

Kazan Brown - Submission on Warragamba Dam Raising SSI 8441

My name is Kazan Brown, I am a representative of the Riley family from the Burragorang Valley.

We are descendants of Dundowra (George Riley) a Gundungurra man and his wife an Aboriginal woman named Ellen. Their son John Joseph Riley lived on a selection at Burnt Flat before moving and settling at Gungarlook in upper Burragorang valley, with his many children. Many branches of the family lived, worked and died at Gungarlook farm.

Many of us have had an unbroken connection with the valley, continuing to visit areas important to our family to this day. After construction of the dam our grandfather Johnny Riley continued to visit the valley with male members of the family, where they camped, learnt stories and the way of the Gundungurra men.

Since then, we have collected reeds for weaving at Reedy Creek, visited Burnt Flat and the “birthing rock” where many of John Josephs children were born on and visited the valley at every chance we have had.

My children have been told the dreaming stories of the Valley while visiting.

Our connection today is strong and continuous.

We are strongly opposed to the proposed raising of the Warragamba Dam wall (Project).

We do not give free, prior and informed consent to the Project and the destruction of our cultural heritage that it will cause.

Despite our continuous connection to the area, being acknowledged knowledge-holders for the area, and a RAP for the Project, we were excluded from surveys, and our feedback on errors in reports purporting to document Gundungurra stories was ignored.

We have already provided feedback on a number of iterations of various reports which have been used to inform the EIS. Very little has changed from the feedback we provided on the Cultural Values Assessment Report (**CVAR**), which, along with the Archaeological Assessment Report (**AAR**), is relied upon by the Aboriginal Cultural Heritage Assessment Report (**ACHAR**) which is Appendix K of the EIS for this project and which is said to be summarised in Chapter 18: Aboriginal Cultural Heritage. Our comments remain largely the same as those provided to the author of the CVAR. For the sake of simplicity, I have referred to the various reports being relied on by the EIS for the assessment of impacts on Aboriginal cultural heritage (and in particular the CVAR, AAR, and ACHAR), as well as Chapter 18 of the EIS, as the **Report**.

The Report is once again another example of a poorly researched document attempting to justify the mass-destruction of Indigenous heritage in the areas to be impacted by the proposed Project.

The Report fails to appreciate the depth, breadth, ongoing and unbroken nature of my family's connection to the Burragorang Valley

The Report fails to recognise the rich, diverse, unbroken, continual and ongoing connection the Riley family has to the area and places within it that has existed for millennia. Places include but are not limited to; Gungarlook, AR 25, 26 and 27, Summer Hill, Joorilands Murro-lung-gulung (incorrectly called Kamilaroi Point in the AAR) and Burnt Flat.

Our connection to the valley, our family's contribution to helping shape the community and our involvement with early Anthropologists, people recording local stories and culture, important sites and language has been recognised in many publications and public documents. Our refusal to participate in the cultural values assessment (**CVA**) therefore did not prevent the author from accessing this information. We find it offensive that our family's roles in recording of the local history of the area has been downplayed and questioned.

The Report notes that the majority of Registered Aboriginal Parties (**RAPs**) declined to participate in the CVA process, and says that this is "the result of the legacy of dispossession and loss from the original Warragamba Dam project and distrust of NSW government and processes of assessment".¹

The Report fails to appreciate that the dispossession and loss is not only a legacy, it is ongoing. Participating in a process such as the CVA is traumatic. It is asking us to trust a non-Aboriginal person with our stories and our knowledge of country for the purposes of the destruction. We, and many other RAPs, have participated in numerous processes like this, as well as state and federal parliamentary inquiries, and each one makes us relive and anticipate the trauma of dispossession and loss.

I chose not to participate in the CVA process not only because of this, but also based on previous experiences in this specific process of assessment for the Project, including being explicitly excluded from the archaeological survey that the Report relies heavily on. It was clear to me from earlier interactions that the assessment process uncritically accepted the dominant and oppressive colonial culture, based on profit and not on culture and environment, and would not be sensitive to the ongoing destruction of our stories, nor the impact of this destruction on us. It was also clear that WaterNSW and Niche were oblivious to how insensitive this was.

Importantly, even though we did not take part in the formal process for the CVA, we did provide feedback on the draft CVAR. This feedback was largely ignored.

The Report misrepresents our stories, which is spiritually desecrating and traumatic

The ancient stories form part of a wider landscape that tells of the stories that have, and still, exist within this land I (and all Aboriginal peoples) belong to.

As an oral based culture, these stories were passed down from my family and connect me, and the wider Aboriginal population, to our ancestors. To alter these stories, as has been done in the Report, is like re-writing stories in the bible and as such is blasphemous to me and my ontology. Altering our stories is a reflection of the attempted annihilation of Aboriginal culture that has been carried out across Australia since invasion/colonisation, previously as Government policy, and now as a product of "development".

