

Draft Land Use Planning and Approvals Amendment Bill 2022

Part 10 – Introducing an additional process option for amending a major project permit

Issue

Experience gained from implementing the proposed Bridgewater Bridge project suggests that design improvements may be required once the major project permit is granted, leading to a need to amend the major project permit and that the current options for amending the major project permit have potential to cause delays in the delivery of the project.

If an amendment to a major project permit does not qualify as a minor amendment under section 60ZZW of the *Land Use Planning and Approvals Act 1993* (the Act), then the process to amend the major project permit is long and complex, or it involves the submission of an entirely new major project proposal, starting the assessment process all over again.

Discussion

At present once a major project permit has been granted there are 4 types of amendments that can be made to the major project permit –

1. The assessment panel can correct any errors or typos in the permit.
2. The assessment panel can make a minor amendment to the permit, provided there is no detriment to any person by the minor change to the permit.
3. The assessment panel can amend a permit to ensure that conditions on the permit are consistent with an environment protection notice or an environmental license.
4. The assessment panel can determine that a significant amendment to the permit can be considered, which then requires the major project assessment process to recommence from the point as if the major project had just been declared.

The degrees of changes to a major project permit, and their subsequent approval process, allowed to the major project permits ranges from very small and then quite large. Yet in terms of scope or scale of an amendment to the major project permit there is nothing in-between. A relatively small change that does not meet the requirements for a minor amendment, currently becomes subject

to a significant amendment process and subject to an extensive assessment process that may not be relative to the scale or scope of change being sought to the major project permit.

With major projects, the detailed design will often not occur until after the major project permit is issued. During the detailed design work an issue may be discovered with the site that causes the need to shift the design or change the design to respond to a site issue, requiring a change to the major project permit.

If a proposed change to a major project permit is unable to be considered a minor amendment, then under the existing significant amendment process option the consideration of the amendment to the major project permit requires the assembling of a new assessment panel, preparation of assessment criteria, preparation of a major project impact statement (MPIS) by the proponent, public exhibition of the MPIS, public hearings held by the assessment panel and then finally issuing an amended major project permit. All the while involving the regulators in the assessment process, adding almost 300 days to the overall assessment process.

Yet the change to the major project permit being requested may not trigger the need to make a new set of assessment criteria and it would be more efficient to retain the assessment panel that granted the original major project permit. In some circumstances, all that may be required is an addendum to the MPIS and then public exhibition of the proposed amendment and public hearings that are specific to the change requested. This would be a simpler and shorter process to follow than the current process for a significant amendment.

The current methods to amend a major project permit appear to be missing an appropriate degree of flexibility that would enable consideration of the proposed changes to the major project permit to be considered under a process that is more relative to the scale/impact of the proposed change.

Given that the scale of an amendment described above is likely to be small then the overall steps in the assessment process shouldn't need to be as long as for an entirely new major project. With that point in mind, it would be reasonable to reduce some of the assessment process timeframes for the major project permit amendment as well for these less complicated amendments.

What can be done?

Provide for an additional major project permit amendment process that caters for small adjustments to the major project, where the process provides an appropriate level of scrutiny and assessment relative to the scale of the project, yet still provides for public involvement including public hearings.

In these situations, the proposed amendment process should only be able to be used where the assessment panel and regulators determine that the earlier prepared assessment criteria are suitable to assess the proposed amendment and do not need to be re-written. This can also involve reducing some of the process times where appropriate. This includes reducing the public exhibition of the proposed amendment to 14 days, which is the same as discretionary planning applications.

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What is proposed?

1. Amend the significant amendment process to provide an additional process to amend a major project permit in a manner that is relative to the scale of the change that is being sought by an amendment to the major project permit.
2. In reference to the above – this is when the assessment panel and regulators determine that the previously made assessment criteria (for the original major project permit) do not need to be altered and that only an addendum to the MPIS is required – when this occurs the process then resumes from the point of lodging an MPIS.
3. Only when this additional amendment process is used, the following sections of the Act have altered timeframes –
 - a. Section 60ZV(1) is 14 days instead of 21 days
 - b. Section 60ZW(2) is 21 days instead of 42 days
 - c. Section 60ZY(3)(b) is 28 days instead of 42 days
 - d. Section 60ZZB(5) is 14 days instead of 28 days
 - e. Section 60ZZF(1) is 14 days instead of 42 days
 - f. Section 60ZZM(1) is 49/63 days instead of 90 days

Sections of the draft Bill that relate to this topic

Clause in draft Bill	Section of LUPAA	Clause note
28	60ZZU	Clarifies that the definition applies for all of subdivision 14.
29	60ZZX	Provides for a minor amendment to be approved on land that has been included within the declared major project area after the original declaration has been made.
30	60ZZZ 60ZZZAB	60ZZZ clarifies what a significant amendment to a major project permit can be and also requires the assessment panel and regulators to examine whether the proposed significant amendment requires remaking of assessment criteria or not 60ZZZAB establishes the process for consideration of the proposed amendment and sets a different assessment process when the assessment criteria are not required to be remade

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