

Department of Police, Fire and Emergency Management

OFFICE OF THE SECRETARY

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Our ref: A20/56801



6 April 2020

Mr Brian Risby
Director
Planning Policy Unit
Department of Justice

Email: planning.unit@justice.tas.gov.au

Dear Mr Risby,

Consultation on the draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2020

Thank you for the opportunity to comment on the draft *Land Use Planning and Approvals Amendment (Major Projects) Bill 2020*.

The Department of Police, Fire and Emergency Management has reviewed the draft Bill and has no further comments. However, this response does not incorporate feedback from the State Fire Commission, which may respond separately.

Should you have any queries in regard to this feedback, the contact officer within my department is [REDACTED] who can be contacted on [REDACTED] [REDACTED] or by email at [REDACTED]

Yours sincerely

S Wilson-Haffenden
A/DEPUTY SECRETARY



TW HPE ref: 20/26405

17 April 2020

Mr Brian Risby
Manager
Planning Policy Unit
Department of Justice
GPO Box 825
Hobart TAS 7001

Via email: Planning.Unit@justice.tas.gov.au

Dear Mr Risby

Land Use Planning and Approvals Amendment (Major Projects) Bill 2020

Thank you for your continued engagement with TasWater regarding the final exposure draft of the *Land Use Planning and Approvals Amendment (Major Projects) Bill 2020*.

TasWater has now reviewed the revised Bill and remains generally supportive of its intention, subject to the following request.

We note that under section 60ZZR(3) of the Bill, the proponent of a major project is liable to pay a relevant regulator (including TasWater) a fee for the time spent by the relevant regulator performing a function or exercising a power in relation to a major project. The fee is to be calculated by *'multiplying the number of fee units per hour that is prescribed'* by the number of hours spent by the relevant regulator performing its functions in relation to major project.

In our understanding, the fee units are yet to be prescribed, although presumably will be through regulations pursuant to section 60ZZZB of the Bill (if passed). In this respect, TasWater requests the opportunity to be consulted when the prescribed fee units are formulated for inclusion in the regulations. This would allow TasWater to confirm the relevant fee unit is sufficient to enable TasWater to recover a reasonable amount for the time it spends performing its functions in relation to major project in its capacity as a relevant regulator.

If you have any questions, or wish to discuss further, please contact [REDACTED]

or via email at [REDACTED]

Yours faithfully

[REDACTED]
Michael Brewster
Chief Executive Officer

Tasmanian Water & Sewerage Corporation Pty Ltd
GPO Box 1393 Hobart Tas 7001
Email: enquiries@taswater.com.au
Tel: 13 6992

ABN: 47 162 220 653



NORTHERN
MIDLANDS
COUNCIL

Ref: 02/018

4 May 2020

Planning Policy Unit
GPO Box 825
Hobart, Tasmania 7001

By email only: planning.unit@justice.tas.gov.au

Dear Sir,

Re: Draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2020

I refer to the notice received from Minister Jaensch dated 4 March 2020 requesting feedback on the draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2020.

The Northern Midlands Council considered this matter at its meeting of 27 April 2020 and resolved to make the following submission:

Councils should be given 42 days to advise whether a project should be declared a major project under section 60I (3), 42 days to nominate a member of the Development Assessment Panel under section 60V (5), and 42 days to provide comments as to what should be specified in the draft assessment guidelines under section 60ZJ.

Yours Sincerely

**Des Jennings
General Manager**

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www.northernmidlands.tas.gov.au

Our Ref:

File No:

7 May 2020

Planning Policy Unit
Department of Justice

Planning.Unit@justice.tas.gov.au

Dear Sir/Madam

Major Projects Legislation

Thank you for the opportunity to provide a submission on the *Land Use Planning and Approvals Amendment (Major Projects) Bill 2020* (the Bill).

LGAT is incorporated under the *Local Government Act 1993* and is the representative body and advocate for Local Government in Tasmania. LGAT fully supports councils who have made individual submissions to the consultation process and in turn, supports the content and opinions expressed within those submissions.

The third round of consultation on the updated Bill is noted and supported and there are a number of improvements in this Bill, from its predecessor, that LGAT supports, in particular

- The reinstatement of the ability for a planning authority to refer a proposal for consideration for declaration as a major project;
- The removal of the previous exclusion of projects on the basis of height alone; and
- Clarification that a proposal cannot be declared a major project if it would be in contravention of a State Policy or Tasmanian Planning Policy or is inconsistent with the relevant regional land use strategy.

There is one residual area of concern in the Bill. Section 60ZL requires that a Panel must only publicly exhibit draft assessment guidelines if in relation to a “bilateral agreement project”. While we recognise the need to create an expedient assessment process, in this instance the removal of the public exhibition of the draft assessment guidelines in all instances (refer to 60ZL (5) in the previous Bill) unnecessarily compromises public participation. It is imperative that the public have the opportunity to provide input into

the final assessment guidelines, given they are being developed on a project by project basis. It is suggested the contents of the previous Bill's clause 60ZL (5) be reinstated.

If you have any questions or would like further information, please do not hesitate to contact [REDACTED] or via phone on [REDACTED]

Yours sincerely

Dr Katrena Stephenson
CHIEF EXECUTIVE OFFICER

Submission supplied in confidence, not for publication at request of representor.

TASMANIAN PLANNING COMMISSION

Our ref: DOC/20/46759
Email: tpc@planning.tas.gov.au

5 May 2020

Mr Brian Risby
Director
Planning Policy Unit

By email: planning.unit@justice.tas.gov.au

Dear Brian

Land Use Planning and Approvals Amendment (Major Projects) Bill 2020

Thank you for the opportunity to comment on the draft Land Use Planning and Approvals (Major Projects) Bill 2020.

The Commission notes previous consultations on the draft Bill has clarified and addressed a number of the issues raised in our previous submission. However, previously the Commission commented that the drafting style of the Bill is extremely prescriptive, complex and at times circuitous. It is difficult to follow, and contrary to the desired outcome of simplifying processes and procedures, confounds and compounds the levels of complexity. The complex numbering system and the ability to reference the Act is a simple example of this.

The Commission further commented that, experience of working with this prescriptive style of drafting is a significant increase in the legal advice and administrative support required to give effect to the statutory processes. This increase in administration has the potential to slow assessments. Notably the risk of errors occurring in what may be considered 'administrative' steps, contained in the legislation, has increased. It is observed that there has been no change to the drafting style.

This version of the draft Bill includes new processes and requirements in response to submissions and the Commission makes comments in relation to these.

In several sections of the draft Bill there are tests for consideration of the proposed major project. A number of these are different tests to those currently provided for in the *Land Use Planning and Approvals Act 1993* (the Act). In the interests of certainty for developers, consistency in decision making and to reduce the potential for legal challenge, it is suggested that consistent expression be used. Examples are:

- that the project would be 'consistent with furthering the objectives specified in Schedule 1' [section 60ZZM(b)] and this differs to the expression at 60ZZX(4)(a) which is 'further the objectives specified in Schedule 1' with the latter being more consistent with expression elsewhere in the Act;
- 'consistent' with State Policies rather than 'in contravention of' a State Policy [sections 60L(1)(b), 60ZI(4)(c), 60ZZM(4)(c) and 60ZZX(4)(b)];

- ‘is consistent with the TPPs’ rather than ‘in contravention of’ the TPPs [60ZZM(4)(d), and 60ZZX(4)(c)]; and
- ‘is consistent with’ or ‘as far as is practicable consistent with’ a regional land use strategy is the more commonly used expression in the Act rather than ‘would be inconsistent with’ [sections 60L(1)(d), 60ZI(4)(e), 60ZZM(4)(e), and 60ZZX(4)(d)].

Each time a new expression is used this leads to uncertainty in how the test might apply, potentially leading to significant time spent in legal argument and challenge as to interpretation. A further observation is that terms such as ‘in contravention of’ is a test that may be very difficult to determine due to the nature of the instruments being tested against. Only one small matter may lead to a ‘contravention’.

In various parts of the Bill such as at sections 60I(1), 60ZJ(1) and 60ZZB(3) all land owners and adjoining land owners and occupiers are to be notified. This may be difficult to achieve if there are a large amount of owners and adjoining owners and occupiers and the assessment process is over a long period of time, for example, if the proposal is for a linear infrastructure project which is akin to some of the example projects listed in the supporting information. This also seems to be an onerous and unnecessary requirement for some steps such as notice that guidelines have been made at section 60ZP(1)(b).

Section 60ZZE requires that the Panel must hold a hearing in respect of a major project within 28 days, or longer period allowed by the Minister, after the public exhibition of the major project ends. In the previous draft Bill the requirement was ‘as soon as practicable’ after the end of the exhibition period. The hearings are held under the *Tasmanian Planning Commission Act 1997* and ‘reasonable notice’ must be given of a hearing. In practice this is a minimum of two weeks. Experience is that it is unlikely to be possible for the Panel (and the parties to the hearing process of which there may be a number) to have organised themselves for a hearing date and for the two week notice to be given within 28 days of the end of the exhibition period. However, it is unlikely to be long after this period. It is sufficient that there is a 90 day period in which the determination must be made under section 60ZZM, so it is not necessary to be as prescriptive about when the hearing must be held.

Other matters:

- Section 60P(3) requires that the declaration be viewed at the Commission offices but does not state exactly what is to be viewed – if it is just the declaration it should be sufficient that this be viewed electronically on the *Gazette*.
- It is noted that the Minister determines remuneration at clause 60V(9) - it is assumed that this would be in consultation with the Commission as this will have implications for the Commission budget.
- At section 60W(2) the Panel can delegate its powers (apart from the power to delegate) and it does not seem appropriate that the Panel has broad powers to delegate to an individual and it is not clear if this includes decision making powers. Further, it is not clear what circumstances may require a Panel to delegate its powers.
- Section 60X(2)(a) is unusual as individuals tend to manage their own conflict rather than the Commission determining if someone has, or is perceived to have, a conflict of interest. It is the Commission’s view that it is preferable to put in place processes to minimise any potential for actual or perceived conflicts of interest when appointing Panel members. Further, at section 60W(3) the Commission must prepare procedural requirements for the conduct of the Panel. The Commission can ensure that requirements for conflict of interest are included and in particular that these are consistent with its published [Code of Conduct](#).

- Section 60ZZZG should include the Commission as the Commission has functions, separate to the Panel, under this Division of the Act.
- The term 'publically' is used in this Division rather than 'publicly' which is the term elsewhere in the Act.

Don't hesitate to contact me if you require any clarification of the issues raised.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sandra Hogue', with a large, stylized initial 'S' and a long, sweeping tail.

Sandra Hogue
Acting Executive Commissioner



Dr Rosalie Woodruff
Tasmanian Greens Member for Franklin

8 April 2020

Planning Policy Unit
Department of Justice
GPO BOX 825
Hobart, TAS, 7001
Via: planning.unit@justice.tas.gov.au

To whom it may concern,

Thank you for the opportunity to make a submission to the review of the *Draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2020* (the Bill). I write on behalf of the Tasmanian Greens to provide our views.

Timeframes and complexity

We have concerns about the barriers to meaningful engagement for the consultation process. Planning legislation is some of the most lengthy and complex of all legislation. It is impossible to interpret in any meaningful way for a person who is inexperienced in reading legislation, and without specific expertise in planning law. It typically contains inaccessible language and requires reading in conjunction with other legislation and legislative instruments to understand its effects.

The consultation has been substantially undermined by being held during the COVID-19 pandemic, which has reduced the effective time available to prepare a submission. Throughout the consultation period, community members and stakeholder organisations have been adjusting to stay at home restrictions. In all likelihood, they would not have been in a state of mind to focus the energy and attention needed to respond to this difficult-to-understand matter.

The Government refused to provide a meaningful extension for this consultation period to account for the COVID-19 pandemic impacts, despite the important democratic functioning of parliament being effectively suspended until mid-August.

Conclusion: The consultation process for this Bill locked out most Tasmanians.

Information provided with the bill

This 206 page Bill was released for public consultation without accompanying Clause Notes or Fact Sheets. This is an unbelievable gap, given the complexity of planning law and the substantial changes this Bill seeks to achieve.

Following widespread comments on social and traditional media from community members and organisations, voicing deep concerns at the attack on the integrity and function of *Land Use Planning and Approvals Act 1993* (LUPAA) this Bill represents, the Department subsequently posted some additional material about the Bill on its website. This explanatory material (called Fact Check) was inaccurate, misleading and inconsistent.

The first Fact Check posted was not objective, and was presented with a political purpose. One section, titled "*Incorrect advice and interpretation of the Bill*", referred to community concerns about the Bill as 'incorrect'. This is an opinion, without nuance, and the case for the information being incorrect was not made:

- We are concerned the Bill avoids the normal required permits. We don't understand why the Department described this concern as incorrect.
- The normal permit requirements for a development assessment under LUPAA are, in fact, avoided in this Bill. Instead, advice is to be sought from Regulators¹ by the Tasmanian Planning Commission's Panel. The Regulators must provide their assessment advice limited to project-specific assessment guidelines.
- Neither the process of obtaining advice from Regulators, nor the assessment guidelines, are 'normal'.
- The concerns expressed that this Bill would enable a major project assessment to avoid the normally required permits are correct.

The Fact Check section online was subsequently rewritten by the Department. The updated section has a bit more nuance in its language, but remains misleading:

- The section titled "*Does the Major Project process bypass other required approvals?*" answers "No". The online information provided is not technically incorrect, however it omits a key piece of information – the fact that Regulators have to assess a proposal based on project-specific assessment

¹ The **Regulators** are those responsible for assessing a Major Projects' proposal against the requirements prescribed within the following: *Aboriginal Heritage Act 1975*, *Environmental Management and Pollution Control Act 1994*, *Historic Cultural Heritage Act 1995*, *Nature Conservation Act 2002*, *Threatened Species Act 1995*.

guidelines that will be written by the Tasmanian Planning Commission (TPC) Panel.

- There is nothing to prevent these criteria being drafted in a way that would ensure the proposal is consequently assessed as compliant by the Regulators.

We are concerned the Department's Fact Check material, developed for the consultation, avoids disclosing these two vital details about the Bill: (1) normal planning assessment guidelines are avoided; and (2) project-specific assessment guidelines are developed. The Fact Check strongly implies that major projects would be subject to the same regulatory assessments as regular projects, when this is not the case.

Not only has some of the information provided by the Department been misleading, it has also been altered on a number of occasions. For us, this has resulted in significant rewrites of parts of this submission. No doubt other submitters have been similarly frustrated.

Conclusion: The supporting information provided with the Bill has been unbelievably inadequate, some of it has been deeply misleading, and key elements of the Bill's purpose and process have not been accurately articulated.

The need for Major Projects legislation

The Bill seeks to fundamentally override the long-standing LUPAA, and the historic role of councils to act as planning authorities on behalf of their communities in assessing developments in their municipalities.

The information supplied to support the consultation process includes a section titled "*What will the Bill do and why do we need it?*". In that, the only reference to why Tasmania needs this legislation is:

"The Major Projects process is needed to deal with development proposals of impact, planning significance or complexity".

This is a statement with no elaboration or justification. There has been no attempt to outline why the current LUPAA planning process fails to satisfactorily assess proposals of impact, planning significance or complexity. There is no explanation for how the proposed new Bill would enable a more satisfactory process.

Conclusion: The need for a Major Projects process has not been articulated.

The purpose of the Major Projects process

One of the government's online Fact Check sections is titled "*Can a Major Project be approved when a planning scheme would not allow it?*". It claims:

"The Major Project process... is intended to consider complex larger scale projects that are contained in more than one council area or their effects will reach beyond a single council area."

This is misleading, because that criterion is only one of six eligibility criteria provided in the Bill. Projects can be eligible regardless of whether or not they cover or effect more than one council area.

This selection of facts makes it difficult to understand what the Bill's purpose actually is – and whether it has been fulfilled.

The government's Fact Check also states: "*. . . it is plausible that some major projects would require an alteration to the local planning scheme to proceed*". This implies the major projects' process may occasionally result in alterations to local planning schemes, but also flags it is not a standard part of the expected process.

The Bill replaces the standard development assessment guidelines in LUPAA with 'project-specific criteria'. If a major project were approved, local planning schemes would need to be altered to enable the project to proceed. There has been no explanation provided for why project-specific criteria are necessary. They have been established as a matter of course. It seems unlikely that any major projects would *not* require modifications to a local planning scheme for them to proceed. There is no reasonable argument for the assessment of a development proposal to also require the alteration of a planning scheme.

In order to qualify for Major Project status, a project has to meet two of six criteria. An argument could be made that if a project were too complex to be assessed by a local planning body it ought to be assessed by a more qualified body. There is no reason why the Government could not decide to provide resourcing directly to local councils to bring on additional planning expertise, should that be needed. Instead, the Bill will subvert the planning process ostensibly to resolve that potential matter.

There are fifteen potential permutations of project criteria that could occur under the project-specific criteria proposed. Many are significantly different to the others, but each possible combination would be assessed under the same framework and outside the local planning scheme. The inescapable conclusion is that this process has been designed to fast-track approvals for a wide-range of projects that would normally be knocked back – either because they would be prohibited within a local planning

scheme, or not approved for other reasons. This is a purpose that is not articulated, or defended.

Conclusion: The purpose for a Major Projects process is not convincingly articulated.

Lack of integrity safeguards

The power vested in the proposed TPC Development Assessment Panels is problematic. Despite consultation requirements and some degree of prescription from regulators regarding the assessment guidelines, ultimately the Panel is able to determine the guidelines for assessing each project. This decision cannot be appealed.

This means if a Panel determines it will establish guidelines that make the approval of a particular project guaranteed, or all but guaranteed, there is nothing anyone can do.

The risk of this occurring is amplified by the weak conflict-of-interest provisions established in the Bill. Most Panel members are to be appointed by the Tasmanian Planning Commission, and it is the Commission that is to determine whether a conflict-of-interest exists for a particular member. Although the *State Service Act 2000* has some conduct provisions on this matter, the application of these provisions in past acts of obvious corruption has been weak.

We note that currently Part 4 of LUPAA, to which most of these amendments relate, is listed under schedule 3A (Provisions in respect of which delegation and directions are restricted) of the *Tasmanian Planning Commission Act 1997*. While this provides a degree of protection against ministerial interference, we cannot be confident these protections will remain into the future. The consultation process for this Bill has occurred during a concurrent review of the function and powers of the Tasmanian Planning Commission. This leaves an open question about whether the existing independence and integrity of the Commission will remain.

Conclusion: The Development Assessment Panel holds too much unchecked power; critical decisions made by the Panel cannot be appealed; and there is a lack of strong integrity safeguards.

Removal of Council responsibility

The allegation that some matters are too complex for councils to consider is condescending and irrational. Councils, like the Tasmanian Planning Commission, employ professional planners. In fact, the Bill proposes one of the three required

members of the panel is to be recommended by a relevant council(s). That member of the Panel would be subject to the same skill and qualifications requirements as all other members. By virtue of these provisions, and by the Bill's own rationale, councils do in fact have the same expert skills as the proposed Major Projects' Panels.

This claim is clearly a political one, and an excuse for the Government to reach in and take control of planning decisions for developments the Government supports but a council and its community do not.

Councils develop planning provisions with local expertise and in consultation with the community. Allowing a Development Assessment Panel to override these provisions undermines community participation in planning.

Conclusion: Removing councils from planning decisions is a political decision that undermines principles of good planning and community participation.

Summary

We make the following observations in relation to this bill –

- The consultation process for the Bill has locked out most Tasmanians.
- The information provided with the Bill is inadequate, deeply misleading, and key elements of the process have not been accurately articulated.
- The need for a Major Projects process has not been articulated.
- The purpose of a Major Projects process is not convincingly articulated.
- The Panel holds too much power, critical decisions cannot be appealed, and there is a lack of strong integrity safeguards.
- Removing councils, and through them local communities, from local planning decisions is unnecessary and political.

We recommended the Draft Bill be withdrawn, and any future attempt to create a Major Projects bill address these issues.

Sincerely,

A handwritten signature in black ink that reads "Rosalie Woodruff". The signature is written in a cursive style with a large, stylized initial 'R' and a long, sweeping underline.

Dr Rosalie Woodruff MP

Tasmanian Greens Planning spokesperson



Submission Re:

29/1/18

Draft Land Use and Planning Amendment (Major Projects) Bill 2018

The North East Bioregional Network has long history of contributing to and participating in land use planning in Tasmania at a local, regional and statewide level.

We wish to comment on the revised draft 'Land Use Planning and Approvals Amendment (Major Projects) Bill 2018'.

Our concerns are as follows

The proposed legislation is not required

The North East Bioregional Network does not support the introduction of a new 'Major Projects' assessment process. The current legislation deals adequately with projects of regional significance and as such local government (and therefore the local community and for that matter all Tasmanians) should continue to have a strong role in deciding whether or not particular developments are appropriate in their area/region. We still retain significant reservations about how what was variously referred to as the Northern Tasmanian Regional Planning Project, Northern Regional Land Use Planning Framework or Northern Regional Land Use Strategy "process" was conducted by Northern Tasmania Development (a conflict of interest if ever there was one) around 2009 -2013 so are highly sceptical about the ability of a Tasmanian Government of any persuasion to instigate any kind of planning "reform" that is not primarily designed to favour short term ad hoc development at any cost over the maintenance and enhancement of Tasmanians quality of life.

Subjective Definitions

The words 'significant', 'significance', 'potentially significant', 'predominantly', 'unreasonably delayed', and 'timely', require definitions. At the moment, they are open to wide interpretation. It's important that these be defined in the legislation to close loopholes and provide clarity to all parties involved. As we all know laws that contain subjective and vague wording are ineffective and unenforceable but helpful for particular vested interests such as industry and developers.

Call-in powers criteria are vague and subjective and lead to corruption and poor governance

We object in principle to the notion of call in powers which centralise executive power and reduce public participation in the planning process. As such the legislation is inconsistent with the requirements under the Land Use Planning and Approvals Act 1993 Schedule 1- Objectives Part 1- Objectives of the Resource Management and Planning System of Tasmania 1.(c) "to encourage public involvement in resource management and planning" . Under section 20 (1) (a) of the LUPA Act, planning amendments "must seek to further the objectives set out in Schedule 1 within the area covered by the scheme". The draft legislation clearly disempowers and sidelines public participation and is therefore in breach of Schedule 1.

The proposed legislation is an attack on some of the fundamental principles of liberal democracy which require due process and separation of powers (that is independent judicial processes which

make decisions based on merit and evidence and are not subject to influence from executive government or private vested interests).

A project can be called in if, in the minister's 'opinion', a council has "unreasonably" delayed the assessment of a project. There is no definition of what "unreasonable" means.

There is no additional requirement for the project to be of regional significance.

A project can be called in if the minister believes that the project is beyond the 'capacity or capability' of a council to assess it in a 'timely manner'. The word 'timely' is not defined and there is no requirement for the Minister to provide evidence that a council lacks the 'capacity or capability' to assess a project.

Call in powers are a recipe for corruption and collusion with vested interests such as property developers and organisations lobbying on behalf of such interests and have led to dismal planning and governance outcomes in other Australian states (why make the same mistake here?).

Rights of Appeal

When Local Councils make a decision on a advertised planning application, that decision can be appealed to the Resource Management and Planning Appeals Tribunal by anyone who has lodged an objection within the required advertised time frame. Under the proposed Bill once a decision is made by a "Assessment Panel" there are no appeal rights. Again this is inconsistent with the Objectives of the RMPS Schedule 1 Part 1 1. (c) which requires encouraging public involvement in resource management and planning.

Environmental impacts

The proposed new legislation will potentially diminish environmental protection. There will not be a fully independent, accountable and transparent process whereby local government and the public can be confident that all of the environmental impacts associated with a particular project have been thoroughly assessed if it is "called in" by the Minister.

In addition it is our understanding that the legislation may be seeking to undermine requirements under the EPBC Act for controlled actions to be assessed by the Commonwealth. We oppose any such move and have little confidence in the current system in Tasmania for protecting threatened species which is characterised by an appallingly under staffed Threatened Species Section and in the case of the Policy and Conservation Advice Branch a government unit which is just a rubber stamp for permits to destroy threatened species.

Yours sincerely

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Additional Comments

May 12th 2020

- The Major Projects Bill review process should be abandoned immediately as it's objective is to increase the number of development approvals by favouring the vested interests of developers over due process via bypassing or reducing the roles of Local Government and the Tasmanian Planning Commission as well as decreasing community participation in the planning decision making process.
- We are also concerned that Local Government can as a planning authority refer a proposal for consideration for declaration as a major project. This is a likely scenario given that many Local Government's in Tasmania prioritise economic growth over other considerations and will see this as an opportunity to get developments through the system. The fact that planning authorities can refer developments obviously creates an environment where corruption via deals with developers is more likely.
- It is also outrageous that the Planning Policy Unit have been publishing rebuttals and "Fact Checks" on the Governments website while the current comment period is still open. A clear sign of lack of respect for due process and desperate tactics to try confuse ,distract and deter community concerns and submissions.

As stated in our previous submission we believe that all "Major Projects" should be dealt with by the Tasmanian Planning Commission in the same way they assess rezonings or Planning Scheme Reviews.

Yours sincerely

[Redacted]

[Redacted]

[Redacted]

[Redacted]



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11 May 2020

Planning Policy Unit
Department of Justice
GPO Box 825
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Via email: planning.unit@justice.tas.gov.au

To Whom It May Concern,

LAND USE PLANNING AND APPROVALS AMENDMENT (MAJOR PROJECTS) BILL 2020

Thank you for the opportunity to provide feedback on the *Land Use Planning and Approvals Amendment (Major Projects) Bill 2020* (the Bill).

Overview

The Housing Industry Association (HIA) is Australia's peak residential building industry association. HIA members comprise of a diversity of residential builders, including all Top 100 builders, all major building industry manufacturers and suppliers, as well as developers, small to medium builder members, contractors and consultants to the industry. In total, HIA members construct over 85% of the nation's new housing stock causing HIA to be well positioned to comment on all building related matters.

HIA exists to service the businesses it represents, lobby for the best possible business environment and to encourage a responsible and quality driven, affordable residential building and development industry. HIA is committed to working with all sectors of government to support a regulatory environment that facilitates growth in the economy, reduces red tape, and enables the delivery of affordable housing.

HIA Response

It is HIA's understanding that the object of the Bill is to improve, build upon and eventually replace the current Projects of Regional Significance (PORS) process. These are objects which HIA principally supports.

It is our further understanding that the Tasmanian Government is seeking feedback on any enhancements and refinements to the Bill, prior to it being tabled in Parliament.

It is not HIA's intention to comment on every aspect of the Bill, with many of the provisions procedural in nature or not contentious. Instead we will focus more broadly on the constitution of the planning assessment panels and timeframes proposed which will be critical to the success of this new legislation.

Accordingly, HIA supports the overarching intent of the Bill in seeking to refine the existing PORS process through creating greater efficiencies and transparency. To ensure this intent is achieved, the outcomes of this Bill must therefore, uphold these overarching principles by ensuring that all measures which are implemented result in enhanced and streamlined processes. More specific comments on key elements we have identified in the Bill are outlined below.

Eligibility criteria

We understand that the eligibility criteria pursuant to Section 60K of the Bill proposes changes to the existing PORS eligibility criteria. In particular it allows for a greater range of permit types being sought by the proponent to be subject to this new approval process. HIA supports this proposed change which is likely to capture large scale residential construction developments, such as 50 to 100 allotments.

Planning Assessment Panels

HIA supports the formation of a planning assessment panel under the Bill. Independent Development Assessment Panels (DAPS) can assist the planning process by providing a balance between technical planning advice and local knowledge. They can also assist the planning process by providing independent decisions in a timely manner. DAPs can offer certainty and a consistent interpretation of planning codes. HIA supports:

- The implementation of independent Development Assessment Panels as a means of improving the planning process as they provide certainty, consistency and transparency in the decision making process.
- The setting of clear thresholds as to which applications should be considered by a Development Assessment Panel.

HIA also believes there is merit in mandating that five members be appointed for all panels. The appointment of five members for all planning assessment panels would be consistent with other states within Australia, which have undergone and are leading planning reform. This may provide for a more balanced approach, as opposed to potentially being more heavily weighted by representation from State and Local Government. It would be appropriate for the Minister for Planning to appoint panel members as a further means of ensuring transparency.

Timeframes

As discussed on the Tasmania Planning Reforms website, the existing PORS process requires a total of 171 days, whereas if all proposed measures within the Bill are implemented, the amended process will take a total of 293 days. This is a significant increase in timeframes to the existing PORS process when the Bill should instead be seeking to reduce current PORS timeframes wherever practicable.

For example:

- Section 60U of the Bill proposes that Councils be given 7 days longer to nominate a Council member to sit on the Independent Panel - 28 days not 21 days. Councils should have a pool of suitably qualified staff with relevant skills and experience. Therefore, the appointment of a relevant Council representative should not be a particularly onerous task which requires 28 days to

complete. This largely administrative function should be able to be completed within the existing 21 day timeframe under the PORS process.

- An additional 2 months is proposed for the Independent Panel and regulators to assess the project, including the stages for public exhibition and public hearings. Regulators should be required to perform their tasks within efficient and economically viable assessment timeframes. In HIA's experience, lengthy referral processes often do not add value to infrastructure and built form outcomes and only serve to undermine timely decision-making.

HIA understands and appreciates that projects which would be subject to the outcomes of the Bill would be particularly complex in nature, and therefore, adequate assessment timeframes are required. However, it remains unclear what benefit would be achieved if the above recommendations are implemented. Additional timeframes should only be entertained when it is clearly demonstrated that they are required for the assessment and determination of an application. The Bill also needs to keep with its intended objects of ensuring efficiency and transparency.

As previously stated, HIA supports the overall intent of the Bill but urges the Tasmania Government to consider the feedback provided by HIA, so that the optimal outcome for major project approval can be achieved. Particularly within the current climate, all tiers of government must be looking to implement measures which provide the greatest possible efficiencies in approval processes, so as to assist industry in recovering from the impacts of COVID-19.

HIA would also contend that the use of an independent planning assessment panel could be extended to the planning approval process for many other projects in the future, including housing, if this proves to be successful for major projects in terms of efficiency, transparency and integrity.

As always, HIA continues to provide input and feedback on all matters affecting residential construction and the industry more broadly. Please do not hesitate to contact me or alternatively [REDACTED], should you wish to discuss further.

Yours sincerely
HOUSING INDUSTRY ASSOCIATION

[REDACTED]

Stuart Collins
Executive Director
Tasmania



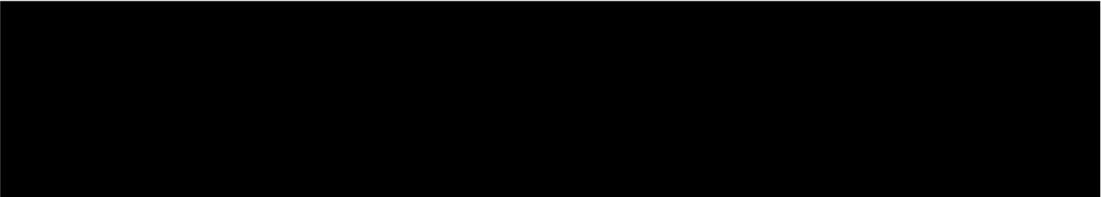
**SUBMISSION IN RELATION TO THE DRAFT *LAND USE
PLANNING AND APPROVALS AMENDMENT (MAJOR
PROJECTS) BILL 2020***



MAY 2020

Submitted to:

planning.unit@justice.tas.gov.au
Planning Policy Unit
Department of Justice
GPO BOX 825
HOBART TAS 7001



About [REDACTED]:

[REDACTED] is an incorporated association comprising of Tasmanians who are committed to protecting kunanyi/Mt Wellington from inappropriate development. It is based in Hobart, has been active since the early 1990's and is constitutionally established to explicitly work to protect kunanyi/Mt Wellington from the cable proposal and associated commercial development on the summit.

Introduction

On 3 March 2020, the Tasmanian Government released for public comment a draft *Land Use Planning and Approvals Amendment (Major Projects) Bill 2020* (Draft Bill). Public comment on the Draft Bill is has been extended to 15 May 2020.

[REDACTED] does not support the Major Projects Bill nor believe it is necessary given existing assessment processes for large scale and complex development proposals. [REDACTED] believes that a credible, fair and robust planning system is required to ensure sound planning decisions and build social licence. The Major Projects Bill undermines an existing system that exhibits the above traits.

[REDACTED] calls for the introduction of this new legislation to be suspended indefinitely, or at a minimum, until Tasmania's health emergency is lifted, and at a time when recommendations arising from concurrent and connected reform reviews are concluded and recommendations from those reviews are available for consideration.

[REDACTED] is of the view that the Major Projects legislation cannot be accurately assessed when other fundamentals impacting on planning decision making in Tasmania are simultaneously under review.

Specifically, a far-reaching review of the Tasmanian Planning Commission and the *Tasmanian Planning Commission Act 1997* is due to close on 30 June 2020 and submissions in relation to the review of the federal *Environment Protection and Biodiversity Conservation Act 1999* were due by 1 May 2020. The EPBC Act is specifically featured in the draft Major Projects Bill. [REDACTED] believes that additional time is be required for recommendations of these reviews to be developed and released and their relationship to the Major Projects Bill understood.

Finally, [REDACTED] notes that submissions to the draft *Tasmanian Civil and Administrative Tribunal Bill 2020* are due by 29 May 2020. This Bill is only the first of several Bills that will determine issues germane to the review of planning decisions. Jurisdiction, costs, adversarial proceedings and very importantly, alternative dispute resolution mechanisms are all slated to be dealt with in future Bills. These reforms will directly impact on the composition, operation and resourcing of the Resource Management and Planning Appeal Tribunal, proposed to be incorporated into a new TasCAT.

Consequently, [REDACTED] believes it is fundamentally unfair to the community of Tasmania to -

1. run such intrinsically interrelated reviews concurrently, undermining the ability of engaged and concerned Tasmanians to respond with full information; and
2. impose deadlines for consultation that fall within an extraordinary and unprecedented health and economic emergency.

Finally, Tasmania already has *State Policies and Projects Act 1993* to cover projects of significance (eg. Basslink Link project). No reason has been given as to why this legislation is not fit for purpose. It involves Parliamentary approval for major projects which, in our view, is significantly more democratic, transparent and desirable than the Major Projects Bill.

Key issues with the Major Projects Bill include:

- Absolute Ministerial desertion on the declaration of a Major Project based on vague criteria that lack parameters;
- Proposals can be stripped from local council assessment processes, even if part way through assessment, or reassessed as a Major Project if refused a planning permit;
- No public consultation on the guidelines by which a project is to be assessed;
- Assessment and approval by a panel that is not subject to normal Code of Conduct requirements;
- No opportunity for public comment until AFTER the panel issues a draft assessment report and no role for local councils;
- Approvals can be granted even if a development is found to contravene the relevant planning scheme or reserve management plan;
- No opportunity is given for merit-based appeal by third parties, including neighbours and other affected parties.
- It is being progressed parallel with other, significant reviews such as the Tasmanian Planning Commission and Federal Environment laws (EPBC Act).

We therefore reiterate our call to abandon this process and withdraw the Major Projects Bill, leave most planning matters to local Councils and other, existing assessment processes, such as the Project of State Significance and Project of Regional Significance processes.

In the unfortunate event that this is not achieved and notwithstanding the above, [REDACTED] submission follows.

1. Minister's power to declare a major project

“Major project” – definitional and Determination Guideline issues

The proponent of a project, the planning authority or the Minister may make a proposal that a project be declared to be a “major project”.

After a major project proposal is made, ***the Minister must decide whether the project is to be a declared major project or not, within 7 days.***

For a project to be eligible for a major project declaration, ***the Minister must be of the opinion that the project meets two of the following criteria:***

- (a) the project will make a significant financial or social contribution to a region or the State;***
- (b) the project is of strategic planning significance to a region or the State;***
- (c) the project will significantly affect the provision of public infrastructure, including, but not limited to, by requiring significant augmentation or alteration of public infrastructure;***
- (d) the project has, or is likely to have, significant, or potentially significant, environmental, economic or social effects;***

(e) the approval or implementation of the project will require assessments of the project, or of a use, development or activity that is to be carried out as part of the project, to be made under 2 or more project-associated Acts or by more than one planning authority;
(f) the characteristics of the project make it unsuitable for a planning authority to determine.

submits –

- The above highlighted terms are terminally infected by uncertainty and a lack of parameters or accountability. For example, what constitutes “*significant financial or social contribution*”, or “*characteristics*” that are “*unsuitable*” for normal planning assessment? In the absence of any definition, this ambiguity risks falling prey to political decision making that preferences one view over other legitimately held views.
- Any slightly more complex development project will generally require assessment under than two or more Acts. The attribute in s.60K(e) is a flagrant and unacceptable ‘get out quick’ provision. This should be removed.
- It is unacceptable that a Minister or planning authority proposing major project declaration is given a discretion **not** to call for a detailed proposal from the proponent (s.60E(2)). No proposal should proceed to a declaration unless and until they comply with s.60F.
- It is unacceptable that the public has no right to know if a major project proposal is made, as per other parties listed in s.60I.
- The Tasmanian Planning Commission structure and operation is currently under review and consequently its independence, structure and resourcing cannot be evaluated in the context of this Bill. To offer unseen Determination Guidelines (s.60J) in relation to the determination of major projects by the Minister as a safeguard against the Minister’s broad discretion under s.60K provides no reassurance in these circumstances. This is especially so given that the Minister is to have a discretion **not** to follow such Guidelines, only to *have regard* to them - s.60M(3). Further, there is no provision for citizen input into Determination Guideline formulation.
- There is no credible citizen recourse to a Ministerial declaration of a major project being made.

- The Ministerial fiat envisaged in this process is fundamentally undemocratic, secretive and potentially very costly to the tax payer. The tax payer, and the advice of potentially qualified, potentially independent members of the Tasmanian Planning Commission, are either specifically or potentially excluded from the project declaration process.

██████ recommends –

- 1. All proposals to comply with s.60J Determination Guidelines**
- 2. All proposals to satisfy 4 attributes under s.60K**
- 3. All proposals should provide the details required under s.60F**
- 4. The public should be notified of a major project proposal determination under s.60I and rights of appeal of this determination should be afforded third parties**
- 5. The TPC should be provided the opportunity to comment on all MP declarations in the same way as planning authorities under s.60I(3). Further, s60M should be amended to require the Minister to consider all comments provided under s.60I(3).**

2. Declaration potential to cut across otherwise regulated public lands

██████ is particularly concerned that a major project declaration can be made in relation to projects on Council or Crown-owned land such as Wellington Park and National Parks.

ROCC submits -

- Management plans applying to public lands such as kunanyi/Mt Wellington and National Parks (which abut kunanyi) have evolved over many years with community input and must be respected and adhered to.
- The Ministerial discretion, if exercised, triggers a planning process without community input until almost the end of the major projects process, effectively disrespecting years of management of areas of ecological significance which reflect, in part, community sentiment in their management plans.
- Applying Major Project legislation to such areas is a case of back-engineering and undermining of fair, democratic and due process. If publicly held, ecologically significant lands are to be managed in new ways that permit commercial enterprises predicated on mass tourism or other invasive activities (ie high volume transport and infrastructure developments), the government should be open and transparent about that, and involve the community via thorough reviews of management plans from the beginning of the process. ████████ notes the Major Projects process allow the provisions of park management plans to be ignored, leading to commercial enterprises which would otherwise not be permissible under the management plan.

The Wellington Park Trust is the authority responsible for the management of the Wellington Park. It is unclear if the intent of 60ZZZC(4) is such that the Wellington Park Trust can no longer apply those “inconsistent” parts of the Plan in performing its statutory powers under *Wellington Park Act 1993* just in the assessment of the major project through its PAA process, or if those “inconsistent” aspects of the Management Plan are amended with respect to all other activities and proposals within the Park (i.e. not just the major project). Further clarity is definitely required in this respect.

█ recommends -

6. **All management plans and planning schemes applying to Council, Public and Crown lands be adhered to, unlike permitted by s.60ZZZC.**

3. Establishment of a Development Assessment Panel

The Tasmanian Planning Commission (Commission) must establish a Development Assessment Panel (Panel) in relation to each major project. The proposed powers of this Panel have an immense potential to change the face of development in Tasmania and have proven unsuccessful in other states.

█ submits –

- The very name of this panel inserts an institutional bias towards *development* rather than *assessment*, and should be changed to *Planning* or *Project Assessment Panel*.
- This proposal removes elected local Councillors from decision-making in relation to major projects, which effectively removes the voice of the people about the most significant projects. Councillors have important local knowledge and mix with constituents, receive feedback on a continuous basis and are accountable to communities directly affected by planning proposals. Public servants and those contracted to serve on Panels and Commissions may experience institutional bias to deliver the known preference of the government of the day, a known and acknowledged dynamic.
- No compelling justification has been offered as to why a further layer of appointments for decision-making is required. As previously stated, the Planning Commission is under review. Any reforms to the Planning Commission must be known for the purposes of consultation on this draft legislation to be meaningful.
- The Commissioners’ position in appointing a panel is one of great responsibility. The appointment of Commissioners’ should therefore be by via a process independent of government, as should panel appointments. There is little transparency or no transparency around the panel appointment process which is disturbing considering the significance of the role.
- The Executive Commissioner of the Commission is a pivotal role. This position is currently a direct appointment by Government (however we note the parallel review of the Tasmanian Planning Commission).

██████ recommends -

7. Development Panels be named either Planning or Project Assessment Panels.
8. Appointments to the Planning Commission of Tasmania MUST be via an independent process that is reviewable.
9. Appointment to a Panel be informed by Guidelines that MUST have the force of law.
10. That planning authorities be included in the definition of a “relevant regulator” under s60Z. This would effectively give councils the power to direct a refusal of a major project – see s60ZZM(6).
11. That there be consequential amendments made to schedule 3A of the *Tasmanian Planning Commission Act 1997* so that the Minister cannot give directions to the TPC about how to perform its functions under the proposed new Part 4, Division 2A of LUPAA. This will ensure that the Commission is likely to be independent of the Minister’s influence.

4. Assessment Guideline formulation and process

If the major project is a “bilateral agreement project”, being a project that is “reasonably likely” to require approval under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) or in relation to which the proponent is likely to have a bilateral agreement within the meaning of that Act, the Panel must publicly notify the draft assessment guidelines and invite representations from the public.

However, if the major project is *not* a bilateral agreement project, there is no requirement for public consultation in relation to the formulation of the assessment guidelines.

██████ submits –

- The Assessment Guideline process is fundamentally flawed where the EPBC Act does not apply. Various regulators are in effect able to create new planning assessment guidelines, and they must only *have regard* to existing planning schemes, policies and strategies. ███████ notes that that Wellington Park Management Trust is not considered to be a relevant regulator for purposes of s60ZA(1)(b) or 60ZM(4)(b). Additionally, the Panel is not required to have regard to the content of the Wellington Park Management Plan under s60ZM(6) in determining the assessment guidelines, especially as s60ZZZC(4) may ultimately mean that the permit completely overrides those provisions. This is nonsensical.
- 14 days to provide such guidelines when complex projects are involved is manifestly inadequate -s.60ZJ. For example, the Wellington Trust would need to assess the proposal (as much as was known), devise guidelines, convene its Board (one would hope) and approve Assessment Guidelines all within 14 working days. Considering their acknowledged limited financial and staffing resources, there is considerable risk that the time frame cannot be met, or assessments are not as thorough as they should be. Unreasonable deadlines can often result in costly mistakes and are a false economy.

The Assessment Guideline formulation process provides multiple entry points for proponents to pressure for favourable Assessment Guidelines. There is no accountability mechanism to protect against corrupt or biased decision making. Tasmanian planning is replete with examples of political pressure and corrupted planning processes that favour proponents (eg. the Tamar Valley pulp mill) and this must be avoided in future. This process does not protect against similar outcomes. The opportunity for public representations that applies to bilateral agreements in s.60ZL should apply to all projects, albeit with realistic timelines for responses.

- Participation in formulating the guidelines overwhelmingly favours parties aligned either with proponents or government. The community is given no voice under s.60ZJ, and only given access to the Assessment Guidelines, at the Draft Assessment Stage – s.60ZZB.
- This process completely subverts normal permit processes that would apply to:
 - the *Environmental Management and Pollution Control Act 1994* (Tas) (in relation to level 2 activities);
 - the *Historic Cultural Heritage Act 1995* (Tas);
 - the *Nature Conservation Act 2002* (Tas);
 - the *Threatened Species Protection Act 1995* (Tas); and
 - the *Aboriginal Heritage Act 1975* (Tas).

█ recommends -

12. The planning authority be required to apply existing planning schemes in providing comments on draft Assessment Guidelines under s60ZJ.

13. A consultation and decision making period of more than 14 days be given to provide Assessment Guidelines under s.60ZJ, and Guidelines must be consistent with currently existing planning schemes and relevant reserve management plans.

14. All assessment guidelines be subject to a public process as provided for in s.60ZL applicable to bilateral agreement projects.

15. The community be included as a notifiable party under s.60ZJ

5. Consultation in relation to a Major Project Impact Statement

The draft assessment report must be publicly notified and exhibited. Members of the public may make representations in relation to whether a major project permit should be granted and/or any conditions that ought to attend the grant of a major project permit. Representations must be received within 28 days of the notice, unless the Panel determines that a longer period is appropriate.

Within 28 days of the public exhibition concluding, the Panel must hold hearings in respect of the major project. Before holding a hearing, the Panel must notify:

- each person who made a representation in relation to the major project;

- each relevant regulator who has participated in the process; and
- each person or body that was notified of the major project proposal.

After the last hearing, each participating regulator must give the Panel a final advice in relation to the major project. The regulator's final advice is a notice specifying that the regulator:

- directs the Panel to refuse to grant a major project permit; or
- does not direct the Panel to refuse to grant a major project permit but requires specified conditions to be imposed on any permit that may be granted; or
- does not direct the Panel to refuse to grant a major project permit and does not require conditions to be imposed.

Within 90 days after the last day of the public exhibition period for the draft assessment report, the Panel must decide whether to grant or refuse a major project permit.

■ **submits –**

- This legislation has in part been justified as being for projects that are too 'complex' for local councils to manage. The time frames provided for decision making do not do justice to the complexity of holding hearings on matters of technical specialisation where experts may not be available to give evidence in such a short time frame. This is an inappropriate matter to be left to Ministerial discretion for extension. It begs the question of politicisation.
- The discretion to extend the 90 day time limit (s.60ZZM) on issuing a decision after the expiry of the notification period is manifestly unfair and borders on denial of procedural fairness. There must be a longer period, unbounded by legislative deadlines, to ensure complex decisions on complex matters are properly determined.
- Regulators must not be subject to undue and unconscionable pressure to issue a final advice when it may be that significant evidence has been adduced in hearings that requires detailed analysis by a specialist. The same applies to the Panel.
- Final reports and advices from regulators will be compiled after hearings are complete and the public notification period has expired. There is no provision for final regulator reports to be made available to the community, as currently is the case. This is a clear and unacceptable denial of procedural fairness, particularly given there are no appeal rights to a major planning permit.

■ **Recommends –**

- 16. Hearings under s.60ZZE must not be subject to the unreasonable timeline of 28 days or rely Ministerial discretion for extension.**
- 17. Decisions under s.60ZZM must not be subject to an unreasonable timeline of 90 days.**
- 18. Final reports from regulators under s.60ZZF must be made available to the community with a reasonable opportunity to respond.**

6. Panel decision and major project permit grant

While a Panel must *consider* a relevant planning scheme, a major projects permit can be granted notwithstanding that the project *would not be permitted* under a planning scheme and is not required to be assessed against the applicable criteria in a planning scheme. Further, both *significant* and *minor* amendments to the permit are permitted under the Bill, with no public notification or involvement (s.60ZZZG).

As presently drafted, the Bill (specifically s60ZZZC(4)) permits any approval inconsistent with the Wellington Park Management Plan, and would render those offending parts of the Plan ineffective. Potentially, these changes would not just relate to the Major Project, but other future proposals as well. This is despite there being no requirement for the Panel, or any of the relevant regulators to even have regard to the Management Plan, let alone assess the project against it.

submits –

- A temporary panel bears no ongoing responsibility to the community, unlike Councils.
- Leaving the Commission to amend planning schemes to remove inconsistencies between the major project and the scheme is unacceptable. The amendment to the planning scheme could apparently be of broad effect, and not just limited to a particular major project proposal depending on how it is drafted. While a planning authority must be consulted by the Commission before any amendment to its scheme, this is no guarantee that there won't be flow on consequences from the amendment.
- Further, corrections to a permit are contemplated under s.60ZZV. *Miscalculations* are specified as errors to be corrected with no public involvement or comment, merely publication in the Gazette. It is unacceptable for miscalculations in a permit for a major project be contemplated without there being a full explanation and period for public comment on how such could occur and what impact it may have. This is particularly so as the public is not to be given access to final regulator reports prior to a permit being issued.

50 penalty units (approximately \$8,150.00) provided for under s.60ZZZG for knowingly providing false or misleading information is a manifestly inadequate penalty. Developer proposals have previously been shown to be misleading, with little consequence. There must be a real deterrent to such behaviour to protect the community. By way of example, s43A of the Environmental Pollution and Control Act 1994 provides for greater penalties for knowingly providing false or misleading information. Without these increased penalties, there is potential that developers will consider the fine as an acceptable cost in providing erroneous information on which significant decisions were based.

- Under s.60ZZT(1) and (2), a major project permit is issued for 5 years, with a possibility for an extension of 2 years and then another 3. This means a permit can be in existence for 10 years. Extensions do not need to be advertised and the community is given no opportunity to comment on contemplated extensions. This is unacceptable.

██████ Recommends -

19. Permit processes under the *Land Use Planning and Approvals Act 1993 (Tas)* and section 51 of the *Land Use Planning and Approvals Act 1993 (Tas)* continue to apply.
20. Projects should not be able to be approved unless compliant with the relevant planning scheme or reserve management plan.
21. Minor amendments to a major project permit under s.60ZZW must be publically accountable and those who have made representations must be given notice prior to the change.
22. Miscalculations should be subject to the same process as in recommendation 23.
23. The penalty for providing false or misleading information under s.60ZZZG to be 200 penalty points.
24. No extension under s.60ZZT to a major project permit should occur without a full and public process of re-qualification

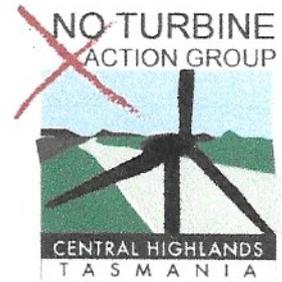
Conclusion

██████ offers the above recommendations in the context that it fundamentally believes this Bill to be unfair, undemocratic and unnecessary. In addition, evaluating and making suitable recommendations to this Bill is hampered by near simultaneous reviews of other directly relevant legislation and the potential for unintended consequences.

██████ does not believe that the Tasmanian Government has made a case for the need for an additional assessment pathway for development proposals in Tasmania. Tasmania already has the Project of State Significance (approved Basslink) and Project of Regional Significance (unused) processes on top of the standard planning approvals processes. No justification has been established that legitimises the need for the replacement of the Projects of Regional Significance process with this Major Projects process.

Indeed, ██████ believes the main aim (and effect) of the Major Projects Bill is to establish a wide-ranging, unaccountable process for development approvals that would be unlikely to be approved by current means, due to flaws in the project rather than existing process. The Bill sidelines the community, removes any recourse for legal challenge and will lead to both bad development decisions, and increased community conflict.

This Bill should be withdrawn.



Manager
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Dear Sir/Madam

RE: Comments on Major Projects Bill

Thank you for the opportunity to comment on the proposed Bill.

To put our comments in context, the No Turbine Action Group (NTAG) is a locally based community group that has recently been formed to research, inform and promote community concerns about wind farms in the Central Highlands, Tasmania – particularly on Epuron’s plan for a wind farm at St Patricks Plains involving sixty seven (67) turbines, up to 240m in height (three times the height of Wrest Point Casino), located next to the Gateways to the Central Highlands and Penstock Lagoon (a world fly-fishing destination), and killing nationally endangered Wedge-tailed eagles. Epuron is at the Impact Assessment phase of their project. There is widespread community opposition against Epuron’s plan for the Plains.

We are not part of any environmental organisation or political movement. NTAG is not an anti-development group but supports renewable energy investments of the right shape and in the right place. Our expertise and contributions are diverse - and includes local and international business owners, ecologists, landowners, shack owners, electrical engineers, media, local and wider Tasmanian community stakeholders, managers, those experienced in natural resource management and construction of major projects, those with long ancestry links to the highlands, and even the convener of World Fly Fishing Championships with international connections!

Having completed some extensive research and after much consideration we wish to inform you that we oppose the Draft Tasmanian Major Projects Bill. Please take our input seriously. We simply present what we know from our reading of the Bill, research, and our experiences with the Proponent (Epuron) and its approval process. We have outlined our general concerns and some specific concerns below.

The Major Projects Bill is of great importance to NTAG and therefore we ask for a written reply on each of the matters raised by us so as to see if the Policy Unit is taking a responsible and balanced approach to all the matters - what is adopted or not adopted and the reasons why.

In coming to our views, we have considered the current wind farm approval process, the proposed Major Projects legislation and its consequences for wind farm approvals (using St Patricks Plains Wind Farm as a case study as well interstate procedures). The attached *NTAG Research Paper: ‘Major Projects Proposal and Wind Farm Approval’* is an integral part of our submission and gives detailed information on our comments.

CONCERNS IN GENERAL

General overview

We do not support the Major Projects Bill. Our view is the current planning system for wind farms needs an upgrade but not the way Major Projects legislation proposes. The current Level 2 approval regime has shortcomings, but the Major Projects regime is worse. The Major Projects legislation is not supported for the reasons outlined below.

Concern about 'drivers' for the Major Projects Bill

Simple reading of the proposed legislation indicates drivers for the Bill to include:

- Making it easier to get major projects into, through and out of the Approval 'tube'.
- Taking major project Approvals away from Local Councils.
- Providing an easier pathway for controversial projects.
- Adopting Major Projects legislation before fixing the Interim Planning Schemes Zoning and Controls for industrial wind farms (cart before the horse).
- Seeing public input as a problem and not an asset; and avoiding broad community input during important stages of the project.
- Not embracing transparency, independent review, peer review and sharing of data through all steps of the process.
- Assuming regulatory competence for the Major Projects process (in the absence of independent review, broad community input and legislative reform); and
- Avoiding an independent arbitration and appeal mechanism by hiding behind a Hearing process.

These drivers will lead to a second-rate project, a second-rate approval process, raise conflict rather than working through objections and concerns, and avoid a great opportunity for community ownership.

Major change to the current approval system

The Major Projects Bill in a practical sense will change the whole planning regime - it replaces Projects of Regional Significance, and in practice Projects of State Significance and Major Infrastructure Develop Approvals because of the breadth of the Bill and the powers of the Minister. The Minister's power to declare Major Projects are broad and subjective (not based on quantitative criteria) and have a low hurdle. This means Local Councils will be bypassed on projects that matter and approval for developments in local government areas will be taken away from Council. Controversial projects will head down the Major Projects way because of the low hurdle to Declare a project and because there are no appeal provisions.

Poor stakeholder and community involvement

The Major Projects process does not foster local and broad community input as a mandatory requirement for the Proponent and Regulators. For example, the Bill is minimalistic about local and community input at the start of the approval process and also during Impact Assessments by a Proponent. Input into draft Guidelines occurs from a limited group and excludes the general public and nearby neighbours (unlike the *EPBC Act* process which is more open). It does not embrace transparency, independent technical review, peer review and sharing of data/information (unlike some interstate systems). Assessment Guidelines for Major Projects are based on an assumption of Regulatory competence without the need for independent reviews. Community involvement needs to be a priority. Under the Bill, nearby neighbours are excluded even though they will be impacted (for example by turbine noise). Other States require disclosure and consultations with neighbours

within 5km of the project, not just neighbours who are adjacent to the project. This Bill also precludes stakeholders from a formal independent arbitration and appeals process.

Second rate procedures to develop Permit Conditions

Approvals and Permit conditions are only as good as the Assessment Guidelines. The Major Projects Bill does not give any surety that proper Guidelines will be developed. For industrial wind farms, there is a poor starting point with the absence of Wind Farm Zones and Conditions in the Central Highland Interim Planning Scheme, and no State Wind Farm Codes, no State Wind Farm Guidelines and no State Wind Farm Policies to give a base framework for developing Assessment Guidelines by the EPA. Hence the EPA adopt a template for Guidelines that is out of date and not current best practice. Transparency, independent technical review, peer review, and sharing of data/information needs to be part of the lexicon of the EPA and Major Projects procedures as is required in some interstate processes. There is a need to mandate comprehensive social and economic-business assessments and community involvement as a core part of the Panels deliberations as well as a Proponent's investigation. Regulators cannot properly develop Guidelines unless the project is accurately described by a Proponent who is required to involve the wider community at the outset.

SPECIFIC CONCERNS

The Major Projects proposal is not acceptable, and the underpinning planning regime needs to be fixed. Fundamental reform for the current wind farm approval process is needed but not like Major Projects legislation proposes.

Fourteen (14) recommendations are made for the current wind farm approval process. They illustrate problems with Major Projects legislation and should not be cherry-picked as a 'part fix' for the Major Projects' shortcomings since the planning system needs to be fixed from the bottom up. They include making sure project proposals are comprehensive and accurate, improve investigation and assessment procedures, and have checks in the system to make sure Approval decisions are robust.

- 1. Fix and support foundational planning schemes and decision making.** There is a need to:
 - a. Provide a framework for Local Council decisions on industrial wind farms including zoning where wind farms are allowed/not allowed; along with comprehensive specifications and controls for wind farms within these zones; and with a State Wind Farm Code, State Wind Farm Guidelines and State Wind Farm Policies (like other States).
 - b. Keep approvals with Local Councils and ensure funding and support for Council decision making – including a Regional Assessment Panel that assesses and presents recommendations on Projects, in a transparent manner, at arms-length from Government, and with peer review and with independent consultant reports.

- 2. Ensure the Proponent's Project proposal is comprehensive and accurate.** There is a need to:
 - a. Require Proponents to consult with neighbours within 5km of the project when developing the project description/Notice of Intent; and recognise local issues at the beginning of the process (not just say who they talked to when submitting the Proposal).
 - b. Make it mandatory for Feasibility-Viability Assessments to accompany a Project proposal.
 - c. Ensure local community input occurs throughout the approval process – at the start of the process in the Project description (Notice of Intent), in **all** draft project guidelines whether *EPBC Act* or not, during the Impact Assessment phase carried out by the Proponent, as well as the final Impact Assessment report and draft Approval.

- d. Make it mandatory for comprehensive social, economic-business, and viability assessments as well as the normal environmental assessments to be an integral part of Impact Assessments.

3. Fix shortcomings in the investigation and assessment phases.

- a. Adopt numerical hurdles to identify what constitutes a major project.
- b. Ensure public input and independent expert review occurs on drafting of **all** Guidelines being developed (just as the *EPBC Act* requires) because regulators do not know all and do not know local and wider issues, and there should not be a select few who have input as proposed under Major Projects legislation
- c. Require Impact Assessment Guidelines to include mandatory consultation and then action on all issues of concern identified during Impact Assessment work; a requirement for the Proponent to provide independent technical/expert review of data and technologies used in an Impact Assessment; and a requirement for transparency and accountability with stakeholders.
- d. Institute a legislative and cultural shift for the EPA so a broader view of social, economic-business, and environmental Impact Assessment occurs for major projects.

4. Ensure approval decisions are robust.

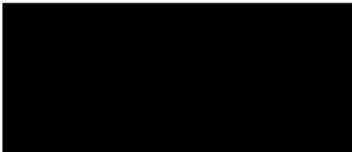
- a. Mandate the opportunity for a Dissenting Report by a member of an Assessment Panel.
- b. Ensure the Projects Assessment Panel does not review their own work and has independent peer review and independent consultant reports.
- c. Attach an Advisory Committee (including a community representative) to an Assessment Panel.
- d. Include an independent arbitration and appeals process through the Resource Management and Planning Appeals Tribunal.

We note that Hearings are neither independent nor a proper arbitration and appeal process. There should be no concerns by the Government, decision-makers, or the community about legitimate appeals in any approval regime.

We strongly recommend that the draft Major Projects Bill be abandoned and that a more democratic and community inclusive legislation be developed for large development projects (including wind farm guidelines) to create a healthy approval climate and positive future for Tasmania.

We trust you find this feedback from those 'at the coal-face' to be helpful and practical. We would be happy to meet, make a presentation, and clarify any matters about our views if you so desire.

Yours sincerely,

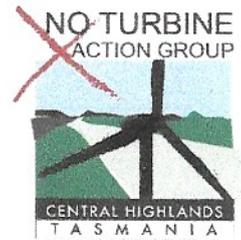


Chair NTAG



14th May 2020

Attachment A: NTAG RESEARCH PAPER: MAJOR PROJECT PROPOSAL AND WIND FARM APPROVAL



NTAG RESEARCH PAPER: MAJOR PROJECTS LEGISLATION AND WIND FARM APPROVAL

This Research Paper considers the proposed Major Projects legislation and its consequences for wind farm approvals using St Patricks Plains Wind Farm and some interstate procedures as case studies. The Major Projects and current wind farm approval processes are compared against threshold criteria important to NTAG. It is seen the planning system for wind farms needs an upgrade but not the way Major Projects legislation proposes. The current Level 2 approval regime has short comings, but the Major Projects regime is worse. The Major Projects Bill is not supported.

In a practical sense, Major Projects legislation will change the whole planning regime - it replaces Projects of Regional Significance and due to the breadth of the Bill, most likely Projects of State Significance and Major Infrastructure Development Approvals. In practice, scrutiny of Projects of State Significance will be taken away from Parliament and the people. The Minister's powers to declare Major Projects are broad and subjective (not quantitative) and this means local councils will be bypassed and approval responsibilities for local government areas will be removed from local Councils. Controversial projects will head down the Major Projects way because of the low hurdle to Declare a project and because there are no appeal provisions.

The Bill is minimalistic about local and community input at the start of the approval process and during Impact Assessments by the proponent. It does not embrace transparency, independent technical review, peer review and sharing of data/information (unlike some interstate systems). Approvals and Permit Conditions for Major Projects assumes regulatory competence without independent review and community expertise. Furthermore, wind farm approvals have a poor starting point. Unlike some interstate processes, there is no State Wind Farm Guidelines or State Wind Farm Code, and no zoning classifications for wind farms showing turbine and turbine free areas and their associated controls as part of the Central Highlands Interim Planning Scheme. This is compounded by EPA's narrow view of their responsibilities (or legislation), no independent expert review of EPA guidelines, limited and late community involvement in assessment decisions, and the absence of an appeals process.

Without these underpinnings, Major Projects approvals will be derived under a second-rate procedure. Fourteen (14) recommendations are made about the current wind farm approval process and Major Projects procedures. They should not be cherry-picked as a 'part fix' for the Major Projects' shortcomings since the planning system needs to be fixed from the bottom up. Other recommendations centre on ensuring project proposals are comprehensive and accurate at the beginning, improving investigation and assessment procedures, and having checks in the system to make sure Approval decisions are robust. Setting up an Assessment Panel Advisory Committee and maintaining an independent arbitration and appeals process (through the Resource Management and Appeals Tribunal) are essential - particularly since Hearings under the Major Projects Bill are not an independent arbitration and appeal mechanism. Feedback on this Paper is welcomed.

BACKGROUND

No Turbine Action Group (NTAG) is a community group concerned about wind farms in the Central Highlands (Tasmania) – particularly about turbines proposed by Epuron for St Patricks Plains. The purpose of NTAG is to research and inform the community about concerns with wind farms in the Central Highlands. NTAG has a diverse perspective because of involvement of local and international business owners, ecologists, landowners, neighbours, shack owners, electrical engineers, those with a long ancestry with Central Highlands, and with experience in natural resource management and construction of major projects.

NTAG is not an anti-development group but supports renewable energy investments which are of the right shape and in the right place. For example, the nearby Cattle Hill Wind Farm has support.

The key question for NTAG is “whether the Major Projects Bill will be a better or a worse approval process than the current approval process for wind farms?” and “how can the wind farm approval processes be improved?” Our experience with the St Patricks Plains industrial development provides some useful insights into the Major Projects Bill and these questions.

This Research Paper provides observations and recommendations about planning and approval matters; compares the Major Projects approval with the current Level 2 wind farm approval process; and outlines some threshold criteria for a solid planning system for wind farms. It canvases what other States do and uses the Upper Lachlan Development Control Plan as an example of a reasonable foundational plan for wind farms (which is not present in Tasmania). Other perspectives on the Major Projects Bill by some interest groups and commentators are also outlined. Recommendations are made.

A. OBSERVATIONS FROM ST PATRICKS WIND FARM PROPOSAL

Our experience with Epuron and the planning process for St Patricks Wind Farm has shown:

- The Central Highlands Interim Planning Scheme does not have State Wind Farm Guidelines, no State Wind Farm Code, and no zoning classifications for industrial wind farms (showing turbine and turbine free areas and their associated controls) as starting reference points for approvals (unlike other States).
- Proponents who are not the investor/developer and only do the paperwork (such as Epuron) do the least amount necessary and do not have ownership of any outcomes or commitments.
- Epuron's project was not notified to many local shack owners who would be impacted by the proposal. The proposal was not notified from the beginning to all neighbours who live within 5 kilometres of the project as is required under some other State's planning regimes.
- Proponents are not required to consult with locals when developing the Notice of Intent (NOI)/project description and therefore ignored important local issues. For example, Epuron did not indicate the presence of a world-class fly-fishing location in the area or the need for helicopters to access fire water from lagoons located within the wind farm area, as part of their project disclosure to the EPA.
- Consultation by Epuron is unacceptable. Proponents need to be accountable to act on all the concerns raised by the community. For example, concerns were raised with Epuron prior to the submission of the NOI and were ignored in the NOI.

- Regulators cannot properly develop Guidelines unless the project is accurately described by the Proponent. Epuron were not required to listen and act on information from locals and the community at the start of the procedure.
- Epuron has made ambit claims about the project in the application process to EPA. For example, initial information by Epuron centred around 19 sites but within three weeks went to 67 turbines - knowing that some turbines will be removed in the approval process.
- Our experience is EPA has a narrow view of their responsibilities when developing Project Specific Guidelines. After public submissions were made, no material changes to the draft Project Specific Guidelines. A legislative and cultural shift is needed for wholesome assessments to be made under the Major Projects plan.
- The Project Specific Guidelines issued by EPA for St Patricks Plains are below best practice because of the out-of-date Planning Scheme, the EPA's narrow responsibilities, lack of regard for public submissions, and the absence of independent expert review. There are gaps in Impact Assessment conditions for Projects - for example, guidelines for setback distances used in interstate planning regimes are missing.
- Social and economic considerations as well as on-site and off-site alternatives to reduce impacts carry little weight in assessments.
- Epuron has not been required to develop community ownership or support.
- Transparency, independent technical review, peer review, and sharing of data/information is not part of the lexicon of the EPA as is required in some interstate jurisdictions.
- Under the current planning regime, approval for the project would be by Central Highlands Council and would include Permits by regulators. Commonwealth *EPBC Act* responsibilities are met via the EPA.
- Under the current regime, appeals about the approval go to an independent body - the Resource Management & Planning Appeal Tribunal.
- Major projects approvals do occur and can proceed under the current Level 2 approval process (as shown by the Cattle Hill Wind Farm) or under the Projects of State Significance process.

B. WHAT IS PLANNED UNDER THE MAJOR PROJECTS BILL?

A simple summary of Major Projects Bill compared with the current process is outlined below and a more detailed summary of the Major Projects Bill procedure is presented in Attachment A.

TABLE 1.

Comparison of Major Projects Proposal with the current Wind Farm Approval Process.

Proposed Major Projects Approval	CURRENT WIND FARM APPROVAL PROCESS e.g. St Patrick Plains, Cattle Hill Wind Farm
<p style="text-align: center;">Major Projects process</p> <p>Proponent submits a Project. Proponent, Local Council, Minister Planning can propose the project as a Major Project. Minister Planning determines if Proposal is a Major Project. Minister declares the Major Project (28-day period for Regulators, landowners, adjacent neighbours to object to the declaration as Major Projects). Assessment Panel is set up by Tasmanian Planning Commission - includes TPC rep, a qualified Local Council rep and a project expert as mandatory members; and 2 other experts (optional).</p>	<p style="text-align: center;">Level 2 Activity</p> <p>Proponent submits draft Development Proposal / Notice of Intent to EPA. Proponent referral under <i>EPBC Act</i> goes to the Cth Dept Environment & Energy (DoEE) for Threatened Species issues. DoEE determines matters for inclusion in an EIS if the Proposal is a Controlled Action.</p>

<p>Relevant Regulators advise the Panel if it is a Major Project and the guidelines to apply. Panel develops Major Project Assessment Guidelines with 14 days for comment from a select group including owners of the land, adjacent land holders, planning authorities, Agencies, but not from the broad community. Public input into draft Assessment Guidelines only occurs if it is a Controlled Action (<i>EPBC Act</i>) issue, with 14 days for comment.</p>	<p>EPA prepare Draft Project Specific Guidelines (PSG). Public input occurs into the draft PSG if it is a Controlled Action (<i>EPBC Act</i>) issue. Fourteen (14) days for comment.</p>
<p>Proponent prepares an Impact Assessment based on Assessment Guidelines. Impact Assessment goes to Panel (onto the Regulators). Regulators say if it meets the Guidelines, refusal, or Permit Conditions.</p>	<p>Proponent does a draft Environment Impact Assessment/Statement (EIS) based on PSG. This Draft EIS goes to EPA, DoEE and Central Highlands Council and reviewed for content.</p>
<p>Panel prepares a draft Assessment Report on the Permit and Conditions. Public exhibition for 28 days then Hearings within 28 days (involves those who made submissions).</p>	<p>If the EPA Assessment is OK then Council are directed to invite public representations on the DA and EIS for at least 42-day period.</p>
	<p>Proponent amends the EIS for DoEE, EPA and Council Approval/Permit conditions.</p>
<p>Permit Conditions are determined after considering regulator final advice (within 90 days of Public exhibition), planning scheme, regional land use strategy, Hearings.</p>	<p>EPA Board does Class 2C Assessment because the proposal is "controlled action" requiring approval under <i>EPBCA</i> (Cth).</p>
<p>Single Integrated Permit issued (including Cth). Tasmanian Planning Commission amends the Planning Schemes for inconsistencies</p>	<p>EPA makes a recommendation to Local Council. Approval requires Local Council to assess against the planning scheme.</p>
<p>No appeal to an independent body.</p>	<p>Representors can appeal the EPA/Council decision to Resource Management & Planning Appeal Tribunal (2-week appeal period). For Commonwealth Approval, can apply to Federal Court for judicial review about not following the legislative process or overlooking an important matter.</p>
	<p>Management Plans provided for Approval (e.g. Eagles). DoEE, EPA endorse Plans and issue Permit Conditions.</p>
<p>Permit stays alive for up to 10 years.</p>	<p>Permit stays alive for up to 6 years.</p>

Comments

The following observations are offered about the Major Projects Bill process:

1. Under the Major Projects Bill, Local Councils can be sidelined for all but minor local developments and the local community voice is lost. **It is effectively a total change to the planning system.**
2. The process for the Minister to declare a Major Projects is so easy that almost all developers will use it. **Better hurdles are required to identify Major Projects.**
3. The Panel deliberations are based on a proponent's project description. **The project description needs to have proper vetting and local community input at the start of the process, so a proper project is presented for assessment.**

4. Panel members should be excluded if they have been involved with developers or projects or have voiced opinions on similar projects.
5. A project notification made by the Proponent to the Panel may be an ambit claim - as shown by St Patricks Plains wind farm NOI - and needs to be tested before being put into the approval tube.
6. **A Feasibility-Viability Assessment must accompany the Projects proposal.**
7. The Major Projects Assessment Panel would function better with a formal **Assessment Panel Advisory Committee having input** (the membership to include concerned community representatives).
8. Input into the assessment guidelines is not open to the general public unless it is for Commonwealth *EPBC Act* matters. **A mandatory requirement for public input on all guidelines is required.**
9. Under the Major Projects Bill, the Assessment Guidelines will be treated as the set of "rules" to be followed by the Proponent to get approval. To remove doubt, the Major Projects Bill must mandate **that all concerns and emerging issues identified during the impact assessment work must be addressed by the Proponent** in the Impact Assessment (not just say who they talked to).
10. No provision in the Major Projects Bill exists for a dissenting report on the draft Assessment Report by a Panel member. **The opportunity for a dissenting report by a member of the Panel needs to be required.**
11. An independent appeal process does not exist under the Major Projects Bill. The Hearings process is not independent but instead decides on issues about its own deliberations. **The Major Projects Bill needs to allow appeals to and arbitration by Resource Management and Planning Appeals Tribunal** as provided for under the current Level 2 approval process.
12. **Keeping a permit alive for up to 10 years is excessive.** Six years under the current process is also excessive.

Furthermore, a simple reading of the proposed legislation indicates drivers for the Bill to include:

- Making it easier to get major projects into, through and out of the Approval 'tube'.
- Taking major project Approvals away from Local Councils.
- Providing an easier pathway for controversial projects.
- Adopting Major Projects legislation before fixing the Interim Planning Schemes Zoning and Controls for industrial wind farms (cart before the horse).
- Seeing public input as a problem and not an asset; and avoiding broad community input during important stages of the project.
- Not embracing transparency, independent review, peer review and sharing of data through all steps of the process.
- Assuming regulatory competence for the Major Projects process (in the absence of independent review, community advice and legislative reforms); and
- Avoiding an independent arbitration and appeal mechanism by hiding behind a Hearing process.

These are not good drivers for a new approval system.

CONCLUSION: Matters in bold above need to be included in the Major Projects Bill.

C. WHAT DOES NTAG SEE AS THRESHOLD ISSUES FOR APPROVALS?

Several truisms need to be recognised for the Major Projects Bill to have any standing:

1. Community input is an asset because the proponent and regulators do not know everything. **The Major Projects Bill largely 'ignores' or limits this asset.**

2. Community engagement at the start of a project (rather than the end) will deliver the best possible outcome and help create community ownership. **The Major Projects Bill does not have community involvement as a priority.**
3. Proper social, economic-business, and environmental assessments are needed. **The Major Projects Bill gives no priority for mandatory social and economic-business assessments.**
4. Approvals and Permit conditions are only as good as the Guidelines. **The Major Projects Bill does not give any surety that proper Guidelines will be developed** (particularly since EPA takes a narrow view of their responsibilities and Regional planning is silent on industrial wind farms).
5. Good foundations allow good processes. If the process is right, the outcome will be right. **The Major Projects Bill and the associated planning regime needs major fixing from the bottom up.**

Hence there are a number of threshold principles NTAG regard as being essential for Approval processes.

TABLE 2:

Analysis of threshold issues for Major Projects Bill and the current Wind Farm Approval process

Principle	MP Bill (N or Y)	Current (Nor Y)
1. No surprises – a planning system with maps to show where wind farms are allowed and not allowed (e.g. zoning for the Great Ocean Road); and a regional development code for wind farms saying what the rules are.	N	N
2. A Feasibility-Viability Assessment that test the viability of the Project (and not assume a project is 'a goer' and waste resources of Approving Authorities).	N	N
3. Include thorough assessments of social, economic-business, environment, and community concerns.	N	N
4. Recognise local issues at the beginning of the process.	N	N
5. Allow local community input:		
a. into the project description (Notice of Intent) by the Proponent		
b. into the initial draft project guidelines developed by Regulators	Y*	Y*
c. during Impact Assessment phase carried out by the Proponent	N	N
d. on the final Impact Assessment report	N**	Y
e. on the draft Approval	Y	N?
6. Decision making to be by Local Council on developments in their area.	N	Y
7. Project Assessment Guidelines to include:		
a. mandatory consultation and action on issues identified during EIS work	N	N
b. proponent to provide independent technical/expert review of data and technologies used in an Assessment.	N	N
c. transparency with stakeholders	N	N
8. Proponent is required to provide funding for community research and input	N	N
9. Independence - Panels should not review their own work	N	Y
10. Appeal process to a third party on merit and procedural matters.	N	Y
11. Include a social licence or qualified social licence statement for the project.	N	N

*if Commonwealth EPBC Act matters are involved

** under Major Projects, public input occurs on the Panel's deliberations rather than a Proponent's EIS

CONCLUSION: The current Level 2 approval regime has shortcomings; the proposed Major Projects regime is worse.

D. APPROVAL PROCESSES FOR WIND FARMS IN OTHER STATES

A brief review of processes used by other states was undertaken. All states issue Permits with conditions when giving approvals for industrial wind farms.

Tasmania. EPA conduct an environmental assessment with Local Councils approving the project. Project Specific Guidelines for each project are issued by EPA. Tasmania does **not** have a State Code for Wind Farms or State Wind Energy Guidelines.

Victoria. Minister for Planning issues permits for wind farms. Victoria has Policy and Planning Guidelines for Development of Wind Energy Facilities in Victoria.

NSW. Depends on size of project and MW involved (approvals by Local Council, Joint Regional Planning Panel, Planning Minister & Planning Assessment Commission). NSW has Wind Energy Guidelines for State Significant Wind Energy, and a Wind Energy Framework.

Qld. Approval by Qld State Assessment & Referral Agency. Qld has a State Code for Wind Farms.

SA. Local Council assess and approve wind farms, but a state significant project is approved by the Minister. SA has a State-wide Wind farm Approval Development Plan and a Wind Farm Planning Policy.

WA. WA Planning Commission administers approvals through Local Councils. WA has a state planning framework for renewable energy facilities issued by WA Planning Commission.

NT. NT Dept of Infrastructure, Planning & Logistics issues Permits.

CONCLUSION: Some jurisdictions do approvals through Local Councils; others use a body like Tasmanian Planning Commission. Most have specific (State) Wind Farm Codes, Wind Farm Guidelines or Wind Farm Planning Policies. Tasmania is lacking State Codes, State Guidelines and Planning Policies for industrial Wind Farms. The Major Projects Bill does not fix this.

A Case Study is presented below and shown to a greater extent in Attachment B as an example of a planning framework for Wind Farms that is reasonably comprehensive at a Local Government level. **The take home message is - the Major Projects Bill is not underpinned by a sturdy (foundational) planning regime for Wind Farms such as that in place in the Upper Lachlan Shire Local Government area in NSW.**

Case Study:

WIND FARM PROJECT APPROVALS

BUILDING A PROPER FOUNDATION FOR MAJOR PROJECT APPROVALS.

Upper Lachlan Development Control Plan (see Attachment B)

This provides the legal framework for local council development decisions and includes objectives, zoning, zoning provisions, and development requirements. It has specific requirements for wind farms and includes matters that allow developers, regulators, and the community to work from the 'same page', such as:

- Minimum requirements for EIS;
- Noise impact assessments (including reference to SA Wind Farm Noise guidelines);
- Electromagnetic radiation and interference including human and animal health matters;
- Evaluation of flora and fauna impacts;
- Decommissioning and site restoration plan;
- Issues outlined in the New South Wales Wind Energy Handbook;
- Agency issues (e.g. aviation safety);

- Controls to be used (such as turbine set back from dwellings, formed public roads, and non-related property boundaries);
- Visual and cumulative impacts;
- Consultations, including local community groups interested in the development - prior to lodging a DA.

Note: *A number of these matters are not adopted by the EPA when developing Guidelines for a wind farm project in Tasmania. When raised by the public they are dismissed because of the narrow view of the EPA about their responsibilities. **Therefore, they can be ignored by the Proponent even though they are standard requirements in other jurisdictions.***

Conclusion: The Major Projects Bill is not built on a solid foundation and in the absence of such legal requirements, the Major Projects Bill gives no confidence that proper standards will be adopted for wind farms. "Trust the process" is not good enough.

E. WHAT DO OTHER INTEREST GROUPS SAY?

Environmental Defender Office. The EDO outlines the process involved in the Major Projects approval process. I have summarised my understandings in Attachment A.

Tasmanian Conservation Trust. Planning decisions are taken away from Local Councils. Limited community involvement occurs. The need for the Major Projects process is not proven. Projects of State Significance (PoSS) have been used and are OK (e.g. for BassLink). Fast tracking powers are not needed. Minister has the power to declare a Major Project and take it away from a Local Council, Guidelines can be developed (but not mandatory) and Minister must only have "regard" to guidelines. Virtually any project can be a Major Project e.g. significant financial or social contribution to a region makes it a Major Project. No right to challenge Minister's decision exists. The Major Projects process is fast tracked, with meaningless community input, and with no power to appeal. The current independent Tasmanian Planning Commission is not involved in the process other than approving Major Projects Assessment Panel members. The Assessment Panel decision cannot be challenged through appeal. For an approved project, the Tasmanian Planning Commission must change the planning scheme if inconsistency occurs. Fast tracked approvals occur as there is no right of appeal and Local Councils are cut out of approvals in their local government area. Major Projects legislation is not needed. Legitimate Major Projects can proceed under the Projects of State Significance process. Minister has unlimited power to declare a Major Project and the decision cannot be challenged. Once declared Local Councils are not involved and community cannot appeal or modify the approval. Major Projects Assessment Panel can be stacked, and the planning scheme ignored.

Planning Policy Unit / Planning Institute of Australia presentation. Basically, they spend a lot of energy saying what is good and do not talk about any short comings (as you would expect from a Planning Policy Unit), so it is hard to get a balanced view from an independent perspective. They compare the Major Projects process with PoRS (Projects of Regional Significance) even though PoRS has hardly ever been used in Tasmania. Their view includes:

- Different projects need different levels of approval and skills.
- Major Projects replaces PoRS. [**Comment: in practice it changes the whole planning system**].
- One approval permit process occurs with Regulators refusing or requiring permit conditions.
- Allows expert consideration. [**Comment: experts and regulators do not know all. Input to the Panel through a formal Advisory Committee is needed**].

