

## **LGNSW submission to**

### **Department of Planning Industry and Environment**

#### ***Review of the Infrastructure SEPP 2017 – health services facilities***

December 2020

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## 1.0 Opening

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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 *State Environmental Planning Policy (Infrastructure) 2007* (the Infrastructure SEPP) which proposes changes to the planning framework for health infrastructure in NSW.

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.

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

## 2.0 Background

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DPIE proposes changes to the planning framework for health infrastructure in NSW under the Infrastructure SEPP including planning pathways for health infrastructure referred to as “low impact”. The proposed amendments form part of the NSW Planning Reform Action Plan. The Explanation of Intended Effects (EIE) indicates that the proposed amendments are intended to enable efficient delivery of health infrastructure such as community health centres, consulting rooms and ambulance facilities.

The scope of the proposed amendments to the Infrastructure SEPP encompass:

- development with consent;
- development without consent;
- complying development; and
- exempt development provisions.

The EIE notes that the proposed regulatory changes are intended to:

- speed up timeframes for determining low scale health infrastructure projects by expanding development without consent provisions,
- allow public authorities such as Health Infrastructure to assess and self-determine low impact developments;
- expand exempt and complying provisions to allow minor works to be undertaken in a timely manner; and
- expand complying development certificate (CDC) conditions to allow minor and emergency activities to occur out of standard construction hours.

## 3.0 Summary of LGNSW Position

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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 principles 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 health 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 significant local impacts of these developments on community quality of life and amenity are fully recognised and addressed.

The need for health facilities of the nature outlined in the EIE is important, but is unlikely to suddenly arise without warning. It is reasonable to expect that a multi-billion-dollar budget department such as NSW Health is able to plan for and schedule development approvals as part of its health infrastructure program. If this is not the case, then the solution should be to make improvements to NSW Health's infrastructure project management processes, rather than continuing to strip planning powers from democratically elected representatives of local communities and reducing development standards. LGNSW strongly objects to the gradual and continual erosion of local government planning powers.

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 Act is as follows:

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

Expanding 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 LGNSW maintains that any such reforms should not be progressed.

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 Platform which are pertinent to this submission:

*LGNSW advocates for ...*

*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.*

*7.5 Strategic (local, district and regional) plans that reflect the agreed planning outcomes from community engagement at local, regional/district and metropolitan levels – residents have a right to be active participants in the planning process and this should be respected and maintained.*

## 4.0 Issues

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### 4.1 Development (health manufacturing) with consent provisions

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The EIE proposes to include a new provision under clause 57(2) of the SEPP to allow a new use, “health manufacturing”. DPIE indicates that the proposed use is derived from the “high technology industry” definition within the *Standard Instrument—Principal Local Environmental Plan* and would involve the manufacturing of biological, pharmaceutical, medical or paramedical systems, goods or components. The EIE states that the proposed new use “health manufacturing” would allow the manufacturing of essential medical equipment including ventilators and cochlear implants and would be developed with consent within the boundaries of an existing health services facility.

As the proposed new use “health manufacturing” requires development consent and the impacts of proposed development can be considered during the assessment process, LGNSW is not opposed to the proposed change.

### 4.2 Provisions for development permitted without consent

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#### a) Stand-alone health services facilities

The EIE proposes a new provision under clause 58(1) of the SEPP that would allow development without consent of standalone health services facilities, including medical centres, community health service facilities, health consulting rooms and hospitals within the boundaries of an existing health services facility. The EIE indicates that the scale of these developments will continue to be limited to a minor nature under clause 58(2).

The definition for *health services facilities*<sup>1</sup> allows for many activities on small sites across all local government areas. While the proposed changes may be more appropriate and considered to be ‘lower impact’ on larger sites (such as regional or district hospitals), the proposed amendments will also allow substantial increases on smaller sites, and in these circumstances a self-assessment is not considered appropriate due to the potential to impact neighbouring properties. The EIE claims the development-without-consent-pathway is intended to facilitate a faster, self-assessment planning process for NSW Health, however the process removes councils’ authority as the local decision-maker for the development.

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<sup>1</sup> Standard Instrument LEP Dictionary:

**health services facility** means a building or place used to provide medical or other services relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in or treatment of injury to persons, and includes any of the following—

- (a) a medical centre,
- (b) community health service facilities,
- (c) health consulting rooms,
- (d) patient transport facilities, including helipads and ambulance facilities,
- (e) hospital.

