



Environmental Planning and Assessment Further Amendment (Part 3A Repeal) Regulation 2011

under the

Environmental Planning and Assessment Act 1979

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Environmental Planning and Assessment Act 1979*.

BRAD HAZZARD, MP
Minister for Planning and Infrastructure

Explanatory note

The objects of this Regulation are:

- (a) to revise the transitional arrangements that apply to existing Part 3A projects consequent on the repeal of Part 3A of the *Environmental Planning and Assessment Act 1979*, and
- (b) in particular, to clarify the on-going status of concept plans for Part 3A projects and to confirm that concept plans for transitional Part 3A projects or former Part 3A projects may be modified.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including clause 10 of Schedule 6A to the Act (which authorises the amendment of savings and transitional provisions in Schedule 6A to the Act) and section 157 (the general regulation-making power).

2011 No 606

Clause 1

Environmental Planning and Assessment Further Amendment (Part 3A Repeal) Regulation 2011

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1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Further Amendment (Part 3A Repeal) Regulation 2011*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 **Amendment of Schedule 6A to the Environmental Planning and Assessment Act 1979 No 203**

Schedule 6A Transitional arrangements—repeal of Part 3A

Omit clauses 1, 2, 3, 3A, 6 and 11. Insert instead in appropriate numerical order:

1 Definitions and application

- (1) In this Schedule:

environmental assessment requirements means:

- (a) environmental assessment requirements for approval to carry out a project, or for approval of a concept plan for a project, notified to the proponent of the project under Part 3A (as modified from time to time under that Part), or
- (b) environmental assessment requirements adopted by the Director-General as environmental assessment requirements for approval to carry out a project, or for approval of a concept plan for a project, under clause 8J of the *Environmental Planning and Assessment Regulation 2000*,

but does not include draft environmental assessment requirements.

Part 3A project or concept plan application means an application under Part 3A for approval to carry out a project (or part of a project) or for approval of a concept plan for a project.

relevant Part 3A repeal date means:

- (a) the date on which Part 3A was repealed, except as provided by paragraph (b), or
- (b) in the case of a project to which clause 17 (1) of *State Environmental Planning Policy (Major Development) 2005* applies—8 April 2011.

transitional Part 3A project—see clause 2.

- (2) Words and expressions used in this Schedule have the same meaning as they had in Part 3A immediately before its repeal.
- (3) This Schedule applies, on and from the commencement of this Schedule, with the amendments made by the *Environmental Planning and Assessment Further Amendment (Part 3A Repeal) Regulation 2011*.

2011 No 606

Environmental Planning and Assessment Further Amendment (Part 3A Repeal) Regulation 2011

Schedule 1 Amendment of Schedule 6A to the Environmental Planning and Assessment Act 1979 No 203

2 Transitional Part 3A projects

- (1) The following are, subject to this Schedule, *transitional Part 3A projects*:
 - (a) an approved project (whether approved before or after the repeal of Part 3A),
 - (b) a project that is the subject of an approved concept plan (whether approved before or after the repeal of Part 3A),
 - (c) a project for which environmental assessment requirements for approval to carry out the project, or for approval of a concept plan for the project, were last notified or adopted within 2 years before the relevant Part 3A repeal date (unless the environmental assessment is not duly submitted within 2 years after the repeal of Part 3A or such further period or periods as the Director-General may allow by notice in writing to the proponent),
 - (d) a project for which an environmental assessment (whether for approval to carry out the project or for approval of a concept plan for the project) was duly submitted before the relevant Part 3A repeal date.
- (2) Environmental assessment requirements referred to in subclause (1) (c) do not include environmental assessment requirements determined under section 75P (1) (a).
- (3) If the environmental assessment requirements referred to in subclause (1) (c) are expressed to expire at a particular time, those requirements continue and do not expire at that time.
- (4) A part of a project is a transitional Part 3A project if that part of the project meets the criteria under this clause for a transitional Part 3A project even though the whole project does not meet those criteria.
- (5) A transitional Part 3A project extends to the project as varied by changes to the Part 3A project or concept plan application, to the concept plan approval or to the project approval, whether made before or after the repeal of Part 3A.
- (6) Development is not a transitional Part 3A project if it ceased to be a project to which Part 3A applies before the repeal of Part 3A or if it ceases to be such a project after that repeal in accordance with the provisions of or continued by this Schedule.
- (7) The repeal, on the commencement of this Schedule, of provisions of the *State Environmental Planning Policy (Major Development) 2005* that declared development as projects to

which Part 3A applied (or as critical infrastructure projects) does not affect the operation of this Schedule.

- (8) A transitional Part 3A project is not State significant development or State significant infrastructure, unless it becomes State significant development or infrastructure and ceases to be a transitional Part 3A project as referred to in clauses 5 and 6.

