

NORTHERN TERRITORY OF AUSTRALIA
Section 38(1)(h) – Pastoral Land Act (NT)

CONSENT TO CLEAR PASTORAL LAND

PERMIT NUMBER: PLC16/9-A

I, PAUL ZLOTKOWSKI, Chairman, Pastoral Land Board

GRANT TO: John Francis Armstrong and each Pastoral Lessee from time to time (collectively “the **Permit Holders**”) in respect of Pastoral Lease No 1195 (“**PL**”) Banjo Station which relates to NT Portion 5807,

A PERMIT TO CLEAR PASTORAL LAND (“the **Permit**”), for the area within NT Portion 5807 (being part of the PL) which is more particularly depicted in the Endorsed Clearing Plan contained at Schedule 1 of this Permit,

COMMENCING: on the date of this Permit and expiring on the Expiry Date (“the **Term**”),

SUBJECT TO: the Schedule of Conditions contained at Schedule 2 of this Permit, and I

CONSENT TO THE PERMIT HOLDERS:

Undertaking the clearing of approximately 6,885 hectares of native vegetation for the purpose of planting improved pasture (“the **Clearing Activities**”).

PROVIDED THAT:

The Permit Holders must Substantially Commence the Clearing Activities within the Commencement Period and (subject to the Pastoral Land Board granting an extension of the Expiry Date) complete the Clearing Activities by the Expiry Date, otherwise this Permit will expire upon the expiry of the Commencement Period or upon the Expiry Date (as the case may be).

EXTENSION OF TERM OF PERMIT:

The Permit Holders may apply to the Pastoral Land Board for an extension of the Term of this Permit, provided that:

- i. the Permit Holders have Substantially Commenced the Clearing Activities within the Commencement Period; and
- ii. the application for extension is submitted to the Pastoral Land Board in the approved form at least one (1) year before the Expiry Date.

The Pastoral Land Board may, in its absolute discretion, grant or reject the request, or grant the request subject to conditions.

REASONS FOR DECISION:

- A. Following the lodgement of a review application with the NT Civil and Administrative Tribunal (NTCAT) in relation to Pastoral Land Clearing Permit No. 16/9, on 21 October 2016 the Pastoral Land Board was invited by NTCAT to reconsider its decision made at the 110th meeting on 22 August 2016.

EXCLUDED AREA OF SLOPE

- B. On 24 May 2016, Mr John Armstrong, Lessee of Banjo Station, submitted the Original Application to the Pastoral Land Board, requesting consent to clear pastoral land under section 38(1)(h) of the Pastoral Land Act (NT).
- C. At the 110th meeting on 22 August 2016, in response to feedback from the Northern Territory Government agencies and authorities, and the Amending Documents of 14 July 2016 and 9 August 2016, the Pastoral Land Board made further changes to exclude areas of slope greater than 2%, as recommended by the NT Planning Scheme Land Clearing Guidelines, from the Original Application.
- D. The Pastoral Land Board determined to undertake a property inspection of Banjo Station to consider the excluded areas to decide whether the permit could be later varied to include those areas.
- E. On 11 October 2016 the Pastoral Land Board conducted a Property Inspection of Banjo Station. Following the site inspection at Banjo Station on 11 October 2016 and subsequent discussion at the 111th meeting on 13 October 2016, the Board determined that the approved clearing area in Pastoral Land Clearing Permit No. 16/9 should be amended to include the areas of slope previously excluded from Princess Di and South Banjo paddocks. In making its decision, the Board considered:
1. advice provided by the Department of Environment and Natural Resources (DENR);
 2. information provided by the Lessee;
 3. information provided by the Lessee's consultant (VPS Land Assessment and Planning);
 4. additional information provided by the Lessee and their consultant during the site inspection; and
 5. data limitations associated with the application of Digital Elevation Modelling (DEM) data without field validation (i.e. ground-truthing).
- F. At the 112th meeting on 15 November 2016 the Pastoral Land Board confirmed the determination to issue a variation to Pastoral Land Clearing Permit No. 16/9, to reinstate the previously excluded areas of Princess Di and South Banjo paddocks to the clearing plan.

- G. The reasons for the Pastoral Land Board's determination to reinstate excluded areas of slope on Princess Di and South Banjo paddocks within the permit area are:
1. Field inspection by the Board confirmed that only a small area within the two original exclusion zones was characterised by slope greater than 2%.
 2. The limited extent of slopes greater than 2% meant that any erosion and resulting sediment could be contained and mitigated if required.
 3. The short slope length at the two areas characterised by slope greater than 2% and implementation of good management practices would enable the risk of erosion associated with clearing slopes greater than 2% to be reduced.
 4. The proposed management practices (selective clearing, in situ retention of felled timber and groundcover establishment) would assist in reducing the risk of erosion associated with clearing slopes greater than 2%.
 5. The location and limited extent of slope greater than 2% made exclusion impractical for the proposed use.

