

REPORT ON PROCEEDINGS BEFORE

SELECT COMMITTEE ON THE PROPOSAL TO RAISE THE
WARRAGAMBA DAM WALL

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PROPOSAL TO RAISE THE WARRAGAMBA DAM WALL

At Jubilee Room, Parliament House, Sydney on Friday, 6 November 2020

The Committee met at 9:35 am

PRESENT

Mr Justin Field (Chair)

The Hon. Wes Fang

The Hon. Shayne Mallard

The Hon. Taylor Martin

The Hon. Rod Roberts (Deputy Chair)

The Hon. Adam Searle

The Hon. Penny Sharpe

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The CHAIR: Welcome to the fourth hearing of the select committee inquiry into the proposal to raise the Warragamba Dam wall. Before I commence, I acknowledge the Gadigal people who are the traditional custodians of the land on which this meeting is being held at New South Wales Parliament and I pay respect to the Elders past, present and emerging of the Eora nation, and extend that respect to other Aboriginal people who are present today. Today we will hear from the Gundungurra traditional owners, representatives from the Illawarra Local Aboriginal Land Council, Australia ICOMOS and an archaeologist. We will conclude with representatives from the Rivers without Boundaries International Coalition, an ecological consultant and an academic from the University of Tasmania.

Before we commence I will also make some brief comments about the procedures for today's hearing. Today's hearing is open to the public and is being broadcast live on the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcast guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I do not think that is an issue here today. I also remind media representatives that they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at today's hearing. I urge witnesses to be careful about any comments you may make to the media or to others after you complete your evidence today, as such comments would not be protected by parliamentary privilege if another person decided to take action for defamation.

The *Guidelines for the Broadcast of Proceedings* are available from the secretariat. All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. There may be some questions that a witness could answer only if they had more time or with certain documents at hand. In those circumstances witnesses are advised that they can take a question on notice and provide an answer within 21 days. Would everyone please turn off their mobile phones or set them to silent for the duration of the hearing. There is a bit of background noise, so for witnesses who are joining us online it may be helpful to mute yourselves when you are not speaking. We will give you time to unmute and answer any questions.

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SHARYN HALLS, Gundungurra Elder, Gundungurra Aboriginal Heritage Association, affirmed and examined

PAUL KNIGHT, Chief Executive Officer, Illawarra Local Aboriginal Land Council, affirmed and examined

KAZAN BROWN, Gundungurra traditional owner, before the Committee via videoconference, affirmed and examined

TAYLOR CLARKE, Gundungurra traditional owner, before the Committee via videoconference, affirmed and examined

DANIEL CHALKER, Indigenous representative, before the Committee via videoconference, affirmed and examined

MICHAEL JACKSON, Archaeologist and Cultural Heritage Adviser, Jackson Ward Archaeology, before the Committee via videoconference, affirmed and examined

HELEN LARDNER, President, Australia ICOMOS, before the Committee via videoconference, affirmed and examined

The CHAIR: We will begin the process while we try to get Mr Jackson online. I invite witnesses to make a short opening statement. I do not want to constrain what you say, but there are quite a few witnesses here and we have an hour and a half for this session. Please keep that in mind if you wish to make an opening statement.

Aunty HALLS: I think the statement that I have been thinking about is still the same as our stand from day one. It goes against the Indigenous land use agreement [ILUA], the raising of the dam, so for cultural reasons we feel that we have such a connection to that part of the world that if a dam wall goes up, the reality is that our songlines and everything that falls within them will be destroyed. The ILUA actually states that the Government agencies that sign that have a responsibility to protect all these places that are sacred to Aboriginal people. I think it goes against the ILUA and that is the main reason we keep fighting. We have been vocal about this ever since we found out that this was going to happen, but even more so it also goes against world heritage values as well.

We have an Aboriginal connection to country with our songlines and everything that will be destroyed. It only takes one episode to do it. Anyone who has been following all of the fires, the drought and then the water that came after it with the flooding, will understand that things get destroyed. It does not matter if you have predictive models or anything, things will get destroyed and that is exactly what is going to happen to our cultural pathways, really, and anything that falls within them. For some reason, people do not understand that Aboriginal people have a cultural landscape. Anything that is in that landscape is important. Every tree, mineral and rock has an important connection to each other and to Aboriginal people, and every animal. At the moment, everyone is paying a lot of attention to everything that got destroyed during the fires, the drought and the floods, but they do not understand that every animal has a story.

In our culture we have a story for animals just the same, but each animal then goes back to people. It is all about the people, their wellbeing and how this is being approached. I suppose the most important thing is that it is not in the spirit of the ILUA and the way it was signed in the first place. Everything to do with the dam and what it is going to do to our country is against everything that it stands for—whether it is a strong ILUA, whether it is a weak ILUA, it does not really matter. It is about the spirit of a document that was signed before the dam issue came up. We thought it would be protected because it is in a schedule 1 area in water. They are not protecting it. It is in a World Heritage area. They are doing their best also to protect it, but our values should be coming first. Aboriginal values—our sites, our stories—need to be elevated. For some reason, they keep on getting pushed down the list.

I am hoping that we can convince everyone of the importance of this area. The scare tactics around that we are going to drown everyone in Penrith if the wall does not go up is an interesting way of seeing things because scare tactics scare people and they believe it. They think, "I will think about that; I am going to drown." Well, no-one is going to drown. We have a dam wall that had water in it during the worst drought that people can remember. During that drought we still managed to keep everyone in water. If we use that same tactic around the dam walls, we can keep the dam wall where it is and be more wise about the water that is behind it and release it better. It is all about proper land and water management. There is no need to spend and waste money on a dam wall. People will still get flooded because we have inadequate drainage everywhere and we also have flood plains that are not flood plains anymore. Hopefully, I am here to answer questions, if needed. That is basically it.

The CHAIR: Thank you. Mr Knight?

Mr KNIGHT: Just picking up from what Aunty Sharyn has had to say there, I think there are a few principles that that we need to be looking at here today, including the issues around how our Aboriginal cultural

CORRECTED

heritage is assessed. What tends to happen in this space is that Aboriginal people and their views are the afterthought. Decisions and processes start with a predetermined view of the world, and that has been constructed by a Western worldview. When it comes to Aboriginal decision-making, it is collaborative, it is cohesive. The intrinsic and extrinsic nature of understanding how connection to country occurs and the agency of all items in it needs to be considered. When we make decisions it is, as I would hope is trying to happen here today, with the full understanding of all the different aspects that will impact that decision. Those agencies are recognised within our communities and that is where connection to country comes from. It is understanding all those different aspects and how they interrelate to determine the best outcome for the community and for those different objects in our ecosystem.

What we continually see are decisions made purely in the best interest of individuals, organisations or what is seen as the majority of the community. We have tens of thousands of years of lived experience on this land that says that understanding how the agency of every object comes together in the decision-making process enables us to survive on this place. Without that we see the environment that we are moving into today, where destruction and desecration continually occurs. We can argue that that is elevated with global warming. Again, if you understand the agency of everything in the decision-making process of Indigenous people, you remove that factor from what happens because you are thinking in advance; you are thinking as a custodian: What is the legacy you are leaving for the next generation? We are continually making decisions on the here and now. We need to be moving away from that and leaning back on the tens of thousands of years of understanding of this place and appreciating the value in that.

More recently this was recognised in the Land and Environment Court with the Darkinjung decision with Rocla quarries—the Calga decision. It is worth looking at what that means because in that decision they held that you need to take into consideration that holistic approach to cultural heritage. Again, we seem to sidestep that continually when it comes to making decisions around how we progress activities that are perceived to benefit us as a community where, in many cases, the legacy that they leave could be detrimental. We need to be thinking about that and reflecting on those legal precedents because that is what this place has been built from. It is not where we come from as Aboriginal people but that is your legislation that has been determining that space. I ask you to review and understand that. I also ask you to think about the World Heritage listing that exists in this place. Under that, the principles are to protect, not to further destroy. With a raising of the dam wall you are looking to destroy more of that ecosystem and environment. That is completely contrary to the World Heritage listing and also needs to be reviewed.

For me personally, I find this whole thing quite challenging as a land council. Some people have asked why the Illawarra land council is been involved in an activity that is not in our land council area. There is a simple answer to that, which is the protection of Aboriginal heritage. Organisations like native title groups and the land council are not resourced to make arguments in these spaces. As a land council our operational funds every year—and a lot of people think we are government funded to some degree—are \$160,000. Not one cent of that comes from Treasury. As native title holders they receive no government funding yet here we are today arguing a case against legal practice and against supposed ecological, environmental and cultural experts that places like this listen to.

We are not given that same opportunity or resources to be able to formulate those arguments against those documents. That is one of the reasons why I am in this space and place today. We need to be putting this forward and we need the resources. That is one of the principles of heritage legislation that is there for Aboriginal people in New South Wales and in the Federal legislation. Even international legislation such as the United Nations Declaration on the Rights of Indigenous Peoples says that Aboriginal people should have free, unfettered opportunity and the resources to be able to make their own case. That is not given. So with those thoughts, I will stop and we will explore that as we go.

Mr CHALKER: I was heavily involved in the cultural heritage survey work that was undertaken. The expectations of that survey were in line with what is currently being done across the development world in culture and heritage. But is that done correctly? The answer from a cultural perspective is no. We are expected to walk onto country—we were doing up to 10 kilometres a day along the foreshore edge—and pick up everything that is actually there. So what is actually recorded there at the moment is underestimated of what potentially is there.

More importantly, we will talk about Indigenous Land Use Agreements [ILUAs] and we will talk about everything else but what is the Government's responsibility under their Acts and legislation? If I read them correctly, the Government has taken the responsibility of the sites, has taken the responsibility of the people and in that the responsibility that is written is to protect, preserve and enhance culture. Is that really being done? One big thing in our culture is identity. A white man walks into a room, has not met someone before and shakes hands. One of the first questions that is said is, "What do you do?"

CORRECTED

We walk into a room, we acknowledge each other and one of the first questions is, "Where are you from?" It is your identity. Our sites, our land, our country, it holds our identity. Every site across this country, from Western Australia with the recent Rio Tinto stuff in the Juukan Gorge, destroyed a part of that picture. The trees in Victoria that we have fought to keep. Every one of these sites is important to all of our identity throughout the country. This is our Dreamtime. I would like to tell everybody that we have got stories from this country. Everybody there is linked to these sites that we are trying to fight to keep. But our story from this country where people left this country—our Dreamtime—everybody comes back to our Dreamtime stories.

