



# NORTHERN LAND COUNCIL

*Our Land, Our Sea, Our Life*

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

**By email:** [eia.ntepa@nt.gov.au](mailto:eia.ntepa@nt.gov.au)

Dear Sir / Madam

## **Submission in relation to Sweetwater Agriculture Development – Stage 1**

1. The Northern Land Council (NLC) makes the following submissions to the Environment Protection Authority (EPA) with respect to the proponent initiated EIS referral prepared by Southern Cross Agri Pty Ltd (**Proponent**) for clearing and development for dryland and future irrigated agriculture on Spirit Hills Pastoral Lease (located on NT portions 1584 and 3221 which forms part of Perpetual Lease 1200) (**Sweetwater Agriculture Development – Stage 1 or Project**).
2. Native title was recognised over the Spirit Hills Pastoral Lease (Perpetual Lease 1200) in the Northern Territory in *Carlton v Northern Territory of Australia* [2011] FCA 576 (**Determination**). Native title is held by the members of the following six estate groups:
  - a. the Miriuwung-Nyawam Nyawam group;
  - b. the Miriuwung-Bindjen group;
  - c. the Gajerrong-Gurrbijim group;
  - d. the Gajerrong-Djarradjarrany group;
  - e. the Gajerrong-Djandumi group;
  - f. the Gajerrong-Wadanybang group,

(collectively, the **Native Title Holders**).
3. The Top End (Default PBC/CLA) Aboriginal Corporation RNTBC (**Top End PBC**) is the Native Title Holders' agent prescribed body corporate (**PBC**) in relation to the Determination. The Proponent's referral material erroneously identifies MG Corporation as the PBC for the Native Title Holders.
4. The NLC is the legal representative of the Top End PBC.

5. The rights of the Native Title Holders in the Determination area (Spirit Hills Pastoral Lease) include:
  - a. the right to travel over, to move about and to have access to the area;
  - b. the right to hunt and to fish on the land and waters of those areas;
  - c. the right to gather and to use the natural resources of those areas such as food, medicinal plants, wild tobacco, timber, stone and resin;
  - d. the right to take and to use the natural water on those areas; and
  - e. the right to live, to camp and for that purpose to erect shelters and other structures on those areas.
6. The public notification period for this referral does not provide the NLC with a reasonable opportunity to properly consult with the Native Title Holders and obtain instructions. The NLC accordingly makes these submissions under its general retainer to assist the Top End PBC in its functions as agent for the native title holders, and also pursuant to its function under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) to assist Aboriginal people to protect sacred sites.
7. The NLC supports the Sweetwater Agriculture Development – Stage 1 being subject to an Environment Impact Statement (**EIS**). This is particularly important to ensure that Native Title Holders and other Aboriginal stakeholders are afforded a reasonable opportunity to consider the Application, obtain expert advice as required, and make submissions.
8. The following comments are matters that NLC submits should be addressed in the EIS.

### **Scope of the Project**

9. It is not clear on the face of the referral material whether the Project (and later stages 2 and 3) is a component of the proposed Ord 3 irrigation scheme, and if so, to what extent the Project is reliant on the Ord 3 irrigation proposal, which NLC understands is still at a preliminary investigation phase.
10. It is important that this is clearly addressed in the EIS and consultations with the Native Title Holders, including an assessment of cumulative impact of existing and reasonably foreseeable projects, which would appear to include (at least) stage 2 and 3 of the Sweetwater Agriculture Development and Ord 3.

### **Impacts on Aboriginal culture and heritage**

11. The referral indicates that the Project will involve a *minimum* clearing of all vegetation in the development area of 3,269.37ha. This clearing is a permanent removal of all vegetation, likely to have a range of flow-on effects to the surrounding land and waters subject to native title rights, and has the risk of causing irreversible destruction to sacred sites and Aboriginal culture and heritage.

12. There are significant recorded sacred sites on the Spirit Hill Pastoral Lease in particular, important men's sites and at least one sacred site registered by the Aboriginal Areas Protection Authority (AAPA). Such sites are often connected with dreaming stories that relates to flora or fauna. Damage to these sites would cause serious and potentially irreversible detriment to Native Title Holders' rights. In this regard, the NLC urges the EPA to take a robust approach in the terms of reference (TOR) for the EIS by ensuring the participation of Native Title Holders in planning and designing prevention and mitigation strategies.

