



SUBMISSION

***Draft State Environmental Planning Policy
(Educational Establishments and Child
Care Facilities) 2017***

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BACKGROUND

On 3 February 2017 the NSW Government released the *Draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities)* (Draft SEPP) for public comment with submissions open until 24 March 2017. The Draft SEPP applies to educational infrastructure in NSW – child care, schools and tertiary institutions (such as universities and TAFE colleges). Most relevant to councils are child care facilities, which are currently regulated through several policies, including national regulations, state requirements and localised provisions in LEPs and DCPs. Whereas schools and tertiary institutions are covered by the *State Environmental Planning Policy (Infrastructure) 2007* and not dealt with through local planning provisions. For this reason the submission primarily focuses on the elements of the Draft SEPP relating to child care facilities.

The Draft SEPP is supported by the following documents (also on exhibition):

- Amendment of Standard Instrument LEP
- Explanation of Intended Effect
- Draft Child Care Planning Guideline
- Draft Better Schools Design Guide

The Explanation of Intended Effect (Appendix 1) contains the detailed proposed provisions. A table has also been prepared showing the draft provisions and the consistency with the Parramatta LEP and DCP (Appendix 2).

PART 1 – INTRODUCTION

This submission has been prepared through consultation with Council's Development Services Unit and Social Outcomes Unit. It is based on a review of the Draft SEPP, comparison with Council's existing controls in the *Parramatta Local Environmental Plan 2011* (PLEP) and Parramatta Development Control Plan (DCP) 2011, a working knowledge of the local area, and understanding of the existing provisions for child care facilities and educational establishments.

This submission will provide some background on Council's experience with child care facilities in the City of Parramatta and focus on the following areas:

- General comments on the Draft SEPP;
- Child Care Centres in City of Parramatta - Background
- Permissible zones - Amendment of the Standard Instrument to permit centre-based child care on R2 Low Density Residential zoned land;
- Implications for planning controls in Parramatta DCP;
- Centre-based child care in IN2 Light Industrial zone;
- Management on ongoing complaints/grievances;
- Concurrence role of Regulatory Authority;
- Impacts on places for children under the age of 2 years old;
- The need for up-front compliance checks; and
- The emergence of 24 hour child care centres.

PART 2 – COMMENTS AND CONCERNS

This section provides details of Council's key concerns with the proposed changes including both strategic and statutory implications.

2.1 General comments on the Draft SEPP

City of Parramatta Council welcomes the introduction of a State Environmental Planning Policy specifically focusing on child care facilities and educational establishments. As the population of metropolitan Sydney continues to grow, this is placing an increased demand on child care services, schools and colleges. Since 2014, City of Parramatta has determined 19 development applications for new centres and/or alterations to existing child care centres. Council currently has 10 outstanding applications before it relating to child care centre developments. In addition, several new sites within the LGA are currently being explored for schools and tertiary institutions. For example, in January this year, Western Sydney University opened a new campus in the Parramatta Central Business District. The NSW Government has also announced the planned construction of two new high-rise schools in the Parramatta CBD to replace Arthur Phillip High School and Parramatta Public School. This highlights the focus on education in Parramatta and the associated demand for child care facilities and the importance of these uses in the planning and development of Greater Sydney's future.

Although Council supports the aims of the Draft SEPP, several issues relating to child care facilities are raised for the Department's consideration. These are discussed in the below sections of this submission.

2.2 Child Care Centres in City of Parramatta - Background

The City of Parramatta is committed to planning for the needs of its families and children. Council's strategic policy context supports the delivery of best practice formal childcare to meet community needs. Policies also acknowledge that the quality of the childcare environment and teaching are critical to positive early childhood development. Because of this, Council is supportive of many of the key elements of the Draft SEPP. In particular, support is given to the following elements:

- Council supports the alignment of the NSW planning system and National Quality Framework for early childhood education.
- Council supports the comprehensive nature of the Planning Guidelines, particularly with regard to the Guide for Complying with the National Regulations.
- Council supports a set of best practice principles that guide early childhood education and care facilities to achieve the most positive outcomes for all children and their families.

