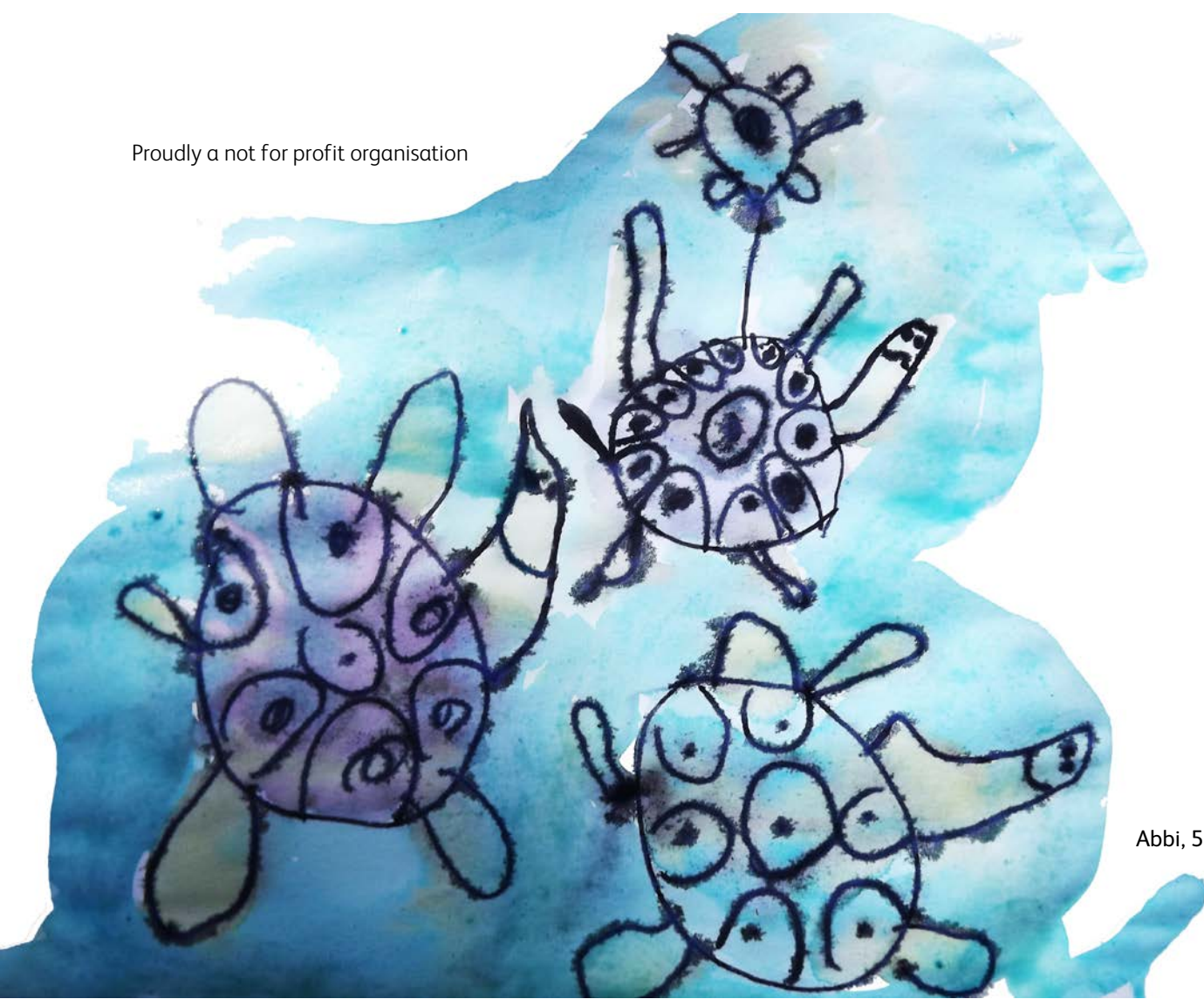


State Environmental Planning Policy

(Educational Establishments and Child Care facilities) 2017

Submission by KU Children's Services

Proudly a not for profit organisation



Abbi, 5 years

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About KU Children's Services

KU Children's Services (KU) is one of the largest not-for-profit providers of early education and childcare in NSW. Established in 1895 as the Kindergarten Union of NSW, KU was the first provider of early childhood education and care in Australia, and has operated continuously for more than 120 years making KU the nation's most experience provider.

