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Dear Madam/Sir

Submission Regarding Australia-ASEAN Power Link | Sun Cable Pty Ltd

Background

1. We act for the Nurrdalindi Native Title Aboriginal Corporation ICN 9392 (**NNTAC**) which is an indigenous corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth). NNTAC's has objects that include:
 - (a) advancing the culture, spirituality, and traditional beliefs of Nurrdalindi native title holders, and
 - (b) protecting and enhancing natural and cultural environment of the Nurrdalindi area in accordance with the priorities and wishes of Nurrdalindi native title holders.
2. The Nurrdalindi native title holders are all those people with native title in relation to the Nurrdalindi area. The Nurrdalindi area is shown in Schedule 1 to this submission. NNTAC aims to become the registered native title body corporate for all of the Nurrdalindi area.
3. We have been asked to prepare a submission on the Australia-ASEAN Power Link (**Project**) on behalf of the NNTC regarding the draft terms of reference (**TOR**) that have been submitted in support of its Referral of Proposed Action (**EP Referral**) for the Project.
4. Sun Cable Pty Ltd (**Proponent**) has proposed that the Project be assessed through the environmental impact assessment process of an environmental impact statement (**EIS**) under the *Environmental Protection Act 2019* (NT) (**EP Act**).
5. Concurrently with the EP Referral, the proposal was referred under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**). It is anticipated that the proposal may be determined a controlled action due to the potential for a significant impact on matters of national environmental significance (**MNES**) that are protected under Part 3 of the EPBC Act.
6. We are instructed that our client's primary concerns relate to the solar farm precinct proposed to be located near Elliot, NT (in and adjacent to the Nurrdalindi area) and also in relation to the high voltage direct current overhead transmission line (**OHTL**) and the potential impacts of these parts of the Project.

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Summary

2. Our client generally supports development of this kind, however this is on the basis that all potential impacts upon the threatened species within the Project area, impacts upon Aboriginal Sacred Sites, and impacts upon local communities are properly considered, assessed and addressed in any EIS that is prepared by the Proponent.
3. We understand that once an EIS is prepared, our client will have a further opportunity to raise concerns regarding the Project if the EIS reveals that the Project is likely to have an unacceptable impact on any of these matters of primary concern for our client.
4. The main issues that our client wishes to raise as being important to include within the TOR for the Project are:
 - (a) the TOR do not address potential impacts on Landform when it is evident that there will be some level of construction and change to the landform within the various areas of the Project. We consider that this needs to be addressed, with particular regard to potential impacts upon vistas, sacred sites and Aboriginal Cultural heritage generally, and how this may impact ecological communities.
 - (b) the consideration of environmental factors as it relates to terrestrial environmental quality, terrestrial ecosystems, hydrological processes, aquatic ecosystems and inland water quality need to consider broader impacts upon Aboriginal Sacred Sites and threatened ecological communities. The TOR proposed by the Proponent focus too narrowly on impacts upon those systems without considering how those systems interact with Aboriginal Sacred Sites, threatened ecological communities and local communities that rely upon and enjoy amenity from these ecosystems and processes.
 - (c) the consideration of communities and economy does not consider potential impacts and risks to Aboriginal Sacred Sites and threatened ecological communities. There is economic and amenity value to Aboriginal Sacred Sites, and those ecological communities. To not assess potential impacts from an economic and community welfare perspective leaves a blind spot to the TOR, and also means that little or no value is placed upon these important considerations.
 - (d) the consideration of culture and heritage aims to designate the Northern Land Council (NLC) as the main and primary point of contact and representative for the various indigenous communities within the Project Area. In relation to the solar farm precinct, the NLC's primary role is as the recognised native title representative body for the Top End of the Northern Territory. It also controls and operates the Top End (Default PBC/CLA) Aboriginal Corporation RNTBC, which is currently the registered native title body corporate for all determinations of native title in the Top End of the NT.
5. Our client and its members have concerns about aspects of these representative arrangements, and as stated above, NNTAC aims to become the registered native title body corporate for the Nurrdalindi area. Presently, the NLC does not work with or represent the NNTAC, and our client and its members wish to be directly engaged in any consultation regarding impacts to Aboriginal Sacred Sites and cultural heritage, particularly given that PV Area of Interest 1 is located within the Nurrdalindi Area and a significant portion of the OHTL passes through the Nurrdalindi Area.
6. Our client wishes to be more directly engaged by the Proponent on how they will address the concerns of the people and communities that are represented by the NNTAC and within its area.

