

***Guide to the State  
Environmental  
Planning Policy  
(Educational  
Establishments and  
Child Care Facilities)  
2017***



## Introduction

---

### NSW's education future - A better plan

Child care and education infrastructure lays the foundation for our children's learning from their earliest years through to their adult careers.

Access to quality child care and education is vital for the development of our children and for our economy. So too, our tertiary institutions play a crucial role in building an educated and skilled workforce to meet the growing demands of industry, provide improved employment opportunities and deliver strong economic growth for NSW.

NSW needs to invest in high quality and cost-effective early education and care facilities, schools, TAFEs and universities to nurture young minds, educate and train our future leaders, innovators and skilled workforce, and to provide the best opportunities for our youth to achieve their life ambitions.

The NSW Government recognises the growing demand across all sectors of our education and child care systems, and has introduced improvements to the planning framework regulating these developments.

The planning system is designed to balance development pressures against environmental, social and economic considerations, as well as the interests of the public. With these improvements, the planning system is better placed to respond to the increasing demand for child care and education services, while still delivering high-quality infrastructure and minimising adverse outcomes.

Previously, planning provisions for schools and tertiary institutions were included in the State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP), while early education and child care facilities were provided for in an array of planning instruments, including State Environmental Planning Policies (SEPPs), Local Environmental Plans (LEPs) and Development Control Plans (DCPs). Early education and child care services and facilities are also regulated under the National Quality Framework.

The NSW Government has introduced changes to the planning system to stimulate more child care services and streamline approvals to deliver appropriately located and high quality early education and care facilities. These improvements to the planning system will also ease the pressure on delivering new public and private school facilities, and upgrading existing facilities, as well as assisting TAFEs and universities to upgrade their campuses to cater for the growing number of tertiary students.

The changes aim to ensure the right settings are in place to:

- deliver high quality early education and care facilities by streamlining the planning process;
- ensure that every child in NSW has access to high quality school facilities; and
- deliver world class tertiary institutions.

### Purpose of this guide

The purpose of this guide is to support the *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* by providing explanatory material to child care and educational providers, councils, consent authorities and the community. This guide does not form part of the SEPP or replace any provisions in the SEPP.

### Overview and key aspects of the policy package

A major part of the policy package is *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* (Education and Child Care SEPP) which provides the overarching planning framework. The Education and Child Care SEPP is supported by amendments to *the Environmental Planning and Assessment Regulation 2000*, amendments to the *Standard Instrument (Local Environmental Plans) Order 2006*, and relevant state environmental planning policies, planning circular PS 17-004, planning

guidelines for child care and school design, and a Code of Practice for non-Government schools that regulates the assessment and carrying out development without consent under the SEPP.

### Simplifying approval processes

The Education and Child Care SEPP provides a range of tools to assist child care and education providers in constructing new facilities and upgrading existing facilities. These changes include:

- minor works such as landscaping, awnings, fences, and minor internal and external alterations can be done as exempt development;
- permitting certain low-impact early education and care facilities to be considered as exempt development;
- a range of new building works including classrooms, lecture theatres, libraries, halls, indoor recreational facilities and school-based child care facilities can be delivered as complying development.

More significant development proposals will require development consent.

The Education and Child Care SEPP sets out where these different classes of development can be undertaken, what approval pathway should be followed, what level of assessment will be required for each proposal, and consultation requirements. It puts in place development controls and considerations to ensure the development meets the expectations of educational facilities and the broader community.

### Ensuring design quality and safe and healthy environments

Meeting the increased demand for these facilities should not compromise the quality of the services they provide, or have a negative impact on surrounding communities. High quality educational facilities are a vital part of a healthy and thriving community and can provide an important civic place for meeting and exchange.

Quality design is a key focus of the Education and Child Care SEPP. The design quality principles will help to ensure that new educational infrastructure enhances communities, delivers greater energy efficiency and contributes to safe, healthy lifestyles for children. The design principles in the Education and Child Care SEPP also aims to ensure that the design of school infrastructure responds appropriately to the character of the area, landscape setting and surrounding built form to ensure that schools and school buildings are an integral part of the community. In addition, the *Child Care Planning Guideline* and the *School Design Guide* will help to ensure that facilities are well-designed, appropriately located, and fit for purpose.

### Allowing for flexibility and multiple uses

The policy also recognises that there is a continuum in the provision of child care, education and community services. Many sites and facilities offer shared services and co-locate with other sectors. Child care services are sometimes located on school grounds and university campuses; education facilities may provide after-hours and vacation care; early education and pre-school services might co-locate with primary schools; and TAFEs may share grounds and facilities with schools.

The Education and Child Care SEPP provides a range of permissible and additional uses on sites, facilitates co-location where appropriate, and encourages flexibility, versatility and adaptability in the design of buildings and sites.

