Land Use Planning and Approvals (Amendment) Bill 2022

Information Package

State Planning Office
Department of Premier and Cabinet

Tasmanian Government

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, 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, 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.

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.

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Currently in the major project assessment process, sensitive Aboriginal cultural heritage 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. In the wrong hands this could lead to the destruction of a highly valued sensitive site or artifact.

Providing confidentiality with respect to Aboriginal cultural heritage 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 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 regulator for Aboriginal heritage advises to do so.

What can be done?

Before the start of the assessment process, the proponent could seek advice from the Minister for Aboriginal Affairs as to the presence, or otherwise, of culturally significant Aboriginal heritage within the project area. The Minister for Aboriginal Affairs will then seek advice from the Aboriginal Heritage Council and Aboriginal Heritage Tasmania.

The Minister for Aboriginal Affairs could then provide advice regarding the contents of the major project proposal to be lodged with the Minister. This advice should indicate whether the project area contains sensitive Aboriginal heritage matters that need to be kept confidential from the public, or whether the major project proposal can be 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 the Minister for Aboriginal Affairs. The declaration notice can then require the assessment panel, the proponent and the regulators to keep any Aboriginal heritage information relating to the site confidential. The information will still be provided to the assessment panel and regulator for appropriate assessment of the issue.

These adjustments to the process would not prevent the regulator of Aboriginal heritage 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 the Minister for Aboriginal Affairs (the regulator for Aboriginal Heritage) before they lodge their major project proposal with the Minister. Where the major project proposal is to include any advice received from the regulator regarding the non-disclosure of sensitive information.
2. Enable the regulator to advise the proponent and the Minister if the major project site has sensitive aboriginal heritage information that should only 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 to the general public then the Minister, the proponent, regulators and the assessment panel are required to not disclose that information in any documents they make public. This requirement on the proponent, regulators and the assessment panel is to be expressed in the Minister's 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. The proponent will be required to provide sensitive information as an annexure to any documentation submitted in the assessment process. This will enable the appropriate assessment by the Aboriginal heritage regulator.

Sections of the draft Bill that relate to this topic

Clause in draft Bill	Section of LUPAA	Clause note
6	60BA	Provides for the discovery of sensitive site information as it relates to Aboriginal heritage prior to lodging a proposal for a major project and also requires the Minister's 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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Pre-lodgement request to discover sensitive information regarding the proposed site

Day 0

Proponent makes request to regulator regarding the presence of any sensitive information on the project site

Day 35

Regulator considers request and gives advice to the proponent, the Minister, the Commission and the Panel (if any)

The Advice is that –

The site does contain features that would be sensitive information

The Advice is that –

The site does not contain features that would be sensitive information

Major Project Proposal documentation is submitted in accordance with 60F and with a sensitive matters statement that says the sensitive matter –

a) Is not able to be viewed by the public, and

b) Must not be disclosed in a meeting that the public may attend, and

c) Must not be disclosed in any discussion between the public and the Minister, and regulator, panel or the Commission, and

d) Must not be disclosed during proceedings at TASCAT, a court or tribunal.

Major Project Proposal documentation is submitted in accordance with 60F, or as required for the permit amendment, with no limitations regarding sensitive information

Request made to Minister for a declaration under 60C or 60E

Request made to Commission for amendment to declared project area under 60TB

Request made to Commission or Panel for an amendment to the major project permit under 60ZZW or 60ZZZ

Assessment process commences from point of lodgement of request (see TPC flowchart)

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Part 2 – Updating references to current legislation

Issue

The *Gas Pipelines 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
15	60Z	Update to reflect current legislation
25	60ZZI	Update to reflect current legislation
33	60ZZZD	Update to reflect current legislation

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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 the proposal and other documents by electronic means during the major projects assessment process, whilst still allowing those without access to digital technology to request a hard copy of any relevant document.

Sections of the draft Bill that relate to this topic

Clause in draft Bill	Section of LUPAA	Clause note
17	60ZL	Updated to provide for electronic exchange of documents
24	60ZZB	Updated to provide for electronic exchange of documents
34	60ZZZH	Updated to provide for 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. Also enables a person to be able to request any document to be provided in hard copy.

