



PLANNING SYSTEM

State environmental planning policies

Circular	PS 09–009
Issued	18 March 2009
Related	PS 09–007

School provisions under State Environmental Planning Policy (Infrastructure) 2007

This circular provides further information to Planning Circular PS 09–007 about the recent gazettal of amendments to the State Environmental Planning Policy (Infrastructure) 2007 associated with schools.

Introduction

On 20 February 2009, State Environmental Planning Policy (Infrastructure) 2007 (the Infrastructure SEPP) was amended to allow educational establishments in NSW to efficiently respond to the Commonwealth Government's economic stimulus package in the provision of additional facilities at existing schools. Please refer to Planning Circular PS 09–007 issued on 2 March 2009.

The amendments to the provisions for schools and TAFE establishments will ensure that the planning system supports the Commonwealth incentives package proposed to fund additional infrastructure at government and non-government schools and TAFE establishments.

These changes made to the Infrastructure SEPP in February 2009 build on the provisions for schools and TAFEs that were added to the SEPP on 24 October 2008.

The new amendments ensure:

- a more consistent planning approach for government and non-government schools by extending the zones where government schools are permissible to non-government schools under clause 28 of the SEPP. This provision will last for three years
- that there are common complying development standards applying to both government and non-government schools under clause 31A of the SEPP.

Following the amendments to the Infrastructure SEPP on 20 February 2009, the following planning regime for educational establishments applies.

Definitions

The definition of *educational establishment* includes government and non-government schools (within the meaning of the *Education Act 1990*) or a university or a TAFE establishment that provides formal education and is constituted by or under an Act.

Where is a school a permitted use

Prescribed zones

In addition to zones where schools are permissible under the relevant local environmental plan (LEP) or other environmental planning instrument, a school may be carried out on land in a prescribed zone. This provision will only apply to non-government schools for the next three years.

Prescribed zones include the following zones in a LEP that is based on the Standard Instrument (or equivalent zones—see 'Interpretation of prescribed zones' below):

- Rural zones—RU2, RU4, RU5, RU6
- Residential zones—R1, R2, R3, R4, R5
- Business zones—B1, B2, B3, B4, B5, B6, B7
- Special zones—SP1, SP2
- Environmental zones—E4.

Interpretation of prescribed zones

Where the LEP is not based on the Standard Instrument, the equivalent zones in the LEP to a prescribed land use zone must be determined. In most cases determining the equivalent zone will be obvious. However, where there is uncertainty, the equivalent zone will be determined by the 'relevant authority'. The *relevant authority* is:

- the public authority proposing to carry out development, or on whose behalf development is proposed to be carried out, on the land, or
- if the development is to be carried out by or on behalf of a person other than a public authority, the Director-General of the Department of Planning.

Other locations where schools permitted

In addition to the prescribed zones:

- an existing school can be expanded on land that is adjacent to that school without the need to rezone the adjacent land
- a new school is permitted on land where there is an existing educational establishment such as a TAFE.

Developing a new school

Development for the purpose of a new government or non-government schools may be carried out with consent in a prescribed zone. Since the Infrastructure SEPP was amended in February 2009, the zones where schools are permissible are now the same for government and non-government schools. This provision will be reviewed in three years.

Clause 32 of the SEPP specifies that the consent authority must take into consideration relevant NSW Government School Facilities Standards for landscape, design and specification. The provisions in these standards prevail over any development control plan.

Alterations to an existing school

Exempt development

Clause 31 of the Infrastructure SEPP lists the development that is exempt development if it is in connection with an existing school and complies with clause 20(2) of the SEPP. These include exempt development in Schedule 1 of the SEPP.

Complying development

Clause 31A of the Infrastructure SEPP is a key planning provision that will assist schools undertaking construction, alterations or additions at existing establishments under the Commonwealth incentives package by making them complying development, including:

- a library or an administration building
- a gym, indoor sporting facility or hall
- a classroom, lecture theatre, laboratory, trade or training facility
- a tuckshop, cafeteria, bookshop or childcare facility for students or staff (or both)
- a car park.

Clause 31A(2) of the Infrastructure SEPP contains specific requirements for complying development, noting that section 76A of the *Environmental Planning and Assessment Act 1979* also provides circumstances where complying development cannot be undertaken.

Clause 31A(4) of the SEPP contains the development standards for complying development under this clause, including those for:

- building height—must not exceed 12 metres

- side and rear setback—a building must be at least five metres from any side or rear boundary
- noise—where a gym, indoor sporting facility or hall located less than 20 metres from a common boundary with land zoned residential, must meet acoustic performance elements in the NSW Government Schools Facilities Standards for design
- overshadowing—specific requirements to prevent overshadowing of any adjoining residential property.

Specific conditions for complying development certificates are provided under clause 31C of the SEPP.

Government school provisions

Clause 29 of the Infrastructure SEPP provides that certain development by or on behalf of a public authority can be undertaken without consent on land in a prescribed zone, if the development is in connection with an existing educational establishment.

Under clause 30 of the SEPP, the local council and the neighbours must be notified of the carrying out of the development and consideration given to any response received within 21 days.

Development consent

Development consent is required for other types of alterations and additions which are not exempt or complying development or development without consent. The consent authority must take into consideration relevant standards in the NSW Government School Facilities Standards for Landscape, Design and specification standards. The provisions in these standards prevail over any development control plan provisions.

Community uses of school facilities

School facilities can be used for a community purpose whether or not it is a commercial use of the facility. Development consent would be required to undertake the community purpose unless the use could be carried out without consent or is exempt or complying development under other planning provisions.

Further information

State Environmental Planning Policy (Infrastructure) 2007, as amended, is available on the NSW legislation website www.legislation.nsw.gov.au.

Note: This and other Department of Planning circulars are published on the web at www.planning.nsw.gov.au/planningsystem/practicenotes.

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Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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