

# 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 of what was intended. It was not intended to exclude landowners who are not the proponent from developing their land.

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.

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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

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		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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