

Submission to the NSW Department of Planning and Environment – *Draft Education and Child Care SEPP*

April 2017

Table of contents

Executive Summary	3
Opening	5
Purpose	5
Background	5
SECTION A – Educational establishments	7
a) Background	7
b) General concerns with schools	7
c) Specific concerns with schools	8
i) <i>Exempt development</i>	8
ii) <i>Complying development</i>	8
iii) <i>Development without consent</i>	9
iv) <i>Local development</i>	10
v) <i>Regional development</i>	11
vi) <i>State significant development</i>	11
vii) <i>Caps on development consents</i>	11
viii) <i>Zoning of school sites</i>	11
ix) <i>Design of schools</i>	12
x) <i>Traffic issues with school development</i>	12
xi) <i>Student accommodation</i>	13
d) Other comments on Universities and TAFEs	13
SECTION B – Early childhood education and care facilities	14
a) Background	14
b) General comments	14
c) Specific comments	15
i) <i>Centre-based child care</i>	15
ii) <i>Draft Child Care Planning Guideline</i>	16
iii) <i>School based childcare</i>	17
iv) <i>Home-based child care development</i>	17
v) <i>Mobile child care and temporary relocation of a service due to emergency</i>	17
Final Comments	18

Executive Summary

The NSW Department of Planning and Environment (DP&E) is undertaking an overall review of State Environmental Planning Policies (SEPPs). In February 2017 the DP&E released a new standalone draft SEPP, called the Education and Child Care SEPP (draft SEPP) for comment. The draft SEPP seeks to expedite education and child care development across NSW and is predicated on the failure of the school system to meet current demand. The draft SEPP overrides local planning processes and specifically fast-tracks the approval of schools in particular, and some low impact types of child care services more generally.

Schools and child care services are under pressure to expand in certain areas, but there is no evidence whatsoever that councils or existing planning processes are the reason for the shortfall. LGNSW contends that there are many factors behind the current pressure on schools and child care services. These include the lack of long term planning by the NSW Government, the failure to retain land for public schools, rapid population growth and demographic changes.

Education/Schools

LGNSW is of the view that the changes to fast track the approval of schools lean too far in favour of the applicant and will unreasonably remove councils and communities from the decision making process. The draft SEPP and subsidiary material will replace most local planning controls, including Local Environmental Plan (LEP) and Development Control Plan (DCP) provisions.

The key focus of the proposed SEPP is to expedite school development. The changes will remove council consent powers from all school development by:

- expanding exempt and complying development as well as development without consent to a wider range of school developments and a wider range of school projects;
- enabling Registered Non-government Schools (RNS) to self-approve certain school projects;
- enabling the Sydney or regional planning panel to approve all local DAs for schools by lowering the threshold for 'regional development' to exclude council as the consent authority;
- lowering the threshold to \$20M for education establishments to be able to be classified as state significant development (SSD) so that more DAs can be approved by the Planning Assessment Commission; and
- enabling Roads and Maritime Services (RMS) to certify that any impacts on the surrounding road network as a result of the Complying Development Application are acceptable, avoiding the necessity for a Development Application to be approved by council.

LGNSW opposes the expansion of complying development provisions to significant local development, such as schools. The reasons for this include:

- the local community is removed from the process and unable to comment on the potential impacts;
- ambiguity about whether the development may or may not increase the school's ability to accommodate a greater number of students with consequent impacts;
- there is a lack of clarity on how the conditions of consent of the current DA will be applied and enforced;
- local government is concerned that parking and open space requirements resulting from the intensification of school developments are not provided for in the draft SEPP;
- it is unclear how the referral process to RMS will ensure that the traffic and parking issues are addressed by the certifier and how the requirements of the consent will be enforced; and
- the complying development provisions are limited to the consideration of height and setback standards, without being able to consider the overall intensity of the use.

