

Draft Land Use Planning and Approvals (Amendment) Bill 2022

Part 6 – Relating to land outside the area declared for a major project

Issue

Once a major project is declared, the area nominated in the declaration notice cannot be added to, unless the declaration of the major project is revoked, and a new major project declaration is made by the Minister which includes the additional land. If that was to occur, then the assessment process would need to start over again.

Yet through preparing the major project impact statement to address the assessment criteria, responding to issues raised during the public hearings, or preparing a detailed design to address the conditions on a major project permit, it may be discovered that a better outcome would arise if an element of the project could be located outside of the area declared for the major project.

Discussion

With a major project declaration, the area for the major project is defined in the official declaration notice made by the Minister. The major project permit can only approve use and development of land inside the declared major project area. Similarly, an amendment to a major project permit can only approve adjustments to the permit within the area declared for the major project.

To achieve a major project permit, a proponent after receiving the notification of the declaration of their major project must prepare a Major Project Impact Statement (MPIS) in response to assessment criteria prepared by the assessment panel. Through the response to the assessment criteria, the proponent may find that a small part of the development needs to be located just outside of the declared major project land area, perhaps to protect a natural feature inside the declared project area, or to avoid an area subject to a high risk from a natural hazard. A similar outcome may result from issues raised during public hearings into the major project or once a major project permit has been granted and the detailed design work is underway.

In the case of a government project, additional land for a project may have been acquired after the initial declaration of the major project and making use of this additional land for the major project would enable a better outcome for the community.

Under the current assessment process, it is not possible for the assessment panel to consider any part of a major project outside of the declared major project area for both the initial approval of the major project and any future amendments to the major project.

This leaves the proponent with two options when making use of newly acquired land or needing to extend the major project outside the declared major project area, which are –

1. needing to have to seek a separate approval through a development application with the local planning authority for the part of the major project outside of the originally declared major project area; or
2. seeking approval for a second major project for the part of the major project outside of the originally declared major project area.

Both options defeat the intent of the major projects assessment process, which is to be an all-inclusive coordinated process. Either option listed above would potentially cause significant time delays in the final delivery of a major project.

What can be done?

Allow for the assessment panel to consider small (relative to the originally declared land area) amounts of additional land to the declared project area. If assessed as suitable, the panel can recommend to the Minister to amend the declared project area to include the additional land.

Any land added to an existing declared area should also be subject to the same limitations that apply for the original declared area, such as decision makers considering the ineligibility criteria set out in section 60N of the *Land Use Planning and Approvals Act 1993* (the Act) and the requirement to seek landowner consents when the land involves Government land or land managed by the Wellington Park Management Trust.

What is proposed?

1. Allow the assessment panel or the Commission to consider extensions/additions to the declared major project area that can only be small relative to the original declared area.
2. When the request to amend the declared project area is made before a MPIS is submitted, the regulators are required to review the proposed additional area of land to see if their original advice would be different.
3. Where the regulators advice is different from their original advice then the relative stage of the assessment process is required to be repeated. This is to ensure that all of the relevant regulators are involved with the major project assessment and that the assessment criteria are up to date and relevant to the additional area of land.
4. Once a MPIS has been submitted, the amended area of land can only be included if the original advice of the regulators remains unchanged or the assessment criteria does not need to change.
5. A request to amend the area of declared land can also be accompanied by a request to amend the major project permit.

