Draft Land Use Planning and Approvals Amendment Bill 2022

Submissions

Submission No	Name	Organisation
1	Phil Stigant	
2	Sheree Vertigan AM	Cradle Coast Authority
3	Trevor Boheim	Glenorchy City Council
4	Ray Mostogl	Tasmanian Minerals, Manufacturing & Energy Council
5	Stuart Collins	Housing Industry Australia
6	Ailsa Sypkes	TasWater
7	Stuart Tanner & Jennifer Nichols	Australian Institute of Architects
8	Professor Tracy Ireland M.ICOMOS, FSA	Australia ICOMOS Secretariat
9	Catherine Searle	Jacobs
10	Emma Riley	ERA Planning & Environment
11	Neil Noye	Hobart City Council
12	Peter McGlone	Tasmanian Conservation Trust Inc
13	Sophie Underwood	Planning Matters Alliance Tasmania
14	Todd Dudley	North East Bioregional Network
15	Michael Ash	Tasmanian Networks Pty Ltd
16	Claire Bookless	Environmental Defenders Office Ltd
17	Kim Evans	Department of State Growth

Submission 1

From: Philip Stigant
To: State Planning Office Shared Mailbox
Subject: Saved to CM: Draft Land Use Planning and Approvals Amendment Bill 2022
Date: Tuesday, 12 April 2022 10:34:11 AM

Dear Sir/Madam,
I emailed you in 2020 regarding your draft Major Projects Bill to point out that it was deeply flawed and far from simplifying the assessment process, would create a system which is both overly complex and open to failures and abuse. Many others, both individuals and organisations made similar submissions.
This was perhaps unsurprising given that the real purpose of the bill was to make it easier to approve developments that are non-compliant with Planning Schemes, Management Plans and other instruments designed to prevent inappropriate development.
The Bill was debated and eventually passed by both Houses with minimal amendment.
Now, a year and a half later we find that this Bill failed at the first hurdle in assessment of the new Bridgewater Bridge and that a 77 page amendment is required to make it workable. 'Oh what a tangled web we weave…'
With the possible exception of Section 6 of the current Draft Bill, all of the proposed amendments serve to make approval easier. Unless the drafters of the 2020 Bill suffered from a quite astounding bias in their failings we should expect a similar magnitude of flaws (that need correction) in the opposite direction. In other words there is doubtless much in the current version of LUPAA that makes it too easy to approve inappropriate development. Much of this was highlighted by community members (including the Environmental Defenders Office) back in 2020, but went unheeded by this government.
If we can assume that the Office of Parliamentary Counsel are at least as well versed in legal drafting as the EDO and now call for an amendment of 77 pages, it is reasonable to assume that the current legislation has many more flaws even than were identified by the EDO at that time.
Let's remember that the new Bridgewater Bridge Project is relatively uncontroversial and also in its very early stages. Many of the flaws in this legislation are yet to be revealed by its application to a project. Who can say how this legislation will fare if it is tested in court?
Rather than an ad hoc amendment the whole of section 60 of LUPAA needs to be rewritten to make it both clear and fair. In particular Major Projects must be required to comply with the relevant Planning Scheme and the relevant Management Plan. The very idea that a Major Project may not have to comply creates uncertainty for both developers and the community and can be expected to result in enormous additional costs to both.

I will not go into detail in relation to the current Land Use And Approvals Amendment Bill 2022 except by way of example to comment on clause 15 which seeks to amend section 60ZA(9).
It is unreasonable to remove a regulators power to respond to or make decisions about a Major Project in the event that they fail to make sufficient response within 14 days. Should they fail in this regard the most likely cause is under resourcing. Even if this is not the case (incompetence maybe?) this should not be allowed to prevent adverse input from such regulators. In this instance the amendment sought is to create a bias in favour of the project being approved. This is bad law and must not stand.

Please reconsider your whole approach to this amendment.

Yours faithfuly,
Phil Stigant

Submission 2

CRADLE COAST AUTHORITY

Stronger Councils, Stronger Region

28 April 2022

Subject: Land Use Planning and Approvals Amendment Bill 2022

Dear whom it may concern

Thank you for the opportunity to provide a submission to the draft LAND USE PLANNING AND APPROVALS AMENDMENT BILL 2022.

We note this amendment impacts on major projects, their pathway through the approval process and the scrutiny they receive along the way.

Given the impact these will have on all Tasmanians and the importance of making sure respondents can provide helpful, timely feedback to proposals we would like to make the following requests.

1. A Plain English summary is required to accompany each application and amendment to each application. This should describe the following in a way accessible to an interested lay person:
    i. Why the proposal or amendment to a proposal is needed
    ii. What difference will it make
    iii. How can people respond
2. We also further request clause 60TG (2) should be amended to additionally specify to consult with the relevant regional planning authority where such an authority exists.

Thank you for considering our requests. We are very happy to respond to any questions you may have and to assist in the further development of the matters covered in our submission.

Kindest regards,

[redacted]

[redacted]

Jenny Donovan

Program Planning Manager

Sheree Vertigan AM

Chief Executive Office

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From: Trevor Boheim
To: State Planning Office Shared Mailbox
Cc: Lyndal Byrne
Subject: Consultation Version of the Land Use Planning and Approvals Amendment Bill 2022
Date: Monday, 9 May 2022 3:00:56 PM
Attachments: image001.png

Hi

Thank you for the opportunity to provide comment on the draft Bill.

The following comments are provided on the Consultation Version of the Land Use Planning and Approvals Amendment Bill 2022.

- The TPC will be able to issue an 'enforcement certificate' when the development under the major project permit has been completed and which sets out the responsibilities of the planning authority for the enforcement of conditions or restrictions of the major project permit. Without any experience of the nature of conditions or restrictions that may be placed on a major project permit by the panel, the potential impacts of this ongoing obligation on Council as a planning authority are unknown. Council has a concern that it may be placed in a position where it is obliged to devote time and money for the enforcement of conditions or restrictions that it had no role in imposing and may ordinarily have no interest in if they were able to be imposed under a planning permit. If a relevant regulator considers it necessary to impose conditions or restrictions that are required continue to be met after the project is completed, it is considered that the ongoing responsibility for enforcing these should rest with the relevant regulator that imposed them in the first instance and not with the planning authority.

- The Panel must, if it imposes a condition or restriction on the major project permit, designate on the permit the relevant regulator(s) responsible for enforcement of the condition or restriction. A condition or restriction may however require plans, information, designs or other documents to be provided to the Panel or a planning authority (or the TPC if the permit has taken effect). A condition or restriction may also require actions or works to be carried out to the satisfaction of the Panel or a planning authority (or the TPC if the permit has taken effect). Again, without any experience of the plans, information, designs or other documents that might be required to be provided, or the actions or works it may have responsibility for determining to be satisfactory, the potential impacts of this on Council as a planning authority are unknown. It is unclear for what purpose these plans, information, designs or other documents would be provided to a planning authority and what actions or works the planning authority may have responsibility for assessment. It is considered that the review of plans, information, designs or other documents and the determination of whether works are satisfactory should rest with the Panel or the relevant regulator.

- The sections on significant amendment of a major projects permit are concerning given the halving of timeframes for assessment / response under the draft Bill. Of particular concern is the proposal to reduce the exhibition period under 60ZZB(5)(b) from 28 days to 14 days. The reasoning is that a 'significant amendment' is akin to a discretionary planning permit applicant, and therefore the exhibition time should reflect that. However, it's a significant amendment to a major project which could be a substantial amount of documentation to review and analyse (the Bridgewater Bridge major project is a good example as the detailed

work is likely to require substantial assessment). Therefore it is requested that the timeframe remain 28 days to facilitate the opportunity for a thorough assessment.

Regards

Trevor

TREVOR BOHEIM
Coordinator Planning Services
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Submission 4

TMEC
Tasmanian Minerals, Manufacturing & Energy Council

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Website: www.tmec.com.au

9 May 2022

State Planning Office
Department of Premier & Cabinet
GPO Box 123
HOBART TAS 7001

Via email: yoursay.planning@dpac.tas.gov.au

Dear Sir/Madam,

RE: Draft Land Use Planning and Approvals Amendment Bill 2022

The Tasmanian Minerals, Manufacturing and Energy Council (TMEC) welcomes the opportunity afforded it to provide feedback on the draft Land Use Planning and Approvals Amendment Bill 2022.

TMEC represents the state's minerals, manufacturing and energy industries and provides leadership, effective issues management and cooperative action on behalf of its members. Our mission is to promote the development of sustainable exploration, mining, industrial processing and manufacturing sectors which add value to the Tasmanian people and communities.

TMEC's membership base represents an important wealth creating sector within the Tasmanian economy. Minerals exports alone account for 64 percentage of Tasmania's commercial exports and is the foundation stone of many regional communities with 5,600 direct jobs.

TMEC is supportive of the amendments being proposed. The draft Bill identifies a number of the practicalities of a project and how a number of the administrative procedures which ensure rigour are not able to be effectively applied within the reality of managing a project. The amendments do not reduce the rigour while they reduce the delays which currently create substantial financial penalties on a project.

Thank you for the opportunity to provide feedback on the Draft Land Use Planning and Approvals Amendment Bill 2022. Please don't hesitate to contact us if you require further information.

Yours sincerely,

[redacted]

Ray Mostogl
Chief Executive Officer

Submission 5

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9 May 2022

State Planning Office
Department of Premier and Cabinet
Tasmanian Government
Via email: yoursay.planning@dpac.tas.gov.au

To whom it may concern

Draft Land Use Planning and Approvals Amendment Bill 2022

Thank you for the opportunity to provide feedback on the 'Draft Land Use Planning and Approvals Amendment Bill 2022', exhibited via Planning Reform Tasmania.

Overview

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

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

HIA Response

It is HIA's understanding following amendments to the Land Use Planning and Approvals Act (LUPA Act) and Major Projects Bill in 2020, further improvements to the process have been identified.

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

It is not HIA's intention to comment on the specific aspects of the Bill, with many of the provisions procedural in nature or not contentious. HIA provided comments on the Major Projects Bill in 2020, which are still relevant to this consultation. A copy of that submission is provided as an appendix to this letter.

Thank you for the opportunity to comment on the Draft Bill via public consultation. HIA would like to be kept informed of its progress in the lead up to the final Bill being ratified. In the interim should you wish to discuss any elements of our submission or have specific questions, please do not hesitate to contact **Roger Cooper – Senior Planning Advisor** on [redacted] or [redacted]

Yours sincerely
HOUSING INDUSTRY ASSOCIATION LIMITED

[redacted]

Stuart Collins
Executive Director
Tasmania

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11 May 2020

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

To Whom It May Concern,

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

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

Overview

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

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

HIA Response

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

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

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

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

Eligibility criteria

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

Planning Assessment Panels

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

- The implementation of independent Development Assessment Panels as a means of improving the planning process as they provide certainty, consistency and transparency in the decision making process.

- The setting of clear thresholds as to which applications should be considered by a Development Assessment Panel.

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

Timeframes

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

For example:

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

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

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

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

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

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

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

Yours sincerely
HOUSING INDUSTRY ASSOCIATION

[redacted]

Stuart Collins
Executive Director
Tasmania

Submission 6

From: Sypkes, Ailsa
To: State Planning Office Your Say
Cc: State Planning Office Shared Mailbox
Subject: RE: Draft Land Use Planning and Approvals Amendment Bill 2022
Date: Tuesday, 10 May 2022 11:57:19 PM
Attachments: [redacted]

Dear Brian

Thank you for the opportunity to comment.

TasWater has no objection to the proposed changes as set out in the draft Bill.

Kind regards

Ailsa Sypkes
GM Governance & Assurance

[redacted]

M [redacted]
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E ailsa.sypkes@taswater.com.au
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I acknowledge and pay respect to the Tasmanian Aboriginal community as the traditional and original owners and continuing custodians of the land in which TasWater resides and pay deep respect to Elders, past, present and emerging.

[redacted]

Australian Institute of Architects TAS

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

Date: 11.05.2022

By email to: yoursay.planning@dpac.tas.gov.au

To whom this concerns,

RE: DRAFT LAND USE PLANNING AND APPROVAL AMENDMENT BILL 2022 – RELATING TO MAJOR PROJECTS ASSESSMENT PROCESS

On behalf of the Tasmanian Chapter of the Australian Institute of Architects (the Institute), we would like to thank you for the opportunity to provide feedback on the Draft Land Use Planning and Approval Amendment Bill 2022, and the proposed amendments to the major projects assessment process. Our Chapter has reviewed the proposed amendments.

