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‘All our sites are of high significance’ Reflections from recent work in the Hunter Valley–Archaeological and Indigenous perspectives

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As part of the environmental impact assessment (EIA) process, the Hunter Valley has been subject to decades of archaeological investigations involving many Aboriginal stakeholder groups. This paper critically discusses the EIA process, specifically the Aboriginal cultural heritage assessment (ACHA) process and the Aboriginal consultation requirements (ACHRs) for New South Wales (NSW) drawing on our collective experience of cultural heritage management (CHM) in the Hunter Valley. We examine the definition of ‘values’ and the identification of heritage within the history of relevant legislation in NSW to critique the ACHA process in the Hunter Valley. We introduce the relevance of the concept ‘solastalgia’, relating concerns for heritage to effects of ‘environmental distress’ from the cumulative impacts of mining and its relevance to the ACHA process. CHM legislation and practice is currently under review by the NSW State government, we hope to stimulate constructive dialogue on these issues based on our collective experience.

Introduction

The Hunter Valley is a 37,200 km² region incorporating the most northern extent of the Sydney Basin in New South Wales (Herbert 1983) (Figure 1). It extends from Newcastle in the southeast with the valley floor bounded by the steep sandstone escarpments of the Blue Mountains, the Broken Back Range and Goulburn River National Park lie to the north-west (Brereton et al 2007:1-3). The Hunter Valley includes eleven Local Government areas and encompasses the boundaries of the Awabakal, Bahtahbah, Karuah, Koompahtoo, Mindaribba, Worimi and Wanaruah local Aboriginal Land Councils. Since the 1960s, the Upper Hunter Valley (including the towns of Muswellbrook, Singleton, Cessnock and Denman), but particularly the Central Lowlands area (including the township of Singleton), has been the focus of extensive archaeological investigations undertaken as part of the Environmental Impact Assessment (EIA) process including numerous and extensive ‘salvage’ excavations primarily relating to coal mining (Figure 2). The Upper Hunter Valley lies within the boundary of the Wanaruah Local Aboriginal Land Council (LALC), an area comprising approximately 14,500 km², and the Central Lowlands comprise 30% of the Wanaruah LALC boundary’s total area (ERM 2004:1). There are approximately 24 open cut and 10 underground coal mines currently in operation in the Hunter Valley region (not including proposed coal mines waiting for Project Approval or undertaking exploratory works) (NSW Minerals Council factsheet 2010:1). The Hunter Valley is responsible for 64% of NSW’s coal production, is the biggest coal producer in NSW, and the Port of Newcastle which services the Hunter Valley’s coal mines is reportedly the largest coal port in the world (NSW Minerals Council factsheet 2010:1). At the time of writing, the Hunter Valley region has

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approximately 75 Aboriginal stakeholder groups currently actively involved in cultural heritage management (CHM) (including archaeological investigations) as part of the EIA process for existing projects.

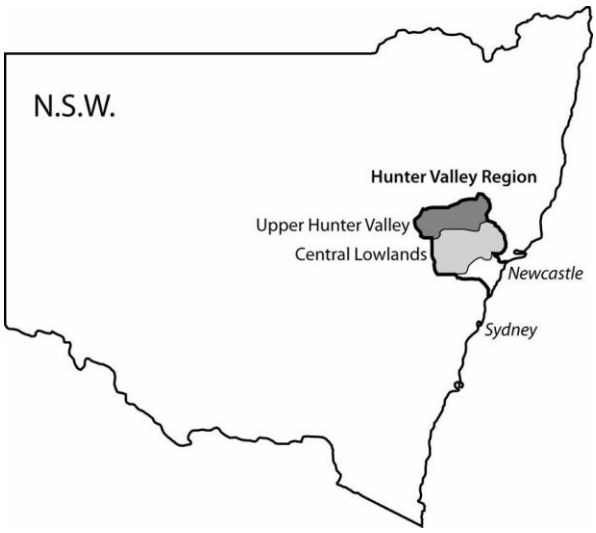

Figure 1. Map showing the location of the Hunter Valley, NSW

The issues raised in this paper are timely and significant as NSW Aboriginal cultural heritage legislation and practice is currently under review by the State Government. Issues in the assessment of 'significance' in CHM in the Hunter Valley region must be considered from the perspective of Indigenous community representatives and archaeologists. These issues include the tensions created by the historical development of CHM legislation in NSW and the associated issues of recognition and identification of heritage. We argue that many of these issues arise from the confusion in definitions of 'values' and 'significance' used in the significance assessment process in both legislation/policy and practice. Recent changes in the Aboriginal consultation process (DECCW 2010a), including the 'Aboriginal cultural heritage consultation requirements' (DECCW 2010b) and their impact on CHM in the Hunter Valley demonstrate the complexity of issues in contemporary CHM. We find literature from environment psychology and international interdisciplinary studies on heritage useful for the critique of CHM in NSW (noting this critique has implications nationally). Albrecht's (2005) concept of 'solastalgia' informs our critique of the nexus between cultural heritage values and the potential long term effects and distress experienced by people in regard to social impacts of mining and other forms of environmental change or transformation.

