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Justice Rachel Pepper

Chair, Scientific Inquiry into Hydraulic Fracturing in the Northern Territory

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18th January 2018

Dear Justice Pepper and Panellists,

Re: Submission in Response to the Draft Final Report

As the owner of North Star Pastoral ('NSP') holding a number of pastoral leases in the Northern Territory, I write to provide feedback on the Independent Scientific Panel's Draft Final Report dated December 2017.

1. Introduction

As you are aware NSP has provided various submissions to the Inquiry and we appreciate the diligence you and the Panel have shown in carefully considering the material. We applaud you and your team for the scope and extent of the stakeholder engagement program that has been conducted to date. It has been inclusive, open, respectful and transparent. It sets an excellent example for others to follow who have to engage a range of stakeholders in a comprehensive debate on a contentious issue.

Our comments herein are additional to and supplement the information NSP has already provided during the life of the Inquiry.

To recap, the key messages from NSP are:

- a) the Company has little confidence the gas industry will protect our pastoral interests, or that the NT Government will, at the front end, implement your suite of recommended legislative and administrative reforms. Therefore we have no option but to adopt the Precautionary Principle and support a ban on unconventional shale gas exploration and development until such time as there is clear evidence that the Inquiry's recommended reform agenda has been fully implemented;

- b) sustainable and uncompromised groundwater and surface water supplies are vital to sustaining the ecosystems on which the pastoral industry relies;
- c) serious concerns regarding the long term (i.e. 100 + years) security of decommissioned gas wells (that is, well integrity including failure of cement capping and steel piping);
- d) a major power imbalance favouring gas companies during any negotiations and the need to level this 'playing field'; and
- e) serious concerns regarding surface activities on land and attendant risks and liabilities and a lack of insurance for damages.

2. General Comments Pursuant to the Draft Final Report

Below, we make some specific comments pursuant to some of the material contained in the Draft Final Report, or omitted, for your consideration.

2.1 Ecologically Sustainable Development principles underpin the Panel's work

Truly progressive human endeavour and social wellbeing are underpinned by the need for a healthy, sustainable environment.

NSP congratulates the Panel for declaring the principles of Ecologically Sustainable Development (ESD) as the prism through which all aspects of this issue were analysed. Whilst NSP supports many of the Report's recommendations, we encourage you to be even more forthright to set an aspirational example of how the principles of ESD can be truly delivered, with even greater use of the Precautionary Principle. Further moves the Panel could make are outlined in this Submission.

2.2 Suggestions for Report to address ramifications of climate change impacts on the on-shore shale gas industry

NSP suggests the Final Report is deficient in not adequately examining the risks and impacts of climate change. Whilst the Draft Final Report addresses methane emissions from the industry, it is silent on the more general aspects of climate change with regard to regulatory reform (Chapter 14), economic impacts (Chapter 13) and social impacts (Chapter 12).

NSP thus encourages the Panel to provide even more leadership in its Report on climate change.

Cyclones and storms are likely to increase in frequency, duration and intensity, thanks to climate change. The shale gas industry seeks to operate in parts of the Northern Territory that experience a tropical wet season which involves cyclones from time to time. NSP encourages the Inquiry to carefully consider the risks associated with the increased frequency and intensity of storms, the resultant damage and the consequential environmental, social and economic impacts.

A case study worth examining is Hurricane Harvey, a 1-in-1,000 years storm event that hit Texas in August 2017. The devastation wreaked on the local oil and gas industry has been incalculable. There are salient lessons from this event for the Northern Territory.

Closer to home, Cyclone Cook hit the Bay of Plenty in New Zealand in April 2017. It was a 1-in-50 years storm event. Climate change is already making its presence felt so it would be prudent for the Panel to recommend the appropriate responses for the NT Government to make now.

In NSP's view, because of the climate change risks, and learning from experiences elsewhere, it should be considered untenable for the industry to be permitted to operate during the designated wet season in the Northern Territory.

Furthermore, all infrastructure and equipment that may be left in-situ in the wet season must be designed to withstand the potential impacts of storms - flooding and high winds - that are being predicted into the future. The use of wastewater evaporation ponds should be prohibited for use in the wet season zone for obvious reasons.