Some examples of these issues were found in draft reports, which the Report is based on, that chose to change the stories that were previously provided, to suit their agendas, which were based on white western assumptions.

Such a process is spiritually desecrating of our stories which is highly traumatic for me.

An example of this is the Jumping women story. This story has been incorrectly assumed in the Report to be part of a Gunyunggalung Story. The author was informed on two separate occasions

¹ ACHAR, p iii.

once in writing on the 3rd May 2021 and at a meeting on the 1st June 2021, that the jumping women story was not a dreamtime story but a tragic incident, however the author has chosen to ignore our Cultural knowledge and continues to incorrectly record the story. Our refusal to participate in the formal CVA process should not mean that when we did provide information or feedback it was not listened to.

The author has failed to recognise the impact and trauma of colonisation, the ways in which it affected us and made its way into our story telling. The jumping women story is a tragic story that came as a result of conflict with settlers. It has no relationship to the Buru Gunyunggalung. Attempting to link it to a Gunyunggalung story is disrespectful and offensive.

To make such a statement and ignore our knowledge is disrespectful and continues to downplay and whitewash the impacts of colonisation on the Gundungurra people.

Ignoring our knowledge and continuing with this narrative is a further extension of that trauma. It tells us no one is listening and the process is not a genuine attempt to understand and record our Cultural values.

As sacred stories, no one has the right to change them, not least a government corporation. Furthermore, a very simple publicly available, google search would have easily brought up the research historian of the area Jim Smith. Jim is a well-known historian of Aboriginal people in the Valley. Jim's books called the *Aboriginals of the Burragorang Valley* and *Gungarlook*, are two examples of how freely and easily information relating to the stories are available.

Jim has prepared a review of the Report (included at **Attachment A** to my submission), and has concluded that:

"The environmental impact statement sections relating to Aboriginal cultural heritage are most inadequate, misleading and disrespectful to the Aboriginal descendants of the Burragorang Valley community."

EIS process and assumptions are contrary to international legal principles regarding the cultural heritage of Indigenous peoples

No consideration of whether impacts outweigh the benefits of the Project

The Report purports to consider the potential impact of the WDR Project on intangible Aboriginal cultural heritage values within the study area. The Report's most fundamental flaw is its lack of any consideration as to whether the nature and extent of adverse impacts on cultural heritage are such as to warrant halting the project altogether.

There is an implicit assumption on the part of the authors that the project will proceed regardless of Aboriginal people's views and the nature and extent of adverse impacts.

Such an assumption is not in keeping with the Burra Charter in relation to the conservation and management of places of cultural significance, with guidelines produced by the International Council on Monuments and Sites (**ICOMOS**) on the application of the Burra Charter to Indigenous cultural heritage, or with United Nations principles in relation to the free, prior and informed consent (**FPIC**) of Indigenous peoples.

We have not given free, prior and informed consent

In relation to FPIC, the UN Declaration on the Rights of Indigenous Peoples (**UNDRIP**) requires States to consult and cooperate in good faith with the indigenous peoples concerned through their own

representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

The UN's expert bodies have recognised that:

'Free implies that there is no coercion, intimidation or manipulation.

Prior implies that consent is to be sought sufficiently in advance of any authorization or commencement of activities and respect is shown to time requirements of indigenous consultation/consensus processes.

Informed implies that information is provided that covers a range of aspects, including the nature, size, pace, reversibility and scope of any proposed project or activity; the purpose of the project as well as its duration; locality and areas affected; a preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks; personnel likely to be involved in the execution of the project; and procedures the project may entail.²

Conformably with those principles, in considering the merits of a proposal, ensuring 'information is provided that covers a range of aspects, including the nature, size, pace, reversibility and scope of proposed project' is critical to a fair and transparent assessment and decision-making process which properly respects the rights of Indigenous peoples (and also ensures that the general public and other stakeholders are provided with reliable, complete and accurate information in relation to impacts of the proposal on the traditional Aboriginal owners).

We do not consent to the Project. The impacts on our cultural heritage (which includes all aspects of place, including ecology, biodiversity, water quality and air quality- all of which have been artificially separated for the EIS) far outweigh the purported benefits.

We have been excluded, not listened to, and not been considered the primary source of knowledge about our places and stories

The Report purports to document our sites, stories, and cultural values, but knowledge holders have been excluded and ignored throughout the process.

A non-Indigenous person should not be deciding what is and isn't important to Aboriginal people and what is and isn't culturally important. We should be able to write our own stories.

That we have not been permitted to do so is apparent from the errors the AAR and the CVAR, carried through to the ACHAR and EIS.

The advice from a range of expert sources is clear- Indigenous peoples are the experts in their own stories and culture and should be recognised as such.

