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Submission – Warragamba Dam Raising Project – SSI-8441: Submission regarding the Environmental Impact Statement

Australia ICOMOS objects to the proposal to raise the Warragamba Dam wall by 14 metres, thereby allowing for periodic inundation of parts of the Greater Blue Mountains World Heritage Area (GBMWA) and adjacent areas (the Dam Proposal) and is strongly concerned at inadequacies of the Environmental Impact Statement (EIS) process and the EIS conclusions relating to cultural heritage.

Australia ICOMOS (International Council on Monuments and Sites) is a non-government, not-for-profit organisation of cultural heritage professionals formed as a national chapter of ICOMOS International in 1976. The mission of Australia ICOMOS is to lead cultural heritage conservation in Australia by raising standards, encouraging debate and generating innovative ideas. ICOMOS is an Advisory Body to the UNESCO World Heritage Committee under the *World Heritage Convention*.

The areas that are affected by the Dam Proposal include a World Heritage property, a National Heritage place, two national parks, a declared Wilderness area, a declared Wild River, and the Warragamba Special Catchment Area. The subject area is recognised globally for its biodiversity and rare species and was also originally nominated to the World Heritage List by Australia, with the support of the NSW Government, for cultural as well as natural values in the 1990s. Parts of the area are currently on the Australian Heritage Council's Priority Assessment List and are being evaluated for a range of potential cultural National Heritage values.

The Dam Proposal is inconsistent with Australia's obligations under the *World Heritage Convention* with respect to the Greater Blue Mountains World Heritage Area (GBMWA) and neither the Dam Proposal itself, nor the EIS comply with specific Decisions of the World Heritage Committee.

The Dam Proposal would affect the National Heritage values of a place on Australia's National Heritage List and would be inconsistent with Australia's *National Heritage Management Principles*.

The Aboriginal Cultural Heritage Assessment Report (ACHAR), at Appendix K of the EIS, does not provide adequate understanding of the nature, extent and significance of the Aboriginal cultural resources that may be affected by the Dam Proposal and does not fulfil the Secretary's Environmental Assessment Requirements (SEARS) for the EIS.

The process of engagement with Traditional Owners regarding the Dam Proposal has been inadequate and their 'free, prior and informed consent' has not been obtained.

The Dam Proposal is inconsistent with the principles and processes of *The Burra Charter: the Australia ICOMOS Charter for Places of Cultural Significance 2013*.

Australia ICOMOS endorses the recommendations contained in the *Interim Report, October 2021, of the NSW Legislative Council Select Committee on the Proposal to Raise the Warragamba Dam Wall*.

Reasons why Australia ICOMOS Objects to the Proposal

Impact on Outstanding Universal Value of a World Heritage Property

The proposed raising of the Warragamba Dam wall has the potential to affect the integrity of the GBMWH and therefore to impact adversely upon the Outstanding Universal Value (OUV) of this World Heritage property.

The proposal is within the GBMWH and while this inscription was for natural values, there are also important cultural sites and values affected, which are explicitly part of the 'integrity' of the property as expressed in its Statement of OUV:

An understanding of the cultural context of the GBMA is fundamental to the protection of its integrity. Aboriginal people from six language groups, through ongoing practices that reflect both traditional and contemporary presence, continue to have a custodial relationship with the area. Occupation sites and rock art provide physical evidence of the longevity of the strong Aboriginal cultural connections with the land. The conservation of these associations, together with the elements of the property's natural beauty, contributes to its integrity. (<https://whc.unesco.org/en/list/917/>)

Under Article 4 of the *World Heritage Convention*, Australia is obliged (among other things) to do all it can, using the utmost of its own resources, (emphasis added) to identify, protect, and conserve the cultural and natural heritage of the GBMWH. In this regard, Australia ICOMOS highlights Decision 40 COM 7 of the World Heritage Committee in 2016, in which it considered the construction of dams with large reservoirs within the boundaries of World Heritage properties to be incompatible with their World Heritage status, and urged States Parties to “*ensure that the impacts from dams that could affect properties located upstream or downstream within the same river basin are rigorously assessed in order to avoid impacts on the OUV*”.

In relation to the Dam Proposal considered by the EIS, the World Heritage Committee, by Decision 43 COM 7B/2 advised that that the inundation of areas within the property resulting from the raising of the dam wall are:

likely to have an impact on the Outstanding Universal Value [. . .] of the Greater Blue Mountains World Heritage Area.

