

Background Information on Tasmanian Major Development Assessment and Approvals Processes

Relevant legislation and processes

Tasmania has a suite of legislation in place to assess and approve all development, including major projects. However, major projects are often dealt with under a combination of these various pieces of legislation through a more integrated process. A description of the suite of legislation, known as the Resource Management and Planning System is provided below, with details of the more integrated assessment processes following.

Resource Management and Planning System

Planning and development in Tasmania is regulated by a suite of policy and legislation known as the Resource Management and Planning System (RMPS). The RMPS aims to achieve sustainable outcomes from the use and development of the State's natural and physical resources by providing an integrated approach to planning and environmental assessment of land and water based activities.

A key integrating feature of the RMPS is a set of objectives that are included as a Schedule to each of the Acts within the system to ensure that all decisions about the use of land and natural resources in the State are made in pursuit of common objectives. The objectives of the RMPS are to:

- promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity;
- provide for the fair, orderly and sustainable use and development of air, land and water;
- encourage public involvement in resource management and planning;
- facilitate economic development in accordance with the objectives set out above; and
- promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.

These objectives of the RMPS are supported by a set of objectives for the planning process, which are to:

- require sound strategic planning and co-ordinated action by State and local governments;
- establish a system of planning instruments to be the principal way of setting objectives, policies and controls for the use, development and protection of land;
- ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land;

- require land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels;
- provide for the consolidation of approvals for land use or development and related matters, and to co-ordinate planning approvals with related approvals;
- secure a pleasant, efficient and safe working, living and recreational environment for all Tasmanians and visitors to Tasmania;
- conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value;
- protect public infrastructure and other assets and enable the orderly provision and coordination of public utilities and other facilities for the benefit of the community; and
- provide a planning framework which fully considers land capability.

There are a number of best practice elements that should be applied to ensure that the RMPS is used effectively. One of these elements is strategic planning, a mechanism to enable government, industry and communities to agree on strategies for resource use and development to reduce the likelihood of conflict over individual developments. Also important is flexibility and currency, which includes a move to a more performance-based approach focused on outcomes rather than prescriptive standards. Other elements include a whole-of-government approach, public participation and monitoring the state of the environment.

Within the RMPS, decisions made by local planning authorities and State agencies regarding the use and development of resources need to take into account broader economic, social and environmental implications.

The RMPS is supported by five key pieces of legislation:

- *Land Use Planning and Approvals Act 1993;*
- *State Policies and Projects Act 1993;*
- *Environmental Management and Pollution Control Act 1994;*
- *Historic Cultural Heritage Act 1995;* and
- *Major Infrastructure Development Approvals Act 1999.*

The RMPS is also supported by two pieces of legislation that assist in the administration of the system, namely the *Tasmanian Planning Commission Act 1997*, which establishes the Tasmanian Planning Commission (TPC) and its powers and functions, and the *Resource Management and Planning Appeal Tribunal Act 1993*, which establishes the Appeal Tribunal and its processes.

The Land Use Planning and Approvals Act (LUPAA) is the main legislation governing land use planning in Tasmania and provides guidelines for the development and amendment of planning schemes. It also provides for the development of regional land use strategies (with which planning schemes must be consistent), the assessment of development applications, the issuing by the Minister of planning directives, and an integrated assessment and approval process for Projects of Regional Significance (further detail provided below).

The State Policies and Projects Act (SPPA) provides for the development of sustainable development policies or 'State Policies' for matters of State significance. State Policies declared under the SPPA prevail over any inconsistent provisions in planning schemes, and planning schemes must be amended to further the outcomes articulated in State Policies. The SPPA also provides an integrated assessment and approvals process for Projects of State Significance (further detail provided below).