The Institute supports these amendments to the draft Bill and acknowledges that they have resulted from an initial project that has tested this new assessment process. We would like to make the following comment regarding part 5, which discusses granting permission for site investigations after a major project is declared.

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

5. *enable the Commission or assessment panel or a regulator to grant permission for site investigations to occur once a major project is declared and before the assessment criteria is finalised, in circumstances where the site investigation is necessary or must occur early to align with the seasonal survey requirements and the site investigations have been identified in the major project proposal*

In addition to the clause notes outlined, we suggest that a clear scope of site investigation needs to be established and approved, so that only work that is required is

undertaken. The nature of these investigations needs to be as minimally intrusive as possible.

More broadly, we strongly encourage the assessment panel to include a member who not only has expertise in the nature of the particular proposal, but who has expertise and experience in urban and landscape design, to ensure sound design outcomes that benefit the whole community. This will encourage a commitment to high-quality outcomes.

Once again, we thank you for engaging with us regarding this process to ensure best-practice assessment processes that result in high-quality outcomes for the community. We would be happy to be involved in further discussion, should you require. If we can be of any further assistance, please don't hesitate to contact us.

Kind regards,

Stuart Tanner
President, Tasmanian Chapter
Australian Institute of Architects

Jennifer Nichols
Executive Director, Tasmanian Chapter
Australian Institute of Architects

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11 May 2022

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

By email: yoursay.planning@dpac.tas.gov.au

Dear Madam or Sir

Comments on Draft Land Use Planning and Approvals Amendment Bill 2022

Australia ICOMOS writes to offer comments on the proposed amendments put forward in the Draft Land Use Planning and Approvals Amendment Bill 2022.

ICOMOS – the International Council on Monuments and Sites – is a non-government professional organisation that promotes expertise in the conservation of cultural heritage. ICOMOS is also an official Advisory Body to the World Heritage Committee under the World Heritage Convention. Australia ICOMOS, formed in 1976, is one of over 100 national committees throughout the world. Australia ICOMOS has over 750 members in a range of heritage professions. We have expert members on a large number of ICOMOS International Scientific Committees, as well as on expert committees and boards in Australia, which provides us with an exceptional opportunity to see best-practice internationally.

We acknowledge and support the benefits of reviewing and improving statutory processes. However, we wish to reinforce that any attempts at enhancing or modifying statutory requirements under the *Land Use Planning and Approvals Act 1993* should not compromise or threaten the protection of Tasmania's heritage. We make the following particular comments in relation to the amendments.

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

Australia ICOMOS supports this proposed amendment in principle with the understanding that the current Major Projects statutory timeframes may not meet the requirements of certain studies. While commencing such studies earlier may be expedient, the decision to do so should not compromise due process or other appropriate statutory frameworks or actions, such as consultations. This is particularly relevant in studies that relate to Aboriginal cultural heritage.

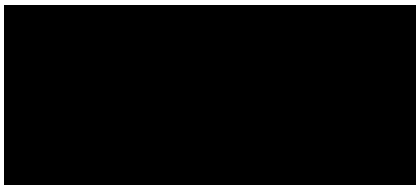
10. Introducing an additional process option for amending a major project permit

Australia ICOMOS supports this proposed amendment in principle. However, we note the imperative to ensure that all relevant stakeholders, particularly those who provided submissions to the original proposal, are contacted to advise of the lodged modification, and that consideration be given to whether or not the amendment may require additional or expanded studies. It is also noted that the guidelines for those amendments considered to be 'non-major' should be strictly adhered to and monitored for conformity.

❖

Australia ICOMOS would be happy to provide further comment if requested.

Yours sincerely



Professor Tracy Ireland M.ICOMOS, FSA
President

Submission 9

Jacobs

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12 May 2022

Attn: State Planning Office
Department of Premier and Cabinet

via email: yoursay.planning@dpac.tas.gov.au

Draft Land Use Planning and Approvals Amendment Bill 2022 – Major Projects Assessment Process

As a major delivery partner on the Bridgewater Bridge Project and other large projects, Jacobs commends the State Planning Office for its proposed amendments to the Draft Land Use Planning and Approvals Amendment Bill 2022.

The proposed amendments will support fairer outcomes for all stakeholders, minimising red tape processes whilst ensuring robust assessment processes remain.

Jacobs therefore provides this submission in support of the proposed amendments.

Regards,

[redacted]

Catherine Searle
Principal Consultant, Hobart Office Lead

[redacted]

Submission 10

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12 May 2022

Mr Brian Risby
State Planning Office
Department of Premier and Cabinet
GPO Box 123
HOBART TAS 7001

By email: yoursay.planning@dpac.tas.gov.au

Dear Mr Risby

REVIEW OF DRAFT LAND USE PLANNING AND APPROVALS AMENDMENT BILL 2022

Thank you for the opportunity to comment on the draft *Land Use Planning and Approvals Amendment Bill 2022* (the 'draft Bill'). ERA Planning and Environment ('ERA') are acting on behalf of West Coast Renewable Energy Pty Ltd.

ERA has reviewed the draft Bill, and believes that the proposed amendments are, broadly, an improvement on the existing major projects provisions of the *Land Use Planning and Approvals Act 1993*. A detailed review has however highlighted a small number of issues that require further consideration.

Fairer outcomes for landowners

Currently, section 60S prevents a Planning Authority from considering any development application within a declared project area for a major project, effectively sterilising the project area from all development, be it related to the project or not. This includes all minor developments or unrelated works that require a planning permit, even if the development will have no impact on the delivery of the major project.

The draft Bill attempts to amend section 60S to address this issue. The supporting information for the draft Bill acknowledges that the current operation of section 60S is problematic, and the wording does not reflect the intent of the provision, referring to the clause notes submitted to Parliament in 2020. While clarification of section 60S is supported, the proposed drafting remains unclear how it would operate effectively. It is recommended that section 60S should be further amended to clarify the extent to which landowners on declared land are prevented or restricted from securing planning approvals for other activities

Project areas, particularly for corridors linear infrastructure such as electricity transmission lines, can be extensive. Even the new Bridgewater Bridge had a much larger project area than just the bridge corridor itself. At the time of lodging a Major Project Proposal, the proponent may not have settled on a final design, or the design may change during the major project process to respond to representations. To provide suitable flexibility, the proponent may propose a larger project area than what is needed to avoid undertaking an amendment to the project area later.

The existence of section 60S, both in its current and proposed forms, raises valid concerns regarding the attractiveness and feasibility for proponents to enter into the major projects process. There are additional concerns regarding property rights and impeding on a landowner's ability to develop their own land consistent with the planning scheme

in effect. This is further exacerbated as a proponent is often not the landowner of all or any of the land within the declared project area. Supporting developments may also be required by the proponent within the declared project area, but it may not be appropriate or relevant to include these subservient developments as part of the major projects assessment.

Another concern is that there is no provision contained in section 60S or elsewhere in the Act to identify when section 60S ceases to have effect. To include a provision in the Act that sterilises large areas of land from future development – effectively in perpetuity – is inappropriate.

The proposed inclusion of a Certificate of Development Completion has merit but requires further refinement. The concept of a completion certificate provides certainty for the proponent, the Panel, and the community alike that the works are complete. It has added benefit that it neatly concludes the operation of the major projects provisions of the Act, including section 60S.

The proposed wording of section 60S(3B) states only that the Panel 'may' issue a Certificate of Development Completion. This wording should be strengthened, as there is no obligation for this certificate to be issued by the Panel at the end of the project. Should a certificate not be issued by the Panel, it remains uncertain if section 60S continues to apply.

It is proposed that:

- Section 60S, in its current form, is repealed in full.
- Instead, include a section that states the Planning Authority can still receive, assess, and determine development applications for any use or development that requires a permit within the project area.
    - Prior to the development application being considered valid, the Planning Authority must refer the development application to the Panel for consent. The Panel has 14 days to consider the referral, and must consider any comments from the proponent, the regulators, and the Minister.
    - A 'non-response' from the Panel to the Planning Authority's referral deems the development application as valid.
    - Should consent be withheld, the Panel must provide the Planning Authority with its reasoning.
    - The Planning Authority must refund 100% of application fees should the Panel refuse to grant consent for the development application.
    - The Planning Authority must notify the Panel, the proponent, and regulators of a development application within or adjacent to the declared Project Area, as if they were an adjoining landowner.
- Section 60S only applies to development applications made after the major project has been declared. It has no ability to be applied retrospectively on valid, but undetermined, development applications. Similarly, it has no impact on existing permits.
- To address the Certificate of Development Completion issue:
    - The proponent must advise the Panel that all required works are complete, and conditions have been met.
    - The Panel has 21 days to assess and determine.
        - If the Panel concludes the project is compete, then it must issue the proponent, the Planning Authority and affected landowners with the Certificate of Development Completion.

- If the Panel concludes that works or conditions remain outstanding, they must advise the proponent of what must be completed.

Information about sensitive matters

The identification and protection of sensitive matters, particularly relating to Aboriginal cultural heritage, is supported.

The proposed amendment in section 60CA(1) requires the proponent to contact regulators, making a sensitive matters request to each regulator. Pursuant to section 60CA(6), each regulator then has 35 days to determine if any sensitive matters exist.

It is envisaged that for most projects, most regulators will not make a sensitive matters declaration.

Under the proposed amendments, there is no requirement for regulators to respond to a sensitive matters request. This means that, should no sensitive matters exist, unless the regulator explicitly advises the proponent that no sensitive issues exist, the proponent must still wait the full 35 days. Including a provision relating to a 'non-response' will help remove any confusion surrounding the operation of the Act or the validity of the major projects application and help streamline the assessment process.

It is proposed that

- The proponent must still contact the regulators
- Regulators have 7 days to advise the proponent whether they have an interest in relation to sensitive matters
- If no response is received from the regulator within 7 days, the proponent can assume that no sensitive matters exist and continue with the major project process.
- If the regulator advises that they have an interest, they have 21 days from the proponent's initial notification to provide advice to the proponent and the Minister.

Additional time for the Panel to consider advice from a regulator

It is acknowledged that, on occasion, the Panel may require additional time to consider advice from a regulator. While the rationale is understood, the proposed amendments add a month to the major projects process

The proposed amendments to section 60ZN(2) to allow for an extension from 28 to 42 days to allow the Panel to consider advice from a regulator are supported, but only when it can be demonstrated that the additional time is required. The extension must be granted by the Minister, and not at the sole discretion of the Panel, and reasoning for the extension must be provided to all parties.

Similarly, it is recommended that the 14 days referred to in the current section 60ZZA are kept as existing, but the period may be extended to 28 days with the permission of the Minister, if the need to extend that period can be demonstrated.

Inclusion of land that sits outside the declared major project area

Currently, there is no mechanism to include additional land that sits outside the declared project area. This may occur if the design needs to be modified to respond to an issue raised in a representation/hearing, or if land has been acquired.

This means that either a separate development application is required to be lodged, or a new major project process is required to be commenced.

The amendment provides a pathway for the declared project area to be amended to include additional land. The additional area of land must be "small, relative to the area of land to which the declaration of a major project relates".

The amendments are generally supported. However, there is ambiguity surrounding what constitutes a "small" amendment, which should be clarified.

Preliminary investigation work

The proposed inclusion of section 60SA to allow the Commission, the Panel, or a regulator to permit the proponent to undertake preliminary site investigations is welcomed. However, section 60SA does not include a specific timeframe for the Panel to make a decision on whether to grant or refuse a site investigation permission.

To support project planning, it is recommended that this section is amended to provide a statutory timeframe for the Panel to determine whether to permit preliminary investigative works.

Summary

Overall, the proposed amendments will improve the major projects process. There are some elements that will add to the overall timeframes of the major projects process - specifically, the requirement to notify regulators prior to submitting a Major Project Proposal to the Minister so that sensitive issues can be identified; and additional timeframes for the Panel to consider advice from regulators or to finalise the initial assessment report.

The current process is more than 350 days for assessment under major projects, with the overall impact of the proposed amendments is that a period of least 35 days to more than two months is added to this timeframe. This is a further disincentive for proponents to utilise the major project process, meaning proponents may pursue less suitable approval pathways. This is particularly the case for renewable energy developments, which have a well-established Level 2 pathway that, in some circumstances, provides for quicker approval timeframe.

The current and proposed operation of section 60S is problematic, and does not achieve its objective. More importantly, its existence deters potential proponents from considering the major projects process as their preferred approval pathway. The draft amendment needs further refinement, and we have recommended amendments that – in our view – will increase the attractiveness of the major projects process for proponents, while restoring property rights for affected landowners.