The Education and Child Care SEPP provides a solid framework for child care and education providers to optimise the current use of their existing sites and facilities, while planning for any future expansion, redevelopment or development of new sites to cater for projected demand into the future.

## Provisions on Early Education and Care Facilities

---

The Education and Child Care SEPP mirrors the physical environment requirements for early education and care services that are already regulated under the National Quality Framework (NQF). By aligning the NSW planning system with the key physical environment requirements from the NQF, new child care facilities can be designed and built according to key national standards.

Prior to commencing an early education and care service, providers must first obtain planning approval for a facility under the NSW planning system prior to applying for a service approval to operate under the NQF. Considering the physical requirements for a service approval at the development application stage will reduce inconsistencies and the risk of service approvals not being granted. These reforms will improve certainty and consistency across national, state and local government requirements.

### Education and Care Services regulated under the National Quality Framework and Supplementary State Provisions

The Australian Government's NQF consists of the *Children (Education and Care Services) National Law (NSW)*, the Education and Care Services National Regulations and the National Quality Standard. The NQF sets quality standards to improve education and care for the following child care services:

- long day care;
- family day care (including care provided in an educator's residence and care provided at a venue other than a residence);
- preschool – may be standalone or where combined with a kindergarten at a school;
- out-of-school hours care, situated on and off school sites.

NSW regulates the following child care services through the *Children (Education and Care Services) Supplementary Provisions Act 2011* and Children (Education and Care Services) Supplementary Provisions Regulation 2012:

- home based education and care services, where the care is provided by the educator as a 'sole trader';
- mobile education and care services; and
- centre-based occasional education and care service.

The NQF is a suite of controls and measures that regulate children education, health and safety, staffing, partnerships with families and the community as well as the physical environment of child care facilities.

### New definitions and types of services

To support the outcomes of the Education and Child Care SEPP and to assist in delivery more child care facilities closer to homes, an amendment to the *Standard Instrument (Local Environmental Plans) Order 2006* has been made which provides clarity and certainty by removing ambiguous and obsolete definitions by aligning with national definitions and enables expanded planning approval pathways. The amendment also permits centre-based child care in R2 Low Density Residential zones.

This amendment was made through the *State Environmental Planning Policy Amendment (Child Care) 2017* which makes consequential changes to LEPs and relevant SEPPs. The amendments:

- introduce definitions for a range of early education and care services, including:
  - early education and care facilities;
  - centre-based child care;
  - school-based child care; and
  - home-based child care
- update all environmental planning instruments to incorporate the new definitions; and
- permit centre-based child care in all R2 Low Density Residential zones across NSW.

An explanation of the definitions as they relate to specific types of services are in Table 1.

**Table 1: Types of services and definitions**

Definition	Type of service
Early education and care facility	Group term which collectively covers home-based child care, school-based child care and centre-based child care facilities. Mobile child care services do not fall under this group term.
Centre-based child care facility	A building or place used for services such as long day care, occasional care, out-of-school hours care located on non-school sites, preschools stand-alone and on school sites, family day care carried out in an approved venue, or a combination of any of the above.
Home-based child care	Early education and care for up to 7 children under the age of 13 years provided by an educator in their home. Includes home-based care regulated under the NSW State Supplementary Provisions; and family day care carried out in an educator's residence regulated under the NQF.
School-based child care	Out-of-school hours and vacation care service for school children carried out on a school site.

The Education and Child Care SEPP includes definitions for mobile child care and the temporary relocation of an early education and care facility in emergency situations. These uses may be undertaken as exempt development, so long as requirements in clauses 27 and 28 (respectively) of the Education and Child Care SEPP are met. Table 2 explains the definitions for mobile child care and temporary relocation of an early education and care facility.

**Table 2: Mobile child care and temporary relocations**

Definition	Type of service
Mobile child care	Early education and care service that visits a premises, area or place for the purposes of providing child care.
Temporary relocation of an early education and care facility	The temporary relocation of an early education and care facility due to an emergency that threatens the safety of the facility and its occupants (such as bushfire, flood, storms).

## Provisions to simplify planning approvals

The Education and Child Care SEPP simplifies planning approvals by introducing exempt and complying development provisions for child care facilities with low amenity impacts. The approval pathways allowed in the Education and Child Care SEPP are set out in Table 3.

