

25 September 2024  
Our ref: NTS 251

The Honourable Paul Scully, MP  
Minister for Planning and Public Spaces  
GPO Box 5341  
SYDNEY NSW 2001

**C/O**

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Dear Minister Scully,

**Constellation Project SSD-41579871**

- 1 We refer to the above application for development consent and the Environmental Impact Statement (EIS) prepared by Aeris Resources Ltd on behalf of Tritton Resources Pty Ltd (**the Proponent**) in support of the proposed Constellation **Project**.
- 2 I am instructed to provide this letter to the **Minister** for Planning and Public Spaces, as the consenting authority, on behalf of the Ngemba, Ngiyampaa, Wangaaypuwan, Wayilwan Aboriginal Corporation RNTBC (ICN 8322) (**RNTBC**), being the registered native title body corporate who holds and manages the Ngemba, Ngiyampaa, Wangaaypuwan and Wayilwan People's (**NNWW People**) native title rights and interests on trust.
- 3 The RNTBC objects to the Project being granted consent by the Minister, for the development of a mineral mining operation and associated infrastructure.

**Background**

- 4 NTSCORP Limited (**NTSCORP**) acted for Applicant in the NNWW People's native title determination application (Federal Court Proceedings number NSD38/2019), which was positively determined by the Federal Court on 14 August 2024 in Cobar (**NNWW People Determination**).<sup>1</sup>
- 5 NTSCORP continues to provide legal representation and assistance to the RNTBC.
- 6 The area that is the subject of the NNWW People Determination covers land and waters in far north west NSW from the Barwon River in the north, to the Lachlan River in the south, the Castlereagh River in the east and Ivanhoe to the west (**NNWW Country**). The NNWW People Determination recognised the non-exclusive native title rights and interests of NNWW People over part of NNWW Country (**Determination Area**).
- 7 The area subject to the Project is wholly within NNWW Country and may affect land and waters within the Determination Area.

**The Project**

- 8 The Proponent is currently seeking planning approval for the development of an open cut, underground copper mine and associated infrastructure. This will involve:
  - (a) mining approximately six million tonnes of ore over a 16 year mine life;

<sup>1</sup> **NNWW People Determination**; *Ohlsen on behalf of the Ngemba, Ngiyampaa, Wangaaypuwan and Wayilwan People v Attorney General of New South Wales* [2024] FCA 900, available here: <https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2024/2024FCA0900.pdf>

- (b) establishment of supporting surface infrastructure, including an infrastructure corridor to the existing Murrawombie Copper Mine; and
  - (c) haulage of ore to the existing processing plant at the Tritton Copper Mine.
- 9 If approved and constructed, the Project is intended to be operated by Aeris Resources Ltd.
- 10 The area identified by the Proponent to be affected by both the construction and operation of the Project covers approximately 141,900 hectares, including:
- (a) approximately 170 hectares that will be permanently disturbed by inundation and infrastructure of the mine (**the Project Area and Permanent Disturbance Area** respectively);
  - (b) the Okeh and Windella properties;
  - (c) infrastructure corridors along Okeh Road, Mitchell Highway and Railway Road; and
  - (d) the haul road along Yarrandale Road.
- 11 The areas described above fall wholly within NNWW Country and adjacent to or on land in which NNWW People have non-exclusive native title rights and interests recognised.
- 12 Accordingly, the RNTBC has an interest in this Project as a whole, due to the potential negative impacts the Project may have on NNWW People, their Country and their ability to enjoy their native title rights and interests.

