

## Submissions report for amendments to the Education SEPP

*This document captures the key themes raised in submissions to the amendments to the Education SEPP, which were exhibited in late 2020.*

### Introduction

*State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* (Education SEPP) commenced in September 2017 and seeks to streamline approvals to deliver appropriately located, high-quality early childhood education and care facilities, schools, TAFEs and Universities across NSW to cater for the growing number of children and students.

The SEPP was released alongside a suite of supporting documents:

- Fact sheets
- Planning Circulars
- Child Care Planning Guideline - Delivering quality child care for NSW
- Guide to the Education SEPP
- NSW Code of Practice for Part 5 activities - for registered non-government schools
- Design Guide for Schools

These documents can be found on the Department of Planning, Industry and Environment's (the department's) webpage.

Clause 9 of the Education SEPP requires the Minister for Planning and Public Spaces to review the provisions of the Education SEPP as soon as reasonably practical after the first anniversary of its commencement. The amendments to the Education SEPP fulfill this obligation.

### Exhibited amendments to the Education SEPP

The amendments to the Education SEPP focus on further streamlining the delivery of education facilities, resolving operational issues, clarifying provisions and making other housekeeping amendments to clarify the intention of the SEPP. This will modernise, simplify and improve the effectiveness and usability of the instrument.

The key amendments to the Education SEPP, in the Explanation of Intended Effects, proposed to:

- introduce measures to support two-storey buildings being development without consent, without changing car parking
- increase the capital investment value trigger for new schools and alterations and additions to existing schools and tertiary institutions to better reflect the nature and impact of these developments
- include hours of operation for the use of school-based child care in the exempt development pathway
- make investigations, including geotechnical and other testing, surveying and sampling as exempt development

- extend the timeframe for short-term portable classrooms under the exempt development pathway from 24 months to 48 months
- update provisions to prevent child care centres within close proximity of each other in R2 Low Density Residential zones
- provide a clearer planning pathway for student housing to be built on existing schools, universities and TAFE sites
- provide an opportunity for innovation hubs for commercial uses to be permitted on existing tertiary institution sites.

Minor changes were also proposed in the Explanation of Intended Effects to supporting documents such as the Child Care Planning Guideline, the Guide to the Education SEPP and the Code of Practice for Part 5 activities to ensure consistency with the SEPP and clarify existing policy.

## Public exhibition

This Submissions Report documents the key issues raised in submissions to the proposed amendments to the Education SEPP as described in the Explanation of Intended Effects. The Explanation of Intended Effects was placed on public exhibition from 20 November until 17 December 2020.

The department received more than 50 submissions addressing the proposed amendments.

The issues detailed in this report reflect the most significant matters raised or those that were most frequently mentioned. In addition to these key issues, there were other issues mentioned by a single submission and many minor issues raised in submissions. While these have been considered, they do not form part of this report.

Submissions were received from individual respondents, councils and State agencies, education and child care providers, peak bodies and industry institutions. There was some variation in responses, with some differences emerging between the positions and issues raised between the different stakeholders.

The varying views received from stakeholders reflect the broader tension between the urgent demand to supply new educational facilities to meet the current and future needs of NSW students and the importance of sustainable, orderly growth in cities, towns and neighbourhoods.

## Breakdown of key issues raised in submissions

A breakdown of the key issues raised in submissions has been grouped and are outlined in the table below.

