



Mr. Nathan Heath
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Infrastructure Assessment
Department of Planning & Environment
Email: nathan.heath@planning.nsw.gov.au

Your reference: SSI-10050
Our reference: DOC22/607881

Dear Nathan

Advice on EIS – State Significant Infrastructure – Wilcannia Weir Replacement (SSI-10050)

Thank you for your referral uploaded to the Major Projects Portal on 18 July 2022 seeking advice on the Environmental Impact Statement (EIS) for the above State Significance Infrastructure (SSI) proposal. We understand that the SSI relates to the construction of a new Wilcannia weir and partial removal of the existing weir, by Water Infrastructure NSW (WINSW). The proposed replacement weir for the Darling River (Baaka) is designed to increase water security for Wilcannia, improve water quality and management, and enhance cultural connection to the river.

The EIS outlines that the current state of the Darling River (Baaka) has negatively impacted cultural values associated with the river and restricted a range of cultural activities. The proposed weir replacement offers the opportunity for the local Aboriginal community to continue to use the river and teach younger generations about the river ecology, use, and history by increasing water retention and levels.

We have prepared the following advice to assist the Department in considering Aboriginal cultural heritage matters under this SSI application. A summary of Heritage NSW's review is provided below with further detailed comments included at **Attachment A** and proposed draft of consent for an Aboriginal Cultural Heritage Management Plan (ACHMP) included at **Attachment B**.

In preparing the following advice Heritage NSW has reviewed the following documents:

- SEARs for SSI-10050, issued 28 August 2020.
- Wilcannia Weir Replacement: Environmental Impact Assessment – prepared by Jacobs Australia Pty Ltd, June 2022.
- Technical Report 4: Aboriginal Cultural Heritage Assessment Report: Wilcannia Weir Replacement – prepared by Jacobs Australia Pty Ltd, July 2022.

The works have potential to impact Aboriginal cultural heritage values

The proposal may impact intangible Aboriginal cultural heritage values that are connected to the river, notably stories associated with Ngatji at Union Bend and Steamers Point, and a long history of the use of the river by the Barkandji people. The construction of the new weir and partial removal of the existing weir have the potential to harm at least 10 tangible Aboriginal cultural heritage sites and the works are within or adjacent to Aboriginal Places.

There are opportunities to improve the Aboriginal cultural heritage assessment report

To adequately establish the nature and extent of the Aboriginal cultural heritage values that maybe impacted by the proposal, further investigations should be undertaken. Heritage NSW recommends that a revised ACHAR be prepared that adequately addresses the following.



Heritage NSW has identified the following opportunities to improve the ACHAR (prepared by Jacobs, 5 July 2022) to better inform the proposal. These include:

- *Providing detail of the Aboriginal Consultation process*
 - Further information is required in relation to the Aboriginal community undertaken with the Registered Aboriginal Parties (RAPs). The ACHAR provides limited information in relation to any comments raised by the RAPs have been adequately addressed. Based on the information provided the consultation process may not satisfactorily address the requirements of the SEARs.
- *Ensuring adequate archaeological assessment has been conducted*

We recommend that the ACHAR could be strengthened by including:

 - A complete, upfront, survey of the entire project area.
 - Details on the location of archaeological survey transects in relation to topographic features.
 - Identification, discussion, and testing of areas of Potential Archaeological Deposit within the project area.
 - Further consideration of the opportunities and risks involved in conducting archaeological excavation of potential archaeological deposits pre- and post-approval. Heritage NSW recommends test excavations be conducted pre-approval to inform the EIS and reduce the risk that culturally significant heritage is not inadvertently impacted.
- *Clarifying impacts to Aboriginal cultural Heritage*
 - It is unclear how many Aboriginal cultural heritage sites will be impacted and to what extent. The number of sites to be impacted should be clarified.
 - Heritage NSW recommends that a thorough survey and test excavation program be undertaken upfront to determine if there is the potential for direct and indirect impacts to unknown Aboriginal cultural heritage sites and associated cultural values.
 - Further information is required on the proposed partial removal of the existing weir and the movement of the associated fish traps to ensure that attached cultural values are adequately conserved and managed.

