INFOSHEET

Draft Land Use Planning and Approvals Amendment Bill 2022

Part 1 – Amendments relating to sensitive material to enable the early identification of sensitive information in the process as it relates to the major project site, especially with respect to Aboriginal cultural heritage.

Issue

Experience from applying the major projects process to the proposed Bridgewater Bridge project has revealed that the process could do with further refinement to provide a more sensitive and respectful approach for the display, or otherwise, of sensitive information during the assessment process, especially with respect to Aboriginal cultural heritage information.

The public display of sensitive information can be offensive to Aboriginal culture, or even lead to harm of a highly valued site.

The major projects assessment process currently requires the public display of information relating to the project and the land where the project is located. At present any information relating to Aboriginal heritage on the major project site is made public during the assessment process. This issue can also occur during the process to amend a major project permit when the proposed amendment is placed on public exhibition.

At times this information could be of a matter that is sensitive to Aboriginal culture and of a kind that should be kept confidential in order to respect their culture. Also, making the sensitive information public could lead to the destruction of a highly valued and sensitive site - if in the wrong hands.

The principle of preventing the public release of sensitive information is also relevant to other types of sensitive information that may be disclosed during the assessment process. Such as the locations of extremely rare plants or animals, where the relevant regulator considers that caution should be used in relation to the public display of information relating to the locations of those matters as well. Whilst this is much less likely to occur than with Aboriginal cultural heritage matters, this is still a relevant consideration to address.

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Discussion

Where Aboriginal culture calls for sensitive information to be kept private/confidential then it is incumbent on any planning processes to observe that cultural practice.

Currently in the major project assessment process, sensitive Aboriginal cultural heritage information, or other sensitive information, may be shown to the public in any of the following –

1. a major project proposal document submitted to the Minister for Planning at the start of the process, which is sent to persons under section 60I of the *Land Use Planning and Approvals Act 1993* (the Act) and also placed on public exhibition with the draft assessment criteria
2. a major project impact statement submitted to the assessment panel and placed on public exhibition
3. initial and final assessment reports prepared by the assessment panel
4. a condition expressed on a major project permit
5. advice from the regulator of Aboriginal Heritage matters, or other relevant regulators
6. a reason for refusal in a notice given by the assessment panel
7. documentation relating to a proposed amendment of a major project permit
8. a new condition on an amended major project permit
9. a reason why the Minister has not declared a major project or revoked a declaration of a major project
10. a reason of refusal of a major project permit by the assessment panel

The above listed documents are all placed on public display at some point in the assessment process, giving the public the opportunity to discover the precise locations of matters that are sensitive to Aboriginal culture or other sensitive matters. Which in the wrong hands could lead to the destruction of a highly valued sensitive site, plant or animal.

Providing confidentiality with respect to Aboriginal cultural heritage matters, and other sensitive matters, is not an attempt to subvert taking those issues into account during the assessment process, nor should it be taken as the government behaving in a secretive manner. It is simply a measure to provide an appropriate level of respect to Aboriginal culture and protection of sensitive sites during and after the assessment process.

Withholding the display of any information from the public is not the preferred outcome, but when it involves sensitive information then that is considered acceptable. This should only occur when the relevant regulator advises to do so.

What can be done?

Before the start of the process, the proponent could seek advice from Aboriginal Heritage Tasmania and other relevant regulators as to the presence, or otherwise, of culturally significant Aboriginal heritage, or other sensitive matters, on the site.

Aboriginal Heritage Tasmania or the relevant regulators could then provide advice regarding the contents of the major project proposal to be lodged with the Minister. Where this advice could be that the site of a proposed major project contains sensitive Aboriginal heritage matters, or other sensitive matters, that need to be kept confidential from the public or that there are no concerns with the content of the major project proposal being made public as is.

If the Minister decides not to declare a major project, then the sensitive information is kept confidential.

If the Minister declares the proposed major project, then the notice of declaration could be required to take account of the advice from Aboriginal Heritage Tasmania, or other relevant regulators, and the declaration notice can then require the assessment panel, the proponent and the regulators to keep any Aboriginal heritage information, or other sensitive matters, relating to the site confidential, but still provide that information to the assessment panel and relevant regulators to enable the appropriate assessment of the issue.

These adjustments to the process would not prevent the regulator of Aboriginal heritage, or other relevant regulators, from undertaking their assessment under the major projects process nor diminish the standard of that assessment. In fact, after the adjustments the assessment of Aboriginal heritage issues will be carried out more in line with current assessments under the Aboriginal Heritage Act 1975 now.

What is proposed?

