



Darwin - Environment Centre NT

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Darwin Convention Centre, Darwin

Speaker: Shar Molloy

Shar Molloy: Good afternoon. I'm Shar Molloy, and I am the Director of the Environment Centre NT. I would like to begin by acknowledging the traditional owners of the land that we meet, the Larrakia people, and I pay my respects to their elders past, present, and emerging. I also acknowledge other Aboriginal people that are present or who are listening to this presentation. Good afternoon Justice Pepper and the panel and everybody listening. I thank you all for the work that you've done in putting together the final draft report and under tight timeframes and scrutiny as well. I have managed to read through most of it, and I appreciate this opportunity to comment on it.

I would like to begin by adding further words of wisdom from Rachel Carson and in setting the tone of this presentation. "We stand now where two roads diverge. But unlike the roads in Robert Frost's familiar poem, they are not equally fair. The road we have long been travelling is deceptively easy, a smooth superhighway on which we progress with great speed, but at the end lies disaster. The other fork of the road, the one less travelled, offers our last, our chance to reach a destination that assures the preservation of the earth." As I comment on this final draft report I stand on the path less travelled, and that is urging the assurance of the preservation of NT's rich biodiversity, unique and beautiful landscape, clean water, and flowing waters and strong culture.

Again, as for the interim report I'm torn between responding to specific issues that need to be addressed if this industry goes ahead versus simply making the case for why it needs to be banned. We clearly stand with many others that you've heard over the last two days that are calling for a ban on fracking, and we simply do not support the creation of a new fossil fuel industry at a time where all carbon pollution needs to be reduced. We frame this also in the context of the Northern Territory not currently having a climate policy, although we are told that it's on its way, and from all accounts, and I have been in meetings where this has been clearly spoken, the Northern Territory government are not intending to include a greenhouse gas emission reduction target in their climate policy. That is because they intend for greenhouse gas emissions to increase in the Northern Territory, and that is absolutely what was spoken from chief minister's office.



Others have addressed the issue of the greenhouse gas emissions and I'm grateful for them making the efforts to get their heads around the numbers. We are choosing to respond to your request for feedback on the draft final report, and we will mostly be addressing the chapter on regulatory reform, and also some other issues at the end. We assert that if all the recommendations made in this draft report are adopted and implemented in full as they're currently written the risk relating to water, land, air, public health will not be mitigated or reduced to acceptable levels. I firstly want to remind us that we have a current situation in the Northern Territory where we have exploration permits that have already been approved, and they've been approved without any public environmental impact assessment process, and also without also the wisdom of the issues that you raise in this draft final report in regards to risks and also how to mitigate them.

There are also a significant amount of exploration permits currently under application, which if the moratorium is lifted could be subject to certain recommendations in the draft final report. As you've heard from quite a few people, our biggest concern with the draft final report is the timing of the key recommendations being before any production licence is granted. We believe all of the recommendations that refer to that term "before any production licence is granted" should be replaced with "before any exploration permit is granted" or perhaps even clearer "before any ground-disturbing activity." In the case where previous exploration permits have been granted the recommendations should stipulate before any further regulated activities including hydraulic fracturing operations, land clearing, road building, earthworks, et cetera can occur after consideration of new information.

There are five reasons for this recommendation. Number one, it's imperative that baseline studies and baseline information occur before any further activity so if there is any impact on the environment it is clear that that impact has been from hydraulic fracturing or associated operational activities. Then therefore there can be no comeback later from the gas companies that say, "Well, the impact wasn't from our activities," if the baseline studies are actually undertaken before there's any further activities, that's also ignoring obviously any damage that already been done. Baseline studies may actually have already previously been part of conditions of exploration permits and that what we're saying is that also that often those baseline information doesn't make it into the public domain.

Number two. The activities related to exploratory activities are not dissimilar to the ones undertaken during production, albeit and we acknowledge at a different scale. Wells are drilled and fracked through aquifers, water is extracted and needing to be managed. Weeds are spread and native vegetation is failed. Number three. Estimation of the amount of wells that can be drilled and fracked whilst under an exploration permit can be well over 60 including at the appraisal and delineation phases per exploration permit. If you multiply the amount of existing exploration permits by that number even if it's not that many, then it's still an extraordinary amount of wells that can be drilled with potentially vast



impacts on areas that you have yourself identified where you need more information to actually understand about conservation values, understand about water values.

