Submission
Mount Piper to Wallerawang Transmission EIS

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Executive Summary

This submission opposes the proposed Mount Piper to Wallerawang Transmission Project on the grounds that it is both **unlawful and environmentally indefensible**. The 8-kilometre, 500 kV double-circuit transmission line—intended to connect Mount Piper substation to Wallerawang substation—is presented as a minor extension within the NSW transmission rollout. However, in law and in fact, it represents a major escalation of cumulative environmental pressure across a landscape already saturated with ecological degradation, legacy industrial pollution, and expanding infrastructure.

The **Environmental Impact Statement (EIS)** is legally non-compliant. It fails to meet the mandatory requirements of both **Commonwealth and State legislation**, including:

- The *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (EPBC Act), by failing to assess significant impacts on migratory and threatened species, and by omitting cumulative impact analysis in breach of *s.136(2)(e)*;
- The *Environmental Planning and Assessment Act 1979 (NSW)* (EP&A Act), by not adequately considering relevant planning matters under *s.4.15* and failing to demonstrate avoidance of serious and irreversible environmental impacts as required by law;
- The *Biodiversity Conservation Act 2016 (NSW)* (BC Act), by relying on offsets in breach of *s.7.2*, where avoidance is legally mandated in cases of extinction risk;
- The *Water Management Act 2000 (NSW)*, by omitting flood, catchment, and hydrological impact modelling;
- The *Work Health and Safety Act 2011 (NSW)*, by neglecting to assess electrical hazard and bushfire risk consistent with statutory duties under *s.19*;
- The *National Parks and Wildlife Act 1974 (NSW)*, through failure to obtain an Aboriginal Heritage Impact Permit (AHIP) and to engage in lawful consultation with Wiradjuri Traditional Custodians;
- International treaties including JAMBA, CAMBA, ROKAMBA, and the *Stockholm Convention*, by failing to safeguard migratory species and prevent release of persistent organic pollutants.

The project area includes remnant native vegetation, endangered species habitat, culturally significant Wiradjuri Country, unstable terrain adjacent to legacy ash dams, and sensitive hydrological corridors. The failure to model,

avoid, or lawfully mitigate these risks not only places the proponent in breach of statutory frameworks—it also creates **foreseeable environmental harm** and exposes the State to **litigation risk**.

The EIS's piecemeal approach—assessing this short transmission section in isolation from coal pollution, ash dam contamination, and parallel Renewable Energy Zone (REZ) transmission expansions—breaches the legal requirement for cumulative impact assessment and reflects systemic failures in NSW infrastructure planning. Courts have consistently held that such segmentation is unlawful (*Project Blue Sky Inc v ABA (1998) 194 CLR 355; Humane Society International v Minister for the Environment [2015] FCA 1413*).

Further, the project fails to offer any secured financial assurance for rehabilitation or decommissioning, in violation of *s.4.17 of the EP&A Act* and *s.96 of the Protection of the Environment Operations Act 1997 (NSW)*. Without a bond or trust, these costs will fall on landholders, councils, and future generations.

Critically, the proposal disregards **Aboriginal heritage law and cultural rights**. It lacks evidence of lawful engagement with Wiradjuri custodians and omits a full Aboriginal Cultural Heritage Assessment Report, breaching both state law and principles of procedural fairness. This oversight not only violates legal standards but risks repeating the systemic failures that led to national and international condemnation in cases such as Juukan Gorge.

In sum, the project is not approvable under current law. Its approval would constitute a **jurisdictional error**, exposing decision-makers to **judicial review and legal remedy**. The Independent Planning Commission, NSW Government, and Commonwealth authorities are therefore **formally placed on notice**: approval of this project on the current record would be unlawful.

Refusal is the only outcome that complies with statutory duties, respects Aboriginal cultural rights, protects ecological integrity, and upholds the principles of environmental justice. Anything less would sacrifice legal obligation to political expedience and place the public interest at irreparable risk.

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1. Introduction

The proposed Mount Piper to Wallerawang Transmission Project involves the construction of an approximately 8-kilometre, 500 kilovolt (kV), double-circuit transmission line connecting Mount Piper substation to Wallerawang substation in the Central Tablelands of New South Wales. It is presented as part of the state's broader energy transition strategy, enabling grid connection of new Renewable Energy Zones (REZs) under the *Electricity Infrastructure Investment Act 2020 (NSW)*. However, the proposal fails to meet the threshold of lawfulness under multiple statutes and exposes the proponent and approving authorities to significant legal risk.

1.1 Strategic Context and Policy Setting

This transmission project is part of the Central-West Orana and Lithgow–Wallerawang grid expansion strategy, a key component of NSW's critical infrastructure rollout (NSW DPE, 2025). While its stated objective is to facilitate renewable energy integration, this cannot override binding legal obligations under Commonwealth and State law. Strategic intent does not excuse environmental harm, procedural unfairness, or failure to protect cultural heritage.

The project is being assessed in isolation, a practice that breaches established legal duties to consider **cumulative environmental impacts** under *s.5.9 of the Environmental Planning and Assessment Act 1979 (NSW)* and *s.136(2)(e) of the Environment Protection and Biodiversity Conservation Act 1999 (Cth)*. The proponent has not accounted for the legacy contamination footprint of Mount Piper power station, the presence of unstable ash dams, or the additive impacts of concurrent REZ transmission expansions. This approach is inconsistent with both SEARs (NSW DPE, 2025) and judicial precedent (Humane Society International v Minister for the Environment [2015] FCA 1413).

1.2 Statement of Opposition

Rainforest Reserves Australia strongly opposes this project in its current form. The Environmental Impact Statement (EIS) is legally non-compliant and deficient in the following respects:

- It fails to demonstrate compliance with *ss.18 and 20 of the EPBC Act 1999 (Cth)*, by not adequately assessing significant impacts on threatened and migratory species (DoE, 2013);
- It contravenes *s.7.2 of the Biodiversity Conservation Act 2016 (NSW)* by proposing to offset "serious and irreversible impacts" (OEH, 2017), which is expressly unlawful;
- It fails to demonstrate lawful consultation with Traditional Custodians, including the Wiradjuri people, as required under *s.86 of the National Parks and Wildlife Act 1974 (NSW)* and the *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010 (NSW DECCW, 2010)*;
- It does not include enforceable decommissioning bonds, breaching *s.4.17 of the EP&A Act (NSW)* and exposing the public to long-term environmental liabilities (NSW Audit Office, 2018).

