



NORTHERN LAND COUNCIL

Our Land, Our Sea, Our Life

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1 August 2021

Our ref: [REDACTED]

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

Attention: [REDACTED]
Committee Secretary

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

Dear [REDACTED]

Inquiry into oil and gas exploration and production in the Beetaloo Basin

On 30 July 2021 Marion Scrymgour stepped down as the Chief Executive Officer of the Northern Land Council (NLC), and I was appointed to that position. My appointment is the culmination of a structured transition process by which Marion and I have worked closely together over the past four months on key matters affecting the NLC.

I refer to your letter dated 22 July 2021 to the NLC regarding the inquiry into oil and gas exploration and production in the Beetaloo Basin (the **Inquiry**) that is currently being undertaken by the Senate Environment and Communications References Committee (the **Committee**).

In your letter, you advise that the Committee has received written submissions from:

- Ms Rikki Tanika Dank;
- GetUp; and
- Nurdalinji Native Title Aboriginal Corporation;

which each contain comments that may reflect adversely on the NLC.

You indicate that, under current Senate resolutions, before these submissions are published the NLC is to be given an opportunity to submit short responses limited to the matters that may reflect adversely on the NLC. Tabulated in the annexure to this letter are the NLC's responses to these matters.

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The NLC looks forward to the opportunity on Monday, 2 August 2021, to appear before the Committee to clarify the relevant statutory functions of the NLC in the Beetaloo Basin, and to otherwise assist the Inquiry.

Yours faithfully



Joe Martin-Jard
Chief Executive Officer

ANNEXURE

A. Submission of Ms Rikki Tanika Dank		
No.	Stakeholder comment	NLC response
1.	I am a Traditional Owner for Balbrini (freehold) and Mukumpala (Native Title). These two areas of our traditional Country were 'returned' to us in the 1990s. I am Nimirinki, which means that I am allowed to speak for my Country.	<p>Ordinarily, the NLC declines to comment on the traditional interests of individual constituents. In this case, however, much of Ms Dank's criticism of the NLC is premised on her claim that she is <i>Ngnimirringki</i> in the <i>Karranjini Rrumburriya</i> group.</p> <p>Members of the <i>Karranjini Rrumburriya</i> group are traditional Aboriginal owners for country on and around Balbirini station. In 1999, following the NLC's successful prosecution of a claim under the <i>Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)</i>, this group's traditional ownership was recognised in the report of the Aboriginal Land Commissioner: see Justice Gray, <i>Carpentaria Downs / Balbirini Land Claim No. 160: Report and Recommendation</i>, ATSIC, Canberra, 27 January 1999 (the Report). The area was made the subject of a grant of Aboriginal land, and title to the area of Balbirini station is now held by the Mambaliya Rrumburriya Wuyaliya Aboriginal Land Trust.</p> <p>Under the traditional laws and customs of this group, the <i>Ngnimirringki</i> are the owners of country. They inherit this relationship with country from their Old People through an unbroken patrilineal line of descent. This is their father's father's country. The <i>Ngnimirringki</i> perform their roles in relation to country with the support and guidance of the <i>Djunggayi</i>, who are connected to the <i>Ngnimirringki</i> through mother's father or father's mother. The <i>Ngnimirringki</i> role is inheritable, whereas transmission of the</p>

		<p><i>Djunggayi</i> role stops after two generations. See generally pages 16-18 of the Report.</p> <p>The NLC has genealogical records for the <i>Karranjini Rrumburriya</i> group, including Ms Dank’s family. These records include genealogical information that was considered and accepted by the Aboriginal Land Commissioner in the earlier land claim: see, for example, page 33 of the Report.</p> <p>The NLC regularly meets with the members of the <i>Karranjini Rrumburriya</i> group to facilitate and record their decisions in relation to a range of matter about their country. They make these decisions in accordance with processes that they must follow under their traditional laws and customs.</p> <p>The NLC acknowledges and respects Ms Dank’s connections to her family and their country. However, the NLC is not aware of any legitimate basis on which it could accept Ms Dank’s claim to be <i>Ngnimirringki</i> for <i>Karranjini Rrumburriya</i> country. Under their traditional laws and customs, the <i>Karranjini Rrumburriya</i> group do not regard Ms Dank as either <i>Ngnimirringki</i> or <i>Djunggayi</i>.</p>
2.	<p>Firstly, as stated above, our family has always steadfastly opposed mining and gas extraction activities, as well as any other destructive activities on our Country. Our exclusion from the decision making and approval process renders all decisions affecting our Country invalid.</p>	<p>The NLC refutes any suggestion that traditional owners have been excluded from consultations or decision-making.</p>
3.	<p>Secondly, the fact that we have got to this point, where we have to fight to protect our Country from government-sanctioned destruction, is a reflection of the sustained, systematic and</p>	<p>This broad and unsubstantiated allegation that the NLC is engaged in “sustained, systematic and deliberate abuse of process” is completely false.</p>

