



17 February 2023

To

Executive Officer
Pastoral Land Board

By Email to:

PastoralAssessment.DEPWS@nt.gov.au

To Whom it May Concern,

S & R DiGiorgio & Sons - Application to Clear Pastoral Land (s38(1)(h)) on Aroona Station

1. The Environment Centre NT (**ECNT**) is the peak community sector environment organisation in the Northern Territory of Australia, raising awareness among community, government, business, and industry about environmental issues. We assist people to reduce their environmental impact and support community members to participate in decision-making processes and action.
2. We refer to the application seeking consent under s 38(1)(h) of the Pastoral Land Act 1992 (NT) (**Pastoral Land Act**) S & R DiGiorgio & Sons (**the Applicant**) to clear 3911 hectares of land in respect of Aroona Station Pastoral Lease 1038.
3. Thank you for the opportunity to provide comment on the application. This submission is made in accordance with section 91G of the *Pastoral Land Act*. The Pastoral Land Board (**the Board**) has an obligation to consider this submission before making a decision whether to grant or refuse to grant the clearing permit.
4. We submit that the Application should be refused, for the following reasons:
 - (a) the Application does not provide adequate information about or engage with potential environmental and cultural heritage risks associated with the Application; and
 - (b) the PLB would be acting inconsistently with the objectives of the *Pastoral Land Act* if the Application was approved; or
 - (c) The applicant's project must be referred for assessment under the *Environment Protection Act 2019 (NT)* and the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*.
5. Further information in relation to these reasons is provided below.

Statutory Context





6. The *Pastoral Land Act* sets out the powers and duties of the Minister, the PLB and lessees with respect to the administration of pastoral leases. It also sets out a process for applying for permits to clear native vegetation on pastoral land. We submit, for the following reasons, that the PLB cannot approve the Application based on the information that is currently available and to do so would be inconsistent with the objects of the Act and the duties of the PLB.

7. The purpose of the *Pastoral Land Act* is reflected in its objects clause which states, inter alia, at section 4:
The objects of this Act are:
 - (a) *to provide a form of tenure of Crown land that facilitates the sustainable use of land for pastoral purposes and the economic viability of the pastoral industry;*
 - (b) *to provide for:*
 - (i) *The monitoring of pastoral land so as to detect and assess any change in its condition;*
 - (ii) *The prevention or minimization of degradation of or other damage to the land and its indigenous plant and animal life;*
 - (iii) *The rehabilitation of the land in cases of degradation or other damage...*

8. Section 5 of the *Pastoral Land Act* reinforces the importance of the objects clause, stating that the PLB:
In administering this Act and in exercising a power or performing a function in relation to pastoral land, shall act consistently with, and seek to further the objects of the Act.

9. The word “sustainable” in section 4(1) is not defined in the Act. Sustainable use has however been interpreted by Australian courts, and generally includes principles of ecologically sustainable development, such as the precautionary principle, the principle of intergenerational equity, the principle of biodiversity conservation and ecological integrity.¹¹ It is now accepted that the concept of sustainability applies to the environment as well as development, and that sustainable development should “improve the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends.”¹² The case explains that the principle of sustainable development has been further refined and includes three components – economic development, social development and environmental protection as interdependent and mutually reinforcing pillars.³ In light of this interpretation of sustainable use, the PLB must take environmental principles such as the precautionary principle into account when making decisions about land clearing permits.

10. The word degradation (used in section 4(b)(ii)) is defined in the Act as:

¹ *Telstra Corporation Ltd v Hornsby Shire Council* [2006] NSWLEC 133.

² *Telstra v Hornsby* at [109] quoting the Department of Environment and Water Resources, Australian National Strategy for Ecologically Sustainable Development, (Canberra, AGPS, 1992).

³ *Telstra v Hornsby* at [112] quoting The Plan of Implementation of the World Summit on Sustainable Development, Johannesburg, 2002.





In relation to land, means a decline in the condition of the natural resources of the land, including the capacity of the land to sustain pastoral productivity, resulting directly or indirectly from human activities on or affecting the land.

