

Feedback in Relation to the Draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities)

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of New South Wales

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Introduction

Federation of Parents and Citizens Associations of New South Wales (P&C Federation) is thankful for this opportunity to contribute feedback regarding the Draft State Environmental Planning Policy (Draft 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 parents and families. It is essential that school staff, parents and the Government work in partnership to ensure that the needs of each student in the Public Education system are met.

The core belief of P&C Federation is that the education of our youth is the most fundamental means of ensuring individual and collective success and, as a result, our greatest national resource.

P&C Federation's response to the Draft SEPP is guided by the recognition that public school enrolments in New South Wales are expected to surge in coming years; the number of school-age children in the state is projected to grow by 267,000 by the year 2031, and the bulk of these new students (65%, or 173,000 students) will enrol in public education.¹ It is incumbent on responsible government to prepare for this projected growth, which includes allowing for the development of more classrooms, the construction and expansion of school facilities, and other necessary infrastructure projects. Such preparation would be greatly assisted by reducing the administrative burdens that accompany public school infrastructure projects, and P&C Federation broadly welcomes the Draft SEPP as a necessary plank in achieving this. Although controls for educational establishments currently exist in Part 3 of the Infrastructure SEPP, the creation of a stand-alone SEPP for educational establishments and child-care facilities is a commendable acknowledgement of the growing infrastructure challenges the public education sector will face. Our feedback focuses on the Draft SEPP as it relates to public schools and child-care facilities.

Draft SEPP – Schools

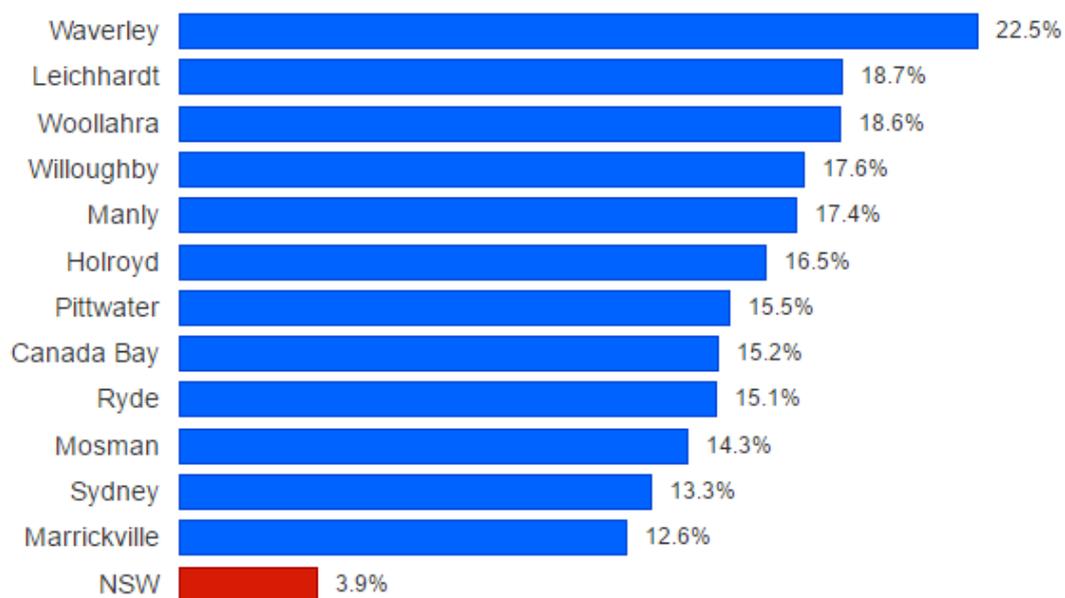
Development permitted with consent and development permitted without consent