This will possibly be without any baseline studies or assessments and analysis of the Territory's unique environmental values including the water interactions, greenhouse gas emissions, terrestrial ecosystems, public health, and social impacts. The majority of the Northern Territory has no faith or trust in the current regulatory environment as it stands to be able to monitor and respond to this industry. It's unthinkable to us that the panel would recommend exploratory fracking operations to continue under the same legislative conditions that exist before and during this inquiry that doesn't appear to us to be robust and rigorous. It doesn't also make any logical sense. How does that help build social licence or trust in the ability of the regulatory framework to address the risks?

We do look forward to the community inquiry on Saturday where as you stated yesterday that we'll have an opportunity to actually ask the panel questions, because we'd really love to actually hear what is the rationale of putting significant recommendations at that timing of production licence versus exploratory permits, and keeping in mind having to deal with the existing ones as well. We request that that question time be able to be as part of the bigger group, not just the question time where we sit at the smaller tables, but that we can actually raise questions in that bigger group. This is an issue that has been raised by many different groups and different organisations and we think that it's important that the community can actually understand first of all what's even being proposed within this draft final report and then what the implications of that are, and also to hear from you if you think that that actually is the best recommendation.

Also, lastly Origin admitted themselves in their presentation yesterday that it is difficult to change regulatory requirements overnight, and it's also difficult within a transition to transition to a different regulatory requirement during operations. We request the following inquiry recommendations be amended in the final report to change the timing of the implementation from before any production licence is granted to before an exploration permit is granted. In the case of where previous exploration permits have been granted, the recommendations should stipulate before any further regulated activities including hydraulic fracturing operations, land clearing, road building, earthworks, et cetera, and then taking into account the analysis and assessment that you receive from the SREBA.

I can go through each one individually, but the recommendations that I've looked that need changing are 7.1, 7.4, 9.2, 10.1, 14.6, 14.32, and 15.1, and there may be others where I've missed that same similar wording. In further clarifying your recommendations, so I refer to your risk assessment relating to land which is on page 172. I'm going to quote you here, so you might want to have a look at that. In clarifying your recommendations we agree with your assessment that the likelihood of onshore gas development, and I'm going to refer to that word later, occurring in currently undocumented



areas of high conservation value in the NT is high. This page 72 on the large document.

Given the lack of comprehensive and systematic information on the biodiversity assets of prospective regions including virtually no information on invertebrate fauna, this poses a significant threat to species that might occupy highly restricted ranges within a development area and therefore the consequence is also rated as high. Combining the likelihood high with the consequence high, the overall risk is high. You go on to say that the high risk can only be mitigated by implementing the findings, so implementing the findings from a strategic regional assessment of biodiversity values connected prior to any shale gas development being approved. The recommendation that you make there is that the strategic regional terrestrial biodiversity assessments are conducted as part of the SREBA on all bio regions prior to any on-shale gas production. Again, there's a shift moving from development to production that can actually be confusing. And that all onshore gas development excluded from areas considered to be of high conservation value.

The results of the SREBA must inform any decision to release land as specified in recommendation 4.2, and also be considered by the decision maker in respect of any activity-based EMP. When the decision maker is considering the activities related to the environmental management plan, that's at that point before exploration permits are considered. Then this seems to me that it's when you actually just keep referring back to production and development rather than exploration, but that's not going to mitigate that high risk. We believe also then that 8.1 needs to be changed so that for significant risks apply to the exploration, appraisal, and delineation phase, not just the development and production phase.

Therefore, recommendation 8.1 should also state that all onshore gas regulated activities be excluded from areas identified as high conservation value from the SREBA assessments that happen before you do the EMP assessments. I'm going to delve even deeper into these regulatory reform recommendations, and as far as we can read there are no recommendations of how to implement the findings of the SREBA and the analysis especially for areas where exploration permits have already been granted, and that's given the current legislation around obtaining a licence under the Petroleum Act. Again, please if we have a look at page 372, and if I've got anything wrong please correct me, because I'm not an environmental lawyer.

On page 372 you talk about what happens because you've been referring a lot to production licence, so you've put this information in here so that it actually shows us really what happens about when you get a production licence and the process. The proponent discovers the commercially exploitable accumulation of petroleum under the EP, or the EMP that's been granted at the exploration stage. Then the proponent applies for the production licence, and I'm going to add in there that that's the point that you're saying that the information from the SREBA has to come in before there was a production licence. So then, where the minister is satisfied that the proponent has one: complied with the Petroleum Act conditions of the



EP and any directions given by the minister, has discovered a commercially exploitable accumulation of petroleum within the EP exploration permit area, and complied with the requirements of an application.

