

Environment & Planning Alert

Part 3A Repeal Act commences

October 2011

Outline

On 1 October 2011, Part 3A of the *Environmental Planning & Assessment Act 1979* (**EP&A Act**) was repealed by the commencement of the following amending legislation:

- *Environmental Planning & Assessment Amendment (Part 3A Repeal) Act 2011* (**Amendment Act**);
- *Environmental Planning & Assessment Amendment (Part 3A Repeal) Regulation 2011* (**Amendment Regulation**); and
- *State Environmental Planning Policy (State and Regional Development) 2011* (**SEPP**).

The introduction of this legislation initiated key changes to the NSW planning system in relation to:

- state significant development (**SSD**);
- state significant infrastructure (**SSI**);
- the Planning Assessment Commission (**PAC**);
- Joint Regional Planning Panels (**JRPPs**); and
- transitional provisions for existing Part 3A projects.

State Significant Development

The amendments have established important changes in relation to all major private development projects in NSW. The provisions significantly reduce the scope of development which is categorised as 'state significant

developments', as some categories previously identified as major projects under Part 3A are no longer categorised as state significant development.

SSDs are only permissible by consent, and can be a certain class of development, which constitute an individual project in an applicable class, or specific sites, which may have been identified due to their development potential or strategic importance.

Some examples of identified classes and specific SSD's include:

- Classes of SSDs:
 - Extractive Industries;
 - Hospitals and Health Research Facilities;
 - Road, Rail and Related Transport Facilities;
- Specific SSDs:
 - Sydney Opera House;
 - Darling Harbour;
 - Royal Randwick Racecourse; and
 - Taronga Zoo.

Residential, commercial and retail development will not be considered state significant unless it is specifically 'called in' by the Minister or the development is on a site with identified SSD. The Minister may 'call in' or declare a specific development to be a SSD by an order, provided they have obtained public advice from the PAC. SSD's require an environmental impact statement (**EIS**) and

development consent from the Minister under a new Division 4.1 of Part 4 of the EP&A Act. The Minister will delegate the decision making power for consent approval for all projects lodged by private developers to the PAC.

State Significant Infrastructure

SSI describes developments mainly undertaken by public authorities and some private developers, which are permissible without consent by the operation of a SEPP. The broad definition of 'infrastructure' encompasses much of the State's development, although certain types of infrastructure will be declared as SSI. These include:

- General Public Authority Activities;
- Port Facilities and Wharf or Boating Facilities;
- Rail Infrastructure;
- Water Supply Systems;
- Pipelines; and
- Submarine Telecommunication Cables.

The Minister must approve a SSI and an environmental assessment must be prepared and publicly notified due to requirements of the Director-General before the SSI can commence. SSI applications will be assessment under a new Part 5.1 of the EP&A Act.

The Planning Assessment Commission

The PAC is an independent panel of experts appointed by the Government. The amendments broaden the power of the PAC due to their expanded role of determining development applications for SSDs as requested by the Minister. This expansion requires additional meetings of the PAC, which are now open to the public, and increasing the number of members to cope with the increased workload and responsibilities.

Joint Regional Planning Panels

JRPPs act as a consent authority for proposed developments and consist of members chosen by the Minister; including representatives from the local government and shires association, the development industry, the Department of Planning & Infrastructure and the Public Service Commission.

The amendments increase the JRPPs power to act as a consent authority for development that is of a class or

description as set out in Schedule 4A of the Amendment Act. The general development applications which can currently be determined by a JRRP include:

- Development that has a capital investment value of over \$20 million;
- Development of coastal subdivisions, council or crown development over the value of \$5 million; and
- Development of private infrastructure and community facilities over the value of \$5 million.

Transitional provisions for existing Part 3A projects

'Transitional Part 3A Projects', to which Part 3A continues to apply, include:

- Approved Part 3A projects, which may be modified under Part 3A;
- Projects for which environmental assessment requirements were notified or adopted before the repeal of Part 3A;
- Projects for which an environmental assessment was submitted before the repeal of Part 3A; and
- Part 3A projects declared by the Regulations to be a transitional Part 3A Project.

For many Part 3A projects, such as those which had not received environmental assessment requirements, and other projects which were only subject to a Part 3A project application, Part 3A will no longer apply. These projects may be determined under Part 4 of the EP&A Act, or may become either a SSD or SSI.

Amendment Regulation

The Amendment Regulation amends the *Environmental Planning and Assessment Regulation 2000* and includes provisions:

- To implement the new SSD and SSI assessment processes, including procedures for the lodgement and notification of development applications and assessment timeframes;
- For SSD and SSI assessment fees;
- In respect of the savings and transitional provisions for existing Part 3A projects; and
- For the standard form, content and preparation of Environmental Impact Statements.

More information

For more information about the changes to the assessment of SSD and SSI, and the repeal of Part 3A of the EP&A Act, click on the following links to view our [May, June](#) and [August](#) 2011 Alerts.

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