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 Minister for Environment and Parks  
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Mr Des Jennings  
 General Manager  
 Northern Midlands Council

16 APR 2020

Dear Mr Jennings,

I refer to your correspondence of 23 March 2020 requesting an amendment to the Northern Tasmania Regional Land Use Strategy (NTRLUS) to allow the progression of the proposed 'Ridgeside Lane' development, and the accompanying background documentation.

I note that the Northern Midlands Council first considered the requested amendment on 19 August 2019, and that on 16 March 2020, following the receipt of feedback from other northern region councils, Council resolved to request an amendment to the NTRLUS; the inclusion of land at 98 Ridgeside Lane, 211 Logan Road and CT 101154/1 Logan Road, Evandale within the urban growth area classification.

I have subsequently received a letter from Mr Brett Robinson, Chief Executive Officer of Traders in Purple, which claims that the proposed amendment has been endorsed by each of the northern region councils. This claim appears to be at odds with the advice you provided, which indicated conditional support from councils for you to progress the amendment, but no support for the substance of the amendment itself.

The requirements of the Information Sheet - RLUS 1 - Reviewing and Amending the Regional Land Use Strategies also indicate that State Agencies and key infrastructure providers should be consulted to ensure that any significant issues are avoided during subsequent consultation. Other than comments from Tas Water in regards to water supply, I am advised that there is no evidence in the background documentation of engagement with these bodies, or their endorsement of the proposed amendment.

The regional land use strategies play a significant role in setting the medium to long-term strategic directions for each of Tasmania's regions. They provide for the efficient delivery of infrastructure and services and a broader regional context for the assessment of development applications and changes in land use. It is my view that individual proposals for significant development or planning scheme amendments should be guided by the agreed strategic planning objectives and priorities and not considered in isolation.

I note that the NTRLUS was substantially amended in mid-2018 to incorporate the growth strategies of the Greater Launceston Plan, including identifying strategically located Urban Growth Areas and a number of new Future Investigation Areas for urban development. These areas represent the agreed position of the northern region councils on where future residential growth and infrastructure will be located across the region.

I am advised that the Northern Midlands Council was one of the five councils which initiated and developed the Greater Launceston Plan, and that the Plan specifically includes a framework for integrated residential development, including for Evandale, Longford and Perth.

I am therefore of the view that the NTRLUS should only be amended if the amendment constitutes good, evidence based, strategic planning. In this case, I would expect Northern Midlands Council to clearly demonstrate that contemporary analysis of land availability and growth forecasts at a regional level have indicated that additional land, beyond what has already been identified within the NTRLUS, is required to support future urban growth, and that the area outside Evandale is the appropriate location for that additional urban growth.

This is especially important given I am advised that other northern region councils have commenced a review of land within the NTRLUS' Future Investigation Areas to determine their prospects for future development. Again, the views of State agencies and key infrastructure providers are critical, because they may already be undertaking strategic asset planning and budgeting activities in order to service the currently identified growth areas in the future.

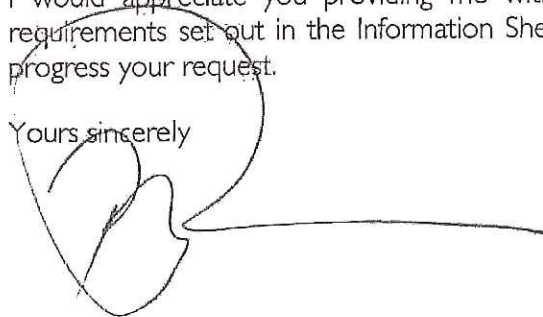
I am also required, under s.5A of the *Land Use Planning and Approvals Act 1993* (LUPAA), to be satisfied that the creation of a new Urban Growth Area would be consistent with each State Policy, and also further the sustainable development objectives under Schedule 1 of LUPAA. I would expect Council to provide clear evidence of this.

I note that the Council commissioned peer review of the proponent's agricultural advice, clearly states that the proposed new Urban Growth Area would result in the permanent loss of agricultural land of local and regional agricultural significance within a declared irrigation district, and was therefore inconsistent with the State Policy on the Protection of Agricultural Land 2009. Any request to amend the NTRLUS would therefore need to address this matter.

While it is encouraging to see interstate developers interested in investing in Tasmania's future, particularly in the area of housing, this should not occur at the expense of good strategic planning and a coordinated approach across the region.

I would appreciate you providing me with a direct response to the consultation and endorsement requirements set out in the Information Sheet, as in the absence of such documentation, I am unable to progress your request.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Roger Jaensch', is written over a circular stamp. A long horizontal line extends from the right side of the signature.

Hon Roger Jaensch MP  
Minister for Planning

**Paul Godier**

**From:** Northern Midlands Council  
**Sent:** Monday, 11 May 2020 2:56 PM  
**To:** Des Jennings; Paul Godier  
**Cc:** Gail Eacher  
**Subject:** FW: To all Tasmanian General Managers re Major Projects  
**Attachments:** Key Issues of the Major Projects Bill March 2020.pdf; 2020 04 24 Updated EDO Fact Sheet Draft Major Projects Bill 2020-003.pdf; 2020 05 Notice of Motion re Major Projects.doc

Regards,  
 Council Administration Officer

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*T a s m a n i a ' s H i s t o r i c H e a r t*

**From:** PMAT / TCT / HnH <brian@corr.net.au>  
**Sent:** Monday, 11 May 2020 2:33 PM  
**To:** Northern Midlands Council <council@nmc.tas.gov.au>  
**Subject:** To all Tasmanian General Managers re Major Projects

## Draft Major Projects Bill

Monday, May 11th 2020

A call to all Tasmania's LG elected members

**To: Mr Des Jennings, General Manager**

**For your information ... this email, including 3 attachments, was sent to all elected members last week. We hope that each Council will make a submission asap re the proposed Major Projects legislation. It is our understanding that the City of Hobart has been granted an extension in time, and will be making their submission later than the 15th May.**

The state government's proposed Major Project Legislation, if introduced, would remove any element of balance, fairness and democracy from planning decisions.

Under the proposed legislation, the Minister for Planning has unchecked power to declare virtually any development that would normally go to a local council, a major project - from a subdivision to a pulp mill.

The legislation provides a fast-track approval pathway, with no appeal rights and no role for elected councils in regard to final approval of a project. If this happens, local elected members will lose control of any development that the Minister decides to be a Major Project.

