



Central Land Council – Hearing Transcript

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Alice Springs Convention Centre, Alice Springs

Speakers: Julie Ann Stoll, David Ross, James Nugent

David Ross: David Ross.

Hon. Justice

Rachel Pepper: David Ross, thank you very much, Mr. Ross.

Julie Ann Stoll: Julie Ann Stoll.

Hon. Justice

Rachel Pepper: Thank you very much, Ms. Stoll.

James Nugent: James Nugent.

Hon. Justice

Rachel Pepper: Thank you very much. Yes, please.

David Ross: We haven't got a submission for you today, we just want to give you a bit of background and from the Central Land Council. Just for everyone's information, the Central Land Council is a commonwealth statutory body. We operate under basically Northern Territory Aboriginal Land Rights Act and the Native Title Act. Functions and duties, responsibilities under both those pieces of legislation. I guess like anywhere, wide range of views of people that are dealing with mining and dealing with oil and gas. I guess my main area of contention at the moment is that the government is very clear on its position as to where it's at. There is a lot of confusion around what's either taking place or about to take place or what the expectations of this review is. Is it designed to enable fracking at the end of the day? Is it designed to stop any fracking in the future? The people that we represent on a daily basis lack a very clear position from government as to what government's expectations are and more importantly, if they do make a decision on going ahead with this in the future, then there's some very clear rules, regulations, about what may or may not be acceptable, how that's to take place, who's involved, etc.

That's the main point. I'll ask my colleagues to raise some issues because there is other issues with our map there and that gives you some idea the areas of contention and areas that have been dealt with in the past.

Julie Ann Stoll: Well it would be nice if somebody could actually show you the extent of that map, because that's just the northern portion of the CLC region. That map



actually shows the extent of coverage of exploration, permit applications, and granted titles over the CLC region and there's almost blanket coverage. There are a number of black dots which is shown on the map just so that you get a sense of the number of communities that are impacted by these applications. You can see wide range of titles over the CLC region affecting numerous, well virtually every community in the CLC region, which is why Mr. Ross pointed out that there needs to be some certainty around whether or not this industry is going to be allowed to proceed and how it would be regulated.

Just for your information, the green line is our northern boundary and Tenant Creek is up around that number 260, 261. Each of those are individual titles. They've each got an individual number. You've probably seen the tenement map. Around 147 is just south of Alice Springs. Alice Springs is just to the north of that. The red areas are the granted titles and all of the green areas are applications, so they have not been granted by the Northern Territory Government at this stage. Basically there's been a hold on any of those grants because of the uncertainty arising from the Hawk report and this latest scientific inquiry. So it's certainty that the CLC needs.

Hon. Justice
Rachel Pepper:

Mr. Nugent, did you wish to say something?

James Nugent:

Yes, Justice Pepper, the issue for the Central Land Council is not that it is a landholder but that it represents the traditional landholders, both on Aboriginal freeholder under the Land Rights Act and with respect to native title negotiations. Petroleum permits pose a special sort of challenge for the organisation, although we deal with mineral exploration negotiations and have done over a 40-odd-year history. Petroleum permits by their nature are very large and they therefore cover a lot of different traditional territory and they therefore don't lend themselves to single meetings or to easy logistics as far as consultations go.

Both the Land Rights Act and to some extent the Native Title Act are based on the concept of free prior and informed consent for landowners and part four of the Land Rights Act sets out a very comprehensive structure, whereby traditional owners consider exploration prospects at the outset. Once they, if they wish to enter into negotiations and enter into an agreement, once they've given their consent for an exploration process, that then implies a further consent for any production. Right at the outset they need to consider not just the impacts and the benefits of the exploration process, but the impacts and benefits of any production process. That's why it's vital at the outset when people are considering those issues that they're able to do so in the context of a fairly robust and well-understood regulatory regime so that they're aware of what the government will bring in terms of environmental and other protections.

