



**NORTHERN
LAND COUNCIL**

Our Land, Our Sea, Our Life

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23 August 2021

Our ref: NLC-871-391-953

Senate Environment and Communications References Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Attention: Stephen Palethorpe
Committee Secretary

By email only: ec.sen@aph.gov.au

Dear Mr Palethorpe

Inquiry into Oil and Gas Exploration and Production in the Beetaloo Basin – Answers to Questions Taken on Notice by the Northern Land Council

In this letter to the Senate Environment and Communications References Committee, the Northern Land Council (NLC) responds to questions taken on notice during the public hearing on 2 August 2021 in the Committee's inquiry into oil and gas exploration and production in the Beetaloo Basin. The responses contained in this letter are suitable for publication.

1. Exploration Permits EP 187 and EP 184

Question:

CHAIR: Senator McCarthy, have you got a follow-up question?

Senator McCARThY: I have, thank you. Mr MacDonald and Mr Kilduff, you can take this question on notice if it's preferable. Can I just go back to the Beetaloo negotiations with respect to Empire Energy EPs 187 and 184? I want to understand, firstly, the time line of when those negotiations took place and, secondly, the *information* that was provided about the implications of fracking, if you could take that on notice.

Mr MacDonald: We're happy to take that question on notice and provide you with a detailed response.

Response (regarding EP 187):

- The application for EP 187 was made on 12 April 2010 by Imperial Oil & Gas Pty Limited (**Imperial Oil & Gas**), a wholly-owned subsidiary of Empire Energy Group Limited. Imperial Oil & Gas Pty Limited.

Katherine	Jabiru	Nhulunbuy	Borroloola	Ngukurr	Tennant Creek	Timber Creek	Wadeye
P.O. Box 396 Katherine NT 0851 P: (08) 8971 9899 F: (08) 8972 2190	P.O. Box 18 Jabiru NT 0886 P: (08) 8938 3000 F: (08) 8979 2650	P.O. Box 820 Nhulunbuy NT 0881 P: (08) 8986 8500 F: (08) 8987 1334	P.O. Box 453 Borroloola NT 0854 P: (08) 8975 8848 F: (08) 8975 8745	P.M.B. 85 via Katherine NT 0851 P: (08) 8975 4755 F: (08) 8975 4601	P.O. Box 55 Tennant Creek NT 0861 P: (08) 8962 1884 F: (08) 8962 1636	43 Wilson St Timber Creek NT 0852 P: (08) 8975 0789 F: (08) 8975 0664	Lot 788 Kanarlida St Wadeye NT 0822 P: 0439 830 435

- The area of EP 187 covers parts of Aboriginal freehold that is held by the Mambaliya Rumburriya Wuyaliya Aboriginal Land Trust under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (**Land Rights Act**).
- Pursuant to its obligations under Part IV of the Land Rights Act, the NLC proceeded to conduct consultations with the traditional Aboriginal owner and affected groups.
- The NLC consulted traditional Aboriginal owners and affected groups through May, October and November 2011, including at a well-attended meeting in Borroloola on 18 May 2011 to which all members of traditional owner and affected groups were invited.
- Through October and November 2011, the NLC facilitated comprehensive sacred site surveys with senior site custodians from the traditional owner groups.
- On 7 and 8 November 2013, the NLC conducted final consultation meetings, where the traditional Aboriginal owners consented to the grant of EP 187 over certain parts of the original application area. Significant parts of the original application area were excised from grant where sacred sites had been mapped in the course of the recent surveys.
- EP 187 was granted on 20 March 2015. Since then, prior to any proposed program of works on the permit area, the NLC has facilitated work program meetings with company representatives, to which all traditional Aboriginal owners have been invited.
- Following the lifting of the Northern Territory Government's moratorium on hydraulic fracturing, and in between COVID-related lockdowns, work program meetings have occurred on 10 November 2018 and 11 November 2020.
- On 12 November 2020, senior traditional Aboriginal owners, as nominated by their families, participated in an inspection of the Carpentaria-I wellsite on the permit area.

Response (regarding EP 184):

- Imperial Oil & Gas also holds EP 184. Unlike EP 187, which covers parts of Aboriginal land subject to the Land Rights Act, the application for EP 184 was made in relation to areas of Limmen National Park, pastoral leases, or Crown land which at the time were subject to claims under the *Native Title Act 1993* (Cth) (**Native Title Act**).
- Imperial Oil & Gas lodged its application for EP 184 on 12 April 2010. The notification date of the pending grant of EP 184 under s 29 of the Native Title Act was 25 August 2010.
- The grant of EP 184 was a future act which attracted the right to negotiate provisions under Subdivision P of Division 3 of Part 2 of the Native Title Act. The permit area covered parts of the following registered polygon native title claims:
 - NTD6016/2000 (Lorella Downs polygon)
 - NTD6031/2002 (Lorella-Nathan River polygon)
 - NTD6030/2000 (Billengarah polygon)

- NTD6031/2000 (McArthur River polygon)
- NTD6001/1997 (St Vidgeon's polygon).

The native title parties who exercised the right to negotiate were the applicants for these registered claims. Today, these claimed areas are subject to approved native title determinations made by the Federal Court.

- Initial consultations with native title holding groups were held through May 2011 in Borroloola. Sacred site surveys with senior site custodians were facilitated by the NLC through February 2013.
- Decision-making meetings were facilitated by the NLC on 25 May 2013 (Borroloola) and 12-15 June 2013 (Minyerri, Ngukurr, Beswick, Urapunga and Katherine).
- EP 184 was granted on 21 August 2013.
- Further sacred site surveys occurred in April and May 2014. Sacred site zones were excised from work program areas pursuant to the company's agreement with the native title parties.
- Initial work program meetings were held on 22 May 2014 (Borroloola) and 29 May 2014 (Ngukurr).
- During the 2014 Dry Season, Aboriginal cultural monitors nominated by the native title holding groups participated in EP 184 exploration fieldwork, including the monitoring of drilling activities.
- Since 2016, Imperial Oil & Gas has not sought to progress any further exploration work programs in relation to EP 184, so no further consultations with native title holders have been required.