	<p>deliberate abuse of process engaged by the Northern Land Council (NLC) and multiple levels of government.</p>	
<p>4.</p>	<p>When my father came across a notice in 2018 outlining proposed gas exploration on our country by Empire gas, I contacted Empire directly via telephone. After this conversation, by way of e-mail, I was advised by their administrative team that they could not provide me with any information regarding the proposed activity nor any records of any alleged consultation with traditional land owners – I was directed to speak with the NLC regarding this matter.</p> <p>Since then, we have heard nothing from either Empire or the NLC regarding this matter, yet it has progressed to the point of the drilling of an initial well.</p>	<p>The families who make up the <i>Karranjini Rrumburriya</i> group have been, and continue to be, consulted about proposed developments on their country.</p> <p>For example, Katie Baker and Peggy Mawson, to whom Ms Danks refers in her submission as “the most senior members of our family”, have been consistently supported by the NLC to participate in consultations regarding petroleum exploration permit EP 187. They both attended an information meeting on 18 May 2011 and a decision-making meeting on 8 November 2013.</p> <p>Peggy Mawson and other members of the Mawson and Baker families have also participated in work program meetings regarding EP 187, including on 10 November 2018 and 11 November 2020. Ms Dank herself was initially in attendance at the meeting on 10 November 2018.</p> <p>On 12 November 2020, Peggy Mawson and members of Katie Baker’s family participated in a site inspection of the Carpentaria-I well. Contrary to Ms Dank’s claims, the NLC remains in regular and ongoing contact with these constituents.</p>
<p>5.</p>	<p><u>NLC - abuse of process:</u> Our family has been excluded from the consultation and approval process for this activity. We believe that this exclusion is not accidental, rather that it represents a deliberate and calculated attempt by the Northern Land Council (NLC) to prevent our voices from being heard. We have had a frustrating relationship with the</p>	<p>The NLC rejects these allegations. Please see responses 1-4 above.</p>

	NLC since our land was returned three decades ago. Our family's desire has always been to protect our traditional country and minimise the impact of mining and pastoral exploitation. To this end, we have previously voiced resistance to mining and large pastoral leases which have the capacity to damage our country.	
6.	Our history with the NLC includes being excluded from meetings regarding decisions affecting our country - in an attempt to circumvent due process and any objections from the rightful traditional owners. Our voices have been excluded by the NLC through various tactics which include, but are not limited to, the following:	The NLC rejects these allegations. Please see responses 1-4 above.
7.	a) Not notifying us of meetings: Although we have lived in Borroloola and on our Country in the past, we are not always there and, more recently, have been away for work and studies. We rely on the NLC to advise us about any upcoming meeting which may impact on our Country or us indirectly. Despite many, many telephone calls and e-mails, we have been systematically overlooked when notifications are made and are unable to participate in any discussions and decision making.	These claims are untrue. The NLC conducts notification diligently in accordance with statutory requirements. Meetings regarding developments on the Mambaliya Rumburriya Wuyaliya Aboriginal Land Trust area, including in relation to EP 187, are typically held in the remote Aboriginal community of Borroloola, which is where the majority of traditional owners reside.
8	b) Bringing in people not related to Country for meetings: The NLC has frequently held meetings to discuss proposed activity on our country and brought in busloads of people from other communities to vote on these proposals. We believe that this is done for two reasons: Firstly, to 'gain majority support' and, secondly, to intimidate the legitimate people for that country.	The NLC regards these allegations as fanciful. The NLC also notes that traditional decision-making by relevant Aboriginal groups does not necessitate "[gaining] majority support".

