

**Submission to the  
Joint Standing Committee on Northern Australia**

**Inquiry into the destruction of 46,000-year-old caves at  
Juukan Gorge**

**and**

**Inquiry into the Opportunities and Challenges of the  
Engagement of Traditional Owners in the Economic  
Development of Northern Australia**

**Nurrdalinji Native Title Aboriginal Corporation ICN 9392**

**April 2021**

1. Nurrdalinji Native Title Aboriginal Corporation (“Nurrdalinji”) thanks the Committee for this opportunity to bring to the Committee’s attention the following matters.
2. Nurrdalinji was established to give effect to decisions made by native title holders from the Beetaloo Sub-basin region of the Northern Territory at a large meeting in Daly Waters in September 2020. We were registered with the Office of the Registrar of Indigenous Corporations on 9 October 2020. Our members are native title holders from 11 determinations of native title across the Beetaloo Sub-basin area. Our name “Nurrdalinji” is an Alawa language word meaning “mixed tribe”, which reflects the fact that our membership is drawn from a wide area and several different language groups.
3. The decisions made in September 2020 were to the effect that Nurrdalinji, once established, should replace the Top End Default Prescribed Body Corporate (TED PBC) as prescribed body corporate (PBC) for native title holders groups in the Beetaloo Sub-basin region. This purpose is reflected in Nurrdalinji’s formal objects, and native title holders have made efforts to have Nurrdalinji become the PBC. In the meantime, and since the TED PBC is not representative in any sense, Nurrdalinji is an important and legitimate vehicle for voicing the concerns and seeking to protect the interests of its members and native title holders in the Beetaloo Sub-basin area generally.

## Executive Summary

4. Many native title holders of the Beetaloo Sub-basin region are deeply concerned that while we have achieved formal recognition of our native title, we have no governance structure to facilitate planning our future and making our own decisions, and virtually no control or say over what happens on our country. That is due in large part to current representation and agency arrangements involving the Northern Land Council (NLC) (the native title representative body for the Top End), and the TED PBC.
5. This issue is coming to a head because of plans by companies including Origin Energy Ltd (Origin Energy) to intensively frack the Beetaloo Sub-basin. Refer for example to: <https://www.smh.com.au/business/companies/the-next-ferrari-of-shale-may-be-hiding-in-the-nt-outback-20190502-p51ja7.html> <https://www.afr.com/companies/energy/hottest-play-on-the-planet-beetaloo-explorer-aims-high-20201026-p568jo>
6. At present, Origin Energy is fracking our country under exploration permits granted some 15 years ago to other companies, and later assigned to Origin Energy. Our people did not understand what fracking was at the time they were advised to enter into agreements consenting to the grant of those exploration permits. How could they? The exploitation of unconventional gas reserves using extensive fracking was new and barely understood in Australia at that time. Many of our people are now worried about the risks of fracking, and especially about the risks to the interconnected subterranean waters that sustain all life there. Our people are also worried about the risks of contamination to country, our cultural heritage and all living creatures. We still do not know the extent of Origin Energy’s plans and what those plans might mean for the use of our water. Meanwhile, NLC continues to facilitate fracking in our country without proper consultation, with no genuine mandate and against the wishes of the majority.
7. Existing cultural heritage protection laws and practices appear to us to be inadequate to address the risks of fracking, especially on our country. Origin Energy and NLC are not consulting with all people whose interests may be affected by those risks.

8. Our people have raised these and other concerns with the NLC and Origin Energy on numerous occasions over recent years. Origin Energy hides behind the NLC. The NLC first ignored our concerns, and more recently has behaved disrespectfully and aggressively towards us. Many of us feel trapped by the NLC/TED PBC representation and agency arrangements, and we need urgent help to change those arrangements so that we are given respect as native title holders, and so that we can start to make decisions about our country and our future with proper advice from faithful representatives and agents.

