



Natasha Homsey  
Resource Assessments  
4 Parramatta Square  
12 Darcy Street  
Parramatta NSW 2150  
email: [natasha.homsey@planning.nsw.gov.au](mailto:natasha.homsey@planning.nsw.gov.au)

Your ref: SSI-10040  
Our ref: DOC20/884122-8

Advice provided via the Major Project Portal

Dear Ms Homsey

**Notice of Exhibition of application for Project EnergyConnect (NSW – Western Section) (SSI-10040)**

Thank you for your referral dated 27 October 2020 inviting comments from Heritage NSW on the above State Significant Infrastructure (SSI) proposal.

**Aboriginal cultural heritage regulation is now part of Heritage NSW**

On 1 July 2020 the Aboriginal cultural heritage regulation functions under the *National Parks and Wildlife Act 1974* were transferred from the Biodiversity Conservation Division in Department of Planning, Industry and Environment (DPIE) to Heritage NSW in the Department of Premier and Cabinet. All references to DPIE administering Aboriginal objects and Aboriginal places needs to be updated to Heritage NSW.

Heritage NSW has reviewed the available supporting documentation and provides comments for the proposed development in relation to Aboriginal cultural heritage matters in **Attachment A**.

The following report was considered in our assessment:

- 'EnergyConnect (NSW - Western Section) Technical paper 2: Non-Aboriginal and Aboriginal cultural heritage assessment' (ACHA). Report produced by Navin Officer Heritage Consultants P/L for TransGrid, dated October 2020

**The assessment is not adequate to address the SEARs for heritage**

Based on a review of the ACHA we advise that the assessment is not adequate to address the following Secretary's Environmental Assessment Requirement (SEARs) for heritage:

- an assessment of the Aboriginal and historic heritage (cultural and archaeological) impacts of the project.

Specifically:

- the ACHA does not provide survey information in accordance with Requirements 5 to 10 (pages 12-18) of the [Code of Practice for Archaeological Investigation in NSW](#) (DECCW 2010) (the Code) and the revised SEARs for Aboriginal cultural heritage matters provided by Biodiversity Conservation Division on 3 June 2020. As such Heritage NSW is unable to assess the adequacy and effectiveness of the assessment. This survey information is required for Heritage NSW to make a complete and proper review of the ACHA.
- Potential Archaeological Deposits (PADs) have yet to be assessed in accordance with the Code and the SEARs. As recognised within the ACHA, the nature and significance of the PADs is yet to be determined and cannot be assessed prior to excavation. Without the

completion of test excavations and significance yet to be established, the Registered Aboriginal Parties (RAPs) could not have provided informed consent. As test excavations have not been undertaken as part of the EIS, the impacts to Aboriginal cultural heritage values remains unknown. Testing upfront informs the potential of the Project area to contain Aboriginal objects, whether future salvage excavation is required and would allow the proponent to redesign the project to avoid any significant objects or sites if necessary.

- the protocol for the discovery of human remains is generally adequate. Point 3 of the process needs to be amended to contacting only the NSW Police in the first instance. If it is a missing person, it can be inappropriate to have unassociated stakeholders involved. Under the *Coroners Act 2009*, until it is determined exactly what is being dealt with, the NSW Police are the lead agency and make decisions around who should be notified and who is appropriate to have involved.

As test excavations have not been completed, Heritage NSW advises that this needs to be completed prior to approval so that the proponent and consent authorities may make appropriately informed decisions concerning the Project. It is recommended that the Aboriginal cultural heritage assessment be revised to fully address the matters noted, including provision of the survey information and results of test excavations, and be submitted to Heritage NSW for comment.

If you have any questions regarding these comments, please contact John Gilding, Archaeologist, Aboriginal Cultural Heritage Regulation – South, at Heritage NSW, on 0428 897 811, or email [john.gilding@environment.nsw.gov.au](mailto:john.gilding@environment.nsw.gov.au).

