



Reference: T20/26020

Director Infrastructure Policy and Assessment Practice
NSW Department of Planning, Industry and Environment
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Submission to the Review of the Education SEPP 2017

Dear Sir/Madam

Thank you for the opportunity to provide feedback on the Review of the Education State Environmental Planning Policy (SEPP) 2017.

The NSW Small Business Commission (Commission) is focussed on ensuring the needs of small business are front-of-mind for Government decisions, planning and policy development and that support and assistance is tailored to ensure maximum benefit(s). The Commission advocates for small businesses and provides resources, strategic advice and low cost mediation services and helps to resolve issues and assist them.

The Commission is a strong advocate for better planning controls, conditions and supporting information to reduce red tape and help small businesses start, gain approvals and operate compliantly.

The Commission supports many of the proposed amendments to the SEPP particularly those that provide additional clarity, improve usability, rectify existing inconsistencies between the Guideline, policy and legislation, and streamline processes for childcare operators in establishing, altering, or operating childcare centres.

We provide the following comments in regard to specific amendments:

Proposed Amendments to the Education SEPP and/or Child Care Planning Guideline	Commission Comments
<i>Restricting childcare centres within close proximity of each other in low density residential zones</i>	<p>Amendment is not supported in its current form.</p> <ul style="list-style-type: none">• Childcare centres are an essential service for our communities and local economies, including to facilitate small business owners and employees being able to work.• Care needs to be taken to ensure that any restrictions of this nature are not anti-competitive, and that there are no unintended policy consequences in how these provisions will operate.• The proposed amendment as it stands could reduce opportunities for small businesses to apply for and establish childcare centres or force businesses into less optimal locations.• It is noted that some councils have been seeking to prevent additional childcare centres opening in their local communities. Reasons can be political due to community agitation. Existing centres also can be opposed to competitors opening close by.

	<ul style="list-style-type: none"> In some communities there are limited places suitable for centres. For example, near transport hubs, and a 200m exclusion zone could mean there are no other alternate sites available, despite demand for more childcare places in the location.
<i>Exempt development standards for school-based child-care</i>	<p>Amendment is supported, subject to the following consideration:</p> <ul style="list-style-type: none"> Ensuring consistency in hours of operation requirements between exempt and complying development is supported. Changes in business operating hours, and the increase in flexible work arrangements require school based child care to be positioned to accommodate future changes in work arrangements as well as the demand for child care on weekends and for extended hours during the week.
<i>Canteens as complying development</i>	<p>Amendment is supported.</p> <ul style="list-style-type: none"> The amendment to include ‘canteens’ as well as cafeterias as complying development is supported.
<i>Innovation spaces/hubs within existing tertiary institutions</i>	<p>Amendment is supported.</p>
<p>Child Care Planning Guideline</p> <ul style="list-style-type: none"> <i>Requirements for centre-based child care to consider local character</i> <i>Site suitability guidance for centre-based child care facilities</i> <i>Site suitability guidance amenity impacts in low density residential area</i> 	<p>These amendments have qualified support, subject to the proposed changes resulting in a reduction in red tape, delays and costs for small business, not increasing them:</p> <ul style="list-style-type: none"> Appropriate consideration needs to be taken to ensure that ‘local character’ and ‘site suitability amenity guidance’ requirements are not used as a barrier to entry or to impose additional unnecessary red tape, hurdles, delays or costs on small business operators. In addition, any local character requirements implemented must be reasonable and appropriate, subject to community consultation, have an option for independent review, and should be already published before an application is received.

Other feedback relevant to child care planning matters and small business:

In addition to amending the SEPP to provide additional clarity and address inconsistencies, there are a number of other issues in relation to child care centre planning and approvals that would benefit from review, these include:

1. Streamlining approval processes for new childcare centres between federal and state agencies, and local government.

Applications and approval for new childcare centres involve three tiers of Government and can be long, onerous and costly. A more seamless process that provides greater certainty would greatly assist as industry sources state that disputes and delays in securing approvals from the three levels of government are costly and highly disruptive.

2. Enable all State, Federal and Local application, assessment and approval processes to be undertaken concurrently to ensure an efficient, fast and smooth assessment and approval process.
3. Fast tracking applications that meet all required planning, regulatory and safety standards for building, opening or expanding.



4. Provide operators with an estimated approval date at the start of the application process, and allowing the centres to commence advertising, hiring staff and registering children in preparation for opening, rather than requiring all necessary approvals to be in place first.
5. Leverage available technology on the ePlanning Platform to create an easy, efficient and transparent planning application and approval process for new and existing childcare centre operators.
6. Ensuring departmental staff that are assessing technical aspects of child care centre planning applications have relevant skills, qualifications and experience to undertake the technical work required, so that unnecessary delays and costs are not incurred.
7. Raising any queries in a timely manner within the existing application approval time frame.
The Commission has received feedback from operators that in some cases, relatively minor issues are being raised late in the application process, and the 'approval time clock' is being reset to zero, i.e. the number of days the Department of Education has to consider an application. This has negative impacts on the financial and operational costs of a small business.

The time clock should be stopped to provide a business with sufficient time to respond to any material issues raised, however the clock should not be reset to zero each time a question is asked, nor multiple times in respect to the same application.

8. More guidance, educational resources and information on relevant decisions and regulatory outcomes to ensure consistent interpretation of the SEPP and lift capability. While there is now one SEPP, the child care sector has indicated that there are inconsistent interpretations between authorities and agencies and these cause additional delays and costs for small business operators. In one example, a child care centre was required to make multiple physical changes to the built environment of their toilets. Local council staff, Department of Planning, Industry and Environment and the Department of Education staff gave conflicting advice regarding the required amount of visibility into the area by both glass windows and walls that resulted in a number of costly building alterations.

In addition, small business operators have provided feedback that there are often complications where there are a multiple different interpretations of some unclear legislative and regulatory requirements, and in some circumstances, difficulties in obtaining clarity.

Measures to provide further clarity and a better customer experience could include:

- i. Web-based Frequently Asked Questions (FAQs) for common enquiries regarding legislative, policy, regulatory or safety requirements, and a process to add new information in response to new queries.
- ii. Greater use of deidentified or hypothetical case studies that provide guidance on addressing legislative, policy, regulatory or safety standards issues.
- iii. Additional fact sheets, guidelines and web-based resources on key topic areas to provide consistent information across NSW.



**Small
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We appreciate the opportunity extended to provide comments on the SEPP. Should further information be required from the Commission please contact Mr Tyler Wakefield, Senior Advisor on 0426 523 493 or email tyler.wakefield@smallbusiness.nsw.gov.au.

Yours sincerely

A handwritten signature in blue ink that reads 'Chris Lamont'.

Chris Lamont
Commissioner
NSW Small Business Commission
22 December 2020