The sorts of issues that typically engage traditional owners, the protection of sites, the cultural and economic values and environmental issues. Certainly with regards to sites, the issues are not any more particularly complex than for other mining and petroleum issues, but those matters that pertain



particularly to groundwater, each of those communities and indeed, virtually every community in Central Australia relies on groundwater. And so the sanctity, the absolute need to protect that groundwater is vital to any community. If there's any suggestion raised that there's a risk to those supplies, then typically on average traditional landowners they would need something quite major in order to convince them to allow a process to continue that may, in fact, jeopardise those supplies.

The debate about hydraulic fracking has been a difficult one, I think, for the council to undertake and to manage. As Mr. Ross said, there's a wide range of views. In some senses it's not too dissimilar to the past issues of uranium exploration and production in the northern territory. The Land Council is an organisation that has taken large measures to make sure that traditional owners have been taken to see uranium mines, have been taken to speak with environmentalists, with scientists, with regulatory groups, so that they can then go back to their country and when they're asked to provide their consent or otherwise to prospects, they can make an informed decision. With the hydraulic fracking debate, the council itself has undertaken panel debates within its council meetings. It's invited industry representatives, representatives from local NGOs that have opposed fracking, the solicitor for the Environmental Defenders Office, and indeed, independent experts from CSIRO to present to the council, to try and come to some understanding as to what the parameters of a decision to allow oil and gas exploration, which would entail hydraulic fracking.

The Central Land Council itself has no firm position on any particular mechanism. Obviously it has to give effects to the decisions of traditional owners. What we're mostly concerned about is making sure that traditional owners, when they're making their decisions, and that the council as a whole does so from an informed position. It's quite difficult when you're dealing with both complex scientific and social events, which in many ways aren't perhaps well-understood broadly in the populace, and there's many different sorts of views expressed for the council to a) come to a position and b) to make sure that traditional owners are giving informed consent. It's certainly why in the trajectory of the hydraulic fracturing debate that there is a very strong need for the government to clearly educate and provide the materials by which not just traditional landowners, but all landowners, can come to these decisions.

In some instances, people express views that many of those things should also be translated into local languages, so that the concepts, not necessarily the scientific terms, but how the information is put to them is actually put in their own language, and they can interrogate in their own language and the Central Land Council certainly supports that where it's able, but would say to the government that that's an important aspect for people on the ground to consider.

Julie Ann Stoll: Just one of the other issues that emerged through looking at the issues paper, the CLC actually made a submission regarding the terms of reference and requested that there be clarity from the inquiry around the use of



hydraulic fracturing for tight gas in conventional gas' plays. That is something that still hasn't been addressed in the inquiry. It's made very clear what hydraulic fracturing is in terms of the parameters of the inquiry, and that it relates only to shale gas. The experience of the CLC has been with conventional plays like Mereenie and Palm Valley, are both located in the CLC region. We actually have a wide and long experience from the CLC's perspective in managing contracts regarding that and looking at those environmental issues.

For us, we really seek some clarity out of this process because traditional owners, when they are making their decisions, as James talked about, need to be fully informed. If hydraulic fracturing is to be promoted or enabled by government regulation, we want to know whether it's for conventional plays, tight gas, not only shale gas. If you could please consider that in your deliberations, we'd appreciate it.

Hon. Justice
Rachel Pepper:

We are bound by our terms of reference. The terms of reference were drafted by government. They were not drafted by the panel nor myself, so that they're not a product of the inquiry and we are bound by them, we cannot change them at this late stage.

I should emphasise, I'm sure it is clear, but just in case it's not, this is not a government inquiry. It was commenced by the government, so it was their idea to have it, but it is not a government inquiry. We are wholly independent of and impartial in respect to the government. The government is a stakeholder, like any other stakeholder. Just as you are a stakeholder. You are an entity and organisation that's coming here today, thank you, and providing us with your views and making suggestions and giving us some commentary. Ultimately we will be making recommendations to the government contained in a report. What the government then does with those recommendations and those findings, conclusions, will be a matter for the government. But I understand one of the things that you have raised quite clearly is the need, certainly, for certainty in the industry were, or if, it's a big if, if it were to go ahead. You've also mentioned, as I understand it, the need for a robust and firm regulatory framework, again, if this industry were to go ahead. We will be making evidence-based recommendations and findings and reporting to the government, but it is not a government inquiry.

