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Attn:
Director,
Lands, Planning,
Environment. NTG

Objection to an application to amend the nt planning scheme via rezoning of conservation zoned land within the Kulaluk area, referred to as 'perpetual lease 671'.

As a Sovereign Gulumirrgin (Larrakia) descendant, on behalf of the Board and members of the Larrakia Nation Aboriginal Corporation (LNAC) I write, under duress, to formally object to the rezoning of part of lots 5182 Town of Darwin & 8630 Town of Nightcliff, from a conservation zone (CN) to light industry (LI).

LNAC members are aware that this new application for rezoning has been submitted by Planit Consulting, on behalf of Gwalwa Darinki Association (GDA). We draw your attention to previous objections lodged by the LNAC for earlier rezoning applications on lands contained in 'perpetual lease 671' also lodged on behalf of GDA.

LNAC's membership now numbers well over 500 individuals who are directly related to the 8 larger 'Larrakia' family groups. Membership is available to all individuals, (and their children by direct descent) identified as legitimate claimants by the 'commonwealth statutory authority', the Northern Land Council (NLC), in the Kenbi Land Claim and Larrakia Native Title claim. Whilst this non-traditional structure, and its membership criteria, is far from ideal, it does at least provide a contemporary platform for its members to advocate for their rights and country.

ONGOING DISPUTES REGARDING 'OWNERSHIP' OF 'LARRAKIA' LAND:

As government is no doubt aware, we have continued to assert 'ownership' (as generally defined by non-Aboriginal culture), or, more correctly exclusive rights to all Gulumirrign (or 'Larrakia') land, identified as our traditional land and sea country, according to Aboriginal tradition and custom. These rights include exclusive rights to all the flora, fauna, minerals, air, airspace, billabongs, aquifers and waterways, on, in or above our traditional lands.

These exclusive rights have never been 'extinguished' by the 'crown' or 'commonwealth' as the 'crown' never had, nor does it currently have, exclusive rights to our land, under Aboriginal law. This can be further evidenced by the fact that visiting traditional Aboriginal people do not recongise the 'crown' as 'owning' the land now known as Darwin, they recognise it as land belonging to the 'Larrakia' people, under Aboriginal law. This acknowledgement of our 'ownership' of Darwin (and surrounds) from our Aboriginal neighbours, is still true today.

Aboriginal law, traditions and customs still override all other imposed governance structures in the country now known as Australia, although, even under this imposed alien governance structure, our rights to this country could be seen as 'common law' rights ie 'first in time, best in law', etc. So any assertions by the 'crown' or its representatives or agencies, to the effect that it holds exclusive ownership of any Gulumirrgin (or 'Larrakia') land, remains contested and rejected in totality by us.

All the land in the area now known as Darwin, Palmerston, Howard Springs, Berry Springs, Virginia, Noonamah, Gunn Pt, Cox Peninsula, Humpty Doo, Darwin River, and all the surrounding salt and freshwater areas, 'belong' to the direct descendants of the original Sovereign Gulumirrigin people, this is our birthright.

In relation to the land identified in this rezoning application, that birthright is further strengthened by those families with known historical and contemporary affiliations to the area, now generally referred to as Kulaluk. Those documented affiliations include, but are not exclusive to, current members of GDA, residing at Kulaluk.

Even when considering the question of rightful ownership of this land under your own 'crown law' it is a fact that this land, which includes all of Lots 8630 and 5182, surrounding native bush and coastal fringes, was 'given' back to affiliated 'Larrakia' people, many years ago, by your government as 'crown perpetual lease 671'. As such we believe that even under your system of law, our rights and interests should be upheld, by 'crown' laws that govern the granting of 'leases'.

Our rights and interests have clearly not been protected, and this situation has been allowed to continue by successive nt governments, despite our protestations, objections, protests and resistance. Perhaps legal action under your system of law will be our best option, to ensure we can continue assert our rights and interests in this land.

The NLC has also been very neglectful of our rights on this 'lease' so any legal scenarios would need to include taking them to task for their continued inaction in representing our rights and interests here. This inactions is despite the fact that the NLC receive funds, supposedly on our behalf, for this very purpose. The NLC have not consulted us for any matters relating to this land, for well over 10yrs.

ORIGINAL PURPOSE OF 'CROWN PERPETUAL LEASE 671':

The elders wanted the land protected and kept in its original natural state for their descendants to be able to enjoy the use and/or occupancy of the land, and for the flora and fauna to be protected from habitat destruction. They were very concerned about the destruction of country and culture via unrestrained developments, and unwanted incursions into traditional Gulumirrgin life. We continue to be concerned about this ongoing destruction today.

Those of us with direct descent from the Sovereign Gulumirrign people, preserve and maintain our full rights to this land, as such, we will continue to consider all 'legal' options, individually, &/or, collectively, to prevent the injustice of the continued discrimination against us, in relation to this and other Gulumirrgin land. We continue to assert our 'ownership' of, right to protection of, and full access rights to this all our land, under Aboriginal law.