9	<p>c) Holding meetings about our Country off Country. Meetings about our Country have been held in Elliott. Thankfully, on previous occasions, the Elliott people asked for the meeting to be stopped due to the absence of the rightful Traditional Owners.</p>	<p>Please see response at 7 above.</p>
10	<p>d) Holding Men-only meetings to discuss matters relating to our Country, which is Women’s country.</p>	<p>At the request of the NLC Borroloola Barkly Regional Council and a number of regional elders, the NLC has helped revive annual meetings of culturally senior men from the different estate groups across the Borroloola Barkly region. These meetings have been used by attendees to reaffirm cultural ties, discuss men’s business, and ask questions of the NLC. This approach is reflective of the important roles that initiated men have in relation to country under these groups’ traditional laws and customs.</p> <p>However, these are not project-specific information meetings or decision-making meetings. Where a group is required to make a decision under the <i>Aboriginal Land Rights (Northern Territory) Act 1976</i> (Cth) or the <i>Native Title Act 1993</i> (Cth), the NLC facilitates the notification and participation of all group members, men and women.</p>
11	<p>Other concerning practices conducted by the NLC include: e) Getting people to sign documents through deceit, coercion and intimidation - Attendees at meeting are requested to sign documents purported to be attendance registers, but which are believed to be used as consent for proposals. - Some of our own family members who cannot read or write English have been asked to sign documents without knowing their contents and without adequate representation. We understand this to be a widespread practice.</p>	<p>The NLC rejects any allegation that the NLC has used deceit, coercion or intimidation to induce constituents to sign documents.</p> <p>The “concerning practices” listed here have no basis in fact. These allegations defame the lawyers and other NLC offers who at all times exhibit integrity and professionalism in their dealings with traditional owners and other stakeholders.</p>

	<ul style="list-style-type: none"> - Lack of legal representation, interpreters and family support during meetings between the NLC and Traditional Land Owners means that informed consent cannot be given. - Allowing pastoral lease holders to throw money on the table at meetings and tell Traditional Land Owners ‘if you don’t sign today, the money walks with us’. 	
12	The role of the NLC in these processes also warrants thorough investigation – we believe that they have been complicit in practices designed to circumvent due process and to railroad mining and related leases on Country.	<p>As a statutory Commonwealth authority subject to the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth), the NLC is subject to constant and wide-ranging audit and review.</p> <p>The suggestion that the NLC has any interest in circumventing due process “to railroad mining and related leases on Country” is manifestly wrong.</p>

B. Submission of GetUp		
No.	Stakeholder comment	NLC response
1.	Rikki Dank who is a Traditional Owner for Balbarini (freehold) and Mukumpala (Native Title) parts of the traditional country of the Gudanji peoples of the northeastern Barkly Tablelands, who said “Our family has been excluded from the consultation and approval process for [Beetaloo]. We believe that this exclusion has been a deliberate and calculated attempt by the Northern Land Council (NLC) to prevent our voices from being heard... Our history with the NLC includes being excluded from meetings regarding decisions affecting our country: Meetings are held without notification, despite multiple avenues of communication being	Please refer to NLC responses A1 – A12 above.

	<p>provided by ourselves to the NLC. Additionally, the NLC has gained ‘approval’ from people who have no right to speak for our country, to circumvent due process and any objections from the rightful Traditional Owners. This is a pattern of behaviour that has persisted over the last few decades and which we have been powerless to stop – despite numerous letters, e-mails and phone calls, and meetings with politicians and lawyers. Put simply, the NLC is too large and protected, financially and politically, for us to fight them alone”.</p>	
<p>2.</p>	<p>Naomi Wilfred from the Hodgson Downs cattle station near Minyerri, 240 kilometres south-east of Katherine, who said she and her people hadn’t been contacted by Origin to discuss the drilling and fracking plans, which they unanimously oppose.</p>	<p>Origin Energy does not have any interests in or around Hodgson Downs cattle station.</p> <p>Jacaranda Minerals Limited and Minerals Australia Pty Ltd currently hold EP 154, which affects parts of the Hodgson Downs station, now within the Alawa 1 Aboriginal Land Trust. Jacaranda and Minerals Australia also holder EP 153, which affects the neighbouring Hodgson River Pastoral Lease, and is subject to approved determinations of native title.</p> <p>Traditional owners and native title holders have entered into petroleum agreements in relation to EP 153 and EP 154. Petroleum exploration in this area is not relatively advanced. Companies have not commenced any drilling.</p>
<p>3.</p>	<p>Samuel Sandy, who is a Newcastle Waters Murrarji Native Title holder in the area, said when Traditional Owners, including his father, gave their consent for gas exploration in the Beetaloo in 2015 and 2016, they weren't given enough information about fracking by the NLC, which facilitated the negotiations.</p>	<p>The NLC does not agree that native title holders have been given insufficient information. On the contrary, consultations were extensive. The NLC provided native title holders with detailed but accessible legal and technical advice throughout the negotiation process.</p>

