WESTERN SYDNEY UNIVERSITY
c/- Locked Bag 1797, Penrith, NSW, 2751

Director, Industry and Infrastructure Policy
Department of Planning and Environment
PO Box 39
Sydney NSW 2001

6 April 2017

Dear Director,

I refer to the release and public exhibition of the **Draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities)**. The policy seeks to implement the following policy initiatives:

- streamline the planning system for education and child care facilities including changes to exempt and complying development;
- NSW will be the first State to bring Commonwealth Laws regulating early childhood education and care into a state planning system;
- brings the Department of Education into the planning process early, and gives child care providers and developers information, from the beginning regarding all national and state requirements for new child care services;
- streamline the delivery of new schools and upgrading existing facilities, with a focus on good design; and
- assist TAFEs and universities to expand and adapt their specialist facilities in response to the growing need, and to maintain our reputation for providing world class tertiary education, while allowing for more flexibility in the use of their facilities.

In doing so, it seeks to provide for exempt and complying development provisions for establishments (education) and facilities (child care) identified. Public authorities will not be subject to a requirement for development consent and will consult with other relevant authorities.

The proposed provisions seek to allow developments within bush fire prone lands to be complying development using standardised development standards and processes.

Of particular note is that at clause 16(e), consultation with the NSW Rural Fire Service is required if the development (for education establishment or school-based child care) is located within bush fire prone areas, with a response being made within 21 days. These provisions would generally apply to matters under Part 5 of the EP&A Act where development consent is not required.

The policy intention is to continue the process whereby public authorities are dealt with under Part 5, whereas non-public organisations will be dealt with under Part 4, including exempt and complying development.

Where public safety is operating, however, it should be Government policy that developments of the type suggested are not to be located within bushfire prone areas, as defined under section 146 of the EP&A Act. It should be recognised that during the Black Saturday Bushfires in 2009, two schools

and two child care centres were completely lost (burnt down) due to their proximity to bushland and within bush fire prone land (sinced mapped). The Victorian Bushfire Royal Commission highlighted the need for care with vulnerable developments. It was indeed fortunate that the fires were not on a school day as there would have been major fatalities. As it was, 173 people died in that one day, of which 123 died in or adjacent to their home. Evacuation in such circumstances may not exist.

It is noted, and endorsed, that clause 34(2)(b) of the policy does not provide for complying development in bush fire prone areas for school-based child care. This provision should generally apply to all the classes of development identified within the SEPP at this time.

Part 7 provides for general development control for educational establishments, including provisions relating to clause 52 relating to Coastal Wetlands. A principle should be that such facilities should not occur in bush fire prone areas. However, where they do, the ability to clear coastal wetlands for these facilities should not be countenanced. TAFE and University campuses are sufficiently large enough to have greater evacuation arrangements, and in either case, the application of water drenching systems should be a cost-effective alternative than simply constantly clearing coastal wetlands. Clause 52 should be deleted. I doubt clause 66, 72 and 73 could be used in either case.

In relation to Schedule 1, although an underlying aspect for exempt development is compliance with the Building Code of Australia, a general **note** should be made that *AS3959-2009 Construction in Bushfire Prone Areas* applies to bush fire prone lands identified under section 146 of the EP&A Act. In relation to fencing, timber fences should not be located within 10 metres of a building as identified in *Planning for Bush Fire Protection* (2006).

In relation to Schedule 2, the allowance of complying development under the EP&A Act, for schools, child care or other educational establishments would be *ultra vires* in that the NSW Rural Fires Act at Section 100B makes clear that matters identified as a Special Fire Protection Purpose under s100B(6) may not be complying development (see section 100B(5)(b)). Further the reference to *specifications and requirements* does not apply, as section 100B(2) requires meeting with *Commissioner's Standards*. Please note that *Planning for Bush Fire Protection (2006)* clearly differentiates between *specifications and requirements* (for dwellings) and *Standards* (for Special Fire Protection Purposes).

It is my submission that complying development should not, even as a matter of policy, apply to developments within this SEPP that have been identified as being located within bush fire prone land as mapped under section 146 of the EP&A Act. Such developments should not be located at BAL levels of 19 or 29 as the main criteria is a radiant heat flux exposure of 10kW/m^2 (@ 1200K) which will fall within BAL 12.5 or maybe outside of bush fire prone areas (at higher slopes).

In summary, there should be no unnecessary exposure of our most vulnerable or to those who do not appreciate the nature of risk associated with the facilities and establishment identified within the proposed SEPP. These developments should be subject to the provisions of section 100B of the Rural Fires Act, 1997.

Yours sincerely,

Grahame Douglas

Academic Course Advisor – Bushfire.