

To whom it may concern

Re: Preferred Infrastructure Report – Warragamba Dam Raising Project – SSI-8441

I write to express my objection to the proposal to raise the Warragamba Dam wall, as set out in the Preferred Infrastructure Report (PIR) published on the NSW Government Planning Portal (SSI-8441, EPBC ID 2017/7940). I do not consent to any of my personal information being published in connection with my submission. I have not made any reportable political donations.

I recognise the need to better manage risks associated with flooding in the Hawkesbury-Nepean Valley. However, I do not believe that the Warragamba Dam Raising (WDR) Project is an effective or ethical way to do this, for the following reasons.

The Gundungurra Traditional Owners and Knowledge Holders of the Burratorang Valley area that will be affected by the proposed project do not consent to the project. The Submissions Report (SR) acknowledges that a number of submissions raised this as an issue, however the SR dismisses this by arguing that obtaining such consent is “not a statutory requirement under NSW or Commonwealth legislation” (SR, page 387). Notwithstanding this, obtaining free and informed consent is a requirement of Article 32.2 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which Australia has endorsed. Article 32 of UNDRIP provides that:

- 1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.*
- 2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.*
- 3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.*

It is clear from the submissions made by Registered Aboriginal Parties that the proposed WDR project and associated consultation processes contravene all three sections of Article 32. The PIR fails to adequately reflect or address this fundamental issue. Appendix C3 to the SR acknowledges Article 32.2, and the “increasing recognition of ‘free, prior and informed consent’ in an international context” (SR, page C25), however asserts that “its application is somewhat constrained” in relation to the WDR project given “it is not part of Australia’s domestic laws” SR, (page C25). While this interpretation may reflect current domestic legislative arrangements, it certainly does not reflect Australia’s moral obligations in relation to upholding UNDRIP.

Besides Article 32, the proposed WDR project impinges on many other rights conferred by UNDRIP, including:

Article 8.1, which provides “the right not to be subjected to...destruction of their culture.”

Article 11, which provides “the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.”

Article 12, which provides “the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects.”

Article 13, which provides “the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies...”

Article 29, which provides “the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.”

Article 31, which provides “the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.”

It is clear from the PIR that the proposed WDR project will destroy parts of Gundungurra Country (c.f. Article 29) and thus severely constrain Gundungurra People’s opportunities to fulfil cultural obligations to care for Country (c.f. Articles 11, 12, 13, 31). The proposed WDR project would cause further destruction of Gundungurra culture (c.f. Article 8.1) and the ability to practise and transmit culture to future generations (c.f. Articles 11, 12, 13, 31). None of these issues are addressed adequately, if at all, in the SR or PIR. Instead, the PIR repeatedly misconstrues and under-represents the magnitude of impacts that the WDR project would have on Gundungurra People; notably the Executive Summary of the PIR makes no mention of the impact of the proposed project on Aboriginal Peoples at all. The statement of principal impacts at section 7.3 of the PIR does not reflect the impacts that Gundungurra Knowledge Holders have communicated the project will have, nor that they have repeated stated that the cultural value of the entire area is of high significance, which is evident in the “RAP responses to Supplementary Assessment to the ACHA” (Table 22 of Appendix F to the PIR). This misrepresentation of impacts fails to enable a true estimation of how the purported benefits weigh against the impacts of the project.

The NSW Government is a Party to the National Agreement on Closing the Gap, July 2020, the objective of which is “to overcome the entrenched inequality faced by too many Aboriginal and Torres Strait Islander people so that their life outcomes are equal to all Australians.”¹ As a Party to the National Agreement, the NSW Government committed to “mobilising all avenues and opportunities available to them to meet the objective of this Agreement.”² The proposed WDR project is contrary to the NSW Government’s stated commitment, and would further entrench inequality faced by Gundungurra People. Upstream inundation at full supply level will damage a considerable area of Gundungurra Country and will cause unnecessary and ongoing harm to Gundungurra People, who have already suffered, and continue to suffer, considerable harms resulting from the ongoing processes of colonisation, continuing dispossession, discrimination, and disadvantage. The proposed WDR project is a form of settler-colonial violence that would be severely detrimental to the social, emotional, and cultural wellbeing, as well as physical health³ of Gundungurra People. This is unacceptable and has not been accounted for in the PIR, which instead focuses solely on the risks to life and property of downstream communities. The PIR claims that the WDR project “would provide intergenerational equality in terms of flood protection for communities in the Hawkesbury-Nepean” (page 109). This is a dubious and unsubstantiated assertion, which fails to consider that the project will undermine intergenerational equity for Gundungurra People, who will be further prevented from accessing Country, practising culture, and deriving the holistic health and wellbeing benefits that flow from this.