Having said that, are there any questions from the panel? Yes, Dr. Beck?

Dr. Vaughan Beck:

Vaughan Beck, I'd just like to follow up on that point we were just discussing then. Given that you've had this experience with Mereenie and Palm Valley, and mentioning the issue of regulation could be a very important issue, are there any other lessons that you have gained from that experience with Mereenie and Palm Valley that you would say need to be considered front and centre if we're now looking at shale gas?

Julie Ann Stoll:

I think that the two industries are slightly different, and I think that there are quite a lot of questions that haven't been answered scientifically around the



shale gas industry. One of the things I think that is apparent though is around the capacity of government to regulate an industry. For all of us here in the northern territory, we're all subject to issues around recruitment and retention of staff. Those kind of issues are a concern in terms of regulation. If you don't have the bodies on the ground and the skills, it's very difficult to make sure that your management is good.

So, my understanding is that the northern territory government can get assistance from governments elsewhere, but there needs to probably be a more formal process to ensure that the territory does have the assistance it needs for any of the regulation that it's required to do.

Dr. Vaughan Beck: Thank you very much.

Hon. Justice
Rachel Pepper: Anyone else? Yes? Dr. Ritchie? Yes.

Dr. David Ritchie: Thank you. Mr. Ross, there's this..

David Ross: Hello, Mr. Ritchie.

Dr. David Ritchie: How are you?

David Ross: Last time I've seen you was here in this building.

Dr. David Ritchie: That's probably right.

David Ross: A bloke's funeral.

Dr. David Ritchie: That's right.

David Ross: Yes, yeah, that's a long time ago.

Dr. David Ritchie: I'll take you back 20 years. You published an excellent book by Bruce rose which was covered quite wide coverage of issues relating to the perceptions. I think it's called something like, "Perceptions of Aboriginal People to Mining in Central Australia". One of the points that just doing the literature survey for this review that Bruce made in his consultation was that there was this statements collected in a number of places, that the focus on the service landscape did not cover all the issues that were important for the maintenance of traditional belief systems. He had a number of really quite good quotes in the report I recall about ... people they were all talking about the importance of the underground culture and the importance of things underground in the continued existence of things underground that could be harmed.

The committee is mindful of your opening points, that pretty well all the land where hydraulic fracturing is proposed is owned in one form or another by traditional owners, under Native Title law holder. What we'd be really interested in is any views that you might have on the adequacy of existing



laws protecting those cultural sites, because this is, as you say, it creates a slightly different set of circumstances to ones that have been managed in conventional mining. I think we'll be following it up, but if you've got any views now, we would be interested to hear them too.

Julie Ann Stoll: [crosstalk 00:18:19] agreements.

David Ross: Yeah, I think it traverses a lot of possible territory in terms of cultural issues. Clearly there are, and we've had instances of, I'm thinking of up at Yulara when land has been disturbed for optic fibre cables or something and certain amounts of ochre were opened up and they were actually very important women's sites. There's no doubt that the sort of...the physical environment and the cultural environment intersect at a number of levels and it's not just at the obvious landscape level as you say. There's some history of this in terms of open pit and underground mining. As I said at the outset, I think the manner in which sites and the clearance of land by traditional owners to ensure that sites are not damaged would not be done terribly differently for a conventional gas play and an unconventional gas play. I don't believe that people would view that differently, although certainly some people would have a different cultural overlay on it. Certainly as its impacts to water, I think that that's where there is a criticality.

