



New South Wales

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

under the

Environmental Planning and Assessment Act 1979

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Environmental Planning and Assessment Act 1979*.

FRANK SARTOR, M.P.,
Minister for Planning

Explanatory note

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

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

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

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

under the

Environmental Planning and Assessment Act 1979

1 Name of Regulation

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

2 Commencement

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

**3 Amendment of Environmental Planning and Assessment Regulation
2000**

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

Schedule 1 Amendments

(Clause 2)

[1] Clause 8J Transitional provisions

Omit clause 8J (2). Insert instead:

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

[2] Clause 8J (3A)

Insert after clause 8J (3):

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

[3] Clause 8J (4A)

Insert after clause 8J (4):

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

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Schedule 1 Amendments

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

[4] Clause 8J (6)–(8)

Insert after clause 8J (5):

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

(7) If:

(a) a development application was made before the commencement of Part 3A of the Act on the basis that the development was State significant development, and

(b) the Minister is required to form an opinion that the development is State significant development in order to determine the application on that basis (but the Minister had not, before that commencement, formed an opinion on the matter),

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

(8) A development consent in force immediately before the commencement of Part 3A of the Act may be modified under section 75W of the Act as if the consent were an approval under that Part, but only if:

(a) the consent was granted with respect to development that would be a project to which Part 3A of the Act applies but for the operation of clause 6 (2) (a) of *State Environmental Planning Policy (Major Projects) 2005*, and

(b) the Minister approves of the development consent being treated as an approval for the purposes of section 75W of the Act.

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

BY AUTHORITY
