

# **EIA Policy, Guidelines and Procedures**

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## **Supplementary Bulletin**

**Environmental Planning  
and Assessment  
Amendment (Infrastructure  
and Other Planning  
Reform) Act 2005 -  
Changes to Environmental  
Assessment Processes**

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# 1. Introduction

This Supplementary Bulletin to the RTA's Environmental Impact Assessment Policy, Guidelines and Procedures has been released to provide preliminary information on the introduction of the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005* ("the Planning Reform Act"). Changes will be made to the body of the Environmental Impact Assessment Policy, Guidelines and Procedures in due course.

The Planning Reform Act received assent on 16 June 2005. Parts of the Act (those dealing with the new Part 3A of the EP&A Act) became operative on 1 August 2005. At that time, the associated Regulation was released. At the time of writing of this Supplementary Bulletin, related Guidelines were still being developed the DIPNR. The information in this Supplementary Bulletin may need to change as the Guidelines are released and as more experience is gained with the operation of the Act.

Other parts of the Act will become operative at a date to be fixed by proclamation.

The Planning Reform Act will change fundamentally the way major infrastructure is assessed in NSW. It introduces a new Part 3A to the *Environmental Planning and Assessment Act 1979* ("the EP&A Act") to cover the assessment of declared *major infrastructure development* and includes new concepts such as *critical infrastructure* and *concept plans*. It also amends Parts 3, 4 and 5 of the EP&A Act and other legislation.

The attached flow diagram provides a summary of the major elements of the new Part 3A and the likely assessment and approval path that declared major infrastructure development will need to follow.

The following are answers to questions likely to arise in relation to the changes.

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## 2. Questions and answers

### 2.1 When and how does a proposal fall within Part 3A?

Major infrastructure or other development may be declared to be a project governed by Part 3A (Part 3A Project) by a State Environmental Planning Policy (SEPP) or by order of the Minister for Infrastructure and Planning (the Minister) published in the Gazette.

For the purposes of Part 3A, development includes activities as defined under Part 5 of the Act. A range of development including that for the purposes of roads might be declared a Part 3A Project. (Development need not be undertaken by a public authority to be declared.)

To be eligible for declaration as a Part 3A Project a proposal must either:

- In the opinion of the Minister be of State or regional environmental planning significance or
- In the opinion of the proponent (ie, the RTA) would require an environmental impact statement if Part 5 of the EP&A Act applied.

A declaration could conceivably cover an individual proposal, a program (e.g. Pacific Highway Upgrade) or a class of development (e.g. all bridges works over a prescribed capital works value).

A Ministerial Order published in the Government Gazette on 29 July 2005 has the effect that all activities for which the RTA would otherwise require an Environmental Impact Statement under Part 5 are development to which Part 3A applies. Hence, while this Order is in effect, the RTA will not prepare any more Part 5 EISs but it will continue to prepare Part 5 REFs.

(See Section 75B)

### 2.2 Is the approval of the Minister for Infrastructure and Planning required for Part 3A Projects?

Yes. Applications need to be lodged with the Director-General of the Department of Infrastructure, Planning and Natural Resources (“DIPNR”). An application may relate to part only of a Part 3A Project. DIPNR guidelines will provide information on what a project application should include.

A preliminary environmental assessment will be required to accompany a project application. DIPNR guidelines will provide information on what a preliminary assessment should include.

Requests for approval are made at the beginning of the process. This is quite different to the previous process where approval was sought following the completion of environmental assessment.

Notification of the application for approval must be made by the RTA by way of an advertisement published in a newspaper circulating in the area of the project; before the start of the public consultation period for the project specified under section 75H.

The Minister may grant approval subject to conditions, and may modify the project itself.

(See Sections 75D, 75E, 75H and 75J and Regulation Clause 8F)

## **2.3 What environmental assessment requirements apply to Part 3A projects?**

Following an application for Part 3A approval, the Director-General of the DIPNR has 28 days to prepare environmental assessment requirements for that part of the Part 3A Project that is the subject of the application. These requirements must include the “key requirements” of relevant government agencies consulted by the Director General.