Importantly, section 4(b)(ii) also refers to the prevention or minimization of degradation or damage to indigenous plants and animals.

11. Native vegetation clearing at a large scale naturally poses a risk of degradation or damage to land, indigenous plants and animals. The PLB, per section 5 of the Act, is bound by a strict duty to act consistently with and seek to further the aim of preventing or minimizing degradation or damage to land and indigenous plants and animals. There is an objective standard to this requirement that must underpin the decisions of the Board in relation to whether to grant permits to clear native vegetation.
12. The PLB must also consider submissions, relevant guidelines and any other matters the PLB considers relevant when making a decision about a clearing permit. Sections 91A to 91ZB guide the PLB in relation to its decision, but ultimately these provisions must be read consistently with the objects clause.
13. Under section 91H(1)(b), the PLB must take into account relevant guidelines issued by the PLB under section 91E. The Board has issued guidelines, these being the Pastoral Land Clearing Guidelines (Guidelines). The Guidelines state that the board aims to ensure pastoral land clearing:
 - (a) *Avoids impacts on environmentally significant or sensitive vegetation;*
 - (b) *Is based on land capability assessments;*
 - (c) *Avoids impacts on drainage areas, wetlands and waterways;*
 - (d) *Avoids habitat fragmentation and impacts on native wildlife corridors; and*
 - (e) *Avoids impact on highly erodible soils.*

And that in deciding each application, the Board should consider the extent to which the Application meets this criteria listed above, having regard to matters such as:

- (a) *The suitability of the site for the proposed use;*
 - (b) *The values associated with the environmental characteristics and the site;*
 - (c) *The significance, extent and likelihood of any potential environmental impacts;*
 - (d) *The measures the application proposes will be implement to mitigate any potential impacts.*
14. The PLC Guidelines also give content to subsection 91H(1)(c) of the Act, stating that relevant considerations for the PLB to take into account include but are not limited to: whether the clearing is necessary for the intended use, environmental issues under the EP Act, environmental issues under the EPBC Act, the Planning Guidelines, the





presence of threatened wildlife, impacts on regional biodiversity, retention of native vegetation adjacent to waterways, presence of permanent and seasonable water features (see p 9).

15. Lastly, section 91H(2) of the Act grants power to the PLB to either approve or refuse to grant the clearing permit. Section 91H read together with the objects clause provide a clear mandate on the PLB to consider environmental risks and harms, including land degradation, in performing its functions under the Act.
16. In our view, application of the precautionary principle to decision-making powers exercisable by the PLB should operate in the present circumstances. There is relevant evidence of risk of serious harm to the environment combined with a substantial degree of scientific uncertainty as to the impacts of the Application. Existing investigations are limited, with little engagement with the potential risks and no range of management options considered. In that context, and consistently with section 4(a) of the PL Act, a precautionary approach should be applied to the decision-making power of whether to grant or refuse the clearing permit.
17. We submit that the PLB cannot approve the Application based on the information that is currently available, as to do so would be inconsistent with the objects of the Act and the duties of the PLB. In our view, the PLB must exercise its power to refuse the Application to anticipate and avoid environmental damage.

Greenhouse Gas Emissions

18. The Applicant has estimated the emissions from the clearing to be 472 053 tones, falling just short of threshold for a large emitting project pursuant to the Northern Territory Government's "Greenhouse Gas Emissions Management for New and Expanding Large Emitters" Policy (*The Policy*).
19. This is nonetheless a significant amount of emissions, which clearly meets the threshold for referral under the *Environment Protection Act*.
20. The applicant should be required to demonstrate how they calculated the total emissions as demonstrated in the *Estimating carbon emissions from land clearing – explanatory notes and map*.