Yours sincerely



**Jackie Taylor**  
**Senior Team Leader, Aboriginal Cultural Heritage Regulation - South**  
**Heritage NSW**

24 November 2020

Enclosure – Attachment A: Detailed comments on Project EnergyConnect (NSW – Western Section) (SSI-10040)  
- Aboriginal Cultural Heritage

## **ATTACHMENT A: Detailed comments on Project EnergyConnect (NSW – Western Section) (SSI-10040) - Aboriginal Cultural Heritage**

The following review and comments are provided against the SEARs, as outlined in the Biodiversity Conservation Division letter dated 3 June 2020, and evaluated within the report: Cressey, A. 2020 'EnergyConnect (NSW-Western Section) Technical paper 2: Non-Aboriginal and Aboriginal cultural heritage assessment'. (ACHA) Report produced by Navin Officer Heritage Consultants P/L for TransGrid.

1. *The EIS must identify and describe the Aboriginal cultural heritage values that exist across the whole area that will be affected by the development and document these in an Aboriginal Cultural Heritage Assessment Report (ACHAR). This may include the need for surface survey and test excavation. The identification of cultural heritage values must be conducted in accordance with the [Code of Practice for Archaeological Investigation in NSW](#) (DECCW 2010), and be guided by the [Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in New South Wales](#) (OEH 2011) and consultation with regional branch officers.*

Desktop assessment is adequate, characterising the types of sites likely to be present and identifying six previous Aboriginal Heritage Information Management System (AHIMS) recorded objects within the study area (Cressey 2020: 30-41 and 50 with redacted figures for site locations/distribution).

A section of the powerline corridor could not be assessed due to landowner access restrictions (appears to be an approx. 10km section east of Gol Gol Lake – Cressey 2020: 17).

**Heritage NSW notes this section was relatively small compared to the overall length of the assessment area however, it still needs to be subject to field assessment, should construction proceed at the location as proposed; or if landholder access issues persist and an alternate alignment is decided, then the alternate location needs to be assessed as per SEARs.**

The field survey was undertaken 22 June – 3 July 2020 by three teams of five people (Cressey 2020: 18). The six AHIMS sites could not be relocated in the field, though they were known to be within the area (Cressey 2020: 50). This is not unusual and is acceptable. Nine new Aboriginal objects were recorded during a due diligence assessment of the geotechnical testing locations and 131 sites were recorded during field surveys, as well as 28 Potential Archaeological Deposits (PADs).

Sites included artefact scatters, isolated finds, scarred trees, hearths, middens, one post contact (glass artefact) and the PADs.

**The ACHA does not provide survey information in accordance with Requirements 5 to 10 (pages 12-18) of the [Code of Practice for Archaeological Investigation in NSW](#) (DECCW 2010) (the Code) and the revised SEARs. As such Heritage NSW is unable to assess the adequacy and effectiveness of the assessment. This survey information is required for Heritage NSW to make a complete and proper review of the ACHA.**

2. *Consultation with Aboriginal people must be undertaken and documented in accordance with the [Aboriginal Cultural Heritage Consultation Requirements for Proponents](#) (DECCW 2010). The significance of cultural heritage values for Aboriginal people who have a cultural association with the land must be documented in the ACHAR.*

Overall, the consultation section appears to be substantially compliant with the SEARs in relation to establishing relevant stakeholders, provision of documents, and review timeframes.

Page 14: 2-6 December 2019, Barkandji Native Title Group, Barkindji Maraura Elders Environment Team and Dareton Local Aboriginal Land Council undertook assessment of geotechnical excavation locations as a due diligence. Barkindji-Maraura Elders Council was not involved.