The Director-General will consult other agencies before preparing environmental assessment requirements; and may convene a Planning Focus Meeting or seek advice from a panel of experts if there is a “range of complex issues” or a project is considered to have “strategic importance”.

The level and scope of assessment requirements may not be known until after an application for approval is made. It is anticipated that the DIPNR Guidelines when finalised will provide some assistance in this respect.

The Minister may publish guidelines on the subject of environmental assessment requirements (including levels of assessment). In preparing environmental assessment requirements the Minister will have regard to any such guidelines.

Draft DIPNR Guidelines indicate that a statement of commitments to environmental management and mitigation measures will be required.

(See Section 75F)

## **2.4 How will environmental assessments be made public and how are submissions considered?**

The Director-General of the DIPNR has 21 days to consider the draft environmental assessment and determine whether it adequately addresses the environmental assessment requirements. The DIPNR will consult other agencies and may require a peer review and/or convene a panel to provide expert advice on adequacy. Additional information could be requested from the RTA if there are any concerns raised at this stage.

Once the Director-General is satisfied on this matter, the Director-General (not the RTA) is required to publicly exhibit the assessment for a period of 30 days. The assessment is to be placed on the DIPNR website and in such other locations as the Director-General determines. This is to occur within 14 days from the date of submission of the assessment. However, the DIPNR might delegate exhibition requirements to the RTA.

The Director-General must provide the RTA with either a copy of the submissions received or a summary of the issues raised in those submissions, within 10 days after closure of exhibition. The Director-General *may* require the RTA to provide a response the issues raised. The DIPNR might delegate to the RTA the receipt and consideration of all submissions.

(Other documents require similar exhibition by the DIPNR: applications for approval; the Director-General's requirements for an environmental assessment; environmental assessment reports by the Director-General; approvals to carry out projects; concept plans and approvals thereto; requests for modifications and approvals thereto. All are to be exhibited within 14 days from receipt of the request/application/submission/ or from the date of determination/report/approval.)

(See Sections 75H, 75X and Regulation Clause 8G)

## **2.5 Can modifications to the project be made following exhibition and before approval?**

The amendments contemplate the making of changes to a proposal the subject of a request for approval following the public exhibition of the environmental assessment. The changes made must minimise the environmental impact of the proposal. The Director-General *may* require a preferred project report outlining any such changes. If the Director-General considers that the proposed changes are significant, the Director-General *may* require the preferred project report to be made available to the public.

(See Section 75H)

## **2.6 Can an approval for a Part 3A project be modified?**

Yes. The Minister may modify an approval, but formal modification from the Minister will not be required where the project as modified will be consistent with the approval already given. The process for post approval modifications which will not be consistent with the approval is more straightforward than under Part 5.

(See Section 75W)

## **2.7 What fees apply?**

This remains uncertain in relation to RTA projects. Until it is resolved, fees should be discussed on a project-by-project basis with the DIPNR. If both a concept approval and a project approval are required, the fee will be apportioned so as not to exceed the total fee payable.

(See Regulation Clause 8H)

## **2.8 My proposal is a Part 3A project. Do I still need to check the provisions of planning instruments such as SEPPs and LEPs?**

Yes. The relevant planning instruments may contain matters that should be considered as part of the environmental assessment for the proposal.

Note that if the project is not also critical infrastructure (see below) and it is wholly prohibited by a planning instrument, the Minister is not able to grant an approval. However, given the linear nature of RTA proposals, it would be uncommon for a proposal to be wholly prohibited.

(See Section 75J)

## **2.9 Are other statutory approvals still required for declared infrastructure?**

In cases where the Minister has granted approval to the carrying out of a Part 3A Project certain other approvals will not be required. These include:

- Water use, water management work or activity approvals under the *Water Management Act, 2000*
- Concurrence under Part 3 of the *Coastal Protection Act, 1979*
- Approval in relation to an item on the State Heritage Register or an excavation permit under the *Heritage Act 1977*
- Permit relating to Aboriginal objects or consent to destroy Aboriginal objects under the *National Parks and Wildlife Act, 1974*.