Our legal advice is that all the most controversial projects communities are currently fighting around Tasmania could be taken away from councils; Cambria Green on the east coast; the Fragrance skyscrapers in Hobart and Launceston; Lake Malbena Helicopter proposal and other developments in the world heritage area; and cable cars proposed for Mt Wellington, Mt Roland and Cataract Gorge.

This legislation would make the Resource Management and Planning Appeals Tribunal (RMPAT) and the Tasmanian Planning Commission (TPC) largely irrelevant, as any declared Major Project could go straight to an unelected Development Assessment Panel (DAP). Decisions by the tribunal (to refuse a development on appeal) and TPC (to refuse a planning scheme change) could always be overturned through the Major Project fast-track process.

Projects could either 1) go straight to the Major Projects process (and bypass Council, RMPAT and TPC), or 2) those that fail in Council, RMPAT or TPC could go through the Major Projects process. These scenarios have the consequence of undermining the roles and functions of Councils and/or RMPAT and/or TPC.

Given the affect that this will have on local decision-making, we believe that all councils should be fully briefed by their own planning officers, with a report to Council, followed by a Council resolution that is conveyed to the Minister.

So, we ask you to consider putting the attached motion, as is or amended, to your council at the next available meeting. Also attached are a Fact Sheet from the Environmental Defenders Office, and Key Issues from TCT.

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**Please contact one of those below if you require more information:**

Sophie Underwood, Planning Matters Alliance Tasmania (PMAT)  
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Peter McGlone, Tasmanian Conservation Trust Inc (TCT)  
P: 0406-380-545 E: [peter@tct.org.au](mailto:peter@tct.org.au)

Brian Corr, Hobart Not Highrise Inc (HnH)  
M: 0407-9790989 E: [brian@corr.net.au](mailto:brian@corr.net.au)

**KEY ISSUES OF THE MAJOR PROJECTS BILL AS OUTLINED BY THE TASMANIAN CONSERVATION TRUST IN THEIR SUBMISSION GUIDE**

Also, see submission guide [here](#).

**Help stop the Major Projects Legislation – make a submission by filling out the form.**

The State Government's proposed Major Project Legislation is back for a third time and this time it is even worse – submissions are due by 15 May 2020.

I oppose the Draft Tasmanian Major Projects Bill (MPB) for the following reasons and recommend that this undemocratic legislation be abandoned.

**The Government has too much power when declaring major projects**

The Major Projects Bill gives the minister total power to declare a major project which removes it from the normal local council planning process. The Tasmanian Planning Commission 'may' produce guidelines but even if they do the minister only has to "have regard to" them and doesn't have to follow them.

Any project which has been refused by a council or the Planning Appeals Tribunal could be later declared a major project and potentially approved. Used in this way, the legislation greatly reduces the relevance of the Planning Appeal Tribunal.

**Virtually any project could be a major project**

The Major Projects Bill allows virtually any development that would normally go to a local council, from a subdivision to a pulp mill, to be declared a major project. The eligibility criteria are so broad and open to interpretation by the minister that he can justify virtually any project as a major project.

**All controversial projects around Tasmania could be fast tracked including:**

Cambria Green on the east coast; the Fragrance skyscrapers in Hobart and Launceston; Lake Malbena Helicopter proposal and other developments in the world heritage area; and cable cars proposed for Mt Wellington, Mt Roland and Cataract Gorge.

**Highrise buildings clause removed**

The previous draft of the Bill partially addressed community concerns by excluding highrise hotels as eligible projects, but the clause has been removed from the latest draft.

**No right of appeal and limited community input**

The community will have no right to appeal against the approval of a major project and will have limited right to have input. Appeal rights provide the community with an avenue to have bad decisions reviewed and removing appeal rights for major developments greatly weakens our democracy.

**Your elected councillors will be side-lined**

The Major Projects Bill allows the minister to take developments away from local councils and approved by Development Assessment Panels. Elected councillors will not have a say over approval of major projects. The DAP members are unelected and the community will not be able to lobby them or vote them out.

**Planning scheme changes can be forced on councils and communities**

Under the proposed legislation planning scheme amendments can be forced on councils and communities. A major project can be approved that is inconsistent with a planning scheme and, after the permit is issued, the Tasmanian Planning Commission must amend the planning scheme to remove any inconsistency. The proponents of Cambria Green may use this path.

If developers have planning scheme amendments refused by the Tasmanian Planning Commission, they could go through the major projects process and have the Commission's decision overturned. The legislation subverts the role of the Commission in the same way as it subverts the Planning Appeal Tribunal.

#### **Development Assessment Panels are not independent**

There are many checks and balances that apply to the Tasmanian Planning Commission that ensures it operates in an independent, transparent and evidence-based manner. For 23 years it has maintained a high level of community trust. There are insufficient checks and balances on the Development Assessment Panel who may be open to unfair influence from the proponent or state government.

#### **Independent Tasmanian Planning Commission is sidelined**

Despite comments by the state government, the independent Tasmanian Planning Commission will not be assessing and approving major projects. All the power to assess and approve developments is given to a Development Assessment Panel that may include no Tasmanian Planning Commission person.

The only safeguard that exists is that the development assessment panel members must be approved by the independent Tasmanian Planning Commission but this could change after the government's current review of the Commission.

#### **No justification for more major projects or fast tracking powers**

Tasmania doesn't need more fast tracking powers. The government has not made the case for why new major projects powers are needed. The Major Projects Bill is intended to replace the Projects of Regional Significance process but no details have been provided about what is wrong with PORS. Tasmania has Projects of State Significance legislation which is a credible process for large and complex projects – and was successfully used to approve the Basslink cable.



