



## **Ku-ring-gai Council Submission**

**on**

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

#### **1. Child Care Facilities Provisions**

A Children's Services Needs study undertaken by Council in 2016 identified that Ku-ring-gai LGA is well supplied with child care places for children aged 3-5 years, as well as for out of school hours care. This was identified as being the status up to 2025. Several larger centres are currently in the process of development, including a 190 place and 200 place child care centre, further underpinning the supply of child care spaces within the LGA. However, there is an emerging need over the next decade in the 0-3 year age grouping. This is seen as an area where the private child care market is failing to deliver and is likely due to the fact that it is not as profitable with a higher unit costing.

Ku-ring-gai currently permits child care centres within its R2 Low Density Residential zone, supported by detailed DCP controls aimed at ensuring that these facilities are compatible with the scale and character of the surrounding areas and provide attractive, site responsive and practical designs. The DCP also identifies preferred locations for child care facilities that seek to protect the health and safety of the centre users and not adversely affect local amenity and local traffic management. The child care facility controls contained in Part 10 of the Ku-ring-gai DCP were subject to extensive review and community consultation in 2016 and are compliant with the National Regulations and Quality Standards (NQF).

In cases like Ku-ring-gai, where Council DCPs are deemed to be compliant with the NQF, and there is adequate provision of child care places, these Councils should be granted an exemption from the application of the SEPP and/or the *Child Care Planning Guidelines*.

In relation to the contents of the draft SEPP, Council offers the following comments:

#### ***General***

- Council supports the alignment of the child care provisions with the National Quality Framework (NQF). Council has taken this approach within its DCP and supports the application state wide.

- Council supports the aligning of the definitions within the Standard Instrument LEP with the terms and definitions contained in the NQF. This will assist in clarity and certainty in applying the proposed child care measures.
- Council supports permitting centre-based child care in all R2 Low Density Residential zones, on the condition that it is supported by sufficient and appropriate planning and design controls to protect the local amenity and visual character of residential neighbourhoods.

#### *Clause 20*

- The ability to gain concurrence to vary the unencumbered space requirements under cl 20 should only be limited to specific/special circumstances, i.e. facilities in high rise buildings or business zones. It should not apply to facilities within the R2 Low Density Residential zone. Sites for the development of new centre based childcare facilities within established residential areas should be of sufficient size to accommodate the full unencumbered area requirements.

#### *Clause 21*

- Cl 21 of the draft SEPP states that a consent authority “*may*” take Part 3 of the 2. *Child Care Planning Guideline* into consideration when assessing applications for centre based child care. As a consequence of cl 24 of the draft SEPP, the Ku-ring-gai DCP will not apply to the extent that a proposal complies with Part 2 and Part 3 of the *Child Care Planning Guidelines*. In order to ensure future facilities are developed to a standard that is currently required in areas, like Ku-ring-gai, with existing comprehensive DCP controls, Part 3 of the guidelines should be a mandatory consideration. The word “*may*” should be replaced with “*must*”, as is the case for the Urban Design Guidelines for SEPP Seniors.

#### *Clause 23*

- The inclusion of ‘site area, site coverage and site dimensions’ and ‘design’ as non-discretionary development standards under cl 23 of the draft SEPP is not supported. These are crucial considerations in minimising impacts on local amenity and character and should be central grounds on which to refuse inappropriate proposals. The inclusion of ‘site coverage’ in particular inconsistent with and contradict the design controls relating to the provision of landscaping.

#### *Clause 24*

- The requirement under cl 24 that prevents a DCP from including controls relating to specified ages, age ratios, groupings, numbers of children or the like is not supported. As identified above, while the market has adequately met the demand in Ku-ring-gai for child care places for 3-5 year olds, it is failing to deliver on spaces for 0-3 year olds. Councils should retain the ability to enforce requirements on minimum age ratios and numbers within new centres in order to address this identified market failure.

#### *Schedule 5.1*

- Council does not support the proposed amendment to the SEPP (exempt and Complying Development Codes) to allow for home-based child care as exempt development on

bushfire prone land. The proposed development standards do not adequately address the evacuation risk issues associated with such facilities.