#### Position Statement

- 13 The RNTBC objects to the Project being granted consent by the Minister as a State Significant Development.
- 14 The RNTBC is gravely concerned that the construction of a new mine and the works proposed by the Proponent will cause irreversible damage to NNWW Country and interfere with NNWW People's ability to enjoy their native title rights and interests.
- 15 The RNTBC is also concerned about the impact of the Project on:
- (a) the protection of Aboriginal Cultural Heritage within the Project Area;
  - (b) the health of NNWW People; and
  - (c) the health of NNWW Country, including the land and connected waterways both above and below the surface.
- 16 The RNTBC considers that insufficient time was provided to consider the documents on public exhibition and provide submissions. Hence, due to the size and density of the documents exhibited in connection with the Proponent's application for consent in relation to the Project, the RNTBC has prioritised the scope of their submission as provided below. The RNTBC reserves the right to make further submissions on these matters, noting that the RNTBC considers that ongoing consultation with NNWW People is essential.
- 17 The RNTBC's concerns are expanded further below and are informed by the RNTBC's knowledge of and responsibility to manage and protect NNWW People's native title rights and interests, and care for NNWW Country on behalf of NNWW People.

#### NNWW People's Native Title Rights and Interests

- 18 Within the boundaries of the NNWW Country, NNWW People actively exercise their native title rights and interests as recognised by the Federal Court of Australia and set out in the NNWW People

Determination. This includes the following rights and interests for domestic, communal and cultural purposes to:<sup>2</sup>

- (a) *the right to enter, traverse across and remain on the land;*
- (b) *the right to camp on and erect shelters on (but not extending to a right to permanently camp on, possess or occupy) the land;*
- (c) *the right to take and use the water for their personal, domestic and communal purposes (including cultural purposes) but not extending to a right to control the use and flow of the water in any rivers, streams or lakes;*
- (d) *the right to gather, take and use the natural resources (other than water) for their non-commercial personal, domestic and communal purposes including, food, medicinal plants, timber, stone, charcoal, ochre and resin as well as materials for fabricating tools and hunting implements, and making artwork and musical instruments;*
- (e) *the right to hunt for their non-commercial personal, domestic and communal purposes;*
- (f) *the right to fish for their non-commercial personal, domestic and communal purposes;*
- (g) *the right to share the natural resources gathered or taken for their personal, domestic and communal non-commercial purposes;*
- (h) *the right to light fires for their domestic purposes, but not for the clearance of vegetation; the right to engage in their cultural activities including:*
  - (i) *visiting places of cultural or spiritual importance and protecting those places by carrying out lawful activities to preserve their physical or spiritual integrity;*
  - (ii) *conducting and participating in ceremonies and rituals including in relation to birth and death (including burials on the land);*
  - (iii) *holding cultural gatherings; and passing on knowledge about the physical and spiritual attributes of places of importance;*
- (i) *and the right to be accompanied by persons who, though not Native Title Holders, are: (i) (ii) spouses, partners or parents of Native Title Holders, together with their children and grandchildren; or people required under traditional laws and customs for the performance of, and to assist in, observe or record, cultural activities, practices or ceremonies.*

- 19 NNWW People have a vital cultural and spiritual connection to their Country. That connection includes a connection to the cultural landscape, to the plants, animals, and geographical forms which NNWW People have cared for, and been cared for by, for millennia.

#### *Impact on NNWW People's enjoyment of their native title rights*

- 20 The Project will have significant short and long term impacts on NNWW People's ability to enjoy their native title rights and interests in the Determination Area and on their lives on NNWW Country. Without the appropriate mitigation measures, the RNTBC is concerned that the Project's mining operations and haulage of materials pose a high risk to the health of NNWW Country and NNWW People.
- 21 The construction of new or related infrastructure facilities, and the proposed activities on such, will generate dust emissions, cause noise interference and result in negative social impacts for NNWW People and the community at large. The construction and operation of the proposed mine will harm and deplete the air quality in the surrounding areas, which may impact the respiratory health of the local community and NNWW People accessing these areas of Country.<sup>3</sup>

<sup>2</sup> NNWW People Determination, Order 5.

<sup>3</sup> Appendix 12, Environmental Risk Assessment (Table 8); Chapter 2 – Strategic Context.

