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OPENING STATEMENT

Senate Environment and Communications References Committee, Inquiry into Oil and Gas Exploration and Production in the Beetaloo Basin

Thank-you Chairman. Greetings Senators.

The Northern Land Council welcomes this opportunity to appear before the Committee in relation to its inquiry into the Beetaloo Basin.

I was appointed as CEO of the NLC on 30 July. My appointment has followed a structured transition process over the past four months, in which and I have worked closely with my predecessor, Marion Scrymgour, on key matters affecting the NLC. I come to this position with some experience of Aboriginal land rights and native title, including through my previous role as CEO of the Central Land Council.

I will make this statement short, to maximise the time in which the NLC can assist Senators with their questions. I want to set out some background information about the Land Council and its statutory functions in relation to the Beetaloo Basin.

Introduction to the NLC

The NLC is an independent statutory authority that was incorporated under the 1976 Land Rights Act. It has wide-ranging duties and functions geared toward assisting and representing Aboriginal people in the Top End to re-acquire and manage their traditional lands.

Today, the NLC serves about 51,000 Aboriginal constituents. Over 75% of these constituents live in regional or remote communities and homelands. The majority of the NLC's constituents speak an Aboriginal language as their first language. Traditional Aboriginal law is practiced in many communities, including throughout the area in which the Beetaloo Basin is situated.

NLC governance

The NLC's supreme body, the Full Council, has 78 elected members, plus five co-opted women, making a total of 83 members. Each of the NLC's 7 regions is represented by a Regional Council, made up of those elected Full Council members from that particular region.

The Full Council elects a Chair, Deputy Chair and an Executive Member from each of the seven regions. Together, these nine members make up the NLC's Executive Council.

The NLC originates from community, and is accountable to community. At every level of its structure, the NLC is representative of the Aboriginal groups that it is set up to help. At any one time, over 50% of NLC employees are Indigenous.

Native title representative body

Since 1994 – in addition to performing functions as an Aboriginal Land Council – the NLC has also been recognised by the Commonwealth as the native title representative body for an area of land and waters which the Government calls “Northern Northern Territory”.

Since 1994, there have been 86 positive determinations of native title in the NLC area. No other representative body in Australia has achieved even half this number of positive determinations. All of the determinations in the NLC area have come as a result of proceedings where claimants have been independently represented in the Federal Court by lawyers employed by the NLC.

NLC functions under Part 4 of the Land Rights Act

Part 4 of the Land Rights Act concerns proposals for exploration and production of minerals on Aboriginal land. The definition of minerals under the Land Rights Act includes petroleum – that is, oil and gas.

Under Part 4, exploration titles cannot be granted on Aboriginal land without the consent of the relevant Land Council. The Land Council must not provide such consent without having complied with the requirement to

consult and obtain the consent of traditional Aboriginal owners, and consult other affected groups. The requirement for traditional owner consent is commonly referred to as the exploration “veto”.

The Part 4 regime has been reviewed and changed numerous times since 1976. The most notable changes occurring in 1987, which gave resource companies a right to develop any discovery into a full-blown production project, following either a negotiated agreement with the Land Council or arbitration.

NLC functions under the Native Title Act

The functions of a representative body are set out under Part 11 of the Native Title Act. The proposed grants of petroleum exploration or production interests are future acts. Relevant functions of the NLC include:

- In relation to areas where native title has not yet been claimed or determined, identifying persons who may hold the native title (203BJ(b));
- Notifying native title holders about proposed future acts (203BG);
- Assisting groups to file and register responsive native title claims, if necessary, and to engage with governments and companies in relation to their proposals (203BB);
- Where an Indigenous Land Use Agreement (ILUA) is contemplated, being a party to that ILUA, where necessary (203BH);
- Certifying native title claims and ILUA registration applications (203BE);
- Assisting constituents to manage and resolve disputes (203BF); and
- Consult generally with those native title holders, groups, and Aboriginal communities that are likely to be affected by the matters with which the representative body is dealing (203BJ(d)-(e)).