I really want to stress here what you've written in bold: "The minister must grant the production licence." So how then does any of the information that you've obtained from your analysis and your assessment from the SREBA possibly impact the decision to grant a production licence? By law it can't even impact the decision, because you've already got these exploration permits that have been, some of them that have already been granted with no consideration of the information that you have from the SREBA, and those conditions exist, and then under this legislation, under the existing legislation then it can have no impact, so it renders that meaningless. Please correct me if I'm wrong, because it could just be the way that I'm reading it.

You go on to say that, and as I was reading it, so: "Many of the reforms proposed above with respect to exploration have direct application to the production phase of any onshore gas industry. For example, it may be the case that between the granting of the exploration permit and the condition consideration of an application for a production licence an event happens or information is obtained that calls into question." But then your next sentence is that you talk about fit and proper person. It was like as I was reading that I had incredibly high hopes that it would be at this point that you would make recommendations about how to amend the Petroleum Act to take into account the new information from the SREBA and to actually make that information meaningful, even if we do go with your recommendations about having the timing be at production licence.

If it's with that SREBA you then identify high conservation land or other risks that are being ascertained to be in those areas where already you've granted an exploration permit how can they actually even be revoked through the legislation? Please, I'm interested in being corrected on that if I've misread it and don't understand. I'm going to move away a little bit from the environmental regulatory information just at this moment. Just in staying on the topic of the SREBA, we also believe that the following considerations should be included in the scope and the content of that assessment. Number one, inclusion of traditional Aboriginal ecological and cultural knowledge to understand the environment and to the risk assessment.

I'd like to refer to NLC's submission on public review of the draft environmental impact statement guidelines released by the Northern Territory's Environmental Protection Agency, that is in 2013, but something ... This information has been replicated elsewhere as well. The guidelines do not address the value of traditional Aboriginal ecological and cultural knowledge to understanding the environment and to risk assessment.

I'm quoting here from NLC's, so from their perspective. "Aboriginal people hold a different world view to that promoted in the environmental impact assessment process, and have developed an understanding of the natural environment and land management practises that complement non-



indigenous impact assessments, and once integrated into the process traditional knowledge will help provide a more complete evaluation, a more holistic approach to environmental impact assessment. Where possible, information relating to traditional knowledge and management systems should be collected and incorporated into EIS documents and specific reference should be made in that process to the contributory value of traditional Aboriginal knowledge and its inclusion in the risk assessment process and information that is of value for describing specific biophysical impacts should be included as part of the required surveys and analysis. Example: flora and fauna surveys."

Just in terms of extending that further, so with the SREBA then that kind of analysis and understanding to be able to actually include this information as well, so that would be a recommendation to strengthen the SREBA even further. Another recommendation again in strengthening that assessment is to consider the impacts to the biodiversity in an altered climate, and I also refer the panel, I can pass over a copy of the article, and it's how Australian legislation can consider climate change in ecological impact assessment by Lukas Clews. Again, it's like it's about strengthening the information that we get from that assessment.

I'm going to come back now to the regulatory reform, so I'd like to address your question regarding the options for the reform of the regulator. We support option one, and possibly there's components of option two that would strengthen option one. That's proposing to align closely with the NT Government's existing environmental reform processes. This option proposes that all petroleum activities must have a ... What you've written is that all petroleum activities must have a separate environmental approval under uniform environmental legislation. Under this option an overarching environmental protection act is introduced in accordance with the Government's current environmental regulatory agenda.

It's where the Minister of the Environment provides a separate and an independent approval for all of the petroleum activities that have an environmental impact. The act will require the Minister to decide whether or not petroleum activities including any onshore gas activities can occur or not on environmental grounds only. The Minister must apply the principles of ESD, including the precautionary principle where the Minister makes a decision. The Minister must be satisfied the environmental risks and impacts associated with the petroleum activity have been reduced to levels that are acceptable. We support that the environment minister actually has those decisions through the process of environmental impacts.

We believe that taking the recommendations from this Inquiry which some of them are really significant and add to that process through to the current regulatory reform will go some ways in strengthening vital regulation needed for other projects and other industries, including mining, land clearing, et cetera. We also believe that the triggers for assessment to be developed under this new regulatory reform may also capture some of the environmental assessment at the exploration phase where previously there has been none.