Response (regarding information):

- Much of the information exchanged with traditional owners and native title holders regarding fracking was done so orally. With the assistance of cultural advisers and translators, NLC lawyers and mining officers presented information to groups, answered questions, and consulted with constituents about their views and concerns.
- During the course of extensive consultations which the NLC undertook in relation to EP 184 and EP 187 (as set out in the above timelines), the NLC presented detailed, factual and unbiased information in relation to the implications of fracking, in accordance with its representation and agreement-making functions under the Land Rights Act and Native Title Act.
- Information presented by the NLC at these consultations sought to accurately describe the known risks associated with fracking and other petroleum exploration activities, and the regulations and methods available for mitigating those risks. This provision of information and consultation about fracking occurred on numerous occasions during the application phase in relation to post-grant work programs.

- On our files we have located consultation aids that were used by NLC officers at the initial consultation meeting on 18 May 2011 and at an EP 187 decision-making meeting on 7 November 2013. We have attached a copy of one of these consultation aids to this letter as **Attachment A**.

2. Land Council records of traditional Aboriginal owners

Question:

Senator McCARTHY: Thank you. I want to go to your annexure as well. I've just had a read while the other senators were asking questions. I see here in the NLC response, at point 1, in relation to traditional ownership, you make reference to Justice Gray's report. I think it's important for the committee to understand this. Justice Gray is the Aboriginal Land Commissioner. In that report, it's identified who the traditional owners—ngimirringki and djunggayi—are. Does the Northern Land Council only refer to traditional owners after a claim, such as a land claim has occurred? I'm just wondering about descendants after that.

Mr Wells: As I understand your question, it's asking whether the NLC records continue after the land claim and whether we continue to research who traditional Aboriginal owners are after a land claim.

Senator McCARTHY: That's correct, thank you. When I saw this, I thought I would be interested to understand it more broadly, not just in relation to this particular inquiry. What is the process for ongoing recognition?

Mr Wells: It's a good question in the sense that it speaks to our processes. The land claims are just a moment in time, and the records of traditional owners that are considered by the land commissioner form a part of the NLC records, but the NLC continues to do research, continues to compile genealogies and continues to consult with groups about membership. It's just the beginning, rather than the end, of that process of identifying TOs.

Senator McCARTHY: What if someone says that they have a relationship, and it's their grandmother? In this case it was Ms Dank, obviously, but I'm thinking even in regard to when we did the land claims just around Borroloola. That was back in 1992, and it wasn't complete until 2005. I just wondered how that next-step process takes place. By all means take that on notice. I think it will be good for the committee to be aware of that when we are challenged with evidence from witnesses who say that they are TOs.

Mr Wells: Yes.

Senator McCARTHY: Thank you.

Response:

- The NLC compiles and maintains detailed records regarding the membership of the majority of Aboriginal groups who have interests in the NLC area, whether under the Land Rights Act, the Native Title Act, or both.
- As discussed in the public hearing on 2 August 2021, much of this information is initially compiled in the course of land claims before the Aboriginal Land Commissioner or native title claims before the Federal Court. In each case, the NLC must consider the traditional laws and customs by which rights to land are held and inherited, and it must develop detailed genealogies of the claimant groups.
- This genealogical information is then constantly maintained by NLC anthropologists. A key task of NLC anthropologists is to regularly check in with constituents about their family tree, and to continue to add data about lower generations to the NLC records, as time goes by.

- At any stage, NLC constituents are entitled to request access to the genealogical records regarding themselves and their families. They can attend NLC offices and scrutinise the relevant records, assisting anthropologists to add new information or correct errors. This is a regular occurrence, and a fundamental part of the work that the NLC does as a Land Council.

3. Cost recovery

Question:

CHAIR: I've just got one final question, because we are rushing up against the clock. I'd like to know whether the Northern Land Council has received any payments from Empire, from Origin Energy or from any other fracking companies to undertake consultation.

Mr MacDonald: Thank you for the question. The NLC has a cost recovery policy and we operate on a cost recovery basis, so the direct costs for the meetings themselves are recovered as guided by our cost recovery policy.

CHAIR: Would you be able to take on notice a list of the cost recovery invoices that you've had to submit to Empire, Origin or any other fracking companies? I just want the dates, the amounts and the company.

Mr Kilduff: We'll have to take it on notice, I think.

CHAIR: Of course. I'm asking you to take it on notice as we'd like that information.

Mr Kilduff: Yes, we'll respond.

Response:

- Consistent with s 33A of the Land Rights Act and the parameters of its native title programme agreement with the Commonwealth, the NLC generally adopts a “user-pays” approach to services provided in connection with proposals from mining or petroleum companies – whether under Part IV of the Land Rights Act or Part 2 of the Native Title Act. Please see as **Attachments B and C** current NLC policies regarding these matters.
- At all stages, proponents are explicitly advised – and must agree – that costs are recovered by the NLC without any expectation regarding the outcomes of negotiations. Whether or not a negotiation results in an agreement does not affect the operation of the NLC’s cost-recovery policy.
- Revenue from the rendering of services to external parties is recorded for each year as a separate revenue line item in the financial statements which appear in the NLC’s Annual Reports. Prior to publication, these financial statements are subject to a complete audit by the Australian National Audit Office. The most recent Annual Report of the NLC, for the 2019-20 financial year, records a total of \$2,594,000.00 in revenue from contracts with non-government parties. I am advised by the NLC’s Finance Department that approximately \$469,657.58 from this amount was paid by proponents under the NLC’s cost-recovery policy.
- On 17 April 2018, the Northern Territory Government’s moratorium on fracking was lifted, following the final report from the Pepper Inquiry and the Northern Territory Government’s commitment to adopt all of the recommendations contained in that report. Since that point, the total amounts invoiced under cost recovery agreements to petroleum companies actively undertaking exploration activities in the NLC area are as follows.

