



Review of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017

Explanation of Intended Effects

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Contents

Introduction	2
Background	3
Overview of proposed amendments	4
Proposed amendments to the Education SEPP	5
Proposed amendments to other legislation	13
Proposed amendments to supporting documentation	15
Table 1 Proposed changes to the Education SEPP	5
Table 2 Other regulatory changes being considered	13
Table 3 Proposed changes to supporting education and child care facilities documentation	15

Introduction

This Explanation of Intended Effect outlines the proposed changes to *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* (the Education SEPP).

State Environmental Planning Policies (SEPPs) deal with matters of State or regional environmental planning significance in New South Wales (NSW) and provide development controls for specific development.

The Education SEPP commenced in September 2017 to streamline approvals to deliver appropriately located, high-quality early childhood education and care facilities, schools, TAFEs and Universities in NSW to cater for the growing number of children and students.

The Education SEPP sets out the land use planning and assessment framework for the development of child care centres, schools, universities and TAFEs. It aims to make it easier for child-care providers, schools, TAFEs and universities to build new facilities and improve existing ones through streamlined processes to save time and money and deliver greater consistency across NSW. The Education SEPP balances the need to deliver additional educational infrastructure with a focus on good design.

The SEPP was released alongside a suite of the following supporting documents:

- Fact sheet: Using complying development in schools and child care facilities
- Planning Circular PS 18-005 New guidance for centre-based child care facilities
- Child Care Planning Guideline - Delivering quality child care for NSW
- Guide to the Education SEPP
- Environmental Assessment Code of Practice 'NSW Code of Practice for Part 5 activities - for registered non-government schools' (Code of Practice NSW) allowing them to assess and self-determine minor proposals
- Design Guide for Schools
- Planning Circular PS 17-004 Development assessments of schools.

These documents can be found on the Department of Planning, Industry and Environment's (the Department's) webpage.

Clause 9 of the Education SEPP requires the Minister for Planning and Public Spaces to:

- review the provisions of the Education SEPP as soon as reasonably practical after the first anniversary of its commencement, and
- after any review of the National Quality Framework for Early Childhood Education and Care Facilities, or after the end of each 5-year period following the commencement of the SEPP, if no review of the National Quality Framework occurs within the 5-year period.

Since the commencement of the Education SEPP, the Department has received frequent requests for information around the existing provisions of the Education SEPP, as well as requests to clarify certain provisions.

Requests have also been made by key stakeholders such as the Department of Education to amend the Education SEPP to further streamline the planning pathway for local school development.

The Department has completed its review of the Education SEPP and is proposing some amendments. The amendments aim to improve the operation and usability of the SEPP.

The planning system is designed to balance the efficient delivery of important social infrastructure against environmental, social and economic considerations. With further

improvements to the Education SEPP, the planning system will be better placed to respond to the increasing demand for child care and education services, while still delivering high-quality infrastructure and minimising adverse outcomes.

This Explanation of Intended Effect provides an outline of proposed changes and is to be read in conjunction with the existing Education SEPP and other supporting documents.

Background

Access to quality child care and education is vital for building an educated and skilled workforce to meet the demands of industry, for providing improved employment opportunities, for delivering strong economic growth for NSW and for building engaged and resilient communities.

NSW is facing unprecedented growth, which is placing pressure on our social infrastructure, including schools, child care facilities and all levels of our education system.

In 2017, the NSW Government recognised the growing demand across all sectors of our child care and education systems and introduced improvements to the planning framework regulating these developments in the form of the Education SEPP.

Overview of proposed amendments

The proposed amendments to the Education SEPP focus on resolving operational issues, clarifying provisions and other housekeeping amendments to clarify the policy intention. This will modernise, simplify and improve the effectiveness and usability of the SEPP.

The key amendments to the Education SEPP propose to:

- clarify existing provisions to better reflect the policy intent,
- facilitate ongoing assessment commensurate with impacts and capital investment values,
- update organisation names, definitions and legislation references,
- introduce measures to support two-storey buildings being development without consent, without changing car parking or student number limits,
- increase the capital investment value trigger for new schools and alterations and additions to existing schools and tertiary institutions to better reflect the nature and impact of these developments,
- include hours of operation for the use of school-based child care in the exempt development pathway,
- clarify investigations, including geotechnical and other testing, surveying and sampling as exempt development,
- extend the timeframe for short-term portable classrooms under the exempt development pathway from 24 months to 48 months,
- update provisions to prevent child care centres within close proximity of each other, in low density residential zones (R2),
- provide clearer guidance on evacuation considerations for child care centres and references to the National Construction Code,
- provide a clearer planning pathway for student housing to be built on existing schools, universities and TAFE sites,
- provide an opportunity for innovation hubs for commercial uses to be permitted on existing tertiary institution sites.

Minor changes are also proposed to supporting documents such as the Child Care Planning Guideline, the Guide to the Education SEPP and the Code of Practice for Part 5 activities to ensure consistency with the SEPP and clarify existing policy.

Proposed amendments to the Education SEPP

The proposed amendments to the Education SEPP have been identified in **Table 1**. These changes are provisional, subject to legal review, and the outcome of consultation.