By the same Decision the Committee urged that the:

process to prepare an Environmental Impact Statement (EIS) for the proposal fully assesses all potential impacts on the OUV of the property and its other values, including Aboriginal cultural heritage (emphasis added).

As outlined below, the EIS does not 'fully assess' 'all potential impacts' because it does not provide adequate identification, investigation or assessment of the potential impacts of the proposed action on the Indigenous cultural values of the GBMWH, which are attributes that contribute to the integrity that underpins the property's OUV.

Adverse heritage impacts should be avoided, to the fullest practical extent, within the GBMWH. The EIS states that “*to compensate for and offset the assessed impact, the Warragamba Offset Strategy focuses on purchasing and managing additional and appropriate land containing the values of the Greater Blue Mountains World Heritage Area to achieve no net loss*”. (EIS Executive Summary page 32). This is an erroneous suggestion. The GBMWH is inscribed on the World Heritage List and loss of attributes which support its OUV, including by periodic inundation, cannot be offset by purchasing alternate land.

Australia ICOMOS therefore supports Recommendation 9 of the Interim Report of the NSW Legislative Council Select Committee on the Proposal to Raise the Warragamba Dam Wall, that the NSW Government:

- *not proceed with the Warragamba Dam wall raising project, if the proposal cannot maintain or improve the current and future integrity of the Greater Blue Mountains World Heritage Area, and*
- *pursue alternative floodplain management strategies instead.*

Impact on National Heritage Values

The discussion of Aboriginal cultural values in the EIS does not adequately consider the implications of the inclusion of some of the affected lands on the National Heritage List nor additional potential National Heritage values. More than 300ha of the Project Upstream Impact Area (PUIA) is already on Australia's National Heritage List and other potentially affected areas are currently part of an area that is on the 'Priority Assessment List' which is being evaluated for potential National Heritage values by the Australian Heritage Council. This assessment includes potential Indigenous National Heritage values which have been nominated by the Greater Blue Mountains World Heritage Area Advisory Committee. This consideration is directly responsive to a specific requirement of the *Australian Heritage Strategy*:

Progressively review existing World Heritage places that have been listed for natural values only to identify whether the areas may contain internationally significant cultural heritage (Australian Heritage Strategy 2015, Objective 1, Action 8, page 19).

As a matter of due process, the Australian Heritage Council should conclude the current Priority Assessment List process and determine whether Indigenous cultural heritage that is within the PUIA has National Heritage value, before any decision is made to proceed with the Dam Proposal.

Australia ICOMOS does not agree with the conclusions reached in Appendix J of the EIS that the Dam Proposal is consistent with the Australian *National Heritage Management Principles*, which apply to places on the National Heritage List. Specifically, in view of inadequacies in survey and assessment and consultative processes, the ACHAR and the conclusions which flow from it, do not comply with the following principles:

1. *The management of National Heritage places should use the best available knowledge, skills and standards for those places, and include ongoing technical and community input to decisions and actions that may have a significant impact on their National Heritage values.*
5. *The management of National Heritage places should make timely and appropriate provision for community involvement, especially by people who:*
 - *have a particular interest in, or associations with, the place, and*
 - *may be affected by the management of the place.*
6. *Indigenous people are the primary source of information on the value of their heritage and the active participation of Indigenous people in identification, assessment and management is integral to the effective protection of Indigenous heritage values.*

Impact on Aboriginal Heritage

The EIS is fundamentally flawed because of the inadequate extent of survey undertaken to identify potentially affected Aboriginal sites and the resulting deficiency in assessment and characterisation of predicted impact. It is very concerning that the ACHAR outlines a process for further investigation subsequent to development consent, whereas the further investigation is actually needed to inform consideration as to whether development consent should be granted. Further investigation of known sites, through recording, comparative study and/or test excavation is needed so that their nature, extent and significance can be comprehensively characterised. This is essential given the nature of the threat posed by the Dam Proposal.

Although 43 archaeological sites and 11 other places of cultural significance have been identified, it is estimated that a further 131 sites may be affected. This extrapolation is of questionable validity, and is at best predictive based on the 'normal' and likely to miss any sites that are 'exceptional' to the established pattern. However, without actual information about the actual sites affected, Traditional Owners have effectively been circumvented of the ability to be sufficiently informed about the relevant cultural heritage impacts and therefore the information available to the consent authority is not comprehensive and inadequate.

