

Review of the Education SEPP

Submission to the NSW Department of Planning, Industry and Environment

December 2020

**Prepared by: Federation of Parents and Citizens Associations
of New South Wales**

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Introduction

Federation of Parents and Citizens Associations of New South Wales (P&C Federation) is thankful to the NSW Department of Planning, Industry and Environment (the Department) for this opportunity to contribute to the proposed amendments to the *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* (Education SEPP). P&C Federation supports the position of individual educational and developmental needs met by a range of differential services expressed through appropriate and well-planned curricula, programs and environments conducted by sensitive and well-trained personnel in conjunction with parents¹ and families.

The core belief of P&C Federation is that the education of our children and youth is the most fundamental means of ensuring individual and collective success and, as a result, our greatest national resource. We also support the concept that it is primarily the responsibility of governments to ensure education is well rounded and fully funded.

P&C Federation is a representative voice for public education in NSW. With over 1800 member associations our understanding of the issues within education is broad and carries with it the voice of a very large body of parents and carers.

Description of issues and proposed changes in Explanation of Intended Effect

Many of the proposed changes outlined in the Explanation of Intended Effect (EIE) are simply to resolve unclear or inconsistent wording throughout the relevant policies and legislation. P&C Federation does not object and has little to add to most of these, however we have outlined below our concerns with some specific proposed changes.

[Planning pathways for development affected by a 10% student cap](#)

When the Education SEPP was first drafted in 2017, one of P&C Federation's main concerns was that developments permitted without consent could not allow for student or staff increases greater than 10% of the previous 12 months. The Department proposes to address these concerns by amending the Education SEPP to instead *"allow for the development of school facilities by a public authority without development consent within the boundaries of an existing school equivalent to an additional classroom (30 students) or 10% of the existing student or staff numbers, whichever is the greater"*. While this is an improvement, we still have the following concerns:

1. The EIE states that this proposed change stems from concerns that the current 10% cap disadvantages small non-metropolitan schools with very low student numbers, whose annual enrolments could easily fluctuate by over 10%. While the proposed change benefits these schools, it overlooks that small non-metropolitan schools are not the only schools unfairly constrained by this 10% cap. Government schools throughout the Sydney Basin may have growth rates of over 10% and more than 30 students due to population growth.

¹ "Parent" refers to anyone with legal care of a child, such as a parent, carer or legal guardian

To illustrate, in four P&C Federation electorates with high population growth – Macarthur, North West Sydney, Sydney, and West Sydney – we sampled the 2017-2018 government school enrolments and found the following²:

- In Macarthur electorate, 10 schools (~8%) had enrolment increases of over 10% from 2017 to 2018;
 - Of those 10 schools, 6 grew by more than 30 students.
- In North West Sydney, 13 schools (~12%) had enrolment increases of over 10% from 2017 to 2018;
 - of those 13 schools, 10 grew by more than 30 students.
- In Sydney electorate, 17 schools (~12%) had enrolment increases of over 10% from 2017 to 2018;
 - of those 17 schools, 11 grew by more than 30 students.
- In West Sydney electorate, 18 schools (~11%) had enrolment increases of over 10% from 2017 to 2018
 - Of those 18 schools, 10 grew by more than 30 students.

This indicates that at least in some highly populated areas, most schools whose enrolment numbers grow by over 10% from the previous year do so by more than 30 students. The proposed amendment in the EIE would not resolve the challenges these schools face.

2. Many education establishments are able to limit the number of enrolments they accept. Government schools, however, generally do not have this option and must accept any enrolments in their catchment zone. If their enrolment growth exceeds both the 10% and 30 student threshold, their ability to expand their capacity appropriately will be hampered, potentially putting unfair and unnecessary strain on their capacity.

For these reasons, placing such limits on government schools undermines the intended purpose of creating an Education SEPP in the first place, which was to help education establishments meet the increases in demand.

Recommendation

Exempt government schools from any student/staff growth limits attached to developments permitted without consent. At the very least, such an exemption should apply to government schools in areas above a certain population.