The tables need to be read in conjunction with the existing Education SEPP.

Table 1 Proposed changes to the Education SEPP

Description of issue and proposed change

Definitions

Clause 5 sets out definitions of terms used throughout the Education SEPP. Clause 5 contains a definition for an education establishment being:

educational establishment means a building or place used for education (including teaching), being—

- (a) a school, or
- (b) a tertiary institution, including a university or a TAFE establishment, that provides formal education and is constituted by or under an Act.

The intention of this definition was to capture all schools (including those with multiple campuses), small schools, government schools and registered non-government schools.

Feedback has been received that the definition, read in conjunction with the Education SEPP provisions is ambiguous. There is confusion about the assessment pathway for the following circumstances:

- an existing school is seeking to establish a separate new school campus at a new location, or
- an existing school is seeking to establish a new recreational facility located some distance from the traditional school buildings.

The SEPP will be updated to ensure it captures circumstances where a new school facility/campus (including recreational facility) is proposed some distance from an existing registered school, so that any new campus located a distance from an existing registered school is assessed as a new school rather than an alteration or addition. Definitions within the Education SEPP or the *State Environmental Planning Policy (State and Regional Development) 2011* may also require amendment to clarify the circumstances for 'new' and 'existing' schools.

Clarification of terms in vegetation clearing clause

Clause 5(3)(f) allows the clearing of vegetation when undertaking construction works as development permitted without consent under the Education SEPP.

Two amendments are required to Clause 5(3)(f), they include referencing 'trees' in the clause and removing the reference to "ringbarking".

An option for the proposed wording of Subclause 5(3)(f) is "subject to any other law, clearing of vegetation or trees (including any necessary cutting, pruning or removal of trees) and associated rectification and landscaping,"

These amendments provide clarification and will assist with the interpretation and usability of the Education SEPP.

Description of issue and proposed change

Correcting cross referencing

A correction needs to be made to Clause 8 'Relationship to other environmental planning instruments' of the Education SEPP. This is a minor amendment that corrects an error that exists in the instrument as a result of an incorrect cross reference.

The amendment would include removing 'Subclause (2)' wherever it occurs in Subclauses 8(1) and 8(4), and instead inserting 'Subclause (3)'.

This amendment will assist with the usability of the Education SEPP.

Updating Department names

Government department names have changed and legislative updates have been made since the introduction of the Education SEPP. It is proposed to amend references to outdated legislation and update department names throughout the SEPP and supporting documents. This amendment will assist with the Education SEPPs usability.

These updates will be made to Clause 13, Part 2 Division 4 Note 1, Clause 19 and Schedule 1 of the Education SEPP and in supporting documents.

Clarifying permissible uses on State land

It is proposed to clarify provisions in Clause 16 of the Education SEPP, which already permits additional uses on State land.

The intention of Subclause 16(2) is to allow local provisions to apply to land adjoining an existing educational establishment that currently apply to the land of the existing educational establishment, if a site compatibility certificate has been issued and the educational establishment is on State land.

For example, if a government school site is zoned SP1 Special Activities and the land adjoining it is zoned R1 General Residential, it is intended to make residential development a use permissible with consent within the grounds of the existing school if a site compatibility certificate has been issued. The residential development would still be subject to provisions of the relevant Local Environmental Plan or other applicable council policies.

It is proposed to reword Subclause 16(2) to permit development that is currently permitted with development consent under an environmental planning instrument on land adjacent to land containing an existing educational establishment, , if there is a valid site compatibility certificate applying to the development, and the land containing the existing educational establishment is prescribed State land.

This amendment will assist with the interpretation and usability of the Education SEPP.

Description of issue and proposed change

Clarifying circumstances where schools can be expanded

It is proposed to clarify provisions in Clause 16 of the Education SEPP, which already permit additional uses on State land.

The intention of Subclause 16(3) is to allow an existing educational establishment to expand their use on to land adjoining the establishment (e.g. expanding a school). It is intended that this requires development consent and the provision will only apply to prescribed State land.

The Clause applies where the zoning of the adjacent land does not permit educational establishments. This provision is intended to make the development for an educational establishment permissible with a site compatibility certificate.

It is proposed to reword Subclause 16(3) to permit development that is permitted with development consent on land where there is an educational establishment to be carried out with development consent on land adjacent to the educational establishment, if there is a valid site compatibility certificate applying to the development, and the adjacent land is prescribed State land.

This amendment will assist with the interpretation and usability of the Education SEPP.

Restricting child care centres within close proximity of each other in low density residential zones

A number of stakeholders, including Local Councils, have raised concerns about amenity impacts, such as noise and traffic, arising from child care centres being in close proximity to each other in Low Density Residential zone - R2.

In response, the Department is considering introducing minimum separation distances between child care centres within Low Density Residential zones – R2. This could be achieved by amending Clause 25(2)(a) to introduce a requirement for a minimum separation between centres in Low Density Residential zone - R2 when determining the location for a centre based child care facility.

A suggested minimum separation distance of 200m between centre based child care centres is being considered. This separation would address the key concerns of noise and traffic without significantly impacting the provision of centre based child care facilities in residential areas, close to where families live.

