

Department of Planning and Environment

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Guide to State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 3 Educational establishments and child care facilities

November 2022





Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Guide to State Environmental Planning Policy (Transport and Infrastructure) 2021

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Introduction

With growing demand across all sectors of the NSW education and child care system, the NSW Government introduced improvements to the planning framework regulating these developments in 2017.

State Environmental Planning Policy (Transport and Infrastructure) 2021 (SEPP Transport and Infrastructure) - Chapter 3 Educational establishments and child care facilities (Chapter 3 – Education) aims to make it easier for child care providers, schools, TAFEs and universities to build new facilities and improve existing infrastructure. It streamlines approval processes and provides for greater consistency across NSW.

This guide provides guidance around the provisions within Chapter 3 – Education of SEPP Transport and Infrastructure, to child care and educational providers, councils, consent authorities and the community. It does not form part of the SEPP nor replace any provisions in the SEPP. We suggest you read it in conjunction with Chapter 3 – Education of SEPP Transport and Infrastructure.

This guide updates the previous Guide to the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017.

Overview

In helping to streamline planning processes around the construction or upgrade of education facilities, Chapter 3 – Education of SEPP Transport and Infrastructure sets out:

- where different classes of development can be undertaken
- what approval pathway should be followed
- the level of assessment required
- any consultation requirements.

The SEPP's development controls and considerations ensure education developments meet the expectations of the community.

Quality design is a key focus; design quality principles aim to ensure that new educational infrastructure responds appropriately to the character of the area, is more energy efficient and contributes to safe, healthy lifestyles for children.

The SEPP is supported by the *Child Care Planning Guideline* and *Design Guide for Schools*, which help to ensure that facilities are well designed and located, and fit for purpose.

Early education and child care facilities

The provisions in Part 3.3 of Chapter 3 – Education of SEPP Transport and Infrastructure apply to early education and child care facilities.

National Quality Framework

Chapter 3 – Education of SEPP Transport and Infrastructure and the *Child Care Planning Guideline* align with the physical environment requirements for child care facilities, as regulated under the Australian Government’s National Quality Framework (NQF). The NQF consists of the *Children (Education and Care Services) National Law* (National Law), the *Education and Care Services National Regulations* (National Regulations) and the National Quality Standard. The NQF sets quality standards to improve the following child care services:

- long day care
- family day care (including care provided in an educator’s residence and care provided at an approved venue other than a residence)
- preschool (standalone or where combined with a kindergarten at a school)
- out-of-school-hours care on and off school sites.

The NQF applies to children’s education, health and safety, staffing, partnerships with families and the community as well as physical environment of the child care facilities.

Definitions and types of services

The Dictionary included in *Standard Instrument – Principal Local Environmental Plan 2006* (Standard Instrument LEP) or section 3.3 - Interpretation of SEPP Transport and Infrastructure contain the relevant definitions for education and child care services. Mobile child care is defined in section 3.28 of SEPP Transport and Infrastructure.

Provisions relating to planning approvals

In clarifying the approval process for early education and care facilities, SEPP Transport and Infrastructure requires providers to obtain planning approval from the relevant consent authority (such as a council) before they start operating their centre-based child care facility. They must then obtain a service approval to operate under the NQF from the NSW Department of Education. Additional information is provided on their website.

SEPP Transport and Infrastructure aligns the NSW planning system with the NQF's key physical environment requirements. Ensuring that physical requirements for a service approval are considered at development application stage reduces inconsistencies and reduces the risk of service approvals not being granted.

SEPP Transport and Infrastructure also simplifies planning approvals by introducing exempt and complying development provisions for child care facilities with low amenity impacts.

Exempt development

Exempt development does not require planning or building approval and is minor work that is low impact. The low impact child care developments that could be permitted as exempt development under Chapter 3 – Education of SEPP Transport and Infrastructure are:

- school-based child care, providing no works are required and hours of operation are met
- home-based child care, except on bushfire prone land
- mobile child care
- temporary emergency relocation of child care facilities.

To be exempt development, all requirements and development standards, including the general requirements in Division 4 under Chapter 3 – Education of SEPP Transport and Infrastructure must be met.

In addition, providers seeking to operate mobile child care service or to temporarily relocate a service must also obtain the consent of the relevant landowner. The service cannot be located on hazardous land (see section 3.28 and 3.29 of SEPP Transport and Infrastructure) and there must be access to adequate sanitary facilities.

