

[REDACTED]

From:

Sent:

Monday, 30 November 2020 2:46 PM

To:

DPE PS Education SEPP Mailbox

Cc:

DPE PS ePlanning Exhibitions Mailbox

Subject:

Webform submission from: Review of the Education SEPP 2017

Submitted on Mon, 30/11/2020 - 14:45

Submitted by: Anonymous

Submitted values are:

Submission Type

I am making a personal submission

Name

[REDACTED]

[REDACTED]

I would like my submission to remain confidential

Yes

Info

[REDACTED]

Suburb/Town & Postcode

[REDACTED]

Submission

Whilst i commend the department on trying to make changes, it has'nt gone far enough to limit the scale of Child Care Centres, each week there is a new Land Environment Court Case regarding a Child Care Centre, the following should also be adopted:

- Floor Space Ratio limit for Childcare Centres in R2 zones that is consistent with complying development code for dwellings.
- maximum height of acoustic fence requirement for all boundaries (excluding corner sites), acoustic fences can often be 3m high to adjoining properties as developers work out the children numbers based on how many car spots they can accommodate and are reluctant to reduce there numbers resulting in going to the LEC over a fence!,
- maximum cap of children per site area should be imposed which is similar to complying development FSR for dwellings and would help reduce the scale.
- Referring to the local character and place guideline will do absolutely nothing to limit scale, why not be consistent with what you can actually build in a R2 zone?

Thank you

[REDACTED]

I agree to the above statement

Yes

From: [REDACTED]
To: [DPE PS Education SEPP Mailbox](#)
Cc: [REDACTED]
Subject: Webform submission from: Review of the Education SEPP 2017
Date: Monday, 30 November 2020 2:58:37 PM

Submitted on Mon, 30/11/2020 - 14:55

Submitted by: Anonymous

Submitted values are:

Submission Type

I am making a personal submission

Name

[REDACTED]

[REDACTED]

I would like my submission to remain confidential

Yes

Info

[REDACTED]

[REDACTED]

Submission

I just wanted to clarify my submission i submitted was with regard to improvements for Child Care Centres, and these are my sugges ions:

- There should be FSR controls consistent with the complying development sepp in r2 zones,
- That there should be cap limit on children numbers based on site area, similar to complying development scale controls,
- There should be acoustic fence height controls to stop 3m high fences,
- That the 200m radius should include to approved development,

I agree to the above statement

Yes

[Redacted]

From: [Redacted]
Sent: Tuesday, 1 December 2020 2:43 PM
To: DPE PS Education SEPP Mailbox
Cc: [Redacted]
Subject: Webform submission from: Review of the Education SEPP 2017

Submitted on Tue, 01/12/2020 - 14:42

Submitted by: Anonymous

Submitted values are:

Submission Type
I am submitting on behalf of my organisation

Name

[Redacted]
[Redacted]

I would like my submission to remain confidential
Yes

Info

Email
[Redacted]
[Redacted]

Submission
Hi there,

Question in regards to the proposed amendment to 'restricting child care centres within close proximity of each other in low density zones.'

If an approved childcare centre is placed adjacent to land zoned SP2 educational prior to the approval of a school, can the proposed school still be pre school – 12?

Kind regards,

[Redacted]

I agree to the above statement
Yes

[Redacted]

From:

[Redacted]

Sent:

Monday, 14 December 2020 6:04 PM

To:

DPE PS Education SEPP Mailbox

Cc:

[Redacted]

Subject:

Webform submission from: Review of the Education SEPP 2017

Submitted on Mon, 14/12/2020 - 18:03

Submitted by: Anonymous

Submitted values are:

Submission Type

I am making a personal submission

Name

[Redacted]
[Redacted]

I would like my submission to remain confidential

Yes

Info

Email

[Redacted]
[Redacted]

Submission

To whom it may concern,

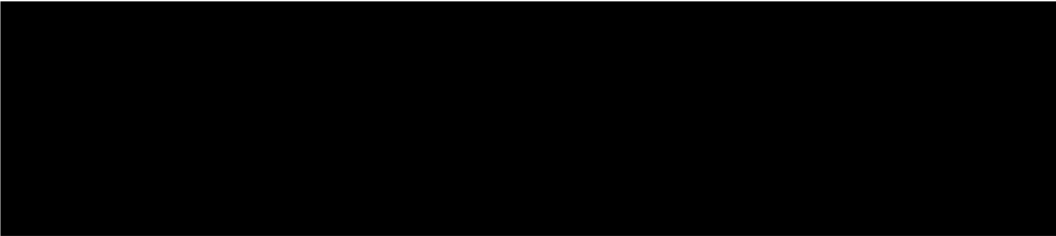
This is feedback regarding the proposed amendments to SEPP for Childcare for low-density areas suggesting a minimum separation distance of 200m between center based child care centers

The suggestion of a global '200m' minimum separation distance across all (R2) areas of NSW where there are material differences in supply and demand is not in the best interest of the public community nor the consumer. As an example, it would not be reasonable to apply the 200m separation rule to Regional NSW as it would to Metro NSW where there are material differences in supply and demand. A considered case by case study (evidenced with an independent consultant's study) is more appropriate for areas where there is current council concerns.

Furthermore, with the spirit of this proposed change aimed at the council's concerns of noise and traffic, a more suitable measure to address these concerns would be with appropriate design requirements supported by Acoustics and Traffic studies taking into account site specifics, rather than a global distance of separation.

Finally, this proposed global minimum distance as it stands, without an evidence-based scientific independent study by professionals detracts from the existing collaboration between councils, expert consultants, and key professional opinions such as Architects and Town planners when shaping our future communities.


I agree to the above statement
Yes



Memorandum


Date: 15 December 2020

To: Director Infrastructure Policy and Assessment Practice, NSW Department of Planning, Industry and Environment

From: 

Subject: Review of the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017

We refer to the review of the *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (ESEPP)* that is being conducted by the NSW Department of Planning, Industry and Environment (DPIE). In particular, we refer to the invitation to stakeholders to provide feedback by 17 December 2020 on proposed amendments to the ESEPP which were published on the NSW Planning Portal on 20 November 2020 and are aimed at *“improving the operation, efficiency and usability of the SEPP and supporting documents”*.


 provide legal services and project management services respectively to a number of non-government schools in NSW. A number of the schools that we assist have, or are proposing to, either build new schools (or school campuses) and/or develop additional or replacement infrastructure within existing schools in reliance on one or more of the approvals pathways provided under the ESEPP.

Given the work that we do for schools, we have a particular interest in seeing that the provisions of the ESEPP are unambiguous and achieve their intended purpose by enabling schools to provide new and improved facilities in an efficient and cost-effective manner. With that in mind, we welcome the opportunity to provide feedback on the review of the ESEPP to ensure that the SEPP is fit for purpose and continues to facilitate the best possible outcomes for schools as they face increased demand on their infrastructure over the next ten years.

1 Supported proposed amendments

The amendments that the DPIE proposes to the ESEPP, along with its supporting documents, are detailed in an Explanation of Intended Effects (EIE).

The EIE states that the amendments are proposed to *“focus on resolving operational issues, clarifying provisions and other housekeeping amendments to clarify the policy intention”* in order to *“modernise, simplify and improve the effectiveness and usability of the SEPP”*. DPIE’s proposals are set out in Table 1 to the EIE. We note that the EIE states that the proposed changes are provisional, subject to legal review, and the outcome of consultation.

 support a number of proposals contained in the EIE, including in particular the proposals relating to:

- (a) **The change in the one-storey limit for DWC** – We support the proposal to increase the current one-storey limit that applies to certain developments under cl 36(1)(a) of the ESEPP to two-storeys. However we note that the EIE refers to an “overall maximum” two-storey facility, which suggests that a school could not construct multiple individual and separate developments (eg a library, with permanent

classrooms on top of it) as development permitted without consent (**DWC**) if those separate components would in total exceed two storeys, even if each development comes within the two storey limit. This restriction (which is not included in the current ESEPP) is unnecessary, particularly given that the impacts of each single development are assessed under the process in Part 5 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* (and in accordance with the Environmental Assessment Code of Practice ‘*NSW Code of Practice for Part 5 activities – for registered non-government schools*’ (**Code**)) whereby the determining authority has a duty to “examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity”, including in relation to height, bulk and scale and related impacts on amenity. If development is likely to have a significant impact on the environment (and therefore require an environmental impact statement) it will no longer be able to be self-approved by a school under the Code, but would rather require approval from the Minister as State Significant Infrastructure. Furthermore, development may only be DWC if it complies with the requirements in clause 36(2) relating to student/ staff numbers and vehicular access points, and must also comply with the most recent conditions of the most recent relevant development consents applying to any part of the school (cl 36(3)). Therefore given these existing statutory protections and constraints to ensure that development is suitable from an impacts perspective, we think that the two-storey requirement should apply to each type of development permitted under clause 36 rather than the total building size;

- (b) **The combined investment value (CIV) thresholds** – [REDACTED] generally support the proposals to amend cl 15 of Schedule 1 to the *State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)*, however we have the following additional suggestions for how the proposed reforms could be improved:
- (i) Whilst we support the introduction of a CIV threshold for new schools to be classified as State significant development (**SSD**), in our view the relevant CIV threshold should be consistent with the proposal for alterations or additions to existing schools, which is \$50 million; and
 - (ii) The new SSD thresholds should be accompanied by appropriate transitional arrangements (as noted on page 14 of the EIE) so that they will not apply to Development Applications which have been lodged, but not yet determined at the time of the amendments coming into force. For those schools that have already obtained the Secretary’s Environmental Assessment Requirements but have yet to lodge an Environmental Impact Statement for their projects at that time, the applicability of the amended provisions should be optional.
- (c) **Property boundaries** – we support the proposal to change the references to “property boundary” that appear throughout the ESEPP to make it clear that these provisions are not intended to refer to the boundaries of an allotment that comprises only part of a school. Currently the internal setback requirements are a common barrier to the availability of non-DA pathways so this proposal will be of great benefit to schools;
- (d) **Student accommodation** – we also support the proposal to delete cl 34 and amend cl 35 of the ESEPP to allow student housing to be carried out as development permitted with consent within the boundaries of existing schools, as well as provide that stand-alone student housing development applications within the boundaries of existing educational establishments are not SSD, irrespective of their CIV; and

- (e) **Short-term portable classrooms** – we strongly support an increase in the time within which existing schools might use short-term portable classrooms as exempt development (**ED**) under cl 38(1)(l) of the ESEPP from 24 to 48 months as this will provide schools with far greater flexibility to meet increasing student demand whilst more permanent learning solutions are developed.