Some gas companies are indicating they will seal access roads on pastoral lands to allow wet season access. Roads are but one element; creek crossings are just as relevant. In many cases creeks and waterways would require very substantial bridges and embankments to permit wet season access. For this to occur the economic costs of such would render the industry even more economically unsustainable than it is now.

2.3 Long term integrity of the cement plug and well piping

The earlier Interim Report notes that the gas companies have not commented on how long the integrity of cement plugs and well casings can be assured. NSP submits this is because they don't really know, or the information they have won't assist their bid to develop the industry.

Furthermore, the consequences of failure may well occur after they have departed the scene, and possibly escaped liability. NSP recommends that no approval be given to allowing development of the industry until this matter is resolved to a very high level of confidence.

3. Specific Comments on various chapters the Draft Final Report

NSP offers comments below, structured as per chapter headings in the Draft Final Report. Our response is based on an exceptions approach. Thus, unless mentioned, we support the recommendations as stated.

3.1 Chapter 14: Regulatory Reform

NSP agrees with the Panel that for the onshore shale gas industry to comply with ESD Principles it must *"be adequately safeguarded by a sufficiently robust and vigorously enforced regulatory regime."*

In the view of NSP a robust and vigorously enforced regulatory regime must be developed and implemented BEFORE there is any contemplation of allowing the industry to proceed. This will be no small task.

It will necessitate a revamping and restructure of portions of the NT Government bureaucracy and the necessary resourcing - both human and financial- together with legislative and regulatory reform. This will take some time; maybe many months.

Then, appropriate policies and procedures will need to be developed, then implementation of same. This will also take time, meanwhile the industry will be agitating for prompt access to the gas resources.

Herein lies NSP's biggest concern. We have little faith that the NT Government will embrace the totality of your regulatory reform findings and recommendations and implement them because, inter alia, it will succumb to the political lobbying and pressure exerted by big business and also from the government's political opponents, especially in the federal sphere.

Thus NSP urges the Panel to be even more definitive and explicit in its Final Report, making it clear and unambiguous that without the implementation of ALL the regulatory reform recommendations the industry will not be adequately safeguarded and hence should not proceed.

3.1.1 Regulatory Reform topics recommended for addition to Chapter 14

- **Climate Change Policy and Plans:**

NSP suggests that the Panel recommend the Government prepare and implement a climate change policy that, as one of its elements, recognises cyclones and storms are likely to increase in frequency, duration and intensity causing increased damage and destruction. Thus, as a consequence of the attendant risks associated with more severe flooding and wind speeds, any onshore unconventional gas industry must meet more robust regulatory standards designed to withstand the changes in climate anticipated into the future.

‘Future climate proofing’ should be applied to systems and infrastructure design, construction processes, building materials and the environment in which a structure is built. Decisions about what and how to build infrastructure must take into account including lifespan, life-cycle maintenance costs and return on investment.

NSP refers you to the National Climate Change Adaptation Research Facility Policy Guidance Brief 7 ‘Climate Proofing Australia’s Infrastructure’ for more details. The link is:

https://www.nccarf.edu.au/sites/default/files/attached_files_publications/INFRASTRUCTURE_A4-Webview.pdf

- **Safeguards against regulatory capture:**

NSP suggests that the Panel recommend that the Government introduce to relevant government departments internal and external measures to protect against regulatory capture. Regulatory capture occurs when regulatory agencies change over time and move from acting in the public interest (their assigned statutory function) to promoting or advancing the interests of industries they are supposed to be regulating.

- **Environmental Impact Assessment:**

NSP suggests the Panel be more expansive and include in its recommendations:

- i. That NT project planning and assessment law be amended to mandate an Ecologically Sustainable Development (ESD) approach to project assessment decisions and adoption of the Precautionary Principle. The ‘public interest’ criteria ought be redefined from the typical short-term jobs and royalties rationale to alignment instead with ESD principles;
- ii. That for onshore unconventional gas development the burden of proof to be reversed. Resources and other laws ought be amended so that instead of the pastoralist having to prove that the proponent has caused water, land, air or noise impacts, the proponent is to prove that it has not caused impacts;

- iii. That the Government introduce a Development Assessment Commission ('DAC') or similar, charged with publicly reviewing and determining the applications of major projects. Chaired by a Judge or pre-eminent lawyer, its process ought be where statements of claim and counter claim by the various parties can be interrogated and cross examined. Parties would be able to be self-represented and the legal rules of evidence not apply. Members of the DAC would be appointed via an independent, transparent process, say on the recommendation of relevant professional bodies.

