14 May 2020

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Submission: Proposed Major Projects Legislation

1) Background: -

The Independent Science Council of Tasmania, composed of scientists and related professionals who seek to provide independent, impartial advice, focusing on policy reforms of significant State interest, welcomes the opportunity to comment on the *Land Use Planning and Approvals Amendment (Major Projects) Bill 2020*.

The proposed legislation, providing for a bespoke process for consideration of major development proposals, is both unnecessary and problematic in its design. While the Council appreciates the importance of efficient and economical procedures for making decisions on environmental issues in order to minimise delays and costs to stakeholders, this consideration is weighed against the vital importance of maintaining the integrity and robustness of Tasmania's Resource Management and Planning System. Furthermore, we must be mindful to protect Tasmania's growing reputation nationally and globally as a *relatively* unspoilt natural environment that attracts many visitors and underpins a significant part of the state economy and enriches the well-being of many residents.

The history of exceptionalism in Tasmania, such as the Pulp Mill Assessment Act 2007 and the Northern Pulp Mill Agreement Act 1988, validates community concerns that creating bespoke legislative frameworks for major development proposals tends to be motivated not by a desire to strengthen environmental controls and standards but rather to weaken them in order to allow problematic activities that otherwise would not be approved under conventional assessments (see eg Tom Baxter, "(Dis)Integrated Assessment: The Pulping of an Integrated Assessment Process", *ANZSEE Conference*, 2009); Giorel Curran and Robyn Hollander, 'A Tale of Two Pulp Mills: Realising Ecologically Sustainable Development in Australia", *Australian Journal of Public Administration*, 67(4) (2008): 483).

Moreover, the history of the current major projects legislation to which our submission speaks similarly reveals a chequered past, with earlier drafts of the Bill submitted in 2017 and 2018 inciting considerable community concern.

2) Unnecessary legislation: -

The proposed legislation is unnecessary as Tasmania already has a generous legislative framework for consideration of major projects, namely: the State Policies and Projects Act

1993 (SPPA) and the Major Infrastructure Development Approvals Act (MIDAA) 1999, along with the existing provisions in the Land Use Planning Approvals Act, 1993, for consideration of major projects of regional significance.

The SPPA is particularly well suited to assessing major development proposals that transcend matters that a single local council could evaluate, as the legislation addresses projects involving significant capital investment, state-wide impacts or complex technical design (eg the Basslink project assessed under the Act). The SPPA offers appropriate checks and balances (eg the requirement for parliamentary approvals for projects brought under the auspices of the Act, and prioritizes the Tasmanian Planning Commission in assessing proposed projects).

Also under-utilised, the MIDAA enables major linear infrastructure proposals (eg roads, railways, pipelines, power-lines, etc), requiring development approval from several councils to be assessed under a customised decision-making procedure.

Thirdly, the existing *Projects of Regional Significance* assessment framework under the Land Use Planning and Approvals Act 1993 enables large and complex projects with foreseeable impacts across more than one local council to be assessed by a specialist Development Assessment Panel in consultation inter alia with the Tasmanian Planning Commission, rather than a single planning authority. Whilst this option for major projects has apparently not been utilised to date, the alleged impediments relating to decision-making time-lines and expenses related for proponents in preparing detailed reports for assessment before knowing whether a proposal is prima facie suitable, could be overcome with more surgical, fine-tuning of the existing statutory regime without the range of changes proposed by the *Land Use Planning and Approvals Amendment (Major Projects) Bill.*

3) Problematic features: -

Some aspects of the draft Bill are welcome, including the opportunity for any regulator to advise of 'no reasonable prospect of approval' early in the process before interested parties would otherwise be subject to a lengthy and costly process for an ultimately doomed project. Furthermore, in general we welcome some aspects of the Bill in regard to opportunities for public submissions, consultations with relevant stakeholders, public hearings and environmental assessment procedures.

However, some aspects of the proposed legislation appear to be problematic, namely:

(a) Owing to the broad scope of the eligibility criteria for the Minister of Planning to declare a "major project", the proposed Bill overlaps with the above mentioned SPPA and MIDAA processes. Instead, the Bill should be narrowed to focus on projects of regional significance only in situations not covered by these existing statues. It is unclear what these might be.

