



Environmental Defenders Office

23 April 2021

The Hon. Meaghan Scanlon
Minister for the Environment and the Great Barrier Reef, and Minister for Science and
Youth Affairs
1 William Street
Brisbane QLD 4000

By email: Environment@ministerial.qld.gov.au

Copy to:

Nick Heath (Chief of Staff): Nick.Heath@ministerial.qld.gov.au
Director-General, Jamie Merrick: Director.General@des.qld.gov.au

CONFIDENTIAL AND PRIVILEGED

Dear Minister

Carmichael Coal Mine – Request to take action in respect of offences against the *Environmental Protection Act 1994 (Qld)*

We act for the *W&J Nagana Yarrbayn Cultural Custodians*, Traditional Owners of Wangan and Jagalingou Country, in relation to their concerns that the registered suitable operator, Adani Mining Pty Ltd (**Adani**) (t/a Bravus Mining and Resources) is causing unlawful environmental harm on their Country and is impacting cultural heritage sites.

Under their laws and customs, these Traditional Owners, including senior cultural leader Adrian Burragubba, have a right to maintain, control, protect and develop their identity and cultural heritage, including their traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings.

These cultural rights embody responsibilities for the custodianship and protection of their ancestral homelands, which form the basis of their cultural life and sovereignty.

The right to maintain and strengthen their distinctive spiritual, material and economic relationship with the land, waters and other resources with which they have a connection is also protected under the *Human Rights Act 2019 (Qld)*, as is their right to maintain and strengthen their distinctive spiritual relationship with the land, territories, waters and resources with which they have a connection under their tradition.¹ Notably, the W&J

¹ *Human Rights Act 2019 (Qld)* s 28.

Nagana Yarrbayn Cultural Custodians did not give free prior and informed consent for Adani Mining Pty Ltd to use its lands, waters or resources or impact its culturally significant sites. Rather, the Native Title process was used by the State and Adani to forcibly exclude W&J Nagana Yarrbayn Cultural Custodians from their country, including a site used for ceremonial purposes, without their consent or prior knowledge.

The W&J Nagana Yarrbayn Cultural Custodians have particular responsibilities in relation to Jagalingou estates where Adani's Carmichael Coal Mine is under development.

As proud Traditional Owners of Wangan and Jagalingou Country, they act to protect sacred sites and look after the land, water, people, stories and totems which are central to the maintenance of identity, laws and cultural rights.

“Our spirits and the spirits of our ancestors travel above, through and under the ground of our country.” - Adrian Burragubba

The W&J Nagana Yarrbayn Cultural Custodians' right to conserve and protect the environment and productive capacity of their land, territories, waters, resources and sacred sites and the right not to be subjected to forced destruction of their culture can't be limited unless it is reasonable and demonstrably justifiable.²

Our client has been alerted to allegations of a series of prolonged incidents occurring on the site of the Carmichael Coal Mine under Environmental Authority EPML01470513 (**EA**) as held by Adani. The matters outlined below give rise to serious concerns that Adani is in breach of its EA conditions and other obligations under the *Environmental Protection Act 1994* (Qld) (**EP Act**). Our client asks you, or your Department, to investigate these matters and bring a proceeding under s 505 of the EPA to remedy or restrain any offences against the EP Act arising out of the following :

- A. Reports of failure to maintain and repair machinery which has leaked a substantial amount of engine oil directly to land without authority;
- B. Reports of deposit of wastewater/greywater from the mine accommodation camp kitchen facilities directly to land without authority;
- C. Failure to notify the administering authority in writing after becoming aware of the notifiable incident of environmental harm in A-B above and take action to mitigate or remediate the environmental harm in breach of conditions A10-11; and
- D. Failure to finalise a baseline groundwater dataset that complies with condition E3b) at least 90 days prior to commencement of box cut excavation, and failure to comply with condition E4 by implementing a Groundwater Management and

² *Human Rights Act 2019* (Qld) s 13, 28.

Monitoring Plan (**GMMP**) that relies on an incomplete baseline groundwater dataset.

A legal brief establishing a case for investigation action under the EP Act is **attached** as **Annexure A**. Key approvals and supporting documents are [linked here via sharepoint](#) in a supporting **Brief**.

Our client is particularly concerned that the potentially wilful or recklessly indifferent nature of the harm which is reported indicates a disregard for the conditions of its environmental authority. Failure to ensure Adani's compliance places cultural and sacred places at risk of further harm.

Any environmental harm which occurs under Adani's auspice, beyond the bounds of what has been authorised should be immediately actioned. In the absence of such action taken by the administering authority, W&J Nagana Yarrbayn Cultural Custodians may be required to take civil enforcement action under s505 of the EP Act to protect their Country and cultural rights.

We urgently request that you investigate these matters and that the Director-General as administering authority take any necessary enforcement action to prevent further environmental harm and adverse impacts to cultural heritage and sites. Having regard to the matters raised, which include potential wilful contraventions of the EP Act, our client also requests that your Department reconsiders whether it is satisfied that Adani is suitable to be registered as a suitable operator having regard to Adani's environmental record, under s 318K(b) of the EP Act.

Request to take urgent enforcement actions to protect culturally significant sites

As the potential contamination of groundwater, and failure to complete and implement a baseline groundwater dataset and GMMP prior to box cut threaten harm to cultural sites including the Doongmabulla Springs Complex, our client requests:

1. a meeting; and
2. urgent action to investigate and restrain and remedy any offences against the EP Act; and
3. your reply to the requests in the preceding two paragraphs by **30 April 2021**.

This letter and its enclosures are privileged, being intended for use in potential legal proceedings and are not to be disclosed to Adani or any third party. Our client does not waive confidentiality and privilege over this information, and it is provided only on the basis that it is to be kept strictly confidential and used for the restricted purpose of investigating the matters raised, pursuing enforcement action against Adani or prosecuting Adani for an offence.

Yours sincerely,
Environmental Defenders Office



Alison Rose
Solicitor

Reference number: 1026

MINISTER