

Submission  
No 33

**INQUIRY INTO WATER NSW AMENDMENT  
(WARRAGAMBA DAM) BILL 2018**

**Organisation:** Colong Foundation for Wilderness

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## THE COLONG FOUNDATION FOR WILDERNESS LTD.

Wednesday 3<sup>rd</sup> October, 2018

The Hon. Martin Taylor, MLC  
Chair  
Standing Committee on State Development  
Legislative Council  
NSW Parliament House  
Macquarie St  
SYDNEY NSW 2000

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Dear Mr Taylor,

### **Inquiry into the Water NSW Amendment (Warragamba Dam) Bill 2018**

The Colong Foundation for Wilderness objects to this legislation that seeks to overturn provisions in the *National Parks and Wildlife Act, 1974* that protect the Blue Mountains and Nattai National Parks from artificial flood inundation. The NSW Government requires the Bill enacted to enable lawful assessment and determination of the proposed raising of Warragamba Dam Wall. Otherwise the NSW Government would be condemned for advancing an unlawful proposal.

In addition to areas of national park, the proposed raising of Warragamba Dam wall will impact parts of the Kowmung River (a designated wild river), as well as parts of the Yerranderie, Burragorang and Nattai State Conservation Areas. The Nattai and Kanangra-Boyd wilderness areas and the Greater Blue Mountains World Heritage Area will also be impacted by the proposal, but apparently it is lawful to degrade them. It must also be lawful to damage threatened species habitat and endangered ecological communities, as there are no proposals to change laws that protect these values.

The Colong Foundation firmly believes that legislation protecting wilderness, wild rivers, threatened species, State Conservation Areas and World Heritage Areas must be strengthened to prevent damaging proposals such as this. How is it that laws that supposedly protect the iconic heritage values of these areas, can in the Government's view, allow them to be degraded?

The State Government should be looking at ways to better protect our natural heritage, rather than seeking to degrade it. On October 28, 2001 the Hon. John Jobling MLC agreed with these ethics when he stated that "The Opposition is convinced by the argument of the Government". The Opposition then voted for the national park legislation the NSW Government now seeks to repeal<sup>1</sup>.

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<sup>1</sup> <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-25551>

The 2016 preliminary Environmental Impact Statement of the proposed dam wall raising states “no permit or assessment is required in relation to any national park, state conservation area or regional park as no works are planned within these areas” (page 32). These remarks are clearly in error as the primary object of this Bill is to permit the dam proposal to proceed without any need for a lease, licence, easement or right of way permissions to be issued under the *National Parks and Wildlife Act* over affected national park lands.

The State Development Committee must ask why the authors of this Bill have made no provision for use of national park lands through the issue of a lease, licence, easement or right? A form of tenure or permit for use of national park lands, in this case for damaging temporary artificial inundation, is what would be required were it not for the proposed legislation. On private land, just terms compensation and compensation through common law operate when a landowner or landholder loses use or their enjoyment of their property is injured.

Logically any use contrary to the purpose of a national park should be associated with just compensation for the alienation of or loss of the public’s use or appreciation of the land, in this case use for heritage conservation which has been granted by six layers of protecting legislation. Yet no compensation is to be paid for the loss of the public’s right to protected national park land, wilderness, wild rivers, national heritage and state conservation areas. So under this legislation there will be no protect or compensation rights for injury to national park land.

Are national parks and other protections that have been granted through the long-term efforts of generations of Australians to become meaningless? If the Committee recommends this Bill’s adoption, it appears so.

Instead of upholding and protecting nature under national parks statute, a new form of catchment management plan is proposed to comfort those who care for southern Blue Mountains wilderness. This WaterNSW plan of management is an ‘empty box’, with no provisions required under the Bill. The proposed legislation will unreasonably remove national park management from lands subject to inundation, without compensating for loss of protection, creating vague management plans in the process.

This legislation will make the area impacted by the proposed flooding, Australia’s first World Heritage listed national park area without a proper management plan. Instead of a National Parks and Wildlife Service developed national park plan of management, with lengthy public reviews and inputs by a regional advisory committee, the area will be subject to this notional WaterNSW management plan.