**Recommendation 1:** LGNSW does not support the proposed change as local government is best placed to make decisions on locally appropriate development applications. These health facilities should require consent, public notification and opportunities for participation and proceed according to publicly accepted local planning processes which include council as the decision maker. LGNSW requests that this proposed change not proceed.

b) Increased maximum height

DPIE proposes to amend clause 58(2) of the Infrastructure SEPP to increase the maximum height of developments under clause 58 (Development without consent) from 12m to 15m.

LGNSW is concerned about this proposed change which would enable buildings up to 4 storeys (a proposed increase from 3 storeys currently) to be permitted without consent and the potential increased impact of development on neighbouring properties, business, residents and the community. Where development within some council areas - such as fringe metropolitan, regional and rural areas - is predominantly low rise with permissible heights significantly less than the existing SEPP provision of 12m it is considered inappropriate to increase the height to 15m. Any proposed development above 12m should require development consent. This increased 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.

**Recommendation 2:** LGNSW does not support the proposed change to increase the building height for development from 12m to 15m under clause 58 (Development without consent) and requests that the current height limit of 12m be retained and any development above 12m should require development consent.

c) Reduced boundary setbacks

The current provisions require minimum 5m setbacks to any property boundary. It is proposed that setbacks from property boundaries be reduced to 1m in any zone except residential zones for one storey buildings within the boundary of an existing health services facility. This proposed amendment would allow a one storey development, with a 1m setback, as development without consent. The proposed change would allow more developments to be undertaken as development without consent.

LGNSW is concerned about the proposed change to reduce setbacks and potential increased impact of development on neighbouring properties, business, residents and the community. Reduced setback provisions 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.

Some councils have non-residential zones that allow for residential development, including E4 Environmental Living and several business zones. The 5m setback to residential zones (1m to others) will not capture these sites, with the potential for detrimental visual, acoustic and privacy impacts. If the proposed change is to proceed, it is recommended that the current wording be amended to include all lots used for residential purposes regardless of zoning.

**Recommendation 3:** LGNSW objects to this proposed change to reduce boundary setbacks from 5m to 1m and requests that the current 5m setback requirement in clause 58 (2) be retained.

**Recommendation 4:** If the proposed change is to proceed, it is recommended that the wording be amended to include all residential uses regardless of zoning.

#### d) Reduced setbacks for ambulance facilities

It is proposed to allow the development of an ambulance facility by or on behalf of a public authority closer than 5 metres to any property boundary. Currently an ambulance facility is permitted as development without consent but is required to have a minimum setback of 5m from a property boundary. This proposed change would allow the development of an ambulance facility to be setback less than 5m and allow more developments to be undertaken without consent.

There is no minimum setback proposed in the EIE so ambulance facilities which are typically noisy and impact the surrounding area, operating 24 hours a day, 7 days per week (24/7), may be located close to property boundaries and therefore have increased impact on neighbouring properties, business, residents and the community. LGNSW would also like to clarify whether development could be located on site with no setback (zero lot line) under the proposed change. Reduced setback provisions may be inappropriate, particularly in fringe metropolitan areas, regional and rural areas where development is of lower scale and density. 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 considers it appropriate that unless a 5m setback is provided for ambulance facilities development consent should be required due to the nature of their operation being 24/7 and including noisy emergency vehicles.

**Recommendation 5:** LGNSW objects to this proposed change to reduce boundary setbacks for ambulance facilities and requests that the current 5m setback requirement be retained and that consent be required unless a 5m setback is provided for ambulance facilities.

### 4.3 Complying development provisions - vegetation

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DPIE proposes a new provision under clause 58C to outline that complying development does not have to meet the general requirements of complying development under the Infrastructure SEPP for the removal or pruning of a tree or other vegetation if:

- *not a tree listed as a significant tree on a council register, and*
- *the tree or vegetation is within 3 metres of the development, and*
- *the tree or vegetation has a height that is less than 8 metres.*

This proposed amendment would allow the removal or pruning of a tree or vegetation as complying development if consistent with the prescribed conditions. The EIE notes the proposed complying pathway for this type of development is intended to provide a faster more efficient process.

LGNSW does not support the proposed amendments for the following reasons:

- the proposed blanket provisions are considered inappropriate and a detailed site assessment needs to be undertaken for each development proposal; and
- the amendment undermines objectives to increase urban tree canopy and retain trees which are prioritised in the Premier's priority for greening our city and in many State government plans including the regional plans across NSW (e.g. the Sydney metropolitan region plan and district plans).

