



TASMANIAN DRAFT MAJOR PROJECTS BILL

Introduction

- 1 On 3 March 2020, the Tasmanian Government released for public comment a draft *Land Use Planning and Approvals Amendment (Major Projects) Bill 2020 (Draft Bill)*. The Draft Bill is available online [here](#). Public comment on the Draft Bill is due by 15 May 2020.
- 2 This fact sheet outlines the changes that the Draft Bill would make to current development and assessment processes.
- 3 There are three existing assessment processes for major development proposals:
 - (a) Projects of State Significance under the *State Policies and Projects Act 1993 (POSS)*, for projects with significant capital investment, state-wide impacts or complex design;
 - (b) Projects of Regional Significance under the *Land Use Planning and Approvals Act 1993 (PORS)* for larger and more complex projects that do not qualify as a POSS but have impacts across council boundaries and regions;
 - (c) Major Infrastructure Development Approval (**MIDA**) for major linear infrastructure projects eg, road, railway, power-line, telecommunications cable or other prescribed infrastructure;
- 4 In summary, the Draft Bill would:
 - (a) Give the Planning Minister the power, in certain circumstances, to declare a project to be major project.
 - (b) Repeal and replace the PORS process in div 2A of pt 4 of the *Land Use Planning and Approvals Act 1993 (Tas)*;
 - (c) Establish a new assessment process for major projects, to be conducted by a "Development Assessment Panel", being a new panel appointed by the Tasmanian Planning Commission for each major project. The Development Assessment Panel coordinates input from "relevant regulators" and may grant a major project permit for

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a project if the project meets certain criteria and none of the relevant regulators have directed a refusal;

(f) Displace existing approvals and establish “relevant regulators” who have input into the assessment and approval of a major project. These bodies are the EPA Board, the Tasmanian Heritage Council, the Secretary of DPIPWE and the Director of Aboriginal Heritage Tasmania, TasWater and TasNetworks. A local council and the Aboriginal Heritage Council are not relevant regulators.

(d) If a project is granted a major project permit, obviate the need for the proponent to obtain the following approvals (listed below) separately, if they would otherwise be required in relation to the project.:

(i) ordinary development permits under the *Land Use Planning and Approvals Act 1993* (Tas);

(ii) permits relating to level 2 activities under the *Environmental Management and Pollution Control Act 1994* (Tas);

(iii) heritage approvals under the *Historic Cultural Heritage Act 1995* (Tas);

(iv) permits, authorities, licences, certificates, determinations, permissions or other authorisations under the *Nature Conservation Act 2002* (Tas);

(v) permits, authorities, licences, certificates, determinations, permissions or other authorisations under the *Threatened Species Protection Act 1995* (Tas); and

(vi) permits, authorities, licences, certificates, determinations, permissions or other authorisations under the *Aboriginal Heritage Act 1975* (Tas).

5 In other words, the grant of a major projects permit has the result that the regulatory schemes established under the Acts listed at (c)(i) – (c)(ii) above do not apply to the project, rather the assessments that are normally carried out under those regulatory schemes are to an extent integrated into the major projects permit assessment. What the Bill does not make clear, though, is whether the integration of other assessments into the major projects permit incorporates fully or truncates the usual assessment process under those Acts.

6 The draft Bill replaces and substitutes the PORS process. Due to the breadth of the eligibility criteria for a major project declaration, the draft Bill is likely to displace the POSS and MIDA processes. In that regard, the eligibility criteria refer to “State” and “regional” significance and it also seems likely that linear infrastructure projects are contemplated.

7 The major projects assessment process in the draft Bill draws on existing elements of the PORS process, e.g. Development Assessment Panels, project assessment guidelines and project declaration. However, the PORS assessment process has never been used – no project has been declared or assessed through PORS - so these elements are untested. There are also substantive new elements, chief among those, the integration of other statutory approvals.

8 For these reasons, our description of the assessment process provided for in the draft Bill is as a new assessment process, not as a comparison with existing statutory processes.

What is a major project?

