



**NORTHERN
LAND COUNCIL**

Our Land, Our Sea, Our Life

26 July 2023

Our ref: TED – 712083887

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

Dear Sir/Madam

**MATHISON STATION – APPLICATION TO CLEAR PASTORAL LAND –
ENVIRONMENT PROTECTION ACT 2019 (NT) REFERRAL**

- 1.1 The NLC makes the following submissions to the Environment Protection Authority (EPA) with respect to the referral submitted by **Pancho Beef** (Bos Terra Pastoral Co ATF, Consulta Pro ATF Mohr-Bell Family Trust, NTR Ag Pty Ltd) on 12 April 2023 to clear native vegetation on Mathison Station.
- 1.2 Pancho Beef submitted a land clearing application to the Pastoral Land Board on 1 April 2022 to clear 4,517 hectares of land on Mathison Station (Perpetual Pastoral Lease No. 1224) for the purposes of growing hay and fodder crops including cavalcade, jarrah, forage sorghum, and Rhodes grass. The NLC provided a submission on the land clearing application which is provided as Attachment 1.
- 1.3 Statutory notice was given for this EPA referral on 28 June 2023 and public comment from interested persons is permitted until 26 July 2023. This provides for 28 calendar days (19 business days) within which comments can be made. The notification period provided is insufficient and does not afford the NLC a reasonable opportunity to obtain instructions from our clients who live in remote areas, thus denying them procedural fairness.
- 1.4 The referral by the proponent appears to have been triggered by a calculation of the likely greenhouse gas emissions. While this was the trigger for referral, it does not mean that only the greenhouse gas component of the proposal will be considered by the EPA in determining whether an environmental impact assessment of a proposal is required, and by which of the three-tiered methods the assessment should follow.
- 1.5 The concerns NLC raised on the land clearing application have not been addressed through the EPA referral process. There does not appear to be any additional information included in the EPA referral beyond what was provided as part of the land clearing application.
- 1.6 As such, the NLC submits that the EPA cannot discount the proposal will not have a significant impact on the environment, and must require a full and thorough assessment through an Environmental Impact Statement (EIS) process.

2. Northern Land Council

- 2.1 The NLC is recognised under Part 11 of the *Native Title Act 1993* (Cth) (**NTA**) as the exclusive representative body for an area of land and waters that wholly includes the area of Mathison Station. The NLC's functions under the Native Title Act include informing and consulting with native title holders about matters that relate to, or may have an impact upon, their native title: s 203BJ(b), (d)-(e).
- 2.2 [REDACTED]
- 2.3 Under the *Environment Protection Act 2019* (NT) (**EP Act**), these native title holders are key stakeholders in the Application and Pancho Beef 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.
- 2.4 These same persons are also the custodians of sacred sites that are situated on the Application area within the meaning of s 3 of the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT) (**Sacred Sites Act**). The NLC has statutory functions under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (**Land Rights Act**) relevant to the area of Mathison Station, which include assisting custodians to protect Aboriginal sacred sites under s 23(ba).
- 2.5 In the performance of relevant functions under the NTA and the Land Rights Act, the NLC makes the following comments regarding the referral.

3. Lack of consultation

- 3.1 The proponent of an action must demonstrate that they have considered their general duties under an environmental impact assessment process pursuant to s 43 of the EP Act. Relevantly, these include:
- *(a) to provide communities that may be affected by a proposed action with information and opportunities for consultation to assist each community's understanding of the proposed action and its potential impacts and benefits;*
 - *(b) to **consult** with affected communities, including Aboriginal communities, in a culturally appropriate manner;*
 - *(c) 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;*
 - *(d) to address Aboriginal values and the **rights and interests of Aboriginal communities** in relation to areas that may be impacted by the proposed action;*
- 3.2 On page 8 of the referral form completed by Rebecca Mohr-Bell and dated 12 April 2023, a checklist is provided to enable the proponent to identify and comment on how they have demonstrated consideration of these general duties. To each of the questions posed that relate to the above mandatory considerations, the proponent has stated that these questions are 'not applicable' on the basis that "there are no Aboriginal communities,

heritage or sacred sites within proximity of the development". The Proponent has not provided the basis upon which this assertion is made.