[School development permitted without consent for two-storey buildings](#)

P&C Federation welcomes the proposal to raise the maximum height of numerous facilities from one storey to two. However, the EIE gives no explanation as to why the one-storey limit for car parks is proposed to remain unchanged. In many schools, expansion of parking facilities would ease traffic congestion on school roads, especially during drop off and pick up times.

² Based on figures available at NSW Education Data Hub, 'NSW government school enrolments by head count (2004-2018)'

Recommendation

Amend section 36(1)(a)(v) of the Education SEPP so that the maximum height for car parks is two storeys.

Timeframes for short-term portable classrooms (e.g. demountables) as exempt development

The EIE rightly notes that short-term portable classrooms are necessary for many schools to accommodate fluctuating student numbers. However, we are concerned that the NSW Department of Education has grown far too reliant on them as a solution to growing enrolment numbers, and is slow to invest in longer-term classrooms for these students.

In our view, short-term portable classrooms are strictly a short-term measure. They are sometimes necessary when a school experiences a rapid surge in enrolments. But while students are using these classrooms, schools should immediately begin planning for and investing in long-term infrastructure. Instead, short-term portable classrooms in many schools have unofficially become long-term structures, and the building of more permanent classrooms is put off indefinitely. This is often to the detriment of students, as short-term portable classrooms tend to be highly rudimentary buildings which may suffer from poor insulation, leakages and other structural issues.

For this reason, we oppose increasing the timeframe for short-term portable classrooms from 24 months to 48 months. We believe 24 months is sufficient time to plan for more permanent classrooms, and we fear doubling the timeframe will only entrench the practice of relying on short-term portable classrooms in lieu of more permanent solutions.

We also note that section 36(1)(a)(ii) of the Education SEPP classifies portable classrooms as development permitted without consent, and there is no timeframe attached to them. It is not immediately clear what distinguishes a portable classroom from a short-term portable classroom.

Recommendations

1. Maintain the 24 month timeframe for short-term portable classrooms in section 38(1)(l) of the Education SEPP.
2. Clarify the distinction between portable classrooms in section 36(1)(a)(ii) of the Education SEPP and short-term portable classrooms in section 38(1)(l) of the Education SEPP.
3. Amend section 38(1)(l) of the Education SEPP to stipulate that short-term portable classrooms must be replaced by permanent or semi-permanent classrooms within 24 months, and that if a school wishes to maintain short-term portable classrooms for more than 24 months, they must demonstrate to the consent authority a valid reason.
4. Amend the Education SEPP to put a maximum limit on the number of short-term portable classrooms allowed within the boundaries of a school, as a proportion of the number of students.
5. Amend the Education SEPP to require portable classrooms to be structurally suitable.

Other Issues

There are other areas of the Education SEPP not covered in the EIE which we feel warrant amending, which we outline below.

Front, side and rear setbacks

Schedule 2, section 4 of the Education SEPP requires the front setback of school buildings to be 5 metres, unless the average front setback for existing developments within 70 metres is other than 5 metres. This is unnecessarily cumbersome for schools, especially in urban areas, which struggle to make space for expansion of buildings to accommodate students.

The rear and side setback requirements in Schedule 2, section 3 of the Education SEPP is an improvement from the former Infrastructure SEPP, in that it distinguishes developments near business and industrial zones from developments near residential zones. However, the SEPP could make further distinctions between different residential zones. For example, Zone R4 (High Density Residential) generally allows for various non-residential developments such as office premises, public administration buildings, recreational facilities as well as residential flat buildings. It would be reasonable for developments in a school bordering such a zone to be granted similar requirements to developments bordering non-residential zones, since R4 zones may already be characterised by dense high-rise development.

The Education SEPP also does not make allowance for land adjoining a school that is owned by the school. Sections of the Education SEPP that prevent development within a specified distance from a property boundary may prevent schools from developing within a certain distance from their own land. This is impractical, as other stakeholders noted in 2017 when the Education SEPP was in draft form and being reviewed (e.g. see submission from McCullough Robertson Lawyers, page 5).