- Local Government is not bypassed – consulted by Minister, have input into the Guidelines, can make submissions to Public Hearings; has a representative on the Panel. [**Comment: Local Government is bypassed as most projects that matter will go to the Major Projects process and approval is taken away from the Council**].
- Minister does not influence who is on the Panel, the Guidelines, Regulator advice or Approval/refusals. [**Comment: Minister does not need to. The Minister decides on what project should be treated under a shoddy process that has major shortcomings and does not include a real appeal mechanism**].
- Regulators give advice to the Panel; can give input into Hearings; provide Permit conditions. Expert Panel prepares the Assessment Guidelines with the advice of the Regulators.
- Adjacent neighbours are advised about the Project and can have input into Public Hearings/submissions. [**Comment: nearby neighbours are excluded even though they will be impacted by turbine noise. Other jurisdictions require disclosure to those neighbours within 5km**].
- Panel Hearings are equivalent to appeals [**Comment: Hearings are not an independent appeal, and the Panel is a decision maker on its own proposal**].
- Not a fast-tracked approval process – but more thorough. [**Comment: It is not thorough because of reasons discussed earlier in this Paper; and it fast-tracks approvals because of poor community input early and throughout the process and there is no proper appeals mechanism**].
- Judicial review rights exist [**Comment: An Independent appeals and arbitration mechanism does not exist**].

Media: Mercury Talking Point article. “Planning panels can make good calls on states Major Projects” (Pam Allen, University of Tasmania). The article says a panel at arm’s length from Government can make good decisions but then goes on to say what works at a regional level in southern New South Wales. *What is described is what the Major Projects Bill could be, rather than what it is; viz:*

- Regional Planning Panel process for certain projects that meet hurdles.
- Regional Panel has statutory powers for commercial developments over \$30M, Crown proposals (e.g. hospitals), ecotourism projects over \$5M, developments on Local Council land, solar and smaller wind farms, waste facilities, quarries, marinas, etc.
- Regional Panels have three (3) State government and two (2) Local Council reps. Local Council members can also be community members with relevant expertise.
- Council planners prepare an Assessment Report for the Panel decision.
- Panel decisions are made public, reports uploaded and available, the community is involved in meetings. There is a transparent and accessible process.
- Peer review of Assessment Reports occurs; and independent consultant reports are used.
- A Panel in the Tasmanian Major Projects Bill does the following:
 - Prepares the draft and final assessment guidelines;
 - Produces the draft and final assessment report;
 - Receives representations and conducts public hearings;
 - Liaises with regulators;
 - Makes a final decision (on its own work) after exhibition and public hearings.

Key conclusion: A regional based, transparent, and accessible approval process based on Local Councils and with hurdles on projects to be considered, is a far better process than the insular Major Projects proposal being put forward.

F. CONCLUSION.

Wind Farms such as Cattle Hill have been approved under the current approval process, so it is difficult to see why a Major Projects process is required unless it improves the current system. For industrial wind farms, this investigation shows the current Level 2 approval regime has shortcomings, but the proposed Major Projects regime is worse. The Major Projects proposal does not fix the current problems and is not the right model to be adopted. Better models are about. A regional based, transparent, and accessible process which involves support for and decisions by Local Councils and has empirical hurdles on what constitutes major projects, is a far better process than the insular Major Projects proposal being put forward. **The Major Projects Bill cannot be supported.**

There is no use putting a new roof on a building that has poor foundations which is what the Major Projects Bill would do. In regard to wind farms, there is a need to adopt best current practice at the local level – with zoning maps to identify turbine/turbine free areas and where explicit controls for wind farms are adopted (such as the **Great Ocean Road turbine free zonings** and Upper Lachlan Development Control Plans mentioned in this report). The Major Projects Bill is **not** underpinned by a comprehensive (foundational) planning regime for wind farms and therefore has ‘open-ended’ assessments and unspecified controls. There is a need for State Wind Farm Codes, State Wind Farm Guidelines, and State Wind Farm Policies. **The fundamental building blocks are not right.**

The Major Projects Bill will in a practical sense, change the whole planning regime. It replaces Projects of Regional Significance (PORS) and due to the breadth of the Bill, probably Projects of State Significance (POSS) and Major Infrastructure Development Approval (MIDA) processes. Local Government will be by-passed. Under the proposed criteria, most projects that matter will go to the Major Projects process and approval responsibilities will be taken away from Council. The Minister’s powers to declare a Major Project are too broad, are not numerical based like other jurisdictions, and are not open to appeal. **Controversial projects will head down the easier Major Projects way because appeal provisions do not exist and hurdles to declare a Major Project are determined by the Minister and are subjective.**

Local as well as community input is an asset for an approval pathway and not a problem. However, the Major Projects process does not foster local and community input as a mandatory requirement for the Proponent or regulators from start to finish of the process. The Major Projects Bill largely ignores this asset. Community involvement needs to be a priority. Nearby neighbours are excluded even though they will be impacted (for example by turbine noise). **Other jurisdiction's require disclosure and consultations with neighbours within 5 kilometres of the project, not just neighbours who are adjacent to the project.**

Approvals and Permit conditions are only as good as the guidelines. The Major Projects Bill does not give any surety that proper guidelines will be developed. Transparency, independent technical review, peer review, and sharing of data/information needs to be part of the lexicon of the EPA and the Major Projects procedures as is required in some interstate processes. There is a need to mandate comprehensive social and economic assessments and community involvement as a core part of Panel deliberations and a Proponent’s investigations. Regulators cannot properly develop Guidelines unless the project is accurately described by the Proponent, there is broad community input at the outset (not just the adjacent neighbours), there are zoning and conditions at the land use level to underpin the deliberation, and there is independent expert review.

It is essential that an Advisory Committee be attached to the Assessment Panel.

Recommendations

Therefore, the Major Projects proposal is not acceptable, and the underpinning planning regime needs fixing. NTAG do not support the Major Projects Bill. The current approval procedure for wind farms has shortcomings but the Major Projects Bill is worse. Some recommendations are made to improve the current Level 2 approval system. They should not be cherry-picked as a part fix for the Major Projects Bill because fundamental reform for wind farm planning is needed before the likes of Major Projects legislation occurs.

1. **Fix and support foundational planning schemes and decision making.** There is a need to:
 - a. Provide a framework for Local Council decisions on industrial wind farms including zoning where wind farms are allowed/not allowed; along with comprehensive specifications and controls for wind farms within these zones; and with a State Wind Farm Code, State Wind Farm Guidelines and State Wind Farm Policies (like other States).
 - b. Keep approvals with Local Councils and ensure funding and support for Council decision making – including a Regional Assessment Panel that assesses and presents recommendations on Projects, in a transparent manner, at arms-length from Government, and with peer review and with independent consultant reports.
2. **Ensure the Proponent's Project proposal is comprehensive and accurate.** There is a need to:
 - a. Require Proponents to consult with neighbours within 5km of the project when developing the project description/Notice of Intent; and recognise local issues at the beginning of the process (not just say who they talked to when submitting the Proposal).
 - b. Make it mandatory for Feasibility-Viability Assessments to accompany a Project proposal. (The Major Projects proposal asks the Proponent to give details of any feasibility assessments that have been undertaken).
 - c. Ensure broad community input occurs throughout the approval process – in the Project description (Notice of Intent), in all draft project guidelines whether *EPBC Act* issues exist or not, during the Impact Assessment phase carried out by the Proponent, as well as the final Impact Assessment report and draft Approval.
 - d. Make it mandatory for comprehensive social, economic-business, and viability assessments as well as the normal environmental assessments to be an integral part of Impact Assessments.
3. **Fix shortcomings in the investigation and assessment phases.**
 - a. Adopt numerical hurdles to identify what constitutes a major project.
 - b. Ensure public input and independent expert review occurs on drafting of all Guidelines being developed (just as the *EPBC Act* requires) because regulators do not know all and do not know local and wider issues, and there should not be a select few who have input as proposed under Major Projects legislation
 - c. Require the Proponent to include mandatory consultation and then action on all issues of concern identified during Impact Assessment work; a requirement for the Proponent to provide independent technical/expert review of data and technologies used in an Impact Assessment; and a requirement for transparency and accountability with stakeholders.
 - d. Institute a legislative and cultural shift for the EPA so a broader view of social, economic-business and environment Impact Assessment occurs for major projects.
4. **Ensure approval decisions are robust.**
 - a. Mandate the opportunity for a Dissenting Report by a member of a Panel.
 - b. Ensure a Project Assessment Panel does not review their own work and has independent peer review and uses independent consultant reports.

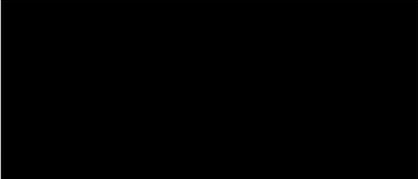
- c. Establish an Assessment Panel Advisory Committee for each project (including community representatives).
- d. Include an independent arbitration and appeals process through the Resource Management and Planning Appeals Tribunal.

We note that Hearings proposed under the Major Projects Bill are neither independent nor a proper arbitration and appeal process. There should be no concerns by the Government, decision-makers, or the community about legitimate appeals as part of any approval regime.

It is concluded that the draft Major Projects Bill be abandoned and that a more democratic and community inclusive legislation be developed for large development projects (including wind farm guidelines) to create a healthy approval climate and positive future for Tasmania.

For your consideration.

Comments and any corrections are welcome and can be forwarded to 


14th May 2020

ATTACHMENT A. MAJOR PROJECTS PROCESS

The Major Projects replaces Projects of Regional Significance (PORS) and due to the breadth of the Bill, probably also Projects of State Significance (POSS) and Major Infrastructure Development Approval (MIDA). PORS has never been used but the Major Projects process draws on some of its procedures. The process for a Major Projects approval would be:

1. Proponent proposes a Project.
 - Proponent, planning authority, Minister can propose a project as a Major Project.
 - Submission by Proponent.
2. Minister determines if the project is a Major Project.
 - Minister determines if it is a Major Project based on two of the following criteria - significant financial or social contribution to the region or State; strategic planning significance; significantly affects public infrastructure; significant/potentially significant environmental economic and social impacts; or difficult for an Approval authority. Also, if a Local Council does not determine the project.
 - Regulators, landowner, adjacent neighbours are notified of the Major Project - seven days after Minister's declaration - and given 28 days to raise objections to the Declaration.
 - Proponent maybe given 'notice of intention of no reasonable prospect of getting a permit' due to use, development, State policy, regional land use strategy.
 - Decision published in the Government Gazette.
3. Adopted as Major Projects.
 - Can occur on private property, Council Land, Crown land e.g. NP and Reserves, Wellington Park.
 - Major Project enters a single assessment process.
 - Tasmanian Planning Commission sets up Major Projects Development Assessment Panel
4. Major Projects Assessment Panel formed.
 - Members come from Tasmanian Planning Commission, qualified local Council person, a project expert (and can have two other experts).
 - Refer the Major Project to the relevant regulators who say if it should be a Major Project (**Comment: the criteria for Minister is so broad it will be a Major Project**); what is and is not included in the guidelines. The relevant regulators include the EPA; Heritage Council, Secretary DPIPW, Director of Aboriginal Heritage, TasWater, TasNetworks, but not the Local Council or Aboriginal Heritage Council.
5. Panel develop Major Project Assessment Guidelines
 - 14 days for comments from landowners, planning authority, Government Agencies, Crown Lands Minister, Wellington Park Trust [**Comment: no community rep or Advisory Committee input**].
 - Prepare draft Assessment Guidelines by considering: the planning scheme and regional land use strategies; regulator input; as well as any matter for proper assessment of the project use/development of the land (**Comment: this is vague and open to (mis)interpretation**). Input from a select group but not the broad community (**Comment: expertise exists in the broad community**).
 - Public advertisement of draft Guidelines only if it is a Commonwealth *EPBC Act* threatened species issue.
 - If not an *EPBC Act* matter, then there is no public input into the draft Guidelines.

- Panel notify the proponent, public and some others (including adjacent neighbours) of the Assessment Guidelines. **[Comment: not all neighbours within 5km are notified as happens under other jurisdictions]**.
6. Impact Statement by the Proponent
 - Proponent prepares a Major Project Impact Statement (IS) - to the Panel within 12 months or as agreed.
 7. Submission of Impact Statement to Panel by Proponent
 - Copy of IS to Panel and by the Panel to the regulators.
 - Panel /regulators may ask for more work or information from Proponent or other bodies. **[Comment: no public input occurs on the Proponents IS – so the Panel and Regulators are working in a narrow tube]**.
 - Regulators give preliminary advice to the Panel - if it meets the Guidelines; or refusal, or conditions imposed].
 - Panel prepares draft Assessment Report on the Permit and its Conditions. **[Comment: there is no provision for a Dissenting Report by a Panel member to allow the public to be better informed]**.
 8. Public display and Hearings of the draft Assessment Report
 - Publicly exhibit draft Assessment Report within 28 days for representations about granting of a Permit.
 - Hearings to occur within 28 days after exhibition of the Assessment Report – includes those who made submissions.
 9. Determination of Permit Conditions
 - Regulator's final advice on issue of the Permit and Conditions goes to the Panel. Reasons for imposing the Condition to be are to be advised by the Regulator.
 - Panel decision on whether to grant a Permit to occur within 90 days after public exhibition of the draft Assessment Report, and on Permit Conditions. Must consider the planning scheme, regional land use strategy, Hearings, and regulators advice. Does not have to comply with the planning scheme criteria.
 - Permit only granted if Assessment Guidelines are met, consistent with objectives of *Land Use Planning & Approvals Act*, not contravene State Policy or Tasmanian Planning Policies, not inconsistent with regional land use strategy, and regulator has not refused the Permit.
 - Proponent gets a single Permit, and the Tasmanian Planning Commission amends any planning scheme for inconsistencies.
 10. Permit Issued
 - If refused the Proponent can try again after two years
 - Permit stays alive for up to 10 years
 11. Project works start
 - Need substantial start within 2 years (?)

Upper Lachlan Development Control Plan 2010



Original Plan adopted by Council 18 February 2010 – effective 9 July 2010

Amendment No. 1

**Adopted by Council 19 May 2011, Confirmed by Council 16 June 2011, Minute No. 161/11
Effective 23 June 2011**

Amendment No. 2

**Adopted by Council 15 September 2011, Minute No. 343/11
Effective 22 September 2011**

1. Preliminary

1.1 Name of Plan

This Plan is known as the Upper Lachlan Development Control Plan 2010. This Plan has been prepared in accordance with Section 72 of the *Environmental Planning and Assessment Act 1979* (the Act).

1.2 Land to which this Plan applies

This Plan applies to all land within the Upper Lachlan Shire local government area.

1.3 Purpose of this Plan

This Plan shall be used in conjunction with Upper Lachlan Local Environmental Plan 2010 (LEP). The LEP provides the legal framework by which Council's development decisions are made and sets out objectives, zonings, zoning provisions and development requirements.

This Plan supplements the LEP by providing general information and detailed guidelines and controls which relate to the decision making process. The LEP and this Plan provide the land use planning and development controls for the Upper Lachlan local government area.

1.4 Date of adoption

This Plan was adopted by Upper Lachlan Shire Council (Council) on 18 February 2010 and commenced operation from the day on which the LEP was published on the NSW Legislation website, being 9 July 2010.

This Plan is subject to amendment from time to time. Plan users should refer to the list of amendments at Section 1.7 of this Plan.

1.5 Other planning policies and instruments

This Plan incorporates the statutory requirements of the *Environmental Planning and Assessment Act 1979* (as amended) and the *Environmental Planning and Assessment Regulation 2000*.

This Plan supersedes all Development Control Plans and Guidelines of the former Crookwell, Gunning, Mulwaree and Upper Lachlan Shire Councils, adopted and in force prior to the date of this Plan coming into effect.

This Plan supports the provisions of the LEP and should be read in conjunction with other planning instruments, Council policies, codes and specific development specifications.

Where there is an inconsistency between this Plan and any environmental planning instrument applying to the same land, the provisions of the environmental planning instrument will apply.

In addition to the above and the provisions of this Plan, in assessing development proposals, Council must consider all those matters specified in Section 79C of the *Environmental Planning and Assessment Act 1979*, as amended. As such, compliance with this Plan does not infer development consent will be granted.

9.5 Wind farms

The following provisions must be addressed when designing a commercial wind farm in the Shire and preparing the development application.

For the purposes of this Plan, commercial wind power generation includes wind power generation turbine(s) or towers with a peak capacity of power rated output greater than 10kW. The erection of a wind monitoring tower also requires Council's consent.

Objectives

- To provide development controls and guidelines that assist in achieving the objectives of the LEP,
- To ensure sufficient information is included with each development application to enable proper assessment,
- To minimise potential land use conflicts,
- To ensure road access and other issues are identified and sufficient information is included with each development application to enable proper assessment, and
- To ensure that adequate provisions are made to restore developed land at the end of the life of the development.

State Significant Development

As at the date of commencement of this Plan, the Minister for Planning has determined that the following criteria are used for State Significant Development [as defined by Schedule 1 of State Environmental Planning Policy (Major Development) 2005]:

- If the development has a capital investment value of more than \$30 million, or
- If the development has a capital investment value of more than \$5 million and is located in an environmentally sensitive area of State significance.

Any development meeting these criteria, or any criteria which replace them, is required to lodge the development application with the Department of Planning. Developers should refer to the requirements of Part 3A of the Act.

Statement of Environmental Effects (SEE) or Environmental Impact Statement (EIS)

The development application must be accompanied by a Statement of Environmental Effects (SEE) or Environmental Impact Statement (EIS) depending on the size of the proposal. Applicants should refer to the Act and associated legislation for the latest requirements for Designated and Integrated development.

The SEE or EIS as a minimum shall contain the following information:

- The location of the property, land contours, boundary dimensions and site area. This should include a map of 1:25,000 scale showing the location of the proposed development, the route of transmission lines to the electricity grid (and include access road, pylon, gradient and erosion control assessments), the service roads on and to the site, and the proximity to significant features such as dwellings, environmentally sensitive land, prime crop and pasture land, forests, national parks, heritage items and aircraft facilities.
- The site plan or plans showing positions of the proposed wind turbines, site boundaries, land contours, native vegetation, the proposed vehicular access points, the location of existing and proposed vegetation and trees on the land, the location and uses of all existing and proposed buildings, power lines, sub-station and fences on the land.

- A description of the proposed wind turbine/s, including all relevant details such as number, make, model, dimensions, generation capacity materials and colour.
- A land use description of the adjoining land and/or affected lands and landscape including assessment of the likely future impact.
- A noise impact assessment demonstrating compliance with the Department of Environment, Climate Change and Water licensing requirements (whether a licence is required or not) which references the South Australian Environment Protection Authority (EPA) Wind farms environmental noise guidelines (July 2009). The application shall also detail proposed monitoring program(s) to validate predicted noise impacts on neighbouring properties. The impact of The Van Den Berg effect is also to be considered.
- A description and assessment of the visual effects including photomontages, plate or panoramic photomontages, computer assisted photo simulations or other graphic representations of the appearance of the wind turbines and transmission lines. Viewshed modelling via the use of a suitable GIS (e.g. "MapInfo") is encouraged. Shadow prediction and shadow flicker assessments shall be included in the visual assessment(s).
- An evaluation of the electromagnetic radiation and/or interference from the wind turbines and/or transmission lines. This should include impacts on human and animal health and local television and radio reception and other local communications.
- A construction program and environmental management plan incorporating the proposed staging of the project, erosion and sedimentation controls, heavy vehicle movements, site access including all service roads, transmission towers, substation, underground wiring, construction phase impacts including facilities, waste disposal, staff/contractor numbers etc, weed control, farm impacts and all other works.
- An evaluation of flora and fauna impacts with specific mention of migratory species potentially impacted by the development. Where the development is in close proximity to known habitats of threatened species, early consultation with the Department of Environment, Climate Change and Water is highly recommended.
- A decommissioning and site restoration plan and program.
- All of the relevant issues in the Planning NSW EIA Guidelines and the NSW Wind Energy Handbook (NSW Department of Industry and Investment) current at the time of the application (*Please note that this Handbook was published in 2002 and some information is no longer valid. In particular, the reader is advised to seek updated information regarding 'The wind energy market' (Section 3) and 'Planning issues for wind farms in NSW' (Section 5).*)
- Demonstration that all issues raised by relevant Agencies have been addressed (e.g. CASA for aviation safety, SCA for water quality issues etc.)
- The heritage significance of the site and surrounds. Reference shall include Council's LEP, the Heritage Branch, Department of Environment, Climate Change and Water, the National Trust of Australia and the Australian Heritage Council (Australian Government). The Wind Farm and Heritage Policy (Draft) prepared by the former NSW Heritage Office shall also be referenced.
- An assessment of any risks involved in soil disturbance, including contamination impacts on hydrology and archaeological issues.
- Assessment of the development regarding all relevant legislation and applicable policies. See item (q) of this Plan for some of these listings.

Note 1: Applicants are encouraged to keep the local community fully informed throughout their design process.

Note 2: Additional information may be required depending upon the circumstances of the development proposal and level of detail, and accuracy provided within the development application.

Controls

The following must be included as part of the design criteria and assessment of any related development application:

- a. The development should be sited and carried out to minimise impacts on, or restrictions to grazing, farming and forestry practices;
- b. The development should be carried out in a way that minimises any physical adverse effects on adjoining land and the development site, including, but not limited to:
 - (i) land degradation
 - (ii) alteration to drainage patterns
 - (iii) pollution of ground water
 - (iv) spread of noxious plants and animals, and
 - (v) bushfire hazard
- c. The developer must assess the visual impact of the project including an assessment of scenic value. The developer must consult with the Council and the community on appropriate visual impact measures;
- d. The developer must assess the cumulative impact of the development having regard to wind farms in existence and those approved but yet to be constructed. Council does not favour large expanses of ridgelines being covered with wind farms and turbines;
- e. Proposed wind turbines shall comply with the South Australian Environment Protection Authority Wind farms environmental noise guidelines (July 2009) or any replacement guidelines. Note that where noise levels are found to exceed those guidelines, Council may require remediation work such as the cessation or decommissioning of the turbines to reduce the noise impacts on sensitive receptors such as non-related dwellings. The developer shall also furnish all data that has been collected on Infrasound levels that would occur at a representative sample of neighbouring non-host residences;
- f. Turbines shall not be located within 2.0 kilometres of any dwelling not associated with the development or from any lot upon which a dwelling may be constructed. The 2.0 kilometre setback proposes utilising a precautionary principle in addressing perceived visual and health concerns;
- g. Turbines shall not be located within a distance two times the height of the turbine (including the tip of the blade) from a formed public road. A greater distance may be required by the road authority;
- h. Turbines shall not be located within a distance two times the height of the turbine (including the tip of the blade) from a non-related property boundary;
- i. Existing and proposed screenings may be used to minimise visual impacts to non-related properties. However, due to the height of turbines, screening is not the preferred method of minimising visual impact. Turbines shall be located in positions so as to have minimal visual impact on nearby properties, especially existing dwellings and lots on which dwellings may be constructed;
- j. Turbine locations are to be sensitive to existing related dwellings on the subject site. Noise and shadow flicker should be minimised and turbines should not be located in close proximity to existing dwellings;
- k. Turbine locations shall not surround a non-related property. Turbines shall be located with the specified setbacks from property boundaries to minimise the visual impact of the development on adjacent and nearby non-related property. Cumulative impacts, having regard to existing turbines and turbines approved but yet to be constructed, should be assessed;

- l. A Communications Study should identify the existing status of communications and detail the proposed method of dealing with potential communication interference. Developers are advised that many parts of the Upper Lachlan Shire have very poor radio, TV, mobile phone, two way reception and the like. The development should not detract from the reception of any of these or other communication methods. Where necessary, it may be required to install additional services (boosters/communication towers/ re-transmission towers etc) to maintain such services in the vicinity of the development. Where this is determined to be necessary, the work and equipment shall be at the developers cost;
- m. Construction vehicles, including concrete trucks, carriers of turbine components, and related heavy vehicles (including relevant contractors) shall only travel on an approved route. This route shall be identified and approved in accordance with this Plan;
- n. A report detailing investigations into the impact of construction vehicles on the proposed route shall accompany the development application. Detailed road condition reports will be required as part of any consent. Council requires the use of the ARRB 'laser car' and 'gypsy camera' for this purpose;
- o. Council will require road works to cope with the over size and overweight traffic movements related to the construction of a wind farm. Bonds will also be required for any potential damage to roads during the construction phase. The road works and bond amounts will be determined by Council professional staff, but will be determined generally by the length of road and condition of road surface/base bridge, drainage etc relevant to the selected route. Where road works are determined necessary for the development, costs associated with the road works shall be the developer's responsibility;
- p. The construction and maintenance of internal roads (roads within the property subject to the development) shall be the responsibility of the developer. Council will require proof that they have been adequately designed and constructed for their purpose. Council and relevant State Government Agencies shall be provided with adequate information about the environmental aspects of the internal road construction;
- q. All infrastructure related to the wind farm should be included in the development application. Management of temporary facilities, waste, numbers of contractors/employees, etc, should be part of the Development Application information. All infrastructure should be located in low visual impact locations and interconnection cables/wiring and the like should be underground;
- r. Developers shall consider and refer to the Department of Planning's NSW Wind Energy Environmental Impact Assessment Guidelines, the NSW Wind Energy Handbook, Best Practice Guidelines for implementation of Wind Energy projects in Australia (AusWEA), South Australian Environment Protection Authority Wind farms environmental noise guidelines (July 2009) and all other relevant policies and legislation applicable to the proposed development. Reference to relevant Council policies and documents shall also be made;
- s. If appropriate, the development application should include details of a viewing area where safe vehicle and pedestrian movements can view the wind farm. The developer should liaise with relevant officers of Council's Works and Operation Department and the RTA regarding any proposed viewing area;
- t. Within six months of the wind turbine generators ceasing to operate, any rights of carriageways that were created to enable maintenance to be conducted on the wind turbine generators are to be extinguished by the developer and the land made good, unless otherwise agreed with the landowner.
- u. Within twelve months of the wind turbine generators ceasing to operate, they are to be fully dismantled and removed from the site. A security guarantee/bond is to be lodged with the consent authority (prior to any work commencing on-site) in an amount determined by the consent authority to cover the cost of dismantling and removal of the turbines; and
- v. Details of the proposed connection to the electricity reticulation network shall be included as part of the Development Application Environmental Assessment.

Other Aspects

Notification

On lodgement of the DA, Council will notify property owners within a 5 kilometre radius of the development in addition to the requirements outlined in Section 3.14 of the DCP. All submissions received will be presented to the Council (or the Minister) for their consideration in the assessment and determination process. Where Council is the consent authority, Council will hold a notification and submission period of not less than 60 days and will require the developer to hold a minimum of one public information night during the exhibition and submission period. The developer shall undertake additional consultation with the community and affected property owners.

Community Enhancement Program

Prior to the commencement of construction, the proponent is to prepare a Community Enhancement Program prepared in consultation with the local community and Council to be funded by the proponent at a minimum rate of \$2,500 per constructed turbine per annum (indexed to the consumer price index for Sydney (Housing) commencing at the September 2010 quarter).

Infrastructure

Much of Council's road network is generally not capable of sustaining the overweight loads involved with wind farms and will require substantial upgrading to accommodate the wind farm construction vehicles. Appropriate bonds will be required to ensure any road damage is repaired to Council's satisfaction. Such bonds are payable prior to commencement of any works on the site. Road sealing shall be required where appropriate on unsealed public roads utilised by the proponent.

Consultation with State Government Authorities

Proponents are advised to consult with public authorities that may have a role in assessing their development application. Council may consult the following Agencies in connection with the development application:

- Department of Planning
- Heritage Branch (Department of Planning)
- Department of Environment, Climate Change and Water
- Primary Industries (Department of Industry and Investment)
- Roads and Traffic Authority of NSW (Department of Transport and Infrastructure)
- Sydney Catchment Authority (SCA)
- The relevant Catchment Management Authority
- Civil Aviation Safety Authority (CASA)
- Australian Rail Track Corporation
- NSW Rural Fire Service (Department of Police and Emergency Services)

Other agencies and community groups shall also be consulted. It is recommended that the proponent identify and consult with local groups that may be interested in their development prior to lodgement of the development application.



Friends of the East Coast Inc.

*Protecting the unique environment of the East Coast
from inappropriate development*

www.friendsoftheeastcoast.org

PO Box 10, Scamander 7215
14 May 2020

Planning Policy Unit
Department of Justice
GPO Box 825
Hobart TAS, 7001
planning.unit@justice.tas.gov.au

To whom it may concern

Thank you for the opportunity to make a submission to the review of the *Draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2020*. We write on behalf of **Friends of the East Coast Inc.** which has been in operation since 2015 to inform the community on planning issues impacting on the East Coast of Tasmania.

Background to Major Projects Legislation

In the 2014 state election the Liberal opposition outlined a planning policy to develop a single state-wide planning system to replace the various interim planning schemes in the 29 local authority jurisdictions. The stated aim of the proposed reform was to make planning “**fairer, faster, cheaper and simpler**”. This program of reform is slow. Over the past 6 years the new Tasmanian Planning Scheme has not yet replaced the current interim schemes.

The new Liberal Government also pledged a number of further planning policies, specifically it "intends to introduce further legislation to implement a range of other planning-related reforms".

"This includes the Government's election commitments relating to **major projects, ministerial call-in powers and third-party appeals**".

Why Major Projects legislation?

So, this proposed planning legislation was proposed over 6 years ago. A relevant question then is why is it necessary? The Government's main stated reason is: "The Major Projects process is needed to deal with development proposals of impact, planning significance or complexity".

Friends of the East Coast Inc. believes the Government is not being open and transparent about the need for this major projects legislation. We suspect the real reason is to facilitate unpopular developments which are rejected by local communities in the normal processes of planning.

Leading the charge in de-regulation of planning is the Property Council of Australia (Tasmania Division) whose mission is "To Champion a Strong Property Industry". The PCA is the organised mouthpiece for private property interests. It lobbies government to achieve its particular sector self-interests. The PCA has had a significant influence on the development of the new Tasmanian Planning Scheme, stating it "remains a pivotal moment in the state's investment history."

On 7th April this year the PCA (Tasmania) stated "This is the perfect time to reduce red tape." "State and local government must also continue legislative reforms aimed at reducing regulatory handbrakes. statutory decision-making frameworks must remain a priority, with the importance of simplified processes key to supporting recovery following this challenging period." The public health emergency is being used to promote self-interests rather than public interests, such as the dire need for additional social housing in Tasmania. Do we need exclusive, luxury, tourist resort enclaves or social housing?

Thus, the self-interest of the property industry clashes with a key objective of Tasmania's planning system: "to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State".

Conclusion

Friends of the East Coast Inc. is unconvinced there is a demonstrated need for the proposed Major Projects legislation. The Government has not provided a convincing argument. Until they can we believe the Draft Bill should be withdrawn.

We are particularly concerned that the legislation would remove the requirement for a normal planning permit and bypass the community and elected Councillors and remove the right to appeal in the Resource Management and Planning Appeals Tribunal.

Faithfully



Andrew Lohrey, President



Graeme Wathen, Secretary



BUSHWALKING TASMANIA

President: [REDACTED]
[REDACTED]

SUBMISSION on PROPOSED “MAJOR PROJECTS” LEGISLATION, TASMANIA

Bushwalking Tasmania opposes the Draft Tasmanian Major Projects Bill for the reasons below and recommend that this undemocratic legislation be abandoned. The proposed legislation would further erode the ability for legitimate interests of the Tasmanian public to influence developments that could happen in the State. No reasonable justification for the proposed legislation is offered. Current legislation can already over-ride community values, so there is no need for legislation that enables more of this. (If anything, current legislation needs amending to require development and land use changes to better reflect public values.) Frankly, the proposed legislation should not be presented to Parliament, and certainly not be proceeded with.

Some reasons for our position:

- Virtually any project could be deemed a “major project”. The eligibility criteria are so broad and open to interpretation that virtually any project could be deemed a major project.
- The Minister or Government has too much power for declaring major projects
- The small assessment Panel of unelected members, who may not be independent, is a concern, and contrasts the Tasmanian Planning Commission that ensures it operates in an independent, transparent and evidence-based manner.
- The independent Tasmanian Planning Commission is sidelined
- Any to all controversial projects around Tasmania could be fast tracked and ignore considered public input and values. This could be such things as skyscrapers in our cities, more Lake Malbena-like proposals (with its many helicopter trips) other developments in our world heritage area and cable cars for Mt Wellington, Mt Roland and Cataract Gorge.
- The high-rise buildings clause has been removed
- There is no protection for Tasmanians’ customary use, access, amenity, values or expectations for anything.
- No right of appeal and limited community input
- Elected councillors, council decisions and well-thought out widely agreed planning schemes can be side-lined
- Planning scheme changes can be forced on councils and communities, including those in contravention to widely agreed use and development prohibitions.
- There is no justification for more ‘major projects’ or ‘fast track’ powers
- Earlier decisions by the Planning Tribunal can be reversed and projects reinstated
- Even when a regulator can make input, it is limited to their specified (narrow) bailiwick, such that any other relevant observation is disallowed
- Allowing of only 14 days to object to / review amendments to a “major project”, which could be significant, is far too short.

If any project is of major importance, it is all the more reason for wide and deep community scrutiny during a reasonable time interval, say 8 weeks. This allows quality reading and understanding, research, dialogue with the proponent, experts or / and Government Agencies and the writing of well-worded submissions that may have to be widely agreed. Holiday periods, pandemics and other societal interruptions reinforce a longer consideration time.

We urge that this legislation not proceed.

Yours,

Andrew Davey, President



HOBART WALKING CLUB Inc

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Philip Le Grove
President

Annette Picone
Secretary

14 May 2020

SUBMISSION FROM THE HOBART WALKING CLUB ON THE LAND USE PLANNING AND APPROVALS AMENDMENT (MAJOR PROJECTS) BILL 2020

About the Hobart Walking Club

The Hobart Walking Club was founded in 1929 and is the oldest walking club in Tasmania. It has around 850 members, making it the largest walking club in Australia. With walks scheduled every day of the year, members walk all over Tasmania, from short easy rambles to long multi-day trips into remote areas of the State. Club members have been at the forefront of exploration in the Tasmanian Wilderness World Heritage Area (TWWHA). Members pioneered the route to Federation Peak; they completed the first traverse of the Western Arthurs, including naming of the mountains and lakes. Numerous huts and safety shelters were built by Club members and many tracks have been built and maintained by Club members over the years.

More generally, Tasmanian walkers and other members of the Tasmanian public have often established and maintained many of our tracks, huts and water crossings. Many continue to do voluntary work to look after the TWWHA and other places.

General Comments

The Hobart Walking Club has significant concerns with the proposed Land Use Planning and Approvals Amendment (Major Projects) Bill 2020 (the Amendment Bill). These relate to the definition of a major project, the removal of the role of local government and the ability to override planning schemes, the ability to bring back projects rejected through normal planning processes, the lack of independence in the process and the lack of a suitable appeals mechanism.

The definition of a major project

The Amendment Bill defines a major project as any project that the Minister declares to be a major project. The grounds for making such a declaration are sufficiently broad and non-specific that virtually any project could be declared a major project for the purposes of the Act.

The removal of the role of local government

Local government has the major responsibility for land use planning in Tasmania but a major project declaration removes local government from the planning process. This is a concern as it removes expertise and independence from land use assessment decisions.

The ability to override planning schemes

Major projects may be approved under the Amendment Bill that are incompatible with the land use specified in a planning scheme and then require the planning scheme to be altered to remove the inconsistency. This renders any planning scheme redundant as a major projects declaration can subvert and require amendment of a planning scheme.

The ability to bring back projects rejected through normal planning processes

The Amendment Bill does not specifically preclude a project rejected through normal planning processes from being declared a major project. The Amendment Bill would therefore provide a mechanism to bring back projects rejected through normal planning processes and provide a mechanism for developments considered inappropriate to be reconsidered.

The lack of independence in the process

Final decision making on major projects is made by an assessment panel appointed by the Tasmanian Planning Commission. The membership of the Tasmanian Planning Commission is appointed by the Minister. This means the Commission and therefore an assessment panel appointed by the Commission may not be sufficiently independent and sufficiently removed from Government direction to provide a truly independent assessment process.

Lack of rights of appeal

The Amendment Bill does not provide for an appeal process in relation to the decision of an assessment panel. The ability of persons aggrieved by a planning decision to lodge an appeal should be a feature of all land use planning processes.

Hobart Walking Club Concerns in recent planning matters

The Hobart Walking Club has concerns with a number of recent developments including the Mount Wellington Cable Car proposal and the Expressions of Interest process for developments in national parks and the TWWHA.

The handing over of public land for private commercial development and the exclusion of walker access to public land as a result of such development is a matter of deep concern to our club and the wider Tasmanian bushwalking community.

Development proposals need to be managed through an open and transparent process. The current secrecy attached to the Expression of Interest development proposals is also a matter of concern to our members.

The proposed Amendment Bill does not allay our concerns regarding the approvals process for developments in our traditional walking areas and we are concerned that the Amendment Bill will in fact make it easier for inappropriate developments such as the Halls Island Lake Malbena development to proceed.

Thank you for the opportunity to comment.



Secretary
Hobart Walking Club

Submission supplied in confidence, not for publication at request of representor.

Department of State Growth

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Our Ref: D20/113749



GINNA WEBSTER
Secretary
Department of Justice
GPO Box 825
Hobart TAS 7001

Attention: Mr Brian Risby
planning.unit@justice.tas.gov.au

Final exposure draft of the Land Use Planning and Approvals Amendment (Major Projects) Bill 2020

Dear Ms Webster

Thank you for providing the Department of State Growth (State Growth) with an opportunity to provide feedback on the final exposure draft of the Land Use Planning and Approvals Amendment (Major Projects) Bill 2020 (the draft Bill).

Large infrastructure projects are inherently complex and often evolve during the planning and construction phases as designers and construction contractors respond and adapt to emerging challenges. It is important that the assessment process for major projects allows some degree of flexibility to support changes through the early design phase. It is also important that the assessment process supports a balanced assessment of risks and outcomes, at both a strategic level and in relation to specific project details.

State Growth has reviewed the draft Bill in detail, particularly in the context of the strategically important Bridgewater Bridge project. As we are in the scoping and development phase of this project, we have been able to review the Bill with a significant degree of practical and contemporary insight. The following comments reflect a number of concerns that we believe warrant further consideration prior to the finalisation of the draft Bill.

Land included in the application

The draft Bill requires all land to be identified prior to declaration in order to notify owners (60I(1)(b)) and adjoining owners and occupiers (60ZJ).

If a proposal does not include all land, including additional land that is subsequently found to be project-related, there does not appear to be any mechanism to amend the application post declaration to include additional land.

It is common for design changes to occur through the scoping and development phase of large infrastructure projects and can even occur during construction, requiring the acquisition of additional land. The inability to include additional land within a project, potentially up until the assessment phase of the process, is a significant limitation.

A suggested response is to include a mechanism similar to s.14A of the *Major Infrastructure Development Approvals Act 1999*, which enables the proponent of a major infrastructure project to make a request to the Minister to amend a notified corridor.

Limitations on ordinary permits

It is our interpretation of 60D where ordinary permits (under a project-associated Act and related to all or part of the land to be included in the major project) have not been determined prior to notification of the Minister (2), are assumed to be withdrawn under 60I of the Bill.

It is understood that any valid permit issued prior to notification of a proposal for declaration under 60I would therefore remain valid, enabling the project-related works to be undertaken at any time throughout the Major Projects process?

It is also understood that the making of applications subsequent to declaration of the project that form part of a major project are excluded under 60Q. The only exception is project-related investigation approvals that can be granted by the panel under 60ZT and only after the guidelines are issued and providing they are contemplated by the guidelines.

As drafted, the major projects process would sterilise the land from any use or development other than for investigation under 60ZT from the 60I notice until all project-related approvals are issued (60ZZS). For example, development requiring an ordinary permit that was not envisaged prior to declaration such as property demolitions, would not be possible until after a major project permit has been issued.

In this context, it is important to note that early works ahead of commencement of primary works for a major project are relatively common and are usually contracted separately to the primary works. Therefore, this provision is likely to delay commencement of primary works where the assessment for early works can only be undertaken after project related approvals are issued. This delay is unnecessary if the proponent is prepared to undertake early works on a 'no-regrets' basis.

Role of the Tasmanian Heritage Council and Aboriginal Heritage Council as regulators

It appears that the draft Bill intends to provide regulatory powers to or recognise regulatory powers of the Tasmanian Heritage Council and the Aboriginal Heritage Council. Both Councils are representative rather than expert bodies and it is understood that the draft Bill as currently constructed provides that either Council could prevent a major project proceeding with the

proponent having no recourse to appeal. It is proposed that the Assessment Panel (the 'Panel') should be able to review the advice of both Councils, and consider this advice against other strategic and project-related considerations, before making a final determination.

Tasmanian Heritage Council

The draft Bill coordinates the Tasmanian Heritage Council's assessment under the *Historic Cultural Heritage Act 1995* (HCH Act). The Tasmanian Heritage Council is required to assess the proposal in the usual way, as if it were not a major project, and either decide to approve or refuse to grant a permit in relation to the project. If the Tasmanian Heritage Council directs the Panel to refuse the project, the Panel must refuse to grant a project related permit under Section 60ZZM(6) of the draft Bill.

The Tasmanian Heritage Council's assessment criteria under Section 39(2) of the HCH Act are narrow, focusing on an assessment of the likely impact of a proposal on the heritage significance of a place. A decision under these criteria make it difficult for the Tasmanian Heritage Council to have regard to broader strategic considerations that may otherwise be integral to the assessment of a major project.

It is proposed that the draft Bill is amended to allow the Panel and the Tasmanian Heritage Council to have regard to broader environmental, social, economic or safety benefits that may be of greater importance to the community than the historic cultural heritage values of a place, and to consider whether there are prudent and feasible alternatives to otherwise retain or recognise heritage values.

Aboriginal Heritage Council

Similar to the Tasmanian Heritage Council's role, it appears that the Aboriginal Heritage Council is also required to make a determination on the project as if it is not a major project (refer 60ZZK(1)). The Panel must refuse to grant a project related permit if it receives advice from a participating regulator, in this case the Aboriginal Heritage Council, that the proposal should be refused.

It is important to clarify the role of the Aboriginal Heritage Council in the context of Relevant Regulators (section 60Z.) under the draft Bill. Supporting web-based information to the Bill refers to the Aboriginal Heritage Council as a Relevant Regulator; however, this body does not have the same statutory role as the Tasmanian Heritage Council. It is understood that the Aboriginal Heritage Council is able to make recommendations to the Minister for Aboriginal Affairs, and that the Minister then determines whether or not to issue a permit. If this is the case, then that Minister will have a role in determining whether or not to refuse or grant a Major Project Permit as the Relevant Regulator.

There is a need to clarify the role of the Aboriginal Heritage Council in the draft Bill.

Potential to include the Water Management Act 1999 as a Project-associated Act

The Major Projects process is able to coordinate a suite of permits required under a number of project-associated Acts. However, the draft Bill does not include the coordination of permits issued by Department of Primary Industries, Parks, Water and Environment (DPIPWE) under the *Water Management Act 1999*. Many large projects include the construction of a new dam or detention basin works, or involve the removal or modification of an existing dam.

It is therefore proposed that the *Water Management Act 1999* be considered for inclusion as a relevant Act under section 60B of the draft Bill.

We look forward to discussing our comments further, noting the importance of this Bill to the planning and delivery of major projects. Please contact [REDACTED] who can schedule a meeting with relevant State Growth officers.

Yours sincerely

Kim Evans
Secretary

May 2020



14th May 2020

Planning Policy Unit
Department of Justice
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P.O. Box 393
Burnie Tas 7320
Phone: [REDACTED]
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Email: [REDACTED]
Website: www.tasminerals.com.au

Via email: planning.unit@justice.tas.gov.au

Dear Sir,

RE: Major Projects Bill

The Tasmanian Minerals, Manufacturing and Energy Council (TMEC) represents the state's minerals, manufacturing and energy industries and provides leadership, effective issues management and cooperative action on behalf of its members. Our mission is to promote the development of sustainable exploration, mining, industrial processing and manufacturing sectors which add value to the Tasmanian people and communities. TMEC's membership base represents an important wealth creating sector within the Tasmanian economy. Minerals exports alone account for 55% of Tasmania's commercial exports and is the foundation stone of many regional communities with 5,600 direct jobs.

While the Tasmanian minerals and manufacturing sector has been the major contributor to the Tasmanian export economy for over a century, opportunities for new developments are vital to meet emerging markets for new products and resources which create a platform for generations of Tasmanians to come. This has always been important, but never so much for the next decade as Tasmania grows its economic base as a means to overcome the cost of the COVID-19 response.

This reform has the potential to be a critical differentiator with other jurisdictions in Australia and globally when it comes to establishing Tasmania as being an investment-friendly destination. A destination which respects the blend of natural and manufactured environments and helps to underpin the socio-economic future Tasmania needs and wants.

We acknowledge the efforts of the Government to address the suite of issues with the current assessment process. TMEC supports moves to;

- The appointment of an independent and skills-based panel and in particular the intent to coordinate all related permit processes required by the full spectrum of regulators
- Any effort to provide transparency for both developers and community stakeholders is critical. That does not mean a consensus needs to be found, but importantly what the decision is and the basis for making the particular decision is of paramount importance in having confidence in the process.
- The stipulation of time frames by which regulators, assessors, interest groups and developers need to operate within helps to ensure the required resources are applied to ensure the required workload is accomplished to the schedule.

- One of the most notable intentions is to be up front with developers where there is the, “no reasonable prospect test” to provide a definitive decision before costs are incurred by the developer.

In closing TMEC again acknowledges the intent the Government has in providing a more predictable process, one which developers can have some confidence when assessing whether the investment in time and expense is justified by the benefit of implementing the proposal.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Mostogl". The signature is fluid and cursive, with a large initial "M".

Ray Mostogl
Chief Executive Officer



Australia ICOMOS Secretariat
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13 May 2020

Planning Policy Unit
Department of Justice
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By email: planning.unit@justice.tas.gov.au

Submission on the Draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2020

Thank you for the opportunity to comment on the Draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2020. I provide this letter as a submission on behalf of Australia ICOMOS. Please note that given the interests of Australia ICOMOS, the submission restricts itself to cultural heritage related matters.

ICOMOS – the International Council for Monuments and Sites – is a non-government professional organisation that promotes expertise in the conservation of cultural heritage. ICOMOS is also an Advisory Body to the World Heritage Committee under the World Heritage Convention. Australia ICOMOS, formed in 1976, is one of over 100 national committees throughout the world. Australia ICOMOS has over 700 members in a range of heritage professions. We have expert members on a large number of ICOMOS International Scientific Committees, as well as on expert committees and boards in Australia.

Australia ICOMOS understands that the Draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2020 is designed to provide for independent assessment of major projects in Tasmania, where the aim is to achieve timely and integrated assessments. Australia ICOMOS does not have particular concerns with the Bill so long as it provides at least the normal, good standard of heritage assessment and protection provided for in existing legislation (such as an expert process, identification/recognition of values, protection of heritage values, and good long-term heritage management which includes monitoring and adaptive management where needed).

Australia ICOMOS does however have a small number of specific concerns with the Bill in its current format, which in our view require addressing. These are as follows.

1. We assume from the background documentation and the tenor of the Bill that the key aim of the Bill is to expedite the assessment and approval process for complex large development projects by removing the normal separate assessment processes required under legislation and combining these into one single assessment process, but which still requires the same level of regard for the legislation that has been bypassed, in this case through a more streamlined process. It is essential to the maintenance of adequate cultural heritage protections that the requirements of the *Aboriginal Heritage Act 1975* and *Historic Cultural Heritage Act 1995* continue to be met via this new process.
2. In our view it is generally undesirable to bypass existing legislation, as is proposed by this Bill, and so the operation of the Bill should be restricted to a very small number of projects. We note that the definition of a 'major project' is extremely open (for example what does 'significant' mean in this context), and recommend that, to give confidence in the Bill and its operation once enacted, the definition of 'major project' is substantially tightened up to ensure that it is for genuine major projects and not a mechanism for any new developments to avoid the standard process.
3. We note that the ability of the Bill to respect existing environmental and heritage legislation requirements is heavily dependent on the role played by the Tasmanian Planning Commission and its independence. We note with concern that there is a review of the Tasmanian Planning Commission

currently being undertaken, which may result in changes that affect the independence and expert operation of the Tasmanian Planning Commission. We doubt the value of these two reviews being carried out in tandem, and recommend that one matter be resolved before the other so that there can be confidence in the role of the Tasmanian Planning Commission in the Land Use Planning and Approvals Amendment (Major Projects) Bill.

4. Although it is not apparent in the Bill, we trust that this Bill will not be applied to highly significant heritage, in particular World Heritage and National Heritage places. Because of their extremely high significance, such places and areas should not be subject to 'major projects' and related processes. To clarify this, we strongly recommend that recognised World Heritage and National Heritage places be specifically excluded from the Bill, noting the over-riding role of Commonwealth legislation and international processes under the *World Heritage Convention*.
5. Finally, we trust that this Bill will not obviate the need for sound cultural heritage research in Tasmania, either in relation to the potential impacts of proposed 'major projects', or to provide the heritage knowledge framework necessary for making sound decisions about the protection of Tasmania's heritage. As noted in previous correspondence to the Tasmanian Government, the historic heritage knowledge framework in Tasmania is not adequate (for example Australia ICOMOS wrote about this matter on 27 February 2015 in relation to Built Heritage Tourism and on 24 August 2015 in relation to the Tasmanian Heritage Register Integrity Project). It requires further development through completion of the regional heritage studies program that was started in the 1990s, but which has not been completed (only about 50% of the state has been covered to date), and also through thematic heritage studies. These studies are critical to ensuring significant historic heritage is listed in local planning scheme Heritage Codes and on the Tasmanian Heritage Register. We also draw to your attention the long outstanding Tasmanian Wilderness World Heritage Area (TWWHA) cultural landscapes study (for which funding has been provided by the Australian government) and which is essential to ensure Aboriginal cultural landscape values of the TWWHA can be protected from the impacts of new recreational and tourism developments in the TWWHA and adjacent areas (Australia ICOMOS wrote to the Tasmanian Government about this matter on 28 January 2020).

Please contact me if we can be of further assistance.

Yours sincerely



Helen Lardner
President



Planning Policy Unit
Department of Justice
GPO BOX 825
HOBART TAS 7001

By email to planning.unit@justice.tas.gov.au

14 May 2020

Dear Sir/Madam,

Land Use Planning and Approvals Amendment (Major Projects) Bill 2020 - Representation from the Planning Matters Alliance Tasmania Inc

The Planning Matters Alliance Tasmania Inc (PMAT) herewith registers this representation against the draft Major Projects legislation. Please can you acknowledge receipt of this email and this representation.

PMAT's overall position is that the Major Projects Bill should be abandoned.

PMAT views this Major Projects Bill (MPB) with deep disquiet and alarm. PMAT is a community advocacy alliance of over 60 groups, and has been recognized by the Planning Institute of Australia as "Planning Champions 2019". Our member groups all want better land use planning across Tasmania and the MPB goes against most, if not all, of our main principles. Please see our Platform Document [here](#).

The draft MPB proposes a hugely significant change to the way land use planning decisions are made in Tasmania. It is highly regrettable that MPB public consultation has been conducted during the worst global pandemic for over 100 years.

PMAT's concerns include the following:

1 The **MPB has the potential to strongly advantage big business and investors whilst ignoring good planning principles and wishes of Tasmanian communities**. The mechanics of the MPB are undemocratic in that Tasmanians would be denied an effective and timely voice in the process.

Examples include:

- The Minister can declare a Major Project based on only 2 of several very broad criteria
- The TPC may not even be represented on the Development Assessment Panel (DAP) which may be chaired by the TPC or any other person
- There is no requirement for the assessment guidelines to be advertised for public comment, (unless the Major Project is a "bi-lateral agreement project" involving the Commonwealth)



- The impartiality of the DAP is questioned, where only 3 people constitute a quorum and they can be drawn from people experienced or qualified in commerce, property, urban development (sic).
- We are **not assured of the planning expertise of the 3-5 people** recruited for the DAP which must be appointed quickly, within 42 days of the Major Project being declared by the Minister
- There are **no RMPAT appeal rights** to a decision by the Development Assessment Panel (DAP)
- Public comment will be conducted **following** the Draft Assessment Report being handed down. Consultation after the draft assessment is neither timely nor fair.
- Consultation will **only** last for 28 days. It means people cannot inform themselves well and there will be no time to engage experts to represent communities. We suggest this will limit meaningful or effective community engagement.

PMAT considers all the above draft processes, amount to a lack of transparency and hold the potential for abuse and corruption at some future stage.

2 The scope of the MPB. This is an extremely serious concern. Nothing can be ruled out, so that many contentious projects could be declared by the Minister. Eg Cambria Green, hi-rise buildings in our cities, and unplanned/poorly planned high-density residential subdivisions to name but three.

3 Existing legislation

a) Projects of State Significance (POSS) and Projects of Regional Significance (PORS)

Given that POSS and PORS legislation already exist, PMAT cannot understand why there needs to be yet another Act designed to achieve the same aims. There will obviously be some complex projects which cover different municipalities but we understand the mechanism for dealing with them already exists with POSS and PORS.

b) The new Tasmanian Planning Scheme, (TPS), was designed to be simpler, faster, fairer, cheaper. We are still awaiting implementation and assessment of the TPS so it does seem premature to introduce these massive changes now.

4 The MPB is contrary to PMAT's Platform Document. PMAT continues to advocate at all levels for the following:

Health, wellbeing and livability of our communities and protection of our environment. The MPB has no public interest test and PMAT cannot be assured of protections for natural and built environment. The current legislation appears to have few, if any, safeguards.

Strategic vision for the whole state. This is absolutely essential for our small state going forward and major projects should ideally be part of a larger scale vision for Tasmania. Declaring Major Projects in an



ad hoc or piece meal way which is allowed under this MPB, in our view is no way to develop good community endorsed sustainable planning for the future. If the Tasmania government were to take their strategic vision for the state to an election, it would be seen as appropriate. Similarly, for Major Projects. The public deserves to know any such plans for Major Projects before an election.

Transparency and independence of decision-making processes. The MPB allows for “call in” powers by the Minister and Development Assessment Panels (DAPs) which appear to largely sideline accepted Council processes, the Tasmanian Planning Commission (TPC) and Resource Management and Planning Appeals Tribunal (RMPAT). At worst, the MPB “call in” powers could undermine these bodies. TPC and RMPAT are trusted and immensely respected statutory bodies implementing LUPAA 1993 and the RMPS. PMAT supports the independent role of TPC and RMPAT and would like to see their independence confirmed and their role and budgets expanded.

PMAT rejects the requirement that the TPC will be required to make the planning scheme amendment to accommodate the Major Project, when it’s overall role in the Major Project declaration and assessment is minimal.

Community involvement. PMAT is concerned about the restricted community engagement, as described above. Certainly, the assessment guidelines not inviting public feedback, lack of RMPAT appeal rights to a DAP decision is a very major anti-democratic part of the MPB and gives no recourse if developments produce poor planning outcomes. The Supreme Court is financially inaccessible to most, so offers no practical recourse for people adversely affected.

An integrated approach. PMAT platform asks for an integrated assessment process across all types of development on all land tenures, meaning **no development should be exempt** from Tasmania’s planning system. This is to be consistent with provision of mediation, public comment and appeal rights, which are **not** satisfactorily addressed by MPB. MPB allows for declared Major Projects to be assessed by the special purpose DAP, against the assessment criteria the DAP develops. Hardly transparent!

State govt and local Councils to share the planning role. Councils should not be sidelined as with the process outlined in MPB. People democratically vote for Councils to represent their community interests. We are seeing now that people do not appreciate their Councilors being forced to approve development applications as with the Acceptable Solutions (currently operating as Interim Planning Schemes but soon as the TPS). Local consultation and representation is fundamentally important to all our Alliance groups.

Neither do PMAT member groups and many of the public want to see Councils being forced to undertake potentially costly monitoring/ implementation of conditions as stipulated under the MPB.



Conclusion

PMAT has never opposed development where:

- Accepted principles and processes of effective public information and engagement are followed
- Where the independence and guidance of the TPC, RMPAT and LUPAA 93 Schedule 1 are fully respected and followed
- Where there is well thought through strategic planning underpinning our planning schemes
- Where that strategic planning, Tasmania's planning schemes, State Policies and any Planning Policies take into account the wider community benefit and long-term implications for our built and natural heritage.

PMAT member groups consider these principles and the PMAT Platform Document are essential for sustainable land use planning and for the future success of Tasmania.

We consider that our planning system will be placed in jeopardy by this legislation and we ask that the Land Use Planning and Approvals Amendment (Major Projects) Bill 2020 be withdrawn.

Yours Faithfully,

Anne Harrison

State President Planning Matters Alliance Tasmania Inc

[REDACTED]

Sophie Underwood

State Coordinator Planning Matters Alliance Tasmania Inc

[REDACTED]

[REDACTED]

14 May 2020

Planning Policy Unit
Department of Justice
GPO BOX 825
HOBART TAS 7001

**SUBJECT: DRAFT LAND USE PLANNING AND APPROVALS AMENDMENT (MAJOR PROJECTS)
BILL 2020 - SUBMISSION**

Cement Concrete & Aggregates Australia (CCAA) is the national peak body representing the heavy construction materials industry in Australia.

In Tasmania our members manufacture cement, produce concrete and extract and process stone, gravel and sand in an entirely local supply chain to support the construction sector. These commodities are critical to enable Tasmania's building and construction industry employing some 19,500 workers and contributing 57.4% to Tasmania's taxation revenue base.

CCAA members **support** the *Draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2020* (Major Projects Bill)

Our members supply products to the civil construction companies and all types of builders. Together we construct public and private built infrastructure in Tasmania.

Uncertainty and delays in achieving timely approvals for projects discourage developers and confound builders in managing employment, workflow, pricing and ordering materials. As with builders and civil constructors, the heavy construction materials industry must make forward capital investments to have a reliable and responsive supply chain; particularly large projects come online. Delays and uncertainty in the delivery of approvals can lead to uncertainty relating to the timing of project starts and potentially capacity constraints and increased costs (to deliver from remote sites for example).

To be effective for our industry the *Major Projects Bill* should deliver the following outcomes:

- An early test before significant costs are incurred on expert studies to warn the developer if the proposal in its current form is unlikely to gain approval.
- Provide for a certain timeline through the approval pathway with statutory times frames to which assessing agencies must conform.
- Have the assessment process lead by a dedicated agency (panel) to integrate feedback and information requirements of regulators and stakeholders in a timely manner.

The *Major Projects Bill* should **not allow** for:

- Third party appeals that unreasonably upset the passage of the project through the agreed assessment process.
- Minority group concerns and media campaigns to outweigh the overall community benefit of a project.
- Repeated requests for additional information that seek to stall the proposal at one stage of the assessment process.
- Any regulator to have the power to veto the proposal when a net community benefit is demonstrated, and the adverse effects can be mitigated.

CCAA member's reading of the draft bill is that the above criteria are met in its current form. However, the Development Assessment Panel would be required to exercise good judgement in considering the motives of representations and in particular weigh up community interest against any recommendation from a regulator to refuse to grant a major project permit.

The Tasmanian community is faced with an almost unprecedented economic challenge as a result of the current COVID-19 health crisis. Tasmania will take years to recover from the downturn in the state's economy and employment. The worst aspects of similar economic shocks in the past have been mitigated through government investment in major projects to boost employment and inject money into the economy to support business.

If the Major Projects Bill had been presented to Parliament and passed two years ago, the government would now be able to initiate significant infrastructure projects which would be fairly considered and assessed, taking into account the community good and approved within a certain timeframe. These projects would stimulate Tasmania's economy, boost employment and remain a legacy to benefit the Tasmanian way of life into the future.

If you wish to discuss the matter further please contact [REDACTED]

Yours sincerely,



Brian Hauser
State Director, Victoria and Tasmania

From: [REDACTED]
To: [Planning Unit](#)
Cc: [Robert Dawkins](#)
Subject: North West Walking Club submission objecting to the Tasmanian Major Projects Legislation
Date: Thursday, 14 May 2020 8:41:51 PM

Dear Sir, Madam

The North West Walking Club agrees with and endorses Bushwalking Tasmania's objection to the Tasmanian Major Projects Legislation. (LAND USE PLANNING AND APPROVALS AMENDMENT (MAJOR PROJECTS) BILL 2020)

We oppose the Draft Tasmanian Major Projects Bill for the reasons below and recommend that this undemocratic legislation be abandoned. The proposed legislation would further erode the ability for legitimate interests of the Tasmanian public to influence developments that could happen in the State. No reasonable justification for the proposed legislation is offered. Current legislation can already over-ride community values, so there is no need for legislation that enables more of this. (If anything, current legislation needs amending to require development and land use changes to better reflect public values.) Frankly, the proposed legislation should not be presented to Parliament, and certainly not be proceeded with.

Some reasons for our position:

- Virtually any project could be deemed a “major project”. The eligibility criteria are so broad and open to interpretation that virtually any project could be deemed a major project.
- The Minister or Government has too much power for declaring major projects
- The small assessment Panel of unelected members, who may not be independent, is a concern, and contrasts the Tasmanian Planning Commission that ensures it operates in an independent, transparent and evidence-based manner.
- The independent Tasmanian Planning Commission is sidelined
- Any to all controversial projects around Tasmania could be fast tracked and ignore considered public input and values. This could be such things as skyscrapers in our cities, more Lake Malbena-like proposals (with its many helicopter trips) other developments in our world heritage area and cable cars for Mt Wellington, Mt Roland and Cataract Gorge.
- The high-rise buildings clause has been removed
- There is no protection for Tasmanians’ customary use, access, amenity, values or expectations for anything.
- No right of appeal and limited community input
- Elected councillors, council decisions and well-thought out widely agreed planning schemes can be side-lined
- Planning scheme changes can be forced on councils and communities, including those in contravention to widely agreed use and development prohibitions.
- There is no justification for more ‘major projects’ or ‘fast track’ powers
- Earlier decisions by the Planning Tribunal can be reversed and projects reinstated
- Even when a regulator can make input, it is limited to their specified (narrow) bailiwick, such that any other relevant observation is disallowed
- Allowing of only 14 days to object to / review amendments to a “major project”, which could be significant, is far too short.

If any project is of major importance, it is all the more reason for wide and deep community scrutiny during a reasonable time interval, say 8 weeks. This allows quality reading and understanding, research, dialogue with the proponent, experts or / and Government Agencies and the writing of well-worded submissions that may have to be widely agreed. Holidays reinforce a longer consideration time.

We urge that this legislation not proceed.

Your faithfully
Kent Lillico
President North West Walking Club





Westbury Region Against the Prison Inc (IA 12477)
32 William Street, Westbury TAS 7303

14 May 2020

Planning Policy Unit
Department of Justice

Major Projects Bill

I write on behalf of Westbury Region Against the Prison Inc (**WRAP**) to make the following representations in relation to the *Major Projects Bill 2020 (MPB)*.

WRAP is a community group formed to oppose the proposed location of the Northern Regional Prison at 135 Birralelee Road, Westbury (**Birralelee Road**). Community opposition is based on a range of reasons, but most of them relate to the proximity of the site to the township.

Since the announcement of Birralelee Road as the preferred site for the prison on 30 September 2019, many people in the Westbury community have spent a huge amount of time and energy voicing our opposition to the siting of the prison there.

Over the course of this journey we have taken some comfort from the fact that planning assessment process will follow the course of a rezoning application under the *Land Use Planning and Approvals Act 1993 (LUPAA)*. Any such application would need to go through two separate assessments, firstly by local council and secondly by the independent Tasmanian Planning Commission (**TPC**). The community would have a 60 day period to prepare and submit representations in respect of the proposal, before the final decision maker (TPC) would consider all relevant material and make a decision.

The involvement of the independent TPC would result in the appropriate degree of arms' length scrutiny before any final planning decision is made. This process would also allow the community the proper opportunity to participate in the decision-making process by making representations in relation to the proposal in a sufficient timeframe and being given an opportunity to be heard by the TPC.

In short, such a process is critical to the community's opportunity to have the Birralelee Road site independently scrutinised and assessed.

With this in mind, we raise the following concerns about the MPB.

1. Specific concern about the MPB

The proposed enactment of the MPB has given rise to anxiety on the part of those who are opposed that the MPB might be used to override/circumvent the process to which the State Government has previously committed, specifically a rezoning application under Part 3 Division 2 of LUPAA or Part 3B Division 2 of LUPAA (as the case may be).

WRAP has written to the Planning Minister to ask him to rule out the future application of the MPB to the Northern Regional Prison Project. To date, he has not done so.

WRAP has concerns over the historic involvement of the Meander Valley Council (**MVC**) in the selection of the Birralee Road site. We are concerned that the MVC could ask for the project to be declared a major project, thereby removing the project from the current planning process. There is no clarity around the stage at which this could occur. For example, there appears to be nothing to prevent the MVC from doing so as soon as any application is received, or further down the planning assessment path, even as it is being heard by the TPC.

In essence, it might allow a standard rezoning amendment or development application to be declared as a major project at any stage if the project looks likely to encounter difficulty. For example, it may become apparent in the course of a standard planning application that one of the usually applicable regulatory bodies from which approval is required is not likely to give that approval. In such a case, a proponent may seek to have the project declared a major project, thereby dispensing with the need for approval by that regulatory body.

In addition, there is concern that the standard planning assessment might run a substantial way through its legal course and if this results in rejection of the proposal, the proposal could nevertheless be revived as a major project.

In my view, outcomes such as these derogate from the rule of law. They are also inconsistent with the principles of procedural fairness/natural justice. They entail a waste of public, private and government resources.

2. General comments

WRAP supports the representations made by Planning Matters Alliance Tasmania. In addition to those representations, we wish to add the following representations.

Planning decisions affect community and individual rights in the natural and built environment.

Planning decisions may also adversely affect people's private property rights, which historically have attracted the utmost protection of the law.

For these reasons, proper and thorough engagement of the public in the planning decision-making process is critical. The MPB does not achieve this, and in many ways runs counter to the public participation principles promoted by the Planning Institute of Australia (**PIA**). One such principle is as follows:

An invitation for the public to participate in planning needs to be made in good-faith and at the earliest practicable stage so that a proposal, policy or strategy may be shaped and influenced in response to community values and comment.

A 28-day period in which to make representations after the DAP has prepared its preliminary draft assessment report (which according to the EDO, is in substance the DAP's preliminary conclusion) does not accord with this principle.

Another such principle involves the seeking out and facilitation of:

"...the involvement of those directly affected, and those with less confidence in public participation who tend to be excluded, potentially affected or having a less direct vested interest in a decision."

If a project is declared a major project under the MPB, individuals are discouraged from participating in a planning matters as they are prevented from engaging directly with their local council representatives, a far more accessible pathway than making representatives to a distant and removed DAP.

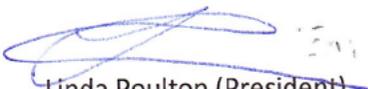
The local council is also unable to perform its function under s.20(2) of the *Local Government Act 1993* of involving and being accountable to its community. How can a Council involve its community in a project with potentially significant ramifications for that community, when a meaningful role played out at a local level has dispensed with under the major projects legislation? How can a Council be accountable to its community when such a decision is taken out of its hands, particularly where this has happened at its own request?

The impact on COVID-19 has hampered the community's capacity to engage with and comment on the MPB, notwithstanding the extension.

It would be cynical for the Government itself to rely on COVID-19 as the cause of delay in so many of its own processes and decisions (such as that relating to Birralelee Road) whilst pushing through with the MPB at a time when many in the community are still reeling from the impacts of COVID-19.

Legislation of such significance should not be rammed through in times of crisis.

For these reasons WRAP does not support the MPB.


Linda Poulton (President)
WRAP Inc


Blackmans Bay Community Association Inc.
2 Derwent Avenue
Blackmans Bay TAS 7052
14th May 2020

Planning Policy Unit
Department of Justice
GPO BOX 825
HOBART TAS 7001
Per: planning.unit@justice.tas.gov.au

Land Use Planning and Approvals Amendment (Major Projects) Bill 2020

The Blackmans Bay Community Association Inc. wishes to express some concerns on the Consultation Draft version of the Land Use Planning and Approvals Amendment (Major Projects) Bill 2020 and its potential implications for Tasmania, specifically the greater Hobart area including Kingborough and our area of Blackmans Bay.

Our concerns include the following:

1. The proposed Development Assessment Panels are appointed by the Tasmanian Planning Commission. While we support the TPC in this role, we note that the TPC itself is the subject of a review at the present time. Our support is therefore conditional on the TPC maintaining its current status as a trusted and independent body which is not influenced by government or other external sources and that it is adequately resourced to undertake the proposed role.
2. While we acknowledge there may be efficiencies from a development application and assessment process viewpoint in having the Development Assessment Panel undertake its role as proposed, we believe that this should not be undertaken at the expense of public input. We are concerned that the public is not invited in all cases for input into Draft Assessment Guidelines. We also understand that there is no requirement for a public benefit test to be applied to those projects on public land, those that require government financial support or that otherwise impact the public in any significant way. These are very important matters for our members.
3. Under the Draft Bill, the Minister for Planning appears to be given almost complete control in declaring a Major Project. This is potentially problematic with respect to transparency, if not now, then certainly at some future stage.
4. The Draft Bill proposes that certain Councils contribute assessment criteria to the Project Assessment Process. However, they are given only 14 days to submit them. This short time period could be problematic for Councils such as Kingborough as its Planning Department is often under stress due to the high numbers of development applications being received in the rapidly growing municipality.
5. It is also noted that any Council's Planning Scheme must be considered by the Development Assessment Panel, a Major Project Permit may be granted even if the project does not comply with that Scheme.

In such cases, Councils will still be required to bear the full responsibility and cost of implementing and monitoring any conditions imposed on a development as a result of the Development Assessment Panel's decision. Given the precarious position of some Councils' finances, including Kingborough's and especially following the impact of Covid-19, this may impose additional economic pressures on Councils, and therefore their ratepayers.

The above are some of the reasons the BBCAI cannot support the draft Major Projects legislation in its current form.

We look forward to the opportunity to make further comment.

Yours faithfully

Darryl Pyrke

(Secretary)



Huon Valley Residents & Ratepayers Association (Inc)

huonvalleyratepayers@gmail.com

www.huonvalley.org.au

Submission on draft Tasmanian Major Projects legislation

Approval of the Draft Tasmanian Major Projects Bill (MPB) by the State Government would set a dangerous precedent by removing the democratic rights of residents, especially those most familiar with an area in which a “major project” is proposed.

Decisions on important changes that would affect local populations could be made without appropriate consultation as part of the decision-making process. For these reasons alone, the MPB should not be considered further by the State Government.

Government would have too much power when declaring major projects

It appears that the Major Projects Bill would allow the minister to make a unilateral decision on whether a project is to be considered as a “major project”. Such a decision would take the project out of the normal planning process and the consultation involved in that process.

Currently the Tasmanian Planning Commission makes decisions about rezoning and thus changes to standards that are prescribed in planning schemes. Decisions are made following a process initiated by the local council and after considering representations from the local community.

The process has been successful because, if the project is initiated by the local council it is then passed to the independent professional planners at the Tasmanian Planning Commission. They have to consider the representations and use their expertise to make the best possible judgement about the merit and appropriateness of a project that has been submitted to the local council by a developer.

Any legislation which gives the minister total power to declare any project a “major project” cannot be seen to be democratic. The basis on which the minister would be able to make such a decision is not clear since the minister is not obliged to follow any guidelines that may be provided by the Tasmanian Planning Commission. This lack of transparency would undermine trust in the government of the day and damage its credibility. Of all Australian states Tasmania has the least rigorous or transparent political donations laws and putting such power in the hands of a minister would create a situation that would invite the perception, or even the reality, of corrupt practice.

How is a “Major Project” defined?

A developer can put forward a project that is unacceptable to the local community, such as high-rise towers that exceed established height restrictions, and there may be sufficient grounds for the local council to reject such an application. Such a decision would then be likely to be supported by the Appeals Tribunal. It seems that the Major Projects Bill would allow any development that would normally go to a local council to be treated as a “major project” if the minister deems it to be one. The eligibility criteria are so broad and open to interpretation by the minister that he or she can justify virtually any project as a “major project”. This could apply to a project which has been refused by a local council or the Planning Appeals Tribunal, or even by the Planning Commission.

If such a project that is unacceptable on planning grounds and/or does not have the support of the local community, were to then be declared a “major project” by the minister and approved, it could go ahead, causing dissent in the community and increasing the lack of trust in the State Government.

What is the Development Assessment Panel?

The members of a Development Assessment Panel are not necessarily independent and there will inevitably be a lack of public trust in members who may have been influenced by proponents of the “major project” which is to be assessed. Again, this structure undermines community trust in the State Government.

There are strong arguments for maintaining the critical role of the independent and respected Tasmanian Planning Commission as the decision-making body on important planning matters in Tasmania, in particular planning scheme amendments which may be required prior to consideration by the council of a “major project” such as the proposed Cambria Green development.

Keep the independent Tasmanian Planning Commission

If developers have planning scheme amendments refused by the Tasmanian Planning Commission, they could still apply to be considered under the major projects process and, if approved by the minister, the Commission’s decision would not then apply. The Planning Commission can consider Projects of Regional Significance under the existing system and this provides adequate scrutiny of larger projects.

There are several projects which might be considered “major projects” under this legislation that would allow the minister to approve developments such as the Mount Wellington Cable Car and the helicopter-accessed fishing lodges at Lake Malbena, against the wishes of large sections of the community. Again, this would cause further distrust of government.

From: [REDACTED]
To: [Planning Unit](#)
Cc: [Trevor Boheim](#); [Paul Garnsey](#)
Subject: GCC Officer Comments on Major Projects Bill
Date: Friday, 15 May 2020 9:02:26 AM
Attachments: [image001.jpg](#)
[image006.jpg](#)

Hi

Thank you for the opportunity to provide comment on the revised draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2020

Please find below Glenorchy City Council Officer comments on the draft:

GENERAL COMMENTS:

Application of a Policy position to the Major Projects Bill

As the draft Bill is essentially a statement and process of establishing public policy, Council officers have raised criticisms of the 'lead in' to this policy process in previous comments. To justify the policy position there should be clear definition of the 'problem' that is alluded to in the Consultation Papers - why have the PORS provisions that have been in the Act for so long, not been used? The use of a case study or real analysis should be the basis for this problem identification, not merely identifying 'apparent shortcomings.'

Stakeholder Engagement

While some of the provisions have been modified in relation to feedback, as previously iterated by Council officers, the draft Bill appears to have been developed with limited engagement with Local Government. This has been a typical approach in the Planning Reform process. Early and comprehensive engagement with the planning practitioners across the region could assist in identification of potential technical or process problems. The focus of the engagement strategy seems to have been to 'inform' rather than 'consult' or 'include'. In addition there is an overwhelming sense of change fatigue being experienced across the sector as Local Governments strives to ensure their communities are represented by a voice when complicated and wide reaching changes are presented in this form.

Why declare prior to determining if there is no reasonable prospect?

It seems inefficient and confusing (and potentially distressing) to the community to declare a project as a major project – when it may be subsequently determined unsuitable. It is assumed that there would be costs to the taxpayer to pay for the gazette notices to declare and then revoke the declaration. It would also seem to create a potentially embarrassing situation for a Minister who declares a major project that is subsequently determined to have no reasonable prospect of establishing.

SPECIFIC COMMENTS:

SS.60C & 60F - only a 'general' description required

If the project must demonstrate it is a 'major' project why is the term 'general' used? ['general description and 'general areas' eg S60C(3) (b); 60F(1)(d)(e) and (f) (and S60O(b))]. How can an appropriate assessment of the project be undertaken if not all details are provided? What level

of 'generality' would be acceptable?? This appears to provide an 'out' for projects that have not been fully scoped by the proponent and could have a negative impact on resources of those required to assess a 'general' project which may not be feasible. The term 'general' needs to be deleted from these various provisions. Similarly, who determines what is a 'key' impact will be under S60F(1)(h).

Legislation must be clear and concise, the use of these vague terms may limit the ability for assessment bodies and the community to have a full understanding of the implications of the proposal.

S60F(1)(q) - where will other requirements be prescribed?

There does not appear to be any amendments to the LUPAA regulations

S60G(1) Minister can request amended proposal

With the Panel undertaking the assessment of the project, the link to the Minister being able to request an amended proposal under the section is unclear.

Applicant only has to take 'reasonable steps' to provide an amended project [S60G(3)], provide further information [S60ZX], or enter into an agreement [S60ZZP (6)]

What is the purpose of the term 'take all reasonable steps'? Why would an applicant not want to provide an amended proposal? In particular, under S60ZX, if the applicant is required to provide further information they must provide it. What 'outs' are anticipated by the use of this term? It is unclear why this term is required, and given the ability to rely on the term to circumvent the assessment process, it should be removed.

S60G(6)(i) 7 S60T(c)(i) 60ZZO (a) 'substantially similar' verses 'substantially the same'

The term 'substantially similar' is used throughout the draft provisions except under S60ZZZE; whereas the term 'substantially the same' is used in the existing Act [eg S39 (1)] for the same concept. Why is there a need for different terminology? Different terms in same act are required to be read differently and given a different meaning. The decision to use different terminology is likely to create significant interpretation problems for both assessors and applicants. Given the mix of terms within the draft Bill, is it possible there has been a typo? The term, as it appears throughout the Bill, should be revised to 'substantially the same'.

Short Timeframes for notification

While some timeframes have been increased from the 2018 version of the Bill, they are still quite tight, with no opportunity to extend (it is likely that officers of the TPC will spend significant resourcing on seeking delegation to extend legislated timeframes). The following timeframes are likely to limit public involvement in the process:

- S60I (3) gives a planning authority 28 days to comment on whether a project should be declared a major project; S60ZZB (50)(b) gives 28 days to comment on the major project. Cut-offs for Council Meeting Agendas, will make it difficult to enable Elected officials to respond on behalf of their community with the 28 days; meeting the agenda will also limit time available for officers to assess the project.
- S60ZZX(2) only gives a person 14 days to consider and respond to a 'minor' amendment

Further, S60I (1), S60P(1), requires the Minister to notify within 7 days (or notification in 7 days - 60ZP) This is a fast turnaround for councils to be able to provide owner/occupier details back to

the Minister and for letters to go out, particularly given that timeframes for Australia post mail delivery are increasing.

Notice and websites

The requirement to publish in newspaper is considered to be outdated; and the COVID-19 crisis has further exposed problems of notice. Can the notification requirements be expanded to include websites? (eg S60J(3), S60S(7), among others). Also why can't S60ZZZH go generally into LUPPA, rather than specifically under this Division.

S60I(6) - proponent of a project, who did not make the proposal, may request it be withdrawn

The intent of this section is unclear.

Differing tests: not inconsistent vs consistent etc throughout the Bill

Provisions requiring assessment against strategic guidelines (Schedule 1 Objectives, State policies, regional strategies) are random and inconsistently worded:

- S60J(2) not inconsistent
- S60L (1) (d) & S60ZI(4)(e) would be inconsistent with
- S60ZI (4) (a) & S60ZZM (4)(e) would not be inconsistent with
- S60ZI (4) (b) would not further the objectives
- S60ZZM(4)(b) would be consistent with furthering the objectives
- S60ZZX(4) would further the objectives
- S60ZZM (4)(c) would not be in contravention of a State policy

Different terms in same act are required to be given a different meaning [the current provision of 60C (8) requires major projects to be 'consistent with' a regional land use strategy; the LPS Criteria at S34 (d) and (e) require proposals to be 'consistent with' each State policy (d) and relevant Regional Land Use Strategy] The decision to use different terminology is likely to create significant interpretation problems for both assessors and applicants. The tests should all be the same.

The significantly weaker tests of 'not inconsistent with', 'not in contravention of' etc are not supported. The test 'not inconsistent with' is generally used when people want to distance themselves from a conclusion that may be premature. Use of this term appears to indicate that the State government does not require 'major projects' to further the planning policies and outcomes to the same extent as 'ordinary' projects

S60K (2) Inappropriate inclusion of a test to consider Councils ability to undertake assessment in a 'timely manner'

The 'test' of Councils ability to assess an application in a timely manner is very broad. While another test under S60K must also be satisfied, this could present as an 'opt-out' opportunity for proponents unable/unwilling to meet desired outcomes within the current processes, and is useful for proponents with strong lobbying powers. The structure of S60K(2) is riddled with 'or' and will make for interesting interpretation opportunities. At what point in time is council's capacity or capability to assess determined, before or after they have hired consultants to undertake the proposed assessment? The current legislation specifies time frames for processing a planning permit application and the right of appeal against things such as requests for more information. It is difficult to understand how any valid application cannot be assessed in a 'timely manner' given the decision time frames under LUPAA. Where is the

evidence/analysis to justify this inclusion? A planning authority can request a project be considered as a major project - which should be an appropriate assessment of a Council's capacity or capability - so this test is not necessary.

S60Q(5)(b) refund of fees

Refunding half the fees could be considered unreasonable if Council has advertised, assessed and been about the refuse the application. Suggest, as a minimum that the refund excludes advertising costs.