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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 Bridgewater Bridge project has revealed that the process could do with further refinement making 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 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, it was originally intended that unrelated developments could occur on the same land as the declared major project and not be subject to the 'perceived' prohibition.

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 from then on.

Discussion

The intended meaning of section 60S of the Act is set out in the clause notes that were submitted with the Bill back 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 within and around the major project would then be subject to the normal planning permit requirements administered by the local planning authority.

A completion status would provide certainty to the proponent and local government about their role as a planning authority especially when:

- considering development applications on portions of land not used for the major project;
- considering additions to a major project that has been completed in terms of the original major project permit; and
- administering 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. Where a completion certificate can be requested by the proponent for the whole major project or a stage of the major project.

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. This 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 now that the major projects assessment process has been included within the Act.

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. Upon a request from the proponent, the Commission can issue a completion certificate (within a set time period from the request being made), 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
10	60S	Clarifies that development for a major project must be done in accordance with a major project permit and that the provision does not apply once a completion certificate has been issued.
11	60SA	Enables the Commission to issue a completion certificate (within a set time period from the request being made) for part or all of the major project, upon a request from the proponent.
27	60ZZP	Clarifies roles for the Commission, assessment panel, planning authorities and regulators in relation to managing issues with the conditions on a major project permit. Including being able to specify on a condition that a plan must be prepared to the satisfaction of the assessment panel.
28	60ZZS	Clarifies the role of the Commission in section 60ZZS(4) of the Act.
32	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. Enforcement of conditions in relation to Aboriginal Heritage or Threatened species remains with the regulator. Other regulators are required to agree to the enforcement certificate being issued. This can only be done once all of the development for the major project has been completed.
35	63B	Removing incorrect references to sections in the Act
36	64	Removing incorrect references to sections in the Act
37	65C	Removing incorrect references to sections in the Act

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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, and the timing of that project would have benefitted from commencing the investigation studies earlier.

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. Depending on the methodology required, in some cases permission to undertake the study may be necessary if the activity is not exempt under the Tasmanian Planning Scheme (TPS). For example, a study may involve disturbing the 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.

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 required, such as ground surveys or botanical studies. In some cases, seasonal timing may suggest the need to commence a study early.

This could occur if the proponent has already identified the need for the early study in the major project proposal document submitted to the Minister.

Prior to the Assessment Panel being formed the Executive Commissioner of the Commission acts on behalf of the panel and could issue any investigation permit if required to do so.

What can be done?

Allow for site investigation permissions to be issued at the discretion of the Panel or the regulator 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, the Commission or the Assessment Panel the discretion to issue investigation permissions. These should be issued after the declaration of a major project, within a set time period of receiving a request from the proponent, where the need for the early site investigations is identified in the major project proposal.

Sections of the draft Bill that relate to this topic

Clause in draft Bill	Section of LUPAA	Clause note
8	60E	Clarifies the intent of subsections (1) & (2).
9	60F	Adds a requirement to specify in a major project proposal document which early site investigations are required and why they are needed early.
11	60SB	Enables the proponent to request 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.
20	60ZT	Specifies when early permissions cease to have effect
21	60ZU	Specifies when early permissions cease to have effect

