



NSW NATIONAL PARKS & WILDLIFE SERVICE

# DETERMINATION NOTICE

## Willandra Lakes Aboriginal Ancestral Remains Reburial Project 2021

*This determination notice fulfils the requirements of a determining authority under Division 5.1 of the Environmental Planning & Assessment Act 1979.*

**REF No:** DOC20/958548  
**Reserve:** Mungo National Park (and adjoining leasehold lands)  
**Proponent:** Heritage NSW (as the primary proponent)  
**NPWS Area:** Lower Darling Area (West Branch)

**Date received: (Revised version) 11 November 2020**

**Date determined: 12 January 2021**

**File Reference:**

**EF20/21462**

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## Determination statement

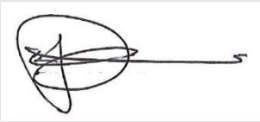
After considering the ‘*Willandra Lakes Ancestral Remains Reburial Project 2021 - Review of Environmental Factors*’ and after having taken into account to the fullest extent possible all matters likely to affect the environment as a result of the proposed activity as required under Section 5.5 of the *Environmental Planning and Assessment Act 1979*, **I hereby determine that the activity can proceed:**


- within land reserved as Mungo National Park under Part 4 of the *National Parks and Wildlife Act 1974* as a permissible activity as the proposal meet all necessary statutory considerations under that Act
- within Western leasehold lands known as Gol Gol Station, Mulurulu Station and Top Stations as the proposed works on those lands do not require consent under Part 4 of the *Environmental Planning and Assessment Act*

subject to the conditions as specified in the Schedules of this determination notice.

### Further, I confirm that:

- an Environmental Impact Statement (EIS) is not required, as the proposal is not likely to significantly affect the environment
- a Species Impact Statement (SIS) is not required as the proposal is not within land or water declared an Area of Outstanding Biodiversity Value under the *Biodiversity Conservation Act 2016* or critical habitat under the *Fisheries Management Act 1994*, and is not likely to significantly affect threatened species, populations, ecological communities or their habitats.

Recommendation for determination is made by		Signature	
<b>Jaymie Norris</b> Manager West Darling Area (West Branch) <b>NSW National Parks and Wildlife Service</b>			
Contact	<a href="mailto:jaymie.norris@environment.nsw.gov.au">jaymie.norris@environment.nsw.gov.au</a> Ph: 08 8084 2828, 0430 475 469 183 Argent Street, Broken Hill NSW 2880	Date referred	12/01/2021

Determination under the EP&A Act is made by		Signature	
<b>Mark Peacock</b> Director West Branch <b>NSW National Parks and Wildlife Service</b>			
<b>Statement</b>	On review of the referred Determination Report for the Willandra Lakes Ancestral Remains Reburial Project 2021 as DOC20/355162 dated 9 December 2020.  I concur with recommendations as referred by the NPWS West Darling Area Manager.  I deem that the activity may proceed subject to conditions as specified in the schedules of this determination notice.		
Contact	<a href="mailto:mark.peacock@environment.nsw.gov.au">mark.peacock@environment.nsw.gov.au</a> Ph: 02 6841 0932, Mobile: 0447 659 544 92 Macquarie Street, Dubbo NSW 2830	Date determined	12 January 2021

## Schedule 1 - Conditions of determination

Reference	
<b>Proposal</b>	Willandra Lakes Ancestral Remains Reburial Project
<b>Proponent</b>	<ul style="list-style-type: none"> <li>Heritage NSW - NSW Department of Premier and Cabinet (as the primary proponent)</li> </ul>
<b>Project partners</b>	<ul style="list-style-type: none"> <li>Willandra Aboriginal Advisory Group (Traditional Owners)</li> <li>NSW National Parks and Wildlife Service</li> </ul>
<b>Park</b>	Mungo National Park (as reserved)
<b>Other lands</b>	Gol Gol Station, Mulurulu Station and Top Station
<b>NPWS Area</b>	Lower Darling (West Branch)

### A. General terms of this determination

#### Responsibilities of the proponent

Heritage NSW is the primary proponent for the purposes of this determination. The primary proponent maintains the responsibility and accountability for the project delivery, as conditioned in this determination.