(b) Furthermore, the eligibility criteria lack rigour, and are open to broad interpretation. Four of the six criteria are based on whether the project will have 'significance', while a fifth refers to 'characteristics of the project make it unsuitable for a planning authority to determine'.

(c) As it stands, a wide variety of controversial developments that are only locally significant could be eligible for a major project declaration, such as cable cars, tall buildings, and large subdivisions. For instance, section 60K(1)(f) specifies one

extremely vague eligibility criterion as "the characteristics of the project make it unsuitable for a planning authority to determine". This could problematically take planning and development decisions out of the hands of locally elected councils where local accountability is particularly important. Whilst the Bill envisions that the Tasmanian Planning Commission may issue guidelines for the Minister on what should be considered a major project, there is no scope for public input into the formulation of these guidelines, and in any event the guidelines would likely lack the legal capacity to significantly limit the Minister's discretion.

(d) The Bill must clarify how the integration of other assessments under other Acts (eg under the Environmental Management and Pollution Control Act) will be incorporated into the major projects permit, eg spelling out to what extent comprehensively incorporating or partially truncating the standard assessment process under those Acts. Various legislative instruments regulating sensitive species and habitats work in tandem to protect different aspects of Tasmania's unique biodiversity for future generations. However, blending or truncating these processes may expose gaps, making Tasmania more vulnerable to over-exploitation. If new legislation will obviate existing important legislation in some circumstances, then it should be specified how this will make the process more refined or more robust, without opening loopholes for the existing regulatory frameworks to be watered down. Importantly, new legislation should make the processes for safeguarding Tasmania for future generations more rigorous, not less.

(e) The circumstances in which relevant regulators (eg the EPA Board) may direct the Development Assessment Panel to refuse a major project permit are too narrow. As we interpret the Bill, a relevant regulator may direct that the Panel refuse a major project permit only if that regulator believes that, were the project otherwise not a "major project", the regulator would refuse to approve the project under its own approval regulations. Furthermore, the process by which the relevant regulator may make that determination is vague (eg, must the regulator comply with the procedures prescribed by its own, "home" legislation or would an abridged assessment process be acceptable?).

(f) Although the Bill obliges the Development Assessment Panel to consider the relevant planning scheme when making its final decision, a major projects permit can be approved despite that the project in question would be barred under the relevant planning scheme and without a requirement to assess the project on the applicable criteria of that planning scheme.

(g) Furthermore, the plan to subsequently amend planning schemes to allow for a major project once a project has been approved, is of particular concern, as this will presumably then enable similar projects to be proposed and approved within the council area without the need for the major project process.

(h) The 28-day timeline for public comment is too short. Environmental Impact Statements for major development projects can often run to several thousand pages, and require substantial effort and time to review. A minimum of 2 to 3 months should be allowed for public review and comment.

(i) The envisioned process in the draft Bill may adversely affect existing rights of Tasmanian Aboriginal people under the Aboriginal Heritage Act. The proposed relevant regulator under the Aboriginal Heritage Act would be either the Minister for Aboriginal Affairs or the Director of Parks, rather than the Aboriginal Heritage Council, which is problematic when currently the Aboriginal Heritage Council is the

mechanism for speaking on behalf of Tasmanian Aboriginal people under the Aboriginal Heritage Act.

(j) There is no right of appeal for an aggrieved member of the community. Although the public has the right to make submissions on proposed major projects, which under the Bill conceivably could be declared for a very wide range of developments, it is vital that an independent body has an opportunity to hear a merits appeal where there is prima facie evidence of deficient decision making. Without this ultimate accountability, the public participation process is at risk of being side-lined.

We therefore recommend that the legislation be withdrawn or subject to further public consultation and revision. Tasmanians must have confidence in their government to protect our island's natural and cultural heritage, and we hold concern that the legislation as proposed risks weakening public input and oversight, which would likely erode that trust.

Yours sincerely

Independent Science Council of Tasmania