

# Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011 No 22

[2011-22]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Note**

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### Authorisation

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# Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011 No 22



New South Wales

## Contents

<b>Long title</b> .....	3
1 Name of Act.....	3
2 Commencement .....	3
<b>Schedule 1 Amendment of Environmental Planning and Assessment Act 1979 No 203</b> .....	3
<b>Schedule 2 Consequential and other amendments</b> .....	42

# Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011 No 22



New South Wales

An Act to amend the *Environmental Planning and Assessment Act 1979* to repeal Part 3A of that Act and to make provision consequent on that repeal.

## 1 Name of Act

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

## 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

## Schedule 1 Amendment of *Environmental Planning and Assessment Act 1979 No 203*

### 1.1 Repeal of Part 3A

#### Part 3A Major infrastructure and other projects

Omit the Part.

### 1.2 State significant development

#### [1] Section 4 Definitions

Insert “State significant development or” after “other than” and after “that is not” in the definition of ***advertised development*** in section 4 (1).

#### [2] Section 4 (1)

Insert in alphabetical order:

***State significant development*** has the meaning given by Division 4.1 of Part 4.

**[3] Section 29A Advertised development**

Insert “State significant development or” after “other than” in section 29A (1).

**[4] Section 72K Joint exhibition of instrument and advertising of application**

Insert “State significant development or” before “designated development” wherever occurring in section 72K (3).

**[5] Section 74C Preparation of development control plans**

Insert “State significant development or” before “designated development” wherever occurring in section 74C (1) (c).

**[6] Part 4 Development assessment**

Omit the note to the Part.

**[7] Section 76A Development that needs consent**

Insert at the end of the section:

**Note—**

Division 4.1 makes provision with respect to State significant development.

**[8] Section 77 Application of Division**

Insert as paragraph (a) of the note to the section:

(a) is or is not State significant development, and

**[9] Section 77A Designated development**

Insert at the end of the section:

(2) Designated development does not include State significant development despite any such declaration.

**[10] Section 78A Application**

Insert “(other than an application in respect of State significant development)” after “development application” in section 78A (8).

**[11] Section 78A (8A)**

Insert after section 78A (8):

(8A) A development application for State significant development is to be accompanied

by an environmental impact statement prepared by or on behalf of the applicant in the form prescribed by the regulations.

**[12] Section 79 Public participation—designated development**

Insert after section 79 (1):

**Note—**

Section 89F deals with public participation for State significant development.

**[13] Section 79A Public participation—advertised development and other notifiable development**

Insert at the end of the section:

(3) This section does not apply to State significant development.

**[14] Section 79B Consultation and concurrence**

Insert after section 79B (2):

(2A) **State significant development—exclusion** This section does not apply to State significant development unless the requirement of an environmental planning instrument for consultation or concurrence specifies that it applies to State significant development.

**[15] Section 79BA Consultation and development consent—certain bush fire prone land**

Insert after section 79BA (1A):

(1B) This section does not apply to State significant development.

**[16] Section 80 Determination**

Omit section 80 (6)–(8). Insert instead:

(6) **Restrictions on determination of development applications involving PAC** If a consent authority (other than the Minister) has received notice that the Minister has requested that a review (with or without a public hearing) be conducted by the Planning Assessment Commission in relation to all or any part of the development the subject of a development application, the consent authority must not determine the development application until:

(a) the review has been conducted, and

(b) the consent authority has considered the findings and recommendations of the Planning Assessment Commission and any comments made by the Minister that accompanied those findings and recommendations when they were forwarded to the consent authority.

(7) If the Minister has requested that a review (with or without a public hearing) be conducted by the Planning Assessment Commission in relation to all or any part of the development the subject of a development application for which the Minister is the consent authority, the Minister must not determine the development application until:

(a) the review has been conducted, and

(b) the Minister has considered the findings and recommendations of the Planning Assessment Commission.

**[17] Section 81 Post-determination notification**

Insert at the end of the section:

(4) For the purposes of this section, **designated development** includes State significant development that would be designated development but for section 77A (2), and accordingly a reference in this section to section 79 (5) includes a reference to section 89F (3).

**[18] Section 82 Circumstances in which consent taken to have been refused**

Insert at the end of the section:

(5) This section does not apply in respect of a development application if section 97 does not apply to the application.

**[19] Section 83 Date from which consent operates**

Omit “under section 80 (7) following the holding of a review” in section 83 (1) (b) (i).

Insert instead “under section 80 (6) or (7) following the holding of a review that includes a public hearing”.

**[20] Section 83 (4A)**

Insert after section 83 (4):

(4A) Subsections (2) and (3) do not apply to State significant development. If development consent for any such development is refused by the Court on an appeal, any development consent that was granted ceases to have effect on the

determination of the appeal.

**[21] Part 4, Division 4.1**

Insert after Division 4 of Part 4:

## **Division 4.1 State significant development**

### **89C Development that is State significant development**

- (1) For the purposes of this Act, **State significant development** is development that is declared under this section to be State significant development.
- (2) A State environmental planning policy may declare any development, or any class or description of development, to be State significant development.
- (3) The Minister may, by order published in the Gazette, declare specified development on specified land that is not declared under subsection (2) to be State significant development, but only if the Minister has obtained and made publicly available advice from the Planning Assessment Commission about the State or regional planning significance of the development.
- (4) A State environmental planning policy that declares State significant development may extend the provisions of the policy relating to that development to State significant development declared under subsection (3).

**Note—**

See section 115U (6) and (7) in relation to development that is, but for those provisions, both State significant development and State significant infrastructure.

### **89D Minister consent authority for State significant development**

- (1) The Minister is the consent authority for State significant development.

**Note—**

Section 23 enables the Minister to delegate the consent authority function to the Planning Assessment Commission, the Director-General or to any other public authority.

- (2) If a staged development application is made under Division 2A in respect of State significant development:
  - (a) the Minister may determine that a subsequent stage of the development is to be determined by the relevant council, and
  - (b) that stage of the development ceases to be State significant development and that council becomes the consent authority for that stage of the development instead of the Minister.

### **89E Consent for State significant development**

- (1) The Minister is to determine a development application in respect of State significant development by:
  - (a) granting consent to the application with such modifications of the proposed development or on such conditions as the Minister may determine, or
  - (b) refusing consent to the application.
- (2) Development consent may not be granted if the development is wholly prohibited by an environmental planning instrument.
- (3) Development consent may be granted despite the development being partly prohibited by an environmental planning instrument.
- (4) If part of a single proposed development that is State significant development requires development consent to be carried out and the other part may be carried out without development consent:
  - (a) Part 5 does not apply to that other part of the proposed development, and
  - (b) that other part of the proposed development is taken to be development that may not be carried out except with development consent.
- (5) A development application in respect of State significant development that is wholly or partly prohibited may be considered in accordance with Division 4B of Part 3 in conjunction with a proposed environmental planning instrument to permit the carrying out of the development. The Director-General may (despite anything to the contrary in section 54) undertake the functions of the relevant planning authority under Part 3 for a proposed instrument if it is initiated for the purpose of permitting the carrying out of the development (whether or not it contains other provisions).
- (6) If the determination under section 56 (Gateway determination) for a planning proposal declares that the proposed instrument is principally concerned with permitting the carrying out of State significant development that would otherwise be wholly prohibited:
  - (a) the proposed instrument may be made only by the Planning Assessment Commission under a delegation from the Minister, and
  - (b) the development application for the carrying out of that development may be determined only by the Planning Assessment Commission under a delegation from the Minister.



### **89F Public participation**

- (1) As soon as practicable after a development application is made for consent to carry out State significant development, the Director-General must:
  - (a) place the application and any accompanying information on public exhibition for a period (of not less than 30 days) prescribed by the regulations (the **submission period**) commencing on the day after which notice of the application is first published as referred to in paragraph (b), and
  - (b) cause notice of the application to be given and published in accordance with the regulations.
- (2) During the submission period, any person may inspect the development application and any accompanying information and make extracts from or copies of them.
- (3) During the submission period, any person may make written submissions to the Minister with respect to the development application. A submission by way of objection must set out the grounds of the objection.
- (4) If:
  - (a) a development application for State significant development is amended, or substituted, or withdrawn and later replaced before it has been determined by the Minister, and
  - (b) the Director-General has complied with subsection (1) in relation to the original application,compliance with subsection (1) in relation to the amended, substituted or later application is not required, unless the Director-General determines that the amended, substituted or later application substantially differs from the original application and the environmental impact of the development concerned has not been reduced by the changes proposed in the amended, substituted or later application.

### **89G Regulations—State significant development**

In addition to any other matters for or with respect to which regulations may be made under this Part, the regulations may make provision for or with respect to the procedures and other matters concerning State significant development, including the following:

- (a) the environmental impact statements to accompany development applications in respect of State significant development,
- (b) the requirements for the preparation of those environmental impact statements,

including consultation requirements with respect to government agencies and other affected persons,

- (c) the making of orders under section 89C (3) declaring specified development to be State significant development,
- (d) the making of information publicly available relating to development applications in respect of State significant development and the determination of those applications,
- (e) requiring applicants to provide responses to submissions made on development applications in respect of State significant development.