Child Care Facilities

In contrast, LGNSW is less concerned with the proposed changes to the approval pathways for child care facilities under the draft SEPP. Councils will retain consent powers for centre-based child care. LGNSW also supports the key purpose of the draft SEPP, which is to better align the national, state and local planning requirements for child care facilities. The consultation process in developing the child care policy has been effective in councils having input on the best way to improve this process without diminishing the responsibilities of councils and the NSW Department of Education. Improvements have been made with the draft SEPP, but further discussion is needed on the content of the draft Child Care Planning Guideline and how it is to be implemented by councils, so that these responsibilities remain clear.

Overall, LGNSW supports the key childcare provisions of the draft SEPP because they:

- introduce common definitions for child care services to be included in the Standard Instrument (i.e. LEP) that match the definitions under the National Quality Framework (NQF);
- retain development consent, with council as the consent authority, for centre-based child care – the more complex development that justifies a merits assessment;
- facilitate the fast track approval of co-located school-based child care by the certification process - a lower risk/impact type of development;
- enable some home-based child care to be approved on low risk bush fire prone land, subject to conditions - a practical solution; and
- remove the need to obtain council approval for mobile and temporary child care facilities, subject to conditions - a sensible approach for small, temporary activities.

However, there are a number of elements in the draft SEPP that require further consideration. These are:

- councils not being able to cap the size of a child care centre in certain locations where the scale of that centre may have unreasonable impacts on the residential amenity;
- removing consideration of the number of children who will attend the centres - this is unworkable as it directly affects the impact of the centre on traffic generation, vehicle access and car parking requirements; and
- the draft Child Care Planning Guideline - this needs revision as it is unclear what council responsibilities are in assessing the requirements under the NQF.

LGNSW recommends further consultation with local government on both the education and child care components of the SEPP to resolve the matters raised in our submission.

Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general-purpose councils, associate members including special-purpose county councils, and the NSW Aboriginal Land Council. LGNSW facilitates the development of an effective community based system of local government in the State.

LGNSW welcomes the opportunity to make a submission on the draft *State Environmental Planning Policy (Educational Establishments and Child Care Facilities SEPP) 2017 (Educational and Child Care Facilities SEPP 2017)*.

Purpose

This submission provides LGNSW's response to the proposed new *Educational and Child Care Facilities SEPP*. This SEPP is referred to as the draft SEPP for the purposes of this submission.

LGNSW's response is based on consultation with councils and close examination of the following documents:

- Draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017
- Explanation of Intended Effect
- Draft Environmental Planning and Assessment Amendment (Schools) Regulation 2017
- Draft Amendment to the Standard LEP for child care
- Draft Environmental Assessment Code of Practice Draft Planning circular on student caps
- Draft Child Care Planning Guideline
- Draft Better Schools Design Guide

Background

DP&E has been progressively reviewing the long list of SEPPs over the past few years. The purpose of SEPPs is to provide high level policy direction on state planning policies to guide planning and land use decisions across NSW. Councils have raised concerns regularly that SEPPs are also used to unjustifiably remove councils' local consent powers, as well as override local planning requirements contained within local environmental plans (LEPs) and development control plans (DCPs).

LGNSW advocates for the reduction of the overall number of SEPPs under theme-based State-wide planning policies. However, during this process LGNSW recommends that SEPPs need to retain their position as high level strategic planning statements providing state-wide direction on planning issues and, where possible, the planning controls should be shifted into the local planning instrument. This would provide better integration across the levels of plan making system. This was identified as a weakness of the system in *A New Planning System for NSW: White Paper*.

In addition, LGNSW recommends that DP&E ensure that the review program:

- addresses the noticeable absence of a state-wide policy position on population growth and settlement patterns. LGNSW considers this should be included as one of the new State Planning Policies;
- ensures comprehensive consultation with local government in the formulation and integration of these planning policies into LEPs and DCPs; and
- introduces the requirement for all SEPPs be placed on public exhibition for 28 days. This should be a statutory requirement (not subject to the Minister's discretion).

This submission relates to the draft SEPP and while LGNSW supports some of the proposed changes, others are supported subject to adjustments or clarification, and a number of changes are opposed.