TERM OF THE PERMIT

- H. When reading the original application for the 110th meeting on 22 August 2016, the Pastoral Land Board Members considered the detailed clearing operations for 2016-2018 for Princess Di and 3 Graces paddocks, with the remainder of clearing to occur between 2018-2026 and the comment '*leave to stabilize and pursue other infrastructure development in the interim before returning to progressively clear and develop remaining blocks*'. The Board observed the development was to be staged over an 8-10 year period (pages 10-11 application).
- I. The period of the Permit was not raised at the 110th meeting on 22 August 2016 as a result of the standard six year term being applied to NT Pastoral Land Clearing Permits, as previously endorsed by the Board. A permit was subsequently prepared with a six year timeframe, was circulated to the Board for endorsement on 1 September 2016 and was sent to the Lessee on 6 September 2016.
- J. In relation to the term, the Permit stated:

"EXTENSION OF TERM OF PERMIT:

The Permit Holders may apply to the Pastoral Land Board for an extension of the Term of this Permit, provided that:

- i. the Permit Holders have Substantially Commenced the Clearing Activities within the Commencement Period; and
- ii. the application for extension is submitted to the Pastoral Land Board in the approved form at least one (1) year before the Expiry Date.

The Pastoral Land Board may, in its absolute discretion, grant or reject the request, or grant the request subject to conditions.”

- K. At the 111th meeting on 13 October 2016 the Pastoral Land Board was provided with, read and noted supporting correspondence from the Lessee regarding the timeframe of the Permit. This correspondence was an e-mail from Mr John Armstrong dated 25 September 2016.
- L. The Pastoral Land Board also noted the correspondence from the Chairman to the Lessee dated 23 September 2016 outlining the reasons for issuing a six year permit which stated that this enabled the Board to monitor progress, and noted an extension could be granted when a more detailed timeframe and clearing plan for Bombing Range, Jims Block and South Banjo paddocks become available.
- M. The Pastoral Land Board discussed the clearing plan timeframe in the Original Application to occur over a ten year period and on 31 October 2016, provided a draft set of reasons for decision, confirmed by Out of Session Resolution 2/2016, to the Lessee to provide comment on, before making a decision.
- N. On 14 November 2016, the Pastoral Land Board received email correspondence from the Lessee, which included a covering email, letter and a Banjo Station proposed land clearing work program document, in response to the Pastoral Land Board’s draft set of reasons.
- O. At the 112th meeting on 15 November 2016 the Pastoral Land Board noted and considered the email correspondence sent by the Lessee on 14 November 2016.
- P. It is noted that the Members of the Pastoral Land Board comprise of pastoralists and a rangeland scientist with extensive experience in land clearing, business planning, land management, natural resource management and project management on a range of land systems and types. The Board used its collective knowledge to assess all the information provided to it with regards to the application over Banjo Station including the requirements involved in undertaking clearing works. The Members have firsthand experience at undertaking clearing works and understand the processes and challenges involved in such works.
- Q. The Pastoral Land Board discussed the term of the permit, noting and considering the Lessee’s correspondence at paragraph [N.] above, in addition to the Original Application and other supporting material listed earlier in these reasons. In considering the Lessee’s response, the Pastoral Land Board determined:
 - 1. Whilst the Board has the authority to set an appropriate term for a permit after assessing the applications and development plan of lessees, the Board is of the view that a period of six years ensures lessees apply to clear realistic areas of land that they have the capacity to manage within available resources at that time and also

guarantees best practice is established and milestones remain achievable when faced with shifting priorities over a set period.

