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Planning Policy Unit
Department of Justice
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By email: Planning.Unit@justice.tas.gov.au

Dear Mr Risby,

Major Projects Reform

Thank you for the opportunity to comment on the revised draft *Land Use Planning and Approvals Amendment (Major Projects) Bill 2018* (***revised draft Bill***). We commend the Government for its efforts to address in the revised draft the many concerns identified in earlier representations, and for allowing further representations on the significantly amended draft Bill.

In particular, we support the tightening of the eligibility criteria, the removal of Ministerial involvement in the development of determination guidelines, the additional opportunity to seek information from the relevant planning authority / authorities before declaring a major project, and the lengthening of timeframes across the assessment process. We also support the clarification regarding the application of the *Tasmanian Planning Commission Act 1997*, the requirement to prepare and publish procedures to guide the hearing process, and the new consequences for a proponent providing false or misleading information.

This submission identifies a small number of outstanding issues regarding the revised draft Bill. In summary, these address:

- Ensuring eligible projects are of regional significance, and not able to be declared on the basis of "unreasonable delay" alone;
- Clarification that buildings exceeding acceptable height limits intended to be used for visitor accommodation will not be eligible for declaration as a major project;
- Requiring details of all parties involved in delivering key aspects of the major project to be disclosed in the impact statement;
- Direct notification to affected landowners of major project declarations, determinations and minor amendment proposals;
- Better integration of Commonwealth requirements where a project is likely to impact on a matter of national environmental significance under the *Environment Protection and Biodiversity Conservation Act 1999*;
- Excluding the entire Christmas / New Year break from the advertising period in relation to major projects to maximise public participation;
- Ensuring that the determination guidelines support consistent decisions in relation to "unreasonable delay", avoiding declaration of projects with 'no reasonable prospects', information requirements and when a project that is otherwise prohibited by a planning scheme should be considered.

Our recommendations are set in out detail below.

Major project - declaration

Eligibility criteria

We support the new requirement for major projects to satisfy at least two of the eligibility criteria in s.60J(1). However, we remain concerned that the availability of the major projects option for projects affected by "unreasonable delay" is too open (see our submission on the previous draft Bill, dated 2 October 2017).

The Consultation Paper provides that "only complex projects with broader regional implications are eligible to be elevated for assessment through the major projects assessment process." However, under s.60J(2)(b) of the revised draft Bill, a project may be eligible for declaration as a major project if the Minister is satisfied that the project cannot be determined by the planning authority in a timely manner (due to its complexity), or where assessment of the project has been subject to "unreasonable delay" – in neither case is a second "regional significance" criteria required to be met.

There remains limited guidance as to when a project could legitimately be considered to have been affected by "unreasonable delay".

We note that s.60H of the revised draft Bill now allows the Minister to seek information from the planning authority that is necessary for her or him to understand whether the eligibility criteria will be met. Section 60I(4) also maintains the previous provision requiring the planning authority to be provided with the major project proposal and given an opportunity to advise the Minister if they do not believe that the complexity / unreasonable delay criteria can be met.

The new s.60J(2) requires the Minister to consider the advice given under s.60I(4) and by the Commission when determining whether to declare a major project, but does not explicitly require regard to be had to other information provided by a planning authority.

Recommendations:

- Require a project purporting to satisfy the "unreasonable delay" criterion to also meet one of the other criteria in s.60J(1);
- Amend s.60J(2) to also require the Minister to consider any information provided by a planning authority in response to a request under s.60H;
- Determination guidelines developed by the Tasmanian Planning Commission set out the information required to support a determination, and the limited circumstances in which a planning authority's decision-making process will be characterised as involving "unreasonable delay".

Inconsistency with planning scheme

Section 60J(3) provides that projects can be declared major projects despite being prohibited by a planning scheme, provided the project is consistent with any relevant State Policy and regional land use strategy.

We encourage the Commission to ensure the determination guidelines emphasise that projects that are inconsistent with planning schemes will be declared major projects only in exceptional circumstances.

As regional land use strategies may be used to justify declaration (and approval) of projects that would otherwise be prohibited, it is important that planning authorities are provided with sufficient resources to undertake comprehensive regional strategic planning and to update relevant documents and strategies to articulate and implement a regional vision.

Building height limits

We commend the State government for responding to community concern that the major projects process would be used to authorise buildings exceeding height limits set in local planning schemes. The Consultation Paper describes the new provisions in s.60K(1)(a) as "simply exclud[ing] buildings

that are solely or predominantly for a hotel, office or residential use which exceed the permitted height of the relevant planning scheme irrespective of their scale or impact."

As currently drafted, s.60K(1)(a) excludes a building from eligibility for a major project declaration where it is intended, in whole or in part, for

(a) use by a person, for any period, as residential accommodation, whether as an owner, occupier, tenant, lodger or guest and whether the accommodation consists of a hotel, motel, apartments or otherwise;

Under the State Planning Provisions, and current interim schemes, "visitor accommodation" is distinguished from residential use, being defined as short-medium term accommodation "away from their normal place of residence". While s.60K(1)(a) specifically refers to hotels, it is not clear that the requirement for use as "residential accommodation" would capture all short-term hotel arrangements.