### **89H Evaluation of development application (s 79C)**

Section 79C applies, subject to this Division, to the determination of the development application.

**Note—**

Section 80 (7) provides that if a review is to be conducted by the Planning Assessment Commission into proposed State significant development the Minister is not to determine the development application until after the review has been conducted and consideration given to the findings and recommendations of the Commission.

### **89I Biobanking—special provisions**

- (1) The Minister may grant consent to State significant development subject to a condition that requires the applicant to acquire and retire (in accordance with Part 7A of the *Threatened Species Conservation Act 1995*) biodiversity credits of a number and class (if any) specified by the Minister in the consent. This subsection applies whether or not a biobanking statement under Part 7A of that Act was obtained in respect of the development.
- (2) The Minister may approve an arrangement under which:
  - (a) the retirement of some or all of the biodiversity credits is deferred pending the completion of any rehabilitation or restoration action proposed to be taken on the site of the State significant development, after the development has been substantially completed, that will restore or improve the biodiversity values affected by the development, and
  - (b) the biodiversity credits the retirement of which is deferred pending the completion of those actions are required to be transferred to the Minister administering the *Threatened Species Conservation Act 1995*.
- (3) Division 7 of Part 7A of the *Threatened Species Conservation Act 1995* applies in respect of any such arrangement as if it were a deferred retirement arrangement approved under that Division.

- (4) If a biobanking statement was obtained in respect of State significant development, the Minister may grant consent to the development subject to a condition that requires the applicant to comply with any conditions of the biobanking statement.

**Note—**

The conditions of a biobanking statement may require the applicant to retire biodiversity credits in respect of the development in order to ensure that it maintains or improves biodiversity values, or to carry out other onsite measures to minimise any negative impact of the development on biodiversity values.

- (5) A person cannot appeal to the Court in respect of a condition imposed by the Minister under subsection (4).

**89J Approvals etc legislation that does not apply**

- (1) The following authorisations are not required for State significant development that is authorised by a development consent granted after the commencement of this Division (and accordingly the provisions of any Act that prohibit an activity without such an authority do not apply):
- (a) the concurrence under Part 3 of the *Coastal Protection Act 1979* of the Minister administering that Part of that Act,
  - (b) a permit under section 201, 205 or 219 of the *Fisheries Management Act 1994*,
  - (c) an approval under Part 4, or an excavation permit under section 139, of the *Heritage Act 1977*,
  - (d) an Aboriginal heritage impact permit under section 90 of the *National Parks and Wildlife Act 1974*,
  - (e) an authorisation referred to in section 12 of the *Native Vegetation Act 2003* (or under any Act repealed by that Act) to clear native vegetation or State protected land,
  - (f) a bush fire safety authority under section 100B of the *Rural Fires Act 1997*,
  - (g) a water use approval under section 89, a water management work approval under section 90 or an activity approval (other than an aquifer interference approval) under section 91 of the *Water Management Act 2000*.
- (2) Division 8 of Part 6 of the *Heritage Act 1977* does not apply to prevent or interfere with the carrying out of State significant development that is authorised by a development consent granted after the commencement of this Division.
- (3) A reference in this section to State significant development that is authorised by

a development consent granted after the commencement of this Division includes a reference to any investigative or other activities that are required to be carried out for the purpose of complying with any environmental assessment requirements under this Part in connection with a development application for any such development.

**89K Approvals etc legislation that must be applied consistently**

- (1) An authorisation of the following kind cannot be refused if it is necessary for carrying out State significant development that is authorised by a development consent under this Division and is to be substantially consistent with the consent:
  - (a) an aquaculture permit under section 144 of the *Fisheries Management Act 1994*,
  - (b) an approval under section 15 of the *Mine Subsidence Compensation Act 1961*,
  - (c) a mining lease under the *Mining Act 1992*,
  - (d) a production lease under the *Petroleum (Onshore) Act 1991*,
  - (e) an environment protection licence under Chapter 3 of the *Protection of the Environment Operations Act 1997* (for any of the purposes referred to in section 43 of that Act),
  - (f) a consent under section 138 of the *Roads Act 1993*,
  - (g) a licence under the *Pipelines Act 1967*.
- (2) This section does not apply to or in respect of:
  - (a) an application for the renewal of an authorisation or a renewed authorisation, or
  - (b) an application for a further authorisation or a further authorisation following the expiry or lapsing of an authorisation, or
  - (c) in the case of an environment protection licence under Chapter 3 of the *Protection of the Environment Operations Act 1997*—any period after the first review of the licence under section 78 of that Act.
- (3) A reference in this section to an authorisation or development consent includes a reference to any conditions of the authorisation or consent.
- (4) This section applies to a person, court or tribunal that deals with an objection, appeal or review conferred on a person in relation to an authorisation in the

same way as it applies to the person giving the authorisation.

**89L This Division prevails**

The provisions of this Division, the regulations under this Division and any other provisions of or made under this Act with respect to State significant development prevail to the extent of any inconsistency with any other provisions of or made under this Act relating to development to which this Part applies.

**[22] Section 91 What is “integrated development”?**

Insert “State significant development or” after “Integrated development is development (not being” in section 91 (1).

**[23] Section 94D Section 94 or 94A conditions imposed by Minister or Director-General in growth centres, council areas etc**

Omit “the Minister is the consent authority pursuant to section 88A” from section 94D (4).

Insert instead “the Minister is the consent authority because it is State significant development”.

**[24] Section 96 Modification of consents—generally**

Insert at the end of section 96 (5):

This subsection does not apply to State significant development.

**[25] Section 97 Appeal by applicant—development applications**

Insert at the end of the section:

- (7) This section does not apply to a development application for designated development determined by the consent authority after a public hearing held by the Planning Assessment Commission, or to the determination of the application.

**[26] Section 98 Appeal by an objector**

Insert at the end of the section:

- (4) This section extends to a development application for State significant development that would be designated development but for section 77A (2), and to the determination of the application.
- (5) This section does not apply to a development application determined by the consent authority after a public hearing held by the Planning Assessment Commission, or to the determination of the application.

**[27] Section 102 Non-compliance with certain provisions regarding State significant development**

Insert “State significant development or” before “designated development” wherever occurring in section 102 (2).

**[28] Section 109CA**

Insert after section 109C:

**109CA Minister not eligible as certifying authority**

The Minister is not eligible to issue a certificate under this Part in respect of any development for which the Minister has granted development consent (or any project for which the Minister has granted approval) unless the Minister is the only person authorised to issue the certificate.

**[29] Section 109K Appeals against failure or refusal to issue Part 4A certificates**

Insert “State significant development or” before “designated development” wherever occurring in section 109K (3).

## **1.3 State significant infrastructure**

**[1] Section 4 (1)**

Insert in alphabetical order:

***State significant infrastructure*** has the meaning given by Part 5.1.

**[2] Section 23 Delegation**

Insert after section 23 (8) (a1):

(a2) the functions of the Minister under Part 5.1 of determining an application for approval to carry out critical State significant infrastructure, or

**[3] Part 5.1**

Insert after Part 5:

## Part 5.1 State significant infrastructure

### Division 1 Preliminary

#### 115T Definitions

In this Part:

**approved State significant infrastructure** means infrastructure to the extent that it is approved by the Minister under this Part (but does not include any stage of the infrastructure that has not yet been authorised to be carried out by an approval under a staged infrastructure application).

**critical State significant infrastructure** means State significant infrastructure that is critical State significant infrastructure, as referred to in section 115V.

**development** includes an activity within the meaning of Part 5.

**infrastructure** means development for the purposes of infrastructure, including (without limitation) development for the purposes of railways, roads, electricity transmission or distribution networks, pipelines, ports, wharf or boating facilities, telecommunications, sewerage systems, stormwater management systems, water supply systems, waterway or foreshore management activities, flood mitigation works, public parks or reserves management, soil conservation works or other purposes prescribed by the regulations.

**proponent** of infrastructure means the person proposing to carry out development comprising all or any part of the infrastructure, and includes any person certified by the Director-General to be the proponent.

**State significant infrastructure**—see section 115U.

#### 115U Development that is State significant infrastructure

- (1) For the purposes of this Act, **State significant infrastructure** is development that is declared under this section to be State significant infrastructure.
- (2) A State environmental planning policy may declare any development, or any class or description of development, to be State significant infrastructure.
- (3) Development that may be so declared to be State significant infrastructure is development of the following kind that a State environmental planning policy permits to be carried out without development consent under Part 4:
  - (a) infrastructure,
  - (b) other development that (but for this Part and within the meaning of Part 5) would be an activity for which the proponent is also the determining

authority and would, in the opinion of the proponent, require an environmental impact statement to be obtained under Part 5.

