



New England Highway bypass of Muswellbrook

Chapter 6.7 Aboriginal heritage

Transport for NSW | October 2021

6.7 Aboriginal cultural heritage

An Aboriginal Cultural Heritage Assessment Report (CHAR) was prepared by Kelleher Nightingale Consulting Pty Ltd (KNC) (2021) to assess potential impacts to Aboriginal cultural heritage as a result of the proposal (refer to Appendix C). An Aboriginal Cultural Values Assessment was also undertaken for the proposal by Waters Consultancy (2020). Relevant sections and findings have been integrated throughout the CHAR.

The CHAR has been prepared in accordance with the Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW (OEH 2011a) and other relevant guidelines, as well as Transport's PACHCI.

6.7.1 Methodology

Aboriginal cultural heritage assessment

The proposal has been subject to two archaeological investigations specific to the current construction footprint, including an archaeological field survey and archaeological test excavation program.

Searches of the AHIMS database were carried out to identify any registered Aboriginal archaeological sites (Aboriginal objects, as defined under the NP&W Act) and declared Aboriginal places (as defined under the NP&W Act) located in the study area.

An Aboriginal archaeological field survey was then carried out in July 2019 with representatives from Wanaruah LALC and the (then) registered Native Title Claimant Group, to clarify records obtained from the AHIMS search and to determine whether any previously unrecorded sites were located in the study area. The results of the survey informed the initial design development and environmental assessment. This is in accordance with the Stage 2 PACHCI requirements (refer to Section 5.3).

Following completion of the PACHCI Stage 2 assessment, it was determined that further information on the nature and extent of the archaeological sites would be required to inform the PACHCI Stage 3 assessment. Accordingly, an archaeological test excavation program was recommended. Test excavation was subsequently undertaken by KNC and registered stakeholder representatives across a five week period between August and October 2020.

An updated AHIMS search was conducted on 24 November 2020 to identify registered (known) Aboriginal sites or declared Aboriginal places within or adjacent to the study area for the PACHCI Stage 3 assessment.

Other heritage registers and lists searched for known Aboriginal heritage in the vicinity of the study area, included:

- Muswellbrook LEP 2009
- Transport for NSW s. 170 Heritage and Conservation Register
- RailCorp s. 170 Heritage and Conservation Register
- State Heritage Register
- State Heritage Inventory
- Commonwealth Heritage List
- National Heritage List
- Australian Heritage Places Inventory
- Register of the National Estate (non-statutory list).

The Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales (OEH 2010) requires significance assessment to be carried out in accordance with the Australia ICOMOS Burra Charter (Australia ICOMOS 2013). Significance assessments were carried out for all Aboriginal archaeological and cultural values sites identified to be impacted by the proposal.

Aboriginal cultural values assessment

The Aboriginal cultural values assessment was undertaken collaboratively with the Aboriginal community and identified Aboriginal cultural knowledge holders, as nominated by the RAPs.

Archival research was undertaken in a range of national, state, and local institutions to provide the historical and ethnographic context for the assessment. An analysis of the ethnographic literature and historical record was undertaken to provide a contextual understanding to allow for the interpretation and assessment of the cultural information.

Ten individuals were identified as Aboriginal cultural knowledge holders.

Aboriginal cultural knowledge holders were consulted as follows:

- Three individuals took part in detailed interviews (via Zoom and/or in person)
- Two individuals were spoken with, but due to illness were unable to attend face-to-face interviews
- Two individuals were spoken with on a number of occasions, but despite repeated attempts, it was not possible to meet with them
- One individual was not able to be contacted
- Two individuals were represented by one of those spoken with.

The identified Aboriginal cultural knowledge holders spoken with provided cultural and historical information on the broader cultural landscape of the region. This information informed the assessment process in relation to the cultural heritage values and significance of the broader region.

Consultation

Consultation with Aboriginal stakeholders has been undertaken in accordance with the PACHCI and the Heritage NSW *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010*.

6.7.2 Existing environment

Aboriginal cultural heritage

Aboriginal sites and places identified by the AHIMS search (2020) in the study area are listed in Table 6-38, with the frequency and site types listed in Table 6-39.