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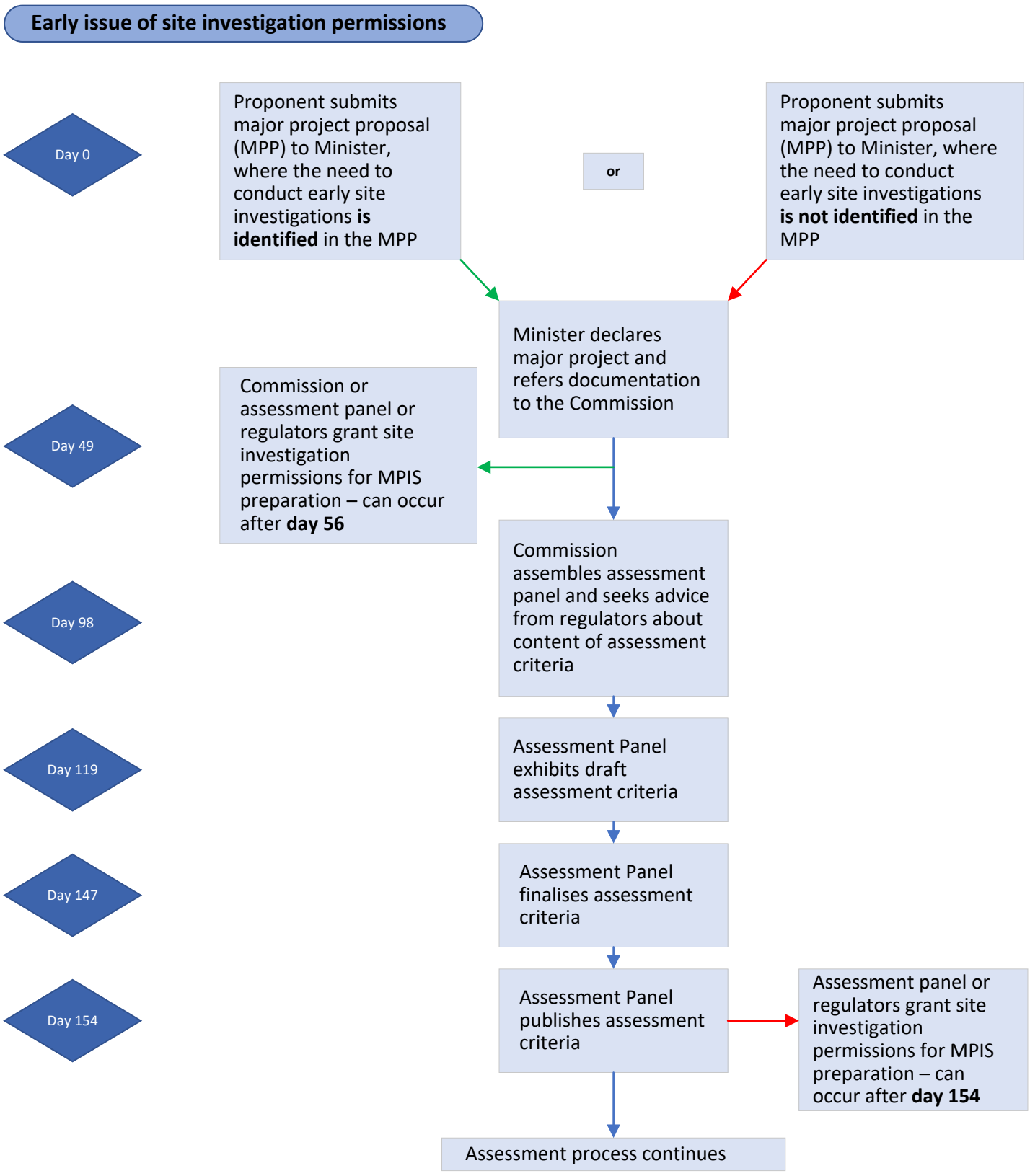
Early issue of site investigation permissions
Day 0
Proponent submits major project proposal (MPP) to Minister, where the need to conduct early site investigations **is identified** in the MPP
or
Proponent submits major project proposal (MPP) to Minister, where the need to conduct early site investigations **is not identified** in the MPP
Minister declares major project and refers documentation to the Commission
Day 49
Commission or assessment panel or regulators grant site investigation permissions for MPIS preparation – can occur after **day 56**
Day 98
Commission assembles assessment panel and seeks advice from regulators about content of assessment criteria
Day 119
Assessment Panel exhibits draft assessment criteria
Day 147
Assessment Panel finalises assessment criteria
Day 154
Assessment Panel publishes assessment criteria
Assessment panel or regulators grant site investigation permissions for MPIS preparation – can occur after **day 154**
Assessment process continues

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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, 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. 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.

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.

