

# JOHNSON WINTER & SLATTERY

**Partner:** Samantha Daly +61 2 8274 9524  
**Email:** samantha.daly@jws.com.au  
**Our Ref:**  
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2 November 2020

The Honourable Rob Stokes MP  
GPO Box 5341  
SYDNEY NSW 2000

Dear Mr Stokes,

We refer to the *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* (NSW) (**ESEPP**) which applies to educational establishments (including schools, universities and TAFE establishments) and early education and care facilities across the State.

We, in conjunction with EPM Projects, have prepared for your consideration the **attached** memorandum regarding the monetary threshold for complying development for schools under the ESEPP.

We look forward to hearing from you.

Yours sincerely

A handwritten signature in blue ink that reads "Johnson Winter & Slattery". The signature is written in a cursive, flowing style.

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**Memorandum**

**Date:** 2 November 2020  
**To:** The Honourable Robert Stokes MP, Minister for Planning and Public Spaces  
**From:** Samantha Daly, Johnson Winter & Slattery, and Andrew Graham, EPM Projects  
**Subject:** State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 - threshold for complying development for schools  
**Doc ID:** 78391056.1

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We refer to the *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (NSW) (ESEPP)* which applies to educational establishments (including schools, universities and TAFE establishments) and early education and care facilities across the State.

In particular, the ESEPP contains a number of provisions enabling educational establishments to carry out certain categories of development as complying development provided a complying development certificate has been issued by a council or a certifier for the development. In the context of schools, clause 39 of the ESEPP provides for a wide range of development that may be carried out as complying development within the boundaries of an existing school, including (but not limited to) a library, an indoor sporting facility, a teaching facility and a hall. These provisions are utilised frequently by schools and provide a mechanism by which schools can expand and improve their existing facilities in order to meet student and staff needs.

Johnson Winter & Slattery (**JWS**) and EPM Projects provide legal services and project management services respectively to a number of non-government schools in NSW. A number of the schools that we assist have, or are proposing to, carry out essential development within existing schools as complying development in reliance on clause 39 of the ESEPP.

Given the work that we do for schools, we have a particular interest in seeing that the provisions of the ESEPP are achieving their intended purpose and enabling schools to provide new and improved facilities in an efficient and cost-effective manner. In carrying out a number of projects for schools, we have identified a material limitation with respect to the availability of the complying development pathway for a number of school developments which we would like to bring to your attention.

Specifically, clause 19 of the ESEPP contains a number of general requirements for complying development (applying to all types of educational establishments). Clause 19(4) provides that if development falls within clause 15(2) of Schedule 1 to *State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)*, and is therefore declared as State significant development (**SSD**), it is not complying development under the ESEPP. Under clause 15(2) of the ESEPP, development that has a capital investment value of more than \$20 million for the purpose of alterations or additions to an existing school is declared to be SSD.

As a result of clause 19(4) of the ESEPP, clause 9 of the SRD SEPP does not apply to a school development that exceeds the \$20M threshold contained in clause 15(2) of Sch 1 of the SRD SEPP. Clause 9 of the SRD SEPP provides:

*9 Exclusion of certain complying development*

*If, but for this clause—*

*(a) particular development would be State significant development, and*

*(b) a provision of an environmental planning instrument (whether made before or after this Policy takes effect) provides that the particular development is complying development, and*

*(c) the particular development is not carried out as part of other development that is State significant development,*

*the particular development is not State significant development.*

In our view, the non-applicability of clause 9 of the SRD SEPP to school development that would otherwise be complying development under the ESEPP is unwarranted and in many cases, is preventing the efficient and cost-effective delivery of essential school developments. Relevantly, we note that the limitation contained in clause 19(4) of the ESEPP was not included in the predecessor to the ESEPP, being the *State Environmental Planning Policy (Infrastructure) 2007* (NSW) (**ISEPP**). Under the ISEPP, we are aware of numerous developments that were carried out within schools as complying development that exceeded \$20M. By way of example, recent large-scale examples carried out as complying development include the Knox Grammar Performing Arts Centre and Barker's Rosewood Sports Centre. These projects each cost in the vicinity of \$50M.

In our opinion, projects such as the Knox Grammar Performing Arts Centre and Barker's Rosewood Sports Centre demonstrate that larger school developments can be undertaken as complying development with acceptable environmental impacts, even though they are not subject to the development consent process (local or state). The ability to carry out these developments as complying development enabled each of the schools to deliver the projects much faster than if they were required to go through the development consent process, and thereby provide valuable facilities to the students to enhance their learning opportunities.

We are of the view that there is a strong case for the current clause 19 of the ESEPP to be amended, particularly given the current need for development, jobs and economic stimulus in NSW during the COVID-19 pandemic.

Specifically we propose that clause 19(4) of the ESEPP be repealed so that clause 9 of the SRD SEPP applies to development within schools that is complying development under the ESEPP. The effect of this would be that if a particular development falls within a category of complying development under clause 39 of the ESEPP, such as a library or a pool, it will not be prohibited from being assessed as complying development simply because it is over \$20M.

We also note that this amendment would ensure that schools are treated equally to other educational establishments (ie universities and TAFE establishments) who are currently not subject to a similar provision in the ESEPP preventing complying development in the event that the development exceeds the relevant SSD threshold.

We would be happy to discuss this further with you, or the relevant members of the Department of Planning, Industry and the Environment, if required. We look forward to receiving your response.

Samantha Daly

Partner

Johnson Winter & Slattery

[samantha.daly@jws.com.au](mailto:samantha.daly@jws.com.au)

0405 260 945

Andrew Graham

Chief Executive Officer

EPM Projects

[agraham@epmprojects.com.au](mailto:agraham@epmprojects.com.au)

0419 732 021