

fracking inquiry

From: Shar Molloy [REDACTED]
Sent: Sunday, 25 February 2018 11:03 PM
To: fracking inquiry
Subject: Submission to Draft Final Report From Environment Centre NT
Attachments: ECNT submission to Draft Final Report 25-2-18.pdf; Shar presentation 10-1-18.pdf; INPEX joint venture seeks to dump \$30 million of federal environmental projects - ABC News (Australian Broadcasting Corporation).pdf; QoN129 (1).pdf

Dear Panel,

Please find attached our final submission to the Draft Final report, including a copy of our verbal submission and supporting documents.

Warm regards,

Shar

Shar Molloy

Director

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We acknowledge we live and work on Larrakia country.

We acknowledge the Larrakia people as the Traditional Owners of the Darwin region and pay our respects to Larrakia elders past and present.

We are committed to a positive future for the Aboriginal and Northern Territory community."



Dear Justice Pepper and Panel of the Inquiry into Hydraulic Fracturing,

Thank you again for the opportunity to respond to the Draft Final Report.

Please find attached a copy of our verbal submission made to the Panel on Tuesday 6th February. We have also included supporting documentation that we referred to in our verbal submission regarding our concerns of any offsets program.

We are also submitting a document regarding Chain of Responsibility Legislation and a pathway for its implementation in the Northern Territory. This document is being used to guide discussions in meetings with various stakeholders and government departments.

We have a few last points to add to our verbal submission as follows:

- We did not read any information about the impact on the environment from the extraction of sand that would be needed to support an onshore gas extraction industry. For example – is this sand coming from the NT? If so will the extraction be from the the Sandsheet Heath vegetation on the Howard Sand Plains. This area is an NT Site of Conservation Significance and also an 'at-risk' ecosystem

Recommendation

The threat to ecosystems from sand extraction to be considered

- We have concerns regarding reuse of drilling wastes into road construction (p69) and how this will be regulated to ensure there are no environmental or health impacts from the use of this waste. We do not believe that this solid waste can be stored and treated safely.

Recommendation

Prohibit the 'reuse' of drilling wastes into road construction or other uses where it becomes part of the existing environment.

- We do not believe the full impacts of the onshore gas fracking industry on existing and future potential carbon abatement projects have been considered, particularly in relation to the threat of weed infestation. We note on page 175 you assess the likelihood of the spread of significant invasive weed species as high and the consequences of this spread as high also. Perhaps it is unknown to the Panel, that where there is an infestation of grassy weeds – either existing or newly introduced



then the current savanna burning method cannot be applied. Under the proposed savanna fire management method (Carbon Farming Initiative—Savanna Fire Management—Sequestration and Emissions Avoidance) Methodology Determination 2018 (draft sequestration method) gamba infested areas are permanently excluded, even if it is eradicated. It is inevitable that grassy weeds other than Gamba, including Mission Grass and Grader Grass, will also be considered threats to carbon abatement programs. The threat of Buffel Grass will be relevant in more arid parts of the NT and will potentially threaten a carbon industry in the NT Centre before it even starts.

The carbon industry in the NT is too important to risk. The current revenue is significant; since it commenced in 2013, savanna burning in the NT has produced over 2 million ACCUs, worth at least \$24 million at today's prices, and continues to grow. Predictions are that 2017 will be worth least \$8 million. Carbon revenue is one of the few long term funding options landowners have to manage their vast estates. Growth in the industry will rely on the development of new methods and expanding the geographic and accounting scope of existing methods. The threat to the viability of existing and future projects from grassy weeds is very significant. If the landscape is invaded by grassy weeds, particularly along disturbance corridors, then one of the key sources of land management funding (revenue from the sale of carbon credits) becomes ineligible.

The biggest threat of grassy weeds invading the NT landscape, and threatening a newly emerging industry, is from a potential onshore gas industry.

Recommendation

Exploration and development of an onshore shale gas industry is to be excluded from areas where there is existing carbon abatement schemes and from areas where there is potential for these schemes to exist. An onshore shale gas industry cannot co-exist with carbon abatement schemes because of the disruption to mosaic burning methods and because of the high risk of the spread of evasive grassy weeds. An area impacted from weeds spread via the onshore shale gas industry permanently excludes these areas from highly lucrative and supportive carbon abatement schemes.

