

2<sup>nd</sup> October 2017

Planning Policy Unit  
Planning.Unit@justice.tas.gov.au

Dear Sir or Madam

**Land Use Planning and Approvals Amendment (Major Projects) Bill 2017**

Thank you for the opportunity to provide a submission on the Draft *Land Use Planning and Approvals Amendment (Major Projects) Bill 2017* (the Bill).

The Local Government Association of Tasmania (LGAT) is incorporated under the *Local Government Act 1993*, our functions being:

- (a) to protect and represent the interests and rights of councils in Tasmania;
- (b) to promote an efficient and effective system of local government in Tasmania;
- (c) to provide services to member councils, councillors and employees of councils.

The views and opinions expressed in this submission are representative of the Local Government sector, having been developed in consultation with Member councils. LGAT fully supports councils who have made individual submissions to the consultation process and in turn, supports the content and opinions expressed within those submissions.

If you have any questions or would like further information, please do not hesitate to contact me at [dion.lester@lgat.tas.gov.au](mailto:dion.lester@lgat.tas.gov.au) or via phone on (03) 62 335986.

Sincerely,



Dion Lester  
Acting Chief Executive officer

## General Comments

It is considered essential that any planning system has a transparent and clear approval process for major projects, however the Tasmanian planning system is not always well placed to manage unique or major projects with regional level impacts. This is a reflection not of the capacity of local government to assess projects but the stage of development of the planning system and the structure of planning schemes, which centre on more standard use and development, such as subdivisions, housing, smaller scale commercial and industrial developments. The system does not anticipate major or unique developments and the absence of applicable criteria in planning schemes can simply result in decisions being made on law rather than merits.

In this context the move to adopt the major projects approval process is supported.

It appears that the draft Bill does offer an improvement on the existing Projects of Regional Significance option, with the provisions allowing for an 'expanded suite of approvals' and 'in principle approval' being cited as beneficial. Expansion of the range of approvals to include land use planning, environmental, Aboriginal cultural heritage etc. would be a positive step for potential proponents who may find taking an application through a number of separate approvals processes a major inhibitor.

The 'in-principle approval' provisions are claimed to provide a level of certainty to a project before they invest in preparing costly surveys and technical assessments. The concept of an in-principle approval is sound and if provided can ensure that resources of the proponent and regulators can be directed at key issues at the initial assessment phase. However, the current drafting of the Bill does little to address this issue or codify a truly "in-principle" assessment. The draft Bill appears to do little more than outline what currently occurs via existing Level 1 and Level 2 activities, with regulators seeking the necessary technical information essential to the assessment upfront and leaving often substantial investigative work or development of management plans, to be developed post-approval as conditions of approval.

It is acknowledged that crafting a legislative process to truly achieve an "in-principle" approval process is difficult. However, in the absence of achieving this, the draft Bill is misleading to suggest it does. If the draft Bill remains unchanged, the guidelines at clause 60V (4) become essential in ensuring regulators do not insist on provision of material which is not critical to the first stage of assessment.

The key issue identified by Local Government is in relation to the eligibility criteria for declaration of major projects and the fact that they are open to a wide interpretation based on the opinion of the Minister.

The eligibility criteria uses the term 'significant', 'significance' or 'potentially significant' in relation to 4 of the 6 criteria. The draft Bill does not contain any definition of 'significant', leaving these criteria very broad and open to interpretation – a high number of projects could make a claim to meeting these criteria. There would be benefit in making these criteria more specific in order to provide both project proponents and the wider community with greater certainty.

The uncertainty around what is likely to be a major project creates the perception that proponents can utilize the major projects route for projects that fail the standard existing processes, making their project political in the hope of receiving major project status and support.

The maintenance of the requirement to gain consent of the General Manager prior to the declaration of a major project, where it is to be situated on land owned by a council, is strongly supported.

## Specific Comments

The following table provides specific feedback relating to sections of the draft Bill.

Section	Reference Summary	Comments / Concerns
60C(4) & 60O(5)	Planning Authority input into the process	<p>It is noted and supported that the draft Bill provides planning authorities the opportunity for input into the process prior to declaration of a major project, during the preparation of the assessment guidelines and at the assessment stage by making a representation and participating in the hearings.</p> <p>However, a number of the proposed timeframes are unrealistic. In particular, the timeframes allowed for advice on whether the planning authority believes a declaration of a major project (60C(4)) and the nomination of a representative (60O(5)) are insufficient. In both cases, Council meetings cannot occur within the timeframes and it is inappropriate for officers to undertake such significant responsibilities.</p>
60H(2)(b)	Eligibility criteria	<p>Clause 60H(2)(b) provides that a project warrants declaration as a major project if, in the opinion of the Minister, the determination by a planning authority of an application for a permit in relation to the project has been unreasonably delayed. It is not clear why this provision is required given the existing legislative provisions in relation to timeframes for making decisions on permit applications. The <i>Land Use Planning and Approvals Act 1993</i> already provides clear requirements in relation to requests for information and such requests are also appealable to the Resource Management and Planning Appeals Tribunal. Given the narrow timeframes involved and existing rights of appeal on this issue, the potential for a planning authority to cause unreasonable delay is negligible. It also has the potential to make a small process issue into a big political issue</p>
60H(3)	Eligibility criteria	<p>Clause 60H(3) clarifies that the fact that a project includes a proposal for a building that exceeds the acceptable solution under the relevant planning scheme for building height is not a relevant consideration for the purposes of determining whether the project is a major project. This inclusion is unwarranted and poor public policy, clearly included to exclude certain current development proposals attracting significant public interest.</p>

60H(7)	A project that would otherwise be prohibited under a planning scheme can be declared a major project.	Concern has been raised that the wording “only if the use or development is not inconsistent with the TPPS or a regional land use strategy” is very open and would allow prohibited use or development to be submitted by virtue of omission to specifically rule them out in a TPPS or regional land use strategy. This is considered too broad.
60YM	Monitoring and Enforcement of planning related conditions	<p>The Panel will undertake the assessment, impose conditions and then transfer responsibility for monitoring and enforcing the planning related conditions back to the relevant planning authority. Concerns have been raised regarding the extent of consultation between the planning authority and Panel in developing the draft conditions and also the resource requirements in monitoring and enforcing the relevant conditions.</p> <p>If a project is considered as major and having a broad impact, even beyond municipal boundaries, to warrant classification and assessment then surely this should warrant the state being responsible for the ongoing monitoring of the planning related conditions.</p>