

16 February 2024  
Our ref: NTS 008

Ms Clare Sykes  
Commissioner and Panel Chair  
Independent Planning Commission  
135 King Street  
Sydney NSW 2000

By email only: [submissions@ipcn.nsw.gov.au](mailto:submissions@ipcn.nsw.gov.au)

To the Independent Planning Commission,

**Submission to Independent Planning Commission regarding proposed Hills of Gold Wind Farm, SSD-9679**

- 1 This submission has been prepared on behalf of the Applicant for the Gomeri People's native title determination application (NSD37 of 2019) (**the Applicant**).
- 2 NTSCORP Limited (**NTSCORP**) performs the functions of a native title representative body for New South Wales and the Australian Capital Territory under s 203FE of the *Native Title Act 1993* (Cth) (**Native Title Act**). NTSCORP is also the legal representative for the Gomeri Applicant in the Gomeri People's Native Title Determination Application.

**Gomeri People Native Title Claim**

- 3 The Gomeri People native title claim covers 111,318 sq km of land and water in northwestern New South Wales. The application area that is the subject of the Gomeri Claim is bounded by the New South Wales and Queensland state borders in the north, the western slopes of the New England Tableland in the east, the Hunter and Goulburn Rivers in the south and the Castlereagh River in the west.
- 4 The site of the proposed Hills of Gold Wind Farm project (**the Project**) sits within the southeastern area of the Nation.
- 5 The Gomeri Nation is represented by the Gomeri Applicant on native title matters. The Applicant is comprised of 19 members representing the various regions of the Nation.

**Native Title Rights and Interests**

- 6 Native title is an important recognition of the rights and interests of Traditional Owners.
- 7 The Native Title Act defines 'native title rights and interests' as being communal, group or individual rights and interests of Aboriginal Peoples or Torres Strait Islanders in relation to land or waters.
- 8 When the Federal Court of Australia makes a native title determination, the rights and interests that are, and always have been, held by the Traditional Owners in accordance with traditional law and custom are recognised at law.
- 9 The Native Title Application was filed to seek the formal legal recognition of Gomeri People's inherent rights.
- 10 The native title rights and interests claimed by Gomeri People in the Gomeri Claim are:

*(a) the right to possession, occupation, use and enjoyment of the lands and waters of the application area;*

- (b) the right to access the application area;*
- (c) the right to use and enjoy the application area;*
- (d) the right to move about the application area;*
- (e) the right to camp on the application area;*
- (f) the right to erect shelters and other structures on the application area;*
- (g) the right to live being to enter and remain on the application area;*
- (h) the right to hold meetings on the application area;*
- (i) the right to hunt on the application area;*
- (j) the right to fish in the application area;*
- (k) the right to have access to and use the natural water resources of the application area;*
- (l) the right to gather and use the natural resources of the application area (including food, medicinal plants, timber, tubers, charcoal, wax, stone, ochre and resin as well as materials for fabricating tools, hunting implements, making artwork and musical instruments);*
- (m) the right to manage natural resources including the right to carbon;*
- (n) the right to share and exchange resources derived from the land and waters within the application area;*
- (o) the right to participate in cultural and spiritual activities on the application area;*
- (p) the right to maintain and protect places of importance under traditional laws, customs and practices in the application area;*
- (q) the right to conduct ceremonies and rituals on the application area;*
- (r) the right to transmit traditional knowledge to members of the native title claim group including knowledge of particular sites on the application area;*
- (s) the right to speak for and make non-exclusive decisions about the application area in accordance with traditional laws and customs;*
- (t) the right to speak authoritatively about the application area among other Aboriginal People in accordance with traditional laws and customs; and*
- (u) the right to control access to or use of the lands and waters within the application area by*

*other Aboriginal People in accordance with traditional laws and customs*

- 11 The Native Title system affords Governments, NGOs, private enterprise, and broader community interests the opportunity to engage with Traditional Owners and custodians who have recognised continuous connections to both country, cultural practices and lore and intricate kinship systems. The value of native title groups such as the Gomeroi native title claim group are that they are the only cultural authority with both agency and integrity to speak on behalf of Country.

**Negotiations regarding proposed Hills of Gold Wind Farm**

- 12 The acts necessary for construction of the Project must be validated under the Native Title Act, ideally through an Indigenous Land Use Agreement.
- 13 In order for any Agreement to be reached, Gomeroi People as a whole need to provide their consent to entering into an Indigenous Land Use Agreement via a resolution of the Gomeroi Claim Group. That step has not occurred yet.
- 14 The Gomeroi People are currently in negotiations with Engie regarding the proposed Hills of Gold Wind Farm. The Gomeroi Applicant note that negotiations with Engie regarding the proposed Project have been open and transparent.

**Concerns held by Gomeroi People regarding cultural heritage protection**

- 15 One of the most significant concerns for Gomeroi People is the impact that major infrastructure projects, such as energy and resource projects, can have on the unique cultural heritage of Gomeroi People.
- 16 Gomeroi People have a vital cultural and spiritual connection to their country. That connection includes the artefacts and objects which are the physical evidence of the Gomeroi People's occupation of their country. It also consists of a deep and enduring connection to the cultural landscape. That is, a connection to the plants, animals, aquatic species and geographical forms which the Gomeroi People have cared for, and been cared for by, for millennia.
- 17 In order to adequately protect and preserve cultural heritage in accordance with cultural birthrights, Gomeroi People must navigate inadequate legislative and regulatory frameworks, some of which are decades old.
- 18 This system, governed by the *National Parks and Wildlife Act 1974 (NSW)*, espouses the intent of the protection and preservation of Aboriginal objects and places.
- 19 The reality for many Aboriginal people in NSW, and especially for Gomeroi People, is that this system advocates for the Government endorsed destruction and desecration of Aboriginal cultural heritage through the grant of "Aboriginal Heritage Impact Permits".
- 20 The Parliamentary Inquiry into Juukan Gorge highlighted the inadequacy of state cultural heritage legislation and the urgent need for legislative reform.<sup>1</sup>
- 21 In terms of Infrastructure projects, greater work is required by both Government planning regimes and private development interests to ensure that the irrevocable damage to Australia's cultural assets ceases.
- 22 On Gomeroi Country, the Gomeroi native title claim group await real leadership in this space.

**Importance of obtaining consent of Gomeroi People**

- 23 Gomeroi People have been responsible for the sound and sustainable management of Country since the beginning. It is essential for all major infrastructure and development projects on Gomeroi

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<sup>1</sup> Joint Standing Committee on Northern Australia, Parliament of Australia, *A Way Forward: Final report into the destruction of Indigenous heritage sites at Juukan Gorge* (2021) 186.

Country to be undertaken with the consent of Gomeroi People, whereby workable solutions which protect culture, Country, and Gomeroi people have been incorporated from the very inception of these projects.

- 24 Thank you for the opportunity to provide these submissions.
- 25 If you require any clarification on the contents of this correspondence, please do not hesitate to contact the undersigned on (02) 8306 2709 or at [wscott@ntscorp.com.au](mailto:wscott@ntscorp.com.au).

Yours sincerely,

A handwritten signature in black ink, appearing to read "William Scott".

**William Scott**  
**Solicitor**  
**NTSCORP Limited**