The Interim Report of the Juukan Gorge Inquiry noted that:

Probably the most basic issue facing Traditional Owners in the protection of heritage is the simple recognition of their knowledge of their own culture, heritage and lore. Traditional Owners know their own culture and traditions, they know the significance of sacred, ceremonial and heritage sites, and, at least roughly, their geographical location. They should

² United Nations Office of the High Commissioner for Human Rights, *Free, Prior and Informed Consent of Indigenous Peoples*, <https://www.ohchr.org/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf>

*not have to fight to prove what is already known to them. Their knowledge should be accepted in Australian law.*³

ICOMOS guidance for heritage practitioners on applying the Burra Charter explicitly says:

*“It is critical that assessments of cultural significance for Indigenous heritage places reflect the views and input of the relevant Indigenous knowledge-holder”*⁴

The Bilateral Agreement between NSW and the Commonwealth under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) provides, at 8.1(d)(i):

(d) In particular, NSW will ensure that:

(i) the views of Indigenous people are treated as the primary source of information on the value of Indigenous cultural heritage to which a particular Matter of NES relates;

Despite this, WaterNSW appointed non-Aboriginal people to filter and interpret our knowledge to produce the Report. The result of this whitewashing is a document that does not properly understand or communicate the cultural heritage value of the areas that will be damaged by the Project, is not fit-for-purpose, and cannot properly inform the decision-maker.

We were actively excluded from the archaeological survey despite wanting to take part

WaterNSW did not permit my daughter Taylor Clarke and I to attend the archaeological survey which informed the entirety of the assessment of archaeological significance of the area proposed to be damaged by the Project.

We were informed that we were not allowed to attend the survey because we didn't have the correct insurance. As the only RAPs who took part as individuals rather than companies (we do not do consultancy work, unlike the other RAPs), we do not have a company structure or expensive and complex insurance already set up. We were told that we had to organise our own insurance.⁵

Insurance and any other requirement for those who are assisting the proponent to meet its statutory obligations in relation to assessment of impacts must be dealt with by the proponent. By not doing so, the proponent has ensured the site has not been adequately assessed and the impact of the Project will not be accurately assessed.

It is unacceptable that knowledge-holders are required to have corporate structures and the associated expensive insurance in order to be able to properly inform the assessment of the area. This imposes a significant burden on knowledge-holders that should be borne by the proponent. It is a particular burden on those who (like my daughter and me) do not consult professionally, but are knowledge-holders for the particular area to be damaged, and who therefore have extensive knowledge of that area than RAPs who make a living from consulting in a number of landscapes do not.

We were not given another opportunity to contribute to the archaeological survey.

³ Juukan Gorge – Interim Report, [1.55].

⁴ https://australia.icomos.org/wp-content/uploads/Practice-Note_The-Burra-Charter-and-Indigenous-Cultural-Heritage-Management.pdf

⁵ See, for example, ACHAR p 43.

This clearly demonstrated to us that they (WaterNSW and Niche) had no intention of listening to us, hid behind the fact that the site is not publicly accessible, and were not genuinely attempting to properly survey the site.

As a result of this deliberate exclusion, many sites of particular significance to our family have not been recorded, or have been recorded/described incorrectly. The AAR, and by extension, the ACHAR and the assessment of cultural heritage impacts in the EIS are knowingly inaccurate.

Examples of specific errors contained in the Report as a result of this deliberate exclusion are discussed below.

This is not appropriate- WaterNSW as the proponent were obliged to organise access for knowledge holders in order for proper surveys to be carried out. The Report has a number of inaccuracies as a result of this dismissive and disrespectful approach to our knowledge and our cultural heritage. The Report is not a proper assessment of cultural values and that error infects the EIS and any decision that relies on the Report.

Burnt Flat and other sites accessible by car

Burnt Flat was not surveyed during the survey period. According to the Report⁶ this was due to water levels, that the site must be accessed by boat, but this is not true- the area is easily accessible by car. If knowledge holders had been included on the survey this would have been done. The area contains many scar trees as well as stone tool deposits that are within the impact zone but which were not surveyed.

A number of other sites were not surveyed “due to the low water level of the Warragamba Dam”⁷, which are known by my family to be accessible by car when water levels are low. If we had not been excluded from the survey, we could have accessed the sites and the sites could have been surveyed.

In addition to Burnt Flat, Kedumba River, Hayes Creek, and Kangaroo River area are all accessible by car on day trips.

Joorilands

Joorilands contains at least 20 scarred trees, including the remains of a large canoe tree. The Report only lists 4.⁸ Had knowledge holders been permitted on the survey these trees would have been located.

Byrnes Creek rock engraving

The Bustard carving⁹ has great significance to the Riley family.

George Riley showed Mathews the carving in the 1890s. In 1906 John Joseph Riley recreated the engraving in another creek bed on a smaller scale. My mother born in 1948 to current day was shown the carving as a child by my Grandfather Johnny Riley.

