Part 3A Major Projects (Now Repealed)

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Overview

Part 3A of the *Environmental Planning and Assessment Act 1979* (NSW) was repealed in 2011. However, the Part 3A system for major project assessment still applies to many project applications that were submitted before the repeal, as well as to modifications for projects that were initially approved under Part 3A.

State significant development (SSD) and State significant infrastructure (SSI), which are Part 4.1 and Part 5.1 of the EP&A Act, have replaced Part 3A as the process by which major projects are assessed. For more information about how new major projects are assessed, read our [SSD and SSI](#) Fact Sheet.

Prior to the introduction of SSD and SSI, all major projects, which include a sub-category of critical infrastructure projects, were assessed and approved under Part 3A provisions, rather than under Part 4 or Part 5 of the EP&A Act. The Planning Minister is the consent authority for all major projects and critical infrastructure.[^2]

This fact sheet outlines the assessment and approval process for Part 3A major projects.

[^2]: EP&A Act, s 75D(1).
What is a Part 3A project?

Part 3A projects are developments that, in the opinion of the Planning Minister, are of State or regional environmental planning significance, or for which an EIS under Part 5 will be required. In practice, Part 3A projects are usually large government infrastructure projects, such as roads, pipelines, desalination plants and dams, but could also include large private developments which are not carried out by a public authority.

Once a project falls within the category of a Part 3A project, then the assessment and approval process under Part 4 or Part 5 of the EPA Act ceases to apply and is replaced by the Part 3A process.

How are Part 3A projects identified?

The EP&A Act itself does not state which kinds of projects are covered by Part 3A. Rather, Part 3A projects are identified in:

- **SEPP (Major Projects) 2005**, or
- can be declared by Ministerial Order (of the Planning Minister).

Either individual projects, or categories of projects, can be declared to be Part 3A projects under a SEPP or an order. Ministerial Orders declaring Part 3A to apply to a project are published in the NSW Government Gazette. Click here to view the Department of Planning and Environment’s Fact Sheet on ‘What is considered a major project’.

**SEPP (Major Projects) 2005**

SEPP (Major Projects) 2005 identifies developments which are to be treated as Part 3A projects.

Schedule 1 of the SEPP provides a list of the types (or classes) of development which can be considered to be major projects.

These include:

- Intensive livestock industries that employ 20 people or more
- coal mining and sand mining developments
- extractive industries taking more than 200,000 tonnes per year

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3 Environmental Planning and Assessment Act 1979 (NSW), s. 75B(2).
4 Environmental Planning and Assessment Act 1979 (NSW), s. 75A definitions “major infrastructure development”.
5 Environmental Planning and Assessment Act 1979 (NSW), s. 75R.
6 Environmental Planning and Assessment Act 1979 (NSW), s. 75B(1).
7 Environmental Planning and Assessment Act 1979 (NSW), s. 75B(1)(b).
- certain marina facilities
- sewage and waste water treatment plants for more than 10,000 people
- pipelines, and
- remediation of some contaminated site.

If the Planning Minister is of the opinion that a particular project falls within one of these categories, and meets any specified thresholds, then the Minister can declare it to be a Part 3A project.

Schedule 2 of the SEPP lists specific sites (rather than general categories) that can be considered to be Part 3A projects. This list includes things such as high-impact developments (landfill, mining, marinas, subdivisions etc.) within the coastal zone, certain industrial developments at Kurnell, and developments on Sydney Harbour Foreshore sites.

As with Schedule 1, if the Planning Minister is of the opinion that a particular development falls within one of the definitions in Schedule 2, then it can be declared to be a Part 3A Major project.

- Click here to view SEPP (Major Development) 2005.

**Ministerial Orders**

Developments which do not fall within one of the categories listed in SEPP (Major projects) 2005 can still be dealt with by the Planning Minister as a Part 3A project upon the Minister publishing a Ministerial Order in the NSW Government Gazette.  

**New Infrastructure Laws for NSW**

In March 2009, the Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009 passed through NSW parliament. The implications of this Act are very significant. The Act applies to infrastructure projects identified as critical through the COAG (Council of Australian Governments) funding process.

Part 5 of the Act allows the new Coordinator General to make an order by writing that the Environmental Planning and Assessment Act (EPA Act) does NOT apply to such projects. Additionally, the Act cannot be prohibited by a Local Environment Plan, it cannot be assessed under Part 5 of the EPA Act and it cannot be declared as a Part 3A project. Alternatively, authorisation is sought from the Coordinator-General who may, upon approval of the project, attach conditions (including environmental protection). He/she may specify public notification requirements once authorisation is given.

There is no scope for public submissions or public participation prior to an authorisation being granted and there are no appeal rights to authorisation.

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8 *Environmental Planning and Assessment Act 1979 (NSW)*, s. 75B(1)(b), (2).
Click here to view the full National Building and Jobs Plan (State Infrastructure Delivery) Act.