S60V(8) revoking appointment of a Panel member

It is unclear whether these grounds are only in respect to S60X or whether there are other grounds. If the intent is for other grounds - these should be clear

S60ZT Actions to enable preparation of an impact statement

If such works are too substantial to be exempt under the relevant planning scheme, there must be provision to ensure the site is rehabilitated if the major project permit is not granted or lapses.

S60ZZR payment of fees

It appears that payment of fees can only be required if a permit is to be granted. The community will be subsidising the assessment process for the proponent to a large degree. If a permit is not granted does the applicant have to pay?

There does not appear to be any fees associated with considering a 'Significant amendment' to a major project (S60ZZZ)

S60ZZT lapsing of a permit

The provision allow for a project to be dormant for 10 years. Significant adjoining land use, policy, social and environmental changes may have occurred in this time frame. This timeframe is excessive.

Ability to apply to Planning Authority within two years of a refusal if have Commission's Consent

Draft 60ZZZL provides no guidance or test for when it may be appropriate for the Commission to give their consent for a proponent to apply for a fresh permit for the same/similar major project – it should only be allowable if there has been a relevant Policy change. Further, why, if the project was considered to be a major project in the first instance, should the application be made to the Planning Authority? If the PA was deemed inappropriate to consider the proposal initially it will be a significant waste of resources to both the PA and the proponent to attempt to reconsider the project. It should go back through the major projects assessment path.

Resourcing costs – impacts of enforcement obligations

Under the draft Bill there is an expanded suite of approvals that can be included in a permit. Significant liaison between relevant regulators and local government bodies to monitor and review permit conditions will place a significant administrative burden on local government. Councils will be required to invest already limited resources and act as the intermediary between the permit regulator and the permit holder to ensure compliance. Further, Council has no control over time frames for other regulators to respond to questions on enforcement matters. Council will receive no fees for the assessment of these permits – yet bears all responsibility for

enforcement.

Overly complex wording

Legislative changes are exhibiting overly complex and convoluted writing styles. This is creating overly complicated legislation (nearly 200 more pages to go into LUPAA) that the public and planning professionals must interpret. It is questionable whether this is meeting the State government mantra of making planning 'simpler'.

Again, thank your for the opportunity to comment - and the extension of timeframes due to the Covid-19 crisis

Lyndal Byrne | Strategic Planner | Glenorchy City Council



[Redacted] | W: www.gcc.tas.gov.au



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14 May 2020

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Submission Re: Draft Land Use Planning and Approvals Amendment Bill 2020. (“the Bill”)

Dear Sir/Madam.

Conservation Landholders Tasmania (CLT) makes the following submission with respect to the above Bill.

About CLT

CLT is an educational trust that regularly organizes and runs fields days, forums and other learning opportunities for its beneficiaries, principally private landholders who have voluntarily placed their land under perpetual covenants pursuant to Part 5 of the *Nature Conservation Act 2002*.

There are currently 890 private land conservation covenants in Tasmania totaling approximately 111,000 hectares, or 4.2% of all private land in Tasmania. This land contributes to the National Reserve System and assists Australia in meeting its international obligations under the 1993 Convention on Biodiversity, which Australia signed along with 166 other countries. CLT has enjoyed the support of the state NRMs and the Tasmanian Land Conservancy since 2012.

Submission

CLT’s submission is that the Bill should be amended to include the following addition to Section 60L(1):

“(e) would relate to any land the subject of a registered conservation covenant under Part 5 of the *Nature Conservation Act 2002*.”

The basis of this submission is as follows:

1. The Bill is inconsistent with the Crown's obligations under the *Nature Conservation Act 2002*.

Part 5, Nature Conservation Act 2002 provides for the Crown to enter into conservation covenants with landowners whose land the Crown considers to have natural values that contribute to the natural biological or geological diversity of the area of the land, or both, and are unique, important and have representative value. Natural values are typically defined as meaning the variety of all life-forms that are native to the land and includes plants, animals and micro-organisms, their genes as well as the ecosystems of which they are a part (including soils, water and landforms) and the processes which maintain them.

A covenant cannot be created until the Crown makes such a consideration. The purpose of a covenant is to conserve those natural values in perpetuity, firstly by their retention and secondly by their maintenance.

A conservation covenant is a restrictive covenant, which is typically characterized as containing a burden and a benefit. The burden lies with the covenantor, being the landowner and amounts to :

- the loss of a bundle of rights over private land (predominantly activities associated with avoiding degradation of the natural values), and
- the on-going responsibility of maintaining the land in accordance with the terms of the covenant and an agreed management plan.

The benefit lies with the covenantee being the Crown who in all respects is the agent for the public. In short, the public benefit from conserving and maintaining land within the environment, which is unique, important and has representative natural values (*Section 3 and Column 3 Schedule 1, Nature Conservation Act 2002*). There is accordingly a public benefit flowing from private land and the efforts of the landowner.

A conservation covenant runs with the landowner's land. It is binding on subsequent landowners and therefore perpetual. The creation of a conservation covenant cannot be mandated and can only be entered into voluntarily. In doing so the landowner acts in good faith and accepts the burden in perpetuity.

Section 34(6) Nature Conservation Act 2002 enables either party to enforce its rights under the covenant. The Crown's rights are to ensure the landowner complies with the burden. The landowner's rights are to ensure Crown compliance with any of its express or implied obligations under the terms of the covenant. One of those obligations is to ensure that the Crown at all times acts in the spirit of the covenant and does not undertake any action capable of rendering the terms of the covenant nugatory.

Section 35(1), Nature Conservation Act 2002 permits a discharge or variation of a conservation covenant only by agreement with the landowner (and also the consent of the Crown of the Commonwealth). Accordingly one party cannot act unilaterally to vary or discharge the terms of a conservation covenant.

In the light of the above, the provisions of the Bill are capable of being in contravention of the provisions of *Part 5, Nature Conservation Act 2002*.

Section 4, Land Use Planning and Approvals Act 1993 applies to all parts of the State including private land with conservation covenants. The Bill does not propose any amendment to this Section, therefore it, likewise applies to such land. Section 60C of the Bill allows for the Planning Minister in the name of the Crown to make a proposal that a project be declared a major project in respect of any land in the State, (possible exclusions are discussed below). If such a declaration is in respect to land the subject of a conservation covenant, then such a declaration could amount to a breach of the Crown's obligations under the *Nature Conservation Act 2002*, not to put the natural values of any covenanted land in jeopardy. Because a conservation covenant is in perpetuity it places the above obligation upon the Crown for all time unless the covenant is varied or discharged by consent with the landowner and the Commonwealth.

The continuation of the Crown's obligation effectively removes the covenanted land from the operation of the Bill, however specific legislative exclusion in accordance with the above proposed amendment, would provide greater certainty. Whilst it is appreciated that the Bill provides some checks and balances through the assessment process with respect to the consideration of covenanted land, it does not specifically prohibit the possibility of a declaration being made in respect to such land. A specific legislative exclusion would also eliminate the possibility of inconsistencies eventuating.

2. The Bill is inconsistent with Crown's obligations under the *Tasmanian Regional Forest Agreement 1997 (as amended)*

The obligations upon the Crown not to act in any way to degrade the terms of conservation covenants, in particular their perpetual nature, is supported by the provisions of the *Tasmanian Regional Forest Agreement 1997 (as amended)*.

The Commonwealth and the Crown entered into the *Tasmanian Regional Forest Agreement* in 1997 to provide a framework for the management and use of Tasmanian forests. The Agreement seeks, inter alia, to implement effective conservation of those forests and provides a funding mechanism from the Commonwealth. It seeks the establishment of a comprehensive, adequate and representative (CAR) reserve system primarily on Crown land, however, it extends to private land, initially through the Tasmanian Government's Private Forest Reserve Program. This program was the first iteration of conservation covenant establishing programs in Tasmania, with an initial tranche of \$30 million. Commonwealth funds approximating \$100 million to date have been invested in the

establishment of conservation covenants in Tasmania. The Agreement has been amended on three occasions and extended until 2037.

One of the conditions of this significant investment is that the Tasmanian Crown agreed to implement a process to facilitate the voluntary participation by private landowners to protect certain CAR values (which effectively are those natural values referred to above) on their land, and that those values wherever possible be secured in perpetuity. (*Clause 59 and Attachment 8 Tasmanian Regional Forest Agreement 1997*). Although the Agreement has been amended on three occasions the Tasmanian Crown still facilitates conservation covenants on private land and their perpetual status is still a defining feature.

It is submitted that in view of the receipt of significant funds from the Commonwealth for the establishment of perpetual private land conservation covenants over approximately 20 years and ongoing, the Tasmanian Crown has a special obligation to ensure perpetuity remains an essential tenet to conservation covenants. The Bill without an exclusion of its application to conservation covenants is inconsistent with this obligation.

3. Section 60K of the Bill necessitates exclusion for conservation covenants

The Bill does not specifically define a major project with respect to its effect upon the landscape or environment. The defining attributes referred to in Section 60K(1) include:

- the likelihood of the project having significant or potentially significant environmental effects (Section 60K(1)(d), and
- the possible impact upon at least 2 or more project-associated acts, including the *Nature Conservation Act 2002* (Section 60K (1)(e).

Without specific statutory exclusion, the above provisions clearly have the potential to include land the subject of a conservation covenant.

4. Section 60L of the Bill already implies significant exclusion of land under conservation covenant

Under Section 60L(1)(b) of the Bill any project that would be in contravention of a State Policy is ineligible to be declared a major project. Whilst only three State Policies under the *State Policies and Projects Act 1993* have been declared, it is noted that that they all relate to the protection of natural values on land which, it is submitted, is, or could be the subject of a conservation covenant.

The State Policy on Protection of Agricultural land 2009 applies to land zoned Significant agriculture or Rural Resources. Many conservation covenants are

currently zoned Rural Resources and some larger are zoned Significant Agricultural.

The State Coastal Policy 1996 protects the natural and cultural values of the Tasmanian coastal area including all islands. Many conservation covenants are already situated within close proximity of the high water mark.

The State Policy on Water Quality Management 1997 protects and enhances Tasmania's surface and ground waters. It is submitted that this policy alone would capture a significant amount of land the subject of existing and future conservation covenants.

Given the possible extensive scope and application of the above State Policies concerning covenanted land, it is conceivable that a considerable amount of that land would already be ineligible to be declared a major project. To the extent that any of that land is not currently included within Section 60L(1)(b), it is submitted that it would otherwise be ineligible for the reasons set out in 1, 2 and 3 above. Accordingly all covenanted land should be specifically excluded as per the proposed above amendment. This would facilitate a simpler application process and provide greater clarity and certainty for landowners as well as proponents seeking a major project declaration.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'John Dennett', with a stylized flourish at the end.

John Dennett

Co-Chair
Board of Trustees
Conservation Landholders Tasmania

Tasmanian Ratepayers' Association Inc.

P.O. Box 1035,
LAUNCESTON TAS 7250

15 May 2020

Planning Policy Unit
Department of Justice
GPO BOX 825
HOBART TAS 7001

By email to planning.unit@justice.tas.gov.au

Dear Sir,

Re: Major Project Assessment Reform

Tasmanian Ratepayers Association Inc (TRA) has reviewed the 200+ pages of the proposed *Draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2020 (draft Bill)* and accompanying documentation. TRA does not support the proposed draft Bill and requests it be withdrawn.

Tasmania has long had a very comprehensive and widely respected land use planning system. The draft Bill serves to weaken the Land Use Planning and Approvals Act 1993 and diminishes the role of communities and Local Government in land use planning decisions.

While the draft Bill gives almost unlimited power to the Minister to declare a development a “major project”, practically ensuring approval, it also effectively ensures the proposal is unlikely to have community support and legitimacy and fail to secure a social licence. Few if any ethical proponents will want to use a process unlikely to result in a social licence. The draft Bill will further muddy the waters of political donations.

TRA has concurs with the comments made by Tasmanian Conservation Trust
<http://www.tasconservation.org.au/major-projects>

Yours faithfully,

Alvaro Ascui
Public Officer
TASMANIAN RATEPAYERS' ASSOCIATION INC.



15 May 2020

Planning Policy Unit
Department of Justice
GPO Box 825
Hobart TAS 7001
Via email: planning.unit@justice.tas.gov.au

To whom it may concern

Thank you for the opportunity to make a submission regarding the *draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2020 (Draft Bill)*.

About the East Coast Alliance

The East Coast Alliance (ECA) is an incorporated association comprising a diverse, Australia-wide community who have voiced strong concerns against a proposed large-scale, inappropriate, and insensitive development, at Dolphin Sands on the East Coast of Tasmania. We are challenging the rezoning and changes to the planning scheme proposed in the Cambria Estate Draft Amendment, which includes the Specific Area Plan (SAP) and other planning scheme amendments.

Introduction

On 3 March 2020, the Tasmanian Government released for public comment a *draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2020 (Draft Bill)*. Public comment on the Draft Bill has been extended to 15 May 2020.

ECA does not support the Major Projects Bill nor believes it is necessary given existing assessment processes for large scale and complex development proposals. The Major Projects Bill undermines an existing system that is robust, independent, fair and credible.

ECA calls for the introduction of this new legislation to be suspended indefinitely, or at a minimum, until Tasmania's health emergency is lifted, and at a time when recommendations arising from concurrent and connected reform reviews are concluded and recommendations from those reviews are available for consideration.

ECA is of the view that the Major Projects legislation cannot be accurately assessed when other fundamentals impacting on planning decision making in Tasmania are simultaneously under review.

Specifically:

- review of the Tasmanian Planning Commission's roles and functions – submissions close 15 May 2020
- review of the *federal Environment Protection and Biodiversity Conservation Act 1999* - submissions were due by 1 May 2020
- the draft *Tasmanian Civil and Administrative Tribunal Bill 2020* – submissions are due by 29 May 2020.

Public Consultation

We have grave concerns about the public consultation process for this bill. Considering the complexity of planning legislation, and the impossibility of most people to be able to interpret and comprehend the intent. ECA and other groups had planned five statewide public meetings, which are essential to assist the community to fully understand the detail of what is proposed and to have a meaningful say.

However, due to COVID-19 we cancelled the meetings. Consequently, we called on Premier Gutwein to postpone community consultation until the pandemic was over.

Although the public consultation period was extended by five weeks, we do not believe this was a meaningful extension for this consultation period to account for the COVID-19 pandemic impacts, despite the important democratic functioning of parliament being effectively suspended until mid-August.

In the interest of natural justice, fairness, and equity during this unprecedented time, throughout the consultation period, community members and stakeholder organisations have been adjusting to stay at home restrictions. Most people would not have been in a state of mind to focus the energy and attention needed to respond to this difficult-to-understand matter.

Consequently, ECA believes it is fundamentally unfair to the community of Tasmania to:

- impose deadlines for consultation of complex legislation that will have a long lasting and serious impact on Tasmania, during an extraordinary and unprecedented health and economic emergency; and
- run interrelated reviews concurrently, hindering and frustrating concerned Tasmanians from responding with full information.

Key issues with the Major Projects Bill include:

- Ministerial power and discretion on the declaration of a Major Project based on vague criteria that lack parameters
- proposals can be stripped from local council assessment processes, even if part way through assessment, or reassessed as a Major Project if refused a planning permit
- no public consultation on the guidelines by which a project is to be assessed
- assessment and approval by a panel that is not subject to normal Code of Conduct requirements
- no opportunity for public comment until AFTER the panel issues a draft assessment report and no role for local councils
- approvals can be granted even if a development is found to contravene the relevant planning scheme or reserve management plan
- no opportunity is given for merit-based appeal by third parties, including neighbours and other affected parties
- it is being progressed parallel with other, significant reviews such as the Tasmanian Planning Commission, Federal Environment laws (EPBC Act) and the draft Tasmanian Civil and Administrative Tribunal Bill 2020.

We reiterate our call to abandon this process and withdraw the Major Projects Bill, leave most planning matters to local Councils and other, existing assessment processes, such as the Projects of State Significance and Projects of Regional Significance processes.

East Coast Alliance Submission

Should this withdrawal of the process and Major Projects Bill not be achieved and notwithstanding the above, ECA's submission follows. **We would like to emphasise this submission has been informed by sound and considered legal opinion.**

Requirement for Major Projects legislation

The government has not made the case for why new major projects powers are needed.

If the Major Projects Bill is intended to replace the Projects of Regional Significance (PORS) process, no details have been provided about what is wrong with PORS.

Tasmania already has *State Policies and Projects Act 1993* to cover projects of significance (e.g. Basslink Link project). No reason has been given as to why this legislation is not fit for purpose. It involves Parliamentary approval for major projects which, in our view, is significantly more democratic, transparent, and desirable than the Major Projects Bill.

The Major Projects Bill fundamentally overrides the longstanding and historic role of councils to act as planning authorities on behalf of their communities in assessing developments in their municipalities.

There has been no explanation about how the current *Land Use Planning and Approvals Act 1993* (LUPAA) process fails to assess proposals of impact, planning significance or complexity. There has been no sound or logical argument demonstrating how this new bill would be a more satisfactory process.

Conclusion

ECA does not believe the Tasmanian Government has made a case for the need for an additional assessment pathway for development proposals in Tasmania. Tasmania already has the Projects of State Significance (approved Basslink) and Projects of Regional Significance (unused) processes on top of the standard planning approvals processes. No justification has been established that legitimises the need for the replacement of the Projects of Regional Significance process with this Major Projects process.

What is a Major Project?

The Minister for Planning has the power and discretion to declare a Major Project, based on only two of six vague criteria. These criteria are open to interpretation and appear to make it easy to justify a wide diversity of projects, large or small, from a residential subdivision to a pulp mill.

Major Projects would be taken out of the normal Council planning system, removing the requirement for a planning permit, and sidelining the community and its elected Councillors.

More importantly, Major Projects can be approved that would not normally be permitted under the local planning scheme and would therefore require a change to the planning scheme. Currently, a Development Application cannot be assessed until the Planning Scheme Amendment has been assessed and approved by the Tasmanian Planning Commission.

This Bill replaces the standard development assessment guidelines in LUPAA with 'project-specific criteria'. If a major project were approved, local planning schemes would need to be altered to enable the project to proceed. It seems unlikely that any major projects would *not* require modifications to a local planning scheme for them to proceed.

There is no reasonable argument for the assessment of a *development* proposal to also require the alteration of a planning scheme.

A major project declaration can be made in relation to projects on private land, Council land, Crown land or in Wellington Park.

Many large or controversial developments could be eligible for a major project declaration, potentially including: high rise buildings, cable cars, prisons, large suburban/rural development or subdivisions, any Level 2 activity usually assessed by the EPA (except salmon farms), development in national parks and reserves.

Where a permit application has been lodged for a development, but not determined by the council, it can be declared a major project.

Conclusion

ECA is of the opinion that this process has been designed to fast-track approvals for a wide-range of projects that would normally be refused – either because they would be prohibited within a local planning scheme, or not approved for other reasons.

The Assessment Process

While there is a requirement for the Tasmanian Planning Commission to approve the membership of the Development Assessment Panel, key concerns remain:

- there is no guarantee of independence – the decision regarding a Major Project approval is removed from the independent Tasmanian Planning Commission
- there is little or no transparency around the panel appointment process
- there is no requirement to appoint Development Assessment Panel members with expertise in planning and development application assessments, natural or cultural values, environmental impact assessment or pollution control, or a community representative
- despite consultation requirements and some degree of prescription from regulators regarding the assessment guidelines, ultimately the Panel can determine the guidelines for assessing each project. This decision cannot be appealed
- this proposal removes elected local Councillors from decision-making in relation to major projects, which effectively removes the voice of the people about the most significant projects. Councillors have important local knowledge and mix with constituents, receive feedback on a continuous basis and are accountable to communities directly affected by planning proposals.

Conclusion

ECA is concerned there has been no clear reason given for the need for new Assessment Panels, which adds a further layer of appointments for decision-making. No reason for *not* including the independent Tasmanian Planning Commission in the assessment process, or taking Planning Authorities out of the decision-making process, with absolutely no ability to direct a refusal of a major project in their municipality.

Tasmanian Planning Commission sidelined

Local Councils, the community and importantly, the independent Tasmanian Planning Commission, will be sidelined through this Bill. Prior to this proposed legislation, the independent Tasmanian Planning Commission played a vital and important role in making these strategically important decisions that affect the whole of Tasmania.

Conclusion

Planning decisions affect communities, the environment and quality of life, often with long-lasting consequences. It is essential there is an independent body in Tasmania making decisions about land use rights across the state and rights to participate in decisions that affect our environment.

The Tasmanian Planning Commission structure and operation is currently under review and consequently its independence, structure and resourcing cannot be evaluated in the context of this Bill.

Limiting the Rights of the Public

The draft assessment report must be publicly notified and exhibited. Members of the public may make representations in relation to whether a major project permit should be granted and/or any conditions that ought to attend the grant of a major project permit.

Representations must be received within 28 days of the notice, unless the Panel determines that a longer period is appropriate.

Within 28 days of the public exhibition concluding, the Panel must hold hearings in respect of the major project. Before holding a hearing, the Panel must notify:

- each person who made a representation in relation to the major project;
- each relevant regulator who has participated in the process; and
- each person or body that was notified of the major project proposal.

This Bill will significantly limit public rights. The first opportunity the public will have to make a comment on most Major Projects will be *after* the Development Assessment Panel has undertaken its assessment of the proposal.

This denies the public an opportunity to make comment when it is most meaningful, that is, *before* the Panel has decided to grant a permit for the project.

The short timeline offered to the public to make comment limits any person, community, or community group's ability to access expert or legal advice to assess, respond to and present evidence to the panel.

Conclusion

This legislation has in part been justified as being for projects that are too 'complex' for local councils to manage. The time frames provided for decision making do not do justice to the complexity of holding hearings on matters of technical specialisation where experts may not be available to give evidence in such a short time frame. This is an inappropriate matter to be left to Ministerial discretion for extension. It begs the question of politicisation.

Concluding comments

Some of the most controversial projects around Tasmania could be declared a Major Project and fast tracked through this legislation, including Cambria Green, skyscrapers in Hobart and Launceston, the Westbury Prison, developments in National Parks and World Heritage Areas, the cable cars proposed for Mt Wellington, Mt Roland and Cataract Gorge in Launceston.

As well, this third iteration of the Bill further weakens the community and local government's say on high rise buildings with the removal of the clause excluding these projects.

ECA believes the main aim of the Major Projects Bill is to establish a wide-ranging, unaccountable process for development approvals that would be unlikely to be approved by current means, due to flaws in the project rather than existing process.

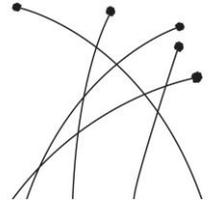
The Bill sidelines the community, removes any recourse for legal challenge and will lead to both bad development decisions, and increased community conflict.

This Bill should be withdrawn.



Anne Held
President
East Coast Alliance (ECA)





15 May 2020

Planning Policy Unit
Department of Justice
GPO BOX 825
HOBART TAS 7001

LAND USE PLANNING AND APPROVALS AMENDMENT (MAJOR PROJECTS) BILL 2020

The TNPA's main concerns with the above Bill are as follows:

- The criteria for major project declaration do not appear sufficiently rigorous to preclude quite minor proposals of only local significance, such as a tourism proposal in a national park.
- The Bill does not preclude the declaration as a Major Project of a proposal on reserved land and the assessment panel is not required to consider any existing management plan or other guidelines for the management of the reserved land.
- Section 60K(1)(f) specifies one eligibility criterion as "the characteristics of the project make it unsuitable for a planning authority to determine". This could apply to almost any development proposal on reserved land because the crucial impacts (on the natural and cultural values of the reserve) are likely to be beyond the remit of the Planning Scheme, and hence the Planning Authority.
- The potential to appeal a planning decision is fundamental to any development proposal gaining a social licence. The absence of an appeal process in this Bill not only deprives the public of the opportunity to challenge a bad planning decision, an approval for a controversial proposal obtained through this process will earn little social licence for the developer.

Yours sincerely,

Nicholas Sawyer
President, TNPA

GLEBE PROGRESS ASSOCIATION INC.

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Draft Major Projects Bill 2020 ***(Land Use Planning and Approvals Amendment (Major Projects) Bill 2020)***

SUBMISSION FROM THE GLEBE RESIDENTS' ASSOCIATION INC

Introduction

The Resource Management and Planning System (RMPS) established in Tasmania during the 1990s is well regarded as providing a sound balance between development and community, environmental and social needs. It provides for communities to have a say in how their neighbourhoods are shaped, while not blocking viable and sustainable development. The Tasmanian Planning Commission (TPC) is central to the system and is seen around the country as a benchmark for how such bodies should operate. The TPC has the trust of the community as acting independently of government and making decisions based on the laws and regulations within the relevant Acts.

Although the reforms now being implemented through the Tasmanian Planning Scheme (TPS) and its State Planning Provisions (SPPs) in many ways weaken the positive aspects of the RMPS, it still provides a sound framework for land use planning.

It is central to our democratic system that communities have a meaningful say in how the places in which they live are shaped. In order to achieve this, land use planning decisions are best made by local government except under exceptional circumstances – where wider geographic and/or public interest considerations are paramount. Such overwhelming public interest concerns should not be based primarily on private benefit and vague statements about economic growth as a public good.

For the long-term sustainability of our State and communities it is important that any large developments that might be considered outside the local government sphere are subject to rigorous public benefit testing and consultation processes that will ensure approved projects have a social licence to proceed.

Is there a need for major projects legislation?

There is little evidence to indicate that the current planning system is placing barriers in front of worthwhile developments. In Hobart, this is evident from the number of buildings being constructed around the city – many of which are large projects. Figures indicate that 90% of Development Applications are approved in Hobart. Some of these are, however, never built (Helen Burnett - opinion piece in Mercury 11/3/2020).

It is claimed that the Major Projects legislation is needed to improve, build on, and eventually replace the current Projects of Regional Significance (PORS) process under the Land Use Planning and Approvals Act 1993. The PORS process came into effect in January 2010, but has never been used. Although the PORS process is flawed there have been few calls to fix this. This would suggest that there is no need for such legislation. Tasmania already has Projects of State Significance legislation which is a credible process for large and complex projects – and was successfully used to approve the Basslink cable.

Specific Issues with the Draft Major Projects Bill

Public involvement

Unlike the current system this legislation makes less of a commitment to the public engagement process – despite the potential for the projects being considered to have a far greater impact on communities. Limiting public consultation seems inappropriate in a democratic system. Being empowered to have a say in the shaping of your local area is important in maintaining liveability and community wellbeing.

The public cannot make representations at the beginning of the process when such input would be most meaningful to developers and to the Development Assessment Panel. A preliminary determination, that the project has a reasonable prospect of being accepted, is made before it is open to public comment.

Since the projects are of state significance the public should have a right to comment on assessment guidelines because these are critical in determining what will be assessed in the project impact statement. The Panel will make its determination based on how the statement meets the guidelines. Clause 60ZL(3) allows public exhibition and comment on draft assessment guidelines for bilateral agreement projects where the Commonwealth is involved. It is inequitable that this doesn't apply also to State only projects.

Once a preliminary decision has been made there is a very short time for public review and input on what in most cases are likely to be very complex proposals. The public would need a reasonable time to assess the impact and make a submission when public notice is given.

The 90-day time period imposed on the process means the panel is not likely to have sufficient time to consult all appropriate regulators and appropriate authorities and prepare a complete assessment as well as provide for the usual fair and open hearings under the current system. This is a failure of good process and an unfair limitation on the public right to have meaningful input into project assessment. This time frame is especially unfair on objectors; the proponent can spend 2 years on its proposal, and then objectors have just 3 months to find funds, appoint consultants and then assess the project.

Once a decision has been made to grant (or not to grant) a major project permit the only avenue to seek a review would be in the Supreme Court. Appeal rights provide the community with an avenue to have decisions reviewed and removing these rights for major developments greatly weakens our democracy. Limiting appeals to the Supreme Court would require a point of law to argue, would always require legal representation and thus be too expensive for most people. Yet for the proponent, the costs of lawyers are tax deductible. It is inequitable, given the substantial resources available to proponents and industry lobby groups.

There should also be a firm requirement for the Panel to consult with those bodies with key expertise or interest in the proposal, before making a preliminary decision. This should include Aboriginal Heritage Tasmania, Department of Primary Industries, Parks, Water and

Environment, the Environmental Protection Agency, TasNetworks, NGOs with relevant expertise and TasWater.

Given that major projects will, by their nature be complex in most cases, the 28-day period to consider a project and provide an expert report is insufficient.

Project Eligibility

Projects only have to satisfy two of the attributes listed in Part 2, clause 60K of the draft Bill – in the opinion of the Minister. These attributes are very broad and could allow a project that would be of economic benefit and considered too big for a Council to determine to be accepted as a major project even if it had significant detrimental effects to the environment or community.

Eligibility under the legislation is potentially so broad and discretion in decision-making so great that they could cover all projects - not just those that are large, complex and/or extend over more than one municipality. Clause 60K(1) (f) sets out the criterion about suitability for assessment by a local authority. This criterion could be strengthened by requiring proponents to demonstrate why the project cannot be properly assessed through the existing system. This should be a threshold test separate from the 'two criteria' requirement. There is a risk otherwise that proponents will be wasting public resources to 'game' the system.

Declaration of Major Projects

The Major Projects Bill gives the Minister total power to declare a major project which has the effect of then removing it from the normal local council planning process. Any project which has been refused by a council or the Planning Appeals Tribunal could be later declared a major project and potentially approved. Used in this way, the legislation greatly reduces the relevance of the Planning Appeal Tribunal and in effect allows for 'second chance' approval of projects that have been subject to proper process and consultation with the community.

The Major Projects Bill allows the Minister unrestrained and excessive power to remove any project from the normal planning process if it is facing high community opposition or has been refused by councils or stopped by the community through a planning appeal. The Bill effectively provides an avenue for approval of projects that have failed the development application process at a council level.

Under clause 60I(1) the TPC may produce Determination Guidelines. However, in making a decision on whether to declare a major project the Minister is not bound by these Guidelines.

Development Assessment Panel

There are many checks and balances that apply to the TPC that ensures it operates in an independent, transparent and evidence-based manner. For 23 years it has maintained a high level of community trust. The proposed Development Assessment Panels do not have the same checks and balances. There is no guarantee that in the new process a particular Panel will be independent and there seems little justification for it to replace the well qualified TPC in this role.

As proposed, a Panel might be open to unfair influence from the project proponent or state government. The only safeguard that exists is that the Panel members must be approved by the independent TPC, but this could change after the government's current review of the Commission.

While the Panel role would more properly be undertaken by the TPC, if this does not occur, the credibility of the Panels could be strengthened by:

- All members of any Panel related to planning being bound by the TCC's Code of Conduct or the State Service Code of Conduct;
- Providing more guidance on who is appointed to a Panel if Council is unable to appoint a representative. Clause 60V(3) could result in a majority of the Panel being from the building, construction and property industries. There is no more reason for them to be on the panel than an environmental expert;
- Requiring Panel appointees to have experience in assessing development applications and providing fair hearings; and
- Making provision for a person with expertise in natural or cultural values, environmental impact assessment or pollution control to be appointed. While regulators can provide input on these areas, there is still a need for one or more members of the Panel to have the knowledge to apply it in decision making.

Assessment process and Decision making

The Major Projects Bill does not provide an integrated planning process. The Panel will coordinate approvals for development and make a decision based on criteria that do not demand analysis or assessment of impacts to neighbouring land uses, the community or on the environment. The legislation should include a requirement for the holistic assessment of a project.

The scope for neighbours to a project site to have input to the assessment process is uncertain because the definition of adjoining land is not detailed. For example, it is unclear if the adjoining land must abut the proposed development or if a neighbour separated by a laneway or a road would be deemed adjoining. If the current tight legal definition of adjoining land is maintained, it is at odds with the more consultative approach for planning authorities, demonstrated in clause 60I(1)(e). Given that proposals to be dealt with under the Bill are intended to be of large-scale significance, it is even more important that individuals and communities have a say under this process.

There are a number of important matters that should properly be considered in the decision-making process, where relevant to a particular project. The draft Bill currently does not adequately deal with these. They include:

- Potential infrastructure changes and the cost to Government and/or councils of this work;
- Changes to planning schemes;
- Potential traffic and parking issues;
- Stormwater issues, normally determined by local government;
- Electricity supply and infrastructure;
- Potential flood issues;
- Building quality, appeal and streetscape issues;
- Building heights;
- Potential fire risks, including building in fire risk areas;
- Overshadowing and solar energy access;
- Existing local management plans;
- Public transport requirements;
- Wildlife and nature conservation, including threatened species;
- Irrigation, rivers and water supply;
- Net community benefit assessed through a comprehensive cost- benefit analysis;
- Agriculture; and
- Provision of open space, particularly for high density living.

Planning scheme changes can be forced on councils and communities

A project that is to be situated on an area of land may be declared to be a major project even though a use or development that is proposed to form part of the project is prohibited under a relevant planning scheme. The proposal to allow the panel to force the Tasmanian Planning Commission to amend relevant planning schemes substantially erodes our planning system and democratic process. Should a development be prohibited under a relevant planning scheme, the government of the day should have to introduce legislation to allow it so that there can be proper parliamentary scrutiny of the matter.

If developers have planning scheme amendments refused by the Tasmanian Planning Commission, they could go through the major projects process and have the Commission's decision overturned. The legislation subverts the role of the Commission in the same way as it subverts the Planning Appeal Tribunal.

Summary position of the Glebe Residents' Association

- There is no credible argument provided that shows the current planning approvals system is not working and that a heavy-handed major projects process is required.
- The major projects legislation denies local communities a fair say in how their neighbourhoods and regions are shaped. It goes against the wishes of every local community's right to have a say.
- The proposal subverts the existing local government planning approvals process and the role of the Tasmanian Planning Commission.
- The proposed process for declaring major projects, convening Panels and gathering expert and community input is severely flawed.
- There is no appeal process for disputing the substance of a major projects permit – other than taking the matter to the Supreme Court on a point of law.

About the Glebe Residents' Association Inc. :

The Glebe Residents' Association was formed around 30 years ago with the purpose of promoting and protecting the welfare, interests and general well-being of the community of Glebe. The Association has a strong interest in enhancing and protecting the social, cultural and built heritage of our suburb and its surrounds --including the Queens Domain. We actively engage within our community, with the City of Hobart, the State Government and other organisations in achieving our purpose.

15 May 2020



Tasmanian Planning Information Network
 raising community awareness for better planning

Planning Policy Unit
 Department of Justice
 GPO BOX 825
 Hobart, TAS, 7001

Via: planning.unit@justice.tas.gov.au

SUBMISSION ON MAJOR PROJECTS LEGISLATION

Background considerations:

- The role of government is to act in the best interests of the community.
- Legislation must be clear and unambiguous regarding rights and responsibilities because it will not just be implemented and interpreted by those who initiate it but by those who follow. One Minister may not interfere in the process but those who follow could use the full powers of loosely worded legislation.
- Public consultation must be an essential element of decision-making in the planning process.
- Once the government has enacted legislation it should leave the interpretation to an independent body. This is the basic principle of separation of powers and reduces the possibility of corruption. It is an important principle of our democratic process that we do not have executive government. Therefore, the Minister should be removed from the process.
- The Tasmanian Planning Commission has the trust of the community. It has demonstrated it can act independently of government and make decisions based on the laws and regulations within the relevant Acts.
- The current scheme is not limiting desirable development as is evident with the number of buildings being constructed around Hobart. 90% of Development Applications are approved in Hobart, but some are never built (Helen Burnett opinion piece in Mercury of 11/3/2020).
- The new process is complex in itself and may not necessarily be faster even if it could permit projects that wouldn't get through the Council system.
- The Minister in an opinion piece in The Mercury said 'It improves and replaces the Projects of Regional Significance process that has been part of planning legislation since 2009, but has never been used.' This would suggest that there is no need for such legislation
- The Tas Planning system is already complex and difficult to understand. Amending planning legislation to include major projects process only adds to the complexity and uncertainty.
- The Bill provides for fees to be set through regulations. Charges should be based on a 'user pays' approach as proponents are seeking special treatment of their project.

CONCERNS REGARDING THE LEGISLATION

Public notification and involvement

- Public consultation is reduced which seems inappropriate in a democratic system. Being empowered to have a say in the shaping of your local area is important in maintaining liveability and community wellbeing.
- The public should have a right to comment on assessment guidelines [60ZL 3 page 97] because these determine what will be assessed in the project impact statement. The panel will make its determination based on how the statement meets the guidelines.
- Clause 60ZL allows public exhibition and comment on draft assessment guidelines for bilateral agreement projects where the Commonwealth is involved. It is inconsistent that this doesn't apply also to State-only projects.
- The public cannot make representations at the beginning of the process when it is most meaningful to developers and the panel. A preliminary determination, that the project has reasonable prospect of being accepted, is made before it is open to public comment.
- One cannot believe a panel would change its mind after giving a preliminary decision and there is a very short time for review. Development applications could be complex and the public should be allowed a reasonable time to assess impacts and make submissions.
- This legislation means that the only place to oppose an approved major project would be in the Supreme Court. That would require a point of law to argue which would always require legal representation. This places planning democracy out of financial reach of most people.
- The 90-day time limit imposed on the process mean the panel may not have sufficient time to consult all appropriate regulators and appropriate authorities and prepare a complete assessment as well as provide for the usual fair and open hearings of the current system. This is a denial of good process and an unfair limitation of the public right to have meaningful input into projects

Recommendation: There should be more opportunity for public consultation and input earlier in the process

Development Application Panel

- There is no guarantee that 'assessment panels' will be independent. We see no reason for them to replace the Planning Commission.
- All members of any Panel related to planning under the proposed legislation should be bound by the TCC's Code of Conduct or the State Service Code of Conduct.
- Guidance for who is appointed if a Council is unable to appoint a representative - criteria [60V 3a,b page 64/5] - seems to favour developers. There is a danger that a majority of a DAP could be from the building, construction or property industries. There is no more reason for them to be on the panel than an environmental expert.
- Panel appointees should have experience in assessing development applications and providing fair hearings.
- There is no requirement to appoint a panel member with expertise in natural or cultural values.
- There is no requirement to appoint a panel member with expertise in environmental impact assessment or pollution control. It seems as if there is a reliance on the regulators to provide this input – but it still requires one or more members of the DAP to have the knowledge to apply it in decision making.
- 'A project may be declared to be a major project even though a use or development that is proposed to form part of the project is prohibited under a relevant planning scheme.' The proposal to allow the panel to force the Tasmanian Planning Commission to amend relevant

planning schemes is fraught with danger and could have far-reaching implications. Should a development be prohibited under a relevant planning scheme, the government of the day should be compelled to legislate changes, so that there can be proper parliamentary scrutiny.

Recommendation: The Tasmanian Planning Commission should be expanded, given more resources, include cultural and environmental experts and should assess major projects

Consultation

- Aboriginal Heritage Tasmania, DIIPWE, the Environmental Protection Agency, TasNetworks, and TasWater should report on any major project. This should not be a matter of discretion or opting in. Such regulators should not be limited to reporting on project-specific criteria but provide consideration of the full implications of any project to the state within their area of expertise.
- The Panel should have to consult these authorities before giving key planning, environmental and cultural heritage approval.
- The provision of 28 days to consider a project and make a representation is insufficient.

Recommendation: Regulators should provide unrestricted expert advice on any major project and any panel should have to give a written response if they choose to ignore that advice

Eligibility

- The qualifying criteria in the draft legislation that major projects are required to meet are so broad that they would cover nearly all developments, not just projects that are large, complex and extend across more than one municipality.
- Projects only need to satisfy two of the criteria [listed in s.11 Part 2 60K pages 44-5] to be accepted. The criteria are very broad and would allow a project that would be of economic benefit to be accepted as a major project even if it had significantly detrimental effects to the environment or community.
- Cl 60K(1) (f) is the criterion about the project not being suitable for assessment by a local authority. Perhaps proponents should be asked to demonstrate why the project cannot be properly assessed through the existing system as a threshold test separate from the other two criteria requirement. Otherwise proponents are wasting public resources to 'game' the system.
- Proponents should have to address draft restrictions or conditions.

Recommendation: A project should have to satisfy a majority of more specific criteria and should have to address draft restrictions or conditions.

Decision making

- The Major Projects Legislation gives power to the Minister for Planning to decide what developments are declared major projects. This gives the Minister unrestrained and excessive power to remove any project from the normal planning process if they are facing high community opposition, have been refused by councils or refused at a planning appeal.
- This is not an integrated planning process. The Panel will co-ordinate approvals for development and make a decision based on criteria that do not demand analysis or assessment of impacts to neighbouring land uses or on the community or on the environment. Legislation should include a requirement for the holistic assessment of a project.

- What is the definition of adjoining land? Must the adjoining land actually abut the proposed development? If the proposed development and neighbour are separated by, say, a laneway, is the neighbour's land deemed to be adjoining? If the proposed development and the neighbour are separated by a roadway, is the neighbour's land deemed to be adjoining? If the current tight legal definition of adjoining land is maintained, it is at odds with the more consultative approach demonstrated in para 60 I(1)(e).
- There is no assurance of protection of general residential areas.
- TasPIN proposes that all of the following matters should be considered and advice sought where they are relevant. Appropriate agencies should be consulted and have revocation rights.
 - potential infrastructure changes and cost to Government and/or councils
 - potential traffic and parking issues
 - stormwater issues, normally determined by local government
 - electricity supply and infrastructure
 - potential flood issues, e.g. building a subdivision in a flood prone area
 - building quality, appeal and streetscape issues
 - building heights
 - potential fire risks, including building in fire risk areas or in areas with, or potential for, limited escape options
 - overshadowing and solar, including solar installation, issues
 - public transport requirements
 - wildlife and nature conservation, including threatened species
 - irrigation, rivers and water supply
 - agriculture
 - provision of open space, particularly for high density living
 - potential health and pandemic risks

Recommendation: The State should have a more integrated approach to planning and approving developments and the Minister should not be able to approve or declare a major project without the specific approval of parliament.

Recommendations

TasPIN sees no real need for such legislation but believes that if the legislative process is to continue

1. there need to be changes to the proposals so that the interests of the public are properly protected with provision for public comment
2. there is a truly independent panel
3. the panel must consider expert advice and provide a written response where it is rejected
4. these processes cannot be used to remove Local Councils authority
5. there is clear and accurate information provided to the public at all stages of any proposal for a project

Chairman: Wayne Burgess

Treasurer: Eric Pinkard

Secretary: Margaret Taylor



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SUBMISSION

**Land Use Planning and Approval Amendment (Major
Projects) Draft Bill 2020**

15 May 2019

Introduction

Master Builders' Association of Tasmania Inc. (Master Builders - MBT) welcomes the opportunity to provide a submission to the Department as part of the Land Use Planning and Approval Amendment (Major Projects) Draft Bill 2020 (the Bill) consultation process.

The Bill is relating to major projects that were previously covered under the Projects of Regional Significance (PORS) process.

However, since its introduction in 2009 the PORS process has not been used, and as a mechanism to support and promote major projects the PORS was a failure.

To be successful the new Major Projects Draft Bill must address the failures of the PORS, in particular, the time and resources required by private investors before being eligible or know whether the projects is eligible under the PORS criteria, the lack of coverage across the permit approval process and uncertainty around assessment timeframes.

It is understood that the objectives of the Bill are to address these failures by providing an 'in principle' approval for eligible major projects, expanding the coverage of permit approvals and introduce a panel with ultimate decision-making authority.

It is understood that the process is advertised as a true triple bottom line assessment process, set up to objectively assess social, environmental, and economic costs and benefits of major projects in the permit approval process.

Ideally, the process proposed under the Bill should, once implemented, become a normal part of the approvals process for major projects in Tasmania. The Bill must streamline the permit approvals process, provide certainty for developers in terms of timeframes and the as a true objective assessment process.

Master Builders see the passing of this Bill as crucial in supporting the industry in the delivery of complex major projects, and for major project construction to take a leading role in the post COVID-19 economic recovery.

The following sections of this submission address specific sections of the Bill pertaining to priority issues or concerns of Master Builders and its members.

In assessing the merits of the Bill, this submission endeavours to comment on the achievement of the Bill regarding the said objectives.

Amendments for consideration

Overall, the Bill in its current form is seen as a marked improvement on the current PORS process. However, to ensure the Bill meets its objective MBT puts forward the following suggested amendments for consideration:

S60I (3) – consider reducing the notification period for a planning authority or State Service from 28 days to 14 days.

S60I (4) - consider reducing the notification period for interested parties from 28 days to 14 days.

S60K (1) – MBT is of the strong opinion that a project should be eligible to be declared a major project if it meets any or all attributes under S60K (1), rather than the current Draft Bill requiring two (2) attributes under S60K (1) to be met.

S60U (2) – consider reducing the time to establish a Development Assessment Panel from 42 days to 14 days.

S60V (1) – if the Panel is going to provide a true triple bottom line assessment (environmental, social and economic), as it's advertised, then the Panel composition must support this. There should be a requirement for a panel member to be appointed with the qualifications and experience to balance the relative costs and benefits of competing interests/priorities and preferably representing the private sector. The latter, in my opinion, would require a person with an industry background (perhaps from the PCA membership or TCCI) or alternatively from Treasury, or otherwise with experience in economic cost/benefit studies. The panel must have breath of experience, and perspectives to be effective.

S60ZA – as this section is drafted it appears, or may be interpreted, that the ultimate decision-making authority as to permitted approval of a major project rests with notice from the relevant regulator/s. The ultimate decision-making authority must rest with the Panel. Regulator should not have the power to 'direct' the Panel (as currently under S60ZA (9)).

Consider reducing the time for regulators to provide notice or assessment from 28 days to 14 days.

S60ZL (2) (a)- consider reducing the period for inspection by the public notice from 28 days to 14 days.

S60ZL (2) (b) – support the public exhibition period of 28 days so long as this is also the period whereby persons can make representations as per S60ZZD.

S60ZN – consider the 42-day period reasonable, if the time for regulators to provide recommendation is reduced to 14 day per recommendation above (**S60ZA (1)**).

S60ZW – consider reducing time provided for additional information to be requested from 42 days to 14 days.

S60ZX – MBT recommends that timeframes under this section are determined, for section (1) and for section (2) for the Panel to provide information to a participating regulator. The participating regulator should then be subject to providing advice back to the Panel in a set timeframe.

S60ZY – consider reducing the EPA 91-day timeframe to prepare advice to 45 days.

S60ZZB – consider reducing the time to for the Panel to provide notice of public exhibition from 14 days to 7 days.

S60ZZD – MBT interprets this to mean representation must be made during the exhibition period, not following it. Meaning that the exhibition period and period for representations take a total of 28 days.

S60ZZT – MBT urges that the time for a permit to lapse is reduced to 2 years, with an application for an extension required for a further 2 years. It is intended that by doing so the legislation is better structured to meet the objective of fast-tracking major projects.

Conclusion

Master Builders firmly supports the implementation of the Bill and recognises the need for major project development to play a crucial role in Tasmanian's economic recovery. This Bill has the capacity to greatly improve the efficiency of the planning assessment process for major projects.

The implementation of the Bill into legislation will be crucial to support and fast track future major projects. Not doing so is a risk to jobs and to the long-term capacity of the states economy to recover from COVID-19 lock downs.

The Assessment Panel should become a part of the normal permit approval process for commercial and major residential construction projects. The ultimate measure of success of this Bill will be its broad utility in the process.

Master Builders is calling on government to fast track the implementation of the Bill into legislation.

CONTACT:

Matthew Pollock

EXECUTIVE DIRECTOR

Master Builders Tasmania

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HERITAGE PROTECTION SOCIETY (TASMANIA) INC.
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email [REDACTED]

14 May 2020

Planning Policy Unit
Department of Justice
GPO Box 825
Hobart TAS 7001

email to planning.unit@justice.tas.gov.au

Dear Sir,

Re: Major Projects Assessment Reform

The carefully considered view of Heritage Protection Society (Tasmania) Inc. is that this 'reform' is illustration of how the democratic planning processes for the Tasmanian community are proposed to be corrupted.

The prevailing level of trust and regard for the political class in Tasmania could not be lower, and whilst not **all** politicians can be said to be questionable in their ethical role in faithfully representing the interests and wishes of the community, this proposal places too much control in the hands of too few, and results in decision-making alliances that cannot be doubted or brought to account, by the community.

The Tasmanian planning system when established, was considered a pioneering effort and the envy of other States. It has now stood the test of time, and that is to be admired. It is this endurance in the face of a number of failed efforts by pro-development lobbyists to over-ride the planning system in order to short-circuit and corrupt our democratic foundations, via political interference.

Having reviewed the 200+ pages of the proposed *Draft Land Use Planning and Amendments (Major Projects) Bill 2020 (draft Bill)*, and this having been undertaken under the severe environment of the Covid19 emergency, we are left with much consternation and confusion as to its purpose, application and impact on existing legislature and procedures. The absence of any explanatory document to guide the insertion of this Bill into law, is illustration of how this process has been indecently rushed or otherwise done without adequate consultation with/communication with, the community.

A popular notion in such matters is "social licence". The unlimited power to be afforded a Minister by this Bill will automatically ensure that a social licence is impossible. The contamination caused by political donations will be made less clear.

Without doubt, the Bill will weaken the *Land Use Planning and Approvals Act 1993* and, excludes other properly appointed statutory bodies from executing their role and responsibilities in a number of areas, an example being how the Tasmanian Heritage Council may be excluded by amending s35 of the *Heritage Cultural Heritage Act 1995*.

An essential element in project approval and community support, is the making of good local heritage decisions. A history of chronic under-funding and resource neglect in Tasmania for the assessment and listing of places of cultural significance, has resulted in the Cultural Heritage list and registers being utterly incomplete, and so without a local approval and assessment procedure, places of significance but not formally recognised or documented, cannot be taken into account.

The *Australia ICOMOS Burra Charter* is the widely accepted reference document for heritage conservation standards, philosophy and methodology in Australia, and forms part of Australia's international responsibilities and obligations, however, no recognition of this fundamental 'handbook' can be found in the draft Bill. Good best practice determines that Heritage Impact Statements must accompany planning applications, and this is particularly essential in relation to large or complex projects.

Legislative framework must be recognised and respected, but this Bill outlines a completely random and ad-hoc procedure that is slanted towards the positive approval of 'special' development proposals that suspiciously could not otherwise withstand scrutiny and review. Assessment of the impact of a development is necessarily a multi-disciplinary procedure, but the very limited description in the Bill of the proposed assessment panel, is hopelessly inadequate and skills-deficient.

The standards that our Tasmanian community should be entitled to expect must never be diminished, and it is these standards that make our environments precious and important in this increasingly fragile world. Bullying of the community and taking unfair advantage of present distress, such as Covid19 lockdown, is to be abhorred.

Heritage Protection Society is a member/partner of Planning Matters Alliance Tasmania, and has been actively participating in its analysis and assessment of this Review. We concur with and strenuously support the submission made by Tasmanian Conservation Trust, and are confident that it represents the broad interest of the Tasmanian community.

We repeat what we have said elsewhere, that what is lacking in the Tasmanian Planning system is the provision of adequate resourcing, and the provision of resources, vital to achieving a quality outcome and deliverance of determinations that the Tasmanian community will feel pride in.

We call upon Parliament to defeat the current proposition outlined in the draft Bill, and focus its attention on equipping the various components of the Tasmanian Planning System in its daily work, in the service of our community.

Yours faithfully

Lionel J. Morrell Architect

President, For and on behalf of
Heritage Protection Society (Tasmania) Inc.



TasNetworks' submission

Land Use Planning and Approvals Amendment (Major Projects) Bill 2020

Submission Version Number 1.0

May 2020

Contact This document is the responsibility of the Network Planning Team, Tasmanian Networks Pty Ltd, ABN 24 167 357 299 (hereafter referred to as "TasNetworks").

Please contact the Network Planning Team Leader with any queries or suggestions.

Action	Name	Date	Signature
Prepared by	Odin Kelly (consultant Land Use Planner)	April 2020	
Reviewed by	Gina Goodman (Land Use Planner, TasNetworks)	11 May 2020	
	Catherine Scott (Principal, Page Seager)	13 May 2020	

Next Review N/A

Responsibilities

- Implementation All TasNetworks staff and contractors.
- Compliance All group managers.

Minimum Requirements The requirements set out in TasNetworks' documents are minimum requirements that must be complied with by TasNetworks staff, contractors, and other consultants.

The end user is expected to implement any practices which may not be stated but which can be reasonably regarded as good practices relevant to the objective of this document.

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1 Overview

This document has been prepared in response to the Tasmanian Government's latest request for comments regarding the Land Use Planning and Approvals (Major Projects) Amendment Bill 2020 (the Bill).

This submission compares TasNetworks' requests for change or requests for clarity with the changes made to the current version of the Bill and makes further submissions based on recent experience with the MIDAA process.

TasNetworks made a submission regarding the 2017 Bill and did not make a submission regarding the 2018 Bill. This submission adds to the 2017 submission and is to be read in conjunction with it.

Thank you for the opportunity to comment.

2 Glossary

CPA	Combined Planning Authority
EMPCA	<i>Environmental Management and Pollution Control Act 1994</i>
LPSs	Local Provision Schedules
LUPAA	<i>Land Use Planning and Approvals Act 1993</i>
MIDAA	<i>Major Infrastructure Development Approvals Act 1999</i>
POSS	Project of State Significance declared in accordance with the <i>State Policies and Projects Act 1993</i>
RLUS	Regional Land Use Strategy
SPPs	State Planning Provisions contained in the Tasmanian Planning Scheme
The Commission	The Tasmanian Planning Commission
TPP	Tasmanian Planning Policies (none in force yet)

3 2020 Major Projects Bill - TasNetworks' Submission

The following table compares TasNetworks' requests for changes in 2017 with the current version of the Bill and makes additional submissions based on recent experience with the MIDAA process.

Table 1: 2020 Major Projects Bill – TasNetworks' submission

Item	Section (2020 Bill)	TasNetworks' 2017 suggested alterations	2020 Draft Bill comment	2020 Bill comment / suggested change
1.	60C	N/A	<p>This section provides for a proponent <i>or a planning authority</i> to refer a project to the Minister proposing it be declared a Major Project. This undermines the existing DA process and can unnecessarily add time to the assessment process whilst a decision is made on the Major Project declaration where a referral is made without the support of the proponent. Other major project assessment pathways in Tasmania leave the assessment pathway decision to the proponent. Where a project crosses Municipal boundaries, the risk of one planning authority proposing a major project declaration increases. In TasNetworks' experience, where there is uncertainty regarding assessment process, this adds complexity, time and cost to a project.</p> <p>As it is currently structured, this process also has the potential for applications made in accordance with the MIDAA process (under section 57 of LUPAA) to be referred by the Planning Authority established under the MIDAA process to the</p>	Remove the ability for Planning Authorities to refer a project to the Minister proposing it be declared a major project.

Item	Section (2020 Bill)	TasNetworks' 2017 suggested alterations	2020 Draft Bill comment	2020 Bill comment / suggested change
			<p>Minister to enter the Major Projects process (instead of the MIDAA process already under way). Deleting the ability of a planning authority to propose assessment as a Major Project removes this risk.</p> <p>It is acknowledged that the current DA process provides a planning authority the power to refer a permissible level 1 activity to the EPA for its consideration. However, as this power of referral relates only to environmental approvals, it is of a different order to that resulting from a Major Projects referral.</p>	
2.	60J Determination guidelines	N/A	<p>The criteria for eligibility and ineligibility are listed in the Act, as are the contents required for a Major Project Proposal (s. 60F). The content requirements are similar to those set out in MIDAA Regulations 2000 and the EMPCA requirements for notice of intent which are essentially mirrored in their content. The nature of these matters means they require amendment and update from time to time to keep pace with best practice and changing industry and community expectations. It is considered more appropriate that the list of eligibility criteria be set out in regulations instead of the Act. This would remove the need for determination guidelines.</p>	Delete requirements in the Bill for determination guidelines and insert power to make a regulations in this regard instead.
3.	60ZJ(e) comments on draft	Include an additional requirement	Under S.60ZJ(e) the Commission must request comments from Tasmanian Government Businesses that the Panel considers may have an interest in a matter to which the major project	Changes address TasNetworks' request, thank you

Item	Section (2020 Bill)	TasNetworks' 2017 suggested alterations	2020 Draft Bill comment	2020 Bill comment / suggested change
	assessment guidelines	that mandates referral of draft assessment guidelines to TasNetworks for all Major Projects.	relates as to what should be specified in the assessment guidelines to be matters to be addressed in the major project impact statement. This addresses TasNetworks' request.	
4.	s.60ZZP Major project permit may be granted subject to condition or restrictions	Requiring the Panel and regulators to check that there are no conflicting conditions in the MPP before it is issued.	S60ZZP (4) & (5) address TasNetworks' request.	Changes address TasNetworks' request, thank you
5.	60ZM assessment guidelines	Provide for assessment guidelines that can be established and reviewed every 5 years	Not included. One of the issues with all Major Projects legislation in Tasmania is the requirement for bespoke guidelines each time a project is proposed. The Major Projects process provides the power to make regulations specifying matters to be included in the assessment guidelines in relation to a class of Major Projects (60ZM(5)). Whilst this moves some	Amend to provide for assessment guidelines for a specific project types that can be established and reviewed every 5 years.

Item	Section (2020 Bill)	TasNetworks' 2017 suggested alterations	2020 Draft Bill comment	2020 Bill comment / suggested change
		for project types	<p>way to the approach suggested, bespoke guidelines are still required each time.</p> <p>For TasNetworks' projects, the issues to be evaluated and addressed each time are the same. The incentive to use the Major Projects process would be greatly enhanced by the ability to establish assessment guidelines for its projects that can be used for a certain period of time and subject to a cycle of review.</p> <p>One benefit of the MIDAA process is the ability to submit multiple applications at different times assessed under one set of criteria. The Major Projects process does not allow for more than one application. It appears to relate only to one project each time the process is used and cannot contemplate multiple applications assessed under the same criteria. It would require the creation of separate assessment panels and separate criteria each time. This does not support streamlined delivery of linear electricity projects.</p>	
6.		Provide for one enforcement planning authority post approval and during	<p>This has not been addressed – s60ZZZD details that the regulator has the responsibility for enforcing compliance with that condition rather than one enforcement planning authority.</p> <p>60ZZZD. Enforcement of compliance with conditions</p>	Amend to provide for one enforcement planning authority post approval and during construction that has established knowledge of compliance requirements.

Item	Section (2020 Bill)	TasNetworks' 2017 suggested alterations	2020 Draft Bill comment	2020 Bill comment / suggested change
		<p>construction that has been involved in establishing compliance requirements.</p>	<p>4) If a major project permit is to be taken under subsection (1) to be a project-related permit issued under a project-associated Act –</p> <p>(a) the project-related permit remains, despite any provision of that Act, in force until the major project permit ceases to be in effect under this Act; and</p> <p>(b) subject to paragraph (c), the relevant regulator in relation to a condition or restriction that is imposed under section 60ZZP(4) on the major project permit pursuant to a requirement of the relevant regulator has the responsibility for enforcing, under the relevant project-related Act, compliance with that condition or restriction, as a condition or restriction imposed on the project-related permit; and</p> <p>(c) the project-related permit may not be cancelled under that Act.</p> <p>60ZZP. Major project permit may be granted subject to conditions or restrictions</p> <p>(9) If a condition or restriction is imposed on a major project permit, the Panel must designate on the permit the relevant regulator, or relevant regulators, that is or are responsible for the enforcement of the condition or restriction.</p> <p>It is not clear however from the bill what entity is responsible for the enforcement of a major project permit with respect to</p>	

Item	Section (2020 Bill)	TasNetworks' 2017 suggested alterations	2020 Draft Bill comment	2020 Bill comment / suggested change
			<p>conditions not imposed at the request of a relevant regulator as it does not appear that a planning authority is able to be designated as responsible for enforcement of a condition pursuant to s60P(9). It is noted that the bill provides for the Commission to exercise the powers in LUPAA at s65F and s65G however the bill does not deal with enforcement of a major project permit beyond this.</p> <p>Whilst the need for separate enforcement by separate State based approval authorities is acknowledged, the separate enforcement of the permit by each planning authority is an unnecessary administrative burden for each authority and for the proponent that creates</p> <ul style="list-style-type: none"> • The need for duplicated and tailored compliance reporting; • Opportunities for varied interpretation of compliance requirements between planning authorities. <p>This can be removed by appointing one planning authority as the enforcement planning authority.</p>	
7.		Establish a certificate of completion process (similar to MIDAA).	Not included. This change fits with the use of one enforcement authority that hands over any outstanding condition requirements once the project is complete to the local planning authorities.	Amend to provide for certificate of completion issued by the enforcement Planning Authority.

Item	Section (2020 Bill)	TasNetworks' 2017 suggested alterations	2020 Draft Bill comment	2020 Bill comment / suggested change
			This also provides certainty for proponents and local planning authorities with respect to compliance.	
8.		Clarify a proponent's rights if a 'no reasonable prospect' notice is issued.	Appears that an additional clause has been added that allows a proponent to amend a proposal in response to a notice of intention 60ZG has been added - Proponent may revoke or amend major project proposal in response to notice of intention.	N/A
9.	60ZC Special provisions relating to where EPA Board is relevant regulator	EPA involvement unclear. Does this process create 'default' EPA involvement for otherwise permissible level 1 activities?	<p>EPA involvement is clarified and improved for permissible level 1 activities via the Major Projects process. It essentially sets up a notice of intent process for Major Projects. If the EPA provides an assessment requirement notice and guidance when the Project is referred to it at the guideline establishment phase, it is taken to be 'called in' for the purposes of EMPCA and can be assessed via the Bilateral Agreement.</p> <p>Due to the intended policy position for this process (between PoSS and DA) it is likely to be used for developments that are usually permissible level 1 activities for the purposes of EMPCA that are larger scale so it is important to provide this clarity.</p>	EPA involvement clarified
10.	60F, 60R, subdivision 6	Gaps, lack of clarity and	It is noted that under s60ZZZD if a Major Project permit includes conditions required by a relevant regulator then the	Amend to include further 'relevant regulators'

Item	Section (2020 Bill)	TasNetworks' 2017 suggested alterations	2020 Draft Bill comment	2020 Bill comment / suggested change
		<p>improved integration: Project Associated Acts, Relevant Regulators and Project Related permits</p>	<p>Major Project permit is taken to be a permit under those Acts. Whilst there is benefit in undertaking a more integrated process for larger projects, this will need to be weighed against the increased time and cost associated with the Major Projects process.</p> <p>Further, there are Acts under which an approval is often required, the regulator for which is not included as a 'relevant regulator':</p> <p><i>National Parks and Reserves Management Act 2002 (RAA process)</i></p> <p><i>Roads and Jetties Act 1935</i></p> <p>In addition to the above, not all regulators contemplated as 'relevant regulators' may be such at the time they are requested to determine the need for their involvement.</p> <p>For example – Heritage Tasmania may not be a 'relevant regulator' at the time the application is submitted because it may not be known if an Aboriginal heritage site will be impacted by the proposal at the time of submission. Under the <i>Aboriginal Heritage Act 1975</i> a permit is not required unless an Aboriginal heritage site is proposed to be impacted. Section 60F implies that this information, together with an approach on how to manage impacts is the appropriate level of detail for an MPP. However, this information would not normally trigger the need for a permit. Unless interpretation</p>	<p>Amend to provide the power to add regulators as the project progresses</p>

Item	Section (2020 Bill)	TasNetworks' 2017 suggested alterations	2020 Draft Bill comment	2020 Bill comment / suggested change
			<p>of the expected level of information required for an MPP is incorrect, there appears to be a gap between the wording in the Bill that triggers a regulator's involvement and what is likely to happen in practice.</p>	
11.	60I Persons Notified	N/A	<p>This section introduces a requirement that the Minister notify all landowners of land to which the proposal for a declaration relates together with <i>owners and occupiers</i> of land that adjoin the land to which the proposal for declaration relates.</p> <p>In the case of linear infrastructure, from a practical point of view, in order to identify land to which the proposal relates and land adjoining this, it requires a finalised route, including access tracks, construction methodology, together with decisions on the need for and location of temporary or ancillary facilities such as depots, site offices, concrete batching and the like.</p> <p>This notification requirement at project declaration does not align with the expected level of information required for inclusion in a request to declare a major project, nor the stage of project planning at which a request for declaration would be made. Requiring notification when the route is not known would mean taking a broader notification approach and it would not be clear which category a landowner could fall into (land impacted, an adjoining owner/occupier), therefore, opening this aspect of the process up to procedural error.</p>	<p>Amend to incorporate a similar requirement to that of Section 10(3) of MIDAA regarding notification at project declaration stage.</p> <p>Amend to provide for declaration of a project area or corridor to assist with notification once project footprint is better defined.</p>

Item	Section (2020 Bill)	TasNetworks' 2017 suggested alterations	2020 Draft Bill comment	2020 Bill comment / suggested change
			It is suggested that a similar approach to the MIDAA (s.10(3)) approach providing the optional application of Section 52(1) of LUPAA be incorporated into the Major Projects process to remove the prospect of procedural error at a stage when this information may not be reasonably known. When the project footprint is better defined, notification could occur. The opportunity to declare a project area or corridor would also assist in identifying who would need to be notified and in what capacity (ie: impacted or adjoining).	
12.	60N circumstances in which declaration may be made	N/A	This section requires the consent of the relevant Minister of the Crown and Councils for land impacted by the proposed declaration prior to the Minister for Planning being able to make the declaration. This is a higher bar than a PoSS or the MIDAA process and would require a shift in expectations from State regulator agencies with respect to the level of information reasonably available at the time of declaration. Further, project planning may not be advanced enough to determine which State landowner agencies could be impacted by the proposal opening the process up to procedural error.	Remove the requirement for State Agency landowner and Council landowner consent prior to Major Project declaration.
13.	In principle approval		This section has been removed.	The removal of this concept is supported.
14.	Appeal rights for assessments	N/A	It is noted that the Bill introduces third party representations and hearings into conditions of approval that currently are not subject to this type of process.	Review the Project Associated Act provisions to remove

Item	Section (2020 Bill)	TasNetworks' 2017 suggested alterations	2020 Draft Bill comment	2020 Bill comment / suggested change
	by relevant regulators		Further, the bill does not contemplate amendments to Project Associated Acts to remove the ability of the permit or licence authority to grant a permit or licence under the primary Act where the activity has been approved under the Major Projects LUPA.	potentially conflicting regulatory regimes
15.	60F, 60ZM Amendment to LPS, consistency with LPS	Review to provide a list of those planning scheme requirements where inconsistency or non-compliance is relevant for these sections	<p>At the beginning of the process a proponent must include in the MPP submitted with a request to declare a major project an assessment of the extent to which the project complies with the requirements of the relevant planning scheme and a statement as to the amendments, if any, that would be required to be made to an LPS in order for the project to so comply (section 60F).</p> <p>Section 60ZM(6) also requires the Panel to determine the assessment guidelines examining if the carrying out of the project is inconsistent with the provisions of a planning scheme that applies to the land – the merit of any changes to an LPS that would be required to be made for the major project to be lawfully carried out.</p> <p>The depth of analysis to meet these requirements remains unclear. For example, a proposal would not comply with and would be inconsistent with a planning scheme where its use is prohibited in a zone use table. Beyond use prohibition, it is unclear what other circumstances may trigger the need for an LPS amendment. Nearly all other aspects of the SPPs have</p>	<p>Review to provide a list of those planning scheme requirements where inconsistency or non-compliance is relevant for these sections.</p> <p>Review to allow for application of the Electricity Transmission Infrastructure Protection Code to new assets.</p>

Item	Section (2020 Bill)	TasNetworks' 2017 suggested alterations	2020 Draft Bill comment	2020 Bill comment / suggested change
			<p>discretion that is limited by considerations in performance criteria. So unless a compliance assessment on a criteria by criteria basis occurs, non-compliance would not be identified.</p> <p>For TasNetworks activities, unless an proposed Site Specific Qualification (SSQ), a Special Area Plan (SAP) or a Particular Purpose Zone (PPZ) prohibits 'utilities' use, use prohibition would not be triggered because 'utilities' is capable of consideration in all zones under the SPPs.</p> <p>This section could also support the application of the Electricity Transmission Infrastructure Protection Code (the Code) to the newly constructed assets. However, the powers provided here do not appear to extend to amendments to support this. This means, unless the Commission directs a Planning Authority, or a Planning authority, of its own volition, requests an LPS amendment to apply the Code, TasNetworks would need to gain the consent of every impacted landowner to apply the Code to an asset that has been assessed and approved by all relevant agencies and regulators.</p>	

4 Conclusion

The main benefits identified from the updated Major Projects process are as follows:

- Expert Panel assessment.
- Removal of the approval in principle concept.
- More Integrated assessment – this reduces the potential for conflict between planning related and other regulator related permit conditions.
- Introduction of power to make regulations for criteria to be included in assessment guidelines based on Major Project Class.
- Accredited under the Bilateral Agreement.
- Increased permit validity time of up to 10 years.

Concerns:

- The need to establish project specific assessment guidelines each time a proposal occurs may prove to be a resource intensive activity with diminishing benefit as more guidelines are established.
- The fact only one application for approval can be considered under each set of guidelines.
- Whether the benefits of the integrated permit conditions outweigh the significant time difference between the usual DA process and a major project assessment where an LPS amendment is not required.
- Enforcement by (potentially multiple) planning authorities that have not made the planning decision and have not been part of compliance negotiations. This heightens the risk of project delay during construction.
- The process assumes all State Policies, Tasmanian Planning Policies, the SPPs, Regional Land Use Strategies and LPS's are in place and strategically aligned.
- Inconsistency between the level of information expected for an MPP and a relevant regulator's powers to require a permit based on this information.
- Whether the major project process will be supported by utilities when 'utilities' use is already capable of consideration in all zones in the SPPs.
- Uncertainty around the detail and extent of information required in the MPIS.

Suggested alterations:

1. Amend to remove the ability for Planning Authorities to refer a project to the Minister proposing it be declared a Major Project.
2. Amend to provide for assessment guidelines for a specific project types that can be established and reviewed every 5 years.
3. Amend to provide for one enforcement planning authority post approval and during construction that has established knowledge of compliance requirements.
4. Amend to provide for certificate of completion issued by the enforcement Planning Authority.
5. Amend to include further 'relevant regulators'
6. Amend to provide the power to add regulators as the project progresses
7. Amend to incorporate a similar requirement to that of Section 10(3) of MIDAA regarding notification at project declaration stage.

8. Amend to provide for declaration of a project area or corridor to assist with notification once project footprint is better defined.
9. Remove the requirement for State Agency landowner and Council landowner consent prior to Major Project declaration.
10. Review the Project Associated Act provisions to remove potentially conflicting regulatory regimes.
11. Review to provide a list of those planning scheme requirements where inconsistency or non-compliance is relevant for these sections.
12. Review to allow for application of the Electricity Transmission Infrastructure Protection Code to new assets.

Department of State Growth

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GINNA WEBSTER
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Attention: Mr Brian Risby
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Final exposure draft of the Land Use Planning and Approvals Amendment (Major Projects) Bill 2020

Dear Ms Webster

Thank you for providing the Department of State Growth (State Growth) with an opportunity to provide feedback on the final exposure draft of the Land Use Planning and Approvals Amendment (Major Projects) Bill 2020 (the draft Bill).

Large infrastructure projects are inherently complex and often evolve during the planning and construction phases as designers and construction contractors respond and adapt to emerging challenges. It is important that the assessment process for Major Projects allows some degree of flexibility to support changes through the early design phase. It is also important that the assessment process supports a balanced assessment of risks and outcomes, at both a strategic level and in relation to specific project details.

State Growth has reviewed the draft Bill in detail, particularly in the context of the strategically important Bridgewater Bridge project. As we are in the scoping and development phase of this project, we have been able to review the Bill with a significant degree of practical and contemporary insight. The following comments reflect a number of concerns that we believe warrant further consideration prior to the finalisation of the draft Bill.

Land included in the application

The draft Bill requires all land to be identified prior to declaration in order to notify owners (60I(1)(b)) and adjoining owners and occupiers (60ZJ).

If a proposal does not include all land, including additional land that is subsequently found to be project-related, there does not appear to be any mechanism to amend the application post declaration to include additional land.

It is common for design changes to occur through the scoping and development phase of large infrastructure projects and can even occur during construction, requiring the acquisition of additional land. The inability to include additional land within a project, potentially up until the assessment phase of the process, is a significant limitation.

A suggested response is to include a mechanism similar to s.14A of the *Major Infrastructure Development Approvals Act 1999*, which enables the proponent of a major infrastructure project to make a request to the Minister to amend a notified corridor.

Limitations on ordinary permits

It is our interpretation of 60D where ordinary permits (under a project-associated Act and related to all or part of the land to be included in the Major Project) have not been determined prior to notification of the Minister (2), are assumed to be withdrawn under 60I of the Bill.

It is understood that any valid permit issued prior to notification of a proposal for declaration under 60I would therefore remain valid, enabling the project-related works to be undertaken at any time throughout the Major Projects process?

It is also understood that the making of applications subsequent to declaration of the project that form part of a Major Project are excluded under 60Q. The only exception is project-related investigation approvals that can be granted by the panel under 60ZT and only after the guidelines are issued and providing they are contemplated by the guidelines.

As drafted, the Major Projects process would sterilise the land from any use or development other than for investigation under 60ZT from the 60I notice until all project-related approvals are issued (60ZZS). For example, development requiring an ordinary permit that was not envisaged prior to declaration such as property demolitions, would not be possible until after a Major Project Permit has been issued.

In this context, it is important to note that early works ahead of commencement of primary works for large infrastructure project are common and are usually contracted separately to the primary works. Therefore, this provision is likely to delay commencement of primary works where the assessment for early works can only be undertaken after project related approvals are issued. This delay is unnecessary if the proponent is prepared to undertake early works on a 'no-regrets' basis.

Role of the Tasmanian Heritage Council and Aboriginal Heritage Council as regulators

It appears that the draft Bill intends to provide regulatory powers to or recognise regulatory powers of the Tasmanian Heritage Council and the Aboriginal Heritage Council. Both Councils are representative rather than expert bodies and it is understood that the draft Bill as currently constructed provides that either body could prevent a Major Project proceeding with the proponent having no recourse to appeal. It is proposed that the Assessment Panel (the 'Panel') should be able to review the advice of both Councils, and consider this advice against other strategic and project-related considerations, before making a final determination.

Tasmanian Heritage Council

The draft Bill coordinates the Tasmanian Heritage Council's assessment under the *Historic Cultural Heritage Act 1995* (HCH Act). The Tasmanian Heritage Council is required to assess the proposal in the usual way, as if it were not a Major Project, and either decide to approve or refuse to grant a permit in relation to the project. If the Tasmanian Heritage Council directs the Panel to refuse the project, the Panel must refuse to grant a project related permit under Section 60ZZM(6) of the draft Bill.

The Tasmanian Heritage Council's assessment criteria under Section 39(2) of the HCH Act are narrow, focusing on an assessment of the likely impact of a proposal on the heritage significance of a place. A decision under these criteria make it difficult for the Tasmanian Heritage Council to have regard to broader strategic considerations that may otherwise be integral to the assessment of a Major Project.

It is proposed that the draft Bill is amended to allow the Panel and the Tasmanian Heritage Council to have regard to broader environmental, social, economic or safety benefits that may be of greater importance to the community than the historic cultural heritage values of a place, and to consider whether there are prudent and feasible alternatives to otherwise retain or recognise heritage values.

Clarification of the role of the Aboriginal Heritage Council

The Bill has assumed that the role of the Aboriginal Heritage Council is equivalent to that of the Tasmanian Heritage Council in that it is able to make a determination on the project as if it is not a Major Project (refer 60ZZK(1)).

However, under the *Aboriginal Heritage Act 1975*, the Minister on the advice from the Director, is the decision maker. In this circumstance, the Minister will have a role in determining whether or not to refuse or grant a Major Project Permit as the Relevant Regulator.

It is important to clarify the role of the Aboriginal Heritage Council in the context of Relevant Regulators (section 60Z) in the Bill and to determine how this process can coordinate with the granting or refusal of a Major Project Permit.

It is noted that supporting web-based explanatory information for the Bill regarding the role of the Aboriginal Heritage Council is inaccurate and will require amendment to accurately reflect its role and that of the Minister.

Potential to include the Water Management Act 1999 as a Project-associated Act

The Major Projects process is able to coordinate a suite of permits required under a number of project-associated Acts. However, the draft Bill does not include the coordination of permits issued by Department of Primary Industries, Parks, Water and Environment (DPIPWE) under the *Water Management Act 1999*. Many large projects include the construction of a new dam or detention basin works, or involve the removal or modification of an existing dam.

It is therefore proposed that the *Water Management Act 1999* be considered for inclusion as a relevant Act under section 60B of the draft Bill.

Contents of declaration of Major Project

An interpretation of 60O(5), that the Minister may, in a declaration of a Major Project that is to take place on an area of land all or part of which is not within any municipal area, specify that a planning authority nominated in the declaration is to be the planning authority in relation to the Major Project. In practice this means that local government planning rules can apply to that area of land for the duration of the project and for the purposes of issuing a permit for use and development of that land.

It is also our understanding that the application of planning controls (Local Provision Schedules) beyond a municipal boundary, may not be possible once the area reverts back to its original status after a Major Project Permit is issued.

If the affected planning authority and other parties are in agreement, it is proposed that the area of land that is not within a municipal area but is taken to be for the purposes of the project is permanently included in that municipality as if a municipal boundary adjustment were sought via an Order in accordance with section 16(4) of the *Local Government Act 1993*. It is assumed that this would necessitate the inclusion of this Act as a project related Act under the Bill.

This change would result in the consistent implementation of planning controls including zoning beyond the completion of the project. Whilst a subsequent municipal boundary adjustment under section 16(4) of the *Local Government Act 1993* can occur, the addition of this process would result in significant streamlining.

Crown landowner consent

To ensure consistent terminology and operation with section 52(1B) of the *Land Use Planning and Approvals Act 1993* and to enable Portfolio Crown land to be managed directly by Portfolio Ministers, it is proposed that 60N(2)(a) be amended to enable Crown land owner consent to be provided by the Minister responsible for the administration of the land rather than by the Minister to whom the administration of the *Crown Lands Act 1976* is assigned.

We look forward to discussing our comments further, noting the importance of this Bill to the planning and delivery of major projects. Please contact [REDACTED] who can schedule a meeting with relevant State Growth officers.

Yours sincerely



Kim Evans
Secretary

15 May 2020

15th May 2020



Planning Policy Unit
Department of Justice
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planning.unit@justice.tas.gov.au

Dear Planning Policy Unit,

Draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2020.

The Tasmanian Land Conservancy (TLC) is a not-for-profit, apolitical, registered environmental organisation that owns and manages land of high conservation significance (tasland.org.au). Since establishing in 2001, the TLC is now one of the largest private landholders in Tasmania with conservation reserves extending over 30,000 ha. TLC reserves are protected by a conservation covenant on title under the *Nature Conservation Act 2002*, and form part of the National Reserve System, including three with World Heritage Area status. The TLC works both on our own reserve network and with private land holders to undertake other effective area-based conservation measures (OECMs) to deliver effective landscape-scale conservation across multiple tenures.

Tasmania has a high proportion of remnant vegetation, extensive wilderness and iconic wildlife, including nationally and state threatened species. However, just under half of Tasmanian remnant vegetation (45.5%) is not formally reserved (State of the Environment Report, SoE 2016), despite some containing high ecological values. Key threats to Tasmanian biodiversity include vegetation clearance and habitat degradation, resulting from residential developments, agriculture and forestry, hydroelectrical requirements, expansion of irrigation schemes and inappropriate fire regimes (SoE 2016).

The TLC developed a World Class Reserves System (WCRS 2015) for Tasmania to strategically guide land conservation and stewardship programs with private landholders, using scientifically sound principals that accounted for vegetation types, habitat availability, aquatic values and landscape context. The WCRS was produced by the TLC's independent Science Council comprising a collective of peers from a range of biological and environmental disciplines. The WCRS spatial prioritization tool has identified high value conservation areas around the state on both public and private land, containing important ecological values that contribute to ecosystem services. Rigorous planning processes are required to ensure that Tasmanian ecological assets do not erode over time through inappropriate assessments of development applications and associated key threats.

The TLC understands that the intent of the *Draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2020* (herein Draft Major Projects Bill) is to improve and

build on the Projects of Regional Significance (PORS) and appreciates the opportunity to provide a submission.

The TLC has strong concerns about the Draft Major Projects Bill, in particular that the Bill displaces relevant regulators with specialised skills and removes the requirement for the proponent to use the existing approval processes. These two key points are expanded on below:

Displacement of relevant regulators

The TLC has concerns about the ability to maintain a fully comprehensive and transparent process following the establishment of the Draft Major Projects Bill. For each major project, a new Development Assessment Panel with a minimum of three to five members is selected by the Tasmanian Planning Commission for their expertise within the project area. However, this means that well-established regulators with experience in the assessment process may be displaced, in particular the TLC is concerned by the displacement of the Secretary of DPIPWE. To adequately replicate the displaced expertise, the new Development Assessment Panel would be required to have a very wide ranging understanding of the six separate Tasmanian Acts (*Land Use Planning and Approvals Act 1993*, *Environmental Management and Pollution Control Act 1994*, *Historic Cultural Heritage Act 1995*, *Nature Conservation Act 2002*, *Threatened Species Protection Act 1995* and *Aboriginal Heritage Act 1975*). Similarly, it would require the Development Assessment Panel to have an awareness of a vast amount of background knowledge, not necessarily brought forward by the proponent.

It is also unclear from the Bill whether the incorporation of the six fore-mentioned Acts will require their assessment to be undertaken in full or in a truncated version. If the assessment is undertaken in a truncated version, this will potentially allow for former triggers to protect cultural and environmental assets to be missed by a more generalised Development Assessment Panel. This will inevitably lead to unnecessary environmental damage.