The ACHAR therefore does not meet a fundamental SEARS Requirement (3.1) that the: "*level of assessment must be commensurate to the degree of impact and sufficient to ensure that the Department and other government agencies are able to understand and assess impacts*".

The ACHAR indicates explicitly that the impacts from the proposal include:

. . . Harm to the cultural landscape through the periodic temporary flooding of 43 known archaeological sites (and an additional predicted 131 archaeological sites) and 11 cultural places within the PUJA.

Cumulative harm to the intangible values of the cultural landscape through extension of previously unmitigated impact on cultural values from the construction of the Warragamba Dam and flooding of the Burragorang Valley and its tributary valleys . . . (ACHAR page iv)

More than 81% of the GBMWhA was impacted by the 2019-2020 bushfires. However, the ACHAR fieldwork was completed prior to the fires and the ACHAR advised that: *“it was not possible to conduct further survey after the fires”*. (ACHAR page 34) and that: *“it is not possible to quantify the effects of the 2019-2020 wildfires on Aboriginal heritage values or individual sites or places in the study area”* (ACHAR page 34). This is completely unacceptable, inconsistent with due process and the suggestion that further survey was not possible is untenable. Bushfires can cause damage to Aboriginal cultural heritage sites, such as damage to rock art from intense heat, burning of scarred trees and damage to stone artefacts. Fire can also reveal scatters or other previously unknown sites – which may now be exposed in previously surveyed areas.

While the ACHAR hypothesises that *“the resilience of the cultural landscape suggest the latest fires have not had an impact that would result in a material effect to this assessment”*, (ACHAR page 34) the impact of the fires is actually completely unknown because further fieldwork was not undertaken. The extent of field survey and the lack of survey post the 2019-2020 fires is a serious and unacceptable shortcoming.

In light of the circumstances outlined above, Australia ICOMOS supports Recommendation 12 of the Interim Report of the NSW Legislative Council Select Committee on the Proposal to Raise the Warragamba Dam Wall, October 2021, which proposes:

That Water NSW conduct further Aboriginal Cultural Heritage Assessment, including additional field surveys, to address the concerns raised by stakeholders and agencies, particularly in relation to the adequacy of field surveys, and post fire assessment, as well as demonstrating the agreement of RAPs in the significance assessment of sites, and the need for a broader cultural impact assessment of the project.

The mitigation and management measures considered in the EIS (EIS Executive Summary page 39) are inappropriate and unacceptable. The EIS proposes *“an Aboriginal cultural heritage management plan to address intergenerational equity including recording of Aboriginal cultural heritage”*. Recording is insufficient. The focus should be on avoidance of harm. And yet, the ACHAR concludes, in relation to Aboriginal Cultural Heritage, that if the project proceeds, *“there is no capacity for directly applied management measures for the avoidance or minimisation of harm”* (ACHAR page iv).

Involvement of Traditional Owners

The ACHAR notes that the ‘Cultural Values Assessment’ involved limited consultation with the Registered Aboriginal Parties (RAPs), *“the majority of who were not willing to participate in the formal assessment process or nominate knowledge holders”* (ACHAR page iii). Despite these limitations and the admission that *“locations of cultural value cannot be considered comprehensive”*, the cultural landscape was assessed to be ‘of very high significance’ (ACHAR page iv).

The EIS states that there has been further consultation with the RAPs during review and revision of the ACHAR. The ACHAR states *“it has been clearly communicated by the RAPs that they do not support the Project”* (ACHAR page iv). Australia ICOMOS notes that, in light of the inadequacy of information available to the RAPs and the circumstances described in the ACHAR, there is no free, prior and informed consent for the Dam Proposal from Aboriginal Traditional Owners. Therefore, Australia ICOMOS supports Recommendation 11 of the Interim Report of the NSW Legislative Council Select Committee on the Proposal to Raise the Warragamba Dam Wall:

That the NSW Government not proceed with the Warragamba Dam wall raising project should Registered Aboriginal Parties not give free, prior and informed consent for the project to proceed, as required in advice provided to the NSW Government by the Commonwealth Department of Agriculture, Water and Environment.

