



ABORIGINAL CULTURAL HERITAGE AND INLAND RAIL (NARROMINE TO NARRABRI)

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WHAT IS INLAND RAIL?

Inland Rail is a 1,600km freight rail line that will connect Melbourne and Brisbane. Inland Rail is being built and managed by the Australian Rail Track Corporation (**ARTC**), a public authority, on behalf of the Australian Government.

WHAT IS THE INLAND RAIL (NARROMINE TO NARRABRI) PROJECT?

The Inland Rail (Narromine to Narrabri) Project (**Narrabri Project**) involves building approximately 306km of new rail corridor and track between Narromine and Narrabri (see map excerpt **attached**).

The Narrabri Project will be built on land that is subject to two registered native title claims: the Gomeri claim and the Ngemba, Ngiyampaa, Wangaaypuwan and Wayilwan claim.

The Narrabri Project also passes through the administrative boundaries of eight Local Aboriginal Land Councils (**LALCs**): the Weilwan LALC, the Coonamble LALC, the Baradine LALC, the Coonabarabran LALC, the Narromine LALC, the Narrabri LALC, the Pilliga LALC and the Gilgandra LALC.

WHAT APPROVALS DOES THE NARRABRI PROJECT HAVE?

Commonwealth approval under the *Environment Protection and Biodiversity Conservation Act 1999*

The Narrabri Project was assessed by an Environmental Impact Statement under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**), and was approved on 31 January 2024, subject to conditions relating to particular threatened species and communities.

NSW Declaration as Critical State Significant Infrastructure

The Narrabri Project was declared as Critical State Significant Infrastructure under the *Environmental Planning and Assessment Act 1979* (NSW) by the NSW Government in 2021, and was approved by the NSW Minister for Planning on 21 February 2023, subject to conditions.¹

What is Critical State Significant Infrastructure?

Critical State Significant Infrastructure is infrastructure that is considered to be essential for the State for economic, environmental or social reasons.

The Narrabri Project is Critical State Significant Infrastructure, which means that:

- ARTC is not required to get certain approvals, licenses or permits that a development in NSW would normally require, such as an Aboriginal Heritage Impact Permit (commonly referred to as AHIPs).²
- A number of different protections for the environment or cultural heritage are not available, such as offence provisions, a stop work order or an interim protection order under the *National Parks and Wildlife Act 1974* (NSW).³
- The consent of landowners to develop on their land is not required, although ARTC was required to notify any affected landowners about the Project.⁴

How is Critical State Significant Infrastructure assessed?

Critical State Significant Infrastructure is required to be assessed by an Environmental Impact Statement (**EIS**).⁵ The EIS for the Narrabri Project was required to assess a number of impacts, including impacts on Aboriginal cultural heritage.⁶

What consultation is required for Critical State Significant Infrastructure?

The EIS and Preferred Infrastructure Amendment Report for the Narrabri Project 3454 required to be publicly exhibited for 28 days.⁷ ARTC also ran community engagement sessions and consulted with Aboriginal stakeholders.

More details on the consultation that occurred for the Narrabri Project can be found in the [Planning Secretary's Assessment Report](#),⁸ the [Aboriginal cultural heritage assessment report](#),⁹ and the [Preferred Infrastructure Amendment Report](#).¹⁰

¹ See [Notice of Decision](#).

² *Environmental Planning and Assessment Act 1979* (NSW) s 5.23(1).

³ *Environmental Planning and Assessment Act 1979* (NSW) s 5.23(3).

⁴ *Environmental Planning and Assessment Regulation 2021* (NSW) reg 181(5)(b).

⁵ *Environmental Planning and Assessment Act 1979* (NSW) s 5.17.

⁶ See the [Planning Secretary's Environmental Assessment Requirements](#).

⁷ *Environmental Planning and Assessment Act 1979* (NSW) Sch 1 s 12.

⁸ See [Planning Secretary's Assessment Report](#), section 5.11 'Community engagement'.