The claim in the Report “it has never been seen” is false. The bird Gunyunggalung is very important to our family.

The area and surrounding landscape is just as important as the carving site itself. The author has not recognised the importance of the landscape. Had knowledge holders from my family been permitted

⁶ AAR, p 37.

⁷ AAR, p 36.

⁸ AAR, p 66.

⁹ AAR, p 46.

on surveys this fact would have been made clear. It should not be excluded simply because the carving is no longer visible.

Kangaroo carving at Gungarlook

Contrary to the assertion in the CVAR,¹⁰ the kangaroo carving on Gungarlook is not connected to the Buru story. It is more than likely linked to the Kangaroo trap in the river directly below the carving that has not been addressed in this report. If knowledge holders were permitted on the survey this would have been made clear. The author of the CVAR was notified in writing of this fact and chose to ignore that information.¹¹

See also **Attachment A-** Smith p 5.

Gungarlook waterhole

The Gungarlook waterhole is well known by my family, who lived there for a century. My Mum, Auntie and Uncle identified it for WaterNSW. The Report ignored the information provided and the site marked as the location of the Gungarlook Waterhole is incorrect. The Report¹² also incorrectly states that the Gungarlook waterhole is currently inundated.

The waterhole is not currently submerged, it is rarely affected, which we could have demonstrated if we had been permitted on the survey. Again this is an example of our cultural knowledge being ignored.

Aerial photos that would have demonstrated this have been obscured by overlays in the CVAR.

We also find it offensive that the Report does not even attempt to spell Gungarlook correctly.

We did not agree to the methodology

The Report refers to an agreed archaeological methodology.¹³ We did not agree to the methodology and had many concerns over the search area.¹⁴

See also the discussion of the inadequacies of the methodology in **Attachment B-** Attenbrow, **Attachment C-** Hunt, **Attachment D-** Irish and Atkinson (particularly sections 5.2 and 5.3), and **Attachment E-** Slack and Ross.

Report ignores rare and sacred art at Murro-lung-gulung

There is no mention of the art at Murro-lung-gulung (incorrectly referred to as Kamilaroi point) In the report.

Here at Murro-lung-gulung is the only recorded image of a waratah in the Sydney basin, along with a hand print and foot print of a Burringilling (creation creature) and a dancing man image. It is uncommon in southeast Australia to have artwork that is said to be made by creation figures.

This is a sacred site with a hand print and foot print left behind by a God. The Report fails to recognise the importance of this site to the Gundungurra People.

¹⁰ CVAR, pp 99-100

¹¹ CVAR, pp 168, 184.

¹² CVAR, pp 31, 182.

¹³ For example ACHAR, pp 36, 45.

¹⁴ ACHAR, sections 6.3.1 and 6.3.2.

Rare art site at Kerswell hill not adequately reflected

Kerswell hill art site is also not adequately reflected in the report. The site contains ochre figures as well as handprints and grinding grooves. Ochre art is rare in Gundungurra Country.

Some of the figures include toadlets, figures with froglike features, geckos and a child's handprint.

Only a small percentage of shelters contain both art and grinding grooves. The shelter itself resembles a frog with its mouth open.

The significance of the surrounding landscape and artifacts is also not accurately represented with the exclusion of axe heads and a rare chisel from the report. There is no mention of the ceremonial site that was linked to the art site.

See further discussion of the Report's inadequate assessment of art sites, including Murro-lung-gulung and Kerswell hill in **Attachment A-** Smith, pp 5-16.

Report incorrectly says no impact at Burnt Flat

The Report says that there will be no impact at Burnt Flat.¹⁵ This is based on the flawed EUIA and is incorrect. WaterNSW's own maps that were supplied to Burnt Flat residents show it will be impacted in large flood events.

This demonstrates the issue with only considering 1-in-20 year flood events as part of the impact area- it minimises the actual impact, particularly where the impact of even temporary inundation is significant and permanent.

As with Kerswell Hill, Burnt Flat will flood eventually and be permanently damaged if the dam wall is raised.

Flora and fauna – cultural heritage

There is little discussion in the Report of traditional food or traditional use of native and local plants. The fauna and flora is part of our cultural heritage and should be included in the Aboriginal cultural heritage report, and the impact on fauna and flora must be included when assessing impacts on cultural heritage.

There is no mention of known Aboriginal burials in the area

There is no mention in the Report of Aboriginal burials in the area. The AAR did not identify any burials in the survey, however there are many burials recorded in historical documents, as well as 14 members of the Riley family. This was brought up in a meeting, and the authors said they would include it in the Report but they have not.

Mary Gilmore – fiction is not an appropriate source

Despite our feedback correcting the record, the quote from Dame Mary Gilmore about being told (second- or third- hand) that the Burragorang Valley was used as an "animal sanctuary" remains in the CVAR.¹⁶ This quote is rubbish and cannot be substantiated. Its inclusion in the final document, despite the author being informed of its inaccuracy, is both telling and offensive.