Parramatta's most recent policy review regarding child care centre development was the result of the Parramatta Child Care Centre Study prepared by a consultant (Greg New) in 2006. The issue driving Council's engagement of Greg New was the need to balance residents' expectations of amenity with the need to provide high quality child care in accessible and convenient locations. The Study was based on surveys of residents and child care centres, review of development applications and Land and Environment Court judgments, a review of other Council DCPs and workshops with Councillors and staff.

One issue identified in the Study was a shortage of places for children under the age of 2. There was also an acknowledgment of the disturbance to residential neighbourhoods that can be caused, particularly from larger centres or where there was a cluster of centres. While there is a planning tradition of allowing low-scale complementary land uses in residential zones, child care centres, particularly larger centres with greater than 40 places can have an impact on the surrounding amenity that is more in keeping with commercial land uses. At the time, it was observed that other Councils took the approach of limiting the size of centres in residential areas. It was also acknowledged that new, stand-alone centres generally require a size of 40-50 places to become viable.

Originally the DCP controls were included in the Draft DCP in response to this study. However, after further consideration as part of the process of reviewing the Parramatta LEP to ensure it was consistent with the Standard LEP template Council resolved to prohibit Childcare Centres in the Residential R2 Low Density Zone. This was in response to on-going concerns about the impact of childcare centres on the amenity of low density residential areas.

2.3 Permissible land use zones

The Draft SEPP is supported by proposed amendments to the Standard Instrument LEP which proposes to make centre-based child care facilities permissible on R2 Low Density Residential and IN2 Light Industrial zoned land. This is inconsistent with the Parramatta LEP 2011 and The Hills LEP 2012 which currently prohibit centre-based child care on R2 Low Density Residential zoned land.

It should be noted that the City of Parramatta as a result of the Council amalgamation process now includes land subject to the other LEPs that were adopted when the land was located within the relevant former Councils. The permissibility of Child Care Centres within these LEPs is shown in Table 1 below.

Table 1 - Permissibility of child care centres in LEPs

LEP	Child care centres
Parramatta LEP 2011 R2 zone IN2 zone	Prohibited Permitted with consent
Hornsby LEP 2013 R2 zone IN2 zone	Permitted with consent Permitted with consent
The Hills LEP 2012 R2 zone IN2 zone	Prohibited Permitted with consent
Holroyd LEP 2013 R2 zone IN2 zone	Permitted with consent Permitted with consent
Auburn LEP 2010 R2 zone IN2 zone	Permitted with consent Permitted with consent

The former Parramatta Council and The Hills Shire Council position prohibiting child care centres in the low density residential zone was adopted as a result of the perceived amenity impacts that these centres were having in low density residential areas. In particular, traffic and parking impacts, noise, privacy and the suitability of sites for quality, best-practice child care. It is concerning that the proposed mandatory inclusion of centre-based child care in the R2 zone will disregard these concerns, leading to increased land use conflict and amenity impacts.

Furthermore, the mandatory permissibility of child care centres in R2 zones could influence market demand and lead to an increase in the development of childcare in lower density residential areas where the land is cheaper, rather than in commercial centres where they are needed the most. Careful consideration needs to be given to whether permitting childcare centres on the cheapest land will discourage them being provided in and around centres and transport nodes. Childcare is needed close to homes and close to jobs so

people have a choice in where they access their childcare. This change may tip the balance so that fewer childcare spaces are provided close to jobs.

2.4 Implications for planning controls in Parramatta DCP

The Draft SEPP and Draft Planning Guideline makes it clear that certain matters contained in DCPs do not apply to development for the purpose of centre-based child care. In addition, the Draft SEPP introduces a new requirement to take the *Child Care Planning Guideline* into consideration when assessing development applications for centre-based child care. The Draft SEPP states that Part 2 of the Planning Guideline must be considered, and Part 3 may be considered, when assessing development applications for centre-based child care.