The Environmental Management and Pollution Control Act (EMPCA) provides the legislative framework for environmental management and pollution control in Tasmania, the fundamental basis of which is the prevention, reduction and remediation of environmental harm. EMPCA describes three levels of operation/use and developments that require approval:

- Level 1 activities are defined as having relatively low impact and are administered by local government planning authorities (noting that the Environment Protection Authority [EPA] can request that the application is referred to the Board for assessment).
- Level 2 activities are defined by Schedule 2 of EMPCA. Definitions are related to 'throughput' or the intensity of a development over a set period. For example, for a Wastewater Treatment Works the trigger for a level 2 assessment is a design capacity to treat an average dry-weather flow of 100 kilolitres or more per day of sewerage or wastewater. Level 2 activities are assessed by the EPA and the responsibility for regulation is left to both the Environment Division (Department of Primary Industries, Parks, Water and Environment) and the council. Three subclasses of level 2 activities are incorporated into EMPCA.
 - Class 2A – level 2 activities that are minor in scale or consequence, are local in extent, readily mitigated and unlikely to generate significant public interest.
 - Class 2B – level 2 activities that are neither Class 2A nor 2C.
 - Class 2C – level 2 activities that have a high level of public interest, very large scale, wide area impacts, significant increase in pressure on threatened species or involve complex issues requiring additional time to assess. Includes Projects of Regional Significance and those likely to require Commonwealth Government assessment.

In order to proceed with a Class 2A project, the developer must prepare an Environmental Effects Report (EER). Both Class 2B and Class 2C require preparation of a Development Proposal and Environmental Management Plan (DPEMP). A DPEMP describes the existing situation, the effect of the project and management of this impact with respect to environmental, socioeconomic, cultural and risk management. A *Guide to Environmental Impact Assessments* for level 2 activities is provided at <http://epa.tas.gov.au/regulation/document?docid=331>. This Guide includes a simplified flowchart that explains the assessment process.

- Level 3 activities are Projects of State Significance.

The Historic Cultural Heritage Act promotes the identification, assessment, protection and conservation of places with historic cultural heritage significance and establishes the Tasmanian Heritage Council and the Tasmanian Heritage Register. Under the Act, proposals for works in registered places or heritage areas are assessed to ensure that they do not adversely affect the historic cultural heritage significance of the area.

The Historic Cultural Heritage Act is currently undergoing reform to provide for integrated approval of projects with historic cultural heritage. A Bill is currently before Parliament to integrate historic cultural heritage assessments with land use planning assessments to deliver a single permit. The Bill was passed by the House of Assembly in September 2012, and is still before the Legislative Council. More details about the reforms to this Act can be found at http://www.heritage.tas.gov.au/act_reform.html.

The Major Infrastructure Development Approvals Act (MIDAA) makes special provision in relation to the approval of major linear infrastructure projects (eg road, railway, pipeline etc). Further detail about the Act is provided below, under 'integrated assessment processes'.

A range of other Tasmanian legislation is relevant to the operation of the RMPS, including legislation relevant to planning approval for specific industry developments and other issues, such as the:

- *Gas Pipelines Act 2002*;
- *Living Marine Resources Management Act 1995*;
- *Marine Farming Planning Act 1995*;
- *Mineral Resources Development Act 1995*; and
- *Aboriginal Relics Act 1975*.

While the Aboriginal Relics Act is not sector specific, it is important to note given its implications for development assessment and approvals. Similar to the Historic Cultural Heritage Act, the Aboriginal Relics Act is currently undergoing reform to provide for integrated approval of projects with Aboriginal heritage. An exposure Draft Bill was released to provide an integrated permit process for Aboriginal heritage, with the consultation process concluding in December 2012. It is intended that the Aboriginal Heritage Protection Bill will be introduced into Parliament in the Autumn session of 2013.

As a result of the reforms to both historic cultural and Aboriginal heritage, the local planning authority will become the single point of application for planning and Aboriginal heritage approvals, with time limited referrals to relevant decision makers and the return provision of binding advice to integrate into a single permit.