**Table 3: Approval Pathways**

Exempt development	Complying development	Local development	Integrated development
<ul style="list-style-type: none"> <li>• Home-based child care, except on bushfire prone land</li> <li>• School-based child care without works</li> <li>• Mobile child care (subject to requirements)</li> <li>• Temporary relocation of services due to emergency (subject to requirements)</li> </ul>	<ul style="list-style-type: none"> <li>• New development for school-based child care</li> <li>• Out-of-school hours care on existing TAFE and University sites</li> <li>• Home-based child care on bushfire prone land</li> </ul>	<ul style="list-style-type: none"> <li>• Centre-based child care</li> <li>• New development for school-based child care on bushfire prone land</li> </ul>	<ul style="list-style-type: none"> <li>• s91 EP&amp;A Act*</li> </ul>
<p>* The Education and Child Care SEPP will not affect the existing integrated development provisions of the <i>Environmental Planning and Assessment Act 1979</i> (EP&amp;A Act) for early education and care developments on land affected by the <i>Heritage Act 1977</i>, <i>Mine Subsidence Compensation Act 1961</i>, or the <i>Rural Fires Act 1997</i>.</p>			

## Exempt Development

Certain low impact child care developments are permitted as exempt development under the Education and Child Care SEPP:

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

To be exempt development, all requirements in the applicable clauses in the Education and Child Care SEPP must be met. If the requirements cannot be met, then a development application (DA) must be made to the consent authority, usually a council.

Providers seeking to operate mobile child care service or to temporarily relocate a service must also obtain the consent of the landowner for the land on which the service is to be provided. Additionally, the service cannot be located on hazardous land (see clauses 27 and 28 of the Education and Child Care SEPP) and must have access to adequate sanitary facilities.

A service approval must be obtained from the Relevant Authority before commencing an early education and care service.

## Complying Development

Certain child care facilities may be considered as complying development, so long as the requirements are met. Complying development is a fast-tracked combined planning and construction approval.

## Home-based child care on bushfire prone land

The Education and Child Care SEPP permits home-based child care on bushfire prone land as complying development, subject to fire safety standards agreed by the NSW Rural Fire Service. The standards are designed to ensure occupants' safety in the event of bush fires, and include:

- provision of an Asset Protection Zone around the dwelling;
- preparation of a Bush Fire Emergency Management and Evacuation Plan;
- the dwelling in which the care is provided must not be located in bushfire attack level-40 (BAL-40) or the flame zone (BAL-FZ) land.

A suitably qualified consultant in bushfire risk assessment, recognised by the NSW Rural Fire Service, or the council will need to certify that the dwelling and any associated access way is not located in bushfire attack level-40 (BAL-40) or the flame zone.

A service approval must be obtained from the Relevant Authority before commencing an early education and care service.

## New development for school-based child care

The Education and Child Care SEPP permits certain building works as complying development, where works are required to accommodate the school-based child care. School-based child care that involves new development is only complying development if:

- it is within the boundaries of an existing school and on land that is not bush fire prone;
- the existing school is operating as a lawful use and is not an existing use within the meaning of section 106 of the EP&A Act;
- it meets the requirements for complying development in clause 1.17A of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) (e.g. it is not a heritage item);
- it does not contravene any existing conditions of a development consent (other than a complying development certificate) that may apply to any part of the school relating to hours of operation, noise, car parking, vehicular movement, traffic generation, loading, waste management, landscaping or student or staff numbers.

School-based child care may be allowed to operate from 7:00 am to 7:00 pm, Monday to Friday, on a school site, if complying development approval is granted.

A service approval must be obtained from the Relevant Authority before commencing an early education and care service.

## Out-of-school hours care on existing TAFE and university sites

The Education and Child Care SEPP permits an out-of-school hours care facility on an existing TAFE or university site as complying development. The proposal will need to meet standards for complying development set out in the SEPP including that the facility:

- must not be located on bushfire prone land or flood affected land;
- must not involve new building work;
- must meet the indoor and outdoor space requirements of the Education and Care Services National Regulations;
- must not be in a premise that is licensed for alcohol or gambling;
- must have separate and age appropriate sanitary facilities;

- must not be located within or adjacent to a building used for restricted premises, sex services, a pub or a registered club.

If the standards cannot be met, a development application will be required. A service approval to operate the service is required from the Department of Education.

## Local Development

The Education and Child Care SEPP requires all other centre-based child care facilities to be assessed through the local development application (DA) process. This means that a development application for a centre-based child care facility will be assessed by a consent authority, usually a council.

### Centre-based child care facilities

Centre-based child care facilities require a development application to council. Centre-based child care facilities must be designed to meet with the physical environment requirements of the NQF, as outlined in the *Child Care Planning Guideline*. The principles, considerations and requirements in the *Child Care Planning Guideline* must be considered by a consent authority when assessing a development application as provided for in the Education and Child Care SEPP.

Development applications that do not meet the NQF's unencumbered indoor and outdoor space controls will require the concurrence of the Secretary of the Department of Education before the application can be determined (see below).

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

### Concurrence of the Department of Education

Development applications that do not comply with the unencumbered indoor and outdoor space requirements of the NQF will require the concurrence of the Secretary of the Department of Education.

Clauses 107 and 108 of the Education and Care Services National Regulations contains strict space requirements for child care facilities:

- at least 3.25m<sup>2</sup> of unencumbered indoor space must be provided for each child;
- at least 7.0m<sup>2</sup> of unencumbered outdoor space must be provided for each child.

