

**LGNSW Submission to
Department of Planning Industry and Environment
*Review of the Education SEPP 2017***

December 2020

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1.0 Opening

Local Government NSW (LGNSW) welcomes the opportunity to make a submission to the Department of Planning Industry and Environment (DPIE) on the review of the Education SEPP 2017.

LGNSW is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

Local government plays a key role in identifying and advocating for the provision of State Government infrastructure to meet the needs of local communities (e.g. schools, hospitals). State and Commonwealth Government growth plans and projects need to make up front provision for the delivery of associated local infrastructure.

LGNSW welcomes DPIE's review of this policy and has advocated for this review on behalf of our members. As stated in our position statement on planning and local decision making, LGNSW advocates for:

*7.10 A review of State Environmental Planning Policies (SEPPs), with priority given to housing related SEPPs so that housing solutions developed by councils are not undermined and SEPP (Educational Establishments and Child Care Facilities) 2017 with a view to returning planning decisions relating to the location, type and design of childcare centres to councils.*¹

This is a draft submission awaiting review by the LGNSW Board. Any revisions made by the Board will be forwarded to DPIE.

2.0 Background

DPIE is undertaking the first review of the *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* since it was introduced in 2017.

The proposed amendments are outlined in the explanation of intended effects (EIE) which was released for consultation in November with submissions closing Thursday 17 December 2020. The proposed amendments form part of the NSW Planning Reform Action Plan.

The DPIE amendments aim to further streamline the delivery of school infrastructure, facilitate the delivery of student housing, address feedback regarding child care centres in low density residential zones and other operational and policy comments raised by stakeholders.

The EIE indicates that the key proposed amendments to the Education SEPP include:

- providing changes to capital investment value (CIV) thresholds to ensure the planning assessment pathway is commensurate with scale and impacts of proposed project;
- streamlining approval processes, to make it easier for schools, TAFEs and universities to build new facilities and improve existing ones;

¹ https://www.lgnsw.org.au/common/Uploaded%20files/Policy/LGNSW_Policy_Platform_-_April_2020.pdf

- supporting the new student housing strategy proposed in the Housing Diversity SEPP for student housing on schools and tertiary institution campuses including TAFEs;
- making provision for innovation hub activities within existing tertiary institutions;
- addressing concerns about impacts of child-care centres within Low Density Residential Zones (R2);
- streamlining the planning system for education and child care facilities including changes to exempt and complying development;
- bringing national laws regulating early childhood education and care into the state planning system;
- bringing the Department of Education (DoE) into the planning process and giving child care providers and developers upfront information about all national and state requirements for new child care services;
- streamlining delivery of new schools and upgrading existing facilities with a focus on good design; and
- assisting TAFEs and Universities to expand and adapt their specialist facilities in response to the growing need, while allowing for more flexibility in the use of their facilities.

3.0 Summary of LGNSW Position

LGNSW's policy positions are informed by the views of our member councils. LGNSW has two planning related Fundamental Principles. Our Fundamental Principles are the overarching principles on matters of importance to local government endorsed at our annual conference, most recently in November 2020. These two principles² are of direct relevance to this submission and are as follows:

- *That local government is best placed to lead and influence local and regional planning processes according to the needs and expectations of local communities.*
- *That our communities' quality of life is a priority of local government planning.*

In developing education facilities and infrastructure, approval authority is often removed from councils, which does not align with these Fundamental Principles. Where this occurs, councils need to be confident that the assessment process fully recognises and addresses the significant local impacts of these developments on community quality of life and amenity.

LGNSW strongly opposes the ongoing reduction in community participation requirements for development undertaken by the State government and considers this to be contrary to the objects of the *Environmental Planning and Assessment Act 1979*. Clause 1.3(j) of the Act³ is as follows:

- (j) *to provide increased opportunity for community participation in environmental planning and assessment.*

Increasing the types of development that do not require consent and public notification is considered to be contrary to the objects of the current planning legislation and any such reforms should not be progressed.

² https://www.lgnsw.org.au/common/Uploaded%20files/Policy/LGNSW_Policy_Platform_-_April_2020.pdf

³ <https://www.legislation.nsw.gov.au/view/html/inforce/current/act-1979-203#sec.1.3>

This submission is based on the views of our member councils which are conveyed in the LGNSW's Policy Platform. Please note the following extracts from LGNSW's Policy Platform⁴ which are pertinent to this submission:

LGNSW advocates for:

4.4 New models for rural and regional infrastructure and service delivery, including consideration of council coordination and/or implementation, that are built on close collaboration between local, state and federal government.