We'd like to strongly recommend that the following recommendations make it through to the final report, and that they also have a broader implication in terms of the environmental regulatory reform. That's 14.1, that the Government design and implement a full cost recovery system for the regulation of the onshore shale gas industry. 14.21, that the Petroleum Act and Petroleum Environmental Regulations be amended to allow open standing to challenge administrative decisions under these enactments, that the merits review be available in relation to decisions under the Petroleum Act and not limited to the decisions in relation to the granting of exploration permits and approvals of EMPs, and that the third-parties that you have listed at a minimum have a standing to seek a merits review.

Where litigation is brought genuinely in the public interest, that costs' rules be amended to allow the NT courts to make an order to not make an order for the payment of costs against an unsuccessful public interest litigant. This is extremely important. That the Government enact whistleblower protections, that's 14.25. Recommendation 14.29, that the Government considers enacting provisions that reverse the onus of proof or create rebuttable presumptions for pollution and environmental harm offences. I would also like to say that Recommendation 14.12 can be strengthened and that is that there is also chain of responsibility legislation from Queensland. I think that's in reference to rehabilitation and also guidance about setting bonds.

Also in Recommendation 8.8 regarding offsets. We have significant concerns regarding the integrity of offsets currently as they're looked after here in the Northern Territory. I refer to \$24 million that is intended to be granted over 22 years that is still not received from the INPEX project for the western Top End marine megafauna. In question 29 from budget estimates dated on the 9th of June 2017 this raised the issue. The offsets were meant to start flowing from the third quarter of 2016, and the answer that was returned was that the programme is intended to be implemented now in 2018/19. The issue is with those offsets if organisations like ours aren't keeping an eye on them and having questions raised about how they're being implemented then they can actually slip through, which is extremely concerning without a doubt. We're also intending to continue to explore the issue of this offsets programme through the environmental regulatory reform process.

In closing, there are many more issues also that we could have addressed regarding well integrity, but I think that was well-covered today, water, economic assessment, and also social impact assessment, and we believe they are adequately covered by some other organisations and individuals that you'll hear from. In closing, we concur with similar sentiments raised by Braedon Earley yesterday. Many of us feel a connection to the Territory that is physical, psychological, and can't be seen, and everything in our bodies, our hearts and our being is saying onshore hydraulic fracturing in the NT is a bad idea, and that message needs to be respected and listened to. Thank you.

Hon. Justice Pepper: Thank you very much Miss Molloy. You were reading from a ... Yes.



- Shar Molloy: Yes.
- Hon. Justice Pepper: You'll submit. Thank you. No. For this reason, because I want to think again about what you said about the current legislative arrangements in relation to the granting of production licences. I just need to think that through. You've obviously spent the time doing that, and I appreciate that, and that is precisely why we have these consultations and why we have this process. I want to be able to plot it through again, so thank you for that.
- Shar Molloy: I think it's really important, because as we're reading this it's important to say, okay, this is the recommendations that you're making, but there is some pathway, that you're describing the pathway for how they can be implemented, because at the moment when you put something out like production licence and there's no pathway for how the recommendations that you are making can be implemented or made meaningful.
- Hon. Justice Pepper: No. I do accept that. It's one thing that I think said when the report was released was that we hadn't yet dealt with implementation, and that is something that still needs to be done. We wanted to get feedback from everybody first before we turned our mind to implementation. I'm very grateful for the assistance that you've provided. Yes. That does need to be done, and I also accept that in some cases we do need to be very clear about whether we're directing the recommendation towards production, ...
- Shar Molloy: Development. Yeah. That's right.
- Hon. Justice Pepper: ... exploration and whether or not we need to look again at some of the recommendations that we have directed towards production and see whether or not they are appropriate in ...
- Shar Molloy: Thank you.
- Hon. Justice Pepper: ... light of what people have told us. We will take all this onboard. Just one last comment which was it's almost certain that we will use the similar format in our final round of consultation with the consultations as we have done previously. Experience has indicated to us including experience where we've deviated from this process during the course of consultations that where you have a large group in Q&A you will get one or two people invariably dominating the questions and other people don't get the opportunity to speak. We will be, I think, following that normal process.
- Shar Molloy: Is there a way that you can answer that question here so that the people that are listening, and so it can be actually understood why? You've said yesterday that you very deliberately have used that term production licence, so it would be great to actually understand why you've done that and not exploration, and not at the exploration permit stage.
- Hon. Justice Pepper: Again, there's a range of different recommendations. Some have been clear in their targeting, which is namely it has to occur now, now, before exploration. Some as you've pointed out are directed to post-exploration, pre-production. There are rationales. There's too many to go through and



explain our logic here today. People will certainly have the opportunity to ask those questions in the group, sorry, the community consultations, but it won't be in a very large Q&A format, because as I said you end up with regrettably one or two people hogging the microphone and other people don't get the opportunity to ask questions. A lot of people feel quite intimidated in that dynamic. The overwhelming positive feedback that we have had from the community consultations where we have had the round table discussion is that people have felt that they can participate in the discussion. We will stick with that format.