The proponent in delivering the activity is to comply with the (Revised) *Review of Environmental Factors – Willandra Lakes Aboriginal Ancestral Remains Reburial Project, prepared by Heritage NSW, dated 11 November 2020 (Willandra REF)* inclusive of the suite of technical appendices.

#### Documentation and project security

Components of this project are deemed confidential and culturally sensitive, and NPWS highlights that it is not in the public interest to allow all information associated with this project to be publicly accessible. Only authorised and nominated NPWS and Heritage NSW staff are authorised to access the secure technical appendices of the Willandra REF. Release or poor handling of information and data associated with this project without approval will be considered a breach of this determination notice.

#### Transfer of REF determination

The REF determination is not transferable, except with the written approval of the Director, NPWS Park Operations West Branch.

#### Inspection of work covered by this REF determination

NPWS reserves the right to inspect and examine works undertaken by the proponent on park that are associated with this project at any reasonable time. NPWS will commit to notifying and organising inspections with Heritage NSW as the primary proponent due to the sensitivities and security issues attached to this project.

#### Entry to land

- As the project will be delivered in partnership with NPWS, the project is not required to seek authorisation under the NPW Act or Regulation to access or undertake works within Mungo National Park. NPWS authorises the entry in accordance with the partnership arrangement as established between Heritage NSW and NPWS Lower Darling Area.

- b. Entry (including access and use of land) on the stations must accord with provisions as outlined by each leaseholder as agreed with Heritage NSW, subject to the Willandra REF Appendix 13 – Response from leaseholders.

### Financial responsibility

The full cost of this project delivery will be borne by Heritage NSW as the primary proponent.

No aspect of this determination commits or burdens NPWS with any costs associated with the project, beyond the existing partnership arrangement which includes a NPWS resource allocation as agreed by the NPWS Lower Darling Area, and approved by the Director, NPWS Park Operations West Branch.

### Reference to NPWS officers in this determination

The Director, NPWS Park Operations West Branch may delegate any functions ascribed to the Director in this determination to another officer of NPWS including, but not limited to, a relevant or equivalent NPWS Area Manager or Park Ranger.

### Explanatory notes to conditions in this determination

Explanatory notes included within this determination do not form part of the conditions, they only inform or explain the delivery of the condition or its intent.

### Submission of documentation or reporting to NPWS

All written requests and post determination reporting set as part of Schedule 1 of this determination is to be submitted directly to the Director, NPWS Park Operations West Branch, as the Determining Authority. The relevant contact details of the Director and Area Manager referred to as part of the determination are provided in the table below:

### Reporting

	Contact Details
<b>Environment Line</b> (for all pollution and environmental incidents)	<b>13 15 55</b>
<b>NPWS West Branch Director</b> (as the determining authority)	Mark Peacock - email: <a href="mailto:mark.peacock@environment.nsw.gov.au">mark.peacock@environment.nsw.gov.au</a> Phone: 02 68410932 Mobile: 0447 659 544 Office: 92 Macquarie Street, Dubbo NSW
<b>NPWS West Darling Area Manager</b> (as the referring Area Manager)	Jaymie Norris – Area Manager West Darling Area (West Branch) Email – <a href="mailto:jaymie.norris@environment.nsw.gov.au">jaymie.norris@environment.nsw.gov.au</a> Phone – 08 8084 2828 Office – 183 Argent Street, Broken Hill NSW 2880
<b>NPWS Lower Darling Area Manager</b> (as the project partner)	Jo Gorman – Area Manager Lower Darling Area (West Branch) Email - <a href="mailto:jo.gorman@environment.nsw.gov.au">jo.gorman@environment.nsw.gov.au</a> Phone 03 5021 8903 Mobile: 0418545231 Office – 4 Melaleuca Street, Buronga Postal – PO Box 318 Buronga NSW 2739

## B. Conditions of determination

### B1. Administrative

#### B1.1 Duration of this determination

- 1) The proponent must have substantially commenced the activity within five (5) years from date of determination.
- 2) The activity must cease in its entirety, including the monitoring program within five (5) years from date of activity commencement, unless alternative formal arrangements are in place and have been approved by the Director, NPWS Park Operations West Branch.

