

6 April 2017

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Dear Sir/Madam;

Re: Submission – Draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017

I am writing in response to the public exhibition of the Department's Draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (SEPP) and associated amendments to the Environmental Planning and Assessment Regulation 2000, planning guidelines for child care facilities, design guidelines for school facilities, environmental assessment code of practice for non-government schools and draft planning circular in relation to student\staff numbers.

The proposed changes associated with the draft SEPP are very important to this local government area. Mosman has seventeen child care centre sites and a dozen government and non-government school sites spread throughout the suburb.

A number of schools are located within Mosman's Scenic Protection Area and/or are listed as heritage items or are within heritage conservation areas. Assessment of proposals for schools and child care centres is undertaken using a merit-based approach in Mosman. Apart from site-specific controls in a DCP for one of our private schools, and the inclusion of parking rates for these developments, there are no other specific controls for schools in Mosman LEP 2012 or DCPs.

The planning reforms associated with early childhood education and care facilities are supported. The uncertainty and confusion caused by conflicting local, state and national planning and building requirements will be removed, and the Guidelines will assist child care providers and developers on delivering high-quality child care facilities. While the transfer of educational establishment provisions from the Infrastructure SEPP to the new SEPP is supported, provisions that weaken local decision making, particularly complying development, are not supported.

The key matters that will be addressed in this submission are:

- Expansion of complying development resulting in adverse impacts on neighbours and significant areas.
- Concerns regarding tree matters, in particular, how the SEPP will leave tree removal open to interpretation and how this could be easily abused.
- Matters relating to early education and child care facilities including: site selection, fencing, heritage, adaptive reuse, provision for 0-2 age group and 'mega centres.' A number of suggestions have been made to improve the draft Guidelines.
- Concerns about how provisions in both the current Infrastructure SEPP and Draft SEPP override the carefully considered strategic direction of LEPs and encourage ad-hoc development of schools.
- Ongoing implications for local decision making.
- The need for out-of-school based care (OOSH) to be a key component in the design of new schools.

- Specific matters relating to Educational Establishments.

A report on the draft SEPP was considered by Council at its meeting on 7 March 2017. Council resolved that:

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.*

1. Expansion of complying development

The draft SEPP proposes an expansion of provisions for complying development, in particular, an increase in the maximum height from 12 to 22 metres. This will pose a considerable risk to views and Mosman's Scenic Protection Area. It also extends complying development well beyond its original intent. Existing provisions under the Infrastructure SEPP have already resulted in undesirable outcomes which will be only be exacerbated under these changes. Concerns are also raised in relation to setback controls that vary based on the neighbouring land use zone.

Increased Height

The Infrastructure SEPP has an existing height limit of 12 metres for complying development. This exceeds the height limit of 8.5 metres applying to Mosman's residential areas under its LEP. Development would be permitted under this SEPP as complying development up to 22 metres in height. This is considered to be excessive in a low density residential zone and would result in development out of scale and context with the surrounding development. The maximum height should be no more than the current 12 metres.

Consideration of views to and from the harbour

The impact of an increase in height and no merit based assessment would be most adverse in Mosman's Scenic Protection Area. This area includes the significant foreshore slopes of Sydney and Middle Harbours. Mosman has three schools located within its Scenic Protection Area. Access to these provisions poses a considerable risk to the natural and visual environment of Mosman and Sydney Harbour, particularly with the proposed height provisions of up to 22 metres. The Scenic Protection Area is currently excluded from the General Housing Code and it should also be excluded from complying development under this draft SEPP.

It is considered that development assessment is the appropriate tool to use to assess view loss. In Mosman, view impacts are carefully considered when relevant, both to and from the Harbour.

Impacts on adjoining development regardless of zone

It is considered that the provisions relating to impact on adjoining development should be reviewed to include residential development regardless of zoning.

Scope and complexity of complying development

Council does not support an expansion into complying development that requires a council certifier rather than a private certifier. The introduction of this requirement would only add further complexity to the system. If the nature of the development means that it is too sensitive to be referred to a private certifier, then complying development is not the appropriate assessment tool and it should instead be a development application, assessed and determined by Council.

Alternative pathway for expansion

A private school in Mosman undertook complying development on the land after receiving Council consent for change of use to educational establishment on the same site. Despite provisions for complying development being restricted to sites already approved for school use, the system can be manipulated, causing confusion and uncertainty in the community.