KU's vision is that *'Every child has a right to feel safe, nurtured, valued and heard'* and KU contributes to this by delivering, supporting and leading high quality inclusive play-based learning programs. KU provides opportunities for children to become the creators, thinkers and doers of today and tomorrow.

Today operates almost 140 early education services, predominantly in NSW. These services include long day care, preschool/kindergarten, out of school hours care, vacation care, occasional care, family programs, early intervention programs and other early childhood education and care services.

The organisation has a long-demonstrated history of designing, constructing and operating purpose built, high quality early education and childcare facilities, as well as upgrading, expanding and repurposing existing buildings.

KU's achievements in the National Quality Standard Assessment and Ratings to date, far exceed the national average, with 99 % of KU centres Meeting or Exceeding the National Quality Standard.

Such is KU's experience, expertise and reputation within the sector, the organisation is often requested to provide specialist advice by other providers, peak bodies, the corporate sector, and all levels of Government. Additionally, KU provides specialist consultancy advice to third parties, including developers, architects, private, public/listed and community-based organisations on the design, establishment and operation of early education and childcare facilities.

Executive Summary

KU Children's Services (KU) welcomes the opportunity to comment on the draft *State Environmental Planning Policy Child Care Planning Guidelines* (Guidelines), and is pleased that in drafting the Guidelines, the Government has articulated a desire to improve the quality, clarity and consistency of childcare centre planning and design in NSW.

In terms of service design, aiming for consistently high quality physical environments aligns with KU's view on providing, safe, and stimulating environments for children that support active learning. Accordingly, KU supports the adoption of key requirements from the National Quality Framework into the State Environmental Planning Policy for assessment of early childhood education and care facilities.

KU also believes the draft Guidelines generally provide a sound overview of the key requirements, intentions and considerations for developers and operators when planning, designing and constructing childcare facilities. Feedback is provided on some important areas of service planning and design KU's feels have not been covered, or adequately covered, within the draft Guidelines.

Unfortunately, KU feels there are some fundamental shortfalls and/or exclusions within the draft Policy and Guidelines, particularly a failure to address the need for planning oversight to address imbalances in supply and demand. It is also noted that the Policy's 'Non-Discretionary Development Standards' specifically restrict the ability for an approving authority (usually the local Council) to restrict or refuse approvals based on supply/demand imbalances, or cater to other local area specific needs. KU objects to this policy position and feels it needs to be reviewed and significantly amended.

KU welcomes, in principle, efforts to streamline and simplify the approval process for the development of new centres, particularly as it pertains to providing clarity for the local approving authorities (usually the local Council) regarding quality and standards. However, in practice the approval of new childcare centres is two-fold, involving both the Council (providing development consent/approval) and the NSW Department of Education (granting Service Approval). KU feels the interconnectedness of those two approval processes, nor the critical nature of the Service Approval, has not been acknowledged or addressed within the Policy. This perpetuates an existing situation where decisions related to some discretionary matters are pushed down the pipeline to Service Approval; creating risk for those investing in the development of childcare centres.

KU's response focusses around three key components of the *State Environmental Planning Policy (Educational Establishments and Child Care facilities) 2017* documents:

- i. Part 3 Early Childhood education and care facilities – specific development controls
- ii. Part 4 Schools – specific development controls
- iii. Draft Child Care Planning Guidelines – Planning and designing quality child care facilities

Part 3 Early Childhood education and care facilities – specific development controls

KU provides comment in relation to the following clauses within *Part 3 Early Childhood Education and Care Facilities - Specific Development Controls*:

► **Clause 22: Centre based child care in Zone IN1 or IN2 – additional matters for consideration by consent authorities.**

KU supports the amended Local Environmental Plan to permit centre based child care in all R2 Low Residential and IN2 Light Industrial zones on the basis that the applicant must still demonstrate that the proposed site complies with acoustic, pollution and soil testing requirements and that the safety of children and families entering and leaving a centre is paramount.