Values and significance

Ambiguity in the definition of 'values' and 'significance' in the Burra Charter have led to misappropriation of these terms by some heritage practitioners/archaeologists in the significance assessment process in NSW. The assessment of cultural and archaeological significance in Aboriginal cultural heritage assessments (ACHAs) for many large mining projects approved in the Hunter Valley in recent years have successively followed the Archaeological Survey and Assessment guidelines (NSW NPWS 1997) and the Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW (OEH 2011) (for examples, refer to AECOM 2010; ERM 2003; Umwelt 2006). Both guidelines used approaches where significance and values are embodied within a place and assumed by some archaeologists/heritage consultants to be objectively quantifiable. Cultural significance is defined as intrinsic to place in the Burra Charter and places are defined as having inherent, embedded values (Australia ICOMOS 1999:2). Successive NSW government guidelines outline significance assessments for Aboriginal heritage as a two-part process in which the archaeologist determines the 'scientific significance' and the Aboriginal community determines or communicates the 'cultural or social' significance of objects or places. Although OEH (2011) has recently tried to integrate these assessments and elevate Aboriginal cultural heritage values through appending the Archaeological Report (scientific assessment) as a separate document to the ACHA, in practice the Archaeological Report still forms the bulk and weight of the ACHA and in parts is repetitive in structure to the ACHA. The guidelines by OEH remain focused on the assumption that sites have

intrinsic social, historical, scientific and aesthetic values (OEH 2011:7) which can be quantitatively and scientifically measured and ranked by an archaeologist/heritage consultant. Some practitioners have reduced this to a numbered 'score card' approach (for examples see Umwelt 2008, 2010a, 2010c). These kinds of ratings, especially when used in isolation, constitute a positivist approach grounded in 'New Archaeology', or archaeology as a science, which assumes the significance of an object/site/place/landscape can be measured as an objective 'truth'. In practice, scientific significance assessments predominantly focus on the remnant physical evidence of Aboriginal occupation in the Hunter Valley (often stone artefacts). The focus on material remains does not often take into account intangible heritage, particularly the relationships and activities between contemporary Indigenous people and the environment, despite the requirement in the guidelines to consider intangible social values (OEH 2011:8). This approach elevates the archaeologist/heritage consultant undertaking the Archaeological Report within an ACHA to a position of power, as a 'scientific expert' capable of applying their expertise to obtain a quantitative measure of scientific values. This contrasts with the articulation and communication of cultural and spiritual values by Indigenous people with respect to their heritage as part of the ACHA process.

Significance is not intrinsic or 'embodied' in a place and it cannot be considered as an objectively measurable attribute over space and time (Brown 2008:21; Byrne 2008:614). Instead, values should be considered as made by people, ascribed by people to place (and/or object) and are therefore inherently social in nature (see Berntrupperbaumer et al. 2006:723-741; Boyd et al. 1996; Brown 2008:21; Byrne 2008:614; Pocock 2003:273; Reser and Berntrupperbaumer 2005:125-146; Rowland 1995:161; Smith 1996:67). Significance of a place cannot be determined without defining who values that place by the active engagement of and genuine consultation with the individuals or collective whose values are being assessed in the determination of significance. Values cannot be objectively identified within places, landscapes or objects; they originate and dwell within the hearts and minds of people. Thus, assessing these values can only be achieved through the engagement of appropriate people in the significance assessment process. Therefore, Aboriginal cultural heritage significance refers to the values held by Aboriginal people about their heritage. These are subjective and shifting in nature and part of the broader cultural system where groups and individuals value and may share attachment to place which may be influenced over time by a myriad of factors.

Figure 2. Overview of the Hunter Valley, central lowlands landscape from the well-known Baiame Cave Site facing east-northeast towards open cut coal mines at Mount Thorley (Photograph–Jillian Huntley)

Environmental psychologists Reser and Berntrupperbaumer (2005:142) provide a useful definition of values as 'individual and shared community or societal beliefs about the significance, importance of cultural heritage and how it should be viewed and treated by humans'. Cultural heritage values 'psychological and social constructs … found 'within' human individuals, institutions and societies' (Reser and Berntrupperbaumer 2005:142). Cultural heritage values are expressed and represented 'across all human activities, relationships and cultural products and … incorporate shared beliefs … about what should be done to protect and

preserve these places and systems' (Reser and Berntrupperbaumer 2005:142). Following these definitions, values are held by people, can change over time and be influenced by any number of social, cultural, political, religious or environmental factors.