1.2 **Proposed amendments not supported**

There are a number of proposals set out in the EIE which [REDACTED] do not support as in their current form they are likely to result in greater complexity and less clarity and certainty for proponents, and therefore would be inconsistent with the objectives of the reforms. The proposed reforms relate to:

- (a) **Proximity of child care centres in low density residential zones** – the proposal to introduce minimum separation distances between child care centres within Low Density Residential zones – R2 through amendment to cl 25(2)(a) of the ESEPP is not supported. Centre-based child care centres within (or adjacent to) existing schools provide significant benefits for communities and families through the co-location of siblings across different age groups and levels of education, and for schools they provide valuable synergies through being able to extend educational offerings to younger age groups. If any minimum separation distance is to be introduced, it should not apply to centre-based child care facilities associated with existing schools;
- (b) **The 10% student cap (development permitted without consent)** – We support an amendment to clause 36 to allow for development equivalent to 30 students or 10% of the existing student or staff numbers, whichever is the greater in the previous 12 months, to be carried out as DWC (subject to complying with the remainder of the clause). However we consider that in circumstances where the student or staff population of a school is limited by a condition of a development consent, cl 36(2)(b) and cl 36(3) should not operate to prevent the school from increasing its student and staff population to that limit or by 30 students/staff or 10% of the existing student or staff numbers, whichever is the greater. Currently many independent schools in NSW are subject to student and staff caps, many of which are historical in nature and therefore often do not reflect the current demand for educational facilities in an area. In accordance with the DPIE's Planning Circular PS 17-004 dated 20 September 2017, student caps are discouraged and consent authorities are required to consider ways in which to avoid unnecessarily restricting student growth over time. At the very least, a school should not be prevented from increasing its student and staff population to the limit that has already been applied under a development consent. Provided a specific development does not increase student or staff numbers over 10% of existing numbers or 30 students/staff (whichever is the higher), the impacts of the development would not be materially greater than the existing approved school, and therefore should also be permitted under the DWC pathway irrespective of any existing student/staff caps in an applicable development consent; and
- (c) **The consideration of “relevant” conditions of consent for DWC and complying development (CD)** – Currently cll 36(3) and 39(4) of the ESEPP provide that the categories of development set out in those provisions that may be carried out within the boundaries of an existing school as DWC and CD cannot be carried out “in contravention of any existing condition of the most recent development consent (other than a complying development certificate) that applies to any part of the school, relate to [a range of subject matters]”. The references to “the most recent” development consent are clear and should not be replaced by the words “the most relevant” development consent, which would serve to obscure and confuse, rather than clarify the meaning of those provisions.

2 Additional areas for reform

Aside from the proposals for reform set out in the EIE, we recommend the following matters be incorporated in the review of the ESEPP to further improve the effectiveness of the planning instrument in facilitating the delivery of unambiguous, cost efficient planning outcomes for schools.

2.1 Clause 19(4) of the ESEPP

Clause 19(4) provides that if development falls within clause 15(2) of Schedule 1 to the SRD SEPP, and is therefore declared as SSD, it is not complying development under the ESEPP. Under clause 15(2) of the ESEPP, development that has a CIV of more than \$20 million for the purpose of alterations or additions to an existing school is declared to be SSD.

As a result of clause 19(4) of the ESEPP, clause 9 of the SRD SEPP does not apply to a school development that exceeds the \$20M threshold contained in clause 15(2) of Sch 1 of the SRD SEPP. Clause 9 of the SRD SEPP provides:

9 Exclusion of certain complying development

If, but for this clause—

(a) particular development would be State significant development, and

(b) a provision of an environmental planning instrument (whether made before or after this Policy takes effect) provides that the particular development is complying development, and

(c) the particular development is not carried out as part of other development that is State significant development,

the particular development is not State significant development.

In our view, the non-applicability of clause 9 of the SRD SEPP to school development that would otherwise be complying development under the ESEPP is unwarranted and in many cases, is preventing the efficient and cost-effective delivery of essential school developments. Relevantly, we note that the limitation contained in clause 19(4) of the ESEPP was not included in the predecessor to the ESEPP, being the *State Environmental Planning Policy (Infrastructure) 2007 (NSW) (ISEPP)*. Under the ISEPP, we are aware of numerous developments that were carried out within schools as complying development that exceeded \$20M. By way of example, recent large-scale examples carried out as complying development include the [REDACTED]

[REDACTED] These projects each cost in the vicinity of \$50M, which we note is the increased CIV proposed in the EIE. Relevantly, neither school is aware of any objections from neighbours when it notified them about the developments.

In our opinion, projects such as the [REDACTED] demonstrate that larger school developments (ie including projects in excess of \$50M) can be undertaken as complying development with acceptable environmental impacts, even though they are not subject to the development consent process (local or state). The ability to carry out these developments as complying development enabled each of the schools to deliver the projects much faster than if they were required to go through the development consent process, and thereby provide valuable facilities to the students to enhance their learning opportunities. Furthermore, development that can be undertaken without a development application has the added benefit of reducing the load on local councils.

We are of the view that there is a strong case for the current clause 19 of the ESEPP to be amended, particularly given the current need for development, jobs and economic stimulus in NSW during the COVID-19 pandemic. Specifically we propose that clause 19(4) of the ESEPP be repealed so that clause 9 of the SRD SEPP applies to development within schools that is complying development under the ESEPP. The effect of this would be that if a particular development falls within a category of complying development under clause 39 of the ESEPP, such as a library or a pool, it will not be prohibited from

being assessed as complying development simply because it is over \$20M (or \$50M, if the CIV threshold is increased as proposed under the EIE).

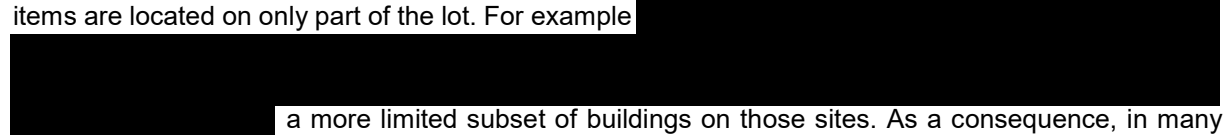
We also note that this amendment would ensure that schools are treated equally to other educational establishments (ie universities and TAFE establishments) who are currently not subject to a similar provision in the ESEPP preventing complying development in the event that the development exceeds the relevant SSD threshold.

2.2 Impacts of complying development on heritage values

Clause 19 of the ESEPP contains a number of general requirements for CD under the ESEPP, including incorporating the general requirements for CD that are set out in cl 1.17A of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP)*.

Under cl 1.17A of the Codes SEPP, complying development for the purposes of any environmental planning instrument must not be carried out on land that is identified as an item of state or local environmental heritage, or on which is located an item that is so identified: cl 1.17(1)(d). However, if items of state or local heritage significance are located on only part of the land sought to be developed, then CD may still be carried out on the remainder of the land: cll 1.17(3) and (4).

In many cases heritage items (in particular items of local heritage significance identified in a Local Environmental Plan (**LEP**)) refer to, and are mapped as, an entire lot in circumstances where those items are located on only part of the lot. For example

 a more limited subset of buildings on those sites. As a consequence, in many cases CD is prevented from being carried out on the same lot as a heritage item, despite having little or no impacts on that item. The mapping of these heritage items therefore undermines the intent of cll 1.17(3) and (4) of the Codes SEPP.

As an alternative to the “blanket” prohibition on the carrying out of development on land on which a state or local heritage item is located which is contained in cl 1.17A(1)(d) of the Codes SEPP and cl 19(2)(a) of the ESEPP, school development should be able to be carried out as CD provided it will involve no more than a minimal impact on the heritage significance of the item. This approach would open up the CD pathway for a number of schools that are currently unable to access this pathway due to the nature of heritage listings on their site and therefore improve the usability of the ESEPP, in particular for schools that are located on large lots.

2.3 Certification of CD by Roads and Maritime Services

Under the *Environmental Planning and Assessment Regulation 2000* (NSW), development carried out as CD under cl 39(1) of the ESEPP that will result in a school being able to accommodate 50 or more additional students requires a certificate issued by Roads and Maritime Services (**RMS**) in relation to impacts on the surrounding road network as a result of the development. However, there is no timeframe prescribed in the EP&A Regulation within which RMS must issue the certificate in relation to the acceptability or otherwise of the impacts, which is resulting in often significant delays for schools in obtaining CD certificates. Given that CD is intended to be an efficient and cost-effective approval pathway, the delays in obtaining RMS certification is undermining the benefits of this pathway and impacting on schools' abilities to deliver necessary school facilities on time and on budget. We therefore recommend that the EP&A Regulation be amended by adding a maximum timeframe for RMS certification to be provided (following which it would be a deemed approval).

2.4 Depth of Excavation

Clause 11 of Schedule 2 of the ESEPP prevents development that is not on land that is identified as Class 3 or Class 4 on an Acid Sulfate Soils Map from being Complying Development if it involves excavation to a depth that is greater than 3 metres below ground level (existing). The economic use of land by schools, particularly in densely populated urban areas, is clearly now more important than ever.

The prohibition on development being able to be Complying Development simply because it involves excavation to a depth greater than 3 metres on land that is not Class 3 or Class 4 on an Acid Sulfate Soils Map is not justified and is unnecessary.

Thank you again for the opportunity to make a submission on what we consider to be an extremely important planning instrument for the education sector and for the broader benefit of NSW. We would be happy to discuss this submission further with you, or the relevant members of the Department of Planning, Industry and the Environment, if required.



From: [REDACTED]
To: [DPE PS Education SEPP Mailbox](#)
Cc: [REDACTED]
Subject: Webform submission from: Review of the Education SEPP 2017
Date: Wednesday, 16 December 2020 1:36:42 PM

Submitted on Wed, 16/12/2020 - 13:34

Submitted by: Anonymous

Submitted values are:

Submission Type

I am making a personal submission

Name

[REDACTED]

[REDACTED]

I would like my submission to remain confidential

Yes

Info

Email

[REDACTED]

[REDACTED]

Submission

In this submission, I would like to address three issues.

