

4 November 2013

Brigalow and Nandewar  
Natural Resources Commission  
GPO Box 4206  
Sydney NSW 2001

**By Mail**

Dear Dr John Keniry AM,

**Re: Submission to the Natural Resources Commission's Cypress forest management in the Brigalow and Nandewar State Conservation Areas - Terms of Reference**

We refer to the Natural Resources Commission's (**NRC**) notice dated 30 September 2013, which called for registrations of interest and submissions in relation to the Terms of Reference in regard to Cypress forest management in the Brigalow and Nandewar State Conservation Areas. In accordance with our usual procedure, your notice was processed on 9 October 2013 and forwarded to Aboriginal Traditional Owners groups with connection to the Brigalow and Nandewar State Conservation Areas. We thank you for the opportunity to make submissions in regards to the above.

NTSCORP Limited (**NTSCORP**) has statutory responsibilities under the *Native Title Act 1993* (Cth) (**NTA**) to protect the native title rights and interests of Aboriginal Traditional Owners in New South Wales (**NSW**) and the Australian Capital Territory (**ACT**).

NTSCORP is funded under Section 203FE of the NTA to carry out the functions of a native title representative body in NSW and the ACT. NTSCORP provides services to Aboriginal Traditional Owners who hold or may hold native title rights and interests in NSW and the ACT, specifically to assist them in exercising their rights under the NTA.

In summary, NTSCORP's functions and powers under sections 203B to 203BK of the NTA (inclusive) are:

- Facilitation and assistance, including representation in native title matters;
- Dispute resolution;
- Notification;
- Agreement-making;
- Internal review; and
- Other functions.

The United Nations Declaration on the Rights of the Indigenous People (**UNDRIP**), which the Australian Government has endorsed, affirms that Aboriginal People have the right to have control over development affecting them, their lands and resources. Any planning framework should therefore, consistent with the UNDRIP, ensure that Aboriginal People are meaningfully engaged.

NTSCORP acts for Aboriginal Traditional Owners and registered native title claimants in the area which includes the Brigalow and Nandewar State Conservation Areas. NTSCORP would like to register its interest in the review process.

The following submission is made on the basis of our extensive experience working with Aboriginal Traditional Owners of lands and waters within NSW and the ACT in protecting native title rights and interests, which includes seeking best practice standards in natural resource management. We note the fundamental correlation between ensuring the sustainable management of natural resources and the ongoing exercise of native title rights and interests. NTSCORP's submission is based on the known native title rights and interests asserted by Aboriginal Traditional Owners in the area. Our key submissions are as follows:

### **Native Title Claimants affected by the Brigalow and Nandewar State Conservation Areas**

We note that the Brigalow and Nandewar State Conservation Areas cover native title determination application areas of the Tubba-Gah People (Federal Court

Proceedings NSD 6010/2002) and the Gomeroi People (Federal Court Proceedings NSD 2308/2011). The Tubba-Gah and Gomeroi People assert their traditional connection to country which is covered by the applicable State Conservation Areas and continue to exercise native title rights and interests in the area.

Native title rights and interests which may be affected by “adaptive and active” management of Cypress Forests in the Brigalow and Nandewar State Conservation Areas include the rights to access and use natural resources, hunt, fish and gather on traditional land and waters.

### **Mineral Extraction**

Point 1 in the Terms of Reference notes that the management objectives for a Zone 3 area includes mineral extraction. NTSCORP asserts that the Terms of Reference should clearly state the specific objectives related to mineral extraction in Zone 3 and whether and to what extent any management plan for the area would involve, impact or allow for increased mineral extraction, and the subsequent effect on native title rights and interests asserted in the Brigalow and Nandewar State Conservation Areas.

### **Active and Adaptive Management**

Points 1 and 2 in the Terms of Reference mentions an “active and adaptive” management process. Again there is uncertainty as to the scope of the NRC assessment objectives concerning Zone 3. Further detail and clarification must be provided regarding what is meant by the terms “active and adaptive.” The scope of the Terms of Reference is unclear. The NRC should consider what impacts such a management program would have on native title rights and interests in the area. Meaningful management opportunities for Traditional Owners should be considered by the NRC in the development of any management plan.

