

**Submission
No 214**

**INQUIRY INTO PROPOSAL TO RAISE THE
WARRAGAMBA DAM WALL**

Organisation: Blue Mountains City Council

Date Received: 10 September 2019



Date 9 September 2019

Office of the Mayor

F00678 (16/125193)

The Director,
Select Committee on the Proposal to Raise the Warragamba Dam Wall
Parliament House, Macquarie Street,
Sydney NSW 2000

Dear Sir/Madam

**SUBJECT Submission to the Select Committee on the Proposal to
Raise the Warragamba Dam Wall**

Blue Mountains City Council's (BMCC) comments in this submission are informed by the City of the Blue Mountains' unique position as a 'City within a World Heritage Area', through its role as a key gateway for tourists visiting the Greater Blue Mountains World Heritage Area (GBMWhA) and as a party to the Gundungurra Indigenous Land Use Agreement.

BMCC's strong sense of responsibility for the protection of the GBMWhA is reflected in its significant and ongoing investments in its environmental management programs and the stringent planning controls in Blue Mountains Local Environmental Plan 2015, including some of the most stringent stormwater provisions in the State and the only schedule of significant vegetation communities in a Local Environment Plan.

Strong stormwater controls are fundamental in controlling and influencing both the quantity and quality of stormwater runoff into the GBMWhA, which includes large areas of Sydney's drinking water catchment.

In addition, BMCC has strong collaborative working relationships with the Darug and Gundungurra Traditional Owners in caring for *Ngurra* (Country), including a formal Native Title agreement, the Gundungurra Indigenous Land Use Agreement.

At this time, BMCC's principle concern is the adequacy of the Environmental Impact Assessment process to date, including the assessment of impacts on World Heritage, Aboriginal Cultural Heritage, and the ecological values of the Greater Blue Mountains National Park

Aboriginal Cultural Values and Native Title

The Gundungurra Traditional Owners have advised BMCC that the area subject of the inundation, including the Coxs and Wollondilly Rivers and Burratorang Valley, are a highly significant part of their Country, being the living embodiment of the significant creation stories about the formation of the landscape by ancestral beings.

This creation story, known as '*The Journey of Gurangatch and Mirrigan*' shapes how Gundungurra people understand this part of Country, and has been retold over countless generations.

In addition to these values, BMCC understands that innumerable, well preserved Gundungurra cultural sites have been identified within the proposed flood zone, and that these are considered by the Gundungurra people to be the tangible manifestations of their intangible ancestral creation story.

Blue Mountains City Council believes that the raising of the dam wall and the resultant predicted flood zones, poses a serious and irreparable threat to the significant tangible and intangible Aboriginal Cultural values of Gundungurra Country.

This has been more fully expressed in the recent Aboriginal Place nomination lodged with the NSW Government by the Gundungurra people, which received the full support of BMCC.

BMCC's initial consultation with Gundungurra Traditional Owners on the Draft Aboriginal Cultural Heritage Report is not encouraging.

In particular, Traditional Owners have communicated their dissatisfaction publicly at the inadequate resources directed to the assessment of the Aboriginal Cultural values of the inundated area.

The draft Aboriginal Cultural Heritage Assessment Report has been described by Traditional Owners as "*inadequate*" and "*hard to follow*", only surveying a small proportion (26%) of the total area impacted.

In addition, Traditional Owners have advised that they are concerned about only being given 40 days to respond to a large and complex 2000 page report.

BMCC strongly urges the NSW Government to undertake a more complete cultural assessment of the impacted area, involving Traditional Owners, and provides a longer period for Traditional Owners to comment on the findings of the further study.

Native Title

Both BMCC and the NSW Government are party to the Gundungurra Indigenous Land Use Agreement (ILUA), established under the *Native Title Act 1993* (NT Act). The area proposed to be inundated is subject to this agreement.

BMCC strongly recommends that any action by the NSW Government in this matter complies with the ILUA.

It is suggested that the inundation as proposed would have significant potential to be a *Future Act* under the NT Act, and to potentially extinguish Native Title. As such, BMCC strongly suggests that it should be dealt with as a *Class 1 Post Registration Act* under the ILUA. This would take the action outside of the *Alternative Regime* established under the ILUA, and require it to be dealt with under the *Negotiation* provisions of the NT Act.

Council notes that the NSW Government is yet to commence negotiation under the NT Act in that regard, and cautions that proceeding with the action in the absence of adequate negotiation under the NT Act could expose it, and consequently the tax payers of NSW, to significant compensation.

BMCC draws the NSW Government's attention to the recent Australian High Court finding regarding Timber Creek in the Northern Territory. Of particular interest in the matter is the significant compensation payable for the loss of intangible, spiritual values resulting in part from inundation of sacred areas.

<https://aiatsis.gov.au/explore/articles/timber-creek-compensation-case>

World Heritage and the Ecological Values of the Greater Blue Mountains National Park

BMCC is currently unable to provide any detailed comment on the impact of the proposal on the ecological values of the Greater Blue Mountains National park as this component of the EIA process is yet to be completed and released.

However, BMCC makes the following, general comment.

BMCC has significant concerns regarding the integrity of the Environmental Impact Assessment (EIA) process being conducted by the NSW Government. The intent of the EIA process is to assess the environmental impacts of a project to determine whether it should proceed, proceed with modifications or conditions or not proceed at all, based on the outcomes of the assessment.

However, NSW Government's actions to date have pre-empted the outcomes of the EIA process. This is exemplified in the passing of the *Water NSW Amendment (Warragamba Dam) Bill 2018*, which has the effect of amending the *National Parks and Wildlife Act 1974* to allow the temporary flooding of the World Heritage listed Blue Mountains National Park

BMCC suggests that the passing of such a significant and highly specific piece of legislation should have been informed by the EIA process, and not enacted prior to the completion, or indeed the commencement of, the assessment process.

This view is reflected in the position of UNESCO's World Heritage Committee, which has requested that the NSW Government submit their Environmental Impact Statement for review by the committee before any final decision about the project going ahead is made.

UNESCO's World Heritage Committee has clearly stated that raising the dam wall and the subsequent flooding of 1,300 hectares of World Heritage Area will "*likely have an impact on the outstanding universal value*" of the Blue Mountains.

BMCC is deeply concerned about the potential impact on its vibrant nature and culture based tourism economy, based in no small part on its World Heritage branding.

BMCC notes with concern that in a recent United Nations report, the World Heritage Centre, which advises the UN committee in charge of world heritage properties, has stated that "*the inundation of areas within the property resulting from the raising of the dam wall are likely to have an impact on the Outstanding Universal Value (OUV) of the property*".

The Committee also noted that it considered any construction of dams with large reservoirs within the boundaries of World Heritage properties "*incompatible with their World Heritage status*". It also urged all governments 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 [their] outstanding universal values*".

As '*The City within a World Heritage National Park*', the Blue Mountains region attracts a large number of domestic and international visitors each year, seeking to experience the Outstanding Universal Value for which the Blue Mountains were inscribed in the World Heritage List.

BMCC strongly suggests that the NSW Government gives due consideration to the economic impacts associated with any compromising of the Blue Mountains World Heritage brand.

In closing, BMCC strongly urges the NSW Government to reconsider this proposed action, and to cease pursuing its plans to inundate this highly valuable and significant area.

Yours faithfully

MARK GREENHILL OAM
Mayor