



NSW GOVERNMENT
Department of Planning



A community guide

NSW MAJOR PROJECTS ASSESSMENT SYSTEM

March 2006



Introduction



In 2005, the NSW Government passed planning reforms to improve the assessment of major projects. The NSW Department of Planning has published this community guide to explain important details about the new system.

The statutory reform package comprises:

- a new part of the *Environmental Planning and Assessment Act 1979* (EP&A Act), known as Part 3A—*defines the assessment process*
- a new environmental planning instrument, known as the State Environmental Planning Policy (Major Projects) 2005—*defines what projects are subject to Part 3A and require ministerial approval.*

The package strengthens the environmental planning and assessment process and improves community consultation and transparency. It also removes unnecessary red tape and clarifies the assessment of major projects, helping NSW remain Australia's economic powerhouse.

The new laws allow the State Government to concentrate on assessing and determining only the most significant proposals in NSW. This significance may be due to a project's economic importance to NSW, potential environmental impact, strategic location or because it will provide essential infrastructure. Also planning and assessment responsibilities are returned to councils in areas where the State planning objectives have been achieved.

For the first time, the planning laws clearly define in one policy package, the major projects that will be determined by the Minister for Planning.

The situation until now

Historically, the NSW Planning Minister has had the power to 'call-in' development applications from local councils. In addition, more than 85 environmental planning instruments gazetted since 1979 made the Minister the consent authority for development covered by those instruments. Some of these instruments covered specific development classes, such as mining or manufacturing.

One of the aims of the Major Projects SEPP is to consolidate in one instrument those projects where the Minister is the determining authority. This makes it easier for everyone—the general community, interest groups and proponents—to understand the assessment regime in NSW, rather than having to wade through dozens of individual instruments. The new laws also include provisions to facilitate the speedy and effective delivery of major projects, public consultation, and an environmental assessment process that is focused on what matters most.

What is a ‘major project’



A development proposal can be declared to be subject to the Part 3A assessment system because of its type and size, or where it is located. These sorts of proposals are commonly known as *major projects*.

Classes of development

Schedule 1 of the Major Projects SEPP provides a list of the classes of development which can be considered a major project to be assessed under Part 3A of the EP&A Act and determined by the Minister.

The major project can be in the category of:

- agriculture, timber, food and related industries
- mining, petroleum production, quarries and associated processing industries
- chemical, manufacturing and related industries
- general manufacturing, distribution and storage facilities
- tourism and recreational facilities
- health and public service facilities
- transport, energy and water infrastructure
- resource and waste-related industries.

Schedule 1 sets thresholds for each of these categories (such as a total capital investment value or the number of operational employees) as to when a proposal may be considered a major project. For example, for a proposed timber-mill the relevant threshold is that it would have to employ more than 100 people full time and have a capital investment value of more than \$30 million. If the Minister forms the opinion that a particular proposal meets the threshold, then it is declared a major project.

The situation is slightly different for residential, commercial or retail projects. As well as having a capital investment value over \$50 million, the Minister must also determine the proposal is ‘important in achieving State or regional planning objectives’ before declaring it a major project.

Specified sites



The Minister is also the determining authority for certain development on specified sites, which are described in Schedule 2 of the Major Projects SEPP. These sites are considered to be important in achieving State or regional objectives. Such sites include Newcastle's Honeysuckle waterfront, Penrith Lakes, Rhodes peninsula, Fox Studios and foreshore sites around Sydney Harbour.

Schedule 2 also covers certain developments within the declared NSW Coastal Zone. For example, major projects that would need the Minister's approval include buildings greater than 13 metres in height, or subdivisions of more than 25 lots in a rural/residential zone if proposed within a sensitive coastal location within the metropolitan coastal zone or any part of the coastal zone outside the metropolitan coastal zone. The consideration of these projects by the NSW Government means the objectives of the NSW Coastal Policy can be more easily implemented.

Environmental assessment process



The new laws ensure a focused, robust and consistent assessment of a major project's potential environmental impact.

Under the new regime, the Department of Planning prepares and makes publicly available the key issues that a proponent must address in an *environmental assessment* of the proposal. These are known as the *Director-General's requirements* for environmental assessment. State agencies such as the Department of Environment and Conservation and other relevant authorities including local councils, are routinely consulted in developing these requirements to ensure all key issues are identified at the start of the process.

