

## DRAFT Second Reading Speech

HON ROGER JAENSCH MP

### *Land Use Planning and Approvals Amendment (Major Projects) Bill 2020*

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

Madam Speaker, eleven years ago this House passed amendments to the Land Use Planning and Approvals Act 1993 to introduce Special Permits under the Projects of Regional Significance, or PoRS, process. That Bill, which was supported by both the Liberal and Labor parties, introduced a new assessment process into the planning system to fill the space between ordinary DAs at a council level and the Projects of State Significance process.

The PoRS process provides for the assessment of projects that have significant regional impacts and importance, by an independent expert panel established by the Tasmanian Planning Commission.

The PoRS process was well intentioned and reflected similar processes in other States, but history shows it did not prove to be an attractive option for project proponents, including the government that created it. Despite the legislation requiring a review after 5 years, this never happened, largely because it had never been used.

The irony is that the process specifically designed to provide for important and complex regional projects, whilst offering assessment by an independent panel, did not even provide the range of approvals available through an ordinary Council DA process. It is not surprising that the PoRS process has been left on the shelf unused.

In 2014, when this Government was first elected, we committed to fixing the PoRS framework to address its deficiencies and deliver a process for assessing major projects that is fit-for-purpose.

Work began in 2015, leading to the release of a first draft of the newly named 'major projects' process in 2017.

The first draft of the Major Projects Bill, like the one being debated today, offered improvements over the PoRS process while retaining the essential elements of independent expert assessment of regionally significant proposals.

Key to these improvements is the expansion of the range of other approvals provided for under the one coordinated assessment process.

The consultation undertaken has clearly indicated that significant projects often require multiple permits addressing planning, environmental, historic heritage, Aboriginal heritage, threatened species and water and sewerage.

Currently, only the Projects of State Significance (POSS) process provides for a single permit application covering all of these approvals.

However, the time and expense involved in putting every significant project through the very lengthy and comprehensive POSS process would outweigh the benefits of the multi-approvals approach.

Without an 'in-between' process, project proponents must run the gauntlet of several separate approvals, each with its own timeframes (or none), and the inherent risk of any one approval being denied at the end of a long and costly process.

The Major Projects process aims to test the fundamentals of a project early in the process, to identify issues that could prevent it from being approved, before significant time and cost is incurred. It does this by not just co-ordinating the relevant approvals by the normal statutory regulators, but by requiring them to assess, at an early stage, if there are basic elements of the project that mean there is 'no reasonable prospect' that they can recommend approval under their respective legislation.

It may seem strange to promote a streamlined approval process for significant developments by indicating that the proponent might be advised of this 'no reasonable prospect' early on, but consultation repeatedly showed that proponents want to know that they are not going to waste time and money chasing permits which are never going to eventuate.

Similarly, the State can benefit by not having valuable council and State Government resources tied up for many months only to discover a fundamental problem that could have been detected earlier.

For this reason, the Bill provides for the Minister to revoke a proposal's Major Project status if the Panel or one of the regulators indicates that there is no reasonable prospect of it gaining approval.

The Major Projects Bill retains some very important features of the PoRS process, including the limited role of the Minister in determining whether to declare a project, and the assessment by an expert panel established by the independent Tasmanian Planning Commission. There is no capacity for the Government of the day, or any vested interest, to influence who is on that panel, or to change its decision. Again, people responsible for managing complex projects have told us that a process where an independent expert panel makes the decisions offers far more certainty than one open to political considerations, and is more likely to be used.

Before I turn to the detail of the Bill, I want to talk a little more about its consultation and evolution.

Some members of the community and, indeed, this Parliament, have suggested the Government has sought to rush this Bill through under the cover of the COVID emergency, but this is patently untrue.