Terms of Reference

7. Table 3 at cl 2.8 to the TOR outlines the environmental factors that may have a significant impact. The Proponent accepts that the Solar Farm and the OHTL will have a potential for significant impact in relation to the following:
 - (a) Terrestrial environmental quality;
 - (b) Terrestrial ecosystems;
 - (c) Communities and economy; and
 - (d) Culture and economy.
8. At Table 3, it says that the following impacts may be uncertain:
 - (a) Hydrological processes;
 - (b) Aquatic ecosystems;
 - (c) Inland water environmental quality;
 - (d) Air quality; and
 - (e) Human health.
9. At Table 3, it says that it will not have a potential for significant impact:
 - (a) Landforms;
 - (b) Coastal Processes;
 - (c) Marine environmental quality; and
 - (d) Marine ecosystems.

Landforms

10. The environmental objective in the *NT EPA Environmental factors and objectives* is to conserve the variety and integrity of distinctive physical landforms.
11. We do not understand how the Proponent justifies that there will not be a potential for significant impact on Landforms in Table 3, when the discussion around Terrestrial environmental quality talks about potential significant impacts in Table 4 resulting from 'direct disturbance of landforms and soils from earthworks during construction'.
12. We consider that the Proponent will need to address this further in a separate part of the TOR for the EIS. Particularly in relation to siting and avoiding Aboriginal Sacred Sites.

Terrestrial environmental quality

13. The environmental objective in the *NT EPA Environmental factors and objectives* is to protect the quality and integrity of land and soils so that environmental values are supported and maintained.
14. Our client is particularly concerned as to potential impacts to Aboriginal Sacred Sites and culture and threatened species and communities (including to the adjacent culturally and ecologically

significant Lake Woods), in relation to the Solar Farm Precinct Areas of Interest (**PV Areas of Interest**).

Terrestrial ecosystems

15. The environmental objective in the *NT EPA Environmental factors and objectives* is to protect terrestrial habitats to maintain environmental values including biodiversity, ecological integrity and ecological functioning.
16. There are a number of different sites identified as PV Areas of Interest close to Lake Woods. Given that there are a number of potential sites, we consider that offsetting should only be contemplated in circumstances where cumulative impacts are very minor.
17. It is important that impacts on Aboriginal Sacred Sites are considered within this framework of potential impacts and risks as well.

Hydrological processes

18. The environmental objective in the *NT EPA Environmental factors and objectives* is to protect hydrological regimes of groundwater and surface water so that environmental values including ecological health, land uses and the welfare and amenity of people are maintained.
19. We note that the consideration of the risk to the welfare and amenity of people has not been considered in the TOR environmental values and potential impacts and risks. We consider that this needs to form part of the TOR in the EIS, particularly in relation to the impacts on flora and fauna and Aboriginal Sacred Sites, and how impacts on hydrological processes might impact the welfare and amenity of people who rely upon and enjoy the impacted environment and the flora and fauna that exists within that environment.
20. It is important that impacts on Aboriginal Sacred Sites are considered within this framework of potential impacts and risks as well.

Inland water environmental quality

21. The environmental objective in the *NT EPA Environmental factors and objectives* is to protect the quality of groundwater and surface water so that environmental values including ecological health, land uses and the welfare and amenity of people are maintained.
22. We note that the consideration of the risk to the welfare and amenity of people has not been considered in the TOR environmental values and potential impacts and risks. We consider that this needs to form part of the TOR in the EIS, particularly in relation to the impacts on flora and fauna and Aboriginal Sacred Sites, and how impacts on hydrological processes might impact the welfare and amenity of people who rely upon and enjoy the impacted environment and the flora and fauna that exists within that environment.
23. It is important that impacts on Aboriginal Sacred Sites are considered within this framework of potential impacts and risks as well.

Aquatic ecosystems

24. The environmental objective in the *NT EPA Environmental factors and objectives* is to protect aquatic habitats to maintain environmental values including biodiversity, ecological integrity and ecological functioning.

25. It is important that impacts on Aboriginal Sacred Sites are considered within this framework of potential impacts and risks as well.

