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NSW Department of Planning, Housing and Infrastructure

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Submitted via NSW Planning Portal

Re: Improving planning processes to deliver infrastructure faster – Explanation of Intended Effect (EIE)

Local Government NSW (LGNSW) welcomes the opportunity to comment on the proposed changes to the Transport and Infrastructure State Environmental Planning Policy (T&I SEPP) outlined in the *Explanation of intended effect – improving planning processes to deliver infrastructure faster*¹.

As the peak body for local government in NSW, representing NSW general purpose councils and related entities, LGNSW supports improvement to planning legislation that facilitates easier delivery of infrastructure. LGNSW also seeks to ensure that councils and communities alike are consulted and appropriately considered as part of the environmental assessment and approval process under the T&I SEPP.

The T&I SEPP is generally a tool for use by State agencies with determining authority powers. Councils and communities are typically more familiar with development applications (DAs) as the approval pathway for developments in their local area. This submission therefore focuses on the proposed changes to the T&I SEPP that depart from the need for local development consent.

This submission is informed by the policy positions of LGNSW and consultation with LGNSW member councils. Please note this submission is provided as a draft, pending endorsement by the LGNSW Board at its next meeting. We will advise of any amendments to the submission in due course.

¹ [Explanation of intended effect – improving planning processes to deliver infrastructure faster](#)

General comments

LGNSW wishes to convey our general objection to the continued and concerning trend by successive State Governments to remove local councils from the assessment process by amending SEPPs to broaden exempt and complying development pathways and 'development without consent' provisions, and to change state significant development (SSD) and infrastructure (SSI) thresholds.

A local DA pathway allows for appropriate conditions of consent to be applied to address and mitigate any local impacts, including the payment of local infrastructure contributions if applicable².

Many of the changes outlined in the EIE will remove DA consent requirements; LGNSW's primary concern is to ensure councils retain legitimate involvement and are appropriately consulted in these processes prior to approval.

Of particular concern are changes to permit permanent and temporary schools on TAFE and university sites without development consent³ and to allow broad and significant intensification and change of use on health services sites without a local development consent (i.e. allowing buildings up to 30m in height - currently up to 12m) as complying development on health care facility sites⁴ and high technology industries and residential care facilities on existing health care sites without development consent⁵. Such radical expansion of permissibility on these sites should first be given rigorous review as part of a holistic campus master-planning process, prior to approval of individual buildings and uses. Master-planning is part of the strategic planning process for hospital and education campuses that should occur with appropriate stakeholder and community consultation in advance of the need to enact emergency relocation or certain types of development that were never previously contemplated on sites for public infrastructure. These and other key issues are discussed below.

LGNSW wishes to highlight key issues in relation to changes proposed to assessment pathways in the T&I SEPP for the following infrastructure:

- Educational establishments
- Health service facilities
- Electricity generating works and solar energy
- Emergency services facilities
- Electric vehicle charging units

² A particular and ongoing concern of local government associated with SSD and complying development in general is ensuring that section 7.11 and 7.12 contributions are paid before such developments receive their final approval.

³ EIE, Table 2

⁴ EIE, Table 6

⁵ EIE, Table 7

The submission also makes comment about the timeliness of further updates to relevant fact sheets and guidelines for Division 5.1 assessments, consideration of waste as essential infrastructure and assisting councils to respond to tree vandalism on public land through installation of tree banners.

Educational Establishments

The proposed change to the T&I SEPP is to permit development for the purposes of a permanent or temporary school within the boundaries of an existing TAFE or university site without the need for a DA. The EIE also includes various provisions that remove the requirement for local development consent (i.e. no DA) in relation to kiss-and-ride zones, synthetic turf playing fields, and temporary public school relocation as a disaster response, as well as some changes that relate to exemptions for vegetation removal at educational establishments.

It is acknowledged that under these changes, the proponents of such activities would still have certain statutory obligations to do an environmental assessment (Review of Environmental Factors – REF) and, in the case of the kiss-and-ride zones, to obtain the necessary approvals from the relevant road authority (which may, in some cases, be the local council).

Nevertheless, each of these activities is likely to impact local council interests and responsibilities; for example: additional traffic generation (affecting access to and impact on council-owned local roads), drainage and stormwater capacity and access and use of the facilities by the wider community. Councils are the custodians of local knowledge, master plans and strategic plans for their local area. It is therefore imperative that the local council is part of the consultation and consideration of the proposed use during the environmental assessment phase to avoid any unintended consequences of these development activities.

Recommendation 1: The proposed changes to the T&I SEPP for educational establishments should include a stated requirement to consult and consider the local council advice and plans as part of the environmental assessment (Review of Environmental Factors – REFs) and for exempt and complying approvals, prior to approval of the use.

Health services facilities

The proposed change to the T&I SEPP is to permit the maximum height of development for the purposes of a health services facility to increase from 12m to 30m as complying development if carried out within the boundaries of an existing health services facility. The proposed inclusion of requirements and standards (similar to Schedule 6 of the T&I SEPP) are to be imposed to ensure that the health services facility responds to the surrounding area, amenities and site constraints.

