

PLANNING SYSTEM

Transitional arrangements - Part 3A repeal

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Related	PS 11-014; PS 11-019; PS 11-020; PS 11-022

Part 3A repeal – transitional arrangements

The purpose of this circular is to advise councils, state agencies, industry and the community of the transitional arrangements in place as a consequence of the repeal of Part 3A on 1 October 2011.

Introduction

Part 3A of the *Environmental Planning and Assessment Act 1979* (the Act) will be repealed on 1 October 2011.

As a result of the repeal of Part 3A, more than 160 Part 3A projects will be removed from the system. This includes 63 residential, commercial and retail developments and coastal subdivisions that were removed on 13 May 2011.

Despite this, Part 3A continues to apply to certain projects subject to the transitional provisions identified in Schedule 6A of the Act. The purpose of this circular is to explain the effect of those transitional provisions.

Transitional arrangements

Continuation of Part 3A

Generally, Part 3A continues to apply to approved projects, whether they were approved before or after 1 October 2011. This means, for example, project approvals can be modified under Part 3A.

Additionally, Part 3A continues to apply to most undetermined project and concept plan applications where Director-General's (of the Department of Planning and Infrastructure) environmental assessment requirements (DGRs) were issued before 1 October 2011 and a current major project declaration remains in force.

These undetermined applications will continue to be assessed and determined under Part 3A, as in force immediately before its repeal.

However, for undetermined residential, commercial and retail and coastal subdivision projects and concept plan applications affected by the making of State Environmental Planning Policy (Major Development) Amendment 2011 (see PS11-014), Part 3A only continues to apply where DGRs were issued before 8 April 2011 and a current major project declaration remains in force.

Concept plans

When a concept plan application is approved and the project is to be assessed and determined by the local council under Part 4, special provisions in Schedule 6A apply, including:

- a requirement for development standards in the concept plan to apply
- environmental planning instruments and development controls plans apply but only to the extent they are consistent with the concept plan.

Revocation of project declarations for Part 3A projects

The NSW Government is putting in place measures to phase out Part 3A in an orderly manner, while recognising that the assessment of some projects is well-advanced and the substantial resources invested in planning for these projects should be recognised.

There are a number of circumstances in which project declarations under the Part 3A assessment system are being revoked. These include:

- where DGRs were not issued before 1 October 2011
- where DGRs are more than two years old at 1 October 2011 and an environmental assessment (EA) has not been lodged.

However, the relevant date for the revoking of declarations for residential, commercial and retail projects and coastal subdivisions for the two scenarios mentioned above is 8 April 2011.

In addition, project declarations for all undetermined Part 3A applications remaining in the system beyond 1 October 2011 will be revoked where an EA has not been lodged by 1 October 2013, unless the Director-General determines before then that substantial progress has been made in finalising the EA.

Pathway for projects not continuing under Part 3A

Proponents for any projects not continuing under Part 3A will need to lodge fresh applications:

- with the department if the project is described in State Environmental Planning Policy (State & Regional Development) 2011 as state significant development or state significant infrastructure: see PS 11-019
- with the department if the project is described in schedule 6 of State Environmental Planning Policy (Major Development) 2005
- with the relevant local council for determination by the relevant joint regional planning panel if the project is now described as regional development in Schedule 4A of the Act.

Physical commencement required for Part 3A project approvals

A Part 3A project approval lapses if the development the subject of the approval is not physically commenced by the date specified in the approval.

Some Part 3A project approvals may not specify a date on which the approval will lapse if the development the subject of approval is not physically commenced. Those approvals will now lapse on 1 October 2016 unless the development is physically commenced before that date.

Further information

The following instruments should be referred to for details in relation to the transitional provisions applying to the repeal of Part 3A:

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

The documents can be found on the NSW Legislation website at <http://www.legislation.nsw.gov.au>.

Department of Planning and Infrastructure circulars are available from www.planning.nsw.gov.au/circulars.

For further information please contact the Department of Planning and Infrastructure's information centre on 1300 305 695.

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Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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