Thank you again for the opportunity to provide further response to the Draft Final Report.

We look forward to our responses and recommendations provided here and in our verbal presentation influencing your Final Report.

Warm regards

Shar Molloy



INPEX joint venture seeks to dump \$30 million of federal environmental projects

Exclusive by the National Reporting Team's Kate Wild

Updated Thu 31 Mar 2016, 4:02pm



PHOTO: The Ichthys INPEX project will pipe natural gas from WA to Darwin. (Supplied)

The company behind a \$34 billion liquefied natural gas (LNG) project in the Northern Territory is trying to renege on its agreement to complete \$30 million worth of environmental projects.

The Ichthys INPEX joint venture will take natural gas off the coast of Western Australia and pipe it 900 kilometres underwater to a processing plant in Darwin Harbour.

Seventy per cent of the gas will go to Japan once production begins.

RELATED STORY: Hundreds march to protest work practices at INPEX's Darwin LNG project

RELATED STORY: INPEX completes deep water gas pipe lay spanning 890 kilometres

Key points:

Government approval was conditional on the company delivering \$91 million of environmental offset projects over the 40-year life of the project.

But the Federal Environment Department has confirmed INPEX has sought approval to revise its offset program "in light of lower-than-expected environmental impacts for the project".

The ABC understands the company wants to save around \$30 million by dumping marine and land reserves it agreed to establish.

That includes 2,000 hectares of mangroves and land, plus "marine habitat for inshore dolphins, marine turtles and dugong".

Sources have told the ABC a \$24 million partnership with Aboriginal rangers "to provide for co-management of dugong, coastal dolphins and Marine turtles" along approximately 300 kilometres of coast is in danger if the Federal Government approves INPEX's request.

Environmental risks no longer relevant: INPEX

In a statement to the ABC, the general manager of INPEX, Sean Kildare, said the assessed environmental risks were no longer relevant.

"[The request for changes] was made on the basis that independently verified environmental studies have demonstrated many of the environmental risks assessed at the time of approval are no longer relevant and are extremely unlikely to be realised in future".

The company's environmental pledges were a condition of the Federal Government approving the Ichthys LNG project under the Environmental Protection and Biodiversity Conservation Act (EPBC), in 2011.

INPEX described its offset projects on the company website as "designed to compensate for residual environmental impacts associated with the project".

- Approval of Ichthys INPEX project conditional on venture providing \$91m of environmental offset projects
- INPEX asks Federal Government to release it from \$30m of promised projects
- Projects marked to be dumped include reserves set aside permanent protection of animals, habitat

Independently verified environmental studies have demonstrated many of the environmental risks assessed at the time of approval are no longer relevant.

Sean Kildare, INPEX general manager

Elsewhere it said: "We are committed to establishing, building and maintaining community trust. We work closely with stakeholders to ensure information is readily available to the community, as well as providing mechanisms for feedback and response."

Mr Kildare said in his statement that more than \$100 million had been spent "on baseline environmental studies and investigations" off the Kimberly coast and the broader Darwin region, which had "substantially increased the scientific knowledge of these minimally studied areas".

The footprint of the Ichthys project stretches from Western Australia to the Northern Territory.