The draft Bill has been subject to three phases of public consultation. Two 5-week periods of consultation were conducted, in August-September 2017 and December-January 2018. A further 10-week consultation was conducted from 3 March 2020 to 15 May 2020. This latest period was extended to compensate for COVID-related restrictions. When face-to-face meetings were not allowed, individual members of the public, professional groups and interested organisations could also arrange video or telephone briefings from Departmental staff. In all there have been three stages of direct consultation over 3 years and covering a total 20 weeks, which together elicited over 1500 responses.

The Government has carefully reviewed every one of these responses, including those provided on template forms, or under a covering email from an umbrella organisation, and we have made further refinements to the Bill as a consequence.

Interestingly, many submissions from stakeholders opposed to the Major Projects process urged the Government to instead keep the current PoRS legislation. However, the aspects of the Major Projects process they were typically most concerned about were those drawn directly from the PoRS process, including

- the role of the Minister to declare projects against broad eligibility criteria,
- the ability to consider proposals that might not be allowed under an existing planning scheme,
- assessment by an expert panel instead of a local Council,
- the final decision by that panel not being appealable to RMPAT, and
- the site-specific amendment of the planning scheme to reflect any permit issued.

And so to the Bill.

The Major Projects Bill replaces the current provisions in LUPAA that provide for the declaration, assessment and granting of a special permit commonly referred to as the Projects of Regional Significance process.

The Major Projects process has three distinct stages: eligibility, preliminary assessment and assessment, and I would like to give a brief summary of these stages.

The **eligibility** stage is a basic test of whether a proposal is considered eligible to enter the process. Every project, no matter who refers it, is assessed against the same criteria and through the same process.

There is no assessment of the merits of the proposal at this stage, just whether the proposal satisfies the eligibility criteria.

The Minister makes a determination of eligibility based on advice from the Tasmanian Planning Commission, State Agencies and the relevant Council or Councils, and in accordance with determination guidelines which quantify the eligibility criteria.

At the **preliminary assessment** stage, the Tasmanian Planning Commission appoints an independent delegated Panel.

The proponent provides a project proposal to the Panel and the relevant regulators for consideration.

The regulators then provide advice to the Panel, either:

- a notice that there are no relevant matters for them to assess, or
- a list of the matters that they will require the proponent to address in order to formally assess the proposal, or
- advice that there is 'no reasonable prospect' of them approving the proposal under their legislation.

Should a 'no reasonable prospect' notice be given, a proposal may be withdrawn and the proponent may modify the proposal and commence the process again. This early advice will potentially save the proponent from wasting significant time and money proceeding with a long assessment process with no prospect of approval.

The advice from the regulators is compiled by the Panel and draft Assessment Criteria are produced.

The draft Assessment Criteria are publicly advertised before being finalised.

These Assessment Criteria cover all the matters the proponent will be required to address, and against which their proposal will be assessed.

In the **assessment** stage, the proponent provides a comprehensive Project Impact Statement addressing all the matters identified in the Assessment Criteria.

The regulators and the Panel undertake a preliminary assessment of the proponent's Project Impact Statement. It is important to note that each regulator undertakes the assessment in accordance with the requirements of its own legislation just as if the Major Project was any other application.

An Initial Assessment Report is prepared, which consolidates the advice from the regulators, including whether the proposal should be approved or not and the conditions that should apply.

The Assessment Criteria, the Project Impact Statement and the Initial Assessment Report are then released for public comment and submissions invited from the community. This provides for greater transparency and scrutiny, as the public will be able to not only review and comment on the proponent's response to the assessment criteria, but also the Panel's and regulators' initial consideration of that response.

Public hearings are then held.

Following the hearings, the Panel and the regulators are required to review their advice in the context of the submissions and the issues raised at the hearings, and determine whether to issue the proponent with a Major Projects permit with conditions, or refuse the proposal.

Madam Speaker, I would like now to address some key elements of the Major Projects process in more detail.

A major project must be for the 'use and development' of land, not just a proposal to amend a planning scheme, and must meet at least two of the three eligibility criteria set out in the Bill, those being whether the project

- will have a significant impact on, or make a significant contribution to, a region's economy, environment or social fabric
- is of strategic importance to a region, or
- is of significant scale or complexity.

