

Overview of Bill

The object of this Bill is to repeal Part 3A of the *Environmental Planning and Assessment Act 1979 (the Principal Act)*. Following the repeal of that Part, development previously dealt with under that Part will be dealt with as follows:

(a) development that is not State significant development or infrastructure will be dealt with under Part 4 by the local council or a joint regional planning panel,

(b) development that is State significant development will be dealt with under Part 4 by the Minister,

(c) development that is State significant infrastructure will be dealt with under a new Part 5.1 by the Minister,

(d) development that has already been the subject of substantial assessment under Part 3A before its repeal will continue to be dealt with under transitional arrangements in accordance with the former provisions of that Part.

The Bill also makes a number of miscellaneous amendments to provisions of the Principal Act relating to the Planning Assessment Commission and joint regional planning panels (including specifying in the Principal Act the development that a regional panel may be authorised by a planning instrument to deal with in place of the local council).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

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

Schedule 1.1 Repeal of Part 3A

The subschedule repeals Part 3A of the Principal Act.

Schedule 1.2 State significant development

The subschedule provides for the proposed scheme for State significant development for which the Minister is the consent authority under Part 4 of the Principal Act.

Schedule 1.2 [20] inserts a new Division 4.1 (proposed sections 89C–89L) into Part 4 of the Principal Act, which makes special provision for State significant development.

Proposed section 89C defines *State significant development* for the purposes of the Principal Act as development that is declared to be State significant development by a State environmental planning policy. The Minister may, by order, also call in specified development on specified land as State significant development on the advice of the Planning Assessment Commission (*the PAC*).

Proposed section 89D makes the Minister the consent authority for State significant development. However, section 23 enables the Minister to delegate this function to the PAC, the Director-General or any other public authority. The proposed section also provides that the Minister may determine, in the case of a staged development application, that a subsequent stage of the development is to be determined by the relevant council.

Proposed section 89E provides for the following matters in relation to a development application for State significant development:

(a) the Minister may determine the application by granting consent, with or without modifications or conditions, or by refusing to grant consent,

(b) the Minister cannot grant consent if the development concerned is wholly prohibited by an environmental planning instrument (but may grant consent even if it is partly prohibited),

(c) if part of the development requires development consent and the other part may be carried out without consent, the entirety of the development is taken to require consent.

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The proposed section also provides for procedures relating to the making of concurrent applications for consent for prohibited development and the making of a planning instrument to remove the prohibition (in which case only the PAC may make the instrument and grant consent).

Proposed section 89F provides for the public exhibition (of not less than 30 days) of a development application for consent to carry out State significant development, including the procedures for the making of submissions in relation to the application.

Proposed section 89G enables regulations to be made for or with respect to the procedures and other matters concerning State significant development, including with respect to environmental impact statements to accompany development applications for State significant development.

Proposed section 89H applies the standard provision in section 79C for the evaluation of development applications to applications in respect of State significant development.

Proposed section 89I allows the Minister when granting approval to State significant development to impose certain conditions in respect of biobanking. Equivalent provision is made in relation to State significant infrastructure. (See proposed **section 115ZC**.)

Proposed section 89J exempts State significant development that is authorised by a development consent from any requirement for the authorisations, and from any order, referred to in the proposed section. Similar provision is made in relation to State significant infrastructure.

Proposed section 89K provides that the authorisations listed in the proposed section must be given consistently with any development consent for State significant development. Equivalent provision is made in relation to State significant infrastructure.

Proposed section 89L provides that provisions relating to State significant development prevail over other provisions in Part 4.

Schedule 1.2 [1]–[10], [12], [13], [17]–[19], [21], [22], [23] and [26] make consequential amendments.

Schedule 1.2 [11] provides that a development application for State significant development is to be accompanied by an environmental impact statement in the form prescribed by the regulations.

Schedule 1.2 [14] provides that an environmental planning instrument cannot require a consent authority to obtain the consent or concurrence of a person before granting development consent to State significant development unless the requirement in the instrument specifies that it applies to State significant development.

Schedule 1.2 [15] provides that the requirements in section 79BA of the Principal Act relating to bush fire prone land do not apply to State significant development.