1. The minimum separation distance of 200m between centre based child care centres is a complex issue that should be studied carefully. I have given my opinion two weeks ago. If the government is really want to add this restriction, it should state that any DA or DL submitted to Council should be exempted. I have submitted my DA for a centre based facility in 2019, and it is still stuck in Council's red tapes.

2. If indoor and outdoor space requirements are sufficiently met, the number of children should be allowed to be increased even though the car park ratio of 1:4 is not met. This is because the population in NSW has grew a lot in the last 20 years, and the 1:4 parking ratio no long reflects the practical situation. Primary schools in NSW don't have the 1:4 parking ratio requirement, and yet hundreds of students can attend the same school.

3. Centre based facilities, especially those without adding new roof space by dwelling conversions, should be allowed to be proved via CDC (private certifiers).

End of submission.

I agree to the above statement


Yes




NSW Department of Planning, Industry and Environment
Locked Bag 5022
Parramatta NSW 2124
education.sepp@planning.nsw.gov.au

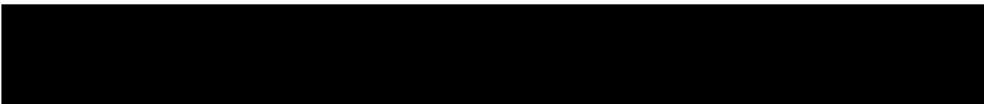
Date 16 December 2020

Joint Submission in response to the Review of the Education SEPP 2017

This submission is in response to the NSW Department of Planning, Industry and Environment's first Review of the Education SEPP currently on public exhibition. This submission was compiled by the 

Overall, we support the proposed amendments to the Education SEPP 2017 and related legislation to make it easier to build high quality education facilities to meet demand, particularly in areas of growth experienced by the 

This submission is divided into five themes and sections as follows.

1. Propose amendments to ensure consistency between opportunities available to education providers at all levels (early education to tertiary education).
 2. Propose amendments to ensure consistency of additional land use clauses between State Land and land used for non government schools.
 3. Propose modifications to specific child care centre development planning controls.
 4. Provide additional housekeeping amendments to the Education SEPP based on implementation of the SEPP since gazettal in 2017.
 5. Provide a high level of support for the draft amendments where the intention is to streamline planning pathways for delivery of educational facilities. Provide some minor rework on the wording of clauses.
- 

1. Recommend consistency of SEPP clauses between early learning, primary, secondary and tertiary education sectors. E.g. Innovation Hubs.

The [REDACTED] would respectfully appreciate consistency in the application of the proposed amendments to both tertiary, child care and primary & secondary school education sectors. The proposed amendments allow development with consent for innovation hubs on existing tertiary institution campuses. This enabling clause should be extended to include development of innovation hubs on secondary education campuses. [REDACTED] are already making a valuable contribution to the successful [REDACTED]

[REDACTED] on the grounds of [REDACTED] and the [REDACTED]

2. Recommend consistency of SEPP clauses permitting additional land uses on State Land and other lands where a registered school is operating.

The scope of proposed amendments to enable additional permissible uses of State Lands (Clause 16(2)) should be extended to include all land zoned for Special Uses where a registered non-government school is located within the Special Uses zone

3. Supportive of the revisions to clauses relevant to the **child care centre** land uses in the Education SEPP except the hours of operation and minimum 200m separation distance between child care centres. [REDACTED] recommends modifications to the hours of operation and definition of separation distance.

CHILD CARE CENTRE HOURS OF OPERATION

Whilst we are generally supportive of the draft amendments to the Education SEPP, we are not supportive of restricting the hours of operation to 7 am to 7 pm. This is not in line with current operating procedures of existing child care centres. This would adversely impact on the viability of child care centres operating within school grounds, relative to others on private land. **We request this planning control be amended to 6 am to 7 pm.**

CHILD CARE SITE GUIDELINES - 200M DISTANCE BETWEEN CHILD CARE CENTRES

A blanket 200 metre distance between child care centres in the R2 Low Density Residential Zone does not take into consideration the master planning strategic intent of co-locating early learning and outside of school hours care services with primary, secondary and tertiary educational provisioning by [REDACTED]

[REDACTED] are master planned and have concept approval to incorporate early learning/child care and OOSH on site. We are apprehensive that the draft amendments will impede planning approvals and strategic plans to provide for a whole of life educational opportunities on one single master planned precinct site.

[REDACTED]

The draft amendment is not warranted when the traffic impacts of proposed child care centres are already considered in the planning assessment of Concept DAs through the State Significant Development Application Process.

We strongly recommend that the 200m separation distance between child care centres should exclude centres proposed to be located within the boundaries of educational establishments. This is to enable [REDACTED] to continue with provisioning early learning centres as per master planning vision.

We strongly recommend that the above mentioned clause is reframed to **exclude private early learning centres to be at least 200 metres from the boundary of existing and planned educational establishments with the view to preserve the masterplanning intent of non-government school systems and to prevent cumulative traffic impacts near school driveways. The separation distance site guideline should exclude third party operated child care centres within 200m of Special Uses (Educational Establishment) zones and indicative school locations in DCPs and Neighbourhood Plans.** [REDACTED] would like to provide express written consent, at its discretion to an applicant wishing to lodge a proposal for a child care centre within 200m of an educational establishment.

4. The following proposed amendments are warranted in addition to those draft amendments contained in the exhibition materials.

CI36	<p>Ambiguous title of Clause 36. (i) Does Clause 36 apply to Exempt and/or Complying Development? Of which both are not technically development consents issued by a consent authority. (ii) Does Clause 36 apply to new schools because Clauses 38 and 30 apply to existing schools?</p>	<p>Recommend (i) Transpose requirements applicable to Clauses 38 and 39 where appropriate. OR (ii) Insert alternate heading of <i>Clause 36 - New Schools - Exempt and Complying Development requirements.</i></p>
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Sch 1 - Exempt Development Sch 2 - Complying Development	<p>Minimum 5 metre setback. Not financially viable to demolish and replace parts of existing buildings (as a result of additions and alterations and maintenance) within 5 metres of existing property boundary by CDC or exempt development. Results in massive architectural, engineering re-work to relocate room/area to another part of the building/block.</p>	<p>Recommend exemption for replacement of building portion located within 5 metres of setback if direct replacement on footprint.</p>
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<p>CI 33 CI 43 CI 50</p>	<p><u>Prescribed zones.</u></p> <p>The following zones are not listed within the prescribed zones clause within the SEPP and are thus precluded from specific planning pathways available in this SEPP where educational establishments are permissible with consent.</p> <p><i>(Sydney Region Growth Centres) 2006 (Growth Centres SEPP) Appendix 14 South East Wilton and Appendix 15 North Wilton</i> introduced additional zoning names and land use tables in Part 2 of these EPIs such as Urban Development Zone (UDZ), Enterprise Zone (ENT), Mixed Use Zone (MU), Agribusiness Zone (AGB) and Environmental & Recreation Zone (ENZ).</p> <p>Educational establishments are prohibited in the Environmental & Recreation Zone pursuant to Western Sydney Aerotropolis SEPP 2020. School authorities are unable to obtain consent for recreational playing fields, amenities buildings, playgrounds in the ENZ zone adjacent to/within walking catchment of proposed educational establishments in a permissible zone.</p>	<p>Recommendation to insert Urban Development Zone (UDZ), Enterprise Zone (ENT), Mixed Use Zone (MU), Agribusiness Zone (AGB) and Environmental & Recreation Zone (ENZ) to the list of prescribed zones.</p> <p>Limit scope of permissible school uses in ENZ to those of recreational purposes.</p>
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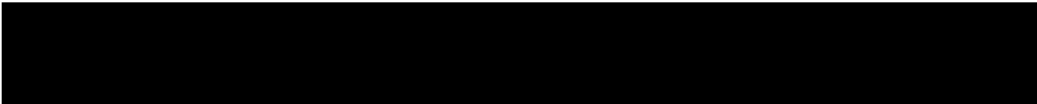
5. General remarks

██████████ support the proposed amendments to remove existing barriers to opening new schools with a CIV of less than \$20 million, using portable classroom demountables for up to 4 years and replacing single storey demountables with two storey buildings.

██████████ support initiatives to increase flexibility within the boundaries of existing educational establishments such as student housing, residential developments adjacent to residential zones and child care centres.

██████████ acknowledge the proposed amendments to definitions in the SEPP (Educational Establishments and Child Care Facilities) 2017 such as 'bushfire prone land', 'new schools' will streamline planning approval pathways. Likewise, we support measures to remove inconsistencies within the *Guide to the Education SEPP*, Code of Practices, Fact Sheets and Planning Circulars.

The following tables contain statements of support in response to specific aspects of intended planning effect and also recommendations where we feel that improvements can be made prior to finalising the legislation.



Matter	Feedback
Table 1	Proposed changes to the Education SEPP
<p><i>Definitions</i> <i>Clause 5 sets out definitions of terms used throughout the Education SEPP. Clause 5 contains a definition for an education establishment being: ...</i></p>	<p><i>Supported:</i> <i>Given it is proposed that 'New 'Schools' will no longer trigger SSDA if they are under the CIV threshold of \$20m.</i></p> <p><i>We believe that this revised definition provides flexibility and opportunities to provision facilities incrementally without following the SSDA requirements for the initial project construction stage</i></p> <p><i>Recommend the \$20 million value is indexed by CPI from the base date of the amended legislation coming into force.</i></p>
<p><i>Modifications to SSDA and activation of SSDAs with deferred commencement conditions</i></p>	<p><i>We have experienced extended processing time delays with the assessment of minor modifications of SSDA approved projects and activating deferred commencement projects. Assessment period delays are delaying delivery of education facilities.</i></p> <p><i>We recommend inclusion of a delegated authority to local councils to act as consent authorities to issue minor modifications and activate deferred approvals.</i></p>
<p><i>Clarification of terms in vegetation clearing clause</i></p>	<p><i>Supported.</i> <i>New wording is helpful</i></p>
<p><i>Correcting cross referencing</i></p>	<p><i>Supported.</i> <i>Correcting an error.</i></p>
<p><i>Updating Department names</i></p>	<p><i>Supported.</i> <i>Updates to reflect changes to government department names.</i></p>