We should not have to fight to keep these. We should be consulted properly. When you really look at it this is all about history. It is kept in these rocks. It is mine and it is yours and I ask everyone there to have a look on ancestry.com to work out where we are from. But as the oldest living culture in the world, who are actually the real ancestors? Have some respect. Thank you.

The CHAIR: Thank you, Mr Chalker. Do you have a short statement, Ms Lardner?

Ms LARDNER: Yes I do and thank you for the opportunity to present on behalf of Australia International Council on Monuments and Sites [ICOMOS]. ICOMOS is the International Council on Monuments and Sites and Australia ICOMOS is a peak body in the heritage sector with a particular interest in Australia's world and national heritage places. Of relevance to this inquiry, ICOMOS is an official advisory body to the World Heritage Committee under the World Heritage Convention. We have serious concerns about the current proposal to raise the wall of the dam. Our concerns are particularly in relation to the appropriate processes for making major decisions. I am mindful that this is a place on the World Heritage List, Australia's National Heritage List and within a national park.

It is a priceless place for future generations and it has the highest level of heritage significance possible in the world. I would like to make two points today and I will try to make them as briefly as I can. The first one is about the adequacy of the environmental impact assessment approach. The principle of well-informed decision-making underpins the Burra Charter which is the Australia ICOMOS charter for places of cultural significance. This charter, which was adopted in 1979 in Australia, is globally recognised as best practice. What is essential is that there is a thorough understanding of the natural and cultural heritage values and resources that may be affected by a proposal prior to decision-making.

It would seem from the publicly available documentation related to the environmental impact statement [EIS] that there has not been a comprehensive survey and assessment of potentially affected areas. We submit that this is a fundamental flaw. If the project were to be considered for possible approval then this essential survey and assessment work must be fully completed beforehand, including necessary background research and consultation prior to decision-making about the proposal. The involvement of associated people is also an important principle as expressed in the Burra Charter.

We have heard from traditional owners that consistent with the globally recognised principle of free prior informed consent, associated people and particularly traditional owners should be involved in the assessment process in a manner that allows them to be adequately informed, to express their views and to have those views meaningfully influence the outcome. There has been such a strenuous and consistent voice from concerned Indigenous stakeholders who are unhappy about this project and this indicates that the engagement process is not yet adequate. Proper heritage conservation and management practice also requires that adverse heritage impacts should be avoided to the fullest practical extent.

Therefore every effort must be made to pursue alternative solutions to the reported downstream flood risk rather than the simplistic solution of raising the dam wall. The possibilities that have been raised include dredging works and filling the dam to a lower level, or downstream flood mitigation activities which might address dangers from tributaries that flow into the Hawkesbury-Nepean system downstream of Warragamba Dam. The last point I would like to make is in relation to engagement with the World Heritage Committee. Australia ICOMOS is concerned that this project is fundamentally at odds with specific decisions of the World Heritage Committee.

In 2016 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. It urged State 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." Last year in relation to this Warragamba Dam proposal, the World Heritage Committee advised 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 of the Greater Blue Mountains World Heritage area".

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The World Heritage Committee urged that the current process to prepare an environmental impact statement of the proposal fully assesses all potential impacts on the outstanding universal value of the property and its other values, including Aboriginal cultural heritage, and has requested that a copy of the EIS be submitted to the United Nations Educational, Scientific and Cultural Organisation [UNESCO] World Heritage Centre for review prior to taking any final decisions regarding the project. In conclusion I would say that currently the dam project is at odds with Australia's obligations under the World Heritage Convention, inconsistent with the natural and cultural heritage values of this important place, not yet subject to sufficiently thorough impact assessment and has insufficient consultation with traditional owners. Thank you, Chair and inquiry members.

Ms BROWN: Thank you for giving my family a voice at this inquiry today. Until today we have not been given a voice. The process that the New South Wales Government and its consultants are running simply has not allowed real consultation to happen. It was clear to us from the beginning that the Government's consultants, Niche Environment and Heritage overseen by SMEC Holdings, were sent to do just one thing: justify the raising of the Warragamba Dam wall. Neither the Government nor Niche have ever asked if we support the project. Their consultation process has simply been them telling us what they are going to do. They do not talk with us; they talk at us. There have been many problems with the assessment process and report conducted by Niche and Water. Throughout their consultation process we have felt disregarded, lied to, disrespected and misrepresented. There has been a consistent attempt to downplay the impact that the project would have on our culture. Government representatives—most notably Emma Hadley—and Niche have repeatedly lied to us about the real height of the dam and our ability to participate in fieldwork.

The Hon. SHAYNE MALLARD: Chair, I ask you to draw the witness's mind back to not making adverse mention of individuals.

The CHAIR: Are you raising a point of order, Mr Mallard, or are you just asking?

The Hon. SHAYNE MALLARD: I am indeed, but I am doing it gently. I just think you need to remind witnesses about adverse mention of individuals. It is not a forum to attack individuals.

Ms BROWN: I am not attacking individuals. These are facts.

The CHAIR: For the benefit of all witnesses, I indicate that in the giving of evidence you need to be careful not to make adverse mention against individuals but I point out that not all critical evidence is considered to be adverse mention.

The Hon. SHAYNE MALLARD: Further to the point of order: The witness named two government employees and said that they lied. I think that is adverse mention.

Ms BROWN: They did.

The CHAIR: Let me be clear. I will read a statement about adverse mention to give everyone a bit of guidance about how it is considered. Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. I therefore request that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily. I also remind the witnesses and members of the media that parliamentary privilege does not apply to what witnesses say outside of the Committee hearing, so please be cautious about any comments that you make to the media or others after you complete your evidence. That is not to constrain the witnesses. The evidence that witnesses give to the inquiry is up to them. Witnesses just need to be aware that anything they say outside of here is not protected by parliamentary privilege. I am not wishing to constrain the witnesses but you might like to consider how you give evidence with regard to specific individuals or organisations. Thank you, Ms Brown.

Ms BROWN: Throughout the process, New South Wales Government representatives and their consultants have been demeaning and condescending. In many cases, they have simply ignored our questions and concerns. Their meetings with us have been nothing but tokenistic. It was clear from the beginning that they were going through their own motions of meaningless consultation. The disrespectful attitude towards our culture was demonstrated when the author of a report spent one day out of 72 in the field examining the areas to be impacted by the dam wall raising.

There is no better example of the disrespect towards our culture from the Government and its consultants than what occurred at a meeting held on 22 July 2019. A representative from Niche and a representative from WaterNSW said to us that if the project was to proceed then they would give our people access to areas of the catchment that we are currently locked out of. They even went on to say that this means that we would be given employment if we would agree to the project proceeding. I was angry. We should not have to choose between having access to our sites and destroying them. Nor do we want their jobs. We already have jobs. We just want them to go away and leave our country alone. My family has lost all trust and confidence in the process being run

CORRECTED

by Niche, SMEC and the New South Wales government agencies. When we say no, we really mean no: no to cultural destruction and no to raising the dam wall.

Ms CLARKE: I do not want to add anything to what Mum has said. I agree with everything she said and the way that she represents this issue to our people. I understand that it is a difficult issue raised by the Hon. Shayne Mallard about mentioning particular people. However, I do think that it is important. If it is at all possible to make this known to those on the Committee, there are particular people who have lied to us throughout this process. I think that as representatives of government they need to be held accountable because it has given us no faith in the process, but I would like to have faith in the process going forward. That is the only thing that I would like to add. I understand that we cannot mention those people specifically. If there is an opportunity to do so in the future, I would really like to do that.

The CHAIR: Thank you, Ms Brown and Ms Clarke. I think we might consider that as a Committee. If there is specific evidence that you would like to give about certain individuals there are ways for the Committee to hear that without the risks of adverse mention that I indicated before. We might need to convene to discuss that and it may not happen this morning. Let us continue with the opening statements and get into questions and then we might come back to that. Thank you very much.

Mr JACKSON: My name is Michael Jackson. I am director of Jackson Ward Archaeology. I was involved in the survey for the project. I was called in to participate by members of the Gundungurra Aboriginal community. Working in that area, I have a long association with them. They knew that I understood parts of the cultural landscape in that area and what the survey might entail.

The CHAIR: Do you have an opening statement, Mr Jackson?

Mr JACKSON: No, that is it. I fully support everything that Aunty Sharyn, Mr Knight, Mr Chalker, Ms Brown and Ms Lardner have said in their opening remarks.

The CHAIR: Then we will open up for questions. Ms Brown, correct me if I am wrong but I thought I heard you say that at a meeting involving the consultants Niche and WaterNSW the suggestion was made that you would be given access to areas that you did not currently have access to in exchange for—was it supporting the project or supporting the environmental impact statement [EIS]? Could you just clarify what you meant by that?

Ms BROWN: They told us that if the project went ahead then they would give us more access to land that Aboriginal people are currently locked out of.

Ms CLARKE: Basically if we stopped fighting them, right?

Ms BROWN: Yes. It was very strongly implied that if we supported it then we would get access.

The CHAIR: What sort of meeting was this? Was this a meeting of the registered Aboriginal parties [RAPs]?

Ms BROWN: Yes, this was a meeting of the RAPs after the draft EIS came out and when we were getting ready to do our submissions.

The CHAIR: So there were multiple people at the meeting representing the RAPs but also representing the project?

Ms BROWN: Yes, that is right. There was me and I think there were four members of my family. I believe Mr Chalker was there. There was a representative from—I think it was Darug Tribal Aboriginal Corporation [DTAC]. I cannot remember offhand who the other person was but I do have the list.

The CHAIR: Okay. I remember when we visited some of the sites on our tour with you having a chat with you in the car. I was pretty shocked by—you were excited to be out there because it was difficult for you to get access to sites. You had to get permission and often get escorted out there. That seemed strange to me at the time. How did you feel having access dangled in front of you in order to win your support for the project?

Ms BROWN: I felt really angry. I should not have to make a choice. We should have access to these areas already. I should not have to apply to WaterNSW and National Parks and have an escort and have them set the time and the day and how long we spend and all that sort of stuff. We should be able to do this when we want, within reason, of course. We do not want to go down there if it is wet and flooded. We should be able to do this. We should not have to choose between destroying things and having access to them.

The CHAIR: Would it be fair to say that you felt you were being bribed?

Ms BROWN: Yes. Yes, I did. I thought it was like having a lolly or something dangled in front of me.