WaterNSW management planning has no room for public consultation. The NSW Government’s desire for secrecy is understandable. A management plan for a Government authorised, degraded national park area will of course create controversy when visual scarring, weeds and habitat loss develop after flooding starts.

The WaterNSW management plans will not mirror the provisions in existing management plans, and include new forms of management to mitigate flood-damaged national park. The objects and management principles of national park management are dispensed with. Sadly, for these national park areas that will be damaged, perhaps nothing is to be protected?

## Area affected and its significance

If Warragamba Dam wall is raised, the preliminary EIS reveals that the affected protected areas are above Lake Burragorang's full supply level of RL116.72 metres to RL128.45 metres, the highest level that flood waters would reach. This envelope perhaps defines what is meant by temporary inundation in the Bill, as the legislation does not define the areas over which it will apply. In the light of this serious omission, the Colong Foundation provides the following information about the area.

The southern Blue Mountains is one of the largest, most rugged and scenic wilderness areas in NSW. It is home to the Kowmung River, legally a wild river that flows through this wilderness. The impacted area has played a key part in the development of ethics for nature conservation in Australia. Myles Dunphy who brought the vision of large national parks to Australia formed his ideas while enjoying this area, and particularly its rivers.

The Blue Mountains is also significant to modern Australia for it is where early bushwalking clubs became established, as they experienced its natural beauty and fought to protect it. It is where light-weight, overnight bushwalking and the necessary equipment for it were developed in the early years of last century. Through this process of rediscovery, the Blue Mountains, once seen as useless for economic exploitation, became appreciated for its intrinsic worth as precious bushland suitable for preservation in its own right.

The Blue Mountains bushland is unique because the long struggle for its conservation was conducted by volunteer community groups whose efforts have had five distinct phases:

- The health-based movement of the 1870s that saw the establishment of small scenic reserves and the construction of a track network for tourists from Sydney;
- The bushwalker movement of the 1930s that established the first community-based nature conservation movement, which in turn developed plans for large national parks with wilderness areas;
- The 1960s when broad community support was organised for the earlier wilderness park vision;
- The consolidation of wilderness protection in the 1990s and confirmation of the area's natural values through World Heritage listing;
- Blue Mountains wilderness management in the 21st Century and its ongoing protection from multiple threats.

Through generations the southern Blue Mountains have seen a caring relationship re-established between the community and the natural world. The Blue Mountains towns are now a City within a World Heritage National Park. Its Council's vision offers hope in the fight to retain strong conservation controls over inappropriate urban expansion.

In 2014, in the spirit of this conservation tradition, the current Coalition Government made a major addition to the Nattai Wilderness, enhancing protection of Sydney's drinking water catchment.

Sydney is rightly renowned as a large metropolis surrounded by wilderness-quality national parks thanks to this Blue Mountains vision – but will our society be able to carry this tradition on or let it slide into oblivion?

## **Inappropriate legislation**

Is Wilderness in the Blue Mountains' National Parks to be protected?

The proposed legislation threatens national parks in the southern Blue Mountains through a tyranny of incremental development. Inundating and smothering precious upstream wilderness in sediment is simply collateral damage for a NSW Government determined to turn the Hawkesbury-Nepean floodplain into real estate.

Residential development should be constrained on floodplains. Floodplains are for floods and compatible uses such as recreation, turf farms, dairy and market gardens.

If the southern Blue Mountains wilderness is to survive the 21st Century, it will need to maintain its status as a world-class showpiece for nature conservation. World Heritage protection has resulted in greater emphasis on effective reserve management. The Blue Mountains World Heritage Institute and the World Heritage Advisory Committee have advanced research and proposed greater recognition and protection for the area's diverse heritage values.