**Note:** *If the activity is not substantially (physically commenced) commenced within the 5-year timeframe, the REF determination will be deemed lapsed. If this occurs Heritage NSW must seek direction from the NPWS Director West Branch as to whether a new REF must be submitted before the activity can proceed.*

#### B1.2 Scope of determination

- 3) This determination only applies to the activity:
  - a. as located in accordance with the Willandra REF Section 6.1 and as shown in the (DOC20/763776) *Willandra REF Appendix 1 – Proposed reburial location maps, dated 11 November 2020*, and
  - b. as described in the Willandra REF Section 6.2 and consistent with the burial location descriptions and specifications as presented in the (DOC20/757387) *Willandra REF Appendix 11 – Proposed reburial location information, dated 11 November 2020*, and
  - c. as works specified in the (DOC20/757499) *Willandra REF Appendix 17 – Table of proposed works, dated 11 November 2020*.
- 4) The ‘activity’ as defined in Condition 3 must be undertaken in accordance with Willandra REF documents as specified unless amended by any condition of this determination.
- 5) In the event of any inconsistency between the Willandra REF and the conditions of this determination, the conditions of the determination shall prevail.

**Note:** *To ensure that the activity is consistent with the Willandra REF and statutorily compliant with the National Parks and Wildlife Act 1974.*

#### B1.3 Other approvals and authorisations required prior to commencement

- 6) This determination, including its schedule of conditions, does not relieve the proponent of any obligation to obtain the necessary statutory approvals to undertake the activity, including but not limited to any approvals required under the (Commonwealth) *Environment Protection and Biodiversity Conservation Act 1999*.
- 7) This determination requires the proponent to obtain authorisation under the *Crown Land Management Act 2016* prior to commencement of works on the Mulurulu, Gol Gol and Top Hut Stations. The proponent is to confirm formal authorisation is in place to ensure certainty of access to the burial locations.
- 8) This determination requires the Section 60 under the *Heritage Act 1977* to be in place prior to commencement of works in accordance with the (DOC19/1062963) *Willandra REF Appendix 7 – Willandra Lakes Aboriginal Ancestors Reburial Project Heritage Assessment Report, dated October 2020*.

#### B1.4 Safety and emergency procedures

9) The proponent is to ensure:

- a. all staff and individuals involved in the project are aware of the safety, security, emergency and environmental safeguards associated with the project works, and
- b. a NPWS Job Safety Analysis or similar operational document is prepared and submitted to the NPWS Lower Darling Area Manager prior to accessing park. The function of the JSA is to ensure the proponent, NPWS staff and Aboriginal community representatives are aware of the project requirements and will safely deliver works on site, and
- c. appropriate communication and emergency equipment are onsite and operational during the project works.

10) In the event of an emergency, the proponent must:

- a. enact relevant emergency procedures as specified in the approved NPWS Job Safety Analysis, and
- b. follow immediate directions given by an NPWS authorised officer (on park) or emergency services authority (including police), and
- c. undertake all reasonable steps as expeditiously as possible to arrest any imminent threat to life (persons), property and/or the environment, and
- d. formally report in writing the details of the incident and actions taken within twenty-four (24) hours to the Director, NPWS Park Operations West Branch, and
- e. seek formal direction from the NPWS Director, NPWS Park Operations West Branch or their delegate regarding any follow-up procedures or actions required to protect or arrest further damage to the environment or to the park.

#### B1.5 Operational hours and access

11) The activity and associated works can be conducted at a time and manner agreed to by the Lower Darling Area Manager, as part of the project partnership arrangements.

12) No public access is permitted at the assessment sites during the works and the proponent must take reasonable steps to limit public knowledge and access to the assessment sites, as described in the Willandra REF.

**Note:** *To minimise impacts to the park and the stations, and to support the safe and secure undertaking of the activity.*

#### B1.6 Availability of the REF and the determination notice

10) A copy of the Willandra REF and this determination notice must be kept on site by the proponent and accessible to staff, contractors or Aboriginal community members present.

