to temporary relocation are too broad and fail to provide adequate guidance on the appropriate location, type or site or building to which a facility may temporally relocate to.

The lack of guidance in this regard means that planning issues such as traffic generation, noise and parking cannot be adequately addressed, which has the potential to create adverse impacts on centre users and the wider residential area.

Clause 32 - School Based Childcare as Exempt Development

The draft SEPP classifies school based childcare as Exempt Development provided no works are required on the school site (Clause 23). The purpose of this clause is to allow school based childcare (without works) to operate without having to go through a lengthy development assessment path. The premise is that school based childcare in existing buildings carry a lower risk of environmental impact.

Comments

As a broad comment it is agreed that school based childcare (particularly in an existing building) is likely to have a lower risk of environmental impact compared to a stand-alone facility in a residential neighbourhood. Notably, the co-location of childcare with schools is encouraged in Council's DCP, recognising that it makes better use of existing resources and facilities.

The Exempt Development provisions pertain to the operation of a childcare facility in an existing building where no works are undertaken. However the provisions do not address those circumstances where an existing building's development consent conditions do not stipulate hours of operation. The lack of control with respect to hours of operation, in turn has the potential to compromise residential amenity.

To address this issue, it is recommended that the Exempt Development provisions be amended to include the timeframe of 7am to 7pm as standard hours of operation. This

would apply only to those circumstances where the conditions of development consent for the existing building do not address hours of operation.

Part 4 – Schools

Schedule 4 – Design Quality Principles

The draft SEPP introduces Design Quality Principles (Schedule 4) that designers of school infrastructure are required to address when designing new school facilities. These principles aim to ensure that new school buildings are designed with a high level of amenity and sustainability, that are responsive to the character of the surrounding locality, contribute to the amenity of the neighbourhood and that are welcoming, accessible and fit for purpose.

Comments

Under clause 29(5) of the draft SEPP, the Design Quality Principles set out in Schedule 4 are only to apply to development requiring consent. However, in accordance to the Better Schools Design Guide (further discussed below), the principles should also inform a 'design verification statement' for Complying Development.

The draft SEPP provisions should accordingly be amended to make it clear that a design verification statement, addressing the design quality principles under Schedule 4 is a requirement for Complying Development.

Better Schools Design Guide

The Better Schools Design Guide is intended to provide practical guidance on how school projects can be designed to best address the design quality principals in the draft SEPP.

Comments

While Council supports the concept of the Design Guide, the content appears to be limited in scope. The Guide only provides high level design principals without any numerical controls. Furthermore the draft SEPP provisions do not make reference to the Guide as a matter for consideration in the assessment process (unlike the draft Guidelines for childcare facilities under clause 21).

With Clause 36 enabling development consent to be granted for new schools regardless of whether the proposal contravenes the development standards of an LEP, Council does not consider that the draft *Better Schools Design Guide* provides sufficient detail to be an adequate substitute for the development standards of an LEP.

Given that's schools may be built in R2 zones, it is considered that some limitation on the scale and impact of development should be provided.

Role of Planning Panels

Page 7 of the Explanation of Intended Effects document indicates that consideration is being given to making the relevant planning panel the consent authority for all DAs relating to schools that are not SSD.

Comments

Council does not support the proposal to make the relevant planning panel the consent authority for all DAs that are not classified as SSD. If this proposal were adopted that panel would be required to assess all manner of minor applications. This is considered to be an unnecessary use of the limited time and resources of the panel.

It is recommended that the existing arrangements be retained, with development above \$5 million referred to the planning panel for determination, and all other applications determined by the relevant local government authority.

Clause 30 - Schools—Development Permitted Without Consent

The draft SEPP will bring across a range of development types that are currently permitted without consent in the ISEPP, including: a library or an administration building; the construction of a portable classroom; a permanent classroom to replace an existing portable classroom; a kiosk, cafeteria or bookshop for students and staff; and a carpark.