In preparing the environmental assessment, the proponent is also encouraged to consult with the community, relevant councils and agencies. The environmental assessment is generally required to include a written *statement of commitments* outlining how the project's likely environmental impacts will be minimised or managed. If the project is approved, the proponent will be required to honour these commitments as part of the conditions of approval.

Once the proponent has prepared the environmental assessment, it is checked that it addresses the Director-General's requirements and, if satisfactory, the Department will arrange to exhibit the environmental assessment for public comment for a minimum of 30 days.

Under the new laws, the proponent can be required to respond in writing to issues raised in submissions and provide a *preferred project report*, which outlines any proposed changes to the project to minimise its environmental impact. If it is determined that the proposed changes significantly alters the nature of the project, the proponent may be required to make the preferred project report available to the public.

The new laws require that all key project documents, including project declarations, applications and environmental assessments be made publicly available.

Critical infrastructure

The Minister also has the power to declare a project to be *critical infrastructure*. Such a declaration can only be made where the Minister is of the opinion the project is essential for the State for economic, environmental or social reasons.

Concept plans

There are a number of ways to propose to carry out a major project. One is to lodge a project application that contains detailed information about the project. Another option is to submit a *concept plan*, which provides a broader overview of what is proposed. Approval of the concept plan would establish the framework for more detailed development of the proposal, and may include the need for further approvals.

Project applications and concept plan applications, including those for critical infrastructure, are all subject to the Part 3A environmental assessment process.



Independent hearing and assessment panels

As part of the planning reforms, provisions have been made in the EP&A Act for the use of independent hearings and assessment panels (IHAPs) to strengthen the assessment process. This could be a panel of experts or a panel of officers representing the Department of Planning and other relevant public authorities. The Minister can decide to convene an IHAP and appoint panel members at any stage in the assessment process to provide important advice on issues of concern.

Public hearings may also be undertaken to provide input into the panel's assessment and recommendations.

The IHAP then produces a report outlining the issues and making recommendations.

Appeals



Both proponents and objectors can appeal decisions made under the Part 3A assessment system, under certain circumstances.

A proponent of a major project who is dissatisfied with the determination of the Minister can, within three months of receiving notification of the determination, appeal to the Land and Environment Court.

Objectors may also have appeal rights in respect of a major project determination. Any appeal must be commenced within 28 days of the notice of determination being issued. Objectors do not have a right of appeal where a concept plan has been approved for the project.

Both proponent and objector appeals cannot be pursued where projects have been the subject of either a Commission of Inquiry or a report prepared by a panel of experts, or when the project has been declared critical infrastructure. This is similar to the situation which existed before the creation of the Part 3A system.

State significant sites



The Minister can determine some sites to be what is known as *State significant sites*. These sites may have significance for the wider community, for example, universities, hospitals, railway stations, heritage precincts and major residential developments. The site's redevelopment significance may also be important to implement State planning objectives, including State or regional planning strategies.

The Major Projects SEPP allows the Minister to determine that a site is State significant and to add it to the list of State significant sites that appear in Schedule 3 of the SEPP.

Before deciding whether to list a site, the Minister may require a study to be undertaken to assess the State or regional planning significance of the site and the suitability and implications of any proposed land use. The Minister may also require an inquiry to be held as part of the investigation into a potential State significant site.

When deciding to place a State significant site into Schedule 3 of the SEPP, the Minister may establish the planning regime for the site. This could include zoning changes.

Once a site is listed as State significant, further detailed major project or development applications may need to be submitted. It is also possible to lodge a major project application or concept plan for approval concurrently with a proposal to list a site as State significant.

More information

Copies of NSW legislation, including the *Environmental Planning and Assessment Act 1979* and Environmental Planning and Assessment Regulation 2000 and environmental planning instruments such as State Environmental Planning Policy (Major Projects) 2005 are available from the NSW Parliamentary Counsel Office's website at www.legislation.nsw.gov.au. See 'Browse A-Z In Force'.

Further information is also available on the Department of Planning website at www.planning.nsw.gov.au, including a list of major projects being assessed under Part 3A. The project register includes details of applications declared as Part 3A, Director-General's requirements issued for particular projects, environmental assessments currently on public exhibition, preferred project reports (where relevant) and notices of determination.

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