<i>Year</i>	<i>Amounts (inclusive of GST)</i>
2018-19	\$406,651.71
2019-20	\$94,078.44
2020-21	\$1,921,766.26

- Without warranting that the data in this table is entirely free from error, the NLC has made every reasonable attempt to provide information that is accurate. The complete list of invoice particulars that is requested by the Committee Chair contains information that is subject to obligations of confidentiality under the NLC's cost-recovery agreements with the respective companies. This information may be commercially sensitive for those companies. The NLC has therefore sought to provide the list separately, as evidence to be taken in camera.

It is our sincere hope that the responses contained in this letter are of assistance to the Committee in its inquiry.

Yours sincerely

Joe Martin-Jard
CHIEF EXECUTIVE OFFICER

ATTACHMENT A

**Attachment to letter from Northern Land Council to
Senate Environment and Communications References Committee, 23 August 2021**

CONSULTATION AID – FINAL MEETING

EP(A) 187 on the Mambaliya Rrumburriya Wuyaliya Aboriginal Land Trust

Imperial Oil & Gas Pty Ltd

NLC Borroloola Regional Office, 7th November 2013

What is today's meeting all about?

Today's meeting is being held so that Imperial Oil & Gas can ask permission from the Traditional Aboriginal Owners to look for oil and gas on land over the area of land shown on the map at the end of this document (see last page) - The NT Government calls this land EP(A) 187, you can see a large map of the EP(A) 187 area at the front of the meeting. Today is a Final Meeting for EP(A) 187, at today's meeting traditional owners will be asked if they are interested in having this oil and gas business on EP(A) 187, the NLC will explain to you about how Imperial Oil & Gas intends to look for and maybe one day produce oil and gas on your country.

At today's meeting Traditional Owners will need to make a final decision about whether to say 'YES' or 'NO' to an oil & gas exploration agreement for EP(A) 187. At today's meeting the NLC will show you the results of the Site Survey for your review and approval. At today's meeting the terms of the Agreement that has been negotiated with the Company for EP(A) 187 will be explained to traditional owners. An NLC Lawyer is here today to explain this Agreement to you and you can ask any questions that you have about this agreement. If anyone has any questions or if you do not fully understand something that is talked about at today's meeting please ask the NLC Staff to explain this to you again because it is very important that everyone understands what is being talked about today. Today's meeting is a good opportunity to ask questions to the Company about their plans for your country.

Your Rights

Under the Aboriginal Land Rights (Northern Territory) Act 1976 (the "Land Rights Act"), Traditional Aboriginal Owners have full control over development on their country on Aboriginal Land Trust land such as with EP(A) 187. Companies that want to explore for oil & gas on

Aboriginal land must ask permission of traditional Aboriginal owners and must accept their decision.

You are identified as the traditional owners of the land over EP(A) 187. At today's meeting you are being asked to decide if you want this oil and gas business on EP(A) 187 and if you want to enter into an Agreement for oil and gas exploration over your country on EP(A) 188.

Today, you are being asked to agree to Oil and Gas exploration with Imperial Oil & Gas over EP(A) 187. If you agree to this proposal then you may say 'YES' today. If you do not want to have oil & gas exploration and production over your country, then you may say 'NO' today.

If you say **NO** at today's meeting, then Imperial Oil & Gas must go away for 5 years before they can ask again for permission to explore the part of the land to which you have said no.

If you say **YES** today, then the Company will have the right to explore for, and one day maybe to produce oil and gas on EP(A) 187. If traditional owners say yes and the tenement is granted the Company may not enter onto any part of EP 187 that has been blocked out from the Site Survey as shown on the map at the end of this document, this is called 'No-Go land' or 'non-consent land'.

What happens if we say yes to the agreement and agree to exploration?

It is very important to understand that if you say 'YES' to exploration on your country you are also saying 'YES' to production on this land. Oil and/or gas production may not happen, but it will happen if the Company finds enough oil and/or gas to make money. If the Company does find enough oil or gas to make money then we will need to have further talks and come back to the Traditional Owners to make a Production Agreement.

The Oil and Gas Company

The company which has applied for EP(A) 187 is called 'Imperial Oil & Gas. Imperial Oil and Gas is owned by another Company called Empire Energy from the USA. Imperial Oil and Gas was established principally for large scale shale gas exploration in Australia. Imperial Oil & Gas also hold the rights to explore for oil & gas over the neighbouring tenement (EP 184). Imperial Oil & Gas Director and CEO John Warburton is their representative and he is here today to talk with

TOs about their plans for EP(A) 187 . This is a good chance for you to talk with him and ask questions to the company about their plans for your country and to ask questions to the Company.

How will The Company explore for shale gas?

(A) Initial Stage –Geological mapping, seismic surveys and stratigraphic drilling

If Traditional Owners grant approval for this work to proceed, initially the Company could undertake work such as geological mapping, aerial gravity surveys (by plane), ground-based seismic surveys or test drilling as part of their work program. To do geological surveying, mapping and modelling the Company may fly, drive or walk over country looking for rocks that point to gas. The company will probably take rock samples and send them away to a laboratory for analysis. This process is called surface geological mapping and it has very limited environmental impact. Seismic surveys use trucks with sounding equipment to take pictures of the underground rocks, sending sound waves down into the earth to show where oil and gas may be found.