- **Regulations – Insurance:**

NSP suggests that the Panel recommend the NT Government develop a comprehensive policy of appropriate insurance and environmental risk coverage for pastoralists to ensure financial protection – both in the short and long terms. That the Government ought implement a three-layered policy of security deposits, enhanced insurance coverage, and an environmental rehabilitation fund.

3.1.2 Comments of Chapter 14 Regulatory Reform Recommendations

Recommendation 14.3

Rather than use the word 'consider' when discussing mechanisms, NSP suggests the Report use the word 'implement'. The word 'consider' is too ambivalent and is likely to provide undesirable wriggle room for the NT Government allowing it to opt out of the issue at hand.

Recommendation 14.7/Recommendation 14.8

Again, NSP encourages the Panel to be more assertive and recommend the adoption of a compensation scheme over a royalty payment scheme. The reasons being:

- a) Compensation should be payable based on the number of wells drilled (both vertical and lateral), the area of land cleared, disruptions to pastoral activities and attendant noise and traffic, and safety net provisions regarding water and land impacts, pests and diseases. A benefit of this approach is that the pastoralist knows up front the quantum that will be received per annum;
- b) Royalty based compensation is opaque, quantum is difficult to predict and is predicated on future production rates.

Recommendation 14.13

NSP suggests the non-refundable levy for the long-term monitoring, management and remediation of abandoned onshore shale gas wells must be on a full cost recovery basis.

Recommendation 14.21

NSP strongly applauds amending the Petroleum Act and Petroleum Environment Regulations to allow open standing to challenge administrative decisions made under these enactments.

Recommendation 14.22

NSP strongly applauds the proposition that merits review must 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 and that the third parties as listed have standing to seek merits review. Please give specific mention to pastoralists.

We also agree that an independent body, such as NTCAT, be given jurisdiction to hear merits review proceedings in relation to any onshore shale gas industry.

Recommendation 14.23

NSP strongly supports that 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

NSP strongly supports the provision of whistleblower protections.

Recommendation 14.29

NSP suggests that the way this recommendation is currently worded represents one of the biggest missed opportunities in the Report.

We strongly encourage the Panel to say that the Government must enact provisions that reverse the onus of proof or create rebuttable presumptions for pollution and environmental harm offences for all regulated onshore shale gas activities.

Asking the Government, as currently worded, to ‘consider’ such a prospect will in all likelihood mean that the Government will ignore it, especially under strong opposition exerted by the gas industry.

In the context of pastoralists, the reason why the Government should reverse the onus of proof is because if a waste spill or water quantity or quality impact occurs, the pastoralist does not have the time or the technical or economic capacity to gather the evidence required to prove such impacts. Nor is it likely the developer will allow physical access to the site or access to the relevant data/documentation.

Placing the onus of proof on the gas companies will create a big incentive for them to be duly diligent and proactive regarding operations and compliance management.

3.2 Chapter 7: Comments on Water Resources Management

Recommendation 7.4

In regard to development of regional groundwater models prior to any contemplation of development for shale gas production, it is essential that extensive baseline data be collected such that there is a very high level of confidence in the data painting an accurate picture of the characteristics of groundwater type, extent, flow patterns and recharge patterns across different annual weather conditions. Depending on the circumstances it may be that up to, say, five years or more, of data being required to fulfil these criteria.

NSP encourages the Panel therefore to be quite explicit that the necessary groundwater baseline data must be collected before there is any contemplation of the impact assessment of proposed gas extraction.

Recommendation 7.8

Suggest change the wording to state that ‘re injection of wastewater into deep aquifers and conventional reservoirs is prohibited until comprehensive geotechnical investigations are undertaken to show that no seismic activity will occur.

Recommendation 7.10

As regards the provision of real-time, publicly available groundwater quality monitoring data being made available, access to such data should be required to be freely and easily available to pastoralists for download and interrogation.

The Panel is encouraged to consider how that can be facilitated if internet services and mobile phone services are poor. Perhaps as part of the community enhancement contributions provided by the gas companies to communities they should be required to provide the financial resources necessary to upgrade the internet and mobile phone services in that region to enable this objective to be achieved.