Table 6-38: Aboriginal sites and places identified by the AHIMS search

Number identified	Aboriginal site / place
117	Aboriginal sites are recorded in or near the above location
0	Aboriginal places have been declared in or near the above location

Table 6-39: Frequency of site types and context from the AHIMS search

Site context	Site feature	Frequency
Open	Artefact	108
	Artefact (Potential Archaeological Deposit (PAD))	2

Site context	Site feature	Frequency
		7
Total		117

The AHIMS search results revealed that there were 18 AHIMS registrations (comprising 12 Aboriginal archaeological sites) located within the original PACHCI Stage 3 assessment study area. The study area was subsequently refined (refer to Figure 3-1) and now contains 12 AHIMS registrations (comprising eight Aboriginal archaeological sites). The sites/places listed below are shown on Figure 6-23 and Figure 6-24:

- Muswellbrook Bypass AFT 1
- Muswellbrook Bypass AFT 2
- Muswellbrook Bypass AFT 3
- Muswellbrook Bypass AFT 4
- Muswellbrook Bypass AFT 5
- Muswellbrook Bypass AFT 6
- Muswellbrook Bypass AFT 7
- Muswellbrook Bypass AFT 8 (includes NH 1, NH 2 and NH 3)
- Muswellbrook Bypass AFT 9
- Muswellbrook Bypass AFT 10 (includes DMC 1, DMC 2 and DMC 3)
- Muswellbrook Bypass IF 1
- Muscle Creek.

No Aboriginal heritage items or places were listed on any other registers within or in the vicinity of the study area.

REMOVED DUE TO CULTURAL SENSITIVITIES

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Test excavations

As part of the PACHCI Stage 3 assessment, 11 of the 12 sites identified were subject to test excavation. Testing was not undertaken at Muswellbrook Bypass IF 1, as the site was determined to be located within a highly disturbed context and the recorded object was unlikely to be associated with any subsurface deposits.

The test excavation program confirmed the presence of subsurface archaeological deposit of varying density and integrity at all 11 of the tested areas. The nature and extent of the archaeology was variable and illustrates the diverse array of Aboriginal activities which took place across the landforms contained within the study area.

Aboriginal cultural values

The Muswellbrook area and wider Upper Hunter region remains important to local Aboriginal people, who have maintained their traditional ties to the area through the sharing of knowledge and lore down generations. Aboriginal people continue to use and care for the natural resources available to them across Country and have an intimate understanding and respect for the landscape.

Particular locations of intangible cultural significance as identified by knowledge-holders during the cultural values assessment include:

- Site A: Sandy Creek Cultural Resource Area
- Site B: Skellatar Hill Line of Sight
- Site C: Pathway.

Sites A and C intersect the study area and site B is about 370 metres to the west (refer to Figure 6-23).

6.7.3 Potential impacts

Construction

Aboriginal cultural heritage

Refinement of the construction footprint subsequent to the test excavation program has avoided impact to one moderately significant site (Muswellbrook Bypass AFT 7) and reduced the extent of the proposed impact at five other moderately significant sites. At three of these (Muswellbrook Bypass AFT 6, Muswellbrook Bypass AFT 8 and Muscle Creek), the construction footprint would avoid impacting on the higher-archaeological value portions of the sites, with impacts restricted to marginal, low value areas on the fringes of the sites.

The impact assessment for identified Aboriginal archaeological sites is shown in Table 6-40 and shown on Figure 6-23 and Figure 6-24.