Cumulatively, these omissions render the project incapable of lawful approval. The *precautionary principle*, embedded in *s.391 of the EPBC Act* and affirmed by the courts (Walker v Minister for Planning [2007] NSWCA 224), has not been applied. The proponent has failed to demonstrate avoidance or minimisation of environmental harm.

1.3 Legal Notice to Government and Proponent

This submission places the Government of New South Wales, the Commonwealth Minister for the Environment, and the proponent **formally on notice** that:

- The current proposal breaches the *EPBC Act 1999 (Cth)*, the *EP&A Act 1979 (NSW)*, the *BC Act 2016 (NSW)*, the *Water Management Act 2000 (NSW)*, the *Work Health and Safety Act 2011 (NSW)*, and other applicable legislation;

- Judicial authorities including *Humane Society International v Minister for the Environment [2015] FCA 1413*, *Bulga Milbrodale Progress Association Inc v Minister for Planning [2013] NSWLEC 48*, and *Project Blue Sky Inc v Australian Broadcasting Authority (1998) 194 CLR 355* confirm that failures to consider legally mandatory factors such as cumulative impacts and cultural heritage can result in **jurisdictional error** and **invalid approvals**;
- Proceeding with approval on the current EIS record would be unlawful and may result in **judicial review proceedings** or other legal action.

Where infrastructure proposals are approved without compliance with statutory requirements, including proper biodiversity assessment, lawful offsets, and Traditional Owner consultation, the decision-maker acts inconsistently with the law and risks invalidation (Peko-Wallsend Ltd v Minister for Aboriginal Affairs (1986) 162 CLR 24; Project Blue Sky (1998)).

This project must not proceed. The law requires not just procedural compliance but a genuine, lawful, and precautionary approach to development assessment. This submission demands strict enforcement of legal standards and urges refusal of the project as the only lawful outcome.

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2. Environmental and Ecological Impacts

The proposed Mount Piper to Wallerawang Transmission Project presents significant environmental and ecological risks. These risks extend beyond localised impacts to include systemic breaches of state and federal legislation, as well as international obligations. The failure of the Environmental Impact Statement (EIS) to address these issues comprehensively places the project at risk of non-compliance with binding statutory frameworks. The following subsections detail the key areas of concern.

2.1 Vegetation Clearance and Habitat Fragmentation

The project requires the clearance of remnant native vegetation, including listed ecological communities. Such actions are inconsistent with the *Biodiversity Conservation Act 2016 (NSW)* (Part 7, Division 2), which prohibits harm to threatened species or ecological communities without lawful authority. The EIS fails to demonstrate avoidance of "serious and irreversible impacts" (s.7.2), raising the likelihood of unlawful habitat destruction.

Additionally, fragmentation of habitat corridors contravenes the *State Environmental Planning Policy (Biodiversity and Conservation) 2021*, which mandates the maintenance of ecological connectivity. The *Environmental Planning and Assessment Act 1979 (NSW)* requires proponents to show consideration of alternatives; however, the proponent has not demonstrated that feasible route adjustments or avoidance measures were properly assessed. This omission constitutes a breach of the assessment requirements under s.5.9 of the Act (NSW DPE, 2025).

2.2 Endangered and Migratory Species

The project area intersects with known habitats and flight paths of endangered and migratory birds, including raptors and species protected under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*. Sections 18 and 20 of the Act prohibit actions likely to result in a significant impact on listed threatened species and migratory species.

By failing to adequately assess bird strike mortality and corridor disruption, the EIS has not applied the "significant impact test" under the Commonwealth referral guidelines (DoE, 2013). This omission raises a clear breach of EPBC obligations. Moreover, Australia's commitments under CAMBA, JAMBA, and ROKAMBA require protection of migratory bird populations irrespective of local project boundaries. The proponent's failure to address these treaties indicates exposure to legal challenge under both domestic and international law.

2.3 Cumulative Biodiversity Impacts

The Lithgow–Wallerawang corridor is already burdened by coal mining legacies, existing transmission easements, and multiple proposed Renewable Energy Zone (REZ) projects. Section 136(2)(e) of the *EPBC Act 1999* explicitly requires the Minister to consider cumulative impacts in approval decisions. The omission of these compounding pressures in the EIS demonstrates non-compliance with federal law.

Judicial precedent confirms this obligation. In *Humane Society International v Minister for the Environment* [2015] FCA 1413, the Court held that cumulative impacts must form part of the Minister's considerations. The failure of the EIS to integrate coal legacy stressors and additive renewable infrastructure impacts mirrors the deficiencies criticised in that case. Accordingly, the proponent risks breaching the EPBC Act and invalidating the assessment process under the *Environmental Planning and Assessment Act 1979 (NSW)*.

2.4 Breach of the Biodiversity Conservation Act 2016 (NSW)

The EIS fails to demonstrate that impacts to listed species and ecological communities have been either avoided or adequately mitigated. Section 7.2 of the *BC Act 2016* provides that proposals likely to result in serious and irreversible impacts (SAII) must be refused. Offsetting is not permissible in cases of SAII, as confirmed in the *Biodiversity Offsets Scheme – Serious and Irreversible Impacts Guidance* (OEH, 2017).

By relying on offsets as the primary mitigation strategy, the proponent is acting contrary to the statutory scheme. This reliance constitutes a potential breach of both the BC Act and the Biodiversity Offsets Scheme framework. As the legislation clearly prohibits offsetting in circumstances where extinction risks are heightened, approval of the project on this basis would be legally indefensible.

2.5 Case Studies

The legislative breaches identified in Sections 2.1 to 2.4 are not theoretical; they have been tested in courts and planning processes across Australia. Precedent demonstrates that where vegetation clearance, cumulative impacts, reliance on unlawful offsets, or failure to protect migratory species occurs, projects have been overturned, modified, or subjected to successful

litigation. The following case studies provide clear, evidence-based parallels to the deficiencies in the Mount Piper to Wallerawang Transmission Project.

Maules Creek Coal Mine – Leard State Forest (2014)
The Planning Assessment Commission's approval of clearing within the Leard State Forest was heavily criticised for underestimating biodiversity impacts and failing to account for cumulative stressors. This case demonstrates how inadequate assessment of critically endangered ecological communities (e.g. Box Gum Woodland) can breach statutory requirements under both the EPBC Act and state law (PAC, 2014).

Bald Hills Wind Farm Litigation (2019)
In *Uren v Bald Hills Wind Farm Pty Ltd* [2019] VSC 654, residents successfully established nuisance claims due to inadequate mitigation of noise and ecological impacts, including bird strike. This case illustrates how proponents who underestimate ecological risks expose themselves to litigation, with findings relevant to both nuisance law and ecological assessment deficiencies.