Clearing an area for the placement of seismic lines



Installing seismic receivers



Equipment used for seismic surveys – recording truck



Equipment used for seismic surveys – seismic vibrators

The Company may also want to drill to see what types of rocks are underground in this area, this is called stratigraphic drilling. The drill rigs used for this type of work are the smaller rigs that are used when exploring for minerals, or making water bores. If the Company wants to undertake seismic surveys or drilling it will first present this information to Traditional Owners at a Work Program meeting and the work areas would need to be site surveyed to protect any sacred sites.

(B) Advanced Stage – Drilling test wells & hydraulic fracturing

If The Company discovers signs of oil or gas in the initial stage of exploration, they may want to drill vertical test wells. A drill pad for a test well is about the **size of a football field** and required a much larger drill rig than that used for drilling rocks or water bores. The well would be lined with a steel pipe and cement to try to prevent gas from seeping into ground water and escaping. The Company could drill many holes from the one drill pad. These holes could be shallow (up to a few hundred metres) or they could go down deep underground, up to several kilometres below the surface.



Example of a drill test well in America



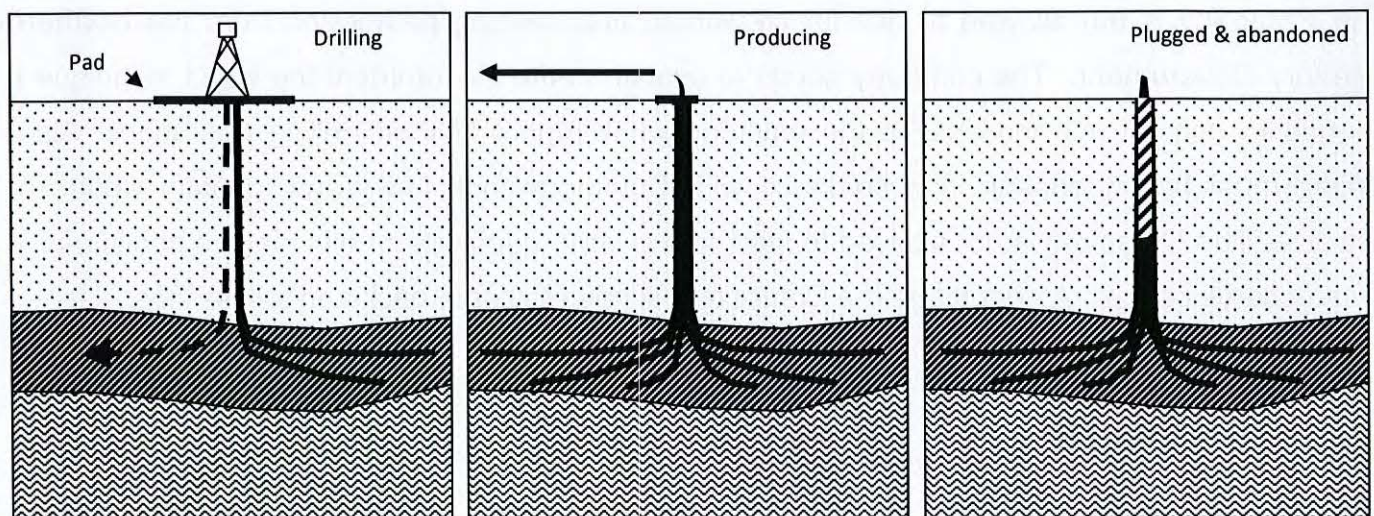
Example of a natural gas well

Because gas is trapped underground in the shale rock, The Company may need to crack open (fracture) the rock so that gas can be released and extracted through the drill hole. To do this, a hole would first need to be drilled straight down to the shale rock zone and then with new technology the drilling could continue sideways for up to several kilometres through the underground shale zone. Then the drill hole is cased with steel and lined with cement and then a mix of water and sand are pumped into the well at a very high pressure. This high-pressure cracks the rock open and allows the gas to be released into the well hole at certain points where the steel casing has holes in it for this purpose. This process is called '**hydraulic fracturing**' also

called '**fracking**'. BTEX chemicals are sometimes used in hydraulic fracturing and can cause environmental problems. The Company have promised **not to use** 'BTEX' chemicals on EP(A) 187. If the Company wants to build a well they must also provide the NLC with an engineer's certificate to show that the design of the well is lawful, safe and will not pollute the ground water.



During exploration gas is sometimes flared (burned-off) like in the picture above because it cannot be transported away. At a later stage a gas well that is flared like this would be closed to stop the fire and then the well may be closed permanently if there is not enough gas to make a business, or if enough gas is found to make a business the well may be reopened for production when the gas can be transported via a pipeline at a later date. If a lot of oil or gas is found on EP(A) 187, the Company may want to build a processing plant (about the size of three football fields) somewhere in the EP area.



How will Oil and Gas be extracted / produced?