Prior to commencing an early education and care facility, a service approval must be obtained from the NSW Department of Education.

Complying development

Complying development is a fast-tracked combined planning and construction approval. The child care facilities that may be considered as complying development are:

- school-based child care within the boundaries of an existing or approved school
- home-based child care on bushfire prone land, if fire safety standards are met under section 3.31 under Chapter 3 – Education of SEPP Transport and Infrastructure
- out-of-school-hours care at an existing university or TAFE site.

Proposals will only be considered complying development if they meet the relevant standards within the applicable provisions and the requirements for complying development in Division 5 under Chapter 3 – Education of SEPP Transport and Infrastructure and in clause 1.17A of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP).

Further, any proposal for a home-based child care on bushfire prone land requires a suitably qualified consultant in bushfire risk assessment recognised by the NSW Rural Fire Service, or the

relevant council, to certify that the dwelling and any associated access way is not located in bushfire attack level-40 (BAL-40) or the flame zone.

Prior to commencing an early education and care facility, a service approval must be obtained from the NSW Department of Education.

Local development

SEPP Transport and Infrastructure requires all other centre-based child care facilities to be assessed through the development application process. These development applications will be assessed by a consent authority, usually a council.

In addition, and as outlined in the Child Care Planning Guideline, centre-based child care facilities must meet the physical environment requirements of the NQF. The consent authority is required to consider the principles, considerations and requirements of the Child Care Planning Guideline when assessing the development application.

Prior to commencing a centre-based child care facility, a service approval must be obtained from the NSW Department of Education.

Concurrence of the NSW Department of Education

Clauses 107 and 108 of the National Regulations contain strict space requirements such that each child in a centre-based child care facility has at least:

- 3.25m² of unencumbered indoor space
- 7m² of unencumbered outdoor space.

Development applications that do not meet these controls require the concurrence of the NSW Department of Education before they can be determined. The NSW Department of Education has 28 days to respond to the concurrence request. If no response is received, the consent authority can determine the development application.

The NSW Department of Education can have input into whether:

- the proposal should be developed in its proposed form
- the provider may later need to apply for a service waiver and if this would be supported
- the proposal should be redesigned.

This concurrence role is another layer to ensure facilities comply with national requirements while giving providers greater certainty in obtaining a service approval.

Centre-based child care on industrial-zoned land

Section 3.24 under SEPP Transport and Infrastructure contains provisions that must be considered when a centre-based child care facility is proposed on IN1 General Industrial or IN2 Light Industrial zoned land. These provisions aim to minimise the risk of conflicting land uses while also ensuring the safety and health of children, staff and visitors.

Non-discretionary development standards

Section 3.26 under SEPP Transport and Infrastructure includes non-discretionary development standards for centre-based child care facilities that mean a development application for a centre-based child care facility cannot be refused by a consent authority on the following grounds:

- location - the development may be located any distance from an existing or proposed early education and child care facility
- indoor or outdoor space – the development can include any unencumbered area of indoor and outdoor space so long as it complies with the National Regulations
- site area and dimensions - the development may be located on a site of any size, street frontage length or allotment depth
- colour of building materials or shade structures - the development may be of any colour unless it is a heritage item or in a heritage conservation area.

Controls in a development control plan

SEPP Transport and Infrastructure notes that certain matters in development control plans are not applicable to centre-based child care facilities. This avoids onerous requirements that exceed those in the NQF, such as:

- numbers or groupings of children
- ages and age ratios of children
- operational or management plans or arrangements
- demonstrated need or demand for child care services
- proximity of the facility to other early education and child care facilities
- matters covered by Part 2, Part 3 or Part 4 of the *Child Care Planning Guideline*.

Section 3.25 under SEPP Transport and Infrastructure requires centre-based child care facilities in R2 Low Density Residential zones to be a maximum floor space ratio of 0.5:1 if a council's development control plan or local environment plan do not specify an alternative floor space ratio.

Schools

SEPP Transport and Infrastructure planning controls applying to schools apply over provisions in local environmental plans and development control plans where there is an inconsistency.

Exempt development

The exempt development provisions for schools enable minor works within school grounds without planning approval, provided certain development standards are met.

This could include short-term single-storey portable classrooms, at-grade car parks, removal of trees if assessed as a risk by a Level 5 qualified arborist, play equipment, sporting fields or tennis and basketball courts.

Division 4 under Chapter 3, section 3.39 and Schedule 5 of SEPP Transport and Infrastructure contain the full list of exempt development items and applicable development standards and requirements.