Defining values as 'psychological and social constructs' provides a new and useful way of thinking about the nature of significance. ACHAs that assess archaeological and cultural significance need to incorporate methodologies that deal with values as 'psychological and social constructs' and incorporate the interrelationship of people and their values with places/sites/objects and landscapes (tangible, physical heritage) and intangible heritage. An example of a methodology which does attempt to grapple with these issues can be seen in the work of Byrne and Nugent (2004) in the lower north coast of NSW. Methodologies with a qualitative focus and perhaps anthropological in nature therefore appear helpful. Methodologies used in ACHAs need to acknowledge the qualitative aspects of 'values'. It is not possible to absolutely quantify values through hierarchical ranking (such as numbered score systems or ratings), as values are not intrinsic to places, objects and sites but belong to people. The history of the establishment of heritage legislation and policy in New South Wales has perhaps led to, and enshrined, some of these issues raised within the significance assessment process.

History of Aboriginal heritage legislation in New South Wales

The history of the establishment of New South Wales (State) Aboriginal cultural heritage legislation is linked to unequal power relationships between archaeologist/heritage consultant and the Indigenous community in the CHM process. From 1930 to 1945, Frederick David McCarthy (Anthropologist, Australian Museum) and Joseph Lexden Shellshear (Professor of Anatomy, University of Sydney) raised with the NSW government their concerns over the ongoing destruction of Aboriginal sites and objects (Smith 2000:110). These concerns were not officially heeded until the 1960s, when archaeologists and other members of the public lobbying for legislation to protect Aboriginal and settler heritage sites from development, coincided with wider public remonstrations concerning broader environmental issues (Smith 1996:69-71, 2000:110). Smith argues that the formation of the National Parks and Wildlife (Amendment) Act 1969 (NSW) took into consideration McCarthy's earlier proposals, but these concerns were grounded in archaeologists as having a 'pastoral role for themselves over Aboriginal material culture', because of a moral and scientific right of access and due to a sense of 'duty' to speak for 'a vanishing people' (2000:110). Later amendments to the Act in 1974 (ss. 86-87), appear to have been developed without consultation with Indigenous people (Smith 2000:110). The Act allowed the collection of artefacts from sites, the regulation of collection and research by archaeologists and elevated archaeologists and scientific values above the values of Aboriginal people in heritage (Brown 2008:20-21; Smith 1996:69, 2000:110-115). This history has influenced and shaped existing heritage legislation in NSW.

The elevation of the archaeologist/heritage consultant in a 'pastoral role' of 'political neutrality' as an independent, scientific 'expert' and a focus on physical evidence of past Aboriginal occupation can be argued to be a major flaw in the development of Aboriginal cultural heritage practice in NSW. It could be argued to be a form of institutional racism and a major cause of unbalanced power relationships between archaeologists, government and Aboriginal stakeholders within the EIA process in NSW. However, this situation is not restricted to NSW and several authors have commented on this issue and discussed unequal power relationships between Indigenous stakeholders, archaeologists and government in institutional practice in CHM including the EIA process in Australia (Langford 1983; Murphy 1996:145; Smith 2000:110-115; Tasmanian Aboriginal Land

Council 1996:293-299). Institutional racism refers to the 'existence of institutional systemic policies and practices which place non-white racial and ethnic groups at a disadvantage in relation to an institution's white members' (Jones 1997:225). Institutional racism cannot often be pinpointed to an individual or to a single purpose of an institution but it can include institutional policies and practices which disadvantage people based on race (Jones 1997).

Since the 1990s, the unequal power balance in institutional practice has begun to be addressed through greater involvement of Aboriginal people in management positions within OEH, especially within the cultural heritage unit, in the site register and in the regulation and administration of the Act (Brown 2008:24-25). Recent shifts in the policies of OEH to focus on the requirements of consultation with Indigenous stakeholders and Aboriginal social values in the EIA process through the development of a more integrated ACHA (OEH 2011), and the establishment of the Australian Indigenous Archaeologist's Association in December 2010 are also significant milestones. However, recent regulatory policies such as the Aboriginal cultural heritage consultation requirements (DECCW 2004, 2010b), do not recognise that financial remuneration is required for Aboriginal stakeholder groups during consultation, particularly in relation to their required input on cultural values and this may further perpetuate the existing power imbalance. The onus in the current NSW Aboriginal consultation requirements is for proponents (through their engaged heritage consultant/archaeologist) to facilitate an assessment of Aboriginal cultural values for a proposed development. Such assessment requires the views and information of Aboriginal people registered for consultation while implying that any contractual arrangement with Aboriginal people is separate from consultation (e.g. Section 3.4 'Consultation should not be confused with employment', DECCW 2010b:9). Requiring Aboriginal stakeholders to define and assess cultural values while stating that consultation does not constitute 'commercial engagement' (and therefore does not require financial remuneration) does not adequately recognise the role of Aboriginal stakeholders as 'owners' of their cultural heritage values and may critically undervalue their role and expertise in the EIA process for assessment of cultural values.

