

30 June 2021
Our ref: NTS 149

General Manager – Phillip Rudd
Rous County Council
218 – 232 Molesworth Street
Lismore NSW 2480

By email only: Anthony.Acret@rous.nsw.gov.au

Dear Mr Rudd,

Re: Widjabul Wia-bal – Future Water Project 2060 Dunoon Dam Project

- 1 Thank you for attending the Widjabul Wia-bal Native Title Claim Group meeting on 11 June 2021. This was a valuable meeting, which shows Rous County Council's (RCC) commitment to developing an ongoing relationship with the Widjabul Wia-bal Native Title Claim Group (**Widjabul Wia-bal**).

Reconciliation Action Plan Advisory Group (RAPAG)

- 2 Firstly, and as discussed with Widjabul Wia-bal on 11 June 2021, it appears some of the RAPAG members listed in the table provided on 11 June 2021 are out of date.
- 3 NTSCORP Limited (NTSCORP), on behalf of the Widjabul Wia-bal Applicant, requests that RCC provide:
- (a) an updated list of the current members of RAPAG;
 - (b) the current terms of reference governing the RAPAG members;
 - (c) details as to the intended process involved for reviewing the terms of reference; and
 - (d) details as to the election process for new members to the RAPAG, specifically how can members of the Widjabul Wia-bal People claim group become RAPAG members.

Dunoon Dam Project Aboriginal Cultural Heritage report

- 4 I refer to:
- (a) the 2013 Ainsworth Heritage Preliminary Cultural Heritage Impact Assessment (**Ainsworth Report**);
 - (b) RCC's letters to Sarah Bartrim on 12 August 2020 and 15 October 2020; and
 - (c) the discussions had between RCC and Widjabul Wia-bal on 11 June 2021.
- 5 NTSCORP Limited (**NTSCORP**) has also been instructed to write to RCC to express Widjabul Wia-bal's frustration and disappointment in RCC's approach and conduct thus far concerning Aboriginal cultural heritage protection and the consultation process undertaken in relation to the proposed Dunoon Dam Project.
- 6 The site of the proposed Dunoon Dam (**the Project Area**) is, as RCC is aware, of particular cultural and spiritual importance to Widjabul Wia-bal, as it contains numerous Aboriginal sites, including burial sites of the ancestors of Widjabul Wia-bal People. The protection of these sites and of all Aboriginal cultural heritage across Widjabul Wia-bal country is of utmost importance.

Obligations under the *National Parks and Wildlife Act 1974* (NSW)

- 7 Under Part 6 of the *National Parks and Wildlife Act 1974* (NSW) (**NPWA**), RCC has general obligations to undertake a due diligence process when dealing with Aboriginal cultural heritage. Under s90N of the NPWA and r57 of the *National Parks and Wildlife Regulation 2019* (NSW), RCC has specific obligations to conform with the requirements of the '*Code of Practice for Archaeological Investigations of Aboriginal Objects in NSW*' and the '*Aboriginal cultural heritage consultation requirements for proponents 2010*'.
- 8 The Applicant considers that RCC has failed to fulfil their obligations under the NPWA, as RCC **did not**:
- (a) employ a person who was an “appropriately skilled and experienced person”, to produce the preliminary Aboriginal Cultural Heritage Assessment;¹
 - (b) ensure that all Aboriginal objects observed during the survey were recorded and reported on AHIMs and to the Chief Executive of NPWA;² or
 - (c) comply with any of the specified requirements concerning the protection of Aboriginal burial sites.³
- 9 Further, the Applicant considers that RCC has breached section 89A of the NPWA, which provides that (emphasis added):
- “A person who is aware of the location of an Aboriginal object that is the property of the Crown or, not being the property of the Crown, is real property, and does not, in the prescribed manner, notify the Chief Executive thereof within a reasonable time after the person first becomes aware of that location is guilty of an offence against this Act unless the person believes on reasonable grounds that the Chief Executive is aware of the location of that Aboriginal object.”⁴**
- 10 Hence, RCC may be guilty of an offence under s 89A of the NPWA, as RCC had knowledge of the location of at least 16 Aboriginal sites in the Project Area. This knowledge has been held for over 7 years, during which time RCC has failed to notify the Chief Executive of the NPWA.
- 11 NTSCORP further notes that RCC may be liable for compensation to Widjabul Wia-bal for:
- (a) any destruction or damage to the sites, which has arisen in the time period since 2013; and
 - (b) any decision of RCC to develop or dispose of land within the Project Area in the future.

Next Steps

- 12 The Applicant requests that no decisions are made by RCC in relation to the Dunoon Dam Project Area – including any decisions about the disposal of the land by Council or determining whether or not the Project should proceed – without proper consultation with Widjabul Wia-bal.
- 13 The Applicant also requests that RCC commission a qualified archaeologist to prepare an Aboriginal Cultural Heritage Assessment for the Project Area. Further, RCC is to use a best practice approach of consultation with Widjabul Wia-bal.
- 14 Finally, the Applicant requests that this letter be passed on to and tabled at the next Rous County Council Councillor’s meeting, for their consideration.

¹ [*Code of Practice for Archaeological Investigations of Aboriginal Objects in NSW, Part 6 National Parks and Wildlife Act 1974*](#), State of NSW and Department of Environment, Climate Change and Water NSW (“**Archaeological Code**”), p.4, at [1.6].

² Archaeological Code, Requirement 5b; 6; 7; 8; 23; 24; 25; 26.

³ Requirement 25, Archaeological Code.

⁴ S 89A, *National Parks and Wildlife Act 1974* (NSW)

15 Please contact the undersigned or Sarah Bartrim on (02) 9310 3188 if you have any questions or would like to discuss this matter further.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Tilly Vaughan".

Tilly Vaughan
Solicitor
NTSCORP Limited