2. The permit template was reviewed by the Board in 2015 with the term of permits increased from five to six years to accommodate the increase in clearing areas being applied for by pastoral land holders. There are sound reasons behind the six year term being a realistic timeframe and it is based on historical performance of lessees.
3. Whilst there is no legislative guidance under the *Pastoral Land Act* with regards to applications for land clearing permits, the Board is guided by the Objects of the Act, relevantly, to monitor the condition of pastoral land and prevent degradation or damage to the land and its indigenous plant and animal life.
4. On consideration of all the information provided to it for Banjo Station, the Board remains of the opinion that a six year term is appropriate and it does not agree to increasing the term for the permit to ten years as sought, noting extensions can be applied for if six years is insufficient to complete the works.
5. Non-pastoral Use permits were referred to by the Lessee. The Board is of the view that these permits are issued for 30 years, as stated in the *Pastoral Land Act*, section 89(1), to give a pastoralist long term security of investment on a pastoral lease and as approval for an ongoing activity. Land clearing for improved pasture is a shorter term project for approval to be granted within a set timeframe. Six year permits have been issued in relation to clearing ranging from 5 hectares up to 17,000 hectares.
6. The issuing of Permit No. PLC16/9-A to Banjo Station for a six year term meets the schedule of clearing provided by the Lessee on 14 November 2016. The detailed schedule of proposed land clearing provided on 14 November 2016 is over an eight year period, not the ten years originally applied for, however, clearing is not being undertaken for a three year period from 2020 – 2023 within Banjo Station, which reduces the actual work being undertaken to a five year period. The clearing program should be completed in a timely manner and the six year timeframe fits in with the actual clearing to be undertaken on Banjo Station as outlined in the provided plan.
7. The process of applying for an extension to the term of a Permit is simple, it is of no cost to the Lessee and only requires a letter of request to the Pastoral Land Board explaining the application to extend. There is a documented history of the Board extending permits when reasonable extension periods are required to enable the Lessee to complete works, if there have been events that have caused a delay, such as meteorological events, market instability, financial hardship, or change in ownership etc.

8. The approval to clear 6612 hectares of pastoral land had been granted by the Pastoral Land Board on 22 August 2016 as the consent authority under the *Pastoral Land Act*. The Board could see no reason why an extension to the timeframe would not be approved in future, given the initial approval to clear has been granted.
- R. The Lessee has requested that Permit PLC 16/9-A be dated to commence for the wet season 2017/18. The Pastoral Land Board is not convinced on the material provided and based on local knowledge that clearing cannot commence this year (2016/17). In any event, the Permit allows for commencement within two years of the date of the Permit, which is the date approved by the Board.
- S. The Pastoral Land Board determines to retain the six year term for Pastoral Land Clearing Permit No. 16/9 for the reasons noted in paragraph [Q.] above and issues Permit PLC16/9-A with a six year term.

DATED 15 November 2016



Chairman
Pastoral Land Board

DEFINITIONS:

In this Permit:

“Commencement Period” means the period of two (2) years of the date of this Permit.

“Expiry Date” means the period of six (6) years from the date of this Permit.

“Original Application” means the document entitled “*Application to Clear Pastoral Land (s.38(1)(h) Pastoral Land Act)*” submitted 24 May 2016.

“Property Inspection” means the property inspection of Banjo Station conducted by the Pastoral Land Board on 11 October 2016.

“Amending Documents” means the email submitted 14 July 2016 and letter submitted via email 9 August 2016.

“Pastoral Lessee” or “Lessee” has the same meaning as in the *Pastoral Land Act*.

“Substantially Commenced” and “Substantially Commence” means not less than 10% of the total area proposed for clearing under this Permit has been cleared.

**SCHEDULE 1
AREA OF LAND**

(refer attached drawing)

**SCHEDULE 2
SCHEDULE OF CONDITIONS**

CONDITIONS PRECEDENT

1. Prior to the commencement of works an Erosion and Sediment Control Plan (ESCP) is to be submitted to and approved by the Department of Environment and Natural Resources (DENR), and an endorsed copy of the plan will form part of this permit. All works are to be undertaken in accordance with the endorsed ESCP, to the satisfaction of DENR. The plan should detail methods and treatments for minimising erosion and sediment loss from the site during both the clearing and establishment phases. Erosion and sediment control information is available on the DENR website at <http://irm.nt.gov.au/soil/management>.
2. To avoid the spread of declared weed species, both within and off the property, a Weed Management Plan is to be developed prior to the commencement of works to the satisfaction of the DENR's Weed Management Branch. The proponent should contact the Weed Management Branch (Darwin office 08 8999 4567) for advice and support in the development of the plan.

CONDITIONS

3. Weed management and weed spread prevention activities must be employed throughout the clearing and pasture improvement phases of the proposed development to the satisfaction of DENR's Weed Management Branch. Ongoing herbicide treatment of weed species will be required on site until preferred species are established and maintained.
4. The clearing, clearing methods, pasture establishment, ongoing pasture and grazing management and ongoing environmental management (including erosion and sediment control) of cleared areas must be undertaken:
 - a. in accordance with the Original Application;
 - b. in accordance with the Endorsed Clearing Plan; and
 - c. to the satisfaction of the Pastoral Land Board.
5. The Permit Holder is required to ensure land management practices do not instigate erosion and to ensure that appropriate erosion and sediment control measures are employed throughout the development and establishment stages, including:
 - a. retention of buffer zones where appropriate and measures to address seasonal timing of works;
 - b. management of groundcover and minimisation of bare ground, crop layout and maintenance of natural sheet flow patterns;