This leaves the proponent with two options when making use of newly acquired land or needing to extend the major project outside the declared major project area, 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 options defeat the intent of the major projects assessment process, which is to be an all-inclusive coordinated process. Either option listed above would potentially 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 additional land to the declared project area. If assessed as suitable, the panel can recommend to the Minister to amend the declared project area to include the additional land.

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 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. When the request to amend the declared project area is made before a MPIS is submitted, the regulators are required to review the proposed additional area of land to see if their original advice would be different.
3. Where the regulators advice is different from their original advice then the relative stage of the assessment process is required to be repeated. This is to ensure that all of the relevant regulators are involved with the major project assessment and that the assessment criteria are up to date and relevant to the additional area of land.
4. Once a MPIS has been submitted, the amended area of land can only be included if the original advice of the regulators remains unchanged or the assessment criteria does not need to change.
5. A request to amend the area of declared land can also be accompanied by a request to amend the major project permit.

6. The Minister can only amend the declared major project area if advice from the assessment panel or the Commission has been given. Where the Commission or the assessment panel has undertaken an investigation to determine if this is reasonable which has included consultation with affected landowners and the relevant regulators.

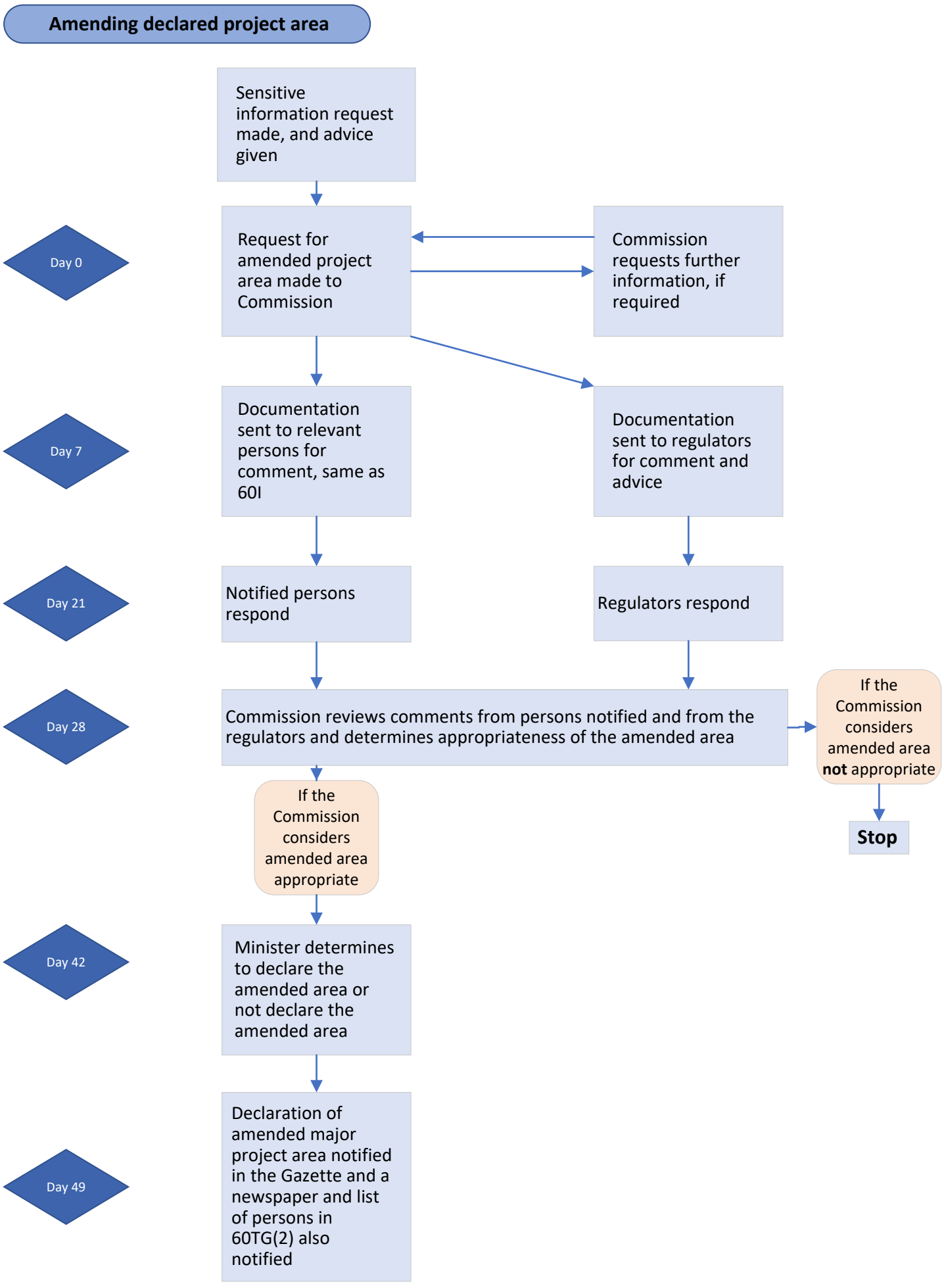
7. Once the Minister amends the declared project area, notification is given in the same manner as when the Minister declares a major project.