► **Clause 23: Centre based child care – non-discretionary development standards**

KU understands the intent of this section of the draft policy to be that non-discretionary development standards cannot be applied, including those standards which relate to the 'proximity to other child care facilities' (pg. 8) therefore preventing a consent authority from refusing a Development Application. Whilst this position may have been developed with the best intentions, KU feels there are fundamental shortfalls and challenges within this stance, and accordingly strongly objects to this policy position and feels it needs to be reviewed and significantly amended to better meet community needs.

The current policy levers encourage centres to be set up in areas where higher fees can be charged (and are therefore more likely to be viable/profitable). This demonstrably leads to oversupply in some areas and, perversely, as oversupply increases, utilisation decreases and viability reduces. In turn, this ensures that the services most likely to survive a market oversupply, are those running a lower cost/ lower quality model. KU believes this is an untested consequence of a market driven approach/policy, the drivers of which must be considered equally with the Government's articulated position in relation to encouraging and ensuring the development of *higher quality* childcare.

Service provision should be encouraged where it is needed most and will provide the greatest social advantage, that is, low socioeconomic area and vulnerable communities.

Efforts have been made to address this by some States and Territories; however, the effectiveness of those efforts is questionable. For example, in Victoria all Councils are required to have an Early Years Development Plan relevant to the LGA and to use the plan to inform planning decisions, however even in Victoria, and in NSW denial of development approval for new early childhood education and childcare services on these bases is often overturned on appeal to the State.

State Government licensing authorities are also not permitted to refuse to grant a licence on the basis that this would lead to oversupply in an area. This lack of power in the face of obvious supply and demand anomalies is frustrating for providers, local government and regulatory authorities alike.

However, the early childhood education and childcare market is now mature and there is no reason not to reintroduce a planning model that restricts or denies development consent and/or Service Approval (and therefore funding) to new services where need cannot be demonstrated.

Local government, although aware of the uneven and, in some cases, excessive and inappropriate expansion of early childhood education and childcare centres within their LGA, is generally restricted by State planning laws (including this proposed draft Policy) from preventing childcare services that are surplus to community need from being established.

In NSW, several Local Governments have proactively sought to address supply/demand imbalances and/or other childcare design and/or quality issues unique to their local area, through the imposition of specific local planning requirements. For example, a number of Councils require new childcare centres to include a minimum of 33 % places for 0-2 year olds (or a percentage relative to the local demography), specifically to address the local undersupply in infant care places (whilst it may be argued appropriate supply exists for preschool places in some parts of the LGA).

Similarly, the Councils in high density areas with a significant 'high rise' infrastructure, have additional planning requirements that are unique to the development of mid-floor childcare, which has become essential if local needs are to be met. Conversely, KU works with a number of Councils with planning restrictions which actively encourage ground floor childcare which makes the most of the available outdoor environment.

Whilst these may initially seem like planning inconsistencies across the State, KU believes that local planning authorities must have the ability to restrict or deny planning approvals, and expect additional requirements as part of that approval process where it is directly addressing community needs and issues.

KU believes there is precedent within NSW planning policy to support a market-driven approach subject to some level of development restrictions in the way that other mature, community service focussed markets are. KU understands pharmacies, for example, can be restricted from opening in proximity to and/or in threat of existing supply.

KU feels the failure to address, and in fact further restrict, the ability of planning authorities to restrict or deny planning approval based on supply/demand imbalances, is a fundamental failing of the draft Policy and Guidelines, and must be redressed as a priority.

