

## Environment & Planning Alert

### Part 3A Repeal Bill introduced

June 2011

#### Outline

On 16 June 2011, the NSW Government introduced the *Environmental Planning & Assessment Act (Part 3A Repeal) Bill 2011 (Part 3A Repeal Bill)* into Parliament to repeal Part 3A of the *Environmental Planning & Assessment Act 1979 (EP&A Act)* and replace it with an alternative system for the assessment of projects of 'genuine' State significance.

The NSW Government also proposes to amend the *Environmental Planning & Assessment Regulations 2000 EP&A Regulation*, and to introduce a new SEPP proposed to be called *State Environmental Planning Policy (State and Regional Development) 2011 (State and Regional Development SEPP)*.

The Part 3A Repeal Bill proposes to establish two separate environmental assessment pathways for two broad categories of development:

- State Significant Development (**SSD**); and
- State Significant Infrastructure (**SSI**).

#### State Significant Development

SSD is proposed to include certain classes of development or specific sites which are of 'genuine' State significance. The amendments will reduce the scope of development categorised as state significant development from those originally categorised as Part 3A projects. SSD is proposed to include the following classes of development:

- Intensive Livestock Agriculture

- Aquaculture
- Agricultural Produce Industries and Food and Beverage Processing
- Timber milling, timber processing, paper and pulp processing
- Mining
- Petroleum (oil, gas and coal seam gas)
- Extractive industries
- Geosequestration
- Metal, mineral and extractive material processing
- Chemical, manufacturing and related industries
- Other manufacturing industries
- Warehouses and distribution centres
- Cultural, recreation and tourist facilities
- Hospitals and health research facilities
- Educational establishments
- Correctional centres
- Air transport facilities
- Port facilities and wharf or boating facilities
- Road, rail and related transport facilities
- Electricity Generating Works and Heat or Co-Generation
- Water Supply Systems

- Sewerage systems
- Waste and resource management facilities
- Remediation of contaminated land.

SSD applications will be determined by the Minister (or delegated to the Planning Assessment Commission (**PAC**), Director-General or senior officers of the Department of Planning & Infrastructure for determination) under a new Division 4.1 of Part 4 of the EP&A Act. A development application for SSD is to be accompanied by an Environmental Impact Statement (**EIS**) prepared in accordance with the Regulations and the Director-General's Environmental Assessment Requirements (**DRGs**).

The EP&A Regulation is proposed to be amended to provide that landowner consents will not be required for SSD applications for mining or petroleum production projects or where the application relates to a project on land with multiple owners.

SSD applications will be notified and publicly exhibited for a minimum of 30 days. SSD applications will be assessed in accordance with s79C of the EP&A Act (which lists the matters for consideration relevant to the determination of development applications under Part 4). The Minister will have to consider the EIS and Local Environmental Plans (**LEPs**), but not Development Control Plans (**DCPs**). Existing applicant and third party appeal rights under Part 4 and judicial review under s123 will apply to SSD.

The Part 3A Repeal Bill proposes that certain approvals and authorisations ordinarily required under the:

- *Coastal Protection Act 1979*;
- *Fisheries Management Act 1994*;
- *Heritage Act 1977*;
- *National Parks and Wildlife Act 1974*;
- *Native Vegetation Act 2003*;
- *Rural Fires Act 1997*;
- *Water Management Act 2000*,

will not be required for SSD.

The Part 3A Repeal Bill proposes that certain approvals and authorisations required under the:

- *Fisheries Management Act 1994*;
- *Mine Subsistence Compensation Act 1961*;
- *Mining Act 1992*;
- *Petroleum (Onshore) Act 1991*;

- *Protection of the Environment Operations Act 1997*;
- *Roads Act 1993*; and
- *Pipelines Act 1967*,

cannot be refused if it is necessary for carrying out SSD that is authorised by a development consent and must be consistent with the consent.

## State Significant Infrastructure

SSI is development mainly undertaken by public authorities and some private developments, for which consent is not required by operation of an environmental planning instrument. SSI is proposed to include the following class of development:

- General public authority activities;
- Port facilities and wharf or boating facilities;
- Rail infrastructure;
- Water supply systems;
- Pipelines; and
- Submarine telecommunications cables.

Any SSI may also be declared to be Critical SSI if it is of a category that, in the opinion of the Minister, is essential for the State for economic, environmental or social reasons.

SSI applications will be determined by the Minister under a new Part 5.1 of the EP&A Act. The assessment process for SSI applications will be similar to the assessment process under Part 3A to be repealed. SSI applications will be notified and publicly exhibited for a minimum of 30 days.

Once a SSI application has been received by the Department, the Director-General will prepare specific environmental requirements (**DGRs**) for the proposal. The applicant must then prepare an EIS in accordance with the DGRs. State and Local environmental planning instruments will not apply to SSI. Similar provisions relating to certain approvals and authorisations required under other legislation that apply to SSD will also apply to SSI.

The new SSI process also provides for staged infrastructure applications.

If a proposed development meets the criteria for both SSD and SSI, the proposal will be determined under the SSD assessment process.

The Part 3A Repeal Bill also provides transitional arrangements for development that has already been the

subject of substantial assessment under Part 3A before its repeal.

For more information on the transitional arrangements, click [here](#) to view our May 2011 Alert.

## Future Developments

We will keep you updated on further developments regarding the introduction of the proposed State & Regional Development SEPP and the commencement of the Part 3A Repeal Act.

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