⁹ See [Aboriginal cultural heritage assessment report](#), section 4.1 'Aboriginal community consultation'.

¹⁰ See [Preferred Infrastructure Amendment Report](#), section 3 'Community and stakeholder engagement'.

CAN I ACCESS THE ASSESSMENT AND APPROVAL DOCUMENTS?

All documents related to the assessment and approval of the Narrabri Project as Critical State Significant Infrastructure can be found [here](#).

All documents related to the assessment and approval of the Narrabri Project under the EPBC Act can be found [here](#).

WILL THE NARRABRI PROJECT IMPACT ABORIGINAL CULTURAL HERITAGE?

How were impacts to Aboriginal cultural heritage assessed?

ARTC prepared an [Aboriginal Cultural Heritage Assessment Report](#) as part of the EIS, which identified that of the 152 Aboriginal heritage sites identified within the rail corridor, 25 sites and 2 Potential Archaeological Deposits will be directly impacted and 23 sites will be vulnerable to indirect impacts.¹¹

A number of methods were used to identify and assess impacts to Aboriginal cultural heritage, including an initial survey, test excavations, desktop assessment, consultation with Registered Aboriginal Parties, and an archaeological survey.¹²

How will impacts to Aboriginal cultural heritage be managed?

The Narrabri Project is subject to a number of conditions which specifically relate to managing impacts on Aboriginal cultural heritage. Those conditions can be accessed [here](#).¹³ A number of mitigation measures are also set out in the EIS, which can be accessed [here](#).¹⁴

Some of the key conditions and mitigation measures include:

- Avoid harm to Aboriginal cultural heritage (E138, E140, E143, E147, E148-154).
- Avoid harm to human remains (E139, E154-156).
- Engage with Aboriginal stakeholders (E144-145).
- Integrate Aboriginal Cultural Values into project design (E146).
- Undertake detailed design and construction planning to avoid direct impacts (AH1).
- Prepare a detailed salvage methodology (AH2).
- Undertake targeted archaeological surveys and investigations for areas with high cultural sensitivity (AH3).
- Undertake a pre-construction survey to confirm the location of listed heritage sites (AH4).
- Avoid impacts on culturally modified trees as far as practicable (AH6).
- Prepare a cultural heritage management plan prior to construction (AH8).
- Develop an unexpected finds procedure (AH10).

¹¹ See [Aboriginal cultural heritage assessment report](#), section 9 'Impact assessment'.

¹² See [Aboriginal cultural heritage assessment report](#), section 7 'Summary of archaeological assessment, section 8 'Significance assessment'.

¹³ See [Infrastructure approval](#), particularly conditions A1, A2, B1, E138-E140, E143-E156.

¹⁴ See [Environmental Impact Statement, Chapter B6 'Aboriginal heritage'](#), section B6.5.2 'List of mitigation measures'.

CONSULTATION WITH ABORIGINAL PEOPLE

Was there consultation about impacts on Aboriginal cultural heritage?

In preparing the Aboriginal Cultural Heritage Assessment Report, ARTC has stated that it engaged in consultation in accordance with the [Aboriginal cultural heritage consultation requirements for proponents 2010](#).

ARTC stated that consultation involved the key Aboriginal stakeholders in the area, including two Native Title groups, eight LALCs and 23 Registered Aboriginal Parties.¹⁵ Nominated staff from the Aboriginal stakeholders participated in the archaeological survey, which was undertaken throughout 2018. More details about consultation can be found in the [Aboriginal Cultural Heritage Assessment Report](#).¹⁶

Will there be any more consultation about impacts on Aboriginal cultural heritage?

The conditions of approval require ARTC to engage in further consultation in relation to cultural heritage both prior to and during construction.

We strongly recommend engaging in all consultation opportunities, given the limited enforcement opportunities available in relation to Critical State Significant Infrastructure projects, as further detailed below.

WHAT CAN I DO IF I AM CONCERNED ABOUT IMPACTS TO ABORIGINAL CULTURAL HERITAGE?