Orange-bellied Parrot and Wind Farms (2000s–2010s)
Several wind farm proposals in coastal Victoria were refused or heavily modified due to the risk of extinction-level impacts to the critically endangered Orange-bellied Parrot. These refusals highlighted the Commonwealth's application of the EPBC Act "significant impact" test, confirming that projects intersecting migratory species flight paths must be refused to comply with federal law.

Humane Society International v Minister for the Environment [2015] FCA 1413
The Federal Court confirmed that cumulative impacts must be considered under s.136(2)(e) of the EPBC Act. This case is directly relevant, as the proponent has not accounted for cumulative impacts of coal, transmission, and REZ projects in the Lithgow–Wallerawang corridor.

Bulga Milbrodale Progress Association Inc v Minister for Planning [2013] NSWLEC 48
The NSW Land and Environment Court overturned the approval of the Warkworth coal project, in part because biodiversity offsets could not adequately compensate for the permanent loss of unique ecological values. This precedent demonstrates that reliance on offsets, where avoidance is possible or SAII are triggered, is unlawful.

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3. Hydrological and Geological Risks

The Mount Piper to Wallerawang Transmission Project poses substantial hydrological and geological risks that extend beyond construction-phase disturbances to long-term soil, water, and contamination hazards. The Environmental Impact Statement (EIS) fails to adequately address these risks, creating potential breaches of both state and federal legislation. The following subsections examine the principal areas of concern.

3.1 Soil Erosion and Slope Instability During Construction

The project traverses terrain with known instability, increasing risks of soil erosion and slope failure during excavation and tower construction. Under the *Environmental Planning and Assessment Act 1979 (NSW)*, the proponent is required to identify, assess, and mitigate foreseeable land instability impacts (s.5.9). The omission of a detailed geotechnical risk assessment in the EIS contravenes this requirement.

The *Protection of the Environment Operations Act 1997 (NSW)* (POEO Act) further prohibits the pollution of land and water through sediment runoff. Inadequate erosion and sediment control during construction would constitute a breach of s.120 of the POEO Act.

Legal breach: Failure to provide sufficient geotechnical modelling and erosion control measures places the project in breach of both the EP&A Act and POEO Act obligations.

3.2 Contamination Risks from Legacy Waste and Ash Dams

The project corridor passes in close proximity to Mount Piper's legacy ash dams and waste storage facilities. These sites are classified as high-risk for heavy metals and toxic leachate, including arsenic, selenium, and PFAS compounds. The *Contaminated Land Management Act 1997 (NSW)* (CLM Act) imposes obligations on proponents to identify and manage risks from land contamination.

The EIS has not demonstrated compliance with s.9 CLM Act, which requires investigation and remediation of contamination risks likely to pose "significant harm to human health or the environment." Any disturbance that mobilises contaminants into surface or groundwater would also contravene the *POEO Act 1997* by polluting waters (s.120).

Case parallel: In the Hunter Valley, breaches were recorded where transmission line construction intersected legacy mine sites, releasing sediment-laden water into catchments. This project risks similar unlawful outcomes if legacy ash dams are destabilised.

Legal breach: The EIS omits mandatory contamination investigations required under the CLM Act, leaving the project vulnerable to legal challenge and enforcement action.

3.3 Inadequate Modelling of Flood or Stormwater Flows

The transmission alignment intersects floodplains and drainage lines. The EIS fails to present comprehensive hydrological modelling for extreme rainfall or stormwater flows, which is required under both the *Water Management Act 2000 (NSW)* and the *EP&A Act 1979 (NSW)*. Section 60 of the Water Management Act prohibits activities that affect water sources without appropriate approvals and modelling of downstream consequences.

Failure to account for altered surface hydrology exposes the project to liability under the *EPBC Act 1999* if flood-induced erosion or contamination threatens listed ecological communities downstream, such as riverine wetlands.

Legal breach: By not undertaking detailed flood modelling, the proponent is in breach of the Water Management Act, and risks contravening EPBC protections for wetlands and aquatic ecosystems.

3.4 Case Studies

Liddell Power Station Ash Dam Leaks (2017–2020)
Investigations into AGL's Liddell site revealed seepage from ash dams contaminating groundwater with heavy metals. Regulators found breaches of both the POEO Act and CLM Act. This case directly parallels the risks at Mount Piper, where legacy ash dams threaten to release contaminants if disturbed by new infrastructure.

Hazelwood Mine Fire Inquiry (2014–2016)
The Hazelwood Inquiry in Victoria identified failures in geotechnical management of mine batters, leading to catastrophic fire and air pollution. This case underscores the consequences of inadequate slope stability modelling, a parallel risk for transmission construction in unstable terrain.

Hunter Transmission Corridor Flooding (2015)
Flooding along transmission corridors in the Hunter Valley highlighted the inadequacy of stormwater modelling in EIS processes. Subsequent erosion caused sedimentation of waterways, breaching POEO Act provisions on water pollution. This case shows the regulatory consequences of insufficient hydrological planning.

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4. Community, Social and Economic Impacts

The Mount Piper to Wallerawang Transmission Project has significant community, social, and economic implications. These extend beyond visual amenity to include impacts on property values, tourism, equity of landholder treatment, and failures of consultation. The Environmental Impact Statement (EIS) inadequately addresses these matters, leaving the project exposed to breaches of statutory obligations under NSW and Commonwealth law, as well as principles of administrative law.

4.1 Amenity and Visual Impacts from 500 kV Towers

The erection of 500 kV transmission towers within populated valley landscapes will cause permanent changes to rural amenity and visual character. Under the *Environmental Planning and Assessment Act 1979 (NSW)*, the EIS must fully evaluate environmental impacts, including visual amenity (s.5.9, Part 4). The *NSW Land and Environment Court* has consistently recognised visual amenity as a legitimate planning consideration, and failure to adequately mitigate these impacts renders the EIS deficient.

Breach: By not providing cumulative visual simulations, view-shed analysis, and landscape-sensitive alternatives, the proponent risks breaching the EP&A Act's statutory requirement to assess all likely impacts.

4.2 Loss of Property Value and Tourism Potential

The presence of high-voltage towers and easements can materially devalue agricultural and residential properties. The *EP&A Act 1979* requires consideration of social and economic

impacts (s.5.9(1)(c)). By failing to address compensation mechanisms or valuation evidence, the proponent breaches this duty.

Tourism in the Lithgow–Wallerawang region relies on natural landscapes and heritage assets. Large-scale transmission infrastructure is incompatible with tourism strategies promoted by the *NSW Tourism Strategy 2030*. Ignoring tourism losses contravenes the public interest considerations embedded in the *EP&A Act 1979* and exposes the proponent to claims of economic harm.

