



Department of Primary Industries

OUT17/14379

Felicity Greenway
Director Industry and Infrastructure Policy
NSW Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Ms Greenway

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

The Department of Primary Industries (DPI) appreciates the opportunity to contribute to the creation of this important Policy. A summary of DPI's key points are as follows:

- The potential for land use conflict in rural zones for child care centres, schools and other educational establishments be considered and addressed where possible through design and land use conflict risk assessment
- Consultation requirements for public authorities be updated to reference appropriate agencies and incorporate machinery of government changes.

Further detailed comments are attached for your consideration.

It should be noted that compliance with approval requirements of the draft State Environmental Planning Policy (Education and Child Care Facilities) 2017 does not extinguish any obligation which may exist to also obtain permission / approval / consent from any other agency which may have some form of control over the site or the proposed development. Approval requirements of the SEPP are additional to existing legislative approval requirements such as those specified in the *Water Management Act 2000*, *Fisheries Management Act 1994* or *Marine Estate Management Act 2014*.

I note that this letter does not constitute consultation with respect to fish and marine vegetation as required under section 34A of the *Environmental Planning and Assessment Act 1979*.

For further information please contact Kate Johnson, Policy Officer on (02) 4916 3964 or via email at kate.johnson@dpi.nsw.gov.au

Yours sincerely

Mitchell Isaacs
Director, Planning Policy & Assessment Advice

DPI appreciates your help to improve our advice to you. Please complete this three minute survey about the advice we have provided to you, here: <https://goo.gl/o8TXWz>

DPI comments on *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* (the SEPP)

Recommendation 1:

DPI recommends that a requirement to undertake a land use conflict risk assessment be incorporated into the Draft Code of Practice for Environmental Assessment.

Rationale:

The establishment of education or child care facilities in rural land use zones has the potential to create land use conflict. While DPI acknowledges that these facilities provide crucial services to the community, a key objective of rural zoning is to minimise conflict between land uses. DPI's Land Use Conflict Risk Assessment Guide can be found at:

http://www.dpi.nsw.gov.au/data/assets/pdf_file/0018/412551/Land-use-conflict-risk-assessment-LUCRA-guide.pdf.

Recommendation 2:

For development permissible with consent, DPI recommends that a site compatibility certificate be required for greenfield developments that are within or adjacent to rural zones and accompanying rural land uses.

Rationale:

DPI is of the view that schools, TAFEs and childcare centres should not be approved in locations where they are likely to be directly impacted by existing intensive animal industries. In addition to increased land use conflict risks, there can be health and wellbeing considerations for staff, children and students if these facilities are poorly placed.

Intensive animal industry developments occur in a range of rural zones. The incorporation of the RU4 Primary Production Small Lots zone as a prescribed zone under Part 4 and Part 5 of the SEPP further increases the likelihood of this occurring, as an objective of this zone in the Standard Instrument is: *To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.*

Recommendation 3:

The draft Better Schools Design Guide and Child Care Planning Guide could include landscape designed setbacks to buffer land used for primary industries, particularly where a proposed development is in the vicinity of intensive agriculture,

Rationale: This will further facilitate good design outcomes.

Recommendation 4:

Part 2 (1) (11) Consultation with public authorities other than councils in the draft SEPP includes the following:

- (b) development adjacent to a marine park declared under the Marine Estate Management Act 2014—the Marine Estate Management Authority,
- (c) development adjacent to an aquatic reserve declared under the Marine Estate Management Act 2014—the Department of Industry, Skills and Regional Development

These clauses should be omitted and replaced with:

- (b) development adjacent to or within a marine park or aquatic reserve declared under the Marine Estate Management Act 2014—the Department of Industry

Rationale: The Department of Industry is the specified authority for all reserves declared under the *Marine Estate Management Act 2014*. Reference should be made to the Department of Industry to reflect recent machinery of government changes.

Appendix

Examples of development for educational establishments in prescribed and rural zones where there has been perceived or actual land use conflict.

Ilim College of Australia Inc. v Fairfield City Council [2011] NSWLEC 1216. Primary school development within close proximity to wholesale nursery in rural residential area. Upheld on appeal.

Ali v Liverpool City Council [2009] NSWLEC 1327. Development of school at Austral in RU4 zone. Development was permissible with consent in current LEP at the time, but prohibited in the draft SI LEP under development by Council. Concerns about impacts of odour from nearby poultry farms. Upheld on appeal.

Al Ali v Gosford City Council [2013] NSWLEC 1261. Proposed agricultural high school on prime agricultural land in close proximity to market gardens, poultry sheds and greenhouses. Upheld on appeal.

The Qur'anic Society v Camden Council [2009] NSWLEC 1171. Proposed school development in Rural 1(a) zone. Found to be inconsistent with objectives of zone. Appeal dismissed