Recommendations

1. Amend Schedule 2, section 4 of the Education SEPP so that the front setback of school buildings (whether new buildings or additions/alterations to existing buildings) is at least 2 metres, regardless of the average front setback of other existing developments.
2. Amend Schedule 2, section 3 of the Education SEPP to allow the side and rear setback to be at least 1 metre from the boundary of land in a residential zone, if it is in Zone R4.
3. Amend the above sections, and all other relevant sections of the Education SEPP, so that schools are not prevented from carrying out development within any distance of a boundary of land that is owned by the school. This should be regardless of whether the adjoining land is in a residential or non-residential zone

Prescribed zones for school development

When the Education SEPP was first drafted in 2017, Zone RU1 (primary production) was included in the list of prescribed zones for school development. P&C Federation at the time supported this, while also recommending that zones RE1 (Public Recreation), E3 (Environmental Management), IN1

(General Industrial) and IN2 (Light Industrial) be added to the list of prescribed zones. Opening these zones for school development would provide more opportunities for school development, and we do not consider these zones to be inappropriate for schools. Section 24 of the Education SEPP already allows for zones IN1 and IN2 to be used for centre-based child care facilities, so we see no reason why these zones could not also be used for schools.

However, in the final SEPP, Zone RU1 is not among the prescribed zones for school development as it was in the original draft, nor are the other zones we had suggested. As far as we know, no explanation for this has been given.

Recommendation

Add zones RU1, RE1, E3, IN1 and IN2 to the prescribed zones for school development, or provide an explanation for why this will not be done.

Exempt development

In our view, some of the complying developments in the Education SEPP would be better classified as exempt developments. This is because they fit the Department's criteria for exempt development, which defines it as "*low impact developments*" which "*are intended to enable minor works to be undertaken within school grounds.*"³ The specific complying developments we believe should be exempt are:

Section 39(1)(a):

(vii) an outdoor learning or play area and associated awning or canopy,

(viii) demolition of a building or structure (unless a State heritage item or local heritage item),

(ix) minor alterations or additions (such as internal fitouts, structural upgrades, or alterations or additions to enable plant or equipment to be installed, to address work health and safety requirements or to provide access for people with a disability),

(x) restoration, replacement or repair of a damaged building or structure

Indeed, section 26A(a) of the Infrastructure SEPP for correctional centres classifies the demolition of buildings (viii above) as exempt development if the footprint of the building covers an area no greater than 250 square metres. We see no reason why this could not be the case for schools.

We also draw attention to a 2017 suggestion from DFP Planning (on behalf of Catholic Education Commission NSW, now Catholic Schools NSW) to include an exempt development provision allowing the interim use of land or facilities in connection with an existing school for the purpose of classrooms during the carrying out of construction works relating to that school.⁴ The reasoning was that when schools undertake construction work, they must sometimes temporarily move students out of their usual classrooms to another building, and if the alternative building has not been approved to be used for classrooms, the school may require a development application to use the building for classrooms, even on a temporary basis. This could be easily avoided by a provision in section 38 of the Education SEPP allowing such temporary use to be exempt development.

³ Department of Planning. *Explanation of Intended Effect: draft State Environmental Planning Page 2 Policy (Educational Establishments and Child Care Facilities) 2017*. February 2017. P.18

⁴ DFP Planning. *Submission to the Draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities)*. 2017. P.2

Recommendations

1. Reclassify the complying developments in section 39(1)(a)(vii-x) of the Education SEPP as exempt developments.
2. Adopt the 2017 recommendation of DFP Planning/Catholic Schools NSW to include an additional exempt development provision allowing the interim use of land or facilities in connection with an existing school for the purpose of classrooms during the carrying out of construction works relating to that school.

Review of Policy

Section 9 of the Education SEPP requires the policy to be reviewed “as soon as is reasonably practicable”, after the first anniversary of the Education SEPP’s commencement, and then after each 5-year period or after any review of the National Quality Framework. The use of the words “as soon as is reasonably practicable” is too open-ended and essentially allows the Department to postpone reviews indefinitely.

Recommendation

Replace the words “as soon as is reasonably practicable” in section 9 of the Education SEPP with “within 6 months”.