Proposed amendment	Issues raised in submissions
Enabling uses permitted on adjoining land to also be permitted on the site of an existing school	<p>Requests were made for university owned land and private schools to have uses permitted on adjoining land to also be permitted on their land and that all zones be prescribed.</p> <p>Council submissions raised concerns with this proposal as it may be used to facilitate residential development on school sites, impact on amenity and infrastructure demand and be inconsistent with council strategies.</p> <p>Submissions were of the view that a planning proposal (with community consultation) is the most appropriate mechanism to achieve the intended outcome.</p>

# Submissions Report

State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017



Proposed amendment	Issues raised in submissions
Enabling schools to expand onto adjoining land	<p>Requests were made that private schools be included in this provision.</p> <p>Concerns were raised around land use conflict between residential and education uses, amenity and uncertainty for landowners.</p>
Home based child care, university and TAFEs as complying development and bush fire prone land	<p>A council submission raised concern that relaxing the approval pathway for home based child care centres on land mapped as bushfire prone, may result in an increased risk to children and their carers during a bushfire event.</p> <p>A submission suggested that parameters be introduced including ascertaining the proportion of the site that is bush fire prone land, the efficacy of evacuation routes and assembly points.</p> <p>Questions were asked about how the provision works.</p>
Permitting student housing with development consent on education campuses	<p>Requests were made that the provision recognise that student housing is provided year-round and not only for students, but also for visiting families, academics and non-student visitors. Requests were made that student housing be permitted with consent on land vested in, leased by or otherwise under the control or management of a university.</p> <p>Council submissions raised concern due to the proposals impacts on amenity and existing infrastructure. Suggestions in submissions included to prepare a design guideline for student housing around built form, amenity, acoustic privacy, etc.</p> <p>Council submissions sought to make the provisions primarily for students, and rural and environmental zones to be excluded.</p> <p>Submissions sought clarification around the provisions.</p>

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Proposed amendment	Issues raised in submissions
<p>Restricting child care centres within 200m of each other in low density residential zones</p>	<p>There was both support and objection to this proposal. Submissions sought justification for the change and the 200m distance selected.</p> <p>Submissions raised concerns as outlined below:</p> <ul style="list-style-type: none"> <li>• traffic impacts are more dependent on the number of children per centre and road classifications rather than the distance between centres</li> <li>• regional and metro areas, growth and new release areas have different demands that will not be met</li> <li>• in some communities there are limited places suitable for centres and the ability to locate centres near transport hubs would be limited. Centres will be restricted in suitable locations despite demand</li> <li>• impact on the quality of education and care provided to children - it will remove opportunities for better quality centre to be built, and that the proposal is anti-competitive.</li> </ul> <p>Other options were put forward to achieve the intended outcome, including:</p> <ul style="list-style-type: none"> <li>• merit assessment to consider impacts, supported by design requirements and acoustic and traffic studies</li> <li>• greater emphasis on demonstrating demand for each service</li> <li>• a heads of consideration provision</li> <li>• the State government being the consent authority for child care centres</li> <li>• a cap on the number of children.</li> </ul> <p>Some child care providers objected to the proposal. Requests were made that the requirement not apply to child care centres associated with schools.</p> <p>Some councils supported the proposal, however asked for clarification around how the distance should be measured, how to respond to situations where multiple development applications were received at the same time, and how to respond to zone boundaries.</p> <p>Submissions also asked for the distance to be increased and applied across all zones, or that child care centres be prohibited in low density residential zones.</p>
<p>Allowing the development of school facilities without development consent capped at an additional classroom (30 students) or 10% of the existing student or staff numbers</p>	<p>Submissions objected to the existing cap. A suggested approach was to mitigate amenity impacts instead. Conversely, a submission requested the clause not be amended.</p> <p>Transport for NSW raised concern that an increase of 10% annually without a development application presents risk of traffic increases not being adequately assessed and mitigated.</p>

