

12 December 2019

Ms Jennifer Richardson
A/Director Infrastructure Policy and Assessment Practice
NSW Department of Planning, Industry and Environment
320 Pitt Street
SYDNEY NSW 2000

E-mail: jennifer.richardson@planning.nsw.gov.au

Dear Ms Richardson,

**Re: Review of the State Environmental Planning Policy (SEPP)
(Educational Establishments and Child Care Facilities) 2017**

Thank you for our brief discussion regarding the above today. As you mentioned, the Australian Childcare Alliance (ACA) NSW members operate about 1,600 childcare services, employ over 25,000 employees, and are committed to providing excellence in early childhood education and care for the more than 125,000 children and their families.

Minister Stokes would be aware of ACA NSW's deep concerns about this SEPP's negative impact since its release in August 2017, particularly in terms of:

- exacerbating childcare oversupply, resulting in increased childcare fees;
- failing to give local governments adequate power to refuse new development applications on the grounds of the number of children, traffic, safety and neighbourhood amenity; and
- giving children and staff access to appropriate emergency assembly areas subject to the size of those new childcare services and the consequential logistics.

ACA NSW is also concerned that there are a number of regulatory reviews that impact on early childhood education and care providers, but there may appear to be inadequate coordination and harmonisation of such efforts. The known reviews are:

- the Review of the National Quality Framework (led by the NSW Department of Education for the Education Council);
- the review of the SEPP (Educational Establishment and Child Care Facilities) 2017 (led by the NSW Department of Planning);
- the proposed amendments to the National Construction Code 2019 (led by the Australian Building Codes Board);
- the release of the High-Rise Childcare Guide (by the Society of Fire Safety Engineers Australia).

We have assembled our concerns and suggestions for improvements that are attached to this letter.

We believe we are not alone in our concerns as many local governments, mayors and councillors across New South Wales have approached us with their concerns about their inability to influence refusals of new childcare services approved by their respective independent hearing and assessment panels. As they are ever mindful of their voting residents attributing blame towards them, ACA NSW will continue to engage local governments with a view of directing their experiences as well as their suggestions for improvements to Minister Stokes and the NSW Department of Planning.

Should you require any further information/clarification on our submission, we would be more than happy to answer them or provide you with more appropriate information.

Thanking you in anticipation.

Yours sincerely,



Chiang Lim
CEO

- cc
1. The Hon Rob Stokes MP, NSW Minister for Planning
 2. The Hon Sarah Mitchell MLC, NSW Minister for Education and Early Childhood Learning
 3. The Hon Shelley Hancock MP, NSW Minister for Local Government
 4. The Hon Kevin Conolly MP, NSW Parliamentary Secretary for Education
 5. The Hon Adam Searle MLC, NSW Shadow Minister for Planning
 6. Ms Jodie Harrison MP, NSW Shadow Minister for Early Childhood Learning
 7. Mr Greg Warren MP, NSW Shadow Minister for Local Government
 8. Ms Nancy Chang, A/Executive Director, NSW Department of Education, Early Childhood Directorate

SUBMISSION TO THE NSW DEPARTMENT OF PLANNING (12 DECEMBER 2019)

REVIEW OF THE STATE ENVIRONMENTAL PLANNING POLICY (EDUCATIONAL ESTABLISHMENTS AND CHILD CARE FACILITIES) 2017

01. SEPP – General

(A) Family Day Care

It is unclear whether local governments have concerns about childcare services operating in residential homes where the regulations may not be adequate to cap the number of children in those homes.

Moreover, depending on the number of children overall in the same residential building (especially in medium and high-density residential developments), how quickly can these children be evacuated during an emergency?

(B) Need for harmony across regulatory authorities

There are currently three authorities and one peak body who are reviewing and/or developing planning requirements for early childhood education and care services. They are:

- the NSW Department of Education and the Education Council (in their the Review of the National Quality Framework);
- the NSW Department of Planning (in their review of the SEPP (Educational Establishment and Child Care Facilities) 2017);
- the Australian Building Codes Board (in their proposed amendments to the National Construction Code 2019 regarding fire requirements and emergency evacuations); and
- the Society of Fire Safety Engineers Australia (in the imminent release of their High-Rise Childcare Guide).