8. 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
10	60S	Clarifies the effect on an existing development application when a major project declared area is amended
12	60T	Clarifies the effect on an existing application/referral with a regulator when a major project declared area is amended
13	Part 4, Division 2A, Subdivision 5: Heading	Heading revised to refer to "Amendment and revocation of declaration"
14	60TA, 60TB, 60TC, 60TD, 60TE, 60TF, 60TG, 60TH and 60TI	60TA – sets out definitions relevant to this section 60TB – identifies the various stages in the major projects process (grounds for amending the area of land), so as to determine what to do when an amended area is applied for at different stages of the assessment process, and after the major project permit has been granted. 60TC - provides for the proponent to apply to the Commission or the assessment panel to amend the declared area 60TD – requires the Commission or assessment panel to consult with relevant persons, the same as those listed in section 60I of the Act 60TE – requires the Commission or assessment panel to seek the views of the regulators, including if any process timeframes could be shortened (where the request to amend the area also relates to a request to amend the major project permit).

Clause in draft Bill	Section of LUPAA	Clause note
		60TE – provides for the Commission or assessment panel to give advice to the Minister if the Commission considers it appropriate to amend the declared area of land. The Commission or assessment panel must not give any advice to the Minister if they consider the amended area to be ineligible under section 60N of the Act, or if consents have not been provided if the amended area includes any government land. 60TG – sets the Ministers actions when acting on advice from the Commission, for declaring the amended area 60TH – requires notification when approval of the amended area is granted 60TI – establishes which parts of the major projects assessment process are required to be repeated, depending on the advice of the regulators relative to the grounds for amending the area of land. For example if the regulators were to change their original advice.
19	60ZR	A Major Project Impact Statement can refer to the additional area of land
26	60ZZMA	Provides for a major project permit to be granted over land that has been included within the declared area after the original declaration.


Amending declared project area
Sensitive information request made, and advice given
Day 0
Request for amended project area made to Commission
Commission requests further information, if required
Day 7
Documentation sent to relevant persons for comment, same as 60I
Documentation sent to regulators for comment and advice
Day 21
Notified persons respond
Regulators respond
Day 28
Commission reviews comments from persons notified and from the regulators and determines appropriateness of the amended area
If the Commission considers amended area not appropriate
Stop
If the Commission considers amended area appropriate
Day 42
Minister determines to declare the amended area or not declare the amended area
Day 49
Declaration of amended major project area notified in the Gazette and a newspaper and list of persons in 60TG(2) also notified

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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, 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, 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. If the regulator is going to run out of time, they are able to seek an extension of time from the Minister.

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.

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What can be done?

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

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.
2. Just to make sure a regulator does not accidentally get left out of the assessment process a reminder notice is required to be sent to regulators just before their time to respond is about to expire.