Normally, there are appeal rights for development approved under the *Environmental Planning and Assessment Act 1979* (NSW). However, many of those appeal rights do not apply to Critical State Significant Infrastructure like the Narrabri Project. This means that merits review,¹⁷ statutory judicial review without permission of the Planning Minister¹⁸ and third-party enforcement¹⁹ actions are not available for this particular project.

There are a number of different actions that an individual or organisation can take if they are concerned about the impacts of the Narrabri Project on Aboriginal cultural heritage:

- 1) Report non-compliance with the conditions of approval.
- 2) Apply to have a declaration made to protect a significant Aboriginal area or object under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth).

More information about these available options is set out below.

1) Report non-compliance with conditions

If you are concerned cultural heritage is being harmed in breach of the conditions of approval, you can report it to the NSW Department of Planning, Housing and Infrastructure.

¹⁵ See [Aboriginal cultural heritage assessment report](#), section 4 'Aboriginal community consultation'.

¹⁶ See [Aboriginal cultural heritage assessment report](#), section 4 'Aboriginal community consultation'.

¹⁷ *Environmental Planning and Assessment Act 1979* (NSW) s 5.27.

¹⁸ *Environmental Planning and Assessment Act 1979* (NSW) ss 5.26, 5.27(2).

¹⁹ Section 5.27(3), *Environmental Planning and Assessment Act 1979* (NSW).

You can report compliance by emailing compliance@planning.nsw.gov.au with as much information as possible. The Department will conduct an investigation into the alleged breach, and determine what action should be taken.²⁰ Conditions may only be enforced by or with the approval of the Minister.

ARTC is required to submit Compliance Reports to the NSW Department of Planning, Housing and Infrastructure annually, documenting how the Narrabri Project is in compliance with the conditions.²¹ The Department will review the Compliance Report, and if non-compliance is identified, the Minister may take enforcement action against ARTC.²²

ARTC is also required to comply with the conditions of approval under the EPBC Act.²³ If you are concerned that ARTC is breaching the conditions of approval, you can report it [here](#), or you can email the Department at environment.compliance@dcceew.gov.au.²⁴

2) Apply for a Declaration

The Federal Minister for the Environment can make a declaration under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) (**ATSIHP Act**) to protect an Aboriginal area or object that is under threat of injury or desecration if:

- it is an area or object of particular significance under Aboriginal traditions;
- it will be used or treated in a way that goes against Aboriginal traditions; and
- State or Territory laws have failed to protect it.

However, even if an Aboriginal area or object meets all these criteria, the Minister has discretion to decide whether or not to make a declaration and declarations are rarely made.

There are four types of declarations that can be made:

- 1) **Section 9 declaration:** provides urgent protection of significant areas for up to 30 days, which can be extended to a maximum of 60 days.
- 2) **Section 10 declaration:** provides longer term protection of a significant area for a period of time specified by the Minister.
- 3) **Section 12 declaration:** provides protection of a significant object or class of objects for a period of time specified by the Minister.
- 4) **Section 18 declaration:** an emergency declaration which provides 48 hours' protection for a significant area or object which is going to be imminently harmed.

A declaration under the ATSIHP Act is meant to be a last resort, so it must be shown that all efforts to protect the cultural heritage at State level have been exhausted.

Visit: [Aboriginal and Torres Strait Islander Heritage Protection Act: General Guide](#)

²⁰ See [Compliance Policy](#), section 4.3 'Assessment of potential breaches'.

²¹ See Condition A49: 'Compliance Reports must be submitted to the Department in accordance with the timeframes set out in the [Compliance Reporting Post Approval Requirements](#) (DPIE, 2020)'.

²² See [NSW Department of Planning, Housing and Infrastructure Compliance Policy](#), section 5 'Regulatory responses'.

²³ See [Notification of Approval](#).

²⁴ See [Report a breach of the EPBC Act](#).

Proposed Inland Rail (Narromine to Narrabri) alignment



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