Recognition and Identification of Heritage

Recognition and identification of heritage by heritage consultants/archaeologists, policy makers and other agencies involved in cultural heritage management is influenced by a range of social, political and cultural factors. Internationally there has been some acknowledgement that heritage practitioners must address what has become a crisis in the 'politics … of recognition' regarding the heritage values of people and identification of heritage (Weiss 2008:426). Weiss (after Mathers et al. 2005) argues that 'for every heritage site chosen and highlighted, countless other narratives or cultural landscapes are overlooked, de-emphasised, or even destroyed' because of the economics surrounding consultancy and the impossibility of a heritage practitioner accomplishing 'political neutrality' in their assessment of the past (Weiss 2008:426). The role of archaeologists as stewards and scientifically neutral 'experts', which is enshrined in heritage legislation, heritage policies and cultural heritage practice, has caused a power imbalance in the EIA process (Smith 1996, 2000; Weiss 2008). Furthermore, as Brown (2008:21) argues, significance criteria developed by Commonwealth and State heritage agencies in Australia and practicing consultants 'are a political construction and are not neutral'.

In practice, this 'politics of recognition' has perhaps inadvertently led to the destruction of other heritage sites and cultural landscapes of value to the wider public. In the case of recognising Aboriginal heritage, sites, places and landscapes may be overlooked, de-emphasised, or even destroyed because they are assessed as not possessing scientific values, or not identified

because they are recent in date, lack physical evidence (defined under the Act as 'Aboriginal objects'), or lack evidence of stereotypically 'traditional' Aboriginal occupation. One example in NSW is the failure to identify post-contact heritage places until the last seven years. Post-contact heritage places include contemporary story places, mission sites, bush food or resource sites, picnic places, and pastoral sites which have originated over the last two hundred years (Byrne and Nugent 2004). Until recently many post-contact heritage places slipped through the gaps of site registers maintained by heritage agencies throughout Australia due to divisions in State legislation between what is perceived as 'historical/settler' and 'Aboriginal' heritage. As a consequence, post-contact heritage places, particularly former missions and government settlements, are underrepresented on State heritage databases (see Brown 2008:23; Harrison and Williamson 2004; Ireland 2010; McIntyre-Tamwoy 2004; Murray 2004a, 2004b).

There is a notable lack of post-contact heritage sites recorded in the Aboriginal heritage assessments prepared for EIAs for the Hunter Valley. Although these sites can often be difficult for archaeologists to identify in the field due to a lack of physical remains, numerous potential post-contact heritage sites were identified within the history chapter of the Upper Hunter Heritage Baseline Study commissioned by the Upper Hunter Aboriginal Heritage Trust (ERM 2004). Although this study was completed more than seven years ago, none of the additional potential post-contact heritage sites identified for further investigation have been investigated and registered on the OEH Aboriginal heritage register (AHIMS). This is often distressing to the community whose heritage is unrecognised, in addition to the increased potential for a site/place to be damaged or destroyed.

Environmental Distress

This research points to a lack of genuine consultation and community engagement in the cultural heritage significance assessment within the EIA process, in particular in the determination of a Project Approval (particularly in the case of the former Part 3a of the Environmental Planning and Assessment Act 1979 which extended the Minister of Planning in NSW's powers to determine Project Approvals). The distress which arises as a result of feelings of disempowerment has been referred to in environmental psychology as 'environmental distress' (Connor et al. 2008:88). Such distress may be caused by a perceived threat, significant transformation or the loss of a place or places due to a development without appropriate mitigation, especially where people feel they have not been adequately consulted or involved in the EIA process.

In an analysis of environmental distress experienced by the Upper Hunter Valley communities (including Indigenous groups) in 'conflict' over water with coal mines, Connor et al. (2008:88) conclude the mining industry promotes 'hard scientific knowledge' in their environmental assessments and consultancy reports with government support of such knowledge 'enshrined in their regulatory regimes', leaving any opposition 'confined to the terms of a contest defined by conservative science orthodoxy' rather than valuing qualitative analysis and/or the consideration of emotion and distress expressed.

