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ABN 38 155 462 810

7 April 2017

The Secretary
Department of planning & Environment
Pitt Street
Sydney NSW 2000

Subject: Submission to Draft SEPP (Educational Establishments and Child Care Facilities) 2017

Dear Secretary

This submission is made in response to the Draft SEPP (Educational Establishments and Child Care Facilities) 2017 on behalf of a major child care provider, Montessori Academy Group Pty Ltd, which operates 27 child care centres, most of which are within NSW.

In general the draft SEPP is welcomed as an important recognition and facilitation of the provision of child care facilities and educational establishments. We endorse the commentary associated with this policy initiative and note the growing demand for child care, and school places, that needs to be met.

I have attached a profile of Montessori Academy and note the strong emphasis of this group on early childhood development and education.

We strongly support the following proposals contained in the Draft SEPP:

1. The provisions of the SEPP would prevail over the provisions of other planning instruments such as Local Environmental Plan (LEPS).
2. Clause 24 of the draft SEPP which provides that the provisions of the Children Education and Care Services) National Law (NSW) prevail over any conflicting provisions in any Development Control Plan (DCP).
3. The use of site compatibility certificates to make certain uses permissible on government owned land for education purposes.
4. The flexibility to allow existing educational uses to expand into adjacent to zones, consistent with the provision of the SEPP (Infrastructure).

However, we have a number of significant concerns in relation to centre based child care facilities particularly that the draft SEPP barely expands the permissibility of such facilities. We are also concerned about the lack of clarity within the draft SEPP and the proposal to make the child care parking provisions within local government's development control plans a non-discretionary matter.

Inconsistent approaches Part 3 and Part 4 of SEPP. We believe that the SEPP is confusing as it relies on different mechanisms for child care uses than for educational uses. In the former, it seeks to utilise an amendment to Standard Instrument provisions by adding centre based child care as a permissible use in R2 and IN2 zones. In the latter case, it prescribes zones of permissibility directly in the SEPP. We believe that the same approach should be applied in both cases and that permissible zones for centre based child care should likewise be prescribed in Part 3 of the SEPP as is the case in other SEPPs such as the Affordable Rental Housing SEPP

IN1 and IN2 zone anomaly. The draft Standard Template order is inconsistent with Clause 22 of the SEPP in that the Order makes child care permissible in IN2 zones but not IN1 zones whereas Clause 22 assumes it is permissible in both.

Expansion of child care permissibility. We believe that the SEPP (and associated changes) needs to expand the permissible zones for centre based child care beyond R2 and IN2 zones. We believe that the child care permissibility should be required for the following additional zones:

- SP1 Educational Establishments and Places of Public Worship
- SP2 Educational Establishments
- SP2 Community facilities
- SP2 Seniors Housing
- IN1 General Industrial
- RE2 Private Recreation (where community facilities is already a permissible use).

In support of this we have examined the zoning maps of a number of Councils. Within the former Bankstown Council area there are 58 sites that are zoned SP2 Educational Establishment and 3 sites zoned SP2 Community Facilities. There are many similar such SP2 zones in Parramatta and Blacktown Council areas and presumably across the State. Within the Parramatta Council area there are several sites zoned SP1 Educational Establishment and Place of Worship.

Given the government's aim to satisfy the rapidly growing demand for child care it makes no sense to exclude educational establishments for potential centre based child care facilities, especially given that it is proposed to make school based child care permissible on such sites. Also, we note that the current SEPP (Infrastructure) provides that a "child care facility to provide for students or staff (or both)" is permissible as a complying development (See clause 31A).

Better defining community facilities. Clause 28(3) of the SEPP (Infrastructure) seeks to address this issue in a tangential manner by providing for permissibility for the following use:

"28(3) an educational establishment (including any part of its site and any of its facilities) may be used, with consent, for any community purpose, whether or not it is a commercial use of the establishment"

Unfortunately, some councils are insisting that a child care facility is not a "community facility". For this reason we request that the SEPP and associated changes make it clear that centre based child care is permissible on sites zoned for educational establishment and community facilities, and the definition of "community facility" in the Standard Template be changed to include centre based child care centres.

Human Services Infrastructure. A review of Council zoning maps show that many, if not most, councils use SP1 and SP2 zones for a variety of uses ranging from utilities infrastructure such as electricity stations, sewerage plants, roads and water facility and on the other hand human services infrastructure such as schools, hospitals, community facilities, seniors living and places of worship. This suggests there is an obvious need for the creation of special “Human Services Infrastructure” Zone such as an “SP4 Human Service Infrastructure”. If this were done it would facilitate a greater range of compatible use within this zone and minimise complexity.