Recommendation 7.12

NSP recommends all road access onto pastoral lands during the wet season be prohibited. Irrespective of whether the roads are sealed or unsealed.

Furthermore, it is absolutely unacceptable for hydraulic fracturing chemicals and wastewater to be hauled on pastoral lands during the wet season. The reason being the roads often being impassable and there is a very high risk of vehicles being caught in floodwaters, with potentially catastrophic consequences.

3.3 Chapter 8: Comments on Land Management, including Pastoral Lands

NSP remains of the view that the legislation must protect pastoralist rights and provide an equitable balance and fair and transparent process when engaging with gas extraction companies in relation to land access, compensation and any disputes. Specifically, that:

- a) pastoralists are at liberty to say "yes" or "no" to the conduct of gas exploration and/or operations on their land;
- b) there will be fair and transparent Land Access Principles, modelled on the agreement on land access for CSG operations in NSW signed on 28th March 2014 by Santos and AGL and landholder representatives NSW Farmers, Cotton Australia and the NSW Irrigators Council; and
- c) That a wholly independent, appropriately resourced statutory body headed by a Pastoral Lands Commissioner be established that will act to protect the interests of pastoralists in negotiations with the onshore unconventional gas industry. Pastoralists to have access to dispute resolution activities paid for by the industry. The Commissioner to report annually to Parliament.

Recommendation 8.4

NSP is of the view that the gas companies must have on the site of any gas exploration, construction or production operations a fire tender of appropriate capacity to promptly extinguish any fire originating from said activities. Whilst having plans are important, we are more concerned at seeing any fire rapidly extinguished.

Recommendation 8.12

Pipelines planned to cross streams must not disturb the naturalness of the site and directional drilling under streams without compromising the integrity of the stream channel should be required.

Recommendation 8.14

NSP suggests the use of the phrase 'minimise the interference with' in the context of gas infrastructure corridors crossing wet season streams is inadequate. There should be no impact on any stream from a crossing constructed by the gas industry.

Recommendation 8.16

NSP suggests there must be no heavy-vehicle traffic allowed on any NT road unless such roads meet the appropriate Austroads standards.

In the event that certain roads do not comply with Austroads standards then such roads are not to be used by heavy and over-sized vehicles until such time as said roads have been upgraded to the required standards.

3.4 Chapter 12: Comments on Social Impacts

Recommendation 12.1

Rather than 'realistic' road upgrades, NSP suggests roads must be upgraded to the appropriate Austroads standards commensurate with the anticipated vehicle type.

Recommendation 12.2

NSP suggests this recommendation be made more explicit. What is meant by 'the provision of adequate and sustainable funding' to ensure the identified infrastructure requirements are met and maintained appropriately? Could you please use more definitive language.

Recommendation 12.3

Rather than a mere 'consideration' being given to the development of road use agreements between gas companies and local councils, such agreements should be mandated.

There should be a recommendation that prescribes:

- a) that roads must be upgraded as per the vehicle and load type PRIOR TO any haulage for gas operations; and
- b) that the local roads authority, presumably the local council, must be paid an annual roads maintenance financial contribution that will cover the gas companies share (based on the percentage of tonnage hauled along that road) of the road maintenance costs for the life of the project.

Recommendation 12.4

NSP suggests the wording be refined to make it more explicit and definitive as to what the Panel really wants the gas companies to be required to do to mitigate potential impacts on services.

Recommendation 12.9

NSP strongly endorses that the Government must regulate to ensure that existing and future users of land can continue to enjoy their rights and interests in the land, including compensatory mechanism as defined.

Recommendation 12.12

NSP suggests the development of a social impact management plan by the gas companies **must** be introduced during the exploration phase, not 'preferably'.

Recommendation 12.16

In the view of NSP, structural reforms to Social Impact Assessment (SIA) including establishment of an independent authoritative body such as the EPA, establishment of a long-term participatory regional monitoring framework and standardised reporting on the social, economic, and environmental performance of the industry '**must**' be made, rather than 'should' be made.

4. Conclusion

Thank you very much for the opportunity to comment on the Draft Final Report. I would be pleased to discuss any of the abovementioned matters with you.

My contact details are phone [REDACTED] or email [REDACTED] - or feel free to contact our adviser Warwick Giblin on [REDACTED] or email [REDACTED]

Yours sincerely



Colin Ross

Managing Director

North Star Pastoral