**Recommendation 6:** LGNSW objects to the proposed change and requests that the proposed new provisions related to exemptions for the removal or pruning of trees and vegetation for complying development not proceed for the following reasons:

- the proposed blanket provisions are considered inappropriate and a detailed site assessment needs to be undertaken for each development proposal; and
- the amendment conflicts with statewide objectives for increasing urban tree canopy and retaining trees.

#### 4.4 Complying development conditions on construction hours

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The EIE proposes a new section under division 10 of the Infrastructure SEPP to allow additional conditions for CDC relating to works outside standard hours for construction.

The proposed conditions would allow works to be:

- undertaken outside of standard construction hours, but only if the works are for approved deliveries or are in an emergency situation (to avoid loss of life or property or to protect the environment); and
- no louder than 5 dB(A) above the rating background level at any adjoining residence in accordance with the Interim Construction Noise Guideline.

LGNSW is not opposed to the proposed change as any works undertaken are unlikely to have significant impacts on the community or the local council due to the restricted nature of the abovementioned conditions.

#### 4.5 Exempt development – temporary construction sheds

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DPIE proposes a new provision under clause 58B (exempt development) to allow the development of temporary construction sheds used solely for the construction of a health services facility, carried out within the boundaries of an existing health services facility. The proposed new clause would allow the development of a temporary construction shed used for the development of a health services facility as exempt development.

LGNSW is not opposed to the proposed change as temporary construction sheds are unlikely to have any significant long-term impacts on the community or the local council.



## 4.6 Further consultation and exhibition of a draft Infrastructure SEPP (Health facilities)

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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 health facilities in the Infrastructure SEPP before it made, as the EIE does not specify the wording that would be contained in the statutory document.

**Recommendation 7:** LGNSW requests that councils can review and provide comment on a proposed draft of the amended Infrastructure SEPP for health facilities before it is made.

## 5.0 Conclusion

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While LGNSW supports the NSW Government's intention to reform the planning system to stimulate economic activity and create an improved planning system to benefit the communities of 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 the proposed amendments to the SEPP are necessary or warranted.

LGNSW does not support the proposed change to allow standalone health services facilities within the boundaries of an existing health services facility as development without consent. Local government is best placed to make decisions on development applications and these health facilities should require consent, public notification and opportunities for participation and proceed according to publicly accepted planning processes which include council as the decision maker.

The following proposed changes to increase building heights and reduce setbacks for development permissible without consent are concerning for LGNSW, as they typify the continued overreach into local planning decisions by state government, the gradual reduction of development standards:

- increasing maximum height of developments (from 12m to 15m);
- reducing setbacks from 5m to 1m in any zone except residential zones for one-storey buildings within the boundary of an existing health services facility; and
- allowing ambulance facilities to be located closer than 5m to any property boundary with no minimum setback included in the EIE.

LGNSW also objects to the proposed change to include exemptions for the removal or pruning of trees and vegetation for complying development, given the significant statewide focus, priority and objectives to retain vegetation and increase tree canopy.

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](mailto:Vanessa.Burow@lgnsw.org.au).

## Appendix 1 - Summary of Recommendations

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**Recommendation 1:** LGNSW does not support the proposed change as local government is best placed to make decisions on locally appropriate development applications. These health facilities should require consent, public notification and opportunities for participation and proceed according to publicly accepted local planning processes which include council as the decision maker. LGNSW requests that this proposed change not proceed.

**Recommendation 2:** LGNSW does not support the proposed change to increase the building height for development from 12m to 15m under clause 58 (Development without consent) and requests that the current height limit of 12m be retained and any development above 12m should require development consent.

**Recommendation 3:** LGNSW objects to this proposed change to reduce boundary setbacks from 5m to 1m and requests that the current 5m setback requirement in clause 58 (2) be retained.

**Recommendation 4:** If the proposed change is to proceed, it is recommended that the wording be amended to include all residential uses regardless of zoning.

**Recommendation 5:** LGNSW objects to this proposed change to reduce boundary setbacks for ambulance facilities and requests that the current 5m setback requirement be retained and that consent be required unless a 5m setback is provided for ambulance facilities.

**Recommendation 6:** LGNSW objects to the proposed change and requests that the proposed new provisions related to exemptions for the removal or pruning of trees and vegetation for complying development not proceed for the following reasons:

- the proposed blanket provisions are considered inappropriate and a detailed site assessment needs to be undertaken for each development proposal; and
- the amendment conflicts with statewide objectives for increasing urban tree canopy and retaining trees.

**Recommendation 7:** LGNSW requests that councils can review and provide comment on a proposed draft of the amended Infrastructure SEPP for health facilities before it is made.