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SPECIAL SUPPLEMENT



New South Wales

State Environmental Planning Policy (Major Projects) 2005 (Amendment No 2)

under the

Environmental Planning and Assessment Act 1979

Her Excellency the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979* in accordance with the recommendation made by the Minister for Planning.

FRANK SARTOR, M.P.,
Minister for Planning

Clause 1 State Environmental Planning Policy (Major Projects) 2005 (Amendment No 2)

State Environmental Planning Policy (Major Projects) 2005 (Amendment No 2)

under the

Environmental Planning and Assessment Act 1979

1 Name of Policy

This Policy is *State Environmental Planning Policy (Major Projects) 2005 (Amendment No 2)*.

2 Aims of Policy

The aims of this Policy are:

- (a) to amend the *State Environmental Planning Policy (Major Projects) 2005* to include further provisions of a savings and transitional nature consequential on the making of this Policy and the enactment of Part 3A (Major infrastructure and other projects) of the *Environmental Planning and Assessment Act 1979*, and
- (b) to amend the *Sydney Regional Environmental Plan No 26—City West* to provide for the relevant council to be the consent authority for the purposes of Part 3 of that plan.

3 Land to which Policy applies

This Policy applies to the State.

4 Amendment of State Environmental Planning Policy (Major Projects) 2005

State Environmental Planning Policy (Major Projects) 2005 is amended as set out in Schedule 1.

5 Amendment of Sydney Regional Environmental Plan No 26—City West

Clause 14 (Consent authority) of *Sydney Regional Environmental Plan No 26—City West* is amended by omitting “Council of the City of Sydney” and by inserting instead “relevant council”.

State Environmental Planning Policy (Major Projects) 2005 (Amendment No 2)

Amendment of State Environmental Planning Policy (Major Projects) 2005 Schedule 1

Schedule 1 Amendment of State Environmental Planning Policy (Major Projects) 2005

(Clause 4)

[1] Clause 6 Identification of Part 3A projects

Omit clause 6 (2) (b). Insert instead:

- (b) the development is an activity within the meaning of Part 5 of the Act and the following provisions apply in relation to the activity:
 - (i) the determining authority for the activity has, before 1 August 2005, complied with the requirements of Divisions 2 and 3 of Part 5 of the Act in relation to the activity,
 - (ii) the activity is not an activity in respect of which the Minister's approval was required under Division 4 of Part 5 of the Act (as in force before its repeal by Schedule 1 to the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005*),
 - (iii) the activity is physically commenced before 1 August 2006, or

[2] Clause 6 (3)

Insert after clause 6 (2):

- (3) If, after the commencement of Part 3A of the Act:
 - (a) any class of development that was not a project to which that Part applies becomes such a project because of an amendment to this Policy (or because of a change in the application of a provision of this Policy), and
 - (b) a development application in respect of any particular development within that class of development was pending on the commencement of that amendment or change,

that particular development does not become such a project by the operation of subclause (1) unless the application is withdrawn or the Minister so directs.

State Environmental Planning Policy (Major Projects) 2005 (Amendment No 2)

Schedule 1 Amendment of State Environmental Planning Policy (Major Projects) 2005

[3] Clause 6B

Insert after clause 6A:

6B Continuation of and limitations on existing lawful uses

- (1) The declaration of development by this Policy to be a project to which Part 3A of the Act applies does not operate so as to require an approval under that Part to be obtained for the continuance of a use of a building, work or land for a lawful purpose for which it was being used immediately before the declaration took effect.
- (2) Nothing in subclause (1) authorises:
 - (a) any alteration or extension to or rebuilding of a building or work, or
 - (b) any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into effect of the declaration concerned, or
 - (c) without affecting paragraph (a) or (b), any enlargement or expansion or intensification of the use, or
 - (d) the continuance of the use in breach of any consent in force under the Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 80A (1) (b) of the Act, or
 - (e) the continuance of the use if it has been abandoned.
- (3) Without limiting the generality of subclause (2) (e), a use is presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months.

[4] Clause 10 Exclusion of certain exempt or complying development

Insert "exempt or" after "the particular development is" wherever occurring in clause 10 (1) (b) and (2) (b).

