



# Planning circular

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## PLANNING SYSTEM

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Guidance for Centre-based Child Care Facilities

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<b>Circular</b>	PS 21-037
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<b>Related</b>	Replaces PS 18-005

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## Guidance for centre-based child care facilities

This circular is to advise councils, practitioners and applicants on the relationship between the *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 concurrence role of the Secretary of the NSW Department of Education in determining development applications for centre-based child care facilities.

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### Introduction

In 2017, the NSW Government introduced reforms to fast track and streamline approvals for child care services to respond to the need to increase the supply of child care facilities. The reforms improved certainty and consistency across National, State and local government requirements.

The reforms were implemented through:

- the *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* (Education SEPP)
- the Child Care Planning Guideline (the Guideline)
- a 2017 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, in particular:

- the concurrence role for the Secretary of the NSW Department of Education
- the application of the Guideline to development applications
- the relationship between development control plans (DCPs) and the Guideline.

### Improving the dual approval process

Proposals for new, or renovated, centre-based child care facilities generally need to obtain 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 Australian National Quality Framework from the NSW Department of Education.

Key physical environmental requirements from the National Quality Framework are considered upfront as part of the development application assessment process for centre-based child care facilities. This ensures 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 Education SEPP applies to all child care facilities and educational establishments in NSW.

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

The child care reforms in 2017 included:

- introducing different approval pathways for different types of child care services:
  - **exempt development** includes but is not limited to: school-based child care, home-

based child care except on bush fire prone land, mobile child care and temporary emergency relocations of child care facilities.

- **complying development** includes but is not limited to: 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 require a development application.
- introducing new definitions
- centre-based childcare mandated as permitted with consent in R2 zones
- introducing a concurrence role for the NSW Department of Education where the amount of unencumbered indoor or outdoor space required under the *Education and Care Services National Regulations (National Regulation) and Children (Education and Care Services) Supplementary Provisions Regulation 2019* 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
- confirming the permissibility of centre-based child care facilities on existing school, TAFE and university sites.

## Concurrence role of the Secretary of the NSW Department of Education

The Regulatory Authority under the National Quality Framework is responsible for issuing service approvals. The Regulatory Authority in NSW is the Secretary of the NSW Department of Education.

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

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

The NSW Department of Education will review these proposals before development consent is issued. This will provide early advice, and therefore a level of assurance 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 NSW Department of

Education does not respond within 28 days, a consent authority may determine the application without the concurrence.

The NSW Department of Education has prepared an Application for Concurrence Form to guide councils on the information and documents it requires when assessing concurrence applications. This form and further guidance is available on the NSW Department of Education's webpage.

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

The Assessment Checklist assists:

- 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 NSW Department of Education is required;
- the NSW Department of Education to assess whether to give concurrence to a development application.

The concurrence decision will influence the final form of the proposed development as determined by the consent authority - the concurrence decision may require modification or potentially refusal of the development application.

## Considering the Guideline

Under clause 23 of the Education SEPP, the Guideline must be considered 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 for consideration 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 DCPs to the 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 Education 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 National Regulations
- control operational matters, including the age make up of children attending a facility
- limit the location of new developments relative to existing facilities.

## Further Information

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

The *Child Care Planning Guideline* is available at: [planning.nsw.gov.au](http://planning.nsw.gov.au)

Department of Planning, Industry and Environment circulars are available at: [planning.nsw.gov.au/circulars](http://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)  
[ececd@det.nsw.edu.au](mailto:ececd@det.nsw.edu.au)

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

### Authorised by:

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**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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