**Critical infrastructure projects**

If a project has been declared as a Part 3A project, the Minister can make an additional declaration that the project is also a ‘critical infrastructure project’ if the Minister is of the opinion that the project is essential for the State for economic, environmental or social reasons.\(^9\)

This can be done by either listing the development in Schedule 5 of SEPP (Major Projects) 2005 (now repealed), or by the Minister making a Ministerial Order.

Projects which have been declared to be critical infrastructure projects include:\(^{10}\)

- the Kurnell Desalination Plant
- the Royal North Shore Hospital redevelopment site
- the Queensland – Hunter Gas Pipeline, and
- Tillegra Dam.

SEPPs do not apply to critical infrastructure projects unless the SEPP specifically states that it does.\(^{11}\)

**Land owner consent not required**

Unlike most other forms of development, an application for a critical infrastructure projects can be lodged without the consent of landowners.\(^{12}\)

**No appeal against critical infrastructure projects**

In relation to appeal rights, the effect of a project being declared as critical infrastructure is to:

- exclude all merit appeals (Class 1) (by either the proponent or by objectors) against any decision regarding of the project,\(^{13}\) and
- exclude anyone from taking judicial review proceedings (Class 4) in the Land and Environment Court to challenge the declaration, to remedy or restrain a breach of the EPA Act in relation to the way the decision was

\(^9\) *Environmental Planning and Assessment Act 1979* (NSW), s. 75C.

\(^10\) *State Environmental Planning Policy (Major Development) 2005*, cl. 6, 6A; Sch 5.

\(^11\) *Environmental Planning and Assessment Act 1979* (NSW), s. 75R(2)(b).

\(^12\) *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 8F(1)(b).

\(^13\) *Environmental Planning and Assessment Act 1979* (NSW), ss. 75K, 75L and 75Q.
made, unless the proceedings are brought, or approved by, the Planning Minister.\textsuperscript{14}

**Exemption from other environmental laws**

Once a critical infrastructure project has been declared, there is very little that another public authority or the public can do to ensure that it complies with environmental laws.

Where critical infrastructure is concerned, only the Planning Minister or the Director-General of Planning can give an administrative order relating to the enforcement of the EP&A Act or the Part 3A planning approval.\textsuperscript{15}

Critical infrastructure projects are also exempt from the usual range of administrative orders that can be used by public authorities to enforce other environmental laws. For example, interim protection orders and stop work orders to protect threatened species, and environment protection notices to reduce pollution, cannot be issued against a critical infrastructure project.\textsuperscript{16}

The EP&A Act also excludes anyone from taking enforcement proceedings in the Land and Environment Court (Class 4 proceedings) to enforce the conditions of a critical infrastructure approval, or to remedy or restrain a breach of the EPA Act or any other environmental law in relation to the project, unless the proceedings are brought or approved by the Planning Minister.\textsuperscript{17}

**How is a Part 3A project processed?**

The website of the NSW Department of Planning and Environment allows the public to track the progress of Part 3A project approvals. The Department’s Major Projects tracking system allows you to:

- Find out information on major projects which are before the Department
- Make submissions on projects which are on exhibition
- Find out about determinations on projects by the Department or Minister

[Click here](#) to go to the Department’s Major Projects Tracking system:

\textsuperscript{14} *Environmental Planning and Assessment Act 1979* (NSW), s. 75T(2).

\textsuperscript{15} *Environmental Planning and Assessment Act 1979* (NSW), s. 75R(5), Part 6, Div 2A, ss. 121A-121AS; and *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 8l.

\textsuperscript{16} *Environmental Planning and Assessment Act 1979* (NSW), s. 75U(3).

\textsuperscript{17} *Environmental Planning and Assessment Act 1979* (NSW), s. 75T(2).
Project application

To begin the process, the developer (proponent) lodges an application (project application) with the Director-General of Planning. Alternatively, the process can begin with the proponent lodging a concept plan. The Planning Minister is the consent authority for all Part 3A projects.

Landowner consent

Before the Minister decides on the application, the proponent must have obtained the consent of those landowners on whose land the development will take place, unless there is an exception. Exceptions include applications by public authorities, or applications which relate to critical infrastructure projects, mining projects or linear infrastructure projects (e.g. train lines, power lines), although notice may still need to be given.

Concept plans

The Planning Minister can allow, or can require, a proponent (developer) to submit a concept plan before lodging an application for a Part 3A project.

The purpose of a concept plan is to give a broad overview of the project by outlining what the project will entail, and whether it will be built in stages. A detailed description of the project is not required. A proponent can lodge a combined concept plan and an application for approval to carry out part of a project at the same time.

The main advantage for a proponent of lodging a concept plan is that the Planning Minister can either approve the development outright, or alternatively can more closely tailor the rest of the assessment process to suit the project.

Once a concept plan is lodged, the usual Part 3A process is followed requiring environmental assessment, an independent hearing and assessment panels (if the Minister requires one), public consultation and an environmental assessment report from the Director-General of Planning.