6.1 Mandatory upfront engagement by State and Commonwealth governments with local government about specific local priorities.

6.2 Effective coordination of State and Commonwealth funding programs where co-contribution is required.

6.3 State and Commonwealth Government growth plans and projects must make upfront provision for, and include, the delivery of associated local infrastructure.

6.4 Increased opportunity for community use of state and federal facilities.

7.1 The planning system to ensure the voice of local communities is heard through:

- the well understood and accepted councillor representation system, which provides transparency and accessibility to communities;*
- genuine local representation, including councillors, on regional planning panels, and*
- third party merit appeal rights in respect of all categories of development applications, including decisions made by the Independent Planning Commission (IPC).*

7.3 Local government to retain control over the determination of locally appropriate development – local planning powers must not be overridden by State plans and policies or misuse of state significant development provisions.

7.4 Local government to be treated as a partner (not just another stakeholder) in metropolitan, regional and district planning processes - the role and voice of local government is vital in delivering productivity, liveability and sustainability.

7.8 Reforms to the planning system to include a fundamental review of its primary purpose and work to improve its efficiency and effectiveness, by consolidating state policies and local plans in local planning instruments, streamlining plan-making and development assessment and ensuring councils have adequate powers to implement provisions.

14.4 The NSW Government to ensure that any new schools constructed in a local government area provide appropriately-sized off-street drop off and pick up zones.

⁴ https://www.lgnsw.org.au/common/Uploaded%20files/Policy/LGNSW_Policy_Platform_-_April_2020.pdf

4.0 Issues

4.1 Use rights of adjoining land

DPIE proposes to amend and clarify the existing provisions in Clause 16 of the Education SEPP. DPIE asserts that this clause already permits additional uses on State land and the proposed amendment is intended to assist with the interpretation and usability of the Education SEPP. The EIE states that 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 (SCC) has been issued and the educational establishment is on State land. For example, this would allow residential development within the grounds of an existing school where land adjoining the school is zoned residential. Subclause 16(2), *Additional uses of certain State land permitted*, is as follows:

(2) *Development for a purpose that is permitted under this Policy without development consent on land by the zoning of that land may be carried out without development consent on adjacent land—*

(a) *that is prescribed State land despite any local environmental plan applying to that adjacent land, and*

(b) *on which is located a school or TAFE establishment.*

Note—*This subclause and subclause (3) apply whether or not the land to which the relevant zoning applies and the adjacent State land (or former State land) are subject to the same environmental planning instruments.⁵*

The following example is included in the EIE: *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.⁶*

LGNSW strongly objects to this proposal as it circumvents the planning proposal process, potentially undermines local strategic plans and is considered contrary to the community participation objects of the *Environmental Planning and Assessment Act 1979*⁷, as referred to in section 3 of this submission.

The requirement for a planning proposal is considered appropriate to ensure both community consultation is adequate and the demand for local infrastructure can be considered and does not place a burden on council to fund improvements to local infrastructure (e.g. roads, traffic network, open space and social infrastructure).

LGNSW is concerned that the proposal to allow for an adjoining land use to be permitted on a school site with a SCC may result in increased divestment of school land by the Department of

⁵ <https://www.legislation.nsw.gov.au/view/html/inforce/current/epi-2017-0494>

⁶ https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/master-test/fapub_pdf/00+-+Planning+Portal+Exhibitions/Explanation+of+Intended+Effect+-+Education+SEPP.pdf

⁷ EP&A Act 1979, s 1.3 (j)

Education, particularly if schools are adjacent to the R4 high density zone and where there is pressure for increased development.

LGNSW considers it inappropriate for the NSW Government to be involved in fast tracking the rezoning of school sites for other purposes. There needs to be rigorous processes in place to ensure that there is adequate land for future educational purposes based on strategic plans and regional plans that identify future population growth. Although it is proposed to require a SCC, this process is inadequate and, in accordance with normal rezoning processes, additional strategic planning and engagement with council and the community is required for any land use change affecting educational land so as to ensure that land which may be required for future educational purposes is not sold off or sterilized.