- c. avoidance or removal of soil windrows or other surface modifications that create concentrated flow paths for runoff; and
 - d. use of erosion controls on access tracks where appropriate.
6. The Permit Holder must notify the Director Pastoral Lease Administration and Board, DENR before the commencement of each stage of clearing and on completion of the clearing as outlined in the Original Application.
7. The Permit Holder must take due care during clearing works and if any archaeological sites (Aboriginal or historic) are identified then works in the immediate area should cease and the Heritage Branch should be contacted for comment.
8. This Permit is subject to the Permit Holder's ongoing compliance with its obligations under the PPL.
9. Despite any term or condition of this Permit, the Permit Holder must at its own cost in all respects, comply with all laws, statutes and subordinate instruments, applicable to the clearing of pastoral land including but not limited to the following:
 - a. *Northern Territory Aboriginal Sacred Sites Act (NT)*;
 - b. *Territory Parks and Wildlife Conservation Act (NT)*;
 - c. *Weeds Management Act (NT)*;
 - d. *Bushfires Act (NT)*;
 - e. *Heritage Act (NT)*;
 - f. *Environmental Assessment Act (NT)*; and
 - g. *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*.
10. This Permit is at all times subject to existing rights, title and interests of all other persons (including any rights or interests registered on the certificate of title). The Permit Holder must comply with all terms and conditions of such existing rights, title and interests. The Permit Holder must not unreasonably or unduly interfere with, impede, restrict or limit the rights, title or interests of any person.
11. This Permit shall be revoked automatically upon the:
 - a. termination of the PPL; or
 - b. surrender of the PPL.
12. For the avoidance of doubt, a transfer of the PPL does not revoke this Permit.
13. The Pastoral Land Board may immediately revoke this Permit by written notice to the Permit Holder if the Permit Holder breaches any condition of this Permit and fails to remedy the breach within ninety (90) days after receiving notice requiring it to do so.

NOTES

1. Under the *Northern Territory Aboriginal Sacred Sites Act* (NT), entry onto and carrying out of work on Aboriginal sacred sites is an offence unless the work is done in accordance with an Authority Certificate issued by the Aboriginal Areas Protection Authority (“**AAPA**”). The Permit Holder must to ensure that all clearing complies with the requirements of that Act.
2. The Permit Holder is advised that there are statutory obligations under the *Weeds Management Act* (NT) to take all practical measures to manage weeds on the property. It is the responsibility of the Permit Holder to ensure that all clearing complies with the requirements of that Act. For advice on weed management please contact the Regional Weeds Officer, Department of Environment and Natural Resources (“**DENR**”) on telephone 8999 4567. The Permit Holder can also access information on the requirements of that Act on DENR’s website (<http://www.lrm.nt.gov.au/>)
3. Fire prevention measures are to be implemented in accordance with the requirements of the *Bushfires Act* (NT). A permit must be obtained before ignition of any felled timber in this area. It is the responsibility of the Permit Holder to ensure that all clearing complies with the requirements of that Act. Please contact the Regional Fire Control Officer of the DENR on telephone (08) 8976 0098. The Permit Holder can also access information on the requirements of that Act on DENR’s website (<http://www.lrm.nt.gov.au/>)
4. The *Heritage Act* (NT) protects archaeological places and objects, regardless of the level of documentation that the Department of Tourism and Culture (Heritage Branch) (“**DTC**”) has of such sites. It is an offence to undertake work on a heritage place or object without first obtaining the relevant approval under the Act. It is the responsibility of the Permit Holder to ensure that all clearing complies with the requirements of that Act. The Permit Holder can access information on the requirements of that Act on DTC’s website (<http://dlp.nt.gov.au/heritage/heritage-act>).
5. It is the responsibility of the Permit Holder to ensure that the proposal to clear pastoral land meets the requirements of the *Environmental Assessment Act* (NT). The Northern Territory Environment Protection Authority (“**NTEPA**”) administers that Act. The Permit Holder can access information on the requirements of that Act on NTEPA’s website (<http://www.ntepa.nt.gov.au/>).
6. It is the responsibility of the Permit Holder to ensure that the proposal to clear pastoral land meets the requirements of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). The Commonwealth Department of the Environment and Energy (“**DEE**”) administers that Act. The Permit Holder can access information on the requirements of that Act on DEE’s website (<http://www.environment.gov.au/epbc/index.html>).
7. Pursuant to section 119 of the *Pastoral Land Act*, a pastoral lessee who is dissatisfied with a decision of the Pastoral Land Board may appeal to the Pastoral Land Appeal Tribunal against the decision of the Board.