INFOSHEET

Draft Land Use Planning and Approvals (Amendment) Bill 2022

Part 11 - Frequently Asked Questions

Why does the legislation need amending?

The major projects assessment process that was established by the *Land Use Planning and Approvals Amendment (Major Projects) Bill 2020* commenced in October 2020. In December 2020 the first Major Project, the New Bridgewater Bridge, was declared by the former Minister for Planning. That project was issued with the first major project permit in May 2022.

It is prudent to revisit legislation after a period of time, particularly after testing a live project, to ensure the process is running as smoothy as possible. These amendments address lessons learned from the first live project and seek to refine the process.

The amendment will provide improved outcomes for all parties involved in the process, including the Aboriginal community, the public seeking to become involved as representors, the regulators, the Commission and development assessment panel (panel), and the proponent.

The design and construct process has become more prominent in large construction projects, compared to two years ago when the Major Projects Bill was first introduced. The process allows for a project to evolve and be further refined during the detailed design phase. The approvals process needs to be flexible enough to provide for this process to achieve the very best outcomes, without compromising the integrity of the assessment process.

Will there be more amendments required to the Act in the future?

The government will always monitor legislation to keep it current, fit for purpose, and in relation to major projects, ensure that it provides for a smooth and efficient assessment process, whilst providing fair outcomes for all parties involved.

These particular amendments provide improvements to introduce more flexibility without compromising scrutiny and independent assessment exercises.

Some submissions noted matters that were outside the scope of the Bill and further consideration and broader consultation on those would be required to determine if they have merit.

Will the amendments weaken the scrutiny of the process that the original Bill provided for?

The amendments will not change the eligibility of a major project. A major project will still need to meet the same tests as currently provided for in the legislation. These tests include that a Major Project needs to:

- have a significant impact on or make a significant contribution to a region's economy;
- be of strategic importance to a region; or
- be of a significant scale and complexity.

A major project cannot be declared if it:

- does not further the objectives of Schedule 1 of the *Land Use Planning and Approvals Act 1993* (LUPA Act);
- contravenes a State Policy;
- contravenes a Tasmanian Planning Policy (TPP); or
- is inconsistent with the relevant regional land use strategy.

None of these tests change as a result of the proposed amendments.

Similarly, the proposed amendments do not alter in any way the role of regulators or the independent Tasmanian Planning Commission appointed development assessment panel (panel) in the process.

Also, the proposed amendments do not reduce the opportunities for the public to be involved in the assessment process. The public will still be able to comment on draft assessment criteria and the exhibited major project, and then participate in public hearings.

Is this about weakening what went through last time?

The current legislation provides for a streamlined and efficient assessment process for major projects. The process is rigorous, independent and fair.

The amendments do not allow for the weakening of the criteria a project has to meet to be declared a major project. Where a major project area is amended, it is done so on the recommendation of the independent panel to the Minister and is subject to the same ineligibility criteria as the original declaration.

The amendments provide additional time for the independent panel to undertake some key tasks in the assessment process, and encourage participation by providing for electronically available documents to the public.

Were other parts of LUPAA considered for amendment within this Bill?

No, the intent for this Bill is to make improvements to the major projects assessment process. Further adjustments to the Act can be considered at a later date, including considering the issues raised by Hobart City Council.

Is preventing the public display of culturally sensitive Aboriginal heritage information during the assessment process hiding information from the public?

The major projects process co-ordinates assessments from a range of regulators in order to reach a final determination on the proposed major project.

The public display of certain information relating to Aboriginal heritage is considered an offence to Aboriginal culture. In other development assessment processes in Tasmania, specific information, such as the location of Aboriginal relics is not placed in the public domain.

The amendment simply brings the major projects assessment process into line with those already in operation in Tasmania under the *Aboriginal Heritage Act 1975,* where culturally sensitive Aboriginal heritage information is concerned.

Is Aboriginal Heritage Tasmania going to become the regulator under the major projects process instead of the Minister?

A consultation paper on high-level policy directions for a new Aboriginal Cultural Heritage Protection Act is currently out for consultation. Until that review process is worked through, the regulator for Aboriginal heritage remains as the Minister for Aboriginal Affairs.

