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Advice provided via the Major Project Portal

Dear Mr Davies

Response to Submissions for Project Energy Connect (NSW – Western Section) (SSI-10040)

Thank you for your referral dated 14 April 2021 inviting comments from Heritage NSW on the above State Significant Infrastructure (SSI) Response to Submissions (RTS).

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

The following reports were considered in our assessment:

- TransGrid, 2021 'Energy Connect (NSW-Western Section) submissions report' (RTS)
- 'Energy Connect (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 Aboriginal cultural heritage

Based on a review of the amended ACHA and RTS, Heritage NSW advise that the assessment to date remains inadequate and does not fully address the following Secretary's Environmental Assessment Requirement (SEARs) for Aboriginal cultural heritage:

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

The inadequacy specifically relates to the absence of comprehensive survey and a subsurface testing program of the potential archaeological deposits (PADs) in line with the [Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW](#) (DECCW 2010).

In order to adequately establish the nature and extent of the Aboriginal cultural heritage values proposed for impact by this development, further investigations are still required. Without the subsurface testing program, the extent of impact to Aboriginal cultural heritage remains unknown. The ACHA itself states the nature and significance of the PADs is yet to be determined and cannot be assessed prior to excavation.

All assessment needs to be undertaken prior to the approval of impacts to Aboriginal cultural heritage

In line with the Burra Charter, the understanding of cultural significance comes first, followed by development of policy and finally management of that place, whereby:

“The cultural significance of a place and other issues affecting its future are best understood by a sequence of collecting and analysing information before making decisions” (Australia ICOMOS Burra Charter, 2013, Article 6.1)

Without adequate assessment, in this instance both survey and subsurface testing, to establish the cultural significance it can not be demonstrated that more places of significance or places which may further enhance the significance of the known Aboriginal cultural heritage in the area will not be found. The Registered Aboriginal Parties (RAPs) could also not have provided informed comments on the project.

Without this further work a Statement of Significance cannot be written and approval should not be considered until assessment is complete. If this Statement of Significance was to be developed post approval, this creates an unacceptable uncertainty as to what values are being impacted, removes the opportunities for holistic management or mitigation actions and limits the ability to effectively influence changes which may be necessary prior to consent being granted.

Without further assessment to resolve the significance of the PADs and completion of the pedestrian survey there is a real risk that new and significant sites, that may change the overall scientific or cultural significance of the area, will not be identified or will be discovered too late to influence land-use decisions or to achieve conservation of values (2015 Land and Environment Court Decision in *Darkinjung Local Aboriginal Land Council v Minister for Planning and Infrastructure & Anor* [2015] NSWLEC 1465).

Heritage NSW considers that the uncertain impacts to Aboriginal cultural heritage caused by this project are not consistent with the principles of ecologically sustainable development (precautionary principle and inter-generational equity) and the objects of the *Environmental Planning and Assessment Act 1979*, specifically Section 1.3 (f), to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage).

In order for this development to proceed and to ensure that the SEARs are complied with, comprehensive pedestrian survey of the entire alignment needs to be undertaken, test excavations need to be conducted, and the Aboriginal Cultural Heritage Assessment and Statement of Significance updated to reflect the results of these assessments.

Further detailed comments are provided in **Attachment A**.

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.

Yours sincerely



Jackie Taylor
Senior Team Leader, Aboriginal Cultural Heritage Regulation - South
Heritage NSW
27 April 2020

ATTACHMENT A: Detailed comments on Project Energy Connect (NSW – Western Section) (SSI-10040) - Aboriginal Cultural Heritage

The following review and comments are provided against the review comments provided by Heritage NSW in the letter dated 24 November 2020, and the response to submissions document TransGrid, 2021 'Energy Connect (NSW-Western Section) submissions report'.