Are further approvals required?

This is up to the Planning Minister. In deciding whether or not to approve a concept plan, the Planning Minister can require the proponent to do further work, such as

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18 Environmental Planning and Assessment Act 1979 (NSW), s. 75E.
19 Environmental Planning and Assessment Act 1979 (NSW), s. 75D.
20 Environmental Planning and Assessment Regulation 2000 (NSW), cl. 8F(1), (2).
21 Environmental Planning and Assessment Regulation 2000 (NSW), cl. 8F(1).
22 Environmental Planning and Assessment Act 1979 (NSW), s. 75M(1).
23 Environmental Planning and Assessment Act 1979 (NSW), s. 75M(3A).
24 Environmental Planning and Assessment Act 1979 (NSW), s. 75P.
25 Environmental Planning and Assessment Act 1979 (NSW), s. 75N; Environmental Planning and Assessment Regulation 2000 (NSW), cl. 8A(2), (3), 8C.
requiring further environmental assessment (e.g. calling for a design competition). Or the Planning Minister can require the proponent to obtain further approvals under Part 4 or Part 5 of the EPA Act (although the Planning Minister can still control this process too).

Alternatively, the Planning Minister can approve the project outright, without requiring any further environmental assessment.

### Case Study: Challenges to concept plan approvals

**Walker v the Minister for Planning & Ors [2007] NSWLEC 741 (Sandon Point)**

The proponents, developers Stockland and Anglican Retirement Villages, applied to build approximately 180 residential dwelling allotments, 3 super-lots for future apartment or townhouse development, up to 250 seniors living units and a residential aged care facility on open space land which was partly declared an Aboriginal Place under the *National Parks and Wildlife Act 1979*, contained endangered ecological communities and significant bird habitat, and was prone to flooding. The Planning Minister eventually approved the concept plan subject to some conditions.

The Environmental Defender’s Office assisted Jill Walker in a successful Land and Environment Court challenge to the Concept Plan approval. Briscoe J held that when granting concept plan approval, the Minister had failed to consider the principles of ecologically sustainable development (“ESD”) because he had not considered whether the flood risk on the site would be exacerbated by climate change, had not obtained up-to-date mapping of endangered ecological communities, and had not carried out further investigations into a possible “women’s area” on the site. ESD is described in s 6(2) of the *Protection of the Environment Administration Act 1979* and includes the ‘precautionary principle’. The precautionary principle states that decision-makers should make an assessment of the risk-weighted consequences of any action before deciding to proceed with the action.

Further, Justice Biscoe held that under cl 8B of the *Environmental Planning and Assessment Regulation*, the Director-General was obliged to include in his report those aspects of the public interest which he considered to be relevant. It has been established in previous cases that ESD is an aspect of the public interest, therefore the Director-General was obliged to consider ESD in deciding what matters needed to be addressed in his report. In this case the Director-General had apparently failed to consider whether the climate-change related flood risk was a matter which needed to be addressed in his report.

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26 *Environmental Planning and Assessment Act 1979* (NSW), s. 75P(1)(a), (1A); *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 8D.
27 *Environmental Planning and Assessment Act 1979* (NSW), s. 75P(1)(b), (2).
28 *Environmental Planning and Assessment Act 1979* (NSW), s. 75P(1)(c).
Subsequently, in *Minister for Planning v Walker* [2008] NSWCA 224, the Court of Appeal (Justice Hodgson) ruled that, although the planning minister must make decisions in the public interest, not having regard to ESD principles does not necessarily constitute a breach of that obligation.

Ms Walker then sought special leave to appeal to the High Court. The application was heard in March 2009. The High Court declined to grant leave on the basis that while there were valid arguments in her favour, they did not think those arguments would succeed if the appeal were heard by the High Court.

**Environmental assessment**

The environmental assessment requirements for major projects and critical infrastructure are far more discretionary than the requirements for developments under Part 4 developments and Part 5 activities under the EP&A Act.

Once a project falls within Part 3A, Parts 4 and 5 of the EP&A Act no longer apply (unless Part 3A specifically says it does).  

**Director-General's sets assessment requirements**

The Director-General of Planning has a great deal of discretion in deciding what form of environmental assessment will be required for a Part 3A project, and what issues the assessment will cover.

Once the proponent lodges a project application, the Director-General must prepare the environmental assessment requirements for the individual project, which are then given to the proponent. In preparing the environmental assessment requirements, the Director-General must consult with relevant public authorities such as the Office of Environment and Heritage and the local council in the area where the project to take place, to ensure that they key issues are assessed.

The Director-General can require the proponent to include in an environmental assessment a ‘Statement of Commitments’ that the proponent is prepared to make to mitigate or manage the environmental impacts of the project.