The EIE also proposes amendments to the T&I SEPP to permit a change of use that would allow high technology industry, health research industries and residential care facilities on an existing health services facility site without the need for a DA.

The changes in Part 2 of the EIE permit broad and significant intensification and change of use to proceed on health services sites without a local development consent. As discussed earlier in this submission, the DA pathway allows appropriate conditions of consent to be applied to address any local impacts, including the payment of local infrastructure contributions. The proposal to more than double the maximum height of health services buildings that can be approved as complying development is particularly concerning because it will preclude this opportunity by removing the relevant local council from the assessment process.

Again, the broadening of provisions to allow intensification and changes of use on the site of health services facilities are likely to impact local council interests and responsibilities. The changes would also not be contemplated under councils' existing local plans and strategies as they are not currently permissible uses. It is imperative that the local council is part of the consultation and consideration of the proposed use in the environmental assessment phase to avoid unintended consequences.

Recommendation 2: The proposed changes to the T&I SEPP for health services facilities should include a stated requirement to consult and consider the local council advice and plans as part of the environment assessment (Review of Environmental Factors - REFs) and for exempt and complying approvals, prior to approval of the use.

Electricity generating works and solar energy

The proposed amendments to the T&I SEPP aim to provide a planning pathway for Stand Alone Power Systems (SAPS) and medium-sized batteries systems as complying development. Currently there is no development assessment pathway in the T&I SEPP for SAPS and more flexible planning pathways for medium-sized solar batteries (up to 200kWh) are proposed as complying development.

To quote the EIE: *As advancements in electricity and battery storage system technology are made, it is appropriate to include development standards for this important infrastructure*⁶.

LGNSW agrees with this need for standards and direction.

LGNSW recently made a submission⁷ to the Department of Planning, Housing and Infrastructure (the Department) on the draft Energy Policy Framework⁸. LGNSW sought to expand the application of the Energy Policy Framework to include energy storage

⁶ EIE, p 22

⁷ [LGNSW_Submission_Energy_Policy_Framework.pdf](#)

⁸ [Draft energy policy framework | Planning Portal - Department of Planning and Environment \(nsw.gov.au\)](#)

and firming projects such as batteries, pumped hydro and other renewable energy options (Recommendation 1 of that submission), as secondary power generating infrastructure was specifically excluded from the draft Energy Policy Framework. The proposed inclusion of SAPS in the T&I SEPP shows a change of position from the Department, which warrants the need for consistency of approach and a stated policy position. The Department is currently considering submissions received on the draft Energy Policy Framework from the public exhibition process.

Recommendation 3: The Department should include consideration of SAPS in the Energy Policy Framework.

Emergency services facilities

The location of emergency services facilities is currently prohibited in recreational zones. Health Infrastructure NSW have requested that ambulance stations be permitted on land zoned for recreation. Where the land is owned or managed by the local council, issues such as the impact on the availability and accessibility of recreational land can be considered by the council through leasing agreements or other negotiations to occupy the land.

LGNSW would like to see a more community minded approach to the occupation of recreational zoned land for non-recreational purposes. Recreational lands are usually reserved for public and club recreation that can be the heart of communities, particularly in rural and regional locations where this relaxation of zoning controls is proposed. It is imperative that the local council is part of the consultation and consideration of the proposed use in the environmental assessment phase to avoid unintended consequences. Council involvement would also help to ensure the community understands and accepts the purpose of any proposed change to land use activity on public recreational land.

Similarly, the proposed permissibility of Volunteer Marine Rescue NSW (MRNSW) emergency services facilities as development without consent potentially underestimates the community value placed on the land where these facilities are often located on Crown land, waterways and reserves that are used as public lands. In the interests of the local community, councils should be included in the consultation and consideration of locating MRNSW facilities prior to entering into formal lease and licence discussions where council is appointed Crown land manager under the *Crown Land Management Act 2016*.

Recommendation 4: The proposed changes to the T&I SEPP for emergency services facilities and MRNSW facilities should include a stated requirement to consult and consider the local council advice and plans as part of the environmental assessment (Review of Environmental Factors – REFs) prior to approval of the use.

Electric vehicle charging units

The EIE proposes changes to planning approval pathways for the installation of electric vehicle charging (EVC) units, including installation of EVC units on telecommunications housing as exempt development⁹ and electric vehicle unit installation on substations, power/lighting poles and street furniture as development without consent¹⁰.

Councils are liable for incidents occurring on their roads and footpaths and therefore have legitimate concerns about potential trip hazards, obscuring sight lines for traffic safety and fire sources. As discussed above in relation to other key infrastructure assessment pathways, early council consultation during the assessment of these types of installations may be warranted, notwithstanding that proponents would still be required to obtain formal Roads Authority approval from councils.