The Draft SEPP regulations for development with and without consent are little changed from those in the current Infrastructure SEPP. One small but welcome change for such developments is that Zone RU1 (Primary Production) has been added to the list of prescribed land use zones for school developments. P&C Federation would also suggest that Zones RE1 (Public Recreation), E3 (Environmental Management), IN1 (General Industrial) and IN2 (Light Industrial) be added to the list of prescribed zones for public school developments. Indeed, Section 22 of the Draft SEPP already allows for Zones IN1 and IN2 to be used for centre-based child-care development provided it is compatible with neighbouring uses, does not restrict the operation of existing industrial land uses and does not pose a health or safety risk to children or visitors or staff. There is no reason why similar rules could not apply to public school developments in these zones. Puzzlingly, the construction, operation or maintenance of toilet blocks is not mentioned in the Draft SEPP as it is in the current Infrastructure SEPP, and in the absence of an explanation P&C Federation believes this should be reinserted.

¹ Infrastructure NSW. 2014 State Infrastructure Strategy Update - http://www.infrastructure.nsw.gov.au/media/42960/inf_j14_871_sis_report_ch07_web.pdf

P&C Federation is also greatly concerned that provisions for developments without consent will not apply to developments that allow for an increase of student or staff numbers greater than 10% of the previous 12 months. This will unfairly disadvantage small schools, which may easily grow by over 10% in a 12 month period due to normal fluctuations in enrolments; a 10% limit will therefore impact on the ability of small mainstream schools, as well as special schools, to take up the benefits of reduced red tape for developments permitted without consent. Considering that up to 30% of New South Wales public schools are small schools, this rule risks inhibiting the growth of a large number of schools.² Moreover, there are a significant number of public schools in the Sydney Basin with steady growth rates of well over 10% simply due to increased enrolments as a result of major residential developments, including large scale construction of units, and many of these schools will continue to experience such growth. For example, growth rates of 10% or higher were experienced between 2015-2016 by nineteen schools in the P&C Federation’s Sydney electorate, nine schools in the North West Sydney electorate and fourteen schools in the North Sydney electorate alone. Most of these public schools had experienced 10% or more growth in previous years as well, and one North West Sydney school, Riverbank Public School, experienced 85% growth between 2015-2016 and now requires demountable classrooms to cater for demand. Other figures from the NSW Department of Education analysed by Fairfax Media indicate that the school-aged population in the City of Sydney will grow by 41% in 10 years and that there was a 13% growth of student enrolments from 2012-2016. In areas of Sydney’s south-west, this growth could be by as much as 55%.³

Top 12 local government areas by growth in student numbers 2012-2016 (source: Fairfax Media)



² Small schools data based on definition of small schools in Australian Education Act 2013, Subsection 43(1) and February 2016 school enrolments in NSW at <http://www.teach.nsw.edu.au/documents/2015%20-%20DGS14-253-Website%20Enrolment%20Information.pdf>

³ Eryk Bagshaw and Inga Ting, *Sydney Morning Herald*, Sydney's school student boom, 13 April 2016 <http://www.smh.com.au/national/education/sydneys-school-student-boom-20160412-go44ij.html>

A circular drafted for consent authorities outlines that if a school wishes to increase student or staff numbers by more than this amount, it must apply for approval for that increase. Having said this, the circular also states that consent authorities should apply flexibility in limiting student and staff increases, and that if a consent authority imposes caps on development consents under the Environmental Planning and Assessment Act 1979 (EP&A Act), it should be for “a valid planning reason supported by a strong evidence base.”⁴ This guidance is to be welcomed; however, as public schools are obligated to accept all students in their catchment areas and their facilities are public assets, these growth restrictions are not reasonable to impose on public schools as they may be for non-government schools. Given that the Draft SEPP was in part prompted in the first place by the projected increases in student numbers and that public schools are expected to absorb the majority of these new students, P&C Federation believes that the 10% growth limit for developments permitted without consent should apply only to non-government schools, and that public schools should be excluded from this limit as a matter of priority.