Breach: Omission of property valuation evidence and tourism impact assessment constitutes a statutory deficiency under the EP&A Act.

4.3 Inequity Between Host and Non-Host Landholders

Transmission projects frequently create inequities between host landholders (who receive easement payments) and neighbouring non-host landholders (who experience impacts without compensation). This inequity breaches the principles of equity and fairness underpinning the *NSW Guidelines for Community Engagement for Electricity Infrastructure Projects* (DPE, 2021).

Case precedent: Courts and inquiries (e.g. Bulga case, 2013) have recognised inequity and disproportionate burden as grounds to overturn approvals. The failure to provide equitable benefit-sharing constitutes a breach of planning fairness under the *EP&A Act 1979*.

Breach: The proponent has not demonstrated compliance with government policy or fair treatment of non-host landholders, undermining the lawfulness of the process.

4.4 Procedural Fairness Failures in Consultation

The EIS process must uphold administrative law principles of **procedural fairness** and **genuine consultation**. The *EP&A Act 1979* (s.5.8) requires proper community consultation. Where consultation is rushed, incomplete, or selective, courts have found such processes to be unlawful.

Case precedent: In *Minister for Immigration and Border Protection v WZARH* [2015] HCA 40, the High Court reaffirmed that procedural fairness is a fundamental administrative law requirement. While not specific to planning, the same principle applies: affected communities must have a genuine opportunity to be heard.

Breach: Evidence of limited engagement, inadequate notice, and failure to respond to community submissions renders the consultation process procedurally unfair and contrary to the EP&A Act.

4.5 Case Studies

The community, social, and economic breaches outlined in Sections 4.1 to 4.4 are not abstract risks. They have already been tested in Australian courts and planning processes, where approvals were overturned, damages awarded, and projects rejected for failing to protect amenity, property values, and community equity. The following case studies demonstrate

how deficiencies in consultation, inequitable burdens, and amenity impacts have repeatedly led to adverse legal outcomes for proponents.

Bulga Milbrodale Progress Association Inc v Minister for Planning [2013] NSWLEC 48
The Court overturned the Warkworth coal mine approval, partly due to unacceptable amenity impacts and inequitable burdens on the community. This demonstrates the Court's willingness to prioritise community amenity over economic arguments.

Uren v Bald Hills Wind Farm Pty Ltd [2019] VSC 654
Residents were awarded damages for noise nuisance that substantially interfered with property enjoyment. The case highlights that infrastructure projects can reduce land value and amenity, creating liability even after approval.

King Island Community Consultation (Hydro Tasmania, 2013)
The King Island community rejected a proposed wind farm after inadequate consultation, illustrating the consequences of failing to secure procedural fairness and social licence.

Hunter Valley Tourism Impacts (2010s)
Multiple mining and transmission projects in the Hunter region were found to conflict with tourism strategies, leading to economic harm and heightened community opposition. This provides a parallel to the Lithgow–Wallerawang corridor where natural landscapes are central to regional tourism.

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5. Cumulative Impact Assessment Failure

The most critical failure of the Mount Piper to Wallerawang Transmission Project is its omission of cumulative impacts. Both state and federal law mandate that cumulative impacts must be explicitly assessed. The EIS segments this project from the legacy footprint of Mount Piper power station, ash dams, and associated infrastructure, as well as from concurrent regional transmission and Renewable Energy Zone (REZ) projects. This segmentation contravenes statutory requirements, established case law, and the Secretary's Environmental Assessment Requirements (SEARs).

5.1 Legislative Requirements

The obligation to assess cumulative impacts is embedded in multiple legislative frameworks:

- **Environment Protection and Biodiversity Conservation Act 1999 (Cth):** Section 136(2)(e) requires the Minister to consider the cumulative impacts of actions when deciding whether to approve a controlled action.
- **Environmental Planning and Assessment Act 1979 (NSW):** Section 5.9 mandates that all likely environmental impacts of a development must be assessed, including those arising in combination with other activities.
- **SEARs (Secretary's Environmental Assessment Requirements):** For state significant infrastructure, SEARs explicitly require cumulative impact analysis of existing, approved, and proposed developments in the region.

Breach: By failing to integrate cumulative biodiversity, hydrological, community, and legacy contamination impacts, the EIS is non-compliant with each of these legislative and policy requirements.

5.2 Segmentation of Project Impacts

The proponent has artificially segmented this project from Mount Piper's legacy footprint (power station emissions, ash dam contamination, landscape fragmentation) and from parallel transmission projects proposed across the Central-West Orana and Lithgow–Wallerawang corridors. This segmentation is contrary to established legal principle, which prohibits the piecemeal assessment of projects with interconnected or overlapping impacts.

Breach: The EIS fails to apply a holistic regional lens, instead isolating the 8 km alignment from its cumulative footprint. This approach breaches SEARs obligations and undermines both the EP&A Act and EPBC Act requirements for whole-of-project assessment.

5.3 Regional and Cross-Sector Implications

The corridor is already under significant environmental and social stress from:

- Mount Piper's coal-fired power operations and legacy waste sites;
- Proposed and approved transmission expansions;
- Renewable Energy Zone (REZ) developments in the Central Tablelands;
- Ongoing coal mining and rehabilitation works.

The EIS omits the additive and interactive effects of these activities, creating a materially incomplete assessment. In particular, cumulative biodiversity losses, compounded hydrological risks, and cumulative social dislocation are omitted, in breach of SEARs and federal obligations under EPBC Act s.136(2)(e).

Breach: The proponent's failure to provide cumulative modelling constitutes a direct legal deficiency that undermines the validity of the EIS.

5.4 Case Studies

The cumulative impact breaches outlined above are not hypothetical. Australian courts have repeatedly invalidated approvals where proponents segmented projects or failed to assess compounding effects. These rulings demonstrate that omission of cumulative impacts is a determinative legal flaw. The following cases provide binding and persuasive authority that directly parallels the deficiencies in the Mount Piper to Wallerawang Transmission Project.

Bulga Milbrodale Progress Association Inc v Minister for Planning [2013] NSWLEC 48
The Court overturned the approval of the Warkworth coal project, in part because cumulative noise, dust, and amenity impacts were not adequately assessed. The Court emphasised that cumulative burdens on a single community cannot be ignored, even where projects are assessed individually. This principle directly applies to the Wallerawang corridor, where multiple projects compound community harm.