Cumulative impacts

21. ECNT submits that, in considering environmental impacts, the Application must be considered cumulatively with other developments in the region, including other land clearing permits granted by the Pastoral Land Board or its delegate.
22. In considering whether or not an action meets the threshold of having a significant impact on the environment under s48 of the *Environment Protection Act NT* (and thus requires referral) section 10 defines impact to include





impacts that are cumulative and may occur over time.⁴ The NTEPA's guidance on referring a proposed action also takes a broad view of the threshold test for referral under the legislation.⁵

23. In particular, this guidance states:

".. it is important for Applicants to examine all potential impact sources that relate to the action, and the potential impact pathways between the source of an impact and sensitive receptors and environmental values that may be impacted. These need to be considered for the life of the proposed action, both in isolation and cumulatively with other reasonably foreseeable proposals and approved actions."⁶

24. The Application thus requires referral under the *Environment Protection Act*.

Significant environmental impacts associated with the Application

25. Land clearing is a fundamental pressure on the environment. Land clearing causes the loss, fragmentation and degradation of native vegetation, and a variety of impacts on soils (eg erosion, salinity, loss of nutrients and acidification) and disrupts essential ecosystem processes.⁷ Threats to biodiversity from landclearing and habitat loss are one of the greatest threats to threatened species in Australia, and to the environment more generally.⁸ Land clearing is recognised as a key threatening process to threatened species (including in the Northern Territory) under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*.⁹ Habitat loss and fragmentation (including due to land clearing) has long been recognised by the Northern Territory Government as a key threat to the Northern Territory's biodiversity.¹⁰

26. ECNT draws the Pastoral Land Board's attention to recent research which indicates that Northern Australia's tropical savannas are one of 19 ecosystems in Australia that meet the criteria of being under collapse.¹¹ Bergstrom et al suggest that it is imperative to understand how different threatening processes combine cumulatively (acting in what they term "threat webs") to further threaten Australia's collapsing ecosystems. As habitats become increasingly fragmented, populations become more vulnerable to other threatening processes, such as climate change, changes in stream flow regimes, predation by invasive species and destructive fires, and they lose the ability to recolonise suitable habitat. This research is not referred to by the Applicant, nor are other threatening processes mentioned which could exacerbate the impacts of the Application and vice versa.

⁴ Tree clearing and dryland salinity hazard in the upper Burdekin catchment of north Queensland". SoilResearch 35(4):785-802.

⁵ https://ntepa.nt.gov.au/_data/assets/pdf_file/0009/805167/referring-proposed-action-to-ntepa-guideline.pdf.

⁶ Pursuant to this policy, a land use project generating over 500 000 tonnes from a single clearing event, or cumulatively from multiple land clearing actions on a property over time is required to develop a Greenhouse Gas Abatement Plan which demonstrates how emissions will be managed and reduced.

⁷ State of the Environment Australia 2016. "Land Theme: Regional and landscape-scale pressures:Land clearing."

<https://soe.environment.gov.au/theme/land/topic/2016/regional-and-landscape-scale-p pressuresland-clearing>.

⁸ Neldner et al. 2017. Scientific review of the impacts of land clearing on threatened species in Queensland. Queensland Government, Brisbane.

⁹ <https://www.awe.gov.au/environment/biodiversity/threatened/key-threatening-processes/land-clearance>.

¹⁰ https://nt.gov.au/_data/assets/pdf_file/0009/204210/vegetation-management-habitat-loss-fragmentation-english.pdf.

¹¹ Bergstrom et al. 2021. "Combating ecosystem collapse from the tropics to the Antarctic." Globalchange biology 27(9):1692-1703.