LGNSW would also welcome the NSW Government considering whether environmental assessment requirements under the *Environmental Planning and Assessment Act 1979* duplicate requirements under the *Roads Act 1993*. Councils support the transition to a low carbon transport system and where processes can be streamlined while maintaining the important role of local government in considering impacts of the activity, these are supported.

For example, in early 2023, the NSW Government amended legislation so that kerbside EV chargers were required to undergo a Part 5 approval process under the EP&A Act. Feedback from councils suggests that this may be a redundant process, as councils can already install a range of infrastructure under the Roads Act, Section 138, which covers works in a public roadway including on-street EV chargers. These existing processes encompass environmental impact assessments, traffic studies and community consultations. LGNSW would be happy to discuss this further with the Department.

Recommendation 5: The proposed changes to the T&I SEPP for electric vehicle charging units should include a stated requirement to consult and consider the local council advice and plans as part of the environment assessment (Review of Environmental Factors – REFs) and for exempt and complying approvals, prior to approval of the use.

Recommendation 6: LGNSW requests the Department consult further with local government to consider whether environmental assessment requirements under the Environmental Planning and Assessment Act 1979 duplicate requirements under the Roads Act 1993.

⁹ EIE, Table 14

¹⁰ EIE, Table 15

Publishing updated Guidelines for Division 5.1 assessments (preparing Review of Environmental Factors - REFs)

The need to update the current guidelines for preparing REFs is timely, should these proposed changes to the T&I SEPP proceed. It may also be beneficial for the Department to update relevant fact sheets (such as those on electric vehicles¹¹ and education facilities¹²) and prepare new fact sheets (along the lines of the EV and education fact sheets) on other relevant infrastructure activities that are contained in the T&I SEPP. As expressed in this submission, the continued inclusion of council and community involvement in the environmental assessment consultation is imperative. There are also other areas of growing importance in environmental assessment, such as the impact of infrastructure development on waste generation and disposal.

Recognition and consideration of waste as essential infrastructure

In responding to this EIE, LGNSW wishes to take the opportunity to highlight the urgent need for recognition of waste and resource recovery as an essential and priority service, by asking the Department to give thought to the merits of its inclusion in future revisions and improvements to the T&I SEPP.

LGNSW detailed the importance of considering waste and resource recovery as an essential and priority service in its 2020 submission¹³ on the *NSW 20 Year Waste Strategy*. The submission recommended a stronger leadership role by the NSW Government to raise the profile of waste and resource recovery within the planning framework.

It has never been a more important time to ensure that waste and resource recovery in NSW is properly treated as the essential service it is. The *NSW Waste and Sustainable Materials Strategy 2041*¹⁴ identifies an urgent need for landfills to meet the needs of Greater Sydney, foreshadowing that existing landfills are likely to reach capacity by 2031. Landfill and resource recovery facilities will need to be delivered before that date.

Decisive leadership, proper investment and essential planning is needed to ensure NSW has the critical waste infrastructure it needs. It is urgent that the NSW Government works with local government to plan for essential infrastructure for waste management and disposal. Waste infrastructure must be treated with the same priority as other essential services, such as water, energy and roads.

Recommendation 7: The Department of Planning, Housing and Infrastructure should consider the merits of including waste and resource recovery facilities as essential services in future improvements to Chapter 2 of the Transport and Infrastructure SEPP.

¹¹ [Electric Vehicles – Fact sheet \(nsw.gov.au\)](https://www.nsw.gov.au/electric-vehicles/fact-sheet)

¹² [Education and child care facilities | Planning \(nsw.gov.au\)](https://www.nsw.gov.au/education-and-child-care-facilities/planning)

¹³ [LGNSW Submission on the NSW 20 Year Waste Strategy](#), pp 23-24

¹⁴ [Waste and Sustainable Materials Strategy \(nsw.gov.au\)](https://www.nsw.gov.au/waste-and-sustainable-materials-strategy)

Approval pathways for installation of tree banners by councils

LGNSW understands the Department is aware of the need to address issues of illegal destruction of trees which is on the rise in NSW. One of the deterrents being explored by some councils following significant cases of tree vandalism on public land is the installation of tree banners to temporarily block views.

LGNSW would like to see the Department explore whether it can make development pathways easier for councils to install banners or other structures or objects in these circumstances. This could be facilitated by including provisions in the T&I SEPP. LGNSW and councils could work with the Department to develop specific requirements (such as height and time permitted for the banner) that would apply to tree banners erected by councils as temporary development.

Recommendation 8: Consideration should be given to amending the T&I SEPP to include tree banners installed by councils as temporary structures as exempt development, subject to appropriate requirements and conditions developed in consultation with councils.

Thank you for the opportunity to comment on the proposed changes to the Transport & Infrastructure SEPP. I reiterate that LGNSW is primarily concerned about the ongoing inclusion of councils and communities where infrastructure facilities are to be expedited in the planning approval processes.

For further information on LGNSW's position, please contact Jane Partridge (T: 9242 4093; E: jane.partridge@lgnsw.org.au) should you wish to discuss.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D Thomas', with a stylized flourish at the end.

Damian Thomas
Director Advocacy