Shar Molloy: If it could just be really taken on-board though the actual kind of recommendations that we've talked about and to be able to actually have those answers for us, because there's many people listening. It's across all, many organisations where that recommendation is being made, so if we could have that.

Hon. Justice Pepper: We may not have those answers for you. This is a draft report, and as I said I emphasise that again when we released the draft report. It's a draft. The whole purpose of the draft is so that we can get the feedback so that we can consider whether or not the recommendation is right, whether it needs to be calibrated, whether it needs to be completely revised. That's the purpose. We may not have answers to all the questions. It may well be that it's, "Well, no. That's a really good point that you've raised." Again, during the course of today many people, and yesterday, have raised really good points, and in the week previous, and they will be considered and taken on-board.

Shar Molloy: I guess my recommendation then is that if that's going to keep going through to the final report that there is very clear justification for why you've chosen to keep it a production licence and not at the exploration permit, that that needs to be very clearly written and stated within the final report.

Hon. Justice Pepper: I don't disagree with that, and if it hasn't been made sufficiently clear then, again, we will take that on-board and have a look at it. No. I do accept that.

Shar Molloy: Thank you.

Hon. Justice Pepper: Yes. Dr Andersen.

Dr. Alan Andersen: I can clarify that for recommendation 8.1, which was the one that you spent a fair bit of time talking about. That's a recommendation referring to terrestrial biodiversity and the recommendation that the results or the SREBA be undertaken and the results inform decisions. That was specifically at the production phase rather than the exploration phase. The assessment that we make in the preamble to that recommendation that the risk is evaluated as high, that's in relation to the full production phase, and that if we were assessing that risk just at the exploration phase it would have been low. The reason for that is for this terrestrial biodiversity issue, it's not a water-related issue, it's not a fracking per se issue, but it's a land clearing,



surface activity issue. The extent of surface activity at the exploration site is relatively low.

I mean certainly that's the case in terms of total area, but it's also relatively low in relation to other activities, land management activities that are happening including just routine pastoral property management operations as well. That's some of the clarification there for that particular one.

Shar Molloy:

I think that we did hear today an example with the pastoralists talking about, you know, they were just fracking just two wells on their property, and there was a movement of 50 trucks, and aeroplanes, and all sorts of stuff. I would actually really question that and also Naomi from Lock the Gate also further answered that in terms of in an exploration permit area you can potentially have 60 wells. This was just two wells. The impact from roads, from pipes, from all those operations, I actually disagree with you. Also, I think that it doesn't make logical sense, because you also referred and you said that the SREBA should impact and inform an EMP and that's before an exploration permit. You're kind of saying one thing and then saying another at the same time. It doesn't make sense. Thank you.

Hon. Justice Pepper:

Thank you for bringing these to our attention. As I said, that's why we have this process. Any further questions? Yes. Dr Jones.

Dr. David Jones:

Just a comment about the number of wells. As you say quite rightly in the full appraisal phase it could be quite a few wells, but our understanding is that it will take actually a number of years to get to that point. There'll still be individual wells being dug around in a quite dispersed way before we get there. I think in terms of calibrating our recommendations and timing of when things come in we have to consider that a bit more closely to see how that might actually work.

Shar Molloy:

Again, it's like how does it actually work. Suddenly you've gone and done an assessment in an area where there's an exploration permit. How do you go and tell that company, "Oh, sorry. We've just found some high conservation area here." At what point do you actually tell them to stop working? What you're saying in terms of at the production licence is that they just continue doing their fracking operations under that exploration permit, so you don't even ... It's just it doesn't make any sense, because, like how do you actually implement any of that information that you get about, "Wow, that exploration permit where you're doing that fracking is actually high conservation value, and there's this threatened species."

Well, you're just going to keep doing that fracking under that exploration permit, because we can't stop you.

Hon. Justice Pepper:

I understand the submission.

Shar Molloy:

Thank you.

Hon. Justice Pepper:

Any further questions? ... Now we will have short break.