## Top End Default PBC

9. The *Native Title Act 1993* requires native title groups to nominate a prescribed body corporate (PBC) to act as their agent in their dealings with the outside world. In most parts of Australia native title groups, having been recognised by a formal determination of native title, have their own PBC, which is owned and controlled by the group, and in which their own people are members and directors.
10. This is not the case in the Top End. To our knowledge, most, if not all determined native title groups in the Top End have been advised by the NLC to nominate the TED PBC as their agent PBC. But native title holders cannot be members or directors of TED PBC: its sole members and its directors are the members of the NLC's Executive Council.
11. In other parts of Australia native title groups instruct their representatives and advisors (such as the regional native title representative body) through their PBC. We are not able to do that because we have no control over TED PBC. In the Top End, the PBC and the representative body are virtually one and the same: the NLC. The NLC acts on our behalf as it sees fit, rather than in accordance with our instructions. We do have a passive role when the TED PBC/NLC makes native title decisions (being those that affect native title). The NLC/TED PBC is required by law to make sure it has the common law holders' consent before it makes such decisions. But who and how it consults, and what counts as "consent", is entirely up to the NLC/TED PBC, and we certainly have no opportunity under this arrangement to make our own plans and direct our own affairs.
12. In a submission to this Committee's *Inquiry into the Opportunities and Challenges of the Engagement of Traditional Owners in the Economic Development of Northern Australia* in January 2020<sup>9</sup>, the NLC answered questions and gave a detailed explanation about TED PBC. It explained that the TED PBC was intended as a stop gap default arrangement to satisfy compliance needs where there was little happening on country. It said:

*In 2012 the NLC's Full Council resolved to establish a default Prescribed Body Corporate (PBC) to provide an option for native title holders, particularly those in remote areas where their determination areas are likely to generate little or no income, whereby the requirements of the Native Title Act are fulfilled at no expense to them as all administration requirements are carried out by the NLC on behalf of the default corporation. Although open to any native title holding group, the default PBC was intended to particularly accommodate groups in remote areas who, owing to a lack of staff and resources, may otherwise have difficulty complying with their obligations under the Corporations (Aboriginal and Torres Strait Islander) Act (CATSI Act) and the Native Title Act. [emphasis added].*

The NLC explained further:

*There is a significant practical difference between a PBC for native title in a town or near a mine that has a source of income from development agreements and can thus employ staff to handle paperwork and administrative requirements, as against remote areas where there will be no such source of income and rarely any actual function for a PBC to perform.*

*... For most native title groups whose traditional lands traverse pastoral leases, unless and until there are future act proposals which generate income, their PBC's sole functions will be to hold their native title on trust and attend to annual compliance obligations.*

13. At the same time, the NLC also assured the Committee that this arrangement was presented to native title groups as an option only and that it “is committed to assisting native title holders to establish their own PBCs”.
14. But our experience shows that this is simply not true. In truth, we were never presented with any options except for the TED PBC. Many of our determinations were left without any PBC for years. When the NLC did act, the TED PBC arrangement was the only one on offer.
15. Our country is not a quiet backwater. The Beetaloo Sub-basin is now one of the most sought-after fracking fields in Australia. It is not the “remote area...likely to generate little or no income” as described by the NLC. A PBC in this area needs to do a lot more than “attend to annual compliance obligations”. We want our own PBC and we have told the NLC this. We have received no support whatsoever to establish one, and (as we set out below) when we have made our own efforts to do so, the NLC has done all that it can to squash our ambitions.
16. The real rationale behind the TED PBC arrangement, in our view, is that the NLC doesn't agree with PBC model established by the *Native Title Act 1983* and doesn't want it in its area. It prefers the monopolistic control that it currently enjoys under the *Aboriginal Land Rights (Northern Territory) Act 1976*, under which Aboriginal land is owned by Aboriginal Land Trusts that can only act if directed to do so by the NLC and that must, if the NLC directs, do exactly as they are told. Rightly or wrongly, this is the scheme that the Land Rights Act establishes. But it is not the governance, agency and representation model established by the Native Title Act and it is unacceptable that we are subjected to it. We don't want it.
17. The TED PBC arrangement may be administratively convenient for the NLC, but it denies Top End native title holders the opportunity to have any real control or say in matters affecting our country and the ability to control what is said by our representatives on our behalf. We are in urgent need of proper representation and agency arrangements, not the façade that is currently in place.

## Cultural Heritage Protection

18. The current NLC/TED PBC governance, agency and representation arrangements, in turn, deny us many opportunities to use existing protections (statutory and contractual) to ensure our cultural heritage is protected.
19. In addition, existing cultural heritage protection laws and practices appear to us to be inadequate to address the risks of fracking, especially on our country. That is because

Northern Territory law seems to assume that our cultural heritage consists of isolated sites, or “crosses on a map”. Our cultural heritage is connected by the waters that flow under the ground. Those waters hold us and our stories together.