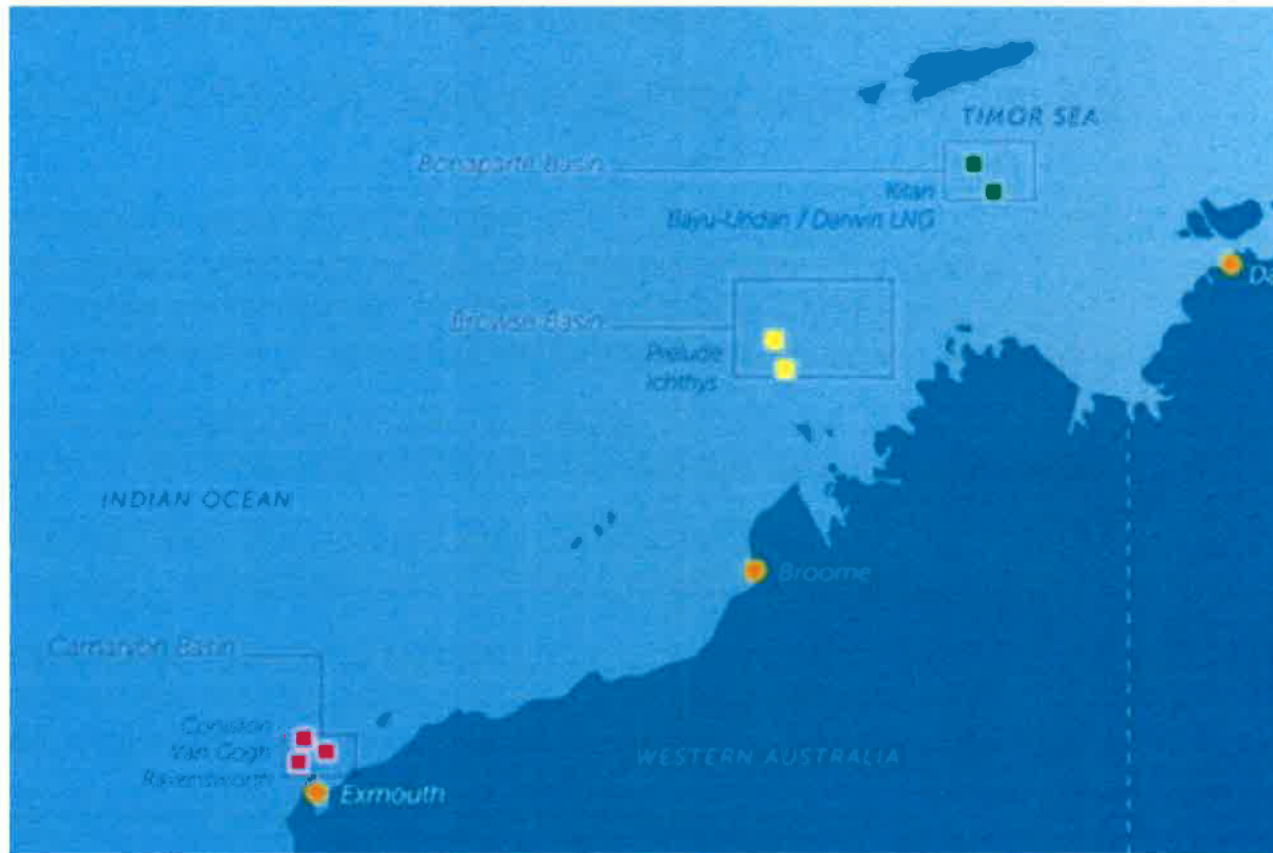


PHOTO: This map shows the footprint of the LNG operation. (Supplied: Ichthys INPEX)

INPEX said offset projects, including aerial surveys of dugong, dolphin and turtles along the entire NT coastline and a 40-year program of monitoring and research in Darwin Harbour, were already underway.

Others, such as ecological surveys in the Kimberley and two national research grants have already been completed.

Mr Kildare said "a significant investment of time, money and people" had shown predicted environmental impacts of the Ichthys project had been "either completely removed ... or were not applicable based on expert advice".

The Federal Environment Department has asked INPEX for more documentation to support the company's request for "a variation of its approval conditions".

Northern Territory Minister for the Environment, Mr Gary Higgins, said it was a matter for the Federal Government who the NT trusted to "assess the proposal based on the facts and the science".

Environment Minister Greg Hunt declined to answer questions put by the ABC.

Topics: oil-and-gas, business-economics-and-finance, government-and-politics, federal-government, environmental-impact, nt, australia, wa



**Senate Standing Committee on Environment and Communications
Legislation Committee**

Answers to questions on notice
Environment and Energy portfolio

Question No: 129
Hearing: Budget Estimates
Outcome: Outcome 1
Program: Environment Standards Division (ESD)
Topic: Inpex – Western Top End Megafauna
Hansard Page:
Question Date: 9 June 2017
Question Type: Written

Senator Waters asked:

We have seen a copy of the agreement between the NT government and Inpex signed in October 2014. In Annexure D, the budget is laid out, and funds were supposed to start flowing in the third quarter of 2016. Why didn't that occur?