**Review by Planning Assessment Commission**

Following amendments made to the EPA Act in 2008, the Planning Minister can now choose to refer any project or aspect of a project application or an application

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29 Environmental Planning and Assessment Act 1979 (NSW), s. 75R(1).
30 Environmental Planning and Assessment Act 1979 (NSW), s. 75F(2), (3).
31 Environmental Planning and Assessment Act 1979 (NSW), s. 75F(4).
32 Environmental Planning and Assessment Act 1979 (NSW), s. 75F(6).
33 Environmental Planning and Assessment Amendment Act 2008 No 36
for a concept plan to the Planning Assessment Commission (formerly called an independent hearing and assessment panel under s 75G: since repealed).  

If the Planning Minister is also the proponent of the project, then the project application must be referred to the Planning Assessment Commission.  

Public consultation and submissions

Once the proponent has completed the environmental assessment, this is given to the Director-General.  

The Director-General must make the environmental assessment report prepared by the proponent publicly available for at least 30 days. During that period, any person can make a written submission to the Director-General about the project.  

In response to the issues raised in the public submissions: the Director-General can require the proponent to submit:  

- a response to any of the issues  
- a report outlining any proposed changes to the project to address those issues, and  
- a revised statement of commitments.  

Public access to documents

In addition to the environmental assessment done by the proponent, the Director-General must make the following documents publicly available:  

- All declarations that Part 3A applies to a particular development  
- All applications to carry out projects  
- The Director-General’s environmental assessment requirements  
- The Director-General’s environmental assessment reports given to the Minister  
- All responses to submissions, including any proposed changes to projects  
- All reports by the Planning Assessment Commission on Part 3A projects  
- All approvals to carry out Part 3A projects  

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34 Environmental Planning and Assessment Act 1979 (NSW), s. 23D(1)(b)(ii).  
35 Environmental Planning and Assessment Act 1979 (NSW), s. 75X(1).  
36 Environmental Planning and Assessment Act 1979 (NSW), s. 75H(1).  
37 Environmental Planning and Assessment Act 1979 (NSW), s. 75H(3).  
38 Environmental Planning and Assessment Act 1979 (NSW), s. 75H(4).  
39 Environmental Planning and Assessment Act 1979 (NSW), s. 75H(6).  
40 Environmental Planning and Assessment Act 1979 (NSW), s. 75X(2); Environmental Planning and Assessment Regulation 2000 (NSW), cl. 8G.
- All applications for approval of concept plans, and
- Any requests for modifications to approvals.

These documents must be made available on the Planning Department’s website.41

- Click here to go to the Planning Department’s website Major project register.

**Planning Minister decides whether to approve project**

After the public consultation process is concluded, the Director-General must then give an environmental assessment report to the Planning Minister which includes the proponent’s environmental assessment and any proposed changes to it, a copy of any report by the Planning Assessment Commission, and any comments by the Director-General or other public authorities.42

The Planning Minister must then decide approve or disapprove the carrying out of the project.43 The Minister can approve the project with modifications, and can impose a condition of approval that the proponent complies with its statement of commitments.44

**Minister not bound by LEPs**

In deciding whether to approve a Part 3A project, the Minister is not bound by the provisions of any local environmental plans (LEPs): but see the exceptions below. However the Planning Minister can choose to take them into account in deciding whether to approve a project, and the Director-General must identify them in the Director-General’s report to the Minister.45

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**Case Study: Minister’s discretion to approve Part 3A projects**

**Drake-Brockman v Minister for Planning [2007] NSWLEC 490**

The Environmental Defender’s Office commenced proceedings in the Land and Environment Court on behalf of Mathew Drake-Brockman, challenging the validity of the approval for re-development of the Carlton United Brewery site on Sydney’s Broadway for 1600 residential apartments, commercial offices and retail premises.

The case challenged the application of Part 3A of the *Environmental Planning and Assessment Act 1979* (the Act), which grants the Minister for Planning broad discretion to approve major projects of State significance. It was argued that the Minister failed to properly consider the principles of Ecological Sustainable

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41 *Environmental Planning and Assessment Regulation 2000* (NSW), cl. 8G(2).
42 *Environmental Planning and Assessment Act 1979* (NSW), s. 5I.
43 *Environmental Planning and Assessment Act 1979* (NSW), s. 75J.
44 *Environmental Planning and Assessment Act 1979* (NSW), s. 75J(4), (5).
45 *Environmental Planning and Assessment Act 1979* (NSW), s. 75I(2)(e), 75J(3) and 75R(3).
Development when approving the site. Judgment was handed down on 13 August 2007 in favour of the Minister for Planning.

Justice Jagot dismissed the appeal on all three grounds:

1. The applicant had not lodged a valid concept plan at the time the Director-General’s (D-G) Environmental Assessment Requirements (EARs) were issued, and thus the EARs were not validly issued; and b) the D-G did not properly consult with the relevant government agencies in relation to the EARs, as required under s 75F(4) of the Act – Her Honour held that the Act did not require the applicant to submit any formal application form in order to initiate the application process. With regard to s 75F(4), it was held that consultation which had occurred via the stakeholder reference panel constituted effective consultation for the purposes of the section of the Act.

