

16 December 2021

The Hon Justin Field, MLC
Chair
Legislative Council Select Committee on the Proposal to Raise the Warragamba Dam Wall
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**Select Committee on the Proposal to Raise the Warragamba Dam Wall
Response to Supplementary Questions to Ms Helen Lardner: Australia ICOMOS**

I refer to the recent hearings conducted by the Select Committee on the Proposal to Raise the Warragamba Dam Wall. I am writing to respond to the following Supplementary Questions from the Committee, arising from my oral evidence on Monday 8 November 2021:

1. *Does the raising of the Warragamba Dam wall comply with Australia's commitments under the World Heritage Convention?*
2. *Does the EIS comply with the Burra Charter?*
3. *In your opinion, does the EIS meet the standard required by UNESCO and its advisory bodies?*
4. *How does cultural heritage form part of the Greater Blue Mountains World Heritage listing?*
 - a) *Why will UNESCO be concerned about the cultural heritage values of the Blue Mountains?*

These matters were addressed in some detail in my oral evidence, and the two written submission made by Australia ICOMOS dated 2 December 2019 and 7 November 2021, so the answers below are provided as succinct summary responses in each case.

1. Does the raising of the Warragamba Dam wall comply with Australia's commitments under the World Heritage Convention?

NO.

The raising of Warragamba Dam wall would adversely affect attributes of the Greater Blue Mountains World Heritage Area which convey the 'Outstanding Universal Value' that lies at the heart of the World Heritage inscription, including periodic inundation of part of the inscribed World Heritage property.

Under Article 4 of the World Heritage Convention Australia has a duty:

. . . of ensuring the identification, protection, conservation, presentation and transmission to future generations of < . . > cultural and natural heritage . . .
and to
. . . do all it can to this end, to the utmost of its own resources . . .

Under Article 5 of the World Heritage Convention, among other commitments, Australia must:

. . . ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated on its territory . . .

The proposed raising of Warragamba Dam wall would also not comply with specific Decisions of the World Heritage Committee.

In 2016, by Decision 40 COM/7, the World Heritage Committee determined that the construction of dams with large reservoirs within the boundaries of World Heritage properties is incompatible with their World Heritage status, and urged States Parties to:

. . . ensure that the impacts from dams that could affect properties located upstream or downstream within the same river basin are rigorously assessed in order to avoid impacts on the Outstanding Universal Value.

The proposed raising of the Warragamba Dam wall would not avoid impacts on the Outstanding Universal Value.

In relation to the proposal considered by the EIS, by its Decision 43 COM 7B/2 in 2019 the World Heritage Committee advised that the inundation of areas within the Greater Blue Mountains resulting from the raising of the Warragamba Dam wall would be:

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

The raising of the Warragamba Dam wall is not consistent with Australia's commitments under the World Heritage Convention.

2. Does the EIS comply with the Burra Charter?

The *Burra Charter: the Australia ICOMOS Charter for Places of Cultural Significance, 2013* sets out principles and processes for decision-making and the conservation and management of places of cultural significance. The *Burra Charter* does not directly set out specific standards or practices for the conduct of an EIS. Nevertheless it is of concern that the EIS is inconsistent with several Articles of the *Burra Charter* and with the Burra Charter Process that requires decision-making to be based on a fulsome understanding of significance. In particular, and by way of example:

- The mitigation and management measures considered (EIS Exec Summary page 39) are inconsistent with an appropriate conservation outcome. The EIS proposes 'an Aboriginal cultural heritage management plan to address intergenerational equity including recording of Aboriginal cultural heritage'. Recording is insufficient and would be inconsistent with the conservation principles in Articles 2 and 3 of the *Burra Charter*.
- Survey of only a part (circ 33%) of the directly-affected area as noted in the sampling strategy presented in Appendix K of the EIS (Aboriginal Cultural Heritage Assessment Report, Appendix 1, Section 9.1, page 30) has prevented comprehensive understanding of the definitive extent of cultural resources which would be destroyed. This shortcoming represents a fundamental non-compliance with the core process set out in Article 6 of the *Burra Charter*.
- There has been insufficient engagement with Traditional Owners. The information available to them through the EIS (including lack of adequate location data – even if it were to be provided in confidence) means that participation by associated people has been thwarted, contrary to the intent of Article 12 of the *Burra Charter*.
- With respect to non-Aboriginal heritage, there was no process for identification or assessment of unlisted items of potential heritage significance which were not already included on statutory registers or lists (EIS Chapter 17, Non-Aboriginal Heritage, page 17-5). In view of the nature of the project under consideration this is not consistent with the process outlined in Article 26 of the *Burra Charter*.

These are but illustrative examples of the non-compliance of the EIS with the spirit, intent, and in some cases actual Articles of the *Burra Charter*.

The proposed raising of Warragamba Dam wall itself is also inconsistent with the Burra Charter because it would not respect the cultural significance of the affected cultural places and would not avoid or minimise adverse impact on cultural heritage.

3. In your opinion, does the EIS meet the standard required by UNESCO and its advisory bodies?

NO; although the position of UNESCO and of ICOMOS International is a matter for those organisations to determine and express.

The field survey undertaken for the EIS is inadequate. Firstly, nothing short of 100% coverage of areas to be inundated would be appropriate. Secondly, a large proportion of the property was affected by major bushfires in 2019-2020, yet the field survey undertaken for the EIS does not seem to have been repeated in fire-affected areas. Therefore, cultural sites exposed by fires have not been identified, implications of fire damage are not adequately considered, nor is the potential for the proposed activity to exacerbate fire impacts, given that about 70% of the predicted inundation area is reported to have been burnt. This would appear to be contrary to the explicit request from the 2021 World Heritage Committee expressed in Decision 44 COM 7B/180, which (among other things):

. . . also requests the State Party to thoroughly assess whether raising the wall could exacerbate bushfire impacts on the property . . .

In addition, the engagement process with Traditional Owners has been insufficient, as demonstrated by their direct representations to the Committee.

In 2019, by its Decision 43 COM 7B/2 in 2019 the World Heritage Committee urged that the:

. . . process to prepare an Environmental Impact Statement (EIS) for the proposed raising of the Warragamba Dam wall should fully assesses all potential impacts on the OUV of the property and its other values, including Aboriginal cultural heritage . . .

The EIS does not “fully assess” “all potential impacts” because it does not provide adequate identification, investigation or assessment of the potential impacts of the proposed action on the Indigenous cultural values of the Greater Blue Mountains World Heritage Area, which are attributes that contribute to the integrity that underpins the property’s Outstanding Universal Value.

4. How does cultural heritage form part of the Greater Blue Mountains World Heritage listing?

Although the Greater Blue Mountains was inscribed on the World Heritage List under criteria (ix) and (x) which relate to natural values, there are also important cultural attributes, which are explicitly part of the ‘integrity’ of the property as expressed in the official Statement of Outstanding Universal Value:

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

a) Why will UNESCO be concerned about the cultural heritage values of the Blue Mountains?

UNESCO will be concerned about the cultural heritage values of the Greater Blue Mountains for three reasons:

- The cultural context is explicitly part of the Outstanding Universal Value of the Greater Blue Mountains.
- Article 5 of the World Heritage Convention refers generally to “*cultural and natural heritage*” (as quoted above), not just World Heritage.
- The Operational Guidelines to the World Heritage Convention specifically support engagement of indigenous peoples and local communities in decision making for World Heritage properties.

Australia ICOMOS hopes that these additional answers may assist the Committee with its deliberations and is able to respond to any further requests or to contribute further as appropriate.

Yours Sincerely,

HELEN LARDNER
Immediate Past President, Australia ICOMOS