Additionally, the TLC holds concerns about whether the small Development Assessment Panels can remain transparent and unbiased in their decisions, with no conflict of interest. There currently appears to be no process to ensure independence of decisions nor the ability to implement an appeal process for what are inherently very large projects.

Removal of approval processes

Development proposals that affect environmental and cultural assets are currently protected by the six separate Tasmanian Acts (listed above), requiring a number of approval processes to be completed, ranging from permits, licences, certificates to determinations. The TLC, as one of the largest private conservation landholders in Tasmania, has had the most experience with the *Nature Conservation Act 2002* and *Threatened Species Protection Act 1995*. The TLC highly values these approval processes, which protect our environmental and cultural assets for future generations. However, it is worth highlighting that despite these fore-mentioned Acts, a large proportion of Tasmanian threatened native vegetation or under-represented communities still remain unprotected. Additionally, in many cases the *Nature Conservation*

Act 2002 or Threatened Species Protection Act 1995 has not been strong enough to protect listed species or communities against ongoing degradation from development.

Consequently, the TLC has very strong concerns about further eroding Tasmanian environmental legislation by creating the Draft Major Projects Bill. Under this proposed legislation, if a project is granted a 'major project' permit, the proponent is no longer required to seek the appropriate approvals from the six fore-mentioned Acts. This erosion of Tasmanian legislation has the very real potential of creating negative environmental and cultural outcomes by not thoroughly assessing the potential impacts of the project, causing irreversible damage over the long-term for perceived short-term gains.

Tasmania is fortunate to still possess extensive native vegetation across our landscape, supporting iconic threatened species and communities, and providing important ecosystem services to the Tasmanian community. It is vital that Tasmanians continue to recognise the value of these ecosystems and provide the required development assessment processes to ensure that they remain intact for future generations.

In summary, the TLC believes that the *Draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2020* should be either reconsidered or substantially modified to (i) retain the rigorous approval processes from the superseded Acts, (ii) have more relevant regulators on the Development Assessment Panel that is chosen by an independent body, and (iii) provides for more transparent processes.

We hope that the submissions will lead to a meaningful opportunity to review the Draft Major Projects Bill and make substantial changes to ensure rigorous assessment processes are maintained to protect the natural and cultural heritage of Tasmania.

Sincerely,

A handwritten signature in black ink, appearing to read 'James Hattam', with a stylized flourish at the end.

James Hattam

Chief Executive Officer

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15th May, 2020

Submission from the Bob Brown Foundation to the *Land Use Planning and Approvals Amendment (Major Projects) Bill 2020* (Draft Bill)

Bob Brown Foundation opposes the *Land Use Planning and Approvals Amendment (Major Projects) Bill 2020* (Draft Bill) in its entirety because the bill proposes a shift to a less participatory and fundamentally undemocratic fast track for developers to by-pass the normally applied assessment standards and public participation mechanisms.

Our specific objections include:

1. The bill gives the Minister absolute power to declare projects as major projects, with reference to only eligibility criteria that seem to include every conceivable development. In effect, the Minister may at their whim decide that any project is a major project.
2. The bill facilitates the removal of the declared major project from normal processes within the Tasmanian planning system.
3. The bill allows the Minister to set the terms of the major project assessment, with the requirement that the Minister would “have regard to” guidelines that may be produced by the Tasmanian Planning Commission. This phrase “have regard to” has a particular meaning at law, and courts have held that its meaning is to give consideration to, but ultimately be free to create assessment guidelines that are contradictory to those produced by the Tasmanian Planning Commission.

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4. The bill does not preclude a major project assessment occurring on projects that had been refused through the local government planning authorities or the Planning Appeals Tribunal. It is conceivable that this process could be used to reassess failed projects while precluding assessment of matters that were fatal to their initial assessment.
5. The bill creates a body to replace the Projects of Regional Significance process without the checks and balances inherent in that system. The Tasmanian Government has failed to make an argument for why major projects should not remain within the Project of State Significance or Project of Regional Significance system, particularly given that the Project of Regional Significance process has never been used
6. The proposed Development Assessment Panels do not have to include anyone from the Tasmanian Planning Commission and are therefore open to inclusion of inexperienced assessors, and assessors who are not subject to the collegiate scrutiny and public accountability of the Tasmanian Planning Commission Commissioners.
7. The Major Project assessments will not only bypass the role of elected councils but will bind them to decisions contrary to the local planning scheme. Where the DAP approves a major project in contravention of a local planning scheme, the local council is required under the bill to amend the planning scheme to suit the DAP approval. This bypasses the normal community consultation processes inherent in planning scheme amendments and deprives affected resident and users natural justice. It will also serve as a back door option to developers where planning scheme amendments have been refused by the Tasmanian Planning Commission process.
8. The bill extinguishes rights to appeal and reduces community participation in the planning process for major projects. This is fundamentally anathema to our democratic processes and compounds the injustices detailed in points 4 and 7.
9. The granting of a major project permit removes the requirement for the following approvals:
 - (i) ordinary development permits under the *Land Use Planning and Approvals Act 1993* (Tas);
 - (ii) permits relating to level 2 activities under the *Environmental Management and Pollution Control Act 1994* (Tas);
 - (iii) heritage approvals under the *Historic Cultural Heritage Act 1995* (Tas);
 - (iv) permits, authorities, licences, certificates, determinations, permissions or other authorisations under the *Nature Conservation Act 2002* (Tas);
 - (v) permits, authorities, licences, certificates, determinations, permissions or other authorisations under the *Threatened Species Protection Act 1995* (Tas); and

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(v) permits, authorities, licences, certificates, determinations, permissions or other authorisations under the *Aboriginal Heritage Act 1975* (Tas).

- 10.** The bill is unnecessary, politically motivated and is likely to result in greater anxiety and delays around assessments.

Bob Brown Foundation strongly urges the withdrawal of the *Land Use Planning and Approvals Amendment (Major Projects) Bill 2020 (Draft Bill)*, and abandonment of this flawed agenda.



Scott Jordan
Bob Brown Foundation

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Friday, 15 May 2020

Planning Policy Unit
Department of Justice
GPO Box 825
Hobart TAS 7001

Dear Planning Policy Unit,

The Tasmanian Wilderness Guides Association (TWGA) welcomes the opportunity to comment on the *Draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2020*.

As an organisation that represents outdoor adventure tour guides, we are particularly concerned about how this legislation will impact on developments proposed for national parks and reserves. We are concerned this legislation will allow projects to circumvent the existing planning and approval processes without sufficient justification. Furthermore, it will exacerbate community frustrations regarding the perceived lack of transparency in the existing planning and approvals process, and consequently further undermine public trust in Tasmania's political and legislative institutions.

Our submission focuses on four aspects of the Bill which we see as problematic; these are:

- The definition of a 'major project' and the Minister's discretionary powers
- The exemption from existing planning and approval processes
- The diminishment of the role of local governments
- Public involvement in the major projects process

Introduction to the Tasmanian Wilderness Guides Association

TWGA represents the people who are the face of Tasmania's tourism industry - guides – as well as the places where we work – outdoor reserves, Wilderness World Heritage Areas, national parks, waterways, rivers, mountains and beaches. The TWGA formed in 2019 to provide a united voice for Tasmania's outdoor guiding community and to have a say in shaping a world class, unique and sustainable tourism industry in Tasmania. Our 69 members are employed by more than 14 tour operators working in Tasmania. Our membership is reflective of the diversity of guided tourism experiences in Tasmania. This includes guided day walks, expedition-style camping trips and lodge-based overnight walks.

The definition of a 'major project' and the Minister's discretionary powers

Outwardly, the major intention of the Bill is to facilitate the delivery of large public infrastructure projects. However, the criteria for what constitutes a 'major project' are sufficiently ambiguous that many projects that would not be considered to be large public infrastructure projects could also be deemed a 'major project,' and so be exempt from regular assessment processes.

The ambiguousness of the criteria is exemplified by the use of words such as 'significant' and 'strategic'. Deciding whether a project makes a **significant** financial or social contribution to a region

or the State, or whether a project has **significant** environmental, economic or social effects is a subjective decision. Without clear guidelines as to what makes something significant, there is too much scope for the Minister to apply this proposed legislation to a wide range of projects that would go beyond the supposed intention of the legislation.

Based on the information available on the Tasmanian Government's website, it is our understanding that it will be up to the Tasmanian Planning Commission to provide guidelines to quantify the eligibility criteria. TWGA is asking that the guidelines be made publicly available and that the community be given the opportunity to provide comment on these guidelines.

It is also our understanding the Minister will be required to prepare a report stating the reasons for their decision on the eligibility of a proposal to be assessed as a major project. TWGA believes this report should be made publicly available and there should be an opportunity to contest a decision (including by third parties).

The exemption from existing planning and approval processes

TWGA is concerned the Bill will allow for the issuing of a major projects permit even if the project would not ordinarily be approved under the relevant planning scheme. Furthermore, should the Development Assessment Panel approve a project that would have failed under the relevant planning scheme, this legislation means the planning scheme can be retrospectively amended to remove the inconsistencies. TWGA's concern is that should developers have projects refused by the Tasmanian Planning Commission following council assessment, they may choose to seek Major Project status and so circumvent the Tasmanian Planning Commission. This undermines the role of the Tasmanian Planning Commission and subverts the integrity of the legislation it oversees.

TWGA is also concerned about what the exemption from existing permit processes will mean. As we understand the Bill, a relevant regulator may only direct the Development Assessment Panel to refuse a major project permit if the relevant regulator is satisfied that, were the project not a major project, the relevant regulator would refuse the project a permit under the permit scheme for which it is responsible. Similarly, regulators can only impose conditions on a major project permit if the relevant regulator is satisfied that, were the project not a major project, a discretionary permit would be granted subject to conditions under the permit scheme for which it is responsible. Our concern is that the process by which the relevant regulator may arrive at this state of satisfaction is unclear. Although the Tasmanian Government's advice is that the regulators will conduct their assessment of a major project "in accordance with their normal obligations", on our reading, the Bill does not indicate whether the regulator is required to comply with the procedures prescribed by its associated Act or whether a different and possibly shorter assessment process is acceptable. We believe the Bill should be explicit in requiring regulators to conduct major project assessments of whether a permit should be granted/refused/granted with conditions attached as per the approval process established in the relevant regulator's Act and/or regulations.

The diminishment of the role of local governments

TWGA is concerned the Major Projects Bill will significantly diminish the role of local government as a planning authority. This is because the assessment procedure outlined in the proposed legislation excludes councils from being considered as a 'participating regulator'.

While we acknowledge that a local government representative will sit on the Development Assessment Panel and be able to provide their perspective, this is very different from being considered as a regulator, whose advice must be followed by the Development Assessment Panel.

One of the reasons for taking control out of the hands of local government for major projects appears to be that the major project process is intended to consider projects that cross council areas. This is made clear in the “Fact check update” information available on the Tasmanian Government’s website:

The Major Project process...is intended to consider complex large scale projects that are contained in more than one council area or their effects will reach beyond a single council area. As such, the Major Project process intends to examine the broader regional issues of projects rather than being limited to the local planning issues.”

Given this clarification of the reason for the legislation, TWGA believes it would be appropriate for the guidelines as to what constitutes a ‘major project’ to include that the project must cross council areas and/or have effects that cross council areas.

Public involvement in the major projects process

TWGA is concerned this Bill does not provide adequate opportunities for the public to provide input and appeal decisions made by the Development Assessment Panel to approve a major project.

In regards to opportunities for the public to provide input, TWGA is concerned the public will only have the opportunity to provide feedback on assessment guidelines in cases where the major project is ‘reasonably likely’ to require approval under the *Environmental Protection and Biodiversity Conservation Act 1999 (Cth)* or where the proponent is likely to have a bilateral agreement. Given the assessment guidelines are the criteria by which a major project permit is granted or refused, TWGA believes the public should be given the opportunity to provide feedback on the formulation of the assessment guidelines for all major projects.

In regards to third party appeal rights, TWGA is concerned the only avenue open to the community is judicial review through the Supreme Court. This is an inhibitive expensive process that will exclude the majority of people from even considering appealing a decision to grant a major project permit or the Minister’s decision to declare a major project. While we can understand the Tasmanian Government’s logic in saying that “Providing an appeal to RMPAT [Resource Management and Planning Appeal Tribunal] against the Independent Panel’s determination would be like having one expert panel testing the decision of another expert panel”, we would say this a result of the process the Tasmanian Government has chosen to put in place and should not be used as an excuse for reducing avenues for the community to appeal such important decisions.

Thank you again for the opportunity to contribute to the *Draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2020*. We trust our comments will be taken on board when considering the need for this legislation in its current form.

Yours sincerely,



Kate Johnston

on behalf of the Tasmanian Wilderness Guides Association



**Friends of
the Earth
Australia**

Submission on the Draft Tasmanian Major Projects Bill

We appreciate the opportunity to make a submission regarding the Tasmanian Major Projects Bill.

Friends of the Earth (Australia) Inc is a national membership based environmental organisation that has been active across the country for more than 45 years.

It is clear that this Bill, if passed in it's current form, will privilege the interests of developers over that of the community. It would weaken the ability of the community to be involved in decision making on major projects, and can be expected to threaten the wild places of Tasmania that are such a drawcard for both domestic and international tourism.

We oppose the Draft Tasmanian Major Projects Bill (MPB) in it's current form for the following reasons and recommend that this legislation be abandoned.

The Government would be given too much power when declaring major projects

The Major Projects Bill gives the planning minister power to declare a 'major project', which will remove it from the normal local council planning process. The Tasmanian Planning Commission 'may' produce guidelines but even if they do the minister only has to "have regard to" them and doesn't have to follow them.

Any project which has been refused by a council or the Planning Appeals Tribunal could be later declared a major project and potentially approved. Used in this way, the legislation greatly reduces the relevance of the Planning Appeal Tribunal and undermines community and local government involvement in decision making.

Virtually any project could be a major project

The eligibility criteria in the Bill are so broad and open to interpretation by the minister that they could justify declaring almost any development that had the support of the government as a major project.

It would allow for the fast track of controversial projects

There are strong and ongoing campaigns against over development in national parks, World Heritage and other wild places. Many in the community believe that wild places should be protected from development, and commercial operations like tourism infrastructure should occur outside the park network.

Proposals like the Lake Malbena Helicopter project and other developments in the World Heritage Area and cable cars proposed for kunanyi/ Mt Wellington, Mt Roland and Cataract Gorge could all be declared 'major projects' in order to override sustained community opposition. Many of these are complex, controversial projects and simple 'fast track' approaches are likely to miss many important aspects during the approvals process.

As one example of this, the proponent wanting to build a cable car on kunanyi/ Mt Wellington has not produced a proposal with enough detail to meet the threshold required for it to be assessed under current rules. This legislation would allow government to pull it from the local council assessment and have new rules and a draft assessment written by a special panel, all without the public having a say.

Development Assessment Panels are not independent

There are currently checks and balances that apply to the Tasmanian Planning Commission that ensures it operates in an independent, transparent and evidence-based manner. This has built a high level of community trust in the planning process.

In contrast, there would be insufficient checks and balances on the Development Assessment Panel under the proposed legislation.

Independent Tasmanian Planning Commission is sidelined

It appears that the independent Tasmanian Planning Commission will not be assessing and approving major projects. All the power to assess and approve developments would be given to a Development Assessment Panel that may include no Tasmanian Planning Commission person.

The only safeguard that exists is that the development assessment panel members must be approved by the independent Tasmanian Planning Commission but this could change after the government's current review of the Commission.

No justification for more major projects or fast tracking powers

Tasmania doesn't need more fast tracking powers. The government already has the Projects of Regional Significance process and Projects of State Significance legislation which provide credible processes for large and complex projects – for instance the Basslink cable.

No right of appeal and limited community input

The community will have no right to appeal against the approval of a major project and will have limited right to have input. Appeal rights provide the community with an

avenue to have bad decisions reviewed and removing appeal rights for major developments greatly weakens our democracy.

Local councils will be side-lined

The Major Projects Bill allows the minister to take developments away from local councils. Elected councillors will not have a say over approval of major projects. The DAP members are unelected and the community will not be able to lobby them or vote them out.

Planning scheme changes can be forced on councils and communities

Under the proposed legislation planning scheme amendments can be forced on councils and communities. A major project can be approved that is inconsistent with a planning scheme and, after the permit is issued, the Tasmanian Planning Commission must amend the planning scheme to remove any inconsistency.

If developers have planning scheme amendments refused by the Tasmanian Planning Commission, they could go through the major projects process and have the Commission's decision overturned. The legislation subverts the role of the Commission in the same way as it subverts the Planning Appeal Tribunal.

May 2020

Louise Sales,
Friends of the Earth



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Members Braddon Branch of the Greens
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15 May 2020

Re: Major Projects Legislation –
The draft Land Use Planning and Approvals Amendment
(Major Projects) Bill 2020

To whom it May Concern,

We understand that this Bill was released for public comment on March 3 2020 and proposes significant changes to the current planning and approvals process. Once a proposed development is declared a 'major project' a local government would no longer act as the planning authority, and exemptions would apply from existing regulatory schemes established in legislation such as: the Environmental Management and Pollutions Control Act 1994, the Threatened Species Protection Act 1995, the Aboriginal Heritage Act 1975 and the Land Use Planning Approvals Act 1993.

If this bill passes into legislation it will have a radical and negative effect on the integrity of the Tasmanian planning system. It creates a new category of 'major projects' that could be approved via a streamlined process, which bypasses the normal checks and balances provided by local government and regulatory schemes. It establishes an approval process that lacks independence, expertise and the opportunity for appeal.

We do not support legislation that would take decision-making away from existing planning authorities, and limit the opportunity for the communities to have their say.

Our specific concerns in regard to this bill are–

- The consultation process for the Bill has excluded most Tasmanians.
- The information provided with the Bill is profoundly misleading, and key elements of the process have-not been accurately articulated. The proposed legislation is likely to undermine and /or completely remove existing and critical planning processes.
- The need for and purpose of a Major Projects process is completely unclear and not convincingly defended.
- The proposed Panel holds too much power, critical decisions cannot be appealed, and there is a lack of strong integrity safeguards.
- Removing councils, and through them local communities, from local planning decisions (and through them local communities) lacks integrity and is unnecessary and would appear to be political in motivation.

Genuine debate and consultation

We in regional Tasmania share the Greens Planning spokesperson Rosalie Woodruff's MP concern about proper consideration and consultation processes. The consultation process for this Bill has locked out most Tasmanians, in light of the COVID-19 pandemic, therefore this short period has now become untenable. The COVID-19 global crisis, and the restrictions now in place across Tasmania, will continue to dramatically alter everyone's lives for months into the future. With expected substantial disruptions for most Tasmanians, we must adapt to the crisis and ensure proper consideration and consultation processes can be ensured for bills of such importance.

We understand that the Government refused to provide a meaningful extension for this consultation period to account for the COVID-19 pandemic impacts, despite the important democratic functioning of parliament being effectively suspended until mid-August.

We understand that the proposed May 2020 date for the debate of this Bill in parliament is now not achievable given the State parliamentary calendar. For genuine and extensive consultation to occur, the consultation the deadline should have been significantly increased. The review of the Tasmanian Planning Commission is due to be completed by 30 June 2020. Should the report of that review recommend significant changes to the structure, function or operation of the Commission and its governing Act, any consultation process around these should also be extended in light of the COVID-19 crisis.

Misleading information provided by government about the Bill

The supporting information provided with the Bill has been most inadequate, some of it is deeply misleading, and key elements of the Bill's purpose and process have not been accurately explained.

We are concerned the Department's Fact Check material, developed for the consultation, avoids disclosing these two vital details about the Bill: (1) normal planning assessment guidelines are avoided; and (2) project-specific assessment guidelines are developed. The Fact Check strongly implies that major projects would be subject to the same regulatory assessments as regular projects, when this is not the case. As we understand there are three existing assessment processes for major development proposals:

- a) Projects of State Significance under the *State Policies and Projects Act 1993 (POSS)*, for projects with significant capital investment, state-wide impacts or complex design;
- b) Projects of Regional Significance under the *Land Use Planning and Approvals Act 1993 (PORS)* for larger and more complex projects that do not qualify as a POSS but have impacts across council boundaries and regions;
- c) Major Infrastructure Development Approval (**MIDA**) for major linear infrastructure projects e.g., road, railway, power-line, telecommunications cable or other prescribed infrastructure;

The draft Bill replaces and substitutes the PORS process. Due to the breadth of the eligibility criteria for a major project declaration, the draft Bill is also likely to displace the POSS and MIDA processes. If a major project permit is granted, there are important consequences for other regulatory regimes' application to the project:

- the normal development permit process under the *Land Use Planning and Approvals Act 1993* (Tas). Section 51 of the *Land Use Planning and Approvals Act 1993* (Tas) does not apply to the project.
- the Commission must amend the relevant planning scheme(s) to remove any inconsistency between the major projects permit and the scheme;
- there is no need for the proponent of the project to separately obtain permits relating to activities authorised by the major project permit under the following Acts:
 - the *Environmental Management and Pollution Control Act 1994* (Tas) (in relation to level 2 activities);
 - the *Historic Cultural Heritage Act 1995* (Tas);
 - the *Nature Conservation Act 2002* (Tas);
 - the *Threatened Species Protection Act 1995* (Tas); and
 - the *Aboriginal Heritage Act 1975* (Tas).

Essentially, if a major project permit is issued, the assessment processes under other regulatory regimes that would normally apply to a project **do not**.

In summary, the Draft Bill would:

- a) Give the Planning Minister the power, in certain circumstances, to declare a project to be major project.
- b) Repeal and replace the PORS process in div 2A of pt 4 of the *Land Use Planning and Approvals Act 1993* (Tas);
- c) Establish a new assessment process for major projects, to be conducted by a “Development Assessment Panel”, being a new panel appointed by the Tasmanian Planning Commission for each major project. The Development Assessment Panel coordinates input from “relevant regulators” and may grant a major project permit for a project if the project meets certain criteria and none of the relevant regulators have directed a refusal;
- d) Displace existing approvals and establish “relevant regulators” who have input into the assessment and approval of a major project. These bodies are the EPA Board, the Tasmanian Heritage Council, the Secretary of DPIPWE and the Director of Aboriginal Heritage Tasmania, TasWater and TasNetworks. A local council and the Aboriginal Heritage Council are **not** relevant regulators.
- e) If a project is granted a major project permit, it would obviate the need for the proponent to obtain the following approvals (listed below) separately, as they would otherwise be required in relation to the project:
 - (i) ordinary development permits under the *Land Use Planning and Approvals Act 1993* (Tas);
 - (ii) permits relating to level 2 activities under the *Environmental Management and Pollution Control Act 1994* (Tas);
 - (iii) heritage approvals under the *Historic Cultural Heritage Act 1995* (Tas);

(iv) permits, authorities, licences, certificates, determinations, permissions or other authorisations under the *Nature Conservation Act 2002* (Tas);

(v) permits, authorities, licences, certificates, determinations, permissions or other authorisations under the *Threatened Species Protection Act 1995* (Tas); and

(v) permits, authorities, licences, certificates, determinations, permissions or other authorisations under the *Aboriginal Heritage Act 1975* (Tas).

In other words, the grant of a major projects permit has the result that the regulatory schemes established under the Acts listed at (c)(i) – (c)(ii) above **do not** apply to the project, rather the assessments that are normally carried out under those regulatory schemes are to an extent integrated into the major projects permit assessment. What the Bill does not make clear, though, is whether the integration of other assessments into the major projects permit incorporates fully or truncates the usual assessment process under those Acts.¹

Why do Tasmanians need this Bill?

The government has not articulated the need for a Major Projects process. The only reference to why Tasmania needs this legislation is: “The Major Projects process is needed to deal with development proposals of impact, planning significance or complexity”. This is a statement with no elaboration or justification. There has been no attempt to outline why the current Land Use Planning and Approvals Act 1993 (LUPAA) planning process fails to satisfactorily assess proposals of impact, planning significance or complexity. There is no explanation for how the proposed new Bill would enable a more satisfactory process.

There are fifteen potential permutations of project criteria that could occur under the project-specific criteria proposed. Many are significantly different to the others, but each possible combination would be assessed under the same framework and outside the local planning scheme. The inescapable conclusion is that this process has been designed to fast-track approvals for a wide-range of projects that would normally be knocked back—either because they would be prohibited within local planning scheme, or not approved for other reasons. This is a purpose that is not articulated, nor defended in the information about the Bill.

No decision can be appealed

The Development Assessment Panel holds too much unchecked power; critical decisions made by the Panel cannot be appealed; and there is a lack of strong integrity safeguards. Despite consultation requirements and some degree of prescription from regulators regarding the assessment guidelines, ultimately the Panel is able to determine the guidelines for assessing each project. This decision cannot be appealed.

Removing councils from planning decisions

Removing councils from planning decisions would seem to be a political decision that undermines principles of good planning and community participation. The allegation that some matters are too complex for councils to consider is condescending and irrational. This claim appears to be a political one, and seems to be an excuse for the Government to reach in and take control of planning decisions for developments the Government supports but a council and its community may not. Councils do in fact have access to the same expert

¹ Extracts from The Environmental Defenders Office Tasmanian Draft Major Projects Bill
Last updated 30 April 2020 <https://www.edo.org.au/publication/tasmanian-draft-major-projects-bill/>

skills as the proposed Major Projects' Panels. Councils develop planning provisions with local expertise and in consultation with the community. Allowing a Development Assessment Panel to override these provisions undermines community participation in planning

We recommend the Draft Bill be withdrawn.

Yours sincerely

Vicki Carman-Brown

Paul O'Halloran

Tom Kingston

Carol Donaghey

Richard Donaghey

Sally O'Wheel

Mary Anne McDonald

Members of the Braddon Greens



Environmental
Defenders Office

Submission re. Draft *Land Use Planning and Approvals Amendment (Major Projects) Bill 2020*

May 2020

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

Environmental Defenders Office is a legal centre dedicated to protecting the environment.

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I. Introduction

- 1 Environmental Defender's Office Ltd (**EDO**) welcomes the opportunity to comment on the Draft *Land Use Planning and Approvals Amendment (Major Projects) Bill 2020 (Draft Bill)*.
- 2 The EDO raises the following concerns about the Draft Bill:
- (a) there is no demonstrated need for the reforms that would be implemented by the Draft Bill;
 - (b) the eligibility criteria for a major project declaration are broad that many projects would be eligible;
 - (c) public participation rights are limited, particularly insofar as public comment is only invited *after* the Development Assessment Panel (**DAP**) has published its preliminary assessment report,¹ the timeframes for public hearings, and that a major project declaration displaces merits review rights;
 - (d) there are ambiguities around the way in which relevant regulators are required to contribute to the assessment of a major project;
 - (e) the Draft Bill would enable a project proponent to “forum-shop” as between available assessment processes.
- 3 We expand on each of these matters below.
- 4 There are elements of the Draft Bill that, insofar as there is a separate environmental impact assessment required, we would support. That includes the “no reasonable prospect” test, that public hearings are mandatory and that there has been no attempt to exclude judicial review, and the role of relevant regulators in particular the EPA.
- 5 However, the combined effect of each of our criticisms results in our conclusion that the Draft Bill should not be progressed in its current form.
- 6 We make recommendations for reform at paragraph [108] that address what we perceive as the intended purpose of this legal reform, insofar as that intention has been expressed, ambiguities about the assessment process and limits placed on public participation.
- 7 We are open to proactively working through these recommendations with the Department of Justice should that assist and answer any questions about the matters raised in this submission.
- 8 We are aware that the Draft Bill will repeal and replace the existing Projects of Regional Significance process in the *Land Use Planning and Approvals Act 1993 (LUPA Act)*. We acknowledge that some of the criticisms we make of the draft Bill – in terms of criteria for decision-making, the governance issues with a Development Assessment Panel and lack of merits review rights – are criticisms we might also make of the PORS assessment process.
- 9 However, if the intention is to improve the PORS process, then this is an opportunity to improve those aspects of the process, not simply to replicate them. To our knowledge, the PORS process has never been used and its elements are untested. In improving the PORS process, it will give greater social licence and trust in the PORS process, will be more likely

¹ Acknowledging public comment on assessment guidelines *may* be called for if approval under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* is likely to be required.

to be accepted, and thus more likely to be utilised. We ask that our comments be considered in that light.

- 10 Further, we do not consider that the direct comparison with the PORS process is apt, because the criteria for declaration of a project is broader and has the potential to displace other assessment processes – namely the Projects of State Significance process under the *State Policies and Projects Act 1993*. Again, there are criticisms we might make of that process – the lack of mandatory hearing, the restriction on merits review and the purported exclusion of judicial review – but there are also positive elements, eg, it is an integrated environmental impact assessment process carried out by the Commission with Parliamentary oversight on project declaration and approval, and in practice has included public hearings.
- 11 Our assessment of the Draft Bill is as introducing a new assessment process, because in any practical sense, it would be a new process.

II. Need for reform?

- 12 There are three existing planning processes that major projects are apt to be assessed under:
- (a) the integrated assessment process for projects of state significance (**POSS**) under the *State Policies and Projects Act 1993* (Tas) (**SPP Act**);
 - (b) assessment of projects of regional significance (**PORS**) by a DAP under Div 2A of Pt 4 of the *Land Use Planning and Approvals Act 1993* (Tas) (**LUPA Act**); and
 - (c) assessment of linear infrastructure under the *Major Infrastructure Projects Assessment Act 1999* (**MIDA Act**).
- 13 These processes displace the usual assessment processes under Parts 3 and 4 of the LUPA Act:
- (a) assessment by local government under Div 2 of Pt 4 of the LUPA Act, including by the EPA as a Level 2 assessment;
 - (b) assessment by a combined planning permit/ planning scheme amendment under the former Part 3 and the current Part 3B of the LUPA Act.²
- 14 The Draft Bill would replace the PORS assessment process³ with a process that is, given the breadth of the eligibility criteria for the making of a major project declaration (see [11]-[27] below), conceivably applicable to PORS, POSS, MIDA, and therefore also Part 4 planning permits and combined planning permits/planning scheme amendments.
- 15 It is our observation that, to date, the policy considerations that purportedly underline this reform are unclear.
- 16 The Department of Justice Planning Reform website cites the following as justifying the Draft Bill:

The Major Projects process is needed to deal with development proposals of impact, planning significance or complexity. It is particularly suited to large public infrastructure projects such as

² Under both the former Part 3 as at 15 December 2015 which remains in force for all municipalities, and Division 4 of Part 3B of the LUPA Act, for the amendment of Local Provisions Schedules.

³ Draft Bill, cl 11.

the proposed new Bridgewater Bridge, or large renewable energy projects including windfarms and pumped hydro networks.

...

The new process will provide the community with the confidence that proposals will undergo a rigorous assessment by independent experts, with opportunities for public input.

It will also provide greater certainty for developers with a coordinated approach for multiple permit assessments, set timeframes and a 'no reasonable prospect test' early on to avoid unnecessary costs associated with assessing projects that are clearly not likely to be approved.

The coordinated permit process ensures that all development-related approvals for a project are assessed concurrently, ensuring potential problems can be discovered early.⁴

17 The PORS, POSS and MIDA assessment processes are also intended to deal with projects of significant impact and complexity.⁵ There is no indication as to why the POSS, PORS or MIDA assessment process (or even the usual local government assessment process) are inadequate or ill-equipped to deliver on that intention. In particular, the POSS process provides for a co-ordinated and concurrent approach to assessment where multiple permits would (but for the project being assessed under those processes) otherwise be required. There is no demonstrable systemic failure of the existing processes to deliver the outcomes to which the Draft Bill is directed.

18 In the absence of any explanation of the policy underpinning of this reform, it is both difficult to judge whether the Draft Bill achieves its purpose (that purpose not having clearly been articulated) or whether the Draft Bill is a proportionate and pragmatic method to achieve that purpose.

III. Breadth of eligibility criteria

19 For a project to be eligible to be declared a major project under the Draft Bill, the Minister must be satisfied that that the project has 2 or more of the following attributes (**Eligibility Criteria**):

- (a) the project will make a significant financial or social contribution to a region or the State;
- (b) the project is of strategic planning significance to a region or the State;
- (c) the project will significantly affect the provision of public infrastructure, including, but not limited to, by requiring significant augmentation or alteration of public infrastructure;
- (d) the project has, or is likely to have, significant, or potentially significant, environmental, economic or social effects;
- (e) the approval or implementation of the project will require assessments of the project, or of a use, development or activity that is to be carried out as part of the project, to be made under 2 or more project-associated Acts or by more than one planning authority;
- (f) the characteristics of the project make it unsuitable for a planning authority to determine.

20 These eligibility criteria are very similar to the current eligibility criteria for a PORS declaration under s 60C of the LUPA Act (**PORS Eligibility Criteria**). That is to be expected,

⁴ Planning Policy Unit, 'Major Project Assessment Reform', *Tasmanian Planning Reform* (Web Page, 7 May 2020) < <https://planningreform.tas.gov.au/major-projects-assessment> >

⁵ See, e.g. the eligibility criteria for a POSS under the SPP Act, s 16(1) and the eligibility criteria for a PORS under s 60C(1)-(3) of the LUPA Act

given the Draft Bill would substitute the major projects process for the existing PORS process.

- 21 However, the Major Project Eligibility Criteria are broader than the PORS Eligibility Criteria so far as they encompass projects of *State* significance, as well as regional. It follows that while the Draft Bill does not purport to repeal or replace the existing POSS assessment process under the SPP Act, the displacement of that process is the likely (or at least possible) practical outcome.
- 22 The breadth of the Major Project Eligibility Criteria is such that many large or controversial developments could be eligible for a major project declaration. On our analysis, they would include major infrastructure projects, any Level 2 activity usually assessed by the EPA (except salmon farms), but also potentially include high rise buildings, prisons, large suburban/rural development or subdivision, and development in national parks and reserves. This is because many of these projects would (or may) require 2 or more project-associated permits, and satisfy the criteria of making a “significant financial or social contribution to a region or the State”: cl.60K(1)(a) and (c).
- 23 We are aware that other jurisdictions (e.g. NSW and Victoria) have major project legislation with eligibility criteria referring to *State or regional* significance. However, a criterion of “regional significance” in NSW is a very different type of project to “regional significance” or “financial contribution to a region” in a Tasmanian context. In a jurisdiction of the size of Tasmania, a test of “significant financial contribution to a region” is potentially able to be met on an economic basis for any relatively large development, such as a large tourism development or even subdivision, and “social” significance for projects such as the Westbury prison.
- 24 If the intention of the Draft Bill is to address infrastructure projects such as the Bowen Bridge, pumped hydro power or wind farms, **we recommend that this intention should be clearly articulated and the eligibility criteria should be targeted to such projects.**
- 25 The broad scope of declaration power has the potential to lead to additional conflict in the community, as it invites speculation as to whether a project currently being assessed will be “called in” for major projects declaration. Likewise, it encourages proponents to forum shop between local and State government. It gives an impression of an “inside track” for developers, and has the potential to instill a level of distrust in planning. The creation of distrust and disruption to the planning process is likely and probable, in our experience in other jurisdictions in which our lawyers have practiced.
- 26 We note that the Commission *may* produce “determination guidelines” to which the Minister is to “have regard” in making his decision. However, as drafted, the Commission is not *required* to prepare the guidelines. **We recommend that, at a minimum, the guidelines under cl.60J must be prepared before any project can be declared.**
- 27 In NSW, the criteria for State and regional significance are objective. A State Environment Protection Policy declares what categories of projects are State significant development. The Minister only has a discretion to declare a project to be State significant development where it is on land identified in a SEPP, and the Minister has “obtained and made publicly available advice from the Independent Planning Commission about the State or regional planning significance of the development”.

28 Whether development is of State significance for the purposes of the *Environmental Planning and Assessment Act 1979* (NSW) is determined by reference to the *State Environmental Planning Policy (State and Regional Development) 2011*. An example of the eligibility criteria for “cultural, recreation and tourism facilities” is as follows:⁶

...

Development for other tourist related purposes (but not including any commercial premises, residential accommodation and serviced apartments whether separate or ancillary to the tourist related component) that—

- (a) has a capital investment value of more than \$100 million, or
- (b) has a capital investment value of more than \$10 million and is located in an environmentally sensitive area of State significance or a sensitive coastal location

29 Or, for “electricity generating works and heat or co-generation”, the criterion is:⁷

Development for the purpose of electricity generating works or heat or their co-generation (using any energy source, including gas, coal, biofuel, distillate, waste, hydro, wave, solar or wind power) that—

- (a) has a capital investment value of more than \$30 million, or
- (b) has a capital investment value of more than \$10 million and is located in an environmentally sensitive area of State significance.

30 The capital investment value provides an objective description of development that falls within the major projects assessment process. The scheme does not rely on Ministerial discretion, and instead provides both industry and the community with clarity about what projects are eligible. This system has been in place for some years, the NSW State Liberal Government reverting to SSD in 2011 after repealing the former Labor Government’s controversial “Part 3A” major projects assessment process.

31 While there are elements of the NSW system that would not automatically translate to Tasmania, there are benefits in providing certainty over what is State significant development, in the same way that Level 2 projects are prescribed. The policy position as to whether the declaration is automatic or whether there ought to be discretion is one that requires further consideration. We would be open to that discussion once the criteria have been produced.

32 **EDO recommends that criteria be designed to capture the types of projects to which the process applies and for those criteria to be in the legislation.** If it is not the intention to capture subdivision, residential apartments, tourist development in parks and reserves, or others, these can be ruled out by properly designed assessment criteria – designed to achieve the purpose of the legislation. Specifying criteria in this fashion will provide certainty to the development industry and investors, and to the community and assist in both preventing conflict and providing legitimacy to the process.

33 We note the current major projects declaration criteria would allow any Level 2 activity to be declared a major project. If it is the intention to take projects out of the EPA assessment process, this intention needs to be explicitly stated and reason given. There is no public policy basis articulated in the documents before us for removing EPA Level 2 assessments

⁶ *State Environmental Planning Policy (State and Regional Development) 2011* (NSW), sch 1 cl 13.

⁷ *State Environmental Planning Policy (State and Regional Development) 2011* (NSW), sch 1 cl 20.

from the usual process through local councils and merits review in the Resource Management and Planning Appeal Tribunal (**RMPAT**).

IV. Public consultation and displacement of merits review

- 34 Certain features of the Draft Bill are likely to restrict public participation and consultation in relation to projects the subject of a major project declaration. The relevant features of the Draft Bill are:
- (a) public consultation on draft assessment guidelines is only mandatory where the project is reasonably likely to require Commonwealth approval under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (**EPBC Act**) and the proponent is likely to seek to have a bilateral agreement apply to the project;
 - (b) public notice takes place *after* a DAP has prepared its draft assessment report;⁸
 - (c) public hearings must take place within constrained time frames unless an extension is approved by the Minister; and
 - (d) there is no provision for merits review of a DAP's decision to grant a major project permit; and
 - (e) the scope of project declaration power has the potential to displace merits review rights for a large number of projects.

Draft Assessment Report

- 35 The matter at [25(b)] is a standalone issue. Consultation with the public (i.e. by the making of representations under s 60ZZD and the holding of hearings under s 60ZZE) takes place after the preparation of the DAP's draft assessment report.⁹¹⁰ In our submission, there are issues of prejudgment inherent in a process that requires a decision-maker to essentially come to a decision prior to inviting public comment. The inevitable result of that process is that public submissions must, to have a meaningful impact, dissuade the DAP from adopting a position that it has already determined is the correct one. And, given that the DAP must rely on the relevant regulator's advice as to whether a permit should be issued and, if so, on what conditions, the public must also dissuade those regulators from their previously expressed positions. The process strays perilously close to a legislative endorsement of the decision maker adopting a process that at common law could be characterised as being affected by apprehended bias.¹¹ **We recommend this be reviewed with a view to resolving that issue.**

Hearing timeframe

- 36 The matters at [25(c)], [25(d)] and [25(e)] are interrelated. The timeframes in relation to public consultation under the Draft Bill (see [68] above) are longer than, for example, the time frames relating to consultation in relation to planning permits under Div 2 of Pt 4 of LUPAA. But to consider this a sufficient guarantee of public participation ignores the matter

⁸ We acknowledge this is the process provided for in the POSS process.

⁹ Draft Bill, s 60ZZA.

¹⁰ The Panel's draft assessment report is in essence its preliminary conclusion as to whether or not a major project permit should be granted in respect of the project. It incorporates all relevant regulator's preliminary advices.

¹¹ See, e.g. *Minister for Immigration and Multicultural Affairs v Jia Legeng* (2001) 205 CLR 507 at [95].

at [25(d)] – that the Draft Bill does not provide a right to seek merits review of a decision to grant a major project permit. This is in stark contrast to the right to seek merits review (a planning appeal to RMPAT) in relation to the grant of a discretionary planning permit under Div 3 of Pt 4 of LUPAA.

- 37 The result is that *all* evidence going to the *merits* of the Panel’s decision must be prepared and provided within the representation period - 28 days (although conceivably further evidence could be provided by experts etc. during the hearings where an extension is given by the Minister). In contrast, in relation to a discretionary planning permit under Div 2 of Pt 4 of LUPAA, a person wishing to contest the grant of a permit on the merits could provide evidence during the 14-28 day¹² public exhibition period *in addition* afforded an opportunity to lead and cross-examine evidence through the fair hearing processes of the RMPAT planning appeal procedure.
- 38 Further, and critically, the Draft Bill requires public hearings to be held within 28 days of the end of the public notice period, unless the Minister approves an extension of time. While an extension may be granted, one would reasonably expect that the intention of such a timeframe is to constrain hearing times and that there is a legitimate expectation arising that both the DAP and the Minister would exercise that power cautiously. This analysis is necessarily hypothetical, but there is clear intended restraint. What this would mean in practice is that, if hearings were held within 28 days of the end of the notice period, the DAP will need to call a hearing within 2-3 weeks of the end of a notice period, to allow for a hearing of 1-5 days. It would need to send letters/emails out within 7 days, with a hearing held within 14 days of receipt of notice.
- 39 This is an insufficient time in which to prepare and provide all relevant evidence and submissions going to the merits of the Panel’s decision, particularly for a large and complex project. It is likely that there will be no (or at least, very limited) opportunity for the exchange of evidence between representors and proponent. The time frame will also limit the ability of representors to engage and brief experts and/or legal representatives. To the extent further information in relation to a representation is required by the DAP to properly assess a representation, there will be limited time for the DAP to request, and the representor to prepare, additional information. Indeed, there is limited time for the DAP to have even read submissions before the hearing, and one must reasonably assume there would be constraints on cross-examination or other procedural rights, in order to ensure the hearing is completed within the 28 day period. In our view, there is little to no prospect of a fair hearing being held within that timeframe.
- 40 **We recommend that the restriction on hearing timeframes be removed from the Draft Bill.** If the DAP is to run a fair hearing process, the DAP must be allowed to run that process in a fair way consistent with procedural fairness obligations.
- 41 These limits on public rights are likely to disproportionately affect the most vulnerable in our community. We are concerned that people not educated in or afforded access to legal and expert services will be prevented from meaningful participation in these processes. Vulnerable people do not have the resources or connections to experts, and are not experienced in public hearing processes to be fairly heard in those timeframes.

¹² Noting that a planning authority may extend the public notice period, and in practice councils have used this power to extend the period up to 28 days for complex projects.

42 In particular, the notice and hearing process is the only way in which Tasmanian Aboriginal people have any voice in a major projects approval process, the Draft Bill displacing, in relation to a major project, any obligation to consult the Aboriginal Heritage Council in relation to permits under the *Aboriginal Heritage Act 1993* (Tas).¹³ The constraint on hearings is likely in our experience to disproportionately impact Aboriginal people who may be affected by a project. This is of consequence in circumstances where the consequence of a major projects permit is that a right to damage or destroy cultural heritage is granted.

43 In view of the complexity of projects likely to attract the major project approvals process under the Draft Bill, our view is that the hearing timeframe should be removed. A requirement that hearings be held within 28 days of the close of public notice will substantially constrain public participation and will not allow for a full hearing.

Purpose of merits review

44 The scope of the project declaration power means that the Draft Bill has the potential to displace merits review rights for a wide range of projects. Merits review is a crucial element of our system of law, and such rights should not be removed lightly.

45 At a very basic level, the purpose of merits review is to restore and promote trust and integrity in the planning and environment system and reduce conflict. The benefits of merits review are widely recognized as improving consistency, quality and accountability in decision-making. The benefits have been described as:¹⁴

- enhancing the quality of the reasons for decisions;
- providing a forum for full and open consideration of issues of major importance;
- increasing the accountability of decision makers;
- clarifying the meaning of legislation;
- ensuring adherence to legislative principles and objects by administrative decision makers;
- focusing attention on the accuracy and quality of policy documents, guidelines and planning instruments; and
- highlighting problems that should be addressed by law reform.

46 The Law Council of Australia recently made submissions supporting an increase in merits review rights under the Federal environmental law, the EPBC Act, saying:

Merits review is an essential tool to improve the rigour and transparency of upfront administrative decision-making and drives overall system efficiency.

47 The Commonwealth Government's Administrative Review Council sets out principles for how to decide whether a decision should be capable of merits review. The Council states:

The Council prefers a broad approach to the identification of merits reviewable decisions. If an administrative decision is likely to have an effect on the interests of any person, in the absence of good reason, that decision should ordinarily be open to be reviewed on the merits.

¹³ See para [61] below.

¹⁴ Preston B and Smith J, "Legislation needed for an effective Court" in Promises, Perception, Problems and Remedies, The Land and Environment Court and Environmental Law 1979-1999, Conference Proceedings, Nature Conservation Council of NSW, 1999, at 107.

If a more restrictive approach is adopted, there is a risk of denying an opportunity for review to someone whose interests have been adversely affected by a decision. Further, there is a risk of losing the broader and beneficial effects that merits review is intended to have on the overall quality of government decision-making.

The Council's approach is intended to be sufficiently broad to include decisions that affect intellectual and spiritual interests, and not merely property, financial or physical interests.

48 The Council identifies:

- (a) two types of decisions that are unsuitable for merits review – legislation like decisions, which are subject to their own accountability measures, and decisions that automatically follow from the happening of a set of circumstances.
- (b) Factors that *may* justify excluding merits review.
- (c) Factors that *will not* justify excluding merits review.

49 None of these is applicable to the major projects permit decision under the Draft Bill.

50 Of note, both the Law Council of Australia and the Administrative Review Council say that a decision is not inappropriate for merits review merely because that decision may also be the subject of judicial review. Indeed, the Law Council advocates for certain decisions to be available to both forms of review in its EPBC Act Review submission, noting that the availability of merits review may render judicial review unnecessary – for instance, on a procedural fairness ground.

51 The information released with the Draft Bill under the heading “Accountability” states that “providing an appeal to RMPAT against the Independent Panel’s determination would be like having one expert panel testing the decision of another expert panel”. The implication being that the primary decision-maker – the DAP – needs no independent oversight or scrutiny. This statement misunderstands the purpose of merits review.

Role of the DAP

52 Let us consider the constitution and role of the DAP in more detail:

- (a) A DAP is the primary decision-maker, once a major project is declared, the DAP makes all primary decisions in the assessment process.¹⁵
- (b) A DAP is appointed on a case by case basis – it is not like the Tribunal’s appointment of members (who are permanent and sessional, and listed on the website and in annual reports) or the Commission’s appointment of delegates (who are either Commissioners or State Service Employees).
- (c) Any person can be appointed to a DAP so long as they have the desired experience or qualifications, but there is no guarantee that they will have expertise in environmental impact assessment, in attributing weight to competing considerations, training in fair hearing obligations, or be subject to a code of conduct.
- (d) Because of the time constraint on hearings, there is no guarantee that a DAP’s processes allow for testing of expert evidence and representation by lawyers as the fair hearing rule dictates, and as would be expected in the Tribunal. It also does not allow for alternative dispute resolution through appropriately qualified and experienced legally trained staff, as does the Tribunal. For the reasons set out above, the

¹⁵ Excepting the role of the relevant regulators to input into the DAPs decision.

timeframes are such that the full hearing process cannot be expected to occur and would require Ministerial approval to be allowed to occur.

- 53 A DAP is therefore not like the RMPAT or even the Commission, where functions are delegated. Because they are appointed on a case by case basis, it is perhaps more necessary that there be an accountability mechanism for their decisions. The limitations on a DAP under the Draft Bill provide the imperative that merits review lies from a DAPs decision.
- 54 We recommend that merits review lie from a decision of a DAP.
- 55 **We also recommend that the Commission be the decision-maker rather than a DAP.** Members of any “panel” that assesses complex projects, runs public hearings and notice requirements, and will ultimately make a decision, should be people trained and experienced in all of those things. The Commission is a ready-made trusted institution. There is no apparent need for a new body, appointed on a case by case basis. The removal of the DAP as decision-maker, and replacement with the Commission, will go a long way to restoring trust in this process.
- 56 The Commission is experienced in undertaking these functions. It hears public representations on a day-to-day basis. It is sufficiently independent of government, and is not subject to direction. Commissioners must comply with a Code of Conduct, and State service employees likewise. Noting that the governance and advice role of the Commission are under review, one would hope that this leads to a strengthening of the Commission’s role.
- 57 If the DAP is to be maintained, **we recommend that there be legislated criteria as to its skills and experience.** For instance, it is important that where Aboriginal cultural heritage forms part of the assessment, that the DAP be appointed with a member of the Tasmanian Aboriginal community or a person with substantial experience and standing within that community in respect of Aboriginal cultural heritage. This criteria should be developed and consulted on.

Judicial review

- 58 Turning to judicial review, the government’s information states that an “appeal under judicial review” is “available” from the DAP or Regulators, and the Minister’s project declaration. We support the fact that there is no attempt to exclude judicial review, unlike the POSS process.
- 59 However, it is necessary to be clear that a judicial review is not appeal. It is either a proceeding under the *Judicial Review Act 2000* (Tas) or at common law by which a Court supervises the exercise of administrative powers. There are significant technical restrictions to the standing of a person to make a judicial review application, both under the Act and at common law.
- 60 Judicial review is limited in scope – review is only permitted on the basis of jurisdictional error or error of law on the face of the record. There is no scope to mount a judicial review on the basis of an argument about the merits of the case.¹⁶ Where a decision-maker’s discretion to make a particular decision is broad – as is the case in the draft Bill – the potential for judicial review to be successfully invoked is further reduced.

¹⁶ For a statutory judicial review, only those matters identified in ss17 and 18 of the *Judicial Review Act 2000* (Tas).

- 61 Supervision of administrative decision-making by judicial review in superior courts is a constitutional minimum standard. In that regard, in *Kirk v Industrial Relations Commission of NSW* (2010) 239 CLR 531 at [100] that “[l]egislation which would take from a State Supreme Court power to grant relief on account of jurisdictional error is beyond State legislative power. “
- 62 The judicial review jurisdiction of the Supreme Court is a costs jurisdiction (c.f. proceedings in RMPAT).¹⁷ That is, there is presumption that costs follow the event. As such, the risk of adverse costs order is often prohibitive the judicial review is commonly cost prohibitive because costs follow the event, unlike in a merits review jurisdiction such as the RMPAT.
- 63 Finally, Tasmania has a good system for merits review and we should support the oversight, accountability and independent review it provides, rather than attempting to limit its jurisdiction. RMPAT is an efficient forum for the resolution of disputes and provides clear and transparent oversight of administrative decision-making in the planning context. Its decisions provide certainty to the operation of the planning system, as its ruling on interpretation and jurisdictional questions have provided guidance to the profession and community over many years.
- 64 RMPAT procedure involves a highly effective mediation process. In the 2018-2019 financial year, of 144 matters filed with RMPAT, only 19 went to full hearing. Sixty-nine cases resolved by consent, and there were 45 withdrawals. That means 80% of cases are effectively resolved without a hearing. It is a credit to the Tribunal that its focus on alternative dispute resolution resolves so many disputes without a formal hearing. Through mediation, often mutually acceptable alternatives can be found. Its benefit cannot be overlooked. There is no equivalent mediation process under a DAP-run hearing and consultation process. Mediation needs qualified and experienced leadership and is not the same as an open hearing process.
- 65 For the reasons set out above, it is our submission that there is no justification not to provide merits review rights, or for the displacing merits review across a potential broad range of developments.
- 66 Legal reform should be proportionate to its aims. Where, as here, the policy aim said to be an assessment process for complex proposals, it is difficult to see how the exclusion of a central form of oversight – merits review – is justified particularly given the scope of projects potentially eligible for declaration. The Draft Bill cannot be considered a proportionate legislative response.

V. The Role of Relevant Regulators

- 67 The Draft Bill purports to ensure that the regulatory regimes put in place by “project-associated Acts”¹⁸ are considered in the grant of a major projects permit. Persons

¹⁷ *Resource Management and Planning Appeal Tribunal Act 1993*; and where there is no legislated capacity for the Tasmanian Supreme Court to issue protective costs orders, unlike other jurisdictions eg, s.65C(2)(d) of the *Civil Procedure Act 2010* (Vic).

¹⁸ Defined by s 60B of the Draft Bill to be the following Acts: the *Aboriginal Heritage Act 1975* (Tas), *Environmental Management and Pollution Control Act 1994* (Tas), *Historic Cultural Heritage Act 1995* (Tas), *Nature Conservation Act 2002* (Tas) and the *Threatened Species Protection Act 1995* (Tas).

responsible for issuing permits/approvals under project-associated Acts are “relevant regulators” in relation to a major project.¹⁹

- 68 Relevant regulators have certain functions in the assessment of a major project:
- (a) specifying matters to be included in the assessment guidelines for a major project;²⁰
 - (b) issuing a preliminary advice to the DAP,²¹ which shapes the DAP’s draft assessment report and consequently has a significant bearing on how public consultation takes place; and
 - (c) issuing a final advice to the DAP,²² by which the relevant regulator can direct the Panel to refuse the major project permit or require the Panel to impose conditions on the grant of a major project permit.
- 69 Importantly, the Draft Bill appears to intend that the relevant regulator’s functions in relation to major project assessment be guided by the regulator’s function under its project-associated Act. For example, under s 60ZZK(1), a relevant regulator may only direct the Panel to refuse to grant a major project permit in relation to the project if the regulator is:
- ... satisfied that the regulator would, if the project were not a major project, refuse to grant, under the project-associated Act, a project related permit in relation to the project.
- 70 Similarly, under s 60ZZK(2), a relevant regulator may only specify conditions or restrictions to be imposed on a major project permit if the regulator would, if the project were not a major project:
- (a) grant, under the project-associated Act... a project-related permit in relation to the project; and
 - (b) impose, on a project-related permit granted under a project-associated Act in relation to the project, the condition or restriction.
- 71 These restrictions on the relevant regulator’s final advice function feed into the relevant regulator’s other functions under the Draft Bill. The relevant regulator may only specify matters to be included in the assessment guidelines if those matters would be “relevant to the decision of the relevant regulator as to the contents of the...final advice”.²³ Similarly, the content of the relevant regulator’s preliminary advice is dependent on what the relevant regulator considers would, at the time the preliminary advice is given, form the content of the *final advice*.²⁴ The result is that all of the relevant regulator’s functions require it to consider how it would give its final advice. That, as [23] and [24] above demonstrate, requires the regulator to ask itself the hypothetical question: if the project were not a major project and the relevant regulator were assessing the project under its project-associated Act, what conclusion(s) would the relevant regulator reach in relation to the granting of a permit/approval under that Act
- 72 Unfortunately, the Draft Bill does not specify *how the relevant regulator is to undertake that hypothetical exercise*. Is the regulator to conduct itself in according to whatever process is

¹⁹ Draft Bill, s 60Z.

²⁰ Draft Bill, s 60ZA(1).

²¹ Draft Bill, s 60ZY.

²² Draft Bill, s 60ZZF.

²³ Draft Bill, s 60ZA(7), (9).

²⁴ Draft Bill, s 60ZZ(4), (5).

prescribed by its project-associated Act? Further, are the criteria in the project-associated Act relevant or some other criteria?

- 73 For instance, under the Victorian *Major Transport Projects Facilitation Act 2009* (Vic), which is a similar piece of legislation where the regulator is involved in formulating project impact statement guidelines and providing advice, the “applicable law criteria” are relevant both to the project impact statement guidelines and to the advice of relevant regulators.²⁵ This provides substantial clarity about the scope of exercise of powers.
- 74 It is the EDO’s submission that there is a substantial ambiguity in the Draft Bill that should be resolved. We recommend that the Draft Bill be amended to clarify the interaction with project-associated Acts and to make clear that criteria for decisions are relevant to project impact statement guidelines and .
- 75 The problems posed by this ambiguity are well illustrated by considering the role of the relevant regulator associated with the *Aboriginal Heritage Act 1975* (Tas) (**Aboriginal Heritage Act**). Under that Act, the Director of National Parks and Wildlife (**Director**) and the Minister for Aboriginal Affairs (**Minister**) are the issuers of permits and hence would be deemed by the Draft Bill to be the relevant regulators associated with that Act.²⁶ The Aboriginal Heritage Council (**AHC**) is given an advisory role in relation to decisions under the Aboriginal Heritage Act.²⁷ This is important because the AHC is an Aboriginal voice in relation to decisions affecting Aboriginal cultural heritage.²⁸
- 76 Under the Draft Bill, it is not clear whether the AHC would retain its advisory role in the course of the Director and/or Minister conducting the functions of a relevant regulator. That is, in considering the matters at [23] and [24] above, would the Director and/or Minister be required to consult the AHC as usual? If the answer is no, this would be a regressive step in terms of Aboriginal heritage protection. It removes an Aboriginal voice from decision-making that is otherwise present, limited though it might be, and is contrary to rights guaranteed by the United Nations Declaration on the Rights of Indigenous Peoples to free, prior and informed consent in decisions that affect cultural heritage or land.
- 77 Another area of ambiguity is what level of assessment is required of the EPA. Section 11, cll 60ZA and 60ZC of Draft Bill provides that:
- (a) The EPA Board is a relevant regulator for all declared major projects;
 - (b) A relevant regulator may decide whether or not to input to the project impact statement guidelines by issuing a “notice of assessment requirements” or a “notice of a no assessment requirements”, or whether it would recommend a revocation of the project declaration;
 - (c) The EPA Board cannot issue a notice of no assessment requirements if the project is a “bilateral agreement project”, meaning that an approval is required under the EPBC Act;

²⁵ See sections 27(h), 39(h), 65(1)(a) of the *Major Transport Projects Facilitation Act 2009* (Vic).

²⁶ Aboriginal Heritage Act, ss 9, 14.

²⁷ Aboriginal Heritage Act, s 3(2); *Aboriginal Heritage Standards and Procedures*, published by DPIPW on the website of Aboriginal Heritage Tasmania, June 2018, pp 8, 14, 16, 23 and 28, <<https://www.aboriginalheritage.tas.gov.au/Documents/Aboriginal%20Heritage%20Standards%20and%20Procedures.pdf>>

²⁸ See, e.g. Aboriginal Heritage Act, ss 3(6), 4(2).

(d) If the EPA issues an assessment requirements notice or notice recommending revocation, it must “carry out an environmental impact assessment of the major project in accordance with Part 5 of the EMPC Act”.

78 Therefore, unless the project requires Commonwealth approval – of which there are relatively few in a Tasmanian context – the EPA can choose whether it has any assessment requirements. There are many examples of projects that are not Level 2 activities, or would not otherwise be assessed by the EPA, would not require Commonwealth approval and do not therefore need an environmental impact assessment. If that is the case, how are the integrated environmental, social, and economic impacts of the project to be assessed? It is clear that the intention is that the Draft Bill does not contemplate an integrated assessment.

79 We recommend that the EPA always be a relevant regulator where there are environmental impacts associated with the project.

80 Further, the environmental impact assessment principles apply to an assessment, but do not specify any clear criteria for how the EIA is to be undertaken. While we welcome the requirement for an environmental impact assessment, where relevant regulators each have different roles, we query how cl 70ZC would operate in practice. The interrelationship between the Draft Bill and Part 5 of the EMPC Act is unclear.

81 We note that planning authorities are not relevant regulators and have limited input to the decision-making process. Indeed, a planning authority needs to make a submission like any other member of the public in order to be heard about the issue of a permit. It seems to us that a planning authority plays a particularly important part of the assessment, in particular, given an amendment to its planning scheme may be made as a consequence of the process, and that it is responsible for part of the enforcement of the major projects permit. We recommend that the relevant planning authority(s) be relevant regulators, or at least, have a higher level of input in relation to conditions and the terms of a planning scheme amendment applying to its municipal area.

82 It is the EDO’s strong recommendation that these ambiguities be clarified.

83 Finally, we welcome the “no reasonable prospects” process with a test to be met. It is an important element in reducing unnecessary time and investment in such a project. However, the role of the relevant regulators is such that a notice by a relevant regulator to the Commission ought to have a higher order of consequence, and the Panel should not have a discretion as to whether to trigger the notice in cl.60ZE. **We recommend this change be made to the no reasonable prospects process.**

VI. Duplication of assessments

84 There is potential for the Draft Bill to provide an avenue for approval to be granted to a major project notwithstanding that the project has been refused under another assessment process.

85 The Draft Bill does not appear to bar a proponent from seeking a major project declaration in relation to a project that has been refused consent by a planning authority (or the Tribunal) or that has not been approved under the POSS process. This is apt to lead to the major projects approval process being used as a de-facto appeals process for refused projects.

Such an outcome is contrary to the rule of law so far as it undermines the finality of planning decision-making.

86 We recommend that the interaction with Courts and Tribunals be clarified.

VII. Criteria for decision-making

87 The DAP is to decide whether to grant a major project permit on the basis set out in s 60ZZM of the Draft Bill. The DAP must:

- (a) have regard to the matters specified in section 60ZM(6); and
- (b) consider any representations made under section 60ZZD(1) in relation to the major project; and
- (c) consider any matters raised in hearings in relation to the major project; and
- (d) consider all participating regulator's final advices.

88 The matters in s 60ZM(6) are :

- (a) any relevant planning scheme; and
- (b) if the carrying out of the project is inconsistent with the provisions of a relevant planning scheme – the merit of any changes to a planning scheme (other than to the SPPs) that would be required to be made for the major project to be lawfully carried out; and
- (c) the regional land use strategy, if any, for the regional area in which the land is situated

89 Notwithstanding that a major project is contrary to the provisions of a planning scheme, the DAP may grant a major project permit, but only if the DAP is satisfied that the grant of the permit:

- (a) would be consistent with furthering the objectives specified in Schedule 1; and
- (b) would not be in contravention of a State Policy; and
- (c) would not be in contravention of the TPPs; and
- (d) would not be inconsistent with a regional land use strategy that applies to the land on which the project is to be situated.

90 While these are the current criteria for PORS projects, they are not the same criteria as for planning scheme amendments under the former Part 3, which provide good guidance on when planning scheme amendments should be made. If the role of the DAP is to perform the planning assessment, and the outcome is that a planning scheme amendment can be made, that assessment should be made as though it is performing the Commissions role.

91 EDO recommends that criteria be consistent with those criteria for a planning scheme amendment under s40M (and s34) of the LUPA Act, and the former s.32 (and s30) of the LUPA Act.

92 We recommend that:

- (a) The criterion in cl60ZZM(4)(c) and (5)(b) be amended to “is consistent with each State Policy”;²⁹
- (b) The criterion in cl60ZZM(4)(d) and (5)(c) be amended to “be consistent with the TPPs”;³⁰
- (c) The criterion in cl60ZZM(4)(e) and (5)(d) be amended to “consistent” with the regional land use strategy, not “inconsistent”, replicating the existing requirement in s34(2)(e) of the LPS criteria and the former section 300;
- (d) Include a criterion in cl60ZZM(4) and (5) that the project avoid the potential for land use conflicts with use and development permissible under the planning scheme applying to the adjacent area.
- (e) Include a criterion in cl60ZZM(4) and (5) that the DAP have regard to the impact of the project relating on the region in environmental, economic and social terms, replicating the existing requirement in s32(1)(f); and
- (f) Include a criterion in cl60ZZM(4) and (5) that, where the development is located on reserved Crown land or in Wellington Park, the project is in accordance with the relevant management plan.

93 **We recommend a review of other usages of this criteria throughout the Draft Bill**, as it would appear the intention is for these criteria to be consistent. That is, the prohibition on project declaration in cl.60L and the “no reasonable prospects” test in cl.60ZI(4).

94 Of particular note is the use of the word “contravention” in respect of both State Policies and TPPs. There will be very rare circumstances for a project to “contravene” a State policy, following the reasoning of the Supreme Court in *St Helen’s Area Landcare and Coastcare Group Inc v Break O’Day Council* [2007] TASSC 15 and *Richard G Bejah Insurance & Financial Services Pty Ltd v Maning & Ors* [2002] TASSC 36.

95 The Court observed in both cases that the State Coastal Policy is formulated as list of “outcomes” containing very few “requirements”, and the extent to which requirements are imposed, they are imposed on local government and State authorities, not to members of the public. His Honour Justice Crawford concluded on the State Coastal Policy:³¹

By its name it purports to be a policy document. Notwithstanding the expression in the Act, s14(1), that it is an offence if "a person" contravenes or fails to comply with a provision of a State Policy or a requirement or obligation imposed under a State Policy, it is my opinion that the Coastal Policy only imposes duties and obligations on government bodies at State and local level, including local councils, for contravention or failure to comply with which the penal provisions of s14 will operate. The Policy does not impose duties and obligations on the general public. Further, requirements which, if contravened or not complied with, might result in an offence being committed by a State or local government body, are small in number, quite possibly only those of cls 1.4.2, 2.6.5, 2.7.2 and 2.7.3, and of them only cls 2.7.2 and 2.7.3 depend on the meaning of "coastal zone" for their effect.

²⁹ Consistent with s34(2)(d) of the LUPA Act for LPS amendments; the former s20(1)(b) of the LUPA Act, which requires a planning scheme amendment to be prepared “in accordance with” a State Policy; and s13(1) of the SPP Act.

³⁰ Compare with s34(2) which requires an LPS to satisfy the “relevant criteria”, which includes that a planning instrument be “consistent” with the TPPs.

³¹ *Richard G Bejah Insurance & Financial Services Pty Ltd v Manning & Ors* [2002] TASSC 36 at [23] per Crawford J.

- 96 The same analysis could readily be applied to the *State Policy on the Protection of Agricultural Land 2009* and the *State Policy on Water Quality Management 1997*. One would expect the TPPs likewise not to contain requirements, particularly given the stated purpose in s12B(1) of the LUPA Act that TPPs are to set out the aims, or principles” that are to be achieved or applied by the TPS or RLUSs.
- 97 The policy decision is therefore, whether it is intended to only require an assessment of “contravention” and thus with limited work to do, or whether the DAP as decision-maker should consider the policies as a whole and whether the project accords with them. We say the latter is preferable.
- 98 In relation to reserve management plans, it is the case that Crown or Wellington Park Trust consent is required under the Draft Bill. However, the giving of consent does not in itself indicate whether the development is in accordance with or consistent with a management plan³². It is appropriate to assess this through a formal public process, not least of which to ensure that all matters that must be assessed under the EPBC Act are assessed and the process can be properly accredited.
- 99 In any event, this assessment should be undertaken through the major projects process by the Panel, or by making the managing authority a relevant regulator. We have recommended that, at a minimum, this form part of the criteria for decision-making.
- 100 We note that there is an ambiguity as to what occurs if a development is approved which is inconsistent with a management plan. For instance, in relation to the Wellington Park Management Plan, the issue of a major project permit that is inconsistent with the plan is not in keeping with the *Wellington Park Act 1993*. It is unclear what the issue of a permit that is inconsistent or not in accordance with a management plan means for the exercise of powers by a reserve management authority, and whether with respect to the Wellington Park, that is satisfactorily cured by section 60ZZZC(4). **We recommend that this ambiguity be clarified.**

VII Alternative policy solutions

- 101 On our analysis, the Draft Bill's aims are unclear, which makes it difficult to assess whether those aims are achieved. In the absence of a clear policy justification or clearly articulated purpose of this regulatory intervention, we consider that the Draft Bill should not proceed in its current form.
- 102 We note statements made in the media yesterday by the Minister for Planning that the Draft Bill is about “an appropriate, streamlined process for projects that are of a scale, strategic significance or complexity beyond the normal capacity and resources of local planning authorities to assess, especially those that cross municipal boundaries and involve multiple acts and regulators”.³³
- 103 In order to provide some constructive feedback, we wish to address briefly alternatives to the draft Bill. In doing so, we make certain assumptions about the purpose of the Draft Bill.

³² The usual practice of DPIPW Crown Land Services is to make clear that Crown consent is not an assessment of the project or approval of lease or licence.

³³ The Mercury, ‘Talking Point: No fast-track, shortcuts, or easy routes in Major Projects process’, 14 May 2020

104 If it is the intention to provide a more detailed assessment for complex projects that are not existing Level 2 activities or Level 2 activities that cross municipal boundaries, we recommend that:

- (a) the category(s) of projects to be targeted should clearly expressed in declaration criteria;
- (b) the reason for identifying that category(s) of projects is clearly expressed.

105 If the intention is to provide a coordinated assessment process for major infrastructure projects, such as named by the Minister, the scope of project declaration could readily be limited.

106 This would have the benefit of limiting the scope of declaration, that do not unduly displace the existing planning assessment process, or impacting on public participation rights in a way that is disproportionate to the policy aim.

107 If it is the intention to streamline permit processes, this could be done through the existing Part 4 permit approval process by creating a series of referrals. This is currently done with the EPA Level 2 assessments under the EMPC Act and Tasmanian Heritage Council under the Heritage Act. A referral system is in place in both the NSW and Victoria planning systems and operates effectively. This enables authority responses to be the subject of submissions and ultimately merits review by proponent and third party alike. This would enable co-ordination of approvals through the existing Part 4 system.

108 Should the Draft Bill proceed in its current form, **we make the following recommendations:**

Project declaration

- (a) The criteria for project declaration be clearly defined and constrain the scope of project declaration by specifying categories of use and development that fall within the scope of the legislation.
- (b) The Commission be required to prepare the determination guidelines under cl.60J before any project can be declared.
- (c) The Bill state that the cl.60J determination guidelines contain criteria and categories of development.
- (d) There be public notice and comment on the determination guidelines.
- (e) Review the criteria in the prohibition on project declaration in cl.60L and the “no reasonable prospects” test in cl.60ZI(4) to align with our recommended criteria for decision under cl.60ZZM.
- (f) Clarify the interaction between a project declaration where an existing permit application is before a Court or Tribunal by:
 - ensuring a project cannot be declared when a related permit application is before the Tribunal or on appeal to the Tasmanian Supreme Court;
 - replicating the 2 year time limit in s.62(2) for major projects declaration of a project that is substantially the same development as a development refused by Tribunal.

Development Assessment Panel

- (g) The Commission be made the assessment body, instead of a DAP.

- (h) If a DAP is proceeded with, the Bill prescribe the expertise required for a DAP for particular projects, for instance, for matters affected Aboriginal cultural heritage, the DAP must contain a representative of the Tasmanian Aboriginal community or person with expertise in Aboriginal cultural heritage assessment.

Relevant regulators

- (i) Clarify how relevant regulators make decisions by ensuring that criteria under project-associated Acts are relevant to their assessment, and ensuring that the project impact statement guidelines contain sufficient information to make that assessment.
- (j) Ensure that relevant regulators are required to have input where a permit under a project-associated Act will or may be required, rather than a discretion.
- (k) Clarify how the Aboriginal Heritage Council and Tasmanian Aboriginal people have input into the assessment where the Aboriginal Heritage Act is a project-associated Act, or Aboriginal cultural heritage is in issue.
- (l) The relevant planning authority(s) be a relevant regulator.
- (m) The EPA always be a relevant regulator where there are environmental impacts associated with the project.
- (n) A “no reasonable prospects” notice issued by a relevant regulator ought to trigger the notice process under cl.60ZE.

Public participation

- (o) There be public comment sought on the project impact statement guidelines for every project.
- (p) The requirement for the DAP to prepare a draft assessment report prior to public hearings be reviewed, having regard to the potential for pre-determination and procedural fairness obligations.
- (q) The restriction on public hearing timeframe in cl.60ZZE(1) be removed and the DAP/Commission be entitled to regulate its own procedures.
- (r) The advice of relevant regulators be made publicly available at all steps (project declaration, project impact assessment guidelines, preliminary advice and final advice).
- (s) The Bill include an amendment to s61 of the LUPA Act to allow a right of appeal to RMPAT against the decision of the Commission.

Decision criteria

- (t) The criteria for making a decision under cl.60ZZM(4) and (5) be amended as outlined at [81].
- (u) The relevant regulators be required to comply with their own Act, so as to ensure that relevant matters under those Acts form the basis for their assessment.

Clarify ambiguities

- (v) Clarify the consequences for a reserve managing authority if a major project permit is issued that is inconsistent/not in accordance with a reserve management plan or the Wellington Park Management Plan.³⁴

³⁴ We note this would likely be resolved by adopting our recommendations (r) and (t)



City of **HOBART**

Enquiries to:



Our Ref. 32-013-07

19 May 2020

Mr Brian Risby
Director
Planning Policy Unit
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Via Email: Brian.Risby@justice.tas.gov.au

Dear Mr Risby

LAND USE PLANNING AND APPROVAL AMENDMENT (MAJOR PROJECTS) BILL 2020

At its special Council meeting on 18 May 2020, the City of Hobart resolved the following in relation to the *Land Use Planning and Approval (Major Projects) Bill 2020*:

- That:*
1. *The Tasmanian Government be advised that the City of Hobart sees no need for the draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2020 to amend the Land Use Planning and Approvals Act 1993 and the Environmental Management and Pollution Control Act 1994 to introduce a new major projects assessment process.*
 2. *In the event that the Tasmanian Government proceeds with the Land Use Planning and Approvals Amendment (Major Projects) Bill 2020 that the following comments be considered:*
 - (a) *The third draft of the Bill continues to be vague in relation to the eligibility criteria for declaration of major projects and the fact that they are open to a wide interpretation based on the opinion of the Minister. Definitions have not been included to provide any clarity.*
 - (b) *The introduction of a category of major projects in s.60K(1)(f), where:

the characteristics of the project make it unsuitable for a planning authority to determine;*

undermines the role of the planning authority, particularly since the criteria are vague, uncertain and dependent on the Minister's opinion.

- (c) The introduction of the power of the Minister to be able to propose that a project be declared a major project (s.60C(2)) is inappropriate in circumstances where it is the Minister who will declare whether or not the project is a major project in s.60M. It is an inherent conflict and leaves the Minister open to suggestions of political interference.*
- (d) The statutory clock for determining proposals which are not major projects is proposed to restart on the date of the declaration by the Minister: s.60D(5)(b)(i). It is preferable for the clock to restart on the date that the planning authority receives notice of the declaration, pursuant to s.60P(1)(d), to ensure that the planning authority is aware of the declaration and does not inadvertently lose time which counts towards the 42 day assessment period.*
- (e) In the event that there is a declaration that a proposal is not a major project, it is proposed that the 42 day statutory clock resets on the date that notice is provided to the planning authority pursuant to s.60P(1)(d) so that the date on which notice is provided is treated as day 1, rather than restarting the clock after the declaration. It is proposed that s.60D(5) is amended so that rather than a reference in (a) to the "relevant time" (which is defined by the date a project is proposed to be a major project), that should be amended to be the day on which the application was lodged with the planning authority. The planning authority is likely to have lost invaluable assessment time if steps have been taken by either the proponent or the planning authority to propose that it is declared to be a major project. If a proposal is significant enough to have been proposed as a major project then the planning authority will need a proper period of time in which to carry out a thorough analysis of the proposal.*
- (f) The introduction of the ability of a planning authority to propose that a project is a major proposal is welcomed. However, it is recommended that there is a pause to the statutory time frame of 42 days to allow the planning authority to properly consider whether or not to do so. If this does not occur then the timeframes imposed on the planning authority (in combination with the deemed approval provision in s.59 of LUPAA) are wholly unworkable. For example:
 - (i) day 1 – application received and initially reviewed by Senior Statutory Planner;*
 - (ii) days 1 – 7 (although a more realistic timeframe would be 14 days or more): consultations by Senior Statutory Planner**

- with Manager, Director and internal referrals within the Council, with a report being prepared making a recommendation to the Council to propose that the project is declared to be a major project – this assumes that the Council has been provided with all relevant information in which to make an assessment as to whether a proposal is (or may be) a major project;*
- (iii) the Council would need to consider the recommendation at a Council meeting and unless it is proposed that a special meeting would be called, the likely timeframe for this to occur is two weeks or more; and*
 - (iv) if the Council, as planning authority, does not accept a recommendation by its officers that a project is proposed to be declared to be a major project, then valuable assessment time has been lost (unless there has been a parallel assessment being carried out by Council officers).*
- (g) In s.60N(2), it is a requirement to obtain the consent of a Council for a declaration to be made that a project is a major project where it owns the relevant land, but not where it only administers or occupies the relevant land. This may undermine the road network, since many highways which are the responsibility of local councils are over privately owned land.*
- (h) In s.60Z, the “relevant regulators” are identified. Entities which are responsible for gas, water and sewerage are included, yet councils in their capacity as highway authority and providing the public stormwater system are not. While councils do have an opportunity to provide their views on a proposal which may be declared as a major project, that is in its capacity as a planning authority, which is a statutory role under LUPAA that is independent from its role as asset manager. It is appropriate for councils to have a role a relevant regulator in this context.*

I thank you for the opportunity to provide comment.

Yours sincerely


(N. D. Heath)
GENERAL MANAGER



Highland Conservation Pty Ltd

– (Gunns Plains), and

LEPRENA
TRUST 

Sullivans Point (Recherche Bay)

Planning Policy Unit
Department of Justice
GPO Box 825
Hobart Tas 7001

To whom it may concern,

Submission on the Tasmanian Draft Major Projects Bill

I represent the interests of two private landholders, who adjoin public lands managed by the Tasmanian Parks and Wildlife Service, at Southport Conservation Area (Trustee for the Leprena Trust –Sullivans Point (Recherche Bay)) and the Leven Canyon Regional Reserve (Co-Director Highland Conservation Pty Ltd – Garthfields Farm (Gunns Plains)). The private landholdings of these two entities are significant asset investments that have been made in order to secure unique land parcels adjoining the public reserve estate. The major projects bill creates considerable uncertainty in relation to the security of these investments, as the bill increase the risk of development in the adjoining reserves in the future and reduces our ability to make meaningful representation in order to protect our assets and business interests.

Highland Conservation Pty Ltd is a Tasmanian family company with a multi-million dollar farming asset based in Gunns Plains, with much land adjoining the Leven Canyon Regional Reserve, which provides the financial base for philanthropic endeavors. Future business success at Gunns Plains, and our ability to give to our environment and community, is closely linked to the beauty of the area, tourism and placed based branding, which the adjoining Leven Canyon Regional Reserve and Loyetea Peak provides. Last year UPC renewables proposed a 60m wide high voltage power easement through the reserve adjoining our land (Figure 1), alternative easement routes are now being explored by TasNetworks. If this development were proposed and deemed to be a ‘major project’ the assessment would potential avoid current local planning and other state legislation requirements. Such developments would severely reduce the visual amenity of the reserve and cause a severe devaluation of our adjoining land investment. The major project bill creates investment insecurity for the majority of Tasmania

landowners, who would see the planning system compromised and their ability to protect their interests diminished.

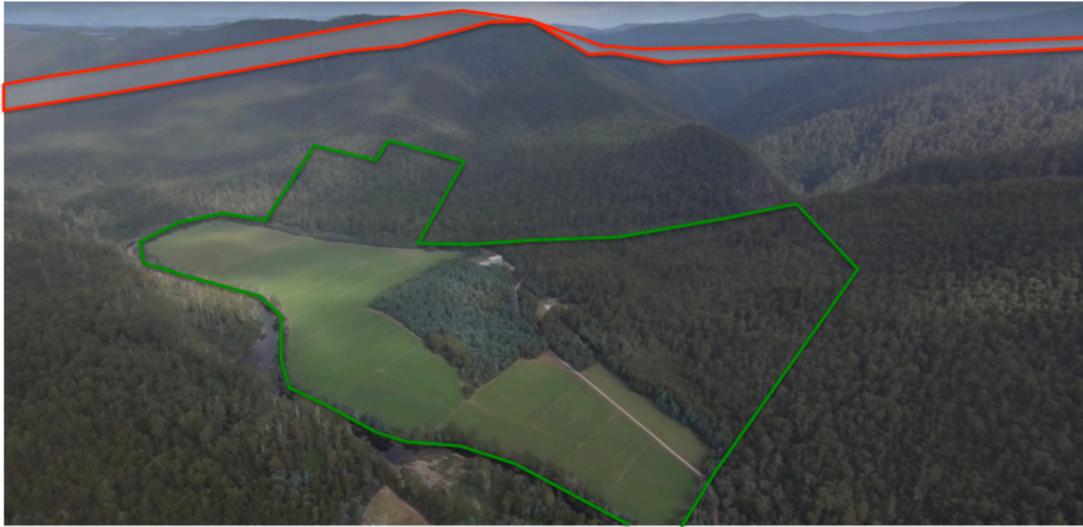


Figure 1. Highland Conservation Pty Ltd has a unique farm setting (paddocks below), we also own land across the river and surrounded by the Leven Canyon Regional Reserve (outline in green). The unique setting of our farm (which is a multimillion dollar asset), & our placed based branding are at severe risk from the UPC Renewables transmission power easement. See estimated vegetation clearance 60m wide, red outline, note 50m tall towers not drawn as their location is unknown.

