

Circular	PS 18-005
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Related	

New guidance for centre-based child care facilities

This circular is to provide advice on *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*, the Child Care Planning Guideline, and development control plans. It also provides guidance on the new concurrence role of the NSW Department of Education in determining development applications for centre-based child care facilities.

Introduction

The NSW Government has introduced reforms to fast track and streamline approvals for child care services. The reforms will improve certainty and consistency across National, State and local government requirements.

The reforms are implemented through:

- *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* (the SEPP);
- The *Child Care Planning Guideline* (the Guideline); and
- An amendment to the Standard Instrument LEP by way of the *Standard Instrument (Local Environmental Plans) Amendment (Child Care) Order 2017* (SI LEP Amendment Order) and the *State Environmental Planning Policy Amendment (Child Care) 2017* (Consequential SEPP).

The purpose of this Circular is to outline the requirements for development applications for centre-based child care facilities including:

- the concurrence of the NSW Department of Education;
- the application of the Guideline to development applications; and
- the relationship between Development Control Plans (DCPs) and the Guideline.

Improving the approval process

Proposals for new, or renovated, centre-based child care facilities generally need two types of approval:

- development consent under the *Environmental Planning and Assessment Act 1979* from a consent authority (usually the local council); and
- a service approval to operate under the National Quality Framework from the NSW Department of Education.

Key requirements from the National Quality Framework are now considered upfront as part of the

development application assessment process for centre-based child care facilities. This will ensure consistency throughout the two stages so that, where the requirements are addressed in the development consent, the proposal should be well placed to secure the subsequent service approval.

Overview of the child care policy

The SEPP applies to all child care facilities and educational establishments in NSW. It consolidates new, and updates existing provisions, bringing them together into a single, current, environmental planning instrument.

The aims of the SEPP are to streamline approval processes; facilitate high quality facilities; and provide greater certainty in the planning system.

The child care reforms include:

- introducing different approval pathways for different types of child care services:
 - **exempt development:** out-of-school-hours care on school sites where no new work is required; home-based child care except on bush fire prone land; mobile child care and emergency relocations of child care facilities.
 - **complying development:** school-based child care where new work is required; out-of-school-hours care on existing TAFE and university sites where no new work is required; and home-based child care on bushfire prone land.
 - **local development:** all other centre-based child care facilities and services will require a development application.
- introducing new definitions;
- mandating centre-based child care in all low density residential (R2) zones;
- introducing a concurrence role for the Department of Education where the amount of unencumbered indoor and outdoor space under the *Education and Care Services National Regulations and Children (Education and Care Services) Supplementary*

Provisions Regulation 2012 are not met in a development application for a centre-based child care facility;

- providing guidance for education and care services, and planning and design considerations;
- special considerations for centre-based child care facilities in industrial zones including compatibility with neighbouring land uses and whether the location will pose a health or safety risk for children and staff;
- introducing consistent state-wide assessment controls through the introduction of non-discretionary development standards and the Guideline; and
- confirming the permissibility of centre-based child care facilities on existing school, TAFE and university sites.

Concurrence of the Department of Education

The Regulatory Authority under the National Quality Framework is responsible for issuing service approvals. At the time of issuing this Circular, the Regulatory Authority in NSW is the Secretary of Education.

Development applications which do not comply with the following National Regulations must be referred to the Department of Education for concurrence (clause 22 of the SEPP):

- The unencumbered indoor space requirement set out in regulation 107, or
- The unencumbered outdoor space requirement set out in regulation 108.

The Department of Education will review these proposals before development consent is issued. This will provide early advice, and therefore certainty to the applicant, about whether the proposal could secure a service approval and ensure consistency between the development consent and service approval processes. If the Department of Education does not respond within 28 days, a consent authority may determine the application without the concurrence.

Applicants should submit a completed National Quality Framework Assessment Checklist (refer Part 4 of the Guideline) with their development application.

The Assessment Checklist will assist:

- applicants to demonstrate their level of compliance with the National Regulations;
- consent authorities to know whether an application is compliant with the relevant physical requirements in the National Regulations, and if the concurrence of the Department of Education is required;
- the Department of Education to assess whether to give concurrence to a development application.

Considering the Child Care Planning Guideline

Under clause 23 of the SEPP, the Guideline is a key consideration for development applications for centre-based child care facilities. For the purposes of implementation and interpretation, the Guideline is not intended to be, and should not be applied as a set of strict development standards.

Parts 2 and 3 of the Guideline set out the design principles and an array of design and planning matters which should be considered when preparing and determining development applications.

Part 4 of the Guideline sets out the relevant requirements of the National Regulations and provides design guidance and advice on how the requirements may be achieved. Part 4 also contains the National Quality Framework Assessment Checklist.

Relationship of Development Control Plans to the Child Care Planning Guideline

Council DCP controls relating to building height, side and rear setbacks and car parking rates will continue to apply to proposed developments.

For all other controls, the SEPP and Guideline override council DCPs where they cover the same matters. Clause 26 of the SEPP also limits additional matters that a DCP can cover. A DCP cannot include provisions which:

- conflict with or extend beyond NQF requirements;
- control operational matters, including the age make up of children attending a facility;
- limit the location of new developments relative to existing facilities.

Savings Provisions

Development applications submitted before the SEPP commenced (1 September 2017) will be assessed under the previous planning controls. The SEPP also provides that consent authorities should assess existing development applications against Part 4 of the Guideline even though they were lodged before the SEPP commenced. This will enable a consent authority to consider and assess the development application against the Guideline to ensure the proposal will meet the National Quality Framework requirements, however concurrence from the Department of Education is not required.

Further Information

A copy of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* is available at legislation.nsw.gov.au.

The *Child Care Planning Guideline* is available at: planning.nsw.gov.au/.

Department of Planning and Environment circulars are available at:

planning.nsw.gov.au/circulars

For more information about the National Quality Framework please contact the NSW Department of Education:

1800 619 113 (toll free)
eecd@det.nsw.edu.au

For further information please contact Service NSW Information Centre on 13 77 88.

Authorised by:

Carolyn McNally
Secretary

Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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