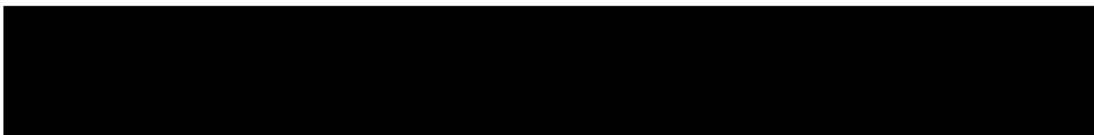
<p><i>Clarifying permissible uses on State land</i></p>	<p><i>Supported.</i></p> <p><i>Recommend equitable treatment and allowing the same provisions of permissible uses on land if zoned SP1 or SP2 with an educational establishment.</i></p> <p><i>Recommend equitable treatment of allowing educational establishment land use on land adjoining a zone where this aforementioned land use is permissible.</i></p>
<p><i>Clarifying circumstances where schools can be expanded</i></p>	<p><i>Supported.</i></p> <p><i>Recommend equitable treatment and allowing the same provisions of permissible uses within boundaries of existing educational establishments and on land if zoned SP1 or SP2.</i></p>
<p><i>Restricting child care centres within close proximity of each other in low density residential zones</i></p>	<p><i>Supported. However, we are concerned about the material impact that the 200m distance will have on strategic plans to have child care centres operate within school sites.</i></p> <p><i>Recommend the clause prevents external child care centre operators from establishing within 200m distance of existing and planned educational establishments with reference to NeighbourhoodPlans, Indicative Layout Plans, Special Use Education zones in EPIs and other planning documents.</i></p> <p><i>Recommend the clause does not apply to proposed child care centres within site boundaries of educational establishments. The spirit of this SEPP is permit co-location of child care, primary, secondary, OOSH land uses within a precinct.</i></p>
<p><i>Bush fire prone land</i></p>	<p><i>Supported.</i></p> <p><i>Reduces compliance needs applying across whole lots unnecessarily.</i></p> <p><i>Recommend a similar definition is adopted for flood prone areas of land within a lot and</i></p>



	<p><i>proposals not located within an appropriate distance (TBD) of existing vegetation.</i></p>
<p><i>Enabling student housing on sites with existing educational establishments</i></p>	<p><i>Supported.</i></p> <p><i>The clause promotes healthy communities. We support this initiative to promote healthy walking and cycling access options for students.</i></p> <p><i>We support this clause as it advocates access to affordable housing by students.</i></p>
<p><i>Planning pathways for development affected by a 10% student cap</i></p>	<p><i>Supported</i></p> <p><i>Benefits primarily for small rural schools.</i></p> <p><i>We are concerned that the 10% student cap is still a limiting factor that prevents the scale of responding to just one bubble class.</i></p> <p><i>For example in a 1000 student school, 10% is 100 students. For example a 500 student school, 10% is 50 students.</i></p> <p><i>We recommend the government consider a revised definition that enables schools to add an additional form/stream over and above the most relevant enrolment cap. This would greatly assist with cyclical changes in enrolment figures.</i></p>
<p><i>School development permitted without consent for two-storey buildings</i></p>	<p><i>Supported</i></p> <p><i>Seek clarification that the proposal to allow for two-storey buildings may apply to all forms of buildings within school grounds and is not limited to home rooms/GLAs.</i></p> <p><i>On sloping sites, this two-storey height limit will be limited in effect. We recommend the definition of height to be 8m or 9.5 metres above existing natural ground level to enable basement level and split level building layouts.</i></p>
<p><i>Directional signage and information boards</i></p>	<p><i>Supported</i></p> <p><i>Removes inconsistency.</i></p>



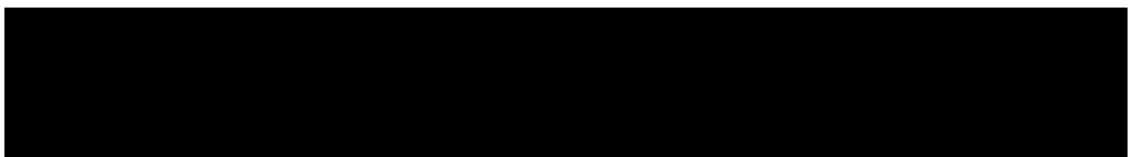
	<i>We believe this will promote improved site conditions and safety conditions within educational establishments.</i>
<i>Exempt development standards for school-based child care</i>	<i>We support the standards, However the 7am to 7pm hours of operation are too restrictive especially in the morning.</i> <i>We recommend the starting time is brought forward to 6am in line with current industry practice.</i>
<i>Timeframes for short-term portable classrooms (e.g. demountables) as exempt development</i>	<i>Supported</i> <i>We are fully supportive of the extra two years to use portable classrooms on schools sites. This aligns with the planning approval and construction time frames to replace classrooms.</i> <i>This clause should be modified to apply to facilities such as library, admin, staff studies, canteens, trade and training spaces, music, drama and counselling rooms.</i>
<i>Teaching facilities to include classrooms</i>	<i>Supported</i> <i>Removes ambiguity</i>
<i>Canteens as complying development</i>	<i>Supported</i> <i>Removes ambiguity</i>
<i>Allowing shops selling school related supplies</i>	<i>Supported</i> <i>Removes ambiguity</i>
<i>External property boundaries</i>	<i>Supported</i> <i>"Site Boundary"</i> <i>Removes ambiguity</i>
<i>Tertiary institution development permitted without consent for two-storey buildings</i>	<i>Supported</i> <i>Tertiary education.</i> <i>Consistent with schools 2 storey amendment above.</i>



<p><i>Innovation spaces/hubs within existing tertiary institutions</i></p>	<p><i>Support initiative within existing tertiary institutions and recommends the same provision applies to secondary schools.</i></p> <p><i>The wording here does not acknowledge that VET/Tertiary studies and partnerships with industry etc are already occurring on school sites.</i></p>
<p><i>Landscaping associated with new development</i></p>	<p><i>Supported</i> <i>Removes ambiguity</i></p>
<p><i>Garbage and waste storage</i></p>	<p><i>Supported</i> <i>Removes ambiguity</i></p>
<p><i>Retaining walls and earthworks</i></p>	<p><i>Supported</i> <i>Removes ambiguity</i> <i>Need Council concurrence</i></p>
<p><i>Measuring noise impacts for complying development</i></p>	<p><i>Supported</i> <i>"Site Boundary"</i> <i>Removes ambiguity</i></p>
<p><i>Complying development over registered easements</i></p>	<p><i>Supported</i> <i>Removes ambiguity</i></p>
<p><i>Consulting with Transport for NSW about changes to pedestrian access points</i></p>	<p><i>Supported</i></p> <p><i>We support the increased level of consultation with TfNSW upfront however propose that the scope of consultation be explicitly extended to include matters of pedestrian safety AND, encouraging greater active travel, Green Travel Plans etc.</i></p> <p><i>We do have some concern this consultation clause will increase planning assessment timeframes if the proposals have no nexus for additional pedestrian crossings or bus zones. References are made to changes such as constructing footpaths to local streets and collector road verges. Connecting to an existing cycle or pedestrian footpath around the perimeter of the school.</i></p>



<i>Allowing geotechnical investigations and other testing, surveying and sampling as exempt development</i>	<i>Supported Allows investigations more easily and earlier in the development phase. Useful for sites with potential geotechnical risks.</i>
Table 2	Other regulatory changes being considered
<i>Threshold triggers for State significant development</i>	<i>Supported. Less projects to be SSDA.</i>
<i>Definitions within the Education SEPP or the State Environmental Planning Policy (State and Regional Development) 2011 may also require amendment to clarify the circumstances for 'new' and 'existing' schools.</i>	<i>Noted/Supported</i>
Table 3	Proposed changes to supporting education and child care facilities documentation
<i>Child Care Planning Guideline - Fire safety provisions for multi-storey child care centres and centres in multi storey buildings</i>	<i>Supported.</i>
<i>Child Care Planning Guideline - Requirements centre-based child care to consider local character</i>	<i>Supported</i>
<i>Child Care Planning Guideline - Site suitability guidance for centre-based child care facilities</i>	<i>Supported</i>



<i>Child Care Planning Guideline – Site suitability guidance amenity impacts in low density residential areas</i>	<i>Refer to section 3 of this submission for commentary on the site suitability guidelines.</i>
<i>Child Care Planning Guideline - Consistent terminology regarding railway stations</i>	<i>Supported</i>
<i>Child Care Planning Guideline - Solar access minimum standards</i>	<i>Supported</i>
<i>Child Care Planning Guideline - Consistent fence heights</i>	<i>Supported</i>
<i>Child Care Planning Guideline - Clarifications and correction within the Child Care Planning Guideline</i>	<i>Supported</i>
<i>Guide to the Education SEPP - Car parking inconsistency</i>	<i>Supported Removes inconsistency</i>
<i>Guide to the Education SEPP - Measurement of rear and side setbacks inconsistencies</i>	<i>Supported Removes inconsistency</i>
<i>Guide to the Education SEPP - Additional guidance on pedestrian safety</i>	<i>Supported Safety</i>
<i>Guide to the Education SEPP – general updates and clarifications</i>	<i>Supported Removes inconsistency</i>
<i>Code of Practice NSW - Notification timeframe inconsistency</i>	<i>Supported Removes inconsistency</i>
<i>Code of Practice NSW - general updates and clarifications</i>	<i>Supported Removes inconsistency</i>
<i>Fact Sheets – general updates and clarifications</i>	<i>Supported Removes inconsistency</i>



<i>Planning Circular PS 17-004 Development assessments of schools – general updates and clarifications</i>	<i>Supported Removes inconsistency</i>
<i>Planning Circular PS 18-005 New guidance for centre-based child care facilities – general updates and clarifications</i>	<i>Supported Removes inconsistency</i>