Recommendation 1: LGNSW strongly opposes this proposed change. LGNSW acknowledges that it is proposed to amend the wording of subclause 16(2) for clarity. Whilst LGNSW supports the government's intention to reform the planning system to stimulate economic activity and to create an improved planning system to benefit the communities of NSW, this provision, subclause 16(2), is contrary to the objects of the current planning legislation and should be deleted.

4.2 Clarifying circumstances where schools can be expanded

The EIE states that it is proposed to clarify provisions in clause 16 of the Education SEPP, which already permit additional uses on State land. The EIE asserts that 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 proposed to reword subclause 16(3) to allow an existing establishment to expand onto adjoining land where educational establishments are not permitted, provided that a SCC has been issued and the adjacent land is prescribed State land. The current wording of 16(3) is as follows:

- (3) Development for a purpose that is permitted under this Policy with development consent on land by the zoning of that land may be carried out with development consent on adjacent land, despite any local environmental plan applying to that adjacent land, if—*
- (a) there is a valid site compatibility certificate applying to the development, and*
 - (b) the adjacent land was prescribed State land when the relevant planning panel issued the certificate, and*
 - (c) a school or TAFE establishment is located on the adjacent land.⁸*

LGNSW is concerned about expanding schools on State land without a rezoning process and just a SCC. LGNSW strongly objects to this proposal as it circumvents the planning proposal process and is considered contrary to the objects of the *Environmental Planning and Assessment Act 1979*⁹ as referred to in section 3 of this submission.

The requirement for a planning proposal is considered appropriate to ensure both community consultation is adequate and the demand for local infrastructure can be considered and does not place a burden on council to fund improvements to local infrastructure (e.g. roads, traffic

⁸ <https://www.legislation.nsw.gov.au/view/html/inforce/current/epi-2017-0494>

⁹ EP&A Act 1979, s 1.3 (j)

network). There needs to be adequate assessment of proposals to expand school sites onto adjoining sites, particularly with respect to parking and traffic and potential impacts on existing residential development.

There needs to be rigorous processes in place to ensure that there is adequate land for future educational purposes based on strategic plans and regional plans that identify future population growth. Although it is proposed to require a SCC, this process is inadequate and, in accordance with normal rezoning processes, additional strategic planning and engagement with council and the community is required for the planning of educational facilities across NSW. The State government's focus on strategic planning should include the planning for educational facilities in order to provide adequate educational services and facilities for communities throughout NSW.

LGNSW questions how the public is informed and can obtain access to information on these approvals particularly if living or buying property in the area. LGNSW would like clarity on whether there is a publicly accessible register of these approvals so the community can obtain this information.

Recommendation 2: LGNSW strongly opposes the proposed change to the wording of subclause 16(3). LGNSW acknowledges that it is proposed to amend the wording of this clause for clarity. Whilst LGNSW supports the government's intention to reform the planning system to stimulate economic activity and to create an improved planning system to benefit the communities of NSW, this provision, subclause 16(3), is contrary to the objects of the current planning legislation and should be removed.

Recommendation 3: LGNSW advocates that a planning proposal and community consultation should be required for the expansion of schools and that councils are best placed to make decisions on these development applications.

4.3 Increased height for development permissible without consent

The proposed changes would amend clause 36 to allow the development of two storey facilities by or on behalf of a public authority within the boundaries of existing schools, TAFEs or tertiary institutions, without development consent.

The EIE states that the proposed amendments are subject to the development not exceeding the equivalent of an additional classroom (30 students) or 10% of the existing student or staff numbers in schools, whichever is the greater.

LGNSW is concerned that the proposed amendments could have negative impacts and considers that appropriate provisions are necessary to ensure that the facility:

- has no impact on adjoining properties;
- is reasonably set back from site boundaries; and
- generates no additional traffic taking into consideration the site and school size.

Particularly as development consent is not required, LGNSW is concerned about the proposed change to increase maximum building height from single to double storey and the potential increased impact of development on neighbouring properties, business, residents and the community. Increased development height may be inappropriate, particularly in fringe metropolitan area, regional and rural areas. This blanket provision is considered inappropriate

and does not provide for a detailed site assessment including issues such as slope, overshadowing, adjoining development and impact on amenity.