- 3.3 The NLC was not approached by the Proponent or made aware of its intention to submit this referral. There appears to have been no engagement by the Proponent with affected Aboriginal communities and native title holders.
- 3.4 The NLC submits that the duties of a proponent referred to at s 43 are an integral part of the statutory process that ought to be undertaken prior to any government approval of an application that has irreversible consequences.
- 3.5 In performing its due diligence, the EPA cannot be satisfied that the considerations pursuant to s 43 of the EP Act have been adequately addressed through the project referral. As such, the EPA must require full and thorough assessment through an EIS.

4. Sacred sites and native title rights and interests

- 4.1 We submit that an Application to clear this vast area of land must be rejected unless the Applicant obtains an Authority Certificate in accordance with section 22 of the Sacred Sites Act for the full clearing area.
- 4.2 An Abstract of Records from the Aboriginal Areas Protection Authority (AAPA) is inadequate protection against interference and/or damage of sacred sites. This is the opinion of AAPA itself, which has advised in the notes to the relevant Abstract of Records that the Abstract 'cannot be relied upon as an exhaustive list of sacred sites in the area. There may be other sacred sites in the parcel of land of which the Authority is not yet aware'.
- 4.3 We note that an Abstract of Records from AAPA was made available as part of the Proponent's application to the Pastoral Land Board. This states that 'there are recorded sacred sites located on the parcel of land; there are restricted work areas in the parcel of land which are provided for in an Authority Certificate.' The recorded sacred sites and restricted work areas appear to be located in the northern section of the property. We note that the vast majority of the area has not been subject to any previous Authority Certificate and that there are no Records available for Public Inspection.
- 4.4 Further, the Abstract of Records obtained by the Application was assessed on 3 April 2020. This information is now nearly three years old. The permit application should not be considered complete if it contains outdated information. It is unclear whether or not there has been a more recent request for an Abstract of Records from AAPA.
- 4.5 The Proponent can demonstrate at least some consideration of their general duties by applying for an Authority Certificate from AAPA. This will assist the proponent and EPA in understanding the impact of the proposed action on affected Aboriginal communities and their sacred sites. At present, the proponent is at risk of occupying, desecrating, or conducting works on a sacred site in breach of the Sacred Sites Act, and liable to prosecution by the Authority.
- 4.6 The NLC asks the EPA to ensure that the Mathison referral is progressed to an assessment by Environmental Impact Statement (EIS). This will provide the opportunity for an AAPA Authority Certificate to be obtained, and more meaningful consultations with the native title holders and custodians to be undertaken. The clearing of native vegetation

over a 10-year period represents a significant period during which the exercise of native title rights and interests will be restricted.

5. Archaeological sites and heritage places

- 5.1 The protection of Aboriginal cultural heritage and archaeological sites is of great concern to traditional custodians, yet the Application does not include an archaeological survey.
- 5.2 The advice provided in the referral document from the NT Government Heritage Branch is dated April 2020.
- 5.3 While the Senior Heritage Officer of the Heritage Branch did not identify any previously recorded Aboriginal archaeological sites located within the proposed land clearing area, they did note that ‘the lack of Aboriginal archaeological sites may be due to the fact that no archaeological surveys have ever been conducted of that particular area.’ The advice received by the Applicant indicates that Aboriginal archaeological sites commonly occur near watercourses. There is a significant watercourse passing through the property and within close proximity of the clearing areas.
- 5.4 Since 2020 when the advice was sought from the Heritage Branch, it is NLC’s understanding that internal processes have been refined and that the Branch now provide advice in an improved manner and form than an informal email from a Heritage Officer.
- 5.5 The outdated advice (now over three years old), combined with knowledge that the information was provided in an outdated manner and form means the EPA cannot be confident that there are no risks to heritage places as a result of the proposed activity. This, combined with the clear lack of documented archaeological information is concerning given the magnitude and extent of these clearing activities and an archaeological survey should be obtained along with an Authority Certificate.
- 5.6 The NT Heritage Branch must also be offered the opportunity to provide advice on this proposal in the agreed manner and form, and the activity should be progressed to an assessment by EIS to facilitate this advice.