The Government's view is that projects with the potential to make substantial impacts on, or contributions to, a region, should be able to be assessed by independent expert panels.

Some submissions expressed concerns that the Panel's assessment could ignore important local planning requirements. The Government has listened and added additional requirements relating to local planning matters. Prior to declaring a Major Project, the determination guidelines will require the Minister for Planning to have regard to any specific local planning controls that are in place.

Where detailed local planning on matters such as building heights and city precinct plans has been incorporated within the planning scheme, the Government considers it appropriate that these are given weight in the consideration of any potential Major Project.

The Panel is also required to have consideration to these specific local planning matters when preparing the assessment criteria and also when making its final decision.

Another of the Bill's safeguards is the requirement for the Minister to consult with a range of people before declaring a project. These include the relevant local council and the other councils in the area of the project, State agencies, the Tasmanian Planning Commission, land owners and immediate neighbours. Any of these can provide reasons as to why the Minister should or should not declare a project to be a Major Project.

Importantly, while a project can be considered even if prohibited under the relevant planning schemes, it must be consistent with State Policies, the Tasmanian Planning Policies, further the 'sustainable development' objectives set out in the LUPA Act, and cannot be inconsistent with the relevant regional land use strategy.

If a project does not meet these thresholds, it is ineligible and the Minister cannot declare it to be a Major project.

Another feature of the Bill is the requirement for landowner consent to be provided by a local council, the Crown or the Wellington Park Management Trust before a project can be declared.

This means, for example, that the proposed Mount Wellington Cable Car cannot be considered eligible to be a Major Project without the consent of the Hobart City Council, as it owns the land.

Some submissions questioned the independence of the Assessment Panel and the role of the Minister in selecting its members. I can confirm that under this Bill, the assessment of projects is conducted by an independent Panel established by the Tasmanian Planning Commission in the same way as under the current PoRS process.

The Bill provides direction for the Commission to assemble the assessment Panel so that the Panel consists of a Commissioner, or nominee, who is the Chair and at least two individuals who the Commission considers to have the appropriate skills and expertise to conduct the assessment of the major project.

The Commission can also add up to two extra panel members where additional expertise and skills is required. The only role for the Minister in this is to be able to specify the skill set of one of the extra panel members, but not to nominate who the member is.

Many submissions suggested that councils will be sidelined by the process and that communities will not be able to have their voices heard. While the assessment is undertaken by an independent expert panel established by the Commission, there is an important role for Councils and several opportunities for local communities to be involved.

The Bill has been amended to increase consultation with Councils throughout the process rather than relying on their representation as a panel member in the assessment process.

Removing the requirement for a council representative on the assessment panel further ensures the independence of the Commission's appointment process, and reduces the risk of conflict between community advocacy and planning assessment roles, adding to the independence of the panel. The Bill has been further modified so that councils will be consulted as councils, not just in their roles as local planning authorities.

This will enable them to represent views relating to all their local government functions and, most importantly, enable them to truly represent the views of their community. Councils will be consulted at every key stage, including before a project is declared, before the assessment criteria are finalised and during the assessment stage of the process.

Major projects rarely just need a planning permit. By their nature they may need multiple approvals relating to environmental, historic cultural heritage, Aboriginal heritage, threatened species and other matters. One of the problems with the current PoRS process is that it cannot consider all of these issues at one time.

This can result in two problems. A project that successfully obtains a planning permit may fail when it subsequently seeks a permit relating to one of these other areas such as Aboriginal heritage, or threatened species, meaning expensive and time consuming planning effort has been wasted.

Alternatively, the regulators of these other matters may feel pressured into giving approvals because they are approached late in the overall process after the applicant has already invested heavily in the proposal.

This Bill provides for a range of permits to be sought at the planning stage, through a single application process, with coordinated, concurrent assessments undertaken by the normal regulators.