1. A requirement for proponents to seek advice from Aboriginal Heritage Tasmania (AHT) and other regulators listed in the major projects process before they lodge their major project proposal with the Minister. Where the major project proposal is to include any advice received from the regulators.
2. Enable the regulators to advise the proponent and the Minister if the major project site has no sensitive cultural issues or no other sensitive site issues with that particular project, or that any sensitive aboriginal heritage information or other sensitive information should be provided in proposal documents in a manner that is not shown to the general public.
3. When the regulators advice indicates that the major project proposal document should not be revealing sensitive aboriginal heritage information or other sensitive information to the general public then the Minister, the proponent, regulators and the assessment panel are required to not disclose sensitive information in any reports they make public. This requirement on the proponent, regulators and the assessment panel is to be expressed in the Ministers notice of declaration for clarity.
4. When this occurs any document that is viewed by the public will be required to contain a statement that the documents contain some information that is not able to be viewed by the public and the proponent will be required to provide any sensitive information as an

annexure to any documentation submitted in the assessment process. This will enable the appropriate assessment by the Aboriginal heritage regulator or other relevant regulator.

Sections of the draft Bill that relate to this topic

Clause in draft Bill	Section of LUPAA	Clause note
6	60CA	Provides for the discovery of sensitive site information prior to lodging a proposal for a major project and also requires the Ministers declaration notice to advise of any sensitive information that should be kept confidential from public viewing. Sets limitations on the display of sensitive information during the assessment process.

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Draft Land Use Planning and Approvals Amendment Bill 2022

Part 2 – Updating references to current legislation

Issue

The *Gas Pipeline Act 2000* has been repealed and replaced with the *Gas Industry Act 2019*.

The Gas Industry Bill 2018 repealed the *Gas Pipelines Act 2000* when it passed the upper house in 2019 and then was finally repealed on 3 February 2021, after the major projects assessment process came into effect.

The major projects process is now not up to date with its references to current legislation in relation to gas pipeline safety, as the Gas Industry Bill 2018 did not make any consequential changes to the major projects process.

Discussion

The Gas Industry Bill 2018 and the Gas Safety Bill 2018 were introduced as a package following a review of the *Gas Pipelines Act 2000* and the *Gas Act 2000*.

Under the former *Gas Pipelines Act 2000* division 4 established the provisions for how pipeline licensees interacted with the planning system and the issuing of planning permits. Where a pipeline licensee gives advice concerning the safety of a pipeline, the planning authority must not grant a permit with any conditions that conflict with the safety condition advice of the pipeline licensee. The major projects process specifically refers to s70D of the *Gas Pipelines Act 2000*.

The relevant sections of the former *Gas Pipelines Act 2000* which were set out in Part 3 Division 4 of that act are now contained in Part 4 Division 2 of the *Gas Industry Act 2019* (sections 49-53).

What can be done?

Amend the legislation references in the *Land Use Planning and Approvals Act 1993* to reflect up to date legislation.

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What is proposed?

Take action based on the following recommendations:

1. Amend the *Land Use Planning and Approvals Act 1993* throughout to refer to the relevant section of the *Gas Industry Act 2019* instead of the former sections of the *Gas Pipelines Act 2000*.

Sections of the draft Bill that relate to this topic

Clause in draft Bill	Section of LUPAA	Clause note
4	60	Update to reflect current legislation
5	60B	Update to reflect current legislation
7	60D	Update to reflect current legislation
14	60Z	Update to reflect current legislation
24	60ZZI	Update to reflect current legislation
32	60ZZZD	Update to reflect current legislation

Department of Premier and Cabinet
State Planning Office

Phone: 1300 703 977
Email: stateplanning@dpac.tas.gov.au

www.planningreform.tas.gov.au

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Part 3 – Making better use of digital technology for information sharing to make public involvement in the major projects assessment process easier through sharing documents electronically

Issue

Sharing documents by hard copy throughout the major project assessment process, in particular with regard to third party landowners and occupiers, is an administrative burden as much of the supporting information involves lengthy documents.

A better outcome would be to enable sharing these documents through modern electronic means, whilst ensuring those without access to the internet can still participate in the process by being provided with hard copies of the documents.

Discussion

When the Minister is considering whether to declare, or not to declare a major project, consultation occurs with a wide range of persons, including owners and occupiers of adjoining land. With this consultation the Minister is required to provide the Major Project Proposal documentation to enable people to make a thorough informed view about the project.

Experience gained from the Bridgewater Bridge project indicates that the major project proposal document can be quite large at almost 200 pages. Section 60I(2) of the *Land Use Planning and Approvals Act 1993* (the Act) requires the provision of this document to each consulted person in a hard copy, resulting in a resource hungry 'mail out' task. In the case of the Bridgewater Bridge project, there were in excess of 150 persons to notify, due to the large scope of the project area and the many adjoining properties.