The Leprena Trust runs a non-commercial artist in residency program at Sullivans Point, surrounded by the Southport Conservation Area. The area is of important natural and historical significance, with state and national heritage listing, as it was where there was respectful interactions and gift exchanges between pakana and early French explorers. The ongoing success of the artist in residency, and our ability to give to the community, is closely linked to the beauty of the area due to the current lack of development in the adjoining Southport Conservation Area. A floating hotel has already been approved nearby through the Office of the Coordinator Generals (OCG) Expression of Interest (Eoi) process, and a lease has been granted to the proponent through the Tasmanian Parks and Wildlife Service. The proponent and others have also been scoping lease options and developments within the reserve - only meters from our private land boundary (Figure 2). If tourism development in the reserve were proposed and deemed to be a 'major project' the assessment would potential avoid current local planning and other state legislation requirements. Such developments would severely reduce the visual amenity of the reserve and cause a severe devaluation of our adjoining land investment. The major project bill creates investment insecurity for the majority of Tasmania landowners, who would see the planning system compromised and their ability to protect their interests diminished.



Figure 2. One of the best experiences that the Leprena Trust artist in residence program can provide is the relatively isolated experience and undeveloped vistas. This is dependent upon the continuation of no infrastructure in the adjoining Southport Conservation Area. Developers have been scoping the option with the TPWS to build on the beach (in this photo) very close to our property and Blackswan lagoon entrance.

Recent planning changes, through the i) Office of the Coordinator Generals (OCG) Expression of Interest (Eoi) process, ii) a planning precedent set by the Lake Malbena decision that enables future projects approved through Tasmanian Parks and Wildlife Services (TPWS) Reserve Activity Assessment (RAA) to circumvent local council planning assessment and approval, and iii) impending changes to the assessment criteria within Tasmanian Planning Scheme for land zoned Environmental Management, have collectively created a situation whereby neighboring property owners and other stakeholders have declining opportunity to meaningfully comment on development proposals in the public reserve estate. The proposed major project bill is yet another process that continues to create uncertainty around the financial value and business security for private landowners who have already invested significantly into their land assets adjoining the public reserve estate.

I raised the concerns I have with the Eoi process through correspondence to the Office of the Co-Ordinator General (OCG). I received the following response from the OCG on 12 February 2020 given my concerns in the Southport Conservation Area:

'Any projects that are recommended from this initial step [in reference to the Eoi assessment] are required to progress all requisite approvals from Local, State and Australian Governments, such as the Reserve Activity Assessment (RAA), Development Applications and, where applicable, approvals under the Environment Protection and Biodiversity Conservation Act 1999. Projects are confidential in the early stages to protect intellectual property but when they move to lease and licence negotiations the process involves a level of public consultation in accordance with the requirements.'

and a response from the TPWS via the OCG on 3 July 2019:

'Any potential development of Crown land [including the Southport Conservation Area and Leven Canyon Regional Reserve] must be considered against the reserve classification, any applicable management plans, Reserve Activity Assessment and the planning scheme'

I raised the concerns I had with the UPC proposal in the Leven Canyon Reserve with Minister for Energy, Hon Guy Barnett, and the TPWS. I received the following response from the Minister on 24 July 2019:

'The proposed wind farm and its transmission lines, like other developments of this size and type, are subject to development and environmental approvals, with the opportunity for public submissions. It is essential these developments comply with the rigorous planning and environmental planning approval processes that are in place....'

and a response from the TPWS on 3 July 2019:

'Where proposals intersect or involve reserved land, our role is to receive an application, and provide advice to the proponent what further action is required in order to satisfy the assessment process as it relates to the various values that may be impacted. We then typically work with other assessment officers in local government, other State Government agencies or the Commonwealth depending on the values that may exist and the nature of the development.'

The Minister for Energy, OCG and TPWS had all reiterated that developments proposed in the reserve estate should also meet the local planning scheme and other state legislative requirements – their advice is not consistent with the draft Major Project Bill. The Major Project Bill, if applied to a development proposal has the potential to circumvent local planning schemes. The panel must *consider* the relevant local planning scheme, but a major projects permit can be granted notwithstanding that the project would not be permitted under the local planning scheme and the proposal is not required to be assessed against the applicable criteria in a local planning scheme. It also appears that if a major project permit is granted, there are important consequences for other regulatory regimes' application to the project, in that the normal development permit process under the *Land Use Planning and Approvals Act 1993* (Tas). Section 51 of the *Land Use Planning and Approvals Act 1993* (Tas) does not apply to the project. The Major Project Bill, if applied to a development proposal has the potential to also circumvent a number of state Acts, such as the:

- i) *Environmental Management and Pollution Control Act 1994* (Tas) (in relation to level 2 activities);
- ii) *Historic Cultural Heritage Act 1995* (Tas);
- iii) *Nature Conservation Act 2002* (Tas);
- iv) *Threatened Species Protection Act 1995* (Tas); and
- v) *Aboriginal Heritage Act 1975* (Tas).

In summary, the Major Project Bill creates investment uncertainty for landowners adjoining the public reserve estate. Major project assessment guidelines are unknown as they'll be customised for the project proposal by the panel established through the proposed Act. It is questionable if local planning or other legislative Acts will be applied as currently required. The scope of relevant regulators (in relation to the Acts (i to v, above) may provide advise to the panel, but it appears that the scope of their advice is restricted to determining if the 'assessment guidelines' (created by the panel) are meet by the proponent in their 'impact statement', rather than advising if the proponent has meet the necessary requirements under the Acts (i to v, above). It appears that the normal assessments required under Acts i) to v) can be circumvented and as such a project can be granted a permit to proceed although non-compliant with these Acts.

The major project bill undermines the existing local government planning framework and important state legislation, the outcome of this will diminish investment certainty for any private landholders adjoining land where major projects are possible. This bill reduces investment security for many place based business and entities located near natural assets that may be diminished by developments that would only be approved if deemed major project that are then able to circumvent local planning and the requirements under other relevant acts. I request that that the Major Projects Bill be abandoned.

Kind regards,

Dr Jason Whitehead

Co-Director Highland Conservation Pty Ltd (Garthfields Farm – Gunns Plains)

Trustee for the Leprena Trust – Sullivans Point, Recherche Bay

Land Use Planning and Approvals Amendment (Major Projects) Bill 2020 public consultation

Submission by the Wilderness Society Tasmania.



May 15 2020



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About the Wilderness Society

The Wilderness Society is an independent environmental advocacy organisation.

As a people-powered organisation, we are part of a mass movement for climate action and nature conservation in Australia. Since 1976, we've led some of the country's most successful campaigns, including the Franklin River, Fraser Island, Australia's Forests, James Price Point in the Kimberley and numerous World Heritage areas.

Today we are campaigning to end deforestation in Queensland, for the introduction of a new generation of nature protection laws (that actually work), the end of fossil fuel drilling in the Great Australian Bight and to end the destruction of native forests in Victoria, Tasmania and beyond.

We exist to protect Australia's environment, to which life on this continent depends. Our mission is to protect, promote and restore wilderness and its natural processes.

A fitting acronym for wilderness is LIFE: Large, Intact, Functioning Ecosystems. Wilderness can be described as the purest form of nature.

The [Federal Government](#) defines wilderness as being remote and natural, constituting

- Remoteness from places of permanent occupation
- Remoteness from established access routes
- Naturalness - the landscape is free from permanent structures of modern society;
- Biophysical naturalness - the natural environment is free from biophysical disturbance and constitutes thriving ecosystems

Examples of wilderness in Australia are the Tasmanian Wilderness World Heritage Area and takayna/Tarkine (TAS), Kakadu National Park (NT), Lamington National Park (QLD), Flinders Ranges (SA) and Ningaloo Reef (WA), among others.



Introduction

“Quite simply, social licence to operate exists when a project, asset or organisation has the ongoing approval from stakeholders” - Anthony Sprigg, CEO of Infrastructure Sustainability Council of Australia¹.

If a project, major or not, fails the social licence test, it can and should be impossible for it to proceed. Major projects ideally rely on social licence if they are to be successfully completed.

Tasmania’s planning landscape is littered with the carcasses of failed projects that governments have sought and failed to impose upon communities that didn’t want them.

From Wild Drake’s helicopter-accessed, luxury tourist accommodation proposed for Lake Malbena inside Walls of Jerusalem National Park, to the Bell Bay pulp mill, Ralph’s Bay marina, Dover woodchip port and the cable car proposed for kunanyi/Mount Wellington, the record shows that unpopular proposals consistently fail and that government and developers sideline the community at their peril.

Failure can also prove expensive.

The failed East-West Link (EWL) Road in Melbourne is instructive and has been studied by academics as a textbook case study of an environmentally-disastrous major project proposal that failed through lack of social licence.

The East-West Link Road was a multi-billion dollar freeway proposed between west and central Melbourne supported by State and Federal governments, which had signed construction contracts. But there was a major problem: local people didn’t want it. “Public opposition and anger to EWL grew such that the incumbent government was thrown out over the project”².

The cost of failure? \$1.1 billion in wasted public funds paid out contracts that had been signed too soon, a government brought down and Melbourne’s traffic congestion problem unsolved.

Failures to fully and properly engage the community in planning and development decisions also excludes important opportunities to improve projects.

Based on this case, University of Sydney researchers found that “poor engagement can result in missed opportunities to crowd-source ideas, incorporate these into the project and subsequently deliver better public value”³.

Unfortunately, the Tasmanian State Liberal Government’s Major Projects Bill lays the groundwork for future major projects to fail in Tasmania in the same way as the East-West link road did. If the Bill became law, it would further sideline local communities, who are already unhappy with Tasmania’s rigid, unfair and unconsultative planning system.

There is unlikely to be a local community anywhere in Tasmania that isn’t already incensed by the current planning scheme ‘requirement’ that when the clock on a development application is

¹ [How much is your Social Licence costing you?](#), Antony Sprigg, Infrastructure Sustainability Council of Australia, undated

² [Collaborative engagement for successful delivery of major projects](#) - Many major projects fail to deliver on their intended outcomes, Suresh Cuganesan, and Alison Hart, John Grill Centre for Project Leadership, The University of Sydney.)

³ ibid



started, it can't be stopped.

This isn't an immutable law of physics, it's a planning law passed by Parliament that favours developers over the public and has made planning worse, not better. The Major Projects Bill will be like taking this unpopular requirement and supercharging it.

The Major Projects Bill proposes to fast-track projects, large or small, not towards success, completion and long-term successful operation, but into contestation and acrimony through the lack of social licence it is likely to create by bypassing local communities.

The Major Projects Bill is wildly inconsistent with the emerging trend of better consultation with local communities emerging the world over. It will hardwire greater ministerial power, less transparency, weaker environmental assessment and reduced public involvement in projects which, if they are genuinely major ones, should require more scrutiny not less.

This would also prove disastrous to Tasmania's already weakened environment. If it became law, the Bill would worsen the prospects of the island's growing pool of more than 600 threatened, endangered and at-risk plants and animals because there are weakened environmental assessment provisions.

Another pulp mill, a new woodchip mill, all the multiple Tourism EOI proposals waiting to privatise public World Heritage land - any project like this could be fast-tracked out of the normal planning system.

This submission sets out some of the reasons why this Bill is bad news for Tasmania's environment (communities, landscapes and ecosystems) and why it should be rejected in favour of Tasmania's existing planning system. The current system already allows for major projects to proceed, without doing away with public consultation, public appeal rights and local councils' involvement.



Recommendation

That the Bill is abandoned in favour of the existing planning scheme, the Projects of State Significance under the State Policies and Projects Act 1993 (POSS), Projects of Regional Significance under the Land Use Planning and Approvals Act 1993 (PORS) and the Major Infrastructure Development Approval (MIDA) process.

This will allow major projects to continue to proceed but while retaining the inputs of local councils, local people and greater accountability of the powers the planning minister can dispense.



Background

On 3 March 2020, the Tasmanian Government released a draft [Land Use Planning and Approvals Amendment \(Major Projects\) Bill 2020](#) (“the Bill”) for public comment.

There are already three assessment processes for major development proposals in Tasmania:

1. Projects of State Significance under the State Policies and Projects Act 1993 (POSS), for projects with significant capital investment, state-wide impacts or complex design;
2. Projects of Regional Significance under the Land Use Planning and Approvals Act 1993 (PORS) for larger and more complex projects that do not qualify as a POSS but have impacts across council boundaries and regions;
3. Major Infrastructure Development Approval (MIDA) for major linear infrastructure projects eg, road, railway, power-line, telecommunications cable or other prescribed infrastructure.

The Major Projects Bill proposes to

- Give the planning minister the power to declare a project to be a major project
- Repeal and replace the PORS process
- Establish a new assessment process for major projects, to be conducted by a “Development Assessment Panel”, being a new panel appointed by the Tasmanian Planning Commission for each major project.
- Replace existing approvals and establish “relevant regulators” which have input into the assessment and approval of a major project. These bodies are Tasmania’s Environmental Protection Agency (EPA), the Tasmanian Heritage Council, the Secretary of DPIPWE and the directors, respectively, of Aboriginal Heritage Tasmania, TasWater and TasNetworks.

If a project is granted a major project permit, the proponent would **not** need to separately obtain the following approvals:

- Ordinary development permits under the Land Use Planning and Approvals Act 1993 (Tas)
- Permits relating to level 2 activities under the Environmental Management and Pollution Control Act 1994 (Tas)
- heritage approvals under the Historic Cultural Heritage Act 1995 (Tas)
- Permits, authorities, licences, certificates, determinations, permissions or other authorisations under the Nature Conservation Act 2002 (Tas)
- Permits, authorities, licences, certificates, determinations, permissions or other authorisations under the Threatened Species Protection Act 1995 (Tas)
- Permits, authorities, licences, certificates, determinations, permissions or other authorisations under the Aboriginal Heritage Act 1975 (Tas)

The Bill therefore means that a proposal that the planning minister decides to make a ‘major project’ is insulated from having to make proper heritage, environmental and Aboriginal cultural impact assessments. This lowers the assessment bar for projects, if they are genuinely major, should have it raised.

This legislation, if introduced, would also remove any semblance of balance, fairness and democracy from planning decisions.

Under the proposed legislation, the planning minister has unchecked power to declare virtually



any development that would normally go to a local council, a major project - from a subdivision to a development in a national park or a pulp mill.

The legislation provides a fast-track approval pathway, with no public appeal rights and no role for elected councils, with regard to the final approval of a project. If a proposal is made a major project and fast tracked out of the normal planning scheme, local elected members and the local people they represent, will lose control of the development.

These impacts are bad enough in their own right but what concerns our organisation in particular is what this could mean for the Tasmanian Wilderness World Heritage Area, areas of wilderness that still require protection, such as takayna/Tarkine, the Spero-Wanderer Wilderness Area (south of Macquarie Harbour) and Recherche Bay among others, for national parks and for other wild places.

With insufficient checks and balances, including weaker environmental assessments, this Bill would be a disaster for the natural world in Tasmania at the very time overarching threats from climate change demand a more robust, considered and precautionary approach to its protection than ever before.

One of the criteria for the planning minister to confer 'major project' status on any project of his choosing is because the "the project has, or is likely to have, significant, or potentially significant, environmental... effects" (60K (d), p45). The Bill does not say whether these effects need to be positive or negative, just that the environment has to be, in some way, affected.

The Bill does not require any additional environmental assessments for a proposal that is made a major project. A major project could include a large processing plant - say a pulp mill - that would have a serious impact upon the local environment and community. Therefore, additional environmental assessments should be required but this Bill does not provide any.

This approach is also completely inconsistent with the EPBC Act, where the significance of the impact is supposed to determine the level/detail of the assessment undertaken.

Compared to many other jurisdictions around the world, Tasmania is still fairly unspoilt, despite the constant erosion of our ecosystems and over 600 threatened, endangered and at-risk plant and animal species.

For the record, it is important that we state that our organisation supports development and that development from 2020 onwards must have social licence, ecological integrity and be in the public interest.

This Bill underlines the need for a new generation of nature protection laws that actually work, something the Wilderness Society has been campaigning for for many years.



Major misnomer

The Major Projects Bill is a misnomer.

It is inaccurately named because there is nothing in the proposed legislation that limits the Bill to only objectively large projects.

In bureaucratic language, section 60B of the Bill explains that a “major project means a project to which a declaration of a major project relates”.

Section 60K (p44) sets out eligibility criteria for what constitutes a ‘major project’. This section is critically important because it provides the justification for the planning minister to exempt particular projects from the normal planning rules, pull a project out of the planning system, away from public scrutiny and declare it a ‘major project’.

This section of the Bill explains that the planning minister can confer major project status on a proposed development if - “in the *opinion* of the minister” [italics added] - if it fulfills two of the following criteria:

- That the proposal would offer significant financial or social contribution to a region or the State
- The project is of strategic planning significance to a region or the State
- The project will significantly affect the provision of public infrastructure, including, but not limited to, by requiring significant augmentation or alteration of public infrastructure
- The project has, or is likely to have, significant, or potentially significant, environmental, economic or social effects
- The characteristics of the project make it unsuitable for a planning authority to determine.

These criteria say nothing about the size of a particular project. In fact, no criteria about the size of a particular project are provided anywhere in the Bill. Therefore, it is perfectly possible that these criteria could equally apply to small, medium or large projects, not just major project proposals.

Nor does the Bill provide clarification or definition about the word “significant”, despite the words significant, significantly and significance occurring 19 times and four times in the critically-important eligibility criteria section.

The application of these criteria hinges on the opinion of the planning minister, rather than an objective assessment on the merits or otherwise of a particular proposal. If the minister *thinks* that a proposal will meet two of a very broad range of criteria, including that it will

- Make a “significant” financial or social contribution to a region or the state (60k (1)(a), p45),
- Would be of “strategic planning” significance to a region or the State
- Significantly “affect” existing public infrastructure
- Involve significant “environmental, economic or social effects”

... he can declare it a major project. These criteria’ could realistically apply to any project and should, at the very least, be able to be objectively measured.

The criteria are so broad and general that the planning minister can, in practice, determine any project, large or small, that he chooses to become a ‘major project’.



In reality, the Bill isn't about major projects, it's about pet projects that any planning minister can fast-track out of the existing planning system, away from proper assessment, regulation, impact assessment and away from public scrutiny.

It is also important to consider what could happen if a planning minister had malign intentions. So broad are the Bill's criteria for making a proposal a 'major project' that a morally-compromised planning minister would have vast scope to fast-track proposals of their choosing.

Let's not forget that only last year, despite the climate crisis and moral and commercial unviability of coal, the current Government provided public funds to help a coal exploration company look for coal on farmland in the middle of Tasmania. This Bill would make it much easier for the Government to help a coal-related project - or similarly non-viable proposals - get up.

The Precautionary Principle is designed to protect people from harm and posits that we should consider something harmful unless there is good evidence to consider it safe.

If we apply this Principle to this Bill, the eligibility criteria, reduced assessments and extra power the Bill gives to the planning minister could mean harms being perpetrated upon Tasmania's environment (people, place and nature).

The Bill provides no evidence that a planning minister can realistically be restrained in conferring major project status on projects of his choosing and plenty of evidence of how he is handed more power under this Bill and fewer checks and balances.

Therefore, because of the lack of evidence to the contrary, the application of the Precautionary Principle to this Bill runs counter to good planning.



Major chaos

Planning is conventionally and justifiably seen as a way to impose order on chaos. However, the current tumult of changes being imposed on Tasmania's planning system imposes chaos on order. A raft of Bills and other changes to Tasmania's planning laws represent a radical overhaul of Tasmania's planning regime, which is perplexing coming from a government that claims to be conservative.

The Major Projects Bill is part of a suite of proposed legislated changes to Tasmania's already sub-standard planning laws all happening at once. As well as this Bill, there is currently

- A review of the [Tasmanian Planning Commission Review](#) (the heart of Tasmania's planning system). This is currently out for public consultation and had the same submission deadline as the Major Projects Bill, meaning that interested parties had to work on two submissions at once.
- A [Tasmanian Civil and Administrative Tribunal 2020 Bill](#) (currently out for public comment). The Bill would subsume the Tasmanian Planning Tribunal into a larger tribunal and could therefore affect planning review decisions.
- [Local Provisions Schedule](#) - government is requiring local councils to create local planning rules

There are also a number of planning-related, second-tier plans out for public consultation at the same time as those listed above, including the [draft Tourism Master Plan](#) for the TWWHA and a [Recreation Zone Plan](#) for the lower Gordon River, among others.

It is poor governance to publicly consult on proposed major changes concurrently, instead of sequentially, one after the other, especially during the worst public health crisis in a century.

This represents poor practice because the community is prevented from knowing how any possible changes to Bill A could have knock-on effects on Bill B.

If the Government subsequently makes changes to Bill A, these could mean significant changes to Bill B or C but because they could be made at the same time and after the public consultation period closes there is no way for the public to have their say on how a finalised Bill, which could then become law, could impact other Bills or existing laws or regulations. It's hard to see how this isn't deliberate.

For example, the Tasmanian Planning Commission, which is integral to the Major Projects Bill, could be dramatically changed following its government review, which could, in turn, affect the Major Projects Bill. But because public consultation on both is simultaneous, the public will be unable to have its say.

The current COVID-19 health crisis is also the wrong time to consult on these radical changes to Tasmania's planning laws that will become permanent and could affect the fabric of Tasmania for generations to come.

Consultation at this time has also led to confusion through the collision of the government's pre-existing plans to radically overhaul Tasmania's planning system with the need to recover from



the impacts of the coronavirus.

In the State and Federal planning ministers' [communique](#) of April 20, 2020, the country's planning ministers set out broad principles behind proposed "adjustments to jurisdictional planning systems" they said were needed so that "the [planning] system supports economic recovery" in the wake of the Covid-19 pandemic.

The Wilderness Society supports the notion of 'building back better' in the wake of the terrible impacts on the country, including Tasmania. The problem is that the planning principles in the communique seem to be less about "better" and more about "faster", "fewer checks and balances" and "reduced public input".

If we are truly to recover successfully, we need to do it together, and with the certainty that public support brings to new developments. And that that can only be delivered with improved, not reduced, public transparency, engagement and review.

The principle of "balancing administrative and legal review rights with the need to address the pandemic emergency and to assist community and economic recovery" is particularly troubling. Getting the balance wrong could mean planning decisions are made that aren't in the best interests of the community's recovery needs.

The speed of approval of developments in this recovery phase needs to be balanced with the recognition that major projects lock-in particular activities and impacts for decades.

Tasmania's Planning Minister, Roger Jaensch MP, issued a complimentary statement to the communique⁴, which included this paragraph:

"The Tasmanian Government has already implemented measures consistent with these principles to ensure development assessment and approvals processes can be kept open, and applications can continue to be processed."

It is important to be crystal clear on this point.

The Major Projects Bill was [tabled](#) in Tasmania's House of Assembly on March 4, well before the impacts of the COVID-19 were being felt in Tasmania or the rest of the country.

The statement by Mr Jaensch suggests that the state government "has already implemented" proposed changes to Tasmania's planning laws that are consistent with an emergency response, even though, at the time, there was no emergency.

Had there been no pandemic, the state government still intended to introduce the major projects Bill, to overhaul the Tasmanian Planning Commission and change local planning rules.

What the government is effectively saying is that the changes it always planned to make to Tasmania's planning systems are consistent with a proposed emergency response. This suspension of normal planning laws should set Tasmanians' alarm bells ringing.

Mr Janesch has effectively admitted that these changes are suitable for an emergency response

⁴ [Keeping the planning and investment pipeline open](#), Roger Jaensch MP, 20 April, 2020



even though the government always intended to make them law.

This justifies our and others' claims that these changes are a radical overhaul of Tasmania's planning law.

Instead of discussing proposed permanent changes to Tasmania's planning laws in an orderly, sober and sequential way, outside this period of historic community vulnerability, legislation is being pushed through, all at once, with confusion as to whether this is part of an emergency recovery package or normal government business.



Major sidelining of local councils

Every ‘major project’ is also always a local one. Any proposal that the Government and the planning minister determines to be a ‘major project’ will always occur somewhere on the ground in Tasmania and affect a local community. Ordinarily, that would also mean it would fall into one of Tasmania’s 29 local council areas, which would consider whether to grant the proposal a development application.

But the Major Projects Bill would mean that ‘major projects’ bypass local councils and therefore bypass local communities too.

The most controversial projects communities are currently fighting could be taken away from councils: Cambria Green on the east coast; the Fragrance skyscrapers in Hobart and Launceston; Lake Malbena helicopter proposal and other developments in the world heritage area; and cable cars proposed for Mt Wellington, Mt Roland and Cataract Gorge.

This legislation would make the Resource Management and Planning Appeals Tribunal (RMPAT) and the Tasmanian Planning Commission (TPC) largely irrelevant, because any declared major project could go straight to an unelected Development Assessment Panel (DAP). Decisions by the tribunal (to refuse a development on appeal) and TPC (to refuse a planning scheme change) could be overturned through the Major Project Bill’s fast-track process.

Projects could either

1. Go straight to the Major Projects process (and bypass local councils, RMPAT and TPC)
2. Or those that aren’t given a planning permit by a local council, RMPAT or TPC could go through the Major Projects process anyway.

Just as concerning is the fact that a proposal could contravene a local planning scheme and still be made a major project and fast-tracked out of the normal planning system. The DAP would only have to “consider” a local planning scheme, rather than ensure a proposal is compliant with it⁵. This fundamentally undermines local planning schemes and their enforcement.

Local councils are also excluded by virtue of the fact that they aren’t listed “relevant regulators”, which the DAP must consult with.

These scenarios have the consequence of undermining the roles and functions of councils and/or RMPAT and/or the TPC. Therefore the Bill would see a significant reduction in the role of local communities and local democracy in planning decisions.

As set out by section 60ZL (2)(a)(ii), the public only gets the chance to comment on a major project after the DAP has made its decision. There is no obligation on the DAP to change its decision following public consultation. We would suggest this is illustrative of empty public consultation, that only happens after a decision has already been made.

⁵ [Tasmanian Draft Major Projects Bill Factsheet](#), Environmental Defenders Office Tasmania, 30 April, 2020



Major missed opportunity for local people power

'Public consultation' often seems like a box a federal, state or local government body or process seeks to tick rather than being properly recognised as an opportunity to collaborate with people. And not just collaborate but as a way to materially incorporate people's wisdom, ideas and improvements into particular projects.

"No matter who you are, most of the smartest people don't work for you," said Bill Joy, founder of Sun Microsystems, referring to the fact that most wisdom lies outside any organisation, and with the people.⁶ The problem is, government typically seems to think it knows best.

The fatal flaw in not properly collaborating and engaging with local people is the failure to realise that proposals can emerge stronger as a result.

This Bill moves in the opposite direction and comes from an old-fashioned, cargo-cult, low self-esteem mindset that is based on the misplaced idea that if we just get some factories built, everything will be okay. It's based on a mistaken calculus that lowering standards and fast-tracking developments are better than raising standards and inviting public collaboration.

This Bill represents yesterday's thinking and increasingly businesses are realising that without social licence, their commercial landscape can become non-viable.

The world's largest public relations company Edelman has conducted an annual trust barometer survey for the last 20 years and its [2020 report](#) is instructive in the context of this Bill.

In a survey in 28 countries and with 34,000 respondents, it found that 87% of respondents, primarily from the business community, believe that "stakeholders, not shareholders, are most important to long-term company success".

In this context of planning, this Bill misses a huge opportunity to enhance local democracy and, in fact, it reduces it. What genuine planning reform should be doing is looking at ways to crowdsource solutions to problems and to enhance the quality, utility and functionality of local planning proposals, as well as to reduce their harmful impacts.

The implication of this Bill is that people are awkward, unnecessary and inconvenient and just hold things up. This is not just an affront but it also fails to tap local wisdom by collaborating with people. Combined with the ubiquity and utility of the internet, this failure is inexcusable. "Emerging technologies hold the potential for real time social licence and social risk measurement, allowing for more targeted, rapid response⁷."

There is masses of information available about how to use crowdsourcing with planning. Here are just a few examples:

- "Project executives across government and the private-sector need to be able to engage skilfully with the public if major projects are to be designed and delivered well."⁸
- "The time is ripe for rethinking the role that dispersed information can play in land use policy. To that end, local governments should explore new ways of crowdsourcing land use."⁹

⁶ P1, [The value of crowdsourcing: A public sector guide to harnessing the crowd](#), Deloitte, 2016

⁷ P22, [Next Generation Engagement Informing community engagement for Australia's infrastructure sector](#), Melbourne School of Government, 2017

⁸ [Collaborative engagement for successful delivery of major projects](#), Suresh Cuganesan, and Alison Hart, John Grill Centre for Project Leadership, The University of Sydney, undated

⁹ [Crowdsourcing Land Use](#), Lee Ann Fennell, 2013



- “There is clearly room for crowdsourcing at the state and local levels... But the most substantial hurdle for smaller government entities will be, frankly, having the guts to give crowdsourcing a try.”¹⁰
- “Crowdsourcing should be embraced by state and local government practitioners and scholars as a noteworthy strategy to approach emergency planning”¹¹
- [NextHamburg](#) is a citizens’ think tank that crowdsources the city together with citizens – a model that is now being replicated in cities across the world. By serving as a citizen-driven project platform and incubator and enabling people to influence politics, NextHamburg is creating an alternative future agenda for their city. There is no reason this model could not be replicated in Tasmania by this Bill.
- [Parramatta City Council](#) is matching crowdsourced public donations for popular projects in its area
- “[Here](#) are some intriguing crowd-sourced projects that are using the power of a crowd to make major projects come to life.”¹²

¹⁰ p30, [Using Crowdsourcing In Government](#), IBM Centre for the Business of Government, 2013

¹¹ p64, [Embracing Crowdsourcing: A Strategy for State and Local Governments Approaching “Whole Community” Emergency Planning](#)

¹² [Tapping into the power of the crowd](#) – a list of 100 uses of crowdsourcing, Medium, 2019



Major Malbena risk

There is a real risk that Wild Drake's luxury tourist proposal at Lake Malbena could be fast-tracked if this Bill becomes law. There is nothing in the Bill that would stop this from happening.

We already know the following things about the helicopter-accessed, luxury accommodation proposed for Lake Malbena inside Walls of Jerusalem National Park:

- That it would degrade wilderness if it were to proceed because the [Wilderness Impact Assessment Report](#) we commissioned showed that it would.
- That the government secretly changed the boundaries of the TWWHA's Self-Reliant Recreation Zone to specifically allow for the proposal to go ahead because it's admitted as much.¹³
- That three key statutory bodies that exist to advise the government on such matters, [the Australian Heritage Council](#), [the Aboriginal Heritage Council of Tasmania](#) and [the National Parks and Wildlife Advisory Council](#) each recommended against the proposal proceeding but were ignored by the government.
- That the local council with jurisdiction for Walls of Jerusalem National Park, Central Highlands Council, also rejected the proposal.¹⁴
- That the [Federal Court](#) found that the assessment process by State and Federal governments was unlawful, secretive and spurious, and awarded costs to our organisation.
- 99% of the submissions to the Federal Government and to Central Highlands Council opposed the Lake Malbena proposal.

Wild Drake's proposal would diminish wilderness in Tasmania. But it is also a test case for the Government's Tourism EOI process, whereby it is facilitating private commercial tourism developments on public reserved land, national parks and inside the Tasmanian Wilderness World Heritage Area.

The Major Projects Bill would give the planning minister the power to fast-track developments on reserve land and in national parks. Section 60N (2)(a) makes all crown land eligible for major project development, which includes reserves, national parks and the World Heritage area.

These Tourism EOI proposals would not be able to get up without the Government protecting them because the majority of Tasmanians know it is wrong to privatise public land in this way and councils would reject them. The Wilderness Society supports nature tourism, but based on developments outside national parks, that don't exclude existing users, are ecologically sustainable and where developers buy their own land.

Given its test-case status, even though Wild Drake's proposal is not a major project in terms of its immediate footprint, it should be considered a major project for what it represents: the first cab off the rank for any number of private commercial tourist proposals for public reserve land, many of which could have their lease and licences signed off before they go through any sort of public consultation exercise, as was the case with the Lake Malbena proposal. The nature of this proposal

¹³ [Halls Island rezoned after tourism proposal received](#), The Mercury, February 20, 2019

¹⁴ [Central Highlands Council rejects Lake Malbena tourism development in the Wilderness World Heritage Area](#), The Examiner, February 26, 2019



being the ‘thin end of the wedge’ is well understood by the public.

If the Major Projects Bill were to become law and the planning minister make the Lake Malbena proposal a ‘major project’, all these demonstrations listed above that the project is harmful to wilderness, has no social licence and has been the subject of an unlawful assessment process could be ignored and the proposal be fast-tracked regardless.

As a warning of what this Bill could lead to, Tasmanians should picture the planning minister justifying just such an intervention and his determination that Wild Drake’s Lake Malbena proposal is to become a major project.

He could pick and choose from the Bill’s broad criteria and use any particular justification for doing so, given the laissez-faire nonchalance of the Bill to what constitutes a major project.

The planning minister might be of the *opinion* that Wild Drake’s fly-in, fly-out proposal could create local jobs, even though it wouldn’t. (Former UTAS economics professor, Graeme Wells, found that the proposal offered zero net benefit to the State’s economy¹⁵.)

Or the minister could claim the proposal is of “strategic planning importance” because fast-tracking the Lake Malbena proposal could help the planning prospects of all the other commercial tourism development proposals in the pipeline for the TWWHA, courtesy of the discredited Tourism EOI process.

Or the Minister could say that, because of the environmental impacts the Wild Drake proposal would have - the Bill doesn’t say whether the impacts have to be positive or negative - he wishes to make the Lake Malbena proposal a major project.

Or that because of the characteristics of the proposal - outright unpopularity and being the subject of several legal appeals, perhaps - he has decided to make the proposal a major project.

Tasmanians may not need to imagine the planning minister using the Bill’s criteria to make the non-major proposal like the Lake Malbena proposal a major project because we believe that is exactly what the planning minister is likely to do and exactly what the so-called major projects Bill is intended for.

And for this reason, and for all the others outlined in this submission, the Major Projects Bill should be rejected in favour of the existing Tasmanian planning system, which already allows for major projects and already offers stronger public consultation, local council consideration and public appeal rights, all of which this Bill would do away with.

¹⁵ [Libs’ plan for helipad at Lake Malbena will affect JOBS](#), Tasmanian Times, November 20, 2018

From: [REDACTED]
To: [Planning Unit](#)
Subject: Submission on the Land Use Planning and Approvals Amendment (Major Projects) Act 2020.
Date: Friday, 15 May 2020 4:35:57 PM

15 May 2020

Planning Policy Unit
Department of Justice
GPO BOX 825
HOBART TAS 7001

I write regarding the draft *Land Use Planning and Approvals Amendment (Major Projects) Act 2020*.

Tourism Industry Council Tasmania (TICT) is the peak industry body for the Tasmanian tourism industry. We are a not for profit organisation that brings together the many businesses and tourism sectors that make-up Tasmania's visitor economy to present a strong and united voice to all levels of government and the community.

TICT welcomes this long-overdue reform of the LUPA framework in relation to particularly large, significant and complex development proposals in Tasmania.

We note these reforms essentially replace the failed Projects of Regional Significance process. It is regrettable it has taken so long for Tasmania to re-establish effective 'call in' powers on complex development proposals, as are in place in other States, but we welcome the Government's initiative in finally progressing these reforms.

TICT supports the overall intent of the Act, and the need to establish an effective framework under LUPA for Councils to request, and the Minister for Planning to initiate, a stand-alone expertise-based assessment of complex development applications.

We have seen recent examples in our industry of small councils with limited planning resources struggling to balance complicated development applications with intense public scrutiny completely disrupting the assessment process. We have also seen examples of Councils compromised in their roles as both the relevant and land manager, undermining both investor's and community confidence in their credibility as the planning arbitrator.

TICT supports the discretion for the Minister in declaring a Major Project. We are pleased there is no proposed minimum monetary threshold on the scale of projects to be considered as Major Project under the amendments, as was considered in the initial consultations on the reforms and is in place in some other jurisdictions.

Some of the projects in our sector most likely to be applicable under these reforms are not 'large' in scale, but rather complicated from a LUPA perspective. In this context, we do suggest the Government consider alternative names for the amendment, and the process; 'Major' implies large in scale. Perhaps 'Major and Complex Projects' would be a more appropriate terminology.

We welcome the time provision for projects to progress through the Major Projects process. This will clearly reduce uncertainty and costs for both developers and the community. Progressing proposals through RMPAT and potentially onto the Supreme Court is extremely expensive for no certain outcome. We have seen frequent examples of projects effectively lost in a black hole of uncertainty from Councils rejection to appeals.

We note the potential for this process to applied over complex development proposals within Tasmania's protected areas. This is obviously an area of considerable debate and concern for many in the community. As an industry, we are concerned by the ongoing consternation around the approval process for tourism activities in protected areas.

We see the potential for this Major Projects process to be triggered for complex development proposals within Tasmania's protected areas, instilling experts into the decision making about projects of unusual environmental, scientific, and economic complexity. This can only be a good thing. The potential for the Assessment Panels to request a Reserve Activity Assessment (RAA) process potentially overcomes one of the criticisms of the current process of considering tourism activities in protected areas, with Parks and Wildlife both the regulator and land manager of activities within their reserve areas.

We welcome the proposed legislation, and a much-needed positive reform of the Land Use Planning framework in Tasmania.

Yours sincerely,

Luke Martin
Chief Executive
Tourism Industry Council Tasmania



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TFGA Submission: Major Project Assessment Reform

The Tasmanian Farmers and Graziers Association (TFGA) is the leading representative body for Tasmanian primary producers. TFGA members are responsible for generating approximately 80% of the value created by the Tasmanian agricultural sector.

Agriculture is one of the key pillars of the economy and, with the current level of support from government, are well positioned to further capitalise on the stature of Tasmania agriculture.

The TFGA appreciates the opportunity to make comment on the Major Project Assessment Reform.

TFGA acknowledges the Major Project Assessment reform and the need for it to be updated into, what has been described, as a more streamlined process, going from a multiple layered approval process dependant on which, one of three major project applications is applied for (Development, S43A and Project of Regional Significance) to the one major project application process (Major Projects).

As stated in the Planning Institute of Australia presentation on the Department of Justice website, the current Project of Regional Significance (PORS) system is avoided due to uncertain timeframes, not enough permits resulting in the applicant needing to seek further approvals, no early warning signs or ways to cut the assessment short if there are major issues detected with the application and significant fees that need to be paid upfront regardless if the project is approved or not.

TFGA agrees that the PORS system needs to be replaced with a more contemporary process allowing for early detection and ways to cut the assessment process short if major flaws are detected with an application. Also, a more cost-effective process with layered monetary outlays is needed and a process that allows for more positive major project outcomes. This will ensure better planning outcomes for the Tasmanian community and to continue to attract investors to Tasmania for ongoing economic growth, especially after the COVID-19 pandemic subsidies.

On the 2nd October 2017, TFGA lodged a submission titled ***'TFGA Submission – Major Projects Reform'*** in which we outlined a concern with ***'disparity in rights between public land and privately-owned land. For example, under section 60H, Eligibility Criteria for declaration of major projects, government owned land requires consent before the application can proceed, whereas privately owned land has no such right and notification to the landowner is all that is required'***.

This presents a significant sovereign risk for agriculture and TFGA would like to reiterate the importance of this point and highlight another possible issue with the current draft 'Major Projects Bill consultation version February 2020'.

We would like to bring to your attention the following perceived issues:

- **Clause 60N. Circumstances in which declaration of major project may be made, (2) (a) – ‘If all or part of the land on which the project is to be situated is Crown Land, within the meaning of the Crown Lands Act 1976 – with the consent of the Minister to whom the administration of the Act is assigned; or’.** TFGA would be concerned with this clause as this offers no protection for farmers who lease Crown Land to run their agricultural business and offers no future incentive to use Crown Land for any agricultural purposes. We would like to see this clause reconsidered to allow for more security for farmers that lease Crown Land and to allow them to be able to continue operating their businesses with confidence.
- **Clause 60K. When project is eligible to be declared to be major project, (3) – ‘A project that is to be situated on an area of land may be declared to be a major project even though a use or development that is proposed to form a part of the project is prohibited under a relevant planning scheme’.** TFGA are concerned about this clause as this gives the Commission and Minister special rights to land that has been declared prohibited under a relevant planning scheme and this appears inequitable. We believe this would not be viewed favourably by the Tasmanian Community.
We request further information regarding whether approvals can be granted even if a development is found to contravene the relevant planning scheme or reserve management plan. Under the draft Bill we are uncertain if this is the case. We ask also on what grounds would a development be granted when it contravenes a planning scheme and or reserve management plan.
- **Clause 60Q. Effect on planning matters of declaration of major project, (3) – ‘If a declaration of a major project is made –
(a) an application for an ordinary permit, in relation to a use or development forming all or part of the major project, that has been made to, but not determined by, the planning authority, is taken to have been withdrawn on the day on which the declaration is made; and
(b) the planning authority to which the application was made must, as soon as practicable, refund to the applicant half of any fees that the applicant has paid in respect of the application.**
- TFGA would again express concern in this area as this gives the Commission and Minister special rights to land that has been declared prohibited under a relevant planning scheme and this appears inequitable. We believe this would not be viewed favourably by the Tasmanian Community. We would also question why only half of the application fees would be refunded? We request further clarification on this point.
- **Fact Check on Planning Reform Website – Why is the final decision on a Major Project made by an Independent Panel and the not the local council. ‘Even if the proposal does not require an amendment to a planning scheme, the Major Project process is intended to look beyond the boundaries of a single council area and consider the broader issues associated**

with the project. In the interests of balancing the views of the local community and the broader region, an independent panel to assess the proposal is considered the most appropriate. This model is also in line with all other states and territories in Australia and in accordance with best practice planning processes. Local government accepts that some parts of the planning system (amendments) and key projects, such as Projects of Regional Significance (PORS) or Projects of State Significance (POSS), should be assessed by independent experts such as the Tasmanian Planning Commission. The Independent Panel is independent from State Government and includes at least one Local Government representative'.

The TFGA need clarification on this point. We understand the Minister is to have regard to the determination guidelines, as per issuing by the Commission, the declaration is by the Minister, with final panel approval. We have found this information contained in the '**Fact Check on Planning Reform Website – Why is the final decision on a Major Project made by an Independent Panel and the not the local council**' but it doesn't seem to be clearly defined within the draft Major Project Assessment Reform 2020 document.

The TFGA would like to see a similar process included in the legislation that has been taken under Projects of State Significance. Under POSS it states:

'If the Minister responsible considers that a project is of State significance, he or she may recommend that the Governor declares the proposal to be a 'project of State significance'. This must then be approved by Parliament before an assessment can begin. If approved, the Minister then directs the Commission to undertake an integrated assessment of the proposal'.

Thank you for the opportunity to comment on the Major Project Assessment Reform and we look forward to your response.

Yours sincerely,



Peter Skillern
Chief Executive Officer
15th May 2020



tasmanian conservation trust inc

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12 May 2020

SUBMISSION ON THE DRAFT MAJOR PROJECTS BILL

GENERAL COMMENTS AND RECOMMENDATIONS

Overall recommendations

The TCT strongly opposes the Draft Tasmanian Major Projects Bill (MPB) for the reasons explained in this submission and recommends that this undemocratic legislation be abandoned. We can't see how it can be amended to fix the numerous fundamental problems.

It is the wrong time to be undertaking consultation on such a complex and far reaching piece of legislation. If the state government does want to continue development of the MPB it should suspend the process until the Coronavirus crisis has ended and normal life has returned for Tasmanians (including when large public gatherings are deemed safe by the Department of Health). It should then hold a comprehensive consultation process, correcting many of the flaws in the current process (as outlined in the submission).

Concerns regarding the consultation process

It is the wrong time to be asking for community input on such a major change to planning legislation

The state government has provided a short extension, an additional four weeks, to the consultation period for the MPB but this is not adequate. It is an entirely inappropriate time to be holding consultation on a bill that has potential for such significant changes to our planning system. Many people are understandably preoccupied with dealing with the impacts the Coronavirus and the state government's justifiable response to it. Many Tasmanians are suffering severe stress from family members and friends who are infected with the virus or who are coping with enforced quarantine. A large proportion of

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the Tasmanian population are under stress caused by loss of their job or closure of their business, having to teach children at home or being worried about elderly relatives who they cannot visit in aged care facilities.

In early March five public meetings were being organized around Tasmania to raise awareness of the MPB and encourage people to make submissions but all were called off due to the health risks.

RECOMMENDATION: It is the wrong time to be undertaking consultation on such a complex and far reaching piece of legislation. If the state government does want to continue development of the MPB it should suspend the process indefinitely until the Coronavirus crisis has ended and normal life has returned for Tasmanians (including when large public gatherings are deemed safe by the Department of Health). It should then hold a comprehensive consultation process, correcting many of the flaws in the current process (as outlined in the submission).

The Planning Policy Unit has distributed misleading and false information regarding the MPB

When the MPB was released in late March 2020 there was no discussion paper or information sheets provided with it to explain in plain English what was being proposed in the bill and the implications of it. The 206 page MPB is a complex and lengthy piece of legislation that is hard for many to read and understand. On its own the bill doesn't provide an explanation of the implications of its clauses or why the changes are deemed to be required. This takes an experienced lawyer or planner to do and most members of the public do not have access to such advice.

Instead the PPU has been releasing information during the consultation process, much of it in response to what it claims has been stated publicly or in submissions. This is an unacceptable way to undertake consultation on such a serious piece of legislation, essentially only responding as the PPU thought mistakes were being made by the community.

The most comprehensive and potentially helpful information was only published on the PPU's website on 27 April 2020, a little over two weeks before the submission deadline. Many people would have made a submission by that stage and would not have had the benefit of this information.

On 9 April 2020 the PPU sent an email to a range of stakeholders informing them that "The PPU is preparing questions and answers to address matters raised in submissions received to date on the MPB. These will be available on the website soon" (email to TCT from Planning.Unit@justice.tas.gov.au date 9 April 2020). It seems that it took until 27 April for this information to be made available.

The first information made available on the PPU's website, undated but probably published in the first week of April, was under a heading 'Fact Check'. This can still be viewed on the PPU's website via the link below.

<https://planningreform.tas.gov.au/major-projects-fact-check/fact-check>

The PPU claimed on its webpage that the Fact Check was responding to “incorrect advice and interpretation of the Major Projects Bill (MPB) that is circulating in the community”. Far from being a “Fact Check”, as claimed, the information is dangerously inaccurate and misleading. The PPU misrepresents or avoids commenting on many of arguments made by groups actively involved in the public debate on the subject, makes false claims about key elements of the MPB and uses misleading or irrelevant comparisons with the PORS legislation.

The supposed ‘Fact Check’ document was so misleading that we were compelled to publish a response (attached Fact Check of the Planning Policy Unit’s Fact Check’). We wish to include a few summary points here to highlight how inappropriate this document was to be produced by the agency which was charged with doing the public consultation.

- The PPU have claimed that the lack of appeal rights is not significant because the Panel’s hearing performs the same or similar function as an appeal (**point 5**). The PPU fails to point out that an appeal can seek to have an approval over turned or conditioned and that submissions to the DAP have no such potential.
- The PPU twice claim the minister’s power to declare projects is limited by the requirement that it meets the guidelines but this statement is false because these guidelines are not mandatory (the TPC may make them) and the minister only has to ‘have regard’ to them and does not have to follow them (**points 1 and 8**).
- The PPU claims incredibly that there will be “greater independent scrutiny and more public process than normal Local Government assessment” (**point 7**). In defending this position the PPU do not mention that there is no right to appeal approvals in the MP process, which is the critical element of independent scrutiny.
- The PPU claims the MP process is not a fast track because of the length the MP assessment process (**point 6**). It is a lengthy process but this does not in any way make up for the key processes that are missed e.g. no rights of appeal and no vote by elected councillors.

This is the type of document we would expect a government minister’s spin doctor to produce. We have never known a government agency to produce such a misleading and false document during a public consultation process.

It is notable that while the PPU claimed on its webpage to be responding to “incorrect advice and interpretation of the Major Projects Bill (MPB) that is circulating in the community” it made no mention of any particular document, statement or author. People who may have read the PPU’s information would not be able to go to the source of the supposed “incorrect advice and interpretation” and judge whether the PPU had accurately represented the claims. This is a basic tenant of rational public discourse which the PPU failed to apply.

RECOMMENDATION: If the State Government does accept the TCT’s recommendation that the development of the MPB should be suspended and another consultation period is offered when the Coronavirus crisis has ended, it is vital that lessons are learnt from the flaws in the current process.

Department of Justice website failed to advertise the MPB consultation for a lengthy period

For a period of two weeks in April 2020 the consultation on the MPB was not listed on the Department of Justice home page or list of public consultations that were open (see attached copies of screen shots taken on 16 April 2020). This error was only corrected once the TCT wrote a letter to the Mercury newspaper. During this period I received a phone call from a member of the community who had been looking for the Draft MPB on the Department of Justice website but could not find it. I could only locate it by using the search tool on the Department's website.

RECOMMENDATION: Draft legislation must be clearly and easily made available to all people who want it.

No mandate for proposed major project powers

The previous version of this legislation, the 'Land Use Planning and Approvals Amendment (Major Projects) Bill 2018', was withdrawn by the State government just prior to the state election. The consultation period on the draft bill closed on the 29 January 2018 but representors heard nothing more about that bill from the department. No mention was made of the major projects bill by the Liberal Party during the election campaign that I could detect. The TCT has thoroughly scrutinised all publically released Liberal Party election policies and other statements and can find no mention of major projects legislation. We also made considerable effort to request from the Premier any policies not publically released but this request was not answered.

RECOMMENDATION: The TCT asserts that the State Government does not have a mandate for proposing new major projects legislation and this is further reason why the state government should abandon the MPB. It is notable that the legislation is considerably different from the two previous versions and as such any claim that electors could expect the government to bring the legislation back is unconvincing.

No justification for more major projects or fast tracking powers

It is the TCT's view that Tasmania doesn't need more fast tracking powers. The government has not made the case for why new major projects powers are needed. The Major Projects Bill is intended to replace the Projects of Regional Significance process but no details have been provided about what is wrong with PORS. The MPB is also far broader in scope than the PORS and this has not been explained. Tasmania has Projects of State Significance legislation which is a credible process for large and complex projects – and was successfully used to approve the Basslink cable.

RECOMMENDATION: It is the TCT's view that Tasmania doesn't need more fast track powers. Tasmania has Projects of State Significance legislation which is a credible process for large and complex projects. If the state government intends to continue with development of the MPB it should only do so after undertaking a full consultation process when the Coronavirus crisis has ended and it should provide the community with a full explanation of why the government wants to change existing major projects legislation and why the proposed changes are justified.

It is notable that with the second version of the MPB the state government released a discussion paper including a brief explanation of the flaws of the PORS legislation and why the changes were required. The discussion paper made reference to unnamed stakeholders that had raised unspecified concerns about PORS. As stated in the TCT's submission on that draft, this explanation was far from inadequate. However, with the third version the government has failed to release a discussion paper and has made no attempt to justify the need for more major projects laws.

Major Projects process could replace Projects of State Significance

While the State government's PPU seems to argue that the MPB is making some minor refinements to the PORS processes this greatly understates the implications of the legislation.

One consequence of the MPB that the state government has not addressed is that not only would the major projects permit process replace the PORS process but they could also displace the current planning process for Projects of State Significance (POSS) under the *State Policies and Projects Act 1993* (Tas). That is because, arguably, any project that might be considered to be of state significance could also be eligible for a major project declaration under the Major Projects Bill. Developers and the minister would be expected to see major benefits in the major project process compared with the POSS and this would relegate the POSS process to being largely irrelevant.

A key difference between the POSS process and the proposed major project process relating to major projects is that a POSS project is of no effect until approved by both Houses of Parliament. There is no equivalent provision for parliamentary oversight in the Major Projects Bill.

SPECIFIC CONCERNS AND RECOMMENDATIONS

The minister has too much power when declaring major projects

The MPB gives the minister total and unchecked power to declare a major project which removes it from the normal local council planning process. The scope of projects that may be declared as major projects is very broad (see below) and this makes the minister's powers critically important and extremely worrying.

The MPB provides no effective check or oversight of the minister's power to declare a major project. The Tasmanian Planning Commission 'may' produce determination guidelines (Section 60J), which means they are not required to, but even if they do the minister only has to "have regard to" them (Section 60M(3)). This phrase means that the minister must take careful note of the guidelines when deciding whether to declare a major project but there is no requirement to follow the guidelines or be consistent with them.

The MPB makes it clear that it is the minister's 'opinion' (Section K(1)) as to whether the project meets the eligibility criteria that is paramount. No one else has a say and there is no effective mechanisms to guide the minister's opinion.

There is no requirement in the MPB that the minister is to produce a statement of reasons explaining why in his opinion the major project meets the criteria.

The PPU has responded to these criticisms by stating that the minister's declaration of a major project is subject to appeal under the Judicial Review Act. However, this has little practical limit to the minister's power or benefit to the community.

It is possible that the Minister's declaration of a major project could be a reviewable decision under the *Judicial Review Act 2002* (Tas). However, judicial review is limited to consideration of errors of law. Errors of law are notoriously difficult to detect and prove. Judicial review proceedings are limited in that the usual remedy for a decision affected by legal error is for the decision to be quashed and sent back to the decision-maker for remaking. In practice, the remade decision may be very similar to the invalid one.

There is no scope for the Supreme Court, under the Act, to consider the merits of the decision. That is, whether the project should be declared, or whether it meets the eligibility criteria. This is in contrast to normal planning decisions, which are generally subject to merits review by the Resource Management and Planning Appeals Tribunal.

The Minister's declaration should be subject to a merits review process because of the broad discretion vested in him or her by the Act.

Virtually any project could be a major project

The Major Projects Bill allows virtually any development that would normally go to a local council, from a subdivision to a pulp mill, to be declared a major project. The eligibility criteria are so broad and open to interpretation by the minister that the Minister can justify virtually any project as a major project.

The MPB requires that the Minister considers the eligibility criteria (section 60K) and ineligibility criteria (section 60L) when deciding to declare a major project. The eligibility criteria would be very hard to prove, in particular the criteria that relate to 'contravention' of a State Policy or Tasmanian Planning Policy. 'Contravention' means that the project is contrary to a statute or, other words, is illegal. This would require a court to determine, which is not something that the minister or the community would be likely to seek as assurance of a correct decision. The other ineligibility criteria relate to 'not furthering' the objectives of the Resource Management and Planning System of Tasmania and being 'inconsistent' with a regional land use strategy. These are very subjective tests that the minister has entire discretion to interpret.

The eligibility criteria are also vague and broad. Although the state government's PPU has made much of the requirement that two or more criteria must be met, because each is so broad this does not significantly limit the scope of projects that could be met. Criterion (a), (b), (c) and (d) are all premised on the project meeting a requirement to a 'significant' degree or has 'significance' i.e.:

- (a) the project will make a **significant** financial or social contribution to a state or region;

- (b) the project is of strategic planning **significance** to a region or the State;
- (c) the project will **significantly** affect the provision of public infrastructure, including, but not limited to, by requiring significant augmentation or alteration of public infrastructure;
- (d) the project has, or is likely to have, **significant** environmental, economic or social effects;

All developments that would normally go to a local council down to and including a subdivision but up to a large industrial development such as a pulp mill could be deemed by the minister to be significant in terms of these criteria. There is no measure or guidance for the minister to determine what is significant.

Similarly the minister is left to judge if (f) 'the characteristics of the project make it unsuitable for a planning authority to determine.' The Minister is required to consult with the TPC and consider advice from state agencies (section 60K(2)) but is not required to follow any advice provided by them.

The remaining eligibility criteria is (e) which relates to a project requiring assessment by two or more planning authorities or two or more project-associated acts. Most sizable developments would be assessed under two or more acts so this does little to limit the scope of the projects that could fit the criterion. The part of the criterion that relates to a project being assessed by two planning authorities might restrict the scope of projects that could meet this criterion but for the fact that a development needs only to meet one or other of the two parts of the criterion.

All controversial projects around Tasmania could be fast tracked including – Cambria Green on the east coast; the Fragrance skyscrapers in Hobart and Launceston; Lake Malbena Helicopter proposal and other developments in the world heritage area; and cable cars proposed for Mt Wellington, Mt Roland and Cataract Gorge.

We can see nothing that would prevent these projects from meeting the criteria.

Highrise building clause removed contrary to the Premier's promise

The 2018 draft of the Major Projects Bill partially addressed community concerns by excluding highrise hotels (section 60K(1)) as eligible projects, but the clause has been removed from the latest draft. As drafted the MPB would allow all of the current and previously proposed Fragrance hotel developments, both in Launceston and Hobart, to be declared as major projects and potentially approved counter to existing or future planning scheme restrictions on building heights.

This contradicts the Premier Gutwein's commitment that local communities should determine building heights for their cities.

The Premier Peter Gutwein, when planning minister, made a clear principled commitment to the House of Assembly that building heights are a matter for

the “community of Launceston” and in regard to skyscrapers proposed for Hobart “it is not for me to call them in”.

It will be up to the community of Launceston to determine the right height for their city. I have to say I do not like tall buildings and I have made that perfectly clear. In regard to what has occurred in Hobart, I do not support skyscrapers, but it is not for me to call them in. It is for local government to utilise the tools available for them, which this Government has made available to enable them to manage the way these things develop. The member for Bass knows that full well, as does the member for Franklin. What they want to do is run their kooky conspiracy theories. At the end of the day the Launceston community will make the decision and they have the planning tools available to them to enable them to do so.

Page 10-11 Hansard, House of Assembly, 19 September 2017.

The minister makes a clear statement of principle that local communities should determine the building heights that are appropriate for them through the normal planning scheme amendment process.

Sidelining the RMPAT

The MPB has the potential to make the Resource Management and Planning Appeals Tribunal (RMPAT) less relevant which greatly reduces the balance and fairness that currently exists in the planning system.

Developers may choose to bypass the normal planning process and seek to have their proposal declared a major project which cannot be challenge to the RMPAT.

Developers who go through the normal process and are either refused by the local council or by RMPAT may then apply to have the same or slightly different project through the major projects process potentially have it approved. This would result in the over-turning the RMPAT decision.

The consequence of such a change to the planning system is grave and has not been acknowledged by the state government. Why would members of the community bother taking RMPAT appeals, at great personal effort and financial expense and risk of not succeeding, when any success could just be over turned through a major project approval. This could deter many people from taking appeals and could seriously damage the level of participation of the community in the planning system contrary to the objectives of the Resource Management and Planning System in Tasmania.

No right of appeal and limited community input

The community will have no right to appeal against the decision of a DAP to approve a major project and will have limited right to have input. The MPB is more likely to be used to address large and controversial projects, projects which have already received strong community opposition. Therefore the limit to community input and absence of appeal rights is extremely worrying.

Appeal rights provide the community with an avenue to have bad decisions reviewed. Removing appeal rights for major developments greatly weakens our democracy. Appeals can seek to have approvals overturned or obtain additional conditions to address specific concerns either through a full appeal or via a mediated agreement. This is not possible in relation to a major project under the proposed MPB.

The community input to the assessment of a major project is extremely limited and quite inappropriate. The community are able to make a representation on a proposed major project and potentially present to a hearing held by the DAP. But the community do not generally get an opportunity to make a comment on the assessment guidelines, which critically determines how a project is to be assessed. Community input is only required if a project is found to require assessment under the Commonwealth EPBC Act.

The community get to make representations on the DAP's draft assessment report but this is the DAP's preliminary conclusion as to whether a major project permit should be granted. At this point the relevant regulators have also provided their preliminary advice as to whether the major project complies with the assessment guidelines. This is a strong contrast to the normal local council planning process where the planning authority issues the development proposal prior to forming a view on the development. The local council planning staff and elected councillors are therefore able to fully consider the communities views on the proposed development prior to making decision.

The MPB requires that the DAP holds hearings into a major project within 28 days of the public comment period closing. For projects that may be very complex and technical in nature this does not provide very long for community groups and individuals to secure services of a lawyer, planner and experts and have them prepare for making a presentation to the DAP hearing on their behalf.

It is a significant right that the community has in normal decisions by their local council to be able to make a deputation to the open council meeting at the time when the planning authority makes its decision. Such an opportunity is not provided for in the MPB.

Elected councillors will be side-lined

The MPB allows the minister to take developments away from local councils and be approved by Development Assessment Panels. Elected councillors will not have a say over approval of major projects. The DAP members are unelected and the community will not be able to lobby them or hold them to account at elections as they may with their councillors.

There are currently many types of developments that elected councillors do not have a say over (no permit required) or cannot refuse (permitted). There is only a subset of applications that require a vote by councillors (discretionary). These are normally designated discretionary because their applicability and approval is conditional and open to judgement by the planning authority after receiving input from the public and council staff. These discretionary developments are generally the projects that are likely to be declared major

projects and taken away from councils. This is why the MPB is such a major threat to the role of elected councillors.

It is a significant matter that local communities take into account to some degree a council candidate's views on development issues when deciding whether to vote for them in council elections. If local communities are disappointed that their views are not adequately represented by local councillors they can hold them to account at the next council election and seek to vote them out. This is a vital part of our democracy.

Critically, there are many issues that affect local communities that are legitimate matters for public debate and representation to elected councillors when developments are open for public comment. Critics of community participation in planning decisions have claimed that councillors are lobbied to go against planning advice and the requirements of their planning scheme. While this is a possibility, it is also the case that planning schemes are open to interpretation, especially in regard to discretionary developments, and the planner's advice cannot always be taken as being the only correct interpretation. This is especially true because the community is often most concerned about the impact of a development of subjective matters such as impacts on scenic qualities, amenity and recreational enjoyment of places. While attempts have been made to ensure planning schemes provide clear frameworks for assessing impacts on these matters there is still a lot of room for interpretation and this will probably always remain. Most people in the community seem to think it is right to have elected councillors judge what is right for their local communities.

Planning scheme changes can be forced on councils and communities

Under the proposed MPB planning scheme amendments can be forced on councils and communities. While the DAP must consider a relevant planning scheme they are allowed to approve a major project that is not consistent with it. A major project can be approved that is inconsistent with a planning scheme and, after the permit is issued, the Tasmanian Planning Commission must amend the planning scheme to remove any inconsistency (Section 60ZZZB). Many in the community fear that the proponents of Cambria Green may use this path.

If developers have planning scheme amendments refused by the Tasmanian Planning Commission, they could go through the major projects process and have the Commission's decision overturned. The legislation subverts the role of the Commission in the same way as it subverts the Planning Appeal Tribunal.

Removal of requirement for landowner consent for planning scheme amendments – a rescue for Cambria

Late in the consultation process the TCT discovered that the MPB could rescue the Cambria proponents from their current legal predicament. Cambria's rezoning proposal was refused by the TPC when the proper landowner consent was not provided and the project is in limbo awaiting a court challenge. But if Cambria was made a major project the owners would not need to provide landowner consent.

The MPB paths the way for overseas developers or others to get planning rules changed and to invest in fast-tracked developments without the Tasmanian public ever knowing who they are or where their money comes from.

The state government has not told the Tasmanian public that investors are being given this special protection and every Tasmanian should be shocked at this deception.

Development Assessment Panels are not independent

There are many checks and balances that apply to the Tasmanian Planning Commission that ensures it operates in an independent, transparent and evidence-based manner. For 23 years it has maintained a high level of community trust.

There are insufficient checks and balances on the Development Assessment Panel. While the state government and the PPU have repeatedly claimed the DAPs would be independent of government this is not entirely correct. The Minister plays a key role in nominating one panel member. Under section 60O(3) the Minister may, in a major project declaration:

- (a) include a statement specifying the particular qualifications or experience that the Minister considers at least one member of the Panel ought to have; and
- (b) require the Commission to appoint to the Panel a member who has those qualifications or that experience.

The scope of the Minister's power under s 60O(3) is ambiguous. It is not clear whether the Minister can or cannot direct the Commission to appoint a *particular person* to the DAP. The Minister may require the Commission to appoint one person with 'particular qualifications or experience' to the DAP which could in practice limit eligibility to one or a few persons.

It has been claimed by the Planning Policy Unit that the DAP is 'to abide by procedures stipulated by Tasmanian Planning Commission on how to conduct the assessment, as well as adhere to Part 3 of the Tasmanian Planning Commission Act 1997 which sets out procedures and conduct of hearings'.

While this is correct there are important differences. One key between the DAPs and the TPC is that all TPC members are required to adhere to the State Public Service Code of Conduct. Critically, TPC members are likely to be involved in numerous assessments and decisions and they may have a lengthy tenure at the TPC. Their adherence to the code and the requirements of the TPC Act in regard to assessment process and hearings is critical to their ongoing involvement in the TPC.

DAP members do not have to adhere to the public service code. Additionally, DAP members are appointed separately for each major project and some may only ever be expected to be involved in a single major project assessment and decision. If they were to contravene the TPC Act requirements it may have no consequences for their future employment.

Independent Tasmanian Planning Commission is sidelined

Despite comments by the state government, the independent Tasmanian Planning Commission will not be assessing and approving major projects, this is to be done by a Development Assessment Panel.

All the power to assess and approve developments is given to a Development Assessment Panel that may include no Tasmanian Planning Commission person. Section 60V 'Appointment of members of Panel' does not require that any DAP member is a member of the Commission and nor does any other part of the MPB. Section 60V(1)(a) provides that the TPC nominates a person as DAP chair who is "a member of the Commission, or any other person nominated by the Commission". While this allows for the TPC to nominate a TPC member as chair there is no requirement.

The only safeguard that exists in regard to members of the DAP is that the members must be approved by the independent Tasmanian Planning Commission but this could change after the government's current review of the Commission.

Yours sincerely



Peter McGlone
Director



DRAFT MAJOR PROJECT BILL

TCT 'Fact Check' on the Planning Policy Unit's 'Fact Check' document, posted on the Department of Justice web site in early April 2020

Produced by Peter McGlone 5 May 2020

SUMMARY OF RESPONSES TO THE PLANNING POLICY UNIT'S DOCUMENT

The Planning Policy Unit's website published information on its website (see link) that claims to be responding to "incorrect advice and interpretation of the Major Projects Bill (MPB) that is circulating in the community".

<https://planningreform.tas.gov.au/major-projects-fact-check/fact-check>

Far from being a "Fact Check", as claimed, the document is a dangerously inaccurate and misleading.

The PPU misrepresents or avoids commenting on many of our arguments, makes false claims about key elements of the MPB and uses misleading or irrelevant comparisons with the PORS legislation.

Go to the end of this document for a full critique: *TCT 'Fact Check' on the Planning Policy Unit's 'Fact Check' document.*

The Planning Policy Unit has avoided commenting on some of our most powerful criticisms e.g.:

- that the major project process can compel the TPC to amend a planning scheme (think Cambria) to ensure it conforms with an approved major project;
- the removal of the highrise clause that was in the second version of the bill; and
- the government still haven't provided a justification for the MP legislation or explained what is wrong with the Projects of Regional Significance (PORS) legislation.

PPU's incorrect statements and misleading arguments

The Planning Policy Unit has made outrageous and incorrect statements in responding to some of our most serious concerns. For example the PPU have claimed that the lack of appeal rights is not significant because the Panel's hearing performs the same or similar function as an appeal (**point 5**).

The PPU twice claim the minister's power to declare projects is limited by the requirement that it meets the guidelines but these guidelines are not mandatory (the TPC may make them) and the minister only has to 'have regard' to them and does not have to follow them (**points 1 and 8**).

The PPU claims incredibly that there will be "greater independent scrutiny and more public process than normal Local Government assessment" (**point 7**). In defending this position the PPU do not mention that there is no right to appeal approvals in the MP process, which is the critical element of independent scrutiny. The independence of the DAP members must be questioned as there is no guarantee that any will be TPC members and the Minister has a key role in appointing one member (**point 1**).

The PPU claims the MP process is not a fast track because of the length the MP assessment process (**point 6**). It is a lengthy process but this does not in any way make up for the key processes that are missed e.g. no rights of appeal and no vote by your elected councillors.

The Planning Policy Unit asks ‘Why do we need a Panel?’ and ‘Why can’t the TPC assess it?’. The PPU simply says that it is retaining the Panels that are allowed for under the PORS process and doesn’t answer the question ‘Why do we need a Panel?’ (**point 3**). It fails to provide a justification for the Panel replacing the TPC in assessing and approving MPs (**point 3**).

The PPU justifies taking major projects assessment and approval away from local government by saying that the TPC currently has authority to amend planning schemes and assess and approve Projects of State Significance (**point 7**). Having the TPC responsible for these existing processes and decisions in no way justifies taking major projects assessment and approvals away from local councils.

PPU mis-represents our position

The supposed Fact Check document is full of opinion masquerading as fact and misrepresents many of our claims. Critically the PPU document does not reference any document that it claims to be correcting.

The PPU refers to arguments that no one seems to be raising e.g. that the normal permits from the EPA, Heritage Council etc are not required (**point 4**) while avoiding responding to our key concern that local councils will be cut out of having a say over approval of the MP.

The PPU claim that we have said the minister has too much power and insinuates that we have claimed the minister makes the final approval (**point 1**). Our argument is that the minister has too much power in the critical first step of declaring a MP. We have not said the minister is involved in approving the major project.

The Planning Policy Unit dismisses our concerns about the TPC being sidelined (**point 2**). The PPU claim that there is little or no difference between the TPC and DAP doing an assessment and approval when we think they are very different institutions. The PPU fails to respond to our key complaint that there is no guarantee that any TPC members are on the DAP.

PPU’s comparison of Major Projects process to the Projects of Regional Significance Process is irrelevant and incorrect

The PPU Fact Check persistently compares features of the Major Projects Bill to the PORS process (**point 1, 2, 3, 5, 6, 7, 8**) in an attempt to justify the MPB. How similar or different the PORS and MPB processes are is not a relevant argument. We simply oppose the MPB and see much that is wrong with the PORS as well. The PPU fail to point out that the PORS process has never been used or attempt to explain why.

The PPU has falsely claimed that key elements of the PORS and MP are the same when this is incorrect. Critically, the PORS criteria are limited to regional projects whereas the MP criteria apply to projects of regional and state significance (**point 8**).

Major Projects process could replace Projects of State Significance (POSS)

While the PPU seem to argue that the MPB is making some minor refinements to the PORS processes this understates the implications of the legislation. One consequence of the MPB that the PPU do not address is that not only would the major projects permit process replace the PORS process but they

could also displace the current planning process for Projects of State Significance (POSS) under the *State Policies and Projects Act 1993* (Tas). That is because, arguably, any project that might be considered to be of state significance could also be eligible for a major project declaration under the Major Projects Bill. A key difference between the POSS process and the proposed process relating to major projects is that a POSS project is of no effect until approved by both Houses of Parliament. There is no equivalent provision for parliamentary oversight in the Major Projects Bill.

TCT ‘Fact Check’ on the Planning Policy Unit’s ‘Fact Check’ document, posted on the Department of Justice web site in early April 2020

The State government’s Planning Policy Units response to so called “incorrect advice”.	TCT response to the Planning Policy Unit
<p>1. Minister has too much power</p>	<p>This heading misrepresents the main point we have made. We have criticised the Major Projects Bill (MPB) for giving the minister too much power in that they have total power to declare virtually any project. The dot points do not negate this point and some are not relevant.</p>
<ul style="list-style-type: none"> • Minister's powers are unchanged from current Project of Regional Significance (PORS) process: 	<p>The Minister’s powers under the Major Projects Bill are different to those under the existing PORS process. But we are not concerned as to how similar the powers are, we are opposed to the Minister’s powers in the MPB.</p>
<ul style="list-style-type: none"> ○ Minister can only declare a project where it meets the eligibility criteria based on the guidelines issued by the Tasmanian Planning Commission 	<p>A project is eligible to be declared a major project if, <i>in the opinion of the Minister</i>, the project has two or more of the attributes listed as eligibility criteria in section 60K of the Bill.</p> <p>It remains our view that virtually any project could meet two or more of these criteria and the Minister’s opinion is critical.</p> <p>The Planning Policy Unit (PPU) mistakenly links the statutory eligibility criteria with the guidelines. The statutory eligibility criteria are in section 60K and <i>are not</i> based on the guidelines issued by the Tasmanian Planning Commission (TPC).</p> <p>However, in determining whether to declare a project to be a major project, the Minister is to have regard to the determination guidelines, <i>if any</i>. To ‘have regard to’ means the Minister must carefully consider the guidelines. The Minister’s decision does not have to comply or be consistent with the guidelines.</p> <p>Importantly, the TPC is not required to produce</p>

	<p>determination guidelines. The MPB states that the Commission <i>may</i> produce guidelines. Those guidelines must be consistent with the Act and there is no opportunity for public consultation in relation to the guidelines.</p>
<ul style="list-style-type: none"> ○ This process is subject to appeal under the Judicial Review Act 	<p>It is possible that the Minister’s declaration of a major project could be a reviewable decision under the <i>Judicial Review Act 2002</i> (Tas). However, judicial review is limited to consideration of errors of law. Errors of law are notoriously difficult to detect and prove. Judicial review proceedings are limited in that the usual remedy for a decision affected by legal error is for the decision to be quashed and sent back to the decision-maker for remaking. In practice, the remade decision may be very similar to the invalid one.</p> <p>There is no scope for the Supreme Court, under the Act, to consider the merits of the decision. That is, whether the project should be declared, or whether it meets the eligibility criteria. This is in contrast to normal planning decisions, which are generally subject to merits review by the Resource Management and Planning Appeals Tribunal. The Minister’s declaration should be subject to a merits review process because of the broad discretion vested in him or her by the Act.</p>
<ul style="list-style-type: none"> ○ Minister’s decision making role finishes with project declaration, with the exception of revoking the ‘major project’ status at any time 	<p>Our main concern is regarding the Minister’s power to declare major projects. The third, fourth and fifth dot points do not relate to the declaration process. However the minister has additional powers to give directions as to the composition of the Panel. There are incorrect statements in the fifth and sixth dot point of the Planning Policy Unit’s Fact Check Document.</p>
<ul style="list-style-type: none"> ○ After declaration of a project the Minister can only require the Panel to add a member with a specific skill set but not the individual; and grant extensions of time during the process to the Panel, 	<p>Under s 60O(3) the Minister may, in a major project declaration:</p> <ul style="list-style-type: none"> (a) include a statement specifying the particular qualifications or experience that the Minister considers at least one member of the Panel ought to have; and (b) <i>require</i> the Commission to appoint to the

	<p>Panel a member who has those qualifications or that experience.</p> <p>The scope of the Minister’s power under s 60O(3) is ambiguous. It is not clear whether the Minister can or cannot direct the Commission to appoint a <i>particular person</i> to the Development Assessment Panel (DAP). The Minister may require the Commission to appoint one person with 'particular qualifications or experience' to the DAP which could in practice limit eligibility to one or a few persons.</p>
<ul style="list-style-type: none"> ○ Panel members are appointed by the independent Tasmanian Planning Commission and not the Minister 	<p>See comment above.</p> <p>The Minister can require the Commission to appoint up to two members of the Panel.</p>

The State government’s Planning Policy Units response to so called “incorrect advice”.	TCT response to the Planning Policy Unit
2. TPC is sidelined – lack of independence	
<ul style="list-style-type: none"> ● Under the current PORS process, the Tasmanian Planning Commission (TPC) must establish a Development Assessment Panel to assess these types of projects. 	<p>The comparison with the PORS legislation is a distraction from our main complaint that under the MPB the TPC is sidelined. Under the MPB the TPC does not assess or approve a project and there is no guarantee that any TPC staff are on a DAP.</p>
<ul style="list-style-type: none"> ● Process for appointing panel has not changed from PoRS, it is not the Commission itself but an independent Panel appointed by it, and restricts the appointment to the Panel of a person who is on the Commission as one of the Government representatives. 	<p>The process for appointing a Development Assessment Panel (DAP) in relation to a major project is similar to the appointment of a DAP in relation to a PORS but there are some minor differences.</p> <p>Perhaps the most significant is that the Minister can require up to two persons be appointed to a DAP in relation to a major project: s 60O(3) and 60V(6). There is no corresponding power in the Minister in relation to a DAP established for assessing a PORS.</p> <p>Irrespective of the similarity of the DAP</p>

	appointment process the TPC is still sidelined in the MPB. Under the MPB the TPC does not assess or approve a project and there is no guarantee that any TPC staff are on a DAP.
<ul style="list-style-type: none"> • The new process requires the panel to act independently from Government: 	The DAP is independent from the State Government, except to the extent that the Minister can direct up to two members be appointed to it. Even though the DAP may operate with some independence from government it is not the TPC.
<ul style="list-style-type: none"> <ul style="list-style-type: none"> ○ It requires the panel to abide by procedures stipulated by Tasmanian Planning Commission on how to conduct the assessment, as well as adhere to Part 3 of the Tasmanian Planning commission Act 1997 which sets out procedures and conduct of hearings. 	When conducting hearings, a DAP must conduct its procedure in the same way as the Tasmanian Planning Commission would under pt 3 of the <i>Tasmanian Planning Commission Act 1997</i> (Tas). Even though the DAP may operate with some independence from government and follow TPC processes it is not the TPC. The critical difference is who may be appointed a DAP member and the involvement of the Minister in this process.
<ul style="list-style-type: none"> <ul style="list-style-type: none"> ○ All panel members are bound by the procedures. 	A DAP must conduct its proceedings in accordance with the procedures approved by the Tasmanian Planning Commission.

