

28 October 2010

Mr Barry O'Farrell MP  
Leader of the Opposition  
Parliament House  
Macquarie Street  
Sydney NSW 2000

Dear Mr O'Farrell

**Re: *Environmental Planning and Assessment Amendment (Repeal of Part 3A) Bill 2010***

I refer to the above legislation which will be introduced into the Legislative Council by the NSW Greens in the near future.

The Greens have described the law as:

An Act to amend the Environmental Planning and Assessment Act 1979 to repeal Part 3A of that Act and to provide for limited classes of critical State infrastructure to be determined at State level following rigorous public consultation ...<sup>1</sup>

The text of the bill is not yet publicly available.

We urge you to oppose this bill. Any major change to the way that state or regionally significant projects were managed under planning laws should be dealt with as part of a comprehensive review. It's inconceivable that any government could wash its hands of projects important to either the state, or a region within it.

Part 3A was introduced in 2005, but when it was introduced, other well established special provisions for state and regionally significant development were repealed. In our view, you cannot remove Part 3A without introducing alternative arrangements for state and regionally significant development.

Part 3A introduced a new terminology, and more efficient processes, but the NSW planning system has always recognised the need for the state government to take responsibility for state or regional projects.

Under the current law, residential, commercial or retail projects with a capital investment of more than \$100 million are held to be state or regionally significant. While many of these projects may not be of significance to the state as a whole, they are, without question, regionally significant. Part 3A, and the long-standing provisions that it replaced in 2005, have always covered "regionally significant" development. A \$100 million residential, retail or commercial project may not be vital for the state's economy, but it still may be important to the future of a region. Major residential development, important office buildings and new retail precincts are vital for the health of regions across NSW and Sydney itself.

We urge the Coalition not to abandon regionally significant development. Such abandonment would be a major disincentive to invest in the state. If the Coalition is intent on reappealing Part 3A, it's important that it clearly spells out and consults widely on its alternative arrangements.

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<sup>1</sup> <<http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/1d436d3c74a9e047ca256e690001d75b/7bd5cb80f79ea672ca2577c10019c143?OpenDocument>> at 28 October 2010.

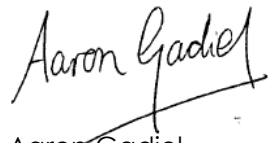
We cannot see how the Coalition could commit to the immediate repeal of Part 3A, either through support of the Greens Bill, or an election promise, without driving considerable investment, jobs and economic activity away from NSW.

We would be grateful for your assurance that Part 3A and the criteria for projects to be given Part 3A status will remain in place until a Coalition Government's comprehensive review of the planning laws is complete and implemented.

For your information, an extract from the long standing pre-Part 3A state and regionally significant provisions is attached.

Yours sincerely

**Urban Taskforce Australia**

A handwritten signature in black ink that reads "Aaron Gadiel". The signature is written in a cursive style with a long horizontal stroke at the end.

Aaron Gadiel  
Chief Executive Officer

Encl.

## The former sections 76A and 88A, *Environmental Planning and Assessment Act 1979*

Sections 76A and 88A of the *Environmental Planning and Assessment Act 1979*, in force before the commencement of Part 3A and repealed in 2005 when Part 3A commenced:

### **76A Development that needs consent**

...

#### **(7) State significant development**

State significant development is:

##### **(a) development:**

- (i) that is declared by a State environmental planning policy or a regional environmental plan to be State significant development, and
- (ii) that may be carried out with development consent, **or**

##### **(b) particular development, or a particular class of development:**

- (i) that, under an environmental planning instrument, may be carried out with development consent, and
- (ii) that, in the opinion of the Minister, is of **State or regional** environmental planning significance, and
- (iii) that is declared by the Minister, by notice in the Gazette, to be State significant development, **or**

##### **(c) development that is proposed to be carried out in accordance with a development application that the Minister has directed, **under section 88A [see below]**, to be referred to the Minister for determination, **or****

##### **(d) prohibited development in respect of which a direction by the Minister under section 89 is in force.**

#### **(8) If:**

- (a) a project comprises development part of which is State significant development, all other development comprised in the project is taken to be State significant development, and
- (b) but for this provision, part of State significant development would be subject to Part 5, this Part applies to the exclusion of Part 5 and the development may be carried out with development consent, and
- (c) **but for this provision, part of State significant development would be prohibited, the development may be carried out with development consent.**

#### **(9) The Minister is the consent authority for State significant development.**

### **Section 88A**

#### **88A Development applications directed to be referred to the Minister for determination**

- (1) The Minister may direct a council to refer a particular development application made to it for determination by the Minister if, having regard to matters that in the Minister's opinion are

of significance for **State or regional** environmental planning, the Minister considers it is expedient in the public interest to do so.

(2) On giving the direction:

- (a) the Minister becomes the consent authority for the development application to the exclusion of the council, except for such functions as the Minister's direction specifies the council is to perform in relation to the development application, and
  - (b) the council must deliver the development application to the Minister within 7 days after receiving the Minister's direction, and
  - (c) if the development application is being advertised, the advertising is to be completed as if the direction had not been given.
- (3) The council must perform the functions specified in the Minister's direction as referred to in subsection (2) (a) in accordance with the appropriate requirements.
- (4) If the Minister's direction is given during or after any period for which the development application is or was being advertised, the council must, at the end of that period, give written notice to each person who made a submission concerning the development application of their rights in the event that the Minister directs, under subsection (5), that a Commission of Inquiry be held.
- (5) If the Minister directs that a Commission of Inquiry be held in accordance with section 119:
- (a) the council, the applicant, an approval body (within the meaning of Division 5) and any person who made a submission concerning the development application are entitled to appear and be heard at the Commission of Inquiry, and
  - (b) the Minister must consider the findings and recommendations of the Commission of Inquiry before determining the application.

[bold and italics added]