The submission provides detailed feedback on the proposed changes in the following order:

- SECTION A – Educational establishments.
- SECTION B – Early childhood education and care facilities.

SECTION A – Educational establishments

a) Background

This section covers LGNSW's response to the NSW Government's proposed regulatory changes for the approval of educational facilities, including schools (both public and private), universities and TAFEs. These changes are primarily incorporated in the new standalone draft SEPP, with subsidiary guidance outlined in the accompanying material which includes the:

- Draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017
- Explanation of Intended Effect
- Draft Environmental Planning and Assessment Amendment (Schools) Regulation 2017
- Draft Environmental Assessment Code of Practice Draft Planning circular on student caps
- Draft Better Schools Design Guide

The draft SEPP and subsidiary material will replace most local planning controls, including council LEP and development control plan (DCP) provisions.

The NSW Government has indicated that the key driver for the proposed changes is the urgent need to provide additional capacity in the school system (both government and private) to meet current and future demand

Schools are obviously under pressure to expand to address demand, however there is significant variation as to where the pressure points for growth are across Sydney and regional NSW. A more strategic approach is needed, identifying the 'hot spots', rather than a general position that facilitates growth universally and in the absence of the infrastructure planning necessary to best manage that growth. This is a good example of the NSW Government trying to solve a planning problem through the assessment process, rather than addressing the issues upfront in the strategic planning process.

b) General concerns with schools

The key focus of the proposed SEPP is to expedite school development. The changes will remove councils' consent powers from all school development by:

- expanding exempt, complying and development without consent to a wider range of school developments and a wider range of schools projects;
- enabling Registered Non-government Schools (RNS) to self-approve certain school projects;
- enabling the Sydney district or regional planning panel to approve all local DAs for schools by lowering the threshold for 'regional development' to exclude council as the consent authority;
- lowering the threshold to \$20M for education establishments to be able to be classified as state significant development (SSD) so that more DAs can be approved by the Planning Assessment Commission; and
- enabling Roads and Maritime Services (RMS) to certify that any impacts on the surrounding road network as a result of the Complying Development Application are acceptable, avoiding the necessity for a Development Application to be approved by council.

The growing demand for schools is not contested. What is questioned is the overly simplistic solution proposed that suggests this fundamentally strategic issue can be resolved through changes to the approval process, and in particular the removal of councils as the consent authority. The implication is that councils are delaying DAs and unnecessarily restricting the size of schools across Sydney and regional NSW. This also implies that planning standards maintained by councils need to be lowered to enable the capacity of schools to be increased. The approach being

put forward is one of expediency over a more considered, strategic and evidence-based approach to the issues.

What has been lacking is an articulated strategic plan for the growth of schools by the NSW Government. The Greater Sydney Commission provides a long overdue good beginning by addressing this issue in the District Plans. However, there is no delivery plan that ensures that the local infrastructure, such as pedestrian crossings, parking, road intersections and lights, is upgraded to support growth at the relevant 'hot spots'. To date, councils have had to rely on the DA assessment process to advocate for these matters on behalf of their communities.

Unfortunately, the current lack of capacity in schools in some locations has been exacerbated by the sale of key school sites in previous decades. This is a legacy of the lack of coordination between the state's planning and education departments over many years and little foresight in projecting future school populations. The draft SEPP appears to perpetuate this short term policy approach by including reference to 'allowing for the efficient development, redevelopment or use of surplus government-owned land' in the aims of the draft SEPP¹. This is a short-sighted policy which will limit the NSW Government's capacity to provide educational facilities for the next generation, with little regard to the strategic framework for schools and sound planning principles.

c) Specific concerns with schools

This section provides feedback on the proposed changes to the approval pathway for differing types of school development.

i) Exempt development

The draft SEPP will expand the range of development on school sites that can be classified as exempt development i.e. that does not require consent.