Paragraph (b) does not apply where the proponent is a council or county council.

- (4) Specified development on specified land is State significant infrastructure despite anything to the contrary in this section if it is specifically declared to be State significant infrastructure. Any such declaration may be made by a State environmental planning policy or by an order of the Minister (published on the NSW legislation website) that amends a State environmental planning policy for that purpose.
- (5) The Planning Assessment Commission or Infrastructure NSW may recommend to the Minister that a declaration be made under subsection (4) in respect of particular development.
- (6) If, but for this subsection, development is both State significant infrastructure because of a declaration under subsection (2) and State significant development, it is not State significant infrastructure despite any such declaration.
- (7) If, but for this subsection, development is both State significant infrastructure because of a declaration under subsection (4) and State significant development, it is not State significant development despite any declaration under Division 4.1 of Part 4.

### **115V Critical State significant infrastructure**

Any State significant infrastructure may also be declared to be critical State significant infrastructure if it is of a category that, in the opinion of the Minister, is essential for the State for economic, environmental or social reasons. Any such declaration may be made by the instrument that declared the development to be State significant infrastructure or by a subsequent such instrument.

**Note—**

In the case of critical State significant infrastructure, this Part contains the following additional provisions:

- (a) section 115ZF (4),
- (b) section 115ZG (3),
- (c) section 115ZK.

Section 23 (8) also prevents the Minister delegating his or her function under this Part of determining an application for approval to carry out critical State significant infrastructure.

## **Division 2 Environmental assessment and approval of**



## **infrastructure**

### **115W Minister's approval required for State significant infrastructure**

- (1) A person is not to carry out development that is State significant infrastructure unless the Minister has approved of the carrying out of the State significant infrastructure under this Part.
- (2) The person is to comply with any conditions to which such an approval is subject.

### **115X Application for approval of State significant infrastructure**

- (1) The proponent may apply for the approval of the Minister under this Part to carry out State significant infrastructure.
- (2) The application is to:
  - (a) describe the infrastructure, and
  - (b) contain any other matter required by the Director-General.
- (3) The application is to be lodged with the Director-General.

### **115Y Environmental assessment requirements for approval**

- (1) When an application is made for the Minister's approval for State significant infrastructure, the Director-General is to prepare environmental assessment requirements in respect of the infrastructure.
- (2) For the purposes of the environmental assessment, the environmental assessment requirements must require an environmental impact statement to be prepared by or on behalf of the proponent in the form approved by the Director-General.
- (3) In preparing the environmental assessment requirements, the Director-General is to consult relevant public authorities and have regard to the need for the requirements to assess any key issues raised by those public authorities.
- (4) The Director-General is to notify the proponent of the environmental assessment requirements. The Director-General may modify those requirements by further notice to the proponent.

### **115Z Environmental assessment and public consultation**

- (1) The proponent is to submit to the Director-General the environmental impact statement required under this Division for approval to carry out the State significant infrastructure.

- (2) The Director-General may require the proponent to submit a revised environmental impact statement to address the matters notified to the proponent.
- (3) The Director-General must make the environmental impact statement publicly available for at least the minimum exhibition period prescribed by the regulations. The minimum exhibition period prescribed by the regulations must not be less than 30 days.
- (4) During that period, any person (including a public authority) may make a written submission to the Director-General concerning the matter.
- (5) The Director-General is to provide copies of submissions received by the Director-General or a report of the issues raised in those submissions to:
  - (a) the proponent, and
  - (b) if the State significant infrastructure will require an environment protection licence under Chapter 3 of the *Protection of the Environment Operations Act 1997*—the Department responsible to the Minister for the Environment, and
  - (c) any other public authority the Director-General considers appropriate.
- (6) The Director-General may require the proponent to submit to the Director-General:
  - (a) a response to the issues raised in those submissions, and
  - (b) a preferred infrastructure report that outlines any proposed changes to the State significant infrastructure to minimise its environmental impact or to deal with any other issue raised during the assessment of the application concerned.
- (7) If the Director-General considers that significant changes are proposed to the nature of the State significant infrastructure, the Director-General may make the preferred infrastructure report available to the public.

#### **115ZA Director-General's environmental assessment report**

- (1) The Director-General is to give a report on the State significant infrastructure to the Minister for the purposes of the Minister's consideration of the application for approval to carry out the infrastructure.
- (2) The Director-General's report is to include:
  - (a) a copy of the proponent's environmental impact statement and any preferred infrastructure report, and
  - (b) any advice provided by public authorities on the State significant

infrastructure, and

- (c) a copy of any report or advice of the Planning Assessment Commission in respect of the State significant infrastructure, and
- (d) any environmental assessment undertaken by the Director-General or other matter the Director-General considers appropriate.

### **115ZB Giving of approval by Minister to carry out project**

(1) If:

- (a) the proponent makes an application for the approval of the Minister under this Part to carry out State significant infrastructure, and
- (b) the Director-General has given his or her report on the State significant infrastructure to the Minister,

the Minister may approve or disapprove of the carrying out of the State significant infrastructure.

(2) The Minister, when deciding whether or not to approve the carrying out of State significant infrastructure, is to consider:

- (a) the Director-General's report on the infrastructure and the reports, advice and recommendations contained in the report, and
- (b) any advice provided by the Minister having portfolio responsibility for the proponent, and
- (c) any findings or recommendations of the Planning Assessment Commission following a review in respect of the State significant infrastructure.

(3) State significant infrastructure may be approved under this Part with such modifications of the infrastructure or on such conditions as the Minister may determine.

### **115ZC Biobanking—special provisions**

(1) The Minister may approve State significant infrastructure subject to a condition that requires the proponent to acquire and retire (in accordance with Part 7A of the *Threatened Species Conservation Act 1995*) biodiversity credits of a number and class (if any) specified by the Minister in the approval. This subsection applies whether or not a biobanking statement under Part 7A of that Act was obtained in respect of the infrastructure.

(2) The Minister may approve an arrangement under which:

- (a) the retirement of some or all of the biodiversity credits is deferred pending

the completion of any rehabilitation or restoration action proposed to be taken on the site of the State significant infrastructure, after the infrastructure has been substantially completed, that will restore or improve the biodiversity values affected by the infrastructure, and

- (b) the biodiversity credits the retirement of which is deferred pending the completion of those actions are required to be transferred to the Minister administering the *Threatened Species Conservation Act 1995*.
- (3) Division 7 of Part 7A of the *Threatened Species Conservation Act 1995* applies in respect of any such arrangement as if it were a deferred retirement arrangement approved under that Division.
- (4) If a biobanking statement was obtained in respect of State significant infrastructure, the Minister may approve the infrastructure subject to a condition that requires the proponent to comply with any conditions of the biobanking statement.

**Note—**

The conditions of a biobanking statement may require the proponent to retire biodiversity credits in respect of the infrastructure in order to ensure that it maintains or improves biodiversity values, or to carry out other onsite measures to minimise any negative impact of the infrastructure on biodiversity values.

- (5) A person cannot appeal to the Court in respect of a condition imposed by the Minister under subsection (4).

## **Division 3 Staged infrastructure applications**

### **115ZD Staged infrastructure applications**

- (1) For the purposes of this Part, a ***staged infrastructure application*** is an application for approval of State significant infrastructure under this Part that sets out concept proposals for the proposed infrastructure, and for which detailed proposals for separate parts of the infrastructure are to be the subject of subsequent applications for approval. The application may set out detailed proposals for the first stage.
- (2) If approval is granted under this Part on the determination of a staged infrastructure application, the approval does not authorise the carrying out of any part of the State significant infrastructure unless:
  - (a) approval is subsequently granted to carry out that part of the infrastructure following a further application for approval in respect of that part of the infrastructure, or
  - (b) the staged infrastructure application also provided the requisite details of that part of the infrastructure and approval is granted for that first stage

without the need for further approval.

- (3) The terms of an approval granted on the determination of a staged infrastructure application are to reflect the operation of subsection (2).

#### **115ZE Status of staged infrastructure applications and approvals**

- (1) The provisions of or made under this or any other Act relating to applications for approval and approvals under this Part apply, except as otherwise provided by or under this or any other Act, to a staged infrastructure application and an approval granted on the determination of any such application.
- (2) An approval granted on the determination of a staged infrastructure application for infrastructure does not have any effect to the extent that it is inconsistent with the determination of any further application for approval in respect of that infrastructure.