3 Continuation of Part 3A—transitional Part 3A projects

- (1) Part 3A of this Act (as in force immediately before the repeal of that Part and as modified under this Schedule after that repeal) continues to apply to and in respect of a transitional Part 3A project.
- (2) For that purpose:
- (a) any State environmental planning policy or other instrument made under or for the purposes of Part 3A, as in force on the repeal of that Part and as amended after that repeal, continues to apply to and in respect of a transitional Part 3A project, and
 - (b) declarations, orders, directions, determinations or other decisions with respect to a transitional Part 3A project continue to have effect and may continue to be made under Part 3A (including for the purpose of the application or continued application of Part 4 or 5 or other provisions of this Act in relation to the project).
- (3) This clause is subject to the other provisions of this Schedule.

3A Projects that cease to be dealt with under Part 3A

- (1) Approval cannot be granted for the carrying out of a transitional Part 3A project if the development concerned is a transitional Part 3A project only because it is the subject of:
- (a) an approved concept plan, or
 - (b) environmental assessment requirements for approval of a concept plan, or
 - (c) an environmental assessment for approval of a concept plan.

However, approval may be granted to such a project if it is to be granted under section 75P (1) (c) when the concept plan is approved (but not if it is to be granted when the concept plan is modified).

- (2) An application under Part 3A for approval to carry out such a project cannot be lodged or dealt with.

2011 No 606

Environmental Planning and Assessment Further Amendment (Part 3A Repeal) Regulation 2011

Schedule 1 Amendment of Schedule 6A to the Environmental Planning and Assessment Act 1979 No 203

- (3) This clause does not prevent the determination of an application for approval of a concept plan.

3B Provisions applying with respect to approval of concept plans

- (1) This clause applies to development (other than an approved project) for which a concept plan has been approved under Part 3A, before or after the repeal of Part 3A, and so applies whether or not the project or any stage of the project is or was a transitional Part 3A project.
- (2) After the repeal of Part 3A, the following provisions apply (despite anything to the contrary in section 75P (2)) if approval to carry out any development to which this clause applies is subject to Part 4 or 5 of the Act:
- (a) if Part 4 applies to the carrying out of the development, the development is taken to be development that may be carried out with development consent under Part 4 (despite anything to the contrary in an environmental planning instrument),
 - (b) if Part 5 applies to the carrying out of the development, the development is taken to be development that may be carried out without development consent under Part 4 (despite anything to the contrary in an environmental planning instrument),
 - (c) any development standard that is within the terms of the approval of the concept plan has effect,
 - (d) a consent authority must not grant consent under Part 4 for the development unless it is satisfied that the development is generally consistent with the terms of the approval of the concept plan,
 - (e) a consent authority may grant consent under Part 4 for the development without complying with any requirement under any environmental planning instrument relating to a master plan,
 - (f) the provisions of any environmental planning instrument or any development control plan do not have effect to the extent to which they are inconsistent with the terms of the approval of the concept plan,
 - (g) any order or direction made under section 75P (2) when the concept plan was approved continues to have effect.

3C Modification of concept plans

- (1) Section 75W continues to apply for the purpose of the modification of a concept plan approved before or after the repeal of Part 3A, whether or not the project or any stage of the project is or was a transitional Part 3A project.
- (2) This clause applies despite anything to the contrary in this Schedule (other than provisions relating to approval for the carrying out of a project or stage of a project that is given in connection with an approval to modify a concept plan).

6 Part 3A projects that become State significant development

- (1) Specified development on specified land that was a project to which Part 3A applied immediately before its repeal may be declared to be State significant development under section 89C.
- (2) Any such development may be declared to be State significant development whether or not the development is a transitional Part 3A project. On the making of the declaration it ceases to be a transitional Part 3A project.
- (3) For the purposes of Part 4 in its application to any such development:
 - (a) any approval under Part 3A to carry out part of the development is taken to be a development consent under Part 4 for the carrying out of that part of the development, and
 - (b) any environmental assessment requirements, any statement of environmental assessment, any public exhibition, any response to submissions by a proponent or any other action under Part 3A in relation to the development are taken to be environmental assessment requirements, an environmental impact statement, public exhibition, a response to submissions by an applicant or other action taken under the corresponding provisions of Part 4, unless the Director-General directs that any such action be taken again under Part 4.

11 Lapsing of Part 3A approvals

- (1) An approval for carrying out a transitional Part 3A project lapses on the day that is 5 years after the repeal of Part 3A unless:
 - (a) the project is physically commenced (within the meaning of section 95) on or before that day on the land to which the approval relates, or

2011 No 606

Environmental Planning and Assessment Further Amendment (Part 3A Repeal) Regulation 2011

Schedule 1 Amendment of Schedule 6A to the Environmental Planning and Assessment Act 1979 No 203

- (b) the approval of the project is subject to a condition in force under section 75Y that provides for the approval to lapse on an earlier or later day.
- (2) Despite subclause (1), an approval for carrying out a transitional Part 3A project that authorises the use of any land, building or work does not lapse if that use is actually commenced before the date on which the approval would otherwise lapse.
- (3) The approval of a concept plan for a transitional Part 3A project lapses on the day that is 5 years after the repeal of Part 3A unless:
 - (a) any part of the project is physically commenced (within the meaning of section 95) on or before that day, in accordance with an approval or development consent, on the land to which the approval or consent relates, or
 - (b) the approval of the concept plan is subject to a condition in force under section 75Y that provides for the approval to lapse on an earlier or later day.