

23 January 2018

Planning Policy Unit
Department of Justice

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Dear Sir/Madam

Major Projects

Thank you for the opportunity to provide a submission on the *Land Use Planning and Approvals Amendment (Major Projects) Bill 2018* (the Bill).

The second round of consultation on the updated draft Bill is noted and supported. 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. Equally, the development of an appropriate major project approval process in a transparent and consultative fashion is important to both ensuring a robust framework as well as strong stakeholder and community support for the resultant legislation.

LGAT is incorporated under the *Local Government Act 1993* and is the representative body and advocate for Local Government in Tasmania. The views and opinions expressed in this submission are a 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.

Many of the changes in the draft Bill are supported, however there are some areas where the draft Bill has failed to respond to concerns raised by the Local Government sector. These will be outlined below.

Eligibility Criteria

The draft Bill does not discuss or address the uncertainty about the application of the criteria continuing to use the terms ‘significant’, ‘significance’ or ‘potentially significant’. 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 to provide both project proponents and the wider community with greater certainty.

The Scope of the Minister’s Declaration Powers Are Too Wide – Unreasonable Delay

Subsection 60J(2) of the revised draft Bill has been modified as follows:

- (2) *Subject to section 60K, a project is eligible to be declared to be a major project under section 60M if, after considering advice provided under section 60I(4) and after consultation with the Commission.*

The additional consultation process with the Commission is noted and supported, however in the interest of transparency it is suggested that the advice of the Commission be made publicly available **in all instances** and where the Minister has deviated from this advice a statement of reasons also be provided.

Excluding Tall Buildings From The Major Projects Assessment Process

Subsection 60K(1) of the revised draft Bill has been modified, seeking to clarify that 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. The clarification extends the consideration to use, in addition to height. This inclusion does little to change the fact that the exclusion of ‘tall buildings’ is unwarranted and poor public policy, clearly included to exclude certain current development proposals attracting significant public interest.

Enforcement Of Planning Conditions

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.

The Planning Authority will be responsible for monitoring and enforcing planning Conditions and so will need to assess if the conditions are reasonable. It is suggested that the Bill allow the Planning Authority to charge an assessment fee, in the manner allowed for the EPA Board and the Heritage Council at sections 60ZF(2) and 60(ZZY(1).

Other Matters

The Bill, at clause 60Z provides a description of 'relevant regulators', this includes 60Z (5) the following:

60Z (5) For the purposes of this Act, a person is a relevant regulator in relation to a major project if, were the major project not declared to be a major project, a project-related permit would be required to be issued by the person under a project-associated Act in order for an activity in relation to the project to be lawfully carried out under that Act.

The intent of this 'catch all' clause is to ensure other regulators, who would typically undertake development assessment (e.g. threatened species), have the opportunity to provide input to the assessment process. However, it is not clear whether the Director of Public Health could be considered a relevant regulator pursuant to clause 60Z (5), as while the *Public Health Act 1997* contains various regulatory functions related to public health, there are no express provisions related to general development project assessment.

The inclusion of the Director of Public Health is considered important and should be clarified in the Bill. This would be consistent with the *Environmental Management and Pollution Control Act 1994*, which at clause 74 (5) has the following:

If required by the Director of Public Health, an environmental impact assessment must include an assessment of the impact of the proposed environmentally relevant activity on public health.

Given the likely itinerant nature of inclusion of the Director of Public Health as a relevant regulator with major projects, express mention in the Bill is warranted. Otherwise, there is a risk that the Assessment Panel could fail to seek the appropriate input.

If you have any questions or would like further information, please do not hesitate to contact dion.lester@lgat.tas.gov.au or via phone on (03) 62 33 5972.

Yours sincerely



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