This amendment addresses concerns raised about amenity as a result of child care centres within close proximity of each other in low density residential zones.

Further amendments to address this issue are also being considered in the Child Care Planning Guideline. These are identified in **Table 3**.

Bush fire prone land

Amendments are needed to Clause 30(3) and Schedule 3, clause 14(1) relating to bush fire prone land to ensure consistency with Clause 19A of the SEPP.

It is proposed to remove the application of these clauses to 'a lot that is wholly or partly' on bush fire prone land. Instead, the clauses will apply to development carried out on bush fire prone land. This will ensure the clauses do not apply to development on land that is not bush fire prone in circumstances where a part of that lot is on bush fire prone land but is not within the development site.

Further communication will be included in the Guide to the Education SEPP and supporting fact sheets.

Description of issue and proposed change

Enabling student housing on sites with existing educational establishments

The proposed Housing Diversity SEPP Explanation of Intended Effect proposes to create a new definition for student housing. It is proposed that the definition for '*student housing*' would be contained within the Standard Instrument LEP and would refer to a building that:

- provides accommodation and communal facilities principally for students enrolled to study at an education establishment during teaching periods; and
- may incorporate some fully self-contained dwellings.

The Housing Diversity SEPP Explanation of Intended Effect also includes proposed development standards for student housing and identifies that design guidelines for student housing could also be developed to accompany the new Housing Diversity SEPP.

Supporting this new proposal, the Education SEPP proposes to allow student housing as a development permitted with consent, by any person who obtains land owner's consent, within the boundaries of an existing educational establishment. No other forms of housing will be permissible on educational establishments.

To enable this, Clauses 34, 44 and 51 *Development for the purposes of student accommodation* are proposed to be deleted and Clauses 35, 45 and 52 are proposed to be amended to allow student housing to become development permitted with consent.

Consistent with the current provisions, student housing that is ancillary to a State significant development proposal for an educational establishment will be assessed as State significant development. However, it is proposed that any stand alone student housing development applications within the boundaries of an existing educational establishment will not be State significant development, irrespective of the CIV.

Student housing that is not within the boundaries of an existing education establishment may occur using the proposed provisions in the Housing Diversity SEPP.

This amendment aligns with the proposal to facilitate delivery of student housing to support educational establishments. Amendments to supporting material such as guidelines and fact sheets will also be undertaken to ensure consistency with the Education SEPP.

Description of issue and proposed change

Planning pathways for development affected by a 10% student cap

Clause 36 of the Education SEPP currently allows the development of one storey school facilities (e.g. library, classroom, cafeteria, car park, etc) to be permitted by or on behalf of a public authority without development consent on land within the boundaries of an existing school. This provision is subject to a 10% cap on student numbers or staff employed at the school.

Stakeholders have raised concern that the current student cap in Subclause 36(2)(b) is disadvantaging smaller regional and rural schools which have low student numbers.

Schools in regional areas are more affected by the 10% cap on student numbers because some schools have very low enrolment numbers and a 10% cap would not permit much growth under the Part 5 'development without consent' planning pathway. For example, a school with 100 students would only permit an additional 10 students, whereas in urban areas larger schools can increase more substantially.

It is proposed to amend Subclause 36(2)(b) to allow for the development of school facilities by a public authority without development consent within the boundaries of an existing school equivalent to an additional classroom (30 students) or 10% of the existing student or staff numbers, whichever is the greater.

Alterations to the NSW Code of Practice for Part 5 activities will also be made to be consistent with the Education SEPP changes.

This provision does not allow applicants¹ to exceed student limits on a development approval.

School development permitted without consent for two-storey buildings

Clause 36 of the Education SEPP allows development of one storey school facilities to be permitted by or on behalf of a public authority without development consent on land within the boundaries of an existing school. Clause 36(1) restricts the development to one storey.

Stakeholders have raised concern that it is not unreasonable to have a two storey facility within a low density residential area..

It is proposed to amend Clause 36 to permit a (overall maximum) two storey school facility (e.g. library, classroom, cafeteria, etc) to be permitted by or on behalf of a public authority without development consent on land within the boundaries of an existing school. Clause 36 is still subject to the cap described in Clause 36(2)(b), which is also described above. The provision for car parking within this clause being only one storey also remains unchanged.

Alterations to the NSW Code of Practice for Part 5 activities will also be made to be consistent with the Education SEPP changes.

The Guide to the Education SEPP will also be updated consistent with the Education SEPP changes.

¹ The terms 'applicant' and 'proponent' are used interchangeably and refer to a person/organisation who, subject to the regulations, applies to a consent authority for consent to carry out development.

Description of issue and proposed change

Clarification regarding application of conditions of consent

The Education SEPP includes a number of clauses which ensure that complying development and development without consent do not contravene any existing conditions of consent applying to a site. Clarification of these clauses is required to ensure all relevant conditions of consent are considered.

The current wording of the clauses refers to the 'most recent development consent' which may be specific to a development consent for an unrelated proposal on the same site, and may not contain the valid conditions of consent required for that specific proposal.