While Dame Mary Gilmore made prolific contributions to Australian literature, she was an author who "romanticised" life in Australia and is not a credible source of information about our culture.

¹⁵ CVAR, p 70,

¹⁶ CVAR, p 43.

The quote is, as the author of the CVAR was informed, fiction not fact. We did not take animals outside the valley, this itself is culturally incorrect. Culturally everything has its place. Saltwater animals belong in salt water country and fresh water animals belong in freshwater country. We would never have taken animals from their home to re populate other areas. Nor was the spot “closed to hunting”. Like all Indigenous people Australia wide, we hunted at certain times of the season and only took what we needed. There are many more relevant and reliable scholars or researchers that could be used to quote from, but the CVAR knowingly chose instead a romanticised fiction.

Knowledge-holders and other traditional owners have been excluded from the site – preventing intergenerational transfer of culture

Loss of cultural knowledge is not just a process that occurred in the past; it is happening now through this project.

Access to the Burratorang Valley is restricted because the valley has been flooded by the existing dam and now acts as storage for water to supply Sydney. This has resulted in ongoing dispossession and distress. Not only has a large and important area of our cultural landscape been permanently damaged, we have not been allowed to access the area that remains to tend to it and to pass on our knowledge.

We have to apply to WaterNSW for access, which is often denied for spurious reasons. We used to be able to speak to a person to work through any issues so we could access the site. WaterNSW now has an automated online application, the first page requires insurance details (as above, insurance is prohibitively expensive for individuals who are not consultants). If you don’t have insurance, you cant progress you application for the site. There is no longer a person in WaterNSW we can talk to about access.

It took my daughter Taylor two years from when she first put her application in until she was finally allowed to get on the boat to go on country. They kept putting her off and making excuses- they’d tell her at the last minute the night before she was supposed to be going that it was called off.

The Project Recommendations in the Report recommends that we have two days of access per year, with a number of unworkable restrictions placed on these two days, including that the access visits are not personal individual visits, but one day for everyone, accompanied by WaterNSW and all other RAPs.

This is not good enough. We should be able to access the area to undertake site maintenance, cultural activities and since the area will be destroyed we should be able to take and educate our children on their culture when we see fit, we should not be policed and I should not have to justify why we want to visit. Loss of cultural knowledge is not just a process that occurred in the past; it is happening now through this project. When access to traditional resources and traditional ways of life is denied and restricted to Indigenous people our knowledge is lost.

The consideration of Aboriginal Cultural Heritage in the Report is flawed, inadequate, and misleading

Proponent (including their contractors) must not provide false or misleading information as part of an EIS- See EDO opinion at **Attachment F**. The Report’s assessment of cultural significance, and of the impact of the Project, is often false and misleading, downplaying both the significance of the area and the impacts of the Project. This is also discussed in **Attachment A- Smith**, **Attachment B-**

Attenbrow, **Attachment C**-Hunt, **Attachment D**- Irish and Atkinson, and **Attachment E**- Slack and Ross.

Only a quarter of the impact area has been surveyed

The Report ignores the fact that only one quarter of the impact area has been surveyed. A comprehensive and accurate report cannot be presented until the impact area has been properly surveyed for both its cultural and archaeological values.

Any report given before the area is fully and properly surveyed will be viewed as inaccurate and misinformed by the local Traditional Owners.

Recommendations imply we have consented

The Report's recommendations are misleading in that they do not convey that we do not consent to the Project going ahead. Recommendations based on the project going ahead imply that we consent to it and we do not.

The Report is based on flood levels and frequencies that minimise and misrepresent the impact of the Project

Flood levels and frequencies used in the Report are intentionally misleading and have clearly been chosen to downplay the impact of the proposed dam wall raising.

The dam wall was originally proposed to be raised by 14 metres. The current proposal is to raise the wall by 17 metres ("to enable adaptation to projected climate change"), and to raise spillways by 14 and 12 metres. The rise & fall of water in dams means that a higher wall will flood various spots with different regularity and for different duration, but technicalities aside there are no real doubts about the general impacts - flooding will occur approximately 14, and even up to 17 metres above current current heights. That means that sites up to 17 metres above current maximum water levels will be flooded at some point if the Project goes ahead.

Our sites are thousands of years old. Our concerns regarding our cultural heritage are not going to suddenly stop in 20 years' time, so it is inappropriate to only look at 1-in-20 year flood events, when 1-in-100 or 1-in-500 year events will also inevitably occur. The impact of the Project on our cultural heritage in these more extreme flood events also needs to be assessed and taken into account. It is also likely that as the impacts of climate change become more severe, the frequency of extreme flood events will increase, rendering assessing for what constitutes 1-in-20 year flood event in 2021 redundant.

