



**NORTHERN  
LAND COUNCIL**

*Our Land, Our Sea, Our Life*

30 September 2021

Our ref: NTP-349-797-269

Northern Territory Environment Protection Authority  
Level 1 Arnhemica House  
16 Parap Road  
Parap NT 0801

To the Environment Protection Authority

**Ucharonidge Station – Proposed clearing of native vegetation – *Environment Protection Act 2019 (NT)* referral**

- 1.1 The Northern Land Council (**NLC**) makes the following submissions to the Environment Protection Authority (**EPA**) with respect to the referral for standard assessment submitted by Ucha Pty Ltd (Cleveland Agriculture) (**Ucha** or the **Proponent**) to clear native vegetation on Ucharonidge Station (the **Ucha Referral**).
- 1.2 Ucha submitted a land clearing application to the Pastoral Land Board on 9 November 2020 to clear approximately 4,898.52 ha of native vegetation to grow dryland cotton and sorghum to achieve viable commercial operation (the **Application**). This Application followed two previous applications to clear land on Ucharonidge Station, which will result in a total of 10,132.43 ha of cleared land (see PLC19/03 and PLC20/01).
- 1.3 The public notification period for this referral has been 27 calendar days (19 business days). Such a short notification period does not provide the NLC with a reasonable opportunity to obtain instructions from our clients (who mostly live in remote locations) and make submissions on the Ucha Referral. The Ucha Referral ought to be subject to a full Environment Impact Assessment (**EIA**) so that Aboriginal stakeholders are afforded a reasonable opportunity to consider the Application and make submissions.
- 1.4 From an initial review, we have noted the following areas of concern that further suggest that the Ucha Referral should be subject to an EIA:
  - (a) Neither the Northern Territory Government nor the Proponent have consulted with the Aboriginal stakeholders (the native title holders and sacred site custodians) about the Application, which, if granted will have profound effects on their traditional country;
  - (b) the cumulative impact on the integrity of the terrestrial habitats, inland water quality and aquatic ecosystems as a result of the proposed agricultural activities (and neighbouring activities) should be adequately assessed;

- (c) Aboriginal stakeholders should be consulted regarding the threat to *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) listed species, particularly those that are noted to have significance to indigenous culture;
- (d) the Proponent ought to seek a sacred site clearance from the Aboriginal Areas Protection Authority (**AAPA**) in conjunction with sacred site custodians; and
- (e) Aboriginal stakeholders should be given the opportunity to comment on the threat of the Application to Aboriginal cultural heritage in the area.

## 2. Northern Land Council

- 2.1 The NLC is the representative body under the *Native Title Act 1993* (Cth) for the northern region of the Northern Territory, including the land and waters subject to Ucharonidge Station.
- 2.2 The NLC is a service provider to the Top End (Default PBC/CLA) Aboriginal Corporation RNTBC, which the determined native title holders of Ucharonidge Station has appointed as their agent under Federal Court orders (see *Raymond v Northern Territory* [2012] FCA 669).
- 2.3 The determined native title holders of Ucharonidge Station are the members of the Warranangku Group. The native title rights and interests held by the Warranangku Group include, but are not limited, to:
  - (a) the right to travel over, to move about and have access to those areas;
  - (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 participate in cultural activities (such as ceremonies, meetings, teaching the physical and spiritual attributes of sites on those areas that are of significance);
  - (e) the right to maintain and protect sites and places on those areas that are of significance under their traditional laws and customs.
- 2.4 Under the *Environment Protection Act 2019* (NT) (**EP Act**), these native title holders are key stakeholders in the Application and Ucha Referral processes, since the exercise of their native title rights and interests will be significantly affected by the proposed change in use of this land.

## 3. Lack of consultation

- 3.1 At [5.10.2] of the Ucha Referral, the Proponent has stated that key stakeholders have been consulted with on the referral process, site selection, project delivery and coordination, identification of sacred sites, and cultural heritage areas of significance, and threatened species identification.

- 3.2 The NLC was not approached by the Proponent or made aware of its intention to submit the Ucha Referral. There appears to have been no engagement by the Proponent with affected Aboriginal communities and native title holders, despite the Ucha Referral stating that key stakeholders have been consulted.
- 3.3 It is appropriate that the EPA refer the matter for an EIA to enable meaningful engagement by the Proponent with affected Aboriginal Communities. Section 43 of the EP Act provides that proponents of an EIA have the following duties with respect to the Aboriginal community and stakeholders:
- (a) to consult with affected Aboriginal communities, in a culturally appropriate manner;
  - (b) to seek and document community knowledge and understanding (including scientific and traditional knowledge and understanding) of the natural and cultural values of areas that may be impacted by the proposed action;
  - (c) to address Aboriginal values and the rights and interests of Aboriginal communities in relation to areas that may be impacted by the proposed action made pursuant to section 1(h) of the Pastoral Land Act.
- 3.4 The NLC supports these steps and submits that they are an integral aspect of the statutory process that ought to be undertaken prior to any government approval to an Application of this magnitude.

