

Dear Ms Donnelley,

I am writing on behalf of Tocomwall Pty Ltd (Tocomwall) and the *Plains Clans of the Wonnarua Peoples* (PCWP) to express their concerns regarding the Aboriginal Cultural Heritage Assessment Report [ACHAR] for the Warkworth Continuation Project [SSD-6464]. This ACHAR is included as Appendix M of Volume 5 of the Environmental Impact Statement (EIS) prepared by EMGA Mitchell McLennan Pty Limited in June 2014 for SSD-6464. The PCWP is a registered Native Title Claimant Group that has an active Application (i.e. NNTT file # NC2013/006) for Registration of a 'Whole of Country' Native Title Claim for lands within the Hunter Valley. The Warkworth Continuation Project Area lies within the 'Country' encompassed by this Claim.

I write this submission as an employee of Tocomwall in which capacity I have previously provided technical advice and Aboriginal cultural heritage management expertise to the *Plains Clans of the Wonnarua Peoples*. I note that Mr Scott Franks is a Director of Tocomwall Pty Ltd and that on behalf of the *Plains Clans of the Wonnarua Peoples* he undertook to become a Registered Aboriginal Party (RAP) for this Project in March 2014. I note that herein a RAP is used as per the statutory Aboriginal consultation process required for the assessment of Aboriginal cultural heritage in NSW outlined in the *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* (DECCW, 2010).

The main concerns of Tocomwall and the PCWP with respect to the Warkworth Continuation Project ACHAR are as follows:

1. Inadequate Consultation Processes

The ACHAR maintains throughout that it complies with the *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* (DECCW, 2010). However it is the view of the PCWP that the Coal and Allied Cultural Heritage Working Group (CHWG) - a key element of the consultation process described for this Project - does not give effective voice to their Native Title rights and interests in the cultural heritage values of the Project Area. In relation to this matter I have been requested to draw your attention to a recent letter from the Australian Competition & Consumer Commission (ACCC) to the Wonnarua Local Aboriginal Land Council [See Attachment 1] noting allegations of alleged cartel behaviour in the arrangement of procurement of Aboriginal cultural heritage services by Mining Companies by and through the use of Aboriginal Heritage Working Groups. I also include at Attachment 2 the response letter to the ACCC from the WLALC that further outlines the apparent functioning of this process. I note that Tocomwall was directly forwarded these two letters in an email broadcast by the Chairperson of the WLALC, Mr Noel Downes on 22 July 2014.

Whilst offering no comment on the alleged cartel behaviour described above what is of most concern to the PCWP is the clear linkage made within these two letters between Aboriginal Community consultation and remuneration for Aboriginal heritage services. This is contrary to the express terms of Section 3.4 of the *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* which indicates that consultation has the express purpose of determining the Aboriginal cultural values held in an area by Knowledge holders (and others) and that it is to separate to any payment requirements for field assessment and/or works associated with the mitigation of impacts such as salvage and site conservation works. However in the "fee for services" contexts described in Attachments 1 & 2 it has been the PCWP experience that as knowledge holders, if they maintain a view of the cultural values of Aboriginal objects and places within a Project area that is (a) contrary to the view of the majority of the ACHWG and (b) likely retards the possible remuneration options of other members of the ACHWG - for example as might occur if a knowledge holder maintains the site to be of such significance that it be retained *in situ* rather than be excavated - the cultural value of the knowledge holder is seldom recognised or acted upon. In fact it is on the basis of their concerns for the legitimacy of a remuneration-based consensus decision-making approach to Aboriginal cultural heritage that to date has seen the PCWP be unwilling to participate in such Working groups. The PCWP has no confidence that decision making about their specific Wonnarua heritage is being determined on intrinsic and associated cultural heritage values (as might be determined using Burra Charter Principles) and not by immediate economic expedients and/or inducements.

In addition to this the ACHAR makes it quite clear that it provides members of the CHWG with sufficient information regarding the Aboriginal objects and places found within their area of operations to enable the

Aboriginal community to make informed decisions regarding their management. Problematically there is however no mechanism identified in the ACHAR by which it can be ascertained that members of the working group are cultural knowledge holders and thereby culturally informed to make appropriate decisions regarding specific items and places within the Project Area. Section 3.3.1 of the *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* makes clear that it is a requirement that the appropriate cultural heritage knowledge is sort and determined in the consultation process. There is no indication in the ACHAR that such knowledge has been sort, obtained or used in the decision making process for sites within the Project area.

2. The location of the Bulga Bora Ground

Contrary to the ACHAR, I am of the view that the research relied upon with respect to the “Bulga Bora Ground” lacks the detail required to support the finding that the probable historic location of this important Aboriginal cultural heritage site has been satisfactorily determined. Based on my own review the evidence provided to support what Rio Tinto has since referred to and mapped as the “Bulga Bora Ground indicative extent” [See Attachment 3a & 3b] appears likely to be in error. Coupled with this I undertook a physical site inspection of this ‘probable historic location’ in 2011 which yielded no physical evidence; and I undertook a preliminary assessment of relevant archival materials not previously referred to in evidence including adjoining Parish Maps [See Attachments 4a & 4b]. From my observations it seems that the Bulga Bora ground was likely situated somewhat north of its current supposed location. This is further supported by (a) the concentration of a broader range of site types including grinding grooves and scarred trees in this more northerly area; and (b) a vegetation regime more in keeping with the red gum - apple box community described for the site in the original reportage of it. Whilst my data is also not categorically proved it is my view that no planning and or management action should be taken that locks the ‘indicative extent of the Bora ground’ into any position until a further targeted survey of all other likely locations for it is made. Moreover the nature and extent of any area to be set aside for the purposes of conservation of Aboriginal cultural heritage values within the Project Area [and any coincident plans for management of these values] should not be determined whilst this issue is not fully resolved.

The PCWP has further concerns with the ACHAR in terms of its lack of assessment of Cumulative Impact and its insufficient addressing of inter-generational equity but essentially these are all inter-linked with their most fundamental concern for the legitimacy of the consultation process that underpins it.

Thank you again for the opportunity afforded Tocomwall and the PCWP to comment on this Publicly Exhibited EIS.

Kind regards,

Maria

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