20. The net result is we are not being consulted or listened to about the risks to our cultural heritage arising from interference with those waters. Fracking through aquifers has the potential to affect wide areas if something goes wrong. Origin Energy and NLC are not consulting with all people whose interests may be affected by those risks.

## Expressing Our Concerns to NLC

21. Our people have raised concerns with NLC for a number of years - both about fracking and about our representative and agency arrangements. The NLC first ignored us. Now it bullies and threatens us. The NLC does not act as our representative and agent.
22. In about 2018 our people sought the help of Original Power Ltd, a not-for-profit Aboriginal organisation with the objective of “building the power, skills, capacity and collective capability of our people to genuinely self-determine what happens in our communities and on our country”.
23. With the help of Original Power, from 2018 to 2020 we sent numerous letters to NLC setting out our concerns and requesting meetings to discuss our concerns. With one exception, we received no reply at all from NLC.

## Expressing our Concerns to Origin Energy

24. Frustrated by the NLC’s disrespect and failure to act as a proper agent, some of our people have travelled thousands of kilometres by bus to raise our concerns with Origin Energy at its annual general meetings in Sydney.
25. Some examples from the transcript of Origin Energy’s 2019 AGM follows.

### ***Unknown Attendee***

*All right. I'd like to thank the traditional owner of this country here we're standing on. And I'm going to introduce myself and tell you my story. My name, [ Ray Dimagedickson ]. I am from Maringar community. I am the [Foreign Language] for that country. And that's my mother country in the Northern Territory. And I'm standing here in this country as well out of respect to protect my country. My [ peer ] Muramalla, we all Muramalla in this room here, and I'll speak for Maringar, my country, my mother country, my Djowei country, my grandfather country.*

*Now to speak for other part of the country that we all share the water on the ground. I know where the water come from. I have a map in my head that was given to me by my father. He got that from my grandfather, and my grandfather got it from my great grandfather with knowledge coming from responsibility to look after that water. It is not Origin water. It is our water, and it has been since the beginning of time. These people standing here with me are Muramallas, too, they represent other part of Mutpura and Djiwali country, and that you call Beetaloo Basin.*

*For you, it is a resource to make money. For us, it is our spirit. It is our songline, it is our ceremony and it's our life, and it's our [Foreign Language]. It is our identity for who we are.*

**Gordon McKellar Cairns Independent Non-Executive Chairman**

*Thank you, sir, for that very dignified and impassioned speech. And also I'd like to thank you also for the way that you conducted that protest. Let me be as absolutely clear as I possibly can be on the record. Our exploration for gas will not destroy land or poison water. Now I respect that there are a range of views on resource development. However, Origin would simply not be doing what it's doing if it led to an outcome that destroyed land or poisoned water. Protecting water and the land is at the heart of almost every conversation we have about exploring for natural gas. And we do so in a responsible way without harming the environment. You have our word on that. [emphasis added]*

**Unknown Attendee**

*Can I just say this? We're the expert too in our country. We've got the knowledge of our land and water. We know the land better than anyone else in this country. And the people that are in power in aboriginal law is the people that [Foreign Language] the songline to their country. They are the people that have the power and the authority over the people in our community and over the land in our community. The people that have the [Foreign Language], they have the power and the authority. Can I ask you, have you seen people in the community that have the power and the authority over their land and people?*

**Gordon McKellar Cairns Independent Non-Executive Chairman**

*Well, actually the reverse is true to what you said. We actually deal with the people who are recognized as the traditional owners of the land. We don't decide who they are.*

26. Anticipating further expressions of concern from Beetaloo native title holders, in his opening speech at the 2020 Origin Energy AGM, Chair Gordon Cairns made the following statement:

*We work with the Northern Land Council to engage with the traditional owners who are the native titleholders and claimants who may speak legally and culturally for the areas where our activities are proposed. We have had on-country meetings with them this year as well as on site following the resumption of exploration. And they have been working with us on sacred survey sites and other clearances. I am very confident in the way we engage with the traditional owners and with our processes for engagement, guided by the principles of free, prior and informed consent.*

27. We have had little if any advice from NLC about the fracking industry's plans for the Beetaloo Basin, or even about fracking and its risks to our country, our waters, our people and life in the Beetaloo. It is left to Origin Energy's Chairman to assure us that fracking "will not destroy land or poison water", and will be undertaken "without harming the environment".