Minister for the Environment v Peko-Wallsend Ltd (1986) 162 CLR 24
The High Court confirmed that decision-makers must consider all matters deemed relevant by

statute, including cumulative impacts. Failure to do so renders decisions legally invalid. This case stands as binding authority that segmentation of impacts is unlawful under the EPBC Act.

Humane Society International v Minister for the Environment [2015] FCA 1413
The Federal Court held that cumulative impacts must be considered when deciding on controlled actions under the EPBC Act. The omission of such impacts from the Wallerawang EIS mirrors the deficiencies criticised in this case, exposing the approval to legal challenge.

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6. Hazard and Safety Risks

The Mount Piper to Wallerawang Transmission Project poses significant hazard and safety risks arising from high-voltage electricity, bushfire interface conditions, and contamination pathways. These risks are not adequately addressed in the Environmental Impact Statement (EIS), despite being foreseeable, preventable, and governed by strict statutory obligations. The omissions leave the project in breach of the *Environmental Planning and Assessment Act 1979 (NSW)*, the *Work Health and Safety Act 2011 (NSW)*, the *Rural Fires Act 1997 (NSW)*, the *Protection of the Environment Operations Act 1997 (NSW)*, and the *Contaminated Land Management Act 1997 (NSW)*.

6.1 Electrical and Fire Hazards of High-Voltage Transmission

High-voltage 500 kV infrastructure is associated with conductor clashing, arcing, insulation breakdown, corona discharges, and arc flash. The *Work Health and Safety Act 2011 (NSW)* (s.19) requires duty-holders to eliminate or minimise these risks "so far as is reasonably practicable." No Electrical Safety Management Plan has been presented that complies with *AS 2067:2016*.

Legal breach: Absence of a risk register for electrical hazards contravenes WHS duties and exposes the project to strict liability under WHS regulations. Failure to design to *AS 2067* standards may also breach *EP&A Act* requirements for compliance with applicable codes and standards.

6.2 Bushfire Interface and Vegetation Clearance Obligations

Transmission lines in fire-prone terrain are a leading source of ignition. The *Rural Fires Act 1997 (NSW)* (s.63) requires owners to take practicable steps to prevent bushfires. The *Bush Fire Environmental Assessment Code* (NSW RFS, 2006) mandates clearance regimes, while the *Biodiversity Conservation Act 2016 (NSW)* restricts clearing of threatened vegetation.

Conflict of obligations: The EIS fails to reconcile the statutory tension between bushfire clearance and biodiversity protections. Excessive clearance breaches the BC Act; inadequate clearance breaches the Rural Fires Act. By providing neither a statutory Vegetation Management Plan nor a hazard reduction strategy endorsed by the NSW RFS, the proponent is non-compliant with both regimes.

6.3 Potential Contamination Pathways in Case of Tower Failure or Conductor Collapse

The corridor runs adjacent to Mount Piper's legacy ash dams and sensitive waterways. Tower collapse or conductor drop could ignite contaminated soils, release toxic insulating oils, or mobilise ash dam sediments. The *Protection of the Environment Operations Act 1997 (NSW)* (s.120) prohibits pollution of waters; s.148 imposes a mandatory duty to notify incidents. The *Contaminated Land Management Act 1997 (NSW)* requires prior identification of foreseeable contamination risks (s.9).

Legal breach: No failure-mode analysis has been conducted, contravening the CLM Act. No incident management framework has been provided, contravening POEO Act s.148. The absence of contingency planning places the project in systemic breach of both statutes.

6.4 Emergency Response and Duty to Notify

Under the *POEO Act 1997* (s.148), proponents must immediately notify relevant authorities of pollution incidents where "material harm to the environment" may occur. The *WHS Act 2011* and *Work Health and Safety Regulation 2017* also require site-specific emergency response plans for foreseeable electrical, fire, and structural hazards.

The EIS does not provide evidence of compliance with either requirement. This omission undermines statutory emergency planning duties and exposes the proponent to liability for both environmental offences and workplace safety breaches.

Legal breach: Omission of incident response protocols and failure to identify mandatory reporting triggers is contrary to both POEO Act and WHS law.

6.5 Case Studies

The hazard and safety risks described are not speculative. Failures of comparable infrastructure projects have already resulted in catastrophic outcomes, inquiries, and litigation.

Black Saturday Bushfires Royal Commission (2009–2010)
The Commission determined that several of Victoria's most deadly fires were ignited by failing powerlines. It recommended strict vegetation clearance regimes and high-voltage design upgrades. Ignoring these lessons constitutes a foreseeable breach of the Rural Fires Act duty to prevent bushfires.

TransGrid Fire Liability Case (NSW Supreme Court, 2002)
TransGrid was found liable for damages after fire ignition from arcing lines. The Court affirmed the operator's duty of care to maintain vegetation clearance and prevent fire. This precedent establishes liability for the Wallerawang corridor if bushfire ignition occurs.

Hazelwood Mine Fire Inquiry (2014–2016)
The Inquiry revealed the catastrophic consequences of inadequate hazard planning. Though focused on mine batters, it underscored the legal requirement for comprehensive risk

assessment, failure-mode analysis, and emergency preparedness—requirements absent from this EIS.

California Utility Fire Cases (Pacific Gas and Electric, 2017–2020)
In the United States, PG&E was held liable for billions of dollars after its transmission lines ignited catastrophic wildfires. This global precedent demonstrates that failure to harden transmission assets against bushfire ignition leads to corporate liability, criminal charges, and insolvency.

NSW EPA Prosecutions for Pollution Incidents (2010s–2020s)
Repeated prosecutions for industrial pollution incidents confirm that failure to notify or prevent pollutant releases results in strict liability. A tower collapse or ash dam breach triggering contaminant release would produce similar liability under POEO Act s.120 and s.148.

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7. Indigenous and Cultural Heritage Impacts

The Mount Piper to Wallerawang Transmission Project is situated within Country under Wiradjuri custodianship. The corridor intersects landscapes with deep cultural and spiritual significance, creating risks of irreversible harm to heritage sites. The Environmental Impact Statement (EIS) does not demonstrate compliance with statutory requirements for Indigenous heritage protection, nor does it satisfy principles of procedural fairness in consultation with Traditional Custodians. These omissions leave the project vulnerable to legal challenge under state, federal, and international frameworks.

7.1 Wiradjuri Custodianship of the Land

The Wiradjuri Nation are the Traditional Owners and custodians of the project area. The *National Parks and Wildlife Act 1974 (NSW)* (NPW Act) protects Aboriginal objects and declared places, with offences for harm under s.86. The EIS does not provide a complete Aboriginal Cultural Heritage Assessment Report (ACHAR), nor does it demonstrate that a permit under s.90 (Aboriginal Heritage Impact Permit, AHIP) has been sought.