Certain other specified statutory approvals are still required, but cannot be refused and must be granted on terms consistent with the Minister's Part 3A approval.

(See Section 75U and 75V)

## **2.10 What monitoring and auditing requirements might apply to declared Part 3A projects?**

It is likely that monitoring and auditing will either be committed to by the RTA as part of the environmental assessment or incorporated into the approval of the Part 3A Project.

However, it should be noted that the Minister can require monitoring or auditing subsequent to the giving of an approval. (Note that this could apply to all previously approved "EIS projects", which now become subject to part 3A provisions).

(See Section 122C. See also Section 122D)

## **2.11 For how long is a major infrastructure approval valid?**

An approval may be subject to a condition that it lapses on a specified date unless a specified action (such as the commencement of works) occurs.

If no such condition is included, the approval will not lapse. However, as a matter of practice it may be appropriate to consider whether a re-assessment is needed in circumstances where there have been important changes in the legislative, policy or receiving environment.

(See Section 75Y)

## **2.12 What is a concept plan?**

The Minister may require or authorise a concept plan for a Part 3A Project. The concept plan would outline the scope of the project and any development options, it would canvass any proposal for staged implementation and include other matters that the Director-General might require.

The environmental assessment and public consultation provisions in the Planning Reform Act apply to the concept plan in the same way as they apply to the general approval to carry out the project.

Once these requirements have been complied with, the Minister considers whether to approve the concept plan and, importantly, whether to approve it with modifications to the project. In giving approval to a concept plan the Minister may by way of determination:

- specify further assessment requirements for approval to carry out the project; or
- decide that approval to carry out the project, or a particular stage of it, shall be subject to the provisions of Part 4 or Part 5, or
- State that no further environmental assessment is required for the project or a particular stage of it. If this is the case the Minister may grant a project approval under s 75J at this stage without further application.

A concept plan approval is not in itself a project approval.

(See Sections 75M, 75N, 75O and 75P)

## **2.13 What is the relationship between the new system and Parts 4 and 5 of the EP&A Act?**

If a proposal is not a Part 3A Project then in almost all cases it will be subject to assessment under either Part 4 or Part 5 of the EP&A Act. Part 4 usually involves the submission of a development application to the relevant local council while Part 5 allows the RTA to coordinate the assessment and approval process as proponent and determining authority.

In the case of a Part 3A Project, Part 4 and Part 5 of the EP&A Act generally will not apply. The exception is where the Minister is giving a concept approval. In such cases the Minister may decide that approval to carry out the project, or a particular stage of it, shall be subject to the provisions of Part 4 or Part 5. The extent to which this option is likely be utilised by the Minister is not known at this stage.

(See Sections 75R and 75P)

## **2.14 What is a critical infrastructure project?**

A critical infrastructure project is a Part 3A Project that in the opinion of the Minister is essential for the State for economic, environmental or social reasons. At the time of writing it is not clear what types of proposals are likely to be critical infrastructure or whether RTA proposals will be among them.

Special provisions in the Planning Reform Act relate to critical infrastructure and these, amongst other things, exclude third party appeals without the consent of the Minister.

(See in particular Sections 75L and 75T)

## **2.15 Will the new system be recognised by the Commonwealth for the purposes of the *Environment Protection and Biodiversity Conservation Act 1999*?**

This is not known. It is possible that the decision of the Commonwealth to accredit the NSW assessment process will depend on the level of environmental assessment nominated by the Minister following an application for approval for a Part 3A Project.

Environment Branch will undertake discussions with both the DIPNR and the Commonwealth Department of Environment and Heritage to try to clarify this matter.

## **2.16 What should I do if I have an “EIS project” part way through the Part 5 approval process?**

As of 1 August 2005, all previous Division 4, Part 5 RTA projects become Part 3A projects. The Regulation includes provisions that enable adoption of assessment processes already undertaken. Details in relation to any individual project will need to be discussed with the DIPNR.

