



**NORTHERN
LAND COUNCIL**

Our Land, Our Sea, Our Life

20 August 2026

Our ref: 856305023

Northern Territory Environment Protection Authority
Level 1, Arnhemica House
16 Parap Road
Parap NT 0820

By email: eia.ntepa@nt.gov.au

Submission in relation to Project Ares – Hyperscale Data Centre Campus

1. The NLC makes the following submissions to the Northern Territory Environment Protection Authority (NT EPA) with respect to the referral prepared by Energy North Pty Ltd (**Proponent**) for the planned development of a behind-the-meter hyperscale data centre campus located on Murrniji Station (**Project** or **Project Ares**).
2. Native title was recognised over Murrniji Station in *King v Northern Territory* [2007] FCA 149 (**Determination**) in favour of a number of estate groups (the **Native Title Holders**). The Top End (Default PBC/CLA) Aboriginal Corporation RNTBC (**Top End PBC**) is the agent prescribed body corporate (**PBC**) in relation to the determination. The NLC is the legal representative of the Top End PBC.
3. The Northern Land Council (**NLC**) supports Traditional Owners and Native Title Holders across the NLC's seven regions in relation to economic development opportunities on their country. The NLC takes a neutral stance with respect to development, while supporting processes that allow Traditional Owners and Native Title Holders to participate in decision and agreement making with respect to development, in accordance with the NLC's statutory functions.
4. The public notification period for this referral does not provide the NLC with a reasonable opportunity to engage an environmental consultant to review the Proponent's referral documentation or properly consult with the relevant Native Title Holders and obtain instructions. The NLC accordingly makes the forthcoming submissions in its own capacity and also pursuant to its function under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) to assist

Darwin

Head Office:
29 Julius St, Berrimah, NT, 0828

Tel:
(08) 8920 5100

Email:
reception@nlc.org.au

Website:
www.nlc.org.au



Aboriginal people to protect sacred sites. In making these submissions, the NLC draws upon the NLC's history and experience working with Aboriginal people throughout the Northern Territory.

5. At the outset, the NLC notes that the proposed Project is unprecedented in the Northern Territory, in terms of size, scale, design and environmental footprint. The Project will likely have significant impacts on the environment. As such, the NLC supports Project Ares being assessed by way of a robust and comprehensive Environmental Impact Statement (EIS). The NLC emphasises that any EIS should ensure that Native Title Holders and other Aboriginal stakeholders are afforded a reasonable opportunity to consider the referral, obtain expert advice as required, and make submissions.
6. The following comments are matters that the NLC submits should be comprehensively addressed in the EIS.

Native title rights over the Project Area

7. The Native Title Holders hold the following native title rights with respect to the land that is the subject of the Project Area:
 - (a) the right to travel over, to move about and to have access;
 - (b) the right to hunt and to fish on the land and waters;
 - (c) the right to gather and to use the natural resources such as food, medicinal plants, wild tobacco, timber, stone and resin;
 - (d) the right to take and to use the natural water (other than the right to take or use water captured by the holders of Perpetual Pastoral Lease 1074);
 - (e) the right to live, to camp and for that purpose to erect shelters and other structures;
 - (f) the right to light fires for domestic purposes, but not for the clearance of vegetation;
 - (g) the right to conduct and to participate in the following activities:
 - i. cultural activities;
 - ii. cultural practices relating to birth and death, including burial rites;
 - iii. ceremonies;
 - iv. meetings;
 - v. teaching the physical and spiritual attributes of sites and places that are of significance under their traditional laws and customs;



**NORTHERN
LAND COUNCIL**

Our Land, Our Sea, Our Life

- (h) the right to maintain and to protect sites and places that are of significance under their traditional laws and customs;
- (i) the right to share or exchange subsistence and other traditional resources obtained on or from the area;
- (j) the right to be accompanied on to the area by persons who, though not native title holders, are:
 - i. people required by traditional law and custom for the performance of ceremonies or cultural activities on the area;
 - ii. people who have rights in relation to the area according to the traditional laws and customs acknowledged by the estate group members;
 - iii. people required by the estate group members to assist in, observe, or record traditional activities on the area; and
- (k) the right to conduct activities necessary to give effect to the rights referred to in (a) to (j),

together, the “**Native Title Rights**”.

8. The size, scale and nature of the Project may have substantial consequences upon the ability of the Native Title Holders to enjoy the Native Title Rights.
9. The NLC encourages the Proponent to engage with Native Title Holders and the NLC to ensure that any interference with the ability of Native Title Holders to enjoy such rights is avoided, mitigated or managed. This is particularly relevant given the potential impacts of the Project upon environmental quality, ecosystems, hydrological processes (including with respect to watercourses and surface and ground water), atmospheric processes (including with respect to air quality, climate and emissions), community and economic values and culture and heritage.
10. Such environmental factors are generally connected to the ability of Native Title Holders to enjoy Native Title Rights. Indeed, there is an inextricable link between the environment and culture, and it is essential that cultural values be considered during the environmental impact assessment.
11. On the basis that the Project is going to have a significant impact upon the environment, the NLC submits that the terms of reference for the EIS (**TOR**) must appropriately and robustly address such factors in the context of the Native Title Rights. One component of addressing such factors is to ensure the TOR provide for the free, prior and informed consent (**FPIC**) of the Native Title Holders with respect to any decision making and agreement making processes. The NLC acknowledges and

Darwin

Head Office:

29 Julius St, Berrimah, NT, 0828

Tel:

(08) 8920 5100

Email:

reception@nlc.org.au

Website:

www.nlc.org.au



encourages the Proponent's commitment to FPIC as set out by the Proponent in the Proponent's referral and Stakeholder Engagement Plan.

