

CLIENT COMMUNIQUÉ

Changes to Education and Child Care SEPP

On 20 November 2020, the NSW Department of Planning, Industry and Environment (DPIE) exhibited an Explanation of Intended Effects about proposed changes to the operation of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (ESEPP). The DPIE indicates that the objective of the proposed changes, which would be given effect by amending various Environmental Planning Instruments including ESEPP, is to 'to ensure faster delivery of [education and child care] projects'.

This Client Communiqué identifies the proposed changes that in the experience of EPM are likely to be of most relevance to independent schools and our initial view about whether these are favourable to our school clients.

The Explanation of Intended Effect is on exhibition until 17 December 2020. EPM will make a further submission to the DPIE as part of our ongoing advocacy on behalf of our clients.

New School Campus

A new campus (including a 'new recreational facility' associated with the main school campus) that is 'located a distance from an existing registered school' is to be treated as a 'new school' rather than an alteration or addition to an 'existing school'. The Explanation of Intended Effects does not however say how far away from the main school campus that the new campus needs to be located for it to be treated as a new school. This means a new campus would be State Significant Development under State Environmental Planning Policy (State and Regional Development) 2011, subject to new thresholds in the value of the development of the school, discussed later in this communiqué.

EPM Opinion ✓

Removing Trees

Clarifying that trees may also be removed as development permitted without consent under cl. 36 of ESEPP.

EPM Opinion ✓

General Corrections & Updating

Correcting cross-referencing errors in cl. 8 of ESEPP and updating the names of other government agencies referenced in ESEPP.

EPM Opinion ✓

Centre Based Child Care Facilities

Introducing a minimum separation distance of 200 metres between centre based child-care facilities within R2 Low Density Residential zones.

EPM Opinion ✗

Bush Fire Prone Land

Clarifies that development is not prevented from being Complying Development if the development is not located on the portion of an allotment that is mapped as bush fire prone land.

EPM Opinion ✓

Student Housing

'Student Housing' to be a new form of development for 'accommodation and communal facilities principally for students enrolled to study at an education establishment during teaching periods; and may incorporate some fully self-contained dwellings', to be permitted with consent within the boundaries of an existing educational establishment.

Student Housing that is ancillary to State Significant Development for an educational establishment will continue to be assessed as State Significant Development while standalone Student Housing will require the consent of the local Council no matter the value of the development.

EPM Opinion ✓

10% Student Increase Limit

Change the limit in the number of students that a school may accommodate due to development that is permitted without consent under cl. 36 of ESEPP from '10% compared with the average of each of those numbers for the 12-month period immediately before the commencement of the development' to 'equivalent to an additional classroom (30 students) or 10% of the existing student or staff numbers, whichever is the greater'. This does not however overcome a student cap imposed under a Development Consent.

EPM Opinion ✓

2-Storey Development without Consent

Increase the storey limit of development that is permitted without consent under cl. 36 of ESEPP from 1 storey to 2 storeys, except a carpark that remains at 1 storey.

This is something that EPM has regularly lobbied the DPIE and the Minister for Planning and Public Spaces about and is one of the most favourable of the proposed changes.

EPM Opinion ✓

Conditions that Constrain Development Permitted without Consent

Change 'most recent development consent' to 'the most relevant development consent' in cl. 36(3) of ESEPP. The reason given for this change is 'to ensure that all valid and relevant development conditions of consent are considered'. In the opinion of EPM, this change increases ambiguity and is unnecessary.

EPM Opinion ✗

School-Based Child Care Hours of Operation

Proposal to introduce hours of operation for Exempt Development involving school-based child care.

EPM Opinion ✗

Short-Term Portable Classrooms

Increase the period that portable classrooms can remain on site as Exempt Development from 2-years to 4-years.

EPM Opinion ✓

Permanent Classroom as Complying Development

Clarify that a 'teaching facility' under cl. 39(1)(a)(ii) of ESEPP includes a 'classroom' which can be Complying Development.

EPM Opinion ✓

External Property Boundaries

Clarify the meaning of 'property boundary' in ESEPP. The Explanation of Intended Effect is however not clear on what is proposed, although EPM understands the intention to be the boundaries of the 'existing school's' [lawful] operations and not necessarily

the boundaries of an allotment that comprises a part of the school.

EPM Opinion ✓

School Pedestrian Access Points

Requirement for a school to consult with Transport for NSW about any changes to pedestrian access points to the school.

EPM Opinion ✓

New Schools <\$20.0M not State Significant Development

Introduce a requirement for the capital investment value for a new school to be \$20.0M+ for the development to be able to be State Significant Development, while a new school with a value less than \$20.0M would require the consent of the relevant Local Council.

EPM Opinion ✗

Existing Schools <\$50.0M not State Significant Development

Increase the capital investment value for alterations and additions to existing schools from \$20.0M to \$50.0M to be State Significant Development. While this substantially broadens the scale of development that can be Complying Development under cl. 39 of ESEPP, it means that development that cannot be Complying Development and that is <\$50.0M can only be assessed by the relevant Local Council. This may not suit some schools in areas in which the Local Council performs particularly poorly or is unsupportive of the school.

EPM Opinion ✓

Recommendation

The Explanation of Intended Effects is available on the DPIE's website at <https://www.planningportal.nsw.gov.au/education-sepp>.

EPM strongly recommends that schools ask their project teams to consider carefully whether the proposed changes to the operation of the ESEPP would impact projects that your school is planning.

EPM will circulate our submission to the DPIE to our school clients.

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