(See Section 75ZA and Regulation Clause 8J)

## **2.17 What should I do if I wish to modify an “EIS project” approved by the Planning Minister under Part 5?**

As of 1 August 2005, all previous Division 4, part 5 RTA projects become Part 3A projects. All proposed modifications after that date will need to apply the Part 3A provisions. See 2.6 above.

## **2.18 Are SISs and DEC concurrence required under Part 3A?**

The requirements that exist under Part 5 do not apply to Part 3A. The environmental assessment requirements will be determined by the Director-General of the DIPNR after consultation with other agencies. Hence, a SIS or similar document could be required but is not mandatory. There is no requirement for concurrence of the Director-General of the Department of Environment and Conservation (DEC) but the DIPNR may consult the DEC when considering the adequacy of the assessment and in determining whether to recommend approval.

## **2.19 What is the status of “REF/SIS projects”?**

SISs and DEC concurrence remain potential Part 5 requirements as they are now. The status of REF / SIS projects remains uncertain. Clarification will be sought from the DIPNR.

## **2.20 Do the reforms have any effect on the RTA’s functions under the *Roads Act 1993*?**

Yes, in two specific ways.

Firstly, there will be cases where the RTA is not the proponent for a Part 3A Project but that development requires the consent of the RTA under section 138 of the *Roads Act, 1993* (“*Roads Act*”). Under the new process a s.138 consent cannot be refused for an approved Part 3A Project and any consent issued will need to be consistent with the Minister’s approval for that infrastructure.

Secondly, the RTA is given the power, via an amendment to the *Roads Act*, to exercise the functions of a roads authority with respect to any road for the purpose of carrying out an approved Part 3A Project.

(See Section 75V and new subsection 64(1A) of the *Roads Act* )

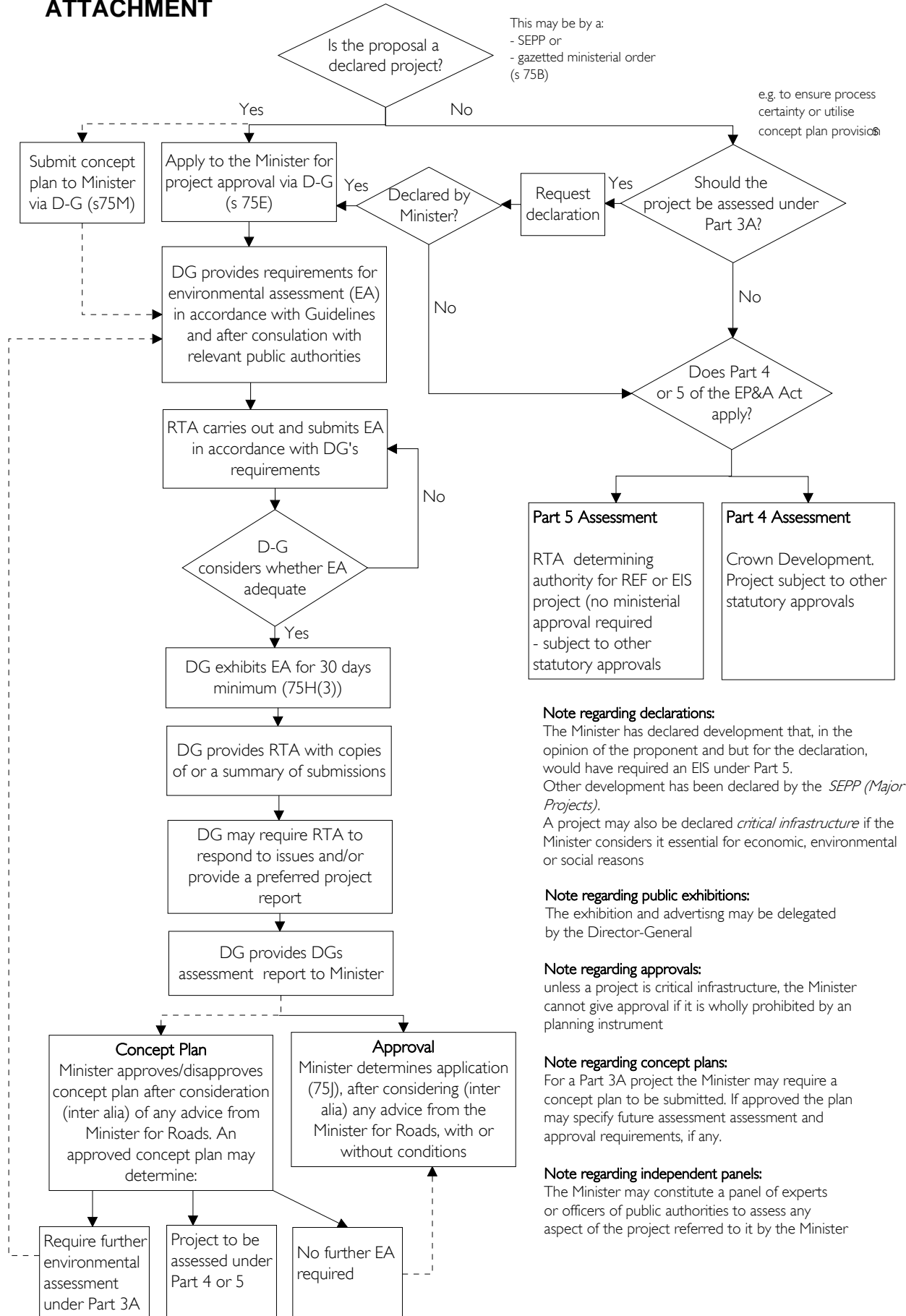
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## 3. Other Matters