We recommend considering additional management and mitigation measures

- *Management and mitigation measures detailed prior to project approval*
 - The ACHAR could be improved by detailing management and mitigation measures in a post-approval ACHMP. Alternatively, the draft ACHMP could be prepared pre-approval to provide greater assurances about how appropriate mitigation measures will be implemented. These measures should include:
 - Areas identified for archaeological salvage excavation and collection, based on results of test excavation and complete survey.
 - Plans and additional information on the proposed partial removal of the existing weir and how this will impact the associated fish traps.
 - Protocols for the continued monitoring of the Darling Rivers (Baaka) banks post-flooding and during sustained low water levels.



- Further detail of management and mitigation measures at the EIS stage will help to ensure that all measures that may contribute to assessing the principles of Ecologically Sustainable Development (ESD) are clearly articulated.
- This would also provide the opportunity for the RAPs to be consulted further on the detailed management and mitigation measures by reviewing a revised ACHAR or draft ACHMP prior to any approval.

Heritage NSW recommends that a revised ACHAR be provided that adequately addresses the above queries to inform the EIS. Heritage NSW can provide an additional review of a revised ACHAR to assist the Department in considering the EIS.

If you have any questions regarding these comments, please contact Corey O'Driscoll, Senior Assessments Officer, at Heritage NSW on 6229 7079 and corey.odriscoll@environment.nsw.gov.au

Yours sincerely

Tim Smith OAM

Director Assessments

Heritage NSW

Department of Planning and Environment

(As Delegate under *National Parks and Wildlife Act 1974*)

Date: 15 August 2022



ATTACHMENT A: DETAILED ABORIGINAL CULTURAL HERITAGE ADVICE ON THE WILCANNIA WEIR REPLACEMENT (SSI-10050)

Aboriginal Community Consultation

The Aboriginal Cultural Heritage Assessment Report (ACHAR) describes the consultation process that has been carried out for the project. Heritage NSW has identified that some information has not been supplied. Heritage NSW requests that:

- There appears to be a break in the consultation process. Heritage NSW requires that consultation be continuous. Under Heritage NSW guidelines, breaks in contact of more than six months may not constitute continuous consultation. However, there appears to be a gap in consultation between December 2020 and June 2022. Please provide any relevant information to clarify if a gap has occurred.
- Please provide records of consultation with the RAPs, including:
 - Meeting minutes or details of meetings held in November and December 2020.
 - Examples of letters requesting project registration and draft ACHAR.
 - Correspondence relating to the ACHAR process, location of community river place, and proposed community infrastructure.

Archaeological Survey

Heritage NSW recommends that a complete archaeological assessment is conducted to better inform the EIS. Adequate and complete assessment, including archaeological survey and subsurface testing is needed to demonstrate that any cultural values associated with the project have been adequately assessed.

- The details provided of the survey are inadequate for Heritage NSW to assess the efficacy of the survey coverage across the project area. The ACHAR does not provide the areas subject to survey, or track logs as required by Requirement 5 of the *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW* (2010).
- It is unclear in the ACHAR which areas have been surveyed, the extent of surveys, including the expansion of the weir pool, and whether the surveys have adequately assessed the entire project area.
- Consideration should be given to the impacts, both direct and indirect, that the expansion of the weir pool and increase in water level will have on the banks of the Darling River (Baaka). The ACHAR notes that erosional undercutting of scarred trees along the banks of the river has already occurred and that there is potential for burials along the river. Additional surveys should be undertaken along the entire weir pool to determine if there is potential for currently unknown Aboriginal cultural heritage to be impacted.

Test Excavations

Heritage NSW recommends that test excavation is conducted in all identified potential archaeological deposits (PADs) to inform the EIS. Section 7.6 of the ACHAR notes that there is potential for subsurface archaeological material to occur along the Darling River (Baaka) and that this may contain stone artefacts, hearths, middens, and burials.