Integrated Assessment Processes

Tasmania has integrated assessment processes for some major developments provided through Projects of State Significance, Projects of Regional Significance, and Major Infrastructure Development Approvals. The most appropriate approval process for major projects is determined on a case-by-case basis. It is important to note that Projects of State Significance are the only fully integrated process, with Projects of Regional Significance and Major Infrastructure Development Approvals only partially integrated, with Projects of Regional Significance only integrating environmental assessments and approvals, and Major Infrastructure Development Approvals only consolidating the land use planning assessments across different local jurisdictions.

Projects of State Significance

Under the SPPA, the Minister can declare a project to be a Project of State Significance (PoSS), provided that the development possesses at least one of the seven attributes outlined in Section 16 of the SPPA (eg significant capital investment and significant impact on the environment). This occurs through an order made by the Governor, at the recommendation of the Minister, and approved by both Houses of Parliament. The assessment process is conducted by the TPC and the final decision is made by the Government,

instead of the planning authority (must be approved by both Houses of Parliament). The PoSS provides an integrated assessment process and the public are given an opportunity to make submissions and appear at public hearings in relation to the proposed development.

The process delivers all State permits, licences and approvals required for the project to proceed through a single integrated process, and is the only fully integrated process for major projects to be assessed and approved under.

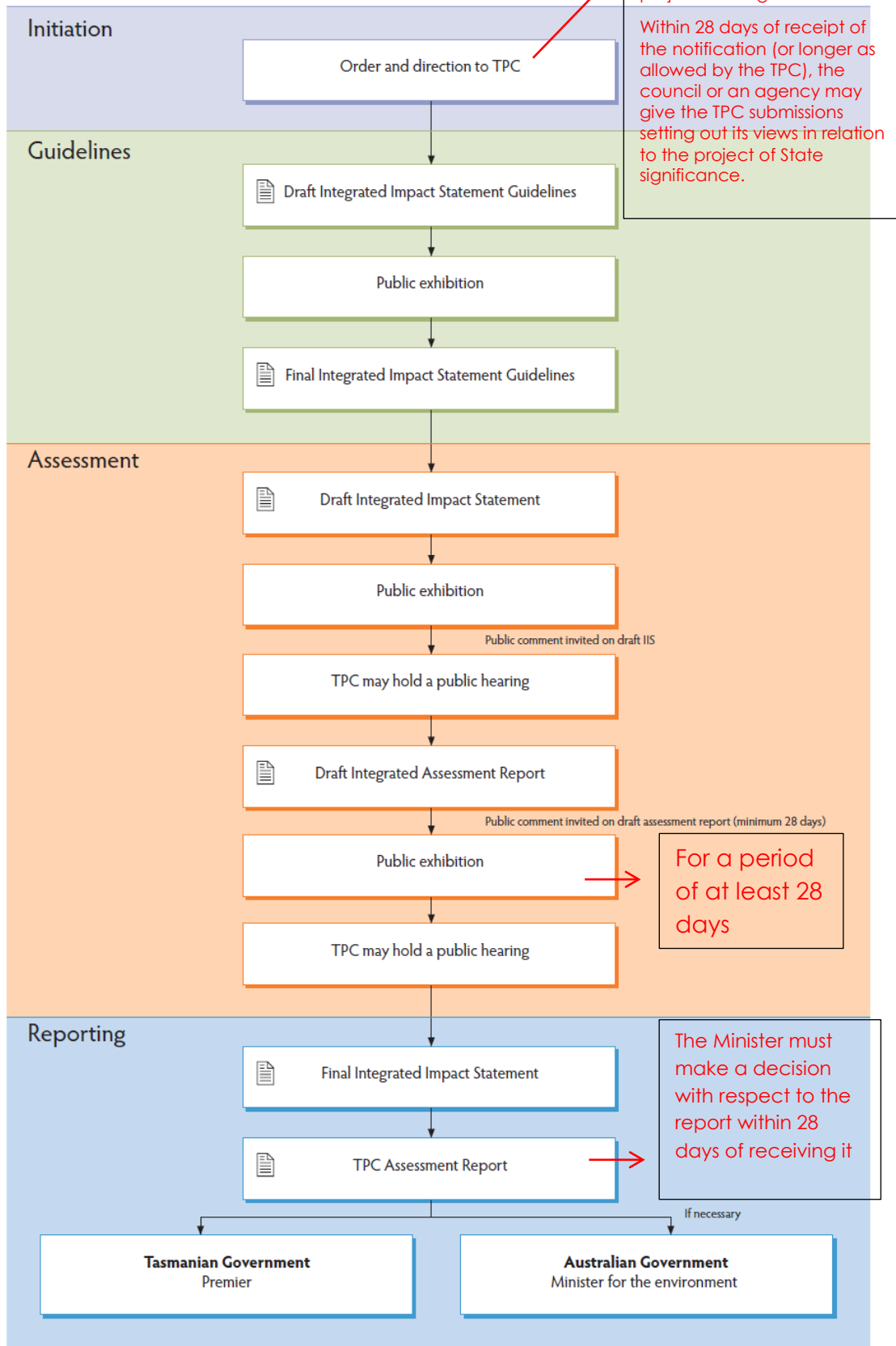
The PoSS includes environmental assessment and approvals under EMPCA and is also authorised under a bilateral agreement with the Commonwealth to provide assessment under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBCA) – ie, the State ensures its own assessment processes contain sufficient information for the relevant Commonwealth Minister to make a decision under the EPBCA.