Car parking provisions. We strongly disagree with the proposal with the Draft SEPP, via the *Child Care Planning Guideline*, to require adherence to the car parking codes within Local Development Control Plans (DCPs). Clause 23 (2) (e) of the SEPP creates a non-discretionary standard such that “*development satisfies the design criteria in the Child Care Planning Guideline*”.

This invokes Design Criteria 3L in the draft *Child Care Planning Guideline* which states;

“The objective of the design criteria is to provide parking that satisfies the demand generated by the Centre.

1. Off street car parking should be provided at the rates for child care facilities specified in a DCP that applies to the land.

2. Where a DCP does not specify car parking rates, off street car parking is to be provided at the following rates

- *Where the site is within 400m of a metropolitan train station – 1 space per 10 children*
- *In other areas – 1 space per 4 children.*

3. Accessible parking is to be provided at one space per 30 children.

4. For small centers in areas with convenient and safe on- street parking spaces this parking may be considered as an offset to off-street parking if it can be demonstrated it does not affect the safety and amenity of the adjacent area.”

In our experience the car parking codes found in local council DCPs are quite varied and are often out of sync with the “on the ground” car parking demand that our centers actually experience. Moreover, in many locations otherwise eminently suitable for child care centres, there is little scope for high levels of car parking as would be mandated by some DCPs. It has been generally accepted in Land & Environment Court cases that the RMS guidelines should prevail in these matters. Also, it is contrary to the intent of the provisions within the E P & A Act which stipulates that DCPs should be treated as guidelines and are not mandatory

Accordingly we strongly request that the Department use the proposed SEPP to invoke the RMS guidelines for car parking rather than leave it to the unpredictability of local DCPs.

Adjoining Sites. The SEPP (Infrastructure) formerly provided for uses to be permissible within a site adjoining a zone where the use is permissible. Consideration should be given to including a provision expanding adjoin land use permissibility to land that adjoins an area in which the use is permissible. This would be a very useful provision, and coupled with a requirement for a site compatibility certificate, could provide further opportunities for centre base child care facilities in suitable locations.

Site Compatibility certificates (SCC) Clause 13. We are advised that the use of SCCs will only apply to educational uses on State owned land. This is unclear from the draft SEPP as their applicability is not stated and should be clarified. It would also be useful if they were applicable for centre based child care facilities in the more problematic zones such as the industrial zones of IN1 and IN2 and infrastructure zones such as SP1 and SP2.

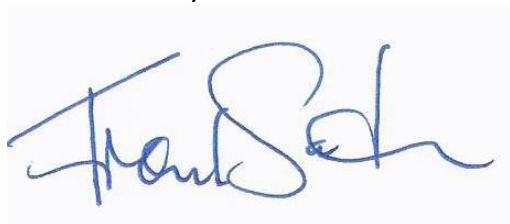
Recommendations

We believe that the following changes should be made the SEPP and associated instruments:

1. The permissibility of centre based child care centres should be substantially expanded from what is proposed and should include new zones such as IN1, IN2, R2, SP1, SP2 and RE2.
2. The insertion of prescribed zones in Part 3 of the SEPP to specify all zones in which centre based child care facilities are permissible so that it is consistent with the treatment of schools in Part 4 of the draft SEPP.
3. A new Human Services Infrastructure zone (SP4) should be created within the standard instrument to include hospitals, schools, community facilities and other forms of human infrastructure, but not infrastructure associated with roads and utilities, and centre based child care facilities should be made permissible in this zone which should remain in the SP2 zone.
4. The SEPP should specify that the RMS car parking guidelines for child care centres should apply and not invoke the requirements of local DCPs which is proposed via Design Criteria 3L in the draft *Child Care Planning Guideline* which is invoked by 23 (2) (e) of the draft SEPP.
5. The applicability of Site Compatibility Certificates should be clarified and they also be made applicable to child care centres in certain more problematic zones such as industrial zones.
6. The definition of "Community Facilities" in the Standard Instrument to be expanded to include child care facilities.
7. Include adjoin site permissibility provision for child care centre as discussed above.

We would appreciate your consideration of these matters and ask that the completion and implementation of this SEPP be expedited.

Yours sincerely



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On behalf of Montessori Academy Group Pty Ltd