The Secretary will have 28 days in which to respond to the concurrence request. If no response is received, the consent authority may proceed to determine the application.

The Secretary will have the opportunity to give valuable input about whether the proposal should be developed in its proposed form; whether the provider may later need to apply for a service waiver and if this would be supported; or whether the proposal should be redesigned as an alternate solution. This concurrence role will ensure developers build facilities that comply with national requirements, and give service providers greater certainty in obtaining a subsequent service approval.

### Heads of consideration for centre-based child care on industrial-zoned land

The Education and Child Care SEPP contains special 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 are designed to minimise the risk of land use conflicts and ensure the safety and health of children, staff and visitors and include:

- whether the proposed development is compatible with neighbouring land uses, including its proximity to hazardous land uses, or restricted or sex service premises;

- whether the proposed development has the potential to restrict the operation of existing industrial land uses;
- whether the location of the proposed development will pose a health or safety risk to children, staff or visitors.

### Non-discretionary development standards

The Education and Child Care SEPP includes non-discretionary standards for centre-based child care. This means that a development application for a centre-based child care cannot be refused by a consent authority on the following grounds:

- location;
- indoor or outdoor space;
- site area and site dimensions;
- colour of building materials or shade structures.

### Controls in a Development Control Plan

The Education and Child Care SEPP makes clear that certain matters contained in Development Control Plans do not apply to development for the purpose of centre-based child care. This is to ensure that any Development Control Plan does not contain requirements that exceed those within the NQF or that are onerous.

The following matters in any Development Control Plan do not apply:

- 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 facility to other early education and care facilities;
- any matter contained in:
  - the design principles in in Part 2 of the *Child Care Planning Guideline*;
  - the matters for consideration in Part 3 of the *Child Care Planning Guideline*;
  - the regulatory requirements in Part 4 of the *Child Care Planning Guideline*.

### Assessment of development applications for centre-based child care

Development applications for centre-based child care are subject to controls set out in the Education and Child Care SEPP and must be assessed against the *Child Care Planning Guideline*.

The *Child Care Planning Guideline* supplements the Education and Child Care SEPP, and includes planning and design principles and considerations, and regulatory requirements for centre-based child care. The Guideline is consistent with the regulatory intent of the NQF.

These provisions will ensure that these development proposals are assessed against a consistent framework throughout NSW, and that new buildings are fit for a service approval under the Education and Care Services National Law, prior to it being approved and built.

## Schools

---

The Education and Child Care SEPP has a major focus on delivering new facilities and upgrading existing facilities at schools faster by simplifying the planning requirements for educational facilities across the state. The provisions will make it much easier for schools to implement a wide range of improvements and expansions to schools such as upgrading sports fields, replacing portable classrooms with permanent buildings, building a new library, and offering new or additional before and after school care in existing school buildings. Planning controls applying to schools are located in Division 3 of the SEPP. These provisions will apply instead of existing provisions in LEPs and DCPs where there is an inconsistency.

### Exempt Development

The exempt development provisions for schools are intended to enable minor works to be undertaken within school grounds without planning approval provided that certain development standards are met.

The types of low impact developments that are permitted as exempt development include:

- short term single storey portable classrooms
- use of existing buildings for out of school hours care for primary school aged children, where no works are required to that building
- use of existing buildings and facilities by community groups, religious organisations, sporting associations and the like
- removal of trees if they pose a risk to safety or damage to infrastructure
- landscaping and environmental management works
- play equipment, sporting fields and courts
- routine maintenance works
- walking paths, seats, shelters and shade structures
- information boards and way finding signage
- amenities building
- demolition of certain development that is not a heritage item or in a heritage conservation area.

The development standards applicable to these development types are listed in clause 38 of the SEPP.

Schedule 1 of the SEPP also lists other exempt developments that may be undertaken within the boundaries of all educational establishments.

### Complying Development

Straightforward developments are permitted within the boundaries of an existing schools as complying development to enable additional classrooms and educational facilities to be installed rapidly in response to increased or changing needs. These developments are determined through a fast track assessment process by an accredited certifier to determine if they meet pre-determined development standards.

The types of complying development that are permitted within the boundaries of an existing school include:

- construction of buildings for educational uses such as classrooms, a library, administration building, school hall, gymnasium, canteen or a child care facility
- a covered outdoor learning area
- a car park
- demolition of a buildings that is not a State or local heritage item

- minor alterations or additions to existing buildings
- restoration, replacement or repair of damaged facilities.

The development standards applicable to complying development are listed in Schedule 2 of the SEPP and will include those listed in Table 4 below.