Table 6-40: Impact assessment for identified Aboriginal archaeological sites

Site name	AHIMS	Significance	Type / degree of harm	Consequence of harm
Muswellbrook Bypass AFT 1	37-2-5952	Moderate	Direct / partial	Partial loss of value
Muswellbrook Bypass AFT 2	37-2-5953	Low	Direct / total	Total loss of value
Muswellbrook Bypass AFT 3	37-2-5954	Low	Direct / partial	Partial loss of value

Site name	AHIMS	Significance	Type / degree of harm	Consequence of harm
Muswellbrook Bypass AFT 4	37-2-5955	Low	Direct / total	Total loss of value
Muswellbrook Bypass AFT 5	37-2-5957	Low	Direct / total	Total loss of value
Muswellbrook Bypass AFT 6	37-2-5956	Moderate	Direct / partial	Partial loss of value
Muswellbrook Bypass AFT 7	37-2-5958	Moderate	None / none	No loss of value
Muswellbrook Bypass AFT 8 (includes NH 1, NH 2 & NH 3)	37-2-5959 (includes 37-2-1454, 37-2-1455 & 37-2-1456)	Moderate	Direct / partial	Partial loss of value
Muswellbrook Bypass AFT 9	37-2-5960	Moderate	Direct / partial	Partial loss of value
Muswellbrook Bypass AFT 10 (includes DMC 1, DMC 2 & DMC 3)	37-2-5961 (includes 37-2-2631, 37-2-2632 and 37-2-2633)	Low	Direct / partial	Partial loss of value
Muswellbrook Bypass IF 1	37-2-5962	Low	Direct / total	Total loss of value
Muscle Creek	37-2-0139	Moderate	Direct / partial	Partial loss of value

An AHIP issued under Section 90 of the NP&W Act is required for the proposal. The AHIP should be sought for the entirety of the lands subject to the proposed works (the study area) and Aboriginal objects associated with the archaeological sites that would be impacted.

The AHIP would include a mitigation program comprising archaeological salvage which would be undertaken prior to construction where substantial portions of moderately significant Aboriginal archaeological sites would be impacted by the proposal. Mitigative salvage excavation would be required for two sites: Muswellbrook Bypass AFT 1 and Muswellbrook Bypass AFT 9.

Salvage excavation at moderately significant sites Muswellbrook Bypass AFT 6, Muswellbrook Bypass AFT 7, Muswellbrook Bypass AFT 8 (includes NH 1, NH 2 and NH 3) and Muscle Creek is not required as these sites would be either avoided or only marginally impacted by the proposal.

Surface collection of artefacts is proposed for all impacted site areas as detailed in Section 6.7.4.

Aboriginal cultural values

Impact assessment for the identified cultural sites was undertaken as part of the cultural values assessment. Two of the cultural sites are partially located within the construction footprint, and one is located adjacent to the construction footprint. A summary of identified impacts are provided in Table 6-41: and shown on Figure 6-23 and Figure 6-24.

Table 6-41: Impact assessment for identified Aboriginal cultural sites

Item	Description	Cultural significance	Impact
Site A: Sandy Creek Cultural Resource Area	A traditional cultural resource area associated with nearby camps and pathways	This cultural resource area has Medium Significance to the local Aboriginal community as a traditional cultural resource gathering place with associated patterns of movement and residence	Yes
Site B: Skellatar Hill Line of Sight	A high point that provides a cultural line of sight to a number of key pathways and locations	The Skellatar Hill line of sight has High Significance to the local Aboriginal community as a traditional location for orienting people within the cultural landscape and making visible the links between significant cultural places	No
Site C: Pathway	A pathway associated with traditional movement patterns	This movement corridor has Medium Significance to the local Aboriginal community as the patterns of movement hold cultural value for their association with resource use, community gatherings and ceremonial cycles	Yes

Operation

The proposal is not expected to impact on any items of Aboriginal heritage or cultural values when it is operational.

6.7.4 Safeguards and management measures

Impact	Environmental safeguards	Responsibility	Timing	Reference
Aboriginal cultural heritage	An application for an AHIP will be made under section 90A of the NP&W Act. The application will be prepared in accordance with the Heritage NSW Applying for an Aboriginal Heritage Impact Permit: Guide for Applicants (OEH 2011b). An AHIP will be sought for the land and associated objects within the boundaries of the construction footprint	Transport	Pre-construction	Additional safeguard
Aboriginal cultural heritage	The AHIP will include provision for impact mitigation through archaeological salvage excavation at Muswellbrook Bypass AFT 1 and Muswellbrook Bypass AFT 9 Salvage excavations will be completed prior to any activities (including pre-construction activities) which may harm Aboriginal objects at these site locations. Salvage excavation activities will be undertaken in accordance with the approved methodology	Transport	Pre-construction	Additional safeguard