Complying development

Straightforward developments are permitted within the boundaries of an existing or approved school as complying development. These developments are determined through a fast track assessment process by an accredited certifier or a council to determine if they meet pre-determined development standards.

This could include construction of buildings for educational uses such as a classroom, a library, administration building, school hall, gymnasium, canteen, cafeteria or kiosk.

Trees within the grounds of a school that are required to be removed or pruned to enable complying development can only be removed as complying development if:

- the tree is not listed as a significant tree on a council register
- the tree is within 3m of the development and has a height of less than 8m.

Relevant requirements and development standards include requirements for the development to be a maximum of 4 storeys and 22m from ground level, side, rear and front setback, as well as overshadowing, privacy, landscaping, noise, garbage and waste storage area requirements.

Division 5 under Chapter 3 - Education, section 3.40 to 3.41 and Schedule 6 of SEPP Transport and Infrastructure contain the full list of complying development items and the applicable development standards and requirements.

The development must not contravene the conditions of a current development consent that applies to any part of the school, including conditions relating to hours of operation, noise, car parking,

vehicle movements, traffic generation, loading, waste management, landscape areas, and staff or student numbers.

Development over a registered easement, development of a basement or a car park is not complying development.

Complying development proposals do not need to be publicly exhibited, yet there are requirements around the notification to the relevant council and neighbours, as detailed in Division 4.5 of Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and Part 6 of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation) and in section 3.42 of SEPP Transport and Infrastructure.

Developments with a project cost (capital investment value) of greater than \$50m is declared to be State significant development and under section 3.18(4) of SEPP Transport and Infrastructure cannot be approved as complying development even if all the applicable development standards can be met.

Heritage

Complying development cannot be carried out on land that comprises an item:

- listed on the State Heritage Register
- subject to an interim heritage order
- identified as an item of environmental heritage or a heritage item by an environmental planning instrument.

If the heritage listing does not apply to the whole site, the restriction applies to the land described and mapped in the listing only. In this case, complying development can be carried out in the remaining parts of the site.

Schools may seek an exemption under section 57 of the *Heritage Act 1977* which, if granted, will permit complying development to be carried out on the site, subject to the conditions or requirements of the exemption.

Development permitted without consent

Certain small-scale developments are permitted without development consent. These developments will still require an environmental assessment of the likely impacts of the proposed activity in accordance with Part 5 of the EP&A Act. Both government and registered non-government schools can use these provisions.

The *NSW Code of Practice for Part 5 Activities for registered non-government schools* regulates how registered non-government schools must assess and determine activities permitted without consent under Chapter 3 – Education of SEPP Transport and Infrastructure. The Code outlines requirements for assessment, documentation and community consultation. Registered non-government schools must comply with the requirements of the Code. The Department of Planning and Environment can undertake compliance action if the Code is breached.

Development permitted without consent and within existing and approved school boundaries include 2 storey buildings (measured from ground level) such as a library, administration, classroom or canteen; a car park not more than one storey high; or demolition of a building or structure that is not heritage listed.

This type of development only allows for minor expansion of schools, which therefore means the increase in the number of students will be no more than 10% or 30 students annually and the number of staff cannot increase more than 10% annually.

If the proposal requires the removal of trees or vegetation, this will be assessed and determined as part of the approval process.

Development without consent cannot contravene the conditions of any current development consent (other than a complying development certificate) applying to any part of the school that relate to hours of operation, noise, car parking, vehicle movement, traffic generation, loading, waste management, landscaping or student or staff numbers.

If the development relates to a heritage item, schools must consider the environmental impacts. If it is a locally listed item or occurring in a heritage conservation area, and will create more than a minimal impact, this impact must be assessed and written notice provided to the relevant council. Schools must take into account any response received.

Development cannot be carried out without consent if it requires the demolition of structures or buildings that are State or local heritage items.

Basements and stacking of 2 storey buildings are not development without consent.

Development permitted with consent

If a development is not exempt, complying or permitted without consent, development consent is required. The consent authority will depend on the size and nature of the proposed development.

State significant development

State significant development is regulated under *State Environmental Planning Policy (Planning Systems) 2021* (Planning Systems SEPP).

New schools, or a new building for an existing school on land not previously used for a school, with a project cost of more than \$20 million are considered as state significant development. If the project cost is \$20 million or less a development application to the relevant council or planning panel is required.