Limitations apply to the scale of these developments, with development in all categories limited to a maximum height of one storey; that the structures be setback by a minimum of 5 metres from any property boundary with land in a residential zone and one metre for all other zones; and a requirement that the development does not result in a greater than 10 percent increase in staff or student numbers over a 12 month period.

While the proposed 'development without consent' clause is modelled on the existing clause in the ISEPP, it is proposed to allow a range of school-based development on bush fire prone land, or land that contains a heritage item.

Comments

Cumulative Impact of Part 5 Development

Council is concerned that the self-regulating nature of Part 5 development creates the potential for cumulative impacts on adjoining properties and the local street network to develop over time, especially given the limited development controls proposed to guide this development pathway in the draft SEPP.

When considering the environmental impact of a proposed development through a Part 5 assessment, the prescribed determining authority is only required to consider, and not adhere to, any relevant development standards that would ordinarily apply to the land being developed, including the potential impact on a heritage item or conservation area. As a result, the limitations identified above are the only standards that must be strictly adhered to under this approval pathway. This issue is compounded by the circular nature of Clause 30 (1), which allows a school to construct portable classrooms, and subsequently convert them into permanent structures at a later time.

While the construction of one – or several – portable classrooms over a 12 month period may not increase student or staff numbers by more than 10%, the cumulative effect of converting portable to permanent classrooms and repeating the process over a number of years is likely to result in impacts on traffic, local parking, and the amenity of neighbouring properties. While cumulative effects may be able to be appropriately managed – for instance through the provision of new or additional public transport services – the draft SEPP is silent on who is responsible for monitoring and reporting changes to staff and student numbers over time, and whether a series of Part 5 developments remain in compliance with existing conditions of consent that apply to the site.

It is suggested that the SEPP allow for consultation with the RMS (state road authority) or Council (local road authority) in relation to primary school proposals. For high school proposals it is suggested that Transport NSW be consulted to address public transport capacity considerations.

Access to Part 5 Provisions for Non-Government schools

For the first time in NSW, the draft SEPP proposes to permit registered non-government schools to carry out small scale development without development consent in accordance with Part 5 of the EP&A Act.

In order to facilitate this, it is proposed that the *Environmental Planning and Assessment Regulation 2000* be amended to prescribe non-government schools as 'public authorities' and 'determining authorities', which will enable private providers to utilise the Part 5 provisions of the EP&A Act to carry out development without consent. As part of the proposed changes, a draft *NSW Code of Practice for Part 5 activities: For registered non-government schools* has been prepared by the Department to ensure that environmental assessment for school developments is undertaken appropriately.

Comments

Distinction between Public and Private Interest

Council is of the strong view that there is a fundamental difference between the development motives of public and private schools, and their accountability to the local community. The pressure to develop and upgrade buildings and facilities in public schools is based primarily on its need to service its local catchment and meet the demand generated within the local community, with public schools obliged to accept any enrolment request within its catchment area.

In contrast, private schools often serve a much broader catchment, and operate on a commercial basis sometimes in competition with other private education providers. As a result, the incentive to undertake development activities is not necessarily associated with expanding the provision of core educational facilities. This has the potential to lead to unsympathetic development, with the potential for associated consequences on local heritage, the removal or pruning of significant trees and vegetation on site, and the cumulative impacts on local traffic and parking (as identified above).

Another key distinction between public and private schools relates to their governance structures, with a public school ultimately answerable to the Minister for Education, whereas a private school is answerable to a private board, or owner of the business. Given the broad powers and lack of restrictions that come with Part 5 development, the success or otherwise of this approval pathway relies on the ability of the public authority to assess and determine an application that is ultimately in the public interest.

A *Code of Practice for Part 5 Activities* has been developed to assist private schools in ensuring assessment is undertaken appropriately, however it does not provide any additional limitations or restrictions on development to ensure the private interests of these providers are in accordance with the public interest.