Government agencies and the system of EIA process have promoted 'hard scientific' knowledge by chosen 'experts' (Connor et al. 2008:88). Broader community concerns are less represented than measurable impacts in social impact assessment within the EIA process. Furthermore, in social impact assessment, the economic benefits of mining to the State and region through jobs and investments are often highlighted, rather than a rigorous assessment of potential social impacts, (including the impact of distress and community wellbeing) from long term mining and its cumulative impacts in a region. As Trigger (1997:162-163) has argued, mining in Australia is dominated by 'corporate narratives, focused upon growth and process that

marginalise alternative 'stories' about the meaning of landscape'. These narratives can be argued to have elevated the 'moral imperative' that mining must proceed, due to 'its economic importance', over local community well-being (Trigger 1997:162-163). The cumulative environmental impacts of mining and their relationship to the potential long term social and psychological impacts on community members and their wellbeing should be explicitly recognised within the EIA process, particularly within ACHAs.

Cumulative impacts and 'solastalgia'

One of the key issues faced in the assessment of people's cultural heritage values within the Hunter Valley is the lack of consideration of cumulative impacts of mining, and the relationship of these prolonged, cumulative impacts to social and psychological health and community well-being. Godwin (2011:88-91) cautions against the application of the assessment of cumulative impacts to CHM in Australia claiming the impossibility of reliably quantifying such impacts. However, we argue that it is crucial to attempt an assessment of such impacts, particularly in regions such as the Hunter Valley which have been subject to an increasing rate of transformation from coal mining and are a focus of continuing extractive industry. We agree with Veth (2011:95-96) that 'archaeology represents an irreplaceable record of human behavior not obtainable from any other source'. The stakes are high in large ACHA projects in terms of the large amounts of financial resources placed in the EIA process and also in terms of the potential long term impacts of these projects on regional landscapes and communities. We agree with Sneddon (2011:94-95) that cultural heritage management 'is a much broader church' where 'there is value in other disciplines attempts to assess these cumulative impacts'. We look to environmental psychology and the concept of 'solastalgia' (Albrecht 2005) to assist in promoting dialogue within CHM on this issue.

Transformation causing distress includes destruction of the landscape by open cut mining and associated impacts on residents include dust, noise and compulsory acquisition of property, leading to loss of neighbours, livelihoods and a 'beloved' landscape (Connor et al. 2008: 77). 'Solastalgia' (Albrecht 2005:44) describes the feeling of powerlessness and distress experienced by Hunter Valley residents in areas of high impact from coal mining who were watching environmental destruction and transformation of the landscapes surrounding their homes. The results of this work is published in several papers (Albrecht 2006; Albrecht et al. 2004:23-29; Connor et al. 2004:47-58; Connor et al. 2008:76-90). Solastalgia is described as

> the pain experienced when there is a recognition that the place where one resides and that one loves is under immediate assault (physical desolation). It is manifest in an attack to one's sense of place and a feeling of distress (psychological desolation) about its transformation. It is an intense desire for the place where one is a resident to be maintained in a state that continues to give comfort or solace … It is the 'lived experience' of the loss of the present as manifest in a feeling of dislocation; of being undermined by forces that destroy the potential for solace to be derived from the present. (Albrecht 2005:45)

Albrecht (2005:46) links solastalgia to 'more serious health and medical problems such as drug abuse, physical illness and mental illness (depression, suicide)' and suggests it may be a diagnosable 'psychosomatic illness'. A Wanaruah Local Aboriginal Land Council representative interviewed by Connor et al. (2008:84-86) expressed Indigenous attachment to the environment as an intimate spiritual connection; the impacts of coal mining therefore not only destroy that environment but irrevocably damage people's connections to country. Albrecht (2005:54) argues solastalgia is experienced at a potentially deeper level by Indigenous people due to their strong spiritual and emotional connections to 'country', with distress manifest from the ongoing destruction and transformation

of the landscape since European invasion. He has suggested solastalgia is a potential contributor to high Indigenous suicide rates and premature death rates because of the transformation of traditional lands and a resulting sense of powerlessness and challenges to individual and group identity (2005:47-49).

Links between Indigenous well-being, cultural heritage and environment are not new ideas and there is a body of literature which supports this connection (for example Human Rights and Equal Opportunity Commission 1997; Grieves, 2006; Memmott 2007). Reser et al. (2011:28) link environmental change (including natural disasters and climate change) and environmental degradation within Indigenous communities throughout the world as 'exacting very real though largely undocumented human costs'. This concept can be applied in the Hunter Valley context and more broadly within Australia and overseas in places where there is rapid development, major physical environmental change (including natural disasters) and environmental degradation. Such changes may result in psychological distress including identity crises potentially manifested in physical health conditions within affected communities (for example Kwiatkowski et al 2009:57-67; Reser et al 2011:18).

