

Friends of Minnamurra River Incorporated

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2 August 2022

Ms Tanya Plibersek MHR
Minister for Environment
PO Box 6022
House of Representatives
Parliament House
CANBERRA ACT 2600

cc. James Barker, Heritage Section, Department of Environment; Simon Banks, Heritage, Reef and Ocean Division, Department of Environment.

Dear Minister Plibersek

This is the response by Friends of Minnamurra River Inc.¹ to the invitation by your department to comment further on an application by Mr Gary Caines, a Wodi Wodi man of the Dharawal people of the Illawarra, NSW, seeking protection of a specified area, Stage 5A and Stage 5B of the Dunmore Lakes Sand and Soil Project, Dunmore, NSW, under section 10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*.

We make these points:

1. The entire land area south of Dunmore House and containing the proposed Stage 5B sand mining area needs to be protected under the Act, as your consultant, Dr Brendan Corrigan, recommends, because it is not only, in itself, a very highly significant Aboriginal area but is an integral and inextricable part of a continuum of land in the Minnamurra River floodplain constituting a much wider – and largely undisturbed – area also having inestimable high values, ancestral/cultural significance and resource utility for living Aboriginal people.
2. The NSW Government has known for many years about the very high value to Aboriginal people of the area now under imminent threat of destruction to make way for a temporary sand mine. Only 200 metres to the west of the proposed mine site at Stage 5B, is a NSW Government sign in the Nungarry Rest Area at Dunmore on the Princes Highway, just north of Kiama, which describes the importance to Aboriginal people of the Minnamurra River and its riparian zone. (*See, particularly, paragraph 3*

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.

in the photograph of that sign on the last page in Attachment A to this correspondence.)

3. **On that sign, the NSW Government states: “The Minnamurra River is the largest river in the region. The Dharawal people had major camping, tool making, ceremonial and burial sites on both sides of the river.”** (FOMR’s underlined emphasis.)
4. This NSW Government sign is only about 200 metres from the proposed mining site (Stage 5B) area which is also practically beside the Minnamurra River. The site, because of its geomorphology including ancient beach terraces, would have been highly favoured by Aboriginal people for interment of their dead. Additionally, the early massacre by European settlers of a group of Aboriginal people occurred at or very near this site and it is therefore likely that those victims lie buried here too.
5. Unless protected by your declaration, this centerpiece of such high Aboriginal heritage and biodiversity values will be completely and irrevocably destroyed for a sand mine which the Project company itself concedes will last only for about two years before being turned into a large private lake and the mining company moves on to new sand resources it has told FOMR are 50km further south, near Nowra, NSW.
6. **It is unclear from your department’s background briefing underlying the invitation to comment further on Mr Caines’ application, exactly what area of the Specified Area cited you may make the subject of a declaration to protect the area.** The department’s brief states that you are “considering making a partial declaration over the south-eastern portion of Stage 5B of the specified area”.
7. This has caused us some confusion because Stage 5B of the Project comprises practically all the area to be completely cleared of all vegetation and then formed into a huge dredge pit.
8. If you declare only “the south-eastern portion of Stage 5B”, it appears that your declaration will not have its intended protective effect on the land immediately surrounding the dredge pit. This immediately surrounding land is very much a part of the highly significant Aboriginal area mentioned by Mr Caines in his application and by Dr Brennan and will be variously damaged, displaced and destroyed as part of the sand dredging operation in the Stage 5B dredge pit .
9. **However, if the Specified Area to be declared includes not only the Stage 5B mining area/dredge pit but all the land south of Dunmore House leased under an extraction agreement by the mining company for the purposes of the Project from the owners of Dunmore House, then your declaration will have the protective effect intended under the Act over the area referred to by Dr Corrigan.**
10. **The urgency of the timing of any declaration under Section 10 of the Act cannot be overstated.** To emphasize this, it is already too late to declare protection for Stage 5A of the Project on the north side of Dunmore House. Stage 5A has been turned from a vacant paddock into a sand mine with active dredge pit in less than 12 months. In July 2021, Stage 5A was the site (*see photograph on the last page of this*

correspondence and another in Attachment A at page 10) of destructive salvage archaeology which exposed such a huge wealth of Aboriginal cultural artefacts that it emotionally overwhelmed the Aboriginal stakeholder archaeological excavators and they stopped work and refused to return to the site.