► **Clause 26: Emergency relocation of early childhood education and care facility – exempt development**

KU agrees with the process becoming less stringent in the planning for childcare centres to be temporarily relocated early childhood education and care centres in case of emergency. This will support and assist families in maintaining childcare in potentially stressful times. KU agrees that the timeframe of a maximum 12 months is a valid timeframe.

Considering the aim of increasing the number of child care places in NSW to meet ongoing demand, KU would like to see this development process applied to childcare centres when there is extensive refurbishment or redevelopment planned for their current site. Approved Providers are responsible for ensuring the safety and welfare of the children in their care at all times, including when extensive building works are being undertaken. When assessing the risk involved with extensive refurbishment, temporary relocation for a fixed period may provide a reduced risk alternative for Approved Providers.

Part 4 Schools – specific development controls

KU provides comment in relation to the following clause within *Part 4 Schools – Specific Development Controls*:

► **Clause: 34 (2) d: School based child care- complying development**

KU is concerned about the implications of a school based child care not operating before 7am or after 7pm on a weekday. There are currently Outside School Hours Care (OSHC) programs operating from 6.30 am in the western suburbs of Sydney. KU believes that further consideration could be given for OSHC services to be open from 6.30am if this meets the needs of individual families and if this is in the best interests of the child.

Draft Child Care Planning Guidelines – Planning and designing quality child care facilities

KU provides comment in relation to the following clauses within the *Draft Child Care Planning Guidelines - Planning and designing quality child care facilities*:

KU has had extensive experience in designing both our own childcare centres as well as working with clients to support them in the development and design of their own centres. The following information is based upon our experience where we have found varying interpretations of the Children (Education and Care services) National Law (NSW). We have included recommendations based on our experience, where we believe it would be beneficial to provide more detailed information, and further suggestions where the Regulations may be silent or where detail has not been provided in the 'Draft Child Care Planning Guidelines'.

► Inclusion of a Director's Office

The guide indicates a Staff/Meeting room and an administration space, however it would be recommended that the Director have a private space where there can be private consultation with families as well as meeting staff members on a one to one basis. In section 2.5, Administration, 'a manager office' is mentioned however it is not mentioned in the, 'Typical space requirements for different size centres'.

► Toilet space

There is a space allowance recommended for children's toilet area, and recommendations however we would like to this to strengthen to state the number of toilets per child. In 'Best Practice Guidelines in Early Childhood Physical Environments', there was a recommendation of 1 toilet for every 8 children. This would assist in having a definitive guide on the number of toilets required per playroom. We would also recommend privacy screens for children in the older age groups, so that children can choose to use a toilet with a privacy screen. The privacy screen would be at low level that would provide privacy from child to child but also be low enough that clear supervision by an adult.

► Cot rooms

Information has been provided about recommended cot room space for the size of a centre. We would suggest that this recommendation is strengthened and clarified so that for children aged from birth to 2 years, there is an allowance of one cot per child is required. Further consideration should be made of spacing in between cots as well to ensure that there is adequate air flow, reduced risk of cross infection and that each child can be readily accessed in case of emergency. 'Best Practice Guidelines in Early Childhood Physical Environment' recommend 800mm to be between each cot, to allow adults clear passageway between each cot for ease of access to each child without intruding on other children.

► Pram storage

There is mention of pram storage throughout the document, however we would recommend that more detailed information is provided on a recommended space allowance for pram storage. The amount of pram storage allowed will vary from regional to city locations depending upon how families travel to their centre, however in some of our larger inner city centres we have between 30 and 40 prams and strollers to be stored daily. This is a significant space commitment to ensure that prams and strollers are not held within hallways or entrances to centre, creating a potential safety or accessibility issues.

► Nappy change facilities

There is mention of the provision of adult hand cleansing facilities within close proximity of the nappy change space. We would recommend that the design specifies a hand-washing sink and basin rather than adult hand cleansing facilities, as this may be interpreted as using hand cleansing chemicals rather than a hand-washing facility.