A flowchart of the assessment process for Projects of State Significance is provided in **Figure 1**, with some notes regarding statutory timeframes.

Figure 1

Assessment process for projects of State significance

Part 3, State Policies and Projects Act 1993



TPC: Tasmanian Planning Commission IIS: Integrated Impact Statement

Projects of Regional Significance

Projects of Regional Significance (PoRS) were established through changes to LUPAA, which took effect in January 2012. A project proponent or planning authority can now apply to the Minister for Planning to declare that a project is a PoRS. The project will be deemed a PoRS if the project:

- is of regional planning significance (eg would make a significant economic or social contribution to the region, or affect the provision of regional infrastructure);
- requires high-level assessment (where the planning authority does not have the capability or resources to adequately assess the proposal); or
- would have a significant environmental impact.

Where a project is declared to be a PoRS, it will be assessed by a Development Assessment Panel rather than a planning authority. The Assessment Panel will comprise 3-5 people including:

- a member of the TPC;
- a person nominated by the planning authorities within the region who has experience in land use planning, urban and regional development, commerce, industry or building and infrastructure; and
- a person with qualifications or experience relevant to the assessment of the PoRS.

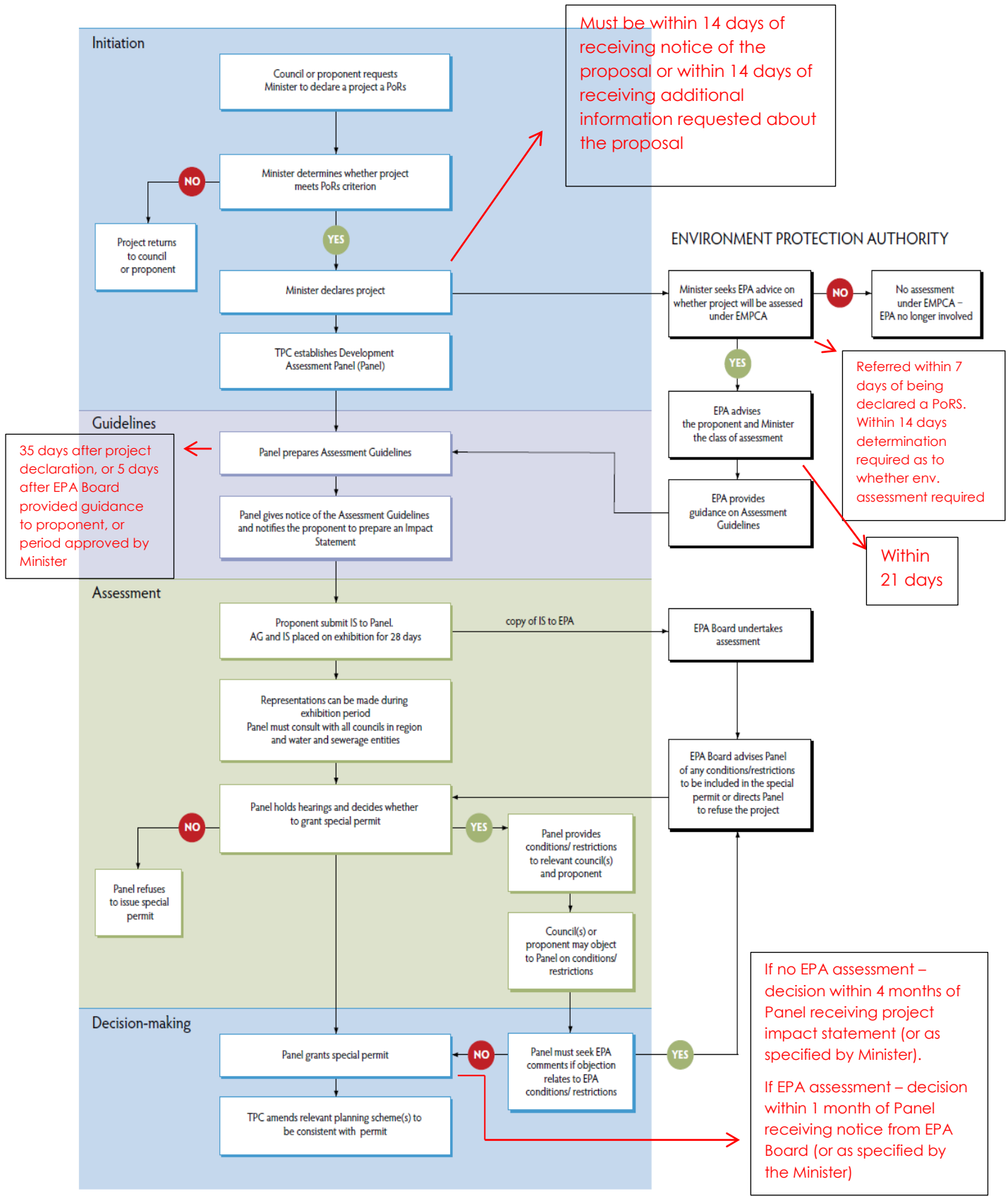
Processes for PoRS were introduced to provide a robust and equitable process for dealing with larger projects that have impacts across council boundaries and affect the wider region. Additionally, it was identified that some councils in Tasmania do not have the capacity to conduct the rigorous assessment these 'higher impact' regional projects require. The PoRS legislation provides for a major project proposal within a region to be subject to an integrated assessment process within statutory time limits.

As with the PoSS, the PoRS assessment process includes environmental assessment and approvals under EMPCA and is also authorised under a bilateral agreement with the Commonwealth to provide assessment under the EPBCA.

A flowchart of the assessment process for PoRS is provided in **Figure 2**, with some notes regarding statutory timeframes.

Figure 2

Assessment process for projects of regional significance
Part 4, Land Use Planning and Approvals Act 1993



TPC: Tasmanian Planning Commission PoRS: Project of regional significance Panel: Development Assessment Panel IS: Impact Statement
EPA: Environment Protection Authority EMPCA: Environmental Management and Pollution Control Act 1994 AG: Assessment Guidelines