Non-compliance with the Burra Charter

Best practice heritage practice, including *The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance 2013* (the Burra Charter), requires that the values of a place of cultural significance

should be identified prior to decisions which affect those values, and that, while considering and managing other factors, a primary objective should be conservation of those values. As outlined above, the EIS has not involved adequate consultation nor survey work in relation to the ACHAR. There has been insufficient consideration of alternatives to the proposal to avoid harm. Therefore, the EIS does not meet Burra Charter standards and is fundamentally flawed.

The Burra Charter sets out specific principles and processes for decision-making and the conservation and management of places of cultural significance. Although the Burra Charter does not directly set out specific standards or practices for the conduct of an EIS, it is of concern that the EIS is inconsistent with several Articles of the Burra Charter. In particular:

- The mitigation and management measures considered (EIS Exec Summary page 39) are inconsistent with an appropriate conservation outcome. The EIS proposes “an Aboriginal cultural heritage management plan to address intergenerational equity including recording of Aboriginal cultural heritage”. Recording is insufficient and would be inconsistent with the conservation principles in Articles 2 and 3 of the Burra Charter.
- Survey of only a part (circ 33%) of the directly affected area as noted in the sampling strategy presented in the ACHAR (page 30) has prevented comprehensive understanding of the definitive extent of cultural resources which would be destroyed. This shortcoming represents a fundamental non-compliance with the core process set out in Article 6 of the Burra Charter.
- There has been insufficient engagement with Traditional Owners. The information available to them through the EIS (including lack of adequate location data – even if it were to be provided in confidence) means that participation by associated people has been thwarted, contrary to the intent of Article 12 of the Burra Charter.
- With respect to non-Aboriginal heritage, there was no process for identification or assessment of unlisted items of potential heritage significance which were not already included on statutory registers or lists (EIS Chapter 17, Non-Aboriginal Heritage, page 17-5). In view of the nature of the project under consideration this is not consistent with the process outlined in Article 26 of the Burra Charter.

The Dam Proposal is inconsistent with the Burra Charter because it would not respect the cultural significance of the affected cultural places and would not avoid or minimise adverse impacts on cultural heritage. Therefore, Australia ICOMOS supports Recommendation 13 of the Interim Report of the NSW Legislative Council Select Committee on the Proposal to Raise the Warragamba Dam Wall, October 2021, which proposes:

That the NSW Government, in the final Environmental Impact Statement, clearly demonstrate how the Aboriginal Cultural Heritage Assessment for the Warragamba Dam wall raising project complies with all current guidelines identified in the SEARs, including the:

- *Burra Charter . . .*

Conclusions

Australia ICOMOS objects to the proposal to raise the Warragamba Dam wall and is concerned at inadequacies of the Environmental Impact Statement process and conclusions relating to cultural heritage and, in particular:

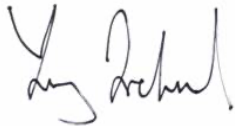
1. inconsistency with Australia’s obligations under the *World Heritage Convention*;
2. non-compliance with specific Decisions of the World Heritage Committee;
3. potential effects on National Heritage values;
4. non-compliance with Australia’s National Heritage Management Principles;
5. incomplete survey coverage of the potentially-affected areas;
6. failure to re-survey following the 2019-2020 bushfires;

7. inadequate understanding of the nature, extent and significance of the Aboriginal cultural resources that may be affected;
8. unfulfilled Secretary's Environmental Assessment Requirements for the EIS;
9. inadequate provision of information to Registered Aboriginal Parties;
10. inadequate engagement with Traditional Owners;
11. absence of 'free, prior and informed consent' from Traditional Owners; and
12. inconsistency with the principles and processes of *The Burra Charter*.

Every effort should be made to pursue alternative solutions to the reported downstream flood risk, rather than pursuing a simplistic solution of the Dam Proposal. Possibilities might include dredging works and filling of the dam to a lower level, or downstream flood mitigation activities which might better address dangers from tributaries that flow into the Hawkesbury-Nepean system downstream of Warragamba Dam.

Australia ICOMOS is concerned that the EIS is fundamentally deficient, and that the very nature of the project is at odds with both appropriate cultural heritage practice and obligations that arise from the *World Heritage Convention*.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tracy Ireland', written in a cursive style.

**Professor Tracy Ireland ICOMOS, FSA
President**