**Note:** *To ensure that the activity is undertaken in accordance with the Willandra REF and any terms expressed in this determination notice.*

### B2. Prior to commencement

#### B2.1 NPWS notification

11) The proponent must notify the Director, NPWS Park Operations West Branch in writing (by email) at least 3 days prior to commencing the overall activity. This notification must include:

- a. contact details of the proponent's onsite supervisor responsible for overseeing the activity and works, and a secondary contact in case of an emergency, and

- b. details of the proponent's representative role, qualifications, level of delegation or authorisation associated with the works under the *National Parks and Wildlife Act 1974*, and relevant organisational policy, and
- c. a list of all other proponent staff, contractors, NPWS support staff and Aboriginal community members that will be present.

For security reasons no other details are required as part of the notification.

**Note:** *To ensure appropriate communication with NPWS regarding the activity on park and to ensure the activity is carried out in a safe manner by appropriately qualified, experienced and authorised officers, as specified in Section 3.1 of the Willandra REF.*

## B2.2 Landholder notification

- 12)** The proponent is required to notify the station landholders prior to commencing the activity. While ensuring security and confidentiality is maintained, this notification must provide the landholders with:
- a. a short explanation of the works and any access requirements, and
  - b. the contact details of the proponent's onsite supervisor and secondary contact, and
  - c. the contact details of the Director, NPWS Park Operations West Branch as the determining authority, explaining reporting processes around the works or its delivery subject to the requirements of this determination, and
  - d. highlighted reporting processes for emergencies or perceived noncompliance with existing access and works as stated under the Willandra REF.

**Note:** *To support the safe undertaking of the activity and ensure an appropriate level of communication with the station landholders.*

## B2.3 Environmental baseline data for the project

- 13)** The proponent must ensure all baseline data associated with site condition to support the environmental performance and monitoring program has been adequately collected before works commence and securely stored.
- 14)** The proponent must ensure data collection during and post works are identified for the purposes of determination reporting requirements and the monitoring framework as set in Schedule B4.1 and B4.3 of this determination.

## B3. During operations

### B3.1 Work, health and safety

- 15)** The proponent must undertake the activity in accordance with the requirements of the *Work Health and Safety Act 2011*, including any industry codes of practice adopted under the Act, or the *Work Health and Safety Regulation 2011*.

### B3.2 Equipment and machinery management

- 16)** The proponent is not permitted to store machinery or materials associated with this activity on park, without prior authorisation from NPWS Lower Darling Area Manager. The proponent must comply with instructions from the Area Manager.
- 17)** All machinery accessing the park (and stations) must be washed down and clean of plant and soil material prior to access to the assessment sites. The proponent is to ensure foreign matter has been removed from vehicles and machinery before entry to prevent the spread of weeds and pathogens.



### B3.3 Restricted activity footprint

- 18)** The activity is only permitted within the specified assessment sites, as shown in the (DOC20/763776) *Willandra REF Appendix 1- – Proposed reburial location maps, dated 11 November 2020*
- 19)** The works are restricted to the activity footprints (as the final burial locations) as described in:
- a. (DOC20/757387) *Willandra REF Appendix 11 – Proposed reburial location information, dated 11 November 2020*, and
  - b. (DOC20/757499) *Willandra REF Appendix 17 – Table of proposed works, dated 11 November 2020* are permitted
- 20)** No clearing or modification of native vegetation or habitat resources is authorised as part of this determination. Damage to native vegetation is prohibited as part of the works.
- 21)** The proponent is to ensure limited soil disturbance occurs outside the direct access route to the assessment sites and the final burial locations as part of this determination.

### B3.4 Access

- 22)** The proponent must ensure access to the assessment sites:
- a. complies with the arrangements made with the NPWS Lower Darling Area Manager
  - b. is avoided during adverse weather conditions
  - c. is undertaken in a way that limits damage to park and station road and trail infrastructure.
- 23)** Any damage occurring to road or trail infrastructure during this activity must be reported directly to the NPWS Lower Darling Area Manager.