LGNSW agrees that most of the activities listed as exempt² are of minor impact and are appropriate to be classified as exempt development, for example walking paths, seats, shelters and shade structures, amenity buildings, landscaping and environmental management works. However, LGNSW opposes the following activities being classified as exempt development:

- one storey portable classrooms; and
- sporting fields and tennis courts.

The location and set back of these can be important as they can be the location of relatively noisy activities that need to be sensitively sited. Also many schools have numerous single storey portable classrooms that appear to have become permanent fixtures. Given this is common practice, this type of development should not be treated as exempt development.

ii) Complying development

The draft SEPP allows more development to be approved by a private or council certifier as 'complying development', subject to complying with certain standards.

¹ Draft *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*, Clause 3(d)

² Draft *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*, Clause 32

The list of complying development³ includes the following activities:

- construction of buildings for educational uses such as classrooms, a library, administration, school hall, gymnasium, canteen or child care facility;
- a covered outdoor learning area;
- a car park; and
- minor alterations or additions to existing buildings.

The above list of development is required to comply with the following planning controls:

- height limit of 4 storeys or 22 metres;
- setback variation of 5m, 8 m and 10 m setbacks for a building height of 12m, 15m, and 22m, respectively;
- overshadowing and privacy requirements;
- landscaping works; and
- external roofing materials to be non-reflective.

The purpose of the complying development pathway is to approve new classrooms and learning centres on the understanding that the project does not contravene any existing conditions of development consent, in particular relating to student and staff number caps. Given that the *Planning Circular on Regulating expansion of schools* recommends that caps on schools should be removed or be more liberally imposed at the highest level, it follows that many school buildings are likely to be able to be approved under the complying development provisions, widening the scope of complying development activity considerably. Also, as most schools would be able to meet the 4 storey height limit and the relative setbacks, this is likely to become the most used assessment pathway for schools.

LGNSW does not support the view that expanding complying development provisions in the way proposed will provide adequate safeguards for local communities and opposes the expansion of complying development provisions to significant local development, such as schools. The reasons for this include:

- the local community is removed from the process and unable to comment on the potential impacts;
- ambiguity about whether the development may or may not increase the school's ability to accommodate more students with consequent impacts;
- there is a lack of clarity on how the conditions of consent of the current DA will be applied and enforced;
- local government is concerned that parking and open space requirements resulting from the intensification of school developments are not provided for in the draft SEPP;
- it is unclear how the referral process to RMS will ensure that the traffic and parking issues are addressed by the certifier and how the requirements of the consent will be enforced; and
- the planning requirements attempt to address the potential impact of the proposed scale and height of the development on the boundaries of the site, without considering the intensity of the use that would be preferable measure of impact.

iii) Development without consent

Development without consent applies to development where a state agency is the consent authority and the assessment process is limited to an environmental assessment under Part 5 of the EP&A Act, as the use is presumed to be permissible. This process requires the agency to

³ Draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017, Clause 33

consider the scale, intensity and impacts on the development based on sound planning principles so that the 'right to develop' acknowledges the potential impacts.

The changes in the draft SEPP are radical and intend to:

- enable registered non-government schools (RNS) to be able to carry out the same development (such as one storey classrooms, libraries, cafeterias and car parks) as government schools, using the same process as government schools under Part 5;
- enable development that increases the capacity of the school by no more than 10% to be approved under this pathway; and
- introduce a NSW Code of Practice for Part 5 activities (the Code of Practice) for non-government schools to manage the environmental assessment process.

LGNSW strongly objects to this significant policy shift for a number of reasons:

- The changes will give significant rights to RNS to self-assess their own building projects, which is unjustified. Transferring a regulatory role to a private organisation/business is irresponsible. Non-government, private schools operate as businesses whose primary purpose is to deliver (and continually improve) their services to their school community (i.e. their customers). The interests and rights of the surrounding community/neighbours would be of only secondary concern.
- The SEPP does not rule out the possibility that a school may cumulatively expand well beyond 10% of its original capacity (resulting in much greater intensification of use) by using the development-without-consent provisions on multiple occasions over a period of time.
- An RNS located in a residential area may already have a strained relationship with surrounding community and may be limited in its capacity to provide rigorous solutions to address the traffic and parking issues. More transparency and independence in the system is needed to ensure that workable solutions are applied to the benefit of both parties.
- The Code of Practice has no legal application and is not able to manage the fundamental conflict of interest where the RNS is both the applicant and the assessor.
- There is no transparency in the process and no requirements to consult with communities or the relevant council.
- It is unclear how the 'self-approval' will work in practice. Where is the paper work submitted and who has responsibility for monitoring compliance of the work with the National Construction Code (NCC) and other matters? In cases where mitigation works are proposed, who checks this process?
- It allows significant work to be approved that may have considerable impact on adjoining development, with no procedural requirements to consult with communities on traffic access, parking and safety issues for both students and residents.
- There is no opportunity for councils to provide planning or traffic advice.

iv) Local development

The draft SEPP has effectively removed the category of 'local development' for schools. This means that all DAs for schools will be processed as either:

- a regional development and be considered by the relevant Sydney or regional planning panel – for development under \$20M; or
- a State significant development (SSD) – for development over \$20m, which has been lowered from the current threshold of \$30M.

This means that local government will have no consent powers for school development. While council staff will be required to manage the assessment process for regional development, these will be the only applications in which councils will have any role to play.

v) *Regional development*

As indicated above, all local development is to be reclassified as regional development in the draft SEPP, removing council as the consent authority. LGNSW's previous comments regarding iv) *Local development* apply.

vi) *State significant development*

The threshold for DAs for schools will be lowered from \$30M to \$20M. LGNSW opposes the lowering of the threshold for SSD for schools, as it further removes decision making from the local community and reinforces the NSW Government's power to expedite the expansion of large schools without local involvement.

vii) *Caps on development consents*

The draft *Planning Circular on Regulating expansion of schools* advocates the relaxation of caps on the number of student and staff permitted at the school, by restricting their use to 'circumstances justified by a comprehensive and evidence-based assessment of relevant planning issues such as traffic and parking'.⁴

The draft circular argues for a more lenient policy on the application of caps on schools to provide for growth. It provides limited direction on how to apply the relevant planning principles to improve practice going forward and is unclear on when caps should be relaxed, or in what circumstances this may be justified. This draft circular provides theoretical advice that needs to be reviewed and refined to be more practically orientated.

viii) *Zoning of school sites*

The draft SEPP will introduce a site compatibility certificate that will enable schools to apply for a 'rezoning' of land used as a school for school purposes.

LGNSW has a number of questions around the purpose of this process, in particular:

- Is the purpose for schools to be able to expand into surrounding residential areas? and/or
- Is this a means to increase the value of school sites to assist government in being able to sell surplus public land?

There is some variation across the sector in how schools have been zoned by councils under LEPs. The earlier versions of the Standard (LEP) Template intended school sites to be zoned more generically or alternatively to take on the zoning 'next door'. The Department of Education argued for the highest valued zoning to apply to a school site to assist in selling its surplus sites. However, many councils sought to have a Special Use zone applied to school sites, as it made it clearer to communities what would be the expectations around such sites. This debate has resulted in the Minister for Planning approving LEPs which zone school sites differently.

The question is whether the NSW Government should be involved in fast tracking rezoning land for school sites. LGNSW questions the introduction of the site compatibility certificate and seeks further information on its purpose.

⁴ *Draft Planning Circular – Regulating expansion of schools*, page 1

ix) Design of schools

The NSW Government aims to deliver better designed schools by incorporating the design guide principles⁵ in Schedule 4 of the draft SEPP. These principles apply to DAs and certain types of complying development applications that are 3 to 4 storeys in height. They do not appear to apply to applications that qualify for 'development without consent'.

LGNSW welcomes measures that will deliver better designed schools and a guide to achieve better outcomes.

LGNSW does not agree that a verification certificate from the qualified designer is a transparent or effective system to deliver better design. Nor does the complying development process enable design to be effectively considered as the designer is not an independent advisor and may be personally invested in the design outcome as envisaged in the plans.