- 22 Additionally, the RNTBC is concerned that the projected noise levels caused by the Project's mining operations (including blasting) and operation of construction equipment will significantly impact NNWW People's enjoyment of their native title rights and interests on land adjacent to the Project,<sup>4</sup> particularly in relation to their ability to use and access the land for hunting and camping.
- 23 This cumulative affect of the noise and air pollution will affect NNWW People's ability to practice their native title rights and interests, which is a significant concern to the RNTBC.<sup>5</sup>
- 24 Further, the Project proposes to use a large volume of water which the RNTBC is concerned will significantly impact NNWW People's native title rights and interests in relation to access and use of water and waterways within the Permanent Disturbance Area and surrounds. The RNTBC is concerned that the proposed water usage by the Project will result in the depletion of waterways within this part of NNWW Country.
- 25 The RNTBC submits that the impact of the Project on NNWW People's native title rights and interests must be mitigated wherever possible.
- 26 The Project must be considered contextually, as NNWW People view the Project as part of an extensive historical and continued exploitation of NNWW Country by exploration and mining activities. The RNTBC considers that impacts NNWW Country and on NNWW People's Cultural Heritage in one area have an impact other Cultural Heritage in other areas of Country. The impact of exploration and mining activities on NNWW Country, damaging the land and overusing the natural resources available, have a cumulative impact on NNWW Country.

#### NNWW People's Cultural Heritage

- 27 The RNTBC notes the Aboriginal Cultural Heritage Assessment (**ACHA**) at Appendix 3 to the EIS and the recommendations made by NNWW People in order to mitigate the impact of the Project.<sup>6</sup>
- 28 The ACHA identified 45 new Aboriginal Cultural Heritage sites. Sites identified were predominantly scarred trees, with five sites identified as potential archaeological deposits requiring further subsurface testing.<sup>7</sup> The Project's summary provides that:  
  
*Potential direct and indirect harm to the identified Aboriginal cultural heritage sites were assessed. The management hierarchy for the conservation principles was used to refine the Project layout, and subsequently avoid impacting 35 sites.*  
  
*Eleven sites are, therefore, now predicted to be impacted by the proposed Project, including five sites expected to be totally impacted and six expected to be partially impacted.*<sup>8</sup>
- 29 The RNTBC is concerned by the potential impact on their Aboriginal cultural heritage, particularly arising from ground disturbance works associated with the construction and establishment of the mine and related infrastructure facilities.
- 30 The RNTBC is not satisfied with the Proponent's commitments to the recommendations made in the ACHA. The Proponent has outlined the proposed Aboriginal Heritage Management Plan (**AHMP**),<sup>9</sup> which makes clear what was recommended in the ACHA but was not committed to by the Proponent,<sup>10</sup> being that:

<sup>4</sup> Appendix 10, Social Impact Assessment (Table 41)

<sup>5</sup> Ibid.

<sup>6</sup> Appendix 3, Aboriginal Cultural Heritage Report, Table 96, pp. 219 – 221.

<sup>7</sup> Constellation Project Environmental Impact Statement: Summary, 21; Appendix 3 Aboriginal Cultural Heritage Report, Table 15, p. 51.

<sup>8</sup> Constellation Project Environmental Impact Statement: Summary, p. 21.

<sup>9</sup> Chapter 7 – Mitigation and Management.

<sup>10</sup> Appendix 3, Aboriginal Cultural Heritage Report, Recommendation 5, p. 220.