It's not just about the economic or the living imperative to have good, clean water. There is a very distinct and perhaps not well-understood cultural aspect to water. There was PhD done jointly, I think it was the first aboriginal and non-aboriginal PhD done jointly out at yuendumu, which looked at water resources and the way that they were treated by the pastoral industry and the sort of cultural rights to water, which very definitely come into play when you're discussing [crosstalk 00:20:33]. It was, that's right. Yeah. To that extent, there are those intersections. I think the landscape considerations on the ground would be handled much the same way, but I think that when traditional owners are making their decisions about land use and about how it impacts them, that their cultural view is very much informed by those sorts of considerations. I wouldn't consider myself an expert on how that'd play out.

Dr. David Ritchie: I suppose just as a follow-up; I think it is something we're going to have to deal with. I think I put it as a question, but I think it's some... we'll get a copy of that Phd.. I'd forgotten about that, that's good..

David Ross: Yep.

Hon. Justice
Rachel Pepper: Yes. Dr. Jones.

Dr. David Jones: Mr. Ross, you implied that there was [inaudible 00:21:26] news and you mentioned that consent for exploration implies consent for production. Does that apply specifically to the petroleum industry or is that mining in general? Because with of course with the exploration well for deep shale gas, the exploration well can be very quickly converted into a production



bore. It's not like an open cut, where you have to then go in, dig a great big hole and do something. There can be quite a narrow gap between exploration and production for gas as compared with other minerals.

David Ross: ... I guess under the Land Rights Act; we have to deal with all applications as conjunctive agreements. If you agree to exploration, you're agreeing to mining.

Dr. David Jones: That's a condition under the act?

David Ross: That's a condition of the act. That was put in an amendment I think back in '87, amendment to the original Land Rights Act because people didn't want to do separate agreements and they had a great fear of the mining industry at that time, and a lot of people in government had a great fear that if they found this I guess uranium was the big thing back then. People had the fear that they found what they're looking for, well then they wouldn't get an agreement. They put them together and forced it through that you have to have conjunctive agreements. That's what that's referring to.

The Native Title Act is different and you don't necessarily get the right to say no over that, the right to protect sites of significance, etc, in terms of that nature, but that's a different piece of legislation.

Dr. David Jones: I can understand why that would put so much additional pressure on the initial information content as well in terms of what it actually implies for-

David Ross: Well it makes it much more difficult for the land councils to deal with, because then we have time limits and things of that nature, and we need as much information and everything up front. As been mentioned, we have to take groups of traditional landowners into state to have a look at other mining operation-

Dr. David Jones: I was actually involved in that process when I was director of [aress 00:23:53], so I know what happened.

David Ross: You know railways, we've had to do agreements on a number of occasions for different things. That's just part of what we have to do.

Hon. Justice Rachel Pepper: I guess one possible solution to that is to go back to the pre-1987, if the conjunctive agreement is a product of legislative amendment after 1987, one solution might be to just disentangle that, so that you in fact give consents at different stages: exploration stage, production stage, and so on. Or I suppose that's under the Aboriginal Land Rights Act, and appreciate that the Native Title Act is a commonwealth piece of legislation, but-

David Ross: [inaudible 00:24:38]

Hon. Justice Rachel Pepper: Indeed. That's quite right, but affording landholders an ultimate right of veto.



David Ross: Yes I'd agree with that but it has to be done up front.

James Nugent: I think the point, David, that's [crosstalk 00:25:02] Dr. Jones is that what it speaks to is the requirement for all of that information to be provided up front for traditional owners. That really does frontline the process, and many people don't, even in industry and/or government, sometimes understand that that requirement, when you're just dealing with what seems to be an exploration proposal and might therefore be seen as rather, not trivial, but just redacted to that level, in fact are the land rights because of the scheme of the act. Because that is a consent, it's a one-time consent and although a mining agreement or a production agreement would be required, once that consent's given, it's a through put process. Therefore people do need to understand not just the exploration process and its impacts, but the production process and what its long-term impacts may be. Obviously there are the known unknowns, and there are things that go to it.