Communities and economy

26. The environmental objective in the *NT EPA Environmental factors and objectives* is to enhance communities and the economy and foster resilience to a changing climate, for the welfare, amenity and benefit of current and future generations of Territorians.
27. We note that impacts on Aboriginal Sacred Sites are not considered within this framework of potential impacts and risks as well.
28. The consideration of communities and economy does not consider potential impacts and risks to Aboriginal Sacred Sites and threatened ecological communities. There is economic and amenity value to Aboriginal Sacred Sites, and those ecological communities. To not assess potential impacts from an economic and community welfare perspective leaves a blind spot to the TOR, and also means that little or no value is placed upon these important considerations.
29. Any impacts on Aboriginal Sacred Sites should be avoided as it is not possible to offset impacts on these sites as the impacts are generally irreversible.

Culture and heritage

30. The environmental objective in the *NT EPA Environmental factors and objectives* is to protect sacred sites, culture and heritage.
31. We note that part of the consultation process and reference to stakeholders is that consultation with Aboriginal groups is to be conducted with the NLC, as being representative of native title holders.
32. We are instructed that relevant members of the NNTAC assert their cultural authority in respect of the solar farm precinct, part of which is, as noted, within the Nurrdalindi area.
33. As set out above, the NLC's primary role in relation to the solar farm precinct is as the recognised native title representative body for the Top End of the Northern Territory. It also controls and operates the Top End (Default PBC/CLA) Aboriginal Corporation RNTBC, which is currently the registered native title body corporate for all determinations of native title in the Top End of the NT. Our client and its members have concerns about aspects of these representative arrangements, and as stated above, NNTAC aims to become the registered native title body corporate for the Nurrdalindi area. We are instructed that our client expects an application to replace the Top End Default PBC as that registered native title body corporate will be filed in the Federal Court in the coming weeks.
34. At present, the NLC does not work with represent NNTAC. NNTAC and its members wish to be directly engaged in any consultation regarding impacts to Aboriginal Sacred Sites and culture, particularly given that PV Area of Interest 1 is located within the Nurrdalindi Area and a significant portion of the OHTL passes through the Nurrdalindi Area.
35. The Proponent should be required to consult with the relevant communities (including NNTAC) regarding:
- (a) The nature and location of Aboriginal sacred sites and other cultural heritage sites/values within the proposal area, including:

- (b) areas listed on Commonwealth and Northern Territory registers of historic and/or cultural heritage.
 - (c) description and location of Aboriginal sites, places or objects of natural, historic or cultural heritage significance, current utilisation and spiritual significance. Information sources should include published archaeological and anthropological information, respective registers, consultations and other research.
 - (d) traditional land use or industry within or in proximity to the proposal area (if any).
36. We consider that this will assist to identify those matters and issues of most importance to our client.
37. We also consider that if any aspect of offsetting is contemplated as a result of any potential impact upon any identified item of significant cultural interest, this should not be considered without first consulting with the impacted community. Any recommendations should be adopted, and if the impacts are significant than alternatives must be implemented.

Human Health

38. The environmental objective in the *NT EPA Environmental factors and objectives* is to protect the health of the Northern Territory population.
39. We consider that any potential impacts to the NNTC communities should result in direct consultation so that those impacts can be managed and mitigated.