11. Compare these photographs with the one taken of the same area of Stage 5A last Sunday (31 July 2022). Within less than a year, including several months lost to Covid lockdowns, a once rich Aboriginal archaeological site under a former cattle pasture in front of Dunmore House (pictured in the background of the photographs) had been transformed into a sand mine, with mining so progressed and the dredge pit already so deep that only the cabin roof and part of the crane jib of the dredge itself is visible above ground level.
12. Preliminary salvage archaeology also began on Stage 5B in 2021. A small number of one-metre square archaeological test pits sunk into the Stage 5B area site, including some of the ancient beach terraces, confirmed an even potentially richer Aboriginal cultural heritage site than at Stage 5A.
13. To add emphasis to this, the Stage 5B area is quite likely to contain Aboriginal burials in those terraces very much favoured by Aboriginal people to inter their dead, including the burials of the victims of the 1818 Aboriginal massacre by Europeans on or very close to the proposed mining site. All in all, the Stage 5B site of the proposed sand mine is quite possibly the richest Aboriginal cultural heritage site in this large region of southeast Australia.
14. With a start to be made on preparing Stage 5B for mining only a month or two away, it is imperative that a protective declaration under Section 10 is made in the very near future.
15. **It is important to raise the point here that the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* is not the only Act within your portfolio under which you can protect this area, an area which, as Dr Corrigan has found, is highly significant to Aboriginal people and which also contains a critically endangered ecological community (EEC) of Southeast Littoral Rainforest, protected under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).**
16. This protected SE Littoral Rainforest is part of the complex of other diverse protected flora and fauna in the Stage 5B mining site area which Dr Corrigan has identified, in his report to you, as the “high value economic resource elements (marine and terrestrial foods and water supply), supporting large residential (Aboriginal) gatherings in historic and prehistoric times.”
17. As explained below, the EPBC Act has already been invoked with the Minister to protect the Stage 5B mining area as a high value part both of Australia’s unique Aboriginal cultural history and biodiversity. The Stage 5B area’s loss to the proposed sand mine or any future destruction or damage would also be yet another adverse impact on the state of the national environment.

18. FOMR wrote to you on 1 June 2022 alerting you to the fact that on 16 December 2020, very shortly after the NSW government's Independent Planning Commission (IPC) decision to allow the mining company, Boral Limited, to completely clear the areas of the protected ecosystems and their wildlife to make way for the new mines, our Secretary, Richard Maitland, filed a complaint to the previous minister, on behalf of FOMR, through the federal Member for Gilmore, Ms Fiona Phillips.
19. The main point of the complaint was that the mining company, Boral Limited, in preparing its application for approval of the two new mine sites, Stage 5A and Stage 5B, together with the NSW Department of Planning, Industry and Environment (DPIE), had failed to notify the then Commonwealth Minister for Environment of the mining project's implications for the critically endangered SE Littoral Rainforest immediately adjoining and overhanging the mine site boundary, as required under the EPBC Act. In addition, the NSW Department of Planning, Industry and Environment also failed to notify the mining Applicant, Boral, of this default.
20. Another FOMR field survey on 29 July 2022, together with further study of historic and recent aerial photography, indicates that part of the SE Littoral Rainforest, listed under the EPBC Act as a critically endangered ecological community, actually partly lies within, as well as immediately adjoining (and overhanging the boundary of) the proposed Stage 5B mining area.
21. As you are of course aware, under the EPBC Act alone, you can stop the proposed mine in the Stage 5 specified area from proceeding because both the mining company and the NSW Department of Planning failed to refer to the Minister or your Department an action that will have, or is likely to have a significant impact on, in this case, a listed critically endangered ecological community of SE Littoral Rainforest.
22. Finally, we have had an opportunity to examine a number of submissions on the issue of the threatened total destruction by sand mining of the proposed Stage 5B Project site made to you and your department by the Gerroa Environmental Protection Society. FOMR fully supports the Society's submissions in their scientific and factual rigour and as a valuable complement to the work we are doing to protect the cultural and natural environment of the Minnamurra River, its estuary and catchment.