An earlier question with regards to Palm Valley and Mereenie, over time prospects change and production techniques change, and the well conditions change and I think in ... Was it Palm Valley or Mereenie where there was the hypersaline water issue. A lot of hypersaline water was brought to the surface, needed to be disposed of, and that's a process entirely separate to the original permitting of production. Ultimately there were agreements reached that that water can be disposed of at Lake Lewis. A salt pan where the water was simply dumped and evaporated off, it was certainly something that was never under consideration by traditional owners at the time of those production wells going in, but it was something that through their production life came to mark a pretty significant environmental event.

Traditional owners are aware that that is a risk of processes and also that once something goes into production it may not be a decade, it may be for quite a bit longer, and that there will be issues that-

Hon. Justice
Rachel Pepper:

For decades, absolutely.

James Nugent:

... that go ahead.

Hon. Justice
Rachel Pepper:

Understand, thank you. Yes?

Ms. Jane Coram:

Can I just clarify? This might be a point we've already gone over, but I know in coal seam gas situation in the eastern sites, which is different to here, a lot of the information that has informed understanding of groundwater systems has only come to light through the exploration phase. So if I understand what you're saying correctly, you actually under the Land Rights and Native Title Acts, you actually have to front load the approvals before that information would be given currently. If exploration then changed understanding of the water systems and the connectivity and indicated that there would be a different impact to the one that was understood at the



time of the exploration, it would be too late to change the development approval. Is that correct?

Julie Ann Stoll: I think, that's exactly correct, and one of the things that we requested through the Hawk Report, was that there needs to be more considered environmental assessment on a strategic level of all of the groundwater resources in Central Australia. If you really want to look at alternative industries that are going to use a lot of water and have potential to contaminate water, you need to understand what you've got well before you start making decisions. That's one of the things that traditional owners have always pointed out during these processes over the last couple of years.

Hon. Justice
Rachel Pepper: Anybody else have any questions? Yes, please.

Julie Ann Stoll: Some point, make one other point, please. So, I noticed that the panel or there's going to be community meetings at Alice Springs and Tennant Creek and Yuendumu and Hermansberg in the CLC region, but my point is that there are many communities across our region that are affected by this issue. It would be really good if they had an opportunity to learn more about this part of the inquiry. The CLC's done its best to inform people about the Hawk inquiry and it's mainly done that through meetings and through our council delegates. This further process is fairly new and it came out through the Christmas break where the CLC doesn't do a lot of fieldwork because of the heat and the rain and ceremonial activities of people in communities, so it would be good if there could be some further meetings across our region. We have other major communities like ali curung and [inaudible 00:30:03], they're all affected by this issue. Lajamanu is another. That would be great.

Hon. Justice
Rachel Pepper: We'll absolutely take that on board. Thank you very much. At this stage it's anticipated a final report will be delivered to the government by the end of the year.

David Ross: Our next Land Council's meeting is in late May and I wondered whether or not you'd be interested in having some representation there to talk to our council. We've got a couple of big days with people coming to talk about hydraulic fracturing process, the for's, the against. We've had government and all sorts of other people, protestors and everyone turned up and had their say and whatnot, so it seems an opportunity for yourselves if that was something that you'd thought was of use.

Hon. Justice
Rachel Pepper: Excellent suggestion. Thank you.

Hon. Justice
Rachel Pepper: I should add that there will be in addition to the suggestions just made, that after those, interim report will be released middle of the year, and we'll be doing further consultations after the release of the interim report. Then there will be a draft final report, which was anticipated to be released around about October. There will be further consultations again after the release of that draft final report. Of course anybody can follow or lodge a



submission at any time. Anybody can contact us and express their views at any time and we welcome whatever form of engagement people can participate in. Those are excellent suggestions and we will follow those up. Is that all?

Thank you very much, Mr. Ross, Ms. Stoll, and Mr. Nugent for attending today. Thank you.