An option is to replace the words "most recent development consent" with "the most relevant development consent", in Subclauses 36(3), 39(4), 46(2)(b), 49(6), 53(3) and 56(4) of the Education SEPP.

This is a minor amendment which will ensure that all valid and relevant development conditions of consent are considered.

Directional signage and information boards

There is an inconsistency between provisions of the Education SEPP that allow directional signage and information boards as exempt development.

Directional signage and information boards are exempt development within the boundaries of an existing school under Subclause 38(1)(h), irrespective of their size.

Directional signage and information boards are also listed in Schedule 1 – 'Exempt development' for educational establishments. This Schedule 1 item also includes a set of development standards which are not found in Subclause 38(1)(h). This causes inconsistency and confusion between these two provisions as to whether the development standards need to apply or not.

It is proposed to remove Subclause 38(1)(h) from the Education SEPP. This will mean that directional signage and information boards will be exempt development if they are consistent with the development standards identified in Schedule 1.

This amendment removes an inconsistency and will assist with the interpretation and usability of the Education SEPP.

Exempt development standards for school-based child care

Stakeholders have raised concerns around exempt development standards for school-based child care because they do not include hours of operation.

Subclause 40(2)(d) currently permits the development of school-based child care as complying development, subject to operating hours (i.e. no operation on a Saturday or Sunday, or before 7am or after 7pm on a weekday, if there is no existing condition on development consent applying to the school relating to hours of operation).

Hours of operation should be applied consistently regardless of whether school-based child care is permitted as exempt or complying development. Operating hours can be a matter of sensitivity in areas surrounding schools.

It is proposed to insert the same restrictions on exempt development, as currently exist for complying development. This will result in a proposed amendment to Clause 38 'Existing schools—exempt development' to introduce hours of operation for school-based child care.

This amendment removes an inconsistency from the Education SEPP and will provide improved certainty for residence near school-based child care.

Description of issue and proposed change

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

Short-term portable classrooms (e.g. demountables) are necessary structures for many schools to accommodate fluctuating student numbers.

Subclause 38(1)(l)(iii) of the Education SEPP allows for the installation of short-term portable classrooms as exempt development within the boundaries of an existing school, if it is removed within 24 months of being installed.

Concern has been raised by education providers that the 24 month timeframe is too short and that schools require more flexibility to manage their structures to accommodate student numbers.

It is proposed to amend Subclause 38(1)(l)(iii) by increasing the timeframe for short-term portable classrooms from 24 months to 48 months. The additional two years will provide schools with more security with their short-term portable classrooms.

Teaching facilities to include classrooms

Clause 39 of the Education SEPP identifies development that can be carried out as complying development within the boundaries of an existing school.

The Clause currently allows for teaching facilities to be carried out as complying development within the boundaries of existing schools. Teaching facilities include classrooms.

However, it is not clear to some users whether a teaching facility under Subclause 39(1)(a)(iii) includes a classroom, especially as the term “classroom” is not included within the clause but is used elsewhere in the Education SEPP.

An option is to insert the word “classroom” within brackets into Subclause 39(1)(a)(iii) to provide clarity and certainty to the provision.

Canteens as complying development

Subclause 39(1)(a)(iv) permits a cafeteria as complying development when carried out within the boundaries of existing schools. However, many schools have canteens instead of cafeterias.

The difference between the two uses are that canteens allow food to be taken away after purchase, while cafeterias are commonly understood to be eat-in premises. These uses are similar in nature and should both be permitted as complying development.

An option is to insert the words “canteen or” in Subclause 39(1)(a)(iv) to provide clarity and ensure both cafeterias and canteens are permitted as complying development.

The supporting material will also be updated for consistency. Supporting material will also clarify ancillary uses of canteen can include situations where students are undertaking course work that requires practical experience.

Allowing shops selling school related supplies

Clarification is required regarding what can be sold in schools under Subclause 39(1)(a)(v). The intention of the subclause is to enable the sale of school related supplies such as books, stationary or school uniforms. The current clause restricts this to bookshops and kiosks (which is undefined).

It is not intended to allow retail stores of a general nature serving the wider public - the goods sold must be related to the school use and aimed at customers who are students or staff only.

This amendment provides clarification and will assist with the interpretation and usability of the Education SEPP.

Description of issue and proposed change

External property boundaries

Terminology around property boundaries is used throughout the Education SEPP which is causing confusion among users.

Clauses 36, 38, 46, 48, 53, 55 and Schedule 1 of the SEPP contain references to “property boundary”. The intention of the wording “property boundary” is the external boundary.

An option is to amend all references from “property boundary” to “external property boundary, “site boundary” or similar to ensure consistency throughout the Education SEPP and supporting materials.

Tertiary institution development permitted without consent for two-storey buildings

Clause 46 and 53 of the Education SEPP currently allows development of one storey facilities to be permitted by or on behalf of a public authority without development consent on land within the boundaries of an existing tertiary facility. Clause 46(1)(a) and Clause 53(1)(a) restricts the development to one storey.

Changes are proposed for schools to undertake development permitted without consent to a maximum of two storeys. Those same parameters are proposed for universities and TAFEs.