Concern is raised that the Draft SEPP will both introduce centre-based child care within the R2 zone, while at the same time removing some of the DCP controls that are critical to managing impacts.

The Parramatta DCP was prepared in 2006 and was written so as to manage the potential amenity impacts of child care centres in residential zones. The provisions in the DCP relating to child care centres were included before the use was prohibited in R2 zones under Parramatta LEP 2011. Some of the other DCPs relevant in the City of Parramatta also contain sections on child care centres with similar objectives to minimise the potential amenity impacts. Table 2 below provides an overview of the current child care centre provisions for land within the City of Parramatta that is subject to planning controls in other DCPs. The implications of the Draft Education and Child Care SEPP would mean that many of the provisions in these DCPs would not be able to be applied.

Table 2 - Provisions regarding child care centres in council DCPs

Issues	Council DCPs				
	Parramatta	Hornsby	The Hills	Holroyd	Auburn
Place numbers	Limited to 40 children in residential zones	30 children - centres in converted dwelling houses, 40 children - purpose built centres, or 60 children - at least 33% of places are provided for 0-2 year olds.	No place numbers found (as childcare not permitted in R2 zone).	Limited to 45 children in R2 Low Density residential zones	No place numbers found.
Separation distance between centres	200m within residential zones	No separation distance controls.	No separation distance controls.	No separation distance controls.	No separation distance controls.
Incentive for under 2 years	At least 33% of the places provided are for children under the age of 2 years old.	Additional place numbers when at least 33% of places provided for children under 2.	No incentive provided in DCP.	No incentive provided in DCP.	No incentive provided in DCP.

While child care centres are currently not permissible in the R2 zone under the Parramatta LEP 2011 (as discussed above), many council DCPs contain provisions that allow such development to be assessed appropriately. However, the Draft SEPP and Draft Planning Guideline proposes to remove the provisions in DCPs that enable councils to best manage

these developments. In this regard, concern is raised that the Draft SEPP will both introduce centre based child care within the R2 zone, while at the same time, removing some of the DCP controls that are critical to managing impacts.

Further, child care centres can vary considerably in size ranging from home-based child care centres to centres with up to 90 places. A blanket permissibility of all centres in the R2 zone is inappropriate, particularly considering the potential impacts in terms of traffic and noise impacts in low density residential areas. A large child care centre is likely to be highly unsympathetic to the amenity of a low density residential area, despite mitigation measures such as acoustic fences. No amount of good design can totally ameliorate the impacts associated with living next to a large child care centre. Should the Department be of a mind to mandate their permissibility in the R2 zone, it is strongly suggested that councils be able to place a cap on the number of licensed places in the R2 zone, either through DCP controls or through a separate definition in the standard LEP template.

It is noted that the Draft Planning Guideline contains a table outlining optimum space requirements including site area. However, this is understood in terms of being a guide only and not being a design criteria for the purpose of the SEPP. It is also noted that the draft SEPP provides that: “the development may be located on a site of any size, cover any part of the site and have any length of street frontage or any allotment depth”. This provision is considered too sweeping as site size is often a concern in the residential zones as sites require sufficient area for landscaping to ensure compatibility with their surrounding context and to provide for adequate stormwater management.

The Draft SEPP also provides that: “the development may be of any colour or colour scheme unless it is a heritage items or within a heritage conservation area.” This provision is of concern, particularly in residential zones where inappropriate colour palettes can cause considerable angst amongst local residents. Bold colours and signage can often be visually obtrusive and be unsympathetic with surrounding low density residential areas and have impacts that would not otherwise be felt in a commercial area. Moderating the colour palette should be available to Council as one way to assist centre-based child care to blend in within a low density residential context and to respond to the concerns of neighbours.