Impact	Environmental safeguards	Responsibility	Timing	Reference
Aboriginal cultural heritage	<p>The AHIP will also include provision for community surface collection at all impacted site areas. The collection must be completed prior to any activities which may harm Aboriginal objects at these site locations and will be conducted as part of the overall salvage program, following the issue of the AHIP</p> <p>The collected objects will be recorded as part of the excavation report and included in the excavation assemblage for long term storage. The collection of surface artefacts will be undertaken in accordance with the approved methodology</p>	Transport	Pre-construction	Additional safeguard
Aboriginal cultural heritage	<p>The short term management of collected Aboriginal objects will be as follows:</p> <ul style="list-style-type: none"> Any Aboriginal objects that are removed from the land by actions authorised by an AHIP, must be moved as soon as practicable to the temporary storage location pending any agreement reached about the long term management of the Aboriginal objects The temporary storage location will be KNC, Level 10, 25 Bligh Street, Sydney NSW 2000 Any Aboriginal objects stored at the temporary storage location must not be further harmed, except in accordance with the conditions of the AHIP <p>The long term management of collected Aboriginal objects is as follows:</p> <ul style="list-style-type: none"> Recovered objects will be lodged with the Australian Museum in the first instance in accordance with the Australian Museum Archaeological Collection Deposition Policy If required, a variation will be sought for recovered objects to be held by the Aboriginal community or reburied. If reburial is to take place, registered Aboriginal parties will be notified and given the opportunity to attend. Requirement 26 "Stone artefact deposition and storage" in the Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW must be complied with 	Transport	Pre-construction	Additional safeguard

Impact	Environmental safeguards	Responsibility	Timing	Reference
Aboriginal cultural heritage	<p>An Aboriginal Heritage Management Plan (AHMP) will be prepared and implemented as part of the CEMP</p> <p>The AHMP will provide specific guidance on measures and controls to be undertaken to avoid and mitigate impacts on Aboriginal cultural heritage during construction. This should include protection measures to be applied during construction, including but not limited to the recommendations set out in this table, as well as contractor training in general Aboriginal cultural heritage awareness and management of Aboriginal heritage values</p>	Construction contractor	Pre-construction and construction	Section 4.9 of QA G36 <i>Environment Protection</i>
Aboriginal cultural heritage	<p>The non-impacted portion of partially impacted sites (outside of construction footprint and AHIP boundary) will be marked on the CEMP prior to construction activities to ensure these parts of the sites are avoided and not impacted by the proposal. The site areas will be marked as environmentally sensitive “no-go zones”.</p> <p>Temporary fencing will be installed around the edge of the non-impacted archaeological site areas and AHIP boundary during construction to provide a physical barrier against accidental access or impact</p> <p>Workers will be inducted as to appropriate Aboriginal heritage protection measures</p>	Construction contractor	Pre-construction	Additional safeguard
Aboriginal cultural heritage	<p>An Aboriginal cultural heritage awareness training package will be delivered as part of the site induction for all contractor(s) and maintenance personnel involved in the construction works</p> <p>The training package will be developed by a cultural heritage specialist in consultation with the RAPs and Aboriginal cultural knowledge holders. The training package will at a minimum ensure awareness of the cultural significance of the construction footprint, the requirements of the AHMP and relevant statutory responsibilities, and the identification of unexpected heritage items and appropriate management procedures</p>	Construction contractor	Pre-construction and construction	Additional safeguard