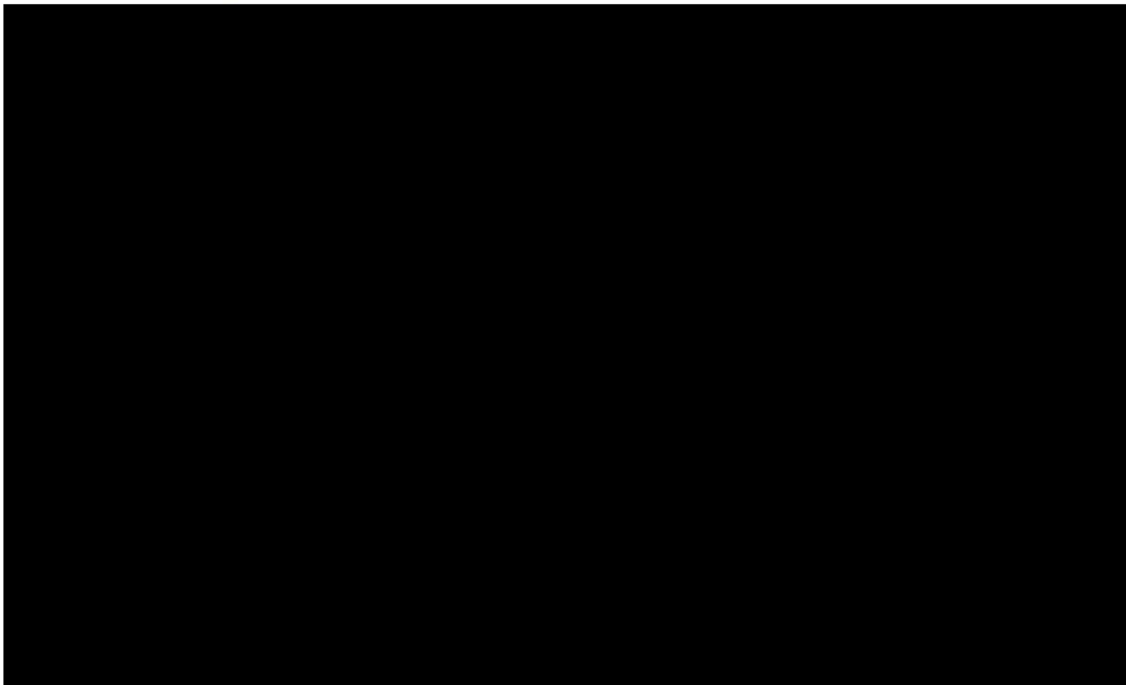
In summary we are supportive of the majority of the proposed amendments to the Education SEPP.

We have provided technical feedback in relation to recommended improvement as follows:

- Planning controls for child care centres.
- Prescribed zones: Adding additional land use zones gazetted in the Wilton and Western Sydney Aerotropolis areas to facilitate delivery of educational establishments in these precincts.
- Proposed amendments to ensure consistency between opportunities available to education providers at all levels (early education to tertiary education).
- Proposed amendments to ensure consistency of additional land use clauses between State Land and land used for non government schools.
- Additional housekeeping amendments to the Education SEPP to further reduce ambiguity.

Thank you for the opportunity to provide comment on the Review of the Education SEPP 2017.

Yours Sincerely



From: [REDACTED]
To: [DPE PS Education SEPP Mailbox](#)
Cc: [REDACTED]
Subject: Webform submission from: Review of the Education SEPP 2017
Date: Thursday, 17 December 2020 2:52:27 PM

Submitted on Thu, 17/12/2020 - 14:50

Submitted by: Anonymous

Submitted values are:

Submission Type

I am making a personal submission

Name

[REDACTED]

[REDACTED]

I would like my submission to remain confidential

Yes

Info

[REDACTED]

[REDACTED]

Submission

As a [REDACTED], I have had 7 court matters for Child Care Centres in one year, with numerous reoccurring tree and landscaping contentions. All of the above were in residential zones and had the following common issues:

Insufficient screen planting between outdoor play areas and adjoining low density residential properties -

As the provision of screen planting minimises available unencumbered outdoor play area, applications consistently propose a lack of planted privacy screening. An extreme level of tension falls on the provision of screen planting within play areas, as the provision of adequate screening costs the applicant/developer many child numbers and potentially hundreds of thousands of dollars of yearly revenue. If the SEPP / Childcare Planning Guidelines were to require a minimum width of screen planting (perhaps 1.5m) where outdoor play areas adjoin residential properties, much greater amenity for the children, and for the neighbouring residents could be achieved consistently.

Height of acoustic fencing-

Child Care Centres in low density residential areas often require acoustic barriers of up to 3m high where outdoor play areas interface with residential neighboring properties. This produces unacceptable visual impacts and overshadowing issues for neighbours. Additionally, where outdoor play areas are proposed above natural ground level, the acoustic fencing often falls over a retaining wall (fill), adding an additional height to the acoustic fence. A maximum allowable fence/ acoustic barrier height on boundaries could be an inclusion that would limit overdevelopment and inspire better acoustic design and outcomes.

Tree Retention -

Almost no Childcare Centre DA applications propose to retain any significant trees on site. Perhaps C18 of the Guideline could be reworded to recommend "(retaining and) incorporating natural features of the site, such as trees, rocky outcrops and vegetation communities into landscaping". This may make the requirement to retain natural features and trees easier to encourage and enforce.

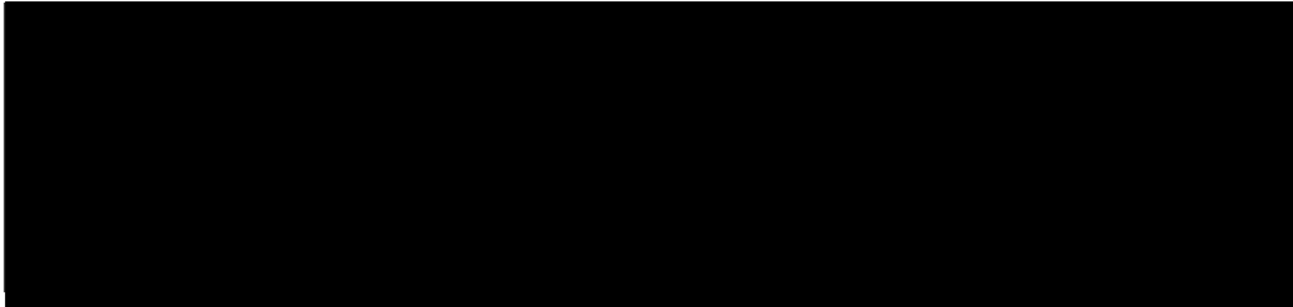
Screening to driveways and at grade car parking -

Insufficient landscaping is generally provided to either side of driveways and car parking areas. As "Parking Rates" only (no controls from Council's DCP relating to landscaping surround driveway and car parks) can be grounds for refusal of a Child Care Centre, it is difficult to impose ample landscaping without trying to enforce using a street scale character test which is inherently subjective. A requirement landscape screening surrounding driveways and at grade car parks (perhaps with a minimum width) would ensure better landscape outcomes and limit overdevelopment.

Amenity impacts of retaining walls -

As Child Care Centres are required to have a high level of accessibility, retaining walls are commonplace to raise the finished ground level to allow access from different internal areas to the external play areas. These walls are often on boundaries with residential properties or corner blocks, which creates privacy issues and amenity issues by heightening acoustic barriers on boundaries. Additionally, retaining walls associated with above ground OSDs and high retaining walls for basement parking are significant barriers to achieving compatible streetscape outcomes. Limits on the height above Natural Ground Level for outdoor play areas, and changes to the permissibility of basement parking within low density residential areas would greatly improve streetscape and impacts on neighbouring residential properties.

I agree to the above statement
Yes



16 December 2020

Director, Infrastructure Policy and Assessment Practice
Department of Planning, Industry and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Our Ref: FP58

Dear Sir/Madam,

**SUBMISSION TO EXPLANATION OF INTENDED EFFECTS –
SEPP (EDUCATIONAL ESTABLISHMENTS AND CHILD CARE FACILITIES) 2017**

Thank you for the opportunity to make a submission on the review of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* (Education SEPP). Please note that due to the timing of the exhibition period, it has not been possible to present this matter to the elected Council for a resolved position. Accordingly, the comments within this letter are officer-level comments which take into account and reflect Council's existing policy position and resolutions with respect to the SEPP.

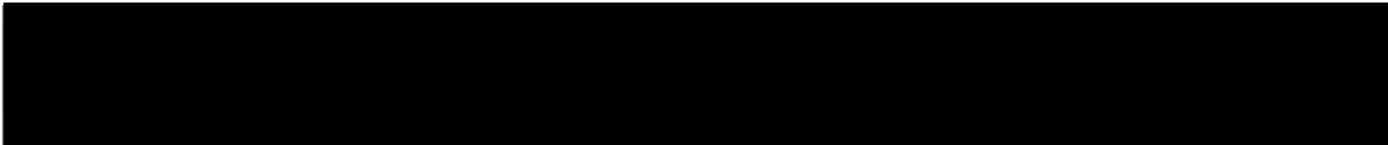
It is reiterated that Council objected to the introduction of the SEPP, particularly in relation to the inclusion of centre-based child care as a mandated permissible use in the R2 Low Density Residential Zone. Council has also raised concern regarding impacts on residential character and amenity, traffic and parking impacts, the expanded role of private certifiers and increased pressures on local infrastructure.

Council's concerns regarding the Education SEPP and particularly the incompatible development outcomes of child care centres in low density residential zones, have not been adequately addressed in this review. Many child care centre development applications receive multiple objections from residents who feel this form of development, its scale and amenity impacts are incompatible with what could reasonably be expected in low density residential zones. The existing development standards outlined in the SEPP and the controls articulated in the supporting documents are inadequate to regulate the delivery of appropriate development outcomes. Development applications for centre-based child care facilities are often well beyond a site's capacity in terms of traffic (including basement car parking), building bulk and scale.

Whilst the Education SEPP aims to streamline the approval pathway for educational establishments, without a rigorous assessment process, it fails to ensure their appropriate delivery with respect to amenity impacts on adjoining properties, particularly within low density residential zones. The current framework limits Council's ability to balance the provision of quality child care facilities with amenity for neighbouring residents. Each site has unique characteristics that need to be considered in the determination of a Development Application, but there are some sites that simply will not be compatible due to their location, configuration and access.

The Local Planning Panel recently refused a child care centre development due to the centres' close proximity to a primary school and the likely increase in traffic congestion for the locality, as well as overdevelopment and visual and noise amenity impacts. It is unlikely that low density residential areas would be able to support a primary school and centre-based child care in close proximity. Minimum separation distances from other traffic generating development would prevent Council and the Local Planning Panel from considering *some* applications that have very little chance of success.

In recent times, five Land and Environment Court appeals have been made regarding childcare centre developments (including developments in low density residential zoned land). Development approvals granted by the Land & Environment Court continue to compromise the amenity of surrounding properties, where Council needs to take court action to enforce conditions of consent relating to noise management plans, hours of operation and lighting.