LGNSW is also concerned whether there would be the opportunity to expand additional classrooms without development consent on multiple occasions, as the cumulative impact may result in unreasonable impacts to neighborhood amenity, including the generation of additional traffic and parking. It is recommended that use of this exempt pathway be limited to only once per school site, or by an appropriate site size/school student ratio, to ensure that the rate of school facilities delivered throughout this pathway is proportional to the school operation and site size.

Recommendation 4: LGNSW recommends that use of this exempt pathway for development of two storeys be limited to only once per school site, or by an appropriate site size/school student ratio, to ensure that the rate of school facilities delivered throughout this pathway is proportional to the school operation and site size and to minimise cumulative impacts.

4.5 Longer time period for temporary classrooms

Currently temporary classrooms (such as demountables) are exempt development if removed within 24 months of being installed. The EIE indicates that 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 removed within 24 months of being installed. This is proposed to be increased to 48 months.

LGNSW appreciates the intent of this proposed change but does not support it because of its potential to delay the construction of permanent classrooms where they are most needed. According to New South Wales data¹⁰, demountable classrooms are concentrated in western Sydney and in 2018, the Riverstone electorate had the highest number of demountable classrooms (168) in the Blacktown LGA. Demountable classrooms often also take up playground areas and sports fields, creating additional issues.

The increase in the number of demountable classrooms across Sydney, and in particular western Sydney, indicates how capital works have lagged in areas that have had significant population growth and need more school infrastructure. This issue needs to be addressed by the NSW Government through additional strategic planning for growth and school infrastructure and the development on additional schools/classrooms and facilities in appropriate locations in a timely manner to meet demand.

Recommendation 5: LGNSW objects to the proposed change to extend the life of demountable classrooms from 2 years to 4 years as exempt development and requests that the current 2-year period be retained.

Recommendation 6: LGNSW advocates that the State government's focus on strategic planning should include the planning for educational facilities in order to provide adequate educational services and facilities for communities throughout NSW without the long-term reliance on temporary classrooms.

¹⁰ Released under Freedom of Information in 2018
(<https://thenewdaily.com.au/news/state/nsw/2018/09/12/demountables-nsw-western-sydney/>)

4.6 New triggers for State significant development (SSD)

It is proposed to amend *State Environmental Planning Policy (State and Regional Development) 2011* to introduce a capital investment (CIV) value trigger for new schools and increase the capital investment value trigger for alterations and additions to schools and for new tertiary institutions. The new triggers are proposed to be:

- \$20 million for new schools,
- \$50 million for alterations and additions to schools; and
- \$50 million for tertiary institutions.

LGNSW considers that schools of less than \$20 million as local development are appropriate considering the scale of this development and requests that assessment guidelines and financial resources (where appropriate) are provided to councils. LGNSW supports increasing the trigger for development to be state significant development from a CIV of \$20 million to \$50 million for alterations and additions to schools, and a CIV from \$30 million to \$50 million for tertiary institutions, as it will give back the responsibility of assessment to councils, consistent with LGNSW policy.

Recommendation 7: LGNSW supports the proposed changes to the value of project triggers for SSD as it will return the responsibility of assessment of these smaller scale local developments to councils.

Recommendation 8: LGNSW requests the State government provide adequate support to councils to implement this change in terms of advice on the likely number of applications per year and resourcing such as finances (if appropriate) and assessment guidelines.

4.7 Innovation hub activities

The EIE indicates that the Education SEPP will be amended to permit '*innovation hub activities*' on existing tertiary institutions as development permissible with consent. The EIE indicates that these activities will typically involve commercial uses associated with the tertiary institution, however, there is no definition of the term *innovation hub activities*. The EIE clearly states that residential accommodation would not be permitted as part of innovation hub activities.

It is recommended that further detail be included to clarify how an innovation hub activity will be defined and the extent of the commercial component allowed as part of the use. A definition for *innovation hub activities* should be included and worded to ensure that:

- any commercial use is ancillary;
- any development does not detract from existing commercial centres;
- any development is consistent with any local council strategy for centres; and
- residential uses will not be permitted.

Recommendation 9: Whilst LGNSW supports this change in principle, it is recommended that further detail be included to clarify how an innovation hub activity will be defined and the extent of the commercial component allowed as part of the use. A definition for *innovation hub activities* be included and be worded to ensure that:

- any commercial use is ancillary;
- any development does not detract from existing commercial centres;

- any development is consistent with any local council strategy for centres; and
- residential uses will not be permitted.