2. The D-G failed to include in his EAR a statement relating to compliance with the EARs – Her Honour found that the whole of the EAR could be the “required” statement and that statements made throughout the report constituted statements relating to compliance with the EARs under Part 3A, and therefore that the Act had been complied with.

3. Failure to consider the principles of ecologically sustainable development (ESD) – Her Honour found that there were indications that the Minister had considered ESD by rejecting a public car park on the site and making it necessary for the proponent to comply with SEPP (Building Sustainable Index: BASIX) 2004 and green star office requirements.

**Prohibited development**

Where an LEP prohibits the type of development being applied for under Part 3A, the Planning Minister can only approve the development if the project application is also accompanied by a concept plan.46

However the Minister cannot approve a Part 3A project that is located within an environmentally sensitive area of State significance or a sensitive coastal location if the development would have been prohibited under the relevant LEP or REP.47

**SEPPs apply**

SEPPs continue to apply to major projects.48 However, if it is a critical infrastructure project, a SEPP will only apply if it expressly states that it applies to the particular project.49

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46 Environmental Planning and Assessment Act 1979 (NSW), s. 75J(3); Environmental Planning and Assessment Regulation 2000 (NSW), cl. 8O
47 Environmental Planning and Assessment Regulation 2000 (NSW), cl. 8N(1).
48 Environmental Planning and Assessment Act 1979 (NSW), s. 75R(2).
Threatened species and biobanking

Where a Part 3A development might affect threatened species, the Planning Minister can approve a Part 3A project subject to a condition that the proponent acquire and retire a certain number of biodiversity credits. This applies even where the proponent has not triggered this process by requesting a biodiversity statement.

Alternatively, the Minister can impose a condition that the proponent comply with its biobanking statement, such as requiring the proponent to retire credits or requiring onsite work to be done to mitigate the impact on threatened species.

Conditions relating to threatened species requirements for Part 3A projects cannot be appealed.

See our Clearing Vegetation and Biobanking Fact Sheets for more information on biobanking and biodiversity statements.

Case Study: True Conservation Association v The Minister Administering the Threatened Species Conservation Act 1995

In these proceedings the TCA is challenging the decision by the Minister on 14 Dec 2007 to grant biodiversity certification to State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (Growth Centres SEPP). The effect of biodiversity certification is that species impact statements no longer need to be carried out for individual development applications in the area covered by the Growth Centres SEPP. Biodiversity certification is a process whereby up-front planning for threatened species protection is intended to take the place of site-by-site assessments. The Minister cannot grant biodiversity certification unless she is satisfied that the SEPP will lead to the overall improvement or maintenance of biodiversity values.

The TCA believes that, in this case, biodiversity certification was granted prematurely and based on inadequate information. The plan will result in the clearing of 1,856 ha of some of the rarest vegetation communities in the State. Approximately 16 threatened plant species and 22 threatened fauna species will suffer a loss of habitat as a result of the planned development under the Growth Centres SEPP.

On 25 June 2008 the Threatened Species Conservation (Special Provisions) Bill 2008 passed through both houses of the NSW Parliament. The bill will confer biodiversity certification on the area within the Growth Centres SEPP covered by the original order. This means that the Growth Centres SEPP will have the benefit of

49 Environmental Planning and Assessment Act 1979 (NSW), s. 75R(2)(b).
50 Environmental Planning and Assessment Act 1979 (NSW), s. 75JA.
51 Environmental Planning and Assessment Act 1979 (NSW), s. 75JA(4).
52 Environmental Planning and Assessment Act 1979 (NSW), s. 75JA(5).
biodiversity certification, even if the original biodiversity order is declared invalid by the Court.

The NSW Government has shown scant respect for the rule of law by introducing special legislation to avoid having to comply with the requirements of the *Threatened Species Conservation Act* in relation to the Growth Centres SEPP. This sets a poor precedent for other areas of the State that are also subject to development pressure.

**Planning Assessment Commission**

The Planning Assessment Commission (PAC) commenced operation on 1 October 2008. It provides the Planning Minister with the option to delegate the assessment and approval of Part 3A applications and concept plans to an external panel of decision makers (i.e. the PAC). The PAC acts as the consent authority for many of the projects previously determined by the Planning Minister.

For more information on the Planning Assessment Commission, see our [Development applications and consents](#) Fact Sheet.

**Other environmental approvals**

*Exemption from some environmental approvals*

Unlike DAs for integrated development under Part 4 of the EPA Act, Part 3A major projects do not need to obtain all their other environmental approvals before they can be approved.

The EPA Act gives Part 3A projects an exemption from some approvals (eg consent to clear native vegetation), whilst still requiring the project to obtain a range of other approvals (which cannot be refused: see para below).