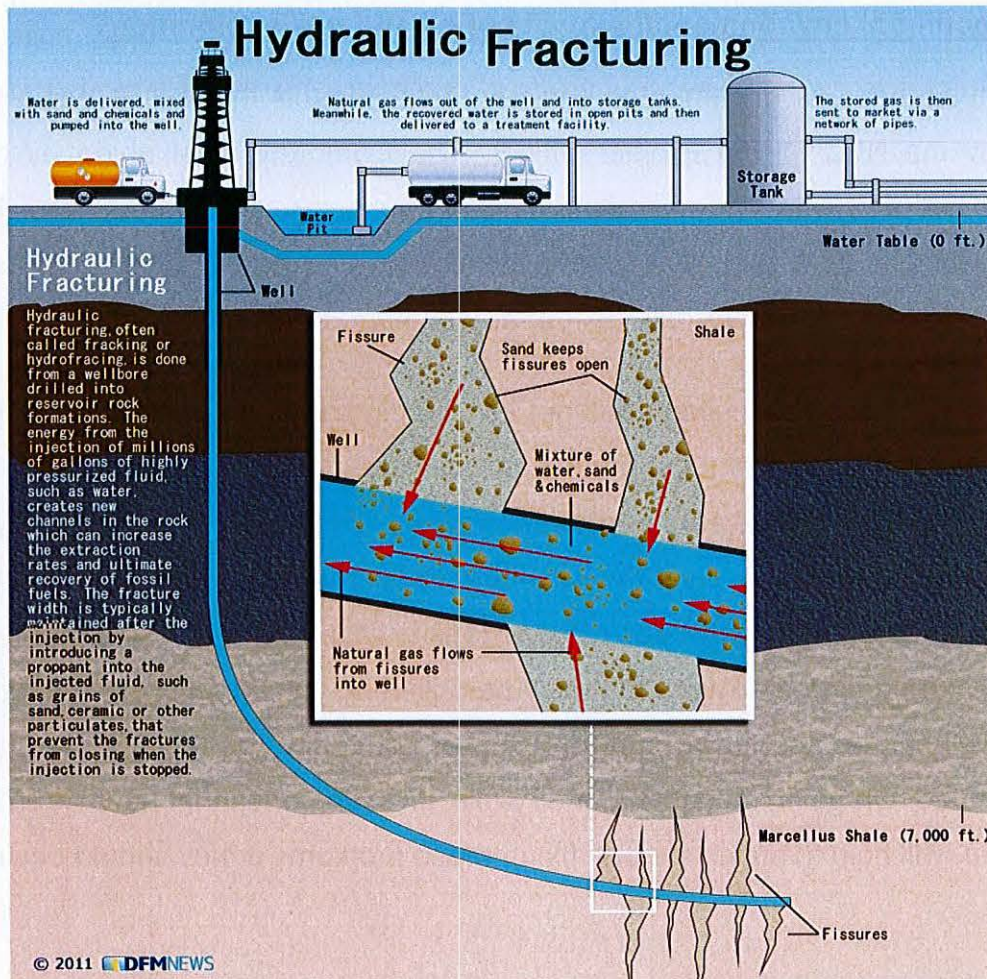
Once a well is drilled, engineers use metal casings to add stability. These casings help keep the well from collapsing in on itself. Each casing is lined with cement walls. Casings get narrower as the well gets deeper and so smaller drill bits are used as the well gets deeper. When the drilling hits oil or gas, engineers must seal the well to prepare it for a production rig using a pair of plugs to seal off the well bore. The bottom plug sits near the deposit. Drilling mud provides the pressure to hold the plug in place while a top plug is used to cap the well.

Then the well is ready for a production rig to take over. If the oil or gas is trapped in the shale rock, the industry calls this an 'Unconventional Resource' and as already explained hydraulic fracturing may be needed to extract the oil and gas from the rock. However if large pockets or 'domes' of oil and gas are discovered 'sitting' outside of the shale rock the industry calls this a 'Conventional

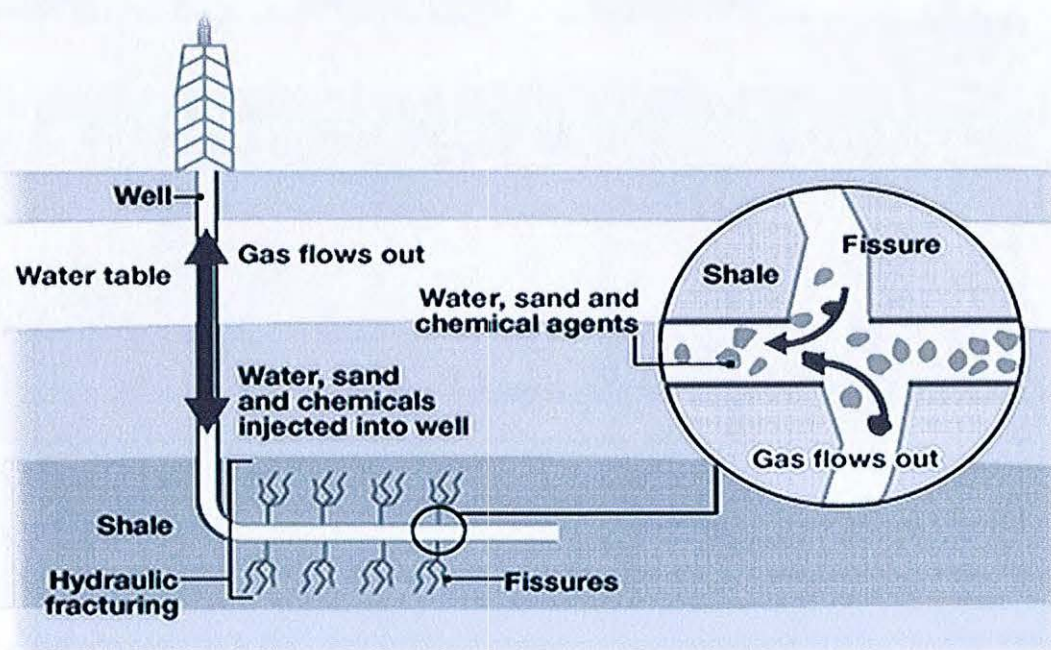


Resource' and hydraulic fracturing would not be required. A conventional Oil resource would usually be extracted using oil well head pumps, a bit like a water bore but much bigger, as shown in the above picture. Electric pumps would pump oil into storage tanks and fuel tank trucks or trains would then be used to transport the oil away.

