

# Friends of Minnamurra River Incorporated

9 Samuels Lane  
KIAMA DOWNS  
NSW 2533

**Email:** FOMR2533@gmail.com



Assistant Secretary  
Aboriginal and Torres Strait Islander Branch  
Department of the Environment  
GPO Box 858  
CANBERRA ACT 2601

**cc. Office of the Minister for Environment**, Parliament House, Canberra ACT 2600

**Comment on Applications under the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 in relation to Dunmore Lakes Sand and Soil, Dunmore, New South Wales** following applications by Ms Sharralyn Robinson, a Yuin Elder and member of the Aboriginal Cultural Company and by Mr Gary Caines, a Wodi Wodi man of the Dharawal people, to protect the sites from desecration by destruction.

1. Friends of Minnamurra River (FOMR) is an active incorporated community-based association formed five 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.
2. For a number of years, some of FOMR's specialists have maintained a close personal dialogue with a number of direct descendants of the Wodi Wodi people of the Dharawal language group, the First Nations custodians of the Minnamurra River and area. Some of these people, most of whom still live in urban centres just to the north in relatively close proximity to the Minnamurra River and its estuary and adjoining land, still consider themselves custodians of that land. They access it mainly from the river because it is now largely private property or under lease to the sand mining company, Boral.
3. Since July 2021, a substantial number of these Aboriginal custodians have been employed on their ancestral lands by Boral's archaeological consultants, Kelleher Nightingale, as members of the experienced First Nations' archaeological teams, known under State government legislation as Registered Aboriginal Stakeholders.
4. Several of these Aboriginal custodians, including some working on the archaeological teams on Boral's proposed sand mining sites at Dunmore, maintain close contact with FOMR specialists. The details, methods and nature of such continuing liaison has to be maintained in strict confidence because Boral managers have several times threatened reprisals against anyone providing information about the activities of Boral or its contractors on the proposed mining sites 5A and 5B.
5. However, despite the threats, close contact with FOMR members continues to be maintained, mainly because of the powerful connections these living ancestors have with the land of the proposed sand mining site.

6. These people and their ancestors have called this land home for at least 17,000 years (the earliest date for Aboriginal occupation obtained by researcher, Josophine Flood, for nearby Bass Point, NSW) and are desperate not to have it bulldozed and replaced by dredge pits with a mine life of only four years maximum.
7. The Aboriginal custodians with whom FOMR is in contact include: (a) descendants of some of the survivors of the Minnamurra River massacre of 1 October 1818 when European settlers killed at least six First Nations people camped at the river near the current Swamp Road, only about 200 metres from the currently proposed Site 5B sand mining site, and (b) descendants who have living relatives who still remember as children living/camping in and roaming the area in late post European contact times.
8. These people have informed FOMR that they are certain that at least some victims of the Minnamurra River massacre are buried in the sand “benches” which form a major part of the proposed Site 5B mine site.
9. FOMR specialists have confirmed that not only massacre victims are more than likely buried on this site but that there are quite probably other burials in the area marked for mining because the site is an archetypal one for Aboriginal burials in littoral areas.
10. This is because littoral area beaches, above tidal influences, were predominantly sand and/or soft soil, easy for excavating graves. At the proposed mine Site 5B on the Minnamurra River estuary at Dunmore, the raised “bench” area, one of several in the area, is actually an ancient beach marking a very early bay or inland incursion of the sea where salt water met fresh water and provided a very rich, temperate environment highly conducive to Aboriginal occupation and then European settlement – and now for the excavation and extraction of high quality old beach sand for concrete structures to expand that European settlement.
11. The NSW Government, in a series of signs at the Nungarry Rest Area on the Princes Highway, only about 200 metres west of the proposed sand mining Site 5B and contiguous with it, acknowledges the long and close association of Dharawal (Wodi Wodi) people with the Minnamurra River (see attached photograph). The river is within a few metres of the proposed mine site just through the federally protected and critically endangered littoral rainforest beside the Rest Area and which overhangs the western boundary of Site 5B.
12. FOMR has been asked to comment on claims by the applicants that thousands of Aboriginal artefacts have been found on the Dunmore site to be destroyed by the proposed sand mine pits. FOMR can confirm with absolute certainty that not only have many thousands of Aboriginal artefacts been excavated from Site 5A of the proposed mining area, but that the number and different types of artefacts found is unprecedented in this coastal region and possibly, on the entire Australian east coast.
13. The Aboriginal descendants of the first inhabitants of this Minnamurra River area formed a very significant proportion of the Boral archaeological consultant’s team that began archaeological salvage work on proposed mining site 5A in July 2021.
14. The number, richness and variety of Aboriginal cultural materials they uncovered from the start of their Site 5A salvage archaeology work prompted them very quickly to contact their FOMR confidants. They were concerned, to the extent of being personally upset and stressed, about the unique nature of the site in their professional archaeological experience and the fact that most of the cultural and scientific significance of the site was being washed away in an archaeological salvage operation which would see the recovered artefacts merely roughly recorded, bundled up and sent to the ‘Aboriginal collections’ of the Australian Museum in Sydney.