**Table 4 – Complying development standards in Schedule 2 of the Education and Child care SEPP**

Control	Standard
Height	Maximum 4 storeys and 22m
Setbacks	<ul style="list-style-type: none"> <li>• at least 5m from any side or rear boundary of the land where it adjoins residential zoned land, and 1m where it adjoins all other land use zones for buildings with a height up to 12m</li> <li>• at least 8m from any side or rear boundary of the land where it adjoins residential zoned land, and 2.5m where it adjoins all other land use zones for buildings with a height up to 15m</li> <li>• at least 10m from any side or rear boundary of the land where it adjoins residential zoned land, and 4m where it adjoins all other land use zones for buildings with a height up to 22m</li> </ul>
Materials	External walls must be constructed of non-reflective materials
Overshadowing	Proposed school buildings must not reduce the solar access to habitable rooms and private open space of adjoining residential properties to less than three hours between 9 am and 3 pm on the winter solstice
Privacy	Windows must be designed or treated to preserve the privacy of adjoining residential dwellings
Landscaping	An area 3m wide along the property is to be landscaped with planting that will achieve a mature height of at least 3m and consist of species that are not likely to pose a health or safety risk

Other development standards relating to noise, waste, earthworks, tree removal, drainage and development on flood prone land are also included in Schedule 2 of the SEPP.

Development undertaken as complying development must not contravene any existing conditions of the most recent development consent that applies to any part of the school. This includes conditions that relate to hours of operation, noise, car parking requirements, vehicular movements, traffic generation, loading, waste management requirements, landscape areas or requirements, and staff or student numbers.

## Development Without Consent

The SEPP recognises the importance of non-government schools in easing the burden on the public school system by permitting registered non-government schools to provide new and upgraded facilities using the development without consent provisions the same way as public authorities.

Certain small-scale developments are permitted without a development consent from a consent authority, but will require the person carrying out the development to undertake environmental assessment of the likely impacts of the proposed activity in accordance with Part 5 of the EP&A Act. Both government and non-government schools can use these provisions.

The types of development that are permitted to be carried out without consent within the boundaries of existing schools include:

- one storey buildings for school purposes such as a library, administration, a classroom, a tuckshop, cafeteria or bookshop
- a car park that is not more than one storey high
- an outdoor learning or play area and associated awnings or canopies
- minor alterations or additions, such as internal fitouts, or to address occupational health and safety requirements or to provide access for people with a disability
- restoration, replacement or repair of damaged facilities
- demolition of buildings or structures.

Developments undertaken without consent will only allow for minor expansion of schools. The provisions ensure development will not allow for an increase in the numbers of student and staff numbers at the existing school that is greater than 10 per cent of the numbers at the site during the previous 12 months. Development undertaken without consent also cannot contravene any existing condition of a development consent (other than a complying development certificate) that applies to any part of the school, relating to hours of operation, noise, car parking, vehicular movement, traffic generation, loading, waste management, landscaping or student or staff numbers.

An amendment to the *Environmental Planning and Assessment Regulation 2000* has been made that prescribes non-government schools as public authorities for the purpose of carrying out development without consent under clause 36 of the SEPP to enable this as the existing legislative provisions currently only permit public authorities to access development without consent provisions.

To support this amendment, an *Environmental Assessment Code of Practice* has been developed that regulates how non-government schools must carry out the environmental assessment and determination of activities permitted without consent by the SEPP. The code of practice outlines the assessment and documentation requirements, and requirements for community consultation. Compliance with the mandatory requirements in the code of practice is a requirement under the EP&A Act and EP&A Regulation, and the Department of Planning and Environment can undertake compliance action regarding certain breaches of the Code.

## Development Permitted with Consent

School development that is not exempt development, complying development or permitted without consent will require development consent before the development can take place. The consent authority that gives this development consent varies depending on the size and nature of the proposed development.

## State Significant Development

All new schools, and significant alterations and additions to existing schools that have a project cost of more than \$20 million are categorised as State Significant Development (SSD). Projects that satisfy the development standards for complying development but have a capital investment value (CIV) of more than \$20 million are also categorised as SSD.

SSD applications are lodged with the Department of Planning and Environment for assessment and consultation with the community. The Minister for Planning is the consent authority for SSD applications, although this may be delegated to Department staff, or the Planning and Assessment Commission.

To provide flexibility to accommodate the built form requirements of schools, the SEPP enables the consent authority to grant development consent even if a development does not comply with development standards such as height and floor space ratios contained in local environmental plans. The applicant is required to justify the departure from the development standards and demonstrate that there are sufficient environmental planning grounds to support the contravention.

The SEPP lists seven design quality principles in Schedule 4 that apply to schools to ensure that school infrastructure is well designed and responsive to its purpose and location. The consent authority is required to take into consideration the design quality of a proposed development in accordance with these design quality principles before determining a SSD application for school development.