The environmental approvals from which approved Part 3A projects are exempt include:

- permits to dredge, or damage marine vegetation or fish ways under the *Fisheries management Act 1994*,
- consent to destroy Aboriginal objects or places under s 87 or 90 of the NPW Act
- consent to clear native vegetation under the *Native Vegetation Act 2003*,

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53 Environmental Planning and Assessment Act 1979 (NSW), ss. 23A – 23F; Environmental Planning and Assessment Regulation 2000 (NSW), cls. 269O - 268W.
54 Environmental Planning and Assessment Act 1979 (NSW), s. 23D(1)(a).
55 Environmental Planning and Assessment Act 1979 (NSW), s. 75U.
56 Environmental Planning and Assessment Act 1979 (NSW), s. 75U.
approvals under the Water Management Act 2000.

Environmental approvals which cannot be refused

Part 3A projects are not exempt from all other environmental approvals: see para above. Although there are still some environmental approvals which need to be obtained, such as a mining lease or pollution licence, the EPA Act states that these cannot be refused if they are necessary for carrying out the Part 3A project, and when issued, must be substantially consistent with the terms of the Planning Minister’s Part 3A approval.57

Thus, once the Planning Minister approves a Part 3A project, there is very little that other public authorities (such as the EPA) can do to prevent the project from being carried out.

Other environmental approvals which cannot be refused for a Part 3A project include:58

- aquaculture permits under the Fisheries Management Act 1994
- a mining lease under the Mining Act 1992

Obligation to disclose political donations

On 1 October 2008, new provisions came into effect in the EPA Act requiring developers to disclose political donations and gifts when lodging or commenting on a development proposal.59

Under the new laws, the obligation to disclose not only applies to all development applications, but also to:

- Formal requests to the Minister or the Director-General for the development of a particular site to be made State significant or to be declared a Part 3A project under the EPA Act; and
- Applications for approval of a concept plan or project (or a modification) under Part 3A.

Under the new laws, developers who make such a request or application to the Director-General or Minister must disclose all political donations of $1,000 or more which are made within 2 years of making the application (or having it determined).60

57 Environmental Planning and Assessment Act 1979 (NSW), s. 75V(1).
58 Environmental Planning and Assessment Act 1979 (NSW), s. 75V(1).
59 Environmental Planning and Assessment Act 1979 (NSW), s. 147.
60 Environmental Planning and Assessment Act 1979 (NSW), s. 147(3).
Disclosure must be made in a statement accompanying the application or planning request. If the donation or gift is made after the application or request is made, the developer must lodge a statement with the decision maker within 7 days.\(^{61}\)

The Department of Planning and Environment must make all disclosures to the Minister or Director-General publicly available, either on the internet or under arrangements posted on the internet, within 14 days of the disclosure being made.\(^{62}\)

**Appeals**

Appeal rights in relation to Part 3A projects vary depending on whether the approval sought is for a concept plan, project or for critical infrastructure. They also vary for proponents and objectors.

The following table summarises the appeal rights for Part 3A projects. The text below should be consulted for more detail concerning these appeal rights.

All appeals are heard by the Land and Environment Court.

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<tr>
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<th>If Concept Plan Approved</th>
<th>If Major Project Approval</th>
<th>If Critical Infrastructure Project</th>
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<td><strong>Appeal Type</strong></td>
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\(^{61}\) *Environmental Planning and Assessment Act 1979* (NSW), s. 147(6).

\(^{62}\) *Environmental Planning and Assessment Act 1979* (NSW), s. 147(12).
Explanation of terms

The information below uses the following terms:

- **Merits appeal** – this is where the person who appeals asks the Court to reconsider the decision as to whether an approval (or consent) should be granted or refused, or have its conditions varied. Merit appeals are heard in Class 1 of the Land and Environment Court.\(^63\)

- **Judicial review** – this is where a person brings proceedings challenging the legal validity of a decision by trying to establish that the consent authority (decision-maker) made a legal error in their decision-making process, e.g. by not following the process set out in the EPA Act. Judicial review cases are heard in Class 4 of the Land and Environment Court.\(^64\)

- **Third party** – third parties are those people who are neither the proponent of the development nor the decision-maker. They are usually interested members of the public or affected landholders.

- **Objector** – refers to a person who made a written objection against a proposed project during the public submission period.

- **Proponent** – means the developer, i.e. the person proposing to carry out the project.

For more information on these terms, and the appeal process in the Land and Environment Court, see our [Land and Environment Court](#) Fact Sheet.