## **2. *Child Care Planning Guidelines.***

It is acknowledged *Draft Child Care Planning Guidelines* is comprehensive and will make a contribution to significantly improve the quality and standard of centre based child care facilities, particularly in areas where there is a current lack of adequate planning controls. However, in cases like Ku-ring-gai, where there are existing comprehensive and well considered DCP controls that are compliant with the NQF, the proposed *Draft Child Care Planning Guidelines* have the potential to reduce the design quality and standard of centre based child care facilities that are developed in the future. As stated previously in this submission, Councils with well developed, NQF compliant LEP provisions and DCPs should be able to seek an exemption from the application of the SEPP and/or the *Child Care Planning Guidelines*.

Should *Child Care Planning Guidelines* proceed to be mandated the following specific issues identified with the guidelines should be addressed:

- The Compliance Checklist for Part 2 – Guide for Complying with the National Quality Framework (Appendix 2) should be a mandatory submission with the DA – to identify whether the proponent complies with the NQF, particularly unencumbered space requirements, so Council can readily identify if the application is to be sent to be sent to DoE for concurrence and not cause undue delay in the assessment process.
- The Compliance Checklist for Part 3 - Design Criteria should also be a mandatory submission with the DA.
- Landscaping and local character: Residential areas in Ku-ring-gai are characterised by building within a landscaped setting with large canopy trees. The design criteria contained in the guidelines relating to such matters as building setbacks, landscaped areas, local character and context, and public domain interface tend to be generic, vague and quite subjective. They are also subject to be potentially undermined by the non-discretionary development standards relating to site coverage in cl 23 of the draft SEPP.

The Ku-ring-gai DCP has well developed controls addressing these matters that have been tailored to Ku-ring-gai's existing landscaped character. The controls also include a crucial deep soil landscaping requirements. In order for Ku-ring-gai to maintain these standards, it is recommend that the guidelines be amended to allow existing DCPs controls to continue to apply in relation to these and other matters addressed by Part 3 of the Guidelines . This would be consistent to the requirements for car parking rates under the guidelines.

- Side and rear fencing:
  - Part 3 allows a minimum 1.8m boundary fence to a side and rear boundary – this should be a maximum 1.8m high control where a site adjoins residential dwelling house/s, otherwise, high boundary fencing greater than the standard 1.8m will be erected and be inconsistent with low density residential character.

- If an acoustic barrier/fence is required between a centre and residential dwelling house/s, they should be limited to 1.8m high at the boundary or limited to 2.1m high with a 1m setback to allow screen landscaping in front to minimise visual amenity impacts.

### **3. Educational Establishments**

#### *Clause 13 - Site Compatibility Certificates*

Ku-ring-gai Council objects to the provisions allowing site compatibility certificates to be issued to permit a school site to adopt the zoning of the adjoining land to facilitate the development of additional facilities and for the disposal of surplus educational land. This would see a potential reduction in land available for educational purposes, contrary to the stated purposes of the SEPP, which is to provide for an urgent and growing demand for the provision of educational establishments.

#### *Development without consent - General*

Council has significant concerns with and does not support the proposed amendment to the EP&A Regulations to prescribe non-government schools as public authorities and thus enable them to use the development without consent provisions under the proposed SEPP. As private entities, non-government schools do not have the level of accountability to the broader community or the internal processes, nor the financial motivation, to rigorously assess development under Part 5 of the EP&A Act. While the proposed *Code of Practice* provides a statutory frame work for non-government schools to undertake Part 5 assessments, it contains many vagaries and is too reliant on self-regulation.

#### *Consultation and notification*

- Clauses 8 and 9 and the *Code of Practice* only requires registered non-government schools (RNS) to consult with Councils if they are of the opinion that the development will have an impact local infrastructure or likely to have an impact of the heritage significance of an item or HCA. It should not be left to the RNS to determine the level of impact. The provisions should include mandatory consultation with Councils all class 1 and 2 developments without consent to determine the level of likely impact on local infrastructure.
- Likewise, it should be mandated that any works involving a local heritage item, adjacent to a local heritage item or within a heritage conservation area be referred to council to determine the level of potential impact. Such assessments should not be left to the discretion of the proponent.
- While clause 31 requires a School carrying out certain development without consent to notify council, the school is then only required to “consider” any response provided by Council. This should be strengthened to allow Council to place conditions on the proposal.