15. As a result of the Aboriginal archaeologists' concerns, FOMR published the attached news release and the archaeological teams subsequently stopped work while an application for a permanent stop work was made to the Commonwealth Minister for Environment.
16. It must be emphasized that the proposed mine site 5A, the subject of salvage archaeology to date, is most certainly the least archaeologically significant of the two proposed mining sites.
17. Finds in archaeological test pits on Site 5B, to be mined after Site 5A, which has just been cleared and destroyed archaeologically to make way for the first Boral dredge pond, indicate very clearly that Site 5B is what Boral's archaeological consultants have stated is an area of "high archaeological significance" under NSW law. It is also the site where mining operations, if allowed to proceed, will unearth not only a huge wealth of artefacts but Aboriginal burials.
18. The FOMR News Release attached at page 7 of this submission, details the large number of the potential contraventions of both State and Commonwealth environmental and flora and fauna protection laws which will occur if this mining proposal, particularly the Site B component, is permitted by governments to proceed.
19. The list of contraventions includes a breach of the Environmental Protection and Biodiversity Conservation Act has already been formally reported to the Minister and is awaiting Ministerial action.

- **Will Chyra**  
**Chair**  
**FOMR**

16 May 2022

# Friends of Minnamurra River Incorporated

9 Samuels Lane  
KIAMA DOWNS  
NSW 2533

Email: FOMR2533@gmail.com



**For Immediate Publication**

**NEWS RELEASE**  
**with Photo**

**15 July 2021**

## **NSW GOVERNMENT REGULATIONS PERMIT INDUSTRY'S DESTRUCTION OF ABORIGINAL CULTURAL HERITAGE AT MINNAMURRA RIVER**

NSW government regulations are permitting the destruction of ancient and unique State-significant archaeological and Aboriginal cultural heritage sites in the Minnamurra River catchment at Dunmore.

The river protection community organisation, Friends of Minnamurra River Inc (FOMR), warned today that archaeological consultants working for Boral Limited on two new approved sand mining sites near the Minnamurra River estuary, are literally washing away archaeological and Aboriginal cultural heritage sites many thousands of years and possibly tens of thousands of years old.

Current NSW government regulations on archaeological and cultural heritage assessment<sup>1</sup> 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.

The government regulations specifically exempt corporations and individuals from prosecution for damaging or destroying Aboriginal artefacts and potential archaeological sites in mining and development project areas.

FOMR says soil from the salvage archaeology sites being dug at Boral's Minnamurra River future sand mining pits is flushed through screens using water.<sup>2</sup>

Flushing with water leaves only a jumble of undated stone artefacts of very little scientific or educational use and destroys practically all other material which could otherwise be used to scientifically determine the age of the site, the richness and change of Aboriginal lifestyle and culture through time, as well as climate and other local and regional environmental changes over many thousands of years.

FOMR Chair, Will Chyra, says Aboriginal stone artefacts, the predominant archaeological objects recovered when archaeological dig soil is washed by water, tell virtually nothing about local Aboriginal cultural heritage because they are not dated and therefore cannot be placed in any prehistoric cultural or environmental timeline or change sequence.

Reliable sources report that large numbers of stone artefacts of various types are being flushed out even at the site of low significance currently being ‘salvaged’ in front of Dunmore House.

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<sup>1</sup> *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*, Department of Environment, Climate Change and Water, September 2010.

<sup>2</sup> In scientifically conducted, non-salvage, stratified archaeological ‘digs’, material carefully excavated layer by layer, each layer about 40mm to 50mm thick, is shaken through 2.0mm to 2.5mm mesh screens or sieves to separate out not only solid artefacts but also organic material such as remains of plants and animals, and carbon from ancient campfires, essential for dating the site/s being excavated.