## TASMANIAN DRAFT MAJOR PROJECTS BILL

### Introduction

- 1 On 3 March 2020, the Tasmanian Government released for public comment a draft *Land Use Planning and Approvals Amendment (Major Projects) Bill 2020 (Draft Bill)*. The Draft Bill is available online [here](#). Public comment on the Draft Bill is due by 15 May 2020.
- 2 This fact sheet outlines the changes that the Draft Bill would make to current development and assessment processes.
- 3 There are three existing assessment processes for major development proposals:
  - (a) Projects of State Significance under the *State Policies and Projects Act 1993 (POSS)*, for projects with significant capital investment, state-wide impacts or complex design;
  - (b) Projects of Regional Significance under the *Land Use Planning and Approvals Act 1993 (PORS)* for larger and more complex projects that do not qualify as a POSS but have impacts across council boundaries and regions;
  - (c) Major Infrastructure Development Approval (**MIDA**) for major linear infrastructure projects eg, road, railway, power-line, telecommunications cable or other prescribed infrastructure;
- 4 In summary, the Draft Bill would:
  - (a) Give the Planning Minister the power, in certain circumstances, to declare a project to be major project.
  - (b) Repeal and replace the PORS process in div 2A of pt 4 of the *Land Use Planning and Approvals Act 1993 (Tas)*;
  - (c) Establish a new assessment process for major projects, to be conducted by a "Development Assessment Panel", being a new panel appointed by the Tasmanian Planning Commission for each major project. The Development Assessment Panel coordinates input from "relevant regulators" and may grant a major project permit for

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a project if the project meets certain criteria and none of the relevant regulators have directed a refusal;

- (f) Displace existing approvals and establish “relevant regulators” who have input into the assessment and approval of a major project. These bodies are the EPA Board, the Tasmanian Heritage Council, the Secretary of DPIPWE and the Director of Aboriginal Heritage Tasmania, TasWater and TasNetworks. A local council and the Aboriginal Heritage Council are not relevant regulators.
- (d) If a project is granted a major project permit, obviate the need for the proponent to obtain the following approvals (listed below) separately, if they would otherwise be required in relation to the project.:
- (i) ordinary development permits under the *Land Use Planning and Approvals Act 1993* (Tas);
  - (ii) permits relating to level 2 activities under the *Environmental Management and Pollution Control Act 1994* (Tas);
  - (iii) heritage approvals under the *Historic Cultural Heritage Act 1995* (Tas);
  - (iv) permits, authorities, licences, certificates, determinations, permissions or other authorisations under the *Nature Conservation Act 2002* (Tas);
  - (v) permits, authorities, licences, certificates, determinations, permissions or other authorisations under the *Threatened Species Protection Act 1995* (Tas); and
  - (vi) permits, authorities, licences, certificates, determinations, permissions or other authorisations under the *Aboriginal Heritage Act 1975* (Tas).
- 5 In other words, the grant of a major projects permit has the result that the regulatory schemes established under the Acts listed at (c)(i) – (c)(ii) above do not apply to the project, rather the assessments that are normally carried out under those regulatory schemes are to an extent integrated into the major projects permit assessment. What the Bill does not make clear, though, is whether the integration of other assessments into the major projects permit incorporates fully or truncates the usual assessment process under those Acts.
- 6 The draft Bill replaces and substitutes the PORS process. Due to the breadth of the eligibility criteria for a major project declaration, the draft Bill is likely to displace the POSS and MIDA processes. In that regard, the eligibility criteria refer to “State” and “regional” significance and it also seems likely that linear infrastructure projects are contemplated.
- 7 The major projects assessment process in the draft Bill draws on existing elements of the PORS process, e.g. Development Assessment Panels, project assessment guidelines and project declaration. However, the PORS assessment process has never been used – no project has been declared or assessed through PORS - so these elements are untested. There are also substantive new elements, chief among those, the integration of other statutory approvals.
- 8 For these reasons, our description of the assessment process provided for in the draft Bill is as a new assessment process, not as a comparison with existing statutory processes.

#### **What is a major project?**

- 9 The proponent of a project, the planning authority or the Minister may make a proposal that a project be declared to be a “major project”. After a major project proposal is made, the Minister must decide whether the project is to be a declared major project or not. Notice of the Minister’s decision must be published in the Government Gazette.
- 10 Not all projects can be declared a major project. For a project to be eligible for a major project declaration, the Minister must be of the opinion that the project meets 2 of the following criteria:



- (a) the project will make a significant financial or social contribution to a region or the State;
  - (b) the project is of strategic planning significance to a region or the State;
  - (c) the project will significantly affect the provision of public infrastructure, including, but not limited to, by requiring significant augmentation or alteration of public infrastructure;
  - (d) the project has, or is likely to have, significant, or potentially significant, environmental, economic or social effects;
  - (e) the approval or implementation of the project will require assessments of the project, or of a use, development or activity that is to be carried out as part of the project, to be made under 2 or more project-associated Acts or by more than one planning authority;
  - (f) the characteristics of the project make it unsuitable for a planning authority to determine.
- 11 A major project declaration can be made in relation to projects on private land, Council land, Crown land or in Wellington Park. Many large or controversial developments could be eligible for a major project declaration, potentially including:
- high rise buildings;
  - cable cars;
  - prisons;
  - large suburban/rural development (like Cambria Green) or subdivision;
  - any Level 2 activity usually assessed by the EPA (except salmon farms);
  - development in national parks and reserves.
- 12 Where a permit application has been lodged for a development, but not determined by the council, it can be declared a major project.
- 13 The Commission may issue determination guidelines as to matters to which the Minister is to have regard in determining whether to declare projects to be major projects. The Commission is required to publish any determination guidelines that it issues but there is no opportunity for public input consultation into their formulation.

**Effect of a major project declaration**

- 14 If a project is declared to be a major project, then it requires a major project permit to proceed.
- 15 Applications that have been made for approvals under the *Land Use Planning and Approvals Act 1993 (Tas)*, *Aboriginal Heritage Act 1975 (Tas)*, *Environmental Management and Pollution Control Act 1994 (Tas)*, *Historic Cultural Heritage Act 1995 (Tas)*, *Nature Conservation Act 2002 (Tas)* and *Threatened Species Protection Act 1995 (Tas)* in relation to the project are deemed to have been withdrawn.
- 16 This appears to be so that the project is subject to a single assessment process – leading to the granting or refusal of a major project permit. The assessment process for major project permits is outlined below.

**Development Assessment Panel**

- 17 The Tasmanian Planning Commission (**Commission**) must establish a Development Assessment Panel (**Panel**) in relation to each major project. The Panel co-ordinates the assessment of a major project. It makes the final determination as to whether a major project permit should be granted or refused for a major project.