- As standard practice, Heritage NSW requires the identification of PADs and subsurface testing of those deposits to establish their archaeological significance.
- Testing upfront informs the potential of the project area to contain Aboriginal objects, informs whether future salvage excavation is required and would allow the proponent to redesign the project to avoid any significant sites if necessary.

- Heritage NSW recommends that test excavations be undertaken prior to project approval to ensure that all cultural values are properly assessed and managed.
- The ACHAR proposes the development of an ACHMP, which will contain methodologies for test and salvage excavations in representative areas (Section 10 of the ACHAR). There is a risk that if this ACHAR recommendation is followed and test excavation is conducted post-approval there may not be scope to make design changes to avoid impacts to any significant Aboriginal cultural heritage values that may be identified.
- The mitigation measures presented in the ACHAR include test excavations. Whilst we support test excavation being undertaken, testing should not be considered as a mitigation measure. The purpose of testing is to identify Aboriginal cultural heritage values to inform decision-making, identify conservation outcomes (where warranted) and then develop appropriate mitigation measures (such as salvage excavation) where impacts are unavoidable.

Removal of the existing weir

Heritage NSW understands that Water Infrastructure NSW and the RAPs have negotiated a partial removal of the existing weir and that the fish traps will either be protected, or stones used for new fish traps by the Aboriginal community. Heritage NSW requires additional information on the proposed partial deconstruction of the weir and plans for the fish traps, including details on:

- A plan detailing the extent of the existing weir that will be removed.
- Impacts that the laydown and clearance areas adjacent to the existing weir will have on culturally modified trees and potential subsurface deposit.
- The ACHAR notes that there is potential for impacts to occur to a number of culturally modified trees through the removal of the existing weir and construction of the new weir, however there is some discrepancy in the number of trees that may be impacted and the extent of the impacts. Please clarify the sites which will be impacted and the extent of the impact.
- A detailed plan for the existing fish traps, including consultation that has been undertaken with the RAPs on this proposal.
- Consideration of impacts of inundation during periods of high-water retention on the fish traps.
- Proposal for the thorough recoding of the existing traps prior to their removal and inundation.

Management and Mitigation Measures

As noted above, an ACHMP is proposed to cover management of Aboriginal cultural heritage during both the construction and post-construction phases of the project.

Heritage NSW recommends the requirement for an ACHMP to be prepared is included in the Conditions of Approval and that an ACHMP be approved by Department of Planning and Environment prior to any development activities occurring within the project area. Conditions for the ACHMP are provided in **Attachment B**. A Draft ACHMP should be provided as part of the Response to Submissions. The ACHMP should consider those points raised above, and:

- Avoidance to ACH where possible and alternative approaches to site office construction (i.e., site office on pillars) to avoid impacts to subsurface deposits.
- Protocols for the monitoring of riverbanks for impacts to ACH following flood events and during sustained low water level and procedures in the event that Aboriginal cultural heritage (i.e., ancestral remains) is exposed; and



- Thorough recording and scanning of ACH sites along the river. The ACHMP proposes 3D scanning of several culturally modified trees however HNSW recommends that this be expanded to include a greater range of culturally modified trees and fish traps.

ATTACHMENT B: RECOMMENDED DRAFT CONDITIONS FOR ABORIGINAL CULTURAL HERITAGE

Below are our recommended draft conditions for the protection of Aboriginal Heritage and the implementation of an Aboriginal Cultural Heritage Management Plan.

Aboriginal Heritage

- 1) All reasonable steps must be taken so as not to harm, modify or otherwise impact Aboriginal objects except as authorised by this approval.
- 2) The Registered Aboriginal Parties (RAPs) must be kept informed about the SSI. The RAPs must continue to be provided with the opportunity to be consulted about the Aboriginal cultural heritage management requirements of the SSI.

