



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

## **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”.

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## 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.

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

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### **[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

- (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.

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**[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”.

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BY AUTHORITY