See also Jim Smith's discussion of this at **Attachment A** to this submission (p 3-4).

The Report misleadingly compares current and future impacts using different metrics, which downplays the impact of the Proposal

The Report compares the impact of the current dam wall height and the impacts of the proposed Project using different metrics, which minimises the increase in impact from the current height to the height of the proposal. In this context the report brazenly and knowingly misrepresents these facts.

The Report notes the proposal to raise the wall by 14- 17 metres. However, while it assesses current damage based on the PMF (which it calls the Existing Upstream Impact Area -**EUIA**) it assesses future damage based only on 1-in-20 year water levels (which it calls Project Upstream Impact Area – **PUIA**).

The Report knowingly misrepresents the facts. It acknowledges the wall will be raised 14 - 17 m, is aware of the PMF, and is aware that short-term flooding constitutes permanent damage to many of the cultural values being assessed (e.g. art). However by adopting a PUIA (rather than correctly using the future PMF) in assessing all damage the report knowingly misrepresents the impacts on cultural assets.

For a robust assessment to take place, impacts must be measured to the probable maximum flood level (**PMF**) as is the baseline comparison for the present dam wall impacts. Choosing an arbitrary, lower, flood level that suits the agenda of WaterNSW, both in minimising impacts to allay concerns of the public and the Minister, and also suiting its offsetting and assessment budgets is not justification enough for such an assessment threshold. The Report should contain all information on impacted areas within the PMF, which it does not.

A Report written in this context cannot be accepted.

The Report consistently under-represents the complexity and value of the living cultural landscape

The Report is an insult to the Gundungurra community and its release by WaterNSW is shameful and misleading.

Process betrays lack of understanding that the culture is a living one

The Juukan Gorge Inquiry highlighted a fundamental flaw in frameworks purporting to protect Aboriginal cultural heritage across Australia¹⁷ - they misunderstand and minimise the nature of culture.

“none of these frameworks adequately encompass the complexity of Indigenous heritage which is living and evolving and is connected not just through historical artefacts, but through songlines, storylines, landscapes and waters.”¹⁸

This lack of understanding is reflected in the Report- there is a myopic focus on sites and artefacts, which comes from the view that our culture is static and historical. However, our culture is alive, not confined to archaeology.

It is clear that the non-archaeological aspect of culture did not occur to WaterNSW until late in the process, when the CVA was commissioned.

Dr Val Attenbrow, in her review of the Report which is **Attachment B** to this submission, noted this inappropriate split:

“...the ‘cultural values’ and archaeological reports should be viewed together; they should not be viewed separately. The ‘cultural values’ in the Study Area are assessed by Waters Consulting of being part of a cultural landscape with a very high level of significance. Combined, the ‘cultural values’ and the archaeological sites and places are an even more impressive cultural landscape that is of very great scientific significance to both the Aboriginal communities and scientists (archaeologists).”

This is also discussed in **Attachment A**- Smith, **Attachment C**-Hunt, **Attachment D**- Irish and Atkinson, and **Attachment E**- Slack and Ross.

¹⁷ See, for example Report of the Juukan Gorge Inquiry at [7.16].

¹⁸ Report of the Juukan Gorge Inquiry at [1.6].

The significance assessment of surveyed sites was cursory and uninformed

The assessment of significance of the sites that were found during the surveys is inadequate, uninformed, and was undertaken without genuine understanding of the area.

This “scientific significance assessment” was done on 337 sites -according to Michael Jackson, an archaeologist who had been involved in the surveys- by one person who had only spent one day in the field, and who “had no discussions with the archaeologists involved in the field survey—not one discussion about any of the sites... There was no deep discussion about any single one of those sites and there was no analysis or clarification of the field notes. There were no discussions with the Aboriginal community.”¹⁹ The assigning of values in this way is so inadequate as to be misleading.

The assessment of significance was not a genuine one, and this is carried through to the assessment of the impact of the Project in the EIS.

This is also discussed in **Attachment A-** Smith, **Attachment B-**Attenbrow, **Attachment C-**Hunt, **Attachment D-** Irish and Atkinson, and **Attachment E-** Slack and Ross.

Language and imagery used to obscure and downplay value

Language and visuals are used throughout the Report to obscure and downplay sites and landscape.

For instance, the CVAR uses language crafted to deliberately mislead the reader and uses graphic techniques on maps that quite literally cover over facts that do not fit its claims (e.g. Gungarlook Waterhole, as discussed above).

It is apparent that the author of the CVAR did not spend any time in the field, instead choosing to undertake all of her research remotely. This was not a result of knowledge-holders refusing to take part in the CVA process- it was clearly stated when the original cultural values methodology was provided to us that interviews would be face to face or on zoom, and mapping would be facilitated through detailed aerial images and maps.