Thank you for the opportunity to comment on the draft Bill. Should you have any further questions regarding our submission, please do not hesitate in contacting us.

Yours sincerely,

Emma Riley, RPIA (Fellow), GAICD
Director

Submission 11

City of HOBART

Enquiries to: [redacted]
[redacted]
: coh@hobartcity.com.au
Our Ref: KA

12 May 2022

Via Email: yoursay.planning@dpac.tas.gov.au

Dear Colleagues

DRAFT LAND USE PLANNING AND APPROVALS AMENDMENT BILL 2022

A response on behalf of the City of Hobart to the proposed amendments to the *Land Use Planning and Approvals Acts 1993* follows.

Insufficient notice to the Council as asset owner

The applicant is required to contact "relevant regulators" before making a proposal for a declaration for a major project. This phrase is defined in s.60B as "a person or entity that is a relevant regulator in relation to the major project under section 60Z". Section 60Z includes:

(a) the EPA Board;

(b) any gas pipeline licensee;

(c) TasWater;

(d) Tasmanian Heritage Council; and

(e) other legislative bodies.

It does not include Councils in their capacity as:

(a) stormwater manager pursuant to the *Urban Drainage Act 2013*; or

(b) highway authority pursuant to the *Local Government (Highways) Act 1982*.

Council stormwater and highway assets are commonly in or on private land. While Councils appear to have control over the ability to have a project declared to be a major project, in that the consent of a Council (if it owns the land) is required by section 60P(2)(b)), a Council does not have that same control if it is only the occupier or administrator of land (see section 60P(3)(b)) – only notice is required to be given in these circumstances. This would leave a Council being effectively excluded from the assessment process since it is not a "relevant regulator" in its capacity as stormwater manager and highway authority where those assets are in or on private land.

This also means that Councils are not sufficiently consulted in circumstances where additional land is included in a proposal, where there is a significant amendment to a major project permit which has been proposed, or where the final assessment of the completed works is being carried out – steps which are introduced by this amending legislation.

This concern was raised in the City of Hobart's previous submission on the major projects legislation and remains a valid concern. There is no justification for giving Councils in these capacities less of a priority than entities such as TasWater.

Fees

The fees which may be charged in relation to major projects are specified in section 60ZZR. There is no allowance for Councils and since there is no application to the Council, section 205 of the *Local Government Act 1993* does not provide a basis to charge fees. If Councils were included as "relevant regulators" then they would be able to charge by the hour for time spent on a proposal.

This is of particular concern given that section 60ZZP is being amended to introduce subsection (10), which allows for conditions to be imposed for the Council as planning authority to assess further "plans, information, designs or other documents". Councils also have an enforcement role, given section 48AA: A planning authority must, within the ambit of its power, enforce the observance of any condition or restriction to which a major project permit is subject.

Given that major projects are the most significant and complex, to impose an obligation and seemingly restrict the ability to impose fees places a burden on ratepayers and an unreasonable expectation of Councils with limited resources and expertise. There should be an allowance for fees which would ensure that Councils were able to recover the cost of engaging external consultants, if necessary, to assess aspects of major projects and to support the enforcement process.

Timeframes

There is lack of clarity about the timeframe for Councils to assess documents pursuant to the proposed section 60ZZP(10)(a). If the expectation is that the time limits in section 60, that is, 15 business days to request further information and 20 business days to assess, then may be completely unfeasible in the circumstances of these significant and complex proposals, particularly if Councils are required to engage external consultants to assist with the assessment.

Amendment decision

Section 60ZZZAB(5) does not include Councils, so they will not necessarily receive notice of an amendment to a major project permit.

No ability to amend land for other applications

It is frustrating to see proposed amendments to this legislation to allow for major projects to be amended, with no corresponding amendment to planning applications pursuant to s.57 or 58. It is noted that the Supreme Court (Tomaszewski v Hobart City Council [2020] TASSC 48) has stated that it is not possible to amend applications. Allowing amendments had been done historically by the Council but we are no longer able to do so, given the Supreme Court decision. So if a developer wants to introduce new land, they need to make a whole new application. This is inefficient and unproductive, and creates “red tape”. There is no reason why applications couldn’t be amended if there was a legislative pathway to do so; albeit there would need to be an ability for Councils to request further information, appropriate adjustments to the statutory clocks, and protections for the public to be able to have sufficient ability to object or support amended proposals.

Yours faithfully

(Neil Noye)
DIRECTOR CITY LIFE

Submission 12

tasmanian conservation trust inc

10 May 2022

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

yoursay.planning@dpac.tas.gov.au

Draft Land Use Planning and Approvals Amendment Bill

1 – Amendments relating to sensitive material

While the stated intention of these amendments is to prevent the disclosure of sensitive information about aboriginal heritage or environmental matters (threatened species locations) where this could lead to damage, it could also mean that important information could be withheld from the public in the assessment process and limit their ability to consider the issue and provide input. The amendments need to be worded so that non-disclosure of certain information is shown to be necessary and cannot create serious disadvantage for those who are making representations. The Threatened Species Protection Act provides for a process that the major projects legislation should be aligned with.

The Tasmanian aboriginal community needs to be actively consulted on how the major projects legislation needs to be amended to better address their interests broadly and in relation to this issue.

2 – Updating references to current legislation

No comment.

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

No comment.

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

No comment.

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

The amendment will allow for permission to be granted for site investigations before the finalisation of the assessment criteria. There seems to be a logical problem with this proposal because, until the assessment criteria are finalized it cannot be certain what matters need to be assessed and may require site investigations. Site assessments may be approved, resulting in environmental damage, that are found to be unnecessary. Examples are provided in the Infosheet such as assessments that are dependent upon seasons or conditions. These factors occur very regularly in natural asset assessments and can easily be factored into a proponent's project planning without making significant delays. The proposed amendment is not supported.

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

The proposed amendment would allow for additional land to be added to a major project declared area. The proposed amendment is not supported as there is no way to determine what is meant by a "small" amount of additional land. Also, the Minister is required to make the decision whether to add the additional land but is not required to follow advice from the panel or others regarding whether the additional land is small in size and is necessary to form part of the project. This is a recipe for anything goes. The major project declared area could expand without any reasonable limit subject to a minister's whim

7 – Clarifying that the process continues if a regulator does not provide a response when required to do so

The proposed amendment may lead to unacceptable outcomes where a relevant regulator has been unable to meet the notice deadline for justifiable reasons such as needing more time to obtain information. Requiring that the process continues may have serious consequences where critical information is not provided to the assessment process by regulators. Clearly an option that should have been considered was to provide regulators with an extension where they can show a good reason for it.

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

On the surface of it this is a positive change that can only help the panel to properly consider input from regulators. However the proposed timelines seem unnecessarily short and there needs to be an option for extensions.

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

The proposed amendment would allow, for example, for an impacted landowner to be notified later in the process where they had not been notified earlier. It is very concerning that the Infosheet admits that the legislation is very complex and prescriptive and therefore prone to such errors. Providing a process for correcting such errors is important (putting aside how the legislation might also be amended to ensure this doesn't occur earlier) but the proposal to allows only 7 days for a person to respond to the potential impact of a major project on their land is clearly inadequate. This might be the first time the land owner has become aware of the major project and they need to be ready to provide a response in just 7 days –

who thought this was acceptable should explain themselves. The TCT opposes the proposed amendment.

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

The proposed amendments will establish a new assessment process for amendments to a major project that don't fit into the current definition of "minor amendments" but are not seen as significant enough to warrant going through the full major project amendment process. This is referred to as middle pathway.

On face value the proposal makes sense as any project may be changed in ways that are not minor or major and need an assessment process that suits the scale or seriousness of the proposed change. The problem with the proposed approach is there will be potential for "major changes" to slip through under the guise (deliberate or not) of being an amendment suited to the middle pathway. The infosheet outlining this proposed amendment says that the decision maker can only allow a change to a major project to proceed through this middle ground if it can be assessed under the original assessment criteria. But the decision maker could make a wrong judgement in this regard or not take into account relevant facts and the potential for this to be found out, challenged or corrected is very limited. There is no proposal for public comment of a proposed amendment that is to be assessment under the middle pathway. The notice of the proposed amendment is only given to a limited number of people with an interest and this is not sufficient.

The proposed amendment is not supported.

Yours sincerely

[redacted]

Peter McGlone
Chief Executive Officer
Tasmanian Conservation Trust
[redacted]
[redacted]

#PlanningMatters

State Planning Office
Department of Premier and Cabinet
GPO Box 123
Hobart TAS 7001
By email: yoursay.planning@dpac.tas.gov.au

12 May 2022

To Whom It May Concern,

RE: *Draft Land Use Planning and Approvals Amendment Bill 2022*

Thank you for the opportunity to comment on the *Draft Land Use Planning and Approvals Amendment Bill 2022*.

The Planning Matters Alliance Tasmania (PMAT) is a growing network of almost 70 community groups from across Tasmania advocating for a strategic, sustainable, transparent and integrated planning system which will serve to protect the values that make Tasmania a special place to live and visit.

PMAT raised many concerns when the *Land Use Planning and Approvals Act 1993* was amended in 2020 to introduce a new major projects assessment process.

This new major projects planning process diminishes community involvement in the assessment of large and complex projects.

Community groups across Tasmania were clear in their opposition to the new major projects assessment process, highlighting their key concerns, including:

- a loss of community rights to appeal bad development decisions;
- limits on meaningful community input to major projects assessments;
- the sidelining of the trusted and independent Tasmanian Planning Commission;
- the side-stepping of parliamentary oversight for State significant projects;
- almost any project would be eligible to be declared a major project; and
- the Planning Minister has unchecked power to declare a development a 'major project' thereby removing it from the usual planning process.

These changes fundamentally undermine our democracy.

#PlanningMatters

As per the Planning Reform website '*Applying the new major projects assessment process to the new Bridgewater Bridge project identified where some improvements to the process could be made and the Government is now seeking to address these with the draft Land Use Planning and Approvals Amendment Bill 2022'*.

PMAT endorses the attached submission drafted by the Environmental Defenders Office regarding the *Draft Land Use Planning and Approvals Amendment Bill 2022*.

We share the EDO's concerns and endorse their ten recommendations relating to:

- Amendments relating to the non-publication of "sensitive" information;
- Amendments relating to the electronic disclosure of information;
- Amendments relating to granting permission for site investigations after a major project has been declared;
- Amendments to allow for additional land to be added to a major project declared area;
- Amendments clarifying that the process continues if a regulator does not provide a response when required to do so;
- Amendments to allow for the correcting of minor administrative errors before a final decision is made; and
- Amendments introducing an additional assessment process option for amending a major project permit.

The *Draft Land Use Planning and Approvals Amendment Bill 2022* also adds greater complexity to already complex planning laws that make planning beyond the comprehension of most Tasmanians.

In November 2021, the Solicitor General cited changes to Tasmania's planning laws as 'complex and prescriptive' which is disappointingly inconsistent with the Tasmanian Government's pledge to make planning rules 'simpler, cheaper and fairer'.

Yours sincerely,

Sophie

Sophie Underwood
State Coordinator - PMAT
[redacted]
[redacted]
www.planningmatterstas.org.au

Environmental Defenders Office

Submission on the draft Land Use Planning and Approvals (Amendment) Bill 2022

12 May 2022

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

Environmental Defenders Office is a legal centre dedicated to protecting the environment.

www.edo.org.au

Submitted to:

Department of Justice
Office of the Secretary
GPO Box 825
Hobart TAS 7001

By email: haveyoursay@justice.tas.gov.au

For further information, please contact:

Claire Bookless
Managing Lawyer – Tasmania
Environmental Defenders Office Ltd
[redacted]

A Note on Language

EDO acknowledges that there is a legacy of writing about First Nations people without seeking guidance about terminology. In this submission, we have chosen to use the term "First Nations" to refer to Aboriginal and Torres Strait Islander peoples across Australia. We also acknowledge that where possible, specificity is more respectful. When referring to Tasmanian Aboriginal / palawa / pakana people in this submission we have used the term "Tasmanian Aboriginal". We acknowledge that not all Aboriginal people may identify with these terms and that they may instead identify using other terms.

Acknowledgement of Country

The EDO recognises First Nations peoples as the Custodians of the land, seas and rivers of Australia. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present and emerging, and aspire to learn from traditional knowledge and customs so that, together, we can protect our environment and cultural heritage through law.

In providing these submissions, we pay our respects to First Nations across Australia and recognise that their Countries were never ceded and express our remorse for the deep suffering that has been endured by the First Nations of this country since colonisation.