- 18 The Panel has a minimum of 3 members and a maximum of 5.
- 19 The 3 mandatory members are:
- a member of the Commission (or other person nominated by it) as chairperson of the Panel;
  - a person with appropriate qualifications and experience who is nominated by the councils for the municipal areas that are likely to be affected by the major project; and
  - a person who is not a member of the Commission and who, in the opinion of the Commission, has qualifications and experience that are relevant to the assessment of the major project.
- 20 The Commission *may* appoint no more than 2 additional people to be members of the Panel. That power can be exercised if the Commission is of the opinion that the scale, specialist nature or complexity of the major project makes it desirable to appoint an additional member with particular qualifications or experience.
- 21 The Commission *must* appoint no more than 2 additional people to be members of the Panel if the Commission is required to do so by the Minister in the relevant major project declaration.

#### **Steps prior to assessment of major project by the Panel**

##### *Relevant regulators*

- 22 The Commission must refer a major project to each relevant regulator. The relevant regulators in relation to a major project are different depending on the character of the major project. The Environmental Protection Authority is *always* a relevant regulator. Other entities that *may* be relevant regulators in relation to a particular major project are:
- a pipeline licensee;
  - the Heritage Council;
  - the issuers of permits under the *Aboriginal Heritage Act 1975 (Tas)*, *Environmental Management and Pollution Control Act 1994 (Tas)*, *Historic Cultural Heritage Act 1995 (Tas)*, *Nature Conservation Act 2002 (Tas)* and *Threatened Species Protection Act 1995 (Tas)*.
- 23 Notably, municipal councils are *not* relevant regulators.
- 24 A relevant regulator must, in relation to each major project, give to the Panel and the Commission:
- a notice of no assessment requirements, by which the relevant regulator specifies that it does not require any matters to be included in the assessment guidelines; or
  - an assessment requirement notice, by which the relevant regulator specifies that it requires certain matters to be contained in the assessment guidelines; or
  - a notice recommending revocation, by which the relevant regulator specifies that it requests the Panel to recommend to the Minister that that the major project declaration be revoked.

##### *Assessment guidelines*

- 25 The assessment guidelines in relation to a major project specify the matters to be addressed in the major project impact statement. They are essentially criteria by which a major project permit is granted or refused. The Panel must determine assessment guidelines in relation to a major project. Before doing so, there are two procedural steps that must be followed.

- 26 *First*, the Commission must request certain persons provide to the Panel within 14 days their comments as to what the assessment guidelines should include. Those persons are:
- the owner(s) of the land on which the major project is to occur (if the owners are not the proponents of the major project);
  - the relevant planning authority;
  - each planning authority for a municipal area that is in the regional area(s) in which the major project is to be situated;
  - the State Services and Tasmanian Government Business that the Panel considers may have an interest in a matter to which the major project relates;
  - the Crown Lands Minister, if the major project is to occur on Crown Land;
  - the Wellington Park Management Trust, if the major project relates to land in Wellington Park
- 27 *Second*, the Panel must prepare draft assessment guidelines.
- 28 If the major project is a “bilateral agreement project”, being a project that is “reasonably likely” to require approval under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) or in relation to which the proponent is likely to have a bilateral agreement within the meaning of that Act, the Panel must publicly notify the draft assessment guidelines and invite representations from the public.
- 29 If the major project is *not* a bilateral agreement project, there is no requirement for public consultation in relation to the formulation of the assessment guidelines.
- 30 The assessment guidelines must include:
- any matters specified by the relevant regulators in an assessment requirement notice;
  - any matters the Panel considers are reasonably required to enable the proper assessment of whether the use and development of the land for the purposes of the major project would be an effective and appropriate use and development of the land; and
  - any matter specified by the regulations
- 31 In formulating the assessment guidelines, the Panel must have regard to any relevant planning scheme and any regional land use strategy.
- 32 The Panel must notify the proponent, the public and the entities specified above at [20] of the assessment guidelines.

**Major project impact statement**

- 33 Once the assessment guidelines for a major project have been prepared, the proponent of the project must prepare a major project impact statement. A major project impact statement must address the matters specified in the assessment guidelines. It must be prepared and provided to the Panel by the proponent within 12 months, or another period agreed between the proponent and the Panel. The Panel must provide a copy to each relevant regulator.

**Consultation relating to major project impact statement**

- 34 After receipt of the proponent's major project impact statement, the Panel and relevant regulators may request further information from the major project proponent. The Panel may also request further information from other bodies so as to make its assessment.
- 35 Each relevant regulator who has issued an assessment requirement notice or a notice recommending revocation must provide the Panel with its preliminary advice in relation to a

major project. The preliminary advice must consider the assessment guidelines and the major project impact statement. It is essentially a statement of the regulator's view as to whether the major project complies with the assessment guidelines. A relevant regulator's preliminary advice should indicate whether the regulator advises that the major project be refused a permit, or conditions that the regulator considers should be included in relation to the permit.

- 36 Following receipt of each participating regulator's preliminary advice, the Panel must prepare a draft assessment report. The draft assessment report is in substance the Panel's preliminary conclusion in relation to whether a major project permit should be granted and if so, with what conditions.
- 37 The draft assessment report must be publicly notified and exhibited. Members of the public may make representations in relation to whether a major project permit should be granted and/or any conditions that in the person's opinion ought to attend the grant of a major project permit. Representations must be received within 28 days of the notice, unless the Panel determines that a longer period is appropriate.
- 38 Within 28 days of the public exhibition concluding, the Panel must hold hearings in respect of the major project. Before holding a hearing, the Panel must notify:
  - each person who made a representation in relation to the major project;
  - each relevant regulator who has participated in the process; and
  - each person or body that was notified of the major project proposal.
- 39 After the last hearing, each participating regulator must give the Panel a final advice in relation to the major project. The regulator's final advice is a notice specifying that the regulator:
  - directs the Panel to refuse to grant a major project permit; or
  - does not direct the Panel to refuse to grant a major project permit but requires specified conditions to be imposed on any permit that may be granted; or
  - does not direct the Panel to refuse to grant a major project permit and does not require conditions to be imposed.
- 40 There are significant constraints on the circumstances in which relevant regulators may direct the Panel to refuse a major project permit. Generally, a relevant regulator may only direct that the Panel refuse a major project permit if the relevant regulator is satisfied that, were the project not a major project, the relevant regulator would refuse the project a permit under the permit scheme for which it is responsible. The process by which the relevant regulator may arrive at that state of satisfaction is unclear. The Bill does not indicate whether the regulator is required to comply with the procedures prescribed by its associated Act or whether a truncated assessment process is acceptable.
- 41 If the regulator requires a condition to be imposed, reasons for imposing that condition must be provided by the regulator.

