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Director, Industry and Infrastructure Policy
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The Australian Sustainable Business Group (ASBG) is pleased to comment on the Department of Planning and Environment's *State Environment Planning Policy (Educational Establishments and Child Care Facilities)* (SEPP).

The Australian Sustainable Business Group (ASBG) is a leading environment and energy business representative body that specializes in providing the latest information, including changes to environmental legislation, regulations and policy that may impact industry, business and other organisations. We operate in NSW and Queensland and have over 120 members comprising of Australia's largest manufacturing companies. Members were involved in the development of this submission and ASBG thanks them for their contribution.

The Department of Planning's Draft State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 primary purpose of this SEPP is to *introduce new standard definitions and provisions that permit centre-based child care in more land use zones.* This also includes General Industrial Zones IN1 and Light Industrial IN2. The goal is to provide cost-effective Child Care Facilities (CCF) near employment lands. In its self this has merit. However, mixing CCFs within industrial zones is likely to result in land use conflict, based on current environmental guidelines, polices and legislation.

ASBG does see benefit in locating CCFs close to employment areas. However, industrial health and environmental standards are set well below (less stringent) that required for CCFs. While it is possible to isolate a CCF with appropriate barriers, filtered air etc, such improvements are not considered by the planning when land use conflict arises from new industrial development impacts on the CCF.

Current Land Use Conflict

Industrial sites across NSW are often affected by land use conflict, some of which involve CCFs. Many environmental standards (see examples below) cite or use CCF and schools as the most sensitive of land uses. From a public perception perspective CCFs would have to rank as the highest sensitive land use. However, this has not stopped many Councils from siting CCFs in industrial zones. Examples include:

- A CCF is located next door to a major manufacturing facility in Western Sydney in an IN1 zone. This industrial site uses significant quantities of Dangerous Goods, even class 2.3 toxic gases are stored. This places considerably increased risk management requirements on the industrial site and concern for the CCF should a leak occur.
- A CCF had to be moved due to remediation of contaminated land and major infrastructure development taking place next door. Movement was only possible as the CCF owner was also the developer. If this was not the case the CCF would not be required to move. Instead far more stringent health and environmental levels would have been required, to cater for the CCF location, which would have either prevented the remediation proceeding or significantly increasing costs, imposing health risks for the CCF.

ASBG members report some Local Environment Plans (LEP) are so pro CCFs they can be give exempt consent or are easily whisked through Council planning processes with little thought as to the land use conflict that will arise in the future. In this last point this SEPP should play an important role in ensuring that CCFs are properly assessed at the planning stage. LEPs should not be used to by-pass a minimum planning process, especially where there is likelihood for land use conflict. There is a good opportunity for the SEPP to play a better gate-keeping role and prevent likely land use conflict early in the planning process.

Recommendation 1:

> ***The draft SEPP to overrule current Local Environment Plans that permit Child Care Facilities without the required planning assessment, especially when being considered for location in or near industrial zones.***

Impact on Future Land Use

Under the SEPP's s22 - *Centre-based child care in Zone IN1 or IN2* does require consideration where a proposed CCF development:

- Is compatible with land uses, including hazardous land use
- Has the potential to restrict the operations of existing industrial land uses
- Location poses a health or safety risk to occupants or visitors to the CCF.

This approach is a good start, but does not consider future impacts on the use of IN1 and IN2 land once a CCF has been established. While location of CCFs in an industrial area has some benefits, ASBG considers that CCFs should not impede future industrial development that will occur over time in that industrial zone. Industrial land use will change hands or be leased to new occupants triggering planning law. Such change in land use usually requires development consent or may trigger the designated development process. As a consequence, environmental guidelines, policies and legislation conditions will be required to be met as a minimum. A CCF located nearby, even one kilometre away, can result in far tighter operating, construction and remediation conditions under the planning process. Noise, dust, odour, air emissions and other environmental factors will take on far tighter criteria, which may not be able to be practically met. For designated developments the public are also invited to comment. Opponents to such future industrial development can (already have successfully) use a CCF located inside the industrial zone to block its planning approval.

For example:

> *A CCF located next door to a vacant IN3 site in central Sydney was successfully used by opponents to a major recycling centre development. Fear of disturbances on capped contaminants would impact on the children at the CCF resulted in not only preventing the recycling centre, but also other future industrial developments on that site. Due to the current proximity of the CCF that site will face future development opposition for perhaps any development. Remediation to non-industrial use standards of the site would also be likely blocked due to the potential impact on the CCF. In effect that site has been virtually sterilised for future industrial develop due to a CCF located in a IN1 zone.*

Even the Development Approval process meets far tighter conditions if a CCF is located within an industrial zone or even nearby. A few examples of environmental instruments used for planning and operating purposes that would cause issues include:

- EPA's Industrial Noise Policy – Under the Amenity Criteria the acceptable limit is 35 dB[1] internal and 55 dB external for a CCF. In contrast the industrial limit is 70 dB or 3,162 times more. Given that the typical background noise for an industrial area is around 70 dB, then a new CCF would need to be placed fully indoors with double

[1] dB measured in $L_{aeq\ 15\ minutes}$

glazing and other noise controls to meet its 35dB internal noise criteria. Though this detracts from providing cost-effective CCFs.

However, consider a new industrial zone only partly developed. Its background noise is low around 50 dB as it is currently quite empty. Consequently a CCF proposal at that time may pass with an outdoor area. Once established the CCF would set the noise standard for the rest of the industrial zone potentially limiting the amenity noise to around 55 dB. How would this land use conflict be resolved without either significant cost or prevention of further use of the industrial land for industry? Even commercial use is likely to be too costly to develop in this scenario.