Recommendation:

If it is the government's intention to exclude any tall building to be used as a hotel, we recommend that s.60K(1)(a) be amended to replace "residential accommodation" with "residential or visitor accommodation".

No reasonable prospects

Our submission on the earlier draft Bill recommended that, in the interests of efficiency, input be sought from relevant agencies regarding the reasonable prospects of a project *prior* to the decision to declare a major project rather than after the declaration. We maintain that an assessment o prospects can be made on the basis of the Major Project Proposal, so the decision could be made prior to the declaration without the need for any additional documentation.

However, we acknowledge that the process for allowing the proponent an opportunity to comment on a proposed 'no reasonable prospects' declaration could be best managed by the Panel.

Regardless of any amendment, the determination guidelines should provide clear guidance on the Minister's considerations to avoid projects with no prospects of success being declared as major projects in the first place.

Notifying landowners that major project declared

Where a major project is proposed over land not owned by the proponent, affected landowners should be personally notified of a declaration, rather than relying on notice in the newspaper. The notification rights of planning authorities and the Wellington Park Trust should be extended to landowners.

Recommendation:

Section 60P(1) should be amended to include the following:

(g) if the project is or was to be situated on an area of land that is not owned by the proponent – all owners of affected land.

Major project - assessments

Proponents

We welcome the amendment of the definition of "proponent" in s.60B to clarify the identity of the proponent where multiple people are involved in delivering a project. This makes it easier to assign responsibility for assessment obligations in the initial phases of a major project.

However, the major project proposal is only required to provide details of the experience and capacity to deliver the project of the nominated "proponent" of a multi-party project (s.60F(1)(b)). Where other parties will be involved in the proposal, details of those parties should be provided in the major project impact statement to allow the Panel to accurately assess the expertise, technical and financial capacity to deliver the project.

Recommendation:

The Tasmanian Planning Commission should develop template draft assessment guidelines (to be adopted / modified by the Panel) that require information to be provided about all collaborators in the major project.

Consent to undertake preliminary surveys

We maintain our concern that under s 60ZQ(2), a regulator must issue a preliminary permit if it is reasonably necessary for the preparation of an impact statement. While we acknowledge the benefits of avoiding repetitive approval processes for preliminary work, there will be exceptional situations where it is inappropriate to issue a permit (for example, where proposed disturbance of Aboriginal heritage is unwarranted or where landowner consent has not been given).

Timeframes

We support the extended timeframes in the revised draft Bill. This will assist in maximising participation by the public and relevant regulators, and improving the rigour of the approval process.

Given that many people take extended leave over the Christmas period, we maintain our recommendation that the full Christmas / New Year period be excluded from the notification period. While s.60ZZB(6) currently excludes periods where the Commission's office is closed during normal business hours, this may be limited to official public holidays, rather than the full period.

Recommendation:

Replace s.60ZZB(6) with the following (modelled on s.27K of the *Environmental Management and Pollution Control Act 1994*):

> *(6) If a period referred to in this section includes:*
>
> *(a) any days on which the offices of the Commission are closed during its normal business hours; or*
>
> *(b) any day in the period from the public holiday in respect of Christmas Day to the public holiday in respect of New Year's Day, both inclusive,*
>
> *that period is to be extended by the number of those days.*

Hearings

We strongly support the level of detail to be included in the draft assessment report, including information regarding any preliminary advice and conditions determined by participating regulators.

We also endorse the extension of the timeframe for regulators' final advice (s.60ZZG) to allow their participation in public hearings, and to adapt their advice to address any issues raised at those hearings and any further information provided by the proponent in response to requests from the Panel.

Other issues

Bilateral assessment

We maintain our previous recommendations regarding integration of the assessment requirements under the *Environment Protection and Biodiversity Conservation Act 1999* where a matter of national environmental significance is likely to be impacted by a major project:

- Requiring the Panel to seek (and consider) advice from the Commonwealth regarding the assessment guidelines (s.60ZL), and whether the impact statement addresses the guidelines (s.60ZU);
- Appointing a representative of the Commonwealth to the Panel (s.60V).

Minor amendments

Currently, s.60ZZZE(1) requires notice of a minor amendment to be given to the planning authority, Wellington Park Management Trust (if relevant) and

> *each person who made a representation under section 60ZZD(1) in relation to the major project that is a representation that is relevant to the proposed amendment*

In the interests of ensuring that all those with a potential interest in the amendment are given an opportunity to comment on whether the amendment is "minor", we recommend that the notification obligations be expanded.

Recommendation:

- Amend s.60ZZZE(1) to also require that a copy of the proposed amendment be given to the landowner and adjoining landowners (some of whom may not have been owners at the time of the original major project proposal, and therefore did not make a representation)
- Amend s.60ZZZE(1)(iii) to simply require notice to be given to each person who made a representation in relation to the major project. The current qualification that the representation is "relevant to the proposed amendment" imposes a significant administrative burden on the decision-maker to make an assessment as to what is relevant under each representation, and risks some representors not being notified despite their interest in the proposed amendment.

If you would like to discuss any of these comments, please do not hesitate to contact me on (03) 6223 2770.

Yours sincerely,

Environmental Defenders Office (Tas) Inc.

Jess Feehely
Principal Lawyer