## Caps on Development Consents

Development consents issued for school development, either as local, regional or State significant development are often subject to conditions that limit the intensification of the school development through caps on both student and staff numbers (cap conditions). These cap conditions are an important tool to manage the traffic and parking impacts arising from school development (both new schools and major expansions), but can be a major constraint on the growth of the school and the provision of essential school infrastructure. Under the SEPP, development undertaken as complying development and development to be carried out without consent cannot contravene any existing conditions on development consents relating to student or staff numbers that apply to the land within the boundaries of an existing school.

Planning circular *PS 17-004 - Development assessment of schools* outlines that the consent authority should recognise the need for flexibility when limiting staff and student numbers as enrolments at both public and non-government schools can fluctuate considerably between years and may be hard to predict. If cap conditions are required, they should only be applied in circumstances justified by a comprehensive and evidence-based assessment of relevant planning issues such as traffic and parking.

## Design of schools

Many school campuses are located within residential neighbourhoods and are an integral part of the community. Well-designed schools create a distinctive and place-friendly facility that responds to and enhance the qualities and identity of the area including adjacent sites, streetscapes and neighbourhood. High quality educational facilities play a significant role in supporting the learning outcomes of students and providing flexibility in meeting the changing methods of delivery of educational services.

The SEPP aims to deliver better quality design for schools to ensure that development at schools respond appropriately to the character of the area, landscape setting and surrounding built form as well as providing a high level of amenity for users of the site. A set of design principles are included in Schedule 4 that outline the design requirements for school developments.

The design requirements apply to three and four storey buildings proposed to be carried out as complying development under the SEPP. The EP&A Regulation has been amended to require that a certifying authority must not issue a complying development certificate unless they have been provided with a written statement by a qualified designer verifying that school buildings that are more than 12 metres in height apply the design quality principles contained in Schedule 4 of the SEPP.

The design requirements also apply to development undertaken at schools that require a development application. Clause 35 of the SEPP requires the consent authority to consider whether the proposed school development meets the design quality principles in Schedule 4 of the SEPP before granting a development approval.

## Traffic issues associated with school development

Traffic impacts, demand for parking and road safety in the traffic network surrounding schools are key concerns arising from development occurring at schools.

For complying developments that will result in an additional 50 or more students at schools, the application must be accompanied by a certificate issued by the Roads and Maritime Services (RMS) certifying that any impacts on the surrounding road network as a result of the development are acceptable or will be acceptable if specified requirements are met. Schedule 1 of the EP&A Regulation 2000 has been amended to insert this requirement. The Roads and Maritime Services (RMS) first to assess whether the traffic

impacts of the proposed development on the surrounding road network are acceptable or will be acceptable if specified requirements are met. This is to ensure that the traffic impacts arising from certain complying school development are assessed by the RMS prior to the lodgement of an application for a CDC, and any required measures to address traffic congestion and road safety are identified. If the RMS does not issue a certificate, then the proponent will be required to lodge a development application for the proposed works.

The SEPP provisions also require that a proponent consult with the RMS on school development undertaken without development consent that will result in additional 50 or more students and located adjacent to a classified road. The proponent is required to take into account any matters raised by the RMS prior to determining whether to undertake the development.

Development applications (including SSD applications) lodged for a new school or an enlargement of an existing school that will result in an additional 50 or more students and is on a site that has direct vehicular or pedestrian access to any road will be referred to the RMS by the consent authority for provision of technical input as part of the assessment process.

### **Student accommodation**

Some schools provide accommodation for students, however, these developments are not considered to be educational facilities. The SEPP clarifies that development proposing student accommodation is not development for the purpose of a school. Residential accommodation for students associated with a school may be carried out within the boundaries of an existing school but this will require a development application and the existing provisions in the relevant LEP and DCP will apply.

### **Tree removal at schools**

The grounds of educational establishments often contain large areas of trees and vegetation that are important to the school community and the broader neighbourhood in which the school is located. The SEPP introduces provisions to achieve appropriate management of trees at schools.

Trees that have been assessed by a Level 5 qualified arborist as posing a risk to human health or safety, or a risk of damaging infrastructure at a school are permitted to be removed as exempt development. However, a replacement tree that is capable of achieving a mature height of at least 3 metres is required to be planted within grounds of the school, to ensure that there is no overall loss of tree numbers at a particular site.

Trees within the grounds of a school may be removed without permission as part of complying development, but only if the tree is not listed as a significant tree on a register kept by the relevant local council, is located within 3 metres of the development and has a height of less than 8 metres.

Otherwise, trees or other vegetation that are required to be removed or pruned to enable an exempt or complying development to be undertaken will require approval from a local council under the provisions of a local environmental plan.

Tree or vegetation removal that is proposed as part of development project that is permitted with or without consent will have the impact of the proposed removal assessed and determined as part of the approval process.

### **Community and shared use of school buildings and facilities**

To deliver the best use of educational infrastructure, greater emphasis will be placed on the shared use of facilities for educational and community purposes. This could take the form of making school facilities available for greater community use, schools sharing spaces with other nearby schools, or it may be a school utilising nearby community facilities such as council owned recreational spaces. Community use may

comprise a sporting club using school playing fields, or religious groups, music or language schools or other groups using school buildings such as school halls or libraries.