- (a) an additional survey program should take place in accordance with the AHMP for the remaining areas of the Subject Area once confirmed and access is granted (this includes the area adjacent to the Lot 13 DP751311 property);
  - (b) protocols for the involvement of the RAPs in cultural heritage works conducted under the AHMP should be developed (e.g. surface monitoring and salvage). This protocol should focus on members of the RAPs identified during this ACHAR's consultation process;
  - (c) a communications protocol should be developed that describes clear methods of communication, including expectations of suitable notification and response time, between the Proponent and the RAPs;
  - (d) an updated protocol for the discovery and management of human remains should be developed, including stop-work provisions and notification protocols;
  - (e) protocols for heritage awareness training should be incorporated into the Project site inductions. RAPs should be involved in the development and presentation of cultural awareness training;
  - (f) a regular review process for the AHMP should be implemented (every 12 months or if/as there are changes to the project);
  - (g) AHIMS Site cards are to be submitted for newly recorded sites; and
  - (h) AHIMS Site impact forms are to be submitted for any sites subject to impact.
- 31 All of the above continue to be significant steps in protecting NNWW People's cultural heritage and the Proponent should ensure that the recommendations of the ACHA are fully implemented in the AHMP including that:<sup>11</sup>
- (a) A further archaeological investigation in the form of subsurface testing should be undertaken for those 5 areas of Potential Archaeological Deposit proposed to be impacted by the development (Recommendation 6).
  - (b) A Care Agreement must be developed with NNWW People to determine the final storage location of any Aboriginal objects recovered during the test excavations and under any future AHMP within the Subject Area (Recommendation 10).
  - (c) The Proponent should relocate identified Traditional Flora to an area of suitable growing condition that will not be impacted by works (Recommendation 11).
  - (d) Any future works at the Project site not contemplated by the ACHA be subject to an Aboriginal Objects Due Diligence Assessment (Recommendation 12).
  - (e) All employees on the Project Site be made aware of their obligations under the NPW Act and any conditions of the future AHMP (Recommendation 13).
  - (f) The Proponent should further ensure that all no-go zones recommended in Recommendation 1 and Recommendation 7 of the ACHA are recreated onsite to ensure that NNWW cultural heritage is not damaged.
- 32 NNWW People have the right, and the cultural obligation, to protect all of the sites within their Country regardless of the fact that they are registered on AHIMS or considered significant by a non-Ngemba, Ngiyampaa, Wangaaypuwan and Wayilwan Person.
- 33 It is noted that the above procedures will assist the Proponent to comply with its legislative requirements to conduct adequate cultural heritage due diligence.

<sup>11</sup> Appendix 3, Aboriginal Cultural Heritage Report, Table 96, pp. 219 – 221.



## Sustainable Water and Ecological Management

- 34 The proposed activities of the Project have the potential to cause impacts to the surface water and groundwater on NNWW Country.<sup>12</sup>
- 35 There are numerous waters within and surrounding the Project.<sup>13</sup> The Bogan River is located approximately 8km east of the Project, and the Project is upstream of the major regulated rivers of Gunningbar Creek and Duck Creek. NNWW People's native title rights and interests are recognised in the waters, beds and banks of the Bogan River and Duck Creek.
- 36 Additionally, there are High Potential Terrestrial Groundwater Dependent Ecosystems (**GDEs**) present directly adjacent to the proposed site, and a significant amount within a 5km radius of the proposed site.<sup>14</sup>
- 37 Groundwater drawdown from dewatering of the open pit mine is predicted to occur as part of the Project.<sup>15</sup> A reliable source of groundwater is essential for the ecosystems in NNWW Country and the RNTBC is concerned that any reduction or contamination of groundwater availability will severely destabilise the local flora and fauna populations and threaten the flow of waterways around the Project area.
- 38 The Project presents a risk of leakage and spillage during construction and operations.<sup>16</sup> The risk of water contamination on NNWW Country from the chemicals in diesel and acid tanks used in the Project is catastrophic to the viability of ecosystems in NNWW Country. Additionally, the RNTBC is concerned that the rehabilitation of the ecosystem after chemical spills can take years and is dependent on the Proponent's ongoing maintenance of the Project post-closure of the mine.
- 39 Finally, the Project involves additional risks of acidic seepage into the groundwater, migration of polluted water from the pit lake into the groundwater, and the discharge of potentially contaminated water from site dams.<sup>17</sup> The RNTBC is deeply concerned that it is impossible to eliminate the risk that toxic chemicals used in the Project will infiltrate into the surrounding waterways and ecosystems.
- 40 NNWW People hold traditional knowledge and the responsibility for how to care for and sustain the waterways within NNWW Country. NNWW People are directly impacted when the health of the waterways on NNWW Country are compromised. The RNTBC is concerned about the cumulative impact the proposed Project may have on the health of these waterways and the stability of the ecosystem in this part of NNWW Country.
- 41 The RNTBC objects to the proposed transport, storage and use of toxic chemicals on NNWW Country, due to the impact these chemicals may have on the environment. If the Project is approved, the Proponent must use the best available construction practices for sustainable water management, including spill management, erosion and sediment management, and run-off management to mitigate risk to NNWW Country.
- 42 The RNTBC requests that a condition of the Ministers consent, if granted, for this project be to require the Proponent to provide access to all data collected which records the impact of the mine on the surrounding ecosystem to the RNTBC on behalf of NNWW People.

