DRAFT SECOND READING SPEECH
HON MICHAEL FERGUSON MP

Land Use Planning and Approvals (Amendment) Bill 2022

** Check Hansard for delivery **

Mister Speaker, I move that the Bill be read a second time.

This Bill proposes a number of amendments to the *Land Use Planning and Approvals Act 1993* (LUPA Act). These amendments aim to refine the major projects assessment process in the light of our practical experiences during the assessment of the new Bridgewater Bridge.

The amendments are intended to make the process more efficient and responsive to the nature of future projects, which are increasingly characterised by evolving designs as a result of contractual processes, whilst maintaining the fundamental core elements of independent assessment, appropriate checks and balances, and opportunities for public engagement. Importantly, the amendments will assist the regulators and the Tasmanian Planning Commission in their assessments, the proponents of major projects through more flexibility, and interested members of the general public through better communications.

The Bill was released for a 5 week public consultation period and has since been refined following advice from the Bridgewater Bridge project team, local councils, State agencies and authorities; professional, industry, environmental and community groups; and importantly the regulators and the independent Tasmanian Planning Commission.

The amendments cover four (4) broad themes. These are: clarifying the original intent of the process; aligning and updating the process to match the current legislative situation; modernising to reflect contemporary circumstances; and introducing flexibility to allow the assessment process to accommodate changes as the project design and details evolve.

These themes are addressed in ten (10) discrete areas, which I will now explain in detail.

Mister Speaker, sensitive information in the wrong hands could lead to the destruction or harm to a culturally sensitive site or relic. In fact, the public display of culturally sensitive information is also offensive to Aboriginal culture.

While the planning processes need to provide adequate information for the appropriate assessment of projects, they should not unwittingly offend certain cultural groups.

In relation to information that is in this way considered sensitive, the major projects assessment process can be improved by preventing the public display of that information if relevant to the site of a proposed major project while still allowing the regulators to assess the impacts on those areas and values.

Mister Speaker, while the draft Bill included in the scope of sensitive information the potential for inclusion of threatened species information, the advice received during the consultation

period indicated that this would be unnecessary given that s.59 of the Nature Conservation Act already effectively provides for the control of sensitive information of this nature. Consequently, the final version of the Bill seeks only to control sensitive information relating to Aboriginal heritage.

The Bill proposes to require proponents to seek advice from the regulator for Aboriginal Heritage before they lodge their major project proposal with the Minister, to ensure that any sensitive information is treated appropriately.

This will provide the regulator of Aboriginal Heritage 35 days to advise the proponent and the Minister if the major project site has, or does not have, sensitive cultural issues or other sensitive site issues which should not be publicly disclosed.

Mister Speaker, the Bill defines sensitive information as – information that is culturally sensitive, or information that, may in public hands, risk harm to an object or relic to which the Aboriginal Heritage Act 1975 applies.

Where such sensitive information is identified, that information must not be included in a document given to another person prescribed in the Act; must not be disclosed in any meeting or hearing; must not be disclosed in discussions between a member of the public and the Minister, a regulator, a member of the Assessment Panel or the Commission; and must not be disclosed during proceedings of the Tasmanian Civil and Administrative Tribunal or a Court.

The regulators will of course, still receive that sensitive information and must assess the proposal's impact on those matters. Any information that is not of a sensitive nature will still be available for public viewing, as it currently under the legislated assessment process.

This aligns the major projects process with the current processes carried out by Aboriginal Heritage Tasmania in accordance with its normal legislative requirements.

Mister Speaker, currently land outside the area declared for a major project cannot be used for the major project. Contemporary design and construct processes for significant infrastructure projects often mean the design of the major project evolves in response to site works and discoveries and engineering documentation. This may result in the project seeking to extend beyond the area originally declared if the project requires or would be improved by using additional land.

The need for additional land, outside of the area initially declared, may in fact emerge as a consequence of the proponent addressing the assessment criteria, or responding to issues raised during the public hearings, or perhaps when preparing a detailed design to address the conditions on a major project permit.,

Currently, once a major project is declared, the area of land nominated in the major project declaration notice cannot be added to. The only way to add land is for the declaration of the major project to be revoked and a new major project declaration made with the additional land. This is an administratively cumbersome and time-consuming task and effectively requires the process to start all over again.

The Bill proposes to allow the Assessment Panel or the Commission to consider small additions to the declared area relative to the area originally declared.

The Bill proposes that an application to amend the declared area can be made at any time after declaration, however, whether that amendment can actually be made to the proposal will vary depending on the exact point that the assessment process has reached.

If the amendment is proposed prior to the assessment criteria being finalised, then it will trigger a new request to the regulators to determine if they have new assessment requirements to cover the additional land. This includes the possibility that a new regulator may now decide to become engaged when previously it determined it did not have an interest.

If the amendment is sought after the assessment criteria have been made, then it can only proceed if the regulators advise that the assessment criteria do not need to be revised or those regulators previously not interested confirm that they do not wish to become a regulator for the assessment. Under these circumstances an amended MPIS to cover the impacts on the additional land, can be submitted up until the stage that a permit is granted.