The SEPP aims to facilitate this by encouraging the designers of school buildings, facilities and grounds to consider how this can be accommodated during the design stage. Design principle 6 requires the school design to maximise multi-use facilities, and the SEPP requires the consent authority to consider whether the development enables the use of school facilities (including recreational facilities) to be shared with the community before granting development consent.

The SEPP permits community use of existing school buildings and facilities is proposed that require no building works as exempt development, meaning that no planning approval is required.

## Heritage conservation

Many school buildings are recognised for their heritage values and are listed as items of State or local heritage. The SEPP continues to apply the current protection measures and assessment requirements applying to heritage listed items.

Exempt developments are permitted to be undertaken on sites that contain State or locally listed heritage items, or within heritage conservation areas, provided that there is no more than a minimal impact on the heritage significance of the item or area. This must also be in accordance with any heritage conservation management plan if one applies to the site. The SEPP does not permit demolition as exempt development on or in a State or local heritage item or in a heritage conservation area.

Complying development cannot be carried out on land that comprises an item that is listed on the State Heritage Register, is subject to an interim heritage order or is 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, then the restriction applies to the land that is described and mapped in the listing only, and complying development can be carried out in the remaining parts of the site.

Additionally, an exemption under section 57 of the *Heritage Act 1977* may be sought. If granted, this will permit complying development to be carried out on the site, subject to the conditions or requirements of that exemption.

Proponents that propose to undertake development permitted without consent on a heritage item are required to consider the environmental impacts of the development. Developments that are likely to affect the heritage significance of a local item, or of a heritage conservation area in a way that is more than a minimal impact must have an assessment of the impact prepared, give written notice to the relevant local council and take into account any response received. The SEPP does not permit development to be carried out without consent for demolition of structures or buildings that are State or local heritage items.

For projects that require a development application or SSD application, impacts on heritage items and conservation areas will be considered as part of the assessment process. Design quality principle 1 contained in Schedule 4 of the SEPP specifically requires that the design of schools should respond to and enhance the positive qualities of the setting, landscape and heritage, including Aboriginal cultural heritage.

## Tertiary Institutions

---

The Education and Child Care SEPP recognises the integral role played by TAFEs and universities in training and developing a strong, educated workforce, to support economic growth in NSW. The provisions of the SEPP enable TAFEs and universities to expand and adapt their facilities in response to the growing number of people seeking tertiary qualifications, and to maintain the NSW reputation for providing world class tertiary education.

The SEPP includes expanded provisions for tertiary institutions to undertake exempt development and other development without consent. Provisions applying to tertiary institutions (TAFEs and universities) are contained in Part 5 and 6 of the SEPP.

### Exempt development

The exempt development provisions are intended to enable minor works to be undertaken within the grounds of existing universities and TAFEs without planning approval, provided that certain development standards are met.

The types of low impact developments that are permitted as exempt development include:

- cycleways
- outdoor recreation facilities, including fields but not grandstands
- routine maintenance (including earthworks associated with a playing field or landscaping and maintenance of existing roads)
- lighting
- landscaping, including irrigation (whether they use recycled or other water)
- environmental management works
- walking tracks, boardwalks, raised walking paths, ramps, minor pedestrian bridges, stairways, gates, seats, barbecues, shelters and shade structures
- portable or temporary buildings for educational purposes
- demolition of buildings and other development that are considered to qualify as exempt development under the SEPP (excluding State or local heritage items).

The development standards applicable to these development types are listed in clauses 48 and 55 of the SEPP.

Schedule 1 of the SEPP also lists other exempt developments that may be undertaken within the grounds of all educational establishments.

### Complying development

The SEPP includes complying development provisions relating to the provision of core educational facilities within the boundaries of existing universities and TAFEs. This includes the construction of, or alterations or additions to certain development (i.e. a library or an administration building, indoor and outdoor recreation facilities or food and drink premises). The full list of applicable development is at clause 49 of the SEPP. The SEPP also provides for complying development to include demolition of buildings (excluding State or local heritage listed items).

The development standards that apply to complying development are listed in Schedule 3 of the SEPP and include a maximum height limit of 15m and 3 storeys, front, side and rear setbacks, requirements for landscaping and restrictions on gross floor area.

Development undertaken as complying development must not contravene any existing conditions of the most recent development consent that applies to any part of the university or TAFE. This includes conditions that relate to hours of operation, noise, car parking requirements, vehicular movements, traffic generation, loading, waste management requirements, landscape areas or requirements, and staff or student numbers.