According to the PIR and Chapter 29 of the EIS, the operational impacts of the WDR project would result in increased upstream inundation extents, depths, and durations of a substantial area of Country which has not evolved to cope with such inundation. The EIS also states the alteration of flows in downstream areas will negatively impact on biodiversity in those areas. While all native species and ecological communities that live on and comprise Country are important, it is particularly concerning that the project will cause further harm to endangered and critically endangered vegetation. According to Chapter 29 of the EIS, the construction phase of the WDR project would result in the removal of 22.42 hectares of habitat for 17 threatened fauna and 51 threatened flora species, 1.64 hectares of which is a threatened ecological community. It is immoral to knowingly cause harm to these endangered and threatened communities and species, when instead we should be protecting them. To perpetuate such damages at all is unconscionable, but to knowingly inflict them on a unique World Heritage Listed area is particularly egregious. No amount of ‘offsetting’ can genuinely compensate for these unique losses.

The inherent logic of the project is ecologically maladaptive: increasing the height of the dam wall will cause flooding in an area that does not naturally flood, in order to reduce—but not totally avoid—the impacts of flooding an area that naturally floods. While raising the dam wall may provide some flood mitigation, it does not completely mitigate risks given the significant contribution of flows from other catchments (such as the 40% of flows in the March 2021 event, for example, as stated in the EIS). Thus, the above-mentioned damages and

associated loss of resilience would be incurred without the certainty of avoiding all of the downstream costs of flooding. This burden is unacceptable given the presence of multiple feasible alternatives. Such alternatives include those detailed Professor Jamie Pittock⁴, such as a combination of lowering the full storage level of Warragamba Dam by 12 metres to create additional airspace, coupled with alternative approaches to bolster and diversify Sydney's drinking water supply (e.g. renewable-energy-powered desalination plants⁵, increased domestic rain-water harvesting, water-use efficiency programs), relocating residents from flood-prone areas (which is currently happening with voluntary buy-backs as part of the NSW Government's \$800 million Northern Rivers Resilient Homes Fund), and engaging in lower-risk flood-resilient activities of value in the flood-prone areas. Chapter 4 (s4.7.9) of the EIS claimed that alternative packages of options were tested, however no details were provided and these options were ruled out on the basis of being 'cost prohibitive' without elaboration of those costs, nor a systemic analysis of benefits or how they compare with those of the WDR Project. Neither the EIS nor the PIR provide a business case that sets out the costs of WDR project or compares these with the suite of alternative options; this precludes a genuine assessment of the relative costs and benefits of the various options.

The SR states that 2,586 submissions were received to the EIS, with 60 supporting and 2,475 objecting to the WDR project; this corresponds to 2% of submissions supporting and 96% opposing the project. Given the strength of community objection to the WDR project, combined with the existence of feasible alternatives for managing flood risk that confer greater resilience in the face of climate change, it would be unethical to proceed with the WDR proposal and the certain harm it would cause Gundungurra People and Country.

The WDR project will cause more harm than it prevents, and it should not proceed.

References

1. Page 3 of the National Agreement on Closing the Gap, July 2020, available at <https://www.closingthegap.gov.au/national-agreement>
2. Page 3 of the National Agreement on Closing the Gap, July 2020, available at <https://www.closingthegap.gov.au/national-agreement>
3. Salmon, M., Doery, K., Dance, P., Chapman, J., Gilbert, R., Williams, R., and Lovett, R. 2019. *Links between Aboriginal and Torres Strait Islander Culture and Wellbeing: What the Evidence Says*. The Australian National University and the Lowitja Institute.
4. Pittock, J. 2018. *Managing flood risk in the Hawkesbury – Nepean Valley*. Australian National University.
5. Turner, A., Sahin, O., Giurco, D., Stewart, R., and Porter, M. 2016. The potential role of desalination in managing flood risks from dam overflows: the case of Sydney, Australia. *Journal of Cleaner Production*, 135, 342-355.