The Planning Reform Act also makes changes to Parts 3, 4 and 5 of the EP&A Act. These are not canvassed in detail as part of this Supplementary Bulletin, but the following is noted:

- Division 4 of Part 5 of the EP&A Act is revoked. This is the current requirement for Ministerial approval to EIS projects. It is no longer needed, as the requirement effectively transfers to Part 3A.
- A new section 111A removes the existing duty to consider the environmental impact of a “routine” activity where the Minister determines that type of activity has low environmental impact and where the activity will be undertaken in accordance with a code approved by the Minister. (At the time of writing of this Supplementary Bulletin, this provision had not commenced operation).
- Provisions are included which aim to achieve a standardisation of local and other environmental planning instruments. These have not yet commenced.
- The *Environmental Planning and Assessment Model Provisions* will cease to have effect, however where they have already been adopted by a planning instrument they will continue to apply. This provision has not yet commenced.
- State significant development provisions will be repealed.
- State Environmental Planning Policy (State Significant Development) 2005 has been amended. This SEPP aims to provide that development previously declared as State Significant development under Part 4 is generally declared instead as major projects under Part 3A.

# ATTACHMENT



This may be by a:  
- SEPP or  
- gazetted ministerial order (s 75B)

e.g. to ensure process certainty or utilise concept plan provisions

<p><b>Part 5 Assessment</b></p> <p>RTA determining authority for REF or EIS project (no ministerial approval required - subject to other statutory approvals)</p>	<p><b>Part 4 Assessment</b></p> <p>Crown Development. Project subject to other statutory approvals</p>
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**Note regarding declarations:**  
The Minister has declared development that, in the opinion of the proponent and but for the declaration, would have required an EIS under Part 5. Other development has been declared by the SEPP (Major Projects).  
A project may also be declared *critical infrastructure* if the Minister considers it essential for economic, environmental or social reasons

**Note regarding public exhibitions:**  
The exhibition and advertising may be delegated by the Director-General

**Note regarding approvals:**  
unless a project is critical infrastructure, the Minister cannot give approval if it is wholly prohibited by an planning instrument

**Note regarding concept plans:**  
For a Part 3A project the Minister may require a concept plan to be submitted. If approved the plan may specify future assessment assessment and approval requirements, if any.

**Note regarding independent panels:**  
The Minister may constitute a panel of experts or officers of public authorities to assess any aspect of the project referred to it by the Minister