The access to Part 5 provisions for non-Government schools is not supported in its current form.

Removal of Bush Fire Prone Land and Heritage Limitations

The current Infrastructure SEPP restricts development on land that is bush fire prone or contains a heritage item to outdoor learning or play areas and associated awnings or canopies. The draft SEPP proposes to remove this restriction, allowing for a greater range of development types on sensitive sites.

Comments

Council does not support the removal of the provision, and recommends it be retained to ensure development that may affect the heritage significance of an item is appropriately assessed and protected. While Council has no objection to minor works that ensure a heritage item remains fit for purpose, it is considered that the current approval mechanisms are effective, and not overly onerous on public authorities. Further it should be considered that bushfire risks be given proper consideration.

Clause 32 - Existing Schools—Exempt Development

It is proposed to expand the range of Exempt Development provisions for schools to include: an awning or canopy that is more than 1 metre away from any property boundary; play equipment, provided the structure is more than 1.2m from any fence; sporting fields, including any courts used for sports, provided the development does not involve the clearing of more than 2 hectares of native vegetation; the use of existing facilities or buildings for the purposes of school-based child care for primary school students, or for community purposes; and certain types of demolition.

Comments

General Requirements for Exempt Development – Heritage Impact

Part 2 of the draft SEPP outlines a number of general requirements for Exempt Development that apply to all development categories, including schools. The general requirements have been brought across without amendment from the ISEPP. While this is the case, Council raises concern with the retention of clause 15(e), which permits development to be exempt under the draft SEPP provided the development affects the heritage significance of an item or area "no more than" minimally.

Given the subjective nature of what is "minimal" it is recommended that any development activity that is on land that contains a heritage item or is within a heritage conservation area should be excluded from the Exempt Development provisions and be subject to a merit assessment.

Setbacks to Adjacent Properties

It is noted that the current provision under the ISEPP permits awning or canopy structures as Exempt Development, provided the structure is more than 5 metres from any property boundary.

Council is concerned that the reduction of this setback to 1 metre has the potential to reduce the amenity to adjacent properties, particularly residential zones. Similarly, the proposal to allow play equipment provided that minimum 1.2 metre setback is provided is not considered to give adequate regard to the amenity impact to adjacent properties.

Council recommends that acoustic performance criteria be established to address amenity impacts on residential uses.

Sporting fields

Council considers that the proposal to allow the removal of up to 2 hectares of native vegetation as Exempt Development is excessive, and could result in the widespread clearing of valuable urban vegetation, without a proper assessment of the environmental impact. It is noted that similar Exempt Development provisions are proposed for universities and TAFEs (under clauses 42 and 49 respectively) which raise comparable issues.

To compound this issue, the draft SEPP proposes an exemption for schools, universities and TAFEs from complying with the general requirements of Exempt Development in relation to Clause 15 (3) (g), which requires that Exempt Development must not involve the removal or pruning of a tree or other vegetation that requires a permit or development consent. This includes an exemption from the requirement that a development consent would be required for the removal of native vegetation under the *Native Vegetation Act 2003*.

Randwick City adopted a comprehensive Register of Significant Trees in 2007. The purpose of this document is to identify and recognise the special importance of

particularly significant trees in the landscape, to guide their management and to ensure their protection for future generations.

All trees listed on Council's Register of Significant Trees are considered to have historic, cultural and natural significance which have been determined based on the criteria developed for the Register of the National Estate, in accordance with the Burra Charter

Under the DCP development consent is required for tree works to any tree listed on Council's Register of Significant Trees, to ensure the appropriate preservation and maintenance of trees or vegetation with aesthetic, environmental and cultural values. Ten schools within the Randwick LGA (including government, religious and non-government organisations) contain significant trees, with a total of 70 trees in the LGA being located on school property. Of these schools some individual schools contain up to 24 listed trees. These provide much needed shade within school grounds to mitigate the 'heat island' effect created by hard surfaces.