In addition, the Design Guide appears to focus on site specific design issues and has limited regard for the context of the development in relation to the surrounding area. In contrast, the NSW Government Architect's *Better Placed*⁶ adopts a wider understanding of design that places greater importance of a building within its neighbourhood context, covering accessibility and other relevant impacts.

x) Traffic issues with school development

The draft SEPP requires RMS to provide advice on traffic related issues, mainly where the student population of the school is to be increased. Referral arrangements apply in the following situations:

- A complying development application for a school project (which increases the school capacity by 50 or more students) requires certification from RMS that any impacts are acceptable or will be acceptable, subject to conditions. It is not clear what this benchmark will be, what the position of RMS will be in relation to local roads and what happens if the project cannot be certified.
- A 'development without consent' requires the proponent (both government and registered non-government schools) to consult with RMS and take into account any advice for a project over 50 students. It is unclear how this process will be administered and appears to be based on an 'honesty system';
- A DA requires the application to be referred to RMS during the assessment process, which is the usual process.

The problem with the above is that the student population fluctuates and a statement from the applicant is not the best measure as to whether the traffic issues generated by the development warrant consideration.

LGNSW considers that the proportion of increase in floor area is a fairer method of determining whether a development could have a potential impact. This would be more suitable, especially where caps are to be removed, allowing for the normal fluctuations of enrolments. This will be a more practical way of addressing the pre-existing issues as well as those likely to arise with growth in the surrounding areas as well as on the school site.

⁵ These principles are located in the NSW Government Architect's draft *Better Schools: A design guide for schools in NSW*

⁶ NSW Government Architect, *Better Placed: A design led approach: developing an Architecture and Design Policy for New South Wales, 2016*

xi) Student accommodation

The draft SEPP clarifies that development proposing student accommodation is not development for the purpose of a school and is a separate use. LGNSW supports this treatment.

d) Other comments on Universities and TAFEs

The draft SEPP extends exempt and complying development provisions to universities and TAFE sites. The exempt provisions cover a wide range of minor development from walking paths to temporary buildings for educational purposes. The complying development provisions for universities enable a wider range of more complex development, such as educational facilities and amenity blocks, up to 3 storeys in height.

LGNSW supports in principle allowing development to occur on the main campuses as complying development, where the University or TAFE has a masterplan for the overall development of the site approved by council.

LGNSW also agrees that these provisions should not apply to tertiary educational facilities in office locations.

The 'development without consent' provisions are restricted to more minor activities and place limits on the gross floor area of buildings that can be approved under this provision. Also the proposed development needs to comply with all existing conditions of consent.

LGNSW supports this approach but does question the lack of transparency around these processes and how this pathway will be monitored or enforced.

LGNSW supports the retention of the DA process for prescribed zones, as well as retaining the threshold for tertiary institutions SSD at \$30M. It is unclear whether this threshold has been lowered for tertiary institutions.

SECTION B – Early childhood education and care facilities

a) Background

The current regulatory process for the assessment and approval of child care facilities requires two steps:

- the approval of a development application for the use, scale and intensity of the activity by the relevant council, followed by;
- a license for the child care service under the National Quality Framework (NQF) by the Department of Education.

The aim of the proposed changes is to streamline the dual process for approving childcare facilities by adopting common definitions and standardising planning requirements for child care facilities across NSW. This is to ensure that any facility approved by council is able to be later licensed by the Department of Education. The changes will more specifically:

- encourage the co-location of child care facilities on school sites by applying exempt and complying provisions to school-based child care centres;
- minimise the approval process for mobile and temporary child care facilities, that are mainly used in regional/rural locations; and
- mandate the permissibility for child care centres in all R2 and Light Industrial IN2 zones and standardise the planning controls for the development application (DA) consent process, subject to locational issues being better articulated.

b) General comments

LGNSW supports the key objective of better aligning the national, state and local planning requirements for child care facilities. The consultation process enabled councils to provide input to improve this process without diminishing the differing responsibilities of councils and the Department of Education. Improvements have been made with the draft SEPP, but further discussion is needed on the content of the *Draft Child Care Planning Guideline* and how it is to be implemented by councils, so that these responsibilities remain clear and coherent to the user.