“This tragic wastage of our human cultural heritage and knowledge of prehistory is worsened by the fact that the government regulations require the stone artefacts recovered, probably many thousands to hundreds of years old, to be bundled together and sent to the Australian Museum in Sydney just for storage”, Mr Chyra says.

FOMR says stratified and accurately dated archaeological sites in the Illawarra region and along the NSW coast are relatively rare and the sites near the Minnamurra River estuary currently being or about to be ‘salvaged’ - and destroyed - are likely to be potentially unique in telling the prehistory of the Illawarra and possibly other areas of the NSW coast.

“Their destruction, permitted by government regulations, is robbing humankind of parts of its history,” Will Chyra says.

Boral’s archaeological consultants, Kelleher Nightingale, has classified two of the larger sites to be ‘salvaged’ near the Minnamurra River as “sites of high to moderate archaeological significance” with their “intactness the most important variable for determining archaeological significance in this instance”<sup>3</sup>. The NSW Department of Planning, Industry and Environment has been informed of this.

However, once ‘salvaged’, the sites’ scientific archaeological and Aboriginal cultural heritage values will be completely lost and any sites not destroyed by the salvage archaeology are scheduled to be destroyed anyway when Boral starts mining sand on its site 5B.

Will Chyra says FOMR last week appealed in writing to Boral Limited to stop the current destructive salvage archaeology operations and asked Boral instead to request its consultants to conduct full and proper scientific archaeological investigations or ‘digs’ at the two sites near the Minnamurra River estuary classified as highly to moderately significant.

Boral has yet to reply.

The Illawarra Local Aboriginal Land Council says it is very unhappy about what’s occurring at Boral’s Minnamurra River sites 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 last year 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.”<sup>4</sup>

**Media contact:** Will Chyra, Chair, FOMR. Mobile: 0419 633 19

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<sup>3</sup> Letter from Kelleher Nightingale Pty Ltd to Boral Land and Property Group, 29 October 2019, at: <https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=DA195-8-2004-MOD-2%2120201126T033641.582%20GMT>

<sup>4</sup> *Submission to NSW Independent Planning Commission on Dunmore Lakes Project Modification 2*, Paul Knight, CEO, Illawarra Local Aboriginal Land Council, 2 November 2020, p. 4. <https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/project-submissions/2020/09/dunmore-lakes-project-modification-2/20201104t122911/dunmore-lakes-project-odification-2--ipcsigned.pdf>.



**Photo (FOMR):** Salvage archaeology under way in July at Boral Limited's approved sand mining site 5A near the Minnamurra River estuary at Dunmore, NSW. In the background, archaeological dig workers use water to flush soil excavated from the dig pit in the middle foreground through mesh screens, destroying practically all archaeological evidence but stone artefacts impossible to accurately date or put into scientific archaeological context.

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KIAMA DOWNS  
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Email: FOMR2533@gmail.com



**For Immediate Publication**

**NEWS RELEASE**

**28 September 2021**

## **SAND MINE NEAR KIAMA WILL BE THE AUSTRALIAN EAST COAST'S JUUKAN GORGE**

The Federal and NSW governments and mining company, Boral Limited, will oversee the east coast's Juukan<sup>5</sup> Gorge if sand mining is permitted to destroy what archaeologists have recently discovered is perhaps the richest Aboriginal cultural heritage site in coastal Australia, close to the Minnamurra River near Kiama, NSW.

The river-protection community organisation, Friends of Minnamurra River Inc (FOMR), issued the warning today as it announced its support for the Illawarra region's Indigenous groups and the Illawarra Local Aboriginal Land Council (ILALC) which has formally applied to the Federal government, under Section 9 of the *Aboriginal and Torres Strait Islander Heritage Protection Act*, requesting a stop work at the proposed sand mining site.

The stop work would enable a review of the impact to cultural heritage objects and potential skeletal remains at the site, beside the river at Dunmore, NSW.

Archaeologically-experienced Registered Aboriginal Stakeholders, employed by Boral's archaeological consultants, have for three months been conducting an archaeological salvage program, excavating numerous one-metre square test pits at the proposed mine site. They have become increasingly concerned about their finding of a surprising and unexpected wealth of cultural material created by their ancestors living in the area for probably over tens of thousands of years.