Why does the sensitive matters request take 35 days?

This is to enable the request to be considered by the Aboriginal Heritage Council, who only meet monthly. It will provide time for the views of the Aboriginal community to be considered in relation to the request.

How are the Aboriginal Community involved in the major projects assessment process?

The Minister for Aboriginal affairs is the regulator for the purposes of the major projects assessment process. To conduct this role during the assessment process, the Minister for Aboriginal Affairs will seek advice from both Aboriginal Heritage Tasmania and the Aboriginal Heritage Council.

The members of the Aboriginal Heritage Council are from the Tasmanian Aboriginal community who have extensive knowledge and experience in Aboriginal heritage management.

Aboriginal Heritage Tasmania is a discreet unit operating within the Department of Natural Resources and Environment Tasmania. They are responsible for the administration of the *Aboriginal Heritage Act 1975*.

The Minister for Aboriginal Affairs' determination in the major projects assessment process is binding on the final decision of the panel under section 60ZZM(6) and section 60ZZP(4) of the Act.

Will information about threatened species be deemed to be sensitive information under the Bill?

No, the Bill has been modified so that only information relating to Aboriginal culture can be considered as sensitive information in the major projects assessment process.

Feedback from the submissions received during consultation suggested that this aspect of the draft Bill would not get used, as the regulator currently does not use its ability under section 59 of the *Threatened Species Act 1995* as the regulator has a preference to enable public access to threatened species information.

The amendment proposes to share information digitally with the public and those parties involved in the process. What if someone does not have access to or cannot use the required technology?

The capacity to provide information online will save significant resources and improve environmental outcomes by reducing printing and distribution requirements.

The use of digital documents also improves the capacity to view information such as mapped areas with greater accuracy.

However, any party with an interest in the process as identified under the Act, will be able to request the document sender for a hard copy to be sent to them.

How will sharing digital documents work in practice?

When a large document is required to be shared, a letter will be sent out advising that the document is available on a website for viewing. The letter will also offer the receiver the chance to indicate whether they would like to receive the document in hard copy instead of downloading it from the web.

After a major project has been declared, can landowners within a declared project area, who are not the major project proponent, apply for a planning permit for other use and development on their land?

Yes, the amendment clarifies that, for landowners within a declared project area who aren't the proponent of the major project, other permits for use and development on their land can be sought from the relevant authorities.

The intent of the amendment is that once a major project has been declared, the proponent can only use the major projects assessment process to gain approval for their major project, and not use other planning processes at the same time as the major project assessment process is running.

The amendment provides further clarity with this intent, by enabling the Commission to issue a completion certificate once the major project is completed. Once the completion certificate is issued, this restriction on the proponent will no longer apply. The completion certificate can be issued in stages, as stages of the major project are completed

Will other use and development issued with a permit through a different process risk creating land use conflicts with the major project?

It is expected that these matters will be addressed right at the beginning of the process through agreements between the proponent and landowners whose land is included in a declared project area.

Why does section 60S not have a referral process to the proponent or panel to manage planning applications by landowners who are not the proponent?

Due to an expectation that proponents will resolve issues with landowners prior to entering the assessment process, it is expected most issues will be resolved prior to lodgement of the major project proposal.

The inclusion of an additional referral process is considered to add a layer of administration to an already complex administration process for little gain.

If the proponent can undertake investigative studies prior to the Assessment Criteria being determined, how can assurances be made that they will be carried out adequately and provide the necessary information?

Prior to a major project being declared, a significant amount of preliminary work will need to have been undertaken by a proponent. A major project proposal is required to be submitted prior to the declaration of any major project. The major project proposal must specify the 'environmental, health, economic, social and heritage effects' identified by the proponent at that stage, and the surveys and studies that will need to be undertaken for the proponent to prepare a major project impact statement.

This means that a proponent will have a relatively good understanding early on in the process of the sorts of investigations that need to be carried out.

Some investigations and surveys, particularly those relating to natural values, need to be undertaken during specific times, such Spring surveys for flora and fauna. The process simply allows for investigations that have already been identified to be undertaken at the most appropriate time, to provide for the best environmental outcomes, whilst reducing the risk of the project incurring significant delays.