## Nurrdalinji

28. Having tried without success to persuade NLC towards a respectful and cooperative working relationship, in 2019 we asked Original Power to help us arrange a meeting of Beetaloo native title holders. This meeting took place in Daly Waters on the weekend of 19 and 20 September 2020. This was the first time that Beetaloo Sub-basin native title holders had met together for as long as anyone can remember.
29. The Daly Waters meeting was attended by representatives of 11 native title determination groups across the Beetaloo Sub-basin area. Several times we invited NLC representatives to attend the meeting, and also to help with its organisation, but there was no response to our invitation and request, and no representative from the NLC attended the meeting.
30. The meeting made unanimous decisions to the effect that:
  - a. a new Aboriginal Corporation to be called Nurrdalinji Native Title Aboriginal Corporation (**Nurrdalinji**) should be established;
  - b. Nurrdalinji should replace the TED PBC as the agent PBC for 9 of the 11 determinations (with a further meeting for the native title holders of the remaining 2 determinations – Hayfield and Shenandoah – to occur later due to sorry business); and
  - c. Nurrdalinji should replace the NLC as native title holders’ representative under the exploration agreements with Origin Energy, and should negotiate a more balanced and respectful arrangement about how NLC represents Beetaloo native title holders in other matters.

We also adopted a short statement of concerns about gas exploration and about the adequacy of the advice and assistance we have been receiving.

31. Still hoping to gain the NLC’s support for our wishes, one of the meeting’s co-chairs wrote following the meeting to the NLC’s Executive Council/TED PBC Directors. **Annexed** is a copy of:
  - A. a letter dated 25 September 2020 from Ms Janet Gregory to the NLC Executive Council members, and
  - B. a letter dated 28 September 2020 received in reply from NLC Executive Council members to Janet Gregory.

This was the first response we had received to any correspondence since January 2019.

32. In December 2020, in accordance with the decisions made at the Daly Waters Meeting, a number of selected Beetaloo native title holders then made an application for Federal Court approval of the removal of TED PBC and its replacement with Nurrdalinji. The NLC, on behalf of the TED PBC responded by threatening indemnity costs against each of the applicants. Pressure from the NLC led one of the applicants to withdraw from the proceedings and discontinuance became inevitable.
33. Whatever the NLC may say publicly about the right of native title holders to choose their own PBC, its actions tell a different story. As we have said, our experience amply demonstrates that it is simply not true that the NLC supports native title groups to establish their own PBCs.

34. At every stage, despite the depth of our feelings and concerns, we have treated NLC with courtesy and respect and expected it to act as our faithful agent and representative. In response, NLC treats us with disdain and without respect for us as native title holders or as their principals. Some of our members report having been warned that if they associate with Nurrdalindi, then they will receive no help or discretionary benefits from the NLC.
35. Our people, our country and our heritage are under real pressure and we can no longer tolerate the current arrangement under which our representative the NLC directs us, rather than accepting and acting on our instructions.

## The Current Situation

36. We have only ever sought basic respect, and the same level of control over our country as native title holders enjoy elsewhere in Australia.
37. But following the discontinuance of the Federal Court application to approve the appointment of Nurrdalindi as PBC for Beetaloo native title groups, we are now in the same position we were in before, with no greater ability to understand and respond to, and ensure our cultural heritage is protected from, industry's plans for the Beetaloo Sub-basin.
38. The situation is now urgent, there are sacred sites that we fear are currently threatened by gas development but we have no way of having our concerns heard. We seek the Joint Parliamentary Committee's assistance to improve this unacceptable situation. We would be pleased to discuss these matters with members of the Committee.

**Johnny Wilson**  
Chairperson



## Annexure A

25 September 2020

Greetings my brothers and sisters.

I am writing to you on behalf of the board of a new corporation to be called Nurrdalinji Native Title Aboriginal Corporation (Nurrdalinji NTAC), in your capacity as the Executive Council of the NLAC and as the members and directors of the Top End (Default PBC) RNTBC.