- Assessment of Contaminated Sites NEPM – under the Health Risk Assessment processes (see Schedules) 'child occupancy' represents a very sensitive land use and need for much lower soil concentrations. While soil limits are considered at the planning stage, future impacts of neigbouring land remediation are not. Remediation of nearby industrial land can be required for a number of reasons such as:
    - Redeveloped to a more sensitive land use requiring land remediation
    - Part of an agreement following a change in property ownership
    - Prevention of creeping plume crossing into a neighbours land
    - Triggering a legislated remediation order

  Health risk assessments for land remediation must take into consideration the health impacts and emissions during the earth works remediation phase. Close proximity of a CCF complicates this process, increasing costs or even preventing remediation occurring. Excavation works on contaminated land would send alarm bells to remediation risk experts and users of CCFs as children could be exposed to a range of hazardous substances, dusts and odours, which are often emitted from a remediation works. For remediation works near sensitive residential areas use of large tents covering the remediation activity can be employed, but at high cost and subsequent occupational health risks to workers inside such enclosed spaces.

  Consequently, CCF should not be located near potentially contaminated land, likely found in industrial zones, so to prevent a future remediation project causing major health issues, if not prevent remediation from occurring.

- Approved Methods for Modelling of Air Pollutants (AP) — Particulate matter, odour and other air pollutants are limits are based on the levels received at the closest *sensitive receptor*. A CCF is considered a *sensitive receptor*[2]. Unlike motor vehicles and wood heaters, where their pollutants are only considered on air shed basis, industrial air emissions for planning purposes under the AP must meet stringent ground level air contaminant concentrations including the Ambient Air Quality NEPM 2015 criteria at the nearest *sensitive receptor*. Mathematical models are used to estimate the ground level concentrations of emissions from proposed industrial sources at this *sensitive receptor*. Hence, the further away the proposed source is from such receptor the lower the estimated ground level concentrations and better health outcomes will be. Industrial develops must meet this criteria or they cannot develop. Consequently, a CCF located within an industrial zone would generally place the *sensitive receptor* much closer than other sensitive receptors are not permitted in industrial zones such as residents, schools and hospitals.

  The AP also requires consideration of likely future sensitive receptors. Consideration of likely future development is a requirement for industrial development sets a precedent for consideration of other future developments. Consequently it would appear reasonable for *sensitive receptors* to also consider likely future industrial development if to be located within an industrial zone.

  The reason for putting industry in industrial zones is to keep them away from sensitive receptors such as CCF for good reason. Air emissions in industrial zones are expected to be not compatible with sensitive receptors due to health impact reasons. Why potentially expose young children to industrial emissions?

[2] See s5.2 Terrain and Sensitive Receptors in Approved Methods.

- Complaints – Dust, odour and noise are the three main complaint based issues affecting industry. For sites with Environment Protection Licences, confirmed complaints against the site usually result in action from the Environment Protection Authority (EPA) such as requiring a Pollution Reduction Program (PRP). For example, a PRP can require the site commission a consultant to undertake a detailed review of the source of the complaint and recommend corrective actions which are usually required to be implemented. Being a sensitive receptor a CCF is likely to more affected than other industrial sites from minor emissions. As a consequence, complaints from CCFs are more likely and frequent. The EPA would be more compelled to implement tighter controls as a result of the sensitive nature of the CCF nearby in the same industrial area.

A CCF located within an industrial zone will make it far more difficult to develop existing industrial land and develop new industrial land within that zone. For Designated Developments a nearby CCF within an industrial zone can result in refusal to develop industrial land to the point of preventing its intended land use for any future activity. Locating CCFs inside industrial zones defeats the purpose of zoning: to keep incompatible developments apart.

An Engineered Solution?

It is possible to engineer a CCF to be isolated from noise, dust, odour air pollution and other environmental impacts from the outside. Such modifications are in part reflected in the Draft Child Care Planning Guideline. Practically a CCF could be designed to operate within an industrial zone. However, environmental and planning controls and conditions currently do not permit the consideration of internal environmental barriers on any development. Currently, a fully enclosed atmosphere controlled CCF would be considered in the same manner as a CCF with an outdoors play area. Hence, environmental guidelines, policies, criteria and legislation would apply to any industrial development proposal wishing to locate in the same industrial area where the CCF would be seen as the sensitive receptor. Consequently, an indoor only CCF within an IN1 zone, and perhaps an IN2 zone, with appropriate engineered environmental controls could only be compatible with its industrial neighbours, especially future ones if the environmental criteria was suspended and replaced with industrial criteria. The problem with this approach is that it is unlikely to be accepted and complex to legislate. It is also costly for the CCF to construct and operation.

Also consider the scenario if a CCF's air purifying system was broken and a pollution incident or even a fire were to occur the health impacts would be concerning. Again why plan for a potential health risk when it can be avoided.

In conclusion locating CCFs in industrial zones under the current set of environmental planning and operational controls will lead to land use conflict, especially future industrial development. It will place CCFs and its children occupants in higher health risk so on balance the better approach is to prevent CCFs in IN1 and especially IN3 zones

Recommendation 2:

That Child Care Facilities should not be permitted in IN1 or IN3 zones.

Recommendation 3:

That s22(2) of the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 also include:

(d) weather the proposed development will impact on future industrial developments compatible with the zoning

(e) application of environmental requirements applied to a CCF within a Zone IN2 to be equivalent to industrial requirements for that zone, if installed engineering controls on a CCF provide a satisfactory indoor environment and the CCF is restricted to indoor activities only.

Should further details and explanation of the above points be required please contact ASBG.

Yours Sincerely

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