



## PLANNING & DEVELOPMENT UPDATE

# Two School Projects Take a Caning in the NSW Land & Environment Court

What lessons have been learnt?



### **Lesson 1: Staged School Projects- Malek Fahd, Hoxton Park**

In March 2012 the NSW Supreme Court ruled the Malek Fahd Islamic School on at Hoxton Park must shut down in 2013 unless it obtains consent for a later (small) stage of the school project.

The Court found that Liverpool Council had failed to properly consider the environmental impacts of one this small stage of the school and that the Council did not properly advertise the application. The school has until next year to obtain consent, or the school will be closed down.

**Lesson learnt:** No matter how good a job you do, you still can be “blindsided”. Care needed with applications for new school projects where there may be threatened species.

### **Lesson 2: Failure to Prove School Project was Complying Development- Al Noori, Greenacre**

In March 2012 a Judge of the NSW Land & Environment Court found that a school project,, ‘approved’ by a certifier, as complying development under State Environmental Planning Policy (Infrastructure) 2007 (“the SEPP”), was invalid.

The problem arose because not all of the land over which the school had lodged complying development application had been lawfully used for the purpose of a school.

In any case, the judge decided that the unlawful works could be regularised by the school obtaining consent from the local council.

**Lesson learnt:** The SEPP is a ‘fast track’ way to get school projects approved, however, planning advice should be first obtained to ensure that the provisions of the SEPP are complied with.

This applies in particular to schools with multiple lots.

### Latest Amendments to SEPP Infrastructure re: School Projects

◆ The SEPP Infrastructure has been amended, allowing schools to continue to be able to lodge development applications for various types of school projects allowed under the SEPP.

◆ The SEPP allows existing schools to expand and to grow, with local council approval, both within and adjoining school sites, even if schools are prohibited on the adjoining land.

◆ There is no change to the complying development provisions of the SEPP. For this types of project, no consent is required from a local council, provided the school development satisfies various provisions of the SEPP- refer to Al Noori experience in Lesson 2 of our update.

*(Note: This update contains general advice only above. Please seek specialist advice for any specific school project under consideration)*



### FOR FURTHER INFORMATION, PLEASE CONTACT:

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We are pleased to announce that approvals have been recently obtained for the following school projects:

- Staged primary school and high school development for 800 students at North Kellyville.
- New primary school at Cecil Park.
- 41` government schools under the BER program.

Feel free to call us to discuss your next school project.