Overall, LGNSW supports the key childcare provisions of the draft SEPP because:

- they introduce common definitions for child care services which will be included in the Standard Instrument (LEP), and will match the definitions under the National Quality Framework (NQF);
- the introduction of common terms for the activities of child care facilities will bring more clarity to the approval system; and
- the changes to the approval pathway for the five activities are considered reasonable and are summarised in the Table on the next page.

LGNSW also supports other changes to the approval as they will:

- retain development consent, with council as the consent authority, for centre-based child care - a more complex development that justifies a merits assessment;
- facilitate the fast track approval of co-located school-based child care by the certification process - a lower risk/impact type of development;
- enable some home-based child care to be approved on low risk bushfire prone land, subject to conditions - a practical solution; and
- remove the need to obtain council approval for mobile and temporary child care facilities, subject to conditions - a sensible approach for small temporary activities.

A summary of LGNSW positions is provided in the following table:

New terms for activities	Definition	Current approval process	Proposed approval process	LGNSW Comment
<i>Early childhood education and care facility</i>	<i>Group term that covers the activities below.</i>	<i>NA</i>	<i>NA</i>	<i>NA</i>
Centre-based child care	Includes a long –day care, occasional care, out-of-school and a preschool or family day care centre.	DA required	DA consent is retained and Complying development provisions apply on TAFE sites	Support– subject to changes to the Draft Child Care Planning Guideline
School – based child care	Early education and care provided on a school site, including out of hours care and vacation care.	DA	Exempt provision apply for the use only where there is no structural work; Complying development provisions apply for minor alterations and additions	Support
Home-based child care	Early education and care provided in a private home for up to 7 children	DA –but generally not permitted in any areas that are classified as bushfire prone	Exempt development provisions apply only in: <ul style="list-style-type: none"> • low level bushfire attack under BAL-40; • where there is an Asset protection zone; and • a Bushfire Emergency Management and Evacuation Plan. Where the activity does not comply a DA is required.	Support - Question whether the fire safety provisions are clear and adequate
Mobile child care	Early education and care that visits a premises, area of place for the purposed of providing child care.	Licence only	Exempt provisions apply	Support
Temporary relocation of an early childhood education and care facility	The relocation of an early childhood education and care facility due to an emergency such as bushfire, flood or storm.	No DA required	Exempt development for 12 months only	Support

c) Specific comments

This section provides further comments on the proposed changes for the assessment and approval process by each activity.

i) Centre-based child care

LGNSW supports DA consent being required for centre-based child care that requires:

- a merits assessment which will now assess the DA against the draft Child Care Planning Guideline;
- referral of the DA to the Department of Education where the DA does not meet the unencumbered indoor and outdoor space requirements under the NQF.

This process will enable councils to obtain feedback from the Department of Education early in the assessment process, confirming whether a DA is likely to comply with the key criteria required under the licensing system.

The concurrence requirements⁷ are limited to the unencumbered indoor and outdoor space, where the centre is not likely to comply with the NQF requirements. This is because these are the hardest criteria to meet. However, it is recommended that the Department of Education to undertake a full check under the NQF, as outlined in the Part 2 of the Guidelines, to clarify what will be required to be met at the licensing stage. This is discussed later.

The draft SEPP will also mandate the permissibility of centre-based child care in Residential R2 and Light Industrial IN2 zones. This is a small change to the current zoning requirements for most councils and therefore is not expected to be strongly opposed.