Ensuring consistency and effectiveness of regulatory requirements, not to mention the avoidance of confusion as to which regulatory authority's requirements takes precedence, is very much encouraged and appreciated.

Suggestion (A) – General: Family Day Care

1. That development applications involving family day care services be removed from the SEPP (Educational Establishments and Child Care Facilities) 2017;
2. That local governments be required to develop a specific Development Control Plan for family day care services as a home-based business with the following additional considerations:
 - (a) the maximum number of children per residence;
 - (b) the residence being able to prove they can evacuate children to the approved emergency evacuation assembly area within 4 minutes; and
 - (c) the need to identify appropriate emergency evacuation assembly area(s) and the logistics to relocate children to those area(s) for the purposes of safety of children under their care as well as facilitating parents/guardians' collection of children in the event of emergencies.

Suggestion (B) – General: Need for Harmony Across Regulatory Authorities

1. All reviews conducted in NSW be coordinated by the NSW Department of Education's Early Childhood Education and Care Directorate.

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(C) Requirement of development applications to demonstrate need

For the past 6 years, the Federal Government has continually reported annual increases in the number of childcare centres with vacancies:

	2013	2014	2015	2016	2017	2018
Average # of Vacancies	80,630	92,340	98,510	110,510	122,570	145,907
% of centres with vacancies	86%	90%	91%	91%	93%	94%

Source: Reported Daily Vacancies in Long Daycare (March Quarter)

<https://www.education.gov.au/early-childhood-and-child-care-reports>

There is childcare oversupply in many parts of NSW and Australia, and that childcare oversupply has been proven to be contributing toward higher childcare fees because of local occupancy levels, fixed costs, and therefore remaining customers having to pay for those fixed costs.

As such, local governments could prioritise approvals of development applications towards those in undersupply areas by requiring development applicants to prove that there is demonstrable need.

Suggestion (C) – General: Need for Harmony Across Regulatory Authorities

1. The SEPP should impose a non-discretionary requirement on all development applications to demonstrate real and not speculative demand to justify for the new childcare service.

02. SEPP – Consultation with peak bodies

In Clause 9 Review of Policy of the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017, the SEPP places no obligations on the NSW Department of Planning to consult peak bodies representing NSW's 5,500+ early childhood education and care (ECEC) services.

ACA NSW believes peak bodies of ECEC services (as usually the end-user) can provide valuable feedback as to how the SEPP performed in reality.

Suggestion (D) – Consultation with Peak Bodies

1. That Clause 9 include a reference for the Minister to consult peak bodies of early childhood education and care services.

03. SEPP – Clause 24 Centre-based child care facility in Zone IN1 or IN2 – additional matters for consideration by consent authorities

Clause 24 (in particular 24(2)(a) and 24(2)(c)) has been written without requiring local governments or their independent hearing and assessment panels to prohibit the location or proximity of a new childcare service next to or near restricted premises, sex services premises and hazardous land uses.

Historically, local governments have had Development Control Plans written such that restricted premises, sex services premises and hazardous land uses cannot be next to or

Suggestion (E) – Making non-discretionary standards for child care facilities in Zone IN1 or IN2

1. That the SEPP be amended to impose non-discretionary standards for child care facilities in Zone IN1 or IN2 by way of a minimum distance (eg 250 metres).

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near places where there are children. Yet in practice, the reverse has been allowed, ie new childcare services can be co-located next to or near restricted premises, sex services premises.

04. SEPP – Clause 25(2)(a) Centre-based child care facility – non-discretionary development standards

Clause 25(2)(a) of the SEPP has effectively neutralised any/all local governments' Development Control Plans relating to childcare centres and the minimum separation requirements between them.

Local governments have had these DCP requirements in order to manage traffic volumes especially in residential areas, as well as maximise public (especially children's) safety.

The SEPP by not allowing local governments to disallow childcare centres to be located next to each other creates new and unwanted problems that jeopardise children's safety especially during drop-off and pick-up times.