In 2015, a development application was lodged to change the use of an existing residential flat building into classrooms and linking it to the neighbouring school building with a bridge. This allowed the pattern of built form in the street to remain the same, consistent with the R3 zone and allowed for the retention of a mature street tree. The proposal closely followed the requirements of the Mosman LEP 2012, DCP and the residential zone objectives. This meant that while it was an educational use, Mosman's planning controls ensured that it blended into the residential streetscape. The proposal attracted only one submission, and was approved by Council.

One year later, a complying development certificate was issued for the redevelopment of the site. The proposal was vastly different from what had been approved. In contrast, the development under complying development resulted in an undesirable outcome as it did not have to comply with Mosman planning provisions. It is currently under construction and will result in severe streetscape impacts, with the removal of a street tree and, a disruption to the building pattern in the residential street. The space within the front building line will be devoid of any landscaping. The street frontage now consists of a 3 metre deep excavation within the front boundary, a substation and hardstand and a high brick wall across the street frontage. The image below illustrates the site under construction.



This example demonstrates why expansion of schools into residential zones should involve council consent. It undermines Mosman's local environmental plan and erodes the established character of the streetscape, which has been cultivated through the consistent application of planning controls over decades. It is an example of ad hoc development where schools determine the shape of built environments with no community input.

The Department should re-consider the expansion of complying development provisions.

2. Matters relating to tree removal

Below is a list of concerns regarding tree matters, in particular, how the new SEPP will leave tree removal open to interpretation and how this could be easily abused:

There are a set of circumstances where complying development can occur in relation to "removal or pruning of a tree or other vegetation that requires a permit or development consent for removal or

pruning, unless that removal or pruning is undertaken in accordance with a permit or development consent." The wording of these provisions (under clause 18 *Development affecting certain trees or vegetation*) is open to interpretation and could easily be abused. Examples are listed below:

- Mosman considers any non-exempt tree to have significance and does not refer to a significant tree register. Clause 18 (a) references this register. The lack of a significant tree register in Mosman opens a loophole which could result in very important trees being removed under these provisions.
- Clause 18 (b) refers to tree or vegetation within 3 metres of the development, does development include external fixtures such as awning, decking or patios? Trees can be safely retained if construction occurs correctly in the majority of these circumstances. This again, could result in trees that would be assessed as being worth retaining under Mosman's system being approved for removal under these provisions.

Clause 18 (c) provides for the removal of trees or vegetation of a height less than 8 metres under complying development. This clause is not supported. An 8 metre tree is a large tree that in most cases would be exhibiting the benefits of large trees. Currently trees over 5 metres in height are protected under Mosman LEP 2012 which is and has proven to be a reasonable height for protection. The height in this clause should be reduced to 5 metres, so that applications for tree removal above this threshold can be assessed through Council via a tree permit or development application.

Clause 32 (b) regarding exempt development for existing schools, refers to "*the removal or lopping of a tree that has been assessed by an appropriately qualified arborist as posing a risk to human health or safety or of damage to infrastructure.*" The drafting of this clause could result in trees that pose low risk to humans or infrastructure being removed. Mosman Council has existing processes where emergency tree permits for high risk situations can be obtained where a tree can formally be assessed and permit issued within 72 hours, which is already accessible to schools.

There are also concerns regarding the wording of "appropriately qualified arborist." The arboricultural industry is effectively an unregulated industry in that there is no licencing for working in the industry. As there is no definition of what an appropriately qualified arborist is, it should be stated that trees are to be assessed by an AQF5 level arborist which is considered the professional level of consulting arborist to hazard assess trees.

3. Matters relating to early childhood education and care facilities

There are a number of positive aspects to the Draft Child Care Planning Guidelines including its comprehensive nature and detailed quantitative and qualitative planning controls. The proposed Guidelines will be a valuable tool for all stakeholders involved in the development of child care centres. Some suggestions are made below on how to improve the document further, with regard to site selection, adaptive reuse, heritage and provision of places for the 0-2 age group.

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. This is a necessary intervention due to the plethora of restrictive planning controls across NSW that directly contradict the national standards. Restrictive planning controls create confusion and delays to approval of new centres on the basis of controls that do not allow consideration of site specific aspects.

By improving the Guidelines with these amendments, in particular, providing clarification in relation to heritage and streetscape consideration for fencing, it will help minimise unintended consequences associated with the introduction of this reform. It could also reduce the need for Councils to have their own child care centre development control plan provisions.