In the age where most people have the means to view documents in an electronic format, there should be provision to allow the sharing of electronic documents in this process, noting that the process should always accommodate those persons without access to electronic documents.

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What can be done?

Allow for documents to be exchanged via electronic means as an alternative to a hard copy.

What is proposed?

1. Provide for the exchange of proposal documents by electronic means during the major projects assessment process

Sections of the draft Bill that relate to this topic

Clause in draft Bill	Section of LUPAA	Clause note
16	60ZL	Updated to allow electronic exchange of documents
23	60ZZB	Updated to allow electronic exchange of documents
33	60ZZZH	Updated to allow electronic exchange of documents throughout the process, including specifying how a person can view documents that are not available for public display, such as a major project proposal document.

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State Planning Office

Phone: 1300 703 977
Email: stateplanning@dpac.tas.gov.au

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Draft Land Use Planning and Approvals Amendment Bill 2022

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

Issue

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

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

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

Once the major project has been declared, the intention has been to not prevent unrelated developments seeking planning permits or being developed on the same land as the declared major project.

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

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

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

Discussion

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

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

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

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

Providing a major project completion status would provide clear certainty to local government about their role as a planning authority, especially in terms of being able to consider development applications on those portions of land that have not been used for the major project or considering additions to a major project that has been completed in terms of the original major project permit, and also in terms of administering their compliance roles under the Act.

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

What can be done?

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

As a consequence of defining the completion point for a major project, there is also a need to clarify who is responsible for enforcement of the conditions on the major project permit before and after this point in time. Which includes enabling the assessment panel or the Commission to 'sign off' on certain conditions that require things to be done to the satisfaction of the assessment panel.

In relation to enforcement there are also changes needed to sections 63B, 64 and 65 of the Act to remove a reference to section 60ZB of the Act as section 60ZB of the Act doesn't relate to enforcement.

What is proposed?

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

Sections of the draft Bill that relate to this topic

Clause in draft Bill	Section of LUPAA	Clause note
9	60S	Clarifies that development for a major project must be done in accordance with a major project permit. Enables the Commission to issue a completion certificate for part or all of the major project
26	60ZZP	Clarifies roles for the Commission, Panel, planning authorities and regulators in relation to managing

		issues with the conditions on a major project permit.
27	60ZZS	Clarifies the role of the Commission in section 60ZZS(4) of the Act.
31	60ZZZAB	Provides for the Commission to issue an enforcement certificate which advises local planning authorities that their role in planning enforcement on the major project site resumes. Effectively working like a handover certificate.
34	63B	Removing incorrect references to sections in the Act
35	64	Removing incorrect references to sections in the Act
36	65C	Removing incorrect references to sections in the Act

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Draft Land Use Planning and Approvals Amendment Bill 2022

Part 5 – Granting permission for site investigations after a major project has been declared

Issue

Experience from applying the major projects process to the proposed Bridgewater Bridge project has shown that the studies required to complete the major project impact statement (MPIS) were known before the assessment criteria were finalised. As that project is running on a tight timeframe, commencing the investigation studies earlier would have been advantageous for meeting the tight timeframes for delivery of the project.

An investigation permission cannot be granted until after the assessment criteria have been made, noting that an investigation permission is only required if the activity relating to site investigations is not 'exempt' under the relevant planning scheme. Yet, the method of the study may already be known, or seasonal timing of a survey may be better to occur earlier. This means a proponent must wait for the preparation of the assessment criteria to be finished, which is 98 days after a major project is declared before they can apply for the necessary site investigation permissions.

Discussion

A proponent has 12 months to prepare an MPIS once the assessment criteria have been issued, or a longer period allowed by the Minister, under section 60ZQ of the *Land Use Planning and Approvals Act 1993* (the Act).

To prepare a MPIS a proponent will need to undertake a range of studies and in some cases the methodology used to undertake the study will trigger the need to obtain permission to undertake the study, as the activity is not exempt under the Tasmanian Planning Scheme (TPS). For example, a study may involve disturbing ground or vegetation. In the major projects process, these permissions are issued by the assessment panel (under section 60ZU of the Act) or the relevant regulator (under section 60ZT of the Act) but the process does not allow them to be issued until after the assessment criteria have been finalised by the assessment panel.