Schedule 1.2 [16], [24] and [25] relocate the provisions relating to reviews by the PAC and appeals by applicants and objectors for designated development where the Explanatory note page 4

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PAC conducts a public hearing. At present such appeals are excluded if the Planning Assessment Committee merely conducts a review.

Schedule 1.2 [25] ensures that appeal rights for objectors in relation to designated development are not excluded merely because the development becomes State significant development and thereby ceases to be designated development.

Schedule 1.2 [27] ensures that the Minister is the certifying authority for the purposes of Part 4A only if the Minister is the only person authorised to issue the

certificate concerned.

Schedule 1.2 [28] ensures that the deemed refusal period, for the purposes of an appeal against a refusal to issue a subdivision certificate where the subdivision constitutes State significant development, is the same as for designated development.

Schedule 1.3 State significant infrastructure

Schedule 1.3 [3] inserts a new Part 5.1 into the Principal Act which provides for the proposed scheme for State significant infrastructure. The new Part 5.1 contains the following provisions:

Preliminary

Proposed section 115T sets out definitions for the purposes of the proposed Part, including *infrastructure*, which is defined to mean development for the purposes of infrastructure, including development for the purposes of any of the following:

- (a) railways,
- (b) roads,
- (c) electricity transmission or distribution networks,
- (d) pipelines,
- (e) ports,
- (f) wharf or boating facilities,
- (g) telecommunications,
- (h) sewerage systems,
- (i) stormwater management systems.
- (j) water supply systems,
- (k) waterway or foreshore management activities,
- (l) flood mitigation works,
- (m) public parks or reserves management,
- (n) soil conservation works,
- (o) other purposes prescribed by the regulations.

Proposed section 115U defines *State significant infrastructure* for the purposes of the Act. The proposed section provides that development may be declared to be State Explanatory note page 5

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significant infrastructure by a State environmental planning policy (*SEPP*) if it can be carried out without consent under Part 4 and is either infrastructure, or other development that would be an activity under Part 5 requiring an environmental impact statement. Specified development on specified land may also be declared to be State significant infrastructure by a SEPP or by Ministerial order (including on the recommendation of the PAC or Infrastructure NSW).

Proposed section 115V enables State significant infrastructure to 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. Proposed sections 115ZF (4), 115ZG (3) and 115ZK make special provision for critical State significant infrastructure. **Schedule 1.3 [2]** ensures that the Minister cannot delegate the Minister's functions of determining an application for approval to carry out critical State significant infrastructure.

Environmental assessment and approval of infrastructure

Proposed section 115W provides that the Minister's approval is required for the carrying out of State significant infrastructure.

Proposed sections 115X–115ZA set out procedures relating to applications for the Minister's approval of development that is State significant infrastructure, including the procedures relating to the environmental assessment of that development and the public exhibition of the environmental impact statement that the proponent must submit to the Director-General under proposed section 115Z.

Proposed section 115Z also enables the Director-General to require the proponent

to submit a response to submissions and a report (a **preferred infrastructure report**) that outlines any proposed changes to the development to minimise its environmental impact or to deal with any other issue raised during the assessment of the application concerned.

Proposed section 115ZB deals with the Minister's determination of an application for approval to carry out State significant infrastructure. The Minister is required to consider the Director-General's report, any advice provided by the Minister having portfolio responsibility for the proponent, and any findings or recommendations of the Planning Assessment Commission following any review of the infrastructure.

Proposed section 115ZC deals with biobanking and is equivalent to proposed section 89I, which relates to State significant development.

Staged infrastructure applications

Proposed sections 115ZD and 115ZE provide for staged infrastructure applications, which set out concept proposals for proposed infrastructure, leaving more detailed proposals for subsequent applications for approval under the Part. This aspect of the scheme for staged infrastructure applications is similar to the scheme for staged development applications set out in Division 2A of Part 4 of the Principal Act.

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Application of other provisions of Principal Act and other Acts

Proposed section 115ZF generally provides that Parts 3, 4 and 5 of the Principal Act do not apply (except as otherwise provided) to or in respect of State significant infrastructure. The proposed section also provides that Division 2A (Orders) of Part 6 of the Principal Act does not apply to critical State significant infrastructure.

