

## Submission on the draft SEPP (Educational Establishments and Child Care Facilities) 2017

The NSW Government has released a draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (“the draft SEPP”) and a suite of documents for public consultation (“the SEPP package”).

Council’s submission has been divided into various parts of the SEPP package as they apply to Georges River Council. These include:

- Part 2 General
- Part 3 Early childhood education and care facilities – specific development controls
- Part 4 Schools – specific development controls
- Part 5 Universities – specific development controls
- Schedule 2 – Complying development
- Draft Child Care Planning Guidelines
- Draft Regulations

Each of the issues under the headings includes a suggested recommendation for consideration in reviewing the draft SEPP (Educational Establishments and Child Care Facilities) 2017. **Table 1** below provides a summary of the suggested recommendations being presented by Council.

**Table 1: Summary of Recommendations**

Issue		Recommendation
<b>Part 2 General</b>		
1	Division 1 - Clauses 8-12 relating to consultation and notification	<p>(a) <i>The SEPP be amended to include a mandatory requirement for public authorities (DoE or RNS) to consult with councils regarding the potential impact of development without consent in respect of issues such as building height, bulk, scale and privacy, and particularly issues which can only be determined by merit assessment, such as the impacts on view sharing and desired future character.</i></p> <p>(b) <i>The draft SEPP be amended to clarify the wording of subclause 12 (1) (c) in relation to the term “public authorities” to avoid confusion and ambiguity in interpretation of the clause.</i></p>
<b>Part 3 Early childhood education and care facilities – specific development controls</b>		
2	Clause 21 Centre-based child care— matters for	(c) <i>Adopt a ‘pre-approval’ process where a plan is considered and assessed by the DP&amp;E prior to the lodgement of a development application. The DoE</i>

Issue		Recommendation
	consideration by consent authorities	<p><i>should assess all the standard based requirements of centres (e.g. play space, supervision, location of offices and the like) and Councils should only assess issues such as parking, streetscape, impacts and the like.</i></p> <p><i>(d) When a Design Statement is submitted by a registered architect with recognised qualification; the architect should be held accountable for the compliance with the numerical/internal design standards, rather than Council.</i></p> <p><i>(e) The SEPP be amended to provide clarity in relation to the consideration of the Part 3 of the Child Care Planning Guideline (mandatory or optional) which deals with matters like siting the development, amenity, configuration and environment</i></p>
3	Clause 22 Centre-based child care in Zone IN1 or IN2—additional matters for consideration by consent authorities	<i>(f) The draft SEPP be amended to not mandate child care centres within the industrial zones due to potential amenity impacts on children including noise, traffic and pollution.</i>
4.	Clause 24 Centre-based child care—development control plans	<i>(g) Where the draft SEPP does not replace important DCP provisions, such as plans of management, and hours of operation, it should be supplemented with requirements that replicate key DCP controls that are specific to particular areas and would be otherwise be lost. Otherwise, the final SEPP should be amended to leave the DCP controls in place.</i>
<b>Part 4 Schools – specific development controls</b>		
5.	Clause 30 Schools – development permitted without consent	<i>(h) The draft SEPP be amended to remove the reference to an increase in student and staff numbers in subclause 30(2) (b) as development without consent due to significant traffic and amenity impacts, specifically in relation to larger schools.</i>
6.	Clause 35 Complying development certificates-additional conditions	<p><i>(i) That ‘lopping’ should be changed to pruning</i></p> <p><i>(j) Any proposed removal or pruning of tree is to be in accordance with AS4373-2007 Pruning of amenity trees</i></p>
<b>Part 5 Universities – specific development controls</b>		