P&C Federation also questions the advisability of prescribing registered non-government schools as public authorities and determining authorities for developments permitted without consent. Under current legislation, developments without consent are available only to public authorities, and the draft amendments to the EP&A Regulation state that an approved Code does not apply to activities connected to an existing non-government school for which an environmental impact statement is needed. This essentially allows non-government schools to undertake their own environmental assessments under Part 5 of the EP&A Act, which subjects non-government schools to less accountability than exists for public schools. P&C Federation suggests that greater accountability be preserved if environmental impact statements for such developments in non-government schools continued to be undertaken by outside authorities.

Complying development

There is a need for increased infrastructure projects to meet the projected rise in student numbers, and part of this entails loosening some current restrictions on development. For this reason, P&C Federation welcomes the fact that height restrictions for complying development have been raised from 12 metres in the current Infrastructure SEPP to 22 metres and four storeys in the Draft SEPP (Schedule 2). At the same time, catering for more students entails providing more space for recreational play as well as more classroom space. P&C Federation thus urges provisions be put in the Draft SEPP to ensure that the allowance for more storeys does not result in excessive reduction of outside play space.

The Draft SEPP also makes commendably clear distinctions between school developments near property boundaries of residential zones and developments near boundaries of any other zones, whereas the current Infrastructure SEPP makes no such distinctions. Thus, for example, where the current Infrastructure SEPP requires a building within boundaries of an existing school to be located at least 5 metres from any side or rear boundary of the land, the Draft SEPP requires such a building that is no more than 12 metres high to be 5 metres from any side or rear property boundary with land in a residential zone, and more than 1 metre from side or rear property boundaries of any other zone.

⁴ Draft Planning Circular on student caps - <https://majorprojects.affinitylive.com/public/8dea0a4c453df373b80f8c436a621260/Draft%20Planning%20Circular%20on%20student%20caps.pdf>

This reflects recognition that not all land zones deserve equal prioritisation, and it is appropriate to give greater consideration to the needs of residential zones over most other land zones.

However, P&C Federation would further argue that the Draft 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.⁵ It would not be unreasonable 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. On the other hand, it is wholly reasonable for school development bordering lower-density residential zones to be subject to somewhat stricter regulations, to suit the character of the area.

Such distinctions between residential zones may also improve the draft overshadowing requirements for complying development. Section 31A of the current Infrastructure SEPP requirements for complying development in schools states that:

“A building must not overshadow any adjoining residential property so that

(i) solar access to any habitable room on the adjoining property is reduced to less than the minimum level (being 2 hours of solar access between 9 am and 3 pm at the winter solstice) or is reduced in any manner (if solar access to any habitable room on the adjoining property is already below the minimum level), or

(ii) solar access to the principal private open space of the adjoining property is reduced to less than the minimum level (being 3 hours of solar access to not less than 50% of that principal private open space between 9 am and 3 pm at the winter solstice) or is reduced in any manner (if solar access to the principal private open space of the adjoining property is already below the minimum level).”

The Draft SEPP, on the other hand, allows complying developments to reduce solar access by three hours at winter solstice instead of two, and has no separate requirements regarding private open spaces in adjoining properties. Stakeholders in residential zones may understandably object to this reduced sunlight, and distinguishing between different residential zones may provide a more viable balance between the infrastructure needs of schools and the lifestyle quality of residents.

There are also complying developments in the Draft SEPP that P&C Federation believes would be better classified as exempt. Specifically, P&C Federation believes the following complying developments in Section 33(1)(a) of the Draft SEPP should be reclassified as exempt developments:

(vii) an outdoor learning or play area and associated awnings or canopies,

(viii) demolition of buildings (unless the building is a State or local heritage item or is within a heritage conservation area), if the footprint of the building covers an area no greater than 250 square metres,

⁵ Standard Instrument—Principal Local Environmental Plan - <http://www.legislation.nsw.gov.au/~view/EPI/2006/155a/historical2016-01-27/full>