Executive Summary

While Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on the draft Land Use Planning and Approvals (Amendment) Bill 2022 (**Bill**), within the same period for consultation on the Bill, we note that the Government has also been consulting on a large number of issue and proposals relevant to Tasmania's environment, including but not limited to:

- The Consultation Paper on the new Aboriginal Cultural Heritage Act
- The draft Police Offences Amendment (Workplace Protection) Bill 2022
- Proposed amendments to *Environmental Management and Pollution Control Act 1994* (Tas)
- The 10 Year Salmon Growth Plan
- Proposed Aquaculture Standards
- The Future of Local Government

The Government also recently passed amendments to Tasmania's forestry laws, and while those amendments were not the subject of public consultation, EDO received numerous inquiries about the changes. Given the complex nature of the Bill, the Government should have taken account of these other consultation and legislative processes in deciding when to seek public comment upon the Bill.

In the last Solicitor General's annual report, Mr Michael O'Farrell SC noted:[1]

> A statute should communicate the law efficiently and effectively to those who have recourse to it. This does not just mean lawyers, it means citizens and institutions who must obey legal commands. While some laws convey difficult legal concepts that are not capable of expression in simple language, that is not true of all laws. The Parliament's endeavour should be to make laws that ordinary people can readily understand.
>
> The complex and prescriptive nature of the provisions of some Tasmanian statutes do not lend themselves to this aspiration. For example, an ordinary person, unskilled in the law,

[1] Crown Law (Tasmania), Office of the Solicitor General, Solicitor-General Annual Report 2020-21, accessed at: https://www.crownlaw.tas.gov.au/solicitorgeneral/annualreport

> would have great difficulty understanding Schedule 6 of the *Land Use Planning and Approvals Act 1993*. I have spent many many hours reading it and I still find some of its provisions very difficult to construe.

It is EDO's respectful view that the Bill adds a great deal of further complexity to the Act about which Mr O'Farrell SC rightly complained: the *Land Use Planning and Approvals Act 1993* (**LUPA Act**).

EDO supports the intent (if not necessarily the drafting) of a number of the amendments proposed in the Bill, such as the ability for documents to be disclosed electronically to relevant persons and extended timeframes for the major projects Assessment Panel (**Panel**) to respond to notices from regulators. However, we consider that, on the whole, **the changes proposed under this Bill do not improve the level of public participation in the major projects assessment process, nor do they increase the likelihood that ordinary people would understand it.**

The significant concerns raised in this submission also indicate that the Tasmanian major projects assessment process may be unlikely to meet national environmental standards for the purpose of any future accreditation of assessment and approval processes under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**).[2]

In the following submission, EDO responds to the Bill and the proposed:

1. Amendments relating to the non-publication of "sensitive" information
2. Amendments relating to the electronic disclosure of information
3. Amendments relating to granting permission for site investigations after a major project has been declared
4. Amendments to allow for additional land to be added to a major project declared area
5. Amendments clarifying that the process continues if a regulator does not provide a response when required to do so
6. Amendments to allow for the correcting of minor administrative errors before a final decision is made
7. Amendments introducing an additional assessment process option for amending a major project permit

A summary of EDO's recommendations with respect to the Bill can be found below.

Recommendation 1: In the Bill, make it clear that a "sensitive matters notice" may only relate to information relating to a threatened species where that information has been declared under s 59 of the *Threatened Species Protection Act 1995* (Tas).

Recommendation 2: To allow for informed public comment on a major project proposal, in the Bill clarify that any "sensitive matters statement" must provide a broad indication of the subject matter of the "sensitive matters notice" where it deals with threatened species, and an indication of the potential impacts of the major project on those species.

Recommendation 3: In the Bill, clarify that a "sensitive matters notice" only applies to information disclosed by the major project proponent, the Minister, or a relevant regulator, and not to information already within the public domain (i.e. information

[2] Previous analysis of Tasmanian laws by EDO has found many laws do not meet national standards for the purposes of accreditation. See also: Devolving Extinction: The risks of handing environmental responsibilities to state & territories - Environmental Defenders Office (edo.org.au)

known or held by a member of the public), and delete proposed s 60CA(8)(d).

Recommendation 4: In the Bill, provide a meaningful opportunity for representatives, chosen by the Tasmanian Aboriginal community to: (a) be consulted at a very early stage of the process about any cultural heritage in or on the land or waters the subject of a major project proposal; and (b) provide their free, prior and informed consent to the major project proposal, including about the release of any culturally sensitive information (as determined by the representatives).

Recommendation 5: In the Bill, proposed s 60ZZZH (2) be changed to allow for a relevant person to elect to be provided with hardcopies of relevant documents.

Recommendation 6: Do not proceed with amendments in clauses 8, 10, 19, and 20 of the Bill.

Recommendation 7: Do not proceed with amendments in clauses 9, 11, 12, 13, 18 and 25 of the Bill.

Recommendation 8: In the Bill, the amendments proposed in clause 15 should include an opportunity for the relevant regulator to seek an extension of time to provide their notice, and if granted, a corresponding extension of time should be given to the Panel to complete the steps under s 60ZK of the LUPA Act.

Recommendation 9: Do not proceed with amendments in clause 25 of the Bill.

Recommendation 10: Do not proceed with amendments in clauses 28, 29 or 30 of the Bill.

1. Amendments relating to the non-publication of "sensitive" information

The Information Package on the Bill (**Information Package**) states that, currently, the major projects process provided under the LUPA Act requires the publication of information relevant to a major project even if that information reveals "sensitive" information, such as information about the location or significance of Aboriginal cultural heritage or threatened species.

Amendments to introduce a new s 60CA to the LUPA Act are proposed to respond to this issue. In particular, it is proposed that under this new section:

- proponents of a major project must first lodge a "sensitive matters request" with "relevant regulators";
- the relevant regulators are empowered to provide the proponent with a notice outlining whether the regulator considers that information provided either by the proponent or the regulator under the major projects assessments process is likely to contain a "sensitive matter";
- a "sensitive matter" is defined in proposed subsection (5) as follows:

> (5) For the purposes of this section, a category of information is likely to contain sensitive matter (sic) if –
>
> (a) information within the category of information (sic) is culturally sensitive; or
>
> (b) were (sic) information within the category of information (sic) available to members of the public, there may be a risk of harm to members of a cultural group, an object or an organism.

- if information concerning a major project is the subject of a notice given by a relevant regulator, then that information cannot be made publicly available through the

publication of proposal documents; discussions between a member of the public and the proponent, regulator, Minister or Assessment Panel; or in any public meetings or hearings; or in proceedings before TasCAT or a Court that is open to the public;

- a major project that is subject to a "sensitive matters" notice from a regulator will be required to publish a "sensitive matters statement" when the Project is declared and with any document about the Project required to be published under the LUPA Act. The statement will indicate that the major project documents include information concerning a sensitive matter that cannot be viewed by the public or discussed at meetings or hearings relating to the Project.

Sensitive information concerning threatened species

EDO accepts that there may be rare occasions where it is appropriate to keep the exact location or nature of threatened species discrete in major project documentation that is publicly released to protect them from harm. However, the proposed amendments outlined in the Bill do not appear to cross-reference to or align with s 59 of the *Threatened Species Protection Act 1995* (Tas). Under that Act, "information about a listed taxon of flora or fauna or any plan, agreement, determination or interim protection order" can be declared confidential by the Secretary (with the Minister's approval), so that any person who receives information declared to be confidential can only use that information to "the extent necessary to perform his or her duties or for the purpose of legal proceedings". This is not in alignment with the Bill, as the Bill proposes to restrict references to certain threatened species information potentially even in TasCAT or other legal proceedings.

Under the Bill, no guidance is given about how a relevant regulator is to determine what is an acceptable risk of harm to an organism arising from the publication of the material may be, for example, through consultation with the Scientific Advisory Committee under the *Threatened Species Protection Act 1995* (Tas).

Based on the current drafting of the clause, it is unclear whether the public will generally be made aware that a sensitive matters notice relates to information concerning a threatened species. For example, through a statement that a threatened species may be impacted by the major project (without disclosing the precise location of the specimens within a major project area).

The broad discretion given to relevant regulators to determine what issues outlined in major project documentation should not be publicly disclosed leaves open the possibility that, while there may be a risk of harm to threatened species from the publication of documentation about that matter, a potentially greater risk of harm to species arising from a major project itself might not be disclosed to the public. This would be a perverse outcome, as these significant risks are the very issues that are likely to be the subject of strong public representations about the proposal.

Indeed, where a member of the public is independently aware of threatened species potentially impacted by the major project and which are the subject of a sensitive matters notice, those people should not be restrained from making representations, submissions or having discussions about those matters throughout the major projects assessment process or in related TasCAT or Court hearings. However, as currently drafted, the proposed provisions appear to operate to do just that.

For these reasons, **EDO does not support clause 6 in its present form** and makes the following recommendations to improve its clarity and operation.

Recommendation 1: In the Bill, make it clear that a "sensitive matters notice" may only relate to information relating to a threatened species where that information has been declared under s 59 of the *Threatened Species Protection Act 1995* (Tas).

Recommendation 2: To allow for informed public comment on a major project proposal, in the Bill clarify that any "sensitive matters statement" must provide a broad indication of the subject matter of the "sensitive matters notice" where it deals with threatened species, and an indication of the potential impacts of the major project on those species.

Recommendation 3: In the Bill, clarify that a "sensitive matters notice" only applies to information disclosed by the major project proponent, the Minister, or a relevant regulator, and not to information already within the public domain (i.e. information known or held by a member of the public), and delete proposed s 60CA(8)(d).

Sensitive information concerning Aboriginal cultural heritage

In making the following submissions about clause 6 of the Bill, EDO acknowledges that it cannot and does not speak on behalf of Tasmanian Aboriginal people. We make the following comments as experts in planning and environmental law with experience in seeking to protect Tasmanian Aboriginal cultural heritage through the law.

EDO supports "culturally sensitive" information not being publicly disclosed in major project documents. However, under the proposed amendments in the Bill, no definition of "culturally sensitive" is provided nor does it provide any information about how information is determined to be "culturally sensitive", or indeed whether the Tasmanian Aboriginal community will have any say in that decision. The Information Package refers to Aboriginal Heritage Tasmania (**AHT**) as if it is a "relevant regulator" for the purposes of the LUPA Act.[3] Currently, AHT is not a representative body for the Tasmanian Aboriginal community, rather it is a non-statutory body that reports to the Minister administering the *Aboriginal Heritage Act 1975* (Tas). The proposal for AHT (or the Minister administering the *Aboriginal Heritage Act 1975* as the case may be), and not the Tasmanian Aboriginal community, to have a role in deciding whether and when major project information contains culturally sensitive information does not appear to be in accordance with the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**) principles of free, prior and informed consent and of self-determination.[4]

The Tasmanian Government is presently undertaking consultation for a new Aboriginal Cultural Heritage Act. The proposed form of the new s 60CA appears to presuppose the

[3] Despite the content of the Information Package, it is unclear if AHT is a "relevant regulator" for the purposes of the LUPA Act as it has no statutory role in the making of decisions under the *Aboriginal Heritage Act 1975* (Tas), rather the issue of permits under that Act is by the Minister on the advice of the Director of National Parks and Wildlife.

[4] Further discussion about the UNDRIP principles and how they should be applied in the case of Aboriginal cultural heritage can be found in EDO's recent Submission in response to a new Aboriginal Cultural Heritage Act dated 6 May 2022, which can be accessed here: https://www.edo.org.au/publication/edo-submission-on-a-new-aboriginal-cultural-heritage-protection-act-tasmania/.

outcome of that consultation will be that AHT will play a role as a regulator with respect to Aboriginal cultural heritage. The Bill also does not factor in any changes required to allow for early involvement of the Tasmanian Aboriginal community in proposals that are likely to have a significant impact on cultural heritage.

In the absence of the new Aboriginal Cultural Heritage Act, any reforms to the major projects process proposed to protect "culturally sensitive" information from public disclosure need to provide a meaningful opportunity for representatives, as chosen by the Tasmanian Aboriginal community, to be consulted at a very early stage of the process about any cultural heritage in or on the land or waters the subject of the proposal, and provide an opportunity for them to provide their free, prior and informed consent to the major project proposal and the release of any culturally sensitive information (as determined by the representatives) relating to it.

Recommendation 4: In the Bill, provide a meaningful opportunity for representatives, chosen by the Tasmanian Aboriginal community to: (a) be consulted at a very early stage of the process about any cultural heritage in or on the land or waters the subject of a major project proposal; and (b) provide their free, prior and informed consent to the major project proposal, including about the release of any culturally sensitive information (as determined by the representatives).