Please contact us at any time should you need any further information or have any questions.

Yours sincerely,

Will Chyra
Chair
FOMR Inc.

Mobile: 0419 633 191

23.



The start of salvage archaeology in July 2021 by Boral Limited’s archaeological consultants on the Stage 5A sand mining site in front (north) of Dunmore House (pictured top right).



In July 2022, Stage 5A less than nine months after the earlier photograph was taken (allowing at least three months delay for Covid lockdowns and an Aboriginal archaeological stakeholder excavators' stop work), the sand mine has been operating already for at least a month and the sand dredge is already well down into an increasingly deep dredge pit. (Dunmore House in top left centre of photograph.)

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ATTACHMENT A

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

16 May 2022

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, Josephine 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 Inc.

NUNGARRY REST AREA

LOCAL HISTORY

We would like to acknowledge the traditional Aboriginal people of the area being the Dharawal language groups. Dharawal people lived from Botany Bay in the north, through to Moss Vale in the west, and down to the Shoalhaven River and Jervis Bay in the south.

This rest area has been named Nungarry, which in the Dharawal language means 'a place to rest or sleep'.

Minnamurra River is the largest river in the region. The Dharawal people had major camping, tool making, ceremonial and burial sites on both sides of the river.

Minnamurra is the Aboriginal word meaning 'plenty of fish'. Minnamurra river is an important habitat for water birds and fish, and local Aboriginal people harvested fish and shellfish from the river using several different fishing methods.

Aboriginal people used plant fibres to weave fish nets and string bags, and shells and bones were used to make fish hooks. They also blocked rivers with rocks and logs so fish swimming down the river were trapped behind the dam and could be scooped

This NSW Government sign at the Nungarry Rest Area beside the Minnamurra River on the Princes Highway, Dunmore, NSW, only about 200 metres from the proposed Stage 5B sand mine, describes the high Aboriginal significance of the immediate and surrounding area and its use for Aboriginal burials.

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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 assessment² 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.³

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

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*, Department of Environment, Climate Change and Water, September 2010.

³ 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.

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.

“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”⁴. 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.”⁵

⁴ 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>

⁵ *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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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 Juukan⁶ 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 assessment⁷ 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.

⁶ 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.*

⁷ *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 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.

"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.

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

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ATTACHMENT B

Ms Tanya Plibersek
Minister for Environment
Parliament House
1 Capital Circuit
CANBERRA ACT 2600

1 June 2022

Dear Minister

The Friends of Minnamurra River (FOMR) Incⁱ convey their heartiest congratulations on your appointment to the Ministry of our new Labor government and offer their support and assistance to you in any way possible in future to help redress the neglect of environments and ecosystems across Australia during the past nine years.

In conveying our support and best wishes, we also want to alert you to the very recent start of the first stage of a sand mining project, with a total operational life of only three to four years, which will destroy a rare, 400-year-old protected forest ecosystem and its equally protected birds and animals, all within 150 metres of one of the last remaining relatively unmodified southeastern Australian river estuaries in the coastal zone and a very popular natural attraction for residents of Sydney only 110km north.

The second stage (5B) of the mine, the first stage of which is just being developed, also threatens to damage and destroy parts of the Commonwealth-protected SE Littoral Rainforest, listed as critically endangered under the *Environment Protection and Biodiversity Conservation Act* and parts of which literally overhang the western boundary of the mine site.

You have the authority to stop the mining development. This would permanently save the site's unique and irreplaceable Commonwealth and State-protected biodiversity, some of the rarest on the Australian east coast.

On 16 December 2020, very shortly after the NSW government's Independent Planning Commission (IPC) decision to allow the mining company, Boral Limited, to completely clear the areas of the protected ecosystems and their wildlife to make way for the new mines, named the Dunmore Lakes Project, our Secretary, Richard Maitland, filed a complaint to your predecessor on behalf of FOMR through the federal Member for Gilmore, Ms Fiona Phillips.