Currently, the links between connection to country, preservation of cultural heritage and emotional and physical well-being are not appropriately assessed as part of the EIA process. Social impact assessments completed as part of EIA focus more often than not on the economic benefits of coal mining, such as potential job growth, infrastructure and offsetting impacts through community based project funding (for examples, refer to AECOM 2010; ERM 2003; Umwelt 2010a; 2010c). In our opinion, many large projects within the Hunter Valley have failed to assess the links between destruction of cultural heritage and its detrimental effects on community well-being (both Indigenous and non-Indigenous) (refer to AECOM 2010; ERM 2003; Umwelt 2006, 2007, 2008, 2010b, 2010c). From our collective experience we can acknowledge that the rapid transformation of country within the Hunter Valley has caused feelings of powerlessness and loss of connection to country, often expressed by Aboriginal stakeholder groups within the consultation process (refer to Aboriginal stakeholder group correspondence within Umwelt 2006, 2010c). The emotional distress we witnessed can be described as a feeling of disempowerment in the broader EIA process, particularly in the determination of Project Approvals and a perception of a lack of adequate social impact assessment. At times, evidence of this stress may manifest in project meetings in threats and incidents of violence and abuse directed at practitioners and other Aboriginal stakeholder groups. The authors have experienced this first hand and have anecdotal evidence that this is not uncommon. We speculate that this behaviour may be symptomatic of stress and an attempt to reclaim power on the part of disenfranchised and frustrated stakeholder groups. Whatever the cause, the situation needs to be addressed as it is unacceptable that archaeologists and community members are being required to work in contexts where physical and verbal abuse have been normalised and are regarded as acceptable behaviour. From personal experience, employers and agencies are enablers in this process because they have failed to set appropriate standards and take action on reported incidents. Community members' distress has been expressed through comments within the ACHA process. Some Indigenous stakeholders expressed a growing sense of powerlessness about their environment being transformed by their view that their input into the significance assessment process was irrelevant in final decision making in the EIA process. Some comments made by Aboriginal stakeholder groups, demonstrate the view that 'no one listens to what we have to say–the mine will always go ahead no matter what'. When asked to comment regarding the cultural significance of a site or landscape stakeholders stated (often in writing)

'all our sites are of high significance' (for example see Aboriginal stakeholder group comments in Umwelt 2006, 2007). During consultation, some Aboriginal stakeholder groups left blank tick box style questionnaires designed to assist groups in making comments on cultural significance. They send back blank signed questionnaires (Umwelt 2006, 2007) or repeatedly state in verbal discussions that they had 'thrown the draft cultural heritage assessment report in the rubbish bin unread' (anon, pers. comm. 2007, 2008, 2012). Such examples can be interpreted as attempts to redress unbalanced power relationships, and often represent resistance to the process, and a way to slow a development project and frustrate the proponent. Refusal by some Indigenous stakeholders to take an active part in the assessment process is explained as being due to the perception that the EIA process was unjust, or compromised from the outset. Our experience is that these manifestations of environmental distress dramatically increased commensurate with the increase in the number of Indigenous stakeholder groups formally registered for consultation in the EIA process in the Hunter Valley, particularly over the past seven years.

Most ACHAs undertaken as part of the EIA process do not address the cumulative impact of major developments such as coal mining's impact on the cultural heritage of the Hunter Valley. Current heritage legislation, site registration and heritage assessment process is still coming to grips with how to define, describe and assess cumulative impact and its relationship to rarity, representativeness and significance. OEH has begun to address this in NSW by mapping registered Aboriginal sites, previous land use history and development (including mining) over time as a means to explore cumulative heritage impacts (Ridges 2011). However, in terms of CHM, there still is much to be done in the ACHA process on understanding cumulative impacts on cultural heritage and its relationship to cultural heritage values. There needs to be greater understanding and analysis of the types of sites registered and those underrepresented on site databases, greater public dissemination of information and regulation on the conservation of site types that are within conservation areas and heritage management zones to improve the ACHA process. For example, cumulative impacts of developments may lead to increased rarity of site types. Sites which may have been originally assessed by an archaeologist as common, (and therefore of lower scientific value) may become rare through increased attrition of the archaeological resource due to development. The authors have direct experience of at least two major projects that were affected by dramatic changes from cumulative impacts in their region over five years, between completion of the original archaeological assessment upon which Project Approval was granted and construction of the mine. These changes were due to increased mining approvals nearby in formerly agricultural areas, which were not approved or known to be under consideration during the preparation of the original development approval including the archaeological assessment. The heritage system as it currently exists does not have adequate mechanisms to address changes to significance over time. Cumulative impacts may also require consideration not just in relation to the physical destruction of sites/landscapes but also the accumulated distress of stakeholders involved in the EIA and ACHA process.