2.5 Centre-based child care in the Light Industrial zone

It is noted that the draft changes to the Standard Instrument propose to include centre-based child care as a mandatory permissible use in the IN2 Light Industrial zone. This will not have any impact on Parramatta as centres are currently permissible in the IN2 zone under the Parramatta LEP 2011. However, Council’s experience with such development in the Light Industrial zone is that it is problematic for many sites. Some issues that have arisen in the Parramatta context include:-

- a. Reverse sensitivity where the new occupants of a child care centre take issue with the noise and impacts from existing light industrial uses in their vicinity upon commencement;
- b. The often unsuitable acoustic amenity provided within industrial complexes;
- c. Air quality from surrounding uses which may vary considerably on a day-to-day basis and can be difficult to measure on a standardised basis;
- d. Safety issues arising from large vehicle movements within an industrial complex;
- e. Lack of car parking and the provision of car parking for a centre within the ground floor of an industrial unit; and
- f. A high reliance on “simulated outdoor space” and the resulting lack of access to fresh air.

Clause 22 of the Draft SEPP contains matters for consideration by consent authorities when considering applications for centre-based child care within the IN1 and IN2 zones. This makes mention of whether the proposed development will pose a health or safety risk to children, visitors or staff. However, there is no definition of how impacts on health are measured. Further, Section 3J of the Draft Planning Guideline refers to noise and pollution, however, the design criteria within the section relate exclusively to noise measurement. Clearer guidance is needed on pollution and how air quality (and hence, health) is measured and quantified.

2.6 Management of ongoing complaints/grievances

Council's Development Services Unit has raised concern regarding the provision on page 8 of the Draft Planning Guideline which mentions "operational or management plans or arrangements". This advice is interpreted to mean that councils will not be able to apply a condition of consent requiring the use of an Operational Management Plan. Currently, Council requires such a Plan as a condition of development consent in cases where a proposed child care centre is likely to have impacts on the amenity of a residential area. These Plans are often critical to the good management of centres and the prompt response to complaints. They also provide surrounding residents, who are most likely to be affected, with relevant contact names and assurance that the centre will be accountable to the conditions under which it was approved. These Plans will be even more critical should centres be mandated as permissible in the R2 Low Density Residential areas where centres can cause considerable angst within the community.

2.7 Concurrence role of Regulatory Authority

Council notes the new concurrence role of the Department of Education (DoE) to ensure that constructed child care facilities comply with national service approval requirements. As per the Draft SEPP, councils will be given just 21 days to refer a development application to the DoE should the application not comply with the indoor or outdoor unencumbered space requirements of the *Education and Care Services National Regulations*. This short timeframe is considered unreasonable given the resources of most Councils and the time involved in processing development applications. Council requests that this timeframe be extended or removed altogether to allow councils to appropriately assess development applications for child care facilities and determine whether or not concurrence is required.

In addition, concern is also raised regarding the 28 day timeframe that the DoE has to respond to applications seeking concurrence. It is not clear what happens should a response from the DoE not be received within the 28 days. It is recommended that clarification is sought regarding this timeframe so that councils can continue to process development applications should a response not be received within that timeframe.

Clarification is also sought regarding the concurrence role of the DoE and whether this replaces the role of the Department of Family and Community Services as the "Regulatory Authority".

2.8 Impacts on places for children under the age of 2 years old

As noted above, two of Council's current DCPs include provisions to promote places for children under the age of 2 years old. Council notes that under Part 3, Section 24, Council will be unable to incentive the provision of places for children aged 2 and under. This could very well lead to shortfalls in provision to what has already been identified as an undersupply

of places for this age range. Due to the requirement for lower staff ratios for children aged less than two years in child care, the operating cost of providing places for this age group is higher. The draft '*City of Parramatta Early Education and Childcare Services Needs Analysis, Dec 2016*' found there was an undersupply of childcare places for 0-4 year olds. Council has concerns that removal of minimum provision rates will only serve to increase this undersupply.