On the weekend of 19 and 20 September 2020 a meeting was held in Daly Waters by native title holders for the Amungee Mungee, Beetaloo, Hayfield, Kalala, Newcastle Waters/Muranji, Nutwood Downs, Shenandoah, Tandyidgee, Tanumbirini, Daly Waters Township, and Ucharonidge native title determinations (Native Title Determinations). Together with Mark Raymond, I chaired that meeting.

At the meeting we decided unanimously to establish an Aboriginal corporation, Nurrdalinji NTAC, to replace the Top End Default PBC as our agent Prescribed Body Corporate for 9 native title determination areas, so that we can take more control of our native title and our country. Together with 6 other native title holders, I was appointed as a director of Nurrdalinji NTAC.

We invited the CEO and others from our native title representative body, the NLC, to attend the meeting. We are disappointed and sorry, but not surprised, that we received no response and that no representative of NLC attended the meeting.

As you know, oil and gas companies are keenly interested in our country, and have plans to turn our country into one of the largest oil and gas fracking fields in the country. We are concerned for our land and waters, and for our people and all creatures who live here. We have made many attempts to raise our concerns with the NLC over a number of years, but our communications with the NLC have gone largely unanswered.

When your Chair (with the CEO) visited Elliott last year for the first time in a decade or more, his message was that we should stop complaining. It was then that we finally understood that we needed to take action ourselves.

Fracking companies are operating on our country under exploration agreements signed decades ago. When these agreements were signed we didn't know what fracking involved, or that these agreements would allow them to frack our country in 2020.

It is true that under whitefella law native title procedural rights are not as strong as the veto rights under the *Aboriginal Land Rights Act*. That is one reason why we need to take control of our native title, rather than just leave it in the hands of white lawyers.

We have decided that until our new PBC is fully set up, approved and operating, we are not talking with Origin Energy or any other fracking company. Please make sure that all NLC staff are aware of our decision, that they respect it, and that they pass our decision on to the Northern Territory Government as well as to oil and gas companies including Origin Energy.

As your CEO told a parliamentary committee last year, Top End Default PBC is intended for native title groups in remote areas where there is little mining or commercial activity, and where native title holders don't have the resources to manage their own PBC. None of those things apply on our country. We need a more fit for purpose PBC. We need to take greater control over decisions being made on our country. Your CEO has said that the NLC is committed to assisting native title holders establish their own PBCs. So we ask that you co-operate with us and support our upcoming court action, and direct NLC staff to also cooperate and to support our court action, for approval to replace Top End Default PBC with Nurrdalinji NTAC.

We have accepted the commitment of Original Power Ltd to do its best to support us while we get Nurrdalinji NTAC fully established and operating. We ask that the NLC also support our efforts.

I want to relay to you some of the words we decided on at our meeting, concerning our relationship with the NLC. We agreed unanimously to:

- 1. acknowledge and appreciate the NLC's historical role in fighting for native title and achieving our native title determinations, and*
- 2. acknowledge the NLC's position as the peak representative organisation and political voice for Aboriginal people in the Top End and its ongoing functions as the recognised native title representative body.*

We will also ask the NLC to continue to advise and represent us and Nurrdalinji NTAC in relation to native title future acts other than anything to do with Origin Energy's petroleum EPs numbered EP76, EP98 and EP117.

We would like to make an agreement with NLC about how NLC advises and represents us in the future, but we want to deal with Origin Energy ourselves.

We welcome your support, and we look forward to working with you in the future for the good of our people.

Yours sincerely,

Janet Sandy (Gregory)

## Annexure B



28/09/2020

Ms Janet Sandy (Gregory)  
C/- 'Original Power' ACN 627 048 373

Dear Janet,

### PROPOSED INCORPORATION OF NURRDALINGI NATIVE TITLE ABORIGINAL CORPORATION

We acknowledge receipt of your letter dated 25/9/20 proposing that the role of the Top End Default PBC be taken over by a new corporation to be called Nurrdalingi Native Title Aboriginal Corporation. You advise that you have been appointed a director of the new corporation. We understand from the fact that you are the person who signed the letter that you have and will continue to have authority and governance responsibility in the management of its affairs.

