

Centre-based child care facilities and the development assessment process

This fact sheet explains the development assessment process for centre-based child care facilities, including the steps to follow in preparing a development application for submission to a consent authority, and the steps that the consent authority must follow when assessing applications.

A centre-based child care facility is a building or place used to provide one or more of the following services, regulated under the National Quality Framework or the State Supplementary Provisions:

- long day care
- preschool, which may be standalone or in a school
- out-of-school hours care, including vacation care
- family day care provided at an approved venue other than a residence
- occasional care.

The full definition of ‘centre-based child care facility’ can be found in section 3.3 of *State Environmental Planning Policy (Transport and Infrastructure) 2021 (SEPP Transport and Infrastructure)*- Chapter 3 Educational establishments and child care facilities or in the Standard Instrument Local Environmental Plan dictionary.

What planning approval do I need for a centre-based child care facility?

A development application is required for centre-based child care facilities that provide any of the above services. The only exception is for temporary emergency relocation of early education and child care facilities as exempt development (section 3.29) and out-of-school hours care provided on an existing TAFE or university site within an existing premise or facility, which may be approved as complying development (section 3.32 and 3.33).

What should I submit?

Section 3.23 of SEPP Transport and Infrastructure, Chapter 3 requires the consent authority to consider the Child Care Planning Guideline before determining a development application for a centre-based child care facility. This applies to development applications for both new centre-based child care facilities and for alterations and additions to existing centre-based child care facilities.

The application of the Guideline to a proposed alteration or addition will depend on several factors such as the scope of proposed works and impact on the existing facility (e.g. changes in attendance capacity and facilities).

Alongside a development application, applicants should submit a completed National Quality Framework Assessment Checklist (see Part 4 of the Child Care Planning Guideline) showing how the application complies with, or varies from, the physical environmental requirements of the National Quality Framework. This will indicate to the consent authority whether the application will require concurrence.

Will my development application need concurrence from the Regulatory Authority?

Under SEPP Transport and Infrastructure, development applications for new centre-based facilities that do not comply with the unencumbered indoor and outdoor space requirements will require the concurrence of the Secretary of the NSW Department of Education as the Regulatory Authority.

Part 4 of the Child Care Planning Guideline sets out the unencumbered indoor and outdoor space requirements under Regulations 107 and 108 of *the Education and Care Services National Regulations* (National Regulations).

What will the Regulatory Authority consider?

In its determination whether to grant concurrence under section 3.22 of SEPP Transport and Infrastructure, Chapter 3, the Regulatory Authority must consider any requirements applicable to the *Children (Education and Care Services) National Law* (National Law) and National Regulations, and whether:

- the development application could be approved as is
- the development application should be modified to meet the unencumbered space requirements, or
- the development application should be refused.

The Regulatory Authority may also notify the consent authority that the premises would be eligible for a future waiver of the physical space requirements.

It is important to note that the Regulatory Authority's concurrence:

- is not the issue of a waiver or the assurance that a waiver under the National Law and National Regulation will be issued
- is not a service approval under the National Law and National Regulations or the assurance that a service approval will be granted.

When is the proposal integrated development?

Integrated development is development on certain land that requires development consent and one or more approvals under other Acts. There are several circumstances where a centre-based child care facility would be integrated development such as:

- if a State heritage item is affected by the proposed development
- the proposed development is located in a mine subsidence district, or
- the proposed development is located on bush fire prone land.

In these circumstances, the development application will be referred to the relevant approval body for review.

The general terms of any approval proposed by the approval body must be included in the development consent granted by the consent authority (usually the council). If the approval body advises it will not grant an approval for the development, the council must refuse the application.

Do I need a pre-development application meeting?

Early in the design phase, a pre-development application meeting may be held with the local council and building designer to focus on achieving the best siting, built form and design outcomes. Working with council should help avoid unnecessary delays with the application.