27. The Application refers to a number of threatened species that may be impacted by the Application. These include the Northern Quoll, Curlew Sandpiper, Gouldian Finch, Ghost Bat, Red Goshawk, Painted Snipe, Grey Falcon, Northern Shrike-tit and Masked Owl. Although the Applicant's familiarity with the station is commendable no biodiversity surveys appear to have been undertaken by the Applicant to ascertain the likelihood of occurrence of these or other species, or to understand their habitat requirements. Assessment of native vegetation in the Application is limited and primarily directed towards the productivity of the land. The applicant assumes that the needs of biodiversity will be met in other areas on the station. The Applicant does not appear to have complied with the NTEPA's guidance for assessment of impacts on terrestrial biodiversity with respect to assessment of native vegetation or biodiversity surveys, amongst other matters.¹²
28. The Northern Territory Government's own published guidance material makes clear that, while Northern Australia has the largest and most intact tropical savanna system in the world, this value could be "readily compromised by excessive removal of native vegetation".¹³ Further, this guidance makes clear that the highly seasonal environment of northern Australia means that it is more important to retain a higher proportion of native vegetation in the landscape than for a less seasonal environment. The guidance refers to research undertaken for the Department in 2009 which showed significant impacts on biodiversity at a landscape scale (approximately 3000ha) if more than 50% of native vegetation is cleared. In particular, the research notes that clearing of this extent "may reduce the diversity of plants and animals to a point where some populations may fall to unsustainable levels".¹⁴ ECNT also refers to research recently undertaken by the National Environmental Science Program's Northern Australian Environmental Resources Hub (NESP) which created spatial data that can be usefully used to inform species conservation policy, assessments of species' conservation status and decision-making about threat mitigation and management.¹⁵ ECNT is concerned that there is very little attempt in the Application to understand the cumulative impacts of different threatening processes in the region.
29. Inadequate information is provided in the Application to assess these impacts, including:
- (a) No biodiversity surveys appear to have been undertaken by the proponent, meaning it is not possible to assess the impacts on biodiversity from the clearing, much less assert that the impacts will be minimal.

¹² https://ntepa.nt.gov.au/_data/assets/pdf_file/0004/287428/guideline_assessment_terrestrial_biodiversity.pdf.

¹³ Ibid.

¹⁴ https://nt.gov.au/_data/assets/pdf_file/0009/204210/vegetation-management-habitat-loss-fragmentation-english.pdf, referring to "Landscape design for maintaining ecosystem services in tropical agricultural landscapes: the response of fauna and flora to landscape mosaics and implications for land clearing policy" Griffiths, A.D, Stewart, A.J., Calnan, T, Venn, S, Brooks, K, & Rankmore, B, (2009) Report to Land and Water Australia. Department of Natural Resources, Environment, the Arts and Sport, Darwin.

¹⁵ A. Pintor, M. Kennard, J. Alvarez-Romero and S. Hernandez, "Prioritising threatened species and threatening processes across northern Australia", User Guide for data, Northern Australia Environmental Resources Hub, National Environmental Science Program, <https://www.nesppnorthern.edu.au/wpcontent/uploads/2020/04/Prioritising-threatened-species-and-threatening-processes-across-northernAustralia-User-guide-for-data.pdf>.





- There is no evidence to support the assertion that impacts on biodiversity will be low.
- (b) There is insufficient evidence to confirm that the 100m buffer will protect Mathison Creek from disturbance. As Mathison Creek is upstream of Giwining/Flora River Nature Park it is important that the creek has high biodiversity of riparian vegetation.
 - (c) There is insufficient evidence to support the Applicant's claim that no soil erosion is present in the proposed area. In 1998, the Top End Waterways Project DALY RIVER CATCHMENT identified Mathison Creek as having high levels of disturbance due to grazing which was like to affect stream reaches. The project also identified the neighboring Aroona creek as experiencing bank erosion. It is unclear how an additional two decades of grazing would leave the soil in better condition.
 - (d) There is insufficient evidence to suggest that the soil is unlikely to be impacted by chaining 3911 hectares of woodland and then burning the felled trees and shrubs in-situ.
 - (e) The applicant proposes to destroy cultural heritage. There is insufficient evidence that Aboriginal Heritage Sites identified by an archeologist are "low significance". As no consultation with custodians appears to have occurred, it is reckless of the archeologist to assert that two sites of low significance may be destroyed.
 - (f) There is insufficient evidence that the cultural site of high significance will be protected from the impacts of clearing 3911ha of native vegetation by a buffer that is 100 m or less. This is particularly troubling as the archeologist explicitly states that the removal of native vegetation significantly disturbs ground integrity, which in-turn reduces the archeological significance, at times, to the extent of extinguishment. Pastoral land is subject to native title rights and interests, if these rights and interests are claimed, Native Title Holders could make a claim for compensation for any cultural sites that are destroyed. The archeologists' recommendations appear ill-advised especially considering Traditional Owners have applied to claim their Native Title close to the survey area.
 - (g) A registry extract is manifestly inadequate to protect sites that may exist in the area, especially considering the findings of the heritage survey. An authority certificate granted under the Northern Territory Sacred Sites Act 1989 (NT) should be a mandatory requirement.
 - (h) It is absurd for the Applicant to provide the response that there are no Cultural sites present within the area that have the potential to be impacted by the proposed action. The application states that two sites will be destroyed and a site of 'high significance' has the potential to be indirectly impacted.

