

Draft Land Use Planning and Approvals Amendment Bill 2022

Part 8 – Providing the Assessment Panel with additional time to consolidate advice from regulators

Issue

There are some parts of the major projects assessment process where the assessment panel is given a small amount of time to complete a significant task that is a key element of the assessment process. Placing them at risk of either not meeting a process timeline or rushing their deliberations and perhaps not getting everything right.

These are the tasks of preparing the assessment criteria and preparing the initial assessment report after receiving the major project impact statement that addresses the assessment criteria. With these tasks the assessment panel must collate and decipher responses from up to six (6) different regulators and at times may need additional time to clarify what the regulator is advising the assessment panel.

Either way there is a risk of placing the assessment process at risk of a lower quality assessment or leaving their assessment process subject to a legal challenge, by operating under the current short timeframes for these particular tasks.

Discussion

Under section 60ZN of the *Land Use Planning and Approvals Act 1993* (the Act) the assessment panel must determine the assessment criteria within 28 days after the end of the public exhibition period for the draft assessment criteria.

Under section 60ZL of the Act a regulator is given the public submissions on the draft assessment criteria up to 7 days after the exhibition period and then the regulator has 14 days in which to give the assessment panel their final advice on the draft assessment criteria. Meaning a regulator may take up to 21 days of the 28 days available to the assessment panel to give the assessment panel their advice in relation to what the final assessment criteria ought to be. Leaving the assessment panel only 7 days to collate, compile and decipher the regulator's advice and make the final assessment criteria.

This is difficult to achieve if the assessment panel deems it necessary to query any aspect of the regulators advice and seek further details from the regulator. It would be better if the assessment panel had 21 days to determine the assessment criteria after receiving the last advice from a regulator in cases where the assessment panel needs to further clarify matters with a regulator.

Also, under section 60ZZA of the Act the assessment panel must determine their initial assessment report within 14 days of receiving the last advice from the regulator. As with the issue above, if any clarification is sought by the assessment panel, it could be difficult to achieve the task in the short timeframe.

With both options there is a risk of placing the assessment process at risk of a lower quality assessment or leaving their assessment process subject to a legal challenge.

The assessment panel can seek a time extension from the Minister, but seeking these every single time a major project is processed would add to the administrative burden of managing the process.

By comparison –

1. the assessment panel has 14 days to finalise the draft assessment criteria which is a less significant task than finalising the assessment criteria, and
2. the assessment panel has 48 days from receipt of the regulators advice to complete their final report and issue a decision to grant a major project permit or refuse the proposal.

What can be done?

In discreet parts of the major projects assessment process, the assessment panel could be given extra time to complete their required tasks. As 7 days to finalise assessment criteria and 14 days to finalise an initial assessment report does not give the assessment panel any time to recheck any of the regulator's advice.

The suggestions below would retain the current 14 days to prepare the draft assessment criteria and up to 21 days to finalise the assessment criteria. Also, the panel would have 28 days to determine their initial assessment report and 48 days to finalise their decision on the proposal.

These suggestions are more in line with the scope of each task in the process and in each case are still less than the final task for each element of the process and are likely to reduce the frequency of requests for time extensions to the Minister.

What is proposed?

1. Amend section 60ZN of the Act to change 28 days to 42 days – finalisation of assessment criteria (effectively giving the panel 21 days to complete their task in real time) but only if the assessment panel considers it necessary to seek clarification from a regulator in relation to the regulators notice of assessment requirements or alteration notice

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2. Amend section 60ZZA of the Act to change 14 days to 28 days – finalisation of initial assessment report

Sections of the draft Bill that relate to this topic

Clause in draft Bill	Section of LUPAA	Clause note
17	60ZN	Provides the assessment panel with an additional 14 days to complete the task if they consider they need it
21	60ZW	A consequential change to clarify the panel can only request additional information from persons listed in section 60ZW(1) of the Act within 42 days, as opposed to just the proponent.
22	60ZZA	Provides the assessment panel with an additional 14 days to complete the task

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