The Gurrangatch storyline is one large site and should be treated as such. By breaking it up into smaller sites diminishes the importance of the story and the impact the Project will have on the storyline and our cultural heritage. This error, of breaking up and isolating aspects of an interconnected and alive whole, is repeated throughout the Report. There can be no understanding of the cultural heritage values of the area when examined like this, which means that there can be no real assessment of the impact of the Project.

The Report’s presentation downplays the value and meaning of the area

The Report’s presentation downplays the aesthetic values of the area. The photographs presented are misleading.

Rather than provide photographs of sites in context, there are close-up “scientific” photos of “artefacts” in isolation.

There are no photographs of the rare and important art that will be damaged or destroyed by the Project.

¹⁹ Transcript of NSW Legislative Council Inquiry into the Proposal to Raise the Warragamba Dam Wall, 6 November 2020, <https://www.parliament.nsw.gov.au/lcdocs/transcripts/2493/Transcript%20-%20Warragamba%20Dam%20Wall%20-%206%20November%202020%20-%20CORRECTED.pdf>, p 8.

Rather than showing the life and vitality of the landscape, it has been picked apart piece by piece and has been made dull and two-dimensional.

This is representative of the misunderstanding the Report's authors have of our culture. You cannot view items, places etc in isolation. To do so loses the meaning and depth.

Aerial photos of sites are obscured in the Cultural Values Assessment Report

The CVAR maps the cultural assets as points on an air photo overlay.²⁰ However, the CVAR overlays this with opaque layers of the EUIA and PUIA, making it impossible to see sites in context. This practice deliberately obscures sites. This misrepresentation is necessary to support false claims in the text regarding current impacts.

The CVAR also uses map overlays which obscure the cultural landscapes under assessment. This is necessary because the air photo underlay clearly shows many statements to be false. For example the Report claims that Gungahlook is already impacted. The opaque EUIA overlay on the map ensures readers do not see the facts that the Report authors have seen— that Gungahlook waterhole remains intact and clearly visible. Again, the CVAR, report knowingly misrepresents these facts.

The Report misrepresents the archaeological field survey

Michael Jackson, an expert archaeologist who attended the field survey was shocked by how the AAR misrepresented and downplayed the survey findings. His evidence to the NSW Parliamentary Inquiry included:

*"I have seen the report—it is in the public now—and I was very upset because it certainly misrepresented what we found in the field. There are many errors of fact that could have been clarified with discussions with me, the other field archaeologist and the Aboriginal community. Sites are mislabelled, their understanding of the sites—obviously, if you can only spend one day in the field you cannot understand these sites to any great extent. I was upset seeing the report. There are errors on survey coverage that are basically— I know what we did in the field and there are errors in reporting about that, saying that we did more in some areas than we did around other sites when we actually did not. So there are a lot of errors there. It was a bit distressing to see that and also to know that I had not been given a chance to rectify it."*²¹

The Report downplays and does not assess the impacts of the 2019/2020 fires on cultural heritage

Severe fires during the summer of 2019/20 devastated 81% of the Blue Mountains Heritage Area.

No post-bushfire field surveys have been undertaken. The severity of the fires in the catchment have been downplayed in the Report.²² There has been no consideration of whether the impact of this proposal on the cultural values of the landscape has increased in the context of the unprecedented 2019/2020 fires.

²⁰ CVAR, pp 76-113.

²¹ Michael Jackson, evidence to the NSW Legislative Council Inquiry into the Proposal to Raise the Warragamba Dam Wall, 6 November 2020. Transcript at <https://www.parliament.nsw.gov.au/lcdocs/transcripts/2493/Transcript%20-%20Warragamba%20Dam%20Wall%20-%206%20November%202020%20-%20CORRECTED.pdf>, p 9.

²² ACHAR, p 34

We do not support the recommendations in the Report- the Project should not be approved

The mitigation recommendations proposed in the Report are doing nothing to help us pass on our cultural knowledge and are contributing to the loss of knowledge by continuing to restrict access and destroy vital parts of our culture.

All recommendations are written as if the project has been approved already. There are no recommendations that discuss the project not proceeding. These recommendations are tokenistic and do nothing to save, preserve or adequately record our culture.

We do not give free, prior and informed consent to the project and the destruction of our cultural heritage.

We do not agree with any of the recommendations put forward in the report.

EIS consultation process has not been conducted in a way that enables Elders and broader Warragamba community to make submissions

The EIS report has not been equally accessible to the public. The proponent has assumed everyone has a reliable internet connection and a computer on which to read it.

Indigenous Australians experience widespread socioeconomic disadvantage, and in western Sydney many Elders only have pre-paid data on smart phones or in many cases do not have internet access at all making it nearly impossible to access and read the Report.

Furthermore, Warragamba will be largely impacted by this project with trucks, extra cars, noise and air pollution. We have a large population of elderly residents in Warragamba who also have little or no internet connection.