### **Division 4 Application of other provisions of this and other Acts**

#### **115ZF Application of other provisions of Act**

- (1) Part 4 and Part 5 do not, except as provided by this Part, apply to or in respect of State significant infrastructure (including the declaration of the infrastructure as State significant infrastructure and any approval or other requirement under this Part for the infrastructure).
- (2) Part 3 and environmental planning instruments do not apply to or in respect of State significant infrastructure, except that:
  - (a) they apply to the declaration of infrastructure as State significant infrastructure or as critical State significant infrastructure (and to the declaration of development that does not require consent), and
  - (b) they apply in so far as they relate to section 28, and for that purpose a reference in that section to enabling development to be carried out in accordance with an environmental planning instrument or in accordance with a consent granted under this Act is to be construed as a reference to enabling State significant infrastructure to be carried out in accordance with an approval granted under this Part.
- (3) Divisions 6 and 6A of Part 4 apply to State significant infrastructure that is not carried out by or on behalf of a public authority (and to the giving of approval for the carrying out of any such infrastructure under this Part) in the same way as they apply to development and the granting of consent to the carrying out of development under Part 4, subject to any necessary modifications and any

modifications prescribed by the regulations.

- (4) Division 2A of Part 6 does not apply to critical State significant infrastructure.
- (5) The regulations may make provision for or with respect to the application to State significant infrastructure of the provisions (with or without modification) of section 81A, section 109M or any other provision of this Act relating to the issue of subdivision certificates.
- (6) Section 109R applies to approved State significant infrastructure.

### **115ZG Approvals etc legislation that does not apply**

- (1) The following authorisations are not required for approved State significant infrastructure (and accordingly the provisions of any Act that prohibit an activity without such an authority do not apply):
  - (a) the concurrence under Part 3 of the *Coastal Protection Act 1979* of the Minister administering that Part of that Act,
  - (b) a permit under section 201, 205 or 219 of the *Fisheries Management Act 1994*,
  - (c) an approval under Part 4, or an excavation permit under section 139, of the *Heritage Act 1977*,
  - (d) an Aboriginal heritage impact permit under section 90 of the *National Parks and Wildlife Act 1974*,
  - (e) an authorisation referred to in section 12 of the *Native Vegetation Act 2003* (or under any Act repealed by that Act) to clear native vegetation or State protected land,
  - (f) a bush fire safety authority under section 100B of the *Rural Fires Act 1997*,
  - (g) a water use approval under section 89, a water management work approval under section 90 or an activity approval (other than an aquifer interference approval) under section 91 of the *Water Management Act 2000*.
- (2) Division 8 of Part 6 of the *Heritage Act 1977* does not apply to prevent or interfere with the carrying out of approved State significant infrastructure.
- (3) The following directions, orders or notices cannot be made or given so as to prevent or interfere with the carrying out of approved critical State significant infrastructure:
  - (a) an interim protection order (within the meaning of the *National Parks and Wildlife Act 1974* or the *Threatened Species Conservation Act 1995*),

- (b) an order under Division 1 (Stop work orders) of Part 6A of the *National Parks and Wildlife Act 1974*, Division 1 (Stop work orders) of Part 7 of the *Threatened Species Conservation Act 1995* or Division 7 (Stop work orders) of Part 7A of the *Fisheries Management Act 1994*,
  - (c) a remediation direction under Division 3 (Remediation directions) of Part 6A of the *National Parks and Wildlife Act 1974*,
  - (d) an environment protection notice under Chapter 4 of the *Protection of the Environment Operations Act 1997*,
  - (e) an order under section 124 of the *Local Government Act 1993*.
- (4) A reference in this section to approved State significant infrastructure includes a reference to any investigative or other activities that are required to be carried out for the purpose of complying with any environmental assessment requirements under this Part in connection with an application for approval to carry out the State significant infrastructure.

#### **115ZH Approvals etc legislation that must be applied consistently**

- (1) An authorisation of the following kind cannot be refused if it is necessary for carrying out approved State significant infrastructure and is to be substantially consistent with the approval under this Part:
- (a) an aquaculture permit under section 144 of the *Fisheries Management Act 1994*,
  - (b) an approval under section 15 of the *Mine Subsidence Compensation Act 1961*,
  - (c) a mining lease under the *Mining Act 1992*,
  - (d) a production lease under the *Petroleum (Onshore) Act 1991*,
  - (e) an environment protection licence under Chapter 3 of the *Protection of the Environment Operations Act 1997* (for any of the purposes referred to in section 43 of that Act),
  - (f) a consent under section 138 of the *Roads Act 1993*,
  - (g) a licence under the *Pipelines Act 1967*.
- (2) This section does not apply to or in respect of:
- (a) an application for the renewal of an authorisation or a renewed authorisation, or
  - (b) an application for a further authorisation or a further authorisation following

the expiry or lapsing of an authorisation, or

(c) in the case of an environment protection licence under Chapter 3 of the *Protection of the Environment Operations Act 1997*—any period after the first review of the licence under section 78 of that Act.

- (3) A reference in this section to an authorisation or approval includes a reference to any conditions of the authorisation or approval.
- (4) This section applies to a person, court or tribunal that deals with an objection, appeal or review conferred on a person in relation to an authorisation in the same way as it applies to the person giving the authorisation.

## Division 5 Miscellaneous

### 115ZI Modification of Minister's approval

- (1) In this section:

**Minister's approval** means an approval to carry out State significant infrastructure under this Part.

**modification** of an approval means changing the terms of the approval, including revoking or varying a condition of the approval or imposing an additional condition on the approval.

- (2) The proponent may request the Minister to modify the Minister's approval for State significant infrastructure. The Minister's approval for a modification is not required if the infrastructure as modified will be consistent with the existing approval under this Part.
- (3) The request for the Minister's approval is to be lodged with the Director-General. The Director-General may notify the proponent of environmental assessment requirements with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.
- (4) The Minister may modify the approval (with or without conditions) or disapprove of the modification.

### 115ZJ Validity of action under this Part

- (1) The validity of an approval or other decision under this Part cannot be questioned in any legal proceedings in which the decision may be challenged except those commenced in the Court within 3 months after public notice of the decision was given.
- (2) The only requirement of this Part that is mandatory in connection with the validity of an approval of State significant infrastructure is a requirement that an



environmental impact statement with respect to the infrastructure is made publicly available under this Part.

- (3) Any infrastructure that has been approved (or purports to be approved) by the Minister under this Part is taken to be State significant infrastructure to which this Part applies, and to have been such infrastructure for the purposes of any application or other matter under this Part in relation to the infrastructure.

### **115ZK Third-party appeals and judicial review—critical State significant infrastructure**

- (1) In this section:

***breach*** has the meaning given by Division 3 of Part 6.

***the judicial review jurisdiction*** of the Court means the jurisdiction conferred on the Court under section 20 (2) of the [Land and Environment Court Act 1979](#).

***the third-party appeal provisions*** means Division 3 of Part 6 of this Act and sections 252 and 253 of the [Protection of the Environment Operations Act 1997](#).

- (2) The third-party appeal provisions do not apply in relation to the following (except in relation to an application to the Court made or approved by the Minister):
- (a) a breach of this Act arising under this Part in respect of critical State significant infrastructure, including the declaration of the development as State significant infrastructure (and as critical State significant infrastructure) and any approval or other requirement under this Part for the infrastructure,
  - (b) a breach of any conditions of an approval under this Part for critical State significant infrastructure,
  - (c) a breach of this or any other Act arising in respect of the giving of an authorisation of a kind referred to in section 115ZH (1) for critical State significant infrastructure (or in respect of the conditions of such an authorisation).
- (3) The conditions of approval under this Part for critical State significant infrastructure are conditions that may only be enforced by or with the approval of the Minister (whether under the third-party appeal provisions, the judicial review jurisdiction of the Court or in any other proceedings).
- (4) The third-party appeal provisions and the judicial review jurisdiction of the Court are subject to the provisions of section 115ZJ.

**115ZL Miscellaneous provisions relating to approvals under this Part**

- (1) The following documents under this Part in relation to State significant infrastructure are to be made publicly available by the Director-General in accordance with the regulations:
  - (a) applications to carry out State significant infrastructure,
  - (b) environmental assessment requirements for State significant infrastructure,
  - (c) environmental impact statements placed on public exhibition and responses provided to the Director-General by the proponent after the end of the public exhibition period,
  - (d) environmental assessment reports of the Director-General to the Minister,
  - (e) any advice, recommendations or reports received from the Planning Assessment Commission,
  - (f) approvals to carry out State significant infrastructure given by the Minister,
  - (g) requests for modifications of approvals given by the Minister and any modifications made by the Minister,
  - (h) any reasons given to the proponent by the Minister as referred to in subsection (2),
  - (i) any other matter prescribed by the regulations.
- (2) The Minister is to give reasons to the proponent for a decision:
  - (a) not to approve State significant infrastructure under this Part, or
  - (b) to modify the State significant infrastructure for which the proponent has sought approval under this Part.
- (3) An approval under this Part may be subject to a condition that it lapses on a specified date unless specified action with respect to the approval has been taken (such as the commencement of work on the infrastructure). Any such condition may be modified to extend the lapsing period.
- (4) An approval under this Part may be surrendered, subject to and in accordance with the regulations, by any person entitled to act on the approval.
- (5) A condition of the approval of State significant infrastructure under this Part may require any one or more of the following:
  - (a) the surrender under this section of any other approval under this Part (or under Part 3A) relating to the infrastructure or the land concerned,

- (b) the surrender under section 104A of any development consent relating to the infrastructure or the land concerned,
- (c) the surrender, subject to and in accordance with the regulations, of a right conferred by Division 10 of Part 4 relating to the infrastructure or the land concerned.