2. Amendments relating to the electronic disclosure of information

The Information Package notes that there are several provisions of the major projects process under the LUPA Act that require the delivery of hardcopy documents to certain people, which can result in very large bundles of documents being distributed to hundreds of people. The Information Package states:

> 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**. (emphasis added)

The Bill proposes to amend ss 60ZL, 60ZZB and 60ZZZH to "allow electronic exchange of documents throughout the process".

Contrary to what is indicated in the Information Package, EDO considers that the proposed amendments to s 60ZZZH do not make it clear that a person might have a choice between being given an electronic copy of a document or a hard copy. Rather, the proposed new subsection (2) of s 60ZZH provides that a notice is deemed to have been given to a person if the person is told "a means by which the person may view, or download a copy of, the document or information at a website specified in the notice, using a means specified in the notice" and "the person may view, or download a copy of, the document or information at the website specified in the notice, using the means specified in the notice." In EDO's view, proposed subsection (2) is unclear and insufficient to allow for a person to elect to obtain hard copies of relevant documents. EDO considers that such an option must be provided for those people who may lack access to the internet or a computer, or the ability to travel to a physical location to view the relevant documents.

Recommendation 5: In the Bill, proposed s 60ZZZH (2) be changed to allow for a relevant person to elect to be provided with hard copies of relevant documents.

3. Amendments relating to granting permission for site investigations after a major project has been declared

Amendments are proposed in the Bill to provide for the grant of early site investigation permissions by the Executive Officer of the Tasmanian Planning Commission or the relevant regulator before the finalisation of major project assessment criteria.

The proposed amendments to allow for such early site investigation permissions are **not supported** by EDO, as they presuppose what might be the information required to respond to the assessment criteria and further complicate what is a very complicated process. If a major project proponent is aware that certain likely site investigations can only be undertaken in certain seasons or conditions, they can and should plan for that within the project schedule. They also have the option of seeking the relevant permissions for those assessments separately to the major project process.

Recommendation 6: Do not proceed with amendments in clauses 8, 10, 19, and 20 of the Bill.

4. Amendments to allow for additional land to be added to a major project declared area

The Information Package contends that amendments to the LUPA Act are required to allow:

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

As currently drafted, the Bill does not quantify what would amount to a relatively "small" amount of "additional area or land" proposed to be added to a major project declared area. Furthermore, the amendments proposed in the Bill to allow for this additional land to be added to a major project do not bind the Minister to follow the advice received from the Panel or the Commission, meaning that even if those bodies considered that the additional area was not relatively "small", "appropriate" and/or "necessary and desirable" to form part of the Project, the Minister could still decide to add that area to the major project declaration.

EDO has concerns that the proposed provisions could be subject to misuse as they potentially allow for the creep of major projects onto adjoining land, including after the major project assessment processes have concluded. On which point, EDO is extremely concerned that it is contemplated both in the Information Package and in the Bill, that the expansion of the area of a major project could potentially be treated as a "minor amendment" under s 60ZZX(3) of the LUPA Act.

EDO also holds concerns about whether the Minister can make a properly informed decision on whether the original assessment criteria are still suitable to assess the impacts of the proposed on the additional land, where all members of the public have not

had an opportunity to comment on whether those criteria address all the issues relevant to that additional land.

Therefore, EDO does **not support** the amendments proposed in clauses 9, 11, 12, 13, 18 and 25 of the Bill.

Recommendation 7: Do not proceed with amendments in clauses 9, 11, 12, 13, 18 and 25 of the Bill.

5. Amendments clarifying that the process continues if a regulator does not provide a response when required to do so

The Information Package states that:

> The major projects assessment process has a rigid requirement that the regulators must give notice of their assessment requirements or a notice of no assessment requirements or a notice recommending revocation of the major project, as required by section 60ZA of the *Land Use Planning and Approvals Act 1993* (the Act).
>
> If a regulator does not provide any form of notice at all then the assessment panel is placed in an uncertain quandary as to whether they can continue with the process because an element of the process has not been satisfied (which is the giving of a notice from the regulator to the panel).
>
> A regulator not responding would also create uncertainty as to whether they wish to become a participating regulator in the process or not.
>
> There is also potential for the proponent to receive a major project permit that is open to legal challenge on this matter.

Amendments are proposed to s 60ZA of the LUPA Act so that where a regulator does not provide a notice of their assessment requirements to the Panel within the required 28 days, they are taken to have no assessment requirements and do not wish to be involved in the process. An exception is made to this general rule for the EPA Board, as it is generally required to be involved in assessments due to the Assessment Bilateral under the EPBC Act.

EDO considers the proposed amendments will provide an unsatisfactory outcome where a relevant regulator has been unable to meet the notice deadline, for example where they require further information to determine their assessment requirements. Given the complexity of major project proposals, the period of 28 days may not be a sufficient amount of time for certain regulators to make a decision as to their assessment requirements or involvement. In these circumstances, the regulators should be provided with an opportunity to seek an extension of time.

Recommendation 8: In the Bill, the amendments proposed in clause 15 should include an opportunity for the relevant regulator to seek an extension of time to provide their notice, and if granted, a corresponding extension of time should be given to the Panel to complete the steps under s 60ZK of the LUPA Act.

6. Amendments to allow for the correcting of minor administrative errors before a final decision is made

The Information Package states:

> The major projects process is highly prescriptive, lengthy and complex, with many administrative requirements to act within set timeframes or to consult with a potentially wide range of people. It is plausible that during such a long and complex process, an error or oversight could occur with a decision maker not responding within a set timeframe, or an individual not receiving an appropriate notification during a particular stage in the process.
>
> If a mistake with administering the process occurs during the process, the proponent could be left with a permit that is open to legal challenge. Naturally, major mistakes should cause the process to be redone for any of those aspects which were not done properly. However, if a mistake is minor in nature then the intent of the process should be that the major project permit is not undermined as a result.
>
> The current process does not enable the assessment panel the ability to correct any administrative error that may have occurred during the process.

To respond to these issues, amendments are proposed in the Bill to allow the Panel to give notice to people who should have been notified about a major project but were not and to provide those people so notified 7 days to make a representation to the Panel about "whether a major project permit ought to be granted in relation to the major project" and/or "any conditions or restrictions that the person considers ought to be imposed on such a permit if granted ". The proposed amendments also provide that the provision of a notice by the Panel outside of a prescribed timeframe does not invalidate the notice.

EDO agrees that the major project 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." We further agree that there is a possibility that the failure to abide by some of the prescriptive requirements might leave project permits open to legal challenge. However, in our view, this is no reason to justify the provision of only 7 days to respond to a major project proposal to members of the public or regulators who should have previously been notified about or consulted about the proposal, but through no fault of their own, were not. The timeframes for representations provided under the proposed amendments are significantly less than other timeframes provided for the provision of representations through the ordinary course of a major project assessment. Furthermore, the provision of a notice under the proposed s 60ZZMB(4) after any Panel hearings, would deprive a person of an opportunity to play an active role in the hearings, which may have significant implications for the outcome of a Panel assessment.

For all these reasons, EDO **does not support** the amendments in proposed clause 25.

Recommendation 9: Do not proceed with amendments in clause 25 of the Bill.

7. Amendments introducing an additional assessment process option for amending a major project permit

Presently, the LUPA Act does not provide for a middle ground assessment pathway for proposed amendments to major project permits that do not fit within the meaning of a "minor amendment" or are not in nature of typographical errors. Rather, all such amendments must go through an assessment using the largely the same processes and timeframes for any ordinary major project proposal. The Information Package notes that such assessments can take over 300 days to complete and that this may impact upon a project schedule. Amendments are proposed in the Bill to provide a process for

amendments to major project permits that are not to correct errors, or “minor amendments”, or within the proposed new category called “significant amendments”. For want of a better descriptor in the Bill or the Information Package, this submission will refer to this new process as a “middle ground” assessment. The proposed middle ground assessment pathway will half the amount of time for the assessment of eligible amendments as compared to “significant amendments”.

Under the proposed amendments, relevant regulators are invited to comment on “significant amendment” applications and provide the decision-maker (being the Commission or a reconstituted Panel) with advice on whether the original major project assessment criteria will allow the regulator to appropriately assess the amendment, and whether the amendment should be refused or modified. Based on the advice from relevant regulators, the relevant decision-maker then decides whether the proposal can proceed through the “significant amendment” process or the shortened middle ground assessment. Only those proposals that can be assessed under the original assessment criteria are eligible for the middle ground assessment. No public comment is proposed to be invited on what assessment pathway may be required for the proposed amendment. Notice of the decision about the assessment pathway for the proposed amendment is only given to the owner, occupier or lessee of the land to which the permit relates after a decision has been made as to what assessment process (if any) applies to the proposed permit amendment.

EDO **does not support** the amendments to provide for a middle ground assessment. This is because timeframes for public and regulator input and decision-making are significantly reduced and may not be adequate for the types of amendments capable of undergoing this process. Such compressed timeframes give rise to the risks that impacts from changes to major projects will not be properly understood by the public or assessed by relevant regulators or the decision-maker.

Recommendation 10: Do not proceed with amendments in clauses 28, 29 or 30 of the Bill.

Thank you for the opportunity to comment on the *Draft Land Use Planning and Approvals Amendment Bill 2022*.

The North East Bioregional Network has a long history of engaging in land use planning matters in Tasmania

This new major projects planning process diminishes community involvement in the assessment of large and complex projects.

Community groups across Tasmania were clear in their opposition to the new major projects assessment process, highlighting their key concerns, including:

- a loss of community rights to appeal bad development decisions;
- limits on meaningful community input to major projects assessments;
- the sidelining of the trusted and independent Tasmanian Planning Commission;
- the side-stepping of parliamentary oversight for State significant projects;
- almost any project would be eligible to be declared a major project; and
- the Planning Minister has unchecked power to declare a development a 'major project' thereby removing it from the usual planning process.

These changes fundamentally undermine our democracy.

As per the Planning Reform website '*Applying the new major projects assessment process to the new Bridgewater Bridge project identified where some improvements to the process could be made and the Government is now seeking to address these with the draft Land Use Planning and Approvals Amendment Bill 2022'*.

NEBN endorses the submission drafted by the Environmental Defenders Office regarding the *Draft Land Use Planning and Approvals Amendment Bill 2022*.

We share the EDO's concerns and endorse their ten recommendations relating to:

- Amendments relating to the non-publication of "sensitive" information;
- Amendments relating to the electronic disclosure of information;

- Amendments relating to granting permission for site investigations after a major project has been declared;
- Amendments to allow for additional land to be added to a major project declared area;
- Amendments clarifying that the process continues if a regulator does not provide a response when required to do so;
- Amendments to allow for the correcting of minor administrative errors before a final decision is made; and
- Amendments introducing an additional assessment process option for amending a major project permit.

The *Draft Land Use Planning and Approvals Amendment Bill 2022* also adds greater complexity to already complex planning laws that make planning beyond the comprehension of most Tasmanians.

In November 2021, the Solicitor General cited changes to Tasmania's planning laws as 'complex and prescriptive' which is disappointingly inconsistent with the Tasmanian Government's pledge to make planning rules 'simpler, cheaper and fairer'.

Yours sincerely

Todd Dudley

President

North East Bioregional Network

24751 Tasman Highway RSD St Marys

Major Projects Amendments – TasNetworks' Submission

Record Number: R0002071081
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TasNetworks | Powering a Bright Future

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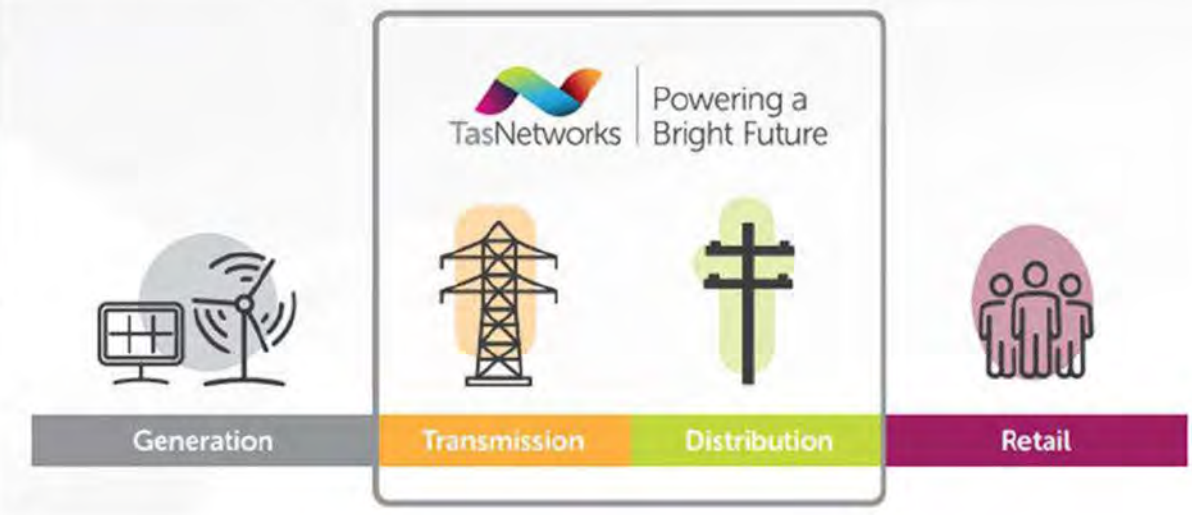
1 Summary

TasNetworks will play a major part in supporting Tasmania's energy future. Over the next 10-20 years it is expected that Tasmanian's renewable energy output will double requiring substantial augmentation to the transmission network. As Tasmania's transmission network service provider, we will be managing the step change required in the generation and transmission of electricity through the Tasmanian network planning process.