### **Ecological, Social and Aboriginal Cultural Values**

The preservation of Aboriginal culture and heritage is a key factor that must be considered in order to achieve sustainable development within the Brigalow and Nandewar State Conservation Areas. The Terms of Reference state that the NRC should consider the “current ecological value of the forest and future values under different adaptive and active management options and processes.” In our view, the NRC should also consider the Aboriginal cultural values of the area (both ethnographic and archaeological) and the value the area holds for Aboriginal Traditional Owners. Traditional Owner values include social, spiritual, cultural and economic values as broadly encompassed by the native title rights and interests they assert in the area. We note the inherent links between these Aboriginal cultural values and ecological values.

There is a notable absence of detail regarding assessment or management processes for the protection of Aboriginal culture and heritage in the Terms of Reference. NTSCORP believes there must be commitment in the Terms of Reference to utilising Traditional Owners existing knowledge, most of which is not captured by mainstream science in relation to natural resource management.

### **Commercial and Economic Development Opportunities**

NTSCORP and Traditional Owners welcome the opportunity to develop any opportunities for employment in areas promoting the cultural values and history of the area as well as other opportunities stemming from ecological sustainable management of the forests. Traditional Owners must be included in any business/economic development opportunities that the Terms of Reference considers.

### **Accountability**

In the areas of accountability and tracking performance NTSCORP encourages the involvement of Traditional Owners in providing specific or “on the ground” knowledge of the area and activities which occurring may require investigation. Community

participation at this stage will allow for appropriate measures to be developed and actioned to mitigate any adverse effect of certain activity.

### **Water Management**

The NRC must also consider as part of its assessment creeks, rivers and bodies of water that may be affected by any management process or programs proposed to be carried out within the Brigalow and Nandewar State Conservation Areas.

NTSCORP recommends that to achieve a high level of Aboriginal participation and to harness Traditional Owner knowledge in relation to forest management and water management, that Traditional Owners be involved in all stages of the review.

The list of legislation mentioned in the Terms of Reference that will be considered by the NRC must also include the *Water Management Act 2000* (NSW), as it relates to native title rights in s 55 which entitles native title holders to take and use water in the exercise of native title rights. Traditional Owners or the Registered Native Title Claimants should be specifically included as stakeholders to be involved in the new plan development.

### **Key Agencies**

NTSCORP strongly supports the principle that community participation should be at the core of assessing environmental and socio-economic impacts. NTSCORP supports the NRC working closely with key agencies. Aboriginal Traditional Owners across the Brigalow and Nandewar State Conservation Areas are key stakeholders who will be affected by any management plans drawn up for the area. The “key agencies” mentioned in the Terms of Reference should be clearly defined and must include Traditional Owners and native title claim groups, including the Tubba-Gah People and Gomeroi People native title claim groups. NTSCORP encourages the addition of a specific reference to “Traditional Owners” in the Terms of Reference to ensure appropriate and legally mandated inclusion of the registered native title claimants.



Traditional Owners best know the needs of their communities, and strive to have a strong voice in natural resource planning and management. The Gomeroi Native Title Applicant and Tubba-Gah Native Title Applicant are the recognised representatives of their native title claim groups for the purposes of the native title application and, accordingly, should be consulted with, to facilitate the inclusion of Aboriginal Traditional Owners as a key group for the purposes of consultation. Consultation with key groups including Aboriginal Traditional Owners must be targeted and meaningful.

We welcome your offer to meet with the Gomeroi People and NTSCORP and look forward to hearing from you. We also suggest you contact Penny Creswell at Allen's Linklaters, Melbourne who act for the Tubba-Gah People in order to arrange a similar meeting with her clients.

We again thank you for the opportunity to make submissions to this important study. We look forward to our feedback being meaningfully incorporated into the Terms of Reference for Cypress forest management in the Brigalow and Nandewar State Conservation Areas. Please do not hesitate to contact Hema Hariharan, Manager Strategic Development on (02) 9310 3188 or via email at [hharihar@ntscorp.com.au](mailto:hharihar@ntscorp.com.au) if you would like to discuss any of the issues raised above.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Natalie Rotumah". Below the signature is the acronym "ORC" in a small, black, sans-serif font.

Natalie Rotumah

Chief Executive Officer

**NTSCORP Limited**

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Cc: Jessica Rossell, Natural Resources Commission.