The NLC's role in relation to major future acts encompasses all of the functions that I have just listed. We work out who the native title holders are, we notify them, we assist them to meet and respond to the proposal. We provide legal advice and other technical assistance. Where instructed, we engage in negotiations and/or commence arbitration or litigation.

The proposed grant of a petroleum exploration permit or production licence by the Northern Territory under the 1984 Petroleum Act usually attracts the right to negotiate under Subdivision P of Division 3 of Part 2 of the Native Title Act.

Whereas under the Land Rights Act traditional owners have veto rights regarding exploration proposals, no such right is afforded to countrymen under the Native Title Act. Native title holders can say "no", but in doing so they are aware that only a handful of applications to the National Native Title Tribunal have succeeded in preventing a major mining or petroleum project from going ahead.

Decision-making

For Aboriginal people in the Northern Territory, a significant aspect of both statutes – the 1976 Land Rights Act and the 1994 Native Title Act – is the recognition and protection of the processes by which Aboriginal groups make decisions under their traditional laws and customs in relation to country.

This connection between ancient Aboriginal law and contemporary Australian law is provided for in subsection (a) of section 77A of the Land Rights Act. This provision says:

Consents of traditional Aboriginal owners

Where, for the purposes of this Act, the traditional Aboriginal owners of an area of land are required to have consented, as a group, to a particular act or thing, the consent shall be taken to have been given if:

- (a) in a case where there is a particular process of decision making that, under the Aboriginal tradition of those traditional Aboriginal owners or of the group to which they belong, must be complied with

in relation to decisions of that kind—the decision was made in accordance with that process

In the Native Title Act, an equivalent provision is at subsection (a) of section 251B, which says:

Authorising the making of application

For the purposes of this Act, all the persons in a native title claim group or compensation claim group authorise a person or persons to make a native title determination application or a compensation application, and to deal with matters arising in relation to it, if:

- (a) where there is a process of decision-making that, under the traditional laws and customs of the persons in the native title claim group or compensation claim group, must be complied with in relation to authorising things of that kind—the persons in the native title claim group or compensation claim group authorise the person or persons to make the application and to deal with the matters in accordance with that process;

Much of the NLC's work in both the land rights and native title jurisdictions revolves around these provisions. Among all those groups for whom Aboriginal law prevails, an important job of the Land Council is to facilitate decision-making that follows this law.

The NLC must ensure that the right people are notified and supported to participate, that appropriate meeting spaces and methods are utilised, and that Aboriginal decision-makers have access to high quality advice: all of the information which they require in order to make an informed decision.

Free, Prior and Informed Consent

These matters touch on something which this Committee has already referred to a lot in its hearings: free, prior and informed consent.

To illustrate the NLC's commitment to free, prior and informed consent, we would refer to our current Mining Policy (No. 116), a copy of which I will seek to have circulated ahead of this appearance.

I want to point out that although the NLC seeks to ensure that our constituents make decisions prior to developments on their country which are *informed* decisions, the question of whether they are *free* decisions can only be answered by reference to the legislation itself.

The Land Rights Act does provide traditional owners with a kind of veto in relation to petroleum exploration, although this no longer operates straightforwardly if an explorer applies to begin production. The Native Title Act provides no veto for either exploration or production.

Along with other Land Councils and rep bodies around Australia, the NLC has consistently advocated for law reform that gives First Nations genuine rights to decide whether and how their country will be mined or drilled. ***In the Beetaloo Basin, I would suggest that much of the criticism that is currently levelled at the NLC would be more appropriately directed at the legislation under which we are required to operate.***

Conclusions

Ultimately, in accordance with our founding statute, the NLC's allegiance is to our constituents – not to companies, governments, NGOs or lobby groups. We are a fully representative body, governed by Aboriginal councillors appointed from across every region of the Top End. The NLC strives to give the highest standards of advice and assistance to our constituents. We reject any suggestion to the contrary.

Questions

Thank you. I am now able to take questions. Depending on the question, I may ask one of my colleagues to provide input.