It is proposed to amend the clauses to allow an (overall maximum) two storey facility (e.g. library, teaching or education facility, cafeteria, etc) to be permitted by or on behalf of a public authority without development consent on land within the boundaries of an existing tertiary institution. This provision is still subject to the requirements described in Clause 46(2) and 53(2), which permit the development if there is no alteration to traffic or transport arrangements, and no contravention to an existing condition of consent. Consequently, the provision for car parking within this clause being only one storey will remain unchanged.

Amendments to the development standards and caps related to floor space ratio, and gross floor area are proposed in order to enable the second storey whilst ensuring development has a low impact.

Innovation spaces/hubs within existing tertiary institutions

Innovation hubs are spaces that contribute to the growth and diversification of the economy and create jobs. Innovation hubs bring together multidisciplinary experts to find new ways to utilise talent, resources and technology and to support innovation and commercialisation through the cross-fertilisation of ideas between the academic sector and the private and/or public sector(s). The relationship between tertiary institutions and the workforce is becoming closer and tertiary institutions need to be able to respond to this need. There is a greater need to foster and attract innovation hub activities within existing tertiary institutions.

It is proposed to expand the SEPP to permit development with consent for innovation hub activities on existing tertiary institutions. These innovation hub activities would typically include commercial uses associated with the tertiary institution. This proposed provision would not permit forms of residential accommodation as part of the innovation hub.

Description of issue and proposed change

Landscaping associated with new development

The Education SEPP requires landscaping under the complying development pathway so that it can be undertaken alongside a new building being built under the complying development provisions.

However, the Education SEPP has been interpreted as requiring landscaping along the entire boundary nearest to the new development rather than only as it applies to the new development.

Therefore, clarification is required relating to the landscaping requirements under the complying development standards in Subclause 9(a), Schedule 2 and Subclause 10(a), Schedule 3 of the SEPP.

It is intended that the landscaping complying development standard applies to the new development and not the entire boundary of the property.

To make this clear it is proposed to remove existing Subclause 9(a), Schedule 2 and Subclause 10(a), Schedule 3 and insert text that says that the landscaped area must be 3m wide and located along the common boundary or boundaries nearest to the new building works.

This amendment will assist with the interpretation and usability of the Education SEPP.

Garbage and waste storage

Schedule 2 'Schools—complying development' and Schedule 3 'Universities and TAFE establishments—complying development' require the provision of garbage and waste storage areas at schools and tertiary institutions as part of any new complying development.

There is confusion among users whether an existing waste storage facility which has capacity to service the development, would allow compliance with this requirement.

The intention of the provision is that if the existing waste facility has the capacity and is approved by a previous development application, it can meet the requirements set out in the Education SEPP.

To make this intention clear it is proposed to remove the existing provisions under Subclause 10(3), Schedule 2 and Subclause 11(3), Schedule 3 and insert text that says that the waste storage area may be part of an existing approved facility on the site that has capacity.

This amendment will assist with the interpretation and usability of the existing provisions.

Description of issue and proposed change

Retaining walls and earthworks

Schedule 2 'Schools-complying development' set out requirements for earthworks and structural supports (retaining walls) for developments at schools and tertiary institutions as part of any new complying development.

There is confusion among users whether drainage to a temporary onsite stormwater detention system under Subclause 11(2)(c) would allow compliance with this requirement.

The intention of the provision is that stormwater or sediment is not redirected onto adjoining neighbouring properties such as residential properties, however this does not cater for a temporary situation where temporary drainage may be required to a designated lot while a council stormwater system is being designed and constructed. This situation arises where schools are constructed in new residential areas (often known as greenfield areas).

To make this intention clearer, one option is to adjust the wording of Subclause 11(2)(c) to require that water and sediment are not transported onto adjoining land, unless it is for the purpose of a temporary onsite stormwater detention system to a designated lot, that has been approved by Council. It is proposed the Council's concurrence to use the temporary drainage system would be required for the complying development provision to be satisfactorily met.

This amendment will assist with the interpretation and usability of the existing provisions.

Measuring noise impacts for complying development

Clarification is required regarding where to measure noise under the complying development standards for schools, and universities and TAFEs (for recreation facility (indoor) or a community facility).

For example, provision under Subclause 6, Schedule 2 of the Education SEPP currently requires a new building or (if the development is an alteration or addition) an existing building that is to be used for the purpose of a school or school-based child care to be designed so as not to emit noise exceeding an LAeq of 5 dB(A) above background noise when measured at any lot boundary.

The intention of Subclause 6(2), Schedule 2 and Subclause 7(b), Schedule 3 is for noise not to adversely impact on residential dwellings adjoining a school, school-based child care or recreation facilities (indoor) or community facilities at universities or TAFEs.

To reduce confusion, an option is to remove the words "at any lot boundary" replacing them with either "external property boundary, "site boundary" or similar to reflect that measurements are taken at the edge of the site.

This amendment will assist with the interpretation and usability of the Education SEPP.

Complying development over registered easements

Subclause 49(4) of the Education SEPP does not permit the erection of a building over a registered easement at universities as complying development. This provision is missing from school and TAFE complying development requirements.