*Consultation with traditional owners*

13. One of the objects of the EP Act is:<sup>1</sup>

*to recognise 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.*

14. Accordingly, the NLC encourages the Proponent to meaningfully engage with Native Title Holders 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.

15. Part 3.1 of the referral report outlines "First Nations Engagement" activities conducted with MG Corporation and Djarrany Djarrany Aboriginal Corporation. The NLC encourages the Proponent to continue to engage broadly with Aboriginal stakeholders, and notes many of the Native Title Holders are members of these aforementioned groups. However, Native Title Holder engagement should be through the Top End PBC as the PBC for the Determination and neighbouring determinations.

*Sacred Sites*

16. We encourage the Proponent to engage directly with the Native Title Holders in respect of protection of sacred sites to guide the design and location of vegetation removal to avoid sacred sites. We also request that the EPA include an explicit requirement for this engagement and reporting on actions taken to address protection of sacred sites through project design and location in the TOR for the EIS.

17. Reliance on AAPA historic abstract of records would fall short of the threshold requirements for sacred site protection under the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT) (**Sacred Sites Act**). To meet those requirements, AAPA certificates must be obtained for the Project area and that the NLC as agent for the native title holders' PBC is the appropriate representative body to consult in relation to the Project.

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<sup>1</sup> Section 3(e), EP Act.

18. The Proponent's draft TOR indicate that it intends to apply for an Authority Certificate under the Sacred Sites Act that covers the entire disturbance area. NLC supports this approach and notes that the Authority Certificate process is critical to the protection of Aboriginal cultural values. The environment impact assessment for the Project should not be concluded until an Authority Certificate has been obtained.

### *Cultural heritage*

19. Noting the comments at paragraph [11], the TOR for the EIS should include requirements to conduct cultural heritage surveys and prepare a cultural heritage assessment to ensure comprehensive investigations of the Project area to determine if any previously unknown heritage sites exist and recommend (if required) measures to mitigate impacts of proposed works in accordance with the *Heritage Act 2011* (NT).

### **Impacts on flora and fauna**

20. Native title rights include rights to hunt on the land and gather and use the natural resources. Land clearing to the extent proposed in stage 1 (and for the larger stages 2 and 3) substantially impacts these native title rights. Further, many of the species present in the Determination Area are culturally and ceremonially significant to the Native Title Holders.

21. The impacts on flora and fauna must be properly understood, including their cultural values and the impacts to species in the surrounding areas outside the development area.

### **Impacts on surface and ground water**

22. Aboriginal cultural values include healthy watercourses and surface and ground water. There are also native title rights over the Project area that are reliant on healthy water systems, including the right to fish and to take and to use the natural water.

23. The NLC is particularly concerned about the potential impacts of the proposed retention facilities, levee banks, drainage networks and river crossings to service the Project. In order to ensure healthy water systems, and the preservation of potential sacred sites linked to surface or ground water in or around the proposed area of the Project, these Project components require robust assessment to ensure the impacts to the flow and quality of surface and ground water, and ecosystems and sacred sites, connected to the Project area are properly understood, and mitigation measures can be appropriately recommended.

### **Proponent's Draft TOR**

24. In addition to the above, the NLC makes the following comments in respect of the Proponent's draft TOR:

- a. **Section 2.3** of the TOR should be amended to refer to:

- i. Top End PBC as representatives of the Native Title Holders for Spirit Hill Pastoral Lease; and
  - ii. NLC as the NTRBSP.
- b. The **social impact management plan (SIMP) referenced in Table 11** of the TOR should include an expanded requirement to detail community benefit arrangements in the community benefit plan.
- c. The TOR should include requirements to **conduct cultural heritage surveys and prepare a cultural heritage assessment**.
- d. The TOR should directly deal with **cumulative impact** of existing and reasonably foreseeable projects in respect of all of the environmental factors.

25. Please direct any queries you have in relation to this matter to Courtney White at [whitec@nlc.org.au](mailto:whitec@nlc.org.au).

Yours sincerely



**Catherine McLeish**  
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**Northern Land Council**