### B3.5 Manage fire risk

- 24)** All operations must accord with Mungo National Park Fire Management Strategy, and ensure:
- a. activities do not obstruct or restrict fire trail access without prior authorisation from the NPWS Lower Darling Area Manager
  - b. machinery operations or ancillary activities will not result in sparking or ignition
  - c. firefighting equipment is present on site, if ignition is likely during the works or ceremony proposed as part of the activity, with confirmation as to requirements obtained from the NPWS Lower Darling Area Manager
  - d. no refuelling or storage of fuels and other flammable materials occurs on site during the works.

**Note:** *Minimise risk or threat of fire.*

### B3.6 Environmental management

- 25)** The proponent must comply with the environmental safeguards and mitigation measures as outlined in the Willandra REF Section 6.2, for the protection of landscape and environmental quality, by limiting:
- a. vehicle movements in order to control dust generation and reduce potential erosion risk when accessing the assessment sites, and
  - b. risk of soil disturbance outside the specified activity (burial location) footprint as far as practically possible to limit the potential for wind and water erosion and to increase the rate of successful remediation of the sites, and



- c. pollution generation and the risk of vehicles and machinery breakdown by ensuring that all vehicles and equipment are mechanically sound and operational, and
- d. waste generation associated with the works, ensuring waste is removed from site and disposed of appropriately, with the exemption of the boxes used to store and transport the Aboriginal Ancestors to the site which will be burnt as part of the traditional ceremony, as specified in the Willandra REF.

**26)** Incidents involving hydrocarbon spills (oil and fuel) are to be treated as an emergency, and the incident managed immediately. All incidents are to be reported to the Director, NPWS Park Operations West Branch as soon as practicable but within twenty-four (24) hours.

**Note:** To minimise the potential for environmental degradation and pollution events.

### B3.7 Natural value protection

**27)** The proponent must comply with the environmental safeguards and mitigation measures as outlined in the Willandra REF Section 6.2 and applied in accordance with Section 9 to ensure the protection of the natural environment on a site by site basis by:

- a. avoiding significant watercourses, landforms and features in the final micro-siting of burial locations as specified in the (DOC19/1062628) *Willandra REF Appendix 2 - Description of the 26 Assessment Sites, dated 5 December 2019*, and
- b. avoiding excessive soil disturbance and limiting the risk of erosion or environmental impacts (both direct and indirect) at and within the immediate area of the burial locations, and
- c. avoiding the spread of weeds and pathogens between assessment sites by limiting movement of soil and vegetative material, and
- d. avoiding threatened species, ecological communities and their habitats (features and resources) during the final micro-siting of the burial locations as confirmed by a suitably qualified and experienced ecologist who will be present to confirm the final locations can avoid impacts and limit risk, and
- e. ensuring clear identification of the burial locations and their extent prior to commencing excavation works with heavy machinery, as specified in the (DOC20/757499) *Willandra REF Appendix 17 – Table of proposed works, dated 11 November 2020*, and
- f. ensuring set aside areas are identified for the storage of soil and salvaged material for the remediation of the burial sites, to limit the risk of impacts to the surrounding environment and existing values.

No impacts to threatened species or ecological communities are authorised as part of this determination.

### B3.8 Cultural value (Heritage) protection

**28)** The proponent must comply with the environmental safeguards and mitigation measures as outlined in the Willandra REF Section 6.2 and (DOC20/663796) *Appendix 10 (in Section 8) – Willandra Lakes Aboriginal Ancestors Reburial Project Statement of Heritage Impact, dated October 2020* in order to protect the State and Local heritage values:

**29)** The proponent must ensure:

- a. impacts to the heritage values are minimised as far as practicable, and
- b. micro-siting procedures include an assessment of the likelihood of historic relics, being located on the surface or subsurface, and all care taken during excavation works, and
- c. protocols around unexpected finds are adhered to in the event that material is unearthed during the works.