What is the holdup with that project? Does Inpex accept that they need to fund it, or are they still trying to dodge that obligation?

Answer:

Condition 11 of the approval for the INPEX Ichthys project requires the person taking the action to submit a Coastal Offset Strategy for the protection of listed threatened and migratory species impacted by the Ichthys project in Darwin Harbour. That Strategy was approved by the Minister's delegate in April 2012.

The approved Coastal Offset Strategy outlines programs to be funded by INPEX as offsets for impacts to matters of national environmental significance associated with the Ichthys project. One of those programs, the Western Top End Marine Megafauna Program is to be designed and implemented by the Northern Territory Government, with funding to be provided by INPEX.

The approved Coastal Offset Strategy requires INPEX to provide \$24 million over 22 years to the Northern Territory Government to implement the Western Top End Marine Megafauna Program. The Department has been advised by INPEX that the Northern Territory Government intends to commence the Western Top End Marine Megafauna Program in 2018/19, following completion of the Conservation Status of Coastal Dolphins Program (a program part of the approved Coastal Offset Strategy). The outcomes of the Conservation Status of Coastal Dolphins Program will inform the design of the Western Top End Marine Megafauna Program.

I would like to begin by acknowledging the Traditional Owners of the land we meet on today, the Larrakia, I pay my respects to the their elders past, present and emerging. I also acknowledge other Aboriginal and Torres Straight Islanders who are present or listening to this presentation.

Good afternoon Justice Pepper, all the panel and everyone here and listening online.

I thank you all for the work you have done on the Draft final report under tight timeframes and public scrutiny. I have managed to read through most of it and appreciate the opportunity to make comment on it.

I would like to begin by adding further words of wisdom from Rachel Carson 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 by – offers our last, our only chance to reach a destination that assures the preservation of the earth¹.”

As I comment on the this draft final report, I stand on the path less travelled, that is urging assurance of the preservation of the NT’s rich biodiversity, unique and beautiful landscape, clean water and flowing waters and strong culture.

Again, as for the interim report, I am 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 you have heard over these last two days that are calling for a ban on fracking. We simply do not support the creation of a new fossil fuel industry at a time when all carbon pollution needs to be reduced. We frame this also in the context of the NT not having a climate policy (although we are told it is on its way). From all accounts, the NT Government are not intending to include a GHG reduction target, because they intend for GHG emissions to increase in the NT. Others have addressed the issue of GHG and I am grateful for them making an effort to get their head around the numbers.

¹ Silent Spring, Carson 1962 p.277

We are choosing to respond to your request for feedback on the Draft final report. We will mostly address the chapter on regulatory reform, plus some further issues at the end.

We assert that if all the recommendations made in this draft Report are adopted and implemented in full, as they are currently written, the risks relating to water, land, air and public health, will not be mitigated or reduced to acceptable levels. (I acknowledge my acceptable levels are probably different from yours, but I won't go there).

I firstly want to remind us all that we have current situation in the NT where we have exploration permits already approved – they have been approved without any public EIA process, without any of these recommendations you are suggesting here to minimise the risks. We also have a significant amount of explorations permits under application, which if the moratorium is lifted, could be subject to recommendations in this draft final report.

So our biggest concern with the Draft Final Report (DFR) is the timing of key recommendations being 'before any production licence is granted'. We believe all the recommendations that refer to the term 'before any production licence is granted' should be replaced with 'before an exploration permit is granted or perhaps clearer, before any ground disturbing activity'. 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 etc. can occur', after considering new information.

There are five reasons for this recommendation:

1. It is imperative that baseline studies occur before any further activity so that if there is any future impacts to the 'environment', it is clear if the impact has been from hydraulic fracturing or associated operational activities. There can be no comeback from the gas companies to say the impact wasn't from their activities if the baseline studies are undertaken before any further activities. (Ignoring any damage already done at this point). Baseline studies may previously have been a condition on past exploration permit approvals, although these studies often don't make it into the public domain.
2. The activities related to exploratory activities are not dissimilar ones undertaken during production (albeit at a different scale) – wells are drilled and fracked through aquifers, water is extracted and needs to be managed, weeds are spread, native vegetation is felled.

