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Important amendments to the Transitional Part 3A provisions

Planners, developers and those involved in major projects may now have greater clarity on approvals granted for concept plans following the 1 December commencement of the Environmental Planning and Assessment Further Amendment (Part 3A Repeal) Regulation 2011. The amendments flow from the 1 October repeal of Part 3A of the Environmental Planning and Assessment Act (EP&A Act).

The revised regulation amends certain provisions of the transitional arrangements for Part 3A projects in Schedule 6A of the EP&A Act.

The changes

The amendments attempt to simplify the 'transitional Part 3A projects' provisions to clarify the position with respect to approvals granted for concept plans.

Definition of Transitional Part 3A projects

The definition of 'transitional Part 3A projects' has been expanded. Pursuant to clause 2 of Schedule 6A of the EP&A Act, a 'transitional Part 3A project' includes:

- (a) an approved project
- (b) a project that is the subject of an approved concept plan
- (c) a project for which environmental assessment requirements for approval to carry out the project, or for approval of a concept plan for the project, were last notified or adopted within two years before the relevant Part 3A repeal date, and
- (d) a project for which an environmental assessment (whether for approval to carry out the project or for approval of a concept plan for the project) was duly submitted before the relevant Part 3A repeal date.

Who does this affect?

Anyone involved in major projects for which approvals under the former provisions of Part 3A have been granted or are in the process of being determined.

Highlights

- Amendments have been made to the transitional arrangements for Part 3A projects in Schedule 6A of the EP&A Act.
- The amendments generally simplify and clarify the status of concept plan approvals.

However, clause 3A of Schedule 6A provides that approval for a transitional Part 3A project cannot be granted if the development concerned is a transitional Part 3A project **only** because it is the subject of:

- (a) an approved concept plan, or
- (b) environmental assessment requirements for approval of a concept plan, or
- (c) an environmental assessment for approval of a concept plan.

Accordingly, projects that have a concept plan approval (or are in the process of obtaining a concept plan approval), and do not have any subsequent project approvals for the development, will not be able to obtain approval by relying upon the provisions of the former Part 3A. Such projects will need to obtain consent under Part 4 or an approval under Part 5 of the EP&A Act depending on the circumstances.

Simplification of when an approved concept plan can be considered in the approval of other development

Clause 3B of Schedule 6A simplifies when certain provisions apply to the carrying out of development for which a concept plan has been approved. It provides that certain provisions apply to the carrying out of development under Part 4 or 5 of the Act when a concept plan has been approved under Part 3A (whether or not the project is or was a transitional Part 3A project).

The provisions that apply are generally the same as the provisions in the previous clause 3A(2) and include:

- (a) if Part 4 applies to the carrying out of the development, the development is development that may be carried out with development consent under Part 4 (despite anything to the contrary in an environmental planning instrument (EPI))
- (b) if Part 5 applies to the carrying out of the development, the development is taken to be development that may be carried out without development consent under Part 4 (despite anything to the contrary in an EPI)
- (c) any development standard that is within the terms of the approval of the concept plan has effect
- (d) 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
- (e) a consent authority may grant consent under Part 4 to the development without complying with any requirement under the EPI relating to a master plan, and
- (f) any order or direction made under section 75P(2) when the concept plan was approved continues to have effect.

Clarification of modifying a concept plan

Clause 3C of Schedule 6A makes it clear that section 75W continues to apply for the purpose of the modification of an approved concept plan, whether or not the project or any stage of the project is or was a transitional Part 3A project.

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Clarification of Part 3A projects that become State Significant Development

Clauses 6(1) and 6(2) of Schedule 6A clarify that any development that was a project to which Part 3A applied immediately before its repeal may be declared to be State significant development under section 89C of the EP&A Act, whether or not the development is a transitional Part 3A project. On the making of the declaration under s89C, the development ceases to be a transitional Part 3A project.

The effect of declaring a development State significant development and it ceasing to be a transitional Part 3A project, is that the provisions of Part 4, rather than the previous Part 3A will apply to that development.

Lapsing of approval of a concept plan for a transitional Part 3A project

Clause 11 of Schedule 6A relates to the lapsing of Part 3A approvals. Clauses 11(1) and 11(2) are the same as they were prior to the amendment (i.e. approvals are preserved if they are physically commenced (or if they relate to a use, that use is commenced) within five years of the approval unless a condition specifies a shorter time). Clause 11(3) now provides for the lapsing of an approval of a concept plan for a transitional Part 3A project on similar terms.

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