The Company is not allowed to drill for oil without first seeking permission from the Northern Territory Government. The company needs to explain to the Government the exact technique it intends to use to drill and assess the environmental impact of their drilling operations. Also, drilling must be undertaken in accordance with Commonwealth Laws and Industry Codes of Practice. The Company is not allowed to start taking large quantities of oil unless it applies for a 'Production Licence'. At that stage the Company will have to come back and talk to TOs.



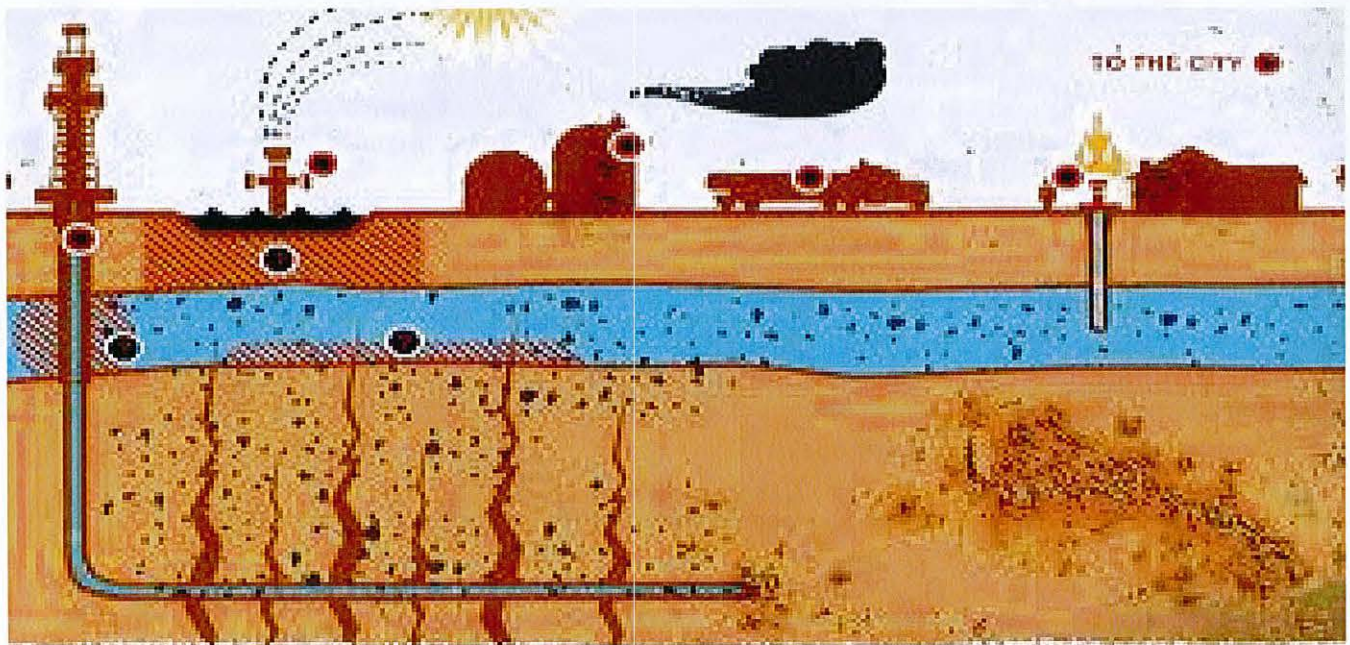
Images: Hydraulic Fracturing and unconventional wells are the same thing but with different names. Water, sand and chemicals are pushed down the well at high pressure to split the rock to get the gas out from the shale rock. They must cement case the drill holes around groundwater.



What are the potential environmental impacts of oil and gas exploration?

Hydraulic fracturing has well documented environmental impacts that will be explained to you at this meeting by the NLC Mining Project Officer. The Company must abide by all Australian environmental laws and with the environmental provisions within the agreement that they will have to make with the NLC and TOs. Under these laws and agreements, the Company must protect the environment and rehabilitate (fix up) any damage to country.

Unlike mining, oil and gas production does not involve digging large holes in the ground as with mines or quarries. The Company must protect groundwater from contamination however there is always a small **risk of groundwater contamination or a gas leak**. The Company must do its best to stop this from happening. Over the long-term the cement may crack or the rubber seals in the wellhead may deteriorate and cause a gas leak. This is why it is important that regular inspections are carried out on all wells that may be drilled on your country so that if there are any problems the well can be shut down and repaired, or if it cannot be repaired, it must be sealed off and rehabilitated. On going monitoring of all wells, including ones that have been closed down and rehabilitated, will help to anticipate and fix up these problems if they should occur.



ATTACHMENT B

**Attachment to letter from Northern Land Council to
Senate Environment and Communications References Committee, 23 August 2021**



1 Introduction

1.1 The Northern Land Council

The Northern Land Council (NLC) is an independent Commonwealth statutory authority that operates as a Land Council under the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) (ALRA) and a Native Title Representative Body (NTRB) under the Native Title Act 1993 (Cth) (NTA). The Commonwealth Minister for Indigenous Affairs has portfolio responsibility for the NLC.

The NLC has functions under the ALRA in respect of Aboriginal people in the northern region of the Northern Territory, and functions under the NTA in respect of the Aboriginal people of the northern region of the Northern Territory, the Tiwi Islands and Groote Eylandt.