# Submissions Report

State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017



Proposed amendment	Issues raised in submissions
<p>Permitting the development of two storey education facilities without consent</p>	<p>There was a mix of support and objection to this proposal. Concerns raised included amenity, bulk and scale of the development and traffic impacts, bypassing community engagement via the Part 5 process. Having a design criteria and traffic management was suggested.</p> <p>Submissions requested car parks also be permitted up to two storeys without needing development consent.</p>
<p>Clarifying provisions around existing development consents</p>	<p>Objections were received to this proposal, requesting that the clause not change. Submissions offered alternative wording.</p>
<p>Extending the timeframe for demountable classrooms to 48 months as exempt development</p>	<p>There was mostly objection to this proposal. Submissions raised concerns that:</p> <ul style="list-style-type: none"> <li>• doubling the timeframe will entrench a practice of relying on demountable classrooms</li> <li>• long term impacts of demountable classrooms taking up play space</li> <li>• impacts on amenity</li> <li>• cumulative traffic impacts of multiple demountable classrooms on site.</li> </ul> <p>Submissions suggested:</p> <ul style="list-style-type: none"> <li>• including a maximum limit on the number of demountable classrooms</li> <li>• if a school wishes to maintain demountable classrooms for more than 24 months, they demonstrate a need to the consent authority</li> <li>• a provision be included that demountable classrooms should not result in a change to conditions of approval relating to car parking or student caps</li> <li>• a traffic management plan is to be prepared</li> <li>• the use should only be permitted with development consent.</li> </ul>
<p>Permitting innovation hubs at tertiary campuses with development consent</p>	<p>A request was made for innovation hubs to be permitted without development consent.</p> <p>Submissions requested innovation hubs be permissible at secondary schools.</p> <p>Councils requested clarification around the definition, the extent of commercial components allowed and information around the size, scale and capacity of the hubs. Suggestions were made around limiting the scale of developments to minimise amenity and traffic impacts.</p>
<p>Consulting with Transport for NSW about changes to pedestrian access points</p>	<p>This provision was largely supported, with items to be consulted on proposed to be increased. Councils sought to be consulted on access points for pedestrians and vehicles at schools located on local roads.</p>

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Proposed amendment	Issues raised in submissions
Increases to capital Investment value for new schools, alterations or additions to existing schools and tertiary institutions.	<p>Submissions both supported and objected to this proposal.</p> <p>Increasing the capital investment value for new schools raised concerns because requiring a development application to be submitted through council was seen to add delays.</p> <p>Some submissions requested that current capital investment value thresholds be retained.</p> <p>Some councils were concerned about the increase to the number of development applications, placing greater strain on resources. They requested resourcing assistance.</p> <p>Another submission requested the trigger for new schools be increased to \$50 million.</p> <p>Concerns from councils included the increase to the number of developments using the complying development pathway under the new capital investment threshold. Complying development was seen as not being adequate to address key issues.</p>
Amending the Child Care Planning Guideline to refer to the Local Character and Place Guideline	<p>Some submissions expressed the view that consideration of local character is adequately addressed in the existing legislation.</p> <p>Councils asked that the Child Care Planning Guideline be amended to allow existing Development Control Plans to apply, which was seen to deliver a more successful outcome for considering local character.</p> <p>The Small Business Commission supported the proposal, subject to it not resulting in red tape, delays or costs.</p>
Minimum standards for solar access in the Child Care Planning Guideline	<p>Some child care providers suggested that the provision of shade for child care centres should be in the form of design guidance rather than a numeric codification.</p> <p>Councils sought clarification around the proposal and the dates selected as winter months.</p>

## Other issues raised

Submissions also raised other issues that were not part of the exhibition material. These are discussed below.

- Local Government NSW and councils oppose the Part 5, exempt and complying development pathways not including community participation
- different views were expressed around the heritage provisions in the SEPP, including views that school development should be complying development provided it will involve no more than a minimal impact on the heritage significance of an item. Conversely that any development that impacts a State or local heritage item or heritage conservation area should trigger an assessment by the relevant government consent authority

- submissions recommend adding additional zones to the prescribed zones for school development
- Department of Education - School Infrastructure NSW made a number of requests to streamline the approval process for delivering school infrastructure, such as permitting temporary pop-up schools without development consent, allowing a change of use from a commercial premises to a school as complying development, and expanding prescribed zones to include the urban development zone

Some stakeholders made submissions requesting particular changes to the Education SEPP specific to their business.

All submissions received have been made [available on the department's website](#).

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