Furthermore, provision is already built into the process to ensure that any permits required by the proponent to undertake investigations, are issued by the relevant regulator. This ensures that any investigative works are carried out in accordance with the relevant legislation.

If the relevant regulators are not satisfied a major project impact statement adequately addresses the assessment criteria, the panel and each of the relevant regulators have the capacity to require the proponent to prepare an amended major project impact statement. This allows those assessing the major project to ensure that adequate studies and investigations have been carried out as required by the assessment criteria.

Can the regulators or assessment panel decline a request for an early site investigation permission?

Yes, the Commission or assessment panel and the regulators have the discretion to deny a request for an early site investigation permission where they consider it appropriate to wait until the assessment criteria have been made.

How can assurances be made that an amendment to the declared project area won't allow for a project to be significantly increased in scale and impact?

As outlined, the design and construct process has become more prominent in large construction projects, compared to two years ago when the Major Projects Bill was first introduced. The design and construct process allows for a project to evolve and be further refined during the detailed design phase.

Issues that may require a declared project area to be amended may include needing to avoid natural values or land subject to natural hazards. An amendment may also be required to improve the community outcome for a major infrastructure project.

Currently in these situations, the proponent needs to seek a separate approval for the amended area, either through a second major project proposal or through a council development application process. This undermines the purpose of the major projects process, which is to streamline approvals.

There are already significant safeguards in the legislation to ensure that major project areas are declared on a sound environmental, social and economic basis. A declared project area is established when a major project is declared. A major project cannot be declared if it:

- does not further the objectives of Schedule 1 of the *Land Use Planning and Approvals Act 1993* (LUPA Act);
- contravenes a State Policy;
- contravenes a Tasmanian Planning Policy (TPP); or
- is inconsistent with the relevant regional land use strategy.

This Bill requires the decision to amend a declared project area to only be made on the recommendation of the independent panel or Tasmanian Planning Commission. The decision to amend the declared project area must also meet the test of furthering the objectives of Schedule 1 of the LUPA Act, and being consistent with the State Policies, TPPs and relevant regional land use strategy.

Can the Minister amend an area of land of his/her own accord without any advice from the Commission/panel?

No, this is because the Minister can only amend the area of land declared for a major project after receiving advice from the Commission or panel that it is suitable. The Minister does not receive the application to amend the area separately. The application to amend the area of land is lodged with the Commission instead. If the Commission or panel considers that it is not suitable to amend the area of land, then the Minister will not receive any notice from them recommending the area be amended.

When amending the declared major project area, what is meant by a 'small' area?

When advising the Minister whether it is appropriate to amend the declared project area, the panel or the Commission must have regard to whether the additional area of land is small, relative to the overall declared project area.

In the decision-maker's view, therefore, the area of land to be added must be considered within the context of the greater project area, and must also be required to achieve the objectives of the project.

Why is the process to amend the declared area of land restricted once a major project impact statement has been submitted?

This is to avoid repeating the entire process again, which will save time and resources for all involved. Once a major project impact statement is submitted, if amending the declared area involves the requirement for new regulators and reissuing the assessment criteria, it is simpler to progress the current assessment, and then seek an amendment to the major project permit.

If the assessment can proceed without a regulator indicating whether they have assessment requirements for a major project, how will the regulator's concerns be captured? Is there a risk of a project resulting in adverse planning outcomes?

Each of the regulators are already required to carry out assessments that fall within their purview under their own legislation. This process merely streamlines each of the assessment processes into one. It requires the regulators to carry out an assessment as if acting under their own act.

As a means to double check if a regulator has assessment requirements, the Bill has been modified so that regulators will be sent a reminder notice if a response has not been recorded. However, it is in the interest of the regulators to ensure that those matters for which they are responsible are regulated in accordance with the requirements of their own legislation.

This particular amendment is consistent with a number of referral processes within the planning system, including referrals to TasWater under the *Water and Sewerage Industry Act 2008* and to the Tasmanian Heritage Council under the *Historic Cultural Heritage Act 1995*, that allow the process to continue in the absence of a regulator response.