We will continue to challenge the erroneous belief of the 'crown' that it 'owns' this land under 'crown law'. The 'crown' cannot prove that this, or any of our land, was ever ceded by any past or living authorised (under Aboriginal tradition) Gulumirrgin person/s. In fact our elders presented a now famous treaty to the 'crown', to challenge its assertions of ownership of our lands, resulting in one of the very first land claim under the Aboriginal Land Rights Act. As such, under Aboriginal law and 'common law', this land remains ours, as per our Aboriginal tradition and custom.

Given these facts, we have continued to challenge the assertions of the proponent/s (Planit/GDA), that 'crown perpetual lease 671' administered by GDA, equates to GDA being the sole property "owners" or having "leasehold ownership". Those people, including members of GDA, who identify as Gulumirrgin (or 'Larrakia') do have shared (exclusive) rights, along with other Gulumirrgin people, as dictated by Aboriginal custom, but they are not, and never have been the sole 'owners' of the land.

Whichever way it is presented - 'crown' or 'Aboriginal law - GDA do not have 'ownership' as asserted by Planit and GDA. It is also a fact that some members of this association are not Gulumirrgin descendants, and as such have no legitimate claim of 'ownership' of any our land, nor can they expect to receive any benefit from any activities undertaken on this land. This bluff of 'ownership' by GDA members, has never been accepted by the wider Gulumirrgin community, and never will be.

FALSE STATEMENTS & POTENTIAL FOR DESECRATION OF A SACRED SITE:

More importantly the proponent/s (Planit/GDA) have by this application, broken Aboriginal law, and possibly 'crown law', by falsely presenting an 'Authority Certificate Clearance' from the Aboriginal Areas Protection Authority (AAPA), that was originally issued to Planit/GDA in July 2012, for a 'legally' separate area of land, adjacent to the land in question.

This brazen attempt by the proponents, to falsely claim that they have obtained a 'sacred site clearance' for land identified in this rezoning application, is astounding and may become the subject of legal action by the LNAC, &/or, AAPA, etc. The NTG also has much to answer for, in relation to this document not being properly checked by the department, before being presented as valid as part of this submission.

So called 'red tape' exists for a reason, as we understand it governments have a duty to their tax payers to take all measures to indemnify itself against any legal actions that may result via the 'execution of its duties'. Fast tracking development applications in the nt appears to be a sure fire way to create situations, such as the one here, where if left unnoticed by us it could have resulted in many legal difficulties for the government. We will not hold our breath for any thanks for bringing this to your attention.

A quick look at the submission by Planit consulting, will reveal it is clear that the proponents have knowingly made false assertions, by reproducing a copy of a 'legal' document (the AAPA authority certificate) by including it in this application as "Appendix E". It is intended to portray a 'legal' sacred site clearance certificate for this site, however, it is not a valid clearance certificate, and should not have been allowed to be portrayed as though it is.

Other misleading and false assertions can be viewed in the same submission by Planit Consulting for example page 5 where AAPA is listed, amongst others, as having been consulted for this current rezoning application. Does government have a responsibility to ascertain the veracity of these statements? My investigations of this matter, with staff members of AAPA, concludes that AAPA has absolutely no knowledge of this current rezoning application. AAPA will be able to verify this fact.

Finally, perhaps the most shameful and misleading statement, is evident in the following paragraph (page 13 section 4.5 'cultural heritage') where the bold sections are exactly reproduced, as found in their formal submission. Quote;

"It is noted that the attached **issue of Authority Certificate** from the Aboriginal Area's Protection Authority found that no sacred sites are located within the proposed rezoning area. The Sacred Tree as noted within **Appendix A – Plan Set** will not be effected by this proposal. The Gwalwa Dariniki Association is the proponent of this rezoning application and as such is cognizant of the need to preserve these surrounding assets".

It is well known to all 'Larrakia' people, especially members of GDA, that there is a contemporary burial site very close to the area in question. Furthermore it is likely, but unknown, that historical burials may be located in areas outside the boundary of the current cemetery, perhaps even on the block being discussed. Even the falsely presented AAPA clearance certificate (which is for the block across the road), states the concerns we have raised in the past about the potential historical burials here.

The burial grounds are a place of high cultural significance for all 'Larrakia', we hoped it would remain protected, via the 'lease', but as recent events have demonstrated, this significant site it is once again under threat, by very the 'leaseholders' themselves. **We hereby request that government and AAPA begin the process of registering this area as a Sacred Site.**

With those facts in mind, and the history of the struggle to protect this land, it is impossible for us to comprehend the level of disrespect for our ancestors, demonstrated by Planit Consulting in this application, and prepared on behalf of, and presumably with the full knowledge of GDA. In regards to the latter, we are especially astounded by the actions of GDA, given that members of their own immediate family are in fact buried very close to the land that they are now applying to rezone.

Words cannot describe the shame, dismay, sorrow and pain we feel in knowing that some members of the GDA, would ever seek to disturb the resting places of our collective ancestors, in order to gain valueless money. The Planit Consulting company, who prepared this submission on behalf of GDA, claim to be ethical, yet this and other related applications prepared by them, demonstrates unethical behaviour and actions.