Stage 1: Eighteen Aboriginal stakeholders registered interest in being consulted for the project (Cressey 2020: 28)

Stage 2/3: Method sent to all Registered Aboriginal Parties (RAPs). Eight RAPs were involved in the survey (Cressey 2020: 29)

Stage 4: Draft ACHA sent to all RAPs for comment (Cressey 2020: 29)

3. *Impacts on Aboriginal cultural heritage values are to be assessed and documented in the ACHAR. The ACHAR must demonstrate attempts to avoid impact upon cultural heritage values and identify any conservation outcomes. Where impacts are unavoidable, the EIS must outline measures proposed to mitigate impacts. Any objects recorded as part of the assessment must be documented and notified to Heritage NSW.*

The ACHA indicates salvage of unspecified objects 'where impacts cannot be avoided' (Cressy 2020: 122-23). Overall Cressy (2020: 123) rationalises that one of the largest linear infrastructure projects to be implemented in southwestern NSW is assessed as having low cumulative impacts.

Mitigation measures are presented for specific sites as identified within the ACHA. These measures include:

- Prior to construction subsurface testing would be carried out in areas with moderate-high significance/potential, and also on PADs. This would be undertaken to establish the presence or absence of archeological deposits.

**Heritage NSW advises that this approach is an assessment method not a mitigation measure.**

- All identified Aboriginal modified trees would be subject to an arborist inspection to establish age and cause of scarring. Scar trees will be avoided where possible, and where this is not possible they will be recorded via 3D scanning, followed by salvage of the trunk.

**Heritage NSW support this approach.**

- Artefact scatter, and portions of, that will be impacted will be salvaged prior to construction and relocated.

**Heritage NSW supports this management strategy.**

- Exclusion zones will be established around deposits that are *in situ* and will not be harmed by the project.

**Heritage NSW supports this management strategy.**

The ACHA also provides general mitigation measures around unknown sites, such as general awareness inductions etc, which are to be developed and refined within the Construction Environmental Management Plan and in consultation with RAPs (Cressey 2020: 124-125).

4. *The assessment of Aboriginal cultural heritage values must include a surface survey undertaken by a qualified archaeologist. The result of the surface survey is to inform*

*the need for targeted test excavation to better assess the integrity, extent, distribution, nature and overall significance of the archaeological record. The results of surface surveys and test excavations are to be documented in the ACHAR.*

Impacts to recorded Aboriginal objects have been considered and are presented in Cressey (2020: 81). These include:

- Partial impact to PEC-PAD-27 for Buronga substation upgrade.

**Heritage NSW advise that this site is of unknown significance and has not been assessed as per the Code with no subsurface testing being undertaken to date.**

- Three artefact isolated finds of low significance would be impacted by Anabranth south compound.
- Direct and indirect impacts on 77 sites within the powerline corridor. Sites types vary and range in significance from low to moderate.

**Heritage NSW advise that the actual harm is yet to be confirmed by detailed analysis.**

- Some of the 77 alignment sites include PADs, of unknown significance and which are yet to be test excavated in accordance with the Code.

**As test excavations have not been completed, Heritage NSW advises that this needs to be completed prior to approval so that the proponent and consent authorities may make appropriately informed decisions concerning the project.**

5. *The ACHAR must outline procedures to be followed if Aboriginal objects are found at any stage of the life of the project to formulate appropriate measures to manage unforeseen impacts.*

- Cressey (2020: 124 and 132) provides appropriate unanticipated finds protocols.

6. *The ACHAR must outline procedures to be followed in the event Aboriginal burials or skeletal material is uncovered during construction to formulate appropriate measures to manage the impacts to this material.*

- Cressey (2020: 124 and 133) provides a protocol for the discovery of human remains.

**Heritage NSW advises the protocol for the discovery of human remains is generally adequate.**

Point 3 of the process needs to be amended to contacting only the NSW Police in the first instance. If it is a missing person, it can be inappropriate to have unassociated stakeholders involved. Under the *Coroners Act 2009*, until it is determined exactly what is being dealt with, the NSW Police are the lead agency and make decisions around who should be notified and who is appropriate to have involved.