CORRECTED

The CHAIR: Mr Chalker, do you recall that meeting?

Mr CHALKER: I do not recall particulars of that meeting, but generally through the whole process the companies that—the cultural heritage process is a corrupt process. It is a developer. The Government is in control of it. I go to work every day and I have a boss. If I do not do what that boss tells me to do, I end up not getting continuous work or financially I am disadvantaged. Through the whole process of cultural heritage at present the boss is the developer. The archaeologists, SMEC, are employed by the Government. What is the Government's objective? This is where it needs to be fair. When we are getting down into these meetings, the objective is already set. We are getting information through that meeting which makes us feel part of it.

The CHAIR: Thank you, Mr Chalker. Ms Brown, you suggested before that you had a list of people that were at that meeting. I am not going to ask you for it now but I indicate that we might have a discussion as a Committee about getting the names of those individuals and working out the most appropriate way to have that list, if possible. At this point I will hand over questioning to other members and I will come back shortly.

The Hon. ADAM SEARLE: My first question is to Ms Brown. Who said that to you?

Ms BROWN: Am I allowed to say who said it?

The Hon. ADAM SEARLE: Well, I have asked the question.

Ms BROWN: Okay. Renee Regal from Niche and Kate Kernaghan from WaterNSW.

The Hon. ADAM SEARLE: In relation to the evidence we have heard from all of you about the Aboriginal cultural assessment, there seems to be a theme that emerges. The theme is that there is inadequate site coverage inspection; I think it is 26 per cent or 27 per cent. One of my questions is: What would be an adequate or representative sample?

Ms BROWN: For me, personally, if you are going to destroy something you need to know exactly what you are going to destroy. It is no use destroying part of it.

The Hon. ADAM SEARLE: My second question is that—and I think this is common criticism across all of the witnesses here—the methodology focuses primarily on physical archaeological remains rather than the social and cultural importance of place, landscape, the contours of the land and riverbeds. But even the focus on archaeological interrogation appears to be inadequate. The last point is the inadequate or insufficient involvement of traditional owners in undertaking those assessments. Is that a correct understanding of the evidence you have all given here commonly today?

Aunty HALLS: It is for me, yes. For sure.

Ms BROWN: Yes. Yes, it is.

Ms LARDNER: If I may just add a point there, I think what we are seeing is a focus on physical values and not all the heritage values. It is those intangible values—those beliefs, meanings and associations—that have not been fully assessed and that do come out with engagement with the traditional owners. I think that is a really important point.

Mr KNIGHT: One of the biggest issues in this space is that the actual assessment is done from a position of getting the proponent over the line in the planning process, not from the protection of Aboriginal heritage. That speaks to what Mr Chalker was saying about basically who pays the piper? We are in this position where we do not have the resources to validate or verify whatever is being recorded in those reports. Those reports really are driven from that position of, "How do we get this project over the line and through the current planning process?" If you start with that premise, you are going to argue the case for that, rather than as an Aboriginal community we want to argue the case that our heritage needs protection. All the legislation that sits around this and talks to Aboriginal cultural heritage says it should be protected, it should be elevated and it should be celebrated.

In a planning process, that does not occur. I would go as far as to say that I think heritage generally gets treated that way, but Aboriginal heritage in particular gets ignored. When you have got a heritage that is tens of thousands of years of age and it is getting ignored, what is the message you are sending not only back into the Aboriginal community. Because this is part of our identity and you are destroying it. You are saying in that process that our heritage, our identity, has no value because you are prepared to destroy that. This is part of who we are and this is part of what makes us behave and do things in certain ways. You are saying, "Hang on, we need to get this project over the line," so that gets ignored.

The Hon. WES FANG: Is that not a perception issue, though? To say that the report is written in order to get it over the line as opposed to the report is a researched piece of evidence to support or discount the project, is that not a perception issue? I guess you go into it with the idea that it is going to be written that way?

CORRECTED

Mr KNIGHT: I think what you are suggesting there could be taken on board. But what I would like to point out is the actual factual position around that. This was—and I referred to it earlier—the Darkinjung Rocla decision around Calga. The court in that case—I am going to read some perspectives on it from here. "The accepted methodology mandated by the relevant guidelines of the Burra Charter"—we heard the Burra Charter mentioned today already—"requires an assessment of the archaeological, historical, social and ethnological values in the area." I am just taking sections out of this. "Requirements for a full knowledge about a site is unrealistic, impractical, particularly where the gaps in knowledge arise from a variety of reasons."

Here is part of the problem: You have taken the land from the Aboriginal community. Then you want us to go back and tell you the stories about that land. In some cases we have those stories, but then you are going, "Okay, but there has been a gap there. Is that still current?" Is that perception, really? It is just as valid. If I take something of family value from you—you might have an item that was your great-grandfather's in your house. I grab that item, I look at that item—let us call it a fob watch—and I am going, "It is probably sterling silver, it has a nice face, the hands are of a particular type and it has an inscription on the back." Now, you have never met your great-grandfather.

Does that make any stories from your family any less valid? No. You might not know what that watch meant to your great-grandfather, but the importance of that to you and to your identity is quite high. In these processes, what they try to do is analyse this from a purely scientific perspective. What are we seeing? What are we recording? Then they try to interpret those values that are given by the Aboriginal community. But you cannot. There is no way you can put down into a document what that really means and the feelings that go along with that.

The Hon. ADAM SEARLE: Mr Knight, the observation that you made about how your perception was that it was not about doing the thorough analysis, it was about getting the project over the line, is that an assessment you formed based on this experience and other experiences that you have had of like processes?

Mr KNIGHT: I have based that experience on my ongoing experience of projects and of signing off on consents to destroy Aboriginal cultural heritage basically every week. That is a direct attack on my identity, but I am expected to do that in the face of, or with the other side of it being, economic development. There is no recognition of economic value in Aboriginal cultural heritage.

Mr CHALKER: Just on that, I would like the representatives to have a look at the actual facts on that. Go to cultural heritage and see how many sites throughout the New South Wales area are actually being signed off by the Government to be destroyed on a weekly basis. It is unacceptable the way that it is. We should not be destroying stuff. We should be looking at it and trying our best to protect and preserve.

The Hon. ADAM SEARLE: I have three questions for Mr Jackson.

Mr JACKSON: I will make a statement on that as well.

The CHAIR: You may speak to that and then we will come back to questioning.

Mr JACKSON: I would urge all Committee members to put into their various search engines the words "archaeology as disaster capitalism". This has been written about right across the Western world, where archaeology appears to be just another arm of colonialism and where, basically, primarily non-Indigenous heritage consultants engage in the process of working with developers to clear the landscape of Indigenous heritage. There is a lot of good literature on that, which you can read. I think that in this project there is no greater example of it actually happening, in my view and from where I stood in the project, there is no greater example than the scientific significance assessment that was done on the 337 sites that were found. That significance assessment was done by one person who 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.

If you look at the report you will actually see that it is a copy-and-paste process where, basically, probably there is a deadline to get the report out and it was just "copy and paste, copy and paste, copy and paste, low scientific significance" over and over again. 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. For me, standing back, I was very distressed about this. I was very, very distressed because I could not believe that I was working in a protected area, which was not protected to begin with, and also that these beautiful places with incredibly rich cultural heritage were being assessed with no care, with no adherence to the Burra Charter or to any of the principles of scientific analysis. I would encourage you to look up "archaeology as disaster capitalism" because this is certainly one of those projects that might go down in history.

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The Hon. ADAM SEARLE: Just following on from that, Mr Jackson, based on your involvement in this project could you describe to the Committee your experience of and the attitude of Niche, SMEC and WaterNSW in the various ways in which they have approached this project?

Mr JACKSON: I suppose my experience has not been positive. It probably goes back to the original amendment bill that was put forward to change or amend the National Parks and Wildlife Act so that they could build a dam to flood world heritage. Before I appeared on that committee I received what was explained to me as a threat to be careful about what I said because of the various agreements that I had signed not to reveal anything project specific to the public—confidentiality, basically. I was very upset by that because I was just trying to stand up for something that I believed in and something that I love. I just had to navigate around it. In the end I appreciated being careful and I navigated my way around that. I have worked in the area for a lot longer than this project, so there is much that I can talk about.

I then attempted to engage with Niche over my concerns. I sent them a very long, heartfelt email which they acknowledged they got, but it was to describe all of the parts of the methodology that I felt had not been adhered to or that had not been done. I was a little bit distraught over the process and over thinking that we were only going to be given a very limited time to look at this area. I never got a reply. I think six weeks later SMEC actually sent me a reply from someone I had never met and did not know. It was very much a tokenistic, "Thanks for your concern, blah, blah, blah." I was angry about that because I was attempting to engage with colleagues on archaeological processes and it seemed to me that their clients were stepping in to override them. I felt like this did not seem to be a very free or inquiring working environment. If they cannot even answer their own emails to me, then I just felt like there was something wrong with the process.

The Hon. ADAM SEARLE: Just on that, Mr Jackson, based on your experiences, do you think Niche, SMEC and WaterNSW were trying to conduct a thorough and rigorous analysis of these issues, or was there some other objective?

Mr JACKSON: Absolutely not. Look, I cannot speak for them, but my experience was absolutely not, really. From the way I was perceiving it and from the issues I had raised, I felt that they were not really, and from what we were hearing behind the scenes, we felt a little bit like they were just trying to hurry up the process. We were only given 25 days initially to do the survey, for instance. I mean, there is no greater example there than one of the Niche archaeologists involved in the project who made the mistake of agreeing with the Aboriginal community that 25 days was not enough time. He was forced to actually send a retraction email to say that 25 days was enough time. That sort of thing suggests to me that they really did not care that much about coverage or about getting it done. It was just a tick-the-box exercise in 25, 50 or 70 days. The feeling was that they just wanted it to go away, they wanted us to go away and they wanted to get it done and to get the report out as quickly as they could.

The Hon. ADAM SEARLE: Does the final report reflect what you found in the field? Is it scientifically and culturally accurate?

Mr JACKSON: 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.

I made a formal request to WaterNSW to review the report last year. I was ignored, firstly, so then I re-sent the formal request and included the ILUA committee in the email. I got a response pretty quickly after that. The response was no. And yet I was meant to be the archaeologist with specialist knowledge of the area, which they were happy to trumpet in the media but when it came to actually reviewing the report I was not given an opportunity to do it. So I suppose the question is, why? Why was the person who supposedly has expert archaeological knowledge of the area and a long relationship with people who were in that area not given that opportunity? For me, I was very upset over it; I was very distressed. I suppose that has just been my experience of it so far.

