



controls for all child care and educational establishments in response to an urgent need for additional capacity in schools and child care centres.

Key changes for Educational Establishments that are relevant to Mosman (i.e. excluding universities and TAFE) include:

- Declaring non-government schools as 'public authorities' to allow them to undertake development declared by this SEPP without consent
- Enabling public authorities to apply to have the zoning of adjoining land apply to the land that the educational establishment is situated. For example, a school (government or non-government) on land zoned SP2 - Special Uses under a council's LEP could apply to be rezoned to R3 - Medium Density Residential, to be consistent with the zoning of adjoining lands. This would be determined by the relevant District Planning Panel
- Allowing all new schools and extensions to existing schools (up to four storeys and up to 22 metres in height) to be approved as complying development
- Potentially allowing only Council certifiers to issue complying development certificates for such proposals (rather than private certifiers) to ensure Council involvement in such developments (still under consideration)
- A draft circular to regulate the expansion of schools and student number caps
- Allowing for school-based child care as exempt development as long as no works are required, and as complying development if works are required
- Lowering the threshold for State Significant Development to \$20 million for schools, enabling them to be approved by the relevant Sydney or regional planning panel
- Inserting a concurrence role for the Department of Education for schools

New provisions introduced for child care centres include:

- Aligning the National Quality Framework for Early Childhood Education and Care Facilities into the NSW planning system
- Referring development applications that do not meet key national requirements to the Department of Education early in the assessment process, allowing applicants to make any necessary modifications early in the design process
- Allowing early childhood education and care facilities to be temporarily relocated (through an exempt development process) in the event of an emergency
- Amending all local environmental plans to permit centre-based child care in all R2 Low Density Residential and IN2 Light Industrial zones (MLEP 2012 already permits centre-based child care in all residential and business zones)
- Introducing the Child Care Planning Guideline, which contains key national requirements and design guidance for child care facilities

In addition to the above summary of provisions, the draft SEPP proposes to intervene in how councils assess child care development applications, in particular narrowing the matters that councils can consider and types of controls that apply. For example, council DCP controls are no longer able to refer to age, age ratios, groupings or numbers of children. The SEPP

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also introduces a list of issues that councils cannot use as a basis for refusing an application, or imposition of conditions. For example, a council will no longer be able to refuse an application on the basis of lot size.

## Consultation

The public consultation period for the draft SEPP is from 6 February to 24 March 2017. The documents on public exhibition are:

- Explanation of Intended Effects
- *Draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*
- *Draft Environmental Planning and Assessment Amendment (Schools) Regulation 2017*
- Draft Amendment to the Standard LEP for child care
- Draft Environmental Assessment Code of Practice
- Draft Planning circular on student caps
- Draft Child Care Planning Guideline
- Draft Better Schools Design Guide

## Relationship with MOSPLAN

Mosman's Community Strategic Plan, MOSPLAN 2013-2023, identifies Strategy 2 of the Built Environment Program, as "Ensure Mosman's position is strong within the framework of the State's planning and regulatory reforms." A recurrent program is identified as "ongoing advocacy and lobbying to protect Mosman's interests in relation to Government policy, inquiries and legislation."

## Comment

The draft SEPP and associated changes will have a positive impact on the ability of the market to respond to demand for child care and school places, increasing certainty and accelerating approval times for development. While these are positive outcomes, there are potential negative impacts associated with these changes.

### Government and Non-Government Schools in Mosman

There are approximately a dozen government and non-government school sites across Mosman where these changes could be applied. Expansion of the scope of exempt and complying development to non-government schools and the inclusion of certain development (such as the construction of buildings up to 22m in height) is not supported. It undermines Council's existing planning provisions (including detailed site specific controls) for key school sites, removes Council's role in assessment of development and the community's opportunity to provide feedback. Examples of issues that may not receive sufficient consideration under exempt and complying development include views, traffic and parking.

There are serious concerns regarding provisions to allow schools to adopt the zoning of adjoining land, enabling development that is permissible on adjoining land, despite the existing provisions of the applicable LEP. These provisions will also facilitate the disposal of surplus educational sites, reducing land available for the provision of school infrastructure. If the intention of this draft SEPP is to respond to unprecedented pressure on existing school infrastructure, the inclusion of these provisions is counterintuitive.

The Department is also considering allowing only Council certifiers to issue complying development certificates for such proposals (rather than private certifiers) to ensure Council involvement in such developments. Whilst retaining Council involvement in the assessment process is supported, this change to the complying development process adds further complication and extends the scope of complying development far beyond what it was originally intended for, that is, for straightforward works with minimal environmental impact.

The details of the proposed changes for schools will need to be reviewed in detail and addressed in a submission in response to the draft SEPP.

### Child Care Centres in Mosman

Compared with the existing National Regulations guidelines, the Draft Child Care Planning Guidelines are more comprehensive, with detailed quantitative and qualitative planning controls. The proposed Guidelines will be a valuable tool for assessment officers during assessment of applications. Compliance with these guidelines will help achieve positive design outcomes.

The delivery of high quality child care centre design will remain a challenge in Mosman. This is because the draft Guidelines are ideal for new build centres, particularly in greenfield locations, but less relevant to developments involving adaptive reuse; that is, conversion of a church, dwelling house or other building into a child care centre. It is also very difficult to develop controls for adaptive reuse and therefore these applications can only be considered on a merit basis. Future adaptive reuse proposals would need to maximise the safety, health and overall care of young children without resulting in unsatisfactory outcomes for universal design, parking and heritage. Council's submission will address the issues associated with adaptive reuse in detail.

There are around seventeen standalone child care centres in Mosman. Many of these centres adaptively reuse existing buildings (i.e. houses and churches) and a number are heritage items (including one state listed item). Council operates one child care centre and one before & after school care and vacation care service. Council also leases out two child care centres to private operators and one preschool to a community based operator.

In 2016, Council staff undertook a comprehensive review of child care centre controls with a view to developing specific planning controls for inclusion in Mosman's DCPs. This work is now on hold pending the introduction of the draft SEPP and associated guidelines.

A review of Council's position on child care centre controls can occur once the success of these new guidelines has been tested by development applications in the Sydney metropolitan area and NSW.

### **Recommended Action**

It is recommended that a submission be prepared to provide the Department of Planning and Environment feedback addressing matters raised in the report.

In particular:

- implications for government and non-government schools in Mosman
- implications for existing and new child care centres
- expansion of schools in residential neighbourhoods

- Council certification of developments
- adaptive reuse of existing buildings

### **Compliance with Section 23A Guidelines - Council Decision Making During Merger Proposal Periods**

The Officer's recommendation is consistent with the Section 23A Guidelines - Council Decision Making During Merger Proposal Periods, issued by the Office of Local Government on 18 December 2015.

Recommendation endorsed by Acting Director Environment and Planning.

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### **COUNCIL RESOLUTION**

#### **Motion** Bendall/Menzies

1. The Officer's Recommendation be adopted subject to additional strengthening of the submission in relation to self-determining planning power of schools which Council considers totally inappropriate and contrary to community interest.
2. The submission addressing the matters raised in the report, including but not limited to the implications for government and non-government schools in Mosman, as well as for existing and new child care centres, addressing issues such as expansion in residential neighbourhoods, Council certification of developments and the adaptive reuse of existing buildings.
3. Council staff engage with further awareness raising in the Community, to ensure the residents of Mosman are aware of this policy in time to submit their own submissions.

**CARRIED UNANIMOUSLY**