**Proponent appeals**

**Concept plans**

A proponent who is dissatisfied with the Planning Minister’s refusal to approve or modify a concept plan can appeal against the merits of the decision in the Land and Environment Court (Class 1).\(^65\) Any appeal must be brought within 3 months of the proponent receiving notice of the decision, or a deemed refusal.\(^66\)

Merit appeals are usually available to proponents, except in very limited circumstances.\(^67\) A merits appeal cannot be brought if:

- the concept plan relates to a critical infrastructure project,
- the proponent is a public authority, or

\(^63\) Land and Environment Court Act 1979, s 17.
\(^64\) Land and Environment Court Act 1979, s 20.
\(^65\) Environmental Planning and Assessment Act 1979 (NSW), s. 75Q(2).
\(^66\) Environmental Planning and Assessment Act 1979 (NSW), s. 75Q(2); Environmental Planning and Assessment Regulation 2000 (NSW), cl. 8E(1), (3).
\(^67\) If the project would not have been assessable under Part 4 if Part 3A did not exist e.g. it would have been a Part 5 project, there is no merits appeal right for proponents.
• if the concept plan has been the subject of a review by the Planning Assessment Commission.68

A proponent can bring judicial review proceedings against a decision by the Planning Minister regarding a concept plan.69 Any proceedings must be commenced within 3 months after public notice of the decision was given.70

**Major projects**

A proponent who is dissatisfied with a decision of the Planning Minister in relation to a Part 3A project application can appeal on the merits to the Land and Environment Court (Class 1).71 Any appeal must be brought within 3 months of the proponent receiving notice of the decision, or a deemed refusal.72

Merit appeals are usually available to proponents, except in very limited circumstances.73 A merits appeal cannot be brought if:

- If the development relates to a critical infrastructure project,
- If the proponent is a public authority, or
- if the project has been the subject of a review by the Planning Assessment Commission.74 Please note that a review by the PAC is different to a decision or a public hearing by the PAC. See 2.3a.1 Explanation of terms above for more information about PAC reviews.

If the proponent commences a merits appeal, then any person who lodged a written objection during the public submission period must be notified by the Minister of the appeal, and that person is entitled to apply to the Court (within 28 days) to be heard as if they were a party to the appeal.75

A proponent who is dissatisfied with a decision by the Minister regarding an application to modify a project approval, including a deemed refusal, can bring a merits appeal.76

A proponent can bring judicial review proceedings against a decision by the Planning Minister regarding a major project.77 Any proceedings must be commenced within 3 months after public notice of the decision was given.78

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68 *Environmental Planning and Assessment Act 1979* (NSW), s. 75Q(1).
69 *Environmental Planning and Assessment Act 1979* (NSW), s. 123; But note limitation in s 75X(5).
70 *Environmental Planning and Assessment Act 1979* (NSW), s. 75X(4).
71 *Environmental Planning and Assessment Act 1979* (NSW), s. 75K(2).
72 *Environmental Planning and Assessment Act 1979* (NSW), s. 75K(2); EPA Regulations 2000, cl 8E(1), (2).
73 If the project would not have been assessable under Part 4 if Part 3A did not exist e.g. it would have been a Part 5 project, there is no merits appeal right for proponents.
74 *Environmental Planning and Assessment Act 1979* (NSW), s. 75K(1).
75 *Environmental Planning and Assessment Act 1979* (NSW), s. 75K(3).
76 *Environmental Planning and Assessment Act 1979* (NSW), s. 75W(5).
77 *Environmental Planning and Assessment Act 1979* (NSW), s. 123; But note limitation in s 75X(5).
Critical infrastructure approvals

Merit appeals (Class 1) are not permitted, for either proponents or objectors, against a determination that concerns a critical infrastructure project. 79

Judicial review proceedings (Class 4) (where a person challenges the legal validity of the Minister’s decision under the EPA Act.) are also not available in relation to critical infrastructure projects unless the proceedings are brought, or approved by, the Planning Minister. 80 Any such proceedings must be commenced within 3 months after public notice of the decision was given. 81

Objector appeals

Concept plans

A third party (objector) cannot appeal against a decision of the Planning Minister to approve a concept plan. The EP&A Act does not contain any provisions permitting such an appeal. 82

However, any person (a third party, an objector, etc.) can bring judicial review proceedings challenging the legal validity of a decision by the Planning Minister regarding a concept plan approval. 83 Any proceedings must be commenced within 3 months after public notice of the decision was given. 84

Major project approvals

An objector who lodged a written objection in relation to the project during the public submission period who is dissatisfied with a decision by the Planning Minister to approve a Part 3A project can bring a merits appeal in the Court. Any appeal must be brought within 28 days of receiving notice of the decision. 85

Objector appeals are only available if the development would normally have been categorized as designated development under Part 4 of the EP&A Act: see our Development Applications and Consents Fact Sheet.

Even so, merit appeals are not available for objectors:

- if the development relates to a critical infrastructure project,
- if there was no concept plan approved for the project, or

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78 Environmental Planning and Assessment Act 1979 (NSW), s. 75X(4).
79 Environmental Planning and Assessment Act 1979 (NSW), s. 75K(1)(a), 75L(1)(a) and 75Q(1)(a).
80 Environmental Planning and Assessment Act 1979 (NSW), s. 75T(2).
81 Environmental Planning and Assessment Act 1979 (NSW), s. 75X(4).
82 Cf. Environmental Planning and Assessment Act 1979 (NSW), s. 75Q.
83 Environmental Planning and Assessment Act 1979 (NSW), s. 123; But note limitation in s 75X(5).
84 Environmental Planning and Assessment Act 1979 (NSW), s. 75X(4).
85 Environmental Planning and Assessment Act 1979 (NSW), s. 75L(3), 153; EPA Regulation 2000, cl 8E(1).
- if the project has been the subject of a review by the Planning Assessment Commission.\(^{86}\)