However, where current LEPs prohibit child care centres in the relevant zones under discussion, council should be allowed to retain their position on evidence based planning. Council should be allowed to justify the exclusion of centres from certain zones on planning grounds, such as:

- whether the objectives of the zone provide a level of amenity required for a child care centre; and
- having regard to whether or not there is other land, suitably zoned that is considered more suitable for child care facilities that may also be better located nearer to transport nodes or routes.

ii) Draft Child Care Planning Guideline

The Draft Guideline provides advisory guidance on how to meet the:

- physical environment requirements of the NQF (under Part 2); and
- matters for consideration and design criteria (under Part 3).

There is lack of clarity as to how these requirements apply to a DA which needs to be resolved. The draft Guideline (Section 1.2) states that the consent authority must take Part 2 into account when assessing a development application. It does not say it has to 'comply'. Hence, the Guideline does not make it clear whether the criteria in Part 2 are mandatory requirements of the development assessment process or may be able to be conditioned on the DA consent. The Self-Assessment Checklist provided is quite general and does not reflect the prescriptive nature of the guide.

In Part 3 of the draft Guideline, the consent authority may take the 'Matters for Consideration and Design Criteria' into consideration for the purposes of the assessment. However, clause 23 of the draft SEPP makes it clear that 'design' cannot not be used as grounds of refusal if the application meets the design criteria in this part. It is assumed by this wording that a 'matter for consideration' is the same as a 'design criterion' and if this matter is complied with, the DA is acceptable. More importantly, it is not clear what council planning responsibilities are in applying these draft Guidelines to the assessment of a DA, i.e. what criteria are mandatory, advisory or are matters that cannot be grounds for refusal. How the Guideline is interpreted in relationship to council DCPs further confuses the interpretation of this guideline.

The following questions need to be answered:

⁷ Draft *State Environmental Planning Policy (Educational Establishments and Child Care Facilities)* 2017, Clause 20

- Is a DA required to comply with the National Regulations set out in Part 2? Is the advice from the Department of Education advisory or mandatory? What happens if advice is not received from the Department in 28 days?
- Are only DAs which do not comply with open space requirements referred to the Department of Education? How will councils assess DAs that do not comply with other aspects of Part 2? Are they to be refused or conditioned?
- Given that the design criteria are performance based and therefore allow for a range of approaches for the development to meet the given objective, debates around compliance are likely to arise. Therefore, it may be challenging for councils to apply the proposed rule where the consent authority cannot refuse consent on the basis of lack of compliance with the design criteria of the Guideline, where the applicant believes the criteria have been met. In these circumstances how will councils determine whether a DA complies?
- What does council do if it does not agree where a designer has verified that a DA complies with the design criteria? Can council refuse the DA?
- What is the difference between a matter of consideration and a design criterion? Are they the same thing?

iii) School based childcare

The draft SEPP encourages the co-location of child care facilities on existing and new school sites. This is a reasonable and sensible use of land and is supported by LGNSW.

Exempt provisions apply where the activity does not involve any structural work and complying development provisions apply to guide alterations and additions to the existing buildings. Given that such activity is low risk development, it is unlikely that these facilities will have negative impacts on surrounding development.

iv) Home-based child care development

The draft SEPP enables some home-based child care services to be approved on low risk bushfire prone land, as exempt development subject to planning requirements. These provisions will only apply to a small proportion of the lowest risk bushfire prone land with specific requirements to address the risk.⁸

While this policy recognises the need for such services across all areas, the planning requirements need to be well understood and applied. The Service Approval licence required by the Department of Education needs to ensure that the planning requirements have been met.

v) Mobile child care and temporary relocation of a service due to emergency

Similarly, mobile child care and the temporary relocation of a service are of low impact and do not warrant planning consent. These services are suitably managed by the licensing process by the Department of Education.

⁸ This only applies to land that is low risk and below bushfire attack level 40 that has an Asset Protection Zone and a Bushfire Emergency Management and Evacuation Plan.

Final Comments

LGNSW appreciates the opportunity to make a submission on the draft SEPP, and outline our areas of concern.

For further information, please contact Jennifer Dennis, Senior Policy Officer – Planning, on 9242 4094 or jennifer.dennis@lgnsw.org.au.