Separate section on site selection

Site selection is an important consideration when planning for a new centre and the draft Guideline rightly states, "Centre-based child care facilities are not suited to every site." A section should be added to this document to address site selection. This would directly respond to the intent of these reforms, which is to enable efficient delivery of child care centres. It should be explained in a way that applicants understand that intensity of development directly relates to the constraints of the site and how to avoid sites that may introduce delays and additional challenges. Characteristics of less challenging sites may

include; safe pedestrian and vehicular access, ability to accommodate on-site parking safely, adjacent to open space, wide street frontages, corner sites and close to business centres/public transport.

Fencing

The guidelines need to provide an explanation of how to handle fence requirements under the national regulations while reducing heritage and streetscape impacts. The intervention on council DCP requirements for fencing may encourage unsympathetic streetscape impacts. Its applicability to heritage items and heritage conservation areas also needs to be explained.

A compromise position should be encouraged. For example, where there is a pattern of low fences within a streetscape, a child care centre compliant fence and screening vegetation could be installed behind the original low fence, to help the centre blend in with the streetscape, this would be particularly important for heritage items and conservation areas.

0-2 age group

Councils across Sydney have attempted to facilitate places for the 0-2 age group in their development controls due to significant demand and waiting lists for the care of babies. The removal of being able to require aged-based places, could result in a market failure, as 'the market' may not deliver for this age group due to the additional costs involved in caring for babies and hence leave a significant gap in provision. If this is removed, there should at least be discussion included in the draft Child Care Planning Guideline to indicate the benefits of providing care for the 0-2 age group.

Adaptive reuse challenges

Delivery of high quality child care centre design will remain a challenge in Mosman, even with the introduction of these reforms. The draft Guidelines are designed 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. These types of applications will still need to be considered on a merit basis.

The proposed Guidelines do not have a distinct section on adaptive reuse and heritage. It is strongly recommended that a section be developed so that it is clear to potential applicants how such applications should be approached.

The Department should provide guidance on best practice for these constrained sites, particularly in relation to parking, access and indoor and outdoor space layout so that potential developers can make well informed decisions before committing to selection of an existing building for adaptive reuse.

Review of Draft Child Care Planning Guidelines

The Draft Child Care Planning Guidelines should be reviewed after being in operation, perhaps after one year, in line with the review of the SEPP, inviting submissions from Councils and members of the community. This ensures any unintended consequences are addressed as well as outstanding challenges or issues. The review should look at development applications processed since implementation of the guidelines and in particular, any Land and Environment Court cases relating to child care centres.

One issue of particular concern across Sydney in past years relates to recent development applications for 'mega' child care centres of over 150 places. It would be prudent either when reviewing the existing reforms and/or during a future review, to monitor the evolution of this trend. The Department of Planning and Environment should consult with the Department of Education on whether these types of centres impact on the welfare of children. These types of centres may become increasingly prolific, as Sydney experiences major population growth and best practice research and analysis on these types of centres should be consulted.

4. Ongoing implications for local decision making

Taking decision making away from local communities

Provisions that contradict local environmental plans and/or reduce the role of councils in determining development outcomes are not supported. Mosman LEP 2012 was developed in close consultation with

the community. Educational establishments in Mosman were designated an SP2 zone, which provided property owners adjacent to these schools certainty as to what future development may occur. The process of requiring a planning proposal to rezone adjoining land ensured that the community was aware of, and consulted on, proposed development and or expansion by private schools. This mechanism is a necessary part of having a transparent and accountable planning system.

Council has been historically opposed to and maintains its opposition to site compatibility certificate provisions and prescribed zones. The provisions in the SEPP override the carefully considered strategic direction associated with local environmental plans. The expansion of prescribed zone provisions to non-government schools in 2009 was originally intended as a temporary measure. It now remains a permanent fixture of the existing Infrastructure SEPP and the draft SEPP.

Master plans produce better long term outcomes

Master planning in cooperation between non-government schools and councils has resulted in good outcomes in Mosman, an example being Queenwood School. The outcomes associated with the draft SEPP, particularly through complying development could further encourage ad-hoc development of schools.

The benefit of complying development provisions in the form proposed under this draft SEPP is that it can allow quick approval of development. This was effective for the purposes of the federal government stimulus in 2009 but may not be the best way to facilitate long term growth and/or redevelopment for the current and future demographic challenges.

Master plans introduce transparency so that the community are aware of the school's long term expansion plans. Having complying development undertaken in the absence of a master plan framework only fosters community confusion and mistrust, due to these provisions overriding and contradicting what is in the Mosman LEP. An example of this situation was described in part one of this submission.