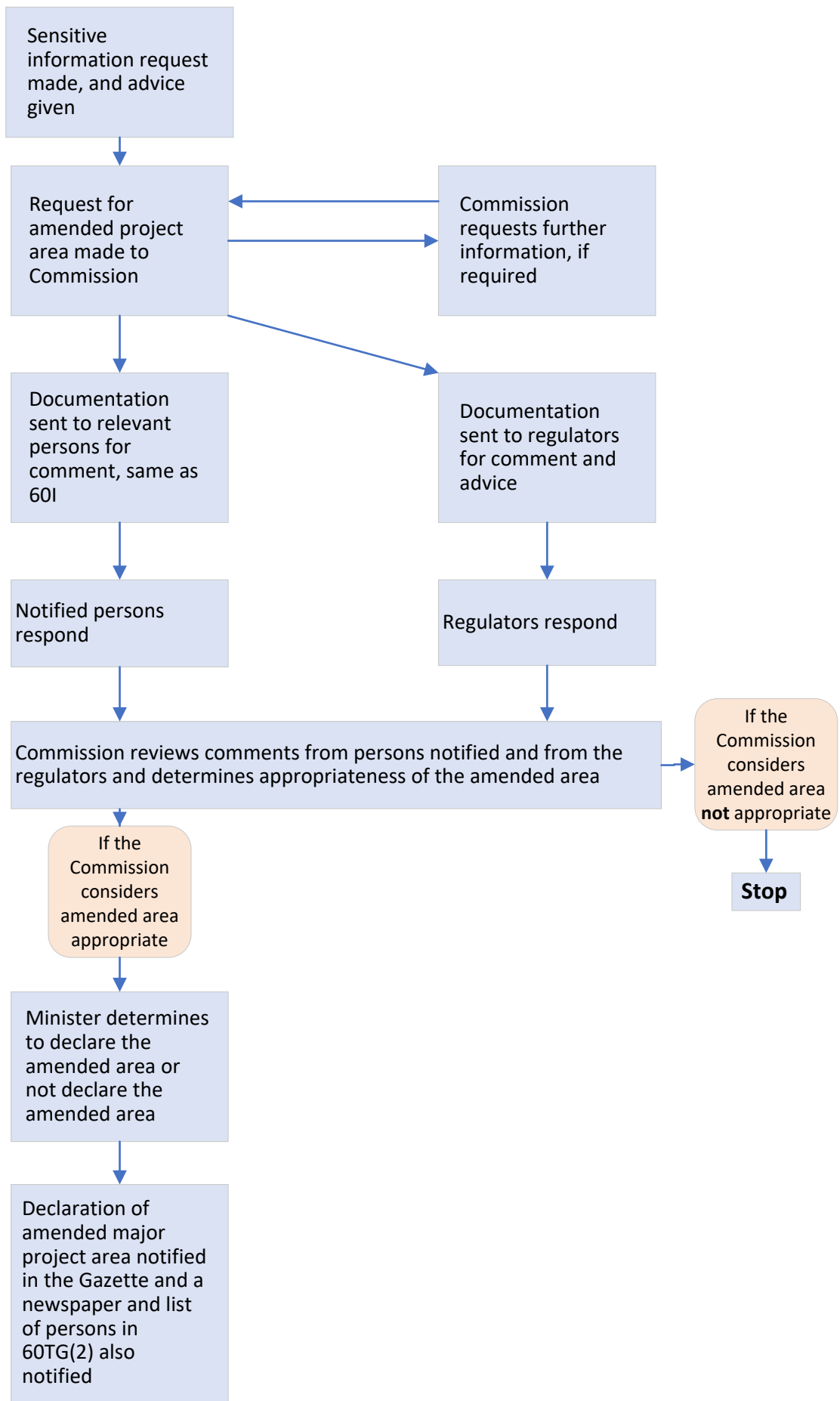
6. The Minister can only amend the declared major project area if advice from the assessment panel or the Commission has been given. Where the Commission or the assessment panel has undertaken an investigation to determine if this is reasonable which has included consultation with affected landowners and the relevant regulators.
7. Once the Minister amends the declared project area, notification is given in the same manner as when the Minister declares a major project.
8. There are also limitations on the Minister declaring the additional land that are the same criteria for declaring a major project in the first place, such as considering the ineligibility criteria under section 60N of the Act and the requirement to have consent from landowner/managers when the land is Government, Council or Wellington park Management Trust managed land.

Sections of the draft Bill that relate to this topic

Clause in draft Bill	Section of LUPAA	Clause note
10	60S	Clarifies the effect on an existing development application when a major project declared area is amended
12	60T	Clarifies the effect on an existing application/referral with a regulator when a major project declared area is amended
13	Part 4, Division 2A, Subdivision 5: Heading	Heading revised to refer to “Amendment and revocation of declaration”
14	60TA, 60TB, 60TC, 60TD, 60TE, 60TF, 60TG, 60TH and 60TI	<p>60TA – sets out definitions relevant to this section</p> <p>60TB – identifies the various stages in the major projects process (grounds for amending the area of land), so as to determine what to do when an amended area is applied for at different stages of the assessment process, and after the major project permit has been granted.</p> <p>60TC - provides for the proponent to apply to the Commission or the assessment panel to amend the declared area</p> <p>60TD – requires the Commission or assessment panel to consult with relevant persons, the same as those listed in section 60I of the Act</p> <p>60TE – requires the Commission or assessment panel to seek the views of the regulators, including if any process timeframes could be shortened (where the request to amend the area also relates to a request to amend the major project permit).</p>

Clause in draft Bill	Section of LUPAA	Clause note
		<p>60TE – provides for the Commission or assessment panel to give advice to the Minister if the Commission considers it appropriate to amend the declared area of land. The Commission or assessment panel must not give any advice to the Minister if they consider the amended area to be ineligible under section 60N of the Act, or if consents have not been provided if the amended area includes any government land.</p> <p>60TG – sets the Ministers actions when acting on advice from the Commission, for declaring the amended area</p> <p>60TH – requires notification when approval of the amended area is granted</p> <p>60TI – establishes which parts of the major projects assessment process are required to be repeated, depending on the advice of the regulators relative to the grounds for amending the area of land. For example if the regulators were to change their original advice.</p>
19	60ZR	A Major Project Impact Statement can refer to the additional area of land
26	60ZZMA	Provides for a major project permit to be granted over land that has been included within the declared area after the original declaration.

Amending declared project area



Day 0

Day 7

Day 21

Day 28

Day 42

Day 49