### **115ZM Regulations for purposes of Part**

The regulations may make provision for or with respect to the approval of State significant infrastructure under this Part and to approved State significant infrastructure, including:

- (a) the requirements and procedures for making applications for approvals under this Part, and
- (b) requiring owners of land on which State significant infrastructure is proposed to be carried out to consent to applications for approvals under this Part, and
- (c) the amendment of applications for approvals under this Part, and
- (d) the preparation, notification and modification of requirements for environmental assessment of State significant infrastructure, and
- (e) the requirements for environmental impact statements under this Part, and
- (f) the fees for applications and the exercise of functions under this Part, and
- (g) requiring the New South Wales Aboriginal Land Council to consent to applications for approvals under this Part on land owned by Local Aboriginal Land Councils, if the consent of the Local Aboriginal Land Council concerned is required as owner of the land, and
- (h) providing for public exhibition, notification and public registers of applications for approvals under this Part (or for the modification of approvals) and of the determination of those applications, and
- (i) the effect of the revocation of the declaration of development as State significant infrastructure.

## **1.4 Planning Assessment Commission**

### **[1] Section 23D Functions of Commission**

Omit section 23D (1) (a). Insert instead:

- (a) any function delegated to the Commission under this Act,

**[2] Section 23D (1) (b)**

Insert “or the Director-General” after “Minister” wherever occurring.

**[3] Section 23D (1) (b)**

Omit section 23D (1) (b) (ii)–(iv). Insert instead:

- (ii) to review any (or any aspect or part of any) development, activity, infrastructure or project to which this Act applies, and
- (iii) to hold a public hearing into any matter the subject of any such advice or review, and

**[4] Section 23E Reviews by, and procedures of, Commission**

Omit section 23E (b).

**[5] Schedule 3 Planning Assessment Commission**

Omit the definition of *member* from clause 1. Insert instead:

*member* means the chairperson or other member of the Commission.

**[6] Schedule 3, clause 2 (1)**

Omit the subclause. Insert instead:

- (1) The Commission is to consist of not less than 4 and not more than 9 members appointed by the Minister.

**[7] Schedule 3, clause 5 (3)**

Insert “, but may not hold office as a member for more than 6 years in total”. after “eligible to be re-appointed”.

**[8] Schedule 3, clause 6**

Omit the clause. Insert instead:

**6 Members may be full-time or part-time**

The Minister may appoint a member on either a full-time or part-time basis. The Minister may change the basis of the appointment during the member’s term of office.

**[9] Schedule 3, clause 7**

Omit the clause. Insert instead:

**7 Remuneration**

- (1) A full-time member is entitled to be paid:
  - (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
  - (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the member.
- (2) A part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

**1.5 Joint Regional Planning Panels**

**[1] Section 23G Joint regional planning panels**

Insert after section 23G (2):

- (2A) An environmental planning instrument may only confer a council's functions as consent authority on a regional panel if the development is of a class or description set out in Schedule 4A. The functions of a consent authority may only be conferred on a regional panel in accordance with subsection (2) (a) and this subsection.
- (2B) Any environmental planning instrument that is in force on the commencement of subsection (2A) ceases to have effect to the extent that it is inconsistent with that subsection.

**[2] Section 23G (4A)**

Insert after section 23G (4):

- (4A) Legal proceedings by or against a regional panel are to be taken in the name of the regional panel and not by or against the members of the regional panel.

**[3] Schedule 4 Joint Regional Planning Panels**

Omit the definition of **member** from clause 1. Insert instead:

**member** means the chairperson or other member of a regional panel.

**[4] Schedule 4, clause 2 (2)**

Omit the subclause. Insert instead:

- (2) One of the State members is to be appointed by the Minister as chairperson of the regional panel. The Minister is required to obtain the concurrence of the Local Government and Shires Associations of New South Wales to the appointment unless:
- (a) the Associations fail to notify their concurrence or refusal to concur within 21 days of being requested to do so by the Minister, or
  - (b) the Associations have refused to concur in 2 different persons proposed by the Minister for appointment.

**[5] Schedule 4A**

Insert after Schedule 4:

**Schedule 4A Development for which regional panels may be authorised to exercise consent authority functions of councils**

**1 Definitions**

(1) In this Schedule:

**capital investment value** has the same meaning as in the regulations under this Act.

**coastal zone** has the same meaning as in the [Coastal Protection Act 1979](#).

**Crown development** means development carried out by or on behalf of the Crown (within the meaning of Division 4 of Part 4 of this Act).

**eco-tourist facility** means a building or place used for tourist and visitor accommodation, function centres or environmental facilities, that is located in a natural environment and is primarily used for activities involving education about, or the interpretation, cultural understanding or appreciation of, the natural environment.

**metropolitan coastal zone** means that part of the coastal zone between the northern boundary of the local government area of Newcastle City and the southern boundary of the local government area of Shellharbour City.

**rail infrastructure facilities** has the same meaning as it has in Division 15 of

Part 3 of *State Environmental Planning Policy (Infrastructure) 2007*.

**road infrastructure facilities** has the same meaning as it has in Division 17 of Part 3 of *State Environmental Planning Policy (Infrastructure) 2007*.

**sensitive coastal location** means any of the following which occur within the coastal zone:

- (a) land within 100m above mean high water mark of the sea, a bay or an estuary,
- (b) a coastal lake,
- (c) a declared Ramsar wetland within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth,
- (d) a declared World Heritage property within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth,
- (e) land declared as an aquatic reserve under the *Fisheries Management Act 1994*,
- (f) land declared as a marine park under the *Marine Parks Act 1997*,
- (g) land within 100m of any of the following:
  - (i) the water's edge of a coastal lake,
  - (ii) land to which paragraph (c), (d), (e) or (f) applies,
  - (iii) land reserved under the *National Parks and Wildlife Act 1974*,
  - (iv) land to which *State Environmental Planning Policy No 14—Coastal Wetlands* applies,
- (h) residential land (within the meaning of *State Environmental Planning Policy No 26—Littoral Rainforests*) that is within a distance of 100m from the outer edge of the heavy black line on the series of maps held in the Department and marked "*State Environmental Planning Policy No 26—Littoral Rainforests (Amendment No 2)*".

**subdivision of land** does not include a boundary adjustment, a strata subdivision, or a community title subdivision associated with another development that has been approved.

- (2) Words and expressions in this Schedule have (subject to subclause (1)) the same meaning as they have in the standard instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*.

## **2 Excluded development**

Development of a class or description otherwise set out in this Schedule is excluded from this Schedule if it is:

- (a) complying development, or
- (b) development for which development consent is not required, or
- (c) development that is State significant development, or
- (d) development for which a person or body other than a council is the consent authority, or
- (e) development within the area of the City of Sydney.

## **3 General development over \$20 million**

Development that has a capital investment value of more than \$20 million.

## **4 Council related development over \$5 million**

Development that has a capital investment value of more than \$5 million if:

- (a) a council for the area in which the development is to be carried out is the applicant for development consent, or
- (b) the council is the owner of any land on which the development is to be carried out, or
- (c) the development is to be carried out by the council, or
- (d) the council is a party to any agreement or arrangement relating to the development (other than any agreement or arrangement entered into under the Act or for the purposes of the payment of contributions by a person other than the council).

## **5 Crown development over \$5 million**

Crown development that has a capital investment value of more than \$5 million.

## **6 Private infrastructure and community facilities over \$5 million**

Development that has a capital investment value of more than \$5 million for any of the following purposes:

- (a) air transport facilities, electricity generating works, port facilities, rail infrastructure facilities, road infrastructure facilities, sewerage systems, telecommunications facilities, waste or resource management facilities, water supply systems, or wharf or boating facilities,



- (b) affordable housing, child care centres, community facilities, correctional centres, educational establishments, group homes, health services facilities or places of public worship.

### **7 Eco-tourist facilities over \$5 million**

Development for the purpose of eco-tourist facilities that has a capital investment value of more than \$5 million.

### **8 Particular designated development**

Development for the purposes of:

- (a) extractive industries, which meet the requirements for designated development under clause 19 of Schedule 3 to the *Environmental Planning and Assessment Regulation 2000*, or
- (b) marinas or other related land and water shoreline facilities, which meet the requirements for designated development under clause 23 of Schedule 3 to the *Environmental Planning and Assessment Regulation 2000*, or
- (c) waste management facilities or works, which meet the requirements for designated development under clause 32 of Schedule 3 to the *Environmental Planning and Assessment Regulation 2000*.

