School provisions under State Environmental Planning Policy (Infrastructure) 2007

This circular provides further information to Planning Circular PS 09–007 about the recent gazettel of amendments to the State Environmental Planning Policy (Infrastructure) 2007 associated with schools.

Introduction
On 20 February 2009, State Environmental Planning Policy (Infrastructure) 2007 (the Infrastructure SEPP) was amended to allow educational establishments in NSW to efficiently respond to the Commonwealth Government’s economic stimulus package in the provision of additional facilities at existing schools. Please refer to Planning Circular PS 09–007 issued on 2 March 2009.

The amendments to the provisions for schools and TAFE establishments will ensure that the planning system supports the Commonwealth incentives package proposed to fund additional infrastructure at government and non-government schools and TAFE establishments.

These changes made to the Infrastructure SEPP in February 2009 build on the provisions for schools and TAFEIs that were added to the SEPP on 24 October 2008.

The new amendments ensure:
- a more consistent planning approach for government and non-government schools by extending the zones where government schools are permissible to non-government schools under clause 28 of the SEPP. This provision will last for three years
- that there are common complying development standards applying to both government and non-government schools under clause 31A of the SEPP.

Following the amendments to the Infrastructure SEPP on 20 February 2009, the following planning regime for educational establishments applies.

Definitions
The definition of educational establishment includes government and non-government schools (within the meaning of the Education Act 1990) or a university or a TAFE establishment that provides formal education and is constituted by or under an Act.

Where is a school a permitted use
Prescribed zones
In addition to zones where schools are permissible under the relevant local environmental plan (LEP) or other environmental planning instrument, a school may be carried out on land in a prescribed zone. This provision will only applies to non-government schools for the next three years.

Prescribed zones include the following zones in a LEP that is based on the Standard Instrument (or equivalent zones—see ‘Interpretation of prescribed zones’ below):
- Rural zones—RU2, RU4, RU5, RU6
- Residential zones—R1, R2, R3, R4, R5
- Business zones—B1, B2, B3, B4, B5, B6, B7
- Special zones—SP1, SP2
- Environmental zones—E4.

Interpretation of prescribed zones
Where the LEP is not based on the Standard Instrument, the equivalent zones in the LEP to a prescribed land use zone must be determined. In most cases determining the equivalent zone will be obvious. However, where there is uncertainty, the equivalent zone will be determined by the ‘relevant authority’. The relevant authority is:
the public authority proposing to carry out
development, or on whose behalf development
is proposed to be carried out, on the land, or
if the development is to be carried out by or on
behalf of a person other than a public authority,
the Director-General of the Department of Planning.

Other locations where schools permitted
In addition to the prescribed zones:
• an existing school can be expanded on land that
  is adjacent to that school without the need to
  rezone the adjacent land
• a new school is permitted on land where there is
  an existing educational establishment such as a
  TAFE.

Developing a new school
Development for the purpose of a new government
or non-government schools may be carried out with
consent in a prescribed zone. Since the
Infrastructure SEPP was amended in February 2009,
the zones where schools are permissible are now the
same for government and non-government schools.
This provision will be reviewed in three years.
Clause 32 of the SEPP specifies that the consent
authority must take into consideration relevant NSW
Government School Facilities Standards for landscape,
design and specification. The provisions in these
standards prevail over any development control plan.

Alterations to an existing school
Exempt development
Clause 31 of the Infrastructure SEPP lists the
development that is exempt development if it is in
connection with an existing school and complies with
clause 20(2) of the SEPP. These include exempt
development in Schedule 1 of the SEPP.

Complying development
Clause 31A of the Infrastructure SEPP is a key
planning provision that will assist schools
undertaking construction, alterations or additions at
existing establishments under the Commonwealth
incentives package by making them complying
development, including:
• a library or an administration building
• a gym, indoor sporting facility or hall
• a classroom, lecture theatre, laboratory, trade or
  training facility
• a tuckshop, cafeteria, bookshop or childcare
  facility for students or staff (or both)
• a car park.
Clause 31A(2) of the Infrastructure SEPP contains
specific requirements for complying development,
noting that section 76A of the Environmental
Planning and Assessment Act 1979 also provides
circumstances where complying development cannot
be undertaken.
Clause 31A(4) of the SEPP contains the
development standards for complying development
under this clause, including those for:
• building height—must not exceed 12 metres

side and rear setback—a building must be at
least five metres from any side or rear boundary
noise—where a gym, indoor sporting facility or
hall located less than 20 metres from a common
boundary with land zoned residential, must meet
acoustic performance elements in the NSW
Government Schools Facilities Standards for design
overshadowing—specific requirements to
prevent overshadowing of any adjoining
residential property.

Specific conditions for complying development
certificates are provided under clause 31C of the SEPP.

Government school provisions
Clause 29 of the Infrastructure SEPP provides that
certain development by or on behalf of a public
authority can be undertaken without consent on land
in a prescribed zone, if the development is in
connection with an existing educational establishment.
Under clause 30 of the SEPP, the local council and
the neighbours must be notified of the carrying out of
the development and consideration given to any
response received within 21 days.

Development consent
Development consent is required for other types of
alterations and additions which are not exempt or
complying development or development without
consent. The consent authority must take into
consideration relevant standards in the NSW
Government School Facilities Standards for
Landscape, Design and specification standards.
The provisions in these standards prevail over any
development control plan provisions.

Community uses of school facilities
School facilities can be used for a community purpose
whether or not it is a commercial use of the facility.
Development consent would be required to undertake
the community purpose unless the use could be
carried out without consent or is exempt or complying
development under other planning provisions.

Further information
State Environmental Planning Policy (Infrastructure)
2007, as amended, is available on the NSW
Note: This and other Department of Planning
Circulars are published on the web at www.planning.

Authorised by:
Sam Haddad
Director-General, NSW Department of Planning

Important note: This circular does not constitute legal advice. Users are
advised to seek professional advice and refer to the relevant legislation, as
necessary, before taking action in relation to any matters covered by this
circular.
© State of New South Wales through the Department of Planning
Disclaimer: While every reasonable effort has been made to ensure that this
document is correct at the time of publication, the State of New South Wales,
it agencies and employees, disclaim any and all liability to any person in
respect of anything or the consequences of anything done or omitted to be
done in reliance upon the whole or any part of this document.

2 / 2