6. Conclusion

- 6.1 In summary, due to the requirements of the EP Act, we submit that the EPA should require a full and thorough assessment of the proposed activity through an EIS (Tier 3 Assessment)
- 6.2 To the extent that the EPA deems the proposed activity will not have a significant impact on the environment, without due consideration of the submissions set out in this letter native title holders and traditional custodians reserve their rights to seek relief to the full extent available at law.

Yours sincerely



James Bainbridge
Lawyer
Northern Land Council



NORTHERN LAND COUNCIL

Our Land, Our Sea, Our Life

20 January 2023

Pastoral Land Board
PO Box 496
PALMERSTON NT 0831

Attention: Executive Officer

By email only: pastorallandboard@nt.gov.au

Dear Sir/Madam

MATHISON STATION – APPLICATION TO CLEAR PASTORAL LAND

- 1.1 We refer to the **Application** dated 1 April 2022, made by Rebecca Mohr-Bell on behalf of Pancho Beef – Jay and Rebecca Mohr-Bell to clear 4,517 hectares of land on Mathison Station (Perpetual Pastoral Lease No. 1224).
- 1.2 Pursuant to a current Commonwealth legislative instrument, the Northern Land Council (NLC) is recognised under Part 11 of the *Native Title Act 1993 (Cth)* (**Native Title Act** or **NTA**) as the exclusive representative body for an area of land and waters that wholly includes the area of Mathison Station. The NLC's functions under the Native Title Act include informing and consulting with native title holders about matters that relate to, or may have an impact upon, their native title: s 203BJ(b), (d)-(e).
- 1.3 [REDACTED]
- 1.4 These same persons are also the custodians of sacred sites that are situated on the Application area within the meaning of s 3 of the *Northern Territory Aboriginal Sacred Sites Act 1989 (NT)* (**Sacred Sites Act**). The NLC has statutory functions under the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)* (**Land Rights Act**) relevant to the area of Mathison Station, which include assisting custodians to protect Aboriginal sacred sites under s 23(ba).
- 1.5 In the performance of relevant functions under the NTA and the Land Rights Act, the NLC makes the following submissions regarding the Application.

2. Legislative Framework

- 2.1 Section 5 of the *Pastoral Land Act 1992 (NT)* (**Pastoral Land Act**) requires that the Pastoral Land Board (the **Board**), in administering the Pastoral Land Act and performing functions in relation to pastoral land, act consistently with, and seek to further, the objects of the Pastoral Land Act. Those objects are found in section 4, and relevantly include:

- to prevent or minimise the degradation of damage to the land and its indigenous plant and animal life (section 4(b)(ii)); and
 - to recognise the right of Aboriginal persons to follow traditional pursuits on pastoral land (section 4(c)).
- 2.2 The Board, or any delegate of the Board, must take the objects of the Pastoral Land Act into account when exercising its functions, including a decision regarding land clearing under section 91H. This involves any submissions relating to the impact of the exercise of native title rights and interests.
- 2.3 The Board must also take into account the impact the consented land clearing will have upon sacred sites.
- 2.4 As stipulated in section 91H(b) of the Pastoral Land Act, when making a decision about an application to clear land, the Board must also take into account the Northern Territory Pastoral Land Clearing Guidelines (the **Guidelines**), which require the Board to consider (among other things):
- any public submissions made (paragraph (7(a)));
 - whether there is sufficient water for the intended use (paragraph (7)(f));
 - impact of the clearing on regional biodiversity (paragraph (7)(j)(d));
 - the presence of any sacred sites within the meaning of Sacred Sites Act (paragraph (7)(j)(j));
 - the presence of declared heritage places or archaeological sites within the meaning of the *Heritage Act 2011* (NT) (paragraph (7)(j)(j)); and
 - any environmental issues under the *Environment Protection Act 2019* (NT) (paragraph (7)(i)).