(ix) minor alterations or additions such as internal fitouts, or alterations or additions to address work health and safety requirements or to provide access for people with a disability,

(x) restoration, replacement or repair of damaged facilities

These developments are consistent with the criteria laid out for exempt developments in the Draft SEPP's Explanation of Intended Effect, which state that exempt developments are to be "low impact developments" which are "intended to enable minor works to be undertaken within school grounds".⁶ Indeed, the current Infrastructure SEPP lists the demolition of buildings with a footprint no greater than 250 square metres (viii above) as exempt development in its regulations for correctional facilities and public authority precincts, and there is no reason why this should not be the case for public schools.

Exempt Development

Section 32 of the Draft SEPP expands the list of developments for schools that are exempt from planning or building approval, and P&C Federation commends the inclusion on this list of development that is currently burdensome for schools. The draft exempt developments make explicit mention of routine maintenance, signage for pedestrians and walking paths of which the current Infrastructure SEPP makes no explicit mention. The draft exempt developments also provide less stringent regulations in some areas: awnings and canopies are currently exempt when they are not within 5 metres of any property boundary, whereas the Draft SEPP amends this to 1 metre. Moreover, lopping trees under the Draft SEPP merely requires an assessment from a qualified arborist rather than having to be in compliance with the School Facilities Standards—Landscape Standard—Version 22. P&C Federation welcomes these amendments as relieving administrative requirements for minor works. We would also suggest that the installation of solar panels in existing schools should be explicitly classified as exempt development.

As a primary concern of P&C Federation is preparing for the student population growth, the construction of more classrooms in public schools should be prioritised by the State Government. To this end, it is commendable that portable classrooms in public schools are exempt development in the Draft SEPP if they are not more than one storey high. Under Section 29(3) of the current Infrastructure SEPP, such portable classrooms are classified as development without consent and such development entails gaining environmental assessments under Part 5 of the EP&A Act, involving a determining authority to consider environmental issues before issuing approval for the development. Moreover, such portable classrooms in the current Infrastructure SEPP are required to be more than 5 metres from any property boundary, whereas the Draft SEPP requires them to be 5 metres from the property boundary of land in a residential zone or 1 metre from the property boundary of land in any other zone. Relieving such regulatory obstacles will allow for the needed increase of classrooms at a speedier rate.

P&C Federation also supports placing sporting fields, tennis courts, or any other type of court used for sport, and associated awnings or canopies as exempt developments if the development does not

⁶ Draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 Explanation of Intended Effect, p. 18 - <https://majorprojects.affinitylive.com/public/597fddb3bea2d2d223036d5ba641b8d6/Explanation%20of%20Intended%20Effects.pdf>

involve clearing of more than 2 hectares of native vegetation. These are currently classified as developments without consent, and therefore require environmental assessments, and reclassifying them as exempt developments will greatly relieve onerous administrative burdens for public schools.

Draft SEPP – School-based child-care facilities

As school-based child care may include out of hours care, which is an activity of P&C Associations throughout the state, P&C Federation welcomes the faster development approval pathways laid out in the Draft SEPP. It encourages shared use of facilities, facilitating a sustainable and optimal approach to investing in school infrastructure and development. P&C Federation welcomes the fact that the Draft SEPP has adopted the recommendation of the 2014 Productivity Commission into child-care services to begin eliminating potential overlaps between the National Quality Framework and state and local government requirements by consolidating standards and other planning controls into one State-wide guideline.⁷ P&C Federation also supports classifying school-based child-care developments as exempt development where it can be accommodated within existing on-site premises and facilities, and where no building works are required to deliver the service. Likewise, P&C Federation considers it reasonable that most developments requiring new building works be classified under the Draft SEPP as complying developments.

⁷ Productivity Commission Inquiry Report Overview and Recommendations: Childcare and Early Childhood Learning. 2014. P. 54 - <http://www.pc.gov.au/inquiries/completed/childcare/report/childcare-overview.pdf>