

Conditions of Consent: Advice for Consent Authorities

April 2018

Access to high quality child care is a fundamental part of modern family life. The NSW Government has introduced changes to the planning system to encourage the delivery of more and better-quality facilities.

State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (Education SEPP) and the Child Care Planning Guideline streamline approvals for early education and care facilities and integrate certain physical requirements of the early education National Law and Regulations into the NSW planning system.

The changes make it easier for applicants to build nationally compliant early education and care facilities.

Introduction

This Fact Sheet recommends potential conditions of consent that may be used by consent authorities (usually local councils) when approving development applications for centre-based child care facilities. The aim is to ensure that planning approvals signal the need for a later service approval, and the link between the development consent and the subsequent service approval application.

Concurrence

A concurrence referral to the NSW Department of Education is required within 7 days of receiving a development application where the unencumbered indoor and outdoor space requirements from the National Quality Framework (also found in Part 4 of the Child Care Planning Guideline) has not or cannot be met. As an independent Regulatory Authority, the Department is unable to provide design advice to consent authorities or developers.

Councils can determine if concurrence is required by considering the National Quality Framework Assessment Checklist in the Child Care Planning Guideline which is completed by the applicant and attached to the development application. The Child Care Planning Guideline must be considered by a consent authority when determining a development application.

Compliance with a concurrence

A development application can be approved once concurrence from the Regulatory Authority, if required, has been received. A development application may be refused on other grounds, even if concurrence is granted. That is, concurrence of the Regulatory Authority does not automatically mean that the development application will be approved by the consent authority.

Where a development application has received concurrence, the consent authority must impose any conditions of concurrence on any consent that is granted, otherwise the consent is voidable. Sections 79B(9) and (10) of the *Environmental Planning and Assessment Act 1979* apply.

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The following provides an example for an appropriate condition of development consent:

“The child care facility must be developed in accordance with the approved plans and the concurrence from the Secretary of Education dated xx/xx/xxxx.”

The development as constructed must comply with any conditions of concurrence granted by the Secretary of the Department of Education as the Regulatory Authority.

National Construction Code

Standards for the construction of child care facilities are set out in the National Construction Code. Compliance with the Code and relevant Australian Standards is required to obtain a Construction Certificate. Councils may not impose requirements on child care facilities that extend beyond the scope of the Code.

The following provides an example for an appropriate condition of development consent:

“The child care facility must be designed and constructed in accordance with the *National Construction Code*.”

Staged development

Staged developments must provide, within the stage one development application, sufficient detail on indoor and outdoor space for a consent authority to determine if the concurrence of the Regulatory Authority is required.

Development proposals that receive concurrence at stage one may also need to be referred for concurrence at a later stage, if the indoor and outdoor space requirements are altered.

The following provides an example for an appropriate condition of development consent to achieve compliance with the National Quality Framework at each stage:

Stage 1

“A separate development application must be submitted for the design and construction of the child care facility proposed within this staged development, accompanied by documentation demonstrating compliance with the *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* and the *Child Care Planning Guideline*.”

Stage 2

“The child care facility must be developed in accordance with the approved plans and any concurrence to this approval received from the Regulatory Authority”.

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The condition ensures that adequate information is submitted during the subsequent stage to enable assessment of the child care facility.

Modifications to a development consent

Applications to modify a development consent must be referred to the Regulatory Authority if the proposed amount of unencumbered indoor and outdoor space does not comply with the National Regulations.

The following provides an example of an appropriate note on a development consent regarding the need for a new concurrence if a modification of consent is sought.

“If a development is modified to meet the requirements of a service approval, the applicant must confirm with the consent authority whether an amended or new consent is required, including the need for further consultation with the regulatory authority.”

Matters which are not appropriate as conditions of consent

The Education SEPP limits the application of certain matters in local Development Control Plans (DCPs) to development for centre-based child care facilities. Provisions in DCPs which seek to apply a requirement, standard or control in relation to the following matters should not be included as conditions of consent:

- caps on numbers of places and references to ages, age ratios, groupings, or the like, of children;
- operational or management plans or arrangements (including hours of operation);
- demonstrated need or demand for child care services;
- proximity of facility to other early education and care facilities;
- any matter that is not consistent with:
 - the design principles set out in Part 2 of the Child Care Planning Guideline;
 - the matters for consideration set out in Part 3, other than those concerning building height, side and rear setbacks or car parking rates; or
 - the regulatory requirements set out in Part 4 of that Child Care Planning Guideline.

Alerting applicants to the need to obtain a Service Approval

A condition of consent can alert the applicant to the need to obtain a service approval, prior to commencing operation.

The following provides an example for an appropriate condition of development consent:

“Following issue of the Occupation Certificate and prior to commencing the service, the applicant must obtain a Service Approval from the Regulatory Authority”.

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Where can I find out more?

- For more information on *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* and the *Child Care Planning Guideline* go to planning.nsw.gov.au/educationandchildcare
- For information on service approvals go to acecqa.gov.au or call on 1800 619 113.
- If English isn't your first language, please call 131 450. Ask for an interpreter in your language and then request to be connected to our Information Centre on 1300 305 695.
- Email information@planning.nsw.gov.au