

21 December 2020

Mr Jim Betts  
Secretary  
NSW Department of Planning, Industry and Environment  
4 Parramatta Square  
12 Darcy Street  
PARRAMATTA NSW 2150

Dear Mr Betts,

**Re: Response to the Review of the Education SEPP 2017**

Firstly, we apologise for not submitting this response by the due date on 17 December 2020. And we thank the NSW Department of Planning, Industry and Environment for accepting this submission.

The Australian Childcare Alliance (ACA) NSW is the peak association representing the privately-owned early childhood education and care (ECEC) sector serving 1,600 services primarily across New South Wales. Our members employ over 25,000 staff and support over 125,000 families.

Since the draft exposure of then proposed *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* (SEPP), ACA NSW has been concerned especially with:

- the removal of local councils' powers to impose proximity/separation requirements between proposed and existing early childhood education and care services;
- their inability to regulate over the impacts of larger services (for example over 100 children); and
- their inability to regulate how services will conduct actual emergency evacuations as well as quarterly rehearsals, especially for larger services.

In response to your Department's Explanation of Intended Effect (EIE) document, we offer the following for your kind consideration.

**1. Allow Proximity/Separation Requirements (Ref: Page 7 of EIE document)**

We are grateful that the Department is seeking to introduce of minimum separation between the proposed and existing early childhood education and care services.

However, ACA NSW believes this proposed requirement of 200 metres only in Low Density Residential zone (R2) would be inadequate.

Instead, the proposed requirement should be a minimum of 500 metres to even 1 kilometre regardless of Residential and Mixed-Use zones. By doing so, this should allow local councils to adequately manage the consequences on additional traffic and minimise the impact on the neighbouring communities, especially during drop-off and pick-up peak periods.

**2. Regulating the impact from larger services (Note: Not in EIE document)**

Although the maximum capacity of any early childhood education and care service is approved solely by the NSW Department of Education subject to the *Children (Education and Care Services) National Law (NSW) 2010* and the *Education and Care Services National Regulations (NSW)*, the reality is 1 January 2012, there is no maximum limit.

That said, the NSW limit prior to 2012 was 75. Currently, the largest capacity approved for any long daycare service is in NSW for 300 children.

As can be expected, larger services tend to have a direct impact on their neighbours and surrounds.

ACA NSW strongly asks the NSW Government to develop with local councils a new process to mitigate the impacts from larger services (eg over 100 children). Such impacts for local councils to consider include:

- traffic;
- local amenity to the surrounding neighbours;
- speed and effectiveness for emergency and evacuation;
- suitability of off-site locations for the gathering of larger numbers of children resulting from evacuations; and
- accommodation of mandatory emergency and evacuation practices every 3 months ([Regulation 97 of the Education and Care Services National Regulations \(NSW\)](#)).

These issues are also made more complex yet still important when considering early childhood education and care services, in particular children's safety, health and well-being, in multi-storey buildings and industrial zones.

### **3. Future planned amendments to the National Construction Code (Note: not in EIE document)**

The Australian Building Codes Board (ABCB) had recently sought input on:

- a new definition(s) on building complexity (<https://consultation.abcb.gov.au/engagement/definition-for-building-complexity/>) and/or specific Performance Solution(s); and
- the need for a transparent and robust process for the approval of Performance Solutions for constructed building work ([https://consultation.abcb.gov.au/engagement/building-design-acceptance/?utm\\_source=NCC+subscription+list+%5BAll%5D&utm\\_campaign=af4813b54f-EMAIL\\_CAMPAIGN\\_2020\\_11\\_12\\_03\\_23\\_COPY\\_02&utm\\_medium=email&utm\\_term=0\\_5e6389f8aa-af4813b54f-52652839](https://consultation.abcb.gov.au/engagement/building-design-acceptance/?utm_source=NCC+subscription+list+%5BAll%5D&utm_campaign=af4813b54f-EMAIL_CAMPAIGN_2020_11_12_03_23_COPY_02&utm_medium=email&utm_term=0_5e6389f8aa-af4813b54f-52652839)).

ACA NSW's concerns relate to what harmonisations will be made in anticipation of future amendments to the National Construction Code for early childhood education and care services in multi-storey buildings, especially as children (aged 0-5 years old) and their educators/carers traverse what are most likely common evacuation routes with the building's other tenants during any emergency and evacuation.

### **4. Request harmonisation of emergency-related requirements across multiple regulatory authorities (Note: not in EYE document)**

Early childhood education and care services are too often at a disadvantage whenever no regulatory authority appears to definitively interpret and regulates the appropriate set of emergency-related requirements:

- the NSW Department of Planning through the SEPP;
- the ABCB via its National Construction Code; or
- the NSW Department of Education via its Regulation 97 of the Education and Care Services National Regulations (NSW) (see <https://www.legislation.nsw.gov.au/view/html/inforce/current/sl-2011-0653#sec.97>).

Despite what are published as statutory instruments that can also overlap, regulatory authorities and/or their officers have been known to interpret them differently causing either deficiencies or incur higher capital and/or operational costs in order to impose best practice.

ACA NSW requests that as part of the Review of the SEPP, Planning NSW should harmonise regulatory making with the ABCB as well as the NSW Department of Education.

**5. Proposed amendments to solar access minimum standards (Note: Page 18 of EIE document)**

The proposed minimum standards of:

- 2 hours of solar access between 8 am and 4 pm in winter (21 March to 21 September); and
- 2.1 m<sup>2</sup> of outdoor space per child;

may cause confusion about the interpretation and implementation of solar access standards for services simulating outdoor spaces within multi-storey buildings.

Notwithstanding, it is also unclear as to whether local councils could still override the SEPP in favour of their tree preservation regulatory controls.

**6. Request harmonisation with the impending proposed amendments following the Education Council's Review of the National Quality Framework (Note: not in EYE document)**

As there is some overlap between the SEPP and the Education and Care Services National Regulations (NSW) (see <https://www.legislation.nsw.gov.au/view/html/inforce/current/sl-2011-0653>), it is also worth pointing out that Australia's early childhood education and care sector is anticipating the release of the proposed amendments to the National Quality Framework in early 2021 (see <https://www.nqfreview.com.au/>).

ACA NSW requests that Planning NSW harmonise its efforts with the NSW Department of Education so as to achieve consistency, clarity and adequate specificity of government requirements.

We most sincerely thank you for the opportunity to make this submission and your kind consideration. We continue to be available to your Department should you require any further information, clarification and assistance.

Yours sincerely,



Chiang Lim  
CEO

cc The Hon Rob Stokes MP, NSW Minister for Planning

The Hon Kevin Anderson MP, NSW Minister for Better Regulation and Innovation

All NSW-based local councils, their Mayors and Councillors

Ms Jennifer Richardson, Director, Infrastructure Policy and Assessment Practice,  
Planning and Assessment, NSW Department of Planning, Industry and Environment

Mr Peter Achterstraat AM, NSW Productivity Commissioner

Mr Chris Lamont, NSW Small Business Commissioner