Compound Distress: the Importance of Political Neutrality

The decision of some heritage consultancies in NSW to involve themselves in the commercial engagement of Indigenous stakeholder groups on behalf of a proponent (for example, in the determination of commercial rates and definition of tasks ['job packages'] often including the direct payment of these groups for and on behalf of the proponent) has contributed to, and in some cases, escalated the distress experienced by Aboriginal people in the CHM process. The involvement of any heritage consultant in the commercial engagement of Aboriginal

stakeholder groups (in fieldwork and consultation programs for EIAs) may reinforce imbalanced power relationships in the cultural heritage management process. In our experience the (long term) involvement of heritage consultants in commercial engagement of registered Aboriginal stakeholders seriously undermines the aspiration of 'political neutrality' and has led to increasing frustration of Indigenous stakeholder groups' with the role of the heritage consultant/archaeologist in the assessment process. This has in turn led to an increased, cumulative sense of powerlessness by Aboriginal stakeholders in the Hunter Valley (Indigenous stakeholder representatives pers. comm. DECCW Aboriginal Consultation Requirements Forums at Singleton 2009 and Kurri Kurri 2010).

Offsets and Conservation Areas– perspectives

One approach adapted in ACHAs to attempt to mitigate cumulative impacts, including compound emotional distress and the destruction of sites and landscapes, has been through the development of 'offset strategies', often including land based conservation areas. The language of 'offsets' to mitigate the negative impacts of coal mining on the cultural heritage values of Aboriginal people in the Hunter Valley is increasingly used in the EIA process, more recently in the context of 'intergenerational equity'. In ACHAs, 'offsets' have included the promises by mining companies to set aside parcels of land termed Cultural Heritage Offset Areas, Conservation Areas, or Heritage Management Zones specifically for their Aboriginal cultural and/or scientific values (often encompassing landscapes with biodiversity and/or other ecological values in addition to 'cultural' or 'scientific' values). The purpose of this is to set aside land which will be conserved by the land owner. Where formalised under a Conservation Agreement under Div. 12 s. 69 of the National Parks and Wildlife Act 1974 the agreement is binding on all parties. These areas are provided to offset or compensate the destruction of objects and landscapes which have scientific or cultural values as assessed through the EIA process, by allowing access to Indigenous groups and their future descendants to access cultural heritage sites and landscapes and, thereby, providing a means for renewing attachment to country. However, in some cases, monetary offsets (for example, see Umwelt 2008a:10.3 to 10.4, 2010b:8.30, 2010c:2.46) have been developed in ACHAs to mitigate the impacts of a proposed mining project to Indigenous stakeholder groups. In many cases, land based offsets and Conservation Agreements established as part of the Planning Approval Conditions of a proposed coal mining project have been either completely or partially rescinded at a later date and proposed for use in further coal mining including related infrastructure (for example, see AECOM 2010; Umwelt 2007, 2010a).

The practice of rescinding or partially rescinding land based offset packages (upon which Project Approvals have been issued) by coal mining companies has been a disturbing trend in the Hunter Valley over the last ten years. In our experience, this practice is often justified by the archaeologist/heritage consultant in the ACHA commissioned through the subsequent offer of a 'replacement' offset area to Indigenous stakeholder groups or, in some cases, through promises of monetary or other non land based remuneration (refer to AECOM 2010; Coal and Allied 2010; Maguire 2012:1; Umwelt 2007, 2010a:E23). This issue raises ethical dilemmas for the archaeologist/heritage consultants, proponents and Indigenous stakeholder groups within the assessment process. It can damage relationships because project commitments and promises to Aboriginal stakeholder groups are not followed through. Such practices jeopardise the integrity of the EIA process. Greater scrutiny and regulation of projects that involve changes to existing offset arrangements is required on the part of the OEH and Department of Planning. Archaeological organisations (such as the Australian Archaeological Association and

Australian Association of Consulting Archaeologists Inc) may also be able to assist with scrutiny of their membership, where breaches of relevant codes of ethics and professional practice have occurred. These actions have also heightened growing cynicism, conflict and distress within the Aboriginal stakeholder groups of the Hunter Valley as they feel disempowered in the impact assessment process.

Where land based conservation offsets are in place, there is no requirement for a formal access agreement for Indigenous stakeholder groups to these Conservation Agreements, and it is unclear what access is actually occurring or indeed possible for Indigenous stakeholder groups. These areas are often adjacent to the active open cut coal mine areas leading to access restrictions and/or onerous occupational health and safety restrictions (for example Beltana Highwall Mining AHMP 2004:30-31; Umwelt/Xstrata Mangoola 2008). The Mangoola Conservation Offset Areas, particularly Anvil Hill, will be surrounded by open cut mining with potential indirect blasting impacts, thus making them inaccessible for certain parts of the year (Umwelt 2006). During initial archaeological survey of Conservation Agreements and consultation for the ACHA, it is difficult for Indigenous stakeholders and the archaeologist to visualise the future impacts of dust, noise and blasting on these places and sites. Although monitoring programs for Conservation Areas which involve consultation with Aboriginal stakeholder groups are often in place, these programs are neither a legal nor policy requirement for monitoring unless stipulated in the conditions of consent of a Development Approval or Project Approval. There is a lack of knowledge and literature evaluating the real benefits of these Conservation Areas to Indigenous stakeholder groups.