## Opportunities for NNWW People

- 43 As outlined above, the RNTBC objects to the proposed Project being granted consent by the Minister.
- 44 If the Project is approved, the RNTBC insists that they be engaged on behalf of NNWW People in order to negotiate economic opportunities and other benefits for the community and NNWW People.

<sup>12</sup> Appendix 5, Water Impact Assessment, Ch 2. 'Potential Impacts', p. 7.

<sup>13</sup> Appendix 5, Water Impact Assessment, Figure 1.1, p. iii.

<sup>14</sup> Appendix 5, Water Impact Assessment, Figure 4.7, p. 38.

<sup>15</sup> Appendix 5, Water Impact Statement, Chapter 2, Appendix 12 - Environmental Risk Assessment, p. 15.

<sup>16</sup> Ibid.

<sup>17</sup> Appendix 5, Water Impact Assessment, Chapter 2.

- 45 The RNTBC notes that the Proponent, in compiling the Social Impact Assessment only considered the view of Nyngan Local Aboriginal Land Council and the Nyngan Local Aboriginal Education Consultative Group when assessing and considering the views of the local Aboriginal Community. As RNTBC is established to hold and manage NNWW People's native title, and to support and provide education, training, health, housing, transport and employment for NNWW People,<sup>18</sup> the RNTBC therefore, insists that they are consulted on all future assessments relevant to the wellbeing and views of the local Aboriginal Community.

### Next Steps

- 46 The Minister's assessment of the Project must take into proper consideration NNWW People's:
- (a) native title rights and interests, including in relation to access to and use of water and waterways;
  - (b) protection of their Aboriginal cultural heritage; and
  - (c) protection of their connection to Country, including the significance of water, waterways and the biodiversity of the area.
- 47 The development of this Project must be undertaken in direct consultation with NNWW People and the outcome of any such consultation should be included as conditions to any Project approvals, if given. The RNTBC requests that the Minister ensures that the contents of the RNTBC's submission are genuinely considered when reaching its decision regarding whether to grant development consent.
- 48 Should the Project proceed, the RNTBC submits that it should be subject to the following conditions prior to the commencement of any works:
- (a) The Proponent be required to incorporate all the recommendations made in the ACHA (Appendix 3) in the AHMP.
  - (b) The Proponent be required to deploy best practice construction practices for water sustainable management and open communication with the RNTBC relating to the monitoring of the impact of the Project on the environment.
  - (c) The Proponent continue to consult with the RNTBC on all future assessments relevant to the wellbeing and views of the local Aboriginal Community, including Aboriginal Cultural Heritage.
  - (d) The Proponent engage with the RNTBC to negotiate economic and other benefits for the community and NNWW People.
- 49 Should the Project proceed, and unless this Project falls within the exception of s 26C the *Native Title Act 1993* (Cth), the RNTBC reserves its right to negotiate in relation to the mine and associated infrastructure facilities,<sup>19</sup> and any compensation in relation to the Project which may be payable under the *Native Title Act 1993* (Cth).
- 50 If you have any questions, please do not hesitate to contact the undersigned on (02) 9310 3188.

Yours sincerely,



Matilda Vaughan  
Senior Solicitor  
NTSCORP Limited

<sup>18</sup> Objects, Rule Book of the Ngemba, Ngiyampaa, Wangaaypuwan, Wayilwan Aboriginal Corporation RNTBC, available here: <https://register.oric.gov.au/document.aspx?concernID=3862343>  
<sup>19</sup> *Harvey v Minister for Primary Industry and Resources* [2024] HCA 1.