The final opportunity for adding in land is after the permit is granted and in conjunction with a request to amend the permit.

Mister Speaker it is important that the provisions to amend the declared area is not used as a way to 'sneak' additional land into the process which is unsuitable and would not have been declared if it was included in the original proposal.

The Bill proposes the same checks and balances for amending the declared area of land as are applied to the area of land in the first declaration.

The Minister can only amend the declared major project area if they have determined it is reasonable to do so, and only after consultation with affected landowners, and receiving advice from the Assessment Panel or the Commission and the relevant regulators.

The Minister can only amend the declared major project area if they are satisfied that the additional area of land would be eligible under section 60N of the Act, that is, the same requirements as declaring a major project in the first place.

Similarly, if the additional area of land is Government, Council or Wellington Park Management Trust managed land, the Minister cannot amend the declared major project area without their consent.

Once the declared major project area is amended, notification is also given to the same parties and in the same manner as for the original declaration.

Mister Speaker, the current legislation is not entirely clear in relation to what landowners whose land is included within an area of land declared for a major project, and who are not the proponent, can or cannot do on their land while the major project is being assessed.

The intention of section 60S of the Act is that once a major project is declared, a proponent of a major project can only develop the land for that major project by receiving a major project

permit and not by pursuing another planning application process. It was not the intention to prevent unrelated developments by the land owner from receiving planning permits or being developed on the same land as the declared major project.

For example, the declaration of a wind farm proposal over many hectares of farmland should not limit the landowner from seeking approval for a new farm shed if one is required. However, the current wording is somewhat ambiguous, and has been read to suggest that no development at all can be carried out while the area is declared for a major project.

The major projects process can be improved by providing more clarity around this issue by reasserting the original intent that development for a major project can only be undertaken in accordance with a major project permit and not a permit issued under another planning process. An exception to this is that any existing permit issued prior to the major project declaration can still be acted upon even if the content of the permit relates to the major project.

In relation to what the requirements are for landowners and proponents for future developments once a major project has been completed, it was always intended that the normal planning processes would be available.

To clarify at what point the normal planning regime recommences, the Bill proposes that the Commission can issue a 'completion certificate', once it is satisfied that the major project is completed. The Bill has been modified following consultation, to provide the Commission with 21 days to respond to a request from the proponent for such a certificate. This also includes the ability to issue a 'completion certificate' in situations where the proponent advises that part of the major project is not going to be completed or if the major project is being developed in stages.

In addition to issuing a completion certificate, the Bill proposes that the Commission is also able to issue an 'enforcement certificate' to local planning authorities. This 'certificate will clarify which authority is responsible for monitoring and enforcement in relation to the conditions on a major project permit. In effect the 'enforcement certificate' will act as a 'handover' between the Commission and local planning authorities which reassigns the responsibility back after the major project process is completed.

There are some minor consequential amendments relating to enforcement where some corrections to references in the Act need to be made because the major projects assessment process has reused section of the Act that had previously been assigned to private planner certification. For example, sections 63B, 64 and 65C refer to section 60ZB which were references to processes which are not part of the legislation. 60ZB now relates to major projects.

Mister Speaker, early permissions for site investigations are beneficial not only for the timely assessment of projects but so that important environmental issues can be surveyed and researched to the fullest degree possible and in alignment to the critical times of the year relevant to the issue.

While some site investigations maybe 'exempt' under the relevant planning scheme, others may require permission from the Commission or the other regulators. Currently, permission cannot be granted for investigation until after the assessment criteria have been made.

This is despite the proponent potentially being well aware of an environmental issue and method of study required. For example, the seasonal timing of a survey may warrant an earlier start to ensure appropriate data is collected at the best time. Currently a proponent must wait for the assessment criteria to be prepared, which is 98 days after a declaration of the major project, before they can apply for the necessary site investigation permissions. That may mean missing a seasonal event and delaying assessment for several months or a year.

To fix this, the Bill proposes to enable a relevant regulator, the Commission or the Assessment Panel up to 21 days the discretion to determine whether or not to issue 'investigation permissions', directly after a major project has been declared, and where the proponent has identified in its Major Project Proposal the need for the early issue of the site investigation, permissions to enable this timely collection of important data.

Mister Speaker, perhaps the most significant part of this Bill is the proposal for further options for amending a major project permit.

Currently the Act provides for amendment of a major project permit as either a minor amendment under section 60ZZW of the Act, or through the long and complex process which involves the submission of an entirely new major project proposal, effectively starting the assessment process all over again. There is no middle ground available when the changes proposed are relatively simple, but still ought to be subject to public exhibition and detailed scrutiny.

The Bill proposes to provide for an additional major project permit amendment process that caters for adjustments to the major project, with an appropriate level of scrutiny and assessment relative to the scale of the project, and public involvement including public hearings. The proposed amendment process may only be used where the Assessment Panel and regulators determine that the proposed amendment is, in their judgement, of a scale that is appropriate to consider through this new process and that the earlier prepared assessment criteria are suitable to assess the proposed amendment and do not need to be re-written.

