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**Memorandum**

**Date:** 22 December 2021

**To:** School Principals, Business Managers and Facilities Managers

**From:** Samantha Daly, Partner and Practice Group Head (Real Estate, Environment, Planning and Construction) at Johnson Winter & Slattery

Andrew Graham, CEO and Managing Director at EPM Projects

**Subject:** Reforms to the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017

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On 17 December 2021, the NSW Government introduced long-awaited reforms to the *State Environmental Planning Policy (Educational Establishments and Child Care Facilities)* (**Education SEPP**) with the passing of the *Education SEPP Amendment 2021*. The reforms are aimed at improving the operation, efficiency and usability of the Education SEPP and supporting documents.

The reforms follow a review by the NSW Department of Planning, Industry and Environment (**DPiE**) of the Education SEPP which involved the receipt of submissions by stakeholders and interested parties. Proposed reforms were exhibited from late November to mid-December 2020. JWS and EPM projects made a submission on the proposed reforms during the submissions period which is [available here](#).

**What changes have been made to the Education SEPP?**

Among the key reforms which have been introduced are the following:

- **Raising of CIV thresholds for SSD** – Previously development for the purpose of alterations, or additions, to an existing school having a capital investment value of more than \$20 million was declared to be State significant development. The threshold has now been raised to \$50 million, which also applies to new buildings within existing schools. The \$20 million threshold remains in place for new schools, as well as new buildings for existing schools, to be developed on land not previously used for a school (eg a new campus on land outside the existing school).
  - **Development in contravention of “the most recent development consent”** – Numerous clauses of the Education SEPP relating to the carrying out of complying development and development permitted without consent in educational establishments and child care facilities provided that “*nothing in this clause authorises the carrying out of development in contravention of any existing condition of the most recent development consent (other than a complying development certificate) that applies to any part of the [facility], relating to hours of operation, noise, car parking, vehicular movement, traffic generation, loading, waste management, landscaping or student or staff numbers*”. It was unclear whether such clauses required looking at only the development consent that was most recently granted or all existing development consents for conditions relating to hours of operation, noise, car parking etc. The words “most recent development consent” have now been replaced with “development consent currently operating” to make it clear that all operative development consents must be examined.
  - **Increase in maximum height of certain development permitted without consent** – Clause 36(1) of the Education SEPP allows libraries and administration buildings, portable classrooms and permanent classrooms (to replace portable classrooms) to be constructed, operated and maintained without development consent on land within the boundaries of existing schools. Such development was previously subject to a number of controls including that any building or
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classroom not be more than 1 storey high. That 1 storey height limit has now been increased to 2 storeys. The 2 storey height limit also applies to kiosks and shops selling school-related goods to students and staff, as well as cafeterias and canteens. A 1 storey limit will still apply to carparks carried out as development without consent.

- **Increase in student numbers associated with development permitted without consent** – Development carried out within the boundaries of existing schools under the development permitted without consent pathway (in clause 36(1)(a) of the Education SEPP) was previously subject to the proviso that it could not allow for an increase in the number of students the school could accommodate that was greater than 10% (compared with the average number of students for the preceding 12-month period). An increase that is the greater of 10% or 30 students now applies so that schools with fewer numbers of students are not disadvantaged. For example, a school that can accommodate 100 students will now be permitted an additional 30 rather than 10 students. Importantly, however, any student or staff caps under a development consent applying to an existing school will still apply such that the increase will not always be possible.
- **Longer term use of portable classrooms as exempt development** – Clause 38 of the Education SEPP allows certain kinds of development to be carried out on land within the boundaries of existing schools, including development for the purpose of a short-term portable classroom. Where previously such classrooms were required to be removed within 24 months of their installation, that timeframe has been doubled to 48 months, or 4 years.
- **Centre-based child care facilities in R2 Zone** – New development controls have been introduced for centre-based child care facilities (eg out-of-school hours care, vacation care and preschool care centres) in land zoned R2 Low Density Residential. Development consent is now required for the purposes of a centre-based child care facility where the floor space ratio for the building on the site of the facility exceeds 0.5:1, except where an environmental planning instrument or development control plan sets a maximum floor space ratio for the facility.
- **Campus student accommodation** – The Education SEPP now expressly allows development for the purposes of campus student accommodation, including residential accommodation associated with a school, to be carried out with development consent on land within the boundaries of a school. In the case of existing campus student accommodation, certain forms of development can now be carried out as exempt or complying development.

### What hasn't changed?

DPIE's Explanation of Intended Effects (EIE) which was publicly exhibited in late 2020 foreshadowed a number of other reforms which did not make their way into the *Education SEPP Amendment 2021*. Among the proposed reforms supported by JWS and EPM Projects was a change to the references throughout the Education SEPP to "property boundary" to clarify that those provisions were not intended to refer to the boundaries of an allotment comprising only part of a school, but instead the external property boundary. The change was supported on the basis that internal setback requirements are a common barrier to the availability of non-DA pathways. Although the change has not been made, we consider that the intent behind the words "property boundary" has been clarified in the EIE. We will also be reviewing the submissions report (once released) to see how this issue has been addressed.

The EIE also proposed the introduction of minimum separation distances between child care centres within Low Density Residential Zones – R2. JWS and EPM Projects opposed this reform on the basis that child care centres, in particular centre-based child care centres within or adjacent to existing schools, provide significant benefits for communities and families. This reform was ultimately not passed by DPIE.

We note that a number of other proposals put forward by JWS and EPM Projects in their [joint submission](#) (see Section 2) were not picked up in the *Education SEPP Amendment 2021*; however, we consider that the majority of the reforms which have been made are a positive step forward in enabling schools to provide new and improved facilities in an efficient and cost-effective manner.

If you have any queries or concerns about how the reforms may affect your existing and planned educational developments, please contact Samantha Daly or Andrew Graham.

We will jointly host a webinar in early February 2022 and will be in touch with the details in mid-January. This will be an opportunity to unpack the reforms and answer any questions you may have.