The CHAIR: If I could follow up, Mr Jackson, and this is also for those other people who were involved in the fieldwork—I think there might be at least two or three people on the panel—I would like to know how the decision was made to only do 27 per cent of the area that was expected to be done as per the agreed methodology. Were you given an opportunity to comment on the draft EIS for the Aboriginal cultural and heritage assessment at any stage?

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Mr JACKSON: No, I was not given an opportunity to draft any—do you mean the writing of the report or doing the reporting? Is that what you are asking?

The CHAIR: I take it from what you have said that you not were not involved in the writing of the report. Did you have any opportunity to comment on the draft, given it was your fieldwork that contributed to the report?

Mr JACKSON: No, there was no opportunity. I did ask Niche early on in the survey. I assumed that I would be writing some of the report in terms of representing the sites that we found, yet that was declined. It was published with a bit of naivety on my part; I should have set that up at the beginning. At that point I realised that the only sort of power we have here is to cover as much ground as we can and record as much as we can to show WaterNSW that there is a hell of a lot of stuff here and we need more time. Originally, we were given 25 days, so there was no talk of 27 per cent or 25 per cent. There was 25 days—what can you get done in that time? So we had to work flat out, to be honest, and it was just a matter of trying to cover as much ground. Because, either way, we were told that the more we found the more we could tell WaterNSW that there was a lot there and we need more time.

There was no discussion of percentages or anything. My feeling is that from the very outset—and I am happy to say this at the outset—we really should do the whole lot. This place is incredible, it is beautiful, the cultural heritage is so rich and varied and everything should be done. Through agitating, I suppose, and pointing out parts of the methodology that had not been completed, we managed to eke out several more days of surveying the area. It felt a little bit like WaterNSW was dragging its feet in this regard. It was not proactive on their part; it was very reactive. I felt like it was a struggle just to get to that 27 per cent of survey coverage. It was also a lot of hard work. We walked over 330 kilometres in off-track remote areas and I think all of us felt the toll on our body just doing that. That gives you some indication of the amount of survey you would be required to do to get 100 per cent. It would be well over or close to 1,000 kilometres of survey. It was hard going—plus doing all the recording was hard going as well. Overall, it was not a happy occasion and, by the end of the process, I was having nightmares about it, to be honest.

Ms BROWN: People keep referring to this as an agreed methodology, but many of us never agreed to this. We were brought a draft copy, we were asked what we thought about it, we made comments and they changed it a little bit. That is what they did. There was no sit-down where they asked, "Do you agree with this? Are you happy for us to do this?"

Mr CHALKER: On that, through the community consultation process in a number of meetings, which should all have been documented, it was raised at nearly every meeting about the insignificance of the assessment and how much was actually being done. It was brought to WaterNSW's and Niche's eyes at their meetings—just the insignificance of what was being done and how much we put across that should be considered and looked at. One of the things in a lot of these methodologies is the direct effects are the only areas that are being looked at, but what about all the indirect effects? What about the cultural effects? Are they really being considered?

The CHAIR: That is a good question, Mr Chalker. I will hand over to Ms Sharpe, who has a question.

The Hon. PENNY SHARPE: I have three questions. My first question is to Ms Lardner. You have been very critical of the way in which this assessment has been done—whether it is cultural or heritage—but it is also on the World Heritage listing. Do you believe that the World Heritage listing of the Blue Mountains area is under threat if this project goes ahead?

Ms LARDNER: Firstly, I would like to say that Australia has obligations under the World Heritage Convention and that includes to identify our heritage values and protect and conserve them. In this case, the World Heritage Committee has asked that the EIS be submitted to the World Heritage Centre for review. I think that Australia very clearly needs to do that and follow the directive of the World Heritage Committee. I think what we are hearing in terms of the inadequacy of the EIS means that there is a real prospect that the World Heritage Centre will be very critical of the EIS. We have been talking about the planning processes but we cannot forget that Australia has these obligations with the World Heritage Committee and that we need to meet these obligations.

The Hon. PENNY SHARPE: What is the process relating to consideration of delisting? Are you able to tell the Committee that?

Ms LARDNER: It is not a straightforward process of delisting. It would be a case where Australia would be asked to respond to comments, particularly criticisms, that were made, for example, on the EIS and basically asked to explain how they were protecting the World Heritage values. The point of the World Heritage list is that it is the outstanding universal value for all people and so Australia would have a chance to respond and show how those values are being protected. But at the moment we have a situation where the EIS has not been submitted and that process Australia would need to go through responding to any comments.

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The Hon. PENNY SHARPE: I want to go back to Ms Brown and Ms Clarke. In your early opening statements you talked to the Committee about the significant concerns you had about being offered access for support for the project. You also touched on the issue about being offered employment. Could you expand on that for the Committee?

Ms BROWN: I believe we were talking about the destruction of culture and this lady turned around and said "But we are going to give you jobs."

The Hon. PENNY SHARPE: What sorts of jobs?

Ms BROWN: I do not know what sorts of jobs. She did not elaborate on that. I personally thought it was funny because everyone in the room at the time had university degrees and we have all got very good jobs.

The Hon. PENNY SHARPE: Just to be clear, this was with WaterNSW and the consultants. It was the same meeting where there was talk of offering access that you currently do not have.

Ms BROWN: Yes, that was the same meeting.

The Hon. PENNY SHARPE: Okay, thank you. I have one last question which goes to the Aboriginal cultural heritage management assessment which I understand has been published in the media. I am a little confused about that because it talks again about more Aboriginal heritage assessment being done after the EIS and outside the EIS process. I am not sure who is the best person to respond to that but that seems highly unusual. I do know whether it would be Aunty Sharyn, Mr Knight or maybe even Mr Jackson. Can someone comment on that? I do not understand how you can deal with the Aboriginal cultural assessment outside the EIS process. Is that what is being suggested?

Aunty HALLS: I might say something. I have just been listening and keeping very quiet. There is a new person who has come on board called Kate. Am I allowed to say her name because I am not even sure what her role is?

The CHAIR: That is fine.

Aunty HALLS: Kate Waters, who now actually wants to talk to Aboriginal people about their values for these places. I find that extremely out of the ordinary. Normally this happens during the process of what we just went through. It is not as if this process has not been going on for a long time. That person should have been engaged at the beginning and not at the end. Really, WaterNSW and the other contractors who they have employed should have done this from day one. From day one this has always been about, "This is what we are going to do." It is them telling us that they are going to do all of this and we are just along for the ride.

It is again using the same system that we have been using across Australia of ticking a box to get what we want. Aboriginal people are not here to tick a box. We are here to protect our cultural values and everything that falls within that. The most important thing here is that the process has let down a whole system. It has let down legal documents and it has let down all the Elders who have been connected with this. All it has managed to do is give us all sleepless nights. Our wellbeing and the way that we want to look after land has been disrupted completely and we do not know where the hell we are going into the future because we did not even sit on any of the interview panels for a start.

We obviously were not considered someone who might have had enough brains to sit there and be part of a panel. That in itself goes against the Gundungurra strategic plan. This strategic plan comes from the ILUA as well. And do you know what? They all sign it. WaterNSW signs it and all the bodies who have signed an ILUA have signed it and yet when they want something, it is, "This is what we are doing or what we have done." That happens at every ILUA meeting. It is not about consulting before an event; it is always consulting after an event. Therefore, as far as I am concerned, every Gundungurra person who has a connection to this country—who is part of this country—has been let down by every government agency because they have not lived up to their responsibilities.

The CHAIR: If there are other responses to Ms Sharpe's question, maybe answer now and then I might just check with other members to see whether there are other questions.

Mr JACKSON: Can I say something? Can you hear me?

The CHAIR: We can.

Mr JACKSON: I also back up everything that Aunty Sharyn Halls just said. There is no greater example I suppose than fixed determination planning in this regard. From the outset, you do a study—an archaeological study—to determine significance. Now the significance process, as we said, has a bearing on the development itself. Now the significance process as we have seen was done by one person who spent one day in the field and

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had no discussions with anyone in the field about the sites and the scientific significance. The scientific significance was reduced to virtually zero. Only a handful of sites were declared to have high scientific significance and the report makes no recommendations to examine the other 73 per cent of the area or to even go back and examine any of the sites that were found.

There are no recommendations to do further inquiry or investigation or a more thorough recording. We were just recording on the fly basically. Yet they are basically saying, "There is nothing we can do so go ahead with your development and then we will go in afterwards and we will do another study. This study will involve excavations and it will employ Aboriginal people to go and look at sites that are going to be destroyed." Can you imagine that process, to go in with a bunch of people who are looking at their cultural heritage, places they identify with, knowing that there is a gun effectively pointed to their heads. For me, it is putting the cart before the horse. It is distressing. It might be good business sense and it ensures a lot of work for companies if you do it this way, but in terms of the spirit of the place and in terms of the inquiry being a free inquiry—as we have been talking about throughout this hearing—it certainly is not. I fully support everything Aunty Sharyn and everyone just said about that.

The CHAIR: Thank you, Mr Jackson. Mr Mallard, any questions?

The Hon. SHAYNE MALLARD: I have a statement or a question.

The Hon. PENNY SHARPE: You do not get to make a statement.

The CHAIR: Try a question.

The Hon. SHAYNE MALLARD: So you are chairing the Committee now, Ms Sharpe?

The CHAIR: No, I am. Try a question.

The Hon. PENNY SHARPE: I am just warning about a point of order.

The CHAIR: You have the floor, Mr Mallard.

The Hon. SHAYNE MALLARD: Forget it.

The CHAIR: Mr Martin?

The Hon. TAYLOR MARTIN: Nothing from me, thank you.

The CHAIR: I might ask Ms Lardner a question. The Niche report in its executive summary cites the Burra Charter and the Australia ICOMOS Charter for Places of Cultural Significance. In your view does the assessment—the environmental impact statement appendix K Aboriginal cultural heritage assessment—comply with the Burra Charter in the conduct and the content of the assessment?

Ms LARDNER: In my view it does not comply with the Burra Charter. I have been very concerned about the process. I do not think that it is full enough in assessing the significance and nor does it consult with the people who are important to understanding the values. In that way it does not follow the Burra Charter process and that remains a great concern.