2.9 Up-front compliance checks

It is noted that the Draft Child Care Planning Guideline details the information that should be submitted with development applications. This includes a "Design Statement" to be prepared by the building designer or architect which clarifies how the development meets the relevant criteria and identifies whether the design does or does not comply with the areas referred to in regulations 107 and 108 relating to unencumbered indoor and outdoor space. The guideline includes a suggested template for the applicant to use in preparing this information.

This requirement of the Guideline is fully supported and considered critical to ensure that the appropriate checks are completed up-front. It is also crucial to assist Council to determine whether an application is required to be forwarded to the DoE for concurrence under the draft SEPP. The draft Guideline notes that the Design Statement "...should be prepared by the building designer or architect...". Due to the critical nature of this information it is requested that the wording in the Planning Guideline be strengthened to make it very clear that the Design Statement "must be submitted" to the consent authority with the development application.

Further on this issue is the potential need for accreditation for designers. It would be helpful for a system of accreditation to ensure that designers of child care centres are required to be accredited by a government body and are hence accountable for ensuring their designs are compliant with the relevant regulations and meet high standards of design.

2.10 The emergence of 24 hour child care centres

24 hour child care centres providing overnight accommodation are a new development within the child care sector. On 27 June 2014, City of Parramatta issued a development consent for the first 24 hour child care service in the local government area. This caters for parents who are shift workers, or otherwise need overnight child minding. The consent was issued with a temporary time period to allow Council the opportunity to monitor the impact of the centre and the performance of the operator.

While it is not known how much of an emerging trend the 24 hour centres are, it is expected that Council will receive more applications in the future, particularly in light of the growth in the Parramatta CBD and also the Westmead Medical Precinct. It is difficult for Council to make a full and proper assessment in the absence of any reference policy. Therefore, it is recommended that the Planning Guideline include controls relating to centres with 24 hour operation and overnight accommodation.

PART 3 – CONCLUSION

This submission was considered by Council at its meeting of 13 March 2017 and endorsed for lodgement to the DP&E for its 24 March 2017 deadline.

To summarise, Council's main concerns are:-

1. Mandatory inclusion of centre-based child care within the R2 Low Density Residential zone is likely to lead to increased land use conflict and poorer amenity outcomes for residents living in low density residential areas.
2. Should the Department be of a mind to mandate their permissibility in the R2 zone, it is strongly suggested that Councils be able to place a cap on the number of licensed places in the R2 zone, either through DCP controls or through a separate definition in the standard LEP template based on size.
3. The Draft Planning Guideline will remove Council's ability to require applicants to prepare and use an operational management plan. These Plans have proven crucial to the effective dealing with ongoing complaints and to ensure the operator is accountable to the conditions of consent and to the sensitivities of neighbouring residential areas;
4. Council requests that the time frame for concurrence be extended or removed altogether to allow councils to appropriately assess development applications for child care facilities and determine whether or not concurrence is required.
5. Council does not support provisions in the Draft SEPP which would remove the ability for councils to incentivise the provision of places in child care centres for children under 2 years old. Councils should be able to continue to include controls in their DCPs in order to prevent even further undersupply for this age group.
6. It is noted that the Draft Child Care Planning Guideline requires a Design Statement to be submitted with development applications. The wording surrounding this requirement needs to be strengthened to ensure compliance. The wording "should be prepared by a building designer or architect" needs to be changed to "must". In addition, a system of accreditation should be introduced to ensure that designers of child care centres are required to be accredited by a government body and are hence accountable for ensuring their designs are compliant with the relevant regulations and meet high standards of design.
7. 24 hour child care centres that provide overnight accommodation for children are a potential emerging trend in the industry. The Draft Planning Guideline should provide guidance for this type of child care centre so that consent authorities can make a full and proper assessment of their potential impacts on the wellbeing of children and the amenity of the area.



Prepared by City of Parramatta Council