Breach: Proceeding without lawful AHIP approvals constitutes an offence under the NPW Act. Failure to recognise Wiradjuri custodianship in project governance also undermines compliance with the *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* (NSW).

7.2 Risks of Disturbance to Cultural Sites and Sacred Landscapes

Transmission infrastructure poses a risk of disturbing burial grounds, artefact scatters, scarred trees, ceremonial sites, and broader sacred landscapes. The *EP&A Act 1979* requires that cultural heritage impacts be assessed as part of the EIS (s.5.9). The *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* extends protection to National and World Heritage values (ss.324–328).

Breach: The EIS isolates physical artefact impacts but fails to assess intangible and landscape-scale cultural values. This omission breaches both EP&A Act obligations and the EPBC Act's recognition of cultural heritage values as matters of national environmental significance.

7.3 Procedural Unfairness in Heritage Consultation

Consultation with Aboriginal parties must be conducted in accordance with the *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* and principles of procedural fairness. The EIS provides evidence of limited or selective engagement, with failure to fully incorporate Wiradjuri voices into project decision-making.

Legal breach: Inadequate consultation breaches the EP&A Act requirement for genuine engagement, undermines procedural fairness, and risks invalidating the assessment. Courts have repeatedly held that failure to afford affected parties a real opportunity to be heard constitutes a denial of natural justice (*Kioa v West* (1985) 159 CLR 550).

7.4 Case Studies

The cultural heritage risks identified are not abstract. They have been tested in law and inquiries, demonstrating that failure to protect Aboriginal heritage renders projects unlawful.

Bulga Milbrodale Progress Association Inc v Minister for Planning [2013] NSWLEC 48
The Court overturned the Warkworth coal mine approval partly because cultural and social values of the community, including Indigenous heritage, were inadequately considered.

Chapman v Lismore City Council [2014] NSWLEC 56
The Court held that failure to properly consider Aboriginal heritage assessment requirements rendered an approval invalid, reinforcing the statutory importance of complete consultation.

Githabul People Native Title Claim (Northern Rivers, 2007)
The Federal Court's recognition of Githabul custodianship demonstrates the legal weight of Traditional Owner rights. Projects disregarding custodianship risk exposure to legal challenge under both heritage and native title law.

Juukan Gorge Destruction (2020)
The destruction of 46,000-year-old caves in Western Australia by Rio Tinto, while legal under outdated state approvals, triggered international condemnation, parliamentary inquiries, and corporate fallout. This case underscores that compliance with the letter of the law is insufficient where cultural values are disregarded — reputational, financial, and legal consequences follow.

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8. Legal and Regulatory Breaches

The Mount Piper to Wallerawang Transmission Project is demonstrably in breach of multiple Commonwealth, state, and international legal obligations. This section synthesises legal deficiencies already raised in preceding chapters and consolidates them under binding

legislative frameworks. These breaches render the project unlawful and not approvable under Australian law.

8.1 Environment Protection and Biodiversity Conservation Act 1999 (Cth)

The project triggers several controlling provisions of the **Environment Protection and Biodiversity Conservation Act 1999 (Cth)** (EPBC Act), including:

- **Sections 18 and 20**, which prohibit actions likely to have a significant impact on threatened species and migratory species;
- **Section 136(2)(e)**, which mandates consideration of **cumulative impacts** in approval decisions;
- The **precautionary principle** embedded in **Section 391**, requiring decision-makers to err on the side of environmental protection where there is scientific uncertainty.

The Environmental Impact Statement (EIS) fails to demonstrate avoidance of serious and irreversible impacts (SAII), misapplies offsets, and omits cumulative biodiversity and hydrological pressures across the Lithgow–Wallerawang corridor. The project is therefore exposed to legal challenge under the EPBC Act (Humane Society International v Minister for the Environment [2015] FCA 1413).

8.2 Environmental Planning and Assessment Act 1979 (NSW)

The project contravenes several provisions of the **Environmental Planning and Assessment Act 1979 (NSW)** (EP&A Act), particularly:

- **Section 4.15**, which requires consideration of all relevant planning matters, including amenity, social impact, and environmental harm;
- **Section 5.9**, which requires assessment of all likely environmental impacts, including cumulative and indirect effects;
- **Section 4.17**, requiring enforceable decommissioning and rehabilitation mechanisms.

By failing to provide a complete assessment of visual amenity, community equity, hydrological impact, and cumulative environmental harm, the proponent has breached the EP&A Act's core obligations (Bulga Milbrodale Progress Association Inc v Minister for Planning [2013] NSWLEC 48).

8.3 Biodiversity Conservation Act 2016 (NSW)

The project also breaches the **Biodiversity Conservation Act 2016 (NSW)** (BC Act) in the following respects:

- **Section 7.2**, which prohibits approval of projects likely to cause serious and irreversible impacts to threatened biodiversity;
- Reliance on **offsets** where avoidance is required, contrary to the **Biodiversity Offsets Scheme – SAII Guidance** (OEH, 2017);
- Inadequate biodiversity assessments that fail to identify or mitigate high-risk ecological communities.

The BC Act clearly prohibits offsetting in circumstances where extinction risk is elevated, yet the EIS leans heavily on offsetting without demonstrating avoidance or minimisation.

8.4 Water Management Act 2000 (NSW)

The project involves potential hydrological alteration in floodplains and drainage lines, yet the EIS lacks comprehensive stormwater and catchment modelling. This constitutes a breach of the **Water Management Act 2000 (NSW)**:

- **Section 60** prohibits activities that affect water sources without appropriate licensing and modelling;
- Failure to demonstrate hydrological assessment or downstream water impacts exposes the proponent to enforcement actions.

The omission of modelling and approval pathways for water source disturbance renders the project non-compliant with state water legislation.

8.5 Work Health and Safety Act 2011 (NSW)

The proponent has not presented any detailed risk register, fire mitigation plan, or Electrical Safety Management Plan, breaching duties under the **Work Health and Safety Act 2011 (NSW)**:

- **Section 19** obliges the proponent to ensure, so far as is reasonably practicable, that electrical and fire risks are eliminated or minimised;
- The absence of compliance with **AS 2067:2016** on high-voltage installations compounds this breach.

Electrical arc, conductor collapse, and vegetation fire risks are not hypothetical – they are well-documented causes of previous infrastructure disasters (Black Saturday Bushfires Royal Commission, 2010).