In terms of quality consideration, we would also recommend a child size hand-washing sink to be installed in close proximity to the nappy change area. This would allow toddler age children to wash their hands (with close supervision by an educator) after nappy change to develop a sense of agency.

► **Craft sinks**

Information has not been provided on provision of a craft sink or space allowance within “the design guidelines”. We recommend that a craft sinks be installed in the children’s playroom or in an area children can be viewed if there is an educator within this space. It is recommended that a craft sink bench would be constructed of materials that are impervious to water and contain one large stainless steel sink and drainage area. If the craft bench is to be located in the children’s playrooms, they would be classified as ‘encumbered’ play space. In term of considering quality inclusion, we would recommend that child care providers could consider the installation of a child’s craft sink alongside the adult craft sink so that children could also assist with preparing craft experiences. We would recommend one craft sink for each playroom.

► **Bottle preparation area**

We would suggest that more specific design and space requirement information is provide in relation to the installation of a bottle preparation area. We recommend that the bottle preparation area is located separate to the centre kitchen in an area that is directly adjacent to the infant and toddler rooms, with clear supervision into the playrooms. The bottle preparation area inclusions would be a bench top space that would be used for the preparation, and cleaning of bottles, a storage cupboard for formula, bottle and drinking cups as well as refrigerator for storage of prepared baby’s bottles. We would recommend that the area be constructed of a material impervious to water and contain a sink and drainage areas.

► **Emergency and evacuation**

KU would recommend that more detailed information is included in the guide particularly in relation to emergency and evacuation of buildings that have childcare located in areas other than the ground floor.

The Guidelines states that the design must, ‘Provide a fire isolated safe haven where children and staff can muster during the initial stages of a fire alert and or other emergency to enable staff to account for all children prior to commencing evacuation and using an adjoining fire isolated exit.’ (pg 28)

Further detail is requested on the recommended size of this area (based on a square metre allowance per child and adult) to cater for all children and staff to be accounted for. It is recommended that further information is provided to state if this safe haven area is required to be fire rated and to what standard.

With many centres having large numbers of children aged from birth to 2 years (often over 30 children on any one day), the usual means of safe evacuation is by way of emergency cots. Design guidelines should provide information on the safe evacuation of large number of non-mobile children.

► **Soil assessment**

To streamline the application process, it is suggested that a soil assessment is to be provided for any service where the children will have access to soil. As stated, *‘with every service application and development applicant one of the following is required’*, with one of these being, *‘A statement made by the applicant that states that to the best of their applicant’s knowledge the site history does not indicate that the site is likely to be contaminated in a way that poses an unacceptable risk to the health of children’* (pg 30). Although an applicant may in good faith, state that the site history of the soil does not indicate that the soil will be contaminated, it would be a costly and time consuming exercise if it is found at a later time that the soil is contaminated and extensive soil reparation work is to be completed before the centre can be approved. We would suggest that soil assessment is completed when the centre is in the initial design phase to ensure that areas of potential danger are eliminated and inaccessible to children.

Other Considerations: Service Approval and the NSW Department of Education

KU welcomes, in principle, efforts to streamline and simplify the approval process for the development of new centres, particularly as it pertains to providing clarity for the local approving authorities (usually the local Council) regarding quality and standards. However, in practice the approval of new childcare centres is two-fold, involving both the Council (providing development consent/approval) and the NSW Department of Education (granting Service Approval).

When planning and establishing new childcare centres, there are numerous critical decisions that may need to be made at design/development approval stage, which are ultimately subject to subsequent and separate approval by the NSW Department of Education as part of Service Approval.

At present, the Service Approval application process for a new centre cannot begin until construction is complete and a full Occupancy Certificate has been issued. The NSW Department of Education is currently unwilling to engage in any pre-planning discussions, or provide interim advice or guidance to developers or operators regarding the *potential* compliance or no-compliance of particular elements of service design. This creates a very real risk that a new childcare centre can be designed and build, with the full support and approval of the local planning authority (Council), only to have Service Approval declined, or restricted, at the final stage. Given the development of a new high quality childcare centre is, in most cases, a multi-million dollar investment, KU strongly believes this is an unfair and unnecessary risk to place on an owner, developer or operator.