## Development permitted without consent

These SEPP provisions enable the following types of development to be carried out without consent within the grounds of an existing university or TAFE:

- one storey buildings for school purposes such as a library, administration, a teaching facility, a kiosk, cafeteria or bookshop, environmental facility, information facility or a storage or maintenance facility
- a car park that is not more than one storey high
- an outdoor learning or play area and associated awnings or canopies
- minor alterations or additions, such as internal fitouts, or to address occupational health and safety requirements or to provide access for people with a disability
- restoration, replacement or repair of damaged facilities
- demolition of structures or buildings that are not State or local heritage items.

The provisions will restrict the amount of gross floor area of buildings that can be constructed under this provision, as outlined at clause 40 of the proposed SEPP. Development undertaken without consent also cannot contravene any existing condition of a development consent (other than a complying development certificate) that applies to any part of the university, relating to hours of operation, noise, car parking, vehicular movement, traffic generation, loading, waste management, landscaping or student or staff numbers.

Development undertaken without consent must not contravene any existing conditions of the most recent development consent that applies to any part of the school. This includes conditions that relate to hours of operation, noise, car parking requirements, vehicular movements, traffic generation, loading, waste management requirements, landscape areas or requirements, and staff or student numbers.

## Development with consent

Development that is not exempt development, complying development or permitted without consent will require development consent before the development can take place. The SEPP provisions permit development for the purposes of a university or TAFE to be carried out in certain prescribed zones, or within the boundaries of an existing university or TAFE if the land is not within a prescribed zone. The consent authority that gives this development consent varies depending on the size and nature of the proposed development.

## State Significant Development

Projects for the purpose of a tertiary institution, including a new institution or expansion of an existing institution that have a capital investment value of more than \$30 million are categorised as State Significant Development (SSD). Projects that satisfy the development standards for complying development but have a CIV of more than \$30 million are also categorised as SSD.

SSD applications are lodged with the Department of Planning and Environment for assessment, including consultation with the community. The Minister for Planning is the consent authority for SSD applications, although this may be delegated to Department staff, or the Planning and Assessment Commission.

## Local and Regional Development

Project with a value of less than \$30 million that are not complying development will be categorised as local or regional development, dependent on the cost of works. These applications are lodged with the local council for assessment and community consultation, but are determined by the relevant Joint Regional Planning Panel (regional panel) if they are Regional development.

## Student Accommodation

The provision of accommodation for students is a facility commonly offered at tertiary institutions, however, it is not an educational facility and is a separate use. The SEPP clarifies that development proposing student accommodation is not development for the purpose of an educational establishment. However, residential accommodation for students associated with the tertiary institution may be carried out within the boundaries of an existing tertiary institution but this will require a development application and the existing provisions in the relevant LEP and DCP will apply.

## Heritage conservation

Many university and TAFE campuses contain buildings that are recognised for their heritage values and are listed as items of local or state heritage. The SEPP continues to apply the current protection measures and assessment requirements applying to heritage listed items.

Exempt developments are permitted to be undertaken at State or locally listed heritage items, and within heritage conservation areas, provided that there is no more than a minimal impact on the heritage significance and is in accordance with a heritage conservation management plan if one applies to the site.

Complying development cannot be carried out on land that comprises an item that is listed on the State Heritage Register, is subject to an interim heritage order or is 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, then the restriction applies to the land that is described and mapped in the listing only, and complying development can be carried out in the remaining parts of the site.

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

Proponents that propose to undertake development permitted without consent on a heritage item are required to consider the environmental impacts of the development. Developments that are likely to affect the heritage significance of a local item, or of a heritage conservation area in a way that is more than a minimal impact must have an assessment of the impact prepared, give written notice to the relevant local council and take into account any response received.

For projects that require a development application or SSD application, impacts on heritage items and conservation areas will be considered as part of the assessment process.

## Related amendments to other environmental planning instruments

---

A number of amendments have also been made to other environmental planning instrument as part of the reforms to the planning provisions applying to child care facilities and educational establishments.

### State Environmental Planning Policy (State and Regional Development) 2011

An amendment to Schedule 1, Part 15 of the State and Regional Development SEPP has been made, to amend the trigger for school developments to become State Significant Development (SSD) applications. All new schools will be classified as SSD applications, and the capital investment threshold for major works to existing schools is proposed to be lowered from \$30 million to \$20 million.

### State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP)

A number of minor amendments to the Codes SEPP relating to child care facilities, schools and tertiary institutions have been made as outlined in the respective Parts above, including amending provisions to enable universities to access change of use provisions.

### State Environmental Planning Policy (Infrastructure) 2008

The Infrastructure SEPP has been amended by removing provisions that relate to educational establishments.

### Standard Instrument Local Environmental Plan Order

Consequential amendments have been made to all relevant planning instruments to enact amendments to the *Standard Instrument Local Environmental Plan Order*. The changes include inserting new definitions for various child care facilities into all affected environmental planning instruments and updating the permissible uses in the R2 Low Density Residential to include centre-based child care.