[5] Clause 14

Omit the clause. Insert instead:

14 Transitional provisions

- (1) If, immediately before the commencement of this Policy on 25 May 2005:
 - (a) a development application in respect of any development had been made but not finally determined, and

State Environmental Planning Policy (Major Projects) 2005 (Amendment No 2)

Amendment of State Environmental Planning Policy (Major Projects) 2005 Schedule 1

- (b) the development was not State significant development, this Policy (as in force on that commencement) does not apply to or in respect of the determination of that development application.
- (2) If, immediately before the commencement of this Policy on 25 May 2005:
 - (a) a development application in respect of any development had been made but not finally determined, and
 - (b) the development was State significant development, this Policy (as in force on that commencement) applies to and in respect of the determination of that development application.
- (3) Subclauses (1) and (2) are subject to the provisions of Part 3A of the Act and the regulations made under the Act for the purposes of that Part.
- (4) Subject to subclause (3), this Policy does not operate to make the carrying out of development for the purposes of a mine, as described in item 7 of Schedule 1 to the *Environmental Planning and Assessment Model Provisions 1980*, a project to which Part 3A of the Act applies if the carrying out of the development would be prohibited or require consent but for the authority conferred by:
 - (a) the adoption of clause 35 and that item of those Model Provisions under an environmental planning instrument applying to the land concerned, or
 - (b) a provision of an environmental planning instrument, applying to the land concerned, that has the same effect in relation to mines as clause 35 and that item of those Model Provisions.
- (5) Subclause (4) ceases to have effect:
 - (a) in relation to development carried out underground—on 1 August 2010, or
 - (b) in any other case—on 1 August 2007.
- (6) For the avoidance of any doubt, nothing in subclause (4) prevents an application to carry out development for the purposes of a mine from being made during the transitional period (as referred to in subclause (5)) for the type of development concerned.

State Environmental Planning Policy (Major Projects) 2005 (Amendment No 2)

Schedule 1 Amendment of State Environmental Planning Policy (Major Projects) 2005

[6] Schedule 1 Part 3A projects—classes of development

Omit Part 5. Insert instead:

Part 5 Residential, commercial or retail projects

13 Residential, commercial or retail projects

- (1) Development for the purpose of residential, commercial or retail projects with a capital investment value of more than \$50 million that the Minister determines are important in achieving State or regional planning objectives.
- (2) This clause does not apply to major development within the meaning of section 31 of the *City of Sydney Act 1988*.

[7] Schedule 2 Part 3A projects—specified sites

Omit clause 5. Insert instead:

5 Newcastle—Honeysuckle

Development within the area identified on Map 3 to this Schedule that:

- (a) is a principal subdivision establishing major lots or public domain areas, or
- (b) is the remediation of contaminated land, or
- (c) is the creation of new roadways, or
- (d) is the creation of new foreshore public domain for the purpose of providing public access to the foreshore in an area under redevelopment, including seawalls, jetties, wharves, pontoons, boardwalks, landscaping, stormwater management or public domain elements (such as furniture, lighting or play equipment), but excluding maintenance, additions or alterations to a developed area, or
- (e) has a capital investment value of more than \$5 million.

[8] Schedule 2, clause 12 (Australian Museum)

Insert “more than” after “value of”.



New South Wales

Environmental Planning and Assessment Amendment (Major Projects—Transitional Provisions) Regulation 2005

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*.

FRANK SARTOR, M.P.,
Minister for Planning

Explanatory note

The object of this Regulation is to make further provisions of a savings and transitional nature that are consequent on the amendments made by Schedule 1 to the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005* in relation to major projects.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including section 157 (the general regulation-making power) and Part 1 of Schedule 6 (savings and transitional regulations).

Clause 1 Environmental Planning and Assessment Amendment (Major Projects—
Transitional Provisions) Regulation 2005

Environmental Planning and Assessment Amendment (Major Projects—Transitional Provisions) Regulation 2005

under the

Environmental Planning and Assessment Act 1979

1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Major Projects—Transitional Provisions) Regulation 2005*.

2 Commencement

This Regulation is taken to have commenced on the date of assent to the *Environmental Planning and Assessment Amendment (Infrastructure and other Planning Reform) Act 2005*.

3 Amendment of Environmental Planning and Assessment Regulation 2000

The *Environmental Planning and Assessment Regulation 2000* is amended as set out in Schedule 1.