#### **The Panel's decision**

- 42 Within 90 days after the last day of the public exhibition period for the draft assessment report, the Panel must decide whether to grant or refuse a major project permit. A major project permit may be granted subject to conditions.
- 43 In coming to its decision, the Panel must consider:
  - the relevant planning scheme and regional land use strategy;
  - any representations made in relation to the major project;

- any matters raised in hearings in relation to the major project; and
  - all participating regulator's final advices.
- 44 Importantly, while it must *consider* the relevant planning scheme, a major projects permit can be granted notwithstanding that the project would not be permitted under the planning scheme and is not required to be assessed against the applicable criteria in a planning scheme.
- 45 The Panel may only grant a major project permit if it is satisfied that certain conditions are met, including:
- the assessment guidelines in relation to the project have been satisfied;
  - the project would be consistent with the objectives specified in schedule 1 of the *Land Use Planning and Approvals Act 1993* (Tas);
  - the project would not be in contravention of a State Policy or Tasmanian Planning Policies;
  - the project would not be inconsistent with an applicable regional land use strategy; and
  - that no participating regulator has, in its final advice, directed the Panel to refuse to grant the major project permit
- 46 If a participating regulator has, in its final advice, directed the Panel to refuse to grant a major project permit, the Panel *must* refuse to grant the major project permit.
- 47 If a participating regulator has, in its final advice, specified conditions or restrictions that it requires to be imposed on the major project permit, the Panel may only grant a major project permit subject to those conditions. The planning authority is responsible for enforcing the observance of any condition or restriction to which the major project permit is subject.
- 48 The Panel must give public notice of its decision to grant or refuse a major project permit.

#### **Effect of major project permit grant or refusal**

- 49 If a major project permit is *refused*, an application for a permit in relation to the same or substantially the same project must not be made within 2 years of the refusal.
- 50 If a major project permit is *granted*, there are important consequences for other regulatory regimes' application to the project:
- the normal development permit process under the *Land Use Planning and Approvals Act 1993* (Tas). Section 51 of the *Land Use Planning and Approvals Act 1993* (Tas) does not apply to the project.
  - the Commission must amend the relevant planning scheme(s) to remove any inconsistency between the major projects permit and the scheme;
  - there is no need for the proponent of the project to separately obtain permits relating to activities authorised by the major project permit under the following Acts:
    - the *Environmental Management and Pollution Control Act 1994* (Tas) (in relation to level 2 activities);
    - the *Historic Cultural Heritage Act 1995* (Tas);
    - the *Nature Conservation Act 2002* (Tas);
    - the *Threatened Species Protection Act 1995* (Tas); and
    - the *Aboriginal Heritage Act 1975* (Tas).

51 Essentially, if a major project permit issued, the assessment processes under other regulatory regimes that would normally apply to a project do not.

NOTICE OF MOTION

IN ACCORDANCE WITH REGULATION 16(5) OF THE LOCAL GOVERNMENT  
(MEETING PROCEDURES) REGULATIONS 2015

I, Councillor / Alderman \_\_\_\_\_, give notice of my intention to move the following motion at the Council Meeting to be held on \_\_\_ / \_\_\_ . 2020:

**“That Council RECOGNISES the significant impact of the proposed Major Projects legislation on its role as a Planning Authority, and REQUESTS the General Manager to prepare a report to Council on how the City's planning role will be affected. This report to then be considered by Council, amended as Council resolves, and then forwarded to the Premier, and Minister for Planning, as the Council's approved position on the Major Projects issue.**

**Background**

The fundamental role of an elected member is to serve the interests of his / her community. We are responsible for strategic vision and planning for the future of our local government area to deliver outcomes for our community. We are active and contributing members of our community and are held to account every 4 years by the electors. Our role as a Planning Authority is a fundamental part of this.

The State Government's proposed Major Projects legislation will change this dramatically, so it is right and fitting that we provide them with our considered opinion on the matter. Hence this 'Notice of Motion'.

The Environmental Defenders Office (EDO), in a Fact Sheet 24<sup>th</sup> April 2020 (attached), has analysed the proposed legislation and raised some serious concerns. Numerous articles / letters in the media have shown a heightened level of community concern about the legislation.

This 'Notice of Motion' is asking our planning officers to report to us on how this legislation would affect our municipality, and on the validity, or otherwise, of the EDO analysis. This will allow us to review the officers' report and provide the State Government with our considered opinion.

Signed: Councillor / Alderman \_\_\_\_\_

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> Comparisons with the existing Projects of Regional Significance (PORS) process

### **Comparisons with the existing Projects of Regional Significance (PORS) process**

The Major Projects Bill aims to review the current Projects of Regional Significance (PORS) process to improve and build on the independent assessment of major projects like large public infrastructure developments.

#### **What advantages does the Major Projects Bill provide over the current Projects of Regional Significance process?**

##### **More consultation**

- A new stage where the Minister must consult with adjoining land owners / occupiers, planning authorities in the region, and relevant government agencies and other bodies prior to project declaration.
- Mandatory consultation with the Tasmanian Planning Commission (Commission) where a planning authority's capacity to process a project needs consideration.
- A stage where the planning authorities and relevant agencies are invited to comment on the Major Project Impact Statement provided by the proponent prior to public exhibition.
- The opportunity for relevant regulators to seek additional information from the proponent so they can properly assess the project.



#### More time

- Councils are given 7 days longer to nominate a Council member to sit on the Independent Panel (28 days not 21 days).
- An additional 2 months is provided for the Independent Panel and regulators to assess the project including the stages for public exhibition and public hearings.

#### More transparency

- The Independent Panel is required to operate in accordance with the Tasmanian Planning Commission Act 1997.
- The Independent Panel is required to publish the reasons for its decision.
- Greater transparency in the range of permits being sought by the proponent as some of these are not currently processes that provide for public input.

#### More certainty and greater efficiency for everyone

- The opportunity for any Regulator or the Independent Panel to advise of 'no reasonable prospect of approval' at an early stage ensuring that the proponent, the Independent Panel, the Regulators, and the public are not subjected to a lengthy and expensive process when it is clear the project is fatally flawed.
- Under the Projects of Regional Significance process, a fatal flaw would either stop a project later on, after much expense and time, or would later place separate Regulators under pressure to grant a permit because it had already received some permits but not all that are required.