#### *Clause 18 – trees and vegetation*

- Under the development without consent provisions, a school could build on a very large footprint, as long as the structure is only 1 storey high. The SEPP would then allow, in

accordance with clause 18, clearing within 3m of any new building of trees less than 8m in height – with no consideration of cumulative impacts and minimal consideration to biodiversity conservation issues (even if a 7 part test was triggered), it would be very unlikely to result in a significant impact being determined. Therefore, we may have a situation leading to the continued degradation of the vegetation on school grounds).

#### *Clause 30 – development without consent*

- The current draft of cl 30 provides the opportunity for applicants to stage a development in a manner that may cause cumulative environmental impacts without the appropriate level of assessment. For example, cl30(1)(a)(ii) allows for the construction of a temporary classroom, while cl30(1)(a)(iii) allows for the replacement of a temporary classroom with a permanent classroom. This, therefore, allows for a permanent classroom to be constructed without any required consent in a two stage process. And then, as stated above, this would provide an entitlement (via cl 18) to clear around the new building.
- Cl 30(1)(e) permits the demolition of building and structures regardless of the heritage status. The words “unless the building is a State or local heritage item or within a HCA” should be added to clause 30 (1)(e). Similarly, these words should also be added to cl40 (1) (d) (Universities) and cl 47(1)(d) (TAFEs).

#### *Exempt and Complying Development - General*

Council objects to the extent to which exempt and complying development and development without consent has been expanded. The range of land uses, works and scale of development that can be undertaken using these provision has been substantially increased and a consent authority's ability to intervene to mitigate impacts of proposals, that may have unacceptable amenity impacts on adjoining land or the surrounding neighbourhood has been largely removed. Elements of particular concern are identified below.

#### *Clause 32 – Exempt development*

- Council has significant concerns over Cl32 (1)(g) which permits the development of sports fields and courts as exempt development provided that they do not involve the clearing of more than 2 hectares of native vegetation. This could involve substantial works, including synthetic playing fields, which result in significant environmental impacts. Such significant works should be subject to rigorous environmental assessment.

The construction of recreational facilities involving the clearing of any native vegetation should not be included as exempt development (cl32(1)(g)) as it does not satisfy the requirements of section 76 of the EP&A Act which limits exempt development to that development that is ‘of minimal environmental impact’;

### *Notification of Complying development*

- The proposed SEPP does not include any notification requirements for complying development, providing no opportunities for neighbours or Council's to comment on the impacts of any such development. This particularly concerning given the proposed scale of development that could be undertake as complying development and the potential associated impacts of such development.

It is recommended that the proposed SEPP incorporate Council and neighbour notification requires consistent with those proposed for development without consent, including the 21 day response period.

### *Clause 32 – Complying development*

- Council has significant concerns over the development of school buildings up to 22m or 4 storeys (*Ref Schedule 2 – 2*) in height as complying development. This could involve substantial, complex buildings that could potentially have significant environmental and amenity impacts on neighbours and surrounding communities. As such, they should be subject to thorough design considerations and merit assessment. Such assessment cannot be adequately undertaken within the complying development framework.

A design verification statement prepared by the proponent's architect/designer is not considered an appropriately rigorous practice and the design should be subject to a professional independent review. This introduces a subjective merit based element into the complying development process that has traditionally been prescriptive only and erodes the integrity of a code assessable approach.

- Within Ku-ring-gai, many schools (both government and non-government) contain significant areas of vegetation, including vegetation listed as threatened under State and Federal legislation, vegetation important for biodiversity connectivity and corridors, and old growth trees that are important for environmental and aesthetic reasons. The proposed SEPP will open up these areas to a far greater risk of clearing, modification and fragmentation.
- The proposed SEPP could be strengthened by requiring schools that are planning a certain level of work (whether determined financially or in m<sup>2</sup>) to have a development site management plan. This would the allow assessment of any development proposals, whether under the exempt, complying or development without consent pathways, to be conducted on the whole site, as opposed to the smaller individual projects that neglect cumulative impacts.

### *Schedule 5.2 - State Significant Development*

The proposed amendment to the SEPP (State and Regional Development) to reduce the State Significant Development threshold from \$30 million to \$20 million is not supported. Combined with the significant expansion of exempt and complying development, this will further reduce a Council's involvement in the expansion of educational establishments in its area and limit a Council's role in ensuring developments do not result in detrimental impacts on neighbours and the surrounding community.