Council has received many complaints regarding privately certified developments at schools and child care facilities, with respect to visual amenity, building height, insufficient setbacks and acoustic amenity. In some instances, Council intervention is required to assist residents and provide measures to prevent overlooking into dwellings and improve visual separation. In one example, a school-based child care facility and toilet facility were located within metres of adjoining residents' boundaries. The proximity to the property boundary and the hours of operation result in the resident being disturbed while in their dwelling from 7am to well beyond 6.30pm. Council intervention was required to assist the resident and provide measures to prevent overlooking into their dwelling.

In the context of Council's position regarding the Education SEPP, the following comments are provided with respect to the specific proposed amendments detailed in the Explanation of Intended Effect:

- **Restricting child care centre within close proximity of each other in low density residential zones**

The EIE acknowledges concerns regarding amenity impacts, such as noise and traffic as arising from child care centres being in close proximity to each other, particularly within land zoned R2 Low Density Residential. A minimum separation distance control between these facilities is a positive step to mitigating the amenity impacts of these developments in low density residential areas, however further consideration should be given to the proximity of child care centres with other educational establishments (and high traffic generating developments), as well as significantly increasing any specified minimum separation distance to well beyond 200 metres.

In addition, location requirements for child care centres should be expanded to prevent child care centre development on high traffic and classified roads. Child care centre developments increase traffic flow beyond typical residential vehicle movements and cause delays in the classified road network with the high volume of entry and exit movements during peak times. Moreover, the location of child care centres on these road types present safety concerns for the children.

There are a number of other controls that should also be considered in the provision of child care centres in low density areas to mitigate amenity impacts, such as regulating the number of allowable places for child care centres to ensure the scale of the development is more aligned with the low density residential area.

It is recommended that a more comprehensive suite of controls, beyond minimum separation distances, be imposed for child care centres in low density residential areas to ensure the scale of development is consistent with the low density character. Council's should have the ability to regulate this form of development through its local development control plans, to ensure appropriate development outcomes are achieved having regard to local context and community expectations.

- **Student Housing**

Further consideration should be given with respect to locational requirements for student housing to be permitted (potentially based on a walkable catchment from tertiary institutions). Additionally, consideration should be given to the appropriateness of the proposed standards for student housing as per the Housing Diversity SEPP and the ability to promote high amenity and liveability. Concern is raised with respect to the potential density of such developments and infrastructure levels of service, given these developments could accommodate a population density well in excess of standard residential flat buildings which would have been anticipated in high density areas.

- **School and tertiary development permitted without consent for two-storey buildings**

The proposed change to Clause 36, 46 and 53 to allow two-storey development without consent is not supported. While two-storey development is common in the R2 Low Density Residential Zone, this only occurs with dwellings, not institutional buildings. School, TAFE and tertiary education buildings generally have a substantially longer and bulkier form than standard dwellings, which is unlikely to be complementary to the character of low density areas. Further, given increased floor-to-ceiling heights within an educational establishment (in comparison to a dwelling), the absolute height of a two storey school or tertiary development may be in excess of surrounding two storey dwellings.

Concern is raised that critical amenity impacts, particularly with respect acoustic and visual amenity for adjoining low density residential properties will not be appropriately assessed. Developments permitted without consent should only apply to development types that will have no impact on affected properties. The

proposed amendment could exacerbate the delivery of undesirable development outcomes in low density areas that should otherwise warrant more thorough assessment.

- **Innovation spaces/hubs within existing tertiary institutions**

The growing integration of tertiary education institutions with the working industry is acknowledged and the opportunity to permit innovation hubs on existing university and TAFE establishments is recognised. It is however considered that innovation hubs should be limited to the use and benefit of the tertiary institution. As such, clarification is sought for the definition of the term and the intended proposed provisions for the facility. Specifically, consideration should be given to the potential intensification of land, especially for TAFE institutions within the Shire, which primarily adjoin low density residential zoned land.

- **Retaining walls and earthworks**

The proposed amendment to subclause 11(2)(c) is not supported. While it is understood that there may be challenges in delivering new education facilities in new release areas, where temporary stormwater and drainage infrastructure has not been completed, burdening Councils with the need to grant concurrence to a complying development certificate is not appropriate. Councils do not currently have a role in the issuing of complying development certificates and it is not clear how such concurrence would be granted. If the stormwater and drainage solutions are unable to be resolved under the existing complying development requirements, the development should follow a Development Application pathway.

The following comments are provided with respect to the proposed amendments to the supporting documentation:

- **Child Care Planning Guideline - Requirements centre-based child care to consider local character**

The addition of a reference to the *Local Character and Place Guideline* to provide detailed guidance on local character, streetscape and public domain is broadly supported. However, as the Education SEPP overrides development control plans, Council is limited in its ability to regulate child care centre developments that would otherwise apply development controls to guide appropriate development outcomes. Accordingly, further information is needed to explain how the Child Care Planning Guidelines would reference the Local Character and Place Guideline. Further, it is suggested that reference to local character be further strengthened in the Education SEPP itself to provide additional certainty that local character is a key consideration in determining where and how child care centres are developed. The level of subjectivity in the current guidelines are not conducive to a clear, transparent or precise framework within which development assessment can occur. It is reiterated that Councils should have the ability to include and apply local controls to such developments through its development control plan and the overriding of local controls with the state-wide policy is not supported.

- **Child Care Planning Guideline – Site suitability guidance for centre-based child care facilities and site suitability guidance amenity impacts in low density residential areas.**

The introduction of additional considerations in assessing centre-based child care in terms of site suitability and cumulative impacts is appropriate. Further, the recognition that in low density residential areas, above ground floor outdoor play spaces can lead to impacts on neighbouring properties such as noise, overshadowing, bulk and scale, character and visual privacy is important. However the EIE does not provide a clear understanding of what amendments to the guideline are proposed to guide assessment of these impacts and clarification is sought on the wording of the amendments. It is recommended that these changes be included in the Education SEPP in a more comprehensive way, rather than in the guideline.


- **Guide to the Education SEPP – Measurement of rear and side setbacks inconsistencies**

The need to ensure consistency of the wording 'at least 5m' between the Education SEPP and the Guidelines is acknowledged. However, concern is raised with respect to the adequacy of the existing setback controls outlined in Schedule 2 of the SEPP.

Development with a building height of 12 metres or more will have significant impacts on adjoining residential properties (even when located 5 to 10 metres from a boundary) unless amenity impacts are carefully mitigated. In instances where facilities have an even greater building height, further amenity impacts are likely to occur, particularly in low density residential areas. The side and rear setback controls for schools following a complying development pathway should be substantially increased to enable significant

landscaping to soften the visual impacts of the development and to ensure visual and acoustic privacy to adjacent residential properties.

Given the issues Council is facing, it is clear that the current level of regulation surrounding child care centres in low density residential areas is insufficient to manage the impacts on amenity, traffic and character. While it is acknowledged that the proposed changes seek to better regulate these uses and address issues currently being experienced, it is considered that the scope of amendments are insufficient and the need to amend the SEPP in this manner is simply a reflection of the fundamental issues associated with permitting child care centres within low density residential zones. Council's request is reiterated that the requirement for child care centres to be mandated as permissible in the R2 Low Density Residential zone be reviewed.

Notwithstanding this, I would welcome the opportunity to further discuss any of the matters raised in this submission and provide input into the drafting of any subsequent legislative amendments and revision of the supporting documentation following on from this exhibition. Should you require any further information or wish to discuss further please contact 



Mr Jim Betts
Planning Secretary
Department of Planning, Industry and Environment
GPO Box 39
Sydney NSW 2001

Attention: Ms Jennifer Richardson

22 January 2021

Dear Mr Betts,

Proposed Amendments to State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (Education SEPP)

██████████ welcomes the opportunity to provide feedback on the proposed amendments to the Education SEPP. ██████████ notes the key objectives of the proposed amendments are to:


- ensure planning assessment processes are commensurate with project risk, complexity, and capital investment value to streamline the delivery of new education infrastructure
- facilitate the delivery of high quality child care and education facilities to ensure NSW has an educated and skilled workforce that meets the future demands of industry, delivers strong economic growth, and builds engaged and resilient communities
- update existing provisions to clarify their intent, and correct minor administrative errors.

██████████ is generally supportive of the proposed changes and has provided detailed comments on the Explanation of Intended Effects (EIE) at **Attachment A**.

During the exhibition of the EIE, ██████████ identified several emerging issues that could be addressed via refinements to the scope of the proposed changes to the Education SEPP, or through initiatives being explored under the Planning Reform Action Plan. These issues are outlined below.

Pop-up Schools and Minor Works on New School Sites

At present 'pop-up' schools on new sites are captured by the 'new school' definition in clause 15(1), Schedule 2 of *State Environmental Planning Policy (State and Regional Development) 2011* (SRD SEPP) and must be assessed via the SSD pathway. This impacts ██████████ ability to rapidly respond to fluctuations in demand for student places in greenfield and urban renewal locations, and places further strain on existing infrastructure.



To ensure infrastructure keeps up with demand in high growth areas, [REDACTED] considers there would be significant benefits in expanding the development without consent pathway to permit the construction and operation of temporary 'pop-up' schools and minor permanent works, for example halls or gym facilities whilst development applications for new schools are under assessment.

In addition, [REDACTED] notes there would be significant benefit in investigating the following opportunities to further streamline the assessment of new school developments, and facilitate innovative school delivery models:

- permit the change of use of commercial premises to an educational establishment under the complying development provisions for small scale schools (i.e. schools with 30 to 60 students) in suitable prescribed zones
- permit the change of use of commercial premises, community facilities, entertainment and function centres, and information and education facilities in prescribed business zones to educational establishments, subject to projects meeting the requirements of Division 5 and Schedule 2 of the ESEPP, and an applicant obtaining a certificate from Transport for NSW certifying any impacts on the surrounding road network are acceptable, or will be acceptable if specified requirements are met.

Student and Staff Caps


[REDACTED] notes several of its existing development consents include conditions referencing staff and student numbers. To ensure these conditions are not interpreted as staff or student 'caps', [REDACTED] requests DPIE consider updating the provisions in clauses 36, 39, 46, 49, 53 and 46 of the Education SEPP, or providing additional guidance for planners and certifiers to confirm a development would only contravene an existing condition of consent relating to staff or student numbers where the condition has been drafted as per the guidance outlined in Planning Circular *PS 17-004 Regulating expansion of schools*.

