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25th October 2019

Attention: Director – Transport Assessments
Planning and Assessment
Department of Planning, Industry and Environment
GPO Box 39
SYDNEY NSW 2001

**PACIFIC HIGHWAY COFFS HARBOUR BYPASS
APPLICATION NUMBER SSI_7666
EIS SUBMISSION**

All Registered Aboriginal Parties (RAPs), community members and Aboriginal cultural knowledge holders agree with the corridor alignment, tunnels and ancillary areas required for construction of the Pacific Highway Coffs Harbour Bypass, as proposed in the EIS.

While the RAPs are committed to work with the RMS, construction contractors and all departments associated with Aboriginal cultural heritage management to facilitate completion of the Bypass, we have several outstanding concerns. Our primary concerns are outlined here and could be resolved by implementation of the recommendations made in this submission. We ask that that these recommendations be considered for inclusion in the Minister's Conditions of Approval for the Pacific Highway Coffs Harbour Bypass.

Concern 1

The Aboriginal archaeological survey undertaken by Biosis Pty Ltd in 2017 was conducted with Coffs Harbour & District LALC sites officers only and did not involve other RAP representatives, or consultation with Gumbaynggirr knowledge holders to identify potential burial locations and/or culturally significant landscape features that would have influenced the placement of campsites. Given that consultation with knowledge holders did not occur until 2018, no account was taken of the location of significant cultural pathways, story lines, known camping areas or resource use places.

Potential archaeological deposits (PADs) later test excavated by Kelleher Nightingale Consulting Pty Ltd within the project construction corridor were thus selected by Biosis Pty Ltd without full and appropriate Aboriginal community input. RAPs

were denied the opportunity to inspect the final revised corridor and were asked to comment on the draft Kelleher Nightingale Pty Ltd Aboriginal cultural heritage assessment report without the benefit of any clear, on-the-ground understanding of the project impact boundaries. The lack of any definitive understanding of the actual impact area has made it incredibly difficult for us to assess the full scope of cultural heritage impacts to be caused by the project.

We believe that the project corridor may well contain additional, previously unidentified PADs that would warrant archaeological testing and possible salvage ahead of construction commencement. As advised at AFG meetings on the 28th of June 2017 and the 8th of February 2018, we do not consider the small-scale test pits and limited proportion of PADs investigated under the *'Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW'* (DECCW 2010), as employed by Kelleher Nightingale Consulting Pty Ltd, to be sufficient to provide location-specific information suitable for determining the range of site contents, scientific or cultural values.

Recommendation 1

The approved project corridor should be inspected by experienced RAP representatives prior to construction commencement to record any previously unidentified PADs and determine the need for test excavation and site salvage if necessary. The test excavation methodology should be agreed by all RAPs and may include grader scrapes, mechanical excavator pits and use of a mechanical sieve to achieve more comprehensive samples than those allowed under the *'Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW'*.

Concern 2

The Salvage Excavation Methodology presented in Appendix E of the Kelleher Nightingale Pty Ltd Aboriginal cultural heritage assessment report (2019) advocates surface artefact collection and Phase 1 hand excavation of 1m² squares placed at 15m intervals across five of the tested sites/PADs that contained subsurface artefacts. Phase 2 salvage, via the hand excavation of contiguous squares, would be undertaken if 'information bearing deposits' are identified during Phase 1, up to a total excavated area of 75m² at each of the five designated salvage sites. No salvage would be undertaken on the remaining 14 sites found to contain subsurface artefacts, albeit at a low density only.

As custodians of our culture and to ensure that inter-generational equity is maintained to the highest possible extent in the face of Bypass construction, it is of utmost importance that all Aboriginal artefacts be salvaged from the impact zone and re-deposited in protected nearby places within the RMS corridor, consistent with Requirement 26 of the *'Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW'* (DECCW 2010). This would allow the artefacts to be accessed for research and Aboriginal community education purposes as future needs arise.

In view of our commitment to future Gumbaynggirr generations RAPs do not support the limited Aboriginal site salvage proposed in the EIS Aboriginal cultural heritage assessment report. We request the opportunity to salvage all artefacts within the project impact area, including more comprehensive salvage at the five salvage sites selected by Kelleher Nightingale Pty Ltd, the 14 subsurface sites not proposed for salvage, and any other sites that may be detected by the implementation of Recommendation 1 above.

Recommendation 2

As far as possible, all Aboriginal artefacts within the proposed Bypass impact footprint should be salvaged prior to construction commencement, in consultation with and with the direct involvement of the RAPs. The salvage methodology should be agreed by all RAPs and may include grader scrapes, mechanical excavator pits and use of a mechanical sieve as deemed warranted to achieve a high level of artefact rescue ahead of site destruction. The rescue of remaining artefacts at the five salvage sites selected by Kelleher Nightingale Pty Ltd should follow the completion of Phase 1 and Phase 2 investigations as proposed in Appendix E of the Aboriginal cultural heritage assessment report (2019).