The State government’s Planning Policy Units response to so called “incorrect advice”.	TCT response to the Planning Policy Unit
3. Why do we need a Panel? Why can’t the TPC assess it?	
<ul style="list-style-type: none"> • A panel is used in the current PORS process, not the TPC 	<p>This point makes the claim that “A panel is used in the current PORS process” but this does not answer the question that is asked ‘why use a Panel’. We argue a panel is unacceptable in the MPB.</p> <p>The Government has failed to make the case that any change to the PORS process is justified. When the government released the draft legislation the first two times it provided scant information on why the PORS process was inadequate and why the proposed changes were needed. This time it has dodged the issue entirely.</p>

<ul style="list-style-type: none"> • The Panel composition has not changed from current process. It consists of: <ul style="list-style-type: none"> ○ A TPC Commissioner or a person nominated by the Commission (provides planning expertise similar to any Commission assessment where Commission staff sit on Panels) ○ A local Government representative (provides local expertise and adds local representation) ○ An expert in the project field (provides expert knowledge relating to the type of project) ○ Plus up to two additional experts if required 	<p>The point claims that the Panel composition is unchanged from the PORS process but even if this was correct the rest of the MPB is very different e.g. the Panels can assess and approve a much wider range of projects. The government is also reviewing the TPC and we fear that this may make it less independent and may make more political decisions in regard to DAP member nominations.</p> <p>There is a key difference between the appointment of members to a DAP under the MPB compared to the PORS process. That difference is described above but bears repeating here – in relation to a major projects DAP, the Minister can require up to two persons be appointed to a DAP: s 60O(3) and 60V(6). There is no corresponding power in the Minister in relation to a DAP established for assessing a PORS.</p>
<ul style="list-style-type: none"> • The Commission has a broad membership but the practice is that only some of the Commissioners sit on Panels with senior staff of the Commission. The Commission is predominately comprised of planning experts. Panels are used for all current assessment processes outside of the local council process including the current Appeal Tribunal and Commission. The benefits of an assessment panel assessing the project is that: <ul style="list-style-type: none"> ○ The local government representative will provide local context and knowledge. ○ Bringing in a subject matter expert will increase the knowledge base of the assessment panel to ensure the impacts are properly addressed. ○ An expert in the project field (provides expert 	<p>The claimed benefits of the Panel made in this point are not convincing as the TPC currently has Commissioners who are from local government. And if specific expertise is missing then why not amend the TPC legislation to allow it.</p> <p>Does the PPU Fact Check intend to assert that DAPs are used for all planning processes other than those considered by the local council under div 2 of pt 4A of LUPAA? That is not the case – the only Panels are through the PORS process which has never been used.</p>

<p>knowledge relating to the type of project).</p> <ul style="list-style-type: none"> ○ Plus up to two additional experts if required. 	
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The State government’s Planning Policy Units response to so called “incorrect advice”.	TCT response to the Planning Policy Unit
4. Avoiding normal required permits	
<ul style="list-style-type: none"> • All assessments required under the ‘project associated Acts’ are conducted by the normal regulators but their decisions are co-ordinated through the MP process just as the EPA and Heritage Council decisions are co-ordinated through the council DA process. • The panel must follow the advice of the regulators. Consequently if a regulator recommends that the panel refuse the proposal, the Panel cannot override the recommendation. • Independent regulators include: <ul style="list-style-type: none"> ○ Environmental Protection Authority ○ Heritage Tasmania ○ Aboriginal Heritage ○ Threatened Species ○ Tas Water ○ Gas Pipeline <p>The first two are already integrated into the normal LUPAA council development assessment process. This introduces other approvals into a similar integrated framework.</p>	<p>This is an argument that the TCT have not made and we have not heard being made by others. The three dot points claim that all approvals required under the normal planning process are required under the MP process. But there is one major omission, under the MP process the local council are not involved in approving or refusing a development.</p> <p>The local council is not a “relevant regulator” under the Major Projects Bill. The upshot is that the local council cannot exercise the powers conferred on relevant regulators, being the power to:</p> <ul style="list-style-type: none"> • direct the DAP to refuse to grant a major project permit; and • direct the DAP to impose specified conditions on a major project permit. <p>It is also worth noting that the power of each relevant regulator to direct the DAP to refuse a major project or to impose a condition on a major project permit is significantly curtailed. Generally, a relevant regulator may only direct that the Panel refuse a major project permit if the relevant regulator is satisfied that, were the project not a major project, the relevant regulator would refuse the project a permit under the permit scheme for which it is responsible.</p>

The State government's Planning Policy Units response to so called "incorrect advice".	TCT response to the Planning Policy Unit
<p>5. Limiting rights of the public – feedback and appeal</p>	
<ul style="list-style-type: none"> The level of public consultation in the process has not decreased from the current PORS process 	<p>This point states that the level of public consultation remains the same as with PORS but even if this was true it does not make it acceptable and the MPB is very different in many ways e.g. it relates to a much wider range of projects.</p> <p>There is no provision for public consultation in relation to the formulation of "assessment guidelines" for PORS or major projects (subject to a minor exception for a major project that is "reasonably likely" to require approval under the EPBC Act).</p> <p>Both major projects and PORSs must be exhibited for a period of 28 days during which members of the public may make representations in relation to the project.</p> <p>Following the period of exhibition, in relation to both major projects and PORS, the DAP must hold hearings. The period of time within which hearings must be held differs as between major projects and PORS:</p> <ul style="list-style-type: none"> hearings in relation to PORS must be held "as soon as is practicable after the public exhibition of the project ends"; hearings in relation to major projects must be held within 28 days of the public exhibition concluding.
<ul style="list-style-type: none"> As with all current discretionary assessment processes, the public make submissions on the proposal before the Panel carries out its assessment and before the normal regulators carry out their assessments and advise the Panel. Additionally, the public have an opportunity to attend and participate in public hearings before the panel finalises their 	<p>This point fails to mention that with the normal council process the community can attend council meetings and make deputations and directly lobby councillors</p> <p>The public may only make representations after:</p> <ul style="list-style-type: none"> the assessment guidelines have been produced; each relevant regulator has provided its preliminary advice (i.e. the regulator's view as to whether the major project

<p>assessment.</p>	<p>complies with the assessment guidelines); and</p> <ul style="list-style-type: none"> the DAP has produced a draft assessment report (which is essentially the DAP's preliminary conclusion as to whether a major project permit should be granted). <p>The exhibition period (during which representations may be made) is 28 days or a longer period if a longer period is determined by the Panel to be appropriate.</p>
<ul style="list-style-type: none"> The Panel's hearing process will provide for the public to test issues and evidence, similar to an appeal process, as is currently the case in the PORS process and all other Commission hearings into planning scheme amendments. 	<p>The Tasmanian Planning Commission is to approve procedures for the conduct of proceedings of DAPs.</p> <p>When conducting hearings, a DAP must conduct its procedure in the same way as the Tasmanian Planning Commission would under pt 3 of the <i>Tasmanian Planning Commission Act 1997</i> (Tas). But a good deal of discretion relating to procedure is afforded to the DAP under that part.</p> <p>The PPU Fact Check appears to compare the hearing process (before a DAP) with the appeals process (i.e. to the Resource Management and Planning Appeals Tribunal) available in relation to normal development applications. That is not a legitimate comparison. There is no provision for merits review in relation to decisions about major projects.</p>

<p>The State government's Planning Policy Units response to so called "incorrect advice".</p>	<p>TCT response to the Planning Policy Unit</p>
<p>6. It's a way to fast track development</p>	
<ul style="list-style-type: none"> Fast track implies cutting corners and shortening key opportunities for involvement. The proposed process has longer and more measured timeframe than the current PORS process (293 days compared to 171 days) and far longer than a normal development application 	<p>The key concern is not the time within which a decision can be made. It is whether this new process gives a reasonable opportunity for <i>meaningful</i> community engagement/consultation. Features of the MPB that suggest there is an inadequate opportunity for community engagement include:</p> <ul style="list-style-type: none"> community consultation does not occur in

<p>undertaken by local council (42 days)</p> <ul style="list-style-type: none"> The 293 days includes a 90 day period for the Panel to conduct public hearings and test issues and evidence, which is a similar timeframe to an appeal process with RMPAT or an amendment process with the TPC. 	<p>relation to the assessment guidelines, which are the key standards against which the project is measured;</p> <ul style="list-style-type: none"> the project is not publicly exhibited (and representations called for/hearings conducted) until <i>after</i> a DAP has made what is in essence a draft decision; hearings are held within 28 days of the end of the notice period; the relevant local government authority has almost no role to play in the decision-making process;
<ul style="list-style-type: none"> The new process includes a 28 day public exhibition of the proposal as opposed to 14 days for a normal development application 	<p>In relation to applications for discretionary permits under div 2 of Pt 4 of LUPAA, the application must be exhibited for 14 days but it can be extended. The public may make representations during that period.</p> <p>In relation to major projects, the exhibition period (during which representations can be made by the public) is 28 days.</p>
<ul style="list-style-type: none"> It is a comprehensive assessment conducted by an independent Panel with rights for Judicial review 	<p>This point raises the right of review to the Supreme Court but as explained above this does not replace the much more accessible merits review process before the Resource Management and Planning Appeals Tribunal.</p>

<p>The State government’s Planning Policy Units response to so called “incorrect advice”.</p>	<p>TCT response to the Planning Policy Unit</p>
<p>7. Taking away power from Local Government and giving it to State Government</p>	

<ul style="list-style-type: none"> The process is the same as that already available through the PoRS process. All Government's across Australia have processes where significant projects are elevated to independent panels which assess them against criteria which set out the broader public interest as opposed to a local council interest 	<p>The MP process is not the same as the PORS process, though some features of the two processes are very similar. But the similarity of PORS and MP is not the relevant point. We do not support the MPB including for the reason that projects are removed from local government.</p> <p>A key difference is the breadth of the major project eligibility criteria. The effect is that many projects can be declared a major project, including those that would otherwise be POSS. The POSS process includes provision for parliamentary oversight, whereas the major projects process does not.</p> <p>Other states have a wide range of major projects laws that are presumably not directly comparable with the MPB. Without evidence they can't be used to justify the MPB.</p>
<ul style="list-style-type: none"> Local government accepts that some parts of the planning system (amendments) and some projects (Projects of State Significance) should be assessed by independent experts such as the Commission. The assessment panel is independent from State Government and includes at least one Local Government representative 	<p>Even if it was true that local government accepts the existing uses of panels this does not demonstrate that local government accept the use of panels for major projects.</p> <p>The argument that the panel is independent from government is irrelevant to our concern that local councillors are not involved in approving a major project.</p>
<ul style="list-style-type: none"> The Minister has no involvement with the Panel or the Regulators while they are making their decision, other than to grant an extension of time 	<p>We have never claimed that the Minister is involved with the Panel or regulators.</p> <p>The Minister has the power to require up to two people be appointed to a DAP.</p>

<ul style="list-style-type: none"> This process involves greater independent scrutiny and more public process than normal Local Government assessment 	<p>The normal local government process involves the potential for an appeal to the tribunal which is the critical element of independent scrutiny. .</p> <p>It is not to the point that the MPB might provide ‘more’ or ‘less’ public process than normal local government process. The central concern in the community is that:</p> <ul style="list-style-type: none"> (a) the breadth of the eligibility criteria mean that many projects may be declared as major projects; and (b) in relation to those projects, the involvement of local government in the decision making process will be significantly diminished; and (c) the draft Bill will exclude merits review rights to the Tribunal – this is crucial. <p>This is of concern because it is a commonly held community belief that local government, being necessary local, are best place to evaluate projects likely to impact on their region.</p>
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The State government’s Planning Policy Units response to so called “incorrect advice”.	TCT response to the Planning Policy Unit
8. Any project could be declared a Major Project at the Minister’s discretion	
<ul style="list-style-type: none"> Someone needs to declare a project is eligible and it should not be the same person or body that assesses it. The Minister does not assess it, he/she simply refers it to the Commission. 	<p>There is no foundation to the statement that the project declaration and assessment need to be performed by different people. The EPA Board decides if a project meets the Level 2 criteria and then assesses the projects. This provides certainty to the community and to industry.</p> <p>Even if it was accepted that a major project should not be declared by body that assesses it, it doesn’t necessarily have to be the Minister.</p>
<ul style="list-style-type: none"> PORS eligibility criteria are retained and we have added two points: <ul style="list-style-type: none"> o a new criterion where a 	<p>The second dot point claims that the “PORS eligibility criteria are retained” but this is misleading. Critically the PORS criteria only relate to projects having regional significance and</p>

<p>number of permits are required</p> <ul style="list-style-type: none"> ○ Inserted requirement for the Minister to consult with the Commission regarding the relevant Council’s capacity to assess a given project <p>We have also clarified other criteria</p>	<p>the MPB criteria refer to projects that are of regional or state significance.</p> <p>The addition of criteria relating to “state significance” is likely to sideline the existing POSS process. For example, the proposed new Basslink cable could be assessed and approved under the MPB but it could not be taken through the PORS process.</p> <p>The addition of eligibility criteria broadens the circumstances in which a major project declaration can be made significantly in comparison to those where a PORS declaration can be made. The breadth of these criteria are of concern because they have the potential to sideline regular council planning processes in a significant number of cases.</p> <p>The problem with the breadth of the relevant criteria is well illustrated by the example given in the PPU Fact Check – of the new criteria relating to multiple permits. Virtually all medium to large projects will require multiple permits. The addition of this criteria is one of the reasons that the MPB represents a significant encroachment on local governments’ power to decide planning applications of significance to their local area.</p> <p>The requirement for the Minister to consult with the Commission about the council’s capacity to assess a given project does not come with any requirement that he or she accept the Commission’s recommendation.</p>
<ul style="list-style-type: none"> • As a result, under MP process a proposal will need to meet two out of six criteria as opposed to one out of five for Project of Regional Significance 	<p>The number of criteria are not reliable indicator of the breadth of circumstances in which the major projects process could be enlivened. It is the breadth of the criteria that are crucial. As is outlined above, the major project eligibility criteria are extremely broad.</p>
<ul style="list-style-type: none"> • The Minister can only make a decision on whether the project is deemed eligible based on the eligibility criteria and having regard to the guidelines prepared by the Commission. 	<p>This point repeats the reference to the assessment guidelines but there is no requirement that the TPC makes the guidelines and if they are made the minister only has to consider them.</p>
<ul style="list-style-type: none"> • Unlike the PORS process the MP process provides criteria the make a project ineligible rather than letting the Minister decide if 	<p>This point refers to the MPB ineligibility criteria but our legal advice is that the criteria are so hard to meet that virtually no project could be ineligible.</p>

<p>the project is ineligible</p>	
<ul style="list-style-type: none"> • Unlike the PORS and POSS process, the independent assessment panel in the MP process can declare the project to have ‘no reasonable prospect’ very early on in the process if advised by a regulator to do so or if the Panel considers that the project was ineligible to be declared as a major project 	<p>This point refers to the MPB providing the DAPs with the power to declare a project has ‘no reasonable prospect’ but this does not relate to our criticism of the minister’s powers to declare virtually any project.</p>



Department of Justice

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In order to ensure the on-going statutory independence and integrity of the Tasmanian Planning Commission, the Minister for Planning has called for an independent review of the Commission's roles and functions.

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The Department of Justice has released the Evaluation of the Tasmania Legal Assistance Sector, providing recommendations to ensure that the sector is equipped to provide assistance to the greatest number of Tasmanians, particularly those who are disadvantaged or in need.

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Seeking your input on the Tasmanian Planning Commission Review.

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Extract from Hansard, House of Assembly. Pages 10-11

Tuesday 19 September 2017

Launceston - Proposal by Fragrance Group

**Ms DAWKINS question to MINISTER for PLANNING and LOCAL GOVERNMENT,
Mr GUTWEIN**

[10.34 a.m.]

Can you advise the House and the residents of Bass of the Government's position on the Fragrance Group's plans for a 70-metre-high skyscraper in Launceston? Do you think it appropriate that a 25-storey building, more than double the height of any existing building, will be built in the city right next door to City Park? Have you met with the developer in relation to this proposal and have you seen the plans? To reassure the people of Launceston, will you today rule out providing any special support or using the powers you would have under the proposed major projects legislation to fast-track this project?

ANSWER

Madam Speaker, I thank the member for her question. It surprises me that I have received it. Quite obviously she has not taken the time to read the major projects legislation which explicitly outlines that the minister cannot call a project in by virtue of its height. You are well aware of that.

Ms O'Connor - That's not true - read the draft.

Madam SPEAKER - Order. It is not a time for debate.

Mr GUTWEIN - The member for Bass, who asked the question, is well aware of the suite of planning controls that are available to local government. Whether it be in Hobart or Launceston, if local government wants to put in place a particular purpose zone and limit the height and put a hard edge to it, they can do that. You know that; you are nodding your head.

Ms Dawkins - I do know that, but I want to know what you did -

Madam SPEAKER - Order. Allow the minister to answer the question.

Mr GUTWEIN - They can put in place a SAP, a specific area plan, if they wish. They can be specific in regard to what goes on a location or into an area. It is important to debunk the rubbish the Greens have been running, and some others, in regard to their arguments about planning.

Ms O'Connor - Have you met with the Fragrance group in relation to the Launceston skyscraper?

Mr GUTWEIN - I will finish this and then I will come back to that.

Ms O'Connor - Answer the question.

Madam SPEAKER - Order. Allow the minister to answer the question. I warn the members opposite. The minister is attempting to answer the question and you are not allowing him to. I have every right to call on the next question and you will not get your answer.

Mr GUTWEIN - Madam Speaker, I will come back to that and the conspiracy rubbish that is run by the Greens over and over again. No, I have not met them.

In regard to the tools available, this needs to be explained very clearly. We have put in place, for the first time ever, statewide planning controls - rules across the state. We have been consistent and have said that local government, with their communities, will be able to protect what is unique and special to them. Those planning controls are available to local government. I can understand why the Leader of the Greens does not bother herself with detail and is prepared to run conspiracy theories, but two members of the Greens have sat around council tables and are aware of the rules that exist today and the rules available to local government in the future.

It will be up to the community of Launceston to determine the right height for their city. I have to say I do not like tall buildings and I have made that perfectly clear. In regard to what has occurred in Hobart, I do not support skyscrapers, but it is not for me to call them in. It is for local government to utilise the tools available for them, which this Government has made available to enable them to manage the way these things develop. The member for Bass knows that full well, as does the member for Franklin. What they want to do is run their kooky conspiracy theories. At the end of the day the Launceston community will make the decision and they have the planning tools available to them to enable them to do so.



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15 May 2020

Via email: planning.unit@justice.tas.gov.au

LAND USE PLANNING AND APPROVALS AMENDMENT (MAJOR PROJECTS) BILL 2020

Submission

The Tasmanian Aboriginal Centre (TAC) is the organisation representing the political and community development aspirations of the Tasmanian Aboriginal community. It was established in the 1970's and delivers a range of health, family, aged-care, heritage protection, training, welfare, child care, land management and other services to the Aboriginal Community.

The TAC notes the State of Emergency declared in Lutruwita /Tasmania due to the global COVID 19 pandemic and highlights the unprecedented demands on our resources and constraints on our personal movement. The TAC believes it would be prudent and just for Government to defer consultation on the Major Projects Bill (the Bill) until the State of Emergency is lifted and things begin to normalise.

Nonetheless we offer the following to the Major Projects consultation process.

The TAC has been strongly engaged in issues pertaining to the protection of Aboriginal heritage. This includes active engagement in the public debate and assessment processes relating to 'major projects' in Tasmania. This includes such proposals as Gunns' pulp mill, the Brighton bypass at Kutalina, the Kingston bypass, the Lake Malbena development, off-road tourism in Takayna/ Western Tasmania Aboriginal Cultural Landscape and the cable car proposal on Kunanyi, amongst others.

The TAC has been consulted over changes to Tasmania's *Aboriginal Heritage Act 1975* and remains manifestly underwhelmed by the scope and function of this Act and the ongoing loss, neglect and disrespect of Aboriginal Heritage in Tasmania.

The TAC is dismayed at the Tasmanian Government's approach to the protection of Aboriginal heritage, highlighted by the proposal to expand 4WD tracks across the Western Tasmania Aboriginal Cultural Landscape on the Takayna coast and the approval of the Lake Malbena luxury huts, against expert Aboriginal advice.

The TAC reads the Major Projects Bill as yet another way Government will facilitate the progression of large, complex and potentially damaging development proposals against the interest of heritage protection and despite the concern of Tasmanian Aborigines.

The TAC sees this Bill as fundamentally unnecessary, noting the existing council planning processes, and the Projects of State Significance and Projects of Regional Significance processes. The Bill appears

to deliberately reduce the capacity for meaningful community consultation and removes merits-based rights of appeal.

The TAC recommends this Bill NOT be progressed and Government take steps to review and strengthen legislation designed to protect Aboriginal heritage, so as to increase the capacity for Aboriginal people to protect our heritage, have a genuine say in development decisions and increase our capacity to challenge destructive approvals.

We offer the following specific observations about the Major Projects Bill.

Major Project Declaration

The TAC does not support the absolute discretion afforded the Minister to declare a project a 'major project' for the purpose of assessment under the proposed assessment structure. While the Bill establishes a proposal must meet two criteria, the listed criteria are nebulous and ill-defined. The TAC believes this has the real effect to deliver the Minister the power to determine almost any proposal in Tasmania to be a 'major project'.

While The Tasmanian Planning Commission may issue determination guidelines as to matters to which the Minister is to have regard in determining whether to declare projects to be major projects, there is no opportunity for public input consultation into their formulation.

We note this applies to government-owned, reserved land, including land listed as National or World Heritage because of significant Aboriginal cultural heritage values. It also includes land over which the Aboriginal community has express claims or aspirations for sovereign return to Aboriginal community ownership and management. The TAC views this as unacceptable.

Consultation

The TAC notes the Bill offers no opportunity for community consultation over the guidelines against which a Major Project would be assessed. Not only does this establish a dynamic that sidelines the community from the start, it risks setting up a structure where critical areas of assessment need are omitted.

Consultation and public hearings are not available until the 'Development Assessment Panel' has published a 'draft assessment report' assessing the proponent's major project impact statement. The draft assessment report is in substance the Panel's preliminary conclusion about whether a major project permit should be granted and if so, with what conditions. At this point, the public has 28 days to comment with the potential for subsequent appeals.

There is no opportunity for public comment on the proposal itself, the project impact assessment or the guidelines against which the proposal will be assessed AHEAD of the Panel's draft assessment report.

There are obvious issues of prejudice inherent in a process that requires a decision-maker to essentially come to a decision before inviting public comment. The inevitable result of that process is that public submissions must, to have a meaningful impact, dissuade the Panel from adopting a position that it has already determined is the correct one. The process strays perilously close to a legislative endorsement of the decision maker adopting a process that at common law could be characterised as being affected by apprehended bias.

Relevant Regulator

The TAC reads the fact sheets accompanying the Bill as incorrect in claiming the Aboriginal Heritage Council is deemed a 'Relevant Regulator', highlighting the further de-prioritisation of the protection of Aboriginal heritage.

Under the Draft Bill, the permit approvals process provided for by the Aboriginal Heritage Act is subsumed within the major project assessment. The persons responsible for assessing permits under that Act are 'relevant regulators' in relation to the assessment of major projects.

Relevant regulators have certain functions under the draft Bill, including the power to direct that a major project permit be refused if the relevant regulator is satisfied that, were the project not a major project, the relevant regulator would have refused a permit under the regulator's parent Act (in this case, the Aboriginal Heritage Act).

The relevant regulator in relation to Aboriginal heritage is either the Minister for Aboriginal Affairs or the Director of National Parks and Wildlife. It is not the Aboriginal Heritage Council (as is said on the Government's Planning Reform website). This is because it is the Minister and/or the Director, not the Council, who is responsible for issuing permits under the Aboriginal Heritage Act. The Aboriginal Heritage Council has only advisory powers.

Notwithstanding the flaws we see in the Aboriginal Heritage Act and the fact that the Aboriginal Heritage Council is a government-appointed and paid council, not an Aboriginal community-appointed panel, this error in the Bill and fact sheets highlight uncertainty about the intent of the Bill and who should be the relevant 'regulator' of Aboriginal heritage.

The TAC strongly supports the Aboriginal community having formal capacity to advise and/or decide on impacts on Aboriginal heritage and the power to refuse permission for the issuing of a permit for a development proposal. Otherwise it is the government advising itself on matters detrimental to Aboriginal heritage in the interests of State development.

Development Assessment Panel

The TAC notes that there is no requirement for an Aboriginal community representative on the Development Assessment Panel, irrespective of the significance of the Aboriginal heritage pertaining to the site of the proposed development or the status of the land upon which it is proposed.

The TAC supports increased involvement of the Aboriginal community in development decisions, not omission.

Merits-based appeal

The TAC strongly supports the capacity for third party, merits-based appeal in planning and development assessment processes as it provides civil society, including Aborigines, recourse to challenge decisions perceived to be flawed.

The absence of merits-based appeal for third parties in the Major Projects Bill continues the marginalisation of community in decision making and could lead to sub-standard, erroneous

development decisions that lead to the destruction of Aboriginal cultural heritage including cultural landscapes.

Consistency with planning scheme and reserve management plans

While the TAC does not believe the planning schemes or reserve management plans adequately provide for the protection of Aboriginal heritage, it is dismayed that the Bill explicitly allows the Development Assessment Panel to approve developments found to contravene schemes or management plans, and for that approval to drive a subsequent change to the scheme or plan.

This will lead to lowest-common-denominator planning and project-driven determination of heritage protection thresholds. The TAC believes the protection of Aboriginal heritage should drive development parameters in planning schemes and management plans, with subsequent development proposals assessed and constrained by those thresholds. The Major Projects Bill establishes a destructive dynamic that will see Aboriginal heritage further downgraded in prioritisation and more Aboriginal heritage lost.

Conclusion

The TAC does not support the Major Projects Bill and calls for it to be abandoned. The Bill will lead to the ongoing degradation of Aboriginal heritage sites and cultural landscapes and further marginalisation of the Aboriginal community, in favour of controversial developments and the private interests of the development sector.

The TAC sees the Bill as unnecessary. It calls for existing legislation and processes, such as the Aboriginal Heritage Act, to be strengthened to increase protection for Aboriginal heritage and enshrine a credible role for the Aboriginal community in processes that determine decisions on all development proposals that have a potential impact on Aboriginal heritage.



Heather Sculthorpe
Chief Executive Officer



Australian Government

Office of the National Wind Farm Commissioner

15 May 2020

Mr Brian Risby
Director, Planning Policy Unit
Department of Justice
GPO BOX 825
HOBART TAS 7001
Via email: planning.unit@justice.tas.gov.au

Dear Mr Risby

RE: *Land Use Planning and Approvals Amendment (Major Projects) Bill 2020 – draft for consultation*

The Office of the National Wind Farm Commissioner welcomes the opportunity to provide feedback regarding the Tasmanian Government's proposed Major Project Assessment Reform.

The National Wind Farm Commissioner has a national, independent role and is responsible for:

- facilitating the handling of complaints from concerned community residents about planned and operating wind farms, solar farms (5 MW or more) and energy storage facilities (1 MW or more)
- identifying and promoting best practices for industry, government and related agencies to adopt with regard to the planning, operation and governance of such projects, and
- improving information access and transparency about proposed and operating projects and wind, solar and energy storage industries.

Our Office has reviewed the Tasmanian Government's draft *Land Use Planning and Approvals Amendment (Major Projects) Bill 2020* and offers the comments outlined below.

A number of these comments are based on observations and recommendations that are outlined in the Commissioner's 2019 Annual Report, recently submitted to the Federal Government and enclosed for your reference.

Responsible authority for approvals

Under the current planning framework in Tasmania, our Office understands that local government is the responsible planning authority for the approval of large-scale renewable projects, while the Tasmanian Environment Protection Authority has responsibility for the assessment and regulation of any potential environmental impacts related to a proposal.

Based on the Commissioner's observations, this arrangement may result in a number of issues, such as the potential for:

- the inability to facilitate a state-wide, coordinated strategic planning approach for the deployment of energy generation and infrastructure as well as preferred renewable energy zones
- inconsistency in approaches to planning processes and approval decisions
- availability for skilled resources and expertise at local government level to be able to properly assess complex planning applications
- perceived or real conflicts of interest, given that the local government and its councillors may be the beneficiary of the economic benefits of the project as well as increased rates and levies of such proposals, and
- complexities in assessing applications where proposals are to be located across multiple local government jurisdictions.

The Commissioner has made recommendations in relation to the appropriate jurisdiction for assessment and approval responsibilities for large-scale renewable projects. In particular, Recommendation 4.2.12 of the 2019 Annual Report (page 44) discusses the roles and responsibilities of state and local governments:

4.2.12: State governments are best placed to be the responsible authority for large-scale renewable energy and storage projects. Local governments have a very important role to play in the planning process, road access, community engagement, construction and operation of the project, but should not be burdened with the overall planning and compliance responsibilities.

While the proposed reforms do not specifically designate the Tasmanian State Government as the responsible authority for the approval of major infrastructure projects, the Office considers that the formation of an independent panel – as proposed in the draft bill – outlines a suitable model in terms that could avoid the potential issues noted above. The proposed model can also provide local communities with assurance of a fair and transparent process when assessing large-scale renewable projects.

Major project decision thresholds

In relation to the Ministerial decision to declare a 'major project', clear parameters should be established to provide consistency in determining project eligibility. As an example, the New South Wales Government includes a capital investment threshold (\$30 million) and a project capacity threshold (30 MW) for projects required to be assessed at the state level.

Our Office understands that, under the current planning framework, a planning authority is required to refer a permit application to the Tasmanian EPA if the project has a proposed capacity of 30 MW or more. The Office notes this energy generation capacity threshold is consistent with some other jurisdictions in Australia.

Opportunities for optimal site planning

The proposed reforms can provide opportunities to introduce optimal site planning and selection for renewable projects at an early stage. This would allow a more top-down,

strategic approach to project selection and approval that can be better aligned with planning of interconnected energy infrastructure whilst minimising potential impacts on regional communities and the environment.

Section 8 of our 2019 Annual Report (pages 57-60) provides a number of recommendations in relation to this topic.

Community consultation

Our Office notes the importance of ensuring that any potential impacts to rural and regional communities are considered and that effective pathways for community consultation are an integral part of the assessment process.

The Commissioner encourages that the ability to engage with communities during the assessment process remains a priority in any planning reforms. The Commissioner also encourages that public exhibitions and consultative processes related to the planning process are sufficiently transparent and accessible for community members.

While primarily intended for consideration by industry developers, Section 3 of our 2019 Annual Report (pages 37-40) focuses on recommendations related to effective community engagement. Some of these recommendations could be incorporated into the proposed assessment process and requirements expected of proponents.

Additional considerations for proposed independent panel

The Commissioner's 2019 Annual Report also includes further recommendations that may be interest in the formation of an assessment panel, the preparation of assessment guidelines and the assessment of proposed projects. In particular, you may wish to review the following sections:

- Section 4 (pages 40-44), which includes recommendations that focus on permit approvals and extensions of permits
- Section 5 (pages 44-51), which includes recommendations on governance and compliance of standards and permit conditions
- Section 6 (pages 52-54), which includes recommendations to provide increased assurance and integrity in the reliability of expert and consultant reports that may be relied upon during the assessment process.

I would be pleased to discuss these matters with you in further detail.

If you have any questions about this submission or require any additional information, you may contact us via email at [REDACTED]

Sincerely



Andrew Dyer
National Wind Farm Commissioner



Office of the National Wind Farm Commissioner

Annual Report

to the Parliament of Australia

ANNUAL REPORT
Year Ending: 31 December 2019



Office of the National Wind Farm Commissioner

31 March 2020

The Hon Angus Taylor MP
Minister for Energy and Emissions Reduction
Parliament House
CANBERRA ACT 2600

Dear Minister

Re: 2019 Annual Report by the Office of the National Wind Farm Commissioner

Pursuant to the National Wind Farm Commissioner's Terms of Reference, I am pleased to provide the 2019 Annual Report to the Australian Parliament on the activities of the Office of the National Wind Farm Commissioner.

This report covers the Office's activities for the period of 1 January 2019 through to 31 December 2019. We again include a number of observations about the governance, development and operation of wind and solar farm projects along with recommendations for consideration.

I look forward to discussing the report with stakeholders in due course.

Sincerely

A handwritten signature in black ink, appearing to read 'Andrew Dyer'.

Andrew Dyer
National Wind Farm Commissioner

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COMMISSIONER'S REVIEW

Introduction

The Office of the National Wind Farm Commissioner is pleased to deliver the Commissioner's fourth annual report to the Australian Parliament, which covers the Office's activities for the period of 1 January 2019 to 31 December 2019.

The Commissioner is independent and reports directly to the Minister for Energy and Emissions Reduction. The Commissioner's key roles are to:

- facilitate the referral and resolution of complaints received from concerned residents about proposed or operating wind farms, large-scale solar farms (5 MW or more) and energy storage facilities such as large-scale batteries (1 MW or more)
- provide greater transparency on information related to wind farms, large-scale solar farms and energy storage in Australia, and
- identify and promote best practices related to the planning, development and operation of energy projects, including standards and compliance, complaint handling procedures and community engagement.

There are no formal powers associated with the Commissioner's role. The Commissioner relies on effective relationships and the cooperation of a wide array of stakeholders to facilitate the complaints handling process as well as assist in the identification and adoption of best practices recommendations.

The Year in Review

2019 has been another active year for large-scale renewable energy, with many new projects being approved, constructed or commissioned. As a result, it was also a very active year for the Office, which included a large number of project site visits, stakeholder consultations, community meetings and progression of various reforms. 2019 was also the first full calendar year in which the Commissioner's terms of reference included solar farms and energy storage projects, in accordance with the Climate Change Authority's recommendations from their 2018 review.

During 2019, the Office understands that 36 large-scale renewable projects were commissioned, contributing more than 3.8 GW of generation capacity within Australia. This included seven large-scale wind farm projects (1,276 MW), 27 large-scale solar farm projects (2,386MW), and two hybrid projects (217 MW).

In September 2019, the Clean Energy Regulator (CER) also announced that sufficient capacity had now been accredited under the Large-scale Renewable Energy Target to achieve the 2020 target of 33,000 gigawatt hours. According to the CER, since January 2016 more than 14 GW of renewable energy projects are either generating power, under construction or backed by power purchase agreements, which is more than double the 6,400 MW the CER estimated would be required over this period to achieve the 2020 target. This includes 8,836 MW of accredited projects, 4,152 MW of projects financed and under construction, and 1,911 MW of projects still awaiting power purchase agreements or financial close.

During this period of rapid change, the Office continues to play a vital role in assisting concerned residents and affected communities. We continue to assist and support industry and government in their dealings with community related matters and to progress appropriate reforms and resolution of systemic issues.

During 2019, the Office received 75 new complaints, with a total of 361 complaints received since the Office's inception. A number of these new complaints were related to construction matters and concerns raised by host landowners – reflecting the shift in focus in a year with substantial construction activity. The

vast majority of complaints received during the year were in relation to proposed wind farms (including projects under construction), with only five complaints relating to operating wind farms.

The Office received relatively few complaints about solar farm proposals and no complaints about energy storage projects. Further analysis of complaints received throughout 2019 are available on pages 8-16 of this report.

The Commissioner undertook 21 project site visits across the year and met with a range of residents, communities and government representatives to gain a better understanding of concerns and issues and how they can best be addressed. Many issues raised during these site visits were related to construction matters, including transportation of large-scale components, site planning and operational logistics. Concerns related to noise and health were not predominant whereas visual amenity, compound impacts from multiple projects in vicinity and environmental concerns remain primary issues for local communities.

While there was a reduction in the number of complaints received in 2019 compared with the previous year, the Office has remained highly active in a number of initiatives and reforms to proactively address and minimise community concerns through adoption of best practices. To enable this engagement and advocacy, the Commissioner has maintained a large and active network of stakeholders including representatives from the community and industry, specialist experts as well as local, state and federal government departments. Specific details and further information on the Office's stakeholder engagement and advocacy activities are discussed in pages 17-25 of this report.

Finally, this report includes an updated compilation of observations and recommendations on a wide range of topics, following the activities and learnings during 2019. These observations and recommendations are detailed in pages 26-62 of the report.

The Year Ahead

Despite the progress in development activity last year and the relative reduction in community concerns, new challenges for industry and government are emerging in the coming period. Some projects that are currently in planning or construction phases have experienced uncertainty or disruptions resulting from various events and circumstances, which has led to anxiety and a lack of certainty for both communities and industry alike. The recent collapse or withdrawal of some manufacturers and construction companies from the market has also left a void for some prospective wind and solar projects.

Notwithstanding these challenges, there remains considerable inertia within the renewable industry as a large number of projects currently under construction draw closer to completion. Of particular note is the advancement of hybrid renewable projects taking advantage of emerging technologies. The Office understands that 15 large-scale batteries were under construction at the end of 2019, many of which are co-located with wind farms and/or solar farms.

There is continuing debate around how the energy 'roadmap' across Australia should be planned and delivered. The characteristics of large-scale wind and solar power generation are very different to the traditional sources of electricity such as coal, gas and hydro – in particular, for the most part, the optimal locations for renewable generation are vastly different and not compatible with the existing grid design. The Australian Energy Market Operator's 2020 draft Integrated System Plan may play a key role in unlocking new opportunities for renewable energy projects in planning the development of network assets in the upcoming period.

While there are current initiatives to strengthen parts of the energy grid, there will need to be careful consideration on how the grid can be best utilised and augmented for the longer-term. As part of these considerations, governments will need to balance the cumulative impacts of multiple projects when building network structure associated with Renewable Energy Zones.

The Australian Government is also currently exploring options for a proposed regulatory framework to facilitate offshore clean energy in Australia, including wind energy, which will bring a range of new

challenges and frameworks that will need to be addressed. Also approaching, as some of Australia's first wind farms reach the end of their operational life, is the funding, logistics and accountability for decommissioning of those assets.

The Office will continue to play an important role for communities and residents affected by new and operating projects, while maintaining a strong relationship with industry, governments and other stakeholders. The Commissioner looks forward to continuing to assist in resolving complaints, promoting best practices and increasing transparency within the large-scale renewable industry over the period.

Finally, at the time of writing this report, the impacts of COVID-19 have commenced emerging for the industry and our stakeholders. It is too early to predict the full magnitude of the likely impacts, but there will be impacts and we expect they will clearly affect a wide range of material activities from development, planning approvals, construction to maintenance of project assets through to severe limitations in fulfilling community engagement programs that have traditionally required face-to-face interactions.

For our Office, it will be 'business as usual' as we comply with the various directives and advice of governments, however our program of site visits and face-to-face meetings with stakeholders will be replaced with alternative methods of interaction for the required period.

We wish all of our stakeholders the very best through this challenging period of COVID-19 and look forward to providing you with our continued support and assistance throughout 2020.



Andrew Dyer
National Wind Farm Commissioner



OVERVIEW

Background

The National Wind Farm Commissioner is an independent role established in October 2015 by the then Minister for the Environment, the Hon Greg Hunt MP. The role's creation was initiated by Recommendation 5 of the 2015 Senate Committee on Wind Turbines Interim Report. The Commissioner commenced the role in November 2015.

In October 2018, following a review by the Climate Change Authority, the role was extended for a further three years from the initial three year period and was expanded to include large-scale solar farms and energy storage facilities. The Climate Change Authority's review of the role of the National Wind Farm Commissioner is available at:

www.climatechangeauthority.gov.au/review-national-wind-farm-commissioner

The Commissioner's revised Terms of Reference are available at [Attachment A](#) and on the Commissioner's website at:

www.nwfc.gov.au/about

Who We Are

The Commissioner is supported by a small team provided by the Department of Industry, Science, Energy and Resources. This team comprises an Executive Officer, a Complaints Officer and an Administrative Assistant.

Office Location and Contact Details

The Office of the National Wind Farm Commissioner is located in Melbourne's central business district. The Office can be contacted via:

Toll-free telephone: 1800 656 395
Email: nwfc@environment.gov.au
Post: National Wind Farm Commissioner
PO Box 24434
MELBOURNE VIC 3001

COMPLAINT MANAGEMENT

Complaint Management Process

A primary function of the Commissioner's Office is to receive and refer complaints from concerned community members about operating and proposed projects and, via a voluntary process, help facilitate resolutions where practical. Information relating to the Office's complaint handling activities are detailed in this report. Many of the complaints received can be complex, taking time to research and resolve.

The Office's complaint management process has been designed to help ensure that the Office functions efficiently and effectively, managing each complaint received appropriately.

It should also be noted that the Office's procedures treat a complaint from a residence as **one** complaint. The complaint may contain a number of issues and may involve a large volume of correspondence with the Office over long periods of time. The Office will record ongoing correspondence in the complainant's file as further information about that complaint. If the complainant lodges a complaint about a substantive new issue or a different project, a new complaint may be established and recorded by the Office.

Complaints Handling Policy

The Office's Complaints Handling Policy outlines the procedure for receiving and handling complaints. Complaints initially received by the Office are classified as an 'enquiry' and may be formally 'accepted' and progressed by the Office once sufficient information, including written consent to share information, has been provided by the complainant.

The Office is also guided by the Information Handling Policy, which outlines what information the Office collects, how this information may be disclosed as well as information on confidentiality and privacy.

These policies are available on the Commissioner's website at www.nwfc.gov.au/about

Complaint Activity

From the period of 1 January 2019 to 31 December 2019, the Office received a total of 75 complaints. The breakdown of the complaints received are as follows:

- five matters were received relating to five operating wind farms
- 44 matters were received relating to 23 proposed wind farms
- three matters were received relating to three proposed solar farms
- 23 matters did not specify a particular project or development, and
- no complaints were received in relation to energy storage developments.

From the Office's inception in November 2015 through to 31 December 2019, the Office has received a total of 361 complaints, comprising:

- 70 matters relating to 14 operating wind farms
- 234 matters relating to 58 proposed wind farms
- six matters relating to five proposed solar farms, and
- 51 matters that did not specify a particular project or development.

Of the total of 361 complaints received by the Office as at 31 December 2019, 349 of those complaints had been closed. The remaining 12 complaint matters are at various stages of the complaint handling process.

Proposed Wind Farms versus Operating Wind Farms

Figure 1 below provides information on the number of complaints the Office has received in relation to proposed and operating wind farms for the period of 1 January 2019 to 31 December 2019. Proposed wind farms are those which are at either the planning stage, have been approved by a state planning authority or are under construction – but not yet operating at the time the complaint was registered.

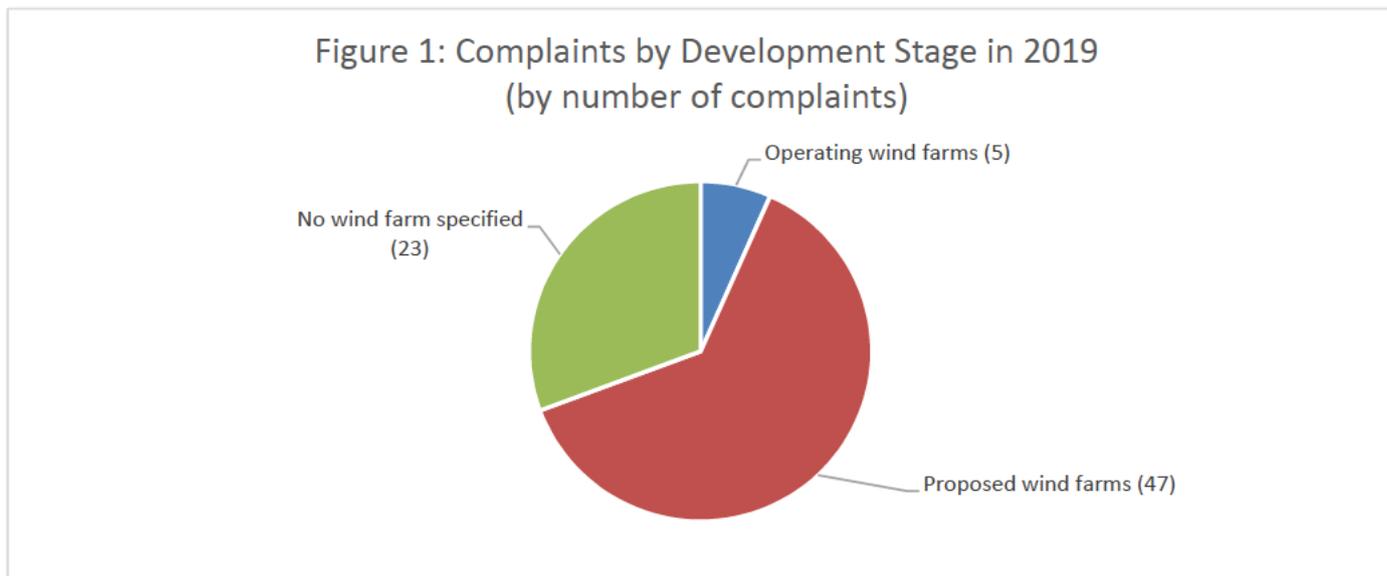
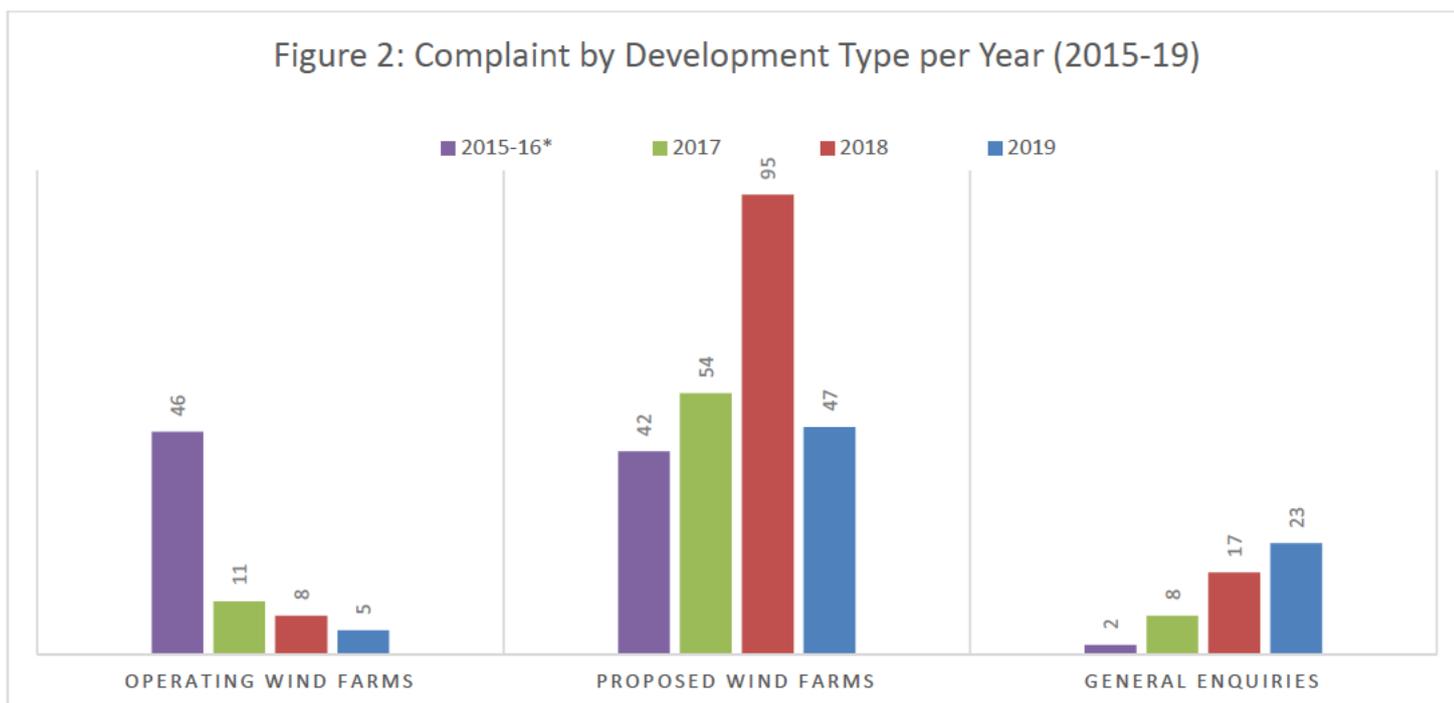


Figure 2 below provides comparative data on the number of complaints the Office has received in relation to proposed and operating wind farms for each calendar year since the commencement of the Commissioner’s role in November 2015.

While the number of complaints, from 2017 onwards, about proposed wind farms remain relatively high compared to operating wind farms, the data indicates an ongoing trend in reduction of complaints about operating wind farms each year. Given the large number of wind farms that have commenced operating in the last few years, this data could suggest that community concerns are significantly diminished once a project commences operation. The increase in general enquiries across each year also indicates the ongoing value of the Office as an independent, reliable source of factual information.



*2015-16 – refers to data collected from inception of the Office on 1 November 2015 up until 31 December 2016

Operating Wind Farms

From the period of 1 January 2019 to 31 December 2019, the Office received five complaints in relation to five operating wind farms. As at 31 December 2019, four of these complaints were recorded as closed.

Figure 3 below provides information on the location of these complaints by state.

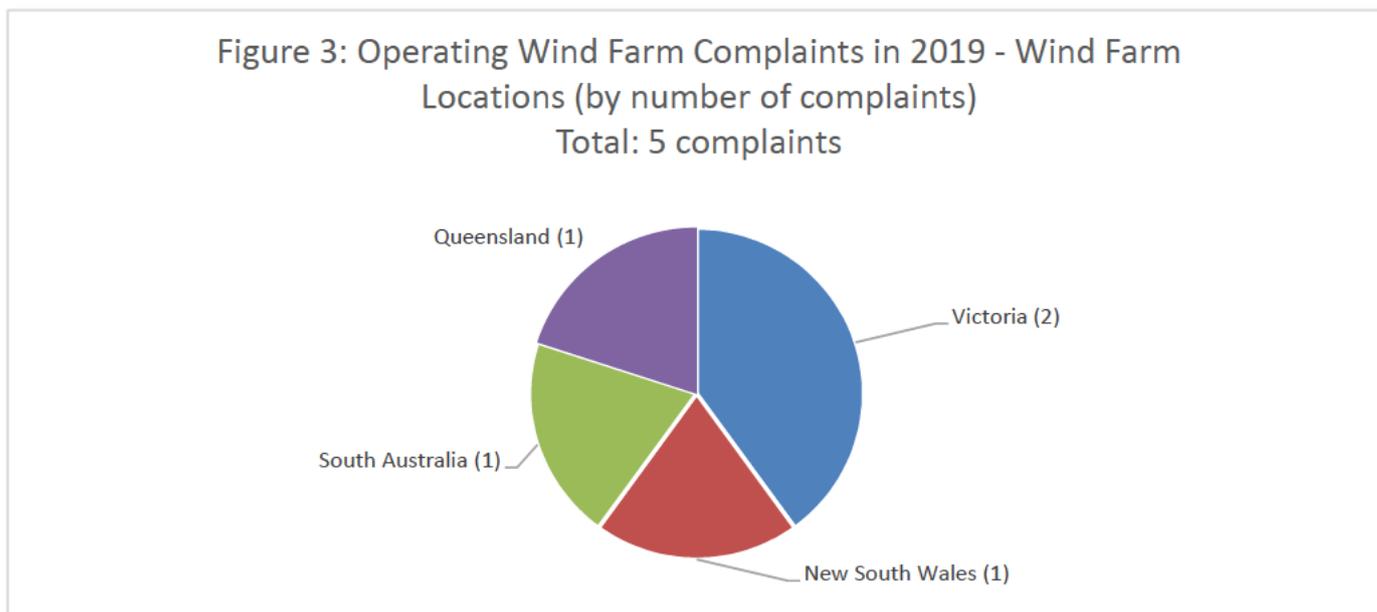


Figure 4 below provides information on the location of all complaints relating to operating wind farms by state, from the period of the Office’s inception on November 2015 up to 31 December 2019.

The majority of complaints about operating wind farms are based in Victoria, although this may reflect ‘legacy’ community issues resulting from older wind farm projects in the state, as well as projects located where the energy grid system was traditionally designed to service relatively dense regional populations.

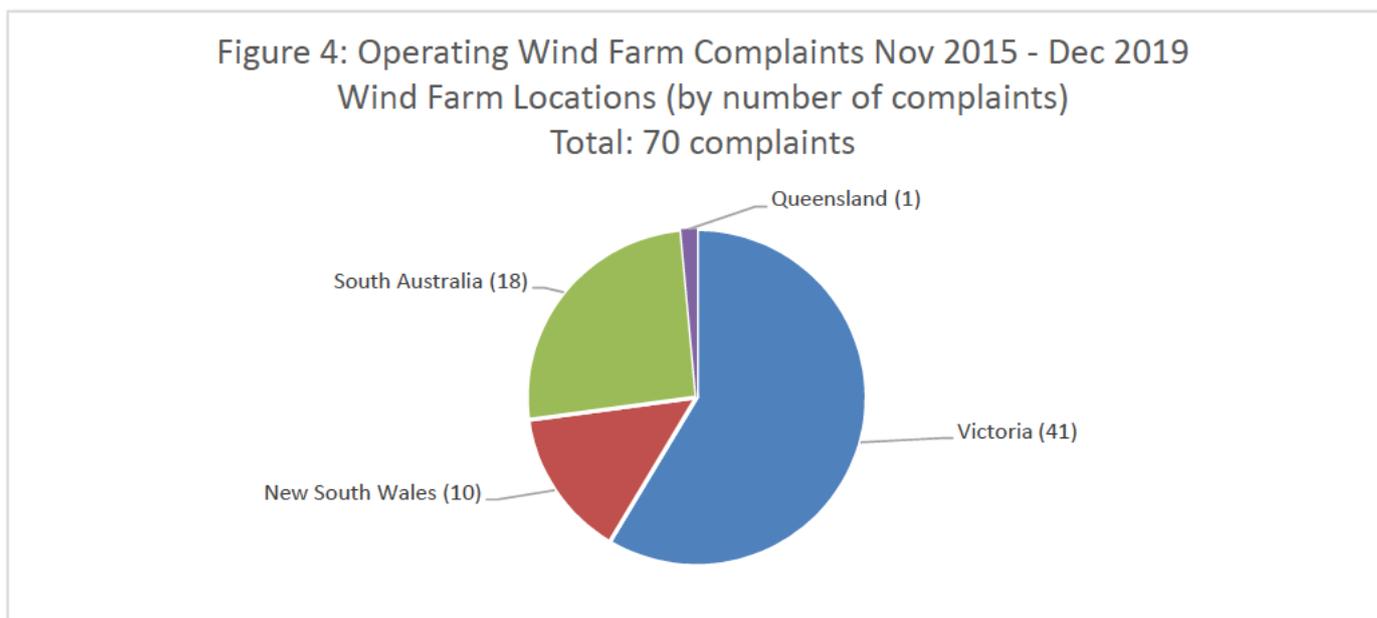
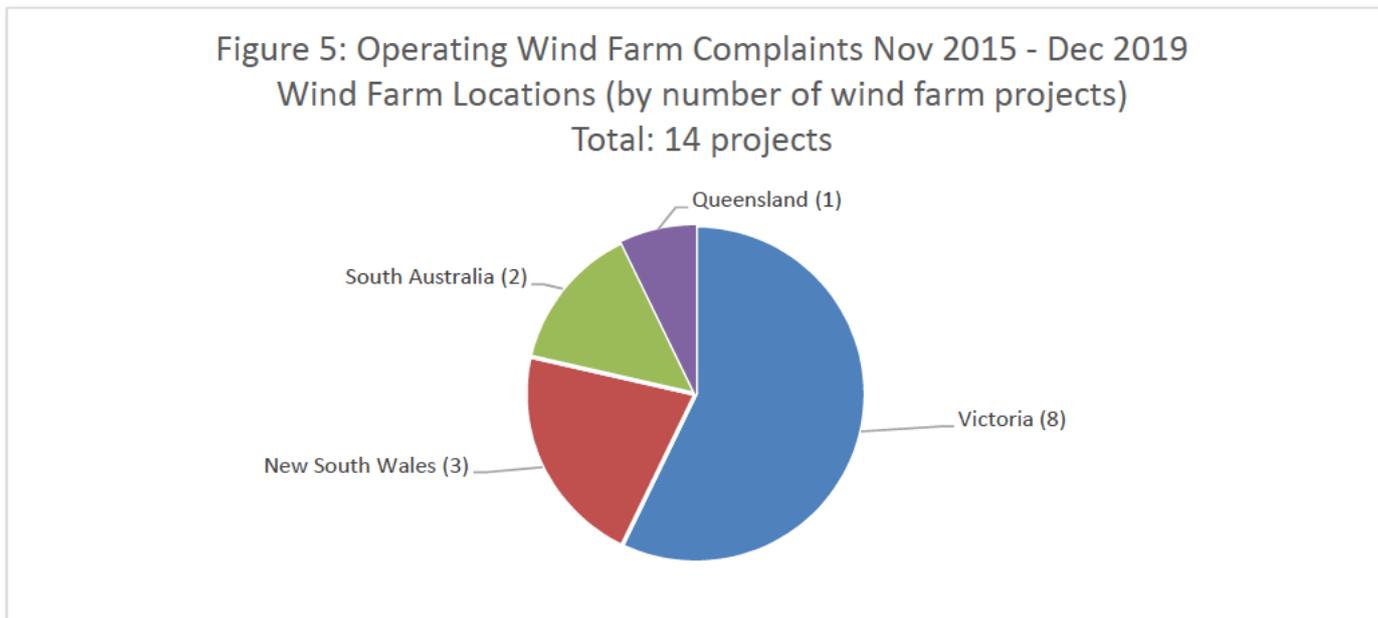


Figure 5 below provides information on the number and location of all operating wind farms, by state, for which the Office received complaints from the period of the Office’s inception up to 31 December 2019.

As outlined above, the majority of operating wind farms that the Office has received complaints about are located in Victoria.



Proposed Wind Farms

From the period of 1 January 2019 to 31 December 2019, the Office received 44 complaints in relation to 23 proposed wind farms. As at 31 December 2019, 38 of these complaints were recorded as closed.

Figure 6 below provides information on the number of complaints about proposed wind farms, by state, for the period 1 January 2019 to 31 December 2019. As with previous years, Victoria had the higher proportion of complaints about proposed wind farms.

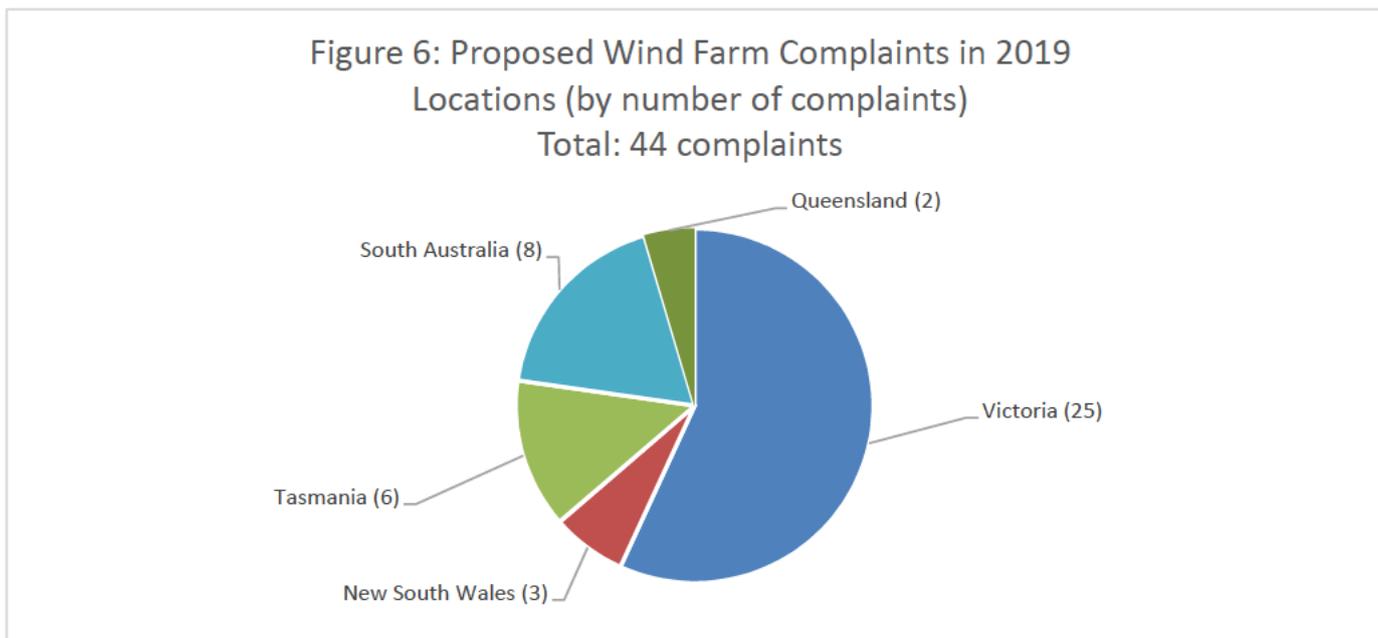
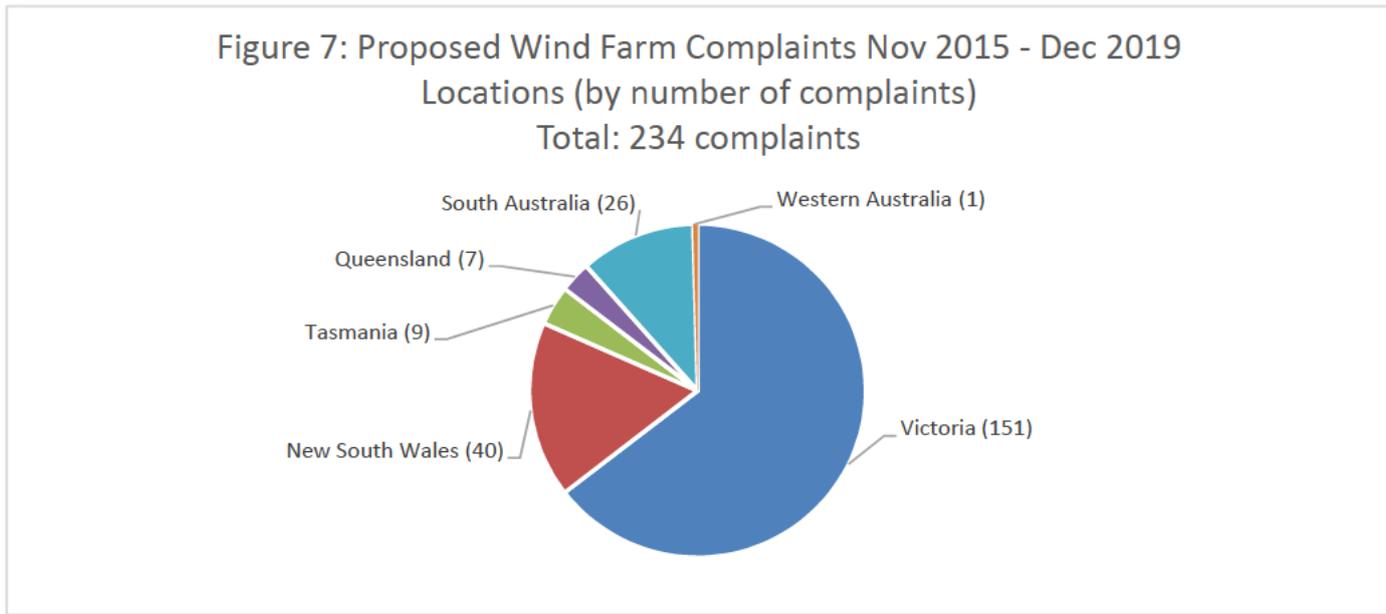


Figure 7 provides information on the number of complaints about proposed wind farms, by state, for the period of the Office’s inception in November 2015 through to 31 December 2019.



The figures below provides information on the location of proposed wind farms, by state, for which the Office has received complaints. **Figure 8** covers the period 1 January 2019 to 31 December 2019 and **Figure 9** covers the period of the Office’s inception up to 31 December 2019.

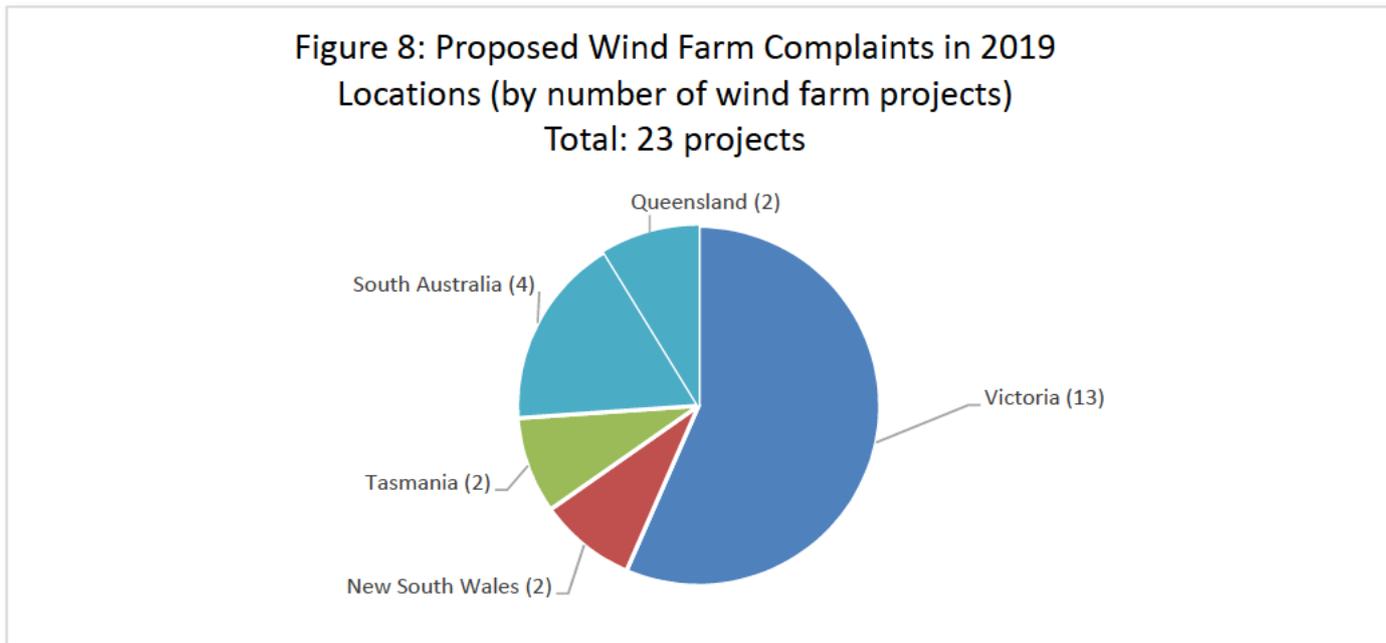
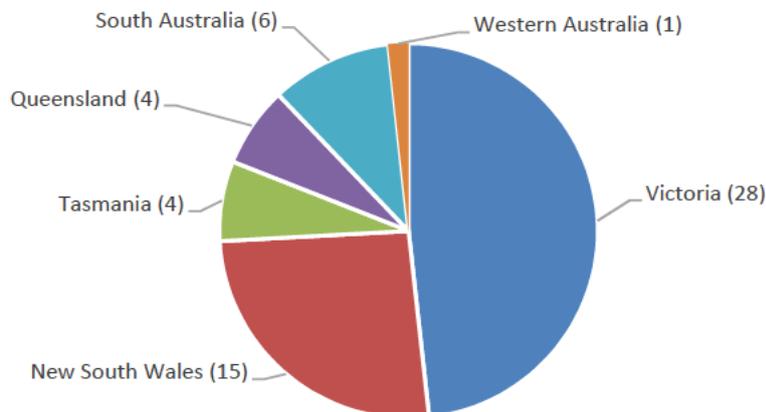


Figure 9: Proposed Wind Farm Complaints Nov 2015 - Dec 2019
Locations (by number of wind farm projects)
Total: 58 projects



Solar farms and energy storage

From the period of 1 January 2019 to 31 December 2019, the Office received three complaints about three proposed solar farms. Since the Commissioner's role was expanded to include solar farms and energy storage on 31 October 2018, the Commissioner has received a total of six complaints about five proposed solar farms. As at 31 December 2019, all of these complaints were closed.

Since the expansion of the Commissioner's role, the Office has not received any complaints about operating solar farms. The Office has not received any complaints about proposed or operating energy storage developments.

It should be noted that some complaints received have been in relation to proposed projects that could be considered hybrid renewable projects which include solar panels and/or energy storage elements. In these cases, where the complaint matter is specifically in relation to the wind turbine component of the proposal, these complaints have not been recorded by the Office under this section.

Issues Raised in 2019

When a complaint is accepted, the Office records the specific complaint issues raised by the complainant.

Figure 10 on the following page provides comparative data on the types of complaint issues raised with the Office and the number of times the type of issue has been raised by complainants.

Overall, there has been a reduction in many categories of complaint issues during the 2019 calendar year compared with the previous year. However, the level of complaint issues recorded in 2019 reflect the increase in project development and construction during the year, with many of the matters raised related to community engagement, planning processes, impacts to amenity and impacts to environment.

The Commissioner handled a number of disputes throughout the year about commercial agreements and construction matters. In dealing with these matters, the Commissioner sought fair and reasonable outcomes based on best practices and worked with the parties to ensure that landowner concerns would continue to be addressed throughout the various development and operational stages of the project.

In maintaining a consistent trend with data collected from previous years, the Office notes that most complaints were about proposed wind farms or wind farms under construction, with only five complaints about operating wind farms received during the year. The comparative data also shows significantly less concerns raised about health impacts and noise from wind turbines in 2019. Since the inception of the Office in 2015, the ongoing reduction of complaints reporting these issues indicates that these matters may no longer be a primary concern for many community members.

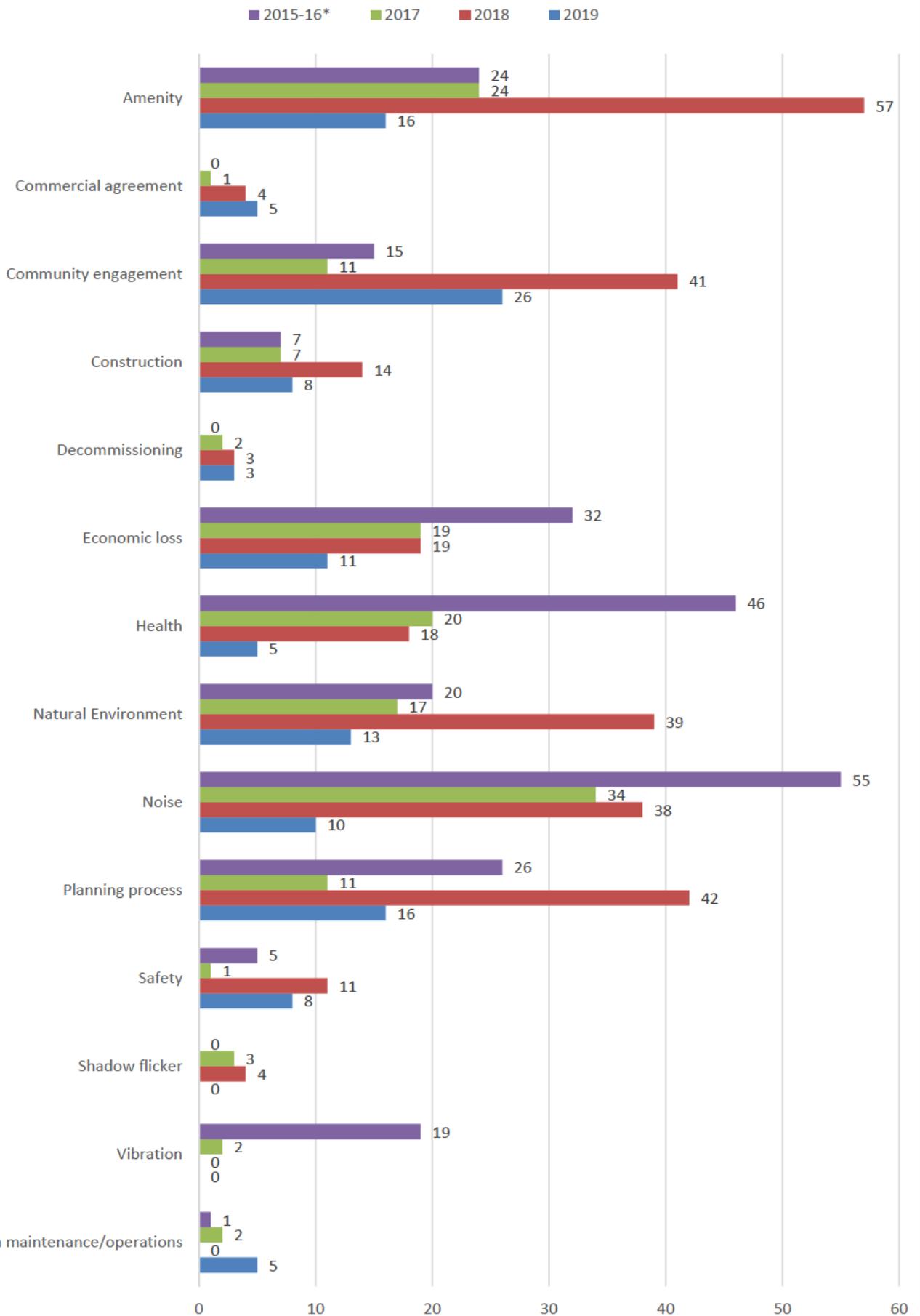
In relation to the complaints about proposed solar farms, the primary issues raised related to commercial agreements and construction matters. The Office did not receive any complaints about operating solar farms or energy storage projects.

Given the steady increase in project development and construction in 2019, the Commissioner has maintained a strong emphasis on engaging with residents and communities, particularly where communities have raised specific concerns with the Office. Many of the complaint issues that have been raised have shaped the Commissioner's recommendations later in this report.

The Commissioner has also devoted more time to assisting industry in being better equipped and capable to handle complaints directly. As a result, the Commissioner is regularly consulted by industry and government on how to resolve complaints received by those stakeholders.

Further, the Commissioner is often cited as a dispute resolution service by industry and government stakeholders in their published complaint handling procedures, reinforcing the value provided to stakeholders and the broader community through the service provided by our Office.

Figure 10: Issues Raised by Complainants
 (note: a complaint may include more than one issue)



*2015-16 – refers to data collected from inception of the Office on 1 November 2015 up until 31 December 2016

Resolutions and Closure

As at 31 December 2019, 349 of the 361 complaints received, since inception of the Office, have been closed, with 12 complaints remaining open at various stages of the Office’s complaint handling process.

82 complaints were closed during the period of 1 January 2019 to 31 December 2019, including 15 complaints that were lodged with the Office prior to 1 January 2019.

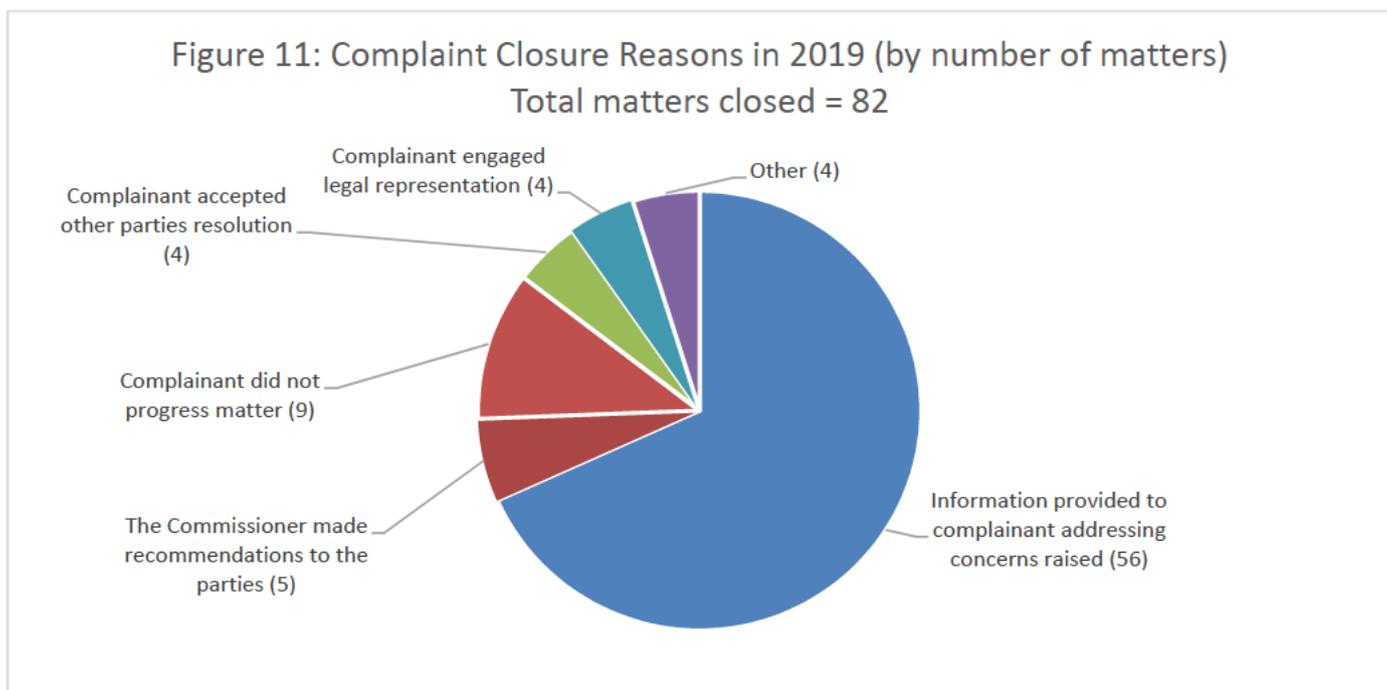
The majority of complaint matters were resolved in 2019 by the provision of relevant information to the complainant. This included providing factual information addressing the concerns raised or facilitating an introduction for the complainant to the appropriate contacts at the respondent organisation.

In other, more complex matters, the Commissioner worked closely with the respective parties to reach acceptable resolutions, including making specific recommendations to these parties for consideration.

Some complaint matters were closed after complainants withdrew their complaint or did not otherwise progress their complaint. This included closure of matters after a complainant would not to provide consent to share information with respondent parties or did not provide sufficient information for the Commissioner to assess the merits of the complaint.

Some matters were closed when complainants notified our Office that they had decided to engage legal representation to resolve their matter directly with the respondent. Finally, matters recorded as ‘other’ included situations in which further efforts would be unlikely to result in a resolution.

Figure 11 below provides a summary of high level closure reasons for matters closed in 2019.



STAKEHOLDER ENGAGEMENT

The Commissioner continues to work directly with a range of stakeholders to resolve systemic issues, complaints, provide briefings and identify needs that can be met through best practice guidance and other information. Key stakeholders include concerned and supportive community members, industry representatives, federal, state and local governments as well as experts engaged by the industry or other organisations.

The Commissioner also maintains collaborative relationships with stakeholders to encourage the adoption of best practices to address systemic issues and has engaged with stakeholders to reach positive outcomes, both for the affected individuals and facilitating improvements to governance frameworks.

Communities, Residents and Project Sites Visited

During 2019, the Commissioner continued to visit wind farm locations to meet with a range of concerned residents, supportive residents and representatives of community groups to understand their perspectives. The Commissioner also met with residents and community groups in relation to proposed solar farms to discuss matters they had raised about the projects.

The Commissioner also participated in a variety of events and meetings with community groups, Community Consultative Committees (CCC) and other liaison groups. These functions often provided the participants the opportunity to work through specific issues and concerns related to approved and proposed projects, as well as gain an understanding of the Commissioner's experiences and learnings across other projects across Australia.

Issues raised during these forums have helped assist discussions with industry and government in considering the development of future policy and guidelines as well as assisting community groups to better prioritise and articulate their concerns.

During 2019, the Commissioner participated in a number of community representative, committee and local government meetings, including:

- community information session in relation to Mortlake South Wind Farm, Victoria
- various resident and community representative meetings relating to proposed and approved projects in western Victoria
- ongoing community representative meetings in relation to Lal Lal Wind Farm, Victoria
- community representative meeting in relation to the proposed Delburn Wind Farm, Victoria
- community meetings in relation to the proposed Hills of Gold Wind Farm, New South Wales
- resident meeting in relation to the proposed New England Solar Farm, New South Wales
- various resident and community representative meetings in relation to proposed projects in South Australia, including projects at Twin Creek, Crystal Brook, Keyneton and Port Augusta, and
- various local government, residents and community representative meetings in relation to the proposed Robbins Island, Jim's Plain and St Patricks Plains Wind Farm, Tasmania.

The Commissioner has also continued to undertake a number of project site visits and met with a range of concerned and supportive residents to understand their perspectives in relation to projects. Key project site visits in 2019 are outlined in Table 1 below.

Table 1: List of 21 project sites visited in 2019:

State	Project site	
New South Wales	Hills of Gold Wind Farm New England Solar Farm Sapphire Wind Farm	White Rock Wind Farm Walcha Wind Farm Bomen Solar Farm
South Australia	Crystal Brook Wind Farm Hornsedale Power Reserve Keyneton Wind Farm	Port Augusta Renewable Energy Park Twin Creek Wind Farm
Tasmania	Cattle Hill Wind Farm Jim's Plains Wind Farm	Robbins Island Wind Farm St Patricks Plains Wind Farm
Victoria	Delburn Wind Farm Hexham Wind Farm Mortlake South Wind Farm	Salt Creek Wind Farm Stockyard Hill Wind Farm Alberton Wind Farm

Since the inception of the Commissioner's role, the Commissioner has visited a total of 67 project sites (see Tables 2 and 3 on the following page). Visits have included meetings with concerned residents to discuss specific complaint matters as well as directly experience the operation of the wind farm and/or the affected area. The Commissioner has also visited project sites to gain a better understanding of issues such as logistics during the construction phase through to observation of turbines that are nearing the decommissioning phase.

In a number of cases, largely due to complainant handling activities or ongoing systemic matters, some wind farm locations have been visited multiple times.

As outlined later in the report, the Commissioner also met with a number of local Councils to discuss local and regional community issues. The Commissioner also attended events such as National Renewables in Agriculture conference in New South Wales, where he presented at the *Hosting Renewables* session for landowners considering hosting wind turbines or solar panels.

Industry

Throughout 2019, the Commissioner has maintained a strong focus on proactively engaging with the large-scale renewable energy industry on a wide range of matters, including approaches to best practice community engagement, complaint handling and transparency of information. The Commissioner has also maintained useful relationships with industry associations such as the Clean Energy Council and the Australian Wind Alliance, which has been valuable in engaging more widely with the industry on systemic and emerging issues.

Some activities that the Commissioner undertook in 2019 include:

- presentations at various public and in-house industry conferences and functions (as outlined on page 22 of this report)
- presentation to the Clean Energy Council's Wind Directorate, including a briefing on updated Annual Report recommendations contained in the 2018 Report, latest complaint statistics and other news items

Table 2: List of 61 wind farm sites visited since 2015:

State	Wind farm		
Victoria (23 sites)	Alberton	Hexham	Oaklands Hill
	Ararat	Lal Lal	Salt Creek
	Bald Hills	Macarthur	Stockyard Hill
	Cape Bridgewater	Moorabool	Toora
	Delburn	Mortlake South	Waubra
	Golden Plains	Mt Gellibrand	Wonthaggi
	Hawkesdale	Mt Mercer	Willatook
	Hepburn	Naroghid	
New South Wales (16 sites)	Bango	Cullerin Range	NSW Energy Cluster
	Collector	Glen Innes	Sapphire
	Coppabella	Gullen Range	White Rock
	Crookwell I	Gunning	Walcha
	Crookwell II	Hills of Gold	
	Crudine Ridge	Jupiter	
South Australia (8 sites)	Crystal Brook	Palmer	Snowtown
	Hallet	Port Augusta	Waterloo
	Keyneton	Twin Creek	
Queensland (5 sites)	Coopers Gap	Kaban Green	Mt Emerald
	High Road	Power Hub	Windy Hill
Western Australia (3 sites)	Albany	Denmark	Mount Barker
Tasmania (6 sites)	Musselroe	Jims Plains	St Patricks Plains
	Robbins Island	Cattle Hill	Western Plains

Table 3: List of other renewable sites visited since 2018:

State	Solar farm
New South Wales (5 sites)	Jemalong CSP Pilot Plant
	Parkes Solar Farm
	New England Solar Farm
	Walcha Solar Farm
	Bomen Solar Farm
South Australia	Hornsedale Power Reserve

- ongoing meetings with representatives of the Clean Energy Council's Wind Directorate and Utility PV Directorate to discuss industry updates and best practice approaches
- meetings with industry and government stakeholders in relation to new regulations introduced in Queensland relating to construction of large-scale solar farms
- meetings with the Civil Aviation Safety Authority (CASA), state governments and then with wind turbine manufacturers to discuss matters relating to aviation safety lighting and turbine manufacturing, and
- appointments with various industry and developers to discuss the Commissioner's updated Annual Report recommendations.

The Office has also continued to meet with many of the industry's proponents to obtain briefings and updates as well as review approaches and practices that may minimise potential issues, particularly as new projects are announced or proponents are preparing for construction. These meetings have been vital in proactively addressing potential community concerns, gaining industry perspectives on best practice processes and how current planning and governance processes have impacted particular projects and communities.

The ongoing engagement with many of these proponents would indicate that industry values the work of the Office, evidenced by the time taken to meet with the Office and their adoption of many of the Commissioner's suggestions.

The Commissioner continued to meet with proponents to provide guidance in developing:

- approaches to resolve specific complaints within communities
- innovative solutions to provide benefits to local communities affected by project developments
- complaint handling policies and procedures
- transparent noise assessment regimes
- appropriate setback distances
- best practice approaches for effective and fair commercial agreements with project hosts and neighbours
- providing accessible and helpful information on project websites to enable community members to have better access to information about wind farm projects
- emergency management procedures for wind farms in the case of incidents such as bushfires, including practical measures to minimise the risk of disturbance to firefighting operations
- methodological solutions for wind farm screening and landscaping arrangements for neighbours to projects, and
- providing updates in relation to systemic, regional or topical matters that may assist developers and operators minimise impacts to communities and residents.