3. Estimations of the amount of wells that can be drilled and fracked whilst under an exploration permit can be over 60 including appraisal and delineation phases, per exploration permit. If you multiply the amount of existing exploration permits by that number, that is an extraordinary amount, with potentially vast impacts. This will possibly be without baseline studies or assessments and analysis of the Territories unique environmental values, including water interactions, GHG emission, terrestrial ecosystems, public health and social impacts.
4. The majority of the NT community has no faith or trust in the regulatory environment, as it stands to monitor or respond to this industry. So it is unthinkable (to us) that the panel would recommend exploratory fracking operations to continue under the same legislative and regulatory conditions that exist before this inquiry. That is not 'robust' and 'rigorous'. This doesn't make logical sense, and it doesn't help to build any social licence or trust in the ability of regulatory framework to address the risks. We look forward to the community inquiry on Saturday where, as you stated yesterday, we have an opportunity to ask the panel questions and to hear your response. In the interests of openness and transparency we request there by question time made available to occur within the whole group.
5. Lastly Origin admitted themselves in their presentation yesterday that it is difficult to change regulatory requirements overnight and 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 their 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 etc. can occur' taking into account the analysis and assessment received from the SREBA.

Recommendation 7.1, 7.4, 9.2, 10.1, 14.16, 14.32 and 15.1 and any others with this wording I may have missed.

In further clarifying your recommendations we refer to your risk assessment relating to land on page 172. We agree with your assessment that "the likelihood of onshore shale gas development occurring in currently undocumented areas of high conservation value in the NT is 'high', 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') and consequence ('high') gives an overall risk rating of 'high'.

This high risk can only be mitigated by implementing the findings from a strategic regional assessment of biodiversity values conducted prior to any shale gas development being approved”

Recommendation 8.1 states:

That strategic regional terrestrial biodiversity assessments are conducted as part of a SREBA for all bioregions prior to any onshore shale gas production, with all onshore shale gas development excluded from areas considered to be of high conservation value. The results of the SREBA must inform any decision to release land for exploration as specified in Recommendation 14.2 and be considered by the decision-maker in respect of any activity-based EMP.

We believe that significant risks also apply at the exploration, appraisal and delineation phase, not just development and production phase. Therefore recommendation 8.1 should state that all onshore shale gas regulated activities be excluded from areas identified as high conservation value from the SREBA assessments.

So in delving even deeper into to these regulatory reform recommendations. As far as we can read there are no recommendations of how to implement the findings of the SREBA assessment and analysis, especially for areas where exploration permits have already been granted given the current laws around obtaining a licence under the Petroleum Act.

I quote on page 372

Where the Minister is satisfied that the proponent has:

- complied with the Petroleum Act, conditions of its EP and any directions given by the Minister;***
- discovered a commercially exploitable accumulation of petroleum within the EP area; and***
- complied with the requirements for an application, the Minister must grant the PL – production licence.***

Your report then goes on to say ‘many of the reforms proposed above with respect to exploration have direct application to the production phase of any onshore shale gas industry. For example, it may be the case that between the granting of the exploration permit and the consideration of an application for a production licence, an event happens or information is obtained that calls into question at this point you go onto talk about ‘fit and proper person’.

I had high hopes that as I was reading, that it would be here that you would make recommendations about how to amend the Petroleum Act to take into account new information from the SREBA. That you would shed some light on how to give meaningful purpose to information obtained from the SREBA. That if identification of high conservation land or other risks was ascertained to already be in areas that had been granted an exploration permit, that they could be revoked through legislation.

In staying on the topic of the SREBA, we believe the following considerations should also be included in the scope and content of the assessment:

1. Inclusion of traditional Aboriginal ecological and cultural knowledge to understanding the environment and to risk assessment.

We refer to NLC’s submission on the ‘Public Review of the draft Environmental Impact Statement Guidelines released by the Northern Territory’s Environmental Protection Agency’ dated 15 July 2013

‘The guidelines do not address the value of traditional Aboriginal ecological and cultural knowledge to understanding the environment and to risk assessment. Aboriginal people hold a different worldview to that promoted in the environmental impact assessment process and have developed an understanding of the natural environment and land management practices that complement non-indigenous impact assessments. Once integrated into the process, traditional knowledge will help provide a more complete evaluation and 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, potentially the Historic and Cultural Impact Assessment. In addition, specific reference should be made in the ESIA 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 analyses (e.g. flora and fauna surveys).