#### More stringent tests of compliance

- The requirement that a major project is 'not inconsistent' with a regional land use strategy as opposed to the assessment criteria under PORS simply 'having regard' to that strategy.
- The provision that any individual regulator can require a refusal of the entire major project permit as opposed to the current situation where some permits are approved without regard to the other permits that are required.

#### How has the current Major Projects Bill provided for the Governments initial intentions?

The current Major Projects Bill has predominantly provided for the Governments initial intentions with some modifications in response to feedback from the past 2 public consultation rounds on the Bill, as follows:

##### Expand the suite of approvals included in a permit

Where the Project of Regional Significance (PORS) process only provided conditions on the permit from the Environmental Management and Pollution Control Act 1994 (EMPCA) process, the current Major Project process will provide assessment of issues involving European Historic Heritage, Aboriginal Heritage, Taswater, Gas pipeline safety, Threatened Species as well as the EMPCA process.

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### **Introduce a no-reasonable prospect test**

The Major Project process provides very early in the process for the Independent Panel or a Regulator to advise the Minister that there is no prospect of the project gaining approval. Then the Minister may revoke the Major Project status and end the process.

### **Stage the recovery of fees and provide more certain timeframes**

The Major Project process provides for fees to be set by regulation, which will provide for a staged fee payment arrangement.

### **Provide for 'in-principle approvals' and expand Ministerial 'Call in powers' – for when Development Application's experience unreasonable delay**

The 'in-principle approvals' and Ministers 'call-in powers' that relate to unreasonable delays with Development Application's (DA) has been removed from an earlier draft of the Major Projects Bill following feedback from the earlier rounds of consultation.

### **Can the Major Project process be stopped at an early stage?**

Yes, unlike the Project of Regional Significance (PORS) and Projects of State Significance (POSS) process, the Independent Panel in the Major Project process can declare the project to have 'no reasonable prospect' very early on in the process if advised by a Regulator to do so or if the Independent Panel considers that the project was ineligible to be declared as a major project or acting as the 'planning' assessor, the Independent Panel considers there is no reasonable prospect of the major Project being approved. Where this occurs, the Independent Panel advises the Minister, who in turn can revoke the Major Project status and the process ends.

### **Is the Major Project process quicker than the Development Application process and able to 'fast track' a proposal?**

No, a Standard Development Application (DA) process is 28-42 days. These decisions are open to an appeal to the Resource Management Planning Appeals Tribunal (RMPAT) which can add up to 90 days to the process.

The Major Projects process will take 293 days to run, which is longer than a DA process, longer than a combined planning scheme amendment and DA process, and longer than the current Project of Regional Significance (PORS) process (171 days).

There are no 'short cuts' in the Major Projects process to enable the process to 'fast track'. Fast track implies cutting corners and shortening key opportunities for involvement, which the Major Project process does not do.

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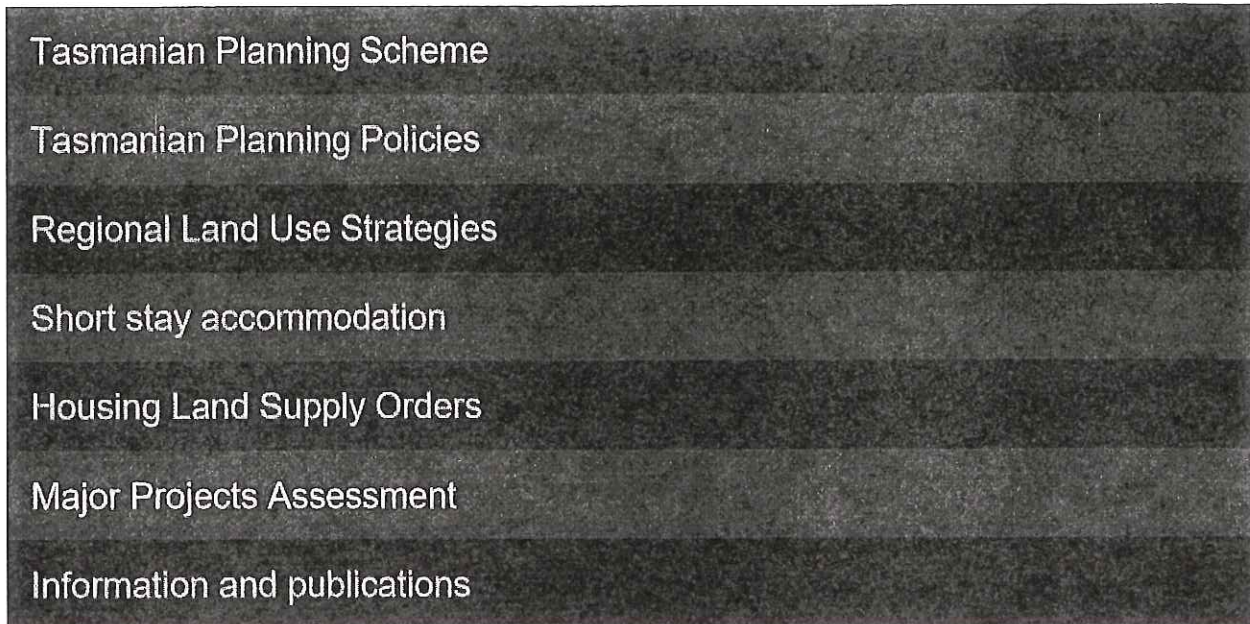
> Comparisons with the existing Projects of State Significance (POSS) process

### Comparisons with the existing Projects of State Significance (POSS) process

#### Is the Major Project process a replacement for the Projects of State Significance (POSS) process?

No, the Major Projects process is intended to be a different process that will sit between the POSS process and the standard development application process. The Major Projects process does not offer the full integrated assessment that the POSS process offers. Some key differences between the Major Projects process and the POSS process are:

- Under POSS all approvals, licenses, authorities, land acquisitions required can be provided, such as Reserve Activity Assessments, Building approval, licences for operating, mineral extraction or dams, where these are not provided for in a Major Project permit.
- Under POSS land owner consent is not required for POSS projects on council or government land, where under the Major Projects process, land owner consent for major projects on council or government land is required.
- A POSS project is not required to be consistent with a relevant regional land use strategy.
- A POSS permit process cannot be appealed under Judicial Review.
- Under POSS Parliament can override the decision of the Tasmanian Planning Commission.