Ongoing engagement with industry stakeholders has been invaluable in gaining an understanding of current practices and standards as well as identifying areas where further improvements could be made by the industry. The Commissioner will maintain a strong focus on identifying opportunities for improvement as well as supporting industry to ensure that proponents are aware of best practices, affected communities are properly consulted and that project information remains transparent and easily accessible.

Government

The Commissioner continues to engage regularly with federal, state and local governments to provide briefings as well as promote the adoption of best practices and reforms arising from the Commissioner's observations and recommendations.

Some of the key reforms that have resulted from engagement with governments are outlined on pages 24-25.

The Office also provided numerous submissions on a range of relevant government reviews including regulatory guidelines, policies and processes.

Some of these submissions include:

- South Australia Environment Protection Authority's draft *Wind Farms Environmental Noise Guidelines*
- South Australia State Planning Commission's *Discussion Paper on Proposed Changes to Renewable Energy Policy in the Planning and Design Code*
- Victorian Government's *Proposed environment protection regulations and environment reference standards*
- Victorian Government's draft *Solar Energy Facilities Design and Development Guidelines*, and
- Australian Government Department of Industry, Science, Energy and Resources' *Offshore Clean Energy Infrastructure Regulatory Framework discussion paper*.

The Commissioner also facilitated a wind and solar farm planning roundtable for the various state planning agencies across Australia, following a productive session held in 2018. This forum provided an opportunity for the state-based planning agencies to share updates, practices and innovations. The Chair of the Independent Scientific Committee on Wind Turbines also presented to the roundtable, discussing the Committee's work and providing information on the Committee's findings in relation to the measurement of wind turbine noise including explaining different types of noise measurements, levels and studies.

Universities and Experts

The Commissioner has continued to liaise with experts and university researchers to understand their respective roles in providing advice and research regarding wind farm design, compliance testing and health effects. Where necessary, the Commissioner also consults with experts and researchers to assist in assessing and addressing issues and complaints.

In 2019, the Commissioner undertook the following activities:

- appointments with academics from Flinders University and the University of New South Wales to discuss updates in relation to the progress of research being undertaken by two National Health and Medical Research Council (NHMRC) funded studies regarding wind farms and health
- consultations with universities in relation to research projects on matters related to renewable energy projects, transition of communities and best practice community engagement
- guest lectures at Monash University in relation to the development and operation of renewable energy projects industry and the importance of community engagement
- meetings with academics from Flinders University to discuss recently released noise studies related to amplitude modulation and vibration resulting from wind farms

- meetings with the Chair of the Independent Scientific Committee on Wind Turbines in relation to wind turbine noise standards
- meeting with the Chief Executive Officer of the NHMRC to provide an update and briefing on the Office's activities
- presentation to the Independent Scientific Committee on Wind Turbines, including updates on the Office's activities and the Commissioner's observations and recommendations, and
- various meetings with wildlife species experts to gain perspectives and understandings of potential environmental impacts related to wind farms.

Presentations and Events

In addition to the community group events that the Commissioner has presented to (see page 17), the Commissioner has also formally presented to a variety of other stakeholder groups and forums. These presentations typically focus on community engagement, social licence and best practices as well as sharing experiences and observations within the wind and solar industries.

Events and meetings that the Commissioner presented or chaired in 2019 include:

- Australian Clean Energy Summit 2019 session *Time for a plan: How Australia can better coordinate and plan for the energy transition*, New South Wales
- Australian National University 'Energy Conversations: role of social licence to operate in a just energy transformation', Australian Capital Territory
- Clean Energy Council Large-scale Solar Industry Forum, Queensland
- Clean Energy Council Wind Directorate meeting, Victoria
- Clean Energy Council Wind Industry Forum, Victoria
- Guest lecture at Monash University program on Wind Energy and Resources Engineering, Victoria
- Moorabool Shire Council meeting on project construction and other regional matters, Victoria
- National Renewables in Agriculture conference, New South Wales
- New South Wales Department of Planning, Industry and Environment Solar Industry Forum, New South Wales
- State Government Wind Farm Planning Roundtable, Victoria
- Western Victoria Councils Roundtable, Victoria, and
- Various presentations to councils in Tasmania.

Commissioner's Website

The Commissioner maintains a website which provides a wide range of information about the Office's activities, including links to publications such as the Commissioner's presentations, bulletins and previous Annual Reports. The website also includes the Commissioner's updated observations and recommendations.

The website also includes detailed information on how to lodge a complaint with the Office, as well as the Office's contact details, policies and procedures.

The website also provide accessible, independent and transparent information about wind farms, solar farms and energy storage projects. This includes links to resources about these industries as well as information on energy generation, health studies, emergency management, planning authorities and guidelines, compliance authority contact details and community engagement best practices.

The Commissioner's website is available at www.nwfc.gov.au.

REFORMS AND ADVOCACY

Throughout 2019, the Office undertook a number of initiatives and advocated for a variety of reforms. Some of these reforms and advocacy are outlined below:

- Worked closely with the Clean Energy Regulator to update their accreditation processes for power stations under the Renewable Energy Target as well as their annual electricity generation return process for participating generators.
- Provided input to the updated NSW Farmers Association *Large-scale Renewable Energy Guide for Farmers and Landholders*, which was published in 2019.
- Proposed a review and evaluation of the National Airports Safeguarding Framework (NASAG) *Managing Wind Turbine Risk to Aircraft* guidelines for state planning authorities, with NASAG advising a schedule to formally review the framework in accordance with the Commissioner's recommendations.
- Facilitated a meeting with relevant government and industry stakeholders to clarify the assessment and regulation of wind farms and aviation safety, including matters relating to aviation impact statements, wind farm aviation lighting, updates to guidance and formal inter-agency processes.
- Worked closely with the Australasian Fire and Emergency Services Authorities Council on their updated *Position Paper on Wind Farms and Emergency Management*, published in 2019, which provides guidance on risk avoidance measures and emergency management procedures.
- Hosted wind and solar farm planning roundtable for state planning agencies to share updates, practices and innovations. This session also featured a session with the Chair of the Independent Scientific Committee on Wind Turbines, who discussed the Committee's work in relation to wind turbine noise assessment and explained different types of noise measurements, levels and studies.
- Prepared guidance material for landowners that are considering entering into commercial agreements with project developers proposing to use their land for project infrastructure. This is expected to be finalised in the near future.
- Held meetings with various state and federal departments and agencies to discuss long-term grid planning and management of cumulative impacts and other community issues across jurisdictions.
- Ongoing agency and government meetings in Tasmania to discuss proposed projects and long-term energy planning within the state, as well as improvements to current planning frameworks and approval processes.
- Ongoing meetings with the Clean Energy Finance Corporation in relation to renewable projects, including debriefing of site visits and updates of project pipelines.
- Continued to advocate for improved oversight of third-party consultant reports following the adoption of the Commissioner's predictive noise assessment and noise testing recommendations by the Victorian Government in 2018. This includes assessment reports such as Aviation Impact Statements, Environmental Impact Statements and Traffic Management Plans.
- Ongoing consultation with various local government bodies, including a council that has passed motions to support the Commissioner's recommendations in relation to project site selection and increased lobbying of the responsible authority to include the recommendations in law.
- Ongoing guidance to local government agencies to implement appropriate procedures for handling complaints received about nuisance allegations related to wind farms, such as provided for in the *Public Health and Wellbeing Act 2008* (Victoria).

- Continued to work closely with a number of wind farm developers to recommend appropriate visual impact mitigation screening solutions and approaches for residences near wind farms.
- Ongoing engagement with industry and government agencies regarding the logistics of transporting turbine components from port to project site, particularly in relation to projects at risk of experiencing significant delays that would affect both industry and communities.
- Continued to work closely with project developers to review and provide advice for best practice internal complaint handling procedures, including advocating for increased transparency and consistency with international guidelines as well as investigate options and solutions for residents, developers and third-party contractors.

UPDATED OBSERVATIONS AND RECOMMENDATIONS - 2019

In the Commissioner's 2016, 2017 and 2018 Annual Reports, the Commissioner made a number of observations and recommendations regarding the wind farm industry, largely based on experiences from handling complaints received, extensive site visits and engagement with a wide range of relevant stakeholders. These observations and recommendations covered many topics, including areas for potential improvement in the planning, governance and operation of the industry.

Our observations and recommendations have received significant feedback from stakeholders. Much of the feedback has been very supportive and aligned with the recommendations. Constructive feedback was also received suggesting further refinements and clarifications. Further, many of the recommendations have been duly considered by the relevant stakeholders and a number of the recommendations have now been implemented as a result.

The following sections are based on our 2018 report and have been further updated to include additional observations made during 2019. These updates are based on our experiences from handling new complaints, further site visits and stakeholder meetings, as well as incorporating feedback received on our 2018 report. In addition, observations and recommendations for 2019 include our experiences from the inclusion of large scale solar and storage projects within our jurisdiction.

For consistency, the 2019 report has utilised the same topic areas and numbering system employed in the 2016, 2017 and 2018 reports.

The recommendations detailed below are intended for consideration by the relevant stakeholders. The Commissioner has no formal powers to mandate the implementation of these recommendations. That said, the Commissioner looks forward to the ongoing discussion and adoption of the recommendations in a manner that will facilitate continuous improvement within the large-scale renewable energy industry.

Finally, as noted in previous annual reports, the large-scale wind and solar energy industry is still relatively new in Australia, with the first major wind farm developments commencing in the early 2000's and large-scale solar projects commencing in the last decade. However, these industries have developed rapidly, with a significant acceleration in new projects in the past few years. Opportunities still exist for further improvement in the governance and operation of the industry, but substantial progress has been made in recent times.

The updated observations and recommendations are also available on the Commissioner's website.

1. Host Landowner Negotiations

1.1. Observations

Background

Wind turbines and solar arrays are typically located on cleared primary production land owned by a landowner, often referred to as the 'host' landowner. The land's existing use is typically broad-acre agricultural production (for example, livestock or cropping). In general, a relatively small portion of the productive land is utilised for a wind farm's operation, such as turbine siting, access roads and other related assets such as transmission line easements, electrical substations, transformers and meteorological masts. The landowner usually continues to operate the agricultural production activities on the remaining land. By contrast, a solar array consumes most of the land that it resides on, with limited opportunities for co-located farming activities.

There is typically significant disruption during the construction phase of these renewable energy assets and ongoing access to the assets will be required by the operator for normal operations and maintenance.

Landowner Payments

Host landowners for wind farms are typically paid a fixed amount per turbine per year under a long-term agreement that mirrors the life of the wind farm – a term of 25 years with renewal options is common. The fee paid to the landowner may be a flat annual fee per turbine, regardless of size or capacity, or a fee based on the generating capacity of the turbine. The latter arrangement reflects the reality that modern day turbines have much greater capacity (in the order of 4 MW - 6 MW) compared with turbines available previously and, therefore, can result in less turbines being hosted by the landowner than originally envisaged with smaller capacity turbines. Host landowners for solar farms are generally compensated on a fixed amount per hectare leased to proponent.

Fee pricing can become dated, especially if a landowner has entered into a fixed annual fee agreement. At issue, and one that has emerged in more recent times, are wind farm agreements that may have been entered into a number of years ago with a fixed annual fee per turbine, where the turbine capacity may have been in the order of 1.5 MW to 2 MW per turbine. However, given the rapid advancement in wind turbine technology, proponents have updated their designs to take advantage of the new, larger scale and more efficient turbines – changing their wind turbine layout to deploy the contemporary technology and requiring fewer turbines to achieve the same energy output.

Many existing agreements did not contemplate the significant change in turbine capacity that has now occurred. As a result, the agreement fee per turbine payable to the landowner (based on the smaller capacity turbine) may not reflect the fee that may be more appropriate for say the larger 4 MW to 6 MW capacity turbine. Further, the landowner's payment may well be less than expected due to the reduction in the number of turbines now required. Landowners may wish to check their existing agreements in this regard and also ensure any new agreements have provision to adjust the fees in the event of a turbine capacity increase (and reduction in number of turbines) as well as the ability to escalate fees annually for changes in indicators such as CPI.

There can also be a variety of arrangements regarding when the payment of fees actually commence and cease. While this is a matter for negotiation between the developer and the landowner, it would appear that a fair and reasonable approach would be for payments to commence no later than the start of project construction and cease no earlier than the completion of decommissioning and restoration at the landowner's property. Fees may also be payable during the development phase in consideration for the option granted to the proponent by the landowner.

Other fee arrangements/agreements may also be required for electrical substations, batteries, transmission line easements, road access, transportation of blades and towers across property boundaries, location of project offices and the like. Landowners hosting these ancillary assets may or may not be wind turbine or solar array hosts.

Emerging issues include 'blade trespass', where a turbine blade may need to traverse a landowner's property boundary when being transported around a bend in the road, and 'sway easements', where a powerline may sway over a landowner's property boundary. The recent increase in blade lengths has increased the possibility of 'trespass' occurring. Developers and their contractors need to be cognisant of these types of issues and ensure they have appropriate agreements in place with landowners prior to submitting permit application plans such as the transport management plan or transmission route plan.

Development Process

Potential host landowners are typically approached by a developer very early in the development phase of a potential project in order to obtain the landowner's agreement to host turbines or solar arrays should the project proceed. Landowners will typically enter into an initial agreement (often referred to as a 'License Agreement') that documents their willingness to host the assets and the commercial arrangements that may be agreed to in the event that the development proceeds to the permit

application stage. Generally, these initial licence agreements provide the developer with exclusive rights over the landowner's property for a defined or undefined period of time.

There is a wide spectrum of developers active in the industry, with a variety of skills, resources, experience and business models. Many developers will progress the project to a stage where it is eligible to secure (or has secured) a planning permit, and then sell the project to another entity that will take the project forward through the construction and operation stages. Currently, developers are not licensed to prospect wind or solar farm projects, nor do they require approval to prospect a location for a potential project site.

At the initial stage of the development process, it is not uncommon for a developer to propose more turbines or solar arrays than will be finally approved or installed. As a result, the developer often enters into preliminary agreements with landowners who may ultimately 'miss out' on hosting assets or be offered to host a reduced number of assets. Further, even when the final number of wind turbines or solar arrays is confirmed, the planned location of these assets may be further revised, which can also result in landowners hosting less assets, potentially earning less fees than original expectations.

There are many reasons why a proposed project may reduce the number of turbines or solar arrays during the development phase. These may include increases in turbine or solar panel capacity, transmission constraints, environmental and planning considerations and requirements, financial constraints, community or neighbour concerns along with changes to policy, legislation or planning guidelines.

These various scenarios, observed in the Australian industry to date, can create a 'winners and losers' situation for landowners that may have had expectations of hosting assets. For instance, a landowner expecting to host say ten wind turbines (and expecting to receive the payments for hosting ten turbines) may become aggrieved if the final approved wind farm has significantly reduced or eliminated the number of turbines to be hosted by the landowner, thereby materially reducing or eliminating the potential income stream to that landowner.

The landowner may not only perceive that they have 'missed out' on a significant expected income stream, but may also raise concerns about the potential impacts of turbines located on neighbouring properties, including changes in amenity, audible noise, construction disruption, loss of property value and other effects of the wind or solar farm. The fact that the landowner's neighbours are hosting turbines or arrays and receiving payments can further aggravate the situation for the landowner that missed out.

This situation can also be exacerbated by developers conducting confidential, individual discussions and negotiations with specific landowners, creating a level of distrust amongst neighbouring landowners and the developer from the outset.

The consequences of these scenarios can be severe, both in terms of fracturing support for the project within the community as well as dividing the community in economic and social terms. Developers need to be mindful of the consequences which may arise from their conduct in landowner negotiations and the magnitude of impact on landowners with regard to changes to proposed solar array areas or the number of turbines and turbine layouts.

There is also a high risk that project prospectors, who may not have fully considered the implications of these scenarios, inadvertently conduct themselves in a manner that can result in long-term resentment to large-scale renewable developments within local and wider communities where the project is proposed. While these actions may lead to difficulties in relation to the success of the specific project, they also have the potential impact of creating difficulties for other project developers who may be undertaking development of neighbouring projects in the region. At times, these situations have brought and still have the potential to bring the large-scale renewable industry into disrepute.

The Commissioner has observed some successful methods by developers of working with landowners that have ultimately missed out on some or all of the expected assets to host. Such methods recognise the landowner's long-term engagement and commitment during the project's development, including a level of payment that may be based on a range of parameters, including the number and type of assets that the landowner had been originally expecting to host.

Host Agreements

A host landowner agreement is essentially a commercial lease. Significant time and money can be spent by developers in creating draft landowner agreements, which in turn should be reviewed by the landowner and their solicitor before negotiating and executing. Both industry and landowners may benefit from a standard agreement document being produced and available for use that is fair and reasonable, complete and consistent with the relevant laws – similar to in concept, as an example, the Law Institute of Victoria's Lease of Real Estate (Commercial).

Some landowner agreements observed could be clearer in a number of aspects. Agreements should provide clarity on a wide range of day to day matters, including which party is responsible for paying rates, land taxes, emergency services levies and the like. The landowner agreement also needs to be clear on termination provisions and the responsibilities regarding decommissioning of the wind farm.

Landowner agreements are not limited to hosting wind turbines or solar arrays – they may also be required to allow easements for high voltage transmission corridors, substations, construction facilities, meteorological masts as well as construction and operational access roads for the wind farm. Careful consideration of the approach and fairness to negotiating these additional agreements should also be required of the developer. Landowners should also ensure they seek suitably qualified legal and financial advice before entering into any agreement.

There may also be innovative opportunities for landowners and other community members to have an ownership stake in the project, which could be in the form of a community-owned wind farm through to equity or debt participation in the commercial ownership structure. It is understood that there are some examples of these approaches in Australia as well as in other overseas jurisdictions such as Europe.

Construction

The construction period can be a time of significant disruption for the landowner, with potential long-term effects. Typical issues can range from management of gates – gates being left open during construction activities can quickly lead to unplanned migration of livestock, often with challenging consequences – through to the impact of new roads and trenches being built throughout the landowner's property.

Firstly, construction itself can be a messy activity, particularly for wind farms. There is significant amount of civil works, components waiting to be assembled, equipment moving around and a large number of construction staff requiring temporary office and toilet facilities. Construction typically consumes a material portion of the land area – a much greater area than when the project is completed. It is advisable to plan for removing any livestock or ceasing farming activities during the construction phase.

Landowners may also be well advised to visit an actual wind or solar farm site under construction to experience first-hand the extent of the works and impacts on the land.

A common frustration for landowners can be last minute changes to the location and routing of internal roads and underground cabling. Project contractors and sub-contractors may inadvertently select a different route to the one that had been agreed to with the landowner, causing an unexpected loss of pasture or cropping capacity. Gates being left open by construction workers can also be problematic if livestock are grazing on the land.

Internal road construction in hilly and ridge terrain may lead to large roadway cuttings and embankments that can make it difficult or impossible to move livestock around the remaining paddock areas.

Best practice gate management is to design the road access and fencing in such a way to minimise or eliminate the need for gates. Project roads should also be designed to minimise the need for 'cut and fill' and vegetation removal, using the natural landscape wherever possible.

A construction project typically has multiple contractors and sub-contractors. It is not always clear who the landowner should contact to resolve issues as they inevitably arise during construction. Developers should ensure there are clearly defined points of contact for landowners to raise and resolve issues during construction, as well as the ability to escalate concerns that remain unresolved. Regular meetings between the developer and the landowner during construction can also provide a forum to discuss and resolve the inevitable changes and issues that may arise.

Outgoings

The addition of a wind farm to a rural property is likely to incur increases in outgoings such as Council Rates, Land Taxes, Insurances and other levies. For instance, a landowner may not be aware that primary production land may be re-assessed as industrial use land once turbines or panels are installed, may attract increased valuation rates, levies and may no longer be exempt from land tax. As discussed earlier, landowner agreements should be precise and clear on which party is responsible for the cost and payment of outgoings and any increase in the outgoings due to the wind farm. Ultimately, the landowner is usually ultimately liable for the payment of outgoings in the event the wind farm operator defaults.

Approaches to calculate and levy items such as council rates, land taxes and other levies appears to be ad-hoc across various state jurisdictions. The lack of a consistent approach may result in a number of consequences, including revenue leakage through to surprises in unforeseen levy charges. Some actions to clarify these matters are being taken, such as the NSW Valuer-General policy *Valuation of Land Used as a Wind Farm* (New South Wales Government, June 2019) but there may well be opportunities for tighter and consistent processes to correctly calculate, levy and collect these outgoing payments as a result of the deployment of wind turbines, solar arrays and other associated assets on the land.

Decommissioning

At the end of the project's operating life, the clear expectation of all stakeholders is that the wind or solar farm will be decommissioned and all turbines, arrays and other infrastructure will be removed from the property, with the property returned to its original condition – to the extent that can be done.

These responsibilities to 'make good' should rest with the project owner. However, in the event of default or breach of the agreement by the project owner, the liability for decommissioning ultimately may rest with the landowner. Further, the landowner typically does not have title or ownership of the project's assets and, as a result, may be unable to recover the costs of any decommissioning activities by selling the assets remaining on the property. Project operators/owners may also change many times during the life of the project.

From a landowner's perspective, it is imperative that any commercial agreement to host assets and the related infrastructure clearly sets out the responsibilities for decommissioning and restoring the site and provides for security of the funding to enable decommissioning.

A landowner may therefore also wish to seek ongoing evidence that the project owner has the capacity to fund the decommissioning activity and that such funds are properly set aside securely for that purpose. Examples that could be considered include bank guarantees, a sinking fund, a trust fund or a deposit held by the landowner. The Australian Government's recent *Offshore Clean Energy*

Infrastructure Regulatory Framework Discussion Paper proposes that developers lodge a decommissioning for infrastructure as a licence requirement.

While there are no documented examples of costs to decommission a contemporary wind turbine or farm in Australia, some published decommissioning plans have calculated costs that are close to \$400,000 per turbine. Many of these decommissioning plans are reliant on balancing decommissioning costs by recycling the recovered materials – however, there appears to be a lack of sufficient evidence to confirm this approach. To put these costs into perspective, the fees earned for hosting the turbine for 25 years could be in the range of \$250,000 - \$625,000 (depending, typically, on the turbine capacity and when the wind farm commenced operations). It is therefore possible that the costs to decommission a turbine could be equal to greater than the total income generated for the landowner over the 25 year lease period.

We are about to enter a period where, for some of the initial wind farm projects around Australia, decommissioning activities will commence in the next few years. There will likely be increased concerns about this topic, particularly from host landowners.

1.2. Recommendations

- 1.2.1. The developer should ensure that landowner expectations are properly managed from the outset of negotiations and that potential host landowners are made fully aware of the risks of potential reduction in turbines or solar arrays and relocation of these assets during the long development process life-cycle. Agreements that enable the developer to have the exclusive rights to the landowner's property should have fair and reasonable provisions for the landowner to terminate the agreement if the project has not met expected milestones after a reasonable period of time. Prospective milestones set out in the agreement should have clearly stated expected dates for those events – such as submission of permit application, financial close, commencement of construction works and expiry of planning permit.
- 1.2.2. Where practical, developers should consider discussing the proposed project and negotiating with all potential host landowners together as a group in an inclusive and holistic manner, rather than individual discussions with landowners. A standard template agreement with consistent commercial terms and conditions should be considered by developers and supported by industry and the relevant legal association in each state.
- 1.2.3. Further to Recommendation 1.2.2, developers should consider offering some level of payment to all engaged potential host landowners if the project proceeds, regardless of final allocation of assets on individual properties.
- 1.2.4. Host landowner agreements should be fair, reasonable and written in plain English. The landowner should have access to and obtain appropriately skilled legal and financial advice before entering into any agreement. The New South Wales Government's *Wind Energy Guideline for State Significant Wind Energy Development* (New South Wales Department of Planning, December 2016) provides some discussion on this topic, particularly within Attachment B of the publication. NSW Farmers' Federation have also produced a *Renewable Energy Landholder Guide* (GHD Pty Ltd, updated in 2019) covering a range of relevant topics related to host landowner agreements. Specific areas of agreements requiring clarity in landowner agreements include:
 - fees payable to the landowner during the project development stage (pre-permit), financial close stage (post-permit), construction, operational and decommissioning stages
 - timing of payment of fees and due dates for payments

- escalation of fees during the agreement, such as a fixed annual increase or CPI increase, and method of calculation
- considerations if the project is cancelled or materially delayed
- considerations if the project scope materially changes, particularly if the changes result in negative impacts for the landowner
- variations to fees in the event of changes to turbine layout, turbine specifications, turbine capacity and number of turbines or solar arrays to be hosted
- agreed internal road and other infrastructure locations (cabling, construction offices, substations, transmission lines etc.)
- process for making changes to location and routing of project infrastructure to the landowner's property (e.g. access roads, cabling) and responsibilities for maintenance of such infrastructure
- responsibility for costs and payment of additional council rates levied on the landowner as a result of the project
- responsibility for costs and payment of additional land taxes levied on the landowner as a result of the project
- responsibility for costs and payment of additional emergency services or other levies as a result of the project
- required insurances to be taken out by the project operator in respect of the landowner
- required insurances to be taken out by the landowner in respect of the project
- additional insurances that may be required to be taken out by neighbours to the project (such as liability insurance)
- responsibility for the costs and payment of the various insurances
- landowner's responsibilities in regard to renting out the property and/or residence(s) to a third-party tenant
- sale or transfer of the land by the landowner
- any restrictions on further development on the property
- provisions in the event of subdivision of the property
- term of the agreement, options for renewal of the agreements and termination provisions
- assurance provisions to protect the landowner in the event the project defaults (such as a deposit or bank guarantee)
- decommissioning provisions, responsibilities of the parties and arrangements to ensure funding is assured and protected
- remedies available to the landowner in the event of default by the developer, and

- key contacts at the developer for the raising and escalation of issues and potential breaches of agreement.

The above items could be set out in a standard template of a commercial lease agreement that is managed and maintained by an appropriate legal, industry or government body. Finally, landowners should be provided with an opportunity to visit a relevant project that is under construction to experience first-hand what is involved.

- 1.2.5. Councils and state jurisdictions should examine and audit current processes in place for the re-rating of properties that host wind and solar projects as well as related infrastructure and clarify how those properties are valued for the purpose of calculating land taxes and council rates. A similar activity should be undertaken for the calculation of applicable emergency services and other levies. The process and calculations should be transparent to relevant stakeholders and be subject to audit and be auditable.
- 1.2.6. Other landowner agreements (such as agreements for transmission line easements or road access) should also be negotiated and finalised with the landowners in a fair and reasonable manner, with appropriate consultations engaging affected landowners and neighbours in determining the final approach and routes to be taken.
- 1.2.7. Developers may wish to consider other forms of engagement with landowners (as well as neighbours and community members) that may allow for equity and/or debt participation in the ownership of the project.
- 1.2.8. The project's construction plan, transportation plan and overall project design should be developed in close consultation with the landowners and designed so to respect the landowner's need to be able to continue primary production operations during and following construction where applicable. Particular attention should be given to paddock/gate management and the impact of access roads to ongoing farming activities. Key contacts at the developer and/or its contractors should be provided to landowners to allow landowners to raise and escalate issues that arise during construction. Developers should also meet regularly with landowners during construction to discuss and resolve issues as well as keep landowners informed of the project's status.
- 1.2.9. To ensure that professional conduct and standards are consistently adhered to by project prospectors and developers, state governments should develop mechanisms to promote and motivate best practice behaviour by prospectors – both in terms of preferred site selection for prospecting and the engagement with landowners and community. Some examples include the NSW Government's 'Renewable Energy Zone' (REZ) designations, the Victorian Government's 'VRET' program, ACT's 'Reverse Auction' program and Queensland's 'RE400' program. A further approach would be the accreditation of developers (or adherence to an appropriate code of conduct) this is overseen by an appropriate industry or regulatory body.

2. Neighbour Consultation and Agreements

2.1. Observations

Background

Most large-scale renewable energy projects will have neighbours. Neighbours are residents or owners of the neighbouring properties next to the host landowner's properties, either in adjoining properties or properties within proximity to the project. There may also be neighbours that are not in direct proximity to the project that could be affected by other related project infrastructure, such as high voltage power lines and roads used for transport to and from the project.

Neighbours may also include functional facilities, such as an airfield, where a proposed wind farm could have significant impact on the ongoing operation and safety integrity of the facility.

Neighbours can be materially impacted by the development, construction and operation phases of the project. Impacts can include dust, disruptions, road damage, blocked roads, visual amenity, noise, shadow flicker and economic loss – both the fear in anticipation of these impacts as well as actual impacts once the project commences construction or is operating.

Consultation

While developers have generally engaged and consulted well with potential host landowners, developers have not always understood the importance of consulting and working with neighbours in proximity to a project. Typical complaints that the Office has received from project neighbours is that they were not consulted by the developer and only heard about the project from third parties. Often there is limited evidence to verify the degree and level of consultation and interactions between the developer and neighbours to the project.

Consultation may include a wide range of topics, such as:

- consulting with neighbours on the project's design and layout, especially during the early scoping and design stages, so to enable a fact-based discussion about landscape/amenity impacts
- consulting with neighbours to explain the planning process and opportunities for neighbours to engage in that process
- consulting with neighbours on the process and oversight of specific activities, such as predictive noise assessments, post construction noise testing, environment, aviation, transport management plan, shadow flicker and visual amenity assessments
- advising and consulting on subsequent proposed changes to the project's design, layout and equipment selection
- ensuring background and operating noise testing (for wind farms) is properly undertaken and results are provided in a timely fashion and appropriate format to neighbours
- providing factual information to address questions and concerns raised by neighbours, and
- facilitating site visits for neighbours to existing operating projects to allow the neighbour to experience a completed project farm first-hand.
- alternately, devices such as wind farm noise simulators are available to enable neighbours and other stakeholders the opportunity to experience noise outputs of a wind farm in a wide range of scenarios.

Lack of effective consultation with neighbours can lead to a range of material issues for a project, including conspicuous opposition to the project (and any modifications to the proposed project), formal objections that may lead to planning/approval delays and appeals, legal actions against the project or planning authority, the project (or elements of the project) not being approved as well as widespread negative media coverage about the project and the industry more broadly.

Neighbour Agreements

In addition to more effective consultation with neighbours throughout the life-cycle of a project's development, some developers have introduced the concept of 'neighbour agreements'. These agreements can provide a commercial arrangement between the project and neighbour that recognises the possible impacts of the project on the neighbour and to gain the neighbour's support.

Agreements may also be mandatory to gain a permit approval in the event the neighbour is at a risk of experiencing impacts from the project that exceed permit/standards limits or if they reside within a default setback distance zone.

The content of a neighbour agreement is typically confidential to the parties, but may include one or more of the following:

- annual payments to the neighbour for the life of the project (including payments during the development, construction and operating phases of the project)
- a one-time payment at the commencement of the agreement
- reimbursement of reasonable legal fees incurred by the neighbour for the review of the agreement
- reimbursement for, or provision of, items such as visual screening, insulation, double-glazing, air-conditioning, energy efficiency programs, solar panels, electricity consumption, increased insurance premiums
- reimbursement for any increased insurance premiums levied to the neighbour as a result of any increases to the sums insured for public liability due to the presence of the wind or solar farm
- an option for the neighbour to request that the developer acquire the neighbour's property, and
- ability for a neighbour to terminate an agreement without penalty.

Most neighbour agreements are voluntary and it is up to the developer to propose and negotiate such an agreement with the neighbour. Some developers have designed neighbour agreement payments based on a formula of distance from a residence to the turbine(s) and the number of turbines located within that distance.

The Office has observed some proposed neighbour agreements that contain clauses which may not be fair and reasonable to the neighbour. Such clauses observed include the right for the project not to conform to the permit conditions that would normally apply to the neighbour (including noise levels and shadow flicker), the ability for the developer to terminate the agreement while the project is still operating – either without cause or with questionable cause – as well as clauses that could be construed to restrict the neighbour's right to make a complaint.

Further, some neighbour agreements seek to impose stringent planning restrictions on the neighbour for any new development or construction on the neighbour's property. The Commissioner's view is that these clauses are unnecessary and the neighbour should simply be required to comply with the planning rules and laws of the jurisdiction.

Inclusion of perceived unfair clauses by the developer can significantly impair the ability to negotiate a fair and reasonable agreement, creating distrust and anxiety amongst neighbours towards the proponent.

Similar to host landowner agreements, all parties may benefit from a standard template agreement for 'neighbour agreements' that is established and maintained by an appropriate body and available for use by industry.

Visual Screening

Screening of the visual impact of the wind or solar farm by planting trees is commonly proposed by developers to project neighbours and may also be a mandatory requirement of the permit. A common issue is the length of time for a newly planted tree to grow to provide sufficient screening, bringing into question the effectiveness of such mitigation. It should be noted that Appendix 2 of the New South

Wales Government's *Wind Energy: Visual Assessment Bulletin* (NSW Department of Planning, 2016) outlines a range of potential mitigation measures that may be applied.

Further, the process of conducting visual screening assessments and designing and implementing the program can be a significant task and results of the program may not meet perceived expectations. An alternative approach is to provide the neighbour with the option of taking a cash payment in lieu of the screening program, thereby empowering the neighbour to decide how best to apply the funds to address the situation. This approach can also alleviate potential difficulties within a community, for instance if some residents have already, proactively, planted trees of their own accord and may now not be eligible for screening assistance.

2.2. Recommendations

- 2.2.1. Developers of projects should, where practical, proactively identify all potential neighbours at the commencement of the development activity and implement an effective, ongoing consultation program with all contactable neighbours throughout the project's development. While it may vary by project and geography, neighbours affected may include residents and landowners in a proximity range of 0 km to 5 km from potential project asset locations, as well as residents in close proximity to other project related infrastructure, such as power transmission or supply infrastructure. This indicative distance range for consultation may need to be greater in situations where, for instance, wind turbines are proposed to be erected on an elevated ridge.
- 2.2.2. Key stakeholders in the development of a project (for example, project buyers, planning authorities, investors, debt providers, local councils, regulators) should seek and consider evidence of neighbour identification and effective neighbour consultations as part of any due diligence and approval criteria.
- 2.2.3. Developers should consider the merits and use of appropriate neighbour agreements as a potential component of its overall neighbour and community consultations and project strategy. If utilised, neighbour agreements should be negotiable, fair and reasonable, written in plain English and the neighbour should have access to and obtain appropriate legal and financial advice before entering into any agreement. Standard agreements should not restrict the neighbour from being able to raise issues and concerns about the project, including subsequent proposed changes to the project design. Neighbours should be able to make complaints about the project and not be subjected to conditions that exceed normal planning standards and permit requirements. There may be existing, operating projects where a retrospective neighbour agreement should be considered. Developers may, alternately, opt for a broader community support model that benefits a wider group of community members that may not include specific neighbour agreements.
- 2.2.4. Screening solutions proposed by developers should be realistic and effective. If trees are proposed, trees should be planted in a timely fashion and well maintained to provide effective visual screening within a reasonable timeframe. Other screening solutions, such as structures or shutter blinds, should also be considered when proposing and negotiating a visual screening agreement. Neighbours may also prefer a cash payment option in lieu of the developer designing and installing the screening solution.
- 2.2.5. The developer should recognise that some neighbours may have been potential host landowners for the project's initial design and should take the time to understand the neighbour's history of involvement with the project. Developers should document all conversations and interactions with neighbours and maintain such records in an appropriate system for future reference. Equally, neighbours who have been approached by developers to offer an agreement should also ensure that they have documented all offers and agreements presented to them.

- 2.2.6. Neighbours should be appropriately represented in any project related committees, such as Community Consultative Committees and Community Engagement Fund Committees, to help ensure that neighbours have a voice, as well as the opportunity to be positively engaged with the many and various aspects of the project across the community.

3. Community Engagement

3.1. Observations

Background

Effective community consultation and engagement is essential for large-scale renewable energy projects to gain widespread support and earn the 'social license' to operate within the community. To be effective in community engagement, it is vital to actually 'engage the community' and involve the community wherever possible in the design and execution of programs related to the project.

The level of community engagement by developers varies widely across projects observed to date. A key observation is that initial project developers, that intend to 'on-sell' the project to a long-term developer or operator, may not invest sufficient time and resources in community engagement or neighbour relations to be effective. These limited efforts can result in lower levels of community support and more divided communities, compared with projects where the project developers appropriately focus on effective community engagement from the very start of the development activity.

Community Committees

In some jurisdictions, such as New South Wales, the planning guideline framework has provided for an early and continuing focus on community engagement, including the establishment of a Community Consultative Committee (CCC) that is maintained throughout the life of the project. Further, recent feed-in tariff arrangements established by the ACT and Victorian Governments, place a significant weighting on selecting developers and projects that have proposed and demonstrated effective community engagement programs, subscribing to community engagement as a high priority.

Many projects also establish Community Engagement Funds, funded by the developer, to support a wide range of initiatives that benefit the local community. In some cases, such funds are a condition of the permit approval, but largely these are voluntary arrangements proposed by the developer.

Community Committees appear to be most effective when there is appropriate balance in the committee membership, an independent chair and appointments are made by an independent body where practical. Committees can play a vital role in the provision of factual information about the project, identifying and resolving issues that arise that require multi-stakeholder cooperation to resolve and dispensing with inaccurate perceptions about the project and related events.

Communications

The quality of and information provided by project websites vary from project and/or developer. In general, there is more work to be done by developers to provide up-to-date websites with clear transparency of information about the developer, the project, current news, how and who to contact in the organisation, how to make a complaint and access the complaint process procedure – along with access to all relevant project documents. While most projects and developers now maintain effective project websites, some project websites remain difficult to find, are out of date or lack sufficient information and easy navigation.

Coordination

Some regions of Australia are experiencing increased clustering of proposed and approved projects, which may result in multiple projects infiltrating and 'surrounding' communities. As a result, there is both the need and opportunity for individual project developers to communicate more effectively with each

other and better coordinate engagement with the broader affected community. These activities could range from combined community engagement initiatives by developers through to coordination of construction programs in order to minimise cumulative impacts on residents and townships.

Developers should also be aware of other key infrastructure projects that may be taking place within the region and ensure that project activities and schedules are planned and coordinated to minimise impacts to communities.

Guidelines

During 2018 and 2019, a number of community engagement publications were issued or updated, including publications by the Clean Energy Council and the Victorian Government. These guidelines are very useful resources to assist developers prepare and execute effective engagement programs. Community engagement plans are now also required in some planning permits as a pre-requisite condition. Other stakeholders may also mandate the requirement for a well-designed and executed community engagement plan.

Overall, there continues to be a wide range of opportunities for developers to further broaden and improve their community engagement. A number of suggestions gained from observations of various practices across the industry are listed below.

3.2. Recommendations

- 3.2.1. The developer should ideally commence and invest early in community engagement – well before the commencement of the permit approval phase. An acquirer of a project still in development should conduct detailed due diligence on the extent and effectiveness of community engagement activities undertaken by the previous developer prior to finalising purchase of the project and be prepared to make the necessary investments in community engagement going forward.
- 3.2.2. The developer should proactively identify and establish effective working relationships with key community stakeholders, including stakeholders that may be opposed to the project.
- 3.2.3. The developer should, in consultation with the responsible authority and the community, consider establishing a CCC (or equivalent) with an appropriate charter and membership (noting that in some jurisdictions, a CCC may be mandated). The CCC Chair should, where practical, be a respected and representative member of the community at large as well as independent of any direct impact or beneficiary of the proposed project. Ideally, the CCC should meet monthly during critical stages of the project's development, approval, construction, post-construction testing and initial operations.
- 3.2.4. Many developers provide a range of information and education opportunities for community members to better understand the benefits and impacts of wind or solar farms as well as address any questions and concerns raised. Initiatives to consider include:
 - establishing a 'shop front' in the community town centre that provides project/permit information, a map and model of the project, information about wind and solar farms and an ability to address questions or concerns raised by community members
 - providing an informal channel for community members to ask questions and provide feedback about the project, and be able to do so anonymously if required
 - providing opportunities for community members to visit operating projects
 - providing access to a wind farm noise simulator to demonstrate wind farm noise to community members and enable them to experience simulated noise scenarios

- maintaining an easily found, up-to-date project website with full transparency on contacts, complaint process, project details, the project's current status along with planning permit details and documentation
- briefing local members (federal, state and local government) on the project and providing them with timely updates and information
- developing effective relationships with local media and providing the media with factual information to assist their reporting of the project and any impacts
- providing information sessions about the project, as well as wind farms and/or solar farms more generally, at convenient locations for community members, including presentations from key stakeholders, along with regular project newsletters and updates
- publishing the minutes, where applicable, of CCC (or equivalent) meetings and allowing observers to attend CCC meetings, and
- understanding and assessing the impacts on local accommodation during construction. Opportunities may exist for developers to construct accommodation which may, in turn, be utilised for long-term accommodation for people in need of housing arrangements.

- 3.2.5. The developer should establish a formal complaints/enquiry process, including a system to record and manage complaints, as well as provide a transparent register of complaints/enquiries information (note: actual complainant details can be masked for privacy). The complaints process should ideally commence at the initial stage of the development activity to allow community members to formally raise concerns and have those concerns addressed in a timely, consistent and transparent manner.
- 3.2.6. The developer (and CCC if it exists) should consult widely and communicate effectively and extensively on the proposed construction and related transport plan. The developer should also ensure appropriate restoration and 'make-good' actions are in place to remedy damage that may occur and seek, where practical, to leave local infrastructure in the same or better condition than prior to the construction. The developer should also proactively provide communications during construction using all forms of relevant channels, such as text messaging, to advise community members in advance of impactful activities. Where more than one construction project is occurring in the same area, collaboration should occur between the projects to proactively identify and resolve issues, such as constrained supplies such as gravel, tradespeople, accommodation as well as road access issues.
- 3.2.7. Further to Recommendation 3.2.6, the developer may wish to seek out opportunities to help facilitate improvements to other related community/local infrastructure. Initiatives could include improving mobile phone coverage, utilising the 'imported' project workforce to help upgrade local facilities (such as parks, playgrounds) and other practical activities which could benefit the overall community for years to come.
- 3.2.8. Local council(s) should proactively engage with the project and community, clearly communicating the council's support for the project as well as its role in facilitating and promoting effective community consultation. Council should participate in any CCC or equivalent. If there are multiple large-scale infrastructure projects located in a council's jurisdiction, it would be advisable to appoint a council liaison resource to coordinate relations and issue resolution between community and developers.
- 3.2.9. Where possible, the developer should engage staff locally (or relocate them locally) to lead community engagement activities and respond to community concerns and complaints. The developer should also seek to hire local tradespeople and contractor staff where practical.

- 3.2.10. Once a project is in operation, the developer should continue to proactively provide information and updates about the project and provide opportunities for the community to visit the project site (such as an 'open day').
- 3.2.11. The developer should consider establishing and maintaining a community engagement fund and ensure there is appropriate community involvement in the governance and management of the fund. In some jurisdictions, such a fund is mandated. The fund should allow for appropriate opportunities for community originated submissions to obtain funding for project proposals. Prioritisation of funded projects that may be of benefit to those community members more directly affected by the presence of the project should be encouraged. The community fund should clearly include and benefit community members that live in proximity to the wind or solar farm rather than only supporting projects related to a regional centre. Developers may wish to consider providing offers for community members to become shareholders in the project, which can provide a practical sense of ownership within the community. Developers may also decide to offer deals on electricity costs, gift cards or other benefits to the local residents within the immediate community.
- 3.2.12. Stakeholders to the project, including the responsible authority, council, bankers, investors and regulators, should seek relevant evidence of both the project's community engagement plan and outcomes from the plan's execution as input to decisions or conditions the stakeholder may wish to place on the project and developer.
- 3.2.13. Industry bodies, such as the Clean Energy Council (CEC) and the Australian Wind Alliance (AWA), should continue to promote effective community engagement and publicly recognise those industry members achieving excellence in positive community engagement outcomes. Appropriate priority should continue to be given to this topic when designing industry forum agendas.
- 3.2.14. State governments can continue to play a key role by prioritising the promotion of effective community engagement in projects. Examples include initiatives such as community engagement plans as a key selection criteria for eligibility to be awarded state government 'feed-in tariff' programs as well as utilising formal permit conditions to mandate preparation and endorsement of the plan.
- 3.2.15. Project developers should ensure that all contractors and other project stakeholders are aware of their responsibility to engage well with the community and minimise community impacts. If there are multiple infrastructure development projects occurring in a region, developers should also be aware of potential cumulative impacts to a community and should liaise with local councils and other developers to proactively plan ahead so to avoid or minimise unnecessary impact on the community.

4. Planning Permits – Time Limits and Scope Changes

4.1. Observations

Background

Once approved, a project planning permit is typically granted for a period of five years. The developer then has that period of time to fulfil and complete the various plans and assessments required by the permit in order to commence construction of the project, consistent within the permit conditions. It is quite common that construction is not completed within this five year period (or even commenced), where the developer then applies for an extension or renewal of the permit.

There have been numerous cases of projects where the permit has been extended or renewed for further periods, often with changes to the project's design due to the ongoing technological evolution of wind turbines and solar arrays.

Elongated Time Frames

As a hypothetical example, design and development activities for a proposed wind farm may have commenced in the 2001-2002 timeframe. In 2005, an approved planning permit with a five year expiry may have then been issued to the wind farm. If construction of the wind farm had not commenced or been completed by the time the approved permit expired in 2010, upon request by the developer, the planning authority may have then approved the permit to be renewed for a further five years until 2015, with the renewal approval usually based on some level of commencement of the project. If the wind farm construction was then completed in 2015, the results of post-construction compliance testing (such as noise-testing) may not be known until the 2016-2017 timeframe.

Therefore, it is feasible that a period spanning 15 years or more can occur between the original prospecting at the wind farm site and the wind farm being fully operational with post-construction testing activities and other compliance reporting complete.

Delays between the time of obtaining a permit approval for a wind farm and the actual commencement of construction works can occur for a variety of reasons. Typical reasons include undertaking and obtaining approval for the various reports and plans required by the permit prior to construction commencement, changes in turbine selection and turbine layout (which may be a consequence of issues uncovered by fulfilling the permit conditions), delays in obtaining financial close and changes in government policy.

These lengthy timeframes for a wind farm project are significant and can raise a number of issues for consideration, including:

- Standards, such as noise standards, which may change over the course of the development process. For example, at the time of initial project development, the project and permit conditions may have been based on the NZS 6808:1998 noise standard. Although the standards may have been revised in the ensuing period, the project and permit will still be based on the 1998 standard, rather than the updated NZS 6808:2010 noise standard – even though the wind farm may have been built more than 15 years after the initial project's development and well after the more recent standard came into effect.
- Setback distances policies (the minimum distance between a turbine and a residence) can also vary over time. As an example, a number of Victorian wind farms with current, renewed permits have no default setback distance provisions as the original permit was approved in the previous decade. Prior to 2011, there were no default setback distance requirements in Victoria. In 2011, a 2 km setback distance was introduced. The current default setback distance on Victoria is 1 km.
- Changes in standards and planning guidelines could therefore conceivably take many years from the time they are introduced to when they are written into planning permits for proposed wind farms.
- Technology, such as wind turbines, may also change over the project timeframe. The original project design and permit conditions may have been based on turbines of a certain energy capacity (for example, the original proposed turbine may have been 1.5 MW, whereas the developer now wishes to deploy 4.5 MW turbines) with changes to physical size dimensions (for example, higher turbine hub heights and longer blade diameters). As a result, the developer may decide to take advantage of the new technology and propose to change their turbine selection during the elongated time period. This change may potentially alter a number of material characteristics and impacts of the wind farm, including turbine layout, visual amenity, noise and shadow flicker. Such changes will likely result in the need for a formal modification (or endorsement) to the planning permit, re-opening the wind farm to potential objections and community concerns about the proposed changes.

- An emerging issue in the last two years has been the impact of the significant increase in wind turbine dimensions on transport routes and vegetation clearance along roadways – often leading to the need for a planning modification. The modification process may well reignite original debates and issues with the project, and add further delays to project start or completion.
- The transport plan itself also needs to be holistic and be carefully planned and mapped from port to project, with appropriate consultation with all relevant stakeholders that have jurisdiction along the proposed route. This consultation will need to be repeated if there is a change to the route and/or the impacts on related matters such as vegetation clearance and property access.
- The requirements on the developer to qualify for the ability to request a renewal of the permit for a further period may be minor relative to the total project scope (for example, the building of a simple shed or road access to the site) so to demonstrate some level of commitment to construct the project. These relatively minor works, when compared to the total proposed project, may be viewed as not substantial enough to warrant that the project has materially commenced within the permitted timeframe nor obligate the project in a way that it has no choice but to proceed.
- The community affected by the wind farm (including host landowners and neighbours) can be subjected to very long periods of uncertainty as to whether or not the project will proceed. This uncertainty can affect a range of individual landowner and stakeholder decisions as well as discourage or prevent other potential development within the wind farm’s planning envelope.
- Community engagement may also not be sustained by the developer over long periods of uncertainty and may deteriorate during the elongated time frame.
- During an elongated development cycle, other wind farms may have been subsequently planned and/or constructed in the area, which may result in possible unforeseen cumulative impacts for nearby residents.

Precedence

Depending on the jurisdiction, a developer may not need to assess a dwelling that is yet to be constructed, even though the dwelling has a valid, current planning permit and building permit. In effect, the layout of a potential wind or solar farm may take precedence over existing planned dwellings, resulting in the possibility of the planned dwelling being too close to turbines to meet noise limit and other setback requirements.

It would seem reasonable to expect that a proposed dwelling that has proper and current permits in place needs to be considered as a dwelling for project planning purposes, where the dwelling permits are already approved and in place prior to a wind farm permit application being submitted.

If the dwelling is subsequently not constructed and/or the permits expire, then the developer may choose to adjust the wind farm design accordingly.

Further, once a wind farm development is approved or constructed, persons wishing to build a dwelling or infrastructure within proximity of the wind farm should have their plans referred to the wind farm to check whether or not the dwelling is within compliance zones for matters such as noise and shadow flicker.

Other Infrastructure

In some jurisdictions, planning permits are not required for transmission and other associated infrastructure to connect the wind farm to the grid. This lack of review and oversight can lead to a wide range of community issues related to the design, routing and installation of the transmission line and related assets. The prospect also exists for duplicative assets connecting each wind or solar farm to the

grid, with no mandatory requirement to seek consolidation of such assets to minimise community impact and promote a more efficient use of capital.

Responsible Authorities

In general, state governments are the designated responsible planning authority for large scale renewable projects. However, some exceptions exist. For example, Tasmania's responsible authority for approval of wind farms is currently local government (although there are some proposed planning reforms which may affect this framework). Queensland also has delegated large-scale solar farms to local government as the responsible authority, as was the case in Victoria until recent changes.

Given the skills, resources and expertise required to properly assess and manage the planning process for these large-scale energy assets, it is strongly preferred that state governments retain responsibility for the planning process and approvals, along with compliance enforcement. Further, council's may avoid decision making by simply declining the proposed project, resulting in an appeal to the appropriate state planning and environment court, adding further delays and costs in the process, with the state effectively being the planning authority in any case – via the court system.

4.2. Recommendations

- 4.2.1. A wind or solar farm planning permit should only be renewed for one further term as a maximum, unless there are exceptional circumstances that have caused a delay in commencement. Approval of permit renewals should require the developer to demonstrate the likelihood of the project commencing and being completed prior to the end of the requested/approved renewal period.
- 4.2.2. Requests for material changes to a wind farm's proposed design and technology need to be scrutinised through an appropriate and rigorous process by the responsible authority. The process should be transparent to all stakeholders and include re-assessments of key impacts such as noise, visual amenity, environmental considerations, aviation, transport route, transmission requirements, shadow flicker and construction impacts.
- 4.2.3. The responsible authority should be able to reasonably introduce and apply current/updated planning guidelines, applicable standards and updated permit conditions when assessing a request to renew and approve a planning permit or modifications to the permit. For example, a developer seeking to renew a permit issued on 1 January 2015, expiring 31 December 2019, may be required to comply with any contemporary guidelines and standards currently in force that could be reasonably expected to be complied with and prepare the renewal submissions in accordance with those guidelines and standards.
- 4.2.4. Evidence of ongoing community engagement for the project should be submitted to the responsible authority when seeking a renewal approval or permit modification request. Submissions should include evidence of current community consultation efforts with regard to any proposed changes in the project design and layout subsequent to the original permit approval.
- 4.2.5. In considering a renewal or modification application, the responsible authority should assess any compounding effects of other proposed or constructed wind farms in the vicinity, in particular with respect to residents who may experience cumulative effects that may be exacerbated by the proposed wind farm that is seeking permit renewal approval.
- 4.2.6. Further to Recommendation 4.2.5, the responsible authority should assess the impacts of any other planning approval requests/approvals in the vicinity that have arisen subsequent to the original permit approval when considering the permit renewal application. These could include dwellings that had legitimate planning approvals prior to the project's original permit being approved that have subsequently been built and are inhabited.

- 4.2.7. In the event that the project is seeking a renewal/extension of the permit period to allow a commenced project further time for construction completion, the responsible authority needs to be fully satisfied that material construction has already commenced and provide extensions only for the period where it would be reasonably expected for the remaining construction to be completed.
- 4.2.8. State governments should consider including relevant questions for prospective rural property purchasers to ask about potential wind or solar farms, in the vicinity of the property, in any due diligence 'checklist' that may accompany a contract of sale or vendor statement document.
- 4.2.9. Planned dwellings within proximity to a proposed wind or solar farm that have existing, approved and current planning and building permits, should be treated as an existing dwelling when preparing and submitting permit applications. Planned dwellings that subsequently are not constructed within the specified time limits, or have expired permits, can be removed as a constraint to the planning layout. See also recommendation 4.2.10 regarding development plans subsequent to a project planning permit being approved.
- 4.2.10. Neighbours to projects, where the project is in either development or in operation, should be allowed to submit development plans to the responsible planning authority for new development on their property, such as a dwelling or a shed. Development proposals within at least 1.5 km of a proposed or operating wind turbine, should be referred to the wind farm developer by the responsible authority for consultation and to verify impact levels of the wind farm at the proposed neighbour's development site. Development proposals in locations where the wind farm is likely to exceed prescribed standards and limits may require written agreements to be reached between the neighbour and the wind farm before the neighbour's development can be granted final approval by the Responsible Authority.
- 4.2.11. Transmission lines, substations and other related electrical infrastructure should all be subject to and require an appropriate and detailed planning permit, ideally as part of the overall permit for the project. Careful consideration should be given to the design and routing of the powerline. Proponents should collaborate wherever possible to optimise use of shared transmission facilities. Relevant governance bodies (transmission planning, electrical safety, road safety, local councils etc.) should be properly consulted on the project and exercise their oversight responsibilities accordingly.
- 4.2.12. State governments are best placed to be the responsible authority for large-scale renewable energy and storage projects. Local governments have a very important role to play in the planning process, road access, community engagement, construction and operation of the project, but should not be burdened with the overall planning and compliance responsibilities.

5. Governance and Compliance of Standards and Permit Conditions

5.1. Observations

Background

The design and governance of large-scale renewable energy projects relies on a range of standards and various compliance mechanisms to monitor and enforce those standards.

Standards are often set and maintained by the responsible authority (for example, a state planning department or environment department) and there are a variety of arrangements in place for enforcing compliance with the standards. Standards may be 'borrowed' from other jurisdictions (for example, Victoria uses the New Zealand (NZ) noise standard, the NSW noise standard is based on the South Australian standard), set by the planning function or set by the state agency responsible for environmental management and regulation.

Enforcement of standards and permit conditions also varies by jurisdiction and the type of standards. Generally, there are no proactive audit regimes in place – rather, compliance relies on receiving complaints or alleged breaches of permit conditions. The pathway to make a compliance complaint or allegation again varies by jurisdiction and type of complaint – in some cases the state environmental regulator can receive and investigate noise or environmental complaints, in other cases it may be a local council, state planning department or the relevant Australian Government department.

Compliance Complaints

It is often unclear to community members where or who they should lodge a complaint to regarding construction or operating compliance. Planning permits may not clearly state the accountability and responsibilities with regard to compliance oversight, nor may they prescribe a process for handling potential or actual non-compliance. Further, local councils and state planning functions may not have the necessary skills and expertise to handle and investigate a compliance complaint. Federal agencies, such as the Clean Energy Regulator, rely on a clear understanding of the responsible compliance authority and the authority's advice if the Regulator is to consider acting on allegations of non-compliance or breach of a law.

Interpretation and Consistency of Standards

Borrowed standards can also be difficult to administrate or enforce if a protocol has not been developed for the local jurisdiction. As an example, the NZ noise standard (used in Victoria and Tasmania) has a concept of low and high amenity areas for determining the appropriate noise limits for a wind farm. Victoria's planning scheme does not define such areas, making it difficult to interpret and apply the NZ standard 'as is' in the Victorian context (see *Cherry Tree Wind Farm Pty Ltd vs Mitchell Shire Council – VCAT – P2910/2012*).

Issues have also arisen regarding the application of tonal noise penalties provided for in the NZ standard. The application of the standard is open to interpretation in that regard, and Victoria must rely on interpretations from New Zealand court proceedings to attempt to clarify the standard. This can be a difficult matter to resolve, particularly in the event the interpretation has also been a topic of debate in the home country (see *Decision of Hearing Commissioners re Palmerston North City Council v New Zealand Windfarms Ltd – November 2017*).

Typical standards and permit requirements relevant to a project's development and operation can include matters such as audible noise, shadow flicker, visual amenity impacts, setback distances, environmental matters related to flora and fauna, vegetation clearance as well as noise and dust levels during construction.

Noise Standards

Noise standards relating to wind farms currently vary by state. For example, the wind farm noise limit standard in Victoria and Tasmania is 40 dB(A)* measured outside the residence. South Australia varies between 35 dB(A)* and 40 dB(A)* based on the location of the wind farm, Western Australia is 35 dB(A)*, New South Wales is 35 dB(A)* and Queensland's standard is 37 dB(A)* during the day and 35 dB(A)* during the night. The approach to measuring the noise emitted from a wind farm can also vary by project and jurisdiction which can lead to debate over the veracity of the noise assessment results.

The World Health Organization's (WHO) latest noise guidelines recently recommended a 45 dB (Lden) limit for wind farm noise, as measured outside the residence, to prevent negative effects on sleep and health. However, the report noted the lack of research or evidence available to conclusively support this new guideline limit. Previous WHO guidelines were based on an inside measurement limit of 30 dB(A),

* or background noise plus 5 dB(A), whichever is the greater amount. Measurements of A-weighted sound pressure level are generally taken on the basis of LA90, 10-min.

although it can be difficult and intrusive to carry out wind farm noise testing inside a residence, particularly over a long period of time.

Current noise standards therefore rely on the effects of attenuation of the noise by the residence structure and would assume that a noise level of say 40 dB(A) measured outside the residence should be less than 30 dB(A) measured inside, based on an expected attenuation in the order of 10-15 dB(A). This attenuation may be greater if the windows are closed and the residence is of solid construction and well insulated, however, the effective attenuation may be less if windows are open and/or construction and insulation of the residence is less robust.

Issues can also arise where a wind farm is tested for noise and the result exceeds the limit by a marginal amount, for example 40.2 dB(A) against a limit of 40 dB(A). The Commissioner's understanding is that the 0.2 dB(A) difference would not be discernible by the human ear and is the result of the complex mathematical calculations that assess multiple noise data points. There may be some merit in allowing for a small, reasonable tolerance level to avoid wind farm's unnecessarily being in technical breach of compliance.

Debate continues as to whether or not a low frequency standard should also be introduced, such as a dB(C) and/or dB(G) weighting. The prevailing argument to date is that the 'A-weighted scale', which has been designed to replicate the human ear's sensitivity to noise, accommodates a sufficient proxy for low frequency noise – noting that low frequency noise can be difficult to detect at levels that would breach threshold targets.

However, based on complaints received, the possibility remains for annoyance for some people living in proximity to a wind farm and perceiving low frequency noises or vibrations while inside their residence. More work is still required to determine whether or not the noise or vibration source in question is the wind farm or some other source. The Office's complaint data has seen a significant reduction over time in complaints citing concerns about low frequency noise or vibrations emanating from operating wind farms.

There may be other sources of noise as a result of the project's operation, in particular noise that would emanate from the electrical infrastructure, including power substations, transformers and back-up generators. The impact of such noise sources should be assessed during the design phase and tested for compliance during any post-construction noise testing.

The Independent Scientific Committee on Wind Turbines has derived a suggested wind turbine noise limit of 35 dB(A) (LA90,10-min) to ensure minimal annoyance. This suggested limit approximately equates to a LAeq,10-min of 37 dB(A) or a Lden of 43 dB(A).

Setback Distances

A setback distance (also known as a 'veto' distance) is a default distance that, if a residence (dwelling) is within that specified distance from a proposed infrastructure, such as a wind turbine or solar array, the resident can either veto the asset or enter into a commercial agreement with the developer to allow the asset to be sited within the setback distance limit.

Setback distances from an asset to a residence also vary across states. For example, Victoria originally had no setback distances for wind turbines, then introduced a 2 km setback distance in 2011 and subsequently amended it to 1 km in 2015. Queensland has introduced a setback distance of 1.5 km, while the New South Wales framework is based on a merit assessment of each project against the criteria and performance standards in the framework. Western Australia has recently recommended a 1.5 km setback in their *Position Statement: Renewable Energy Facilities* (Western Australian Planning Commission, March 2020). Turbines can be closer to a residence than the default setback distance, however typically require an agreement to be reached between the resident property owner and the developer.

Current setback for wind turbines have been predominately set based on legacy turbine dimensions and expected outcomes from noise standards. As a rough rule of thumb, a 40 dB(A) noise contour should be just less than about one kilometre from the turbine(s), whereas 35 dB(A) noise contour is typically less than 1.5 km from turbines, although these distances can vary with topography and terrain. Turbines installed during the last decade have mostly been at tip heights in the order of 150 metres and around 2 MW to 3 MW in capacity.

New projects are now proposing turbines with tip heights in excess of 220 metres and capacity of up to 6 MW per turbine. Improvements in turbine design have mitigated the noise effects and, generally speaking, the noise contours have not materially changed for these larger turbines, despite increased hub and tip heights as well as generating capacity. However, there may well be effects of increased visual amenity and shadow flicker impacts that may give rise for a need to revisit current set back distances and increase them accordingly.

While setback distances are typically based on the distance from the wind turbine to the residence, there may also be circumstances where the distance of the turbine from the neighbour's property boundary should also be a consideration. Such circumstances could include the potential effect of wind turbines on animals such as horses, driving distractions on nearby roads or other situations where turbines may impact neighbouring properties due to their proximity to land use activities on a property.

The British Horse Society recommends a minimum setback distance from wind turbines to horses of 200 metres or three times the blade tip height – whichever is greater – on the basis that horses could potentially react to noise, blade rotation and shadow flicker impacts from wind turbines (see the Society's *Wind Turbines and Horses – Guidance for Planners and Developers*, 2015). The Society's report notes that, while there have been anecdotal reports of livestock such as horses being impacted by turbines, no formally recognised studies have established demonstrable causality.

Upper Lachlan Shire's Development Control Plan specifies that turbines shall not be located within a distance of two times the tip height of a turbine from a formed public road or a non-involved property boundary. For example, a tip height of 150 metres would require a setback of 300 metres from a road or property boundary according to these guidelines (see *Upper Lachlan Development Control Plan 2010*, page 93).

Electrical infrastructure required for the project, such as transmission lines, may also cause a change in visual amenity for community members. Consideration should be given for those impacts and setback distances as they may also be appropriate to mitigate visual amenity loss and noise issues arising from the infrastructure.

Harmonisation of Standards

The opportunity exists for a clearer framework of standard setting and enforcement of standards, whereby there is independence in the setting and enforcement of standards from the planning function. Such independence allows for increased community confidence in the objectivity of setting standards and assessing compliance. It also allows the relevant independent agency to acquire and maintain the appropriate skills and expertise to fulfil its standards and compliance responsibilities.

The opportunity also exists for increased harmonisation of key standards across state jurisdictions, such as noise, visual amenity, shadow flicker and setback distances, providing a consistent approach and expectations for governments, industry and the community. Consistency across the states will not only provide a more equitable outcome for residents potentially affected by projects, but may also result in the additional benefit of driving improvements in the technology across the entire market based on the more stringent, while appropriate, standard.

While there may be a number of ways to address these issues, best practice appears to be assigning responsibility for the setting and compliance oversight of environmental-related standards with the state environmental regulator, while the application of the standards to specific projects rests with the state or

local government planning authority. The current arrangements in place in New South Wales and South Australia generally reflect practices along these lines.

Deemed Compliance

Finally, once a wind or solar farm commences operations, it may not have achieved formal compliance of all conditions until all of the post-construction compliance testing has been completed and accepted. Typically, formal post construction testing, such as noise testing of a wind farm, can only commence once all turbines are operating. The testing itself may take up to 12 months to complete and report. Therefore, there may be a period of two or more years where the wind farm is partially or fully operating, but is yet to be confirmed as compliant.

A wind farm may therefore effectively be 'deemed' to be compliant in some jurisdictions even though post-construction assessments have not commenced or been completed, relying on the predictive assessments undertaken prior to construction. There may be an opportunity to introduce more formal processes to properly clarify the deemed compliance period and then confirm when a wind farm is actually compliant (once all of the required testing is complete) and the timeframes for which that must occur. This period of uncertainty of compliance can cause a range of community concerns and also be costly for governing bodies, particularly for larger wind farms that may have a two year plus construction cycle.

Anecdotally, some wind farms have been described as being 'not non-compliant' when unable to confirm compliance with required permit conditions, highlighting the difficulty of declaring a wind farm to be 'non-compliant' when its default status is compliant. In addition, it may be appropriate to consider that a wind farm is deemed to be operationally compliant during the construction, commissioning and testing periods, but ongoing compliance is subject to final confirmation by the responsible or regulatory authority after compliance testing is completed.

From the Commissioner's observations, one solution to this issue is for a wind farm to be licensed by the appropriate environmental regulator. Under this scenario, the wind farm would need to confirm and maintain its compliance with the applicable license and permit conditions or risk losing its license to operate in the event of unrectified material breaches of the license and/or permit conditions. The license conditions could include conditions to be met during the period prior to post-construction testing, particularly with regard to handling abnormal or mechanical noise issues.

Measurement approaches for measuring compliance with the standards can also vary between projects and jurisdictions. Given the extraordinary number of variables to be measured, consideration needs to be given to the consistency of measurement, calculations and reporting for assessing environmental measures such as noise and flora and fauna impacts when setting permit or license conditions.

For example, there is much scope for variability when selecting the noise data points to be included and also determining the 'line of best fit' for those set of noise data points – such variances could mean the difference between compliance or otherwise when assessing the results of a noise testing program.

5.2. Recommendations

- 5.2.1. State governments should review and clarify their current arrangements for the setting of environmental standards, along with the arrangements for oversight and confirmation of compliance with those standards. It is strongly preferred that the department or agency setting and maintaining the various standards is independent of the department or agency responsible for planning and applying those standards. In addition, the compliance authorities for a project should be clearly defined, transparent, accessible to the community and able to receive and investigate allegations of compliance breaches. Where compliance oversight currently rests with local government, appropriate support and resources should be made available to the council/shire to enable them to effectively perform their compliance

and investigative responsibilities, including being equipped with the appropriate policies and procedures to handle alleged breaches of permit/license compliance and/or laws.

5.2.2. Based on the outcome of the review outlined in Recommendation 5.2.1, state governments should consider whether or not the current arrangements are appropriate, effective and consistent with best practices for the independent development, maintenance, compliance management and governance of environmental standards applicable to wind and solar projects. If planning functions or local councils are designated as the responsible compliance authority, they should be provided with appropriate support and resources to assist them in carrying out their responsibilities.

5.2.3. In considering the above recommendations and possible reforms, the potential roles of an appropriate independent, state based, standards and compliance agency (such as a state environmental protection or regulatory authority) could include responsibility to:

- Set and maintain the environmental standards applied to wind and solar farms, including setback distances, noise, shadow flicker, visual amenity, flora and fauna, environment and heritage (noting the role of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* with regard to Matters of National Environmental Significance including protected flora and fauna), along with specifying the methods and procedures for measurement of the prescribed standards.
- Review planning applications for projects and recommend/require permit conditions related to the environmental standards. Environmental standard conditions in permits should clearly state the process for how the measurements are to be undertaken and reported as well as provide the opportunity for peer review of the process, calculations and results.
- Provide or facilitate peer review and audit of expert reports, including review of testing and modelling programs, submitted by the developer related to permit requirements (see also Section 6).
- Where appropriate, license the facility once it is constructed and issue and monitor license conditions for the operation of the asset that may be subject to review and renewal. State governments should also receive and review regular reporting against those licence conditions from the project operator and may withdraw licences in the event of unrectified material breaches of applicable license and permit conditions.
- Receive and investigate complaints related to environmental standards, including alleged breaches of non-compliance with permit requirements or relevant laws.
- Confirm as required the compliance or non-compliance of an operating project with regard to environmental standards, related permit conditions and relevant laws.
- Report material breaches and investigations to the Clean Energy Regulator and other relevant agencies.
- Liaise with other agencies (e.g. Civil Aviation Safety Authority, Australian Government Department of Agriculture, Water and the Environment) on assessments and compliance matters that involve such agencies.

5.2.4. Planning permits (and/or applicable licenses) for projects should clearly state:

- The oversight organisation(s) or person(s) accountable for determining compliance of a wind farm with its permit (and license) conditions, both at post-construction and ongoing operational stages.

- The process and contact details for lodging a complaint or alleged breach of permit (and/or license) compliance.
 - The process to be followed in the event that an operating project is found to be non-compliant with one or more of the permit (and/or license) conditions.
 - A requirement for the developer or operator to publish transparently, on the project website, the process and contact details to make a complaint or alleged compliance breach to the designated oversight organisation.
- 5.2.5. During the period between the commencement of a project's commissioning/operation and the completion of any required post-construction assessments, the project could be designated to be in 'provisional' or 'deemed' compliance, pending the results of the assessments. In this scenario, a project can only move from 'provisional compliance' status to being confirmed as 'compliant' once the responsible authority (or regulatory authority) has confirmed it is satisfied that the project is compliant as a result of any post-construction assessments. While the project is in 'provisional compliance' it is deemed to be compliant. Once a project has completed its post-construction assessments and confirmed to be compliant by the responsible authority, ongoing compliance is then overseen by the designated agency or responsible compliance authority. For the avoidance of doubt, a project that has been constructed in a way that is consistent with the requirements of any predictive noise assessments is deemed compliant unless proven otherwise.
- 5.2.6. If a project's facilities are deemed by a responsible authority to be in an unrectified material breach of compliance, the project should be required by the responsible compliance authority to cease operating or curtail the non-compliant facilities until compliance is achieved.
- 5.2.7. The Federal Government should review the compliance enforcement powers and actions that may be taken by the Clean Energy Regulator in the event of a suspected or confirmed unrectified material breach of compliance.
- 5.2.8. Governments should consider reviewing the primary standards across all jurisdictions for noise limits and setback distances. The following relate to wind farms only:
- 5.2.8.1. Based on current observations and the findings of the World Health Organization, it would appear that an appropriate level for a consistent wind farm noise limit would be 35 dB(A)*, measured outside of the residence. Noise standards that specify 'high' and 'low' amenity noise level limits must have clear guidance that define where those limits are applicable.
 - 5.2.8.2. Applied penalties for specific noise conditions such as tonality and special audible characteristics continue to be set at 5 dB(A), however such noise complaints should also be assessed on a subjective and reasonableness test by an approved, independent expert. Protocols should be developed and in place to clarify interpretation of 'borrowed' noise standards from other jurisdictions.
 - 5.2.8.3. A default setback distance of 1.5 km between a residence or dwelling and the nearest turbine (note: for turbines with a tip height of 200 metres or greater, a variable setback distance may be more appropriate to consider any increased visual amenity impacts). Local topography, existing trees and vegetation as well as terrain need to be also considered when applying any default setback measures.
 - 5.2.8.4. In addition to a setback distance between a turbine and a residence, a minimum setback distance of 200 metres (as measured at ground level from the centre of the

* LA90, 10-min; or background noise plus 5 dB(A), whichever is the greater amount

tower or 150 metres from the extended horizontal blade tip, whichever is the greater) and a neighbour's boundary fence line or public road carriageway, should also be considered.

- 5.2.8.5. Consideration should be given to setback distances between a wind farm and a materially populated township or city boundary. A distance of 5 km may be appropriate to preserve amenity and provide some flexibility for planning growth of the township (note – consideration of reducing these suggested setback provisions may be appropriate in the case of a small-scale, community-supported and owned wind energy facility).
- 5.2.9. The noise assessment design and compliance testing conditions should include assessment and testing of the wind farm's electrical infrastructure (transformers, substations, back-up generators etc.) and noise levels from these sources need to be compliant with the applicable standards.
- 5.2.10. A setback distance between a residence and other infrastructure associated with the project, such as transmission lines, should also be considered to help alleviate visual amenity impacts and noise considerations. This would include a setback distance between a residence and major transformer or generation infrastructure, such as a terminal substation. Where possible, transmission infrastructure should be placed underground and/or well away from residences and road reserves. If this is not possible, a minimum setback distance of 100m between a rural residence and powerline infrastructure should be considered in planning guidelines for powerlines of 66 kV or greater.
- 5.2.11. Power poles installed in the road reserve must comply with relevant standards and guidelines for setback distances from the carriageway, comply with any road safety requirements and road safety barrier specifications, and pole locations must be pre-approved by the responsible authority.
- 5.2.12. Consideration should also be given to the current standards for wind turbine shadow flicker. A typical standard at present is a limit of 30 hours of shadow flicker per year at a resident's external window or garden area. This standard, used across Australia, has been sourced from shadow flicker standards developed and used in Europe, where setback distances to residences are typically less restrictive. At, say, a 1 km distance from a turbine, the residence would be very unlikely to receive 30 hours of actual shadow flicker. A more appropriate standard in the Australian context may be no more than a total 15 hours of actual shadow flicker per year at a residence and no more than 30 minutes of shadow flicker should be experienced on a given day. Neighbours experiencing (or likely to experience) shadow flicker that is annoying should also be provided with the opportunity for having visual screening installed. To date, shadow flicker complaints have been minimal.
- 5.2.13. Final siting adjustments for turbines during construction ('micro-siting') should be limited to a distance of no more than 100m from the approved site location, be no closer to a residence (or property boundary per Recommendation 5.2.7) and be properly documented, including the reasons for the change. Micro-siting of a distance greater than 100m should require written approval from the responsible authority. Power poles installed in the road reserve must comply with relevant standards and guidelines for setback distances from the carriageway, comply with any road safety requirements and road safety barrier specifications, and pole locations must be pre-approved by the responsible authority.

6. Use and selection of Experts

6.1. Observations

The design and approval of a proposed wind or solar farm relies heavily on third-party consultants (or 'experts') to prepare a range of reports including assessments related to noise, visual amenity, shadow flicker, aviation, flora and fauna, hydrology, vegetation and various other environmental assessments.

Experts are selected and paid for by the developer. The expert reports are typically included with the developer's planning permit submission to the responsible authority when seeking approval for the project. Many of the assessment reports rely on complex calculations or results from predictive computer modelling. These reports also rely on assessing the project against standards that are not always clearly defined.

The accuracy of the assessment reports and recommendations is therefore highly dependent on the quality and precision of the assumptions used, correct application of calculations, the integrity of computer modelling applications, the accuracy of the data used and the skills of the expert in interpreting the output of the resulting analysis.

Once the wind or solar farm is built, experts are engaged to carry out any required post-construction assessments. These assessments, and resulting reports, utilise actual data from the operating project, however may still rely on assumptions and modelling to collect and analyse the data and to then present in a format to support the conclusions.

It is very common practice that experts engaged to perform the design and predictive assessments during the planning phase are the same experts engaged by the developer to perform the post-construction assessments. Developers may also often use the same experts on multiple projects, establishing a long-term relationship between the parties.

The selection and use of the same expert in both the design and then post-construction phases of a project may give rise to perceived or real conflicts of interest between the developer and the expert as well as expectations effectively placed upon the expert to confirm the project's compliance.

As a hypothetical example, an acoustician engaged to assess a proposed wind farm's design for compliance with the noise standard – is then engaged to assess the constructed, operating wind farm to confirm compliance with the noise standard. The expert acoustician may then be placed in a difficult situation if the acoustician discovers some aspects of the operating wind farm are potentially non-compliant, particularly if those areas of non-compliance may be a result of errors or assumptions made in the original acoustician's design assessment. There may be enormous pressure on the expert acoustician to measure and/or interpret the operating noise data in such a way that would demonstrate compliance, rather than non-compliance, of the operating asset.

There is certainly scope for a clearer separation between the experts used for the predictive assessments used in the design/application stage versus the experts used for the post-construction assessments of a project, along with the inclusion of independent audits of the expert's reports. A more rigorous process would yield a range of material benefits including minimising costly expert errors during the assessment phase, minimise or eliminate perceived or real conflicts of interest and give all stakeholders greater confidence in the integrity and reliability of the expert assessment process.

Best practices that has been observed or implemented are as follows:

- A suitably qualified expert be appointed by a developer to carry out the relevant assessment during the planning application and project design activity. The appointed expert must be free of any real or perceived conflicts of interest.

- Before approving the design or planning application, an independent, accredited auditor be appointed to scrutinise and review the expert's assessment/design report. The auditor's report and findings/recommendations are provided to the developer, the developer's expert, the responsible planning authority and other relevant agencies for the subject matter (e.g. Civil Aviation Safety Authority, Country Fire Authority, Environment Protection Authority, Australian Government Department of Agriculture, Water and the Environment etc.).
- Once the project is constructed, a different expert (that is, different and unrelated to the 'predictive assessment' expert) be appointed to carry out any required post-construction compliance assessments, as specified by the planning permit or equivalent instrument.
- The post-construction compliance report is then reviewed by a different (that is, different to the auditor of the 'predictive assessment' report), independent, accredited auditor to confirm the accuracy and integrity of the post-construction report. The auditor's findings/recommendations are issued to the developer, responsible authority and other relevant agencies.
- Project compliance is confirmed once the responsible authority is satisfied with the findings of the experts, accompanied by unqualified audit reports.

These additional steps and appropriate separation of experts and auditors will go a long way to facilitate confidence for all stakeholders in the significant decisions that are made on the basis of expert reports. The process will also provide better protection for industry from very costly errors and risks of subsequently being found to be non-compliant.

This type of approach for noise assessments was piloted, on a voluntary basis, at a proposed Victorian wind farm. In applying a more conservative approach than the initial assessment, the process found that a material number of turbines at that wind farm were at risk of breaching compliance if deployed as planned. Early identification of these issues allowed the proponent to adjust the operational design and parameters accordingly to ensure compliance – before construction commenced.

The Victorian Government has now formally adopted the accredited noise assessment auditor framework for all new and modified wind farm planning permits. Other states have implemented or are considering implementing variations on the above. In some cases, industry proponents have also adopted some or all of these best practices, even if not required, to ensure integrity and accuracy of the expert reports they are relying on.

In addition to noise assessments, other expert disciplines that have led to material issues in recent times included aviation safety assessments and vegetation clearing assessments for transportation routes. Errors and/or omissions in those assessments lead to either significant project cost overruns or cancellation of the project as a result.

Finally, it is expected that these reforms will increase the market opportunities for additional experts and auditors as well as help facilitate growth of skills and firms in the relevant disciplines.

6.2. Recommendations

- 6.2.1. Given the heavy reliance on advice and assessments provided by experts in a project's design, planning, construction and compliance decision-making, qualified experts used for assessment engagements should be ideally selected from an accredited panel or list. The panel or list could be maintained by the relevant responsible authority (or environmental regulator). Alternately, the panel or list could be maintained by a relevant industry body or association.
- 6.2.2. To ensure independence and remove any real or perceived conflicts of interest, the expert organisation (or expert) selected to perform post-construction compliance assessments of a

project should be a different expert organisation (or expert) to the one engaged for the design/planning phase of that project.

- 6.2.3. Expert reports, assessments and techniques used for planning submissions, such as the predictive noise assessment, should be reviewed and assessed by an independent auditor, appointed or accredited by the responsible authority and/or relevant regulator. Further, expert reports prepared with respect to post-construction compliance should also be reviewed and assessed by a different, independent auditor, also appointed or accredited by the responsible authority and/or relevant regulator.
- 6.2.4. The appointed independent auditors (refer to Recommendation 6.2.3) should be suitably qualified, experienced and accredited, have the ability to assess the integrity and accuracy of the expert's report and be able to identify and confirm compliance or non-compliance with the relevant permit conditions and/or prescribed standards.
- 6.2.5. Planning approval processes should carefully take into account the advice of independent auditors and/or referral agencies, such as CASA, before deciding on whether to approve a project. Where appropriate, designated authorities (e.g. the relevant road authority), may be deemed to be a statutory referral agency, whereby their advice and recommendations must be adhered to by the responsible planning authority.

7. Complaint Handling and Emergency Procedures

7.1. Observations

Complaint handling

Wind and solar farms are typically required to establish a complaint handling procedure, together with supporting systems and processes, to comply with planning permit conditions. It is also common sense that the project be able to properly receive, investigate and resolve complaints as part of normal facility operations and effective community engagement.

Complaint handling procedures are generally required to be submitted and endorsed by the responsible authority. However, currently, requirements for complaint procedures are often limited to noise and construction complaints only. In many cases, limited guidance is provided in permit conditions as to the process, scope, requirements and standards that the complaint handling procedure should adhere to.