The pre-development application meeting provides opportunities for feedback on specific concept plans for the site. At the meeting, relevant planning policies and site constraints can be discussed.

Proponents should contact the relevant council for advice on requirements for pre-development application meetings.

How should I prepare my development application?

Regulation 25 of the National Regulations requires that plans for a service approval application must be prepared by a building practitioner. To align with this requirement, development applications should be designed and prepared by an architect registered in NSW under the *Architects Act 2003* or a building designer accredited by the Building Designers Association. Development application plans may be used for the service approval application.

The development application should demonstrate that the proposal addresses:

- the provisions of SEPP Transport and Infrastructure
- the design quality principles in Part 2 of the Child Care Planning Guideline
- the matters for consideration cited in Part 3 of the Child Care Planning Guideline
- the regulatory requirements in Part 4 of the Child Care Planning Guideline and submit a completed National Quality Framework Assessment Checklist
- any other relevant requirements in a development control plan, local or state environmental planning instrument.

When considering the controls in a local development control plan, applicants and consent authorities should be aware that section 3.27 of SEPP Transport and Infrastructure, Chapter 3

provides that certain requirements, standards or controls do not apply to proposals for centre-based child care facilities including:

- operational or management plans
- demonstrated need or demand for child care facilities
- proximity of the proposal to other early education and care facilities
- any other matter contained in the Child Care Planning Guideline, other than building height, side and rear setbacks and car parking rates

Note: For child care facilities in R2 Low Density Residential zones a maximum floor space ratio of 0.5:1 applies, unless the relevant council's local environmental plan or development control plan specify an alternative floor space ratio.

The plans, sections and elevations may also be accompanied by three dimensional views of the development within its context.

Submission requirements for development applications are provided in the *Environmental Planning and Assessment Regulation 2021*.

A range of specialist studies may be required by the council to support a development application such as a traffic study, an acoustic report or a heritage study. Proponents should contact the relevant council for advice on specific requests.

What happens after I lodge my development application?

The development application process generally includes the following steps:

- Preliminary assessment of the application: ensures the information provided complies with submission requirements. Additional information may be requested.
- Referral (if required):
 - *Concurrence*: if the development application for a centre-based child care facility does not comply with the unencumbered indoor and outdoor space requirements of Regulations 107 and 108 of the National Regulations, the local council will refer the application to the NSW Department of Education for concurrence. The NSW Department of Education has an Application for Concurrence Form to be completed by the council. A fee for the concurrence is payable. A link to the Form can be found on the NSW Department of Education's website.
 - *Integrated development*: if the application is Integrated Development under section 4.46 of the *Environmental Planning and Assessment Act 1979*, the council will refer the development application to the relevant approval body for review and issue of general terms of approval. Proponents should contact the relevant council for advice on whether a fee is payable for Integrated Development.
- Notification: An application is usually notified for a minimum of 14 days, during which time the community may make submissions about the proposed development.
- Assessment and Determination: Council will assess the application considering all plans and documentation, any submissions and responses from referral agencies. The council will determine the application by approving it, usually with conditions, or refusing it.

What happens after consent is granted?

Once development consent is granted, a construction certificate must be obtained before works can commence. Prior to the commencement of work, applicants must appoint a Principal Certifying Authority (PCA). This can be the local council or a private certifier.

Once the building work is completed, the building cannot be occupied until an occupation certificate has been issued by the PCA. Finally, a service approval is required to operate a service, for which approved providers must lodge an application with the Regulatory Authority (the NSW Department of Education).

Where can I find out more?

- For information on the National Quality Framework go to <https://www.acecqa.gov.au/national-quality-framework>
- For information on NSW service approvals go to <https://education.nsw.gov.au/early-childhood-education/operating-an-early-childhood-education-service/setting-up-a-new-service>
- For information on SEPP Transport and Infrastructure and the Child Care Planning Guideline go to <https://www.planning.nsw.gov.au/Policy-and-Legislation/Education>