Sections of the draft Bill that relate to this topic

Clause in draft Bill	Section of LUPAA	Clause note
16	Section 60ZA	Clarifies that no action by a regulator is taken as a 'no assessment requirements notice', except where there is a Bi-lateral agreement assessment between the Environment Protection Authority (EPA) and the Commonwealth (as the EPA is not allowed to step away from the assessment process in this circumstance). Includes a requirement for the Commission to send reminder notices to regulators to make sure they are aware they need to consider the information previously sent to them.

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Draft Land Use Planning and Approvals (Amendment) Bill 2022

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. This means a regulator may take up to 21 of the 28 days available to the assessment panel to give the assessment panel their advice in relation to what the final assessment criteria. The assessment panel would then only have seven 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 at numerous stages throughout the assessment process adds to the administrative burden of managing the process.

By comparison the assessment panel has 14 days to finalise the draft assessment criteria which is a less significant task than finalising the assessment criteria, and

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 seven 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.

These suggestions are more in line with the scope of each task in 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
18	60ZN	Provides the assessment panel with an additional 14 days to complete the task if they consider they need the extra time
22	60ZW	A consequential change to clarify the assessment panel needs to make all of its requests for additional information from persons listed in section 60ZW(1) of the Act within 42 days, as well as the proponent.
23	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 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.

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 administering the process occurs, 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 not be that the major project permit is 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 address some errors that may have occurred during the process.

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What is proposed?

1. When a notice that is required to be given to a person or given within a prescribed time period, and that notice was not given to a person or not given within the prescribed time period, the assessment panel has the ability to notify that person and seek their views prior to making their final decision on the proposed major project.
2. Providing the person 21 days to respond to the assessment panel with their views on the proposed major project. Any such reply is then taken to be a representation given during the exhibition period.
3. 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
26	60ZZMB	The assessment 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. The person has 21 days to provide their views on the proposed major project.

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

Issue

Experience gained from implementing the Bridgewater Bridge project suggests that design improvements may be required once the major project permit is granted. This may require an amendment to the major project permit, the current options for which have the 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 Commission or assessment panel can correct any errors or typos in the permit.
2. The Commission or 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 Commission or 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 Commission or 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 ranges from very small to 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 it is considered under the existing significant amendment process. Consideration of the amendment under this process 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 and finally the issuing of an amended major project permit. Throughout this process the involvement of regulators is required, 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, 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 determined under a process that is relative to the scale/impact of the proposed change.

For even smaller scale amendments, 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, unless a regulator advises not to do so.