The protection of registered easements should be applied regardless of the type of educational establishment.

It is proposed to insert the same restriction on complying development that currently exists for universities, to schools and TAFEs.

This amendment removes an inconsistency from the Education SEPP and will provide improved protection of registered easements for all educational establishments.

Description of issue and proposed change

Consulting with Transport for NSW about changes to pedestrian access points

A change is proposed to the Education SEPP to include a requirement to consult with Transport for NSW (Transport) around any changes to pedestrian access points at schools. This request will allow Transport to assess the appropriateness of the pedestrian access point changes and to ensure pedestrian safety.

The *Road Transport Act 2013* gives Transport the authority to authorise a person or public authority to install or display a prescribed traffic control device. Under Section 87 of the *Roads Act 1993*, Transport has responsibility for approving the installation of approved traffic control devices (e.g. warning, guide signs and pavement markings).

An option is to amend Subclause 13(3)(d)(i) by adding the words 'or pedestrian' so the provision reads 'a new vehicular or pedestrian access point to the school, or'.

Allowing geotechnical investigations and other testing, surveying and sampling as exempt development

Currently *State Environmental Planning Policy (Infrastructure) 2007* allows investigations, including geotechnical and other testing, surveying and sampling as exempt development. Given that the use is considered to be of minor impact and to ensure consistency across government policies, it is proposed to amend Schedule 1 of the Education SEPP to also allow investigations as exempt development, subject to it not involving any greater disturbance of the ground or vegetation than is necessary and not resulting in an increase in stormwater drainage or run-off from the site concerned.

Proposed amendments to other legislation

Proposed amendments have been identified to other legislation which will support the implementation of the Education SEPP amendments. These have been identified in **Table 2**. These changes are provisional, subject to legal review, and the outcome of consultation.

The table needs to be read in conjunction with the relevant legislation.

Table 2 Other regulatory changes being considered

Description of issue and proposed change

State Environmental Planning Policy (State and Regional Development) 2011

Threshold triggers for State significant development

The Department has received requests from Department of Education to increase the capital investment value for new schools and alterations and additions to existing schools under *State Environmental Planning Policy (State and Regional Development) 2011* (State and Regional Development SEPP).

The Department of Education have also identified that there are some development proposals that would be appropriate to utilise the complying development assessment pathway, except the capital investment value of the project triggers a State significant development assessment process.

Currently under Clause 15, Schedule 1 of the State and Regional Development SEPP development for the purpose of a new school (regardless of the capital investment value), alterations or additions to an existing school that has a capital investment value of more than \$20 million and tertiary institutions that have a capital investment value of more than \$30 million are State significant development.

The current capital investment values are capturing small scale schools and tertiary institutions that are not considered to be of State significance and the current State significant development approval pathway is considered to be too onerous for these local developments where there are not significant impacts. The State significant development approval pathway is not considered appropriate for small scale schools (e.g. <20 students).

It is proposed to amend Subclause 15(1), Schedule 1 of the State and Regional Development SEPP to introduce a requirement for the capital investment value for new schools to be \$20 million.

This will mean that new schools with a capital investment value of less than \$20 million, will be assessed as local development by the local council. This will give responsibility back to local councils for local developments.

It is proposed to amend Subclause 15(2), Schedule 1 of the State and Regional Development SEPP to increase the capital investment value for alterations and additions to existing schools from \$20 million to \$50 million, and to permit demolition and redevelopment of an existing school via this clause.

The Education SEPP permits four storey or 22 metre new buildings or alteration and additions to existing buildings within the school site as complying development, subject to the development meeting specified development standards.

It is proposed to amend Subclause 15(3), Schedule 1 of the State and Regional Development SEPP to increase the capital investment value for tertiary institutions from \$30 million to \$50 million. Tertiary institutions that do not trigger the capital investment value will be assessed by the local council as local development.

It is also proposed to amend Note 2 under Clause 19 of the Education SEPP to refer to the updated capital investment value amounts.

Description of issue and proposed change

Definitions within the Education SEPP or the *State Environmental Planning Policy (State and Regional Development) 2011* may also require amendment to clarify the circumstances for 'new' and 'existing' schools.

Transitional arrangements will be provided where there are changes to assessment pathways. These arrangements will be confirmed after consultation, and once any assessment pathway changes are finalised.

Proposed amendments to supporting documentation

The proposed amendments to the guidelines and fact sheets have been identified in **Table 3** below. These changes are provisional, subject to legal review, and the outcome of consultation.

The tables need to be read in conjunction with the existing supporting documents. The supporting documents that have proposed amendments are:

- Child Care Planning Guideline - Delivering quality child care for NSW (Child Care Planning Guideline)
- Guide to the Education SEPP
- Environmental Assessment Code of Practice NSW - Code of Practice for Part 5 activities - for registered non-government schools (Code of Practice)
- Fact sheet: Using complying development in schools and child care facilities
- Planning Circular PS 17-004 Development assessments of schools
- Planning Circular PS 18-005 New guidance for centre-based child care facilities.

There is no proposed amendment to:

- Design Guide for Schools (no proposed change).