9 The proponent of a project, the planning authority or the Minister may make a proposal that a project be declared to be a “major project”. After a major project proposal is made, the Minister must decide whether the project is to be a declared major project or not. Notice of the Minister’s decision must be published in the Government Gazette.

10 Not all projects can be declared a major project. For a project to be eligible for a major project declaration, the Minister must be of the opinion that the project meets 2 of the following criteria:

- (a) the project will make a significant financial or social contribution to a region or the State;
- (b) the project is of strategic planning significance to a region or the State;
- (c) the project will significantly affect the provision of public infrastructure, including, but not limited to, by requiring significant augmentation or alteration of public infrastructure;
- (d) the project has, or is likely to have, significant, or potentially significant, environmental, economic or social effects;
- (e) the approval or implementation of the project will require assessments of the project, or of a use, development or activity that is to be carried out as part of the project, to be made under 2 or more project-associated Acts or by more than one planning authority;
- (f) the characteristics of the project make it unsuitable for a planning authority to determine.

11 A major project declaration can be made in relation to projects on private land, Council land, Crown land or in Wellington Park. Many large or controversial developments could be eligible for a major project declaration, potentially including:

- high rise buildings;
- cable cars;
- prisons;
- large suburban/rural development (like Cambria Green) or subdivision;
- any Level 2 activity usually assessed by the EPA (except salmon farms);
- development in national parks and reserves.

12 Where a permit application has been lodged for a development, but not determined by the council, it can be declared a major project.

13 The Commission may issue determination guidelines as to matters to which the Minister is to have regard in determining whether to declare projects to be major projects. The Commission is required to publish any determination guidelines that it issues but there is no opportunity for public input consultation into their formulation.

Effect of a major project declaration

14 If a project is declared to be a major project, then it requires a major project permit to proceed.

15 Applications that have been made for approvals under the *Land Use Planning and Approvals Act 1993* (Tas), *Aboriginal Heritage Act 1975* (Tas), *Environmental Management and Pollution Control Act 1994* (Tas), *Historic Cultural Heritage Act 1995* (Tas), *Nature Conservation Act 2002* (Tas) and *Threatened Species Protection Act 1995* (Tas) in relation to the project are deemed to have been withdrawn.

16 This appears to be so that the project is subject to a single assessment process – leading to the granting or refusal of a major project permit. The assessment process for major project permits is outlined below.

Development Assessment Panel

17 The Tasmanian Planning Commission (**Commission**) must establish a Development Assessment Panel (**Panel**) in relation to each major project. The Panel co-ordinates the assessment of a major project. It makes the final determination as to whether a major project permit should be granted or refused for a major project.

- 18 The Panel has a minimum of 3 members and a maximum of 5.
- 19 The 3 mandatory members are:
- a member of the Commission (or other person nominated by it) as chairperson of the Panel;
 - a person with appropriate qualifications and experience who is nominated by the councils for the municipal areas that are likely to be affected by the major project; and
 - a person who is not a member of the Commission and who, in the opinion of the Commission, has qualifications and experience that are relevant to the assessment of the major project.
- 20 The Commission *may* appoint no more than 2 additional people to be members of the Panel. That power can be exercised if the Commission is of the opinion that the scale, specialist nature or complexity of the major project makes it desirable to appoint an additional member with particular qualifications or experience.
- 21 The Commission *must* appoint no more than 2 additional people to be members of the Panel if the Commission is required to do so by the Minister in the relevant major project declaration.

Steps prior to assessment of major project by the Panel

Relevant regulators

- 22 The Commission must refer a major project to each relevant regulator. The relevant regulators in relation to a major project are different depending on the character of the major project. The Environmental Protection Authority is *always* a relevant regulator. Other entities that *may* be relevant regulators in relation to a particular major project are:
- a pipeline licensee;
 - the Heritage Council;
 - the issuers of permits under the *Aboriginal Heritage Act 1975 (Tas)*, *Environmental Management and Pollution Control Act 1994 (Tas)*, *Historic Cultural Heritage Act 1995 (Tas)*, *Nature Conservation Act 2002 (Tas)* and *Threatened Species Protection Act 1995 (Tas)*.
- 23 Notably, municipal councils are *not* relevant regulators.
- 24 A relevant regulator must, in relation to each major project, give to the Panel and the Commission:
- a notice of no assessment requirements, by which the relevant regulator specifies that it does not require any matters to be included in the assessment guidelines; or
 - an assessment requirement notice, by which the relevant regulator specifies that it requires certain matters to be contained in the assessment guidelines; or
 - a notice recommending revocation, by which the relevant regulator specifies that it requests the Panel to recommend to the Minister that that the major project declaration be revoked.