### **9 Coastal subdivision**

Development within the coastal zone for the purposes of subdivision of the following kind:

- (a) subdivision of land for any purpose into more than 100 lots, if more than 100 of the lots will not be connected to an approved sewage treatment work or system,
- (b) subdivision of land for residential purposes into more than 100 lots, if the land:
  - (i) is not in the metropolitan coastal zone, or
  - (ii) is wholly or partly in a sensitive coastal location,
- (c) subdivision of land for rural-residential purposes into more than 25 lots, if the land:
  - (i) is not in the metropolitan coastal zone, or
  - (ii) is wholly or partly in a sensitive coastal location.

### **10 Development subject to delays in determination**

Development that has a capital investment value of more than \$10 million but less than \$20 million:

- (a) for which a development application to the relevant council has been lodged but not determined within 120 days after the application was lodged, and
- (b) that is the subject of a written request to that council by the applicant for the application to be dealt with by a regional panel,

unless the chairperson of the regional panel concerned determines that the delay in determining the development application was caused by the applicant.

### **11 Development in council areas where development assessment unsatisfactory**

- (1) Development within the area of a particular council for particular purposes designated by the Minister by order published on the NSW legislation website.
- (2) Such an order cannot be made unless the Minister is satisfied that the performance of the council concerned in dealing with development matters has not met applicable performance criteria.

## **1.6 Miscellaneous amendments**

### **[1] Section 23 Delegation**

Omit section 23 (8) (a1).

### **[2] Section 54 Relevant planning authority**

Omit section 54 (2) (c). Insert instead:

- (c) the Planning Assessment Commission or a joint regional planning panel has recommended to the Minister that the proposed instrument should be submitted for a determination under section 56 (Gateway determination) or that the proposed instrument should be made,

### **[3] Section 82A Review of determination**

Insert at the end of the section:

- (12) This section does not apply where a regional panel exercises a council's functions as the consent authority.

### **[4] Section 110 Definitions**

Insert "or Part 5.1" after "Part 3A" in section 110 (2).

### **[5] Section 112 Decision of determining authority in relation to certain activities**

Insert "or Part 5.1" after "Part 3A" in section 112 (6).

**[6] Section 115R Application of other provisions of this Act**

Insert “or declared to be State significant infrastructure” after “Part 3A applies” in section 115R (3A).

**[7] Section 115RA Shark meshing**

Insert “or declared to be State significant infrastructure” after “Part 3A applies” in section 115RA (3).

**[8] Section 121A Definitions**

Insert “or in the case of State significant infrastructure” after “Part 3A applies” in the definition of **consent authority**.

**[9] Section 121A, definition of “development consent”**

Insert “and also includes, in the case of State significant infrastructure, an approval under Part 5.1 to carry out the infrastructure” after “carry out the project”.

**[10] Section 121B Orders that may be given by consent authority or by Minister etc**

Insert “, in connection with State significant infrastructure” after “Part 3A applies” in section 121B (1) (aa).

**[11] Section 121B, Table item 18**

Insert “or Part 5.1” after “Part 3A”.

**[12] Section 121D Circumstances in which compliance with sections 121F-121K is required**

Insert at the end of the section:

, or

- (d) an order given by the Minister or the Director-General in connection with State significant development or State significant infrastructure.

**[13] Section 121O Development consent or approval not required to comply with order**

Insert “or Part 5.1” after “Part 3A”.

**[14] Section 122A Application of Division**

Insert after section 122A (1):

- (1A) This Division also applies to the carrying out of State significant development that has development consent under Part 4 and to the carrying out of State significant infrastructure approved under Part 5.1. In this Division, any such development or

infrastructure is referred to as a project.

**[15] Section 122G Purposes for which powers under Division may be exercised**

Insert “or Part 5.1” after “Part 3A” in section 122G (1) (b).

**[16] Section 145B Exemption from liability—contaminated land**

Insert “or Part 5.1” after “Part 3A” in section 145B (2) (c).

**[17] Section 147 Disclosure of political donations and gifts**

Insert “or State significant infrastructure” after “State significant development” in paragraph (b) of the definition of **relevant planning application** in section 147 (2).

**[18] Section 147 (2)**

Insert after paragraph (b) of the definition of **relevant planning application**:

(b1) an application for approval of State significant infrastructure (or for the modification of the approval for any such infrastructure), or

**[19] Schedule 6 Savings, transitional and other provisions**

Insert at the end of clause 89 (2):

This subclause ceases to have effect on the repeal of Part 3A of the Act.

## **1.7 Transitional arrangements for existing Part 3A projects**

**[1] Schedule 6 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011*

**[2] Schedule 6A**

Insert after Schedule 6:

## **Schedule 6A Transitional arrangements—repeal of Part 3A**

### **1 Definitions**

(1) In this Schedule:

**environmental assessment requirements** means:

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

but does not include draft environmental assessment requirements or environmental assessment requirements for the purposes of the approval of a concept plan.

**Part 3A** means Part 3A of this Act, as in force immediately before the repeal of that Part and as modified under this Schedule after that repeal.

**Part 3A project 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.

**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.

## 2 Transitional Part 3A projects

- (1) For the purposes of this Schedule, the following are **transitional Part 3A projects**:
  - (a) an approved project (whether approved before or after the repeal of Part 3A),
  - (b) a project for which environmental assessment requirements were notified or adopted before the repeal of Part 3A,
  - (c) a project that is the subject of a Part 3A project application and that the regulations declare to be a transitional Part 3A project.
- (2) However, a **transitional Part 3A project** does not include any of the following:
  - (a) a project that ceases to be a project to which Part 3A of this Act applies by the operation of *State Environmental Planning Policy (Major Development) Amendment 2011*,
  - (b) a project that ceases to be a project to which Part 3A of this Act applies by the operation of any other State environmental planning policy, of this Schedule or of a regulation under this Act.

- (3) A transitional Part 3A project includes a part of a project if:
  - (a) that part of the project was the subject of a separate application for approval to carry out that part of the project, and
  - (b) that part of the project meets the criteria under this clause for a transitional Part 3A project.
- (4) A transitional Part 3A project extends to the project as varied by changes to the Part 3A project application or project approval, whether made before or after the repeal of Part 3A.

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

- (1) Part 3A 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 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) The regulations may modify provisions of Part 3A (and the instruments or decisions referred to in subclause (2)) as they apply to a transitional Part 3A project.
- (4) The declaration of development as a project under Part 3A (or as a critical infrastructure project) is revoked if the development is not, or ceases to be, a transitional Part 3A project.
- (5) A transitional Part 3A project is not State significant development or State significant infrastructure.
- (6) This clause is subject to the other provisions of this Schedule.

### **4 Construing references to Part 3A**

A reference in this Act (other than this Schedule) or in any other Act or in any instrument made under an Act to Part 3A or to a provision of that Part is to be construed as a reference to that Part or that provision as continued by this Schedule.

## **5 Part 3A projects that become State significant infrastructure**

- (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 infrastructure under section 115U (4).
- (2) Any such development may be declared to be State significant infrastructure 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) Despite anything to the contrary in any environmental planning instrument, any such development that is declared to be State significant infrastructure is taken to be development that may be carried out without development consent under Part 4.
- (4) For the purposes of Part 5.1 of the Act in its application to any such development:
  - (a) a concept plan approved under Part 3A in relation to the development (whether before or after the repeal of Part 3A) is taken to be an approval (and the concept proposals) for a staged infrastructure application under Division 3 of Part 5.1, and
  - (b) any approval under Part 3A to carry out part of the development is taken to be approval under Part 5.1 for the carrying out of that stage of the development, and
  - (c) any environmental assessment requirements, any statement of environmental assessment, any public exhibition or any other action under Part 3A in relation to the development is taken to be environmental assessment requirements, an environmental impact statement, public exhibition or other action taken under the corresponding provisions of Part 5.1, unless the Director-General directs that any such action be taken again under Part 5.1.

## **6 Part 3A projects that become State significant development**

- (1) This clause applies to development (other than a transitional Part 3A project or State significant infrastructure) that was a project the subject of a Part 3A project application and that becomes State significant development.
- (2) 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 stage of the development, and

- (b) any environmental assessment requirements, any statement of environmental assessment, any public exhibition or any other action under Part 3A in relation to the development are taken to be environmental assessment requirements, an environment impact statement, public exhibition 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.

## **7 Regulations relating to projects ceasing to be Part 3A**

- (1) The regulations may make provision for or with respect to the effect of the revocation (whether or not under this Schedule) of a declaration of development as a project under Part 3A or as a critical infrastructure project.
- (2) In particular, the regulations may make provision for or with respect to:
  - (a) the revival of consents or approvals under other Parts of this Act, and
  - (b) the recognition of any environmental assessment or any other action for the purposes of other Parts of this Act, and
  - (c) the continuing effect of provisions of Part 3A for the purposes of other Parts of this Act.