Significant alterations and additions to existing schools that have a project cost of more than \$50 million (including rebuilding a school or erecting a building at an existing school) are also categorised as State significant development. This means that projects that satisfy the development standards for complying development but have a project cost of more than \$50 million are State significant development.

Student accommodation that is not part of a development application for an educational use is not State significant development and will be assessed by council or the relevant Planning Panel.

State significant development applications are lodged with the Department of Planning and Environment for assessment and consultation. The Independent Planning Commission is the consent authority for applications:

- not supported by council
- where more than 50 unique public objections are received
- where the person who makes the application has disclosed a reportable political donation in connection with the application.

The Minister for Planning is the consent authority for all other State significant development applications, although this may be delegated to Department staff.

To ensure flexibility, Chapter 3 - Education of SEPP Transport and Infrastructure, enables development consent to be granted even if a development does not comply with development standards such as height and floor space ratio, so long as the departure from development standards is justified and sufficient environmental planning grounds demonstrated.

Schedule 8 of SEPP Transport and Infrastructure lists 7 design quality principles to ensure school infrastructure is well designed and responds to its purpose and location. The consent authority must consider design quality in accordance with these principles before determining a State significant development application.

Local and regional development

Development with a project cost less than the project cost trigger for State significant development that is not complying development or exempt development is categorised as local or regional development, dependent on the cost of the works.

Regional development applications are lodged with council for assessment and community consultation, and determined by the relevant Planning Panel.

Regional development does not apply in the City of Sydney Local Government Area.

Crown development

Crown development, such as a government school, with a project cost of more than \$5 million is regionally significant development. These developments are determined by the relevant Planning Panel.

Crown development with a project cost of \$5 million or less can also be referred to a Planning Panel if a council has not determined the application in the prescribed timeframe, or where a council seeks to refuse consent or impose a condition that the applicant disagrees with.

If the Planning Panel wishes to either refuse or impose conditions on the application, and the applicant disagrees, or if the application is not determined within the prescribed timeframe, the application may be referred to the Minister for Planning.

Campus student accommodation

Campus student accommodation offered at schools and tertiary institutions is not an educational facility and is a separate use under sections 3.34, 3.44 and 3.51 under Chapter 3 - Education of SEPP Transport and Infrastructure. Section 3.3 defines campus student accommodation.

Campus student accommodation may be built within the boundaries of a school or tertiary institution with development consent via sections 3.35(1), 3.45(1) and 3.52(1). Provisions in the relevant LEP and DCP may also apply. Chapter 3 - Education under SEPP Transport and Infrastructure requires the consent authority to consider if the proposed accommodation meets the design quality principles in Schedule 8 before granting approval.

Exempt development and some complying development under Chapter 3 - Education of SEPP Transport and Infrastructure, such as minor alterations and additions that do not increase the bulk and scale of the building, can be undertaken to strict criteria. These provisions do not apply to off-campus student accommodation.

No works are permitted to campus student accommodation under the Part 5 pathway.

If the accommodation forms part of a larger development application for a school, university or TAFE, and the education component of the project (i.e. not the student accommodation) is above the project value identified in the Planning Systems SEPP it will be assessed as State significant development. If the development consists of just campus student accommodation this will require a development application to council or the relevant Planning Panel, dependent on the cost/nature of the works.

Chapter 3 - Education of SEPP Transport and Infrastructure does not cover provisions for student accommodation off campus, this is covered under *State Environmental Planning Policy (Housing) 2021*.

Other issues

Design

Chapter 3 - Education of SEPP Transport and Infrastructure aims for quality design that responds to the character of an area, landscape setting and surrounding buildings, while also providing an attractive setting for users. The design quality principles in Schedule 8 outline these requirements.

The requirements apply to 3 and 4 storey buildings proposed as complying development. Clause 138 of the EP&A Regulation requires a certifying authority to receive a written statement by a qualified designer verifying that school buildings more than 12m high have applied the design quality principles before a complying development certificate is issued.

The requirements also apply to development that requires a development application. Section 3.36 of SEPP Transport and Infrastructure requires the consent authority to consider if the proposed school development meets the design quality principles before granting approval.

Sections 3.35, 3.45 and 3.52 also require the consent authority to consider if campus student accommodation meet the design quality principles in Schedule 8 before granting approval.

The *Design Guide for Schools* provides practical guidance on addressing the design quality principles.

Traffic

Traffic impacts, demand for parking and road safety are key concerns.