The CHAIR: Thank you. I just ask a question of those people who are actually out there in the field. Mr Jackson, I know you said that the author spent one day in the field and did not discuss that work with anyone in the field. But this report is full of site descriptions and it identifies or gives a level of significance to those sites. Any of those that were involved in the field surveys, did you contribute to the formation of those assessments of the significance of the site? How were they arrived at?

Mr JACKSON: I do not know how they were arrived at. In the field, as I said, it all happened very quickly.

The CHAIR: Mr Jackson, could you just speak a bit closer to the microphone? We cannot quite hear you.

Mr JACKSON: I am not sure how they were arrived at because we were working very quickly in the field. We were basically only recording a sample of what was found there and that is all the time that we had. I am not actually sure how the scientific significance was assessed. As I said, I was not consulted about that. I was not asked any questions about any of the field recordings. I checked with the other archaeologist involved and he said he was not either. You would have to ask the Niche archaeologist how she arrived at that.

The CHAIR: So Ms Brown, Ms Chalker and Aunty Sharyn have not signed off in any way, shape or form on the significance rating of those sites.

Aunty HALLS: No.

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Ms LARDNER: No.

Mr CHALKER: No. In this project and other projects, as culture and heritage, we as a community are pressured to put significance on place—be it low, medium, high or extremely important. When we look at the landscape, that is against our cultural principles because everything is connected and everything has place. Everything has meaning in our stories. We are being pressured to put significance on place so that, in the system, it justifies destroying something.

The CHAIR: Thank you, Mr Chalker.

Mr KNIGHT: If I can just add to that, Mr Jackson raised it but the whole assessment is based on scientific value. Firstly, I find that quite offensive because it is actually placing my cultural heritage and my identity into the basket of scientific analysis. Sorry, I am a human being. Do not take me there. That is one aspect of it. Secondly, that scientific value is based on the information that that analysis can provide to the understanding of how Aboriginal people used a particular area or how those objects were used in that place. Again, that is misrepresenting that connection. It is the fob watch idea that I spoke about earlier. That whole story—and all of the connectedness and the feelings that go with that—cannot be brought down to a scientific equation and how much that adds to the knowledge base of Aboriginal people.

I am sorry but we are still here today. What has happened in the past is still continuing. The whole analysis process is focused, in a way, to be based on a point in time. It is an analysis process and it is a Western view that is focused around the object. It is focused around analysing what is in front of you and saying, "Okay, what's the information that this gives me about that place at a point in time?" When you are talking about Aboriginal people, we are still here today. Our culture continues. That whole assessment process forgets that and totally ignores it. That is a significant flaw in this whole process. Earlier I heard people talking about the methodology and you asked the question about it. The methodology does get sent out to groups to comment on, but again it is framed in that context of a point in time and of the analysis of an object. It is framed in that position of what this is going to add to the scientific understanding of this place. That is just offensive to me as a human being.

The CHAIR: What standing should this Aboriginal cultural heritage assessment that is going to inform the EIS and the planning process have? What standing does it have?

Mr KNIGHT: For me personally, I think it is a record of some of the things that were found on that site. It is a record of people that walked that land at some time in the past. It is an assessment that was conducted by people that were walking that land and recording those things but being pushed in a particular way to understand that space and place from this perspective of scientific analysis. I can guarantee that every single Aboriginal person here is offended by that process.

The CHAIR: So it says nothing about the value.

Mr KNIGHT: It says absolutely nothing about the value. It says absolutely nothing about that connection. That rating of whether this is highly significant, of medium significance or of low significance has nothing to do with the connection to that country. It has nothing to do with the value of that place and the understanding of us as Aboriginal people. It is about how much that contributes to the scientific understanding of that place.

Mr CHALKER: If the Government is really fair dinkum about reconciliation—if you look at the process, the cultural heritage assessments, anthropologists' assessments of us, scientific assessments of us, understanding our culture in the past—this is still happening today. This is what this is. Are we actually being included in reconciliation? We are here today because we have to argue for our points of view. It should be the other way around. You should be coming to us as the community. What perspective are the archaeologists, cave wallers and anthropologists bringing to this? They are taking their perspective and rewriting our history. Through reconciliation, through stuff like this, through development, the Government needs to set an example for the rest of the country. The Government needs to stand up and bring culture, heritage and Aboriginal people to the front and make it important. How do you expect proper reconciliation across the whole of Australia when the Government does not consider it important?

The CHAIR: Thank you, Mr Chalker, and thank you to all who have given evidence here. This inquiry is not nearing conclusion. The EIS is still some time off, as we understand from the Government, and there may well be further opportunities to get your views about the project and the final EIS. Thank you for your time. I apologise for the limited amount of time that we have had this morning. The Committee has resolved that answers to questions taken on notice be returned within 21 days. If there are any questions on notice, you will be contacted by the secretariat and asked if you could provide those answers in that time. I do have some questions

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from the evidence given this morning. Thank you again and we will be bringing the next witnesses into the room and online.

(The witnesses withdrew.)

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EUGENE SIMONOV, Doctor of Conservation and Coordinator, Rivers without Boundaries International Coalition via videoconference, affirmed and examined

SAI KHUR HSENG, Coordinator of Shan Sapawa Environmental Organisation in Myanmar and Member, Rivers without Boundaries International Coalition via videoconference, affirmed and examined

STEVEN DOUGLAS, Consultant ecologist (BAM certified) and environmental planner, Ecological Surveys and Planning via videoconference, affirmed and examined

JAMIE KIRKPATRICK, Geography and Spatial Sciences, University of Tasmania via videoconference, affirmed and examined

The CHAIR: I remind witnesses that these hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. I ask that you focus on the issues raised by the inquiry's terms of reference and avoid naming individuals. I also remind witnesses and members of the media that parliamentary privilege does not apply to what witnesses say outside of the Committee hearing. So please be cautious about any comments you make to the media and others after you complete your evidence. If there is information you want to provide to the Committee that may name individuals there are ways we can hear that evidence but try to avoid adverse mention of individuals during your testimony. Professor Kirkpatrick, would you like to make a short opening statement?

Professor KIRKPATRICK: I have asked to be involved in this because, as part of a team, I was responsible for writing the case for listing the World Heritage area under the natural criteria. Those natural criteria were the only ones that were accepted by the World Heritage Bureau as being apposite to the Greater Blue Mountains World Heritage Area and they were the importance of the area for the storage and development of the megadiverse eucalypts. It is rather amazing that a rare and threatened species, including endemic and relict species, remained unchanged for a very long time. World Heritage listing means that something is the best of the best in the world—it means it is globally outstanding. It is either the only example of a kind like the Opera House or it is the best example of a particular phenomenon.

So it is a pretty important thing. Only a very small part of the world is listed for World Heritage and everyone was very keen to get the Blue Mountains listed because it attracts a lot of tourists, having World Heritage listing, and it also reaffirms the affection that people have for the place. One of the dangers of having a World Heritage listing is, as in all reserves these days and previously, the tendency to think that it does not really matter if you move a little bit of the reserve for something else because it is only a tiny bit. But it is a large proportion on a global basis because this is the only place where the eucalypts are listed for World Heritage because of the diversity of the Blue Mountains—there could be other places—but losing a bit of it is not good even if there are other bits that affirm that World Heritage listing within a particular World Heritage area.

The other point that I really wanted to note was that within the Greater Blue Mountains World Heritage Area—and indeed within most of them—it is the values that we are statutorily trying to protect and those values do vary within the World Heritage area so they will be concentrated in some places and not in others. Within the World Heritage area there may be other values in other parts or they may be there as a buffer or whatever. So if we lose a little bit of a World Heritage area to developments it is really extra important that we do not lose the bits that best tell the World Heritage story. So we have done our preliminary analysis, which you have a copy of, which indicates that drawing down the dam would lead to the loss of outstanding universal values. We have concentrated areas and we have the story there and we have threatened eucalypt species that are within that dam apron that epitomise the rarity and eucalypt diversification story. Thank you.

The CHAIR: Thank you, Professor Kirkpatrick. We will now go to Dr Douglas. Would you like to make a short statement?

Dr DOUGLAS: I believe that we are at an awkward stage of the process where we are looking at something that perhaps we should never have got to. We are looking at a 17 metre extension to the dam head wall which would flood part of a World Heritage area and National Park estate. If we had a much more effective process for evaluating how we best manage the fairly well understood flood risk from this catchment, we would not have arrived at this point of dealing with the dam head wall extension. The fact that we are here is evidence of a flawed process. There are alternatives and I do not think they were given anywhere near the attention that was warranted.

They seem to have been explored in a fairly limited way and we got to this point in part because the true economic, environmental and cultural costs—and the legal ramifications of a head wall extension—were not given due regard very early in that evaluation process. But here we are now and we have got draft impact assessment

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documentation that has found its way into the public domain and we have seen that State and Federal environment and heritage agencies have been extremely critical of that assessment. Ideally, we now need to profoundly re-evaluate how it is that we got to this point dealing with such a significant head wall extension which will generate very large impacts on natural and culturally significant areas.

As Professor Kirkpatrick has pointed out, there is a disproportionate impact of the head wall extension through inundation onto threatened eucalypt species. You may be familiar with some of these. As has been mentioned, eucalyptus benthamii lost most of its population and extent with the building of the original Warragamba Dam wall. Extending that dam head wall would take out a large proportion of the eucalypt remains and some of the best of that habitat. That species is certainly more likely to tolerate inundation than many other eucalypts that have been compromised by the inundation process, but essentially no eucalypt can put up with permanent flooding, not even river red gums, which are a flood plain species.

Professor Kirkpatrick's work reveals that there is another nationally significant eucalypt species that would also be disproportionately affected by the inundation. We do not, of course, know the periodicity and duration of that flooding. There are estimates, but that is all they are. What we have is a very anti-precautionary, if that is a legitimate term, assessment of what might arise in terms of impacts on threatened biodiversity values and biodiversity in general.

Mr SIMONOV: When we heard about the criticised substandard environmental impact statement on the raising of the wall of the Warragamba Dam, we asked our extended network of groups working in river protection to look for similar cases that are associated with the same performing company, namely SMEC. Very quickly we were able to identify five to seven cases that are somewhat similar to what you see at Warragamba Dam in various aspects, both in dealing with indigenous populations and the selective treatment of various environmental impacts. Some of these impacts come from the Mekong River basin, namely from the Don Sahong Dam, which is one of the critical dams that blocks the main stream of the Mekong River, which is extremely important as a source of fisheries for indigenous populations of several countries, especially Laos, where the dam is built, and Cambodia and Vietnam further downstream. The company that was doing consulting work for the dam was not responsive to the calls of the governments of downstream countries to incorporate certain aspects of assessments or NGOs following up on the case.