The PLB should refer the Application to the NTEPA under the EP Act 53.

30. In light of the matters set out above, there is compelling evidence that the Application has the potential to have a significant impact on the environment. We do note however (and as is noted above) that further information is likely to be required to identify the full extent of any risk, as well as other potential risks.





31. The *Environment Protection Act* commenced operation in mid-2020 and is relatively new NT legislation establishing a comprehensive scheme for environmental protection, including biodiversity conservation in the NT. The breadth of the Act is reflected in its objects clause which states at section 3:

The objects of this Act are:

- (i) *to protect the environment of the Territory; and*
- (j) *to promote ecologically sustainable development so that the wellbeing of the people of the Territory is maintained or improved without adverse impact on the environment of the Territory; and*
- (k) *to recognise the role of environmental impact assessment and environmental approval in promoting the protection and management of the environment of the Territory...*

32. The concept of 'environment' in turn is broad and encompasses social and biological elements of the natural environment. Part 4 of the Act sets out a detailed referral and assessment process for proposed actions impacting on the environment. Under that Part, sub-section 48(a) mandates that an Applicant must refer a proposed action to the NT EPA for assessment that has the potential to have a significant impact on the environment. This obligation is broad and requires referral where there is potential for direct, indirect and cumulative impacts (see meaning of 'impact' under section 10). The Applicant has determined that in this instance a referral is not required.

33. Section 50(2) of the EP Act grants power to the Board to refer the Application to the NTEPA, and states:

(2) The statutory decision-maker:

- (a) *may refuse to consider the application until the action is referred to the NT EPA under this Division and a decision is made on the referral; and*
- (b) *must take all reasonable steps to encourage the Applicant to refer the action to the NT EPA; and*
- (c) *may refer the action to the NT EPA.*

34. We submit that, per section 50 of the EP Act, the Board should either refuse to consider the Application until it has been referred to the NTEPA, encourage the Applicant to refer the Application to the NTEPA or refer the matter itself.

It would be inconsistent with the Pastoral Land Act for the Board to grant the clearing permit

35. In conclusion, we submit that the PLB cannot rationally grant the clearing permit based on the information contained in the Application. In *Minister for Immigration and Citizenship v Li* [2013] HCA 18, the Court held that authority to make decisions conferred by a statute must be exercised according to law and reason, and genuinely





consider the information before it.

36. A rational decision by the Board in this context requires further information about the potential environmental impacts for it be able to grant a clearing permit according to law (i.e. consistently with the PL Act) and reason.
37. We submit that it would be inconsistent with section 4(a) (facilitating sustainable use of the land), and section 4(b)(ii) (prevention or minimisation of land degradation or other damage to the land and its indigenous plant and animal life) of the *Pastoral Land Act* to grant the clearing permit based on the information outlined in the Application. The Board is therefore not permitted to approve clearing in accordance with section 5 of the *Pastoral Land Act*.
38. In conclusion, it is not possible for the PLB to approve the permit and act consistently with its duty to ensure the prevention or minimisation of degradation of or other damage to the land and its indigenous plant and animal life. The Application should be refused, or alternatively, referred under the *Environment Protection Act* and *Environment Protection and Biodiversity Conservation Act*.

Yours faithfully,

Kirsty Howey

Executive Director