Once a major project is declared, the proponent has to wait for the assessment criteria to be made before receiving permission to undertake the necessary studies. In most cases, the proponent would already have a clear idea of the studies needed to be done, such as ground

surveys or botanical studies and in some cases seasonal timing may suggest the need to commence a study early. This would be a reasonable proposition if the proponent has already identified the need for the early study in the major project proposal document submitted to the Minister seeking the declaration of the major project.

Prior to the Assessment Panel being formed the Executive Commissioner of the Commission can act on behalf of the panel and could issue any investigation permit if required to do so, or a relevant regulator could also issue permission.

What can be done?

Allow for site investigation permissions to be issued earlier in the process than after the finalisation of the assessment criteria where the early study has been identified by the proponent in the major project proposal.

What is proposed?

1. Enable a relevant regulator or the Commission or the Assessment Panel to issue investigation permissions, once a major project has been declared where the proponent has identified in the major project proposal the need for the early issue of the site investigation permission

Sections of the draft Bill that relate to this topic

Clause in draft Bill	Section of LUPAA	Clause note
8	60F	Adds a requirement to specify in a major project proposal document which early site investigations are required and why
10	60SA	Enables the relevant regulator or the Commission or Assessment Panel to issue early site investigation permission once a major project has been declared, where the early study has been identified in the major project proposal submitted to the Minister
19	60ZT	Specifies when an early site investigation permission ceases to have effect
20	60ZU	Specifies when an early site investigation permission ceases to have effect

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Draft Land Use Planning and Approvals Amendment Bill 2022

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

Issue

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

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

Discussion

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

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

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

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

Leaving the proponent with 2 options when making use of newly acquired land or needing to extend the major project outside the declared major project area in relation to making use of the additional land, which are –

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

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

What can be done?

Allow for the assessment panel to consider small (relative to the originally declared land area) amounts of extra land being used for the major project outside the area declared for a major project, and if considered suitable to add the extra land to the declared major project area, make a recommendation to the Minister to amend the declared area of land for the major project.

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

What is proposed?

1. Allow the assessment panel or the Commission to consider_extensions/additions to the declared major project area that can only be small relative to the original declared area.
2. This is only to be allowed to occur if the small extension/addition is included in the MPIS that is placed on public exhibition (so that the public are well aware of the proposed changes) or if an issue is raised in the public hearing or for an amendment to a major project permit already granted.
3. The Minister can only amend the declared major project area after receiving advice from the assessment panel or the Commission. Where the assessment panel has undertaken an investigation to determine if this is reasonable which has included consultation with affected landowners and the relevant regulators.

4. Once the Minister amends the declared project area, notification is given in the same manner as when the Minister declares a major project.
5. There are also limitations on the Minister declaring the additional land that are the same criteria for declaring a major project in the first place, such as considering the ineligibility criteria under section 60N of the Act and the requirement to have consent from landowner/managers when the land is Government, Council or Wellington park Management Trust managed land.

Sections of the draft Bill that relate to this topic

Clause in draft Bill	Section of LUPAA	Clause note
9	60S	Clarifies the effect on an existing development application when a major project declared area is amended
11	60T	Clarifies the effect on an existing application/referral with a regulator when a major project declared area is amended
12	Part 4, Division 2A, Subdivision 5: Heading	Heading revised to refer to "Amendment and revocation of declaration"
13	60TA, 60TB, 60TC, 60TD, 60TE, 60TF, 60TG and 60TH	60TA – sets out definitions relevant to this section 60TB – provides for the proponent to apply to the Commission or the assessment panel to amend the declared area 60TC – requires the Commission or assessment panel to consult with relevant persons, the same as in section 60I of the Act 60TD – requires the Commission or assessment panel to seek the views of the regulators 60TE – provides for the Commission or assessment panel to give advice to the Minister, including the criteria around that advice 60TF – sets the Ministers actions when declaring the amended area

		60TG – requires notification for approval of the amended area 60TH – establishes when a new major project proposal document is required after an amended area is declared
18	60ZR	A Major Project Impact Statement can refer to the additional area of land
25	60ZZMA	Provides for a major project permit to be granted over land that has been included within the declared area after the original declaration.

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Phone: 1300 703 977
Email: stateplanning@dpac.tas.gov.au
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Part 7 – Clarifying that the process continues if a regulator does not provide a response when required to do so

Issue

The major projects assessment process has a rigid requirement that the regulators must give notice of their assessment requirements or a notice of no assessment requirements or a notice recommending revocation of the major project, as required by section 60ZA of the *Land Use Planning and Approvals Act 1993* (the Act).

If a regulator does not provide any form of notice at all then the assessment panel is placed in an uncertain quandary as to whether they can continue with the process because an element of the process has not been satisfied (which is the giving of a notice from the regulator to the panel).