With further streamlining and simplification, the Major Projects provisions of the *Land Use Planning and Approvals Act* 1993 (LUPAA) could play a large part in the suite of approvals necessary to facilitate the network augmentations required to achieve this future state. We welcome further engagement on these and other potential changes in the Resource Management and Planning System and related legislation that could support this.

2 TasNetworks – About us

TasNetworks owns, operates and maintains the electricity transmission and distribution network in Tasmania. We deliver a safe, cost-effective and reliable electricity supply to more than 295,000 residential, commercial and industrial customers. TasNetworks' transmission network connects 30 hydro-electric power stations, five wind farms and one thermal (gas-fired) power station. We facilitate the transfer of electricity between Victoria and Tasmania and provide the network capability that supports the Basslink high-voltage direct current (HVDC) interconnector. We also provide telecommunications and technology services. We are owned by the State of Tasmania and operate as a commercial business with assets of $3.5.



3 TasNetworks' role in Tasmania's energy future

Over the next 20 years, as part of Australia's transition to a more sustainable future, the State is set to increase its renewable energy capabilities still further. Tasmania will expand its role as a supplier of zero emission energy to both Tasmanian customers and mainland Australia and produce green hydrogen for both domestic and international markets. Under the State Government's Tasmanian Renewable Energy Target (TRET), ***the State's renewable energy output will double, so that by 2040 Tasmania will produce twice as much clean energy as it does now. Realising this ambition will require substantial adaptation of the current Tasmanian transmission network.*** As Tasmania's transmission network service provider, TasNetworks will be managing this step change in the generation and transmission of electricity through the Tasmanian network planning process.

The Australian Energy Market Operator (AEMO) has identified three Renewable Energy Zones (REZs) and one offshore wind zone (OWZ) in Tasmania. It is anticipated that the four REZs will be the locations for most of the new generation required to achieve the State Government's TRET, as well as to support the proposed hydrogen production facilities and Marinus Link. REZ's indicate areas within the State which are known to be high quality renewable energy areas, however their existence does not preclude new renewable generation from being developed outside these nominated REZs. Tasmania's energy future will require connection and transmission infrastructure to support the new renewable generation expected under the TRET.

Integrating these quantities of variable renewable generation with the Tasmanian power system will require careful coordination by TasNetworks to preserve the reliability and stability of the State's transmission network while minimising the cost of delivering the additional energy required to ***double Tasmania's renewable generation output***. Major projects assessment processes will need to be fit for purpose to support this uplift.

Our 2021 Annual Planning Report (APR) provides detailed analysis of the implications for network capacity across a range of scenarios, including the potential location of new generation and load across the REZs in Tasmania – as well as the implications for the cost of the network. The draft Tasmanian Renewable Energy Coordination Framework[1] focuses on an orderly delivery of sustainable and integrated large-scale renewable energy projects across the REZs. TasNetworks is looking to work with all stakeholders to ensure that Tasmania achieves its renewable energy aspirations in the most efficient manner, by maximising the utilisation of existing assets and transmission corridors.

TasNetworks will play a key role in in facilitating Tasmania's energy future. To integrate both the industrial-scale production of hydrogen and the new renewable generation required to supply that load, significant adaption of Tasmania's transmission system will be required.

The key elements of our plans for the future are, as required:

• enhancement of the 220 kV Palmerston-Sheffield transmission corridor, which is required under the majority of future scenarios;

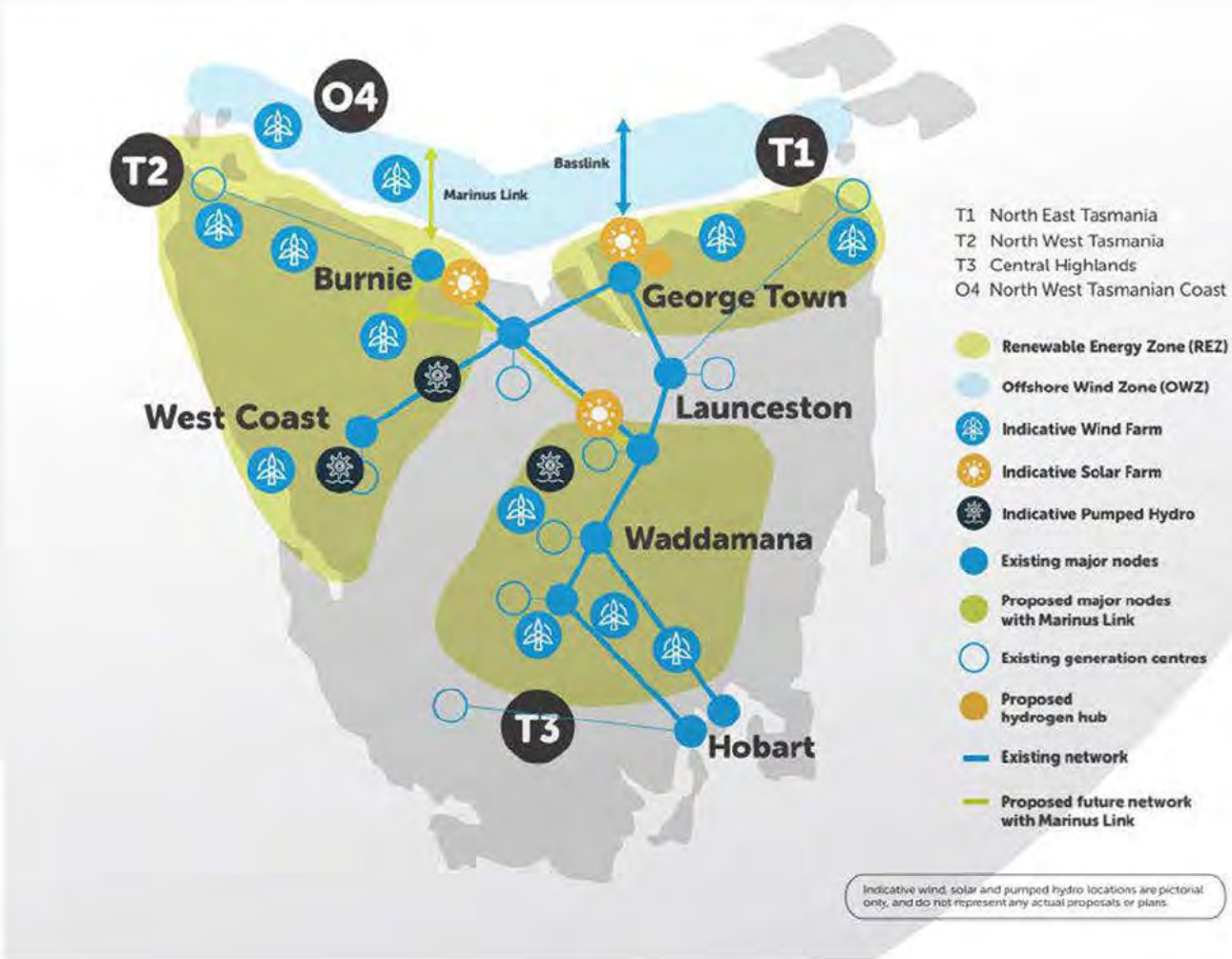
[1] https://www.stategrowth.tas.gov.au/rt/have_your_say_-_consultation/

• supporting the development of Renewable Energy Zones (REZs) in the Central Highlands and north-east Tasmania;

• developing the transmission network in the State's north-west to support the proposed Marinus Link interconnector with Victoria, as well as new wind generation in the north-west Tasmania REZ; and

• managing system strength and stability as increasing amounts of inverter-based generation (such as wind farms) are connected to the Tasmanian power system.

The image below indicates potential renewable energy generation resources, the REZ's in Tasmania and immediate priorities for augmentation.



Tasmania's renewable energy landscape is expected to change significantly over the next 10-20 years. The information below illustrates aspects that are being planned for or are already underway as part of this transition.

4 Submission regarding LUPAA Major Projects Amendments

TasNetworks supports amendments to LUPAA to improve the assessment process available for activities meeting the Major Project criteria and makes a number of suggestions for further improvement including:

- The inclusion of an ability to establish criteria that can apply to certain project types (eg: transmission lines) that are reviewed at a regular interval. This would streamline the beginning of the assessment process by removing the need to establish criteria every time a project of this type is proposed.
- Ensuring that after the declaration stage, if additional issues are discovered, an ability to amend criteria to include the issue requiring assessment.
- Any reference to planning schemes in criteria is at the point a major project is declared, not at the point an application for approval is submitted.
- A flexible definition of 'project area' where specific land does not need to be identified in the declaration process but is identified as the project develops and progresses.
- One Planning Authority for enforcement of the permit.

Other changes that could also be considered to better support streamlined and integrated assessment and protection of electricity transmission infrastructure include:

- Amendment to LUPAA exemptions, or State Planning Provision exemptions, that allow for project investigations that expand exemptions already available (with appropriate limitations) without the need to enter the Major Project process.
- The ability to easily and efficiently apply the Electricity Transmission Infrastructure Protection Code (ETIPC) to new assets.
- Amendments to the State Planning Provisions to extend application of the ETIPC to a broader suite of potentially conflicting use and development.
- Progression of Tasmanian Planning Policies and review of Regional Land Use Strategies taking into account and supporting TasNetworks' strategic plans.

Thank you for the opportunity to make a submission regarding the amendments and we look forward to further engagement to support Tasmania's renewable energy future.

Environmental Defenders Office

Submission on the draft Land Use Planning and Approvals (Amendment) Bill 2022

12 May 2022

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

Environmental Defenders Office is a legal centre dedicated to protecting the environment.

www.edo.org.au

Submitted to:

State Planning Office
Department of Premier and Cabinet

By email: yoursay.planning@dpac.tas.gov.au

For further information, please contact:

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Environmental Defenders Office Ltd
[redacted]

A Note on Language

EDO acknowledges that there is a legacy of writing about First Nations people without seeking guidance about terminology. In this submission, we have chosen to use the term "First Nations" to refer to Aboriginal and Torres Strait Islander peoples across Australia. We also acknowledge that where possible, specificity is more respectful. When referring to Tasmanian Aboriginal / palawa / pakana people in this submission we have used the term "Tasmanian Aboriginal". We acknowledge that not all Aboriginal people may identify with these terms and that they may instead identify using other terms.

Acknowledgement of Country

The EDO recognises First Nations peoples as the Custodians of the land, seas and rivers of Australia. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present and emerging, and aspire to learn from traditional knowledge and customs so that, together, we can protect our environment and cultural heritage through law.

In providing these submissions, we pay our respects to First Nations across Australia and recognise that their Countries were never ceded and express our remorse for the deep suffering that has been endured by the First Nations of this country since colonisation.

Executive Summary

While Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on the draft Land Use Planning and Approvals (Amendment) Bill 2022 (**Bill**), within the same period for consultation on the Bill, we note that the Government has also been consulting on a large number of issue and proposals relevant to Tasmania's environment, including but not limited to:

- The Consultation Paper on the new Aboriginal Cultural Heritage Act
- The draft Police Offences Amendment (Workplace Protection) Bill 2022
- Proposed amendments to *Environmental Management and Pollution Control Act 1994* (Tas)
- The 10 Year Salmon Growth Plan
- Proposed Aquaculture Standards
- The Future of Local Government

The Government also recently passed amendments to Tasmania's forestry laws, and while those amendments were not the subject of public consultation, EDO received numerous inquiries about the changes. Given the complex nature of the Bill, the Government should have taken account of these other consultation and legislative processes in deciding when to seek public comment upon the Bill.