I see that my colleague from Myanmar, Mr Khur Hseng, is online, so he will talk about the case with the dams in Myanmar on the Salween River. Further evidence comes from Africa. There is a very important example of the Isimba Dam on the Nile in Uganda for which SMEC conducted major work. It was built in place of a conservation offset for Bujagali Dam, which means that it could not be touched, and it also has a very important cultural and economic importance for indigenous populations. Finally, there are a couple of examples from Mongolia, where I have worked directly, where the Taishir Dam was built under general consultancy of SMEC. It was the major international consultant for all aspects of this first hydropower project in Mongolia. It had a miscalculation in the initial design and, as a result, communities downstream for years were deprived of water and many indigenous herders had to migrate to urban slums in the cities because they could not survive without water downstream from the dam that was accumulating in its giant reservoir, by Mongolian standards.

Finally, there is the famous case of the Undai River diversion in the Khanbogd district of the Gobi Desert in Mongolia. A very important desert stream, which was a very important economic and cultural asset for local indigenous nomadic herding communities, was basically removed, under the general consultancy and design of SMEC, by Rio Tinto, which developed the Oyu Tolgoi copper-goldmine. This was the subject of lengthy investigation by the International Finance Corporation that resulted in a big win for the local indigenous people and forced Rio Tinto to work to restore certain functions. But still, the original cultural and economic importance of the river was lost due to the initial design on the site. I could continue with certain cases where we do have witnesses from the sites that we have had communication with. There are more cases known to generate conflict between indigenous people and a project designed or provided with an environmental impact assessment by SMEC. Our general concern is making sure that there are not so many international companies that generate so many problematic projects around the world. Right now this is in your backyard, so we are trying to assist with factual material from other parts of the world.

The CHAIR: Professor Kirkpatrick, the Government has made a lot of public statements to date, and in evidence before the inquiry, that suggest that any inundation of the World Heritage area would be temporary. The suggestion is that the impacts would therefore be less—sometimes described as indirect—and that from a cultural heritage and ecological perspective, the impacts of temporary inundation are not as significant as permanent inundation. Could you speak to that a little more? In particular, could you examine the question of how temporary versus permanent inundation might change the effect on World Heritage values?

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Professor KIRKPATRICK: Yes, there is not very large literature on the effects of inundation and waterlogging on eucalypts. I did one project on this in Tasmania and one of the species is actually one of the species in the Blue Mountains—eucalyptus ovata. What we found, and I think what other people found too, is that there are some eucalypt species that if they are under water for even relatively short periods basically die and there are others that can persist with inundation for quite long time periods—several months for some species. So any sort of temporary inundation is going to kill some of the vegetation and it is certainly going to kill some of the eucalypts, like the ones that are on the slightly steeper slopes, and it is going to make a bit of a mess of the landscape, really. There will be some things that are killed and other things that might survive within the same area is the most likely outcome.

The CHAIR: When drawing a distinction when it comes to the loss of World Heritage values, does it really matter if it is a one-off temporary inundation or a permanent inundation, or are the consequences of that in the loss of world heritage values largely the same?

Professor KIRKPATRICK: Pretty much so. I mean, there may be one or two eucalypts that might survive temporary inundation but will not survive permanent inundation. But the story as a whole, particularly for individual breeds of eucalypts that are threatened, is that it might be better to have temporary inundation and for them to survive as they are resistant to inundation than to have permanent inundation and them just being sticks poking out of the surface of a lake.

The CHAIR: Fair enough. This goes to one of the points that is particularly contentious between the proponent of the dam and the agencies charged with ecological protection which is: How do you offset those impacts? A suggestion to us in previous hearings was that there was some consideration of deeming the impacts of temporary inundation as indirect, which might change the equation of the biodiversity offset. Professor Kirkpatrick or Dr Douglas, could either of you speak to whether or not temporary inundation impacts should be considered direct or indirect for the purposes of biodiversity offsetting?

Professor KIRKPATRICK: I will leave it to you, Dr Douglas, because you have the New South Wales experience.

Dr DOUGLAS: Thank you. I would consider those impacts direct. I cannot see that there is any legitimate ecological argument to consider the flooding or inundation—call it what you will—to be indirect. It is very clearly a direct consequence of building the head wall extension. Any argument to claim that it is an indirect effect that would then arguably warrant less biodiversity offset calculations is simply self-serving. There is no scientific credibility to that at all.

The CHAIR: Am I right to say that it is not supported by the current procedures, guidelines or regulations around biodiversity offsetting?

Dr DOUGLAS: That is my understanding, yes.

The Hon. ADAM SEARLE: Mr Simonov, based on your experience—and we have seen in a number of submissions descriptions of SMEC's conduct in Asia, Laos, Africa and Mongolia—can you describe how you perceive its conduct to be? Does it abide by the law—at least, the laws of the countries in which it operates? Should we be concerned about its involvement in this project and if so, why?

Mr SIMONOV: Not necessarily. It is of course difficult in countries with a relatively weak rule of law; it is difficult to investigate such things. But at least in Mongolia, from our experience we know SMEC violated a number of laws and rules of good practice. As you probably remember from our submission, we specifically mention that they were banned from doing projects in Sri Lanka and Bangladesh due to outright corruption and attempts to bribe some officials, which was disclosed not by NGOs but by the World Bank and other international monetary financial institutions. So there is evidence of that kind—that they do not necessarily always follow the law. Mr Khur Hseng will probably have something to add from the Myanmar case on that because they have extensive experience of trying to get these guys to do basic consultation with local communities, which is also a requirement by law. It does not necessarily follow the laws and we do have—at least in some cases—documented evidence of that.

The Hon. ADAM SEARLE: Are you talking about criminality or corruption? What are you saying here?

Mr SIMONOV: I am saying that, at least in some cases, SMEC was banned from doing certain things by international financial institutions due to their extreme misconduct, which means corruption.

The Hon. ADAM SEARLE: Where can we get further details of that? Would we be able to get them from the World Bank or from those other financial institutions?

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Mr SIMONOV: I believe we have a reference to the case. I will refer you to the page in our submission because, you know, this is not part of data we obtained directly from the field; we obtained it from documents just on the site of international monetary multilateral development institutions that they banned certain companies from something. Wait a second; we do have it on our list of its deeds because it is open data. We will be more than happy to send it to you. Our submission reads:

In 2017 SMEC was debarred by the World Bank from working in development and aid projects in Sri Lanka, India and Bangladesh following allegations of bribery and corruption.

Basically, if they were barred there is a record on the World Bank barring record. There is a formal procedure for that. Many firms, every year, are barred from doing business in certain places due to misconduct and violating rules and laws.

The CHAIR: Welcome Mr Khur Hseng and thank you for your attendance. We apologise for the technical challenges. You are invited to make a short opening statement or we can go back to asking questions.

Mr HSENG: Thank you.

The CHAIR: Mr Searle, do you have more questions?

The Hon. ADAM SEARLE: I do. I do not know who the appropriate person is to answer. Could someone address the Committee in detail about the Mong Ton Dam in Myanmar and the consultation undertaken with Indigenous people by SMEC Holdings [SMEC] and did it involve the use of military tanks in that consultation? If so, what impact did that have on the quality of consultation with Indigenous people?

The CHAIR: I suspect, Mr Khur Hseng, that might be a question directed to you. Did you hear that question? Mr Khur Hseng, can you hear us?

Mr HSENG: I am here. Can you hear me?

The CHAIR: Did you hear that last question? Do you have anything to say in regard to that question?

The Hon. ADAM SEARLE: Do you need me to repeat the question?

Mr HSENG: I can hear.

The Hon. ADAM SEARLE: Can you hear us?

Mr HSENG: I need to ensure the connection, I think. Since 2015—

The Hon. ADAM SEARLE: We can hear you.

Mr HSENG: Some might appear and some might disappear on my computer. I hear something not so clear.

The CHAIR: Mr Khur Hseng, could I suggest that you turn your video off. That will help with the bandwidth and then we can probably speak to you on audio.

Mr HSENG: Okay, thank you.

The CHAIR: Okay, try again Mr Searle.

The Hon. ADAM SEARLE: Mr Khur Hseng, can you talk to us about SMEC's involvement in the Mong Ton Dam in Myanmar and its consultation with Indigenous people and whether that involved the use of the military? If it did, what impact did that have on the consultation with Indigenous people?

The Hon. SHAYNE MALLARD: Point of order: Mr Searle referred to the use of tanks in his question. I refer to the relevance of consultation on an overseas dam project and the use of the military. That is not even a factor in Australia or the Warragamba Dam issue. I do not think it is relevant to the terms of reference.

The Hon. ADAM SEARLE: To the point of order: Clearly at issue in the submissions we have received, not only from these witnesses but also at least implied in other submissions, is the question about whether SMEC has undertaken its job as a consultant for the Government properly. That raises the issue about whether it is fit and proper to do the work and its record in other jurisdictions is of high relevance to whether we can or should have confidence in its work in New South Wales.

The Hon. WES FANG: To the point of order—

The Hon. SHAYNE MALLARD: It is not relevant to talk, firstly, about overseas consultation and, secondly, any alleged military involvement in the context of this inquiry for Warragamba Dam.

The CHAIR: Mr Fang?

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The Hon. WES FANG: To the point of order: While I accept Mr Searle's argument, I believe Mr Mallard is right in saying that questions around a foreign power's military being involved in the consultation process is well outside the scope of the terms of reference and the question should be ruled out of order.

The CHAIR: The terms of reference are clear. Paragraph (d) is as follows:

- (d) the adequacy of the Environmental Impact Assessment process to date, including the assessment of impacts on:
- (i) World Heritage,
 - (ii) Aboriginal Cultural Heritage,

We have received submissions to the effect that the consultation with traditional owners has been inadequate. This witness was put on the witness list some time ago. Questions around SMEC's history of working particularly with traditional owners and Indigenous peoples have arisen in the media and were foreshadowed resulting in this witness being put on the list and we have received a submission. I will leave it to the witness to answer on his experience of the engagement by SMEC with Indigenous people. If there was a type of engagement that is up to them to represent. Mr Hseng, I ask you to be cautious about mentioning any individuals in your response. We would prefer if you did not make adverse mention of individuals in answering this question. You can certainly speak to your experience about how SMEC engaged in consultation relating to your project.