Table 3 Proposed changes to supporting education and child care facilities documentation

Description of issue and proposed change

Child Care Planning Guideline - Fire safety provisions for multi-storey child care centres and centres in multi storey buildings

Changes to national standards for emergency and evacuation procedures are being made. An amendment made to the National Construction Code came into effect on 1 July 2020 to enhance fire safety provisions in early childhood facilities above the ground floor in multi-storey buildings.

Stakeholders have requested more guidance on early childhood facilities above the ground floor in multi-storey buildings within the Department's guidance material.

One option is to update the Child Care Planning Guideline, Section 4.8 Emergency and evacuation procedures to reference the new national standards for emergency and evacuation procedures made by the National Construction Code.

This could include guidance that child care facilities in multi-storey buildings must also comply with the requirements for fire safety that are contained in an amendment to the *National Construction Code* including:

- fire safety provisions for facilities that meet the Deemed-to-Satisfy criteria for new facilities. These provisions apply to those facilities that have direct egress to a road or open space (generally facilities located on the ground floor) or two-storey standalone facilities.
- for facilities that do not meet criteria directly above, a Performance Solution needs to be developed and approved providing criteria specific for the facility and the building in which the facility is located.

This revision of the Child Care Planning Guideline will improve fire safety requirements and align the NSW guidance with relevant national policy.

Description of issue and proposed change

Child Care Planning Guideline - Requirements centre-based child care to consider local character

The Child Care Planning Guideline includes advice on how centre-based child care facilities are to consider local character, streetscape and the public domain. Stakeholder feedback has suggested that greater guidance should be provided about how to integrate new facilities into their surrounds.

The Department has recently published a new *Local Character and Place Guideline*. The *Local Character and Place Guideline* provides tools to define existing character and desired future character that aligns with the strategic direction for an area.

It is proposed to update the Child Care Planning Guideline to add a reference to the *Local Character and Place Guideline* to provide detailed guidance on these topics. It is suggested that the most relevant section of the Child Care Planning Guideline is section 3.2. Local character, public domain and streetscape. This will provide greater advice and alignment between guidelines.

Child Care Planning Guideline – Site suitability guidance for centre-based child care facilities

The Child Care Planning Guideline includes advice on how centre-based child care facilities are to consider the selection and location of suitable sites. Stakeholders have raised concerns about the ability to appropriately consider this, based on the guidance provided.

Site selection is largely dependent on the specifics of a site and the proposed development should be discussed with the consent authority.

To provide greater clarification it is proposed to amend Figure 12 “*Cutaway plan showing arrangement and relationship between rooms within a child care facility*” in the Child Care Planning Guideline to better showcase a best practice site layout within the neighbouring context (e.g. adjoining buildings, roads).

This amendment should be read in conjunction with the amendment in the row below.

This amendment will assist with the interpretation and usability of the Guideline.

Description of issue and proposed change

Child Care Planning Guideline – Site suitability guidance amenity impacts in low density residential areas

When originally released in 2017, the Education SEPP amended the Standard Instrument to make ‘centre based child care facilities’ a mandatory permitted use in Low Density Residential zones – R2.

This was intended to streamline the approval processes, provide greater certainty in the planning system for child care centres, and ensure child care services could be provided in various zones.

While child care centres are permissible, the consent authority undertakes an assessment to consider the suitability of the site for the development and the likely impacts (including cumulative impacts). Consent authorities also consider the Child Care Planning Guideline when assessing a development application for a centre based child care facility.

Stakeholders have raised concerns about the ability to appropriately consider site suitability and cumulative amenity impacts that result from child care centres being located within close proximity to each other, within a Low Density Residential zone – R2. The Department propose to update the Education SEPP (Clause 25) described earlier in this document, and support that with amendment to the Child Care Planning Guideline providing advice on cumulative impact assessment in Low Density Residential zones – R2. The Department is seeking feedback on a proposed separation distance of 200m between child care centres to address cumulative amenity impacts.

The Department also proposes to provide further advice to improve the regulation of outdoor play spaces above ground floor in Low Density Residential zones – R2, in response to suggestions from stakeholders.

In Low Density Residential zones above ground floor outdoor play spaces can lead to impacts on local neighbours such as noise, overshadowing, bulk and scale, character and visual privacy. While outdoor play spaces above ground floor may be appropriate in some commercial and business zones, impacts in Low Density Residential zones – R2 require further guidance.

Impacts that may be considered include:

- overlooking into adjoining properties
- noise emissions
- visual amenity impacts (e.g. additional building bulk and overshadowing)
- complications to emergency evacuation.

This update to the Child Care Planning Guideline will provide greater clarity on site suitability assessment and will also support the Education SEPP.

Child Care Planning Guideline - Consistent terminology regarding railway stations

The Child Care Planning Guideline refers to car parking rates depending on if a site is located within 400m of a “metropolitan train station”. There is confusion caused by this term as it is not a defined term in the Education SEPP or in the Child Care Planning Guideline.

It is proposed to amend the Child Care Guideline to amend the above phrase to a “railway or Metro station within Greater Sydney”. This would align with Transport advice and boundaries in the Greater Sydney Region Plan.