4.	<p>Janey Dixon, another Native Title holder, who said she decided she felt the NLC had not given her family enough information about the scale of the gas developments proposed: “They never gave us good advice about what it’s for and what it’s going to do. We are standing strong not to have this fracking, because we don’t like fracking”.</p>	Please see above.
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C. Submission of NurrDALinji Native Title Aboriginal Corporation		
No.	Stakeholder comment	NLC response
1.	<p>The decision to incorporate NurrDALinji was made unanimously at a large meeting of Beetaloo Sub-basin region native title holders made in September 2020. The meeting decided that once established, NurrDALinji should replace the Top End Default Prescribed Body Corporate (TED PBC) as prescribed body corporate (PBC) for native title holder 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.</p>	<p>The replacement of a PBC can only occur under Federal Court orders, where the Court is satisfied that the proposed replacement is in accordance with the wishes of the common law native title holders themselves. The <i>Native Title Act 1993 (Cth)</i> and the <i>Native Title (Prescribed Bodies Corporate) Regulations 1999 (Cth)</i> recognise that, where there are particular decision-making processes under traditional law and custom that apply to such matters, these processes must be followed for a decision to be valid.</p> <p>There are over 13 different native title determinations made by the Federal Court of Australia under the <i>Native Title Act 1993 (Cth)</i> in relation to the area of country that the NurrDALinji Native Title Aboriginal Corporation (NNTAC) purports to represent. These determinations formally recognise the native title rights and interests of dozens of different Aboriginal estate groups, who have continued their connection to country since the assertion of sovereignty by the Crown in 1825.</p> <p>Together, adult members of these different groups number in their thousands. Their traditions are strong and vital, and they continue to make decisions in accordance with Aboriginal law and custom.</p>

		<p>Each group makes decisions about their country in accordance with processes required under traditional law and custom. For these groups, their traditional decision-making processes reflect the patrilineal inheritance of rights to country, and the allocation of responsibilities according to each member's position with the kinship system.</p> <p>According to NNTAC's own materials, the invitations to the September 2020 meeting were issued to fewer than a hundred individuals, and the meeting notice completely failed to identify the traditional Aboriginal groups that hold native title, according to the Federal Court determinations.</p> <p>According to the NNTAC's own records, tt this "large" meeting in September 2020:</p> <ul style="list-style-type: none">• the number of attendees was 36 (at most);• decisions were not made in accordance with the processes that must be followed under traditional law and custom;• decisions were instead made by a show of hands by those in attendance, following a sort of Western boardroom system; and• decisions were purportedly made about particularly areas of country where not a single member of the native title holding group for that country was present at the meeting. <p>Most of the senior decision-makers from the Beetaloo region did not attend the NNTAC meeting in September 2020. Many of the senior native title holders who spoke with the NLC were either unaware of the NNTAC meeting or opposed its activities.</p> <p>In these circumstances, the NLC does not accept that NNTAC represents the native title holders of the Beetaloo Sub-basin or that it</p>
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		has been validly appointed by any native title holding group to be their PBC.
2.	Meanwhile, NLC continues to facilitate fracking in our country without proper consultation, with no genuine mandate and against the wishes of the majority.	<p>The NLC refutes this claim. The NLC is in no position to “facilitate fracking” on any country.</p> <p>The NLC acts on the instructions of native title holders.</p> <p>In fulfilling its statutory mandate as a Land Council under the <i>Aboriginal Land Rights (Northern Territory) Act 1976</i> (Cth) and a representative body under the <i>Native Title Act 1993</i> (Cth), the NLC assists native title holders to make informed decisions about pending petroleum interests and other proposed future acts that may affect native title. This assistance includes providing native title holders with legal advice about their options, including agreement making and litigation.</p>
3.	Origin Energy and NLC are not consulting with all people whose interests may be affected by those risks.	<p>This claim lacks particulars. This may be because the authors of this submission are, in reality, unable to identify any particular instance where the NLC has failed to consult with affected groups.</p> <p>The NLC goes to exhaustive lengths to ensure that it consults with all groups whose interests are likely to be affected by a particular proposal.</p>
4.	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.	The NLC rejects the claim that it has ignored Mr Wilson’s concerns. The NLC has responded to all communications from Mr Wilson and NNTAC, including with an invitation to attend the NLC to speak with the CEO.