Mr HSENG: Can you hear me?

The CHAIR: We can. Please go ahead and answer the question.

Mr HSENG: It is still happening since a study from 2015. There was planning to have consultation happening in [inaudible] but I shall notice [inaudible]. So we have that time every day of the [inaudible] the first time of SMEC's approaching for the consultation meetings [inaudible] local dam. So mostly the local community oppose the meeting. Also we have photo evidence during the consultation meeting and the local community also sent an open letter and consulted. The civil society also sent an open letter to SMEC to withdraw the hearing on the projects. Also we planned to go to the community [inaudible]. So before we go we have another [inaudible] going to oppose SMEC and the time is coming around [inaudible].

The CHAIR: Thank you, Mr Khur Hseng. Mr Searle, do you have any other questions?

The Hon. ADAM SEARLE: Does Mr Simonov have anything to add about SMEC's conduct.

Mr SIMONOV: It makes a big difference how you invite local traditional owners to the consultation. If you invite them in an adversarial manner, let us say exposing a tank, then you are sending a certain message. Of course it was done by the military. It was not done by SMEC per se but it was part of the process which SMEC was overseeing and this is of high concern. In a less adversarial manner but still in an unfriendly manner, it was done in Mongolia because until there was special compliance brought to the Ombudsman of the International Finance Corporation, there was very little hope to reverse the decisions of entire river diversion in the Gobi Desert, which was done under SMEC's supervision. It required the special Ombudsman's intervention—a special trilateral committee creation—for them, in the course of actually three years, to reassess the damage done and agree on mitigation actions.

The CHAIR: Mr Simonov, would it be fair to say that from your experience SMEC has a poor international reputation when it comes to engaging with Indigenous peoples around major development projects and, in particular, dams?

Mr SIMONOV: From our examples, yes that is how it looks. It is among the worst companies we know about.

The CHAIR: Okay, thank you. Mr Fang, do you have any questions for the witnesses?

The Hon. WES FANG: No.

The CHAIR: Dr Douglas, I previously asked questions about direct versus indirect, and obviously that has a direct bearing on how biodiversity offsets might be assessed for a particular project. How is the framework for biodiversity assessment that currently enables us to determine impacts and offset requirements used? Is it appropriate for assessing the impact on World Heritage values? That might be a question for you, Professor Kirkpatrick.

Dr DOUGLAS: I am happy to let Professor Kirkpatrick deal with the World Heritage issues.

Professor KIRKPATRICK: If there is impact on World Heritage values, there is the possibility of the World Heritage Bureau inquiring into those prospective values and sending out a mission. They did that in Tasmania several years ago. That mission views things and gets input from a whole lot of protagonists to seek

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their advice. The World Heritage Bureau then communicates that advice to the national government. In the Tasmanian case, the national government and the State government, which were the effective managers of the World Heritage areas, agreed with the recommendations of the mission. That is the sort of process that has taken place where there has been a high degree of unease about the appropriateness of particular developments or particular management plans in relation to a World Heritage area. It is a decision made by the World Heritage Bureau as to whether they have that sort of mission. It is a body composed of representatives from various States.

The CHAIR: From what you have seen of the information that is on the public record to date—and some of the draft environmental impact statement [EIS] has been leaked and is on the public record, and we have also seen responses from State and Commonwealth departments commenting on the draft EIS—have the World Heritage values been adequately assessed from what you can see of the draft EIS to date?

Professor KIRKPATRICK: No. It is not that the draft EIS does not have a mountain of information in it, which is reasonable information, but the way in which it has been interpreted in relation to World Heritage values I do not think is appropriate. I think that is probably the problem experienced by other people who have looked into the issue as well.

The CHAIR: Could you just expand on that? How has it not adequately assessed those values?

Professor KIRKPATRICK: Well, this is what I was trying to do in my introduction. Basically, the raising of the Warragamba Dam will have strong effects on the outstanding universal values, of which there are only two for the Greater Blue Mountains World Heritage Area. Yet the environmental impact assessment [EIA] suggests that because it is only really small and it can be offset there is not really a major problem; it is only 0.000001 per cent of where each area is concerned. But that is not the way that World Heritage works. If someone wanted to build a kiosk on the front steps of the Sydney Opera House, it would only be a very small kiosk but I do not think that would be acceptable in terms of the World Heritage integrity of it. It is a different matter if you are building an ecotourism resort, because you can argue that it is to do with interpreting the World Heritage area. But when you are enlarging a dam it does not really help with the interpretation at all, especially seeing that no-one is planning in that area anyway.

The CHAIR: You mentioned earlier that for other projects World Heritage might send a mission to consider the impacts. Does that tend to happen only when there is outrage about a proposal?

Professor KIRKPATRICK: Yes, there has to be major public consternation about what is going on.

The CHAIR: So it is not something that happens because we foresee that there could be impacts and there are ways of developing an appropriate response, like a request being made to have these World Heritage value impacts assessed through a mission like that. Is it always the case that it happens at the end of the process just because of public consternation about the issue? Is that really how we end up getting an assessment of World Heritage impacts?

Professor KIRKPATRICK: I think that everything is politics really. The only way that the people who run World Heritage get concerned that a World Heritage area is being potentially incrementally affected is through the review process, which brings in people from the outside to review things, and by people communicating with them that there is a real problem and that something needs to be done about. Then they might do it but they do not do it as an automatic part of a process.

The CHAIR: The Government or the project proponent could conceivably pre-emptively make that request. It could speak to the Federal Government or the World Heritage Committee and try to engage them in the process at the start. I assume that there is no barrier to that.

Professor KIRKPATRICK: The Federal Government signed an international treaty which obliges it to identify, protect, interpret and communicate World Heritage values. That is enacted through the Environment Protection and Biodiversity Conservation [EPBC] Act, so it is the Federal Government's responsibility. The Federal Government has a responsibility as a signatory to support World Heritage to conserve prevent the loss of it. It is interpreted very narrowly as being related to the values, so if an action did not reflect the values in a World Heritage area then it is not really apposite in terms of the responsibilities of the Federal Government.

The CHAIR: In your view would the raising of the dam wall and the temporary inundation that would result during flood events impact World Heritage values for the site?

Professor KIRKPATRICK: It is one of the outstanding universal values related to diversification of threatened species, yes.

The CHAIR: Dr Douglas, I want to delve into the biodiversity offset issue again. Regarding the question of indirect versus direct, your suggestion before was that this very much should be considered a direct impact.

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Does the framework for biodiversity assessment enable us to adequately assess biodiversity impacts and enable us to reasonably offset them?

Dr DOUGLAS: My understanding is that the framework is essentially an old instrument under the previous Threatened Species Conservation Act and what flowed from it. Part of the problem here is that the project is being assessed under legacy law and policy and not under the current New South Wales Biodiversity Conservation Act and the associated biodiversity assessment method [BAM]. The BAM, as it is known, is effectively an update to the Framework for Biodiversity Assessment [FBA], and it is more up to date in terms of the data that underpins it and the methods that it uses, and it would be best practice. It is not perfect but it is more current and better informed—more detailed—than the FBA. You initially asked the question as to whether the FBA deals with World Heritage issues. It is my understanding that it does not because it is part of New South Wales law. World Heritage matters are effectively the concern of the Commonwealth because of the external affairs power, so the FBA would not be the right tool for that job. I am not an expert in the FBA; I have not used it before, and I am unlikely to use it because it is a legacy tool. Can I answer any other matters for you?

The CHAIR: It seems to me that the proxy for World Heritage here ends up becoming an assessment of the threatened species impacts of a project. There is also quite a lot of information about the draft EIS on the public record now and there are also the responses from State and Commonwealth environment departments about the quality of the EIS. From what you have seen in the public realm, do you think the EIS adequately assesses the threatened species and biodiversity impacts of the project? I asked the same question of Professor Kirkpatrick.

Dr DOUGLAS: No, it does not do that, and clearly that has been raised by government agencies—State and Federal—who have been strongly critical of it. In SMEC's defence, as a consultant myself I know that when you are not given the time, the resources or the brief that would allow you to do an assessment properly, you simply cannot. I think that part of the problem here is that SMEC is employed by the proponent of the project. The proponent has a vested interest in getting that matter approved so they may have a conflict of interest when it comes to who they appoint and how they manage that consultancy. You could have perhaps the most ethical and effective consultancy in the world and if they are not given the time, money or brief that would allow them to do the job properly, they are clearly not going to be able to do that, and I suspect that is a factor here. The material that is in the public domain is indicative of that. There are things that the consultants know they should be doing but they have not been able to do them, it seems. There are substantial gaps in the assessment process and in the datasets that are needed. There is a lot of information, as Professor Kirkpatrick has pointed out, but information is not necessarily what we need to make a sound decision here.

The CHAIR: What are the key gaps as you see them?

Dr DOUGLAS: My understanding is that there are major deficiencies in survey efforts. For example, the FBA specifies, as the more current method the BAM would, how many hours of surveying effort over what area at what level of density. For example, if you were to walk through an area that is going to be affected by a project, how many people with what skill level should target what plants, animals and ecological communities with particular densities of transit? For example, should those people be 10 metres apart if they are looking for a medium-sized plant, for example, or should they be 30 metres apart if they are looking for large eucalypts?

It is that kind of detail that I believe has not been complied with. I do not know any consultancy firm or individual consultants that would not want to comply with those rules were they given the funding, the time and the opportunity to do that. It is in the consultants interest because they get paid more to do a more thorough job, but if the client has set a budget or other constraints that simply does not allow you to do the surveying consistent with the specified method, then you cannot do that and you get a deficient result. It is my understanding that that is what we are dealing with—under-sampling, so not enough field work, not enough time surveying the vegetation, surveying the animal habitat quality, or doing particular types of survey work for specified species. So there are very substantial gaps, and if we were seeing this in something like a new mine proposal, those gaps would be the basis on which the environment regulators would say, "No, sorry, go back, do it again" or ultimately refuse an application because the questions that need to be answered through ecological assessment have not been answered properly or, in some cases, at all.

The CHAIR: This is a very large site—very complicated and hard to walk through. Is it reasonable in that sort of instance that you would come up with a modified methodology to get to an 80 per cent solution because the viability of a project, if you were to walk the entire terrain, might be impossible in some instances? How would that normally be dealt with by consultants dealing with such a large and complicated potential impact?