## **8 Continuing operation of Part 3A concept plan provisions for non-Part 3A transitional projects**

- (1) This clause applies to development:
  - (a) that was a project the subject of a Part 3A project application before the repeal of Part 3A (but not an approved project), and
  - (b) that is not a transitional Part 3A project to which Part 3A continues to apply, and
  - (c) that is not State significant infrastructure for which a concept plan has been approved under Part 3A.

This clause applies even if the declaration of the development as a project to which Part 3A applies has been revoked.

- (2) If the Director-General had, before the repeal of Part 3A, notified the proponent of environmental assessment requirements for an application for approval of a concept plan for development to which this clause applies, Part 3A continues to apply for the purposes only of the determination of the application (including for the purposes of the modification of any concept plan that is approved by the determination).



- (3) The regulations may modify provisions of Part 3A as they continue to apply for those purposes.
- (4) The following provisions apply to development to which this clause applies that is covered by a concept plan that is approved under Part 3A (whether before or after the repeal of Part 3A):
  - (a) 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) any development standard that is within the terms of the approval of the concept plan has effect,
  - (c) 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,
  - (d) 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,
  - (e) 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,
  - (f) an order or direction under section 75P (2) has no effect to the extent to which it is inconsistent with the terms of the approval of the concept plan.

## **9 Compensation not payable**

- (1) Compensation is not payable by or on behalf of the State:
  - (a) because of the enactment, making or operation of any of the following:
    - (i) the *Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011*,
    - (ii) *State Environmental Planning Policy (Major Development) Amendment 2011* or any other environmental planning instrument, regulation or decision relating to the removal of any project from the operation of Part 3A (whether made before or after the commencement of this clause), or
  - (b) because of any consequence of any such enactment, making or operation, or
  - (c) because of any statement or conduct relating to any such enactment, making or operation, or

- (d) because of any other statement or conduct relating to the repeal or proposed repeal of Part 3A (including the termination of consideration of any application or proposal under that Part in anticipation of its repeal).
- (2) This clause extends to statements, conduct and any other matter occurring before the commencement of this clause.
- (3) In this clause:
  - compensation** includes damages or any other form of monetary compensation.
  - conduct** includes any act or omission, whether unconscionable, misleading, deceptive or otherwise.
  - statement** includes a representation of any kind:
    - (a) whether made verbally or in writing, and
    - (b) whether negligent, false, misleading or otherwise.
  - the State** means the Crown within the meaning of the [Crown Proceedings Act 1988](#) or an officer, employee or agent of the Crown.

## 10 Savings and transitional regulations

- (1) This clause applies to regulations made under Part 1 of Schedule 6 that contain provisions of a savings or transitional nature consequent on the enactment of the [Environmental Planning and Assessment Amendment \(Part 3A Repeal\) Act 2011](#).
- (2) The provisions of those regulations have effect despite anything to the contrary in this Schedule.
- (3) The regulations may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.

## Schedule 2 Consequential and other amendments

### 2.1 Aboriginal Land Rights Act 1983 No 42

#### Section 40 Interpretation

Insert at the end of paragraph (b) of the definition of **development application** in section 40 (1):

, or

- (c) an application for approval of State significant infrastructure under Part 5.1 of the

*Environmental Planning and Assessment Act 1979.*

## **2.2 Barangaroo Delivery Authority Act 2009 No 2**

### **Section 4 Definitions**

Insert “and State significant infrastructure within the meaning of Part 5.1 of that Act” after “of that Act” in the definition of **development** in section 4 (1).

## **2.3 Building and Construction Industry Long Service Payments Act 1986 No 19**

### **Section 3 Definitions**

Insert “or Part 5.1” after “Part 3A” in section 3 (3).

## **2.4 Coastal Protection Act 1979 No 13**

### **[1] Section 37B Concurrence of Minister not required for certain development**

Omit the note to the section. Insert instead:

**Note—**

The concurrence of the Minister under this Part is also not required for other development under the *Environmental Planning and Assessment Act 1979* (see projects approved under Part 3A and State significant development or infrastructure).

### **[2] Section 55K Breach of coastal zone management plan: offence**

Insert “or approved State significant infrastructure within the meaning of Part 5.1 of that Act” after “of that Act” in section 55K (b).

### **[3] Section 55L Breach of coastal zone management plan: restraint**

Insert “or approved State significant infrastructure within the meaning of Part 5.1 of that Act” after “of that Act” in section 55L (5) (a).

### **[4] Section 55Y Removal of emergency coastal protection works**

Insert “or approved State significant infrastructure within the meaning of Part 5.1 of that Act” after “of that Act” in section 55Y (4).

### **[5] Section 55ZA Order to remove certain materials and structures unlawfully placed on beaches (other than emergency coastal protection works)**

Insert “or approved State significant infrastructure within the meaning of Part 5.1 of that Act” after “of that Act” in section 55ZA (6).

### **[6] Section 55ZB Stop work orders relating to materials and structures unlawfully being**

**placed on beaches (other than emergency coastal protection works)**

Insert “or approved State significant infrastructure within the meaning of Part 5.1 of that Act” after “of that Act” in section 55ZB (2).

## 2.5 Electricity Supply (General) Regulation 2001

### Clause 104A Definitions

Insert “or Part 5.1” after “Part 3A” in paragraph (b) of the definition of **development consent** in clause 104A (1).

## 2.6 Fisheries Management Act 1994 No 38

### [1] Section 163 Grant of aquaculture lease

Insert “or Part 5.1” after “Part 3A” in section 163 (7B) (b).

### [2] Section 218 Fishways to be provided in construction of dams and weirs

Insert “or Part 5.1” after “Part 3A” in section 218 (5C).

### [3] Section 220ZF Defences

Insert after section 220ZF (1) (b) (iii):

- (iv) State significant infrastructure approved under Part 5.1 of the *Environmental Planning and Assessment Act 1979*, or

## 2.7 Forestry and National Park Estate Act 1998 No 163

### Section 36 Application of Environmental Planning and Assessment Act 1979

Insert “, or State significant infrastructure under Part 5.1,” after “Part 3A” in section 36 (2A).

## 2.8 Gas Supply (Safety and Network Management) Regulation 2008

### Clause 34A Definitions

Insert “or Part 5.1” after “Part 3A” in paragraph (b) of the definition of **development consent** in clause 34A (1).

## 2.9 Hawkesbury-Nepean River Act 2009 No 14

### Section 4 Definitions

Insert “, State significant infrastructure (within the meaning of Part 5.1 of that Act)” after “Part 3A of that Act)” in the definition of **in-stream development** in section 4 (1).

## 2.10 Heritage Act 1977 No 136

### [1] Section 56 Definitions

Omit paragraph (a) of the definition of **prescribed application**. Insert instead:

- (a) the *Environmental Planning and Assessment Act 1979*, not being an application under Part 3A or Part 5.1 or an application relating to State significant development or integrated development,

### [2] Section 66 Application of Subdivision

Omit “Part 3A and Division 5 of Part 4 excepted”.

Insert instead “Part 3A, the provisions relating to State significant development or integrated development and Part 5.1 excepted”.

## 2.11 Homebush Motor Racing (Sydney 400) Act 2008 No 106

### Section 26 Application of *Environmental Planning and Assessment Act 1979*

Insert “, or State significant infrastructure under Part 5.1,” after “Part 3A” in section 26 (3).

## 2.12 Liquor Act 2007 No 90

### Section 45 Decision of Authority in relation to licence application

Insert “or Part 5.1” after “Part 3A” in section 45 (3) (c).

## 2.13 Liquor Regulation 2008

### Clause 15 Applications for certain licence-related authorisations

Insert “or Part 5.1” after “Part 3A” in clause 15 (2) (b).

## 2.14 Major Events Act 2009 No 73

### Section 51 Modification of environmental planning instruments and development consents

Insert “or Part 5.1” after “Part 3A” in the definition of **development consent** in section 51 (7).

## 2.15 Marine Parks (Zoning Plans) Regulation 1999

### Clause 1.41 Consent by relevant Ministers not required for certain activities

Insert “, or State significant infrastructure under Part 5.1,” after “Part 3A” in clause 1.41 (2) (c).

## 2.16 Mining Act 1992 No 29

### [1] Section 168A Addition or variation of conditions in certain circumstances

Insert “or Part 5.1” after “Part 3A” in the note to section 168A (1).

### [2] Schedule 1 Public consultation with respect to the granting of assessment leases and mining leases

Insert “or Part 5.1” after “Part 3A” in clause 4A.

### [3] Dictionary

Insert “or Part 5.1” after “Part 3A” in the definition of ***development consent***.

## 2.17 Motor Sports (World Rally Championship) Act 2009 No 55

### Section 10 Application of Environmental Planning and Assessment Act 1979

Insert “, or State significant infrastructure under Part 5.1,” after “Part 3A” in section 10 (3).