Concern 3

Ancestral Gumbaynggirr burials have been detected on sand-based and alluvial lands at Corindi, Station Creek, Boambee, Sawtell, Moonee and Nambucca Heads, with 21 burials recently identified on creek banks at Glenugie north of Coffs Harbour. The distribution of known burials suggests that burials may be present in the vicinity of waterways traversed by

the Bypass. This possibility has been given scant attention in the Kelleher Nightingale Pty Ltd Aboriginal cultural heritage assessment report (2019), which simply outlines procedures to be followed in the event that human remains are uncovered during construction activities. However, the likelihood of burials being recognised by construction personnel (e.g. machinery operators) is clearly very low.

Any ancestral burials that may be intercepted by the project works will be of high Aboriginal community significance and would require the use of culturally sensitive salvage methods and repatriation agreed by the RAPs and knowledge holders. To offer the best (and probably only) chance of any burials being detected, it is necessary that close monitoring of vegetation clearing and topsoil stripping be undertaken on landforms with the potential to contain these sites. The monitoring should be undertaken by local Aboriginal community members (especially RAP representatives) engaged either directly by RMS or employed by the Construction Contractor for the duration of construction works in line with their Aboriginal Participation Plan.

Recommendation 3

Monitoring of vegetation clearing and topsoil stripping should be undertaken by experienced local Aboriginal community representatives to ensure that ancestral burials are not destroyed during the project works. Areas requiring this monitoring should be identified by the RAPs and knowledge holders, and the monitoring personnel agreed by the RAPs and knowledge holders. If any possible evidence of human remains is detected during the monitoring or at any other time, Management Procedure 10.2 of the Kelleher Nightingale Pty Ltd Aboriginal cultural heritage assessment report (2019:56) should be strictly adhered to.

Concern 4

We do not support Management Procedure 10.4 c) of the Kelleher Nightingale Pty Ltd Aboriginal cultural heritage assessment report (2019:57), which states that “Where as a result of alterations to the project design an impact on Aboriginal heritage is considered to be greater than identified by the Approved Project ... consultation may entail a phone call and phone log of comments received or the provision of a report for comment.”

Nor do we support Management Procedure 10.4 d) of the Kelleher Nightingale Pty Ltd Aboriginal cultural heritage assessment report (2019:57), which states that “Where a proposed change is an area located outside of the study area assessed as part of the Approved Project ... This area would require preliminary assessment to determine any impacts upon Aboriginal heritage. Should no impacts be identified then no consultation with Aboriginal stakeholders is required. Should potential impacts be identified, consultation with Aboriginal stakeholders will be undertaken. This consultation will entail the provision of a report for stakeholder comment (10 working days) detailing the impacts and mitigation strategies proposed.”

These recommended management procedures illustrate an overall failure to properly engage with RAPs or to appreciate and accept considerable Aboriginal community knowledge, as detailed in our response to the draft Kelleher Nightingale Pty Ltd Aboriginal cultural heritage assessment report dated 18th of October 2018.

Recommendation 4

As per best practice, RAP representatives should be engaged to assist with all additional Aboriginal cultural heritage surveys/investigations, including inspections of areas to be affected by project design alterations and areas outside the approved corridor that may also be impacted. Knowledge holders should be consulted to determine cultural heritage values of these areas. All reports should be reviewed by the RAPs, and final reports should contain and address RAP correspondence and concerns.

Concern 5

To allay our outstanding concerns regarding Aboriginal site and landscape destruction and achieve a positive outcome for the local Aboriginal community, we ask that the RMS and/or Construction Contractor employ RAP representatives for the duration of the project earthworks, and preferably for the entire project duration. In addition to day-to-day construction tasks, these representatives would assist with:

- The excavation, community collection and salvage of Aboriginal sites/artefacts.
- Delivery of the cultural awareness component of the project induction program, pre-start and tool box meetings.
- Monitoring of vegetation clearance and topsoil stripping within archaeologically sensitive areas, including areas with the potential to contain ancestral burials.
- The installation of animal boxes and other required fauna protection measures.
- The selection of suitable plant species and flora plantings as required.
- The production of educational booklets, as recommended in the EIS Aboriginal cultural values assessment report prepared by Waters Consultancy (2019).

Recommendation 5

The RMS and/or the Construction Contractor should employ suitable RAP representatives for the duration of construction impact activities to ensure that as much of the cultural landscape as possible is preserved, and to offer work opportunities to compensate Aboriginal site destruction in the development-related context. The RAPs and knowledge holders wish to be kept fully informed of the timetable and progress of all works associated with the planning and construction of the Bypass.

In addition to the above concerns and recommendations, the RAPs and knowledge holders require input to the:

- Environmental Work Method Statement.
- Cultural Heritage Management Plan.
- Management and Mitigation Plan for unexpected discoveries.
- WHS and Cultural Safety/Policy Plan.

Signed and submitted by:

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