2. Our second recommendation is for SREBA to consider to consider impacts to biodiversity in an altered climate and refer the Panel the article ‘How Australian legislation can consider climate change in ecological impact assessment’ by Lukas L. Clews²
3. Thirdly, any previous baseline data collected from exploration permits to be included and added to this assessment process.

Still staying on regulatory reform we would like to address your question regarding the options for reform of the regulator.

We support option 1. Which proposes to align closely with the NT Governments ‘existing environmental reform process’. This option ‘proposes that all petroleum activities must have a separate environmental approval under uniform environmental legislation that is administered by an entity other than DPIR. Under this option “an overarching Environmental Protection Act is introduced in accordance with the Government’s current environmental reform agenda whereby the Minister for the Environment provides a separate and independent approval for all petroleum activities that have an environmental impact. The Act will require that Minister to decide whether or not petroleum activities (including any onshore shale gas activities) can occur or not, on environmental grounds only. The Minister must apply the principles of ESD, including the precautionary principle, when the Minister makes a decision, and the Minister must be satisfied that the environmental risks and impacts associated with the petroleum activity have been reduced to levels that are acceptable. Consistent with the current regulatory framework for petroleum activities, all environmental plans, approvals and reasons for all approvals must be published”. Option continues to be expanded on page 389 very clearly.

We believe taking the recommendations from this inquiry through to the current regulatory reform process will go some ways to strengthening vital regulation needed for other projects and industries including mining, land clearing, etc. We also believe that the triggers for assessment to be developed under the regulatory reform process may capture some public environmental assessment at the exploration permit stage, where previously there has been none.

We would like to strongly recommend that the following recommendations make it through to the Final report and note that they have broader application to the environmental regulatory reform:

² Accessed from <http://publications.rzsns.w.gov.au/doi/pdf/10.7882/FS.2012.021>

Recommendation 14.1

That the Government design and implement a full cost recovery system for the regulation of any onshore shale gas industry.

Recommendation 14.21

That the Petroleum Act and Petroleum Environment Regulations be amended to allow open standing to challenge administrative decisions made under these enactments.

Recommendation 14.22

That merits review be available in relation to decisions under the Petroleum Act and Petroleum Environment Regulations including, but not limited to, decisions in relation to the granting of exploration permits and approval of EMPs.
That the following third parties (that are listed) at a minimum, have standing to seek merits review.

Recommendation 14.23

Where litigation is brought genuinely in the public interest, that costs rules be amended to allow NT courts to not make an order for the payment of costs against an unsuccessful public interest litigant.

Recommendation 14.25

That the Government enact whistleblower protections.
That a hotline be established to make anonymous reports about any onshore shale gas industry non-compliance and that such reports be investigated.

Recommendation 14.29

That the Government consider enacting provisions that reverse the onus of proof or create rebuttable presumptions for pollution and environmental harm offences for all regulated onshore shale gas activities.

In further recommendations we suggest 'Chain of responsibility legislation' be created to strengthen recommendation 14.12 We can provide policy proposals on that.

In Recommendation 8.8 regarding 'offsets', we have significant concerns regarding their integrity³. We refer to 24 million dollars to be granted over 22 years still not received from the Inpex project for the Western Top End Marine Megafauna Program. Question 29 form budget estimates dated 9th June 2017, raises the issue. These offsets were meant to start flowing from the third quarter of 2016. The answer returned was that the program is intended to be implemented in 2018/19. We will continue to explore the issues of an offsets program through the environmental regulatory reform process.

There are many more issues we could address regarding well integrity, water security, economic assessment and social impact assessment. We trust these issues will be addressed in other submissions particularly from Lock the Gate and Arid Lands Environment Centre.

In closing we concur with the similar sentiments raised by Braedon Earley yesterday. Many of us feel a connection to the Territory that is physical, psychological and also can't be seen. Everything in our bodies, heart and being is saying 'onshore hydraulic fracturing in the NT is a bad idea' - that message needs to be respected and listened to.

³ See <http://www.abc.net.au/news/2016-03-31/inpex-joint-venture-seeks-to-dump-federal-environmental-projects/7289310?pfmredirect=sm>