## 2.18 National Parks and Wildlife Act 1974 No 80

### [1] Section 91AA Director-General may make stop work order

Insert at the end of section 91AA (4) (d):

, or

(e) State significant infrastructure approved under Part 5.1 of the *Environmental Planning and Assessment Act 1979*.

### [2] Section 98 Harming protected fauna, other than threatened species, endangered populations or endangered ecological communities

Insert at the end of section 98 (5) (d):

, or

(e) State significant infrastructure approved under Part 5.1 of the *Environmental Planning and Assessment Act 1979*.

### [3] Section 99A Directions relating to protected fauna

Insert after section 99A (6) (c1):

(c2) in relation to anything essential for the carrying out of State significant infrastructure approved under Part 5.1 of the *Environmental Planning and*

*Assessment Act 1979*, or

**[4] Section 118A Harming or picking threatened species, endangered populations or endangered ecological communities**

Insert after section 118A (3) (b) (iv):

- (v) State significant infrastructure approved under Part 5.1 of the *Environmental Planning and Assessment Act 1979*, or

**[5] Section 118C Damage to critical habitat**

Insert after section 118C (5) (b) (iv):

- (v) State significant infrastructure approved under Part 5.1 of the *Environmental Planning and Assessment Act 1979*, or

**[6] Section 118D Damage to habitat of threatened species, endangered populations or endangered ecological communities**

Insert after section 118D (2) (b) (iv):

- (v) State significant infrastructure approved under Part 5.1 of the *Environmental Planning and Assessment Act 1979*, or

**[7] Section 156A Offence of damaging reserved land**

Insert after section 156A (2) (c) (iii):

- (iv) State significant infrastructure approved under Part 5.1 of the *Environmental Planning and Assessment Act 1979*, or

## **2.19 National Parks and Wildlife Regulation 2009**

**[1] Clause 11 Littering and damage**

Insert after clause 11 (2) (b) (iii):

- (iv) State significant infrastructure approved under Part 5.1 of the *Environmental Planning and Assessment Act 1979*, or

**[2] Clause 17 Erection and occupation of structures**

Insert after clause 17 (2) (b) (iii):

- (iv) State significant infrastructure approved under Part 5.1 of the *Environmental Planning and Assessment Act 1979*, or

**[3] Clause 18 Protection of vegetation**

Insert after clause 18 (2) (b) (iii):

- (iv) State significant infrastructure approved under Part 5.1 of the *Environmental Planning and Assessment Act 1979*, or

## **2.20 Petroleum (Onshore) Act 1991 No 84**

**[1] Section 48 Application of this Division to Government bodies where development consent etc not required**

Insert “or Part 5.1” after “Part 3A” in section 48 (1).

**[2] Section 54A Division applies only where development consent etc not required**

Insert “or Part 5.1” after “Part 3A”.

## **2.21 Plantations and Reafforestation Act 1999 No 97**

**Section 9 Offence with respect to unauthorised plantations**

Insert at the end of paragraph (b) in the definition of *ancillary plantation operations* in section 9 (4):

, or

- (c) the carrying out of approved State significant infrastructure within the meaning of Part 5.1 of that Act,

## **2.22 Protection of the Environment Operations Act 1997 No 156**

**[1] Section 50 Timing of licensing of development requiring consent under EP&A Act**

Insert “or infrastructure” after “a project” in the definition of *development consent* in section 50 (4).

**[2] Section 50 (4)**

Insert “or Part 5.1” after “Part 3A” in the definition of *development consent*.

## **2.23 Redfern-Waterloo Authority Act 2004 No 107**

**[1] Section 28 Authority as approval body for State infrastructure or other significant**



### **projects**

Insert “, or State significant infrastructure for the purposes of Part 5.1,” after “Part 3A” in section 28 (1).

#### **[2] Section 29 Heritage matters**

Insert “or that is State significant infrastructure to which Part 5.1 of that Act applies” after “Part 3A of that Act applies” in section 29 (1).

## **2.24 Roads Act 1993 No 33**

### **Section 64 RTA may exercise functions of roads authority with respect to certain roads**

Insert “, or State significant infrastructure approved under Part 5.1,” after “Part 3A” in section 64 (1A).

## **2.25 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)**

### **Schedule 2 Public Offices**

Insert at the end of Part 1 of the Schedule:

Full-time member of the Planning Assessment Commission

## **2.26 Subordinate Legislation Act 1989 No 146**

### **Section 10A Certain statutory rules to remain in force**

Insert after section 10A (2):

- (3) Despite the other provisions of this Part, the *Environmental Planning and Assessment Regulation 2000* remains in force until 1 September 2013, unless sooner repealed.

## **2.27 Threatened Species Conservation Act 1995 No 101**

### **[1] Section 114 Director-General may make stop work order**

Insert after section 114 (4) (a1):

- (a2) State significant infrastructure approved under Part 5.1 of the Planning Act, or

### **[2] Section 126I Effect of biodiversity certification**

Insert after section 126I (1):

(1A) **Infrastructure under Part 5.1 of the Planning Act** The environmental assessment requirements for the approval of State significant infrastructure under Part 5.1 of the Planning Act do not require an assessment of the impact of the infrastructure on biodiversity values if the infrastructure is carried out or proposed to be carried out on biodiversity certified land.

**[3] Section 126ZW Effect of changes to biodiversity certification on development and other activities**

Insert after section 126ZW (1) (a):

(a1) any approval of State significant infrastructure under Part 5.1 of the Planning Act granted before the suspension, revocation, modification or expiry,

**[4] Part 7A, Introductory note**

Insert “or Part 5.1” after “Part 3A”.

**[5] Section 127ZG Application for retirement of biodiversity credits**

Omit section 127ZG (2) (c). Insert instead:

(c) for the purpose of complying with a condition of an approval or consent granted by the Minister under Part 3A, Part 4 or Part 5.1 of the Planning Act, or

**[6] Section 127ZJ Development for which biobanking is available**

Insert “or development that is State significant infrastructure under Part 5.1 of that Act” after “Part 3A of the Planning Act applies”.

**[7] Section 127ZQ Modification, revocation and lapsing of biobanking statement**

Insert after section 127ZQ (7) (a):

(a1) in the case of a statement that relates to State significant infrastructure to which Part 5.1 of the Planning Act applies, the Minister administering that Act approves the infrastructure, or

**[8] Section 127ZR Minister may require retirement of credits**

Insert after section 127ZR (3) (a):

(a1) in the case of a statement that relates to State significant infrastructure to which Part 5.1 of the Planning Act applies, the Minister administering that Act imposes the credit retirement condition as a condition of approval under that Part, or

## **2.28 Threatened Species Conservation Regulation 2010**

### **Clause 33 Defences**

Insert after clause 33 (c) (ii):

(iia) State significant infrastructure approved under Part 5.1 of that Act, or

## **2.29 Transport Administration Act 1988 No 109**

### **Section 18 Definitions**

Insert “, State significant infrastructure within the meaning of Part 5.1 of that Act” after “Part 3A of that Act” in the definition of **development** in section 18 (1).

## **2.30 Water Management Act 2000 No 92**

### **Section 345 Harm to aquifers and waterfront land**

Insert after section 345 (3) (a) (iv):

(v) infrastructure approved under Part 5.1 of that Act, or

## **2.31 Water Sharing Plan for the Bega and Brogo Rivers Area Regulated, Unregulated and Alluvial Water Sources 2011**

### **Clause 89 General**

Insert “, or State significant infrastructure approved under Part 5.1,” after “Part 3A” in clause 89 (5).

## **2.32 Water Sharing Plan for the Greater Metropolitan Region Groundwater Sources 2011**

### **[1] Clause 36 Access rules for the taking of water**

Insert “, or State significant infrastructure approved under Part 5.1,” after “Part 3A” in clause 36 (1).

### **[2] Clause 53 General**

Insert “, or State significant infrastructure approved under Part 5.1,” after “Part 3A” in clause 53 (3).

## **2.33 Water Sharing Plan for the Murrumbidgee Area Unregulated**

## **and Alluvial Water Sources 2010**

### **Clause 59 General**

Insert “, or State significant infrastructure approved under Part 5.1,” after “Part 3A” in clause 59 (3).

## **2.34 Water Sharing Plan for the Richmond River Area Unregulated, Regulated and Alluvial Water Sources 2010**

### **Clause 81 General**

Insert “, or State significant infrastructure approved under Part 5.1,” after “Part 3A” in clause 81 (3).

## **2.35 Water Sharing Plan for the Towamba River Unregulated and Alluvial Water Sources 2010**

### **Clause 61 General**

Insert “, or State significant infrastructure approved under Part 5.1,” after “Part 3A” in clause 61 (3).

## **2.36 Water Sharing Plan for the Tweed River Area Unregulated and Alluvial Water Sources 2010**

### **Clause 64 General**

Insert “, or State significant infrastructure approved under Part 5.1,” after “Part 3A” in clause 64 (3).