Under Clause 128 of the EP&A Regulation, an application for complying development that results in 50 or more new students at a school must be accompanied by a certificate issued by Transport for NSW certifying that any impacts on the road network are acceptable or will be acceptable if specified requirements are met. This allows for early identification of traffic impacts.

If Transport for NSW does not issue the certificate, a development application is required.

Transport for NSW must also be consulted on school development undertaken without development consent that will result in 50 or more new students, with access to a public road, or where new or relocated vehicle or pedestrian access from a public road is required. Matters raised by Transport for NSW must be considered before the proponent decides to undertake the development.

Local development applications and State significant development applications lodged for a new or expanded school or tertiary institution that will result in 50 or more new students on a site that has direct access to any road will be referred to the Transport for NSW by the consent authority for technical input. Pre-development application/site selection consultation is encouraged with Transport for NSW, particularly for any new school sites.

Site compatibility certificates

Chapter 3 - Education of SEPP Transport and Infrastructure allows government schools and TAFEs to expand onto adjacent land via site compatibility certificates, which facilitate this expansion without the need for a rezoning if the proposed development is compatible with surrounding land uses.

The Department of Planning and Environment assesses applications for site compatibility certificates and refers them to the relevant Planning Panel for determination. A site compatibility certificate cannot be issued without consultation with the council.

A development application is still required when a certificate is issued.

Tertiary institutions

Part 3.5 and Part 3.6, and Schedule 5 and 7 of SEPP Transport and Infrastructure include provisions applying to tertiary institutions (TAFEs and universities).

Exempt development

The exempt development provisions enable minor works within the grounds of existing universities and TAFEs without planning approval, provided development standards in Division 4 and sections 3.49 and 3.56 under Chapter 3 - Education of SEPP Transport and Infrastructure are met. Schedule 5 also lists exempt development types that may be undertaken within the grounds of educational establishments.

The types of low impact developments permitted include outdoor recreation facilities (fields but not grandstands), portable or temporary buildings for educational purposes, and demolition of buildings and other development considered as exempt development under the SEPP (excluding state or local heritage items or conservation areas).

Complying development

The SEPP includes complying development provisions relating to core educational facilities within the boundaries of existing universities and TAFEs. This includes the construction of, or alterations or additions to, development listed in sections 3.50 and 3.57, such as a library or an administration building, indoor and outdoor recreation facilities or food and drink premises. The SEPP also provides for complying development to include demolition of buildings (excluding State or local heritage listed items).

Schedule 7 of SEPP Transport and Infrastructure lists relevant development standards that apply to complying development, including a maximum height limit of 15m; front, side and rear setbacks; requirements for landscaping; and restrictions on gross floor area. Other development standards also apply.

Development must meet the requirements for complying development and the development standards. It must not contravene the conditions of a current development consent that applies to any part of the university or TAFE.

Development permitted without consent

Sections 3.47 and 3.54 under Chapter 3 - Education of SEPP Transport and Infrastructure enable various types of development to be carried out without development consent within the grounds of an existing university or TAFE. These include 2 storey buildings (measured from ground level) for

tertiary purposes; a car park not more than one storey high; or restoration, replacement or repair of damaged facilities.

The SEPP restricts the amount of gross floor area of buildings.

Basements and stacking of 2 storey buildings are not development without consent.

Development cannot contravene any condition of a current development consent (other than a complying development certificate) that applies to any part of the university or TAFE.

Development permitted with consent

SEPP Transport and Infrastructure permits development for the purposes of a university or TAFE in prescribed zones or within the boundaries of an existing university or TAFE if the land is not within a prescribed zone. The consent authority will depend on the size and nature of the development.

For information on campus student accommodation, refer to the previous section under 'Schools'.

State significant development

Projects, including a new institution or expansion of an existing institution with a project cost of more than \$50 million are State significant development. Projects that satisfy the development standards for complying development, but have a project cost of more than \$50 million are not categorised as State significant development and are complying development.

These provisions are found in the Planning Systems SEPP.

State significant development applications are lodged with the Department of Planning and Environment for assessment, including consultation. The Independent Planning Commission, or in some cases the Minister for Planning is the consent authority for these applications, although this may be delegated to Department staff.

Local and regional development

Please refer to the relevant section under 'Schools'.

Campus student accommodation

Please refer to the relevant section under 'Schools'.

Other issues

Traffic

Please refer to the relevant section under 'Schools'.

Site compatibility certificates for TAFE establishments

Please refer to the relevant section under 'Schools'.