

# 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, 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, 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.

## 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 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. In the wrong hands this could lead to the destruction of a highly valued sensitive site or artifact.

Providing confidentiality with respect to Aboriginal cultural heritage 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 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 regulator for Aboriginal heritage advises to do so.

## What can be done?

Before the start of the assessment process, the proponent could seek advice from the Minister for Aboriginal Affairs as to the presence, or otherwise, of culturally significant Aboriginal heritage within the project area. The Minister for Aboriginal Affairs will then seek advice from the Aboriginal Heritage Council and Aboriginal Heritage Tasmania.

The Minister for Aboriginal Affairs could then provide advice regarding the contents of the major project proposal to be lodged with the Minister. This advice should indicate whether the project area contains sensitive Aboriginal heritage matters that need to be kept confidential from the public, or whether the major project proposal can be 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 the Minister for Aboriginal Affairs. The declaration notice can then require the assessment panel, the proponent and the regulators to keep any Aboriginal heritage information relating to the site confidential. The information will still be provided to the assessment panel and regulator for appropriate assessment of the issue.

These adjustments to the process would not prevent the regulator of Aboriginal heritage 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 the Minister for Aboriginal Affairs (the regulator for Aboriginal Heritage) before they lodge their major project proposal with the Minister. Where the major project proposal is to include any advice received from the regulator regarding the non-disclosure of sensitive information.
2. Enable the regulator to advise the proponent and the Minister if the major project site has sensitive aboriginal heritage information that should only 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 to the general public then the Minister, the proponent, regulators and the assessment panel are required to not disclose that information in any documents they make public. This requirement on the proponent, regulators and the assessment panel is to be expressed in the Minister's 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. The proponent will be required to provide sensitive information as an annexure to any documentation submitted in the assessment process. This will enable the appropriate assessment by the Aboriginal heritage regulator.

## Sections of the draft Bill that relate to this topic

Clause in draft Bill	Section of LUPAA	Clause note
6	60BA	<p>Provides for the discovery of sensitive site information as it relates to Aboriginal heritage prior to lodging a proposal for a major project and also requires the Minister's declaration notice to advise of any sensitive information that should be kept confidential from public viewing.</p> <p>Sets limitations on the display of sensitive information during the assessment process.</p>

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Tasmanian  
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**Pre-lodgement request to discover sensitive information regarding the proposed site**

Day 0

Proponent makes request to regulator regarding the presence of any sensitive information on the project site

Day 35

Regulator considers request and gives advice to the proponent, the Minister, the Commission and the Panel (if any)

**The Advice is that –**  
The site does contain features that would be sensitive information

**The Advice is that –**  
The site does not contain features that would be sensitive information

Major Project Proposal documentation is submitted in accordance with 60F and with a sensitive matters statement that says the sensitive matter –

- a) Is not able to be viewed by the public, and
- b) Must not be disclosed in a meeting that the public may attend, and
- c) Must not be disclosed in any discussion between the public and the Minister, and regulator, panel or the Commission, and
- d) Must not be disclosed during proceedings at TASCAT, a court or tribunal.

Major Project Proposal documentation is submitted in accordance with 60F, or as required for the permit amendment, with no limitations regarding sensitive information

Request made to Minister for a declaration under 60C or 60E

Request made to Commission for amendment to declared project area under 60TB

Request made to Commission or Panel for an amendment to the major project permit under 60ZZW or 60ZZZ

Assessment process commences from point of lodgement of request (see TPC flowchart)