

Draft Land Use Planning and Approvals Amendment Bill 2022

Part I – Amendments relating to sensitive material to enable the early identification of sensitive information in the process as it relates to the major project site, especially with respect to Aboriginal cultural heritage.

Issue

Experience from applying the major projects process to the proposed Bridgewater Bridge project has revealed that the process could do with further refinement to provide a more sensitive and respectful approach for the display, or otherwise, of sensitive information during the assessment process, especially with respect to Aboriginal cultural heritage information.

The public display of sensitive information can be offensive to Aboriginal culture, or even lead to harm of a highly valued site.

The major projects assessment process currently requires the public display of information relating to the project and the land where the project is located. At present any information relating to Aboriginal heritage on the major project site is made public during the assessment process. This issue can also occur during the process to amend a major project permit when the proposed amendment is placed on public exhibition.

At times this information could be of a matter that is sensitive to Aboriginal culture and of a kind that should be kept confidential in order to respect their culture. Also, making the sensitive information public could lead to the destruction of a highly valued and sensitive site - if in the wrong hands.

The principle of preventing the public release of sensitive information is also relevant to other types of sensitive information that may be disclosed during the assessment process. Such as the locations of extremely rare plants or animals, where the relevant regulator considers that caution should be used in relation to the public display of information relating to the locations of those matters as well. Whilst this is much less likely to occur than with Aboriginal cultural heritage matters, this is still a relevant consideration to address.

Discussion

Where Aboriginal culture calls for sensitive information to be kept private/confidential then it is incumbent on any planning processes to observe that cultural practice.

Currently in the major project assessment process, sensitive Aboriginal cultural heritage information, or other sensitive information, may be shown to the public in any of the following –

1. a major project proposal document submitted to the Minister for Planning at the start of the process, which is sent to persons under section 60I of the *Land Use Planning and Approvals Act 1993* (the Act) and also placed on public exhibition with the draft assessment criteria
2. a major project impact statement submitted to the assessment panel and placed on public exhibition
3. initial and final assessment reports prepared by the assessment panel
4. a condition expressed on a major project permit
5. advice from the regulator of Aboriginal Heritage matters, or other relevant regulators
6. a reason for refusal in a notice given by the assessment panel
7. documentation relating to a proposed amendment of a major project permit
8. a new condition on an amended major project permit
9. a reason why the Minister has not declared a major project or revoked a declaration of a major project
10. a reason of refusal of a major project permit by the assessment panel

The above listed documents are all placed on public display at some point in the assessment process, giving the public the opportunity to discover the precise locations of matters that are sensitive to Aboriginal culture or other sensitive matters. Which in the wrong hands could lead to the destruction of a highly valued sensitive site, plant or animal.

Providing confidentiality with respect to Aboriginal cultural heritage matters, and other sensitive matters, is not an attempt to subvert taking those issues into account during the assessment process, nor should it be taken as the government behaving in a secretive manner. It is simply a measure to provide an appropriate level of respect to Aboriginal culture and protection of sensitive sites during and after the assessment process.

Withholding the display of any information from the public is not the preferred outcome, but when it involves sensitive information then that is considered acceptable. This should only occur when the relevant regulator advises to do so.

What can be done?

Before the start of the process, the proponent could seek advice from Aboriginal Heritage Tasmania and other relevant regulators as to the presence, or otherwise, of culturally significant Aboriginal heritage, or other sensitive matters, on the site.

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Aboriginal Heritage Tasmania or the relevant regulators could then provide advice regarding the contents of the major project proposal to be lodged with the Minister. Where this advice could be that the site of a proposed major project contains sensitive Aboriginal heritage matters, or other sensitive matters, that need to be kept confidential from the public or that there are no concerns with the content of the major project proposal being made public as is.

If the Minister decides not to declare a major project, then the sensitive information is kept confidential.

If the Minister declares the proposed major project, then the notice of declaration could be required to take account of the advice from Aboriginal Heritage Tasmania, or other relevant regulators, and the declaration notice can then require the assessment panel, the proponent and the regulators to keep any Aboriginal heritage information, or other sensitive matters, relating to the site confidential, but still provide that information to the assessment panel and relevant regulators to enable the appropriate assessment of the issue.

These adjustments to the process would not prevent the regulator of Aboriginal heritage, or other relevant regulators, from undertaking their assessment under the major projects process nor diminish the standard of that assessment. In fact, after the adjustments the assessment of Aboriginal heritage issues will be carried out more in line with current assessments under the Aboriginal Heritage Act 1975 now.

What is proposed?

1. A requirement for proponents to seek advice from Aboriginal Heritage Tasmania (AHT) and other regulators listed in the major projects process before they lodge their major project proposal with the Minister. Where the major project proposal is to include any advice received from the regulators.
2. Enable the regulators to advise the proponent and the Minister if the major project site has no sensitive cultural issues or no other sensitive site issues with that particular project, or that any sensitive aboriginal heritage information or other sensitive information should be provided in proposal documents in a manner that is not shown to the general public.
3. When the regulators advice indicates that the major project proposal document should not be revealing sensitive aboriginal heritage information or other sensitive information to the general public then the Minister, the proponent, regulators and the assessment panel are required to not disclose sensitive information in any reports they make public. This requirement on the proponent, regulators and the assessment panel is to be expressed in the Ministers notice of declaration for clarity.
4. When this occurs any document that is viewed by the public will be required to contain a statement that the documents contain some information that is not able to be viewed by the public and the proponent will be required to provide any sensitive information as an

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annexure to any documentation submitted in the assessment process. This will enable the appropriate assessment by the Aboriginal heritage regulator or other relevant regulator.

Sections of the draft Bill that relate to this topic

Clause in draft Bill	Section of LUPAA	Clause note
6	60CA	Provides for the discovery of sensitive site information prior to lodging a proposal for a major project and also requires the Ministers declaration notice to advise of any sensitive information that should be kept confidential from public viewing. Sets limitations on the display of sensitive information during the assessment process.

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