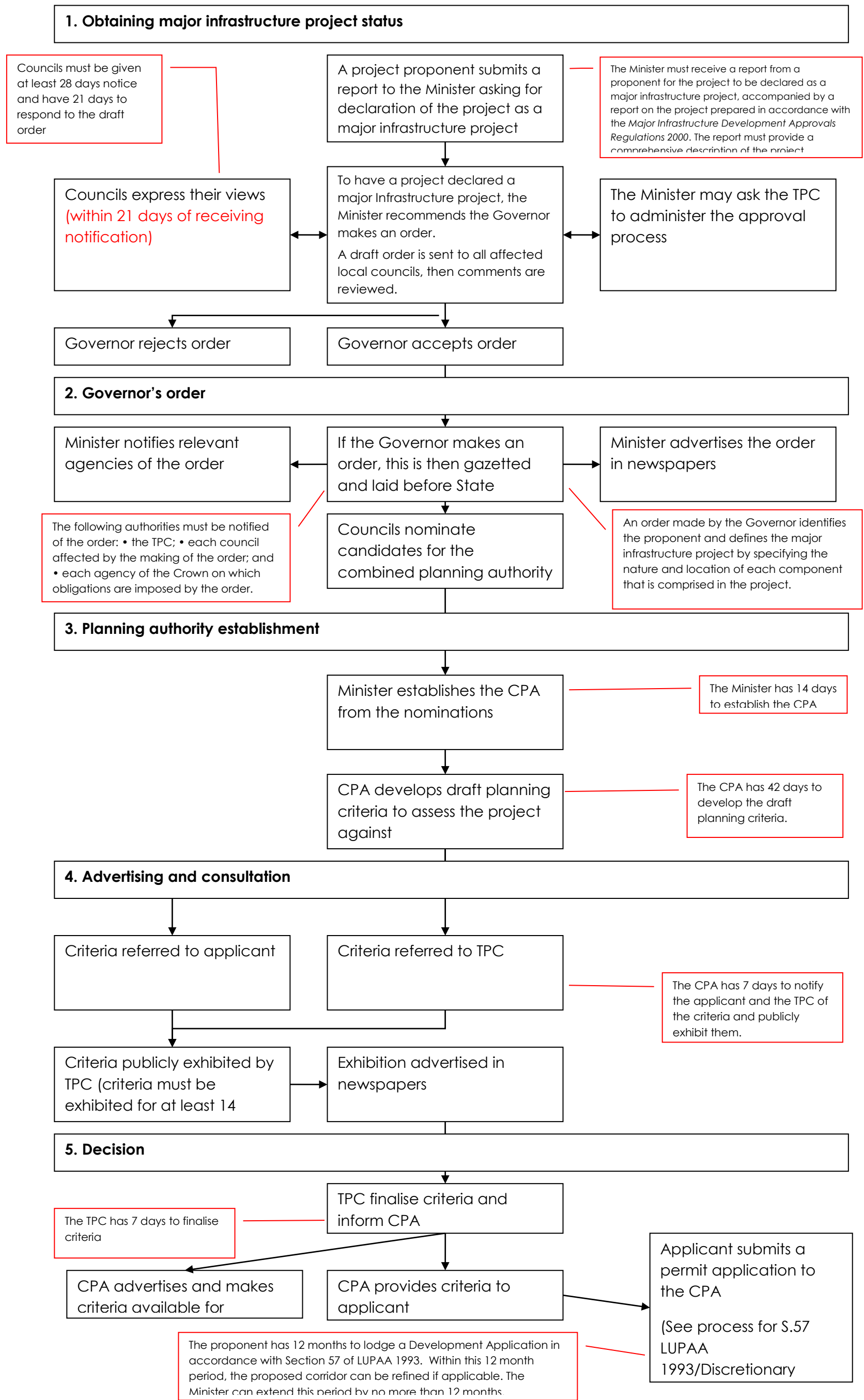
Major Infrastructure Developments

Under the MIDAA, the Minister may recommend (after consultation with relevant councils) that a project be declared a *Major Infrastructure Project*, when 'linear' infrastructure projects, such as a major gas pipeline, require development approval from several councils. Once declared as such, these projects are assessed by a specially constituted body (combined planning authority), but are subject to otherwise normal planning approvals, including appeals.