12. A key aspect of FPIC is ensuring that the Native Title Holders have the time and space for comprehensive consultation and engagement regarding the environmental implications of the project, both before and throughout any decision and agreement making processes. This requires genuine inclusion, comprehensive disclosure, effective and meaningful participation, culturally informed consultation, and respect for cultural practices. This also requires clear, timely, accurate and accessible information is provided to the Native Title Holders.
13. The NLC further submits that the TOR must provide for the comprehensive consultation and opportunity of the Native Title Holders to participate in:
 - (a) undertaking study to identify, describe and characterise existing Aboriginal cultural heritage values that may be affected by the Project;
 - (b) protecting Aboriginal cultural heritage values through the design and location of the Project, including with respect to vegetation removal, construction activities and rehabilitation and waste;
 - (c) providing guidance in relation to cultural protocols, identification and protection of sacred sites and cultural heritage, and the protection of nearby water sources and flora and fauna in the area;
 - (d) any further avoidance, mitigation and management activities with respect to Aboriginal cultural heritage values that may be affected by the Project;
 - (e) reporting on actions taken to address Aboriginal cultural heritage values, including sacred sites; and
 - (f) the design and implementation of economic, social and community benefit arrangements.
14. Such TOR are critical to ensuring FPIC is afforded, particularly given the Proponent's uncertainty regarding the potential significant environmental impacts of the Project.
15. Such approach is consistent with one of the objects of the *Environmental Protection Act 2019* (NT), being the recognition of:



“the role that Aboriginal people have as stewards of their country as conferred under their traditions and recognised in law, and the importance of participation by Aboriginal people and communities in environmental decision making processes.”¹

Sacred Sites

16. The referral indicates that the Project will involve the clearing and soil disturbance of up to 19,150 hectares of vegetation. Such clearing poses a significant risk of irreversible destruction to sacred sites and Aboriginal culture and heritage.
17. The Proponent notes in the Referral that it is committed to applying for an Authority Certificate, but that there is insufficient information to determine the potential for significant impacts to other values of culture and heritage. The Proponent’s draft TOR notes that it will provide an Authority Certificate “if one has been obtained” or clarify if an application has been made under the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT) (**Sacred Sites Act**) that covers the Project Area and proposed activities during all phases of the Project.
18. To this end, the NLC submits that the Authority Certificate process is critical to the protection of Aboriginal cultural values, and that an Authority Certificate must be obtained pursuant to section 22(1)(b) of the Sacred Sites Act. It is vital that the Proponent complies with any Authority Certificate issued and works closely with AAPA and Traditional Owners to ensure that sacred sites are not damaged.
19. Additionally, proactive measures must be taken to minimise any potential risks to these culturally important locations. Cultural monitors should be engaged by the Proponent where possible, and Traditional Owners should be provided with regular updates on any works within the vicinity of sacred sites. The NLC submits that the TOR should reflect this requirement.

Consultation with traditional owners

20. The NLC encourages the Proponent to meaningfully engage with Native Title Holders and Traditional Owners in relation to cultural protocols, identification and protection of sacred sites and cultural heritage, and the protection of nearby water sources and flora and fauna in the area. The NLC encourages the Proponent’s commitment to following the voluntary frameworks with respect

¹ Section 3(e), EP Act.



to First Nations stakeholder engagement referred to in the Proponent's Stakeholder Engagement Plan.

Scientific uncertainty

21. The NLC notes that there remains extensive uncertainty in the Proponent's referral regarding the environmental impacts of the Project, including in respect of how the Project will affect:
- (a) hydrological processes, including surface flows and cumulative groundwater impacts;
 - (b) threatened species; and
 - (c) the community and economy.
22. Furthermore, the Proponent notes that there is insufficient information to assess the significance of impacts from the Project on:
- (a) terrestrial environment quality;
 - (b) terrestrial ecosystems;
 - (c) atmospheric processes; and
 - (d) values of culture and heritage, including archaeological features and cultural landscape values.
23. Acknowledging that the draft TOR prepared by the Proponent seeks to address each of the items listed in paragraphs [21] and [22], the NLC submits that the above matters are central to the principles of FPIC and requires that such matters are comprehensively and robustly assessed and addressed in the EIS.

Conclusion

24. For the reasons set out in this submission, the NLC supports Project Ares being subject to a comprehensive and robust EIS and submits that the TOR for such EIS should ensure that:
- (a) the rights and interests of Native Title Holders and Traditional Owners are considered;
 - (b) the Native Title Holders and Traditional Owners have the opportunity to participate in the environmental assessment and development process, and are afforded agency and FPIC; and
 - (c) the Native Title Holders and Traditional Owners have the opportunity to participate in matters pertaining to stewardship of the Project and the country upon which the Project is proposed, including with respect to sacred sites and matters of cultural significance.



**NORTHERN
LAND COUNCIL**

Our Land, Our Sea, Our Life

25. Please direct any queries you have in relation to this matter to Andy Bennett at BenneA@nlc.org.au.

Yours sincerely

Yuseph Deen

Chief Executive Officer

Northern Land Council

Darwin

Head Office:

29 Julius St, Berrimah, NT, 0828

Tel:

(08) 8920 5100

Email:

reception@nlc.org.au

Website:

www.nlc.org.au