Description of issue and proposed change

Child Care Planning Guideline - Solar access minimum standards

The Child Care Planning Guideline specifies “year-round solar access to at least 30 per cent of the ground area, with no more than 60 per cent of the outdoor space covered” for outdoor play areas at centre-based child care facilities.”

It is difficult to demonstrate compliance with the year-round fixed percentage requirement. To resolve this issue, it is proposed to amend the Child Care Planning Guideline text to: “have a minimum of 2 hours of solar access between 8am and 4pm in winter (March 21 to September 21), to ensure a minimum 2.1m² of outdoor space per child”.

This proposed change will improve the utility of the Child Care Planning Guideline and is aligned with other solar access practices.

Child Care Planning Guideline - Consistent fence heights

Confusion is currently being caused by inconsistencies between the fence heights in the text and the figures within the Child Care Planning Guideline. The current guidance is often read as having a discrepancy between the text and Figure 11 (both 1.2m and 1.8m are referenced).

It is proposed to make minor edits to the Guideline for clarity purposes to resolve this inconsistency and add additional explanatory text for internal fences: “if the outdoor space is being fenced internally, then the fence must be at least 1.2m high”. This change will utilise the National Construction Code as a safety reference (*Australian Standards 1926.1 – 2012*). That Code requires 1.2m internal fence for outdoor play spaces.

This amendment will provide a useful clarification of the Child Care Planning Guideline.

Child Care Planning Guideline - Clarifications and correction within the Child Care Planning Guideline

It is proposed to make various minor edits to the Child Care Planning Guideline to correct terminology, grammar and spelling errors.

Guide to the Education SEPP - Car parking inconsistency

There is an inconsistency between the Education SEPP and the Guide to the Education SEPP relating to car parking permissible under the complying development pathway. The Education SEPP does not include car parks as complying development, however the Guide to the Education SEPP describes car parks as complying development. Similarly, exempt development in the Education SEPP includes ‘at grade car parks’ but this is missing from the Guide.

It is proposed to remove the references to car parks being complying development and add ‘at grade car parks’ to exempt development to the Guide to the Education SEPP. The amendment will ensure consistency between the Education SEPP and the Guide to Education SEPP.

Guide to the Education SEPP - Measurement of rear and side setbacks inconsistencies

There are inconsistencies between the Education SEPP and the Guide to the Education SEPP relating to the measurement of rear and side setbacks. This inconsistency is causing confusion with users.

The wording “more than 5 metres” is used throughout the Education SEPP and the wording “at least 5m” is used in the Guide to Education SEPP.

An option is to change all references to “at least 5m” in the Guide to “more than 5m” to ensure consistency between the Education SEPP and the Guide to Education SEPP.

Description of issue and proposed change

Guide to the Education SEPP - Additional guidance on pedestrian safety

To ensure consistency between the Education SEPP and the Guide to the Education SEPP, the Guide is proposed to be updated to include additional guidance on pedestrian safety.

The *Road Transport Act 2013* and the *Roads Act 1993* give Transport for NSW the authority and responsibility for prescribed traffic control devices – that means traffic signs, road markings, traffic signals, or other devices, to direct or warn traffic on, entering or leaving a road.

An option is to amend the Guide to the Education SEPP to include “Consultation with TfNSW is required for any school development activity where the pedestrian access arrangements are proposed to be altered. This is because Transport for NSW approval is required for any proposed alterations to a 40km/h school zone, or any new school zone, which is commonly required when an access point to a school (whether for pedestrians or vehicles) is altered on any road”.

Guide to the Education SEPP – general updates and clarifications

It is proposed to make various edits to the Guide to reflect changes to the Education SEPP (for example student accommodation, bushfire prone land) and to ensure consistency between the documents.

Code of Practice NSW - Notification timeframe inconsistency

There is an inconsistency between the Code of Practice NSW for Part 5 activities and the Education SEPP relating to notification timeframes; the Code of Practice NSW refers to business days, while the Education SEPP refers to days (being calendar days).

An option is to change the notification period of “21 business days” to “21 days” throughout the Code of Practice NSW. This will ensure consistency between the Code of Practice NSW, the Education SEPP, and other planning legislation such as the *Environmental Planning and Assessment Act 1979*, which also refers to days (calendar days).

Code of Practice NSW -general updates and clarifications

It is proposed to make various minor edits to the Code of Practice to clarify matters, correct terminology, grammar and spelling errors.

Fact Sheets – general updates and clarifications

It is proposed to make various minor edits to the Centre-Based Child Care Facilities, DA Process and complying development fact sheets to clarify matters being adjusted in the Education SEPP, to correct terminology, grammar and spelling errors.

Planning Circular PS 17-004 Development assessments of schools – general updates and clarifications

It is proposed to make various minor edits to Planning Circular PS 17-004 to update legislation references and contact details.

Planning Circular PS 18-005 New guidance for centre-based child care facilities – general updates and clarifications

It is proposed to make various minor edits to Planning Circular PS 18-005, including to update the information on the Department of Education’s new Concurrence Application Form, and other minor updates.