

11 February 2022

Ms Jennifer Richardson
Director, Infrastructure Policy and Assessment Practice
Department of Planning, Industry and Environment
Locked Bag 5022
Parramatta NSW 2124

Upload via Planning Portal

Dear Jennifer,

RE: Changes to the *State Environmental Planning Policy (Infrastructure) 2007* and *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*

The Urban Development Institute of Australia NSW (UDIA) is the peak industry body representing the leading participants in urban development in NSW. Our more than 500 member companies span all facets of the industry from developers, consultants, local government, and state agencies. UDIA advocates for the creation of Liveable, Affordable and Connected Smart Cities.

UDIA welcomes this opportunity provided by the NSW Department of Planning and Environment (DPE) to comment on proposed changes to *State Environmental Planning Policy (Infrastructure) 2007* (the ISEPP) and the *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*. Our submission focuses on the ISEPP only.

We commend DPE for undertaking this review, to improve planning processes that lead to greater efficiencies for infrastructure delivery, which is critical to support growth and meet the housing supply and jobs needs of NSW. The review is consistent with our “Make Planning Work” policy initiative, which advocates for the substantial reform of the NSW planning system to remove the bureaucracy, red tape and poor planning that holds back development.

Our submission was drafted by members of our UDIA Infrastructure Committee, which comprises specialists in infrastructure design, delivery, and assessment. We have also obtained input from a legal expert. Overall, we are supportive of the principle of creating an ‘efficient, effective and transparent’ assessment process for new infrastructure proposals.

We acknowledge that the proposed changes to the ISEPP, as well as the adoption of our recommendations outlined below, will help address some of the current obstacles which impact on the coordinated and prompt delivery of infrastructure, which can cause blockages and blind spots which undermine housing supply and affordability.

We will, however, continue to advocate for ongoing changes to the NSW planning system to achieve more broadscale outcomes such as less bureaucracy to ensure the coordinated delivery of infrastructure to support growth.

Our recommendations are presented below:

1. *Provide clarity around “minor works” and development categorised as “exempt development”.*
2. *Ensure consistent consultation and notification requirements for exempt development types and “minor works” proposals.*
3. *Allow pedestrian pathways and cycleways and combined bridges, which are of a minor nature, to be classified as “exempt development”.*
4. *Amend the definition of “construction works” {{Clause 5(3)}} to include additional works to support the delivery of key infrastructure projects.*
5. *Amend State Environmental Planning Policy (State and Regional Development) 2011 to allow early works for a proposed State Significant Infrastructure project to occur prior to approval.*
6. *DPE to apply the 1% Annual Exceedance Probability as opposed to the Probable Maximum Flood as the standard to determine flood liable land.*
7. *Amend the proposed standardised language for stormwater drainage to state “...does not increase the amount of post-development flows and run-off and cause a decrease in the water quality in those flows from the site concerned.”*

Recommendations and commentary

1. Provide clarity around “minor works” and development categorised as “exempt development”

UDIA is concerned that the definition of ‘minor works’, which could fall under exempt development, is potentially ambiguous and may result in likely confusion on what is exempt development, or development of minimal environmental impact, and what specific development would trigger a consent or an approval.

Providing greater clarity and consistency will help smooth planning approval pathways for minor and/or exempt development infrastructure types. A list of example minor and exempt works and defining which category they fall into would support this.

2. Ensure consistent consultation and notification requirements for exempt development types and “minor works” proposals

Under the ISEPP, there are different consultation requirements between those development types classified as “minor” and those categorised as “exempt development”.

Providing greater clarity and consistency regarding consultation required for minor works and that which is categorised as “exempt development”, will allow a transport agency to better plan and deliver a transport project.

3. Allow pedestrian pathways and cycleways and combined bridges, which are of a minor nature, to be classified as “exempt development”

UDIA supports the delivery of improved sustainable transport outcomes under our policy of achieving 30-minute cities to ensure land use is supported with all forms of transport, including cycleways and pedestrian pathways and combined bridges.