In the last Solicitor General's annual report, Mr Michael O'Farrell SC noted:[1]

> A statute should communicate the law efficiently and effectively to those who have recourse to it. This does not just mean lawyers, it means citizens and institutions who must obey legal commands. While some laws convey difficult legal concepts that are not capable of expression in simple language, that is not true of all laws. The Parliament's endeavour should be to make laws that ordinary people can readily understand.

[1] Crown Law (Tasmania), Office of the Solicitor General, Solicitor-General Annual Report 2020-21, accessed at: https://www.crownlaw.tas.gov.au/solicitorgeneral/annualreport

> The complex and prescriptive nature of the provisions of some Tasmanian statutes do not lend themselves to this aspiration. For example, an ordinary person, unskilled in the law, would have great difficulty understanding Schedule 6 of the *Land Use Planning and Approvals Act 1993*. I have spent many many hours reading it and I still find some of its provisions very difficult to construe.

It is EDO's respectful view that the Bill adds a great deal of further complexity to the Act about which Mr O'Farrell SC rightly complained: the *Land Use Planning and Approvals Act 1993* (**LUPA Act**).

EDO supports the intent (if not necessarily the drafting) of a number of the amendments proposed in the Bill, such as the ability for documents to be disclosed electronically to relevant persons and extended timeframes for the major projects Assessment Panel (**Panel**) to respond to notices from regulators. However, we consider that, on the whole, **the changes proposed under this Bill do not improve the level of public participation in the major projects assessment process, nor do they increase the likelihood that ordinary people would understand it.**

The significant concerns raised in this submission also indicate that the Tasmanian major projects assessment process may be unlikely to meet national environmental standards for the purpose of any future accreditation of assessment and approval processes under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**).[2]

In the following submission, EDO responds to the Bill and the proposed:

1. Amendments relating to the non-publication of "sensitive" information
2. Amendments relating to the electronic disclosure of information
3. Amendments relating to granting permission for site investigations after a major project has been declared
4. Amendments to allow for additional land to be added to a major project declared area
5. Amendments clarifying that the process continues if a regulator does not provide a response when required to do so
6. Amendments to allow for the correcting of minor administrative errors before a final decision is made
7. Amendments introducing an additional assessment process option for amending a major project permit

A summary of EDO's recommendations with respect to the Bill can be found below.

Recommendation 1: In the Bill, make it clear that a "sensitive matters notice" may only relate to information relating to a threatened species where that information has been declared under s 59 of the *Threatened Species Protection Act 1995* (Tas).

Recommendation 2: To allow for informed public comment on a major project proposal, in the Bill clarify that any "sensitive matters statement" must provide a broad indication of the subject matter of the "sensitive matters notice" where it deals with threatened species, and an indication of the potential impacts of the major project on those species.

[2] Previous analysis of Tasmanian laws by EDO has found many laws do not meet national standards for the purposes of accreditation. See also: Devolving Extinction: The risks of handing environmental responsibilities to state & territories - Environmental Defenders Office (edo.org.au)

Recommendation 3: In the Bill, clarify that a "sensitive matters notice" only applies to information disclosed by the major project proponent, the Minister, or a relevant regulator, and not to information already within the public domain (i.e. information known or held by a member of the public), and delete proposed s 60CA(8)(d).

Recommendation 4: In the Bill, provide a meaningful opportunity for representatives, chosen by the Tasmanian Aboriginal community to: (a) be consulted at a very early stage of the process about any cultural heritage in or on the land or waters the subject of a major project proposal; and (b) provide their free, prior and informed consent to the major project proposal, including about the release of any culturally sensitive information (as determined by the representatives).

Recommendation 5: In the Bill, proposed s 60ZZZH (2) be changed to allow for a relevant person to elect to be provided with hardcopies of relevant documents.

Recommendation 6: Do not proceed with amendments in clauses 8, 10, 19, and 20 of the Bill.

Recommendation 7: Do not proceed with amendments in clauses 9, 11, 12, 13, 18 and 25 of the Bill.

Recommendation 8: In the Bill, the amendments proposed in clause 15 should include an opportunity for the relevant regulator to seek an extension of time to provide their notice, and if granted, a corresponding extension of time should be given to the Panel to complete the steps under s 60ZK of the LUPA Act.

Recommendation 9: Do not proceed with amendments in clause 25 of the Bill.

Recommendation 10: Do not proceed with amendments in clauses 28, 29 or 30 of the Bill.

1. Amendments relating to the non-publication of "sensitive" information

The Information Package on the Bill (**Information Package**) states that, currently, the major projects process provided under the LUPA Act requires the publication of information relevant to a major project even if that information reveals "sensitive" information, such as information about the location or significance of Aboriginal cultural heritage or threatened species.

Amendments to introduce a new s 60CA to the LUPA Act are proposed to respond to this issue. In particular, it is proposed that under this new section:

- proponents of a major project must first lodge a "sensitive matters request" with "relevant regulators";
- the relevant regulators are empowered to provide the proponent with a notice outlining whether the regulator considers that information provided either by the proponent or the regulator under the major projects assessments process is likely to contain a "sensitive matter";
- a "sensitive matter" is defined in proposed subsection (5) as follows:

> (5) For the purposes of this section, a category of information is likely to contain sensitive matter (sic) if –
>
> > (a) information within the category of information (sic) is culturally sensitive; or
> >
> > (b) were (sic) information within the category of information (sic) available to members of the public, there may be a risk of harm to members of a cultural group, an object or an organism.

- if information concerning a major project is the subject of a notice given by a relevant regulator, then that information cannot be made publicly available through the publication of proposal documents; discussions between a member of the public and the proponent, regulator, Minister or Assessment Panel; or in any public meetings or hearings; or in proceedings before TasCAT or a Court that is open to the public;
- a major project that is subject to a "sensitive matters" notice from a regulator will be required to publish a "sensitive matters statement" when the Project is declared and with any document about the Project required to be published under the LUPA Act. The statement will indicate that the major project documents include information concerning a sensitive matter that cannot be viewed by the public or discussed at meetings or hearings relating to the Project.

Sensitive information concerning threatened species

EDO accepts that there may be rare occasions where it is appropriate to keep the exact location or nature of threatened species discrete in major project documentation that is publicly released to protect them from harm. However, the proposed amendments outlined in the Bill do not appear to cross-reference to or align with s 59 of the *Threatened Species Protection Act 1995* (Tas). Under that Act, "information about a listed taxon of flora or fauna or any plan, agreement, determination or interim protection order" can be declared confidential by the Secretary (with the Minister's approval), so that any person who receives information declared to be confidential can only use that information to "the extent necessary to perform his or her duties or for the purpose of legal proceedings". This is not in alignment with the Bill, as the Bill proposes to restrict references to certain threatened species information potentially even in TasCAT or other legal proceedings.

Under the Bill, no guidance is given about how a relevant regulator is to determine what is an acceptable risk of harm to an organism arising from the publication of the material may be, for example, through consultation with the Scientific Advisory Committee under the *Threatened Species Protection Act 1995* (Tas).

Based on the current drafting of the clause, it is unclear whether the public will generally be made aware that a sensitive matters notice relates to information concerning a threatened species. For example, through a statement that a threatened species may be impacted by the major project (without disclosing the precise location of the specimens within a major project area).

The broad discretion given to relevant regulators to determine what issues outlined in major project documentation should not be publicly disclosed leaves open the possibility that, while there may be a risk of harm to threatened species from the publication of documentation about that matter, a potentially greater risk of harm to species arising from a major project itself might not be disclosed to the public. This would be a perverse outcome, as these significant risks are the very issues that are likely to be the subject of strong public representations about the proposal.

Indeed, where a member of the public is independently aware of threatened species potentially impacted by the major project and which are the subject of a sensitive matters notice, those people should not be restrained from making representations, submissions or having discussions about those matters throughout the major projects assessment process or in related TasCAT or

Court hearings. However, as currently drafted, the proposed provisions appear to operate to do just that.

For these reasons, **EDO does not support clause 6 in its present form** and makes the following recommendations to improve its clarity and operation.

Recommendation 1: In the Bill, make it clear that a "sensitive matters notice" may only relate to information relating to a threatened species where that information has been declared under s 59 of the *Threatened Species Protection Act 1995* (Tas).

Recommendation 2: To allow for informed public comment on a major project proposal, in the Bill clarify that any "sensitive matters statement" must provide a broad indication of the subject matter of the "sensitive matters notice" where it deals with threatened species, and an indication of the potential impacts of the major project on those species.

Recommendation 3: In the Bill, clarify that a "sensitive matters notice" only applies to information disclosed by the major project proponent, the Minister, or a relevant regulator, and not to information already within the public domain (i.e. information known or held by a member of the public), and delete proposed s 60CA(8)(d).

Sensitive information concerning Aboriginal cultural heritage

In making the following submissions about clause 6 of the Bill, EDO acknowledges that it cannot and does not speak on behalf of Tasmanian Aboriginal people. We make the following comments as experts in planning and environmental law with experience in seeking to protect Tasmanian Aboriginal cultural heritage through the law.

EDO supports "culturally sensitive" information not being publicly disclosed in major project documents. However, under the proposed amendments in the Bill, no definition of "culturally sensitive" is provided nor does it provide any information about how information is determined to be "culturally sensitive", or indeed whether the Tasmanian Aboriginal community will have any say in that decision. The Information Package refers to Aboriginal Heritage Tasmania (**AHT**) as if it is a "relevant regulator" for the purposes of the LUPA Act.[3] Currently, AHT is not a representative body for the Tasmanian Aboriginal community, rather it is a non-statutory body that reports to the Minister administering the *Aboriginal Heritage Act 1975* (Tas). The proposal for AHT (or the Minister administering the *Aboriginal Heritage Act 1975* as the case may be), and not the Tasmanian Aboriginal community, to have a role in deciding whether and when major project information contains culturally sensitive information does not appear to be in accordance with the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**) principles of free, prior and informed consent and of self-determination.[4]

[3] Despite the content of the Information Package, it is unclear if AHT is a "relevant regulator" for the purposes of the LUPA Act as it has no statutory role in the making of decisions under the *Aboriginal Heritage Act 1975* (Tas), rather the issue of permits under that Act is by the Minister on the advice of the Director of National Parks and Wildlife.

[4] Further discussion about the UNDRIP principles and how they should be applied in the case of Aboriginal cultural heritage can be found in EDO's recent Submission in response to a new Aboriginal Cultural Heritage Act dated 6 May 2022, which can be accessed here: https://www.edo.org.au/publication/edo-submission-on-a-new-aboriginal-cultural-heritage-protection-act-tasmania/.

The Tasmanian Government is presently undertaking consultation for a new Aboriginal Cultural Heritage Act. The proposed form of the new s 60CA appears to presuppose the outcome of that consultation will be that AHT will play a role as a regulator with respect to Aboriginal cultural heritage. The Bill also does not factor in any changes required to allow for early involvement of the Tasmanian Aboriginal community in proposals that are likely to have a significant impact on cultural heritage.

In the absence of the new Aboriginal Cultural Heritage Act, any reforms to the major projects process proposed to protect "culturally sensitive" information from public disclosure need to provide a meaningful opportunity for representatives, as chosen by the Tasmanian Aboriginal community, to be consulted at a very early stage of the process about any cultural heritage in or on the land or waters the subject of the proposal, and provide an opportunity for them to provide their free, prior and informed consent to the major project proposal and the release of any culturally sensitive information (as determined by the representatives) relating to it.

Recommendation 4: In the Bill, provide a meaningful opportunity for representatives, chosen by the Tasmanian Aboriginal community to: (a) be consulted at a very early stage of the process about any cultural heritage in or on the land or waters the subject of a major project proposal; and (b) provide their free, prior and informed consent to the major project proposal, including about the release of any culturally sensitive information (as determined by the representatives).

2. Amendments relating to the electronic disclosure of information

The Information Package notes that there are several provisions of the major projects process under the LUPA Act that require the delivery of hardcopy documents to certain people, which can result in very large bundles of documents being distributed to hundreds of people. The Information Package states:

> 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**. (emphasis added)

The Bill proposes to amend ss 60ZL, 60ZZB and 60ZZZH to "allow electronic exchange of documents throughout the process".