Impact	Environmental safeguards	Responsibility	Timing	Reference
Aboriginal cultural heritage	<p>A cultural heritage specialist will be engaged to develop interpretative materials on the cultural values and historical records relating to the Site A: Sandy Creek Cultural Resource Area; Site B: Skellatar Hill Line of Sight; and Site C: Pathway cultural sites and the cultural landscape they sit within</p> <p>The form of the interpretative materials will be determined in consultation with the Aboriginal cultural knowledge holders and RAPs following investigation of options with Muswellbrook Shire Council</p> <p>Options to be considered include interpretative signage, an educational booklet, and input into (aesthetic) design elements to reflect the Aboriginal cultural values of the area</p>	Transport	Pre-construction	Additional safeguard
Aboriginal cultural heritage	<p>The proposed bridge to be constructed near Site A: Sandy Creek Resource Area will be named in recognition of the Aboriginal cultural values and history of the region</p> <p>A range of potential names with supporting explanations will be developed by a cultural heritage specialist in consultation with the Aboriginal cultural knowledge holders and RAPs, with the options to be presented to the Aboriginal cultural knowledge holders and RAPs for their review and nomination of a preferred option to Transport</p>	Transport	Pre-construction	Additional safeguard
Aboriginal cultural heritage	<p>The AHMP will include an Unexpected Heritage Items Procedure (Roads and Maritime 2015) requiring notification of the identified knowledge holders within 48 hours of any discovery of potential archaeological Aboriginal skeletal remains during the proposed works</p>	Transport	As required	Section 4.9 of QA G36 <i>Environment Protection</i>
Aboriginal cultural heritage	<p>If there is a confirmed discovery of archaeological Aboriginal human remains, consultation will occur with the RAPS and Aboriginal cultural knowledge holders in relation to: the development of a management plan for proposed works in the relevant area; cultural ceremonies in relation to the human remains and the site of their occurrence; and repatriation of the human remains</p>	Transport	As required	Additional safeguard

Site name	AHIMS number	Assessed significance	Management and mitigation
Muswellbrook Bypass AFT 1	37-2-5952	Moderate	<ul style="list-style-type: none"> Community collection Archaeological salvage excavation AHIP required prior to commencement of works affecting the site
Muswellbrook Bypass AFT 2	37-2-5953	Low	<ul style="list-style-type: none"> Community collection Archaeological mitigation not required AHIP required prior to commencement of works affecting the site
Muswellbrook Bypass AFT 3	37-2-5954	Low	<ul style="list-style-type: none"> Community collection Archaeological mitigation not required AHIP required prior to commencement of works affecting the site
Muswellbrook Bypass AFT 4	37-2-5955	Low	<ul style="list-style-type: none"> Community collection Archaeological mitigation not required AHIP required prior to commencement of works affecting the site
Muswellbrook Bypass AFT 5	37-2-5957	Low	<ul style="list-style-type: none"> Community collection AHIP required prior to commencement of works affecting the site
Muswellbrook Bypass AFT 6	37-2-5956	Moderate	<ul style="list-style-type: none"> Community collection Archaeological mitigation not required (marginal impact to low-value portion of site) AHIP required prior to commencement of works affecting the site
Muswellbrook Bypass AFT 8 (includes NH 1, NH 2 & NH 3)	37-2-5959 (includes 37-2-1454, 37-2-1455 & 37-2-1456)	Moderate	<ul style="list-style-type: none"> Community collection Archaeological mitigation not required (marginal impact to low-value portion of site) AHIP required prior to commencement of works affecting the site
Muswellbrook Bypass AFT 9	37-2-5960	Moderate	<ul style="list-style-type: none"> Community collection Archaeological salvage excavation AHIP required prior to commencement of works affecting the site
Muswellbrook Bypass AFT 10	37-2-5961 (includes 37-2-2631, 37-2-	Low	<ul style="list-style-type: none"> Community collection Archaeological mitigation not required

Site name	AHIMS number	Assessed significance	Management and mitigation
(includes DMC 1, DMC 2 & DMC 3)	2632 and 37-2-2633)		<ul style="list-style-type: none"> • AHIP required prior to commencement of works affecting the site
Muswellbrook Bypass IF 1	37-2-5962	Low	<ul style="list-style-type: none"> • Community collection • Archaeological mitigation not required • AHIP required prior to commencement of works affecting the site
Muscle Creek	37-2-0139	Moderate	<ul style="list-style-type: none"> • Community collection • Archaeological mitigation not required (marginal impact to low-value portion of site) • AHIP required prior to commencement of works affecting the site