Environmental Planning and Assessment Amendment (Major Projects—
Transitional Provisions) Regulation 2005

Amendments

Schedule 1

Schedule 1 Amendments

(Clause 2)

[1] Clause 8J Transitional provisions

Omit clause 8J (2). Insert instead:

- (2) The Director-General may accept (with or without modification), as an environmental assessment for a project or concept plan:
 - (a) an environmental impact statement obtained in accordance with the requirements of the Director-General under Part 4 or under Division 4 of Part 5 of the Act with respect to any development or activity before it becomes a project to which Part 3A of the Act applies, or
 - (b) a statement of environmental effects (as referred to in clause 2 (1) (c) of Schedule 1) prepared in connection with the development concerned before it becomes a project to which Part 3A of the Act applies, or
 - (c) a written assessment arising out of the consideration, under section 111 of the Act, of the environmental impact of an activity and prepared before the activity becomes a project to which Part 3A of the Act applies.

[2] Clause 8J (3A)

Insert after clause 8J (3):

- (3A) If any such period of public exhibition of an environmental impact assessment is accepted by the Director-General, the proponent must provide the Director-General with any written submissions made during the public exhibition period in relation to the relevant development or activity.

[3] Clause 8J (4A)

Insert after clause 8J (4):

- (4A) If a development application is made after the commencement of Part 3A of the Act in respect of any development that:
 - (a) was, immediately before the repeal of section 89 of the Act, the subject of a direction under that section, and
 - (b) is not a project to which Part 3A of the Act applies,the Minister may direct that the application is to be determined (unless the development application is withdrawn by the applicant) as if the amendments made to the Act by Schedule 1 to

Environmental Planning and Assessment Amendment (Major Projects—
Transitional Provisions) Regulation 2005

Schedule 1 Amendments

the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005* had not been made.

[4] Clause 8J (6)–(8)

Insert after clause 8J (5):

- (6) Clause 89 of Part 17 to Schedule 6 to the Act extends to development applications pending on the commencement of Part 3A of the Act for development that was State significant development on the commencement of the *State Environmental Planning Policy (State Significant Development) 2005*.

- (7) If:

- (a) a development application was made before the commencement of Part 3A of the Act on the basis that the development was State significant development, and
- (b) the Minister is required to form an opinion that the development is State significant development in order to determine the application on that basis (but the Minister had not, before that commencement, formed an opinion on the matter),

the Minister may, after that commencement, form an opinion that the development was, at the time the application was made, State significant development. In that case, the application is to be determined (unless withdrawn by the applicant) as if the amendments made to the Act by Schedule 1 to the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005* had not been made.

- (8) A development consent in force immediately before the commencement of Part 3A of the Act may be modified under section 75W of the Act as if the consent were an approval under that Part, but only if:
- (a) the consent was granted with respect to development that would be a project to which Part 3A of the Act applies but for the operation of clause 6 (2) (a) of *State Environmental Planning Policy (Major Projects) 2005*, and
- (b) the Minister approves of the development consent being treated as an approval for the purposes of section 75W of the Act.

The development consent, if so modified, does not become an approval under Part 3A of the Act.



New South Wales

State Environmental Planning Policy No 71—Coastal Protection (Amendment No 4)

under the

Environmental Planning and Assessment Act 1979

Her Excellency the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979* in accordance with the recommendation made by the Minister for Planning. (9038911)

FRANK SARTOR, M.P.,
Minister for Planning

Clause 1 State Environmental Planning Policy No 71—Coastal Protection
(Amendment No 4)

State Environmental Planning Policy No 71—Coastal Protection (Amendment No 4)

under the

Environmental Planning and Assessment Act 1979

1 Name of Policy

This Policy is *State Environmental Planning Policy No 71—Coastal Protection (Amendment No 4)*.

2 Aims of Policy

The aim of this Policy is to exclude certain development from the operation of Part 3 of *State Environmental Planning Policy No 71—Coastal Protection*, being development comprising the erection of a building that is 2 or more storeys in height (other than development within 100m below mean high water mark or development on land described in Schedule 3 to that Policy).

3 Land to which Policy applies

This Policy applies to the whole of the land to which *State Environmental Planning Policy No 71—Coastal Protection* applies.

4 Amendment of State Environmental Planning Policy No 71—Coastal Protection

State Environmental Planning Policy No 71—Coastal Protection is amended as set out in Schedule 1.