4.8 Hours of operation for exempt development

DPIE proposes to introduce hours of operation for the use of school-based childcare in the exempt development pathway which will apply restrictions on the hours of operation for exempt school-based child-care development. The EIE states *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)*. The proposed hours of operation would be the same as those currently applying to complying development: *no operation on a Saturday or Sunday or before 7am or after 7pm*. The EIE indicates that these hours of operation would only apply where there is no existing condition on a development consent applying to the school relating to hours of operation. DPIE proposed to amend clause 38 'Existing schools—exempt development' to introduce hours of operation for school-based childcare.

LGNSW is not opposed to this change.

4.9 Conditions of Consent

Currently the Education SEPP contains clauses to ensure that development permissible without consent and complying development do not contravene any existing conditions of consent applying to the subject site. The provisions currently refer to the "*most recent development consent*". DPIE proposes to amend the wording to "*the most relevant development consent*" to ensure that all valid and relevant conditions of consent are considered.

LGNSW supports this minor change.

4.10 Separation distance for child-care centres

It is proposed to introduce provisions to prevent child-care centres within close proximity of each other in low density residential zones (R2). A separation distance of 200m between child-care centres is being considered. The amendment seeks to address concerns raised about amenity impacts, such as noise and traffic, arising from child-care centres being near one another.

In-principle, LGNSW supports the 200m distance between centres and would prefer a larger distance. LGNSW queries how the separation distance of 200m was determined and the criteria used to determine this distance. A larger distance of 500m is considered more appropriate.

Feedback from some councils indicates that more services are being built than there are children and staff available.¹¹ In examples provided to LGNSW councils note that all of these

¹¹ For example, in Cumberland LGA:

- Hilltop Road in Merrylands: Early Elements Education (79 Hilltop Rd) and Hilltop Child Care Centre (with 2 licensed services at 34 and 38 Hilltop Rd) located within 400m of each other.
- The Avenue, Granville; Granville TAFE Child Care Centre, France Fisk Child Care Centre and Palm Child Care Centre (located next door to each other) within 350m.

services have current vacancies and all services are meeting or exceeding the NQS. By establishing a separation distance we would aim to address this issue, which is clearly affecting utilisation numbers at each of these services, for any future planning.

The local government sector supports proposed measures to ensure distance between centres are supported. Due to COVID-19 and the change in work practices and increased unemployment, some centres have vacancies when they never have before in decades. The concern is that over-supply can lead to poor quality outcomes for children if there is a shortage of quality teachers and quality sites.

Rather than decisions being based on geographic distance, councils would prefer for centres to show that they meet community need through a feasibility study. With the SEPP, the requirement by councils for a feasibility study is no longer allowed. It should be a greater separation than 200m PLUS a demonstrated need (through a feasibility study). This is particularly pertinent in the current economic climate considering the impacts of COVID-19 (including the revised lower population growth rates for many areas, more people working from home and the reduced demand for childcare services).

LGNSW also queries who has the responsibility for oversight of the density and supply/demand issues of childcare services. Although councils previously had oversight of this issue, the SEPP removed that control. However, no one in the State or local government seems to currently have clear responsibility for this planning issue.

LGNSW recommends that advice/guidance be provided on how to calculate the separation distance. Clear and concise guidance is required to minimise confusion and debate between assessment planners and applicants/developers.

Recommendation 10: LGNSW supports inclusion of a separation distance and requests that more than 200m be considered, with a recommendation that 500m would be appropriate.

Recommendation 11: LGNSW recommends that clear and concise guidance be provided on how to calculate the separation distance.

Recommendation 12: LGNSW recommends that the guidelines be amended to also require a feasibility study demonstrating need for the facility or upgrade be provided with any proposal.

4.11 Updates to Child Care Planning Guideline

DPIE proposes the following:

- update the existing advice on how centre-based childcare facilities are to consider local character, streetscape and the public domain;
- amendments to advice on how centre-based childcare facilities are to consider the selection and location of suitable sites;
- update to provide further advice to improve the regulation of outdoor play spaces above ground floor in Low Density Residential zones – R2; and

It should be noted that all of these services have current vacancies and all services are meeting or exceeding the NQS. By establishing a separation distance we would aim to address this issue, that is clearly affecting utilisation numbers at each of these services, for any future planning.