Issue		Recommendation
7.	Clause 42 Existing universities – exempt development	<p>(k) That 'lopping' should be changed to pruning</p> <p>(l) That an appropriately qualified arborist should be an AQF Level 5 Arborist</p> <p>(m) Changes be inserted to the effect of 'diverting infrastructure to retain a tree' in place of 'damage to infrastructure'.</p> <p>(n) It is recommended that NSW Government creates / adopts a document similar to Kidsafe Guide: Plants for Play spaces.</p>
<b>Schedule 2 – Complying development</b>		
8	Clause 2 – Building Height	(o) It is recommended that a maximum building height of 12m be maintained for complying development for schools, as is currently permitted by the Infrastructure SEPP.
9	Flood control lots	(p) It is recommended to include a subclause in Schedule 2 clause 12(1) with wording to specify that the clause applies "to all development that is carried out on a lot within a Flood Planning Area of a relevant LEP". This will enable the consideration of the controls of clause 12 to school sites in the SP2 Infrastructure zone.
<b>Draft Child Care Planning Guidelines</b>		
10.	Outdoor Environment	(q) It is recommended that there should be a minimum specified requirement in terms of a percentage of UV rating of compliance from a manufacturer/supplier for shade sails for childcare centres i.e. especially for shade sails covering sandpits to have more than 95% UV protection.
11	Front Fencing	(r) It is recommended that a consistent distance be adopted between pickets as per play items i.e. fencing on play structures AS 4685 SET: 2014 Playground equipment i.e. 89mm.
12	Emergency and evacuation	(s) It is recommended that there should be mandatory evacuation strategies in case of the subject site in high flood risk areas.
<b>Draft Regulations</b>		
13.	Verification	(t) It is recommended to establish an independent third

Issue		Recommendation
	Statement - Height	<i>party certification or registration system for practitioners who would be permitted to either prepare independently assessed design verification statements, or confirm the accuracy of design verification statements prepared by designers.</i>
14	Non-government schools as public authorities	<i>(u) It is recommended that the draft SEPP be amended to remove this clause.</i>

## **Part 2 General**

### **1. Division 1 - Clauses 8-12 relating to consultation and notification**

The abovementioned clauses propose to require consultation with councils and other public authorities for development without consent carried out by or on behalf of public authorities. In the case of consultation with councils, this only relates to development which may impact on council-related infrastructure or services (namely stormwater, traffic, pedestrian, sewerage, water supply and excavation management) or development which relates to local heritage items and heritage conservation areas.

While Council supports consultation between public authorities and councils, the consultation required by these clauses is not mandatory.

Additionally, the term ‘public authorities’ is used to describe both the proposed developer of education facilities and child care facilities, such as a registered non-government school (“RNS”) or the Department of Education (“DoE”), as well as the governing bodies or agencies for particular types of development, such as the Office of Environment and Heritage (OEH) or Roads and Maritime Services (RMS). For example, sub clause 12 Exceptions states:

*(1) Clauses 8–11 do not apply with respect to development to the extent that:...*

*(c) they would require notice to be given to a council or public authority that is carrying out the development or on whose behalf it is being carried out...*

In this sub clause, it is unclear under which circumstances notice is required to be given and to whom and which public authority is carrying out development and for whom.

### ***Recommendations***

***(a) The SEPP be amended to include a mandatory requirement for public authorities (DoE or RNS) to consult with councils regarding the potential impact of development without consent in respect of issues such as building height, bulk, scale and privacy, and particularly issues which can only be determined by merit assessment, such as the impacts on view sharing and desired future character.***

***(b) The draft SEPP be amended to clarify the wording of subclause 12 (1) (c) in relation to the term “public authorities” to avoid confusion and ambiguity in interpretation of the clause.***

## **Part 3 Early childhood education and care facilities – specific development controls**

### **2. 21 Centre-based child care—matters for consideration by consent authorities**

The SEPP requires Councils to make an assessment against part 2 of the Child Care Centre Planning Guidelines. This is onerous for Council assessment officers to undertake and is contrary to the NSW Department of Planning Environment (DP&E) aims to reduce red tape and DA times.

With respect to clause 21 (b), the draft SEPP states that consent authorities ‘may’ take into consideration part 3 of the Child Care Planning Guidelines. This contradicts Clause 23 (e) design which states *that the development satisfies the design criteria in the Child Care Planning Guideline is a non-discretionary development standard.*

#### **Recommendations**

***(c) Adopt a ‘pre-approval’ process where a plan is considered and assessed by the DP&E prior to the lodgement of a development application. The DoE should assess all the standard based requirements of centres (e.g. play space, supervision, location of offices and the like) and Councils should only assess issues such as parking, streetscape, impacts and the like.***

***(d) When a Design Statement is submitted by a registered architect with recognised qualification; the architect should be held accountable for the compliance with the numerical/internal design standards, rather than Council.***

***(e) The SEPP be amended to provide clarity in relation to the consideration of the Part 3 of the Child Care Planning Guideline (mandatory or optional) which deals with matters like siting the development, amenity, configuration and environment***

### **3. Clause 22 Centre-based child care in Zone IN1 or IN2—additional matters for consideration by consent authorities**

Mandating childcare in the IN2 zone when it is known that sex services are permissible with consent in the industrial areas within the Council is unacceptable. The clause is worded so that only existing incompatible uses are considered and not the future proposals. It is unclear whether Council should refuse a DA for an industry due to the presence of a Child Care Centre nearby.