Assessment guidelines

- 25 The assessment guidelines in relation to a major project specify the matters to be addressed in the major project impact statement. They are essentially criteria by which a major project permit is granted or refused. The Panel must determine assessment guidelines in relation to a major project. Before doing so, there are two procedural steps that must be followed.

- 26 *First*, the Commission must request certain persons provide to the Panel within 14 days their comments as to what the assessment guidelines should include. Those persons are:
- the owner(s) of the land on which the major project is to occur (if the owners are not the proponents of the major project);
 - the relevant planning authority;
 - each planning authority for a municipal area that is in the regional area(s) in which the major project is to be situated;
 - the State Services and Tasmanian Government Business that the Panel considers may have an interest in a matter to which the major project relates;
 - the Crown Lands Minister, if the major project is to occur on Crown Land;
 - the Wellington Park Management Trust, if the major project relates to land in Wellington Park
- 27 *Second*, the Panel must prepare draft assessment guidelines.
- 28 If the major project is a “bilateral agreement project”, being a project that is “reasonably likely” to require approval under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) or in relation to which the proponent is likely to have a bilateral agreement within the meaning of that Act, the Panel must publicly notify the draft assessment guidelines and invite representations from the public.
- 29 If the major project is *not* a bilateral agreement project, there is no requirement for public consultation in relation to the formulation of the assessment guidelines.
- 30 The assessment guidelines must include:
- any matters specified by the relevant regulators in an assessment requirement notice;
 - any matters the Panel considers are reasonably required to enable the proper assessment of whether the use and development of the land for the purposes of the major project would be an effective and appropriate use and development of the land; and
 - any matter specified by the regulations
- 31 In formulating the assessment guidelines, the Panel must have regard to any relevant planning scheme and any regional land use strategy.
- 32 The Panel must notify the proponent, the public and the entities specified above at [20] of the assessment guidelines.

Major project impact statement

- 33 Once the assessment guidelines for a major project have been prepared, the proponent of the project must prepare a major project impact statement. A major project impact statement must address the matters specified in the assessment guidelines. It must be prepared and provided to the Panel by the proponent within 12 months, or another period agreed between the proponent and the Panel. The Panel must provide a copy to each relevant regulator.

Consultation relating to major project impact statement

- 34 After receipt of the proponent’s major project impact statement, the Panel and relevant regulators may request further information from the major project proponent. The Panel may also request further information from other bodies so as to make its assessment.
- 35 Each relevant regulator who has issued an assessment requirement notice or a notice recommending revocation must provide the Panel with its preliminary advice in relation to a

major project. The preliminary advice must consider the assessment guidelines and the major project impact statement. It is essentially a statement of the regulator's view as to whether the major project complies with the assessment guidelines. A relevant regulator's preliminary advice should indicate whether the regulator advises that the major project be refused a permit, or conditions that the regulator considers should be included in relation to the permit.