		<p>On the ground, NLC officers remain open to consulting with all NNTAC members and seeking to address their concerns.</p> <p>There has been no disrespectful or aggressive behaviour towards Mr Wilson or the NNTAC.</p>
5	<p>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.</p>	<p>There is a persistent confusion among some stakeholders about the role of a PBC.</p> <p>Under the relevant legislation, the role of the Top End (Default PBC/CLA) Aboriginal Corporation RNTBC (Top End PBC) is simply to perform PBC functions where required. The Top End PBC consults affected native title holders about whether they consent to any particular development. The PBC has no mandate beyond simply facilitating these decision-making processes.</p> <p>The Top End PBC is a cost-effective and practical arrangement for determined native title holding groups who may lack the capacity to administer their own PBC.</p> <p>However, if a native title holding group, under their traditional laws and customs, makes a valid decision to appoint a compliant Aboriginal Corporation to replace the Top End PBC, there is unlikely to be any basis on which the NLC or the Top End PBC would seek to oppose that decision.</p>
6	<p>At present there is no prospect that the free, prior informed consent of native title holders will ever be sought or achieved in relation to Beetaloo Sub-basin fracking because there is no opportunity for the region's native title holders to become informed, to actually understand the benefits as well as the</p>	<p>The NLC is working on a number of levels to keep native title holders informed about activities on their country, and to prepare them to establish legitimate regional decision-making structures in the Beetaloo area.</p>

	<p>cumulative impacts and risks of the Beetaloo project as a whole on the region's native title holders and their interests. Without that knowledge, informed decisions cannot be made.</p>	<p>I note the advice in the letter of 28 September 2020 from the Executive Council to Janet Sandy and Mr Wilson that the NLC has been working towards the establishment of a corporation which in time could transition to becoming a PBC, and that the NLC is conducting consultations which provide a proper process for ascertaining the wishes of the native title holders.</p>
<p>7</p>	<p><u>Top End Default PBC</u> The <i>Native Title Act 1993</i> (Cth) (NTA) 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. 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.</p>	<p>The performance of PBC functions is often highly technical, costly, onerous, and is subject to administrative and judicial review. The NLC respectfully suggests that an Aboriginal corporation does not need to be a PBC to be provide meaningful assistance or representation to native title holders.</p> <p>At the same time, the NLC also recognises and supports the desire of many native title holders to establish and operate their own PBCs. Please note NLC response at 5 above. The NLC is currently working with a number of groups across the Northern Territory on their plans for designing and appointing their own PBCs.</p> <p>The NLC refutes the accusation made here that it advises native title holders to nominate the Top End PBC. Rather, in the absence of any viable alternative, the Top End PBC has often simply been the only option initially available to native title holders. In time, as representative and sustainable corporations are established, the NLC expects that native title holders will have new options to consider.</p>
<p>8</p>	<p>In other parts of Australia native title groups engage and 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:</p>	<p>This claim is inaccurate.</p> <p>The Top End PBC is an agent prescribed body corporate. It performs PBC functions under the applicable legislation. It can only act with the authority of common law native title holders. It can only enter</p>

	<p>the NLC. The NLC acts on our behalf as it sees fit, rather than in accordance with our instructions.</p>	<p>agreements on behalf of native title holders when they have consented.</p>
9	<p>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.</p>	<p>This claim is also inaccurate and exaggerated. Native title holding groups that have appointed the Top End PBC have already been formally recognised in approved determinations of native title. Their interests in country have therefore been the subject of detailed anthropological research and Federal Court proceedings. Generally, by the time that groups have successfully navigated this process, they have already participated in comprehensive connection research and know exactly where their country is.</p> <p>The Top End PBC's processes must comply with the statutory regime at all times. Individuals or groups who disagree with the Top End PBC's approach in a matter may take action, including in the courts, to challenge this approach. Such challenges do occur from time to time, and indicate the existence of an active system of accountability and oversight.</p>
10	<p>In the case of exploration permits granted to fracking companies since the early 2000's, some of which have since been assigned to companies like Origin Energy Ltd, the NLC negotiates the terms of draft native title consent agreements with the company; then holds a meeting with native title holders in which native title holders are given a take-it-or-leave-it choice, after being told that our native title rights are weak under Australian law and that the proposed mining tenement is likely to be granted anyway if we refuse to enter the agreement negotiated by NLC.</p>	<p>Throughout the processes under which agreements are negotiated, NLC lawyers and other personnel engage in regular communications with native title holders about the details of the pending future act, the state of negotiations, and the elements of the proposed final agreement. Instructions are taken at several stages, not just at the meeting where a final decision is taken about whether to endorse an agreement.</p>