Will allowing the Development Assessment Panel to address administrative errors retrospectively, including the failure to notify an interested party, allow key participants in the process to be excluded?

There are extensive consultation requirements prescribed under the Major Projects legislation in relation to community and stakeholder engagement. Whilst this provides for a rigorous and inclusive assessment process, it has extensive administrative requirements making it complex and prescriptive. It is therefore plausible for errors and oversights to occur.

The Bill contains a provision that will enable the process to allow the panel to seek input from a party that might have not been included in a particular stage required under the Act. In this situation the proposed amendment gives that party time to consider the relevant matter and respond to the panel. Similarly, giving a notice outside of the statutory timeframes is allowed by Bill.

The purpose of these amendments is not to undermine the involvement of any stakeholder or member of the community. Rather, the changes provide for minor errors to be addressed without risking invalidating the process or requiring the assessment process to recommence.

Will the new permit amendment process allow larger projects of a greater scale or impact to be 'snuck' through?

If an amendment to a major project permit does not qualify as a minor amendment, 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.

The Bill includes an additional amendment process that allows only for an amendment to a permit where a change to the assessment criteria is not required. If the amendment to the permit involves a substantial change to the use or development, then it is likely the assessment criteria will need to be re-prepared and the significant amendment of a major project process would then be required, which would see the assessment recommence as if the major project had just been declared.

The proposed amendment provides for an amended permit process that addresses the scale of use and development that might occur between a minor amendment and a significant amendment.

The proposed process allows for an addendum to a major project impact statement, public exhibition and hearings. It therefore provides for three-tiered approach to address requirements to amend a permit. Consequently, there will be adequate safeguards in the legislation to ensure that a rigorous and equitable process is applied as appropriate to the significance of the permit amendment required.

How is the public involved in a significant amendment process?

The decision whether a proposed major project permit amendment can be a significant amendment is made by the Commission in conjunction with feedback from the regulators. This is an administrative decision to determine if an assessment process is used or not. Currently, the public do not get involved with this administrative decision.

However, once a proposed major project permit amendment can be a significant amendment then the normal major projects assessment process applies from the point in the process at which a major project has been declared. From there the public are involved in the same manner as they would have been with the original major project. This process allows for the public to be involved with the preparation of new assessment criteria, public exhibition, and public hearings before the amendment to the major project permit is determined.

How does the significant amendment process work and how will it work with the new amendment process?

The significant amendment of major project permit provides for an amendment to allow for altered use or development under the major project permit, as long as the amended major project would be substantially the same major project to which the major project permit relates.

When the proponent requests a significant amendment to the permit, the panel or the Commission considers that request with advice of the relevant regulators. The panel or Commission either then refuses the request or gives permission to the proponent to apply for a significant amendment to the major project permit. If the panel or the Commission gives permission for an application for a significant amendment, the amendment application is treated as

a major project proposal and the process recommences from the point at which the major project is first declared.

This process allows for the public to be involved with the preparation of new assessment criteria, public exhibition, and public hearings to be undertaken under the Act as if the amendment were a new major project. Essentially, the process recommences in its entirety from the point of declaration.

The proposed amendment process on the other hand provides for less substantial amendments that may arise during the detailed design phase, for instance, those that do not involve a change of or additional use, nor development of a different scale or development.

If an amendment to the permit required a change to the assessment criteria to assess the impact, then the full significant amendment process would need to be followed.

For instance, if the use and development are not proposed to be altered, but the location of the project was to change, this may generate different impacts and require new assessment criteria to be prepared to assess that impact. This would trigger the full significant amendment process.

Any proposed amendment to a major project permit is therefore subject to these two tests;

- first that a substantial change to the nature of use or development is not changing the major project; and
- second, if new assessment criteria are required to be prepared to assess the impacts of the amendment.

The panel or the Commission, with advice from the relevant regulators, determine if it is appropriate to use the amendment process and if so, which amendment process will be required.

Why does the new amendment process have shortened process timeframes?

The draft Bill has been amended to provide the regulators with the ability to advise the panel as to whether the process times should be shortened or not.