3. Sacred sites

- 3.1 The Applicant proposes to clear 4,517 hectares of previously uncleared land to grow hay and fodder crops. We submit that an Application to clear this vast area of land must be rejected unless the Applicant obtains an Authority Certificate in accordance with section 22 of the Sacred Sites Act for the full clearing area.
- 3.2 An Abstract of Records from the Aboriginal Areas Protection Authority (**AAPA**) is inadequate protection against interference and/or damage of sacred sites. This is the opinion of AAPA itself, which has advised in the notes to the relevant Abstract of Records that the Abstract ‘cannot be relied upon as an exhaustive list of sacred sites in the area. There may be other sacred sites in the parcel of land of which the Authority is not yet aware’
- 3.3 Notwithstanding this, we note that the Abstract of Records from AAPA and provided by the Applicant at Attachment 5, states that ‘there are recorded sacred sites located on the

parcel of land; there are restricted work areas in the parcel of land which are provided for in an Authority Certificate.’

- 3.4 The recorded sacred sites and restricted work areas appear to be located in the northern section of the property. We note that the vast majority of the area has not been subject to any previous Authority Certificate and that there are no Records available for Public Inspection. The area covered by the pastoral land clearing application has not been subject to any previous Authority Certificate and therefore a Certificate must be obtained prior to a land clearing permit being considered.
- 3.5 Further, the Abstract of Records obtained by the Application was assessed at 3 April 2020. This information is now nearly three years old. The permit application should not be considered complete while it contains information that is outdated.
- 3.6 The existence of sacred sites and a restricted work area within the property boundary of the Application, combined with the out-of-date Abstract of Records and lack of coverage of an Authority Certificate over the area, demonstrates how important it is for the Board to require the Applicant to obtain an Authority Certificate for the full land clearing area. Without adequate sacred site surveying, consultation with custodians, and an Authority Certificate, the Board cannot assess the impact the land clearing will have upon sacred sites.
- 3.7 If the Board is minded to approve the Application notwithstanding the other matters raised in this submission, the Board should only proceed to grant the application subject to a condition requiring that an Authority Certificate be obtained from AAPA.
- 3.8 If land clearing proceeds without further investigation as to the presence of sacred sites across the whole proposed clearing area, the proponent will be at risk of occupying, desecrating or conducting works on a sacred site in breach of the Sacred Sites Act, and liable to prosecution by the Authority.
- 3.9 In issuing a land clearing permit and subsequently enabling the commission of any of the offences listed above, the Pastoral Land Board may be complicit in these contraventions. The land holder has a responsibility to comply with the Sacred Sites Act. By relying solely on the information available on the face of an Abstract of Records from AAPA – where such reliance is contrary to the permitted use of the Abstract according to AAPA itself – this land holder has failed to demonstrate appropriate consideration of the presence of sacred sites. It is within the power of the Pastoral Land Board to require that applicants obtain Authority Certificates to demonstrate that they have taken reasonable steps to ensure that sacred sites are protected.
- 3.10 We submit that an Application to clear this area of land where sacred sites exist must be rejected unless the Applicant obtains an Authority Certificate relating to the full extent of the Application area.
- 3.11 By way of this letter, the applicant and the Board are hereby put on notice as to the real and foreseeable risk of the existence of unregistered sacred sites on the land clearing area and the remainder of Mathison Station and, moreover, of the real and foreseeable risk that they will be desecrated if the Sacred Sites Act is not complied with. Should any site desecration, damage or other offence under the Sacred Sites Act occur in connection with land clearing activities on Mathison Station, the custodians maintain their rights to have that offence prosecuted and to seek relief within the full extent available at law.

