

SCHOOLS DEVELOPMENT ALERT NSW

Draft Schools State Planning Policy - more planning approval obstacles in the path of new school projects?



A new state planning policy aimed at schools may need to be radically rewritten if it is to live up to the State Government's promise of delivering much-needed new or upgraded school facilities faster.

Forecasts reveal that between now and 2031 there will be a **demand for an estimated 172,000 new students in New South Wales, equivalent to 15 new schools per year**, with about one third of existing school buildings in need of upgrading or replacement.

This is a clear challenge to urgently provide for school facilities and for the State Government to play "catch up".

In the face of this unprecedented growth in the demand for school facilities in New South Wales the State Government has released for public comment Draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (the Draft SEPP).

In recognition that the public school system will not be able to cope with the forecast demand the NSW Department of Planning & Environment states:

"As the public system struggles to keep up, there will be increasing pressure on the private sector to assist in meeting this demand."

So will this new draft policy help in making it easier to obtain planning approval for new school projects? In short, NO.

The draft SEPP policy package contains few measures that will actually help schools in enabling projects to be fast-tracked to meet this huge forecast student demand.

In fact, even more red-tape and planning obstacles are proposed to be put in the way of most types of new school projects getting the go-ahead.

1. "Without Consent" Projects:

The new draft SEPP requires an onerous system that public schools are currently lumbered with- and even then a 10% cap on the increase in student numbers applies- more likely to hinder, rather than help, any proposed upgrading or expansion of any school. These provisions allow one storey school buildings only- probably of limited use for schools with already constrained sites.

Notwithstanding the massive shortfall in student places forecast between now and 2031, it is disappointing to note that the new Draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 does not give any apparent priority to speeding up or simplifying the planning approvals process for new school projects or make it easier to increase student numbers at existing schools.

This is despite the fact that the new planning package promises "delivering new facilities and upgrading existing facilities faster."

The planning package proposes that all new schools, and significant alterations and additions to existing schools that have a project cost of more than \$20 million will be categorised as State Significant Development (SSD).

This will involve the preparation of costly, time-consuming EISs, with attendant delays in the determination of any school project whilst submissions and amendments are considered, consent conditions considered etc etc. These new measures may also potentially provide fodder for opponents of any proposed (SSD) school.

Example: The St Catherine's School SSD project took two and a half years to get final DA approval from initial contact with the Dept. Planning.

Any approval for uses under this category of school use must be backed up by a detailed Part 5 assessment report- equivalent to a mini-EIS,- something that non-government schools have not had to contend with previously. A new Code is proposed for these schools to follow.

OUR CLIENT CASE STUDY 1:

Existing school in need of expansion, with limited space for development, but has no limits on student numbers.

Recommendation:

“Without Consent” option of little utility, as it is geared to one storey development only. No development consent required for further expansion.

Pursue the current complying development approvals pathway before the new Draft SEPP comes into force.

2. Complying Development

The Draft SEPP allows basically the same range of school facilities to be certified under the complying development provisions except for underground or multi storey car parks (clause 33(1)(xi) of the draft SEPP). If the Draft SEPP is adopted, such car parking structures will require the issue of a DA consent- and more resulting delays with a project going ahead. There are no sound town planning reasons why underground or multi-storey school car parks are no longer complying development.

New controls are to apply to complying development under the Draft SEPP eg. if the land is flood prone, a certificate will be required from a hydraulic engineer for development on flood-affected land. Heritage controls also are to apply to complying development - not previously the case.

OUR CLIENT CASE STUDY 2:

Existing school in need of increased student numbers but has local council development consent limits on student numbers. The existing school buildings can accommodate the increase in students sought.

Recommendation:

The existing/proposed Schools SEPP of little assistance.

Seek a s.96 modification of the consent to increase student numbers, backed up by details of capacity of the existing school to absorb additional students and demonstration that it meets the requirements of the School Facilities Standards- referred to in the

The Draft SEPP seeks to allow complying development on bushfire prone land. However, this will only be possible if s.110B(6)(a) of the *Rural Fires Act 1997* is correspondingly amended, deleting reference to schools as a “special fire protection purpose”.

Section 110B(5)(b) of the *Rural Fires Act 1997* states, inter alia, that development for the purposes of a special fire protection purpose:

“(b) **is not complying development for the purposes of the *Environmental Planning and Assessment Act 1979*, despite any environmental planning instrument.**”

Alternatively, the school site will need to be reclassified (ie. mapped) as not being bushfire prone land.

OUR CLIENT CASE STUDY 3:

Existing school city location in need of more classrooms, abutting residences, with limited space for development, and with limits on student numbers. Underground/multi-storey car parking seen as essential.

Recommendation:

Pursue the current complying development approvals pathway before the new Draft SEPP comes into force. Seek additional students using s.96 modification or in association with DA for additional school buildings elsewhere on the school campus. [NOTE: If it had been a new school the use of a s.83B master plan approval would have been the first step required].

In short the Draft SEPP offers the following:

- One storey portables are to be “exempt” development- but with new guidelines applying.
- The “without consent provisions offer schools the opportunity to expand by up to 10%- but only for one storey development, and only if there are no existing local council consent constraints. All new without consent development will be subject to onerous Part 5 planning assessments.
- Complying development provisions for increased heights of development- a positive feature- however, new underground or multi-storey school parking will require DA consent- a negative feature. The raft of new design guidelines accompanying complying development will be an additional administrative and planning burden to contend with.
- Declaring all new school projects as State Significant Development will only result more delays and more costs in obtaining approvals. Maintaining the existing approvals process is a better option eg. obtain master plan approval and then get complying development certificates for all future buildings or use of s.96 modifications application- the later avoiding the need for new DA or SSD approvals process.

