Fire Protection Association Australia
Life. Property. Environment.

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Dear Director,

RE: DRAFT SEPP (EDUCATIONAL ESTABLISHMENTS AND CHILD CARE FACILITIES)

Fire Protection Association Australia is the peak technical and educational fire safety organisation in Australia. We are a not-for-profit organisation, governed by a board of directors and have thousands of members across the country.

We welcome the opportunity to provide comment on the draft *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* (*the* **SEPP**)

At present an educational establishment or child care facility would require a bush fire safety authority in accordance with section 100B of the *Rural Fires Act 1997* (**RF Act**). Of particular importance is Section 100B(5)(b) which states that development which requires a bush fire safety authority *"is not complying development for the purposes of the Environmental Planning and Assessment Act 1979, despite any environmental planning instrument."*

Accordingly to achieve any form of complying development for educational establishments or child care facilities then modification of the RF Act would need to be done. However, simply removing Section 100B(5)(b) may have some unintended consequences for other types of development and such a change needs to be carefully considered.

If changes are made to the RF Act as a result of the SEPP then "development" may also need to be defined in the RF Act so that it aligns with the definition of "integrated development" as per the *Environmental Planning and Assessment Act 1979* (**EP&A Act**). Without doing so the definition of "development" in the RF Act is so broad that it may have the same effect as 100B(5)(b) anyway.

Until the above is resolved it is recommended that there are no forms of complying development for educational establishments or child care facilities on bush fire prone land.

Notwithstanding the above, if a bush fire safety authority is required then section 100B(2) of the RF Act states that a bush fire safety authority authorises development if it complies with the *"… standards regarding setbacks, provision of water supply and other matters considered by the Commissioner to be necessary to protect persons, property and the environment from danger…"*.

The standards are contained in PBP and there are no specifications and requirements for educational establishments or child care facilities.

The current wording in Section 11 of Schedule 2 and Section 14 of Schedule 3 of the SEPP refers to "specifications and requirements" which relate to infill development. To better align with both PBP and the RF Act it is recommended that the wording in these sections is changed to "standards".

In accordance with PBP the setbacks (Asset Protection Zone) for education facilities and child care facilities are based on a radiant heat exposure of 10 kw/m^2. The basis for the 10 kW/m^2 is to support those entering or exiting a building by not allowing conditions which are untenable in the open (for very short periods of time).

Section 11 of Schedule 2 and Section 14 of Schedule 3 of the SEPP will allow complying development to have a radiant heat exposure of almost triple that (29 kW/m^2). This will increase the risk to emergency service personal, the community and will also create some confusion in the development process. There will be two different acceptable thresholds with one for complying development (<29 kW/m^2) and another for development requiring a bush fire safety authority in accordance with the RF Act (<10 kW/m^2).

It is recommended that the threshold in Section 11 of Schedule 2 and Section 14 of Schedule 3 be modified to "no greater than 10 kW/m^2" rather than not BAL-40 or BAL-FZ.

Where an existing educational facility or child care facility cannot achieve this threshold then careful consideration through the existing integrated development process should be conducted. Simply constructing to a higher BAL does not necessarily achieve a better bush fire risk outcome in all situations and the starting point should be compliance with the same standards that a new facility would need to comply with. This is effectively what section 4.2.5 of PBP suggests by referring to the "preferred standards" being compliance with the 10 kW/m^2 threshold.

Whilst we don't necessarily have a concern with home based child care being required to meet the same specifications and requirements as a dwelling, it is noted that Schedule 5 of the SEPP proposes to achieve this through a range of changes to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (**E&CD Codes**).

It is recommended that the text in clause 3.36B of the E&CD Codes is used as the basis for any modification to clause 2.46 of the E&CD Codes (which is proposed in Schedule 5 of the SEPP). At present the translation in this section is not only missing important parts but contains contradictions. For example proposed clause 2.46(1)(e) and (f) and clause 3.36B(3) is missing entirely. i.e. it does not specify who can determine that *"… the dwelling and any associated access way must not be in bush fire attack level-40 (BAL-40) or flame zone (BAL-FZ)".* Nor includes any mechanism for the additional construction requirements which are required in NSW at lower BAL levels to offer enhanced protection from bushfire emebers to be required for such facilities.

If used, the text in clause 3.36B(3) should be also modified so that the council is removed from being able to issue the certification and that the matters which need to be certified are expanded from (2)(b) to clauses (2)(a) and (2)(b).

The suggested wording is as follows:

(3) A standard specified in subclause (2)(a) and (2)(b) is satsified if certified by a person who is recognised by the NSW Rural Fire Service as a suitably qualified consultant in bushfire risk assessment.

This above wording of clause (3) should also be changed in Section 11 of Schedule 2, Section 14 of Schedule 3 and clause 3.36B of the E&CD Codes for consistency.

It is our view that those certifying that these important bushfire safety standards are met should be required to be recognised by the NSW Rural Fire Service as being suitably qualified to do so. Irrespective of whether they are emplpyed by a local government or a private company alike. Because there is no requirement for council officers to be recognised as suitably qiualified this creates an uneven playing field in both competency and cost (as consultants are required to be accredited, maintain insurance and undertake professional development – which are all costs which council employees do not incur).

Such a change is also consistent with the broader NSW fire safety reforms which aim to recognise competent fire safety practitioners across a range of fire protection fields.

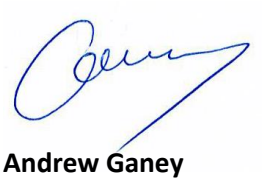
Schedule 1 will also make the construction, maintenance and augmentation of firefighting emergency equipment exempt development in some circumstances. We recommend this is removed from Schedule 1 as the definition is so broad that it will likely have unintended consequences and the standards associated are overly narrow (as sprinkler systems are just one form of fire safety equipment). It is also noted that residential care facilities for seniors does not appear to fit within the definition of an educational establishment or child care facility.

Lastly, we also understand that the NSW Rural Fire Service is currently reviewing Planning for Bush Fire Protection 2006. As there are references to this document in the SEPP, references may need to be updated in the future (depending on the timing of the review in comparison to if/when the SEPP is adopted).

We thank you for taking the time to read this letter and welcome the opportunity to work further with you on this matter, or any other matter which improves fire safety in NSW.

If you would like to discuss any aspect of this submission please don't hesitate to call me on 03 8892 3131.

Yours sincerely,



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