The NLC provides a diverse range of legal, land management, commercial and advocacy services to Aboriginal people in connection with the performance of its functions.

1.2 NLC Services – ALRA

The NLC performs services in connection with its functions under ALRA that include but are not limited to all things necessary or convenient to be done for or in connection with:

- ascertaining and expressing the wishes of Aboriginal peoples about the management of their land and legislation about their land;
- protecting the interests of traditional owners of, and other Aboriginal people interested in, Aboriginal land;
- assisting Aboriginal peoples to protect sacred sites, whether or not they are on Aboriginal land;
- consulting traditional owners and other Aboriginal peoples interested in Aboriginal land and land under claim regarding proposals to access, use or operate on the land;
- negotiating agreements on behalf of traditional owners with peoples interested in using Aboriginal land or land under claim and ensuring the terms and conditions of those agreements are reasonable;
- ensuring traditional owners understand the nature and purpose of proposals and ascertaining whether they consent to proposals on the terms and conditions negotiated;
- assisting Aboriginal peoples to carry out commercial activities;

- assisting Aboriginal peoples claiming land;
- keeping a register of Land Council members and members of Aboriginal Land Trusts and descriptions of Aboriginal land;
- supervising and assisting Aboriginal Land Trusts;
- attempting to conciliate disputes between Aboriginal peoples regarding land matters;
- holding in trust and distribute to Aboriginal associations statutory payments from the Aboriginals Benefits Account to communities affected by mining operations and income received on behalf of landowners under negotiated agreements;
- processing applications for permits to enter Aboriginal land; and,
- any other functions as prescribed by the ALRA.

The NLC will:

- from time to time determine the priorities it will give to performing its functions;
- allocate resources in the way it thinks fit so as to be able to perform its functions efficiently; and,
- give priority to the protection of the interests of traditional Aboriginal owners of, and other Aboriginals interested in, Aboriginal land in the area of the (s23AA ALRA).

1.3 NLC Services – NTA

The NLC is the NTRB for the northern region of the Northern Territory and for the Tiwi Islands and Groote Eylandt. Land over which native title rights and interests can be claimed includes Crown and other lands in towns, national parks, land vested in the Northern Territory Land Corporation, pastoral leases and offshore areas.

Functions of NTRBs prescribed under the NTA include but are not limited to:

- facilitating the researching, preparation and making of applications by individuals or groups for determinations of native title or for compensation for acts affecting native title;
- assisting in the resolution of disagreements among such individuals or groups about the making of such applications;
- consulting with and having regard to the interests of persons who hold or may hold native title in relation to land and waters affected by acts affecting native title, such as mining and petroleum;
- consulting with Aboriginal communities that might be affected by acts affecting native title, such as mining and petroleum;
- assisting individuals or groups who may hold native title by representing them and, if requested to do so, negotiating on their behalf in relation to:
 - the doing of acts affecting native title;
 - the provision of compensation in relation to such acts;

- Indigenous Land Use Agreements or other agreements in relation to native title rights; and
- any other matter relevant to the operation of the NTA;
- certifying in writing applications for determinations of native title and applications for registration of Indigenous Land Use Agreements relating to areas of land wholly or partly within the region of the NTRB; and,
- becoming a party to Indigenous Land Use Agreements after consultation with the native title holders of the land or waters subject to the agreement.

1.4 NLC Services – Northern Territory Government

The NLC also provides services in connection with its functions under Northern Territory law, including but not limited to the:

- Aboriginal Land Act;
- Cobourg Peninsular Aboriginal Land, Sanctuary and Marine Act;
- Northern Territory Civil and Administrative Tribunal Act;
- Mineral Titles Act;
- Nitmiluk (Katherine Gorge) National Park Act;
- Northern Territory Aboriginal Sacred Sites Act;
- Pastoral Land Act;
- Petroleum Act;
- Special Purpose Leases Act;
- Territory Parks and Wildlife Conservation Act; and,
- Water Act.
- Kenbi Land Trust Act
- Geothermal Energy Act
- Sacred Sites Act

1.5 Other Services Provided by the NLC

The NLC also provides services in the following areas:

- land, sea and natural resource management;
- economic development and commercial services;
- community planning and development;
- advocacy; and,
- administration and support services.

2 Policy Statement

The NLC receives some Commonwealth funding in order to perform its functions under the ALRA and NTA. However, the NLC's funding is insufficient to respond to all proposals lodged by third parties (**Proponents**) that seek an interest or a right to access, use or

operate on Aboriginal or native title land. The NLC therefore expects Proponents, who wish to submit any proposal/s to the NLC, to bear all reasonable costs associated with the provision of services, described in paragraphs 1.2 through to 1.5 in Section 1 above. The NLC will attempt to share costs between Proponents where appropriate and convenient.

3 Policy Objective

The objectives of the policy are to ensure that the costs incurred by the NLC, associated with the provision of services to Proponents:

- (a) are consistent; and
- (b) are recovered by the NLC, subject to the waiver detailed in paragraph 8 below.

4 Proponent Categories

Proponents are categorised as follows:

- (a) Commercial;
- (b) Commonwealth Government / Northern Territory Government/ Local Government;
- (c) Research Institutions;
- (d) Aboriginal corporation / traditional owner; and
- (e) Not-for-profit / charitable / community organisation or groups.

5 Acceptance of Proposal/s

The acceptance by the NLC of all proposals submitted by Proponents will be based on the following conditions:

- (a) due diligence check on the Proponent/s;
- (b) the proposal/s will be of benefit to the Aboriginal communities that the NLC serves.

6 Submission of Estimate

The NLC will submit to the Proponent an estimate for the work connected with the proposal/s. The Proponent will accept the estimate, along with the NLC's terms and conditions, in writing prior to the NLC agreeing to commence work on the proposal/s.