The executive summary that was placed in the local post office – only after I made repeated requests for consultation material on the project to be made available to the community in hard copy – is a propaganda booklet that does not adequately cover the impact to this community in a way that residents can make an informed decision.

It also does not contain information on how to make a submission. Instead it reads as if the approval decision has already been made that the project will proceed.

The needs of the community that will be most affected by the proposal should have been taken into account in the design of a consultation process. This is particularly the case given the scale and impact of the project. Our community needed easily accessible and understandable material explaining the project, its impacts, and that submissions are being sought, that is easy to understand. an EIS must be easy to understand. The EIS for the project has been far from easy to understand, navigate, or access, which has put the Warragamba community and the Aboriginal communities that will be adversely affected by the proposal, at a disadvantage. It also means that the decision-maker will not be able to take into account their interests and opinions.

Expert Opinions

The views and knowledge of Aboriginal people should be treated as expertise in and the primary source of information on the value of Aboriginal cultural heritage. However, because this best

practice is not yet widely understood, a number of academic experts in archaeology and anthropology, specialising in Aboriginal occupation in and around Sydney, have provided me with additional reviews of the EIS. In particular, they examine the way in which the EIS and its associated reports assess the cultural value of the area that will be affected by the proposal, and the adequacy of the assessment of its impact. These reports form part of my submission.

Attachment A- Report of Dr Jim Smith

Smith considers that

“The environmental impact statement sections relating to Aboriginal cultural heritage are most inadequate, misleading and disrespectful to the Aboriginal descendants of the Burragorang Valley community... In my view the environmental impact statement is an attempt to minimise the Aboriginal cultural significance of places in the Burragorang Valley which will be affected by the raising of Warragamba dam.”

He notes in particular the downplaying of the cumulative impact of the raising of the Warragamba Dam on top of the impact of the original dam being built, and the intellectual dishonesty of only assessing impact from a 1-in-20 year flood.

Attachment B- Report of Dr Val Attenbrow

Attenbrow found that the EIS *“is inadequate in three key ways:*

- 1. No-subsurface testing of deposits was undertaken. As such, Chapter 18 cannot portray a valid assessment of the archaeological sites and places.*
- 2. It downplays the scientific significance of the archaeological sites and places described in the report.*
- 3. It does not give adequate consideration to the high cultural values of the landscape.”*

Attachment C- Report of Phil Hunt

Hunt considers that “overall the EIS falls short in a number of areas, principally in relation to the assessment of significance.” He notes that “the ACHAR downplays the incredible number of sites identified and recorded during this work, which is especially surprisingly given that it is still only a sample of the entire area,” and argues that the way in which the significance of sites was assessed was superficial.

Attachment D- Report of Dr Paul Irish and Fenella Atkinson (Coast History and Heritage)

Irish and Atkinson’s *“strong view is that the ACHAR for the Warragamba Dam Raising does not meet the Secretary’s Environmental Assessment Requirements (SEARs) and is manifestly inadequate to allow the Minister to make an informed decision about the project in relation to Aboriginal heritage. The ACHAR falls significantly short of both the general and specific desired performance outcomes in the SEARs because:*

- 1. The level of assessment undertaken is insufficient to define the extent and significance of Aboriginal heritage within the study area or to support the management recommendations.*
- 2. The assessment does not meet the requirements of the SEARs because it does not address several key requirements of the guideline documents to which the SEARs refer.*

3. *The assessment neither meets, nor attempts to meet, the Heritage (Key Issue 10) desired performance outcome to seek ‘to the greatest extent possible, the long term protection, conservation and management of...Aboriginal objects and places’.*”

Attachment E- Report of Dr Michael Slack and Associate Professor Annie Ross

Slack and Ross reviewed a final draft of the AAR. Their views remain applicable to the AAR in the EIS:

“Overall, archaeological value has been privileged over Aboriginal value generally, and cultural value specifically, especially in relation to the assessment of significance of archaeological sites. Clearly, the assessment process presented in this report does not “reflect best practice assessment processes as set out in the Burra Charter”, as is required by the DECCW guidelines (page 140).

*The predictive model is based on previous archaeological surveys and the landscape context for the subject area. Ethnographic information and Aboriginal oral history does not appear to have been included. **This is a very old-fashioned approach to archaeological and cultural heritage site survey and heritage place identification. It certainly does not make any provisions for cultural landscapes.**”*

Attachment F- EDO Opinion on EIS requirements

In addition, the Environmental Defenders Office has provided me with an opinion on the requirements for an EIS to not contain false or misleading information and to consider alternatives.

Attachments

Attachment A- Report of Dr Jim Smith

Attachment B- Report of Dr Val Attenbrow

Attachment C- Report of Phil Hunt

Attachment D- Report of Dr Michael Slack and Associate Professor Annie Ross

Attachment E- Report of Dr Paul Irish and Fenella Atkinson

Attachment F- EDO Opinion on EIS requirements