Heritage NSW Aboriginal cultural heritage review/ submissions 24/11/2020	TransGrid 2021 response to submissions	Heritage NSW review response
<p>An approx. 10km section east of Gol Gol Lake could not be assessed due to landowner access issues. Heritage NSW advised this would need to be assessed, or if any alternate alignments were undertaken to alleviate land access issues, then these would need to be assessed as per SEARs.</p>	<p>Mitigation measure AH3 provides that, survey will occur with RAPs in areas that were outside of original survey (TransGrid 2021: 38)</p>	<p>What is proposed is not a mitigation method, but an assessment. As per previous comment, to address the SEARs and proper planning and approvals processes, assessments need to be completed.</p>
<p>The ACHA does not provide survey information in accordance with Requirements of the Code of Practice for Archaeological Investigation of Aboriginal objects in NSW (DECCW 2010) (CoP) and the revised SEARs.</p>	<p>CoP survey data was contained in Appendix 4 of the ACHA. This was clarified between discussions with Navin Officer and Heritage NSW and was sufficient to address requirements.</p>	<p>Noted. The requirement for completion of surveys and the need to test excavations was also discussed.</p>
<p>As a mitigation measure the ACHA identified that prior to construction subsurface testing would be carried out in areas of moderate-high significance/potential, as well as PADs. Heritage NSW pointed out that this is not a mitigation measure but an assessment method.</p>	<p>Comment not specifically addressed in RTS.</p>	<p>Heritage NSW maintains that the information derived from assessments inform site management, including mitigation measures, and that this is the proper and logical steps to appropriately inform decision making.</p>
<p>The ACHA acknowledged that there would be partial impact to PEC-PAD-27 at the Buronga Substation. Heritage NSW advised that the site was of unknown significance having not been subject to proper assessment (no subsurface testing).</p>	<p>A review and redesign by TransGrid has had the outcome that the site can be avoided. The location will be made an exclusion zone (TransGrid 2021: 38).</p>	<p>Heritage NSW supports this approach: it is in keeping with Principles of Environmentally Sustainable Development (ESD) and neutralises the need to undertake subsurface assessment due to avoidance.</p>
<p>The ACHA identified 77 sites would be subject to direct and</p>	<p>TransGrid provided a detailed response (2021: 38-39)</p>	<p>EIS table 10-2 provides a summary of objects that</p>

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<p>indirect harm within the powerline corridor. Heritage NSW advised that actual harm was yet to be confirmed by detailed analysis.</p>	<p>stating this was addressed in EIS table 10-2, Navin Officer (2020) Table 10.2, Table 10.3 and revised ACHA.</p>	<p>would be harmed by area (A and B), and type (artefact, midden and scar tree).</p> <p>ACHA table 10.2 provides information as above, with addition of loss of value (partial, complete) and identifies PAD as a site type to be harmed.</p> <p>While Appendix 4 contains some good detail on sites and results of analysis (for those assessments undertaken) a full understanding of harm to Aboriginal cultural heritage values remains incomplete.</p>
<p>Heritage NSW advised that test excavations had not been completed as part of the ACHA. This needed to be completed prior to approval so that proponent and consent authorities could make appropriately informed decisions.</p>	<p>TransGrid RTS outlines that subsurface testing has not been undertaken because:</p> <ol style="list-style-type: none"> 1. Whilst the impact corridor has been selected, the project is only at concept design stage. Position of infrastructure will vary during detail design to minimize impacts 2. A number of PADs have been identified as containing features of middens and burials which precludes testing under the CoP. <p>Once a preferred detail design is selected that cannot avoid structures in areas of Aboriginal cultural heritage sensitivity those locations will be subject to subsurface testing (TransGrid 2021: 36-37).</p>	<p>Heritage NSW continues to be concerned about the preference to leave assessments to post approval.</p> <ol style="list-style-type: none"> 1. In order to adequately understand impacts on Aboriginal cultural heritage values, assessments need to inform detailed design not the reverse. 2. While, it is correct that the CoP does not facilitate excavation of middens and burials - if known sites not covered under the CoP are to be excavated, they can be done so under an AHIP as part of proper approvals process.
<p>Heritage NSW advised that the protocol for discovery of human remains was generally adequate, however needed to be amended to reflect the</p>	<p>TransGrid modified their contingency protocol to reflect this.</p>	<p>Noted.</p>

Heritage NSW Aboriginal cultural heritage review/ submissions 24/11/2020	TransGrid 2021 response to submissions	Heritage NSW review response
<p><i>Coroners Act 2009, whereby the Police are the lead agency who should be contacted first and based off their investigation any other relevant stakeholders would be subsequently engaged.</i></p>		