7 Commencement of Work

In order to ensure the timely delivery of services, the Proponent should, no less than four weeks (unless otherwise agreed by the parties), prior to the NLC incurring any cost or expense in relation to the provision of services, pay 100% of the accepted estimate into the NLC's nominated bank account.

Where the Proponent does not accept the estimate and/or accept NLC's terms and conditions, and/or pay 100% of the accepted-estimate, the NLC is not obliged to incur any cost or expense relating to the proposal/s.

If at completion of delivering the services, the payments made by the Proponent to the NLC exceed the costs incurred by the NLC performing the services, the NLC will refund the excess amount to the Proponent within a reasonable period.

8 Waivers

There may be circumstances where a Proponent is unable to pay the reasonable costs of the NLC in delivering services in connection with a proposal. In these circumstances, the Proponent can apply in writing to the relevant Branch Manager of the NLC, to waive costs for service-delivery. A waiver will only be granted where the Proponent falls into a category as described in paragraphs 4 (b), (c), (d) and (e), and recovering costs from the Proponent would, in the relevant circumstances:

- (a) be inconsistent with government policy objectives; and/or
- (b) impact on the financial viability of the Proponent.

Sharing costs between Proponents does not constitute a Cost-Recovery Waiver.

9 Policy Interpretation and Implementation

The Chief Financial Officer (CFO) of the NLC is responsible for interpreting the policy, assisting the relevant work areas in its implementation and making policy-recommendations to the Chief Executive Officer (CEO).

Branch Managers are accountable for ensuring that this policy is implemented. Any changes to this policy must be approved by the CFO prior to those changes being effective.

All inquiries and correspondence in relation to this policy are to be directed to the:

**Chief Financial Officer
Northern Land Council
GPO Box 1222
Darwin NT 0801
By email:**

10 Compliance

NLC ensures its workplace policies and procedures are consistent with legislation, are relevant to operational needs and are fair and reasonable. NLC will ensure that policies and procedures remain current through a review process.

11 Document Approval

Document Name: <i>Cost Recovery Policy</i>			
Document No: NLC008			
Approved By:	Chief Executive Officer	Joe Morrison	
Delegated Authority:	Chief Financial Officer	Joe Valenti	
Version	Date Approved	Review Date annually	Amendment
2.0	18 April 2017	18 April 2019	
Superseded Documents:			
1.0	01.10.2014	01.05.2015	Original

ATTACHMENT C

**Attachment to letter from Northern Land Council to
Senate Environment and Communications References Committee, 23 August 2021**

Title	Mining Policy
Policy Number	NLC 116
Approved	Chief Executive Officer, 17 November 2020
Policy Owner	General Manager Land & Law
Trim Number	E2020/20064
Next scheduled review	16 November 2022

1 Introduction

The Northern Land Council (NLC) has statutory functions and duties under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth.) (ALRA) and under the *Native Title Act 1993* (Cth.) (NTA) and legal obligations to fulfil in respect of agreements with third parties (Proponents) in relation to mining.

Mining means the exploration for, or production of, minerals and petroleum substances.

2 Policy Objective

The objectives of the policy are to provide guidance to NLC workers to ensure that, among other outcomes:

- a) decisions made at NLC consultations are upheld by processes consistent with the principle of Free Prior and Informed Consent (FPIC); and
- b) NLC complies with all relevant laws in the discharge of its functions and duties.

To achieve the policy objective the NLC may engage interpreters, cultural advisors, scientists, lawyers, anthropologists and other experts as necessary to ensure that information provided to Indigenous Peoples in relation to mining is objective, factually correct, culturally appropriate, and takes in to account all relevant traditional, scientific and other knowledge.

3 Policy Statement

Neutrality

The NLC maintains a neutral position in relation to mining. This means that NLC workers do not seek to direct or otherwise influence people to either consent, support, refuse consent or object to mining proposals and associated activities.

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and FPIC¹

FPIC and other principles that underpin the aspirations and expectations of the NLC and its constituents

¹ Ref: Article 32, UNDRIP. The International Finance Corporation's Performance Standard 7 (IFC PS7) describes FPIC processes and elements.

in relation to mining are enshrined in the UNDRIP. In relation to mining the NLC upholds the requirement for FPIC, including the requirement for informed consultation with, and meaningful participation of, Indigenous Peoples.

Although there is no universally accepted definition, FPIC is broadly acknowledged to require and recognise:

- the need for factual information;
- the importance of capacity;
- the right to withhold consent; and
- the need for an enforceable legal agreement to predicate a consent decision.

Environment

The NLC works collaboratively with Indigenous Peoples and proponents toward the goal of preventing environmental harm from mining, including in relation to sacred sites and other cultural aspects. The NLC encourages Proponents to utilise the best available science and technology and employ leading practice governance, planning and consultation processes to work collaboratively with Indigenous Peoples to minimise the environmental impacts of mining.

Independence

NLC decisions about the allocation of resources and information provided to Indigenous Peoples in relation to mining are made independently regardless of funding arrangements.

4 Policy Interpretation and Implementation

The General Manager Land and Law is responsible for interpreting the policy, assisting the relevant work areas in its implementation and making policy recommendations to the Chief Executive Officer (CEO). Any changes to the policy must be approved by the CEO prior to those changes being effective.

The General Manager Land & Law is accountable for ensuring that the policy is implemented.

All inquiries and correspondence in relation to the policy are to be directed to the:

General Manager Land & Law
Northern Land Council
GPO Box 1222
Darwin NT 0801
By email:

5 Version History

Version	Approved Date	TRIM Number
Original	17 November 2020	E2020/20064