#### **4. Sacred sites and cultural heritage**

- 4.1 The native title holders and custodians are deeply concerned about the protection of sacred sites and Aboriginal cultural heritage at Ucharonidge Station. No surveys have been done with the custodians in relation to the Application. No Authority Certificate has been issued by AAPA. A cultural heritage survey has been undertaken, however it only focuses on Western heritage.
- 4.2 The EPA is unable to consider whether sacred sites, culture and heritage are going to be adequately protected under the Ucha Referral without adequate sacred site surveying, consultation with custodians, and an Authority Certificate is issued by AAPA under section 22 of the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT) (**Sacred Sites Act**). By itself, an AAPA registry search does not provide an adequate basis for identifying and protecting sacred sites in the proposed land clearing area: AAPA clearly states this in the written notes that accompany the search results.
- 4.3 As stated by the NLC in its submissions of 11 December 2020, there are sacred sites in the vicinity of the two land clearings permits that have already been approved on Ucharonidge Station (PLC19/03 and PLC20/01). Custodians have expressed their grave concern that works in these areas may (or may already have) damage their sacred sites, which is a prosecutable offence under the Sacred Sites Act. Note 12 of PLC20/01 refers the permit holder to potential liability under the Sacred Sites Act. However, there has been no follow up on this matter by the Proponent, and the Ucha Referral has failed to address this important concern.

- 4.4 The NLC asks the EPA to ensure that the Ucha Referral is progressed to an EIA. This will provide the opportunity for an AAPA certificate to be obtained, and more meaningful consultation with the native title holders and custodians to be undertaken.
- 4.5 The NLC would like to see consultations lead to a registered indigenous land use agreement between the native title holders, Northern Territory Government, and the Proponent, so that no further large-scale clearing of Warranangku Country occurs without the First People's free, prior and informed consent.

## 5. Impact on terrain, aquatic systems and protected species

5.1 It is appropriate that the Application proceed to EIA so that it can be properly explored and tested in light of the objectives identified by the EPA.<sup>1</sup> The Application must be tested to ensure that the proposed land clearing and change of land use will:

- (a) conserve the variety and integrity of distinctive physical landforms;
- (b) protect the quality and integrity of land and soils so that environmental values are supported and maintained, bearing the cumulative impact of other cotton growing ventures in the area;
- (c) protect terrestrial habitats to maintain environmental values including biodiversity, ecological integrity and ecological functioning, noting the additional chemicals to be introduced into the environment;
- (d) protect the 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, including traditional use of the area, such as the native title rights identified above;
- (e) 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; and
- (f) protect aquatic habitats to maintain environmental values including biodiversity, ecological integrity and ecological functioning.

5.2 **Impact on terrestrial habitats:** the Ucha Referral, while being for the clearing of native vegetation, is ultimately for the development of a viable commercial operation in relation to experimental and genetically modified varieties of cotton (Bollgard III and Roundup Ready Flex). The information provided in the Ucha Referral suggests real potential for a significant impact on the environment. If consented to, the Application will result in a total of 10,132.43 ha of cleared land utilised for cotton farming, just at Ucharonidge Station. There is, at current, insufficient information for the EPA to assess the impacts that genetically modified cotton production, and the use of associated hazardous substances such as herbicides and pesticides (see reference at [3.5] of the Ucha Referral) will have upon the environment. The Proponent ought to provide the EPA with

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<sup>1</sup> See [https://ntepa.nt.gov.au/\\_data/assets/pdf\\_file/0008/815471/guidance-public-submissions-during-eia-process.pdf](https://ntepa.nt.gov.au/_data/assets/pdf_file/0008/815471/guidance-public-submissions-during-eia-process.pdf)

a comprehensive study that takes into account all cotton farming in the area so that the cumulative impact can be properly assessed.

- 5.3 **Long term impact:** It will likely take years for the full impacts that this type of landscape transformation may have on the environment to be properly understood. It is imperative that time should be taken between significant consents to land clearing of areas of this size so that the impact to the environment can be assessed. This should occur prior to significant portions of land in the Northern Territory being irreversibly transformed.
- 5.4 **Impact on aquatic ecosystems:** Our constituents are concerned about the cumulative impact that cropping of dryland cotton will have upon aquatic ecosystems, not just at the land clearing site but also upon connected waterways, including groundwater systems. The Ucha Referral contains brief advice at [5.3] as to surface water and hydrogeology, however does not address or provide any advice or analysis of the risk to aquatic ecosystems, including groundwater systems, from chemical use through pesticide and herbicide application once agricultural production commences. There is strong concern that this will impact on the traditional use of water ways, including damaging sacred sites.
- 5.5 **EPBC Act listed species:** There is a likelihood that fauna species listed under the EPBC Act are located in the area (see Ucha Referral at [5.4.1]). The Species Conservation Advice, at Appendix D, identifies a number of species that are significant to Aboriginal and Torres Strait Islander people. A full EIA is required so that Aboriginal people in the area have the opportunity to comment on how the land clearing may affect the species of cultural significance and ensure they are protected.

Yours faithfully



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*Copy by email to:* Minister for Arts, Culture and Heritage  
Minister for Environment