



Blue Mountains Conservation Society Inc

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Nature Conservation Saves for Tomorrow

Dr Greg Terrill
PO Box 227
Dickson, ACT 2602

Sent by email: gterrill99@gmail.com

23 February 2021

Application for the Protection of the Burragorang Valley, Near Warragamba NSW by Gundungurra Aboriginal Heritage Association Inc

Dear Dr Terrill,

Blue Mountains Conservation Society is a community-based volunteer organisation with over 800 members. Our mission is to help protect and advocate for the natural environment of the Greater Blue Mountains

The Society supports the application under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)* (ATSIHP Act) by the Gundungurra Aboriginal Heritage Association Inc seeking the long term preservation and protection of a significant Aboriginal Heritage area known as Burragorang Valley near Warragamba NSW. The specified area for protection is indicated in the notice published in Commonwealth Government Notices. This area covers part of the river system of the Coxs, Kowmung and Wollondilly Rivers and is an integral part of the surrounding Greater Blue Mountains World Heritage Area.

Significance of the area to aboriginal people

The Society is aware of the great significance the area holds for local indigenous organisations as a cultural landscape which embodies traditional stories and beliefs long held up until today. The southern Blue Mountains is an extensive and rich cultural landscape belonging to the Gundungurra People. In particular, the landscape of the valley is the location of the Gundungurra creation songline, the Journey of Gurangatch and Mirrigan. This is the epic battle of the tiger cat (Mirrigan) and the snake (Gurangatch) through the land which formed the southern Blue Mountains.

This amazing living legacy of indigenous culture should be preserved and protected with pride. Indigenous culture in Australia is significant at an international level as the longest continuous culture in the world. The specified area must be physically protected so that it can be understood and passed on to future generations in a traditional and culturally appropriate way. It should be protected through the federal law whose sole purpose is indigenous cultural protection.

Nature and extent of the threat of injury to or desecration of the area

The proposed raising of the Warragamba Dam Wall will cause repeated flooding of the valley and irreparably damage and destroy this cultural landscape. It will also destroy the remaining sites of this story, including Indigenous archaeological sites, creation waterholes and cave art.

The construction of Warragamba Dam some sixty years ago flooded and thereby destroyed a large proportion of the cultural heritage and dreamtime stories of the Gundungurra people. This is further reason for protecting what remains today.

Extent to which area is or may be protected by or under a law of the State and Territory, and effectiveness of any remedies available under any such law

(i) No dedicated legislation

Unlike other states, NSW has no dedicated legislation exclusively for the protection of Aboriginal Cultural heritage. Many years of detailed research, government endorsed working groups and proposals to establish dedicated separate legislation for indigenous cultural protection and management have failed to achieve this. Consequently, the *National Parks and Wildlife Act* (NSW) 1974 (NPW Act) remains the legislative vehicle for indigenous cultural heritage recognition and protection along with the conservation of nature, other cultural values, the fostering an understanding of nature and cultural heritage and the management of protected lands (s.2A).

The NPW Act provides automatic or blanket protection of individual sites where material culture is evident (eg art sites, camp sites, stone tools, burials) but provides only limited protection (see below) for cultural landscapes where material evidence is limited or non-existent. For NSW First Nations, protecting cultural landscapes, whose significance derives from stories, songs, traditions and relationship to country, is essential for the continuation of cultural traditions.

(ii) No “Aboriginal place” status under NPW Act

According to the NSW National Parks Service website, “Declaring Aboriginal Places is a way of recognising and legally protecting Aboriginal cultural heritage. Land deemed to have special significance for Aboriginal culture in New South Wales ... can be declared as an Aboriginal Place. These declarations are a conservation tool and advance the recognition, protection and understanding of Aboriginal cultural values throughout New South Wales.”¹ An Aboriginal Place declaration is the only legal avenue in NSW to protect and conserve a significant cultural landscape.

¹ <https://www.environment.nsw.gov.au/research-and-publications/publications-search/declared-aboriginal-places>

In August 2018 the Burratorang Valley area was nominated for declaration as an Aboriginal Place under the *NPW Act*. However, some two and a half years later the declaration has not proceeded, despite extensive documentation of the area's significance and the clear threat the dam wall proposal represents to the areas cultural values. The fact that this very worthy proposal is apparently stalled demonstrates that an Aboriginal Place nomination is not effective avenue to protect this cultural landscape.

The NSW government has already weakened the protections the *NPW Act* could provide to the Burratorang Valley. In 2018 it legislated to ensure that temporary flooding of land upstream of Warragamba Dam was a permissible activity within a national park.

Indeed, the same government which decides the Aboriginal Place nominations is the proponent of the Warragamba Dam raising, which suggests that the declaration is unlikely to happen while the proposal, which would cause so much cultural destruction, is government policy.

Boobera Lagoon, located north of Moree near the Queensland border, is an important example of a culturally significant site which was denied Aboriginal Place status but eventually secured protection under the *ATSIHP Act*. The Indigenous people of the area believe the lagoon is the resting place of the Rainbow Serpent and so a place of great cultural and spiritual significance.

(iii) NSW Planning law cannot protect

Environmental Planning and Assessment Act (NSW) 1979 (Part 5,) which controls the conditions under which the proposed Dam wall raising can be carried out, cannot protect the specified area. Consent is not necessary as the proponent is a government entity. While an Environmental Impact Statement is required, consideration of Aboriginal cultural heritage is just one of many community and cultural and environmental factors that are weighed up. As well, periodic flooding the specified area under the proposed dam raising is essential to the proposal. There is no way the proposal could go ahead and not have significant impact on the Aboriginal cultural values of the area.

Protection under ATSIHP Act

In contrast to the situation in NSW, the sole purpose of the ATSIHP Act is

“...the preservation and protection from injury or desecration of areas and objects in Australia and in Australian waters, being areas and objects that are of particular significance to Aboriginals in accordance with Aboriginal tradition.”
[s.4]

While the decision-maker has to take certain matters into consideration, "... the courts have emphasised the 'high value' the ATSIHP Act places on the protection of Aboriginal heritage threatened with injury or desecration, and have stated that this is a factor to be given substantial weight by the Minister in exercising his or her discretion."²

We call on Minister Sussan Ley, as the responsible minister, to use the ATSIHP Act to protect the highly significant cultural landscape of the Burraborang Valley.

Yours sincerely



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² Introduction to the Aboriginal and Torres Strait Islander Heritage Protection Act, Heritage Division Department of Sustainability, Environment, Water, Population and Communities, 2010, P.15