

**EDUCATION SECTOR:  
INSIGHTS SERIES**

# **New rules for school developments**

**A fact sheet on proposed ESEPP  
changes for non-government schools.**



# Changing the rules for school developments

**Making projects ‘shovel ready’ faster is the thinking behind proposed changes to state planning regulations for the NSW education sector as it bounces back after a year of universal uncertainty.**

Non-government schools in NSW should soon be able to take advantage of more flexible and streamlined planning pathways for new developments under proposed changes to state government regulations.

The State Environmental Planning Policy (Educational Establishments and Child Care Facilities) – or the ESEPP – was originally introduced in September 2017 and, for the first time, laid out a set of specific planning regulations for the education sector that took precedence over existing planning rules.

The ESEPP was designed to make the planning and approvals process easier, faster and cheaper for educational organisations. Now, changes will extend these principles with the aim of helping non-government schools get their developments ‘shovel ready’ faster.

The NSW Government has received some 50 submissions on the proposed revisions, which were published in November 2020. The government is yet to respond, but it is likely the final policy changes will be implemented this year.

This Westpac fact sheet helps unpack the mooted changes and highlights a number of key implications.

## Next-stage planning

The new ESEPP proposals were discussed at a recent Education Breakfast event hosted by Westpac, where the bank’s National Head of Education, Michelle Johnston, said the

changes were particularly relevant in an environment where many schools are planning new developments.

“As we emerge from COVID-19, we are seeing student enrolment numbers being surprisingly resilient,” Johnston said. “With student numbers stable, and a funding environment that enables access to attractive interest rates, many schools are now taking the opportunity to commence the next phase of capital works to improve facilities for students on campus.”

**“The contrast has been quite stark in the comparison between projects that have gone through the traditional DA path, compared with the ESEPP.”**

**Alister Henskens**, State Member for Ku-ring-gai and Cabinet Secretary, NSW Government

Alister Henskens, State Member for Ku-ring-gai and Cabinet Secretary in the NSW Government, told attendees at the Westpac event it was important there was awareness of the ESEPP and how schools could benefit.

“The contrast has been quite stark in the comparison between projects that have gone through the traditional DA path, compared with the ESEPP,” said Henskens, who has many non-government schools in his electorate.▶

## ✔ Key take-outs:

- The potential changes are designed to further modernise, simplify and improve the effectiveness and usability of the ESEPP.
- Proposed amendments are yet to be ratified, but it’s likely that changes will be made this year.

“The approval pathways under the ESEPP seem more streamlined with less delays, potentially 6 to 12 months faster than a regular DA”.

### How to stay ahead of the game

Samantha Daly, a lawyer from firm Johnson Winter & Slattery who has extensive experience in the ESEPP process, emphasised the need for proactivity for educational institutions to fully benefit from recent and upcoming regulatory shifts.

Daly’s advice to schools is to examine the ESEPP and its changes and consider this route at the outset of any planning process, rather than after plans had been decided.

“You can potentially redesign your masterplan so you can avoid development applications altogether,” she said. “This requires upfront thinking, and we suggest you look at all of your constraints and approval pathways before you think about any new developments, because the ESEPP can save on time and cost.”

Daly outlined four approval pathways under the EP&A Act, and how the ESEPP – and the proposed changes – worked in each context.

The pathways are:

- Development with consent
- Development without consent
- Exempt development, and
- Complying development.

### The way ahead without consent

One of these most relevant initiatives is the ‘Development without consent’ pathway, which has only been open to the non-government sector since the ESEPP was introduced in September 2017.

In this pathway, schools self-assess and self-determine their own developments without the need to lodge development applications with councils.

**“You can potentially redesign your masterplan so you can avoid development applications altogether...We suggest you look at all of your constraints and approval pathways before you think about any new developments, because the ESEPP can save on time and cost.”**

Samantha Daly, lawyer,  
Johnson Winter & Slattery

Under the existing ESEPP provisions, these developments include one storey buildings such as libraries, permanent classrooms to replace portable facilities, kiosks, and cafeterias and one-storey car parks.

“This is something that schools are still getting familiar with because they are traditionally not used to being in that role of self-assessment and determination,” Daly said.

The proposed changes plan to widen the criteria for the type of developments that can proceed down this pathway.

Along with the other proposed changes, the new ESEPP will give non-government schools greater and more streamlined planning options.

