

# Draft Land Use Planning and Approvals (Amendment) Bill 2022

Part 4 – Fairer outcomes for landowners whose land is included within an area of land declared for a major project

## Issue

There is currently some confusion as to what a landowner can or cannot do on their land if the land is included within an area of land declared to be a major project or what can occur on the land once a major project is completed.

Experience from applying the major projects process to the Bridgewater Bridge project has revealed that the process could do with further refinement making it clear that landowners can apply for planning permits when their land is included within an area of land declared for a major project, and when a major project is completed.

The intent of section 60S of the *Land Use Planning and Approvals Act 1993* (the Act) is to say that – once a major project is declared, a person can only develop that major project under a major project permit. Meaning a developer can't also attempt to get approval for that major project under another planning process.

Once the major project has been declared, it was originally intended that unrelated developments could occur on the same land as the declared major project and not be subject to the 'perceived' prohibition.

The clause notes submitted to Parliament in 2020 for this clause state that “section 60S requires that use or development that forms part of a major project cannot be undertaken unless it is in accordance with a major project permit or an existing permit”.

In practice this clause has been interpreted and applied to mean that a person (who is not the proponent) cannot develop their land under a normal planning permit once the land is included within a major project declaration. Which demonstrates some confusion as to the meaning of how section 60S of the Act is currently written, as that interpretation appears to be the opposite of what was intended. It was not intended to exclude landowners who are not the proponent from developing their land.

After a major project is completed, there may be confusion as to whether section 60S of the Act still applies and also whose role it is to enforce the requirements of the Act on the major project site from then on.

## Discussion

The intended meaning of section 60S of the Act is set out in the clause notes that were submitted with the Bill back in 2020. The intended meaning of this clause is also in line with the former Projects of Regional Significance (PORS) process, which stated – 60H(2) “A person must not undertake on land a use or development that forms part of a project of regional significance on the land, except under and in accordance with a PORS permit”.

Landowners who are not the proponent were never intended to be subjected to a limitation on their land as the current interpretation of this clause sets out.

The current interpretation of section 60S of the Act demonstrates some confusion as to the meaning of how section 60S is currently written, as that interpretation appears to be the opposite of what was intended. It was not intended to exclude landowners who are not the proponent from developing their land, although it is noted that under the current version of section 60S of the Act it is not clear if a landowner who is not the proponent of the land is excluded from the restriction under section 60S of the Act. This should be clarified.

Also, once a major project is completed on the ground there would be no need for section 60S of the Act to have any effect. This could be ‘switched off’ by the granting of a completion certificate from the assessment panel or the Commission. In this instance, once a major project is completed, development of the land both within and around the major project would then be subject to the normal planning permit requirements administered by the local planning authority.

A completion status would provide certainty to the proponent and local government about their role as a planning authority especially when:

- considering development applications on portions of land not used for the major project;
- considering additions to a major project that has been completed in terms of the original major project permit; and
- administering compliance roles under the Act.

Additionally, the fact that at the end of the process the Commission amends the planning scheme to reflect the major project permit really suggests that it should be treated as part of the normal planning system from then on. The assessment of the major project is a bit like a section 40T (s43A) application on steroids, and once approved it is intended to just be normal business from then on.

## What can be done?

Section 60S of the Act can be revised to be clear that it is meant to say a person cannot develop the land for parts of a major project unless those parts of the development are in accordance with a major project permit and provide clarity around when a major project is completed. Where a completion certificate can be requested by the proponent for the whole major project or a stage of the major project.

As a consequence of defining the completion point for a major project, there is also a need to clarify who is responsible for enforcement of the conditions on the major project permit before

and after this point in time. This includes enabling the assessment panel or the Commission to 'sign off' on certain conditions that require things to be done to the satisfaction of the assessment panel. In relation to enforcement, there are also changes needed to sections 63B, 64 and 65 of the Act to remove a reference to section 60ZB of the Act as section 60ZB of the Act doesn't relate to enforcement now that the major projects assessment process has been included within the Act.

## What is proposed?

1. The meaning of section 60S of the Act is clarified so that development for a major project can only be undertaken in accordance with a major project permit and not a permit issued under another process. An exception to this is that any existing permit issued prior to the major project declaration can still be acted upon even if the content of the permit relates to the major project.
2. Upon a request from the proponent, the Commission can issue a completion certificate (within a set time period from the request being made), once it is satisfied that the project is completed, and then normal planning processes can apply to the land, including the land used for the major project. This also includes the ability to issue a completion certificate in situations where the proponent advises that part of the major project is not going to be completed.
3. Clarification on the role of the assessment panel or the Commission in relation to managing conditions on the major project permit.
4. The Commission is able to issue an 'enforcement certificate' that advises local planning authorities that their planning enforcement role under the Act resumes once a completion certificate has been issued, effectively like a 'handover'.
5. Corrections to former references that have been superseded by the major projects assessment process.

## Sections of the draft Bill that relate to this topic

Clause in draft Bill	Section of LUPAA	Clause note
10	60S	Clarifies that development for a major project must be done in accordance with a major project permit and that the provision does not apply once a completion certificate has been issued.
11	60SA	Enables the Commission to issue a completion certificate (within a set time period from the request being made) for part or all of the major project, upon a request from the proponent.
27	60ZZP	Clarifies roles for the Commission, assessment panel, planning authorities and regulators in relation to managing issues with the conditions on a major project permit. Including being able to specify on a condition that a plan must be prepared to the satisfaction of the assessment panel.
28	60ZZS	Clarifies the role of the Commission in section 60ZZS(4) of the Act.
32	60ZZZAB	Provides for the Commission to issue an enforcement certificate which advises local planning authorities that their role in planning enforcement on the major project site resumes. Effectively working like a handover certificate.  Enforcement of conditions in relation to Aboriginal Heritage or Threatened species remains with the regulator. Other regulators are required to agree to the enforcement certificate being issued.  This can only be done once all of the development for the major project has been completed.
35	63B	Removing incorrect references to sections in the Act
36	64	Removing incorrect references to sections in the Act
37	65C	Removing incorrect references to sections in the Act