In such circumstance, there is no guidance of the location of the industry; given that it is a critical urban service to be provided for.

Mandating childcare in the IN2 zone raises two major concerns:

- It increases the propensity for land use conflicts - Adjoining industrial uses and associated pollution, noise and truck movements could have significant detrimental impacts upon the amenity and health of children attending proposed new facilities
- It could result in further loss or fragmentation of industrial lands

Council objects to mandating child care centres in IN2 zones because of the potential impacts on children's health and the risk it poses for loss of industrial land.

### ***Recommendation***

***(f) The draft SEPP be amended to not mandate child care centres within the industrial zones due to potential amenity impacts on children including noise, traffic and pollution.***

## **4. Clause 24 Centre-based child care—development control plans**

This clause relates to matters listed below:

- (a) glazed areas,
- b) operational or management plans or arrangements (including hours of operation),
- (c) demonstrated need or demand for child care services,
- (d) proximity of facility to other early childhood education and care facilities,
- (e) fencing,
- (f) laundry and hygiene facilities,
- g) indoor space requirements,
- (h) outdoor space requirements (including natural environment and shade),
- (i) toilet and hygiene facilities,
- (j) ventilation and natural light,
- (k) administrative space, (l) nappy change facilities,
- (m) any matter provided for in the Child Care Planning Guideline,
- (n) any other matter relating to development for the purpose of centre-based child care for which provision is made by or under the Children (Education and Care Services) National Law (NSW) or the Children (Education and Care Services) Supplementary Provisions Act 2011.

This clause aims to replace DCP planning objectives and controls for childcare and education. This will reduce Councils' ability to implement DCP controls that are specific to particular areas and help in assessing the merits and needs for individual proposals. This could result in poor development outcomes which do not best serve the community. On the other hand, it is noted that the Child Care Guidelines rely on DCP standards for building heights, setbacks and parking.

### **Recommendation**

***(g) Where the draft SEPP does not replace important DCP provisions, such as plans of management, and hours of operation, it should be supplemented with requirements that replicate key DCP controls that are specific to particular areas and would be otherwise be lost. Otherwise, the final SEPP should be amended to leave the DCP controls in place.***

## **Part 4 Schools – specific development controls**

### **5. Clause 30 Schools – development permitted without consent**

This clause will permit development without consent on existing school sites to include an increase of students and staff numbers by up to 10% “compared with the average of each of those numbers for the 12-month period immediately before the commencement of the development”.

This issue of 10% increase in student and staff numbers for larger schools will have an impact on traffic generation and pressure on parking.

In the instances where the schools are located in residential precincts, with narrow streets, a lack of on-street parking and poor public transport services, there can be significant impact on residential amenity and road infrastructure. These impacts need to be assessed by an independent authority with community input. The development without consent process in this clause does not allow this rigorous process. No master planning will be required for individual sites or precincts to determine the long term needs and cumulative impacts.

### **Recommendation**

***(h) The draft SEPP be amended to remove the reference to an increase in student and staff numbers in subclause 30(2) (b) as development without consent due to significant traffic and amenity impacts, specifically in relation to larger schools.***

### **6. Clause 35 Complying development certificates- additional conditions**

This clause proposes to introduce the removal or lopping of vegetation as complying development, subject to it being carried out in accordance with AS 4970-2009 Protection of trees on development sites



Removal of trees as complying development may result in reduced amenity and undermines Council's ability to tailor controls to balance development with community expectations.

### ***Recommendations***

***(i) That 'lopping' should be changed to pruning***

***(j) Any proposed removal or pruning of tree is to be in accordance with AS4373-2007 Pruning of amenity trees***

## **Part 5 Universities – specific development controls**

### **7. Clause 42 Existing universities – exempt development**

This clause proposes to permit the removal or lopping of trees that poses a risk to human health or safety or of damage to infrastructure as exempt development subject to assessment by an appropriately qualified arborist.

Removal of vegetation as exempt development may result in reduced amenity and undermines Council's ability to tailor controls to balance development with community expectations.

It is noted that in terms of trees/ landscape, there is no guide/list or discussion given in the draft SEPP appendices about suitable types of trees and plant species that could be used in Childcare or Educational Establishments.