As Andrew Graham CEO of EPM Projects, a project management consultancy, explained: “While a master plan is critical, a master plan that minimises or avoids development applications can yield significant time and cost savings.

“An informed master plan will also de-risk building projects by avoiding onerous conditions of consent through a more efficient and predictable process that is largely controlled by the school.”

“This should facilitate more investment in the sector which, in turn, will play a role in rebuilding the economy as we emerge from COVID-19,” said Westpac’s Michelle Johnston. ▶

### ✔ Key take-outs:

- Upfront thinking in the early stages of planning is key to maximising the potential benefits of the ESEPP.
- We are committed to a collaborative approach, working with schools who are keen to take advantage of the current low-cost funding environment to invest in and improve facilities for students on campus.

# Next-stage planning: 6 key changes

## 1 Complying development

**Now:** Even if a development is complying in every way and “ticks all boxes”, it still has to go through the State Significant Development (SSD) pathway if it is valued at more than \$20 million.

**Next:** The threshold for SSDs is proposed to be lifted to \$50 million for alterations and additions to a school (currently all new schools are SSD).

## 2 Portable classrooms

**Now:** Portable classrooms are exempt from planning consent if they are used for up to two years.

**Next:** The new proposals extend this to four years, after which a classroom may be removed and replaced by another new portable classroom and the development will also be exempt.

## 3 Height limits

**Now:** The current height limit for development without consent is one storey.

**Next:** Changes to the development without consent pathway, where schools self-assess their projects, will raise the height limit on projects to two storeys.

This means that if the school is planning new administration buildings, a library, cafeteria, or permanent classroom then they can self-assess developments of up to two storeys, as long as the development does not contravene existing conditions, or change traffic conditions.

This also applies to projects where a second storey is proposed on top of an existing building.

## 4 Setbacks

**Now:** Currently setback provisions apply to internal lot boundaries as well as the school perimeter.

**Next:** New proposals on school boundaries and setback provisions would no longer apply to internal lot boundaries.

Existing setback provisions would continue to apply to the school perimeter, but not to boundaries within an existing school site.

## 5 Student accommodation

**Now:** Residential accommodation associated with a school is permitted with consent within the boundaries of an existing school (but is a separate use to development for the purpose of a school).

**Next:** A DA for student accommodation only will not be SSD no matter what the capital investment value is of the development.

For example, if a school lodges a development application for student accommodation, such as a boarding house, then if it is valued at up to \$60 million it would be considered by the local council, and not as an SSD.

If, however, the boarding house proposal is part of a broader master plan, then it will still be considered as an SSD no matter the value. ▶

## 6 Increasing staff and student numbers

**Now:** The development without consent pathway allows for an increase in student or staff numbers of up to 10%.

**Next:** A proposed new provision will make the cap either 10% or 30 students, whichever is greater.

Smaller schools, in particular, are expected to benefit from the suggested changes in the cap. For example, a school of 250 students could only grow by 25 students, but under the proposed new rules may grow by 30.

### On their success, we all depend

Looking to the future, helping non-government schools to build resilience and further expand to meet the needs of a new generation of students during Australia's economic recovery and the next phase of growth is an important focus for Westpac.

“At Westpac, we are very keen to support the rebuild of Australia's economy as an enabler of funding to the education sector,” Johnston said.

“Many of the relationships with our customers span decades - some exceed 100 years. That experience and focus enables us to understand schools' banking needs and we will continue to provide innovative and tailored solutions.

**“At Westpac we are very keen to support the rebuild of Australia's economy as an enabler of funding to the education sector.”**

Michelle Johnston, National Head of Education, Westpac

## ? FIND OUT MORE

Which pathway could be right for you?

Navigating ESEPP and choosing the development pathway that's right for your school can be daunting. That's why EPM Projects have teamed up with Johnson Winter & Slattery to create [ESEPP Help](#), an online resource empowering independent schools with the know-how they need before they commence the development process.

Simply head to the [ESEPP Help site](#), answer a few simple questions about your potential development plans and you'll receive preliminary advice on the most efficient and cost-effective development pathway.

[esepp.net.au](http://esepp.net.au)

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## We're here to help

If you need more information or would like to discuss the latest proposed changes to the NSW ESEPP, your future development plans or further funding requirements, we're here to help. Speak to your Westpac Relationship Manager or visit [westpac.com.au/education](http://westpac.com.au/education).

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