As the process involves changes to the major project permit that are of a relatively small scale, it is also proposed to reduce some of the process times where appropriate. This includes reducing the public exhibition of the proposed amendment to 14 days, which is the same as for normal discretionary planning applications. When this additional amendment process is used, the following sections of the Act have altered timeframes –

a. Section 60ZV(1) is 14 days instead of 21 days – this relates to the period that regulators have to request a revised impact statement

b. Section 60ZW(2) is 21 days instead of 42 days – this relates to the period of time that the Panel has to seek additional information from a variety of parties after it receives the impact statement

c. Section 60ZY(3)(b) is 28 days instead of 42 days – this relates to the standard period for regulators to provide the Panel with preliminary advice

d. Section 60ZZB(5) is 14 days instead of 28 days - this is the exhibition period – but it is a minimum requirement and can be extended

e. Section 60ZZF(1) is 14 days instead of 42 days - this relates to the period of time for a regulator to give the Panel its final assessment advice

f. Section 60ZZM(1) is 49 days instead of 90 days – this is the period that the Panel has after the exhibition period to give its decision to the proponent.

Importantly, the regulators may advise that any or all timeframes should not be shortened, if they consider the amendment will require a longer assessment period.

Mister Speaker, currently, if a regulator does not provide a response when required to do so during the major projects assessment process there is confusion about whether the process can continue until a response is received.

In accordance with section 60ZA, 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.

If a regulator does not provide any form of notice at all then the Assessment Panel is placed in a quandary as to whether it can continue with the process because this requirement has not been satisfied.

The major projects process can be improved by clarifying that the process continues if a regulator does not respond.

The Bill proposes that if a regulator does not respond as required under 60ZA, then that 'non-action' is taken as a notice of no assessment requirements and an indication that the regulator does not wish to become a participating regulator in the assessment process. In response to submissions made during consultation on the draft Bill, there is now a requirement for a reminder notice to be sent to the regulators before this assumption is made.

Mister Speaker the Assessment Panel is only given a small amount of time to complete two (2) significant tasks that are key elements of the assessment process, placing it at risk of not meeting a process timeline or rushing its deliberations.

These are the tasks of preparing the assessment criteria and preparing the initial assessment report after receiving the major project impact statement. These tasks require the Assessment Panel to collate and decipher responses from up to six (6) different regulators.

Feedback from the Commission suggests that if a little extra time is available to the Panel to clarify matters raised by the regulators, then that will provide proponents with clearer advice and certainty in what they need to do in the assessment process.

The Bill proposes to provide the Assessment Panel with extra time to complete its required tasks by amending sections 60ZN and 60ZZA of the Act to extend the 28 days to 42 days, but only if the Panel considers it necessary to seek clarification from a regulator in relation to its notice of assessment requirements or alteration notice.

Mister Speaker, administrative errors in complex assessment process such as the major projects parts of LUPAA, are a distinct possibility. Currently, there is no ability in the major projects assessment process to rectify any administrative errors that may have occurred.

An accidental clerical or administrative error could result in the process being subject to legal challenge causing delays for the delivery of the project or even requiring the proponent to start the major project application process again.

The Bill improves the process by providing the Assessment Panel with the flexibility to correct errors when a requirement to give a notice to a person has not been met, or when the notice is required to be given within a prescribed time period and that time period was not complied with.

In these circumstances the Panel will be able to subsequently notify that person and seek their views in respect of the proposed major project, prior to making its final decision on the proposed major project. The draft Bill proposed 7 days for a person to respond after receiving the notice but following consultation, this has been extended to 21 days.

While the Bill introduces this capacity to rectify such an error, it also proposes to ensure that the administrative failure to give notice as prescribed does not in itself invalidate the assessment process.

Mister Speaker, digital technology can be better used for sharing information with the public during the major project assessment process.

Sharing documents by hard copy throughout the major project assessment process, in particular with regard to third party landowners and occupiers, is an administrative burden, as much of the supporting information involves lengthy documents.

The major projects assessment process can be improved by making better use of digital technology.

The Bill proposed to enable sharing these documents through modern electronic means, whilst ensuring those without access to the internet can still participate in the process by being provided with hard copies of the documents.

Mister Speaker, the Gas Pipeline Act 2000 has been repealed and replaced with the Gas Industry Act 2019. The Bill proposes to amend the Act throughout to refer to the relevant section of the Gas Industry Act 2019 instead of the former sections of the Gas Pipelines Act 2000.

Mister Speaker, this Bill proposes a series of beneficial amendments to the major projects assessment process, based on the experience and observations of the regulators, proponents, and a range of stakeholders. The amendments streamline processes and address contemporary

design and construct infrastructure project development practices while retaining the independent assessment oversight and appropriate levels of public engagement.

Mister Speaker, I commend the Bill to the House.