Suggestion (F) – New Proximity Requirements between Child Care Facilities

1. That the SEPP be amended to impose a minimum non-discretionary standard of 100 metres separation between an existing child care facility and a new facility in any zone.
2. That the SEPP allow local governments to impose higher non-discretionary standard of larger separation distances between any existing child care facility and a new facility in any zone on the basis of environmental factors including traffic volume.

05. SEPP – Clause 26 Centre-based child care facility – development control plans

For the problems and reasons similar to #04 above.

Suggestion (G) – Proximity of facility to other early education and care facilities

1. That the SEPP remove Clause 26(1)(c).

06. SEPP – Clauses 29-30 Home-based child care

For the problems and reasons similar to #01(A) above, it is unclear whether local governments have concerns about childcare services operating in residential homes where the regulations may not be adequate to cap the number of children in those homes.

Moreover, depending on the number of children overall in the same residential building (especially in medium and high-density residential developments), how quickly can these children be evacuated during an emergency?

Suggestion (H) – Proximity of facility to other early education and care facilities

1. That the SEPP do not allow home-based care as exempt development under the SEPP.
2. That local governments be required to develop a specific Development Control Plan for family day care services as a home-based business with the following additional considerations:
(d) the maximum number of children per residence;

- (e) the residence being able to prove they can evacuate children to the approved emergency evacuation assembly area within 4 minutes; and
- (f) the need to identify appropriate emergency evacuation assembly area(s) and the logistics to relocate children to those area(s) for the purposes of safety of children under their care as well as facilitating parents/guardians' collection of children in the event of emergencies.

07. Child Care Planning Guideline – General

The SEPP and local governments must be aware of the change in the indoor unencumbered space for out-of-school-hours-care (OSHC) to now be 2 m² rather than the 3.25 m² requirement.

However, this new “standard” can only be given to out-of-school-hours-care development applicants by way of a waiver to Regulation 107(2) by the NSW Department of Education.

This opportunity to waive Regulation 107(2) to allow 2 m² for OSHC operators for unencumbered indoor space (to be in line with the primary schools' standard for unencumbered indoor space) may create a new problem of providing timely concurrence from the NSW Department of Education as part of the development application assessment.

Suggestion (I) – Proximity of facility to other early education and care facilities

1. That the NSW Department of Planning consult with the NSW Department of Education to confirm whether the concurrence process is being hindered by the new waiver process offered by the NSW Department of Education.

08. Child Care Planning Guideline – (2) Design Principles & (3) Site selection and location

With reference to the above, the NSW Department of Planning should revise the Design Principles with the following in mind:

- the location of new childcare facilities relative to existing services and how their combined impact would affect traffic volumes and consequently the decreased level of children's safety with increased traffic during pick up and drop off periods;
- the location of new childcare facilities next to or near restricted premises (including liquor retailers), adult services and hazardous sites; and

Suggestion (J) – Proximity of facility to other early education and care facilities

1. That the Guideline be revised to require development applicants to produce their solutions to:
 - a. proximity to existing services;
 - b. proximity to restricted premises, adult services and hazardous sites; and

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- the location of new childcare facilities while considering whether they have adequate access to appropriate emergency assembly areas during evacuations, as well as how quickly they can evacuate from a multi-storey building (with the emerging expectation to be 4 minutes).

- c. the time to evacuate as well as location of appropriate emergency assembly area(s).
2. That the preferred solution should be that the Guideline impose minimum standards.

09. Child Care Planning Guideline – 4.8 Emergency and evacuation procedures

For the problems and reasons similar to #08 above, development applicants must be required to demonstrate whether:

- appropriate emergency assembly area(s) have been identified and are suitably accessible; and
- children can be evacuated from the facility to the emergency assembly area(s) within 4 minutes.

Suggestion (K) – Emergency and evacuation procedures

1. That the Guideline be revised to impose minimum non-discretionary standards to address:
 - a. emergency assembly area(s) with the size, distance and duration to relocate in the event of an emergency in mind; and
 - b. minimum duration to evacuate the building (eg 4 minutes).

***** END *****

FOR ANY FURTHER INFORMATION/CLARIFICATION, PLEASE CONTACT THE AUSTRALIAN CHILDCARE ALLIANCE NSW

VIA 1300 556 330 OR NSW@CHILDCAREALLIANCE.ORG.AU