

**Friends of
Minnamurra River Incorporated¹**

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**COMMUNITY SUPPORT CALLED FOR IMMEDIATE REFORMS TO STOP
MINERS AND DEVELOPERS USING AND OVERRIDING BIASED NSW AND
FEDERAL LAWS TO DESTROY ABORIGINAL SACRED SITES AND PRICELESS
HERITAGE**

A Kiama, NSW, riverine conservation organisation has called for immediate widespread community pressure on NSW and Federal politicians to reform current laws allowing miners and developers to override existing Aboriginal heritage protection laws and also block First Nations' peoples from any meaningful say on mining and construction projects that will destroy the heritage sites they are trying to protect.

The Friends of Minnamurra River (FOMR Inc) issued the call for community support and action following a letter from national sand miner and building materials' supplier, Boral Limited, to the local Kiama newspaper, The Bugle, on 22 December 2023.

In the letter, the company tried to defend itself against starting and continuing the destruction by sand dredging of a sacred Aboriginal burial and heritage site at Minnamurra, pre-empting a federal government decision on a government consultant's strong recommendations in 2022 to save and permanently protect the site as a Significant Aboriginal Area.

The site and its surrounds which Boral started sand dredging on 30 October 2023, is the same area that local Wodi Wodi First Nations' people are adamant contains not only the burials from at least 30,000 years of their archaeologically-proven continuous occupation of the same land but also the victims of the officially recognised 1818 Minnamurra Massacre of Aboriginal people by early European settlers on or very near the site.

The sacred site is out of public view on leased land on the Minnamurra River floodplain nearly immediately south of historic Dunmore House, about 8km north of Kiama, NSW.

FOMR Inc Chair, Will Chyra, says that Boral's recent letter to the local newspaper editor obscures the years of struggle that local Wodi Wodi people have had trying to defend from Boral's new sand mines their traditional Country near the Minnamurra River and estuary

¹ Friends of Minnamurra River (FOMR) is an active incorporated community-based association formed six years ago to conserve, protect and enhance the estuarine and catchment ecosystems of the Minnamurra River. It has qualified expertise available to it and within its membership in plant and animal ecology, archaeology, hydrology and environmental science.

where they've been burying their ancestors for 30,000 or more years and where archaeological test pits have revealed a national treasure of Aboriginal cultural artefacts, some of them not seen before in the archaeological record of this part of Australia.

Mr Chyra says Boral's letter has also raised what he calls the absolute inequity and shocking imbalance of NSW laws which make it impossible for Aboriginal people to prevent the destruction of their heritage sites by miners and developers.

"Our First Nations' people do not stand a chance of protecting their cultural and human heritage in the same way that non-Aboriginal Australians are assured of and take for granted the formal protection of their heritage", Mr Chyra says.

"The odds are always entirely stacked against our First Nations peoples in trying to get some protections for even their most highly valued sites – such as those at Minnamurra", he says.

Mr Chyra says most Australians are completely unaware of how NSW laws in particular militate against the protection of Aboriginal cultural and human heritage. For example:

- NSW laws and regulations specifically exempt corporations and individuals from prosecution for damaging or destroying Aboriginal artefacts and potential archaeological sites in mining and development project areas;²
- Aboriginal people and/or their representatives can only 'consult' with the proponents of mining and development projects; they cannot 'veto' any mining or development project, no matter whether or not that project may mean the total destruction of a major heritage and/or sacred site (such as that at Minnamurra);
- Current NSW government regulations on archaeological and cultural heritage assessment allow the "salvage" of potential archaeological sites, such as those in the Minnamurra River catchment, using techniques that destroy those sites and prevent their scientific investigation for the recovery of their full records of Aboriginal cultural heritage;
- Perversely, Aboriginal cultural heritage protection in NSW is administered under the NSW *National Parks and Wildlife Act 1974*;
- The federal government's *Aboriginal and Torres Strait Islander Heritage Protection Act* (ATSIHP Act) is almost farcical in that there is no time limit in the legislation for the federal Department of Environment to make decisions on the Act's Section 9 applications for "emergency" declarations to stop immediately threatened desecration or damage to Aboriginal heritage;
- At Minnamurra, this federal legislative defect has allowed Boral to continue destroying the Aboriginal sacred and heritage site while the Department of Environment considers a local Wodi Wodi woman's Section 9 application to stop Boral's dredging of the site. The department says it will take one to two months to decide whether or not to stop the destruction – by which time the site that the Section 9 applicant is trying to save will be gone, just a hole in the ground;

² *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales*, Department of Environment, Climate Change and Water NSW, September 2010, and *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales – Part 6 NSW National Parks and Wildlife Act 1974*, Department of Environment, Climate Change and Water, September 2010.

- The federal ATSIHP Act also contains no mechanism for the administering department to stop, temporarily or otherwise, a miner or developer from damaging or destroying an Aboriginal heritage site or Aboriginal cultural object/s;
- Current NSW government regulations (*see Footnote 2*) on archaeological and cultural heritage assessment allow the “salvage” of potential archaeological sites, such as those in the Minnamurra River catchment, using techniques that destroy those sites and prevent their scientific investigation for the recovery of their full records of Aboriginal cultural heritage, and
- The powers of Local Aboriginal Land Councils when ‘consulting’ on behalf of their constituents with mining and development project proponents is limited under the NSW Act³

Mr Chyra says FOMR is asking all individuals and community organisations concerned by the destructive Boral mining continuing at Minnamurra and by the nearly total ineffectiveness of NSW and federal laws in preventing such continued destruction of highly significant Aboriginal cultural sites and materials, to write to their NSW and federal parliamentary representatives and to the NSW Environment Minister, Penny Sharpe, and the federal Environment Minister, Tanya Plibersek.

He says letters should request an immediate start to reforms to change all the defective and ineffective Aboriginal heritage protection legislation and regulations, both State and federal, “so that we can put the earliest possible stop to those who are destroying and damaging irreplaceable cultural and human heritage so important to current and future generations of all Australians and for understanding our past and therefore our Australianess.”.

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³ The Illawarra Local Aboriginal Land Council has said it is very unhappy about what has occurred at Boral’s Minnamurra River mine sites, particularly Site 5B, but is powerless to do anything about it because of the NSW government regulations permitting the destruction. The Land Council says the regulations exist only to allow industrial projects to proceed. It told the NSW Independent Planning Commission in November 2020 of “what we believe is a failure in the approach that (Boral’s consultants) Kelleher Nightingale have applied and the predetermined position in our view of consultants that are engaged to undertake what should be the protection of Aboriginal heritage but inevitably becomes a process to get the proponent through the planning process.”