Dr DOUGLAS: To give you an example, the ecological assessment for the large-scale urbanisation of western Sydney does employ that method because a lot of that land is privately owned. In the case of Warragamba, there are very significant topographic, terrain-based obstacles. There are safety considerations—even if you are

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fit enough with the right equipment to get into some areas, is it appropriate for an employer to send ecologists into those circumstances? And sometimes the answer is no. But a lot of that area can be surveyed adequately.

Back to the western Sydney example, when you cannot get access to land, for whatever reason—it might be that the owner will not allow you on, or there are health and safety reasons why you cannot get there, or the client and the process requires an answer in a time frame that means you cannot do the survey in a manner consistent with what is required for that particular species; for example, if the area is in drought or flooded, you might not be able to do the survey that is necessary to assess particular species so you have to take the precautionary approach. Other arms of government do that in their environmental assessments, as does the private sector.

The method is broadly known as the "presumed present approach". So if you cannot get into an area to survey it for appropriate reasons then you have to assume that everything that might reasonably be in there based on whatever information is available to inform that sort of decision—generally database records, habitat analysis or other primitive tools—you have to treat those things as being there, and you also have to come up with a credible density of occurrence. It is easy enough to say, "Well there are gum trees in there that we know koalas might eat, so we will treat that area as koala habitat." The bigger question is: How many koalas might be in there? Are they a breeding population? So if you are going to apply the precautionary principle of the presumed present method, then you need to do that in a guided and informed manner to ensure that your predictions are credible.

The CHAIR: If we get that wrong because of either inadequate survey work or, where we cannot survey, the precautionary principle has not been applied so we have missed a critical population, how does that impact on the potential assessment of biodiversity offset costs? I know that in the public realm at the moment we have seen a table of potential costs because of impacts on certain species, and it is pretty substantial.

Dr DOUGLAS: If you underestimate the area occupied by threatened plant or animal species or endangered ecological communities, you would be underestimating the scale and nature of ecological damage and the compound effects that arise from that. In many cases, it is not just a case of losing species "X" from that impacted area, but what flows from the loss of species "X". How many other species might be lost in the longer term through a sort of cascade mechanism?

You would also be playing down the calculations of biodiversity offsets and the associated cost. As you mentioned, the biodiversity offset calculations that are publicly available are extremely large. It would be very costly were the Government to attempt to purchase those offsets and it may even not be feasible to acquire the offsets that would be calculated. But obviously if you are not using the presumed present method correctly, you could overestimate or underestimate the scale of impact and overestimate or underestimate the costs arising from your biodiversity credit or offset obligations.

The nature of the process is such that unless the work is done very well and also carefully scrutinised by independent agencies or individuals, it is more likely than not to be underestimated. Keep in mind here that any consultant employed by any client has a financial relationship. If you do not give the client what they want, they are not likely to re-engage you, they may even opt to not pay you your full fee, or they may not give you further fees for additional work, so most consultants are somewhat under pressure from their client and their client's agenda. That is just the nature of the industry; it does not matter who is engaged. I suspect in this situation the more likely outcome of not applying the precautionary approach properly would be an underestimate of the impacts and likewise an underestimated biodiversity offset of obligations and costs.

The Hon. WES FANG: Dr Douglas, do you have any indication or proof that that has occurred on anything to do with this project?

Dr DOUGLAS: No, I do not.

The CHAIR: Dr Douglas, given that we have quite a lot in the public realm at the moment, we have State and Commonwealth departments raising concerns about the adequacy of the survey work and, in particular, the analysis of koalas was identified by the Commonwealth, how should that be rectified as part of finalising the EIS? How can it be?

Dr DOUGLAS: I should say up-front that I am not a koala expert. My expertise is principally in the flora—the plant and ecological community side of the business. However, I have enough knowledge of koalas to say that it is a difficult species to assess the impacts on, partly because it is what is called a cryptic species; it is surprisingly hard to find that animal. It lives, obviously, primarily in trees. It is very good at hiding itself and it takes a lot of survey effort to detect populations that occur at quite low densities and low density occurrence is the norm in the Sydney Basin bioregion, or much of it. It is another species where you can use the required amount of survey effort and the specified techniques and still risk under-detecting that species, underestimating the true size of the population. I am aware from my work in the Southern Highlands that there are more advanced

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technologies that certainly the Government is using to better understand what koalas eat, what their habitat requirements are, where they are, where they move and to get a credible—certainly the most credible I have seen—estimate of their abundance in particular areas. Once you know that you can better assess the impact of a proposal.

The Hon. ADAM SEARLE: Do we know what species potentially are most at risk from the project?

Dr DOUGLAS: That is quite a complex question to answer.

The Hon. ADAM SEARLE: I am happy for you to take it on notice.

Dr DOUGLAS: Are you happy for me to answer that?

The Hon. ADAM SEARLE: Yes, please.

Dr DOUGLAS: We do know that there are two nationally significant eucalypt species that are disproportionately at risk from the project simply because of where they occur in the landscape. One of those is a listed vulnerable species in State and Federal law. Camden white gum is I believe its common name—eucalyptus benthamii. As I mentioned in my opening statement it lost a lot of its numbers and habitat to the original Warragamba Dam and before that it would have been heavily cleared for the Burratorang Valley. That is because it is a tall straight tree on fertile country that is well watered. It is frequently targeted for pastoral and cropping and its lumber value. Once you go and dam that catchment what little of it was left would have been drowned. There is clear evidence in the dataset that that species was recorded in what is now the inundated portion of the dam. That species now occurs in a small part of the dam fringe.

But more significantly, it would be along some of the watercourses that flow into the dam and that would be inundated by any raising of the dam wall, even if it was quite a small addition to the wall. Just because of the topography and where that species occurs it is disproportionately affected. On the other side, it is more tolerant than many eucalypts—or it is certainly likely to be—of inundation because it occurs close to water and certainly on the Hawkesbury-Nepean flood plain it occurs in areas that are naturally subject to flooding. It may tolerate inundation better than many, but the vast majority of eucalypts that would be affected by inundation caused by the higher head wall are not species of that nature. You can imagine that having dammed the Burratorang Valley, what we are now seeing above the existing high water mark, the species that occur roughly midway up the hillside, are the species that did not evolve in floodplains or close to watercourses and they are not at all adapted to inundation of any kind.

Even a period of very prolonged rainfall, such as can occur in a La Nina event, could see some of those species at risk simply because they are not used to having what horticulturalists might call wet feet. They do not like having their root zone inundated and they can actually drown in heavy soils. The other significant species that Professor Kirkpatrick's work revealed would be disproportionately affected is called eucalyptus hypostomatica. Again, it is occurring in positions on the landscape where a greater proportion of that species would be compromised just by the nature of where it is, where the high water mark already is, and where that water mark would extend to with a higher wall.

The CHAIR: Dr Douglas, at the start of the hearings you suggested that we were working backwards—that the alternatives should have been looked at first. Could you expand on your thoughts and why you would raise that as an issue?

Dr DOUGLAS: I believe we are asking the wrong question almost. Everyone is aware that there is a flooding risk in the Hawkesbury-Nepean basin and the earlier processes to assess that put very clearly in the public domain what some of those risks are. To that we have added climate warming and a range of other effects that make flooding a greater concern than it might have been historically essentially. You have more people in the flood plain, more businesses, more infrastructure and with a warming climate. As much as we clearly face drought and more intense and more frequent droughts we also get the flip side of that, when the drought breaks, of more frequent rainfall events and perhaps a more intense La Nina phase. I do not think that anyone is questioning that we need to deal with the flood issue, particularly in the context of climate warming. But we have got ourselves a long way down the process of dealing with a head wall extension that has arguably significant impacts on national park estate and World Heritage areas.

That was not dealt with earlier on in the process when there was the preliminary assessment for what options might be investigated to deal with the flooding risk. The whole concept of World Heritage impacts did not get a mention, nor did the massive economically very significant biodiversity offsetting obligations, were the Government to comply with one, factored in. I would argue that the process of evaluating flood management options was flawed from the beginning—flawed in its implementation. That is why we are now dealing with a very problematic dam wall extension that has already grown at least twice in height that I am aware of, and where

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there is nothing, in my understanding, that would stop this Government or any future government from turning that head wall extension into a permanent water reservoir addition.

You can imagine that if Sydney continues to grow and more severe droughts were to arise there would be very clear pressure to have a larger water reservoir at Warragamba Dam. What might in theory be built as a flood detention mechanism for genuine emergency circumstances, suddenly, by the stroke of any future government's pen, becomes a taller Warragamba Dam to hold water back permanently. The indirect impacts through unspecified amounts and durations of inundation suddenly become permanent inundation, at least while the water can be held there if the climate allows. I really feel we have got to an exceptionally problematic and flawed part of a much wider process where we originally started asking: How do we deal with the flooding problem? But now we are dealing with: How do we assess the impacts of a higher dam wall on World Heritage and national park values. I think the fact that we got to where we did tells you that the process was flawed. There are other options that were not given due regard and the impacts of this option were not properly considered up-front.

The CHAIR: Dr Douglas, Minister Ayres said on the radio just this morning—this is a direct quote that has just been published—"We are not giving up any more time. We are not bowing to what is, for all intents and purposes, environmental terrorism." As someone who has spent their life assessing the impacts of our decisions on the natural environment, who is providing advice to this Committee today with expertise based on the impacts of this project and the adequacy or not of the environmental impact assessment to date, how does it make you feel to hear those words from the Minister?

Dr DOUGLAS: It borders on Trumpism. It is really denying the evidence to suit a purely political and personal agenda. His remarks have no credibility.

The CHAIR: Thank you very much, Dr Douglas. Professor Kirkpatrick, do you have anything to add to that last question?

Professor KIRKPATRICK: The question relating to the Minister?

The CHAIR: If you want. I give you the floor.

The Hon. WES FANG: Chair, I remind you that this is a good point to reiterate the adverse mention requirements of the Committee.

The CHAIR: Send the Minister a text, Mr Fang.

The Hon. PENNY SHARPE: The Minister has just called them environmental terrorists.

The CHAIR: It is entirely up to you Professor Kirkpatrick if you want to take that rope or not.

Professor KIRKPATRICK: I do not think it really warrants any sort of response.

The CHAIR: I thank all the witnesses for their time and expertise today. If there are any questions that members want to put on notice the Committee secretariat will contact you and you would normally have 21 days to respond to those questions. Thank you again for your time.

(The witnesses withdrew.)

The Committee adjourned at 12:22