While many projects are likely to be compliant with the requirement to submit and have an endorsed complaint handling procedure, our observations have been that a number of projects (or proponents) have not published the procedure or communicated the procedure to the community. This lack of transparency can make it difficult for community members to know how to make a complaint and the process by which they should expect their complaint to be handled.

It is pleasing to see that many projects have adopted the Commissioner's suggestions, making their complaint handling procedures transparent and available and demonstrating compliance with their processes for complaint handling. However, there are still further opportunities for proponents to ensure they are following their own documented procedures when handling complaints and avoid situations including:

- projects not following their own published procedure for handling complaints
- projects failing to internally escalate the complaint for review when the complaint has not been resolved
- multiple complaints from a resident about the same issue or issues – with no visible action being taken by the proponent to investigate or resolve

- a lack of rigour or process in complaint investigations and absence of or poor clarity in correspondence
- complaints remaining open when they should be closed, and
- a lack of clarity regarding next steps in the complaint handling process – leading to numerous complaints that remain unresolved and/or not closed.

There is also a wide range of project complaint handling procedures in place that vary by proponent and project, often resulting in a mix of consistency in the quality and effectiveness of the procedures. Also, project operators may possess varying degrees of complaint handling skills. As such, there continue to be further opportunities to improve the capability of staff and effectiveness of the industry's complaint handling procedures.

The Commissioner has encouraged a number of developers and operators to voluntarily publish their complaint handling procedures on their project website. Many proponents have now complied with this request. Some proponents have also revised their complaint handling procedures as a result of discussions with the Office. The Commissioner continues to make suggestions to improve existing complaint handling procedures to the many industry members who have sought assistance from the Office. Proponents also often seek assistance from the Office on suggestions for handling specific complaints that they may be dealing with.

Noise considerations

While objective measures and standards are used to determine compliance with noise restrictions, it is also evident that there is further scope to investigate complaints relating to noise emissions from turbines and other infrastructure. In assessing noise-related complaints, the objective 'tests' currently in place do not necessarily capture the tonal character of noise emissions that a complainant may be experiencing. For instance, maintenance or operating issues with infrastructure (such as a turbine or a substation transformer) may lead to harmonic frequencies that produce a harsher tone to the human ear. While this is not typically represented in noise assessment data, contemporary noise measurement or recording devices can be used to indicate that the tonal character of a particular noise emission may reasonably be considered to be disturbing or offensive to a complainant.

Other events can cause abnormal noise annoyance from wind turbines. These include loose bolts, lack of greasing of the rotating nacelle during the yaw process and lightning strike of a blade (piercing a hole in the turbine blade that causes a high-pitched whistling sound). These situations require a rapid response to a complaint and it is in everyone's interest that the asset be repaired and the noise emission rectified.

Permit requirements

Following the Commissioner's discussions with the relevant Minister and Department, the Victorian Government moved quickly to introduce additional permit conditions related to complaint handling procedures and transparency based on the Commissioner's initial observations and recommendations. It is understood that these additional conditions have been applied to both new, renewed and modified planning permits issued for wind farms in Victoria.

There may also be other avenues for complaints to be lodged by residents in proximity to a project. In Victoria, complaints about 'noise nuisance' can be lodged to local government under the *Public Health and Wellbeing Act 2008 (Victoria)*. Council's need to be fully aware of their responsibilities under this Act and ensure they have appropriate documented procedures to receive and handle complaints in the case they are lodged under this legislation. Further, the *Environment Protection Amendment Act 2018 (Victoria)* will come into force in 2020 and may provide additional options for residents to raise complaints about 'unreasonable noise' and allege breaches of the general environmental duty that is central to the legislation.

Finally, industry bodies such as the CEC may have a key role to play in leading the development and promotion of consistent, best practice complaint handling models and procedures for the renewable energy industry that can be adopted by industry members, configured for their specific operations.

Emergency procedures

The Commissioner has also observed opportunities for clearer protocols to be put in place between project operators and emergency response agencies, in particular as they relate to ground and aerial firefighting and the ability to direct a rapid shutdown of assets such as wind turbines and the positioning of turbine blades during a shut-down to minimise the obstacle.

Not all turbine manufacturers or specific turbine models, have the ability to remotely lock the turbine blades into the required position for safe aerial firefighting. Some blades will continue to drift with the wind, further increasing the risks to pilots and reducing the workable airspace between turbines to fly and drop retardants.

Other potential obstacles to aerial firefighting, such as meteorological masts, radio towers and powerlines may also exist around the project site and pilots need to be well aware of this infrastructure. A consistent standard for the visible identification of meteorological masts should be considered and adopted into planning guidelines and aviation safety assessments.

7.2. Recommendations

- 7.2.1. Planning permit conditions for wind and solar farms should stipulate that the complaint handling procedures should support all types of complaints raised about the project and also meet minimum best practice standards for complaint handling procedures (such as the *Australian/NZ Standard for Complaint Handling – AS10002:2014*). The developer should implement appropriate systems and processes to support the procedures and maintain an appropriately detailed complaint register.
- 7.2.2. Planning permits should include a condition requiring the endorsed complaint handling procedure and the complaints register to be published on the project's website. The website should include a toll-free number and an email address to contact the project operator to make an enquiry or complaint. Developers should also proactively implement these provisions from the very commencement of development as part of best practice transparency and community engagement.
- 7.2.3. Planning permits should include a condition requiring that the endorsed complaint handling procedure be followed and complied with by the proponent. Failure to comply could be deemed as a material breach of permit compliance.
- 7.2.4. The responsible authority should have the powers and capability to enact and audit a project's complaint handling activities and complaints register to monitor compliance with the procedures and the planning permit conditions.
- 7.2.5. The complaint handling procedure and the project operator should have the capacity to accommodate handling of urgent or emergency complaints. These complaints may be related to safety issues as well as unacceptable environmental conditions, such as damage to a turbine caused by external events such as lightning strike or mechanical failure resulting in unacceptable noise emissions. The project operator should respond immediately, on-site, to assess, address and rectify such issues. While objective measures and standards may be in place for assessing matters such as noise emissions, a subjective, reasonableness test should also be applied when assessing environmental conditions, such as abnormal noise emissions, tonality, special audible characteristics and low frequency noise.

- 7.2.6. Complaint handling bodies such as developers, local councils, state governments and compliance authorities should ensure their complaint handling procedures are relevant for wind and solar farm matters. Further, complaints need to be closed out at the appropriate time with the complainant being advised accordingly.
- 7.2.7. For extreme emergency conditions, such as a bushfire, the project operator should have appropriate controls, protocols and procedures in place, consistent with the emergency response requirements, to ensure the assets can be rapidly shut down. Power network operators should be aware the wind or solar farm capacity may need to be shut down quickly in the event of a bushfire.
- 7.2.8. Projects should also work closely with the relevant firefighting (and/or emergency services) agency to review and agree on protocols and procedures to be followed in the event of an emergency.
- 7.2.9. The project should also use appropriate marking devices to ensure transparency of other aerial obstacles such as meteorological masts, radio towers and powerlines to the firefighting agency. Material obstacles should require planning permits. If the obstacle is a risk to aviation safety, a referral should be made to CASA and the obstacle should be assessed as part of the overall aviation impact assessment.
- 7.2.10. Wind turbine design standards should be reviewed in light of their capability to remotely position and lock turbine blades in the event of a bushfire. Developers should strongly consider selecting turbines that conform to this standard going forward. There would also be a strong advantage if turbines were delivered with the capability to install aviation lighting even if this is not a permit requirement or intended for use under normal conditions, as the capacity to utilise these assets may assist greatly in the event of any bushfire or emergency.
- 7.2.11. The industry peak body (CEC) should continue to provide leadership to the industry by developing and promoting best practice standards for complaint handling, along with community engagement and quality assurance of member companies. The CEC could also encourage or mandate (via a code of conduct) that its industry members voluntarily publish their project's complaint handling procedure and contact details, and that members are properly trained and skilled in effective complaint handling.
- 7.2.12. Policies and procedures for handling noise and other environmental complaints lodged with government agencies, including local councils, should be in place where the possibility exists for complaints to be made either as an alleged breach of compliance and/or under other governing legislation, such as the Victorian *Public Health and Wellbeing Act 2008* and the *Environment Protection Amendment Act 2018*. Overlapping legislation may well need to be revisited to avoid unnecessary duplication of process and the prospects of vexatious complaints and litigation.

8. Site Selection

8.1. Observations

Background

The selection criteria for a potential site for a proposed project may be based on a range of factors including the available wind or solar resource, proximity to existing transmission infrastructure, potential for securing landowner arrangements and other approved development in the area.

Current transmission infrastructure was originally designed and built many years ago based on the location and availability of existing energy resources (such as coal, gas, pumped hydro) which, at that time, did not envisage the significant shift to large-scale renewable resources such as wind and solar

energy. These relatively new resources are often optimally (in all other respects) best located in different geographies and often well away from existing grid infrastructure.

Prospecting developers are not generally restricted in initiating a new project on a particular site and almost always pursue sites that are very close to existing transmission infrastructure. Developments often commence by prospectors initiating discussions with adjoining landowners at a transmission optimal site to seek their agreement to host the project. However, because existing transmission infrastructure is often located near communities, lifestyle dwellings and primary producers, prospective and developed wind and solar farms are more likely to be located in areas that will cause friction with non-involved neighbours and communities.

Site impacts

The Commissioner's experience to date indicates that there is a much higher likelihood of community issues and concerns to contend with when a proposed or operating wind or solar farm is located near or amongst more populated areas. Often, the more populated areas correlate with the proximity and availability of transmission infrastructure, however, they can also result in a very large number of neighbours who will reside in close proximity to multiple turbines or solar arrays.

Further, there may be multiple proposed (and/or existing) projects in a given area, with the potential for residents to be 'surrounded' by wind turbines and/or solar arrays if such projects proceed. These scenarios could lead to a range of compounding issues for residents including noise, visual amenity and potential economic loss. A further complication may occur if project construction timeframes overlap, placing enormous pressure on local resources and infrastructure, in addition to the usual annoyances such as construction noise, traffic and dust.

Based on our complaint handling experiences, the Commissioner has found that locating wind turbines on the top of hills or ridges, while optimum for capturing the wind resource, can have greater impacts on visual amenity, may lead to specific noise and shadow flicker scenarios for residents in the valley beneath and may have other dislocation impacts on the community. Access roads for hill and ridge wind farms can also be obtrusive and significantly damage and constrain the remaining available farming land in the area.

Conversely, there appear to be minimal issues raised to date about wind farms that are located on large land holdings, or on flat or slight to moderate undulating land and sites that are well away from neighbours and towns (noting comments made earlier regarding landowner and neighbour agreements in subsections 1 and 2).

Location and capacity of transmission grid remains a significant challenge for the renewable energy industry. A number of more recently completed projects have discovered, upon connection to the grid, that there is insufficient capacity in the existing transmission line for the project's generational output to be delivered – resulting in significant curtailment of the generation capacity of the project. In particular, a number of large-scale solar projects have experienced this situation, as these projects tend to be in more remote locations in order to capture the solar resource. Again, it may be prudent for developers to engage early with AEMO and transmission operators to ensure that the project's output can be accommodated.

Optimising site locations

There may be opportunities to select and prioritise wind and solar energy projects in the current pipeline based on an increased likelihood of acceptance of the project by the surrounding community. With the increase in development and construction costs, the ongoing grid connection issues and the declining value of large-scale generation certificates, not all projects in the development pipeline are expected to go ahead. There is an opportunity to select projects that meet other key parameters, including economic and regional development goals, while also selecting sites that are optimal from a community impact perspective.

Recent state and territory government initiatives, such as Renewable Energy Zones (NSW), VRET Program (Victoria) and Reverse Auction Program (ACT) have enabled governments to become involved in selecting projects that are located in more optimal sites. These administrators also have a level of control to mandate community support programs through to ensuring minimal or no cumulative effects from neighbouring projects. Upgrades to the grid system at a national level may also provide opportunities to explore new locations for renewable projects.

There can be great variances in the final design and layout from the project's original design and approved permit conditions. As these changes occur, there are not necessarily sufficient processes in place to re-assess other nearby projects for potential compounding impacts on residents and whether or not projects with such compounding impacts should proceed. There can also be severe cumulative effects during construction of more than project in a specific locality, placing enormous pressures on roads, resources (such as gravel), accommodation and skilled tradespersons.

Given that existing projects have most likely already selected optimal sites for their location, management and selection of appropriate new sites from remaining site options may become more difficult. A more 'top-down' approach to selecting projects, together with appropriate long-term planning and augmentation of the grid, should assist greatly in managing this challenge going forward.

8.2. Recommendations

- 8.2.1. State/Territory and local governments should consider assessing proposed wind and solar energy projects on a wider range of criteria (including ability for power output to be transmitted and consumed, the suitability of a location from a community impact perspective and the degree of community support) and then prioritising projects for approval or progression accordingly. 'Reverse auction' feed-in tariff schemes such as the schemes deployed by the ACT and Victorian governments, could be an example of how to prioritise and incentivise projects to be developed in preferred locations. These schemes can also promote best practice community engagement. Visual amenity guidelines such as the *Wind Energy Visual Assessment Bulletin for State Significant Wind Energy Development* introduced in New South Wales in 2016 can also restrict development in more populated areas, including assessing the acceptability of multiple wind farms in a given location.
- 8.2.2. State and local governments may also consider other criteria in assessing and prioritising wind and solar energy projects, including economic development and the ability to both support regional and industry development through improved local electricity supply and infrastructure in regional communities. Appropriate zoning for renewable energy development and overlays for clarifying where it would be appropriate or not appropriate to build and operate projects should also be considered.
- 8.2.3. Prospecting for new wind and solar farm development sites could be subject to an 'approval to prospect' requirement issued by the responsible authority before formal prospecting commences. The approval to prospect a specified potential site would be granted on a range of criteria, including the suitability of the proposed site, alignment with the State's renewable zone strategy, transmission capacity as well as the credentials of the developer and key personnel. See also Recommendation 1.2.9.
- 8.2.4. As part of the assessment suggested in Recommendation 8.2.1, the responsible authority should have processes in place to obtain and verify clear evidence of the developer's consultations with affected landowners and residents and be able to assess the likelihood of strong community support for the project.
- 8.2.5. Once an approved project has materially commenced construction, the responsible authority may need to check other approved projects in the area which are yet to commence construction, to ensure any compounding effects on residents, including noise, shadow

flicker and visual amenity, have been properly considered in those applications/permits. If necessary and where reasonable, the responsible authority should also have the ability to require a modification to the approved planning permit and layout of those projects that have not already materially commenced construction. Background noise levels should exclude any noise contribution from a neighbouring operating wind farm for the purposes of applying the noise standard.

- 8.2.6. State governments should publish and maintain a map of all operating and proposed wind and solar farms, including the location of the project, location of wind turbines or solar arrays, the status of the project (proposed, permitted, in construction or operating) as well as information about the project's design, including number and size/rating of wind turbines or solar arrays and information about the proponent.
- 8.2.7. State governments, in conjunction with the appropriate Australian Government departments/agencies and the Australian Energy Market Operator (AEMO), should review current and planned transmission infrastructure to ensure it allows for new large-scale renewable generation facilities to be connected in the most optimal locations for renewable resources. AEMO's Integrated System Plan has identified a number of potential renewable energy zones that provides insight and direction transmission planning. The resulting new and/or augmented transmission infrastructure needs to be commissioned and in place in a timely manner.

9. Health Matters

9.1. Observations

Much has been and continues to be written and researched on the topic of wind farms and health effects. Debate continues around the world as to whether a wind farm causes physiological harm to residents living within its vicinity.

In 2016, the NHMRC announced the funding of two research studies into wind farms and health. One study is focused on the effects of wind farm noise on sleep and is led by Professor Peter Catchside at Flinders University. The other study is focused on measuring the effects of infrasound and is led by Professor Guy Marks at the University of New South Wales.

In addition, in late 2015, the Australian Government established the Independent Scientific Committee on Wind Turbines to provide advice on a range of matters including wind farm noise levels and the relationship to health effects.

A number of complaints about wind farms received by the Office include references to health impacts as a result of wind farm operations. Health conditions cited in complaints include sleep disturbance, headaches, ear-aches, 'pounding' in the ears, tinnitus, tachycardia, high blood pressure, sight impairment, diabetes, chest-tightening, nausea and general fatigue. The complaints generally state that such conditions are caused by audible noise and low frequency noise, including infrasound, along with vibration sensations attributable to the operation of nearby turbines. In some cases, complaints have stated that some health conditions are persisting even when the turbines are not operating.

Numerous invitations have been extended to complainants to provide evidence of their medical conditions. Complaints regarding health concerns received by the Office have, in the main, provided only anecdotal evidence regarding stated health issues and perceived causality. It has therefore been difficult to form an opinion on whether or not the stated health conditions reported by complainants are valid and, if valid, whether or not the health conditions are possibly a result of the wind farm's operations or from some other known cause.

The Office will continue to handle complaints, with supporting evidence, from community members regarding potential health effects from operating wind farms. Since the Office has commenced,

70 complaints about operating wind farms have been received. These complaints relate to 14 operating wind farms out of a total of more than 80 operating wind farms across Australia. Of these 70 complaints, approximately half of the complainants cited concerns about health impacts from the operating wind farms. Of these, a very small number of complainants agreed to work with the Office and provide evidence of the stated health issues. In all of these cases, the root cause of the stated health issue was not attributable to the wind farm.

Further, in 2019, only five complaints about operating wind farms were received. The clear majority of complaints received have been about proposed wind farms. On the basis that a wind farm has to be built and operating before it could possibly cause a physiological health effect, the potential cohort of potential physiological health complaints is very small.

It should also be noted that, for the last two years, the Office has not received any complaints regarding allegations of vibration sensations being caused by a wind turbine's operation. The Office's findings could not confirm any actual evidence of vibrations at a residence with causality from a turbine, findings which are consistent with advice received on this topic from Flinders University. The Office's complaint data further substantiates these findings.

It is possible that stated health conditions that exist may be as a result of other known causes not related to the wind farm's operations. Of material concern is the potential situation whereby a resident may fail to seek and obtain appropriate medical advice and treatment for a treatable health condition, due to the possibly incorrect assumption that an operating wind farm is the perceived cause of the condition. For example, if a resident is experiencing sleep difficulties, they may be advised by their general practitioner (GP) to consult a sleep specialist for a proper diagnosis of the root cause and advice on treatment to remedy the condition. If the GP's advice is not followed, the cause of the condition may persist unnecessarily.

Health conditions may also arise as a result of stress, annoyance or anxiety related to the presence of an operating wind farm or concerns about the effects of a proposed wind farm. Further, uncertainties in relation to whether a proposed wind farm will actually proceed (a period which may extend for several years) may also contribute to stress and anxiety. Again, affected residents may need to seek appropriate medical treatment for these ancillary health conditions as well as seek ways to resolve their concerns.

In November 2019, the South Australia Supreme Court handed down its decision in relation to the proposed Palmer Wind Farm. The Court concluded that claims that the turbines would cause sickness and health issues for residents were unsubstantiated. Of note, the objectors did not provide sufficient evidence of causality from any expert medical witness. The Court's finding has been consistent with the Commissioner's observations and recommendations based on actual complaint experience.

The Office will continue to monitor relevant decisions that explore evidence about wind farms and health in consultation with the Independent Scientific Committee on Wind Turbines, such as the recent guidelines issued by the World Health Organization, as well as hearing outcomes, such as the Palmer Wind Farm decision and the Administrative Appeals Tribunal decision in *Waubra Foundation v Australian Charities and Not-for-profits Commission*. The Office will also monitor and continue engagement regarding any results of the NHMRC funded studies and the work of the Independent Scientific Committee on Wind Turbines, as well as assessing any further evidence gathered through its complaint handling activities.

The Office has also observed the need for clearer, streamlined legislation that provides a balance of protecting the community while also providing a degree of certainty for the proponent. In Victoria, complaints made under the *Public Health and Wellbeing Act 2008 (Victoria)* have utilised the nuisance provisions under the Act to allege that wind farms are creating a 'noise nuisance', even when a wind farm has been deemed compliant with its permit conditions. Councils should have in place clear

procedures for investigating and determining whether or not a wind farm is causing a noise nuisance under the Act.

9.2. Recommendations

- 9.2.1. Federal and state governments should continue to assess the outcomes of research into wind farms and health, including outcomes of the two NHMRC funded wind farm health studies and findings of the Independent Scientific Committee on Wind Turbines. Environmental standards, such as noise standards, should be monitored and reviewed in line with any recommendations arising from these programs.
- 9.2.2. Residents living in the vicinity of an operating or proposed wind farm that are experiencing health conditions should be encouraged to seek appropriate medical advice to properly diagnose and treat any health-related conditions accordingly. GP's receiving patients from wind farm locations should maintain an awareness of wind farm and health matters through bodies such as the Australian Medical Association and assist patients in understanding the need for appropriate testing, diagnosis and remedies for the presented health conditions or concerns.
- 9.2.3. Medical practitioners who identify potential causal links between a patient's health condition and their proximity to the operation of a wind farm should report such incidences in an appropriate way to the relevant professional body, association and/or government agency.
- 9.2.4. Residents who are experiencing unacceptable noise levels from a wind farm should be encouraged to report such incidents to the wind farm operator, the compliance authority and/or the appropriate regulator to initiate the appropriate investigation and resolution of the noise incidents.
- 9.2.5. Residents lodging health-related complaints with the Office should assist with providing and sharing any evidence regarding their stated health conditions and any medical assessments that identify possible causality of the wind farm as a contributor to the health conditions.
- 9.2.6. State governments may need to identify and address potential overlapping regulations and/or legislation with regard to noise emissions from a wind farm and ensure clear procedures are in place to handle, investigate and resolve such complaints raised under the various avenues.

GLOSSARY

A-weighted scale	A scale that is applied to instrument-measured sound levels to replicate the relative loudness perceived by the human ear.
Amenity	The visual impact a wind farm has on the landscape.
Australian Government	The Government of the Commonwealth of Australia (also referred to as Federal Government).
Australian Wind Alliance (AWA)	A not-for-profit organisation that supports the wind energy industry in Australia, with the objectives of boosting regional economies and reducing pollution and greenhouse emissions.
Clean Energy Council (CEC)	The peak not-for-profit organisation supporting the clean energy industry in Australia. The CEC represents a range of clean energy sectors and works with governments and other organisations to promote the industry.
Community Consultative Committee (CCC)	A CCC is a membership that is set up to facilitate consultation between wind farm developers, the community, local councils and other stakeholders that may be involved in the development phase or operation of a wind farm.
Community Association	A non-government association of participating members of a community who facilitate representative community engagement in the development process.
Community Engagement	The consultative process of wind farm developers supporting the participation of community members in the development process.
Commercial Dispute	An issue regarding the contractual goods or services of a wind farm whereby financial compensation has been sought by a party (for example, a host or a neighbour).
Complainant	One or more resident(s) from a residence who has contacted the Office for the purpose of making a complaint.
Concerned Resident	A person who resides in a dwelling within proximity to a proposed or operating wind farm facility, who holds concerns about potential impacts of the proposed or operating wind farm and may make a complaint to the Commissioner.
Construction	The stage in which the wind farm including access roads is being built. The construction stage may last a number of years.
dB	Decibels, a measurement unit used to describe the level or intensity (loudness) of a sound.
dB(A)	A-weighted decibels, a measurement unit that used to express the relative loudness of sounds in air as perceived by the human ear.
dB(C)	C-weighted decibels, a measurement unit that is used to measure low-frequency noise.
dB(G)	G-weighted decibels, a measurement unit that is used to measure to infrasound.
Economic Loss	The potential negative economic impact that a proposed or developed wind farm may have on a particular community or individuals within a community. This is typically the loss or perceived loss of property values or business within proximity to a proposed or operating wind farm.
Expert	A person who has special skill, knowledge or authority in a particular field of study.
Health	General physical or mental condition of a concerned resident.
Hz	Hertz, a unit which measures the frequency of sound waves, perceived by the human ear as pitch. The typical range of human hearing is 20-20,000 Hz.
Industry Association	An organisation founded and funded by businesses and other parties that have an interest in the wind energy industry.
Industry Member	Employee or other party who is involved as a member of an industry association.
Infrasound	Sound that is lower in frequency than 20 Hz or cycles per second, the 'normal' limit of human hearing.
Independent Scientific Committee on Wind Turbines	An independent, multidisciplinary, expert group established in 2015 by the then Minister for the Environment, the Hon Greg Hunt. The Committee was primarily established to investigate and provide advice on the potential impacts of sound from wind turbines on health and the environment.
LA90,10min	The A-weighted sound pressure level, obtained by using the fast time-weighting, that is equal to or exceeded for 90% of a 10 minute time interval. The values for individual 10 minute time periods are highly variable and a function of the hub height wind speed. The actual value for a particular hub height wind speed is determined by best fitting a polynomial function of hub height wind speed, which can be up to fourth order, to the individual 10 minute time period LA90,10min values when the wind turbines are operating. It is corrected to remove the effect of the background noise by subtracting a background noise function determined in the same way when the wind turbines are not operating.

	For example, for a particular hub height wind speed, the $L_{A90,10min}$ function determined as described above must be less than the greater of 35 dB and the background noise function determined as described above plus 5 dB.
Micro-siting	The process whereby the specific location of a wind turbine is determined.
National Health and Medical Research Council (NHMRC)	An independent statutory agency and expert body that promotes the development and maintenance of public and individual health standards. NHMRC provides research funding and development of advice, drawing upon a broad range of resources.
Natural Environment	The land, water, biodiversity, flora and fauna and the naturally occurring ecological processes that may be impacted by the development or operation of a wind farm.
Neighbour	A resident of a property that is within close proximity to wind farm turbine/s, but does not host the turbine.
NZS 6808:1998	A recognised standard in New Zealand introduced in 1998 that provides methods for the prediction, measurement and assessment of sound from wind turbines. This standard was based on the United Kingdom 1996 Energy Technology Support Unit (ETSU) report <i>The assessment and rating of noise from wind farms</i> (ETSU-R-97, 1996). However the New Zealand standard introduced the L95 measurement used to describe background sound in New Zealand. The standard limit was 40dB, with a 'background +5 dB' variable. This standard was used for all wind farms in New Zealand until the introduction of the 2010 standard and was also adopted in Victoria prior to 2010. This standard is now succeeded by NZS 6808:2010.
NZS 6808:2010	A recognised standard in New Zealand introduced in 2010 that provides methods for the prediction, measurement and assessment of sound from wind turbines. This standard succeeded the 1998 version (NZS 6808:1998). While the 1998 version was introduced prior to significant wind farm development in New Zealand, a number of technical refinements and incremental enhancements were included in the 2010 standard. Notably, the standard also provided for a more stringent 'high amenity noise limit' in special local circumstances.
Ombudsman	Appointed authority to assist the public by investigating and resolving complaints on a specified issue.
Planning Process	A local, state or Federal Government process to determine whether a proposed project will be approved.
Responsible Authority	The planning authority responsible for the project from a planning/approval/compliance perspective.
Safety	The potential for the wind farm to cause danger, risk or injury to residents of a community within proximity to a wind farm. May include issues such as sleep deprivation, fire hazard, or any personal well-being.
Shadow flicker	The shadow cast by the sun over the rotating blades of a wind turbine that results in a rotating shadow affecting neighbouring properties.
Supportive Member	A member of the community that is in favour of a proposed or operating wind farm, including persons who reside in a dwelling within proximity of a proposed or operating wind farm
Terms of Reference	The specifications that outline the scope and limitations of the Office of the National Wind Farm Commissioner. See Appendix A .
Vibration	The oscillatory motion of an object or parts of an object. One of its possible causes is infrasound from a wind turbine.
Wind Farm Maintenance/Operations	Related to the ongoing process of ensuring the upkeep of the wind farm turbines for the life of the project.
Wind Turbine	Device with at least one moving part called a rotor assembly, which is a shaft or drum with blades attached, which is used to convert the wind's kinetic energy into electrical power.

APPENDIX A – TERMS OF REFERENCE 2018-21

National Wind Farm Commissioner Terms of Reference 2018-21

The National Wind Farm Commissioner has been reappointed for three years due to the ongoing growth in renewable energy and the Government's continued commitment to ensure community concerns are acknowledged and addressed.

The Commissioner will work collaboratively with all levels of government, scientists, experts, industry and the community to resolve complaints from community members about proposed and operational wind farms, large scale solar farms (5 MW or more) and storage facilities, such as large scale batteries (1 MW or more).

The Commissioner will refer complaints about wind farms, large scale solar farms and storage facilities to relevant authorities and help ensure that they are properly addressed.

The Commissioner will lead efforts to promote best practices, information availability, and provide a central, trusted source for dissemination of information.

The Commissioner, supported by the Australian Government Department of the Environment and Energy will report to the Minister for Energy and provide an Annual Report to the Australian Parliament on delivering against these Terms of Reference.

The Commissioner's role will not duplicate or override the important statutory responsibilities of other jurisdictions, such as those relating to the planning and approval of wind farms, large scale solar farms and storage facilities.

The Commissioner is to draw on the work of the Independent Scientific Committee on Wind Turbines.

The role of the National Wind Farm Commissioner will be extended for a period of three years, until October 2021, and will be re-evaluated by the Australian Government prior to that date.

15 May 2020

Planning Policy Unit
Department of Justice
PO Box 825
Hobart TAS 7001

via email:

Dear Brian,

Submission to the Land Use Planning and Approvals Amendment (Major Projects) Bill 2020

The Planning Institute of Australia (Tasmania Division) welcomes the opportunity to comment on this important legislative reform.

Firstly, we thank the Planning Policy Unit for engaging with our members through an initial information session in April 2020, and the following Q & A session in May 2020.

As the body representing the planning industry in Tasmania, we support the need for a robust major project assessment process as part of a well-functioning planning system. A proper major projects process also aligns with the need for proper levels of assessment within the broader principles of coherent planning systems as advocated by the Institute.

It is imperative to note that while our members were generally supportive of this type of reform, not all members support the Bill. A number raised concerns or objections, ranging from the basis of the Bill, through to the lack of inclusion of significant stakeholders, the setting aside of the existing regulatory requirements under statutory process, nature and opportunity for involvement by the various communities, among others.

We do, however note that this is the third consultation process over a number of years. Accordingly, we have taken a constructive approach to this process. The Tasmanian Division provides qualified support for the reform as detailed in the Draft Bill, but there are several matters that we feel need to be addressed for this improved framework to achieve its purpose. These are discussed below.

Eligibility criteria

Under Section 60K of the Draft Bill, the eligibility for a proposal to be declared as a Major Project is broad, relying on the opinion of the Minister to declare significance in terms of a combination of

financial, social, strategic, economic and/or environmental effects. Under Section 60L, the project would not be eligible to be declared a major project if it was in contravention of a State Policy.

Despite being legally-binding, State Policies have provided little clarity for projects that have required an assessment. With only three State Policies in effect, there is limited scope for Section 60L(1)(b) to be used as an effective strategic tool. The Tasmanian Planning Policies (TPPs) should help fill that gap (s60L(1)(d)), but the Major Projects process is likely to be in effect before the implementation of the TPPs, which reduces these protections around the strategic positioning of a project's declaration.

Additionally, in exploring some of the major project pathways of other Australian jurisdictions, we believe there is merit in including a capital value criteria to help quantify the significance or contribution to a community or region. This is used in the State Significant Developments (SSDs) in New South Wales. Considering that urban and regional developments would differ notably in costs, a tiered approach could be used whereby urban developments of greater than \$10million, and regional developments of greater than \$5million in capital value could be considered as major projects, if it also met another criteria under Section 60K. This approach of varying qualification between urban and regional development is seen in Western Australia.

Recommendations

- That the eligibility criteria for a project to be declared a major project needs to provide more assessment value, rather than a checkbox approach.
- That the determination guidelines form a mandatory part of the assessment of nominations, and be reflected by a new reporting requirement at Section 60O(1)(f).
- That the eligibility criteria should enable the quantification of significance or economic, social and/or regional contribution through the incorporation of a capital value.

Consents

Crown land consent

Section 60N(2)(a) of the Draft Bill requires that if a project includes Crown land, that the relevant Minister has provided consent. This raises the question of the practicalities of the use of the Major Projects pathway for any application which affects any Crown land, given that to obtain consent, your consent request needs to be accompanied by the entire package of information that is to be submitted as part of an application.

Given that the Major Projects process will determine the requirements and information a proponent is required to provide, it is therefore difficult to see how it will be possible for a complete package of information to be provided before a Major Projects is declared.

To state a practical scenario - this requirement would affect all projects from developments within a National Park, to a project which included a new or modified access onto a Crown road. Section 60N also includes similar consent requirements relating to land owned by a Council or within Wellington Park, and therefore could create similar issues.

It may be that where a project is proposed to go through the Major Project process, that the assessments made by departments as landowner or manager should be brought into the process rather than having to occur before. This could mean the Reserved Activity Assessment process (or

the equivalent assessment by State Growth or other agencies) would be undertaken in a coordinated way as part of the Major Projects assessments.

It is likely that many projects which would otherwise meet the criteria to be considered a major project, would require some Crown consent.

The Reserve Activity Assessment (RAA) process is interesting in the context of this Bill, because RAA provides for a more integrated environmental impact assessment than through the usual Crown land assessment process. RAA is effectively a planning and environmental assessment and its purpose is whether to grant an authority under the National Parks and Reserved Land regulations. Owners consent for a planning permit application is only a by-product of it. If they are integrated, it would be the Development Assessment Panel making the recommendation to the Director of National Parks that an authority is granted. The Assessment Panel cannot take that power away from the Director. It would also need to be clear that the land manager (Parks and Wildlife Service) would need to form part of the process as a referral agency.

Recommendation

That the Crown consent process is incorporated into the Major Projects process (as opposed to being a criteria to enable its declaration) to reduce duplication of assessment and process, to ensure that potential major projects are not cut off from the process through the need for this pre-consent, the RAA is duly undertaken, and also to provide a more transparent assessment of projects than the current system.

Landowner consent

Under the planning system, a 'normal' application under Section 57 of the *Land Use Planning and Approvals Act 1993* requires landowners to be notified. For planning scheme amendments and s.43A applications, the consent of the landowner is required, however under the Major Projects process as detailed in the Bill, private landowners are only required to be notified rather than needing to give consent. This process is consistent with that of a normal planning application, but none of the higher processes under the Act.

It is unclear how this is consistent with the hierarchy of processes within the objectives which underpin our planning system.

Recommendation

That landowner consent should be required, and not simply notified by the applicant, particularly considering the scope of projects which are likely to be declared and assessed as Major Projects.

Failing landowner consent, the same test ought to be established for all lands regardless of tenure, so that Crown land is subject to the same process as private and Council-owned land.

Timeframe for comments on draft assessment guidelines

Under Section 60ZJ of the Draft Bill, the landowner, adjacent landowner, relevant planning authority, regional planning authority, State Service Agencies and, on occasion, Wellington Park Management

Trust or a relevant Minister are given 14 days to provide comments as to what should be contained in the assessment guidelines in relation to the project.

We believe 14 days may not be a sufficient time, particularly for landowners and adjacent landowners who may not have had any previous notice, involvement or experience in this process. It is likely that they will need to engage in professional assistance to help them, making the 14 day period difficult for meaningful engagement.

Notwithstanding the above, we also wish to note that a crucial advantage of this major projects process is the ability to provide more time for assessment, for projects which would otherwise need to be crammed into standard statutory timeframes.

Recommendation

That the time frame to provide comment to the Commission should be a minimum of 21 days.

Consideration of planning scheme

We note that there is no formal assessment against the planning scheme, unlike a standard development approvals process. While we understand that the guidelines require consideration of relevant land use planning matters and the relevant scheme, the Bill does not provide any guidance on the aspects of the planning scheme that need to be included in the assessment guidelines. This will be particularly important for developments that would otherwise be prohibited under the planning scheme. A lack of justification on this dimension may lead to public critique over lack of transparency.

There needs to be greater clarity around what the guidelines must ensure is covered, including impacts on local level planning considerations. For example, the Act could determine that the guidelines must set out requirements relating to potential for land use conflict, capacity of infrastructure, local character impact, for example.

How might this new process work for local councils, given that they are required by the Panel to have input to the assessment guidelines and that they may be forced to amend their planning scheme, all potentially without the usual planning fees that subsidise assessment costs and staff time?

Recommendation

That greater clarity is given around the involvement of local government and the creation of local planning problems from approval of activities that would otherwise be prohibited under existing planning controls.

Competency of the decision makers

While not explicitly outlined in the Bill, we take this opportunity to emphasise that there should be a requirement to demonstrate core competency within the decision makers, and their upkeep of the working knowledge. For this Bill, the decision makers would include those in the Tasmanian Planning Commission, as well as those appointed to the Development Assessment Panel. We see standards of

professional practice as particularly important for this process, as it is likely to involve decision making of the more complex and potentially contentious projects.

Regulatory systems that engender trust in the decision-making process are recognised across Australia as best practice and are promoted by industry groups, peak professional bodies and community organisations across the board. The concept of trust contemplates transparency in decision-making processes and providing certainty for the community, built environment and development industry. Debates around these interrelated core principles are at the heart of regulatory reform agendas in several jurisdictions. They are as relevant to Tasmania as anywhere else, if not more so, given the State's history of contentious debates around land use and development decisions.

As a way to address this, we believe that corporate membership with the Planning Institute of Australia should be mandatory for decision makers. This allows the monitoring of core competency, upkeep of knowledge, and ensures rigorous standards of professional practice. This would also be aligned with the broader national push for recognition of professionals within the industry. A similar method was incorporated into the recent South Australian planning reform, which saw the introduction of the Accredited Professionals Scheme as a way to ensure reliability and accountability of their decision makers.

Recommendation

That a minimum corporate membership with PIA is mandatory for decision makers involved in the major projects approvals process.

A final point that was raised by some members is the need for a refresh of the Regional Land Use Strategies (RLUS) and the implementation of the Tasmanian Planning Policies. Some members voiced concern over the need for this Bill in light of larger concerns about the application of the RLUS.

We hope these recommendations are considered by the Department prior to finalising the Bill.

We thank the Department for your efforts on this legislative reform, and look forward to discussing these comments further with our members at the hearings. We would like to urge the use of the consultation process developed for this Bill for future reforms, with an initial information session that is then available on the PPU website for anyone to view, with a follow-up Q&A style session.

Yours sincerely



Mick Purves
President
Planning Institute of Australia
Tasmanian Division

PO Box 348 Deloraine Tasmania 7304

Email: Tea@antmail.com.au.

15th May 2020

Planning Policy Unit
Department of Justice
GPO BOX 825
HOBART TAS 7001
By email to: planning.unit@justice.tas.gov.au

Major Project Assessment Reform
And The
Land Use Planning And Approvals Amendment (Major Projects)
Bill 2020

The Environment Association (TEA) Inc is a not for profit, volunteer based, regional, environment, community association and a stakeholder in this process. TEA has a long-term interest in environmental and social outcomes firstly in our region, Northern Tasmania, particularly in climate change, the conservation of biological diversity, forest conservation, land use planning, especially on private land and forestry issues but also at a State level and in certain matters at the Commonwealth level.

The Environment Association has worked in the public interest since its inception in 1990. The Environment Association (TEA) is a long-term independent stakeholder in any resolution to the complex and divisive conflict in Tasmania.

TEA has long been a participant and advocate for sound and responsible land use planning in Tasmania, including adequate local government solutions. We support the RMPS system, before it suffered the diminution which occurred post 2013.

TEA is not represented by any other conservation organisation, formally or informally.

Submission

We appreciate the opportunity to provide this critique of the Tasmanian Major Project Assessment Reform and perhaps more importantly of the 'Land Use Planning and Approvals Amendment (Major Projects) Bill 2020'.

We consider that the public consultation opportunity to be insufficient in the extraordinary circumstances and call for it to be extended.

We consider there is no genuine Major Project Assessment Reform, merely a debasement.

The Bill in question is intended to replace the existing Division 2A - Special permits for projects of regional significance in the Land Use Planning and Approvals Act.

LUPAA Division 2A has never been enlivened, never used and remains a white elephant since its inception well over a decade ago.

TEA has decided to not attempt to correct the numerous flaws inherent and embodied within the 'Land Use Planning and Approvals Amendment (Major Projects) Bill 2020'.

Currently the legislation states:

“60T. Grant of special permit

(1) The Panel may, in accordance with this section –

(a) grant a special permit in relation to a project of regional significance; or

(b) refuse to grant a special permit in relation to a project of regional significance.”

(2) A special permit may be granted unconditionally or on the conditions or restrictions, specified on the permit, that are imposed on the permit under section 60U .

(3) In deciding under subsection (1) whether to grant a permit in relation to a project, the Panel must consider any representations made under section 60Q in relation to the project.

(4) The Panel may only grant a special permit in relation to a project if it is satisfied that –

(a) the grant of the permit will further the objectives specified in Schedule 1 ; and

(b) the grant of the permit will not contravene any State Policy or planning scheme; and

(c) the assessment guidelines in respect of the project have been satisfied; and

TEA is opposed to repeal of the current LUPAA Division 2A. We know Div. 2A has never been used. It would therefore logically be preferable to simply rescind it. Make the system Simpler as the Liberals in fact promised to do! Oh did they forget?

The 'Land Use Planning and Approvals Amendment (Major Projects) Bill 2020' gives the Minister for Planning the power to declare a project a Major Project.

TEA can see that in itself suggests that a lot of work is being performed by Planning Policy Unit trying to install some sort of enhanced special ministerial set of powers. TEA considers this set of powers to be extraordinary.

This is a proposed shift in power which TEA considers to be unwarranted, unnecessary and unwelcome and thus we wish to register our strenuous objection to the proposition.

We do not consider the creation of Development Assessment Panels to be adequate.

TEA claims the 'Land Use Planning And Approvals Amendment (Major Projects) Bill 2020' will bring the Tasmanian Planning Commission into disrepute and will ensure because appointees, appointed by the TPC would be processing the application as well as dealing with any objection and appeal, it is highly likely that a lack of probity would arise. The panel would obviously fall into a conflicted situation very quickly during the hearing process.

The determinant of what constitutes a Major Project is very broad and poorly defined with too much discretionary type latitude being given to The Minister over the matter.

There is no adequate separation of the persons (The Development Assessment Panel) processing the application, who are also making up the guidelines for assessment and also who are running a hearing over the matter. This is completely inadequate, so lacking in probity and typical of Tasmania.

Why should The Development Assessment Panel have a right to make assessment guidelines? In any case 14 days to finalise the guidelines for a Major Project would be inadequate.

TEA claims the 'Land Use Planning and Approvals Amendment (Major Projects) Bill 2020' represents potentially an unwarranted diminution of the powers and purpose of the Tasmanian Planning Commission and would likely to lead to poorer quality, lesser sustainability of outcomes.

Why should The Development Assessment Panel have a right to vary timeframes?

TEA advocates the final decision maker regarding the Major Project should remain the Tasmanian Planning Commission, and not go to the Minister under this Bill.

TEA advocates the public hearing process should always be run by the Tasmanian Planning Commission and it should include two rounds of consultation, an objection round and an appeal round. The TPC should run the objection round.

A consultation which would include an appeal round, run by the RMPAT should be considered.

We can see a role for the proposed mechanism of The Development Assessment Panel which would have the potential to enhance the quality of assessment and provide at least some separation between the assessment and the hearing process under our model. But for that support of DAP mechanism we would want to ensure a much tighter criteria including panel member experience and qualifications would need to be much more definitive. There would have to be a requirement for sufficient expertise within the Bill.

Objectors to a development can easily be and often are at a disadvantage in that the financial resources and expertise are simply not available to them, including due to a lack of a pecuniary interest in the outcome. Of course other people can volunteer to assist them and community organisations objecting can raise funds to try to levelness of the field but it must be made clear that the LUPAA system and this Bill in particular is a very pro-development one. It seems that all you ever do is devote your miserable lives to enhancing the rights and opportunity of the developer to screw the planet and the people of Tasmania.

At the end of the day, what is the point of a 2 tiered system. One tier for the poor bastard who merely wants a dwelling and another with a golden road for the planet raper or community interest destroyer, simply so some Minister's mate can decide?

We wish to oppose and express concern over the reduction in the amount of community objection opportunity and the lack of appeal rights which the process embodies over standard development application processes, which are normally run through Local Councils. There is no adequate justification for such fast tracking. A bigger Major Project

should include more opportunities for objection and appeal not less. You have this aspect wrong as well.

Potentially the Major Projects Bill in its current form represents a proposal of a way of undermining the established system of planning instruments, which are the principal way of controlling land use development and the protection of land in Tasmania.

There is no guarantee that the expertise, which is co-opted on a Development Assessment Panel is going to be the expertise which is required to ensure that the effects on the environment and heritage or on pollution or on scenic amenity would be adequately and fully considered. The expertise may be insufficient for an explicit consideration of both social and economic effects and yet it (The Bill) must.

An associated problem for the Development Assessment Panel process is the lack of a full suite of State Policies, which would provide a form of guidance for the development assessment panel members. These fundamental elements of the RMPS in Tasmania have never been created and so when a process seeks to short cut the assessments, in the absence of adequate policy guidance it is highly likely that notions of sustainable development and intergenerational equity will be prejudiced through such an inadequate process. The Liberal Government has failed in its promise over State Policies. No Trust.

It must be reiterated that for a Division of LUPAA, which has not ever been used, ever this 'Land Use Planning and Approvals Amendment (Major Projects) Bill 2020' is a ridiculous unwarranted desperation proposition which we consider should be completely abandoned.

END



GLAMORGAN
SPRING BAY
COUNCIL

15 May 2020

Planning Policy Unit
Department of Justice
PO Box 825
HOBART TAS 7001

Dear Sir

SUBMISSION TO LUPAA MAJOR PROJECTS BILL 2020

Thank you for the opportunity to make submissions on this significant reform.

Council supports significant reforms to improve regulatory processes and outcomes. Noting this, we have formed a view that there are matters that do not appear consistent with the objectives of the Resource Management and Planning System and Land Use Planning and Approvals Act 1993. For the Bill to deliver its intended purpose, Council considers these matters need to be addressed.

Council is of the opinion the Bill will remove the ability of the local Council and community to have productive input to how their area develops in the future.

Council has concerns that there is generally a lack of clarity for the justification in taking a proposal outside of the normal planning application process and the subsequent cost implications that has for both the Council and the local community.

Council is of the opinion that the eligibility criteria requires better definition. A project could be listed under the criteria provided for (c) due to water, sewer, stormwater or road infrastructure and then also at (e) because it requires multiple approvals and therefore be elevated to the Major Projects process on procedural issues rather than matters that actually relate to regional or state significance.

The reasoning for taking a project outside of the normal application process is critical to the integrity of the process. Failure to clarify this and provide direction on how and when the process is to be used is likely to undermine the social licence of the process and approvals issued under this process.

It is noted that the Minister can both nominate a proposal for Major Project status and then determine the nomination. This creates a conflict of interest. The determination guidelines are also not mandatory and not required to be reported upon. Council requests that

- the Minister for Planning not be allowed to nominate projects for Major Project status;
- the determination guidelines at 60J be a mandatory requirement for the use of the process;
- determination guidelines must be issued by the Commission prior to the use of the process; and

- the Minister be required to report on assessment against the determination guidelines at 60O.

Council considers that the composition of the Assessment Panel needs to include expert and elected representatives from each of the affected Councils at 60V(b).

The Assessment Panel process is seen as a way to bypass the local Council and community, particularly given the lack of representation on the panel itself and through the Relevant or participating regulator role.

Relevant or participating regulators, at 60Z series, need to include the range of statutory regulators and provide carriage of their regulatory regimes to this process. The general catch-all at subclause (5) is unclear and does not provide a clear intent for its use. The nature of the provision and contents of the clauses suggest that the full ambit of regulatory regimes from State need to be addressed at this point to ensure the process delivers its stated intent. Specific omissions include:

- Aboriginal Land Council of Tasmania,
- TasNetworks;
- State Growth;
- Parks and Wildlife Service;
- Threatened Species Unit
- Crown Land services;
- Affected Planning Authorities for advice regarding assessment against their planning schemes;
- Affected Councils for inclusion of relevant requirements for matters such as stormwater, roads, infrastructure etc;
- Tasmanian Planning Commission for impact of required planning scheme changes to accommodate a specific proposal.

Council is concerned that the process removes assessment of such projects from Local Government and the practical ability of the local and wider communities to have involvement, obtain information and have productive input into the assessment and determination of applications.

Council also has a concern that the process removes much of the existing statutory requirements and considerations for assessment of a project. The discretion provided in the Bill is understandably broad, but Council does not consider that there is a clear enough process for the integrity of existing regulatory requirements to be carried through to the new process. As an example, the environmental impact assessment required for Level 2 assessments is not clearly transferred to the guidelines in the Bill.

Council considers this loss of existing statutory assessment is significant.

Council considers that the 14 day consultation period on the assessment guidelines at 60ZN (2)(b) is not a reasonable period for potentially affected parties to obtain planning and or legal advice to determine satisfaction or otherwise with the assessment guidelines. This should be at least 28 days. The process in the act also does not provide for a contact process for questions and answers as happens with the planning application process at Council. This process is important in building understanding at the local level of the proposal and how it will be assessed. Given the intent of this legislation, it is submitted that this task must be resourced by the project process and not devolved to Council as an additional cost for the local community to resource.

Council is also concerned that the Exhibition of major projects at 60ZZB is un-resourced and presents a similar opportunity for cost and work imposition to the local Council with no recourse to the assessment process.

Council has similar concerns for other potential cost implications for this process. For example, enforcement of the permit and conditions generally falls to the relevant agencies and where that is the Commission, 60ZZZF is unclear whether that obligation rests with the Commission or divests to the Planning Authority. This needs to be clarified and resourcing needs to be addressed.

If it is intended that Council is responsible for enforcement of the planning functions of the permit, we object to this devolvement of obligation and require that Section 60ZZZF makes the Commission or another State agency the enforcement agent of Major Project permits.

Council also has concern that post decision, there is a requirement to amend the relevant planning schemes to remove inconsistencies with permits that are issues. 60ZZZC provides no further guidance on how or why this must be done and there is concern this will have unintended impacts beyond the approved development site. Clarity must be provided on how this is to be done (type of amendment and extent of impacts) and it must be subject to the exhibition, hearings and review process established in the Act, much like the current 43A process.

Absent this, there is no opportunity for community input of the amendment or review of its impact or effects. More guidance must be provided on this process to better define what type of amendment should be considered, the process to be used and the consultation with the local community. It is also important that the Council and community do not bear the cost of that process.

Many of the concerns for Council and our community arise because the criteria for declaration of a project are not clear and provide for procedural matters rather than justifying why a proposal should be taken out of the normal assessment process.

Council appreciates your consideration of our submission.

Yours sincerely



Clr Debbie Wisby
MAYOR



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ACTING GENERAL MANAGER

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18 May 2020

The Hon Roger Jaensch MP
Tasmanian Minister for Planning
GPO Box 123
HOBART TAS 7001

Dear Minister,

DRAFT LAND USE PLANNING AND APPROVALS AMENDMENT (MAJOR PROJECTS) BILL 2020

Thank you for your letter of 4 March 2020 advising that the draft *Land Use Planning and Approvals Amendment (Major Projects) Bill 2020* is open for public comment.

Glenorchy City Council is committed to appropriate development of our City, that is consistent with our local planning provisions, as well as the regional land use strategy and the *Tasmanian Planning Scheme*. In recent months, we have seen an unprecedented number of planning, development, building and plumbing applications submitted to Council for determination, indicating the appetite of developers large and small to help us grow our City, for the economic and social benefit of our residents.

Glenorchy City Council is committed to ensuring the land use planning and approval process in Tasmania is robust, rigorous, transparent and fair, and gives due consideration to the advice of independent technical experts, as well as the aspirations and values of our communities.

Glenorchy City Council submits the following comments in relation to the draft Bill. These comments are in addition to comments provided by officers of Council to the Planning Policy Unit of the Department of Justice.

The justification for revising the Projects of Regional Significance process

Glenorchy City Council understands that the proposed Major Projects assessment process described in the Bill has been developed to replace the current Project of Regional Significance assessment process under the *Land Use Planning and Approvals Act 1993*.

There appears to be broad community concern about the justification for amending the existing Project of Regional Significance process. If the community and local governments are to feel confident that the proposed process represents an improved mechanism for the consideration and assessment of Major Projects, there needs to be clear articulation of the benefits of the revised process, and in particular how it will enable consideration of the

social and economic benefits and disbenefits of proposed projects, while ensuring rigorous technical assessments of those projects.

Ensuring independence of the Panel

Glenorchy City Council notes that the draft Bill requires that a Major Project proposal is assessed by an independent Panel, appointed by the Tasmanian Planning Commission. We understand that the Independent Panel will consist of a member of the Commission who will act as the Chair, a representative from the local council where the Project is located, and an expert in the field of the Project.

Council notes that the role of the Panel will be to ensure that the Major Project represents an effective and appropriate use and development of land. The Panel will assess the consistency of a Major Project proposal against the relevant planning scheme provisions, as well as coordinate assessments conducted by regulators. We also note that the Panel must act on the advice of the regulators and cannot override their assessments or direction to the proposal.

We note that the Panel must prepare Assessment Guidelines and is responsible for exhibition of the proposal and conducting hearings into the representations made. Importantly, the Panel will be required assess the proposal against the Act and prepare reports into the final Major Project permit, or the final decision to refuse the proposal.

Council would like to highlight that the Panel must be broadly agreed to be independent to give certainty and confidence in the Major Project assessment process. It will be critical to ensure the composition and role of the Panel are truly independent of political views. To that end, there must not be any ability for the Minister to hand-pick the panel or to direct the Panel.

Ensuring rigorous assessment of Major Projects against provisions in the relevant planning schemes

Glenorchy City Council notes that the draft Bill requires that the Minister consults with the relevant Councils in their capacity as local Planning Authorities before declaring a project to be a Major Project. This provides these Planning Authorities with the opportunity to request the Minister not declare the project as a Major Project, and thus see it proceed through normal Council planning processes.

We also note that the draft Bill requires the Panel to consult with Planning Authorities in the region during the preparation of the assessment guidelines and also during the final assessment of the Major Project proposal. Planning Authorities may also be required to attend public hearings held by the Panel.

Glenorchy City Council requires reassurance that the process for considering Major Projects will ensure rigorous assessment of Major Projects against provisions in relevant planning schemes. Transferring development control to another Planning Authority, in this case the Independent Panel, must not come at the cost of rigorous and transparent assessment of consistency against relevant planning provisions.

It is critical that this assessment is undertaken by qualified technical experts, without political interference, and the resulting advice is given due and careful consideration in the determination of Major Projects. It is also critical that local Planning Authorities are given

adequate opportunity to comment on the consistency of Major Projects with their local planning provisions.

Adequate engagement with local governments

Local governments must be afforded adequate opportunity to consider Major Projects and to provide advice with respect to their consistency with the aspirations and values of their communities.

As you are aware, in our municipality the Glenorchy Planning Authority (which consists of myself and four aldermen) is delegated to make planning decisions on behalf of the Council. Members of the Glenorchy Planning Authority often find determining land-use planning matters an area of tension. It is a highly technical area, requiring members to consider consistency of applications against the planning scheme, rather than considering the broader social and economic benefits or disbenefits of the proposal, as are often expressed in representations from residents on planning and development applications.

In performing their roles, members of the Glenorchy Planning Authority must put aside their normal role of representing constituents to undertake a technical assessment against planning provisions, which is often extremely difficult and not well-understood by members of the community.

The Major Projects process must provide adequate opportunity for local governments to provide advice on the consistency of those projects with their planning schemes, but also on the benefits and disbenefits of projects for their communities and how the Major Projects align with their communities' aspirations and values.

Adequate community engagement

The success of the Major Projects process will also rely on ensuring adequate opportunity for communities to understand, consider and comment upon the impacts and benefits of Major Projects. The Major Projects process must be broadly considered to be inclusive, fair and independent if it is to be owned and respected by the Tasmanian community.

We note that as with all current discretionary development application assessment processes, the public will be able to make submissions and participate in public hearings on proposals, before the Independent Panel and regulators carry out their final assessments.

Council would like assurance that the views of representors, communities and various peak bodies will be given due consideration in the assessment and determination of Major Projects.

We trust that you will carefully consider these matters in finalising the Bill for consideration by Parliament. Please contact me if you would to discuss this submission or if you would like any further information.

Yours sincerely,



Ald. Kristie Johnston
Mayor of Glenorchy



MEMORANDUM

To: Planning Policy Unit, Department of Justice
From: Planning Services Unit, Glenorchy City Council
Re: Officer level comments on the revised draft *Land Use Planning and Approvals Amendment (Major Projects) Bill 2020*
Date: 4 May 2020

On 4 March 2020, the Minister for Planning, the Hon. Roger Jaensch, wrote to all Tasmanian Mayors advising that the draft *Land Use Planning and Approvals Amendment (Major Projects) Bill 2020* was open for public comment.

Comments prepared by officers of the Glenorchy City Council's Planning Services Unit in relation to the Bill are provided below. These comments are separate to those provided by Aldermen of the Council.

GENERAL COMMENTS

Justification of the policy position for the Major Projects Bill

As the draft Bill is essentially establishing public policy, Council officers suggest a more comprehensive justification is provided. To justify the proposed policy position, there should be clear definition of the 'problem' that is alluded to in the Consultation Papers - that is, why have the PORS provisions that have been in the Act for so long, not been used? The use of a case study or real analysis might provide the basis for this problem identification, rather than 'apparent shortcomings.'

Stakeholder engagement

While some of the provisions have been modified in relation to feedback previously provided by Council officers, the draft Bill appears to have been developed with limited engagement with Local Government. Early and comprehensive engagement with planning practitioners across the region could assist in identification of potential technical or process. The focus of the engagement strategy seems to have been to 'inform' rather than 'consult' or 'include'.

In addition, there is an overwhelming sense of change fatigue being experienced across the sector as Local Governments strive to ensure their communities are represented in considering complicated and wide-reaching changes to the planning system.

Why declare prior to determining if there is no reasonable prospect?

It seems inefficient and confusing (and potentially distressing) to the community to declare a project as a major project – when it may be subsequently determined to be unsuitable. It is assumed that there would be costs to the taxpayer to pay for the gazette notices to declare and then revoke the declaration. It would also seem to create a potentially embarrassing situation for a Minister who declares a major project that is subsequently determined to have no reasonable prospect of establishing.

SPECIFIC COMMENTS

SS.60C & 60F - only a 'general' description required

If the project must demonstrate it is a 'major' project, why is the term 'general' used? ['general' description and 'general' areas eg S60C(3) (b); 60F(1)(d)(e) and (f) (and S60O(b))]. How can an appropriate assessment of the project be undertaken if not all details are provided? What level of 'generality' would be acceptable? This appears to provide an 'out' for projects that have not been fully scoped by the proponent and could have a negative impact on resources of those required to assess a 'general' project which may not be feasible. The term 'general' needs to be deleted from these various provisions.

Similarly, who determines what is a 'key' impact? Legislation must be clear and concise, with the use of these terms likely to lead to the inability for assessment bodies and the community to have a full understanding of the implications of the proposal.

S60F(1)(g) - where will other requirements be prescribed?

There does not appear to be any amendments to the LUPAA regulations.

S60G(1) Minister can request amended proposal

With the Panel undertaking the assessment of the project, the link to the Minister being able to request an amended proposal under the section is unclear.

Applicant only has to take 'reasonable steps' to provide an amended project S60G(3), provide or further information S60ZX, or enter into an agreement S60ZZP (6)

What is the purpose of the term 'take all reasonable steps'? Why would an applicant not want to provide an amended proposal? In particular, under S60ZX, if the applicant is required to provide further information, they must provide it. What 'outs' are anticipated by the use of this term? It is unclear why this term is required, and given the ability to rely on the term to circumvent the assessment process, it should be removed.

S60G(6)(i) 7 S60T(c)(i) 60ZZO (a) 'substantially similar' verses 'substantially the same'

The term 'substantially similar' is used throughout the draft provisions except under S60ZZZE; whereas the term 'substantially the same' is used in the existing Act [eg S39 (1)] for the same concept. Why is there a need for different terminology? Different terms in same act are required to be read differently with a different meaning. The decision to use different terminology is likely to create significant interpretation problems for both assessors and applicants. The term, as it appears throughout the Bill, should be revised to 'substantially the same'.

Short timeframes for notification

While some timeframes have been increased from the 2018 version of the Bill, they are still quite tight, with no opportunity to extend. It is likely that officers of the TPC will spend significant resourcing on seeking delegation to extend legislated timeframes. The following timeframes are likely to limit public involvement in the process:

- S60I (3) gives a planning authority 28 days to comment on whether a project should be declared a major project; S60ZZB (50(b) gives 28 days to comment on the major project . Cut-offs for Council Meeting Agendas, will make it difficult to enable full Councils or Planning Authority to respond on behalf of their community with the 28 days; meeting the agenda timelines will also limit time available for officers to assess the project.
- S60ZZX(2) only gives a person 14 days to consider and respond to a ‘minor’ amendment.

Further, S60I (1), S60P(1), requires the Minister to notify within 7 days (or notification in 7 days - 60ZP). This is a fast turnaround for Councils to be able to provide owner/occupier details back to the Minister and for letters to go out, particularly given that timeframes for Australia post mail delivery are increasing.

Notice and websites

The requirement to publish in newspaper is considered to be outdated; and the COVID-19 crisis has further exposed problems of notice. Can the notification requirements be expanded to include websites? (eg S60J(3), S60S(7), among others). Also why can't S60ZZH go generally into LUPPA, rather than specifically under this Division.

S60I(6) - proponent of a project, who did not make the proposal, may request it be withdrawn

The intent of this section is unclear.

Differing tests: not inconsistent, consistent, etc throughout

Provisions requiring assessment against strategic guidelines (Schedule 1 objectives, State policies, regional strategies) are random and inconsistently worded:

- S60J(2) not inconsistent
- S60L (1) (d) & S60ZI(4)(e) would be inconsistent with
- S60ZI (4) (a) & S60ZZM (4)(e) would not be inconsistent with
- S60ZI (4) (b) would not further the objectives
- S60ZZM(4)(b) would be consistent with furthering the objectives
- S60ZZX(4) would further the objectives
- S60ZZM (4)(c) would not be in contravention of a State policy

Different terms in same act are required to be given a different meaning [the current provision of 60C (8) requires major projects to be ‘consistent with’ a regional land use strategy; the LPS Criteria at S34 (d) and (e) require proposals to be ‘consistent with’ each State policy (d) and relevant Regional Land Use Strategy] The decision to use different terminology is likely to create significant interpretation problems for both assessors and applicants.

The test should all be the same, noting that the significantly weaker tests of 'not inconsistent with', 'not in contravention of' etc are not supported. The test 'not inconsistent with' is generally used when people want to distance themselves from a conclusion that may be premature. Use of this term appears to indicate that the State government does not require 'major projects' to further the planning policies and outcomes to the same extent as 'ordinary' projects

S60K (2) Inappropriate inclusion of a test to consider Councils ability to undertake assessment in a 'timely manner'

The 'test' of Councils ability to assess an application in a timely manner is very broad. While another test under S60K must also be satisfied, this could present as an 'opt-out' opportunity for proponents unable/unwilling to meet desired outcomes within the current processes, and is useful for proponents with strong lobbying powers. The structure of S60K(2) is riddled with 'or' and will make for interesting interpretation opportunities. At what point in time is Council's capacity or capability to assess determined - before or after they have hired consultants to undertake the proposed assessment? The current legislation specifies time frames for processing a planning permit application and the right of appeal against things such as requests for more information. It is difficult to understand how any valid application cannot be assessed in a 'timely manner' given the decision time frames under LUPAA. Where is the evidence/analysis to justify this inclusion? A planning authority can request a project be considered as a major project - which should be an appropriate assessment of a Council's capacity or capability - so this test is not necessary.

S60Q(5)(b) refund of fees

Refunding half the fees could be considered unreasonable if Council has advertised, assessed and been about the refuse the application. We suggest, as a minimum, that the refund excludes advertising costs.

S60V(8) revoking appointment of a Panel member

It is unclear whether these grounds are only in respect to S60X or whether there are other grounds. If the intent is for other grounds - these should be clear.

S60ZT Actions to enable preparation of an impact statement

If such works are too substantial to be exempt under the relevant planning scheme, there must be provision to ensure the site is rehabilitated if the major project permit is not granted or lapses.

S60ZZR payment of fees

It appears that payment of fees can only be required if a permit is to be granted. The community will be subsidising the assessment process for the proponent to a large degree. If a permit is not granted does the applicant have to pay?

There does not appear to be any fees associated with considering a 'Significant amendment' to a major project (S60ZZZ).

S60ZZT lapsing of a permit

The provision allow for a project to be dormant for 10 years. Significant adjoining land use, policy, social and environmental changes may have occurred in this time frame. This timeframe is excessive.

Ability to apply to Planning Authority within two years of a refusal if have Commission's Consent

Draft 60ZZZL provides no guidance or test for when it may be appropriate for the Commission to give their consent for a proponent to apply for a fresh permit for the same/similar major project – it should only be allowable if there has been a relevant Policy change. Further, why, if the project was considered to be a major project in the first instance, should the application be made to the Planning Authority? If the Planning Authority was deemed inappropriate to consider the proposal initially, it will be a significant waste of resources to both the Planning Authority and the proponent to attempt to reconsider the project. It should go back through the major projects' assessment path.

Resourcing costs – impacts of enforcement obligations

Under the draft Bill there is an expanded suite of approvals that can be included in a permit. Significant liaison between relevant regulators and Local Government bodies to monitor and review permit conditions will place a significant administrative burden on Local Government. Councils will be required to invest already limited resources and act as the intermediary between the permit regulator and the permit holder to ensure compliance. Further, Council has no control over time frames for other regulators to respond to questions on enforcement matters. Council will receive no fees for the assessment of these permits – yet bears all responsibility for enforcement.

Overly complex wording

Overly complex and convoluted writing styles will create complicated legislation (nearly 200 more pages to go into LUPAA) that the public and planning professionals must interpret. It is questionable whether this is meeting the State Government intent of making planning 'simpler'.

From: [REDACTED]
To: [Stevens, Leigh](#); [Gall, Steve \(Heritage\)](#)
Subject: Draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2020
Date: Friday, 15 May 2020 4:44:18 PM
Attachments: [image001.png](#)

Subject: AHT review of the Draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2020

Hi, [REDACTED].

AHT has reviewed the *Draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2020* and make the following comments / observations for consideration for inclusion in DPIPW's broader response to the current phase of consultation which concludes on 15 May 2020. AHT staff have engaged with the Project Team in the Department of Justice, with a view to ensuring the correct interpretation of the Bill to support the provision of the following advice.

- To support compliance with timeframes cited in the Bill, the Aboriginal Heritage Council would need to receive a referral of an application under Act as early as possible, as such the AHC could be included as a 'referred entity' under the Bill and included with those listed under Section 60D.
- Section 60K details major project eligibility if the project requires assessments or a use, development or activity that is to be carried out as part of the project, to be made under two or more project-associated Acts. Given the vast distribution of Aboriginal heritage across Tasmania, the likelihood of major projects requiring assessment under the Aboriginal Heritage Act, and the number of those that may also require assessment under the Nature Conservation Act – there is potential for development applications not of a calibre that wouldn't normally be considered a 'major' project being eligible for assessment under the legalisation.
- Section 60ZT details that certain permissions may be given to enable preparation of a major project impact statement. The Draft Bill states that if a proponent, in preparing a

major impact statement, are required to engage in an activity this is not permitted under a project-associated act, then the relevant regulator must issue to the proponent a permit, if they make a valid application. This may negatively impact on Aboriginal heritage values.

- There are special provisions (Section 60ZC) for the EPA to request an extension notice (within 30 days) for an extension of up to 91 days (or longer if allowed by the Minister) – however no other regulators can extend their assessment periods.
- Section 60ZZD allows for a project related permit to remain, despite any provisions of a project-related permit. There are no permit timeframes under the Aboriginal Heritage Act. All other project associated acts (excluding the AHA and the NCA) are exempt from this section. DoJ could not clarify why the AHA and the NCA are not exempt – they’re currently looking into it.
- We support that wherever practical to do so, the requirement for proponents to consider Aboriginal heritage is referenced at every available opportunity, including the preparation of Assessment Guidelines by the Tasmanian Planning Commission. There are numerous areas in the Draft Bill where the consideration of Aboriginal heritage values could be cited.
- Outside of the single reference to Aboriginal heritage in the Draft Bill (as a project associated act), there are no other references to Aboriginal heritage. Conversely, there are numerous references to historic cultural heritage and the requirements under the Historic Cultural Heritage Act. Both the AHA and the HCH acts are project associated acts under the Draft Bill. The disparity in referencing the values of ‘heritage’ in the Draft Bill may adversely impact proponents and the wider community’s value of Aboriginal heritage.

Regards

Steve Gall

Director, Aboriginal Heritage Tasmania

Department of Primary Industries, Parks, Water and Environment

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██████████ | Email ██████████



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13 May 2020

Planning Policy Unit
Department of Justice
GPO BOX 825
HOBART TAS 7001

By email: planning.unit@justice.tas.gov.au

Dear Sir/Madam

Land Use Planning and Approvals Amendment (Major Projects) Bill 2020

I refer to the correspondence received from Minister Jaensch dated 4 March 2020 in respect of the Land Use Planning and Approvals Amendment (Major Projects) Bill 2020 (the Bill).

Tasmanian Ports Corporation Pty Ltd (**TasPorts**) is a state-owned company responsible for twelve Tasmanian Ports (eleven seaports and one airport) including the Port of Hobart. We run a diverse range of commercial operations across a large geographical base with the purpose of facilitating trade for the benefit of Tasmania.

TasPorts is supportive of legislative change which will improve and build on the current process under the Land Use Planning and Approvals Act 1993 in relation to major development proposals of impact, planning significance or complexity.

Yours faithfully

A handwritten signature in blue ink, appearing to read "Anthony Donald".

Anthony Donald
Chief Executive Officer

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ABN 68 300 116 092

21 May 2020

Planning Policy Unit
Department of Justice
Planning.Unit@justice.tas.gov.au

Dear Sir/Madam

RE: George Town Council submission to Land Use Planning and Approvals Amendment (Major Projects) Bill 2020

On behalf of George Town Council, I thank you for the extension in time and opportunity to provide a submission to the Land Use Planning and Approvals Amendment (Major Projects) Bill 2020. Council appreciates consultative process taken to date for the proposed Bill, however have some concerns with regard to Bill that are expressed herein.

The Bill asserts more stringent criteria for a development application to be classified as a Major Project, than within the existing Project of Regional Significance (PORS) process, however appears to qualify developments such as wind farms that are currently assessed by councils as a Planning Authority. It is the view of Council that criteria for determining what qualifies as a Major Project is too broad and needs greater definition.

The Bill seeks to increase ministerial powers and interventions, however appears to diminish the role of the local Planning Authority in doing so. It is a concern of Council that applications previously considered by Planning Authorities that are proposed to be considered by the State, effectively jeopardises community outcomes due to reduced analysis of development implications on a local area. It is the view of Council that this can only be achieved through an in depth knowledge of the local area and thus a thorough understanding of the objectives and applications local planning provisions. Council appreciates that the Bill proposes that Planning Authorities will be consulted, however this is far removed from having decision making powers.

Consultation with communities does not occur until after the proposal has received in principal approval which will create a level of expectation with both the proponent and the community that the proposal is likely to go ahead, despite any relevant matters raised through the consultation process. Community perception of government transparency is already at low levels, Council questions what other statutory processes utilise a genuine consultation process in this manner? It appears to contradict other proposed changes in legislation requiring greater community engagement including that proposed as part of the reform of *Local Government Act 1993*.

Council also holds concerns, that the approval of major projects that force changes to a local planning scheme may also jeopardise local community outcomes at the expense of perceived regional benefits.

The Bill is professed to streamline the process for assessment of applications for Major Projects, yet the Bill provides for a further seven days for Council nominations to Independent Boards and an additional two months for Independent Boards and regulators to assess the developments.

While it is likely encouraging for developers seeking to expedite the process, it appears the Bill provides a vehicle for developments to be approved with less stringent conditions usually applied by means of permits issued by relevant regulators under legislation such as the *Environmental Management and Pollution Control Act 1994*. Council appreciates that regulators will be consulted, however is concerned that this streamlined approach may result in reduced protection of assets and areas of heritage, cultural and environmental significance.

With this in mind, Council remains unconvinced that there is a justifiable need for a change to the Land Use Planning and Approvals Act 1993 and current PORS process.

Yours sincerely

A handwritten signature in black ink, appearing to be 'SP', with a long horizontal flourish extending to the right.

Shane Power
General Manager

Brand Tasmania

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Mr Brian Risby
Director
Planning Policy Unit
Department of Justice
Email: Brian.Risby@justice.tas.gov.au

Dear Mr Risby

MAJOR PROJECTS BILL

Brand Tasmania is a statutory authority and public sector agency established under the *Brand Tasmania Act 2018*. We commenced operations on 29 March 2019, and since that time we've been working as a client-service organisation, delivering policy and brand advice, support and intelligence to our partners in government, business, and the community. Our role is to facilitate and create partnerships, ensuring that the Tasmanian brand is protected, owned and promoted by all levels of government, business and the Tasmanian community.

Brand Tasmania's enabling legislation sets out our objectives and our functions. Our broad objectives are to:

- develop, maintain, protect and promote a Tasmanian brand that is differentiated and enhances our appeal and competitiveness nationally and internationally;
- strengthen Tasmania's image and reputation within the Tasmanian community, nationally and internationally; and
- nurture, enhance and promote the Tasmanian brand as a shared public asset.

Our functions are wide-ranging, and include everything from brand management and marketing, to research, collaboration and stakeholder engagement. In the context of the Major Projects Bill, two of our important functions are for Brand Tasmania to:

- advocate for the protection of the attributes on which the Tasmanian brand relies; and
- to identify risks to the reputation of the Tasmanian brand and to develop mitigation or contingency plans in relation to that risk.

As you can see from our statutory objectives and functions, Brand Tasmania may be able to play a role in the assessment of major projects through the application of the Tasmanian brand as a lens to help inform decision making across government, business and the Tasmanian community.

The Tasmanian brand

Back in 2017-18 we unearthed the Tasmanian brand through a comprehensive research project, including interviews with a representative sample of over 425 Tasmanians from across the state. The purpose of this work was not to say one part of the state is the same as the other. It was about identifying those values that unify us – our traits, traditions and values – that exist in the people who live here, regardless of where they live. The brand values that were identified through this work are:

- We pursue quality over quantity
- We create, preserve, and protect the unusual
- We are determined
- We are quietly confident
- We are connected to each other and to the land

Since Brand Tasmania's establishment in March 2019, our understanding of the Tasmanian brand has been further tested and refined through an additional 50 interviews, and over 45 workshops that have reached more than 815 Tasmanians from Huonville to King Island, and Smithton to George Town. Over 1,000 people and businesses have signed up to be a Tasmanian partner, and we have 57,275 subscriptions across our various digital and social media platforms. What we know from our research is that Tasmanians are inventive. They are bold. They are determined. They break the rules. They are quietly confident. They understand, more than ever, what makes this place different and special and they want to protect it.

Managing brand risk and protecting our brand attributes in the context of Major Projects

The 'Tasmanian brand' has a long history of being front and centre in debates around major projects: indeed, a global political movement emerged from the protests to protect a key brand attribute (our natural environment and wilderness) from a major development during the 1970s. Recent debates show that Tasmanians continue to hold passionate views, both for and against, significant projects, with 'the brand' held up by both sides during the debates.

We recognise that public debates on major projects will continue. Brand Tasmania takes its responsibilities "to identify risks to the Tasmanian brand" and to "advocate for the protection of the attributes on which the Tasmanian brand relies" seriously. We take advantage of being in Government by being able to provide advice and recommendations to government decision-makers through consultation and policy development processes. We are not an interest group that will be on the front-page of the paper arguing our position: that is not where our influence lies. But we do want to ensure that when leaders use the 'Tasmanian brand' to make a decision or to make a point, they understand and elevate the Tasmanian brand.

We believe that the power of our work lies in our ability to use our brand as a lens to help inform decision-making across government, business and the Tasmanian community. In order to carry out our legislative functions appropriately, it is something we must continue to do, particularly in relation to major projects that have the potential to impact all Tasmanians.

Using our Tasmanian brand as a lens to make decisions is a crucial risk management strategy. If we apply our understanding of the Tasmanian brand and its values when we assess major projects, we reinforce Tasmanian culture and ambition: who we are at our best. We avoid wasting time, effort and money on random or contradictory decisions. Our extensive – and ongoing – economic and social research with Tasmanians is a powerful piece of community intelligence and engagement. We can, and should, reflect on our brand values and attributes when making the big decisions that affect Tasmania and Tasmanians.

The value of place branding in the decision making process

The Major Projects Bill requires, or provides opportunities for, consultation with State Service agencies. It is likely that Brand Tasmania will be in a position to provide relevant advice on a number of the major projects captured by this legislation. While the brand won't necessarily interact with every proposal, we would like the Panel to consider Brand Tasmania when identifying State Service Agencies for consultation at the relevant stages of the process.

We also believe that brand input could strengthen the Determination guidelines issued by the Minister under section 60J(1) and we are happy to provide any advice required for the development of the Determination guidelines.

Our place branding authority can and should add value through the planning process. When we talk about 'our brand lens as a tool for decision-making' what we are really talking about are the questions we need to ask ourselves when making a decision that impacts Tasmania and Tasmanians, including in response to the assessment of major projects:

- will this decision contradict the Tasmanian brand or have the potential to damage Tasmanian's reputation?
- will this decision protect the connections that exist within and among our communities?
- Tasmanians understand what makes this place different and special and they want to protect it from becoming beige and ordinary. What will be the impact of this decision? Will Tasmania be more or less beige and ordinary as a result?
- the spirit of protecting, preserving and promoting the unusual is deeply embedded in our culture. Will this decision erode our unique Tasmanian culture? If yes, in what way and why is it acceptable?
- will this project lead to a short-term burst of employment in a volume-based industry that will require economic incentives or is this an investment in a long-term plan based on our competitive and brand advantages in the "premium" market?
- will this project improve and enhance Tasmania's premium, artisanal, boutique economy?
- will this project grow Tasmania's standing as a renewable energy leader?

We have included additional feedback on specific provisions of the legislation in the table at Attachment 1.

If you have any questions about the work of Brand Tasmania please do not hesitate to contact me at

[REDACTED]

Yours sincerely



Todd Babiak
Chief Executive Officer

25 May 2020

ATTACHMENT 1 - Feedback on specific sections the Major Projects Bill

Section		Brand Tasmania feedback
Determination guidelines 60J(1)	the Commission may issue guidelines (determination guidelines), applicable to all projects, as to the matters which the Minister is to have regard in determining whether to declare projects to be major projects.	Brand Tasmania's input could strengthen the Determination guidelines issued by the Minister under this section, and we are happy to provide any advice required for the development of the guidelines.
When project is eligible to be declared to be major project 60K(1)(d)	the project has, or is likely to have, significant, or potentially significant environmental, economic or social effects.	We recommend that this clause be altered slightly so it is clear that the environmental, economic or social effects are to be <i>positive</i> effects.
Comments to be sought in relation to draft assessment guidelines 60ZJ(1)(e)	the State Service Agencies, and the Tasmanian Government Businesses, that the Panel considers may have an interest in a matter to which the major project relates;	It is likely Brand Tasmania will have "an interest in a matter to which the project relates."
Notifications to be given that assessment guidelines made 60ZP(g)	each State Service Agency, or Tasmanian Government Business, that the Minister considers may have an interest in relation to a matter to which the major project relates.	It is likely Brand Tasmania will have "an interest in a matter to which the project relates."
Notification in relation to a project 60ZZC(1)(i)	The Panel, within 14 days after preparing under section 60ZZA(1) the draft assessment report in relation to the major project, must give a notice in relation to the major project to – ... all State Service Agencies and Tasmanian Government Businesses that have been consulted in respect of the major project under section 60ZK(1).	It appears the reference to section 60ZK(1), should actually be a reference to section 60ZJ(1).

Section		Brand Tasmania feedback
<p>Notice of grant of, or refusal to grant, major project permit to be given 60ZZQ(4)(h)</p>	<p>The Panel must give to the following persons or bodies a copy of a notice under subsection (1) or (2):</p> <p>Each State Service Agency, or Tasmanian Government Business, that was notified under section 60ZK(1)(e)</p>	<p>It appears the reference to section 60ZK(1)(e), should actually be a reference to section 60ZJ(1)(e).</p>
<p>Cancellation of a major project permit 60ZZZA(6)(h)</p>	<p>If the relevant decision-maker cancels under subsection (1) a major project permit in relation to a major project carried out, or to be carried out, on an area of land, the relevant decision-maker is to take reasonable steps to give notice in writing of the cancellation, and the date from which the permit is cancelled, to –</p> <p>each State Service Agency, or Tasmanian Government Business, that was notified under section 60ZK(1)(e) of the major project.</p>	<p>It appears the reference to section 60ZK(1)(e), should actually be a reference to section 60ZJ(1)(e).</p>
<p>False information 60ZZZG</p>	<p>A proponent in relation to a project must not, under this Division, provide orally or in writing, to the Minister, the Panel or a relevant regulator, any statement, document, or representation, in relation to the project, that the person knows to be false or misleading in any material particular.</p> <p>Penalty: fine not exceeding 50 penalty units.</p>	<p>Given the scale of projects likely to be captured under the legislation, the fine of 50 penalty units (or approximately \$8,400) seems low.</p> <p>By way of comparison, the Brand Tasmania Act lists offences, including offences related to deception, the penalty for which is a fine up to 2,000 penalty units (or \$336,000).</p>