If it is the proponent who commences a merits appeal, then any person who made an objection during the public submission period must be notified by the Minister of the appeal, and is entitled to apply to the Court (within 28 days) to be heard as if they were a party to the appeal.\(^{87}\)

Any person (a third party, an objector, etc) can bring judicial review proceedings challenging the legal validity of a Part 3A approval.\(^{88}\) Any proceedings must be commenced within 3 months after public notice of the decision was given.\(^{89}\)

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**Case Study: Major project approvals**

**The Gerroa Environment Protection Society Inc v Minister for Planning and Cleary Bros (Bombo) Pty Ltd**

The Environmental Defender’s Office assisted the Gerroa Environmental Protection Society (GEPS) in their Land and Environment Court appeal against the Planning Minister’s approval of an extension to a sand quarry at Gerroa on the NSW South Coast.

The development was approved as a major project under Part 3A of the *Environmental Planning and Assessment Act 1979*.\(^{90}\)

GEPS claimed that the safeguards contained in a sand mining approval did not go far enough, particularly with regards to endangered ecological communities on the site. GEPS launched a merits appeal seeking to have the approval overturned, or better conditions attached.

The hearing concluded on 10 March 2008 and the Court handed down its decision approving the development on 16 May 2008.

Although the quarry was ultimately approved, by bringing the action GEPS succeeded in pressuring the proponent to improve the development's environmental safeguards. The Court also attached additional conditions to the development consent with the result that the environmental impacts of the development have been markedly reduced.

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**Critical infrastructure approvals**

Merit appeals (Class 1) are not permitted, for either proponents or objectors, against a determination by the Planning Minister which concerns a decision relating to a critical infrastructure project.\(^{90}\)

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\(^{86}\) *Environmental Planning and Assessment Act 1979 (NSW)*, s. 75L(1).

\(^{87}\) *Environmental Planning and Assessment Act 1979 (NSW)*, s. 75K(3).

\(^{88}\) *Environmental Planning and Assessment Act 1979 (NSW)*, s. 123; But note limitation in s 75X(5).

\(^{89}\) *Environmental Planning and Assessment Act 1979 (NSW)*, s. 75X(4).
Nor can judicial review proceedings (Class 4), (where a person challenges the legal validity of a decision under the EPA Act) be brought by any person in relation to a critical infrastructure project, unless the proceedings are brought, or approved by, the Planning Minister.\textsuperscript{91} Any such proceedings must be commenced within 3 months after public notice of the decision was given.\textsuperscript{92}

**Glossary**

**Key to terms used in this Fact Sheet**

- **Act** means the *Environmental Planning and Assessment Act 1979 (NSW)*
- **Consent authority** means the person responsible for deciding whether to grant development consent or not, usually a local council, but sometimes the Planning Minister or the PAC
- **DA** means a development application
- **DCP** means a development control plan
- **Department** means the *NSW Department of Planning and Environment*
- **Determining authority** means the NSW Minister for Planning or a public authority whose approval is required in order to enable the activity to be carried out e.g. local council
- **DGR’s** are the Director-General of Planning’s environmental impact assessment requirements
- **Director-General** means the Director-General of the *NSW Department of Planning and Environment*
- **Environment Minister** means the NSW Minister for the Environment
- **EIS** means an Environmental Impact Statement
- **EP&A Act** means the *Environmental Planning and Assessment Act 1979 (NSW)*
- **EP&A Regulation** means the *Environmental Planning and Assessment Regulation 2000 (NSW)*
- **EPI** means an environmental planning instrument, which includes LEPs and SEPPs
- **LEC** means the Land and Environment Court of New South Wales
- **LEP** means a Local Environmental Plan
- **PAC** means the *Planning Assessment Commission*

\textsuperscript{90} *Environmental Planning and Assessment Act 1979 (NSW), s. 75K(1)(a), 75L(1)(a) and 75Q(1)(a).*

\textsuperscript{91} *Environmental Planning and Assessment Act 1979 (NSW), s. 75T(2).*

\textsuperscript{92} *Environmental Planning and Assessment Act 1979 (NSW), s. 75X(4).*
Planning Minister means the NSW Minister for Planning

SEPP means a State Environmental Planning Policy

SSD means State significant development

SSI means State significant infrastructure

Useful websites
Part 3A projects are approved by the Planning Minister, and administered by the Department of Planning and Environment:

- Click here to go to NSW Department of Planning and Environment’s website on Part 3A Projects, which includes a series of fact sheets on Part 3A projects.

Useful legal texts

- Environmental & Planning Law in New South Wales, by Lyster, Lipman, Franklin, Wiffen and Pearson, The Federation Press (2007), Chapters 2-4