The intent behind shortening the timeframes is to allow recognition that some proposed major project permit amendments may not be that extensive, may not have a great impact or may not require a detailed assessment, yet still not be able to qualify for a minor amendment to the major project permit. Where the proposed amendment can still be considered under the original assessment criteria and a regulator advises that "we need more time to assess this one" then the shortened processes cannot be used.

Do the time limits on Councils set out in section 60 of the Act apply to a major project permit?

No, the section 60 requirements in the Act only apply to normal planning permits and not to major project permits. This is because section 60 only refers to **permits**. The Act defines "permit" as "any permit, approval or consent required by a planning scheme to be issued or given by a municipality in respect of the use or development of any land". In the case of major project permits, these are not issued by a municipality.

Can regulators seek a time extension to respond when they are giving their preliminary advice under section 60ZA?

Yes, that is currently provided for under section 60ZA(1) of the Act, where the Minister can grant the regulator more time to provide their views on the proposed major project.

How do the major project enforcement provisions work now with respect to local government responsibilities and what changes are contained within the Bill?

Currently enforcement of conditions of a major project permit are carried out by the relevant regulators in relation to matters on the permit that fall under the *Aboriginal Heritage Act, 1975, the Threatened Species Protection Act 1995* and *the Nature Conservation Act 2002.* All remaining conditions fall to the Commission to enforce, including where plans are required to be submitted to the satisfaction of the panel.

The Bill amends the Act to allow the Commission to issue an enforcement certificate at the end of the project, or after a nominated stage of the project, to the relevant regulator or planning authority, as appropriate, to enforce conditions of the major project permit on an ongoing basis. Where a major project permit relates to land within a number of local government areas (LGA), an enforcement certificate can provide for a planning authority to enforce the conditions of the major project in relation to use or development within their relevant LGA only. Similarly, an enforcement certificate may provide that a planning authority enforce specific conditions on the major project permit.

Will local government be required to enforce conditions on the major project permit that requires the panel's secondary approval?

Currently, the panel has the ability to specify on a major project permit who is responsible for enforcing each condition. The Bill now allows for the panel to specify that plans, information, designs or other documents be submitted to the satisfaction of the panel or a planning authority in order for the condition to be met.

Once the project is completed the enforcement role will be passed onto the local planning authority. Prior to the issue of an enforcement certificate any condition specifying that meeting a condition requires an action to be done to the satisfaction of the panel, is the task of the panel to enforce.

Ongoing enforcement is then carried out after an enforcement certificate issued by the panel or Commission.

Why are Councils not given a regulators role in the major projects assessment process?

The current role of the regulators involves elements of development assessment that relate to a legislated process to either require conditions to be placed on a permit or provide for a separate approval.

At present, the role of Councils for roads and stormwater management does not have a legislated link to inserting conditions onto a planning permit.

What changes were made to the consultation bill after consultation?

The Bill was subject to public consultation for a period of five weeks in April/May 2022. During that period 17 submissions and 2 pieces of advice were received, and in response the following adjustments to the draft Bill have been made, as follows:

- revising the scope of the sensitive matters process so that it only applies to matters of Aboriginal cultural heritage;
- providing a set time for the Commission to issue a completion certificate, after receiving a request from a proponent;
- enabling regulators to have the discretion to issue an early site investigation permission, as the Commission can, as opposed to a mandatory requirement to issue the permission early and setting timeframes for the issue of these early permissions;
- providing for a reminder to be issued to the regulators that they must respond to a request to provide their assessment requirements;
- enabling members of the general public more time to respond when they receive a notice relating to correcting errors made in the process by increasing that from 7 to 21 days;
- notifying the relevant planning authority when a major project permit amendment process has been completed; and
- clarifying in section 60ZZZH that persons can still receive documents by hard copy if they choose to do so rather than relying on the electronic notification.

Will the changes hinder the implementation of future major projects?

With many major projects making use of the 'design and construct' process, the assessment process needs to be agile to accommodate changes to what is proposed. The Bill provides for the project area to be amended and provides greater flexibility in the process available to amend the major project permit. Without these additional processes, any significant changes to a proposed major project would require the assessment process to recommence, which would cause delays in the overall delivery of the major project.

By making use of these additional processes, a major project will be able to be implemented sooner, rather than later.