8.6 Aboriginal Cultural Heritage Act 2022 (NSW) and National Parks and Wildlife Act 1974 (NSW)

Although the new **Aboriginal Cultural Heritage Act 2022 (NSW)** is not yet proclaimed, existing obligations under the **National Parks and Wildlife Act 1974 (NSW)** remain binding:

- **Section 86** makes it an offence to harm Aboriginal objects without lawful authority (i.e., an AHIP);
- The failure to obtain a valid **Aboriginal Heritage Impact Permit (AHIP)** breaches statutory protections of Wiradjuri cultural values.

Moreover, consultation requirements under the **Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010** have not been properly applied, breaching procedural fairness duties under administrative law principles (Kioa v West (1985) 159 CLR 550).

8.7 International Legal Obligations

Australia has ratified key international agreements relevant to this project, including:

- **JAMBA** (1974) – Japan–Australia Migratory Bird Agreement;
- **CAMBA** (1986) – China–Australia Migratory Bird Agreement;
- **ROKAMBA** (2007) – Republic of Korea–Australia Migratory Bird Agreement;
- **Stockholm Convention** on Persistent Organic Pollutants.

These treaties obligate the Australian Government to protect migratory species and ecosystems from harm, regardless of project scale. The EIS fails to demonstrate compliance, particularly with bird migration pathways and contamination risks.

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9. Decommissioning and Financial Assurance Failures

The Mount Piper to Wallerawang Transmission Project EIS provides no secured financial assurance mechanisms to guarantee tower removal, site rehabilitation, or waste management at the end of project life. This omission exposes landholders, councils, and the State to significant financial and environmental liabilities. Both state and federal frameworks require proponents to demonstrate that decommissioning obligations are enforceable and fully costed, yet no such evidence has been provided.

9.1 Absence of Secured Bonds for Transmission Tower Removal

The *Environmental Planning and Assessment Act 1979 (NSW)* requires conditions of approval to include enforceable mechanisms for rehabilitation and decommissioning (s.4.17). The *Protection of the Environment Operations Act 1997 (NSW)* (s.96) allows the EPA to require financial assurances to ensure environmental obligations are met.

Breach: The EIS does not propose a rehabilitation bond, trust, or financial assurance. This omission contravenes established practice under both the EP&A Act and POEO Act, leaving the State exposed to legacy liabilities.

9.2 Risk of Abandonment and Non-Compliance

Without secured bonds, there is a foreseeable risk that the proponent will abandon transmission assets at the end of operational life. This has been evidenced in comparable renewable energy projects where decommissioning has been delayed, underfunded, or ignored.

Breach: The omission of binding financial instruments breaches the precautionary principle embedded in the *Protection of the Environment Administration Act 1991 (NSW)* and undermines intergenerational equity by shifting long-term risks to future landholders and taxpayers.

9.3 Burden Shifted to Landholders and Councils

If the proponent defaults on decommissioning obligations, costs will be borne by private landholders and local councils. This outcome conflicts with principles of equity and fairness embedded in NSW planning law and contradicts the *Local Government Act 1993 (NSW)*, which prohibits the imposition of unfunded liabilities on councils.

Breach: By failing to provide enforceable financial assurance, the EIS effectively shifts responsibility to third parties, a transfer of liability inconsistent with statutory duties of care under the EP&A Act.

9.4 Case Studies

The risks of abandonment and inadequate financial assurance are not speculative. Multiple precedents demonstrate the consequences of failing to secure decommissioning guarantees.

Crookwell Wind Farm (NSW)
Landholders hosting turbines reported uncertainty about who would be responsible for turbine removal and rehabilitation at end of life. No enforceable financial bonds were secured, leaving long-term obligations unresolved.

Windy Hill Wind Farm (QLD)
Decommissioning provisions for turbines at Windy Hill have been criticised as inadequate and unenforceable, with landholders fearing eventual abandonment of infrastructure. This highlights the consequences of failing to impose legally binding bonds.

Coal Mining Sector (NSW & QLD)
Following decades of abandonment of mine sites, governments imposed mandatory rehabilitation bonds to secure decommissioning obligations. Transmission projects are currently exempt from similar requirements, creating a regulatory gap and inequitable treatment between industries.

International Precedent – United States Renewable Projects
In several U.S. states (e.g. Minnesota, Wyoming), regulators require full-cost decommissioning bonds for wind and transmission projects after high-profile cases of abandonment. These global standards underscore Australia's failure to impose equivalent protections.

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10. Systemic Issues in NSW Transmission Planning

The Mount Piper to Wallerawang proposal is not an isolated assessment problem. It reflects systemic planning failures across NSW transmission rollout, where projects inside and around Renewable Energy Zones are being advanced through fragmented assessments, reduced merits oversight, and policy settings that weaken environmental safeguards. These settings create foreseeable errors of law if the Independent Planning Commission relies on incomplete material or treats legally relevant considerations as optional.

10.1 Pattern of disaggregation and segmentation across REZ projects

Transmission and generation works associated with REZ delivery are being split into multiple, separately assessed packages, for example early works, corridor enabling works, substations, line sections, and subsequent augmentations. This practice prevents a full examination of combined effects and frustrates statutory duties to assess cumulative impacts. Under the *Environmental Planning and Assessment Act 1979 (NSW)*, decision-makers must consider the likely impacts of the development as a whole, including interactions with other activities, not just isolated components (EP&A Act 1979). The *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* requires the Minister to consider cumulative impacts when deciding controlled actions, EPBC Act s.136(2)(e). The approach also sits uneasily with EPBC provisions on related actions and with the availability of Part 10 strategic assessments, which exist precisely to avoid piecemeal approvals that mask the real footprint of a program of works (EPBC Act 1999).

Breach risk: Where a proponent segments an obviously interdependent program, the assessment fails to address a legally relevant consideration, namely the cumulative and program-level impacts required by EP&A Act and EPBC Act. Courts have set aside approvals where decision-makers ignored mandatory considerations or allowed piecemeal evaluation of a single undertaking that ought to have been treated holistically (Peko-Wallsend 1986; Bulga 2013).

10.2 Legislative weakening of environmental protections

Recent policy and statutory settings for rapid grid buildout have narrowed safeguards in practice. Classification of large transmission as State Significant or Critical State Significant Infrastructure limits merit appeal pathways and concentrates discretion, while relying heavily on conditions drafted after incomplete analysis (EP&A Act 1979, Part 5.1). Consolidation of planning instruments and heavy reliance on the Biodiversity Offsets Scheme in lieu of avoidance has, in effect, reduced on-ground protection for threatened entities that meet serious and irreversible impact thresholds, which the *Biodiversity Conservation Act 2016 (NSW)* says cannot lawfully be offset (BC Act 2016; OEH 2017). The Electricity Infrastructure programmatic planning for REZ delivery, including Network Infrastructure Strategies, has advanced route options ahead of full environmental constraints testing, which displaces the avoid-then-minimise hierarchy that NSW and Commonwealth law require (EII Act 2020; SEARs 2025; EPBC Act 1999).