Importantly, each of the regulators will carry out their normal assessment independently and feed that advice back to the assessment panel. The Bill makes it clear that regulators are required to conduct their assessments in a manner that is required under their own legislation, not to a lower standard as some submissions have suggested could occur. Each regulator must recommend refusal if it is not appropriate to issue a permit under its own legislation.

There has also been a significant misunderstanding or deliberate misrepresentation of the extent of public engagement provided in the Bill. The reality is that the Major Projects amendments actually increase opportunities for public engagement compared to the current PoRS process.

There are four stages of community input into a major project.

First, a range of interested parties have up to 28 days to advise whether they think the Minister should declare a project. This includes the owner of the land, owners and occupiers of adjoining land, the relevant local council and other councils in the region, relevant State agencies and the Tasmanian Planning Commission.

Second, the broader community has 14 days to comment on the draft Assessment Criteria prepared by the Panel and regulators before they are finalised. The Assessment Criteria are the project specific rules against which the project will be assessed by the independent panel.

Third, the public has 28 days to make representations to the exhibition of the proposal, the major project impact statement, and the Panel's initial assessment report based on the information provided at that point, including the preliminary advice of the separate regulators.

This provides for greater transparency and scrutiny, as the public will be able to not only review and comment on the proponent's response to the assessment criteria, but also the Panel and regulators' initial consideration of that response.

Finally, interested parties have the opportunity to appear before the independent Panel at a public hearing to follow up on a representation. Hearings are not specifically limited in duration. All persons that lodge a representation will be invited to appear before the Panel.

The Bill provides for a comprehensive and rigorous assessment process with no 'short cuts' or political involvement.

The Panel has the discretion to approve a major project or refuse it.

If a major project permit is issued, the relevant planning scheme can be amended to remove any inconsistency between the permit and the planning scheme. Again, this is not new. It is consistent with the Projects of State Significance and PoRS processes that we have had for years.

Some submissions were concerned that the Major Projects process could lead to broad changes to planning schemes, which would allow other projects of the same type or scale to be approved under the normal DA process.

This has never been the intention and the Bill makes it clear that any amendment is limited to the specific site of the project.

Finally, I want to address comments regarding the inability to appeal the Panel's decision on merit to the Resource Management and Planning Appeal Tribunal.

The Major Projects process is consistent with the existing PoRS process - there is no appeal on the merit of the proposal to RMPAT or any other body.

This matter was raised during the debate on the PoRS process in 2009, and the response to it then is still valid today: it is not appropriate to appeal the decision of one independent expert panel to another expert panel.

This is completely consistent with all decisions made by panels established by the Commission, except where the Commission acts as a planning authority under the Major Infrastructure Development Approvals Act (MIDAA).

Consequently, there is no loss of appeal rights from those currently in place under existing legislation, because those rights never existed.

The point of appeals is to provide an opportunity for representors to be heard and for proposals to be tested by an independent expert panel. The Bill provides for this in an efficient and accountable way.

The Major Projects Bill is the culmination of a long process of analysis and drafting following three rounds of public consultation. While some will claim it aims to 'fast track' proposals and eliminate public scrutiny, nothing could be further from the truth.



This Bill sets out arguably the most open and transparent approval process for major projects in the nation, while providing for all of the key planning related permits in a single process.

The Bill balances time savings for proponents with adequate time for regulators and the independent panel to thoroughly assess a proposal.

Modelling of the timeframes indicates that a full major project assessment would take about 11 months. The Government has taken advice from the regulators and from local government and major industry bodies as to their requirements and expectations of the process. And there is a consistent view that certainty of timeframes is preferred over open ended and unpredictable processes.

In conclusion, this Bill will provide a robust, transparent and comprehensive process to assess the major projects Tasmania needs to rebuild and recover from the COVID-19 crisis through an independent process, based on established planning laws and meaningful public engagement.

I commend the Bill to the House.