Proposed section 115ZG is similar to proposed section 89J, which relates to State significant development. Proposed section 115ZG (1) and (2) exempt approved State significant infrastructure from any requirement for the authorisations, and from any order, referred to in the proposed subsections. Proposed section 115ZG (3) exempts critical State significant infrastructure from the orders, directions or notices listed in the proposed subsection.

Proposed section 115ZH is equivalent to proposed section 89K, which relates to State significant development.

Miscellaneous

Proposed sections 115ZI–115ZM set out miscellaneous provisions. Among other things, these provisions provide for the modification of approvals granted under the proposed Part, the public availability of documents relating to State significant infrastructure, the lapsing and surrender of approvals, the exclusion of third-party appeals in respect of critical State significant infrastructure and regulation-making powers.

Schedule 1.4 Planning Assessment Commission

Schedule 1.4 makes the following amendments in relation to the Planning Assessment Commission (the PAC):

(a) to confer on the PAC, in addition to other functions conferred by section 23D of the Principal Act, any function delegated to the Commission under the Principal Act (including delegation of the Minister's function of determining development applications for State significant development)

(**Schedule 1.4 [1]**),

(b) to enable the Director-General (and not just the Minister) to request the Commission to exercise certain of its functions (**Schedule 1.4 [2]**), including the following functions (inserted by **Schedule 1.4 [3]**):

(i) the review of any development, activity, infrastructure or project to which the Principal Act applies,

- (ii) the holding of a public hearing into any matter the subject of any advice to be given, or review to be made, by the Commission,
- (c) to clarify that the minimum number of Commission members is 4 and the maximum number is 9 (**Schedule 1.4 [6]**),
- (d) to provide that a person may not hold office as a member of the Commission for more than 6 years in total (**Schedule 1.4 [7]**),

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- (e) to enable the Minister to appoint any of the members of the Commission on either a full-time or part-time basis (**Schedule 1.4 [8]**),
- (f) to provide that the remuneration of the full-time members of the PAC is to be determined by Statutory and Other Offices Remuneration Tribunal (**Schedule 1.4 [9]**).

Schedule 1.4 [4] and [5] make consequential amendments.

Schedule 1.5 Joint Regional Planning Panels

Schedule 1.5 makes the following amendments in relation to Joint Regional Planning Panels:

- (a) to enable an environmental planning instrument to confer on a regional panel consent authority functions, in place of a council, only if the development concerned is of a class or description set out in proposed Schedule 4A (**Schedule 1.5 [1] and [5]**),
- (b) to provide that the Minister may only appoint the chairperson of the regional panel with the concurrence of the Local Government and Shires Associations (**Schedule 1.5 [4]**).

Schedule 1.5 [2] makes a provision for the manner of taking legal proceedings by or against a regional panel.

Schedule 1.5 [3] makes a consequential amendment.

Schedule 1.6 Miscellaneous amendments of Principal Act

Schedule 1.6 makes minor and consequential amendments, including:

- (a) to clarify that the cases in which the Minister may direct that the Director-General, rather than the council, is the relevant planning authority for the preparation of a local environmental plan, include cases where the Planning Assessment Commission or a joint regional planning panel has recommended to the Minister that a proposed instrument should be submitted for a determination under section 56 (Gateway determination) of the Principal Act (**Schedule 1.6 [2]**), and
- (b) to clarify that section 82A of the Principal Act, which requires a consent authority who is a council to review a determination of a development application at the request of the applicant concerned, does not apply where a regional panel exercises a council's functions as the consent authority (**Schedule 1.6 [3]**).

Schedule 1.7 Transitional arrangements for existing Part 3A projects

Schedule 1.7 provides for transitional arrangements consequent on the repeal of Part 3A of the Principal Act by Schedule 1.1, including the following:

- (a) the continued application of Part 3A of the Principal Act to approved projects, and projects for which environmental assessment requirements were notified or adopted before the repeal of the Part, other than specified projects declared to be State significant infrastructure,
- (b) the transitional arrangements relating to development (other than development referred to in paragraph (a)) that was the subject of a Part 3A project application and that becomes State significant development,
- (c) transitional arrangements with respect to concept plans under Part 3A.

Schedule 2 Consequential and other amendments

Schedule 2 makes amendments to other Acts and instruments that are generally consequential on the amendments made by Schedule 1.