The site specific controls for the Queenwood School sites represent a successful example of Council and a school working together to develop a master plan. These controls addressed issues unique to this location (e.g. Scenic Protection Area) while facilitating future intensification of use of the school sites and have formed the basis of the school's redevelopment.

5. Out-of-school based care (OOSH)

Throughout the draft SEPP and associated documentation, there is very limited discussion of OOSH and the need for OOSH to be a key component (not just a consideration) in the design of new schools, major redevelopment, and other upgrading of schools.

This omission appears contradictory to State and Federal government policies in OOSH and roll out of new OOSH places, and policies and programs for employment, vocational training and workforce participation of parents and carers of school-aged children. If new schools are to be future-fit then there needs to be effective integration of OOSH in the design and construction of new and upgraded school facilities.

In Schedule 4 of the draft SEPP and the draft 'Better Schools: A Design Guide for Schools in NSW (NSW Government Architect) the design principles include, "*Accessible and Inclusive ... Schools should actively seek opportunities for their facilities to be shared with the community and to cater for activities outside of school.*"

There should be specific reference to out-of-school-hours care in this principle and OOSH should have higher priority for provision over other activities outside of school such as the commercial recreational class.

A suggested modification for further consultation by the Department with OOSH peak bodies:

... Schools should actively seek opportunities for their facilities to be shared with the community and to cater for Out of School Hours Care and other activities outside of school.

There should be more detailed discussion of the importance and priority of OOSH to the school community and value in having school-based facilities.

Currently, the only mention of integration of OOSH or before-and-after-school care (BASC) on review was in the draft Design Guide on page 20 in 'Key Activities'.

Many schools and communities work together to share library and sporting facilities, meeting spaces, performance spaces and to run after hours adult education or school holiday programs. The co-location of early learning centres and before-and-after-school (BASC) programs on school grounds is becoming increasingly common.

This needs to be significantly strengthened and for the Design Guide to highlight throughout the document (not just at the end) that OOSH (BASC and vacation care) is now a core program to be incorporated into school design.

The SEPP review provides a timely opportunity to move school design into the 21st century where schools can readily incorporate OOSH and provide a quality environment for the increasing number of children requiring BASC and vacation care.

6. Specific matters relating to educational establishments

Below is a list of other issues identified while reviewing the draft SEPP material:

- Instead of a designer, the draft SEPP should instead require that a registered architect verify that the development achieves the design quality principles before a complying development certificate (CDC) can be issued for certain school developments.
- Some of the protections for heritage items are weak and subjective in relation to development without consent and exempt development. Protections such as "must involve no more than minimal impact on the heritage significance of the item or area" are not strong enough.
- Audible works for complying development should be restricted to 8am to 1pm on Saturday with inaudible works allowed between 7 and 8am.
- The wording of the Design Quality Principles needs to be strengthened within the SEPP, particularly the use of the word "should." It invites discretion in relation to the extent to which each principle is addressed.
- It is not clear whether an RMS Certificate is required for complying development for the purpose of school based child care. It should be a requirement as this type of work involves an increase in the number of students.
- The requirements that have to be met when obtaining an RMS Certificate have not been explained within the explanatory material.
- Development without consent provisions should not facilitate significant increases in student population through incremental creep. For example, the repeated use of the 10% provision over 5 years for a school with a starting population of 1000 could result in an increase of over 500 places.
- A number of new definitions have been added to the draft SEPP, and other definitions amended. It is essential that these do not contradict definitions of an identical or similar name within the standard instrument LEP.
- There should be a simpler way to articulate that private schools will be able to complete development without consent. Defining them as a 'public authority' is unnecessarily confusing.
- Requirements for notification for non-government schools need strengthening. In addition to content being available online, a notification sign should be placed in front of the school for a defined period of time.
- The notification period for Council to comment on site compatibility certificates is inadequate. Twenty-one days does not accommodate for the time required for a report to be made to Council.
- Summary documents provide a clear comparison between the current planning framework with the proposed changes. Inclusions that would have assisted as part of this exhibition include; tables showing the applicability of types of development to public and private schools and exclusions from these provisions; a timeline of the history of changes to these planning provisions.

- If provisions in a SEPP contradict local environmental plans, these overriding provisions should be incorporated into the standard instrument local environmental plan, improving transparency.

Thank you for the opportunity to comment on this proposal. Please do not hesitate to contact me on 9978 4154 or g.khouri@mosman.nsw.gov.au if you would like to discuss these issues further.

Yours sincerely



Gibran Khouri

STRATEGIC PLANNER