

Draft Land Use Planning and Approvals (Amendment) Bill 2022

Part 7 – Clarifying that the process continues if a regulator does not provide a response when required to do so

Issue

The major projects assessment process has a rigid requirement that the regulators must give notice of their assessment requirements, notice of no assessment requirements, or a notice recommending revocation of the major project, as required by section 60ZA of the *Land Use Planning and Approvals Act 1993* (the Act).

If a regulator does not provide any form of notice at all then the assessment panel is placed in an uncertain quandary as to whether they can continue with the process because an element of the process has not been satisfied (which is the giving of a notice from the regulator to the panel).

A regulator not responding would also create uncertainty as to whether they wish to become a participating regulator in the process or not.

There is also potential for the proponent to receive a major project permit that is open to legal challenge on this matter.

Discussion

Section 60ZA of the Act provides a mandatory requirement for a regulator to provide a notice of their assessment requirements, notice of no assessment requirements, or a notice recommending revocation of the major project. This action must occur within 28 days of receiving the major project proposal documentation from the Commission. If the regulator is going to run out of time, they are able to seek an extension of time from the Minister.

Section 60ZK of the Act sets the time period for when the assessment panel must prepare draft assessment criteria, which is 14 days after receipt of the last notice from a regulator or when the regulator was required to provide the notice. In effect the assessment panel can continue with their role in the process when no response is given by the regulator.

However, if there is no response from a regulator when there was a mandatory requirement to do so, that may cause concern as to whether the remainder of the assessment process is valid or not.

What can be done?

Provide more certainty in the process if a regulator does not respond as required under section 60ZA of the Act.

What is proposed?

1. Clarify that when a regulator does not submit any notice, as required under section 60ZA of the Act, then that 'non-action' is taken as a notice of 'no assessment requirements' and that the regulator does not wish to become a participating regulator in the remainder of the assessment process.
2. Just to make sure a regulator does not accidentally get left out of the assessment process a reminder notice is required to be sent to regulators just before their time to respond is about to expire.

Sections of the draft Bill that relate to this topic

Clause in draft Bill	Section of LUPAA	Clause note
16	Section 60ZA	<p>Clarifies that no action by a regulator is taken as a 'no assessment requirements notice', except where there is a Bi-lateral agreement assessment between the Environment Protection Authority (EPA) and the Commonwealth (as the EPA is not allowed to step away from the assessment process in this circumstance).</p> <p>Includes a requirement for the Commission to send reminder notices to regulators to make sure they are aware they need to consider the information previously sent to them.</p>