Contrary to what is indicated in the Information Package, EDO considers that the proposed amendments to s 60ZZZH do not make it clear that a person might have a choice between being given an electronic copy of a document or a hard copy. Rather, the proposed new subsection (2) of s 60ZZH provides that a notice is deemed to have been given to a person if the person is told "a means by which the person may view, or download a copy of, the document or information at a website specified in the notice, using a means specified in the notice" and "the person may view, or download a copy of, the document or information at the website specified in the notice, using the means specified in the notice." In EDO's view, proposed subsection (2) is unclear and insufficient to allow for a person to elect to obtain hard copies of relevant documents. EDO considers that such an option must be provided for those people who may lack access to the

internet or a computer, or the ability to travel to a physical location to view the relevant documents.

Recommendation 5: In the Bill, proposed s 60ZZZH (2) be changed to allow for a relevant person to elect to be provided with hard copies of relevant documents.

3. Amendments relating to granting permission for site investigations after a major project has been declared

Amendments are proposed in the Bill to provide for the grant of early site investigation permissions by the Executive Officer of the Tasmanian Planning Commission or the relevant regulator before the finalisation of major project assessment criteria.

The proposed amendments to allow for such early site investigation permissions are **not supported** by EDO, as they presuppose what might be the information required to respond to the assessment criteria and further complicate what is a very complicated process. If a major project proponent is aware that certain likely site investigations can only be undertaken in certain seasons or conditions, they can and should plan for that within the project schedule. They also have the option of seeking the relevant permissions for those assessments separately to the major project process.

Recommendation 6: Do not proceed with amendments in clauses 8, 10, 19, and 20 of the Bill.

4. Amendments to allow for additional land to be added to a major project declared area

The Information Package contends that amendments to the LUPA Act are required to allow:

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

As currently drafted, the Bill does not quantify what would amount to a relatively "small" amount of "additional area or land" proposed to be added to a major project declared area. Furthermore, the amendments proposed in the Bill to allow for this additional land to be added to a major project do not bind the Minister to follow the advice received from the Panel or the Commission, meaning that even if those bodies considered that the additional area was not relatively "small", "appropriate" and/or "necessary and desirable" to form part of the Project, the Minister could still decide to add that area to the major project declaration.

EDO has concerns that the proposed provisions could be subject to misuse as they potentially allow for the creep of major projects onto adjoining land, including after the major project assessment processes have concluded. On which point, EDO is extremely concerned that it is contemplated both in the Information Package and in the Bill, that the expansion of the area of a major project could potentially be treated as a "minor amendment" under s 60ZZX(3) of the LUPA Act.

EDO also holds concerns about whether the Minister can make a properly informed decision on whether the original assessment criteria are still suitable to assess the impacts of the proposed on the additional land, where all members of the public have not had an opportunity to comment on whether those criteria address all the issues relevant to that additional land.

Therefore, EDO does **not support** the amendments proposed in clauses 9, 11, 12, 13, 18 and 25 of the Bill.

Recommendation 7: Do not proceed with amendments in clauses 9, 11, 12, 13, 18 and 25 of the Bill.

5. Amendments clarifying that the process continues if a regulator does not provide a response when required to do so

The Information Package states that:

> The major projects assessment process has a rigid requirement that the regulators must give notice of their assessment requirements or a notice of no assessment requirements or a notice recommending revocation of the major project, as required by section 60ZA of the *Land Use Planning and Approvals Act 1993* (the Act).
>
> If a regulator does not provide any form of notice at all then the assessment panel is placed in an uncertain quandary as to whether they can continue with the process because an element of the process has not been satisfied (which is the giving of a notice from the regulator to the panel).
>
> A regulator not responding would also create uncertainty as to whether they wish to become a participating regulator in the process or not.
>
> There is also potential for the proponent to receive a major project permit that is open to legal challenge on this matter.

Amendments are proposed to s 60ZA of the LUPA Act so that where a regulator does not provide a notice of their assessment requirements to the Panel within the required 28 days, they are taken to have no assessment requirements and do not wish to be involved in the process. An exception is made to this general rule for the EPA Board, as it is generally required to be involved in assessments due to the Assessment Bilateral under the EPBC Act.

EDO considers the proposed amendments will provide an unsatisfactory outcome where a relevant regulator has been unable to meet the notice deadline, for example where they require further information to determine their assessment requirements. Given the complexity of major project proposals, the period of 28 days may not be a sufficient amount of time for certain regulators to make a decision as to their assessment requirements or involvement. In these circumstances, the regulators should be provided with an opportunity to seek an extension of time.

Recommendation 8: In the Bill, the amendments proposed in clause 15 should include an opportunity for the relevant regulator to seek an extension of time to provide their notice, and if granted, a corresponding extension of time should be given to the Panel to complete the steps under s 60ZK of the LUPA Act.

6. Amendments to allow for the correcting of minor administrative errors before a final decision is made

The Information Package states:

> The major projects process is highly prescriptive, lengthy and complex, with many administrative requirements to act within set timeframes or to consult with a potentially wide range of people. It is plausible that during such a long and complex process, an error or oversight could occur with a decision maker not responding within a set timeframe, or an individual not receiving an appropriate notification during a particular stage in the process.
>
> If a mistake with administering the process occurs during the process, the proponent could be left with a permit that is open to legal challenge. Naturally, major mistakes should cause the process to be redone for any of those aspects which were not done properly. However, if a mistake is minor in nature then the intent of the process should be that the major project permit is not undermined as a result.
>
> The current process does not enable the assessment panel the ability to correct any administrative error that may have occurred during the process.

To respond to these issues, amendments are proposed in the Bill to allow the Panel to give notice to people who should have been notified about a major project but were not and to provide those people so notified 7 days to make a representation to the Panel about "whether a major project permit ought to be granted in relation to the major project" and/or "any conditions or restrictions that the person considers ought to be imposed on such a permit if granted ". The proposed amendments also provide that the provision of a notice by the Panel outside of a prescribed timeframe does not invalidate the notice.

EDO agrees that the major project 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." We further agree that there is a possibility that the failure to abide by some of the prescriptive requirements might leave project permits open to legal challenge. However, in our view, this is no reason to justify the provision of only 7 days to respond to a major project proposal to members of the public or regulators who should have previously been notified about or consulted about the proposal, but through no fault of their own, were not. The timeframes for representations provided under the proposed amendments are significantly less than other timeframes provided for the provision of representations through the ordinary course of a major project assessment. Furthermore, the provision of a notice under the proposed s 60ZZMB(4) after any Panel hearings, would deprive a person of an opportunity to play an active role in the hearings, which may have significant implications for the outcome of a Panel assessment.

For all these reasons, EDO **does not support** the amendments in proposed clause 25.

Recommendation 9: Do not proceed with amendments in clause 25 of the Bill.

7. Amendments introducing an additional assessment process option for amending a major project permit

Presently, the LUPA Act does not provide for a middle ground assessment pathway for proposed amendments to major project permits that do not fit within the meaning of a "minor amendment" or are not in nature of typographical errors. Rather, all such amendments must go through an

assessment using the largely the same processes and timeframes for any ordinary major project proposal. The Information Package notes that such assessments can take over 300 days to complete and that this may impact upon a project schedule. Amendments are proposed in the Bill to provide a process for amendments to major project permits that are not to correct errors, or "minor amendments", or within the proposed new category called "significant amendments". For want of a better descriptor in the Bill or the Information Package, this submission will refer to this new process as a "middle ground" assessment. The proposed middle ground assessment pathway will half the amount of time for the assessment of eligible amendments as compared to "significant amendments".

Under the proposed amendments, relevant regulators are invited to comment on "significant amendment" applications and provide the decision-maker (being the Commission or a reconstituted Panel) with advice on whether the original major project assessment criteria will allow the regulator to appropriately assess the amendment, and whether the amendment should be refused or modified. Based on the advice from relevant regulators, the relevant decision-maker then decides whether the proposal can proceed through the "significant amendment" process or the shortened middle ground assessment. Only those proposals that can be assessed under the original assessment criteria are eligible for the middle ground assessment. No public comment is proposed to be invited on what assessment pathway may be required for the proposed amendment. Notice of the decision about the assessment pathway for the proposed amendment is only given to the owner, occupier or lessee of the land to which the permit relates after a decision has been made as to what assessment process (if any) applies to the proposed permit amendment.

EDO **does not support** the amendments to provide for a middle ground assessment. This is because timeframes for public and regulator input and decision-making are significantly reduced and may not be adequate for the types of amendments capable of undergoing this process. Such compressed timeframes give rise to the risks that impacts from changes to major projects will not be properly understood by the public or assessed by relevant regulators or the decision-maker.

Recommendation 10: Do not proceed with amendments in clauses 28, 29 or 30 of the Bill.

Submission 17

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Tasmanian Government

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Thank you for the opportunity to comment on the draft *Land Use Planning and Approvals Amendment Bill 2022,* relating to the major projects assessment process.

The major projects assessment process provides a key approval pathway for larger scale projects in Tasmania. It is important that this process is **efficient, transparent, and provides certainty to all participants**. Reflecting the nature and complexity of planning, designing and delivering larger projects, it is also important that the process provides for some degree of flexibility.

In this context, the Department of State Growth generally supports the proposed amendments subject to the matters documented in the Attachment being appropriately addressed. The ability to conduct early site investigations, to expand the declared major project area or to amend a permit without the requirement to restart the entire assessment process, represent sensible updates that support some evolution in planning and design without compromising appropriate review by regulators or external stakeholders. Improved processes in relation to the public disclosure of sensitive material are important to the ongoing protection of this material. Improvements to administrative processes, including sharing information digitally and addressing minor administrative errors, will assist in streamlining the assessment process.

While the current Bill addresses the majority of known issues with the current assessment process, the Department recommends a further review of the major projects assessment process at the conclusion of the New Bridgewater Bridge project. As the first project to be assessed under the provisions, a review post-completion of the project provides an important opportunity to consider the full assessment process as applied to a major project.

In relation to the draft Bill, Attachment 1 identifies a number of issues that require further review or clarification. In future it would be highly beneficial to achievement of government policy outcomes for agencies to be engaged in an open dialogue on potential issues and remedies for any complex planning matter such as this prior to commencement of legislative drafting.

If you have any further questions, please contact Di Gee - Manager, Transport Systems Planning, by email at [redacted] or on [redacted].

[redacted]

Kim Evans
Secretary
12 May 2022

Attachment 1 – areas for review and clarification, Land Use Planning and Approvals Amendment Bill 2022

Page 12

- Section 60CA(6)(a) should refer to sensitive matters, not matter.
- 35 days represents a long timeframe within which a regulator is required to advise as to whether a site contains sensitive matters. It is unclear what this timeframe is based on. For example, an Aboriginal Heritage Desktop Review query is often addressed by the Department of Natural Resources and Environment within a few business days, with the query form committing to a response or request for further information within 10 working days. We suggest this timeframe is reduced, noting the 10 working days for Aboriginal heritage queries.

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- Suggest that Section 60CA(8)(a) requires rewording as it is not clear in its intent. It currently states 'any information that is within the category of information must not be included, in a document given to another person under this Act, that a member of the public is able to view under a provision of this Act, unless the information is not able to be viewed by a member of the public.' It is unclear how information in a document that a member of the public is able to view under a provision of the Act can contain information that is not able to be viewed by a member of the public.
- It is also suggested that Section 60CA(8)(c) requires rewording as it important that a proponent is able to discuss sensitive information with relevant regulators, the Panel or the Commission. In fact, as a general principle, dialogue between regulators and proponents should be actively encouraged. A proponent will often become aware of sensitive information through its own investigations (for example, Aboriginal heritage and threatened species site surveys). It is also unclear how a proponent can meet the assessment criteria or address associated requirements without being able to discuss these matters. For example -
    - if a development location was selected, which had impacts in terms of site and scale, but was otherwise placed to avoid a sensitive aboriginal heritage site or stand of rare orchids, this should be considered by the Panel, or
    - if a regulator was aware that a location was unsuitable as it would impact a sensitive site, but was unable to advise the proponent, the regulator would need to recommend refusal of the permit without reason and be unable to advise the proponent of the alternative option of relocating the development.

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- As per previous comments, clause 10(c) should be removed.

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- Clause 6 appears to only allow the amendment of a declared major project area if the additional land to be included is Crown Land, council-owned land or land owned by the Wellington Park Management trust. Clause 7, however, appears to recognise that privately owned parcels may be included in the expansion of a major project area. It is unclear why private land is not included in Clause 6 and it is assumed this omission is unintentional and should be corrected. It is likely that an additional parcel of land to be included in an amended declared major project area is privately owned. For example, a private proponent may purchase a parcel of land and then amend the declaration to cover this additional land. Additionally, if the land is owned by parties other than the proponent, then assuming landowner consent is provided, this land should be able to be included. It is noted that at the time of declaration, the New Bridgewater Bridge project area included privately-owned land.