A regulator not responding would also create uncertainty as to whether they wish to become a participating regulator in the process or not.

There is also potential for the proponent to receive a major project permit that is open to legal challenge on this matter.

Discussion

Section 60ZA of the Act provides a mandatory requirement for a regulator to provide a notice of their assessment requirements or a notice of no assessment requirements or a notice recommending revocation of the major project. This action must occur within 28 days of receiving the major project proposal documentation from the Commission.

Section 60ZK of the Act sets the time period for when the assessment panel must prepare draft assessment criteria, which is 14 days after receipt of the last notice from a regulator or when the regulator was required to provide the notice. In effect the assessment panel can continue with their role in the process when no response is given by the regulator.

However, if there is no response from a regulator when there was a mandatory requirement to do so that may cause concern as to whether the remainder of the assessment process is valid or not.

What can be done?

Provide more certainty in the process if a regulator does not respond as required under 60ZA.

What is proposed?

1. Clarify that when a regulator does not submit any notice, as required under section 60ZA of the Act, then that 'non-action' is taken as a notice of no assessment requirements and that the regulator does not wish to become a participating regulator in the remainder of the assessment process

Sections of the draft Bill that relate to this topic

Clause in draft Bill	Section of LUPAA	Clause note
15	Section 60ZA	Clarifies that no action by a regulator is taken as a 'no assessment requirements notice, except the EPA in situations where there is a Bi-lateral assessment under with the Commonwealth (as the EPA is not allowed to step away from the assessment process in this circumstance)

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

Issue

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

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

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

Discussion

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

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

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

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

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

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

By comparison –

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

What can be done?

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

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

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

What is proposed?

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

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

Sections of the draft Bill that relate to this topic

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

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Draft Land Use Planning and Approvals Amendment Bill 2022

Part 9 –Correcting minor administrative errors before a final decision is made

Issue

Experience from applying the major projects process to the proposed Bridgewater Bridge project indicates that the process is complex to administer, giving rise to the potential for administrative errors to occur throughout the process.

An accidental clerical or administrative error in managing the major project assessment process could result in the process being subject to legal challenge causing delays for the delivery of the project or even requiring the proponent to have to recommence at the start of the major project application process again.

Discussion

The major projects process is highly prescriptive, lengthy and complex, with many administrative requirements to act within set timeframes or to consult with a potentially wide range of people. It is plausible that during such a long and complex process, an error or oversight could occur with a decision maker not responding within a set timeframe, or an individual not receiving an appropriate notification during a particular stage in the process.

If a mistake with administering the process occurs during the process, the proponent could be left with a permit that is open to legal challenge. Naturally, major mistakes should cause the process to be redone for any of those aspects which were not done properly. However, if a mistake is minor in nature then the intent of the process should be that the major project permit is not undermined as a result.

The current process does not enable the assessment panel the ability to correct any administrative error that may have occurred during the process.

What can be done?

Provide the assessment panel with flexibility to manage the process in a manner that can correct some errors that may have occurred during the process.

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What is proposed?

1. When a notice that is required under the major projects assessment process to be given to a person or the notice is required to be given within a prescribed time period, and that notice was not given or not given within the prescribed time period, the assessment panel is provided with the ability to notify that person and seek their views in respect of the proposed major project prior to making their final decision on the proposed major project.
2. Specifying that not giving a notice within a prescribed time period does not invalidate the assessment process.

Sections of the draft Bill that relate to this topic

Clause in draft Bill	Section of LUPAA	Clause note
25	60ZZMB	The panel can notify persons that were previously not notified and seek their views with respect to the proposed major project. Also, giving a notice outside the prescribed timeframe does not invalidate the assessment process.

Department of Premier and Cabinet
State Planning Office

Phone: 1300 703 977
Email: stateplanning@dpac.tas.gov.au

www.planningreform.tas.gov.au

Tasmanian Government

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Draft Land Use Planning and Approvals Amendment Bill 2022

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

Issue

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

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

Discussion

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

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

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

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

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

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

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

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

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

What can be done?

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

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

What is proposed?

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

Sections of the draft Bill that relate to this topic

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

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How to make a submission

You can have your say by making a written submission and posting or emailing it to our Office by **5pm, Thursday 12 May 2022**.

Submissions must be received by our Office before the consultation period closes.

Postal address:

State Planning Office
Department of Premier and Cabinet
GPO Box 123
Hobart TAS 7001

Email address:

yoursay.planning@dpac.tas.gov.au

Personal information

Submissions will be treated as public information and will be published on our website unless confidentiality is specifically requested. No personal information other than an individual's name or the organisation making a submission will be published.

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