- 36 Following receipt of each participating regulator's preliminary advice, the Panel must prepare a draft assessment report. The draft assessment report is in substance the Panel's preliminary conclusion in relation to whether a major project permit should be granted and if so, with what conditions.
- 37 The draft assessment report must be publicly notified and exhibited. Members of the public may make representations in relation to whether a major project permit should be granted and/or any conditions that in the person's opinion ought to attend the grant of a major project permit. Representations must be received within 28 days of the notice, unless the Panel determines that a longer period is appropriate.
- 38 Within 28 days of the public exhibition concluding, the Panel must hold hearings in respect of the major project. Before holding a hearing, the Panel must notify:
 - each person who made a representation in relation to the major project;
 - each relevant regulator who has participated in the process; and
 - each person or body that was notified of the major project proposal.
- 39 After the last hearing, each participating regulator must give the Panel a final advice in relation to the major project. The regulator's final advice is a notice specifying that the regulator:
 - directs the Panel to refuse to grant a major project permit; or
 - does not direct the Panel to refuse to grant a major project permit but requires specified conditions to be imposed on any permit that may be granted; or
 - does not direct the Panel to refuse to grant a major project permit and does not require conditions to be imposed.
- 40 There are significant constraints on the circumstances in which relevant regulators may direct the Panel to refuse a major project permit. Generally, a relevant regulator may only direct that the Panel refuse a major project permit if the relevant regulator is satisfied that, were the project not a major project, the relevant regulator would refuse the project a permit under the permit scheme for which it is responsible. The process by which the relevant regulator may arrive at that state of satisfaction is unclear. The Bill does not indicate whether the regulator is required to comply with the procedures prescribed by its associated Act or whether a truncated assessment process is acceptable.
- 41 If the regulator requires a condition to be imposed, reasons for imposing that condition must be provided by the regulator.

The Panel's decision

- 42 Within 90 days after the last day of the public exhibition period for the draft assessment report, the Panel must decide whether to grant or refuse a major project permit. A major project permit may be granted subject to conditions.
- 43 In coming to its decision, the Panel must consider:
 - the relevant planning scheme and regional land use strategy;
 - any representations made in relation to the major project;

- any matters raised in hearings in relation to the major project; and
 - all participating regulator's final advices.
- 44 Importantly, while it must *consider* the relevant planning scheme, a major projects permit can be granted notwithstanding that the project would not be permitted under the planning scheme and is not required to be assessed against the applicable criteria in a planning scheme.
- 45 The Panel may only grant a major project permit if it is satisfied that certain conditions are met, including:
- the assessment guidelines in relation to the project have been satisfied;
 - the project would be consistent with the objectives specified in schedule 1 of the *Land Use Planning and Approvals Act 1993* (Tas);
 - the project would not be in contravention of a State Policy or Tasmanian Planning Policies;
 - the project would not be inconsistent with an applicable regional land use strategy; and
 - that no participating regulator has, in its final advice, directed the Panel to refuse to grant the major project permit
- 46 If a participating regulator has, in its final advice, directed the Panel to refuse to grant a major project permit, the Panel *must* refuse to grant the major project permit.
- 47 If a participating regulator has, in its final advice, specified conditions or restrictions that it requires to be imposed on the major project permit, the Panel may only grant a major project permit subject to those conditions. The planning authority is responsible for enforcing the observance of any condition or restriction to which the major project permit is subject.
- 48 The Panel must give public notice of its decision to grant or refuse a major project permit.

Effect of major project permit grant or refusal

- 49 If a major project permit is *refused*, an application for a permit in relation to the same or substantially the same project must not be made within 2 years of the refusal.
- 50 If a major project permit is *granted*, there are important consequences for other regulatory regimes' application to the project:
- the normal development permit process under the *Land Use Planning and Approvals Act 1993* (Tas). Section 51 of the *Land Use Planning and Approvals Act 1993* (Tas) does not apply to the project.
 - the Commission must amend the relevant planning scheme(s) to remove any inconsistency between the major projects permit and the scheme;
 - there is no need for the proponent of the project to separately obtain permits relating to activities authorised by the major project permit under the following Acts:
 - the *Environmental Management and Pollution Control Act 1994* (Tas) (in relation to level 2 activities);
 - the *Historic Cultural Heritage Act 1995* (Tas);
 - the *Nature Conservation Act 2002* (Tas);
 - the *Threatened Species Protection Act 1995* (Tas); and
 - the *Aboriginal Heritage Act 1975* (Tas).

51 Essentially, if a major project permit issued, the assessment processes under other regulatory regimes that would normally apply to a project do not.