Traffic Management Conditions - Use of the Complying and Development without Consent Pathways

[REDACTED] is currently managing travel demand and encouraging sustainable travel options across its portfolio via Green Travel Plans and/or Operational Traffic and Access Management Plans. [REDACTED] understands the private sector uses similar approaches to reduce travel demand on existing school sites. These plans can generate significant reductions in private vehicle trips, free up capacity on the road network, and provide opportunities to repurpose redundant car parking spaces for education uses.

As a result of these outcomes, [REDACTED] considers there is also an opportunity to revise the provisions of clauses 39, 49, and 56 of the Education SEPP to permit the use of the complying development pathway where an applicant can demonstrate historic conditions of consent related to vehicle movements, traffic generation, or car parking are no longer relevant due to:

- an approved Green Travel Plan or Operational Traffic and Access Management Plan reducing private vehicle trips and creating spare capacity on the road network

- 
- an approved Green Travel Plan creating surplus car parking spaces, sufficient to accommodate the proposed increase in staff or student numbers
 - vehicle trips associated with increased staff or student numbers will not significantly alter levels of service beyond those approved under the relevant development consent (i.e. would remove the need for off-site upgrades), and a certificate can be obtained from the relevant road authority (Council or Transport for NSW) verifying the traffic impacts of the proposed development are acceptable.

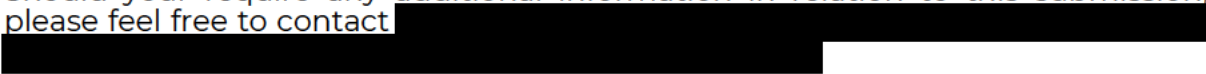
Schools in the Urban Development Zone

At present the urban development zone is not identified as a prescribed zone in clause 33 of the Education SEPP. In order to streamline the delivery of school infrastructure, consistent with the intent of this zone, [REDACTED] requests DPIE consider amending clause 33 to include the Urban Development Zone as a prescribed zone.

Similar provisions could also be used to open up the development without consent pathway, provided staff and student numbers do not increase by more than 10%, or 30 students, whichever is greater, in any 12 month period.

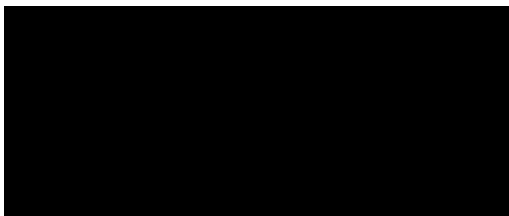
[REDACTED] looks forward to working with DPIE in 2021 to further streamline the assessment and delivery of new school infrastructure.

Should you require any additional information in relation to this submission, please feel free to contact [REDACTED]

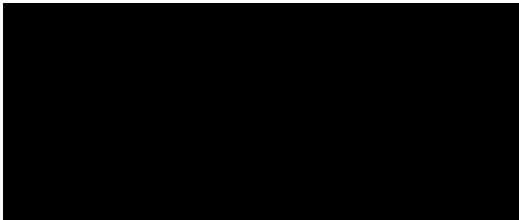


ATTACHMENT A – COMMENTS ON THE EDUCATION SEPP EIE

Proposed Amendment	Comment
Education SEPP	
Clause 5 – Updating the Educational Establishment Definition	supports amendments to clarify the circumstances where a development is categorised as a 'new' or 'existing school' to provide greater clarity around the planning pathways applicable to school developments.
Clause 5(3)(f) – Vegetation Removal Permitted without Development Consent	supports the proposed amendments to remove references to ringbarking and clarify vegetation clearing and tree removal can be undertaken as development without consent.
Clause 8 – Correction of Cross-Referencing Errors	supports the proposed amendments to clause 8 to correct administrative errors and clarify the relationship between the Education SEPP and other environmental planning instruments.
Clauses 13 and 19 – Updating Department Names	supports the proposed changes to update references to outdated legislation and departmental names.
Clause 16 (2) and (3) – Clarification of Permissible uses on State Land	<p> which are zoned SP2 Special Use. This adds complexity to the planning process where an adjoining land use zone is not a prescribed zone, and there is a need to expand the boundaries of an existing public school to accommodate growth. Further, where sites are zoned SP2 it adds complexity and delays to the divestment process once Government has decided land is surplus to its requirements.</p> <p>Accordingly, supports changes to allow the use of a Site Compatibility Certificate to facilitate:</p> <ul style="list-style-type: none"> the expansion of existing school and TAFE sites on State land where educational establishments are not identified as a permissible use on the adjoining land; or the redevelopment of surplus government land consistent with the range of permissible uses on the land adjoining a government school or TAFE site.
Clause 25(2)(a) 200 m Minimum Separation Distances for Centre Based Childcare Centres in the R2 Low Density Residential Zone	<p>notes it is critical that any future changes to the Education SEPP support the State Government's commitment expand access to before and after school care (BASC) for all public primary schools in Sydney, Newcastle, Illawarra, the Central Coast and major regional centres. To ensure this occurs, seeks confirmation that the proposed changes will:</p> <ul style="list-style-type: none"> permit the establishment of BASC facilities (i.e. school-based child care) on existing school sites in the R2 zone where a centre based child care facility is already in operation within 200 m of a school site not unreasonably restrict the supply of child care places in high need/high demand areas, given the importance of these facilities for families across NSW.
Clause 30(3), Schedule 3, and Clause 14(1) – Bushfire Prone Land	supports changes to the complying development provisions for home-based child care and

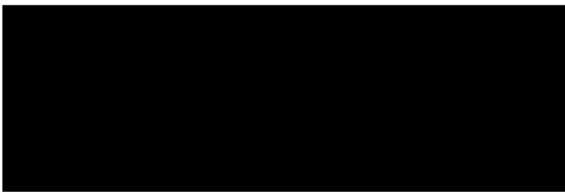


	<p>university and TAFE establishments to provide consistency with clause 19A(3), which permits complying development on part of a lot which is not subject to the BAL 40 or Flame Zone provisions outlined in <i>Planning for Bushfire Protection</i>.</p>
<p>Clauses 34, 35, 44, 45, 51 and 52 – Student Housing on Existing Educational Establishments</p>	<p>██████ supports the proposed amendments to clauses 35, 45 and 52 to permit student housing at educational establishments subject to development consent, and the consequential deletion of clauses 34, 44 and 51 to facilitate this outcome.</p> <p>In addition, ██████ supports student housing that is ancillary to a State significant development application being categorised as State significant development, and all stand-alone student accommodation developments on existing sites being categorised as local or regional development, irrespective of capital investment value.</p> <p>██████ also notes the proposed changes to the Education SEPP are tied to the implementation of the proposed Housing Diversity SEPP, which seeks to include a definition for student housing within the Standard Instrument LEP. Until the proposed Housing Diversity SEPP is gazetted, ██████ would support the inclusion of stand-alone definition of student housing within the Education SEPP.</p> <p>Further, ██████ seeks further consultation with DPIE on the design standards for student accommodation on school sites to ensure any new standards are developed to align with the Department of Education's <i>Educational Facilities and Standards Guidelines (EFSG)</i>.</p>
<p>Clause 36 – Student Caps</p>	<p>██████ supports the proposed changes to facilitate the creation of an additional classroom, or a 10% increase in staff or student numbers, whichever is greater, under the development without consent pathway to provide parity between small or rural schools and larger urban and regional schools.</p> <p>██████ also considers there is scope to amend the provisions of clause 36(3) as they apply to conditions referencing staff or student numbers to confirm these conditions only operate as a 'cap' where they have a clear planning purpose and objectives, as outlined in Planning Circular <i>PS 17-004 Regulating expansion of schools</i>.</p>
<p>Clause 36(1) – Height of Buildings Permitted under the Development without Consent Pathway</p>	<p>██████ supports the proposed changes to clause 36(1) to increase the height of development permitted under the development without consent pathway from one storey to two storeys. These changes are critical to balance the retention of play space and the provision of temporary and permanent school infrastructure.</p>
<p>Clauses 36, 39, 46, 49, 53 and 56 – Applications of Conditions of Consent</p>	<p>██████ notes the proposed change is sought to clarify developments undertaken via the development</p>

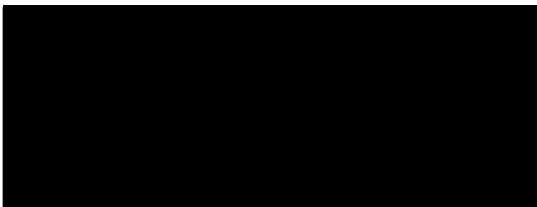


	<p>without consent and complying development pathway do not contravene the conditions of any relevant consent, rather than conditions in the most recent development consent.</p> <p>Whilst the proposed changes have been identified to ensure new developments stay within approved impact envelopes, [REDACTED] notes there are examples of historic development consents that contain conditions specifying staff or student maximums that are not linked to the management of residential amenity (i.e. are linked to traffic, car parking or similar impacts).</p> <p>To ensure the development without consent and complying development pathways are available to facilitate the efficient delivery of education infrastructure, [REDACTED] requests DPIE consider:</p> <ul style="list-style-type: none">• providing guidance to confirm conditions of consent referencing staff or student numbers are not considered a 'cap' unless the conditions have been drafted in accordance with the guidance provided in <i>PS 17-004 Regulating expansion of schools</i> (i.e. cap conditions must have a clear planning purpose and clear objectives to retain amenity or manage traffic impacts etc.)• permitting the use of the development without consent or complying development pathway where traffic or car parking impacts will not exceed the approved impact envelope due to the implementation of a Green Travel Plan and/or Operational Traffic and Access Management Plan (i.e. the implementation of a Green Travel Plan and/or Operational Traffic and Access Management Plan has created additional capacity on the road network or reduced car parking demand therefore enabling additional staff or students to be accommodated on-site).
Clause 38(1)(h) – Directional Signage and Information Boards	[REDACTED] supports the deletion of sub-clause 38(1)(h) on the basis it will confirm the installation and use of directional signage and information boards can be undertaken via the exempt development pathway, subject to compliance with the development standards identified in Schedule 1 of the Education SEPP.
Clauses 38 and 40 - Exempt Development Standards for School Based Child Care	[REDACTED] supports the proposed amendments to clause 38 to ensure school based child care is permitted between 7 am and 7 pm on week days, regardless of the planning approval pathway.
Clause 38 – Timeframes for Portable Classrooms	[REDACTED] supports the proposed changes to extend the timeframe for short-term portable classrooms from 24 to 48 months to ensure temporary facilities are provided to respond to short-term increases in student numbers, or to maintain service provision where school upgrade projects are in the planning or construction phase.