Council recommends that the proposed development type be removed in its entirety, as the potential environmental impact is not appropriate for the Exempt Development pathway.

Clause 33 -Existing Schools—Complying Development

The proposed expansion of Complying Development provisions will enable schools to construct additional facilities within school grounds to respond to increased student numbers, including the construction of, or alterations or additions to a range of typical education developments such as: libraries, administration buildings or office premises; gyms, indoor sporting facilities or halls; classrooms, lecture theatres, laboratories, trade or training facilities; and the demolition of buildings up to a footprint of 250m².

Schedule 2 of the draft SEPP lists the proposed development controls for school based complying development. These include setback provisions requiring a minimum 5m setback from any side or rear boundary of land adjoining a residential zone for buildings with a height up to 12m, 8m for buildings with a height up to 15m, and 10m for buildings of a height up to 22m (the maximum allowed); solar access provisions requiring a minimum of 3 hours to any habitable room or principal private open space to an adjoining residential property between 9am and 3pm; and a requirement that a minimum of 3m of landscaping be provided for a new building constructed adjacent to the boundary of land in a residential zone.

Comments

Community Consultation

Council has consistently argued that issuing a notice of intent to carry out works as complying development is an inadequate substitute for a merit based assessment by a consent authority.

While Council supports the Department's objective to increase the capacity and amenity of public schools, it is considered that given the bulk and scale proposed to be permitted under the SEPP (up to 4 storeys and 22m height), a code assessment is an insufficient framework to assess the likely environmental impact that could result with these types of developments.

Council recommends that developments of greater than 2 storeys should require a development application and be assessed by Council.

Clause 36 - State Significant Development for the Purpose of Schools

As a result of the introduction of the draft SEPP, it is proposed that *State Environmental Planning Policy (State and Regional Development)* 2011 be amended so all new schools,

as well as existing schools proposing new development with a capital investment value (CIV) in excess of \$20 million, will be classified as state significant development (SSD).

Further, under the draft SEPP new schools will be permissible in most zones, and under Clause 36 any development standards applicable to that zone would not need to be complied with.

Comments

Council does not support the proposal to make all new schools state significant development, as this will place an unreasonable burden on smaller schools due to the greater level of complexity required in meeting the assessment requirements of SSD. These requirements, which include the preparation of an environmental impact assessment, are considered to be an overly complex and onerous process for what, in many cases, may be a small school with minor environmental impact (such as the Joseph Varga School in Randwick which has 40 students).

Should this proposal proceed into the final SEPP, it is recommended that a minimum cap be applied based on the number of students the proposed school will serve, to address the issue of small school developments being classified as state significant development.

Part 5 – Universities

Clause 40- Universities – Development Permitted Without Consent

Application of Development Standards

The proposed provisions are similar to those that have been prepared for school based development, however there are additional development standards that limit the scale and intensity of development on a university site. These standards include a requirement that the development comply with any LEP requirements for maximum floor space ratio and maximum gross floor area; and that – in the case of an alteration or addition to a building – that the development does not extend the gross floor area of an existing building by more than 50%, and does not result in the building having a gross floor area of more than 2,000m².

Comments

Council supports the proposed development standards, and would support the development of similar standards for school based development undertaken through a Part 5 approval process.

Clause 50 - Existing Universities – Complying Development

Heritage

The draft SEPP includes provisions restricting Complying Development on land that contains a draft heritage item, or is within a heritage conservation area or a draft heritage conservation area. It does not, however, restrict development on land that contains a heritage item.

Comments

It is recommended that Clause 43 (1) (a) be amended to insert the words "heritage item" to address the apparent omission.

As a general comment, it is also noted that LEP heritage item mapping generally applies to the entire site, rather than to a particular building on the site. To avoid confusion, proposals on land containing a heritage item should be subject to a DA, requiring the

submission of a heritage impact statement to enable a merit assessment on the likely impact of the proposed development.