Consultation and practice

The OEH's recent ACHRs (DECCW 2010b) and former draft 'Interim Consultation Requirements for Applicants' (DEC 2004) have led to major problems in cultural heritage management and the EIA process within the Hunter Valley. The most notable issue is the dramatic increase in the number of registered Aboriginal stakeholder groups for consultation. In 1999, there were two Aboriginal stakeholder groups actively involved in the EIA process in the Hunter Valley. In 2004, there were twelve Aboriginal stakeholder groups registering interest for consultation in relation to EIAs in the Hunter Valley. By 2010, this number had increased to about sixty registered Aboriginal stakeholder groups. This increase has, in many cases, not led to an increased unity on decision making or effective consultation in our experience but to increased factions within the Hunter Valley. For example, one family is represented by at least twelve individual registered stakeholder groups and has membership in at least two peak bodies. This increase in the sheer number of groups per family has an effect on decision making in heritage assessments in the Hunter Valley due to the potential dominance of one family. There is a risk that the voices of other families, represented in fewer registered stakeholder groups and peak bodies, may be muted or effectively silenced. Proponents (and their engaged heritage consultants/archaeologists) cannot make judgments regarding the cultural values of Aboriginal stakeholders registered for consultation regarding projects and are required to afford equal opportunity for the presentation of all registered Aboriginal stakeholders' cultural values during the EIA process regardless of traditional right to speak for country. This increases tensions between Aboriginal stakeholder groups and the archaeologist/heritage consultant, because of a power imbalance in their roles in the ACHA process.

In extreme cases, some Aboriginal stakeholder groups have registered for consultation throughout many areas within NSW in the hope of obtaining paid employment during fieldwork on projects (Indigenous stakeholder group representative, pers. comm. 2007). Effectively such groups 'come in' from areas where they

have not previous registered interest or identified as Traditional Owners, or local descendants, or members of historical communities. For example, several groups from the Wanaruah LALC region have started to register interest for consultation in the Awabakal LALC region publicly arguing that they have 'a right to succession'; a right to work in the region and speak for country because the 'Awabakal died out' (Indigenous stakeholder group representative pers. comm. 2010, 2011; proponent Newcastle area pers. comm. 2011). In this particular case the Awabakal LALC and other Traditional Owner and historical community groups within the Awabakal region are having to negotiate with people they perceive as 'outsiders'. The OEH ACHRs (DECCW 2010b) stipulate that proponents specifically advertise their projects in broader newspapers with national and State coverage bringing new stakeholder groups into the consultation process unless an approved native title determination exists. These requirements can lead to the focus of a heritage assessment in an EIA for a large mine project being skewed towards the consultation process and fees for involvement of over 60 stakeholder groups in fieldwork. These issues provide an environment which is vulnerable to corruption by unscrupulous proponents and some Indigenous stakeholder groups.

Conclusion

This paper has identified several problems with current ACHA process in NSW, particularly within the Hunter Valley, chiefly the lack of recognition of connections between community well-being and cultural heritage, and the imbalance of power relationships in the ACHA process embedded in legislation and regulatory guidelines such as the ACHRs. We argue that these problems can be linked back to the legacy of the development of cultural heritage legislation in NSW, the definition of heritage constructs (such as values and significance) and their misappropriation in practice, and the politics of recognition and identification of Aboriginal cultural heritage. The concept of 'solastalgia' and recognition of environmental distress and its relevance to assessing cultural heritage values have been discussed to highlight problems within the ACHA process, within the context of cumulative impacts from coal mining in the Hunter Valley. Although, this paper has focused on our collective experience within the Hunter Valley, the issues raised in this paper are potentially equally applicable to any region where visual and perceived environmental changes and landscape scale transformation is occurring in Australia (for example, Pilbara region, Western Australia, Bowen Basin, central Queensland) and overseas (for example, Canada, Chile and Papua New Guinea), particularly where mining and extractive industries intersect with and affect Indigenous communities . We hope this paper provides some critical 'food for thought', particularly in the relation to further consideration of cumulative impacts and environmental distress. We hope to promote constructive dialogue on these issues in the future, in a part of the world we call home where much of the attention and financial resources allocated to cultural heritage has focused on the archaeological record through CHM funded by coal mining projects.

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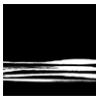

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