State Environmental Planning Policy No 71—Coastal Protection
(Amendment No 4)

Amendments

Schedule 1

Schedule 1 Amendments

(Clause 4)

[1] Clause 9 Application of Part

Omit clause 9 (1) (b).

[2] Clause 11 Determination by councils of applications for significant coastal development

Omit “clause 9 (1) (b), (c) or (d)” from clause 11 (1).

Insert instead “clause 9 (1) (c) or (d)”.



New South Wales

Environmental Planning and Assessment Amendment (Species Impact Statement) Regulation 2005

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*.

FRANK SARTOR, M.P.,
Minister for Planning

Explanatory note

The object of this Regulation is to provide that changes to the test (*the section 5A test*) for deciding whether development or an activity is likely to have a significant effect on threatened species, populations or ecological communities, or their habitats, and changes to the required contents of species impact statements, are not to apply in respect of:

- (a) development or an activity the subject of a development application or application for Part 5 approval lodged before or within 6 months after the commencement of the changes, or
- (b) a Part 5 activity carried out by or on behalf of a determining authority if the determining authority's determination to carry out the activity occurs before or within 6 months after the commencement of the changes.

In the case of changes to the section 5A test, the applicant will have the option of choosing to have the changes apply in respect of an application made within 6 months after the commencement of the changes.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including section 157 (the general regulation-making power) and clause 1 of Schedule 6.

Clause 1 Environmental Planning and Assessment Amendment (Species Impact Statement) Regulation 2005

Environmental Planning and Assessment Amendment (Species Impact Statement) Regulation 2005

under the

Environmental Planning and Assessment Act 1979

1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Species Impact Statement) Regulation 2005*.

2 Amendment of Environmental Planning and Assessment Regulation 2000

The *Environmental Planning and Assessment Regulation 2000* is amended as set out in Schedule 1.

Environmental Planning and Assessment Amendment (Species Impact Statement) Regulation 2005

Amendment

Schedule 1

Schedule 1 Amendment

(Clause 2)

Clause 286C

Insert after clause 286B:

286C Transitional—species impact statements and determination of significant effect

- (1) An amendment made to section 110 (Content of species impact statement) of the *Threatened Species Conservation Act 1995* by the *Threatened Species Conservation Amendment Act 2002* does not apply to or in respect of a species impact statement:
 - (a) that accompanies a development application lodged under Part 4 of the Act before or within 6 months after the commencement of the amendment, or
 - (b) that is submitted to a determining authority in connection with a Part 5 approval if the application for that approval (or for any of the Part 5 approvals required for that activity if the activity requires more than one Part 5 approval) is made before or within 6 months after the commencement of the amendment, or
 - (c) that is considered by a determining authority in connection with the carrying out of an activity by or on behalf of the determining authority if the determining authority makes its determination to carry out the activity (or to have it carried out on its behalf) before or within 6 months after the commencement of the amendment.
- (2) The substitution of section 5A (Significant effect on threatened species, populations or ecological communities, or their habitats) of the *Environmental Planning and Assessment Act 1979* by the *Threatened Species Conservation Amendment Act 2002* does not apply to or in respect of:
 - (a) development that is the subject of a development application lodged under Part 4 of the Act before or within 6 months after the substitution of that section (but not so as to affect the application of that section as substituted in respect of any part or aspect of that development that is the subject of a subsequent development application lodged more than 6 months after the substitution of that section), or

Environmental Planning and Assessment Amendment (Species Impact Statement) Regulation 2005

Schedule 1 Amendment

- (b) an activity that is the subject of an application for a Part 5 approval made before or within 6 months after the substitution of that section, or
 - (c) an activity carried out by or on behalf of a determining authority if the determining authority makes its determination to carry out the activity (or to have it carried out on its behalf) before or within 6 months after the substitution of that section.
- (3) Subclause (2) does not apply in the case of a development application or application for a Part 5 approval lodged or made within 6 months after the substitution of section 5A of the *Environmental Planning and Assessment Act 1979* if the applicant advises the consent authority or determining authority in writing at the time of making or lodging the application that section 5A as substituted is to apply (in which case that section as substituted applies to and in respect of the development or activity concerned).
- (4) In this clause:
activity and *determining authority* have the same meanings as in Part 5 of the Act.
Part 5 approval means an approval of an activity by a determining authority that is required to enable the activity to be carried out.

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