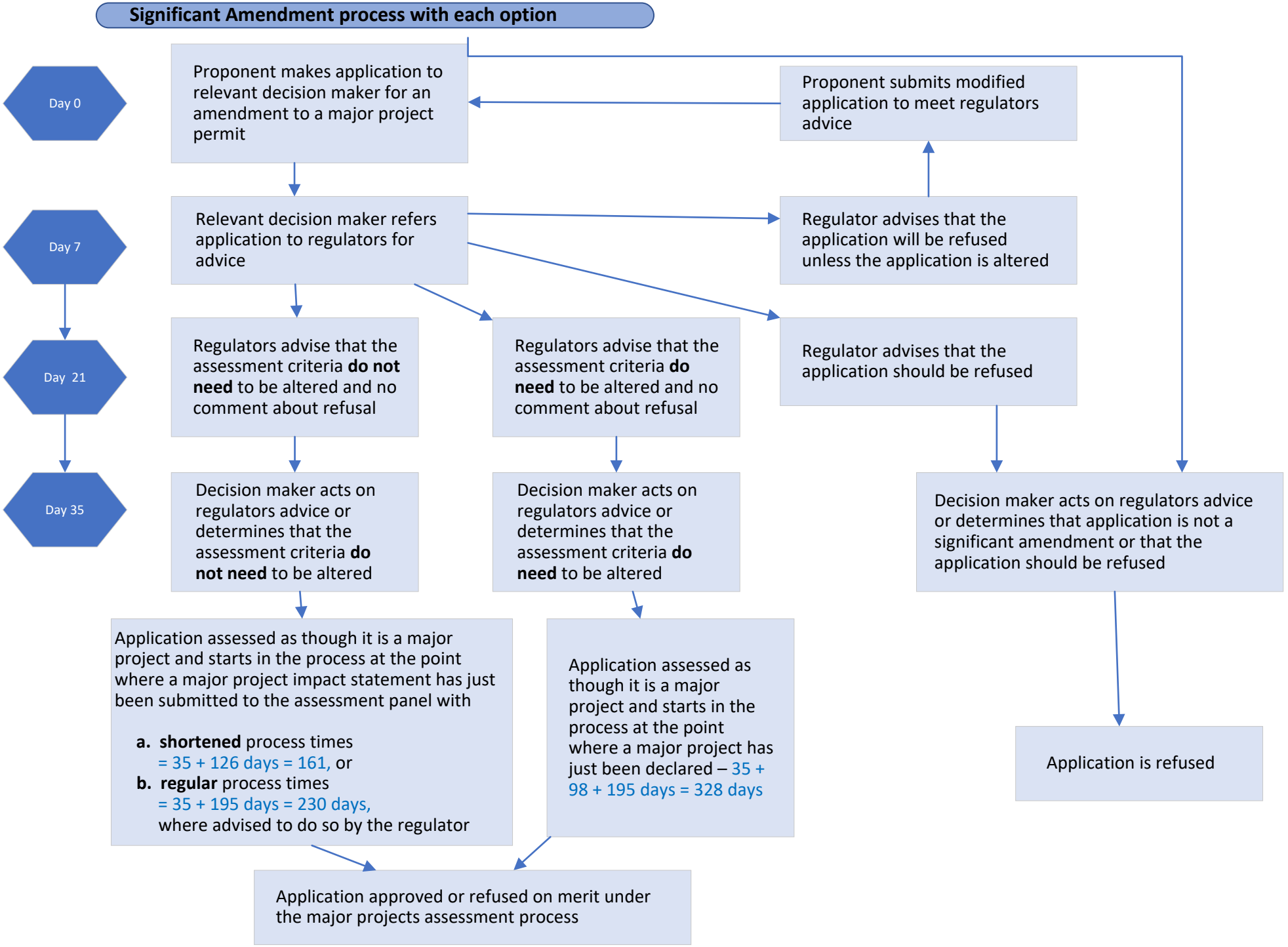
What is proposed?

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.
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 and the regulators agree, the following sections of the Act can 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
29	60ZZU	Clarifies that the definition applies for all of subdivision 14.
30	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.
31	60ZZZ 60ZZZAA	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

Clause in draft Bill	Section of LUPAA	Clause note
		60ZZZAA establishes the process for consideration of the proposed significant amendment by determining which stage of the assessment process the significant amendment application will start from depending on whether the assessment criteria are not required to be remade or not. If the assessment criteria are required to be remade, then the assessment of the significant amendment starts at the point in the process as if the major project has just been declared. If the assessment criteria are not required to be remade, then the assessment of the significant amendment starts at the point in the process as if the major project impact statement has just been submitted to the assessment panel.


Significant Amendment process with each option
Day 0
Day 7
Day 21
Day 35
Proponent makes application to relevant decision maker for an amendment to a major project permit
Proponent submits modified application to meet regulators advice
Relevant decision maker refers application to regulators for advice
Regulator advises that the application will be refused unless the application is altered
Regulators advise that the assessment criteria do not need to be altered and no comment about refusal
Regulators advise that the assessment criteria do need to be altered and no comment about refusal
Regulator advises that the application should be refused
Decision maker acts on regulators advice or determines that the assessment criteria do not need to be altered
Decision maker acts on regulators advice or determines that the assessment criteria do need to be altered
Decision maker acts on regulators advice or determines that application is not a significant amendment or that the application should be refused
Application assessed as though it is a major project and starts in the process at the point where a major project impact statement has just been submitted to the assessment panel with
a. shortened process times = 35 + 126 days = 161, or
b. regular process times = 35 + 195 days = 230 days, where advised to do so by the regulator
Application assessed as though it is a major project and starts in the process at the point where a major project has just been declared – 35 + 98 + 195 days = 328 days
Application is refused
Application approved or refused on merit under the major projects assessment process

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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.