

DEPARTMENT OF RESOURCES, ENERGY AND TOURISM

Minister for Action

Min ID: B09/242

DEVELOPMENT OF A LIQUEFIED NATURAL GAS (LNG) PRECINCT IN THE KIMBERLEY REGION

Purpose: To update you on progress in the development of a LNG precinct in the Kimberley and to seek your agreement to further investigate the inclusion of a throughput model as an element of the Commonwealth's input to an Indigenous Benefits Package.

Background: On 23 December 2008 the Premier of Western Australian (WA), the Hon Colin Barnett MLA, announced James Price Point (60 kilometres north of Broome) as the preferred site for an LNG precinct for the processing of the Browse Basin gas reserves. The Department is representing the Commonwealth's interest in this development. You officially nominated Mr Bob Pegler (A/g Head of Resource Division) as the Commonwealth's representative on the WA Government Negotiation Committee (GNC). Woodside have advised the WA Government that certainty of land tenure is required by 30 June 2009.

Issues: Site selection and Native Title: Premier Barnett has stated that the WA Government will attempt to acquire the James Price site by consent. However, if by 31 March 2009 there is no consent or prospect of a consent agreement being met in a timely manner, that it will pursue compulsory acquisition of native title and non-native title interests. The Commonwealth's policy is to encourage negotiated outcomes to resolve Indigenous land issues rather than relying on litigation or compulsory acquisition. Further information is at Attachment A.

Commonwealth Involvement: On 4 February 2009 the Department held an out-of-session Inter Departmental Committee (IDC) meeting to update agencies on outcomes and to discuss next steps following the second meeting of the GNC, which was held on the 28 January 2009 in Perth. Mr Bill Gray, the Commonwealth appointed Facilitator, also attended and updated the IDC on his activities.

The IDC agreed that a Commonwealth framework for possible social and economic initiatives be developed as part of a broader Indigenous Benefits Package. A series of Working Groups will be convened to consider the various fiscal and social contributions which may be possible from

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X

Redacted pursuant to s47B

Indigenous Engagement: The Department understands that the Kimberley Land Council (KLC) and Joseph Roe (Goolarabooloo elder), through their respective legal representation, have reached agreement that the KLC will negotiate on behalf of all native title interests. This relationship remains an uneasy one.

Redacted pursuant to s47B & s47G

Recommendation: That you note the Commonwealth's activities to date and agree that a throughput model be considered as part of the broader Indigenous Benefits Package.

Slipstream Version 6 February 2009

Peter Livingston (+61 2 6213 7974)  
A/g General Manager  
Offshore Resources Branch  
Resources Division  
05 February 2009

Consultation: DEWHA, AGD, DEEWR, Treasury, FaHCSIA

APPROVED NOT APPROVED

*Martin Ferguson*

Martin Ferguson 10/2/2009

Contact: Stumbles, Lesley (+61 2 6213 7505) Output Info: 1.1

*Peter* *Proposals* *Needs* *Consider* *Consideration*,  
*TRANSACT* *Proposals* *110* *HUGH* *ENTREPRENEURS*.

*Martin's Required*

Site Selection

Redacted pursuant s47G

On 5 February 2009 the Department of the Environment, Water, Heritage and the Arts (DEWHA) and the Northern Development Taskforce (NDT) held a workshop in Perth to scope out the next stage of the strategic assessment process.

In December 2008 DEWHA released a draft *Comparative Analysis of the Feasibility of Alternative Locations for the Development of a Liquefied Natural Gas Precinct* which explores alternative options outside the Kimberley (Karratha to Darwin) for an LNG precinct.

On 15 October, 2008 the NDT released a report identifying four short-listed sites which would be subjected to further site specific technical analysis. The four locations identified were consistent with those announced by the Kimberley Land Council (KLC). The sites are Gourdon Bay (south of Broome); James Price Point (north of Broome); North Head (north of Broome); and Anjo Peninsula (far north Kimberley).

The report was released for public comment. The WA Environmental Protection Authority (EPA) reviewed and reported on the four sites. DEWHA provided informal advice highlighting key *Environment Protection and Biodiversity Conservation (EPBC) 1999 Act* concerns at each of the short listed sites.

Compulsory Land Acquisition and Native Title Implications

The Commonwealth Government has an agreed policy of encouraging broad settlements to resolve Indigenous land issues, rather than relying on litigation or compulsory acquisition. The Attorney General takes the view that a negotiated outcome is the best way to ensure major projects like this proceed quickly and in a manner that meets the Government's objectives on Indigenous economic development.

The Attorney General's Department provided advice to the Kimberley IDC that compulsory acquisition can occur if it does not adversely affect Indigenous people noting that it may also lead to long, legal cases in the High Court. Compulsory acquisition will make WA liable for compensation and the Commonwealth will be required to fund part of the compensation.

DEWHA have advised that compulsory acquisition has serious implications that could lead to an application for declaration under the *Aboriginal and Torres Strait Island Heritage Protection Act 1984* (the Act) to stop the development. The Act is the principal Commonwealth legislation protecting Indigenous heritage and acts to complement state and territory legislation. The Act is intended to be used only where state or territory laws and processes prove to be ineffective. The Minister for the Environment, Heritage and the Arts is responsible for making decisions under the Act.

### Indigenous Engagement

The KLC would prefer receiving cash on an annual basis as payment for leasing the land. The KLC's preferred option of equity is off the table. WA will push the Commonwealth for a throughput arrangement.

The KLC has rejected Woodside's initial compensation offer and been in contact with your office and held meetings with a number of other Departments seeking Commonwealth funding to continue their involvement in the consultation and engagement process. On 25 November 2008 you wrote to the KLC (C08/4019 refers) advising that your portfolio was not in a position to provide them with funding. You wrote again on 16 January 2009 (C08/4549 refers) to confirm the appointment of Mr Bill Gray as Facilitator and to confirm the Commonwealth's involvement on the WA Government Negotiating Steering Committee.

In an effort to ensure that Indigenous interests receive a fair and reasonable compensation package, the Commonwealth has agreed to fund a mediator/facilitator to work with the four parties involved (WA Government, Browse Joint Venture partners, Indigenous interests and Australian Government agencies) in relation to Indigenous related land access issues. On 23 December a joint media release with your colleagues, the Hon Jenny Macklin MP and the Hon Robert McClelland MP, announced the appointment of Mr Bill Gray AM as Facilitator.

Mr Gray will attempt to find a resolution by 31 March 2009. After which time the WA Government has indicated that, should there be no prospect of a consent agreement being achieved in a timely manner, it may then begin action to pursue compulsory acquisition of native title and non-native title interests.

On 2-3 December 2008 RET and the Department of Education, Employment and Workplace Relations (DEEWR), in consultation with the KLC, jointly organised a Working In Partnership (WIP) workshop in Broome. The workshop theme was *Building a Skilled Workforce in the Kimberley* complementing the development of an LNG precinct. 120 stakeholders across indigenous organisations, employers, education and training providers and State, Local and Federal Government attended the workshop.

A key outcome of the WIP workshop held in Broome was the establishment of a steering committee for future development and implementation of a Kimberley based action plan. The purpose of the steering committee is to advance Indigenous employment, education and training issues and will be driven by a senior DEEWR officer based in Broome.

The KLC has recently expressed dissatisfaction with the steering committee, who have yet to meet, and is concerned that their negotiation process with Governments, in regard to the LNG precinct, will be jeopardised if they participate.