

# CLIENT

## COMMUNIQUÉ

**R**ecent legislative changes in New South Wales may impact on EPM Planning's school clients. Amendments have been made to the State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017 ('ESEPP').

The original ESEPP, which commenced on 1 September 2017, contained very limited transitional provisions. Complying Development Certificate (CDC) applications, which were lodged pursuant to the State Environmental Planning Policy (Infrastructure) 2007 ('ISEPP') and which had not yet been determined by 1 September 2017, had no effect. Those CDC applications had to be recommenced under the ESEPP.

This had a major impact on some projects, where complying development was possible under the ISEPP, but not under the ESEPP. Development within heritage items is one particularly important example.

The NSW Government has brought in an amendment to the ESEPP which allows any CDC applications made before 1 September 2017, but not determined by 15 December 2017, to be assessed under the ISEPP. This amendment may have the effect of allowing complying development within a heritage item where it was previously not possible.

Some other amendments to the ESEPP include:

- Demolition of buildings (other than heritage items) can now be carried out as development without consent;

- In order to be exempt development, portable classrooms must be temporary and removed within 24 months of installation.

### *Environmental Planning and Assessment Act 1979*

The Environmental Planning and Assessment Act 1979 is currently undergoing something of an overhaul. The Environmental Planning and Assessment Amendment Bill 2017 has been assented to by Parliament. The Bill is expected to be promulgated some time in this quarter of 2018, together with amendments to the Environmental Planning and Assessment Regulation 2000 ('the Regulations').

One effect of these amendments has been to reduce the commercial certainty offered by CDCs. CDCs offer an alternative, extremely valuable planning pathway to the DA process, and we have been able to achieve some very significant reductions in time and expense for our clients in identifying ways for some major developments to be 'complying'.

The abovementioned Bill contains a new Section 85A(2), which states that some types of CDCs can only be issued by Council, rather than private certifiers. The details of which CDCs will be so restricted will be contained in the currently pending Regulations. Given that it is not possible to appeal a refusal of a CDC in the same way as a DA refusal, this has considerable potential to shut down the benefit to the school sector of the 'complying development' approval pathway. For example, if the Regulations specify that any developments over a certain capital

investment value, such as \$5 million, cannot be complying development, that will mean that such developments will need to undergo the DA or some other process. That in turn will have a major, negative impact on the ability of schools to carry out critical developments.

EPM Planning believes this is a matter which needs to be urgently addressed with the Department of Planning, while the legislation is still being formulated. We are therefore preparing a submission to the Department.

In the meantime, we strongly advise schools to lodge CDC applications for any projects which may constitute 'complying development' as quickly as possible, in order to avoid future restrictions on the issue of CDCs.

Please contact us if you need advice about whether your potential projects are 'complying development', or if you have any other questions about the the quickest and cheapest planning pathway available for your projects.

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