Clause 39(1)(a)(iii) – Teaching facilities to include classrooms	supports the proposed changes to clause 39(1)(a)(iii) to confirm classrooms are categorised as a teaching facility.
Clause 39(1)(a)(iv) – Canteens as Complying Development	The proposed changes to clause 39(1)(a)(iv) are supported on the basis they recognise canteens are similar in nature to cafeterias and are suitable to be undertaken as complying development.
Clause 39(1)(s)(v) – Shops Selling School Related Supplies	The proposed changes to facilitate the sale of school based supplies as complying development are supported. In addition, given the low impact of these facilities, requests DPIE consider permitting the construction and use of shops selling school based supplies as development without consent.
Clauses 36, 38, 46, 48, 53, 55 and Schedule 1 – External Property Boundaries	supports the proposed amendments to the Education SEPP to recognise schools often comprise multiple lots, and any references to property boundaries or site boundaries refer to the external boundaries of the site only.
Clauses 46 and 53 – Tertiary Institution Development Permitted without Consent	supports the extension of the two-storey height limit for development undertaken without consent for tertiary institutions to ensure all education providers can undertake appropriate low scale developments under Part 5 of the <i>Environmental Planning and Assessment Act 1979</i> (EP&A Act).
New Provision - Innovation spaces/hubs at existing tertiary institutions	<p> supports the proposed provision to permit innovation hubs and spaces at tertiary institutions to support the growth and diversification of the local economy, and create new jobs.</p> <p> considers there is scope to expand the proposed provision to permit the use of innovation hubs at secondary schools to foster collaboration between secondary schools, industry and tertiary institutions in key education and employment precincts.</p> <p>An example of a live project which would benefit from permitting innovation hubs on secondary school sites is the , which has been designed as an education hub to connect students to training and employment opportunities with local industry and the surrounding community. For this project, the expansion of the innovation hub provision to secondary schools could facilitate the co-location of innovation spaces and hubs in a suitable location on either the TAFE or high school site consistent with the vision for the precinct, which seeks to:</p> <ul style="list-style-type: none"> • create new opportunities for employment and businesses to come together • pilot a new model of co-operation between education institutions and business, to smooth student transitions from different levels of education to the workplace • deliver an attractive precinct that integrates with its surrounds and creates opportunities to share knowledge, services and infrastructure.
Schedule 2 clause 9(a) and Schedule 3 clause 10(a) – Landscaping	The clarifications proposed to confirm a 3 m landscaped setback only applies along the perimeter of a new building adjacent to a site boundary, rather than along



Requirements for Complying Development	the full extent of the site boundary are supported. [REDACTED] also recommends this provision is drafted to confirm it only applies to development adjacent to an external property boundary to provide clarity where a school, TAFE or university site comprises multiple lots.
Schedule 2, clause 10(3) and Schedule 3 clause 11(3) – Garbage and Waste Storage Facilities for Complying Development	[REDACTED] supports the proposed amendments to Schedules 2 and 3 to clarify garbage and waste storage facilities are only required for complying developments if an existing on-site garbage/ waste storage facility does not have capacity to service the proposed development.
Schedule 2 clause 11(2)(c) – Retaining Walls and Earthworks for Complying Development	[REDACTED] supports the proposed amendments to permit temporary drainage to a designated lot whilst a permanent stormwater system is being designed and constructed, subject to obtaining Council concurrence prior to the issue of a Complying Development Certificate.
Schedule 2 clause 6 and Schedule 3 clause 7 – Measuring Noise Impacts for Complying Development	[REDACTED] supports the provision of additional guidance to confirm the intent of the noise impact provisions and clarify where noise measurements should be undertaken. However, [REDACTED] requests DPIE consider specifying noise measurements should be taken at the affected property boundary, rather than at the boundary of a school or tertiary education site, to: <ul style="list-style-type: none"> ensure noise impacts are measured where potential impacts may occur (i.e. at the boundary of a residential property or recreation reserve), unless access cannot be obtained to the affected property; and provide consistency with <i>AS 1055:2018 Acoustics – Description and measurement of environmental noise</i>, and the recommendations of the <i>EPA Noise Guide of Local Government</i>, and current industry practice.
Clause 49(4) – Complying Development over Registered Easements	[REDACTED] agrees registered easements should be protected. However, [REDACTED] requests further discussions occur with service providers to determine the viability of permitting development over a registered easement, subject to an applicant obtaining the approval of the asset owner prior to the issue of a complying development certificate.
New Provision – Consultation with Transport for NSW for Complying Development	[REDACTED] supports Transport for NSW assessing the suitability of new pedestrian access points on public roads to address its obligations under the <i>Road Transport Act 2013</i> . However, as schools often have pedestrian access points that do not adjoin a road reserve (i.e. via adjoining open space), [REDACTED] requests any potential changes specify consultation is only required where the pedestrian access point adjoins a public road.
Schedule 1 New Provision – Geotechnical Investigations, Testing, Sampling and Surveying as Exempt Development	[REDACTED] supports the proposed changes to Schedule 1 to permit minor site investigation works as exempt development to provide consistency with the provisions for other infrastructure providers outlined in <i>State Environmental Planning Policy (Infrastructure) 2007</i> .
Proposed Amendments to other Legislation	
Updates to SSD thresholds in <i>State Environmental Planning Policy</i>	[REDACTED] supports the proposed changes to 15(2) of Schedule 1 of the SRD SEPP to increase the capital



(State and Regional Development) 2011 (SRD SEPP)

investment value (CIV) threshold for State significant developments for alterations and additions to existing schools from \$20 million to \$50 million to streamline the assessment and delivery of new school infrastructure.

also supports the intent of the proposed changes to clause 15(1), Schedule 2 of the SRD SEPP to streamline the assessment of small scale schools. However, considers it would be beneficial to investigate the following opportunities to further streamline the assessment of new school developments and facilitate innovative solutions to the delivery of new school infrastructure:

- permit the change of use of commercial premises to an educational establishment under the complying development provisions for small scale schools (i.e. schools with less than 30 students) in all prescribed zones
- permit the change of use of commercial premises, community facilities, entertainment and function centres, and information and education facilities in the B1 to B8 business zones, subject to meeting the requirements of Division 5 and Schedule 2 of the ESEPP, and an applicant obtaining a certificate from Roads and Maritime Services certifying any impacts on the surrounding road network are acceptable, or will be acceptable if specified requirements are met
- expanding the development without consent pathway to permit the construction and operation of temporary 'pop-up' schools, and the complying development or development without consent pathways to permit minor site works whilst SSD applications for new schools over \$20 million are under assessment.

also seeks clarification regarding whether the proposed changes to clause 15(1) of the SRD SEPP are intended to alter the provisions for regional development, which requires all Crown developments valued between \$5 and \$20 million to be assessed by a Sydney or Regional Planning Panel. Further, clarification regarding the provisions for private infrastructure and community facilities over \$5 million which are currently assessed by councils and determined by a Sydney or Regional Planning Panel.

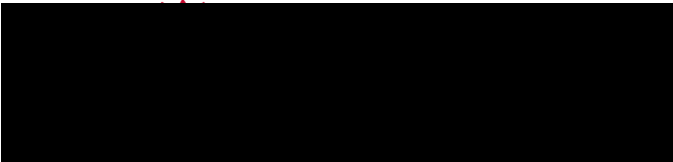
If changes are proposed to the regional development provisions, or provisions for private infrastructure and community facilities over \$ 5 million, it is requested DPIE consult further with , councils and other education providers prior to the development of the final planning pathway options for new schools under \$20 million.

Supporting Documentation

Potential Updates to the Childcare Planning Guideline to:

- clarify fire safety provisions for multi-storey child care centres and centres in multi storey buildings

supports updates to clarify the fire safety standards and emergency evacuation provisions applicable to multi-storey child care centres and centres located in multi-storey buildings.



- identify requirements for centre-based child care facilities to consider local character
- provide site suitability guidance for centre-based child care facilities
- 200 m separation distance between centre based child care

██████ supports updates to reference DPIE’s Local Character and Place Guideline to provide applicants and consent authorities with tools to design and assess child care centre developments to ensure new facilities respond to the existing or desired future character of an area.

██████ supports the proposed changes to Figure 12 of the guideline to showcase best-practice site layouts.

As outlined above, ██████ requests DPIE confirm the proposed changes will:



<p>facilities in the R2 low density residential zone</p> <ul style="list-style-type: none"> • provide consistent terminology regarding railway stations • minimum solar access standards • consistent fence heights • administrative corrections and updates 	<ul style="list-style-type: none"> • permit the establishment of BASC facilities (i.e. school-based child care) on existing school sites in the R2 zone where a centre based child care facility is already in operation within 200 m of a school site • not unreasonably restrict the supply of child care places in high need/high demand areas, given the importance of these facilities for families across NSW. <p>█ supports updates to align the terminology used in the Guideline with the description of railway and metro stations in the Greater Sydney Regional Plan.</p> <p>█ supports the alignment of the solar access provisions for centre-based child care facilities with standard solar access requirements (i.e. 2 hours to outdoor spaces at winter solstice).</p> <p>█ supports the proposed changes to Figure 11 of the Guideline to clarify the circumstances where 1.2 m and 1.8 m fence heights apply.</p> <p>Changes to apply correct terminology and correct administrative errors are supported.</p>
<p>Updates to the Guide to the Education SEPP to clarify car parking, setback, and pedestrian safety requirements, and general updates to provide consistency with proposed future changes to the Education SEPP.</p>	<p>█ supports the proposed changes on the basis they will provide consistency with the terminology outlined in the Education SEPP and reflect any future changes resulting from the exhibition of the Explanation of Intended Effect.</p>
<p>Updates to the Code of Practice to reflect the proposed changes to the Education SEPP, correct inconsistencies with the notification requirements for Part 5 development outlined in the EP&A Act, and correct terminology and administrative errors.</p>	<p>█ supports the proposed changes on the basis they will align the Code of Practice with the requirements of the EP&A Act and the proposed changes to the Education SEPP.</p>
<p>Updates to updates to the Using Complying Development in Schools and Child Care Facilities and Planning Circulars PS 17-004 and PS 18-005 to align the documents with the proposed changes to the Education SEPP, current legislative requirements and correct grammar and spelling errors.</p>	<p>█ supports these changes on the basis they are administrative in nature.</p>