BIODIVERSITY & CONSERVATION VALUES:

As in our previous objections to proposed amendments to the nt planning scheme for conservation zoned land on 'perpetual lease 671', and with regard to the above statements, we reiterate the following points;

- Despite the inclusion of a contradictory environmental report, prepared by consultants "Ecoz & VDM Consulting" who were contracted by the proponents - we contest that area is of high local biodiversity and conservation significance. This is due to the proximity to the nearby mangroves, the ongoing decline of native vegetation in and around Darwin, and the presence of several threatened species. These threatened species were listed by the consultants "Ecoz & VDM Consulting", but strangely dismissed as likely to be unaffected by any future rezoning, in their final summary of potential impacts.

- The environmental consultants own 'ground truthing' (apparently the result of only one visit to the site) of the main vegetation cover, shows that the block in question is predominantly populated by remnant native vegetation such as a "pandanus community" which covers approx. 45% of the block in question. Although not identified as a 'community' in this report, we have noted the presence of other native plants such as mature white gum trees, black wattles, stringy barks, cycads and bush apple trees. This kind of habitat/community is generally referred to as open woodlands, though is not identified as such in this report, it covers a further approx. 10-15% of the block in question. Meaning that native plant species, in fact, is the dominant vegetation type on this block.

- It is true that there are invasive weeds on some of this block, and in other parts of the lease. With the addition of the illegal Minmirama 'stockpiles', and the total lack of weed management demonstrated by the 'leaseholders' the entire leased area needs a concentrated effort by 'Larrakia', the 'crown', the 'leaseholders' and interested members of the community, to control and remove them, as this is a conservation zone.

- Without immediate management, the weeds could become, but are not currently, the dominant species. It is misleading of the consultants to summarise the vegetation as; "…over 50% of it is described as introduced species (weeds)". LNAC has voluntarily undertaken some weed control work in the adjacent area, and would be happy to help manage the invasive weeds on this block as well, given the appropriate support and assistance to gain funding.

- In relation to issues of vegetation clearing we once again point out the inaccuracies and inconsistencies in the Planit submission, variously describing the area as; "….predominantly consisting of introduced species and invasive weeds. Very little comprises native species", and; "The site contains limited scrub regrowth dominated by commonly distributed species, and invasive weeds". See previous and above comments.

- In regards to fauna, and potential impacts, currently non threatened native fauna known to inhabit the area, includes, but is not limited to regionally vulnerable Varanus species (goanna's), Black & White Cockatoo's, Possums, Bandicoots, Quolls, fruit and cave bats, various reptiles, frogs and insects, including native bees, important for pollination.

- Since the invasion of cane toads, the impacts on some native fauna, such as goanna's, quolls and native frogs has been immense. The fact is that many local parks and reserves in and around Darwin, and bushland on this perpetual lease area, supports reasonable numbers of these vulnerable fauna. These fauna are now largely absent from more remote area's where cane toads have not been actively managed/controlled. Here on town, these 'urban island refuges' (fragmented native vegetation) are mostly devoid of cane toads, so they have and will remain critical habitat for the above mentioned fauna.

- On both of the above points regarding potential impacts on native flora & fauna, we reiterate our earlier statement; 'Without time, funding or opportunity to carry out full heritage, flora & fauna survey's in the area, nor the provision of such detail by the proponents, we can only state our insistence about these values, and challenge the proponents to prove otherwise' – which they have not in this submission.

- We note that NRETA has also highlighted the value of this remnant native vegetation patch, in relation to it's proximity to the mangrove forests nearby. Many species that inhabit or visit the mangroves for foraging, also inhabit or visit the woodlands, for shelter and foraging. The native bush must stay intact, to ensure the survival of these fauna

OTHER CONCERNS:

- In relation to issues of traffic management we still assert that problems already exist, with congestion, flow and potential for accidents, re entry/exit to the Larrakia Nation AC office and to the commercially operated sheds nearby. It is already an accident waiting to happen, so any more traffic here almost guarantees an accident will occur.

- Over 75% of the subject site is prone to seasonal inundation, as identified by the consultants. It would require a lot of work, and the need to bring in extra stable soils to mitigate the impacts of flooding and subsidence.

INTERNATIONAL CONVENTIONS:

Once again, we remind government of its international obligations, and advise that the granting of this rezoning application, and subsequent amendment to the nt planning scheme, will contravene a number of articles in the United Nations Declaration on the Rights of Indigenous People, including, but not limited to the following;

"Article 29 - Environment: **Indigenous peoples shall receive assistance in order to restore & protect the environment of their land & resources...."**

"Article 32 - Resource Development: **1. Indigenous peoples have the right to determine strategies for the development of their lands and resources.**

2. Statess shall consult in order to obtain the consent of indigenous peoples before giving approval to activities affecting their lands or resources...just compensation must be paid for such activities and measures taken to lessen their adverse impact.

3. States shall provide effective mechanisms for juts and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impacts".

We trust our objections and concerns raised here will be taken fully into account by government, when assessing this rezoning application.

Sincerely,

Donna Jackson – Senior Ranger & Member,
Larrakia Nation Aboriginal Corporation

20th June 2013