They are frustrated by the current NSW government regulations on archaeological and cultural heritage assessment<sup>6</sup> which allow the "salvage" of potential archaeological sites, such as the potential mine site 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.

The NSW government regulations specifically exempt corporations and individuals from prosecution for damaging or destroying Aboriginal artefacts and potential archaeological sites in proposed mining and development project areas.

The experienced First Nations' archaeological teams, known as Registered Aboriginal Stakeholders under government legislation, at Boral's proposed new mine site at Dunmore are also constantly fearful that they will unearth burials, known to be in the vicinity of the site, of the six Aboriginal people murdered by a group of white settlers in 1818. There are still descendants of some of those victims living in the local area.

The Illawarra Local Aboriginal Land Council has stated on ABC news that it believes the registered Aboriginal personnel on the site are working under duress and that the site is too significant to be continuing the work.

Like FOMR, it wants Boral to abandon its plans for the sand mining at the site - mining which Boral says would have an operating life of only three years anyway - and the landscape left in its natural state.

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<sup>5</sup> The mining company, Rio Tinto, in December 2020 attracted international shame by allowing its employees to destroy 46,000 year old Aboriginal archaeological and cultural sites at Juukan Gorge in Western Australia. Rio Tinto executives resigned and the company has published this apology: *In allowing the destruction of Juukan Gorge to occur, we fell far short of our values as a company and breached the trust placed in us by the Traditional Owners of the lands on which we operate. It is our collective responsibility to ensure that the destruction of a site of such exceptional cultural significance never happens again, to earn back the trust that has been lost and to re-establish our leadership in communities and social performance.*

<sup>6</sup> *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*, Department of Environment, Climate Change and Water, September 2010.

“The richness and cultural heritage of the proposed mining site and its importance to us all as a site of human adaptation, experience and gathering for tens of thousands of years is simply too great to have it destroyed for very short term industrial and commercial expedience,” says Will Chyra, Chair of FOMR.

“The destruction of this site at Dumore by mining would be the Australian east coast equivalent of the dreadful and irrevocable loss that all Australians witnessed with a mining company’s destruction of Juukan Gorge in Western Australia less than a year ago,” Mr Chyra says.

The proposed mining site, currently an endangered ecological community protected by NSW law - which the NSW government would allow Boral to override to dig its mine and completely destroy the site – covers an ancient landscape where the saltwater of the sea met the freshwater thousands of years ago.

FOMR says that this indicates it was a significant meeting place and ceremonial land for freshwater and saltwater Aboriginal tribes.

“The multitude of stone tools and other ancient artefacts being unearthed show a long continuous occupation of Aboriginal cultural heritage, similar to Juukan Gorge, so the site they’re coming from must be preserved. Boral’s proposed sand mine must be stopped,” Mr Chyra says.

The ILALC’s application to the federal Environment Minister to order a stop work at Boral’s proposed new Dunmore mine site is the second Federal government intervention sought to stop the mine proceeding.

A number of local residents and the Federal Member for Gilmore, late last year complained to the Federal Environment Minister that, among other things, Boral and the NSW Department of Planning, Industry and Environment (DPIE) breached the Australian *Environmental Protection and Biodiversity Conservation Act* (EPBC Act) by failing to disclose that the proposed sand mine would or could impact SE Littoral Rainforest at and near the site. The SE Littoral Rainforest is listed under the EPBC Act as “critically endangered”.

The threat to the SE Littoral Rainforest is in addition to what the NSW DPIE concedes are other major effects if Boral’s proposed new mine proceeds:

- Destruction of 4.5ha of rare, ancient and high quality bird and animal habitat, Bangalay Sand Forest, a State-protected Endangered Ecological Community comprising 100 to 400-year old trees;
- Risks to another Endangered Ecological Community, Coastal Saltmarsh, protected in NSW and listed as vulnerable under the EPBC Act and for which the NSW government has developed a “Save Our Species” recovery program to try to reverse the continuing loss of this high value EEC;
- The cutting and clearing of an additional 3.0 ha of high value native vegetation, unique to the Minnamurra River catchment area.
- Six fauna species listed as threatened under the NSW *Biodiversity Conservation Act* have been recorded in the mining site to be cut and cleared.

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**Media Contact:** Will Chyra, Chair, FOMR, 0419 633 191