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## PLANNING SYSTEM

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State environmental planning policies

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# Review of and subsequent changes to the SEPP (Major Projects) 2005

This circular is to advise local councils, relevant State agencies, industry and the community of the gazettal of some recent amendments to State Environmental Planning Policy (Major Projects) 2005.

## Introduction

State Environmental Planning Policy (Major Projects) 2005 (the Major Projects SEPP) commenced on 1 August 2005. The policy provides a single planning instrument for the identification of projects for which the Minister for Planning is the approval authority under Part 3A of the *Environmental Planning and Assessment Act 1979* (the EP&A Act). When it was introduced, the Major Projects SEPP updated or replaced provisions in 87 individual planning instruments, directions and declarations, which, over the years, made the Minister the determining authority for developments of State or regional planning significance.

Clause 15(1) of the Major Projects SEPP provides that the Minister is to review the operation of that SEPP 'as soon as practicable after the first anniversary of the commencement of Part 3A of the Act...to ensure that the provisions continue to be appropriate for identifying Part 3A projects'.

As a result of this review, on 18 April and 27 July 2007 amendments no. 4 and no. 16, respectively, to the Major Projects SEPP were gazetted. The two amendments are designed to update the Major Project SEPP to ensure that it can more efficiently and effectively achieve its stated objectives. The changes take effect from date of gazettal.

## The review process

The review of the Major Project SEPP took into consideration the project applications received during the first 18 months of the SEPP's operation and drew on consultations with a number of key external stakeholders as well as feedback from

the Department's assessment teams. The review also considered legal cases and legal advisings, and took into consideration whether proposals that to date have been identified as major projects have met one or more of the criteria set out in clause 15(2) of the policy, i.e:

- (a) the development is of regional or State economic importance in terms of a particular industry or infrastructure sector,
- (b) the development is of strategic significance in achieving State or regional planning, service delivery or economic development objectives,
- (c) the development is likely to set a precedent or is an emerging industry of strategic importance to the State,
- (d) the development is of region-wide or State-wide community interest,
- (e) the development is in need of an alternative consent authority arrangement:
  - (i) for added transparency because of potential conflicting interests, or
  - (ii) because more than one local council is likely to be affected or is the consent authority.

## Changes to the Major Project SEPP as a result of the review

Amendments no. 4 and no. 16 cover a number of classes of development and projects on specified sites, and include changes to both primary clauses and the schedules. Some of the changes involve adding projects while others remove projects from the Part 3A assessment regime, passing them back to the relevant local council for

assessment and determination. A summary of some of the key changes is provided below.

### **Changes to certain classes of development (Schedule 1 of the Major Project SEPP)**

The amendments in relation to:

#### *Agricultural produce industries and food and beverage processing*

- Clarify that development for the purposes of a winery that employs 100 or more people, or has a capital investment value of more than \$30 million, are Part 3A projects.
- Clarify that development that employs 100 or more people, or has a capital investment value of more than \$30 million, and that the Minister for Planning considers constitutes an agricultural produce industry or food and beverage processing are Part 3A projects.

#### *Petroleum (oil, gas and coal seam methane)*

- Extend existing Part 3A provisions to include drilling and operation of petroleum wells (in connection with oil, gas and coal seam methane) in the Hawkesbury, Port Stephens and Upper Hunter local government areas.

#### *Extractive industries*

- Exclude development for the purpose of turf farming and certain maintenance dredging from being Part 3A extractive industries projects.

#### *Major sporting facilities*

- Include park improvements in Western Sydney Parklands with a capital investment value of more than \$5 million to be Part 3A projects.

#### *Transport, communications, energy and water infrastructure*

- Include electricity generating facilities burning distillate in the types of generation plants which are considered to be a Part 3A project.
- Clarify that reticulation facilities are to be considered when deciding if a major sewage and waste water treatment plants is to be a Part 3A project.
- Include development for the purpose of inter-continental submarine telecommunication cables (outside council areas) as a Part 3A project.

#### *Remediation of contaminated land*

- Exclude development for the purpose of remediation of contaminated land that would otherwise have not required development consent from being a Part 3A project.