To achieve the quicker delivery of cycleways and pedestrian pathways and combined bridges, especially those of a minor nature, there should be no consent or approval requirements under Part 4 or Part 5 of the *NSW Environmental Planning and Assessment Act 1979*.

UDIA recommends that two categories for this infrastructure type as either:

- Development permitted with or without consent (Part 4 or 5) covering major or moderate type works, i.e., the new cycle connection to the north end of the Sydney Harbour Bridge; or
- Exempt development for works of a minor nature, such as a new cycleway in an existing local street.

By recognising the varying scale of pedestrian pathways and cycleways, and combined bridges, it could allow a quicker approval pathway for works with minimal environmental impact.

4. Amend the definition of “construction works” {(Clause 5(3))} to include additional works to support the delivery of key infrastructure projects.

Early works are critical to the successful delivery of an infrastructure project, allowing a delivery agency to commence works in an efficient manner from the onset, prior to the determination of a State significant infrastructure (SSI) and commencement of the main construction contract. UDIA commends DPE for the proposed addition of a new subclause (j) in the definition of “construction works” in Clause 5(3).

UDIA contends that the new subclause (j) should also include geotechnical investigations and minor site clearing to facilitate tests or investigations. This will provide greater scope for a transport agency to commence early works for a project prior to a determination.

5. Amend State Environmental Planning Policy (State and Regional Development) 2011 to allow early works for a proposed State Significant Infrastructure project to occur prior to approval

Further to Recommendation 4, UDIA recommends that a corresponding exclusion of these works must occur with State Significant Infrastructure (SSI) in *State Environmental Planning Policy (State and Regional Development) 2011 for early works (geotechnical investigation and minor site clearing etc.)*. Otherwise, the “early works” will be permissible without consent (Part 5) and still potentially be caught under the definition of SSI, preventing these types of works occurring until a relevant SSI approval is obtained.

6. DPIE to apply the 1% Annual Exceedance Probability as opposed to the Probable Maximum Flood as the standard to determine flood liable land.

UDIA understands that flooding undermines the development potential of an area from which to provide infrastructure to support growth. For sensitive land uses that require service infrastructure there are grounds for adopting the Probable Maximum Flood (PMF) standard, however we have consistently maintained that a more balanced approach should occur, rather than adopting an excessively cautious approach to provide land use supported by infrastructure on land potentially impacted by flooding.

The use of the PMF as a default for the assessment of infrastructure as proposed in the ISEPP is unreasonable that will ultimately undermine the growth potential of a precinct and directly impact on housing supply. It seems illogical to have a design control which exceeds the design life of the proposed infrastructure asset.

UDIA contends that the PMF approach is far too onerous and unreasonable, and the use of the 1% Annual Exceedance Probability is the more appropriate design standard to determine flood liable land and achieve a more balanced land use and infrastructure outcome.

7. Amend the proposed standardised language for stormwater drainage to state “...does not increase the amount of post-development flows and run-off and cause a decrease in the water quality in those flows from the site concerned.”

We support efforts to provide consistent wording across different infrastructure types to achieve a common approach to stormwater management. We urge DPE to amend the current proposed wording covering stormwater drainage to ensure that water quantity and water quality are included in the standard language. This will provide a more thorough assessment of stormwater management issues for a transport project, which covers two key hydrological issues.

Conclusion

Thank you again for the opportunity to make a submission on the proposed changes to *State Environmental Planning Policy (Infrastructure) 2007*. UDIA looks forward to continuing to work with the NSW Department of Planning and Environment on any further changes proposed.

We will, however, continue to advocate for ongoing changes to the NSW planning system to achieve more broadscale outcomes such as less bureaucracy to ensure the coordinated delivery of infrastructure to support growth.

Should you have any further questions or wish to arrange a meeting to discuss our recommendations, please contact David White, GWS and Southern Region Manager at dwhite@udia.com.au or 0415 914 612.

Kind Regards,



Steve Mann
Chief Executive
UDIA NSW