KU feels the interconnectedness of those two approval processes, nor the critical nature of the Service Approval, has not been acknowledged or addressed within the Policy. This perpetuates an existing situation where decisions related to some discretionary matters are pushed down the pipeline to Service Approval; creating risk (and disincentive, particularly in areas of high net demand) for those investing in the development of childcare centres.

KU would strongly recommend the Department of Education being involved much earlier in the process of discussing the design of a childcare centre. KU would suggest that the Department provides a 'Planning Advisory Service' to operators and developers at the Development or Planning approval stage.

Applicants could meet with the Department's early childhood professionals to discuss the planning and operational considerations of the proposed design, streamlining the later formal Service Approval process.

At this point in time, *potential* non-compliance or subjectivity could be explored and resolved at this design phase. Indicative and/or interim approval for any areas of significant non-compliance or waiver/exemption, should be able to be granted at that time, reducing the risk that a seemingly 'reasonable' solution will be denied Service Approval later.

This would also be the ideal time to conduct and/or review the soil assessment requirements, discussed earlier in this submission.

This is similar to the 'pre-DA meeting' and 'Duty Planner' services Councils provide, which have been highly effective in supporting, streamlining and removing risk from the planning approval/consent process.

KU believes this service should be provided by the Department of Education free of charge, to developers and operators who are engaged in the planning/approval process. However, KU believes such a service to be so valuable in supporting and mitigating risk within the planning process, that we would not object to the implementation of a reasonably structured 'fee for service' model.

In KU's own experience, one of the most common examples of this scenario is that where an indoor/outdoor offset is required. Constrained sites, multi-floor centres, centres with unusual access and evacuation processes, or limited light and/or shade arrangements, are also common scenarios where early advice and indicative approval would be valuable.

Case study: Indoor/outdoor offset

KU is proud of our high quality educational programs, delivered in sustainable, natural learning environments (indoors and out), and fully supports the baseline regulatory requirement of 7sqm of

outdoor space per child. However, in practice, the severely limited availability of greenfield and/or ground floor sites in some areas (such as CBD and higher density inner suburban areas) is driving a need for increasingly innovative design solutions to address that requirement.

More often KU, and other operators, are responding to this by seeking to deliver indoor/outdoor environments, where some (or occasionally all) the outdoor space required is provided within an expanded indoor environment. In a quality learning environment, at play space deemed to be 'outdoor' would be appropriately designed with traditional 'outdoor' play in mind, and landscaped with abundant natural plants and gardens, sand pits, water play areas, etc. These indoor/outdoor spaces can then be operated to include a high-quality program offering traditional 'outdoor' activities such as climbing, running, large scale construction, ball games, etc.

Over the past two decades, KU has developed and/or operated a number of centres which have included an indoor/outdoor offset, including numerous which have been rated as 'Exceeding' under the National Quality Standards Assessment and Rating process. However, in each of these cases, the development of the centre was the subject of significant financial and operation risks; whilst the planning authority was able to issue development consent (following appropriate planning and explanation regarding the indoor/outdoor offset), the offset itself was still subject to final review and approval by the Department of Education at Service Approval stage.

It is therefore technically possible, that an operator or developer could fully fund and execute the development of a new centre, only to have the centres Service Approval declined, or enrolment numbers restricted to supported by 7sqm of *actual* outdoor space. KU believes this risk is unnecessary and avoidable.

Availability for further Comment

KU values the opportunity to review and provide comment on the Policy and Guidelines, both as part of numerous consultation forums to date, and in written form. Similarly, any opportunity to meet with Departmental stakeholders to provide further information and/or insights in relation to this submission, our recommendations, and our significant experience in developing and operating high quality early childhood education and childcare centres, would be warmly welcomed.