### **Changes to projects on specified sites (Schedule 2 of the Major Project SEPP)**

The amendments in relation to:

#### *Coastal areas*

- Exclude the following development in the coastal zone from being declared to be a Part 3A project:
  - a change of the use of a building to use as a recreational or tourist facility
  - some development for the purpose of a building or structure that is more than 13 metres high
  - certain development that the Minister determines to be of only local environmental planning significance.
- Include as a Part 3A project certain incremental subdivision in the coastal zone (namely subdivision of land adjoining or neighbouring land in the same ownership by a series of development applications concerning a small parcel of land).
- Remove a provision in the Major Projects SEPP that excludes development from being a Part 3A project if, under another environmental planning instrument, the Minister for Planning or the Director-General of the Department of Planning has a concurrence role, in relation to the development.

#### *Naval Stores Site, Ermington*

- Exclude certain lands in Ermington by changing the boundary of the map in Schedule 2 of the SEPP so that development in that area will in future be determined by the council.

#### *Newcastle—Honeysuckle*

- Exclude certain lands in Honeysuckle by changing the boundary of the map in Schedule 2 of the SEPP so that development in that area will in future be determined by the council.

#### *Port and related employment lands*

- Re-establish the policy that small-scale development with a capital investment value of \$5 million or less carried out by a public authority in the port areas of Botany and Sydney Harbour do not require development consent under Part 4 of the EP&A Act, while similar small-scale development by the private sector operators require consent from the Minister for Planning under Part 4.

#### *Sydney—Sydney Cricket Ground*

- Establish that development at the Sydney Cricket Ground for the purposes of non-sporting events, which comply with noise prevention notice and other nominated provisions (e.g. certain concerts or rallies) and minor development (e.g. landscaping, signage, bus shelters) at the Sydney Cricket Ground are exempt development.

- Make the Minister the consent authority for other minor development or non-sporting events at the Sydney Cricket Ground that are not exempt development.

*Sydney Harbour foreshore sites—Rhodes Peninsula*

- Remove the Minister’s approval role for future development within Rhodes Peninsula so that such development is no longer identified as a Part 3A project. As a result, the City of Canada Bay Council will be the consent authority for, and Sydney Regional Environmental Plan No. 29—Rhodes Peninsula, will apply to all future development on land within the Rhodes Peninsula.

**Changes in relation to State significant sites (Schedule 3 of the Major Project SEPP)**

The amendments in relation to:

*Redfern–Waterloo Authority sites*

- Exclude basements and any space within a building with a floor level that is predominantly below a basement from the calculation of storeys in buildings on land in the Redfern–Waterloo Authority sites.
- Clarify that certain minor development, such as public art and street signs undertaken by or on behalf of a public authority, or minor internal alteration of buildings, are exempt development on land within the Redfern–Waterloo Authority sites.

*State significant sites in general*

- For greater transparency, provide for the public to be notified of proposals to add sites to the list of State significant sites in Schedule 3 of the Major Projects SEPP.

**Other changes to the Major Project SEPP**

*Calculation of capital investment value (clause 3(2))*

- GST has been excluded from the determination of the capital investment value of development for the purposes of the Major Project SEPP.

*Transitional provisions and other changes (clause 6; and Schedule 1, clause 7[1][b])*

- Transitional provisions for Part 5 applications made under but not finally determined before the Major Project SEPP took effect have been included.
- A provision in Schedule 1 to the Major Projects SEPP has been included, so that it refers not just to an application for development consent under Part 4 of the EP&A Act but also extends to an application for approval of a concept plan or a project under Part 3A of the EP&A Act.

**Further information**

A copy of State Environmental Planning Policy (Major Projects) 2005 (Amendment No .4) is available in the NSW Government Gazette Number 53, Special Supplement, published on 18 April 2007; and State Environmental Planning Policy (Major Projects) 2005 (Amendment No. 16) is available in the NSW Government Gazette Number 93 published on 27 July 2007. See <http://www.advertising.nswp.commerce.nsw.gov.au/Gazette/>

A copy of State Environmental Planning Policy (Major Projects) 2005, as amended, can be viewed on the Parliamentary Counsel Office’s website at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)

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Director-General

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**Important note**

This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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