- to reference the new national standards for emergency and evacuation procedures made by the National Construction Code on 1 July 2020 to enhance fire safety provisions in early childhood facilities above the ground floor in multi-storey buildings.

Councils support the need for greater clarity and guidance around the need for multi-storey education and care services in R2 Residential zones. Consideration needs to be given to the use of above ground outdoor play spaces and the need for such in low density zones. Greater clarity is also sought as to whether these above ground outdoor play areas are considered 'simulated outdoor environments', thus confirming the need to submit the subsequent DA for concurrence. (Recent discussions with the Early Childhood Education Directorate suggest any 'outdoor play space' provided above ground in a multi-storey service would be considered 'simulated', however developers/providers often dispute this.)

Fire safety in child-care centres which have multiple storeys is a real issue. There are severe limits to how staff can safely evacuate non-walking children. When residential accommodation is located above the early childhood education centre (ECEC), this also causes issues (for example people can hang over their balcony with cigarettes and drop rubbish and other items).

The SEPP and the Guideline should include best practice outcomes, not the minimum requirements. It is difficult to have quality services if the design of the building is sub-standard. (For example, some child centre designs include an area for bottle preparation in the nappy change area and this is not considered best practice.)

Another significant issue missing from the proposed changes is the issue of timeframes for concurrent assessment. Where council needs to seek concurrency from the DoE, this needs to occur within 7 days of the application being received. LGNSW recommends that DPIE consult further with councils as to whether they are able to seek concurrency in this timeframe, or whether this step is ineffective.

Recommendation 13: LGNSW recommends that the DPIE to consult further with councils as to whether the timeframes for concurrent assessment are adequate and/or how it can be improved.

Recommendation 14: LGNSW requests that a thorough review of the SEPP and the Guideline be undertaken by DPIE, in consultation with councils, and amended to include best practice outcomes, not minimum requirements.

4.12 Student housing

DPIE proposes the following amendments to provide a clearer planning pathway for student housing to be built on existing schools, universities and TAFE sites:

- proposes to allow student housing as a development permitted with consent within the boundaries of an existing educational establishment.
- student housing that is ancillary to a State significant development proposal for an educational establishment will be assessed as State significant development.
- proposes 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.

The EIE proposes that a definition for 'student housing' 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.*

LGNSW suggests that the definition of student housing be strengthened to ensure that non-students are not able to reside in the student housing (e.g. evidence to be provided to demonstrate that a student housing provider is to manage the stock or there be a Plan of Management tied in with the consent).

LGNSW suggests that further detail is required to ensure that any development is consistent with development in the adjoining zone/site, particularly if there are no height/FSR controls within the existing zone.

It is noted that the Housing Diversity SEPP EIE released in July 2020 included proposed development standards for student housing and suggested that design guidelines for student housing could be developed to accompany the new Housing Diversity SEPP. LGNSW is still waiting on the release of the Housing Diversity SEPP to understand the proposed provisions relating to student housing.

LGNSW recommends that clear and concise guidelines be provided on how to define the boundaries to clarify whether is it the land zoned and/or used for the purposes of an educational establishment. In some instances, land may be used for the purposes of an educational establishment but may not be zoned for educational purposes.

Recommendation 15: LGNSW recommends that the definition of student housing be strengthened to ensure that non-students are not able to reside in the student housing.

Recommendation 16: LGNSW recommends that further detail be provided to ensure that any development is consistent with development in the adjoining zone/site, particularly if there are no height/FSR controls within the existing zone.

Recommendation 17: LGNSW recommends that clear and concise guidelines be provided on how to define the boundaries to clarify whether is it the land zoned and/or used for the purposes of an educational establishment.

4.13 Further consultation and exhibition of a draft Education SEPP

LGNSW considers it important for councils and other stakeholders to have the opportunity to review and provide comment on a draft of the changes to the Education SEPP before it made, as the EIE does not specify the wording that would be contained in the statutory document.

Recommendation 18: LGNSW requests that councils can review and provide comment on a proposed draft of the amended Education SEPP before it is made.