4. Archaeological sites and heritage places

- 4.1 The protection of Aboriginal cultural heritage and archaeological sites is of great concern to traditional custodians, yet the Application does not include an archaeological survey.
- 4.2 While the Senior Heritage Officer, Heritage Branch, did not identify any previously recorded Aboriginal archaeological sites located within the proposed land clearing area, they did note that ‘the lack of Aboriginal archaeological sites may be due to the fact that no archaeological surveys have ever been conducted of that particular area.’ The advice received by the Applicant indicates that Aboriginal archaeological sites commonly occur near watercourses. There is a significant watercourse passing through the property and within close proximity of the clearing areas.
- 4.3 The Board should, in making its decision, acknowledge the lack of documented archaeological information for this area and that the area has not been cleared before. Accordingly, before granting a permit to clear land, the Board should require that an archaeological survey be obtained along with an Authority Certificate. The total absence of assessments and on-site surveys reflects that the Application fails to demonstrate consideration of the presence of archaeological sites, heritage places and sacred sites as it is required to.

5. The Application must be referred to the Environment Protection Authority

- 5.1 The proposed action, being for land clearing of 4,517ha, and intended use, has the potential to have a significant impact on the environment. In accordance with the *Environmental Protection Act 2019* (NT), Environment means all aspects of the surroundings of humans including physical, biological, economic, cultural and social aspects. This includes impacts to Aboriginal cultural heritage and sacred sites.
- 5.2 The NT Environment Protection Authority (EPA) pre-referral screening tool requires the Applicant to consider whether the proposal could have a direct or indirect impact on environmental factors or objectives. This includes culture and heritage. If an impact to an environmental value or sensitivity has the potential to occur, the proposal must be referred to the EPA.
- 5.3 The completed pre-referral screening tool, provided by the Applicant at Attachment 6, answers ‘no’ or ‘not applicable’ to every screening question. Based on the information provided throughout the Application, there is evidently significant potential for impact to an environmental value to occur. The NLC submits that the pre-referral screening tool has been inappropriately answered, including in the following respects.
- (a) ‘People – Culture and heritage’: The pre-referral screening tool answers ‘not applicable’ to all pre-screening questions for culture and heritage: Protect sacred sites, culture and heritage. As discussed in part 3 and part 4 above, the Application does not include a valid AAPA Authority Certificate or complete archaeological survey. This area has not been previously assessed for cultural heritage or sacred sites. As such it is not logically open to the Applicant to answer ‘not applicable’ to the screening questions about these issues. Rather, they should be marked as ‘uncertain’, and the application be referred to the NT EPA for further assessment.
 - (b) ‘Air – Atmospheric processes’: The Application identifies that the proposed land clearing will generate 625,000tCO₂-e of emissions. Under the NT Government *Greenhouse Gas Emissions Management for New and Expanding Large Emitters*

policy, this activity meets the criteria for a large emitting project and should be referred to the NT EPA given its potential to have a significant impact to the environment in relation to atmospheric processes.

- 5.4 When considering the environmental impact of the Application as required by the Guidelines, the Board must ensure due diligence and refer the Application directly to the NT EPA.

6. Conclusion

- 6.1 In summary, due to the objects of the Pastoral Land Act and the Guidelines issued to direct the Board, we submit that the Board should not approve the Application, should require an Authority Certificate be obtained, and refer the application to the NT EPA for further assessment.
- 6.2 To the extent that any approval is purportedly issued without due consideration of the submissions set out in this letter native title holders and traditional custodians reserve their rights to seek relief to the full extent available at law.

Yours sincerely



James Bainbridge
Lawyer
Northern Land Council

Copy by email to:

Minister for Arts, Culture and Heritage
Minister for Environment, Climate Change and Water Security
Minister for Aboriginal Affairs
Aboriginal Areas Protection Authority