### B3.9 Cultural value (Aboriginal Cultural Heritage) protection

- 30)** The activity as part of the determination is restricted to a conservation and protection work only under Section 87A(a) of the *National Parks and Wildlife Act 1974*. All works associated with the project must comply with the intent of the Act, to ensure it conserves and protects Aboriginal objects. The activity must be supervised by a Heritage Officer(s) from Heritage NSW.
- 31)** The reburial must involve the Aboriginal people of the Willandra Lakes, as the Traditional Owners undertaking a traditional Aboriginal activity for the purposes of the Section 87B of the *National Parks and Wildlife Act 1974*. The proponent is to ensure that reburial adheres to the cultural protocols as raised (or directed) by the Traditional Owners with respect to caring for the dead when re-interring the Willandra Lakes Aboriginal Ancestors.
- 32)** The proponent must comply with the environmental safeguards and mitigation measures as outlined in the Willandra REF Section 6.2 and (DOC20/663796) *Appendix 10 (in Section 8) – Willandra Lakes Aboriginal Ancestors Reburial Project Statement of Heritage Impact, dated October 2020* to ensure protection of Aboriginal cultural heritage, by:
- avoiding all recorded and observed Aboriginal objects as outlined in the (DOC19/1062628) *Willandra REF Appendix 2 - Description of the 26 Assessment Sites, dated 5 December 2019*, and
  - minimising risk to Aboriginal objects to the greatest extent possible by applying burial location micro-siting procedures as specified by the Willandra REF. The proponent is to limit the risk of impacting on unidentified Aboriginal objects occurring subsurface.
- 33)** In the event of unexpected discoveries of Aboriginal objects occurring, the proponent must ensure:
- the respectful and careful management of those unexpected finds, and
  - all works cease immediately, and
  - finds are appropriately recorded on a site card and entered into the Aboriginal Heritage Information Management System, and
  - the objects are returned to their exact location of origin, and the existing excavation refilled and remediated in accordance with the provisions of this Willandra REF and monitored post remediation, and
  - a new burial location for the Ancestral remains is to be selected within the relevant assessment site, as shown in the (DOC20/763776) *Willandra REF Appendix 1- – Proposed reburial location maps, dated 11 November 2020*.

**Note:** The activity must avoid and minimise the risk of impacts to Aboriginal cultural heritage values at all times. NPWS recognises that the works will also constitute a Traditional Aboriginal cultural activity under Section 87B of the *National Parks and Wildlife Act 1974*.

## B4. Post activity

### B4.1 Site remediation completion

- 34)** Remediation of each burial location and associated access is to accord with the Willandra REF Section 6.2. The proponent is to ensure the burial locations are remediated to a standard that they are stable and concealed.
- 35)** Upon finalising the works, the proponent is to provide written notification confirming the project completion to the Director, NPWS Park Operations West Branch. The notification is to
- provide information on the project's environmental performance and confirm the success of the safeguards and mitigation measures applied to protect environmental values, and
  - provide a statement on overall compliance with this Schedule of Determination Conditions, and

- c. report on issues encountered or associated with project delivery, including (but not limited to) damage to NPWS infrastructure, any security issues or matters raised by the Traditional Owners.

#### B4.2 Burial location recording

- 36)** Site impact forms are to be completed for each burial location on completion of the project and submitted to the Aboriginal Heritage Information Management System Registrar.

#### B4.3 Monitoring and contingency planning

- 37)** The proponent is to prepare a Monitoring and Contingency Plan for the project. The plan is to be submitted to the Director, NPWS Park Operations West Branch for approval prior to commencement of the monitoring program.
- 38)** Once approved, the plan will allow for emergency and management works without additional assessment for five (5) years from the date of project commencement.
- 39)** The plan is to include information around contingency planning for the burial locations, including:
  - a. emergency and standard issues that may need to be addressed or remediated under contingency scenarios, and
  - b. appropriate management protocols that are consistent with the 'Activity Description' as set out in the Willandra REF Section 6 and relevant key technical appendices to guide the delivery of on-ground works and actions, and
  - c. allocation of responsibility for the works, and
  - d. establishing a reporting framework which is agreed to by the project partners and the Aboriginal people.
- 40)** The plan is to include monitoring procedures and protocols around
  - a. methods used to monitor the burial locations, and
  - b. allocate responsibility for the monitoring program, including reporting and storage (management) of data and information collected as part of the program, and
  - c. specify monitoring frequency over the proposed duration of the project, and
  - d. scheduled reporting to the project partners on the success of remediation works on site.