Other environmental factors of considerations

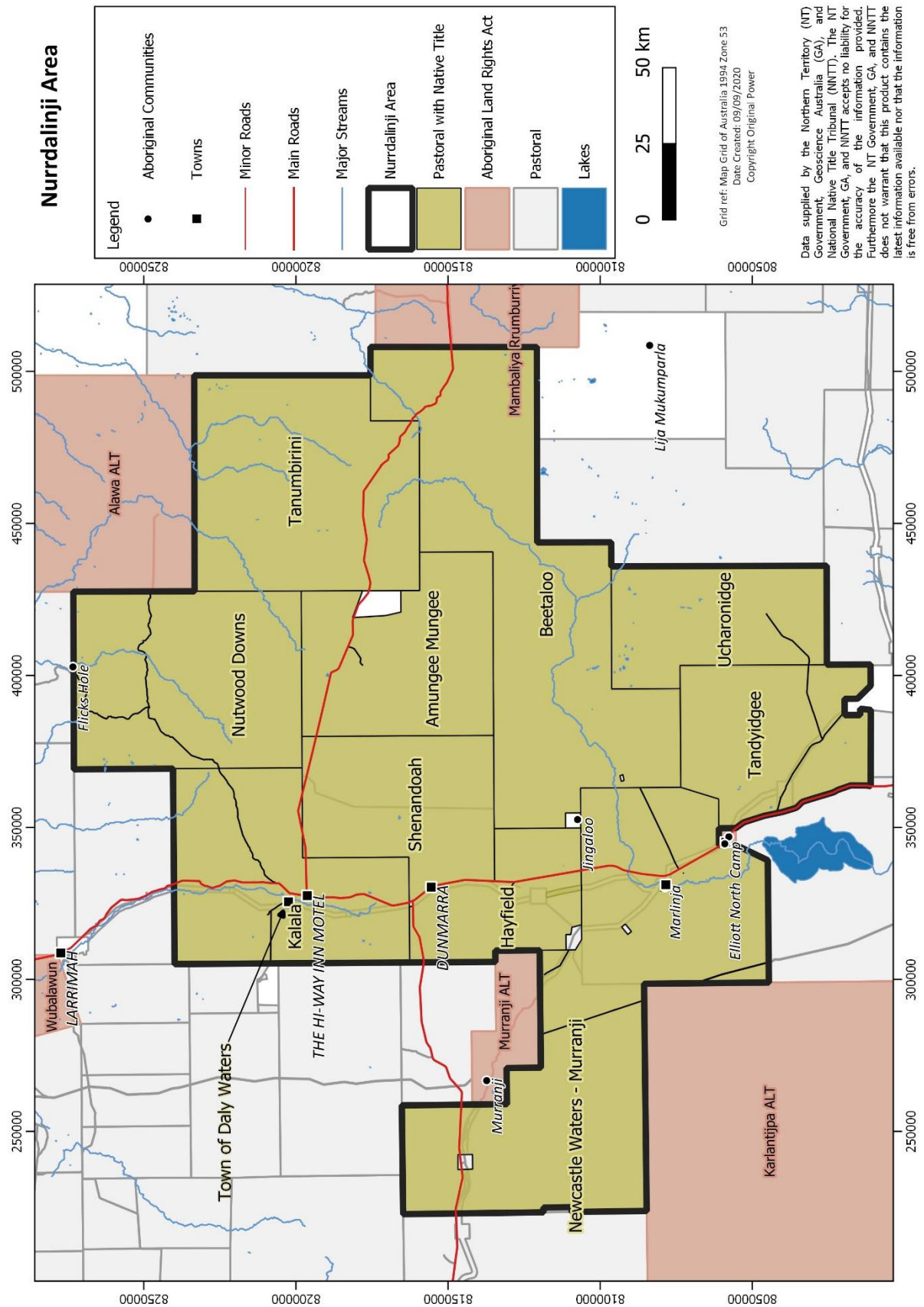
40. We consider that all of the relevant heads of consideration include potential impacts beyond a narrow focus on various elements, and also consider impacts upon the goods and services that are available in the variously impacted ecological communities and Aboriginal Sacred Sites. For example, if the Project will impact upon a particular waterway, when considering the significance of that impact, matters such as:
- (a) the goods that are provided from that resource should be considered (fish, water, breeding grounds for various species),
 - (b) the services that it provides (tourism, amenity from active and passive activities); and
 - (c) cultural, spiritual and welfare (Aboriginal Sacred Sites, culturally important places, and places of restoration and wellbeing).
41. We also consider that the stakeholder engagement and consultation should be direct. Any identification of significant impacts should require a higher level of consultation with the recommendations and outcomes of that consultation being formally adopted into the Project approval, as a condition of approval.
42. We thank the NT EPA for the opportunity to make these representations on the TOR, and we look forward to greater consultation and involvement in the preparation of the EIS and the approval process for the Project.

Yours sincerely



Holding Redlich

Schedule 1 – Map of the Nurrdalinji Area





Australian Government
Office of the Registrar of Indigenous Corporations

CERTIFICATE OF REGISTRATION OF AN ABORIGINAL AND TORRES STRAIT ISLANDER CORPORATION



This is to record that

NURRDALINJI NATIVE TITLE ABORIGINAL CORPORATION

INDIGENOUS CORPORATION NUMBER: 9392

is a corporation registered under the
Corporations (Aboriginal and Torres Strait Islander) Act 2006.

The date of registration is 09 October 2020

Delegate of the Registrar of Aboriginal and Torres Strait Islander
Corporations

Certificate issued under section 32-1(c)