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### Eligibility of projects

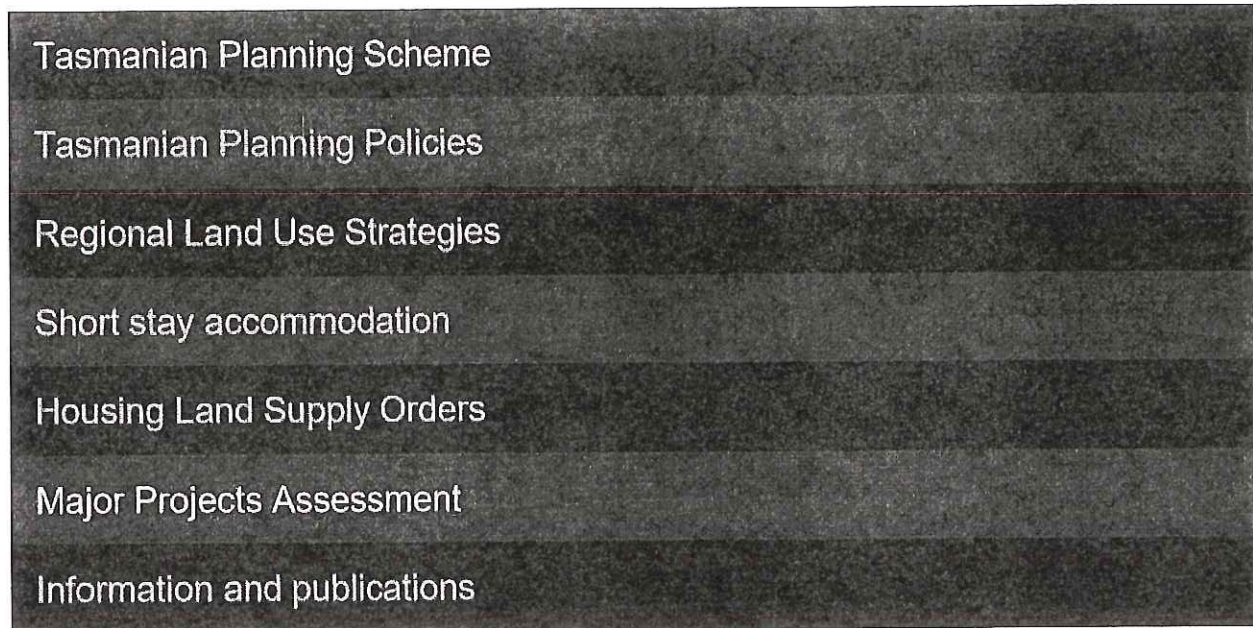
#### Can any project be assessed under the Major Project process?

No, for a project to be considered under the Major Project process, the major project must meet the eligibility criteria set out in the Major Projects Bill. The Major Project process requires a major project to meet at least 2 out of the 6 criteria, which is more stringent than the Project of Regional Significance (PORS) process.

Further, when the Minister makes a decision on whether the project is eligible, that decision must have regard to the Determination Guidelines prepared by the Tasmanian Planning Commission (the Commission). Unlike the PORS process the Major Projects Bill specifically provides ineligibility criteria.

The Major Projects Bill, as with the current PORS process already in place, is designed to assess a development application that meets the eligibility criteria. While the major project may require an amendment to the planning scheme, it is not designed as an alternative way of rezoning land to facilitate future development. The Major Project proposal must be an application for an actual development which meets the eligibility criteria. The Minister cannot declare a project that is ineligible.

#### Is the consent of the landowner required with the Major Project process?



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## Eligibility of projects

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### Is the consent of the landowner required with the Major Project process?

Where a major project is proposed to be located on land owned by the Crown, a Council or land managed by the Mt Wellington Park Trust, the Minister cannot declare the project as a major project without the written consent of the land owner/manager.

For land that is privately owned, the proponent is required to show proof to the Minister, before the process begins, that the proponent has written to the land owner to advise them of the intent to have their project assessed as a major project.

### **What does the Major Projects process not do?**

The Major Project process is designed to assess projects that are larger than normal developments and smaller than projects that are considered to be a Project of State Significance. Accordingly, the major projects process has limitations. These are as follows:

1. The Major Project process cannot be used for rezoning land in isolation of a development application for a project which itself meets the eligibility.
2. The Major Project process cannot be used if a local council, the Crown or the Wellington Park Trust withholds its consent as a landowner.
3. The Major Project process cannot be used if the proposal is inconsistent with the regional land use strategy in place and it cannot amend that strategy as part of the MP process.
4. The Major Project process cannot issue a permit if any one of the normal Regulators of the Project Associated Acts advises that it should be refused.
5. The Major Project process cannot be subject to interference by the Minister or Parliament.
6. The Major Project process does not provide for any land acquisition that the Major Project may require.
7. The Major Project process does not provide the necessary license for land in a national park to be developed.
8. The Major Project process does not provide a mining lease, permit for a Dam or final approval to conduct works in a road reserve.

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> Accountability, the Minister and the Independent Panel

### **Accountability, the Minister and the Independent Panel**

#### **How will the Independent panel be accountable?**

The Independent Panel is selected by the Tasmanian Planning Commission (the Commission) and is required to consist of a member of the Commission who acts as the Chair, a representative from the local council where the project is located, and an expert in the field of the project. Importantly, all Independent Panel members are bound to conduct themselves in accordance with the requirements of the *Tasmanian Planning Commission Act 1997*.

#### **Can appeals be made after a decision is made?**

The process of an appeal to the Resource Management and Planning Appeal Tribunal (RMPAT) is provided for ordinary development applications made to local councils under the planning scheme in force. RMPAT establishes a panel for the purposes of reconsidering the application against the planning scheme. Where there are proposals to vary the planning scheme either on its own or as part of a specific project, the decision is made by a panel appointed by the Tasmanian Planning Commission.

The only appeals against the determinations of the Tasmanian Planning Commission are to the Supreme Court under Judicial Review. The Major Projects Bill relies on a determination by an



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The only appeals against the determinations of the Tasmanian Planning Commission are to the Supreme Court under Judicial Review. The Major Projects Bill relies on a determination by an independent panel selected by and operating under the *Tasmanian Planning Commission Act 1997*. Providing an appeal to RMPAT against the Independent Panel's determination would be like having one expert panel testing the decision of another expert panel.