Breach risk: When policy speed is allowed to override statutory checks, approvals risk failing to apply the precautionary principle and to prefer avoidance over offsetting, both of which are embedded in NSW planning objects and biodiversity law (EP&A Act 1979; BC Act 2016; OEH 2017).

10.3 Precedent risk if the IPC approves unlawfully

If the IPC approves this project while cumulative impacts remain unassessed, while offsets are proposed in SAII contexts, or while segmentation persists, it creates precedent pressure to repeat the same legal defects across the REZ build program. More importantly, it exposes the approval to judicial review and potential invalidity. The High Court has held that failure to take into account a matter the statute requires to be considered is an error of law that can invalidate a decision (Peko-Wallsend 1986). Where decision-makers act inconsistently with

the statute or mandatory procedures, the approval may be set aside for jurisdictional error, with Project Blue Sky confirming that contravention of a statutory condition regulating decision-making can lead to invalidity depending on legislative purpose (Project Blue Sky 1998). NSW authority also confirms that failure to have proper regard to ecologically sustainable development and cumulative risk can vitiate a decision, or at minimum demonstrate legal unreasonableness (Walker 2007; Gray 2006; Bulga 2013).

Practical exposure: An invalid approval triggers delay, redesign and re-assessment costs, and it undermines investor certainty for the entire transmission program. It also sets a **stronger precedent for strategic or class litigation against subsequent REZ segments.**

10.4 Case studies and authorities

The systemic defects identified in 10.1 to 10.3 have already been tested in Australian courts. Where proponents segmented interdependent works, failed to assess cumulative impacts, or relied on offsetting to paper over unacceptable loss, approvals were set aside or found legally unreasonable. The following authorities are binding or highly persuasive and define the legal standard the IPC must apply to this assessment (Bulga 2013; Peko-Wallsend 1986; Project Blue Sky 1998; HSI 2015).

Bulga Milbrodale Progress Association Inc v Minister for Planning [2013] NSWLEC 48
Approval overturned where cumulative amenity and environmental impacts were inadequately assessed and offsetting could not remedy unacceptable loss. The Court emphasised that cumulative burdens on a single community are a mandatory consideration (Bulga 2013).

Minister for Aboriginal Affairs v Peko-Wallsend Ltd (1986) 162 CLR 24
High Court authority that failure to consider a statutorily relevant matter is an error of law. Applied here, cumulative and program-level effects required by EP&A and EPBC Acts cannot be ignored (Peko-Wallsend 1986).

Project Blue Sky Inc v Australian Broadcasting Authority (1998) 194 CLR 355
Sets out the test for invalidity where a statutory condition is breached. If the purpose of the requirement is to regulate decision-making and ensure a proper outcome, non-compliance can render the decision invalid (Project Blue Sky 1998).

Walker v Minister for Planning [2007] NSWCA 224
NSW Court of Appeal recognised the centrality of ecologically sustainable development in planning decisions, including precaution where there is scientific uncertainty about serious or irreversible harm (Walker 2007).

Gray v Minister for Planning [2006] NSWLEC 720
The Court required proper consideration of greenhouse gas emissions and ESD in a major project assessment, reinforcing that broad, cumulative and intergenerational impacts are legally relevant (Gray 2006).

Humane Society International v Minister for the Environment [2015] FCA 1413
Federal Court confirmed cumulative impact obligations under the EPBC Act. Segmenting projects that share pathways of impact invites legal error (HSI 2015).

11. Conclusion

The Mount Piper to Wallerawang Transmission Project is not a neutral act of infrastructure expansion—it is a test of environmental law, cultural respect, intergenerational equity, and the rule of law in New South Wales and Australia. In its current form, the proposal stands in direct breach of multiple statutory obligations, including under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*, the *Environmental Planning and Assessment Act 1979 (NSW)*, the *Biodiversity Conservation Act 2016 (NSW)*, and other regulatory instruments.

Despite being only 8 kilometres in length, this project cuts a legal and ecological wound through a landscape already burdened by coal legacy pollution, fragmented ecosystems, and repeated failures of governance. It endangers threatened species, violates Aboriginal cultural heritage protections, and imposes inequitable burdens on local communities. It does so while evading its lawful responsibilities to model cumulative impacts, consult meaningfully, and demonstrate that serious and irreversible harm can be avoided—not just mitigated.

The Environmental Impact Statement is materially deficient. The reliance on offsets where extinction risks are present is unlawful (OEH, 2017). The failure to secure lawful permits for Aboriginal heritage disturbance is an offence under the *National Parks and Wildlife Act 1974 (NSW)*. The absence of enforceable decommissioning guarantees shifts long-term liabilities onto the public, contravening the public interest objectives of planning and environmental law. And the segmentation of this project from its broader ecological and infrastructure context renders the entire assessment legally suspect, if not invalid (Project Blue Sky Inc v ABA (1998) 194 CLR 355).

Formal Notice

We therefore place the following entities **formally on notice**:

- The **New South Wales Government**, for permitting regulatory shortcuts under the guise of "strategic infrastructure" and risking invalid approvals through unlawful segmentation and offsets;
- The **Commonwealth Minister for the Environment**, for any failure to require referral or proper cumulative impact assessment under *s.136(2)(e)* of the EPBC Act;
- The **Independent Planning Commission**, for the legal risks it would inherit by approving a project that breaches mandatory statutory obligations;
- The **proponent**, for proceeding on a legal foundation so deficient that it invites judicial scrutiny, environmental litigation, and reputational damage.

Should this project be approved on the current record, it will be open to legal challenge. The case law is settled: *failure to consider a matter that a statute requires to be considered is a jurisdictional error* (Peko-Wallsend Ltd v Minister for Aboriginal Affairs (1986) 162 CLR 24). Approvals made under such circumstances are **not just improper—they are invalid**.

A Call to Uphold the Law

This submission is not simply an objection, it is a defence of the rule of law and the ecological and cultural values that those laws were designed to protect. Laws are not aspirational. They are enforceable. They demand not only compliance but vigilance.

In this moment, decision-makers must choose: to uphold the law and act with integrity—or to yield to expedience and ignore statutory duties. The future of lawful environmental governance in NSW depends on that choice.

Approval is not merely inadvisable. **It is unlawful**. Refusal is the only outcome consistent with the evidence, the law, and the public interest.

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