We note with some concern that after stating that the reason for the change was so that "we can take more control of **our** native title and **our** country", you go on in the letter to use language which reflects your opposition to fracking. Your views in that regard are well known, and it appears that they are shared by Original Power, the entity whose assistance you have sought to establish the proposed new PBC.

You are absolutely entitled to have negative views about fracking. We respect those views and some of us may share them. But as the directors of the NLC default PBC our job is to properly represent the wishes in particular of the senior decision makers from the estate groups whose country will be affected.

The difficulty faced by the NLC and ultimately by ourselves as the directors of the Top End Default PBC, is that as things there are some differences between groups and families about what should happen, about who properly speaks for particular areas of country, and about who is entitled to compensation payments for work being done on country.

These sorts of differences are not unusual throughout the Top End PBC area, but it means that there is work to be done to try and bring people together. It will be difficult for that work to be successfully carried out by a corporation which already has a settled anti-fracking position. When you use the words "our country" we are not sure whether you are referring to your own family's country or also for country which can only be spoken for by other people.

While there some people amongst some of the native title holder groups who share your anti-fracking views, for the time being you are in the minority when it comes to the areas where exploration drilling has taken place and compensation money has been paid. This makes it all the more important that any PBC responsible for those areas does not adopt or promote a particular position in relation to whether commercial gas extraction should proceed.

It is true that things are at an early stage and that positions and numbers may change. The NLC is committed to ensuring that independent and objective specialist information is provided to the native title holders for all estates within the exploration permit areas, but in particular those where Origin indicates it is most likely that commercial extraction will take place. It is important that for those who are undecided or who currently favour a commercial development outcome, that the PBC which is supposed to be representing them not be seen to have taken sides.

We Executive Council members are all responsible for and focused on this job, but we will be listening



carefully to and supporting our Executive Council member from Elliott. Part of his everyday life as an NLC representative for all groups in his community and neighbouring communities involves dealing with the stresses and tensions that are being raised as a result of at times aggressive lobbying and campaigning.

Decision-makers within the relevant native title holder groups will need to decide whether environmental risks can be managed and are outweighed by economic and other opportunities for desperately poor and disadvantaged families. It is extremely unlikely that they will in their lifetimes get a second chance of this kind. That doesn't mean that they shouldn't and won't decide to oppose a progression from exploration to commercial gas extraction, but it is important that they do not feel pressured by outsiders (Indigenous or otherwise).

While consultations across all 9 of the native title determination areas you have mentioned in your letter haven't progressed as quickly as we would have liked, the NLC has earlier in the year arranged for a consultant to undertake major anthropological review.

Part of the reason for this was to revisit and confirm information from one of the most senior native title holders (and holders of cultural knowledge for other groups). The subsequent interaction with Pompey Raymond by NLC staff has also touched on the calling by Original Power of your meeting at Daly Waters. Pompey Raymond has expressed disappointment with the process which has been adopted, and said that he does not support the change you are proposing.

We understand that Mark Raymond did not regard his chairing of the Daly Waters meeting as meaning that his own family's country was to be included in the area to be covered by the proposed new PBC. In any event he supports the position being taken by his father.

We want to make it clear that over the last two years the NLC has already been working towards the establishment of a corporation which over a period of time could transition to becoming a PBC for those areas which are affected by exploration and any subsequent commercial gas extraction. It was contemplated that the new corporation could undertake some other roles and tasks and establish its governance effectiveness and administrative capacity before taking on the PBC role. The NLC will be consulting with native title holders about how best to proceed from here, and in particular whether the incorporation process should be fast-tracked.

As regards your own family's country, if you want consideration to be given for Nurrallindji NTAC to become the default PBC just for that area, we will consider our position further in relation to that.

Yours sincerely,

Samuel Bush-Blanasi  
Chairman of the Northern Land Council

~~Matthew Ryan~~  
West Arnhem Executive Member

Djawa Yunupingu  
East Arnhem Executive Member

~~Christopher Neade~~  
Borroloola Barkly Executive Member

~~Grace Daniels~~  
East Arnhem Executive Member

Helen Lee  
Borroloola Barkly Executive Member

Brian Pedwell  
Victoria River District Executive Member

~~Bill Danks~~  
Darwin Daly Wagait Executive Member