An appeal provides for a more detailed submission of evidence in favour of or against the proposal and the testing of that evidence through a public hearing. This is exactly what the Major Projects Bill proposes through the Independent Panel's public hearing procedures.

An appeal under judicial review is available to those who consider that the Independent Panel or the Regulators have not conducted their assessments appropriately. The Minister's declaration of a project can also be challenged through judicial review.

### **Why is the final decision on a Major Project made by an Independent Panel and not the Local Council?**

Even if the proposal does not require an amendment to a planning scheme, the Major Project process is intended to look beyond the boundaries of a single council area and consider the broader issues associated with the project. In the interests of balancing the views of the local community and the broader region, an independent panel to assess the proposal is considered the most appropriate. This model is also in line with all other states and territories in Australia and also in accordance with best practice planning processes.

Local government accepts that some parts of the planning system (amendments) and key projects, such as Projects of Regional Significance (PORS) or Projects of State Significance (POSS), should be assessed by independent experts such as the Tasmanian Planning Commission. The Independent Panel is independent from State Government and includes at least one Local Government representative.

### **Can the Minister direct the Independent Panel to approve a Major Project?**

No, once the Minister declares a major project he/she has no further role in the consideration of the merits of the proposal. All the Minister can do is grant extensions of time to the Independent Panel or revoke the major project at any time during the process.

### **Can the Minister 'hand pick' the Independent Panel members?**

No, the Independent Panel members are selected by the Tasmanian Planning Commission (the Commission). As a minimum the Bill requires the Independent Panel to consist of a member from the Commission, a member from the local council (where the major project is located) and an expert in the field of the major project. The Minister can request the Commission to appoint an additional expert, but the Minister is not able to say who that fourth independent panel member is.

### **Has the Tasmanian Planning Commission been sidelined?**

The Tasmanian Planning Commission (the Commission) has not been sidelined. In fact it operates in a similar way to how it does for most of its normal work, which is by delegating assessments and determinations to panels. Those panels can consist of one or more Commissioners (except those representing Government interests) and other delegates who may be senior Commission staff. The Major Projects Independent Panel includes a member or delegate of the Commission. The Independent Panel also has a local government representative and an expert relevant to the project. As such the full panel membership will be able to cover regional issues through the Commission representative, local issues through the local government representative and project specific issues

through the panel expert. In combination these panel members, along with the advice from the regulators will ensure that each and every major project will undergo a robust thorough assessment.

Also, the structure of the Independent Panel is unchanged from the Projects of Regional Significance (PORS) process. However, the Major Project process has introduced procedures for the Independent Panel to follow, which were not in the PORS process. These procedures require the Independent Panel to adhere to part 3 of the Tasmanian Planning Commission Act 1997 and include processes for dealing with conflicts of interest.

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### Public involvement in the process

#### Does the Major Project process restrict public involvement in the process?

No, the level of public consultation in the Major Project process has not decreased from that in the current Project of Regional Significance (PORS) process. As with all current discretionary development application assessment processes, the public make submissions on the proposal before the Independent Panel carries out its final assessment and before the normal regulators carry out their final assessments and advise the Independent Panel. Additionally, the public have an opportunity to attend and participate in public hearings before the Independent Panel finalises its assessment.

The Independent Panel's hearing process will provide for the public to test issues and evidence, similar to an appeal process, as is currently the case in the PORS process and all other Tasmanian Planning Commission hearings into planning scheme amendments.

#### Does the Independent Panel determine the major project before the public can make submissions?

No, the Independent Panel prepares a draft assessment report and places that on public exhibition along with the other project documents. The public can make a submission to the Independent Panel about the Independent Panel's initial findings as well as the project itself and then test their

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No, the Independent Panel prepares a draft assessment report and places that on public exhibition along with the other project documents. The public can make a submission to the Independent Panel about the Independent Panel's initial findings as well as the project itself and then test their submission at the public hearing. This all occurs before the Independent Panel makes its final decision on the proposed major project.

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> Other approvals/permits and Regulators

### Other approvals/permits and regulators

#### Who are the regulators in the Major Project process and what do they do?

The Regulators are those organisations or bodies responsible for administering separate approvals or giving advice to refuse or include conditions on a permit issued under the *Land Use Planning and Approvals Act 1993*. The Regulators conduct their assessment of a major project in accordance with their normal obligations and give their advice on conditions or an instruction to refuse the permit to the Independent Panel. The Independent Panel cannot override a Regulator. This ensures the major project process provides a thorough robust assessment of all the issues relevant to a major project, as opposed to by-passing them. The Regulators include:

- Environmental Protection Authority
- Heritage Tasmania
- Aboriginal Heritage
- Threatened Species
- Tas Water
- Gas Pipeline

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- Aboriginal Heritage
- Threatened Species
- Tas Water
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### Does the Major Project process bypass other required approvals?

No. All assessments required under other relevant legislation are called 'project associated Acts' in the Major Project process. The assessments of a Major Project are conducted by the normal Regulators and their decisions are coordinated through the Major Project process just as the

Environment Protection Agency (EPA) and Heritage Council decisions are coordinated through the council development application (DA) process under the long standing arrangements under the Land Use Planning and Approvals Act 1993. The Independent Panel must follow the advice of the Regulators. Consequently if a regulator directs that the Independent Panel to refuse the proposal, neither the Independent Panel nor another Regulator can override the direction.

### **Can a Major Project be approved when a planning scheme would not allow it?**

Planning schemes are not fixed forever, and many applications to change or amend planning schemes are made every year. These are assessed by the Tasmanian Planning Commission (the Commission). Currently a person can also seek a planning scheme amendment and a development permit at the same time. In the year 2018-19 the Commission processed 14 such combined applications.

The Major Project process provides for a similar approach but is intended to consider complex larger scale projects that are contained in more than one council area or their effects will reach beyond a single council area. As such, the Major Project process intends to examine the broader regional issues of projects rather than being limited to the local planning issues. On this basis, it is plausible that some major projects would require an alteration to the local planning scheme to proceed. The Major Project process has been designed to consider this scenario and allow the consideration of projects that may not be currently allowed by a local planning scheme. This is not dissimilar to how the Commission considers an amendment to a planning scheme for a site specific change to the planning scheme as part of a combined application. The processes and procedures that the Commission follows to determine the amendment to the planning scheme are embodied within the Major Project process.

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