Raising Warragamba Dam's wall will flood and degrade the Lower Kowmung Gorge and a considerable section of the Coxs River. Most of the threatened Camden White Gums in the Kedumba Valley will be drowned, the breeding habitat of the critically endangered Regent Honeyeater in the Burragorang Valley will be inundated and Koala habitat in the Little and Nattai river valleys will be impacted, along with the habitat of many other threatened species.

The dam proposal will inundate up to 4,700 hectares of national parks and reserves and 65 kilometres of wilderness streams upstream of the raised dam wall. It will submerge and destroy Aboriginal cave art and eucalypt scar trees. The waterholes along the Coxs and Wollondilly rivers that are key elements of Gundangara dreaming stories will be ruined.

The Kanangra-Boyd Wilderness was nominated for protection in 1988 but its protection was long deferred due to the earlier proposal to raise the Warragamba Dam Wall, that triggered the first campaign to stop it. In 1995 the NSW Government agreed to protect this wilderness, and it was eventually declared in 1997, after alternative flood management arrangements were put in place.

Following World Heritage listing of the region in 2000, the *National Parks and Wildlife Act* was amended in late 2001 to allow the transfer of ownership of certain Special Area catchment lands to national parks. National park boundaries were then extended to the full supply level of Warragamba Dam on June 28, 2002 to rule out future development of Warragamba Dam, and the Opposition parties supported the changes.

The NSW Government's Bill to allow the flooding of national parks, reverses the bipartisan decisions taken to specifically protect World Heritage areas from this threat.

By allowing development of flood prone areas downstream of Warragamba Dam the NSW Government will also endanger human life. The dam proposal is only a half measure. The recent flooding associated with the upper Nepean which inundated Picton, as well as any floods coming down the Grose, Colo and Macdonald rivers or South Creek are not mitigated by the proposed dam wall raising.

Infrastructure NSW consultants Molino Stewart reported that flooding is constraining residential development, and, for example, is preventing up to 4,900 residential lots at Penrith Lakes<sup>2</sup>. It is good town planning that constrains development in hazardous areas. Floodplains are for floods so that at times of flood emergency, traffic is limited to the capacity of designated evacuation routes. Put simply, residential areas must not be built in flood zones. An enlarged dam will not have any effect on the more extreme floods that have been historically visited on the Hawkesbury-Nepean from time to time. What the dam proposal provides is a false sense of security that puts people at risk.

Raising Warragamba Dam wall will trigger an unprecedented development boom on the floodplain and put many more people in harm's way. The NSW Government's 2017 flood risk strategy, plans to allow an additional 130,000 people to reside on the Nepean floodplain in the next 30 years<sup>3</sup>. The dam proposal will not stop larger floods and the NSW Government has adopted no plan for enhancing the capacities of evacuation routes. Are Government members prepared to support this Bill, when engineering solutions fail, as happened in Queensland in 2011 after their state government allowed floodplain development in the belief that it was safe once Wivenhoe dam was built.

Sydney's renowned wilderness-quality national parks are again at risk from short-sightedness. Renewed pressure to urbanise the Hawkesbury-Nepean floodplain has generated this second proposal to raise Warragamba Dam's wall. This Bill will allow lawful inundation of wilderness national parks upstream. The uncritical support for population growth on a dangerous floodplain on the assumption that life gets better with more urban development is a mistake – the new urban growth centres and World Heritage areas will both be endangered.

We need instead to take a more humble, less expensive, nature-focused approach to flood management, compatible with the southern Blue Mountains wilderness being a world-class centre for nature conservation management. We must reaffirm the primary purpose of World Heritage listing and ensure effective conservation management of the area's integrity, whilst granting greater recognition to and fostering greater appreciation of the area's significant and renowned natural and cultural heritage values.

Thank you for the opportunity to make a submission.

Yours sincerely,

Keith Muir  
Director  
The Colong Foundation for Wilderness Ltd

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<sup>2</sup> Molino Stewart, 2012, Hawkesbury-Nepean Flood Damages Assessment Addendum Report: Answers to Recent Questions, page 1

<sup>3</sup> Hawkesbury-Nepean Valley Flood Risk Management Strategy, January 2017, pages 3, 9 and 19