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The new State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017 (ESEPP) commenced on 1 September 2017. Contrary to normal Parliamentary practice, quite limited transitional provisions were included in the ESEPP. Complying Development Certificate (CDC) applications, which were lodged pursuant to the ISEPP and which have not yet been determined, have no effect. Any CDC applications must be recommenced under the ESEPP.

Some important changes to the requirements for complying development have been included in the ESEPP. The most important of these are:

- Demolition of existing buildings within a heritage conservation area can now be complying development. This means that projects can take place within heritage conservation areas under a CDC. Development on an allotment on which there is a heritage item is still not able to be complying development.
- At grade parking areas are no longer complying development.
- The setback requirements have been changed considerably. Side and rear setbacks of 5m from land

zoned residential and 1m from land zoned industrial or commercial now apply. Land zoned for infrastructure is unaffected by this requirement. Internal lot boundaries within schools zoned SP2 will therefore not require setbacks. It is possible that setback requirements will apply to land used for a school but zoned residential, commercial or industrial.

- A front setback requirement now applies. The front setback must be consistent with all buildings within 70m of the relevant building. If there are no such buildings, then a minimum 5m front setback applies.
- There seemed to be some scope for complying development in bushfire protection areas in the draft ESEPP. That has been removed from the final Policy.

The provisions for obtaining development without consent remain in place. This does not mean that no approval is needed, but simply that an environmental assessment equivalent to the DA process must be undergone (under Part 5 of the Environmental Planning and Assessment Act 1979). The main difference with a DA is that, after undergoing environmental assessment, the final determination is made by the school itself, rather

than by Council. However, this is only available to developments of one storey. A number of other restrictions apply and EPM Planning anticipates that the usefulness of development without consent may be rather limited, but still worth pursuing wherever possible.

Many of the other provisions contained in the draft ESEPP have been preserved in the final Policy. The single most significant change remains the fact that complying development can no longer take place on land on which there is a heritage item. Unfortunately, this will drive an increase in DAs, which seems contrary to the whole point of the ESEPP.

Please contact the undersigned if you would like to discuss the implications of the new ESEPP for your developments.

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