

<b>Circular</b>	PS 11-014
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<b>Related</b>	

# Part 3A of the EP&A Act and residential, commercial, retail and coastal subdivision development.

The purpose of this circular is to advise councils, proponents and the community of *State Environmental Planning Policy (Major Development) Amendment 2011* which removes specified classes of development from the operation of Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act), and the arrangements for projects remaining in Part 3A, pending the legislative repeal of that Part.

## Introduction

The Government has announced that it will introduce a Bill to repeal Part 3A of the EP&A Act. It is anticipated that the Bill will include a new regime for the assessment and determination of projects of genuine State significance.

Pending the introduction of that Bill *State Environmental Planning Policy (Major Development) Amendment 2011* (the SEPP) was published on 13 May 2011. The SEPP makes important amendments to *State Environmental Planning Policy (Major Development) 2005* (Major Development SEPP) in respect to the operation of Part 3A. This circular outlines the key changes.

## Residential, commercial or retail development

Group 5 of Schedule 1 to the Major Development SEPP has been repealed. The effect of the repeal will be that residential, commercial and retail projects with a capital investment value greater than \$100 million will no longer be identified as a class of development to which Part 3A of the EP&A Act applies.

Proponents wishing to lodge new development applications for residential, commercial and retail projects with a capital investment value greater than \$100 million will need to do so with the relevant local council under the relevant / applicable provisions of Part 4 of the EP&A Act.

## Coastal subdivision development

Clause 1 of Schedule 2 to the Major Development SEPP has also been repealed. The effect of the repeal will be to no longer identify coastal subdivision projects as development to which Part 3A of the EP&A Act applies.

Proponents wishing to lodge new development applications for coastal subdivision meeting the former thresholds will need to do so with the relevant local council under the relevant / applicable provisions of Part 4 of the EP&A Act.

## Transitional provisions

Transitional provisions have been included in the Major Development SEPP for certain existing project applications and concept plan applications.

All project applications and concept plan applications for residential, commercial or retail development or coastal subdivision development, for which Director General's environmental assessment requirements (DGRs) have been issued on or before 8 April 2011 will remain as Part 3A applications, with the exception of those applications where DGRs were issued more than 2 years before 8 April 2011 and the proponent had not lodged an environmental assessment with the Department by 8 April 2011.

The Department will continue to assess those applications remaining under Part 3A of the Act until the proposed Bill is passed by Parliament and takes effect.

Further transitional provisions consequential upon the proposed Bill will set out how all continuing Part 3A applications will be assessed once Part 3A is repealed.

#### **Projects awaiting declaration under Part 3A**

All projects that were seeking declaration as residential, commercial, retail or coastal subdivision Part 3A projects but were not declared as such by 8 April 2011 will not be declared as a Part 3A project.

#### **Revocation of some existing declarations**

Declarations for current projects affected by the amendment to the Major Development SEPP are revoked. Specifically:

1. Declarations for projects for which DGRs were not issued on or before 8 April 2011 are revoked.
2. Declarations for projects where there is an approved concept plan and where the only DGRs that were issued on or before 8 April 2011 were in respect of the concept plan application are revoked.

Projects where DGRs were issued more than 2 years before 8 April 2011 and where the proponent had not lodged an environmental assessment with the Department by 8 April 2011 will also be revoked by the Minister for Planning & Infrastructure.

The validity of all prior project approvals or concept plan approvals will not be affected by the revocation of a declaration.

#### **New applications for these projects will be regional development**

The regional development provisions of the Major Development SEPP continue to operate so that all new development applications for residential, commercial and retail development with a capital investment value of more than \$100 million will be assessed by local councils and determined by the relevant joint regional planning panel.

The amendment to the Major Development SEPP removes the upper thresholds for coastal subdivisions that are regional development so that the joint regional planning panels will now determine any new development applications made to local councils for development previously identified in repealed clause 1 of Schedule 2 of the Major Development SEPP.

The Department is currently examining the thresholds for development referred to the Joint Regional Planning Panels to ensure they are dealing only with genuinely regionally significant development and further advice will be provided in due course.

#### **New applications on sites with approved concept plans**

The amendment to the Major Development SEPP sets out special assessment requirements for new applications under Part 4 of the Act which relate to a site which is already the subject of an approved concept plan under Part 3A.

Specifically, councils will be required to assess development applications for these proposals consistently with the approved concept plan, notwithstanding any:

1. prohibition, and
2. non-compliance with any development standard

that would otherwise apply in any relevant environmental planning instrument.

#### **Department to assist local Councils and proponents**

The Department will establish a team to assist councils and proponents on the assessment of proposals removed from Part 3A. This assistance may be provided through the LEP gateway process where applications would require concurrent rezonings or assistance from the Department's Project Delivery Unit where multiple agency approvals are required.

#### **Other classes of Part 3A development**

The Government has announced that it will introduce a Bill to repeal Part 3A of the EP&A Act. It is anticipated that the Bill will include a new regime for the assessment and determination of projects of genuine State significance.

#### **New applications and projects awaiting declaration**

No new applications for any of the development that remains identified as Part 3A in the Major Development SEPP will be accepted and assessed during this interim period. Projects currently awaiting declaration will not be declared.

Generally, applications for the assessment of these projects will be able to be lodged once the new legislation has commenced, provided the category of development is one to which the new system of State significant development applies.

#### **Urgent assessment of some new applications under Part 4**

A new provision (clause 6C) has been included in the Major Development SEPP which enables the urgent assessment and determination of development which remains a class of development to which Part 3A applies pending the repeal of Part 3A by the forthcoming Bill.

Under the clause, proponents are able to request the Director General of the Department of Planning & Infrastructure to certify that the proponent can lodge a new development application with the relevant local council for assessment under Part 4, in lieu of an application under Part 3A. Generally such applications will be determined by the relevant joint regional planning panel.

Requests by proponents under this clause may be made at any time before the Bill repealing Part 3A takes effect. Proponents should contact the Department of Planning & Infrastructure to find out the necessary information requirements to accompany the certificate request.

### Further information

A copy of the *State Environmental Planning Policy (Major Development) Amendment 2011* is available on the NSW legislation website at <http://www.legislation.nsw.gov.au>.

Further detail can be found on the Department of Planning and Infrastructure's website, [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au), in the following Fact Sheets:

- Fact Sheet - Removing coastal subdivision and residential, commercial & retail developments from Part 3A;
- Fact Sheet - Arrangements for projects remaining under Part 3A pending its repeal; and
- Frequently asked questions – Amendments to the Major Development SEPP and Part 3A transitional arrangements.

For further information on the repeal of Part 3A please contact [3ainfo@planning.nsw.gov.au](mailto:3ainfo@planning.nsw.gov.au). Telephone enquiries can be directed through the Department's information centre on (02) 9228 6333.

Note: This and other Department of Planning & Infrastructure circulars are published on the web at <http://www.planning.nsw.gov.au/PlanningSystem/Circularsandguidelines/>

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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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