Aboriginal Cultural Heritage Management Plan

- 3) Prior to carrying out any development, the Applicant must prepare an Aboriginal Cultural Heritage Management Plan for the development to the satisfaction of the Secretary. This plan must:
 - a) be prepared by suitably qualified and experienced persons whose appointment has been endorsed by the Secretary;
 - b) be prepared in consultation with Heritage NSW and Aboriginal Stakeholders;
 - c) include a methodology for complete and thorough survey of all areas within the project footprint with Aboriginal Stakeholder participation;
 - d) include a methodology for a test excavation and salvage excavation program with Aboriginal Stakeholder participation of sites to be impacted with consideration to understanding site characteristics, and local and regional archaeological context;
 - e) include a description of the measures that would be implemented for:
 - i) protecting the Aboriginal heritage items identified within the project footprint or items located outside the approved development footprint, including fencing off the Aboriginal heritage items prior to commencing construction;
 - ii) salvaging and relocating the Aboriginal heritage items located within the approved development footprint;
 - iii) salvaging, relocating or avoiding any Aboriginal heritage items located within the approved development footprint identified during test excavations of the site;
 - iv) include updated baseline mapping of the heritage items within and adjoining to the development disturbance area;
 - v) include updated mapping of all areas that have been and will be subject to monitoring, test excavations, and salvage excavations
 - vi) include conservation options for the mitigation and avoidance to impacts AHIMS registered sites situated within and outside the project footprint;
 - vii) prepare a methodology outlining when Registered Aboriginal Parties must be notified of changes to the Heritage Management Plan;
 - viii) include a procedure for assessing significance of Aboriginal Objects identified during the monitoring, test excavations, and salvage excavation and ensure that

- the management and mitigation measures are considered for all sites, and with special consideration for those of high significance;
- ix) a strategy for the long-term management of any Aboriginal heritage items or material collected during the test excavation or salvage works;
 - x) a contingency plan and reporting procedure if:
 - (1) an Unexpected Heritage Finds and Human Remains Procedure must be prepared to manage unexpected heritage finds (heritage items and values) in accordance with any guidelines and standards prepared by Heritage NSW.
 - (2) the Unexpected Heritage Finds and Human Remains Procedure must be prepared by a suitably qualified and experienced heritage specialist in relation to Aboriginal cultural heritage, in accordance with the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (2010) and submitted to the Planning Secretary for information no later than one (1) month before the commencement of construction.
 - (3) the Unexpected Heritage Finds and Human Remains Procedure, as submitted to the Planning Secretary, must be implemented for the duration of construction.
 - xi) ensuring workers on site receive suitable heritage inductions prior to carrying out any development on site, and that records are kept of these inductions; and
 - xii) ongoing consultation with Aboriginal stakeholders during the implementation of the plan; and
- f) include the completion of Aboriginal cultural heritage test and salvage excavations, an Aboriginal Cultural Heritage Excavation Report(s), prepared by a suitable qualified expert. The Aboriginal Cultural Heritage Excavation Report(s), must:
- i) be prepared in accordance with the *Guide to Investigation, assessing and reporting on Aboriginal cultural heritage in NSW*, 2011 and the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales*, 2010; and
 - ii) document the results of the archaeological test excavations and any subsequent salvage excavations (with artefact analysis and identification of a final repository for finds).
 - iii) The RAPs must be given a minimum of 28 days to consider the report and provide comments before the report is finalised. The final report must be provided to the Planning Secretary, Heritage NSW, the relevant Councils, and the relevant Local Aboriginal Land Council, and the RAPs within 24 months of the completion of the Aboriginal archaeological collections and excavations (both test and salvage).
- g) where previously unidentified Aboriginal objects are discovered, all work must immediately stop in the vicinity of the affected area. Works potentially affecting the previously unidentified objects must not recommence until Heritage NSW has been informed. The measures to consider and manage this process must be specified in the Unexpected Heritage Finds and Human Remains Procedure required by Condition and include registration in the Aboriginal Heritage Information Management System (AHIMS).