### ***Recommendations***

***(k) That 'lopping' should be changed to pruning***

***(l) That an appropriately qualified arborist should be an AQF Level 5 Arborist***

***(m) Changes be inserted to the effect of 'diverting infrastructure to retain a tree' in place of 'damage to infrastructure'.***

***(n) It is recommended that NSW Government creates / adopts a document similar to Kidsafe Guide: Plants for Play spaces.***

## **Schedule 2 – Complying development**

### **8. Building height**

Clause 2 – Building Height of the draft SEPP proposes to permit building height for schools to a maximum of 4 storeys or 22m from ground level with a sliding scale of setback as complying development. The Infrastructure SEPP currently sets the maximum school building height to 12m.

Allowing building heights of 4 storeys /22 metres as complying development under the draft SEPP is of significant concern as schools are quite often located within low density residential neighbourhoods and this proposed height is generally inconsistent with the adjoining low density development (which is generally 8.5m/9m).

This height will compromise local amenity in low density residential areas and ensuring an acceptable interface between the school and adjoining properties will become impossible under the draft SEPP.

### ***Recommendation***

***(o) It is recommended that a maximum building height of 12m be maintained for complying development for schools, as is currently permitted by the Infrastructure SEPP.***

## **9. Flood control lots**

The draft SEPP includes the following definition of flood control lot:

“flood control lot means a lot to which flood related development controls apply in respect of development for the purposes of industrial buildings, commercial premises, dwelling houses, dual occupancies, multi dwelling housing or residential flat buildings (other than development for the purposes of group homes or seniors housing).”

This definition does not apply to land zoned SP2 Infrastructure in the former Kogarah and Hurstville LEPs. Consequently, no consideration of the controls of Clause 12 will apply for complying development for schools and school-based child-care on existing school sites zoned SP2 Infrastructure.

### ***Recommendation***

**(p) It is recommended to include a subclause in Schedule 2 clause 12(1) with wording to specify that the clause applies “to all development that is carried out on a lot within a Flood Planning Area of a relevant LEP”. This will enable the consideration of the controls of clause 12 to school sites in the SP2 Infrastructure zone.**

## **Draft Child Care Planning Guidelines:**

## **10. Outdoor Environment**

Outdoor play areas should provide shade in the form of trees or physical shade structures that provide protection from ultraviolet radiation to at least 30 per cent of the outdoor play area:

### **Recommendation**

- (q) That the GSC advocate on behalf of Councils to the relevant State Government authorities to promote the greening of streets, particularly where they have been identified as linking to major corridors.***

## **11. Front Fencing**

The draft Guidelines propose the following:

*Fencing is required around outdoor spaces used by children. This fencing must be designed to prevent children preschool aged or under; from being able to go over, under or through the fence into areas external to the outdoor play space.*

*.....*

*The fencing should have no gaps between pickets greater than 100mm.*

### **Recommendation**

- (r) It is recommended that a consistent distance be adopted between pickets as per play items i.e. fencing on play structures AS 4685 SET: 2014 Playground equipment i.e. 89mm.***

## **12. Emergency and evacuation**

### **Recommendation**

- (s) It is recommended that there should be mandatory evacuation strategies in case of the subject site in high flood risk areas.***

## **Draft Regulations**

### **13. Verification Statement - Height**

Clause 129AA of the draft Regulation states a certifying authority must not issue a complying development certificate for school developments 12m in height or greater, unless they have been provided with a written statement a qualified designer (a person registered as an architect in accordance with the *Architects Act 2003*), verifying that the design quality principles in the Draft SEPP have been achieved.

Concern is raised that these written statements (design verification statements) will not provide a rigorous assessment of the design quality principles and will not be independently prepared and assessed.

### **Recommendation**

- (t) It is recommended to establish an independent third party certification or registration system for practitioners who would be permitted to either prepare independently assessed design verification statements, or confirm the accuracy of design verification statements prepared by designers***

#### **14. Non-government schools as public authorities**

Under the draft Regulations, registered non-government schools (RNS) will also be able to expand and upgrade school facilities using similar planning provisions as public authorities, using the same self-assessment process as government schools may currently do.

Council does not support this clause as the clause will permit RNSs to propose, approve, and carry out certain works without development consent on existing school sites. This assessment process for development without consent will not be independent. The auditing mechanism to ensure that the RNSs are held accountable for the accuracy will only be independent if it is undertaken by the DoE or another independent authority.

#### ***Recommendation***

- (u) It is recommended that the draft SEPP be amended to remove this clause.***