The MIDAA removes the complications where a project occurs across multiple local government boundaries, and provides a framework for the acquisition of land by the Crown. While parliamentary approval is still required, it is a simpler process than requiring a full legislative procedure for each new project. This would normally result in the need for multiple development applications, multiple approval processes running in parallel and, potentially, multiple appeal hearings, all applying to what is in effect one single development. A further benefit is that under different planning schemes, the criteria against which a planning authority assesses the development will most likely vary, whereas under MIDAA this is overcome through the use of the combined planning authority.

A flowchart of the assessment process for Major Infrastructure Developments is provided in **Figure 3**.

Figure 3 Assessment Process for Major Infrastructure Development



Recent Reforms

Planning Reforms

The Tasmanian Government's current planning reform program aims to replace all existing planning schemes with contemporary and consistent new schemes. While this is a broader reform, which is not aimed specifically at improving the assessment and approval of major projects, the implications of the reform for improved strategic planning are likely to have benefits for investors and major projects over time. The reform program is being delivered through the Regional Planning Initiative, which is supported by a signed Memoranda of Understanding (MOU) with the State's three regional local government organisations and their respective member councils.

A key feature of the Regional Planning Initiative is the introduction, through LUPAA, of regional land use strategies (RLUSs) and the requirement for all planning schemes for the region to be developed and/or revised to reflect the strategic direction in the RLUSs.

To promote consistency across councils, planning schemes must also be based on the statewide and regional planning scheme templates and include a suite of statewide planning provisions and codes, such as single dwelling and multiple dwelling provisions, that are being developed progressively.

To facilitate the process of updating all planning schemes in line with RLUSs, LUPAA has been amended to provide for interim planning schemes. Interim planning schemes are declared by the Minister and remain in place until such time that a planning scheme can be developed and formally assessed and approved by the TPC and the Minister in accordance with provisions in LUPAA. Transitional provisions for development applications submitted prior to the introduction of interim planning schemes have been established, whereby those development applications are assessed against the existing planning scheme that was in place at the time of the application.

Regional planning steering committees, comprising State and local government representatives, were established under the MOUs to facilitate State and local government coordination of the planning reform program. The Government has provided funding to the regional planning committees to engage project teams and consultants to conduct the research, analysis, plan preparation and consultation prescribed in the MOUs.

The regional planning committees have also initiated their own regional reform programs through technical reference groups of all council planners in a region. For example, some regions are developing consistent development application forms, standard permit conditions and conducting regional training and development programs for planning staff.

Work is also occurring on a number of Codes, which will provide greater certainty for all developments as to the requirements when developing in potentially hazardous areas. A statewide Bushfire-Prone Areas Code was issued by the Minister for Planning in September 2012 and will be applied across all new planning schemes. Statewide codes are also being developed for landslip prone areas and coastal hazards.

Initiatives to improve processes

In 2012, the Tasmanian Government established Invest Tasmania, a unit in the Department of Economic Development, Tourism and the Arts, to support investment attraction in the State. It is the first point of government contact for individuals and organisations that want to establish, relocate, diversify or expand their business in Tasmania. Further detail about the services offered by Invest Tasmania can be found on the following website <http://www.development.tas.gov.au/invest/home>. An Invest Tasmania map is also available providing access to information on the status of investment and infrastructure projects valued at over \$2 million in Tasmania. The map can be accessed at <http://investtasmmap.development.tas.gov.au/>.

In early 2012, the Planning Schemes Online Project commenced as a partnership between State and local government. The Project will enable developers, decision makers, land managers, strategic planners and members of the public to search planning schemes online and be confident that they are viewing the most up-to-date version. While again this is not specific to major developments, it is likely to have positive implications for major projects, with key information relevant to developments easily accessible.

The key objectives of the Project are to:

- make planning scheme information more accessible through a state-wide online portal;
- improve quality assurance processes on planning scheme mapping and ordinance; and
- build an online planning scheme dataset and delivery system as an effective base for providing additional planning scheme services, including electronic lodgement of development applications, in the future.