The main point of the complaint was that the mining company, Boral Limited, in preparing its application for approval of the two new mine sites, together with the NSW Department of Planning, Industry and Environment (DPIE), had failed to notify the then Commonwealth Minister for Environment of the mining project's implications for the critically endangered SE Littoral Rainforest immediately adjoining and overhanging the mine site boundary, as required under the EPBC Act.

In addition, the NSW DPIE failed to notify the Applicant, Boral, of this default.

As you and your department are undoubtedly aware, the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) regulates and protects matters of national environmental significance (MNES), including nationally listed ecological communities of which the SE Littoral Rainforest at the proposed Dunmore Lakes sand mine site is one.

As you will also be aware, under the EPBC Act a person who proposes to take an action that will have, or is likely to have, a significant impact on a MNES must refer that action for a decision about whether assessment and approval is required under the Act.

FOMR is very familiar with the formal approval and planning process for the two new sand mine dredge pits and all the documentation associated with it and there is no evidence that either Boral Limited or the NSW DPIE complied with the EPBC Act by referring the mining proposal to the Minister for assessment and federal approval, as required.

On 13 January 2021, your predecessor notified Ms Phillips that she had referred FOMR's complaint about the apparent breach of the MNES provisions of the EPBC Act "to the Department of Agriculture, Water and the Environment for further consideration and follow up action as appropriate".

We have heard nothing since and now seek your reconsideration and earliest possible determination and action in relation to our December 2020 complaint.

To possibly assist you in considering the complaints anew and making a determination, we offer the following additional information about Boral's proposed new mine at Dunmore Lakes Stage 5B.

In addition to the very real risks to the critically endangered SE Littoral Rainforest, protected under NSW legislation and listed under the EPBC Act, the NSW government has adopted the IPC approval of the new sand mine at Dunmore Lakes Stage 5B and will allow:

- 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;
- Totally destruction of the habitats of six fauna species listed as threatened under the NSW *Biodiversity Conservation Act* and which NSW DPIE says have been recorded in the mining site to be cut and cleared. Other animals will be killed or maimed in the clearing process.
- Probable damage and/or destruction of another Endangered Ecological Community (EEC), 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 Coastal Saltmarsh is also immediately adjacent to the proposed mine site beside the Minnamurra River estuary and adjoins the listed SE Littoral Rainforest EEC under threat.

- Destroy an additional 3.0 ha of high value native vegetation, unique to the Minnamurra River catchment area.

The NSW Independent Planning Commission was told by NSW DPIE, in supporting Boral Limited's application for the new mines, that some of the destruction and animal and bird habitat loss at the mining site Stage 5B would be offset by the NSW Biodiversity Offset Scheme (BAS) but since then, only last year, the NSW Minister for Environment has announced that the NSW Government no longer believed the BAS to be effective and a NSW upper house inquiry into the scheme is nearing completion.

Finally, your predecessor appointed a consultant to examine applications to your portfolio by local Aboriginal people here to stop the sand mine from desecrating by destruction the land in and around the mine site with which they have had long and continuing association.

Salvage archaeology shows clear evidence that a wealth of highly significant cultural and archaeological material, probably unique on the south eastern Australian coast, exists in the mine site.

Additionally, the Aboriginal applicants are almost certain, as is also suggested by the geomorphology of the Stage 5B mine site, that it contains Aboriginal burials, including the burials of the victims of a late 19th century massacre by European settlers of Aborigines camped at the site beside the Minnamurra River. The massacre site is formally recognised by historians and by the Kiama Municipal Council.

Some of the descendants of the survivors of that massacre contributed to the applications to your predecessor to stop the mine proceeding under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*.

We have written to you separately about the Aboriginal applications, which also await your considerations and decision, and also enclosed a submission we recently made to your department about those applications.

We commend to you your earliest possible consideration and determination of the matters we raise above.

Yours sincerely,

Will Chyra
Chair
FOMR Inc.

ⁱ 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.