5 Conclusion

While LGNSW supports the government's intention to reform the planning system to stimulate economic activity and to create an improved planning system to benefit communities in NSW, we oppose many of the proposed changes as detailed in section 4 of this submission. The NSW Government has not made a strong case for why some of the proposed amendments are necessary or warranted.

LGNSW reiterates its position that local government is best placed to make decisions on development applications and education facilities should require consent, public notification and opportunities for participation and proceed according to a typical planning process which includes council as the decision maker.

A summary of all recommendations is provided in Appendix 1.

To discuss this submission further, please contact Vanessa Burow, Senior Policy Officer Planning at Vanessa.Burow@lgnsw.org.au.

Appendix 1 - Summary of Recommendations

Recommendation 1: LGNSW strongly opposes this proposed change. LGNSW acknowledges that it is proposed to amend the wording of subclause 16(2) for clarity. Whilst LGNSW supports the government's intention to reform the planning system to stimulate economic activity and to create an improved planning system to benefit the communities of NSW, this provision, subclause 16(2), is contrary to the objects of the current planning legislation and should be deleted.

Recommendation 2: LGNSW strongly opposes the proposed change to the wording of subclause 16(3). LGNSW acknowledges that it is proposed to amend the wording of this clause for clarity. Whilst LGNSW supports the government's intention to reform the planning system to stimulate economic activity and to create an improved planning system to benefit the communities of NSW, this provision, subclause 16(3), is contrary to the objects of the current planning legislation and should be removed.

Recommendation 3: LGNSW advocates that a planning proposal and community consultation should be required for the expansion of schools and that councils are best placed to make decisions on these development applications.

Recommendation 4: LGNSW recommends that use of this exempt pathway for development of two storeys be limited to only once per school site, or by an appropriate site size/school student ratio, to ensure that the rate of school facilities delivered throughout this pathway is proportional to the school operation and site size and to minimise cumulative impacts.

Recommendation 5: LGNSW objects to the proposed change to extend the life of demountable classrooms from 2 years to 4 years as exempt development and requests that the current 2-year period be retained.

Recommendation 6: LGNSW advocates that the State government's focus on strategic planning should include the planning for educational facilities in order to provide adequate educational services and facilities for communities throughout NSW without the long-term reliance on temporary classrooms.

Recommendation 7: LGNSW supports the proposed changes to the value of project triggers for SSD as it will return the responsibility of assessment of these smaller scale local developments to councils.

Recommendation 8: LGNSW requests the State government provide adequate support to councils to implement this change in terms of advice on the likely number of applications per year and resourcing such as finances (if appropriate) and assessment guidelines.

Recommendation 9: Whilst LGNSW supports this change in principle, it is recommended that further detail be included to clarify how an innovation hub activity will be defined and the extent of the commercial component allowed as part of the use. A definition for *innovation hub activities* be included and be worded to ensure that:

- any commercial use is ancillary;
- any development does not detract from existing commercial centres;
- any development is consistent with any local council strategy for centres; and
- residential uses will not be permitted.

Recommendation 10: LGNSW supports inclusion of a separation distance and requests that more than 200m be considered, with a recommendation that 500m would be appropriate.

Recommendation 11: LGNSW recommends that clear and concise guidance be provided on how to calculate the separation distance.

Recommendation 12: LGNSW recommends that the guidelines be amended to also require a feasibility study demonstrating need for the facility or upgrade be provided with any proposal.

Recommendation 13: LGNSW recommends that the DPIE to consult further with councils as to whether the timeframes for concurrent assessment are adequate and/or how it can be improved.

Recommendation 14: LGNSW requests that a thorough review of the SEPP and the Guideline be undertaken by DPIE, in consultation with councils, and amended to include best practice outcomes, not minimum requirements.

Recommendation 15: LGNSW recommends that the definition of student housing be strengthened to ensure that non-students are not able to reside in the student housing.

Recommendation 16: LGNSW recommends that further detail be provided to ensure that any development is consistent with development in the adjoining zone/site, particularly if there are no height/FSR controls within the existing zone.

Recommendation 17: LGNSW recommends that clear and concise guidelines be provided on how to define the boundaries to clarify whether is it the land zoned and/or used for the purposes of an educational establishment.

Recommendation 18: LGNSW requests that councils can review and provide comment on a proposed draft of the amended Education SEPP before it is made.