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A Tale of Two Cities: Preliminary Empirical Results From Two Very Different *Native Title Act* Negotiations

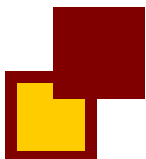


Lily O'Neill, PhD candidate

The Agreements, Treaties and Negotiated Settlements
(ATNS) Project



Browse LNG Agreements

- Three agreements relating to a proposed ‘gas hub’ for multiple users to process LNG from the offshore Browse Basin
 - Site selection and negotiation process that went from approximately 2006 to 2011.
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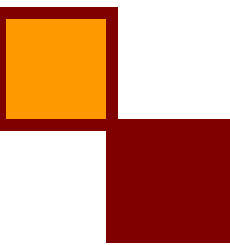


Browse LNG negotiated benefits

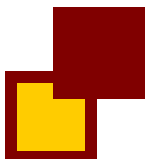
- A State Agreement
- Estimated \$1.5 billion package
- Regional Benefits Package
- As well as some pretty extraordinary aspects, including that the ownership of port would return to Traditional Owners at the end of the life of the LNG Precinct; no other LNG development on Kimberley coastline without consent of Traditional Owners; and that TOs could order the building of a desalination plant if evidence that the groundwater was in danger.



Gladstone LNG

- 
- Four separate LNG developments on Curtis Island processing coal seam gas
 - Agreements are confidential, even for some applicant group TOs:

“I attended the Gladstone meeting, and I asked a lot of questions in that meeting and asked to see a copy of the ILUA. I was told by a ‘representative’ that they couldn’t send out these sort of contracts, that they are highly sensitive, confidential. So I didn’t get to see a copy of the document at all. Basically we weren’t given enough information to say whether or not it was a good deal. They gave us about ten handouts to read.” (Kezia Smith, Port Curtis Coral Coast member)



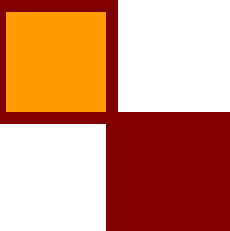


But TOs say:

- “They are going to earn billions, and to pay us a \$1.75 million shut up deal is just sickening” (Kezia Smith, PCCC TO)
- “I can tell you that the four of them in total do not total \$10 million. It’s obscene. I couldn’t honestly say that we got the best of a bad lot.” (Tony Johnson, PCCC TO)
- “Crumbs from the master’s table” (Kerry Blackman, PCCC TO)



And LNG company reps...

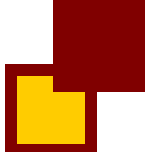


Would you say that any of the Gladstone agreements were in the ballpark [of Browse LNG]?

“No. It’s a different stratosphere. Different universe.”

Why do you think that happened?

“I don’t know. It’s hard to comprehend that level...its perhaps a different space, a different precedent set. And that project is high profile. We certainly don’t compensate anybody on that level. Hard to comprehend really. We do compensate relative to the Queensland space.”



Gladstone LNG manager 1



One Gladstone LNG RTN negotiation

process...

When you work out before you go into a negotiation what the parameters are, is there much wriggle room, or is 'this is how much we are going to pay'?

“We tell them a reasonable jump in point and go from there. How that compensation is structured, we can be flexible, we can fund initiatives, or maybe it’s purely financial. It’s up to the group and us to work something out.”

Is that jump-in point, do you generally stick to about that? Do many groups push you beyond that?

“They try to.”

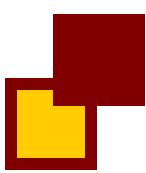
Do they ever succeed?

“No, not really. They have to be reasonable and practical as well. You don’t want to set a precedent. And we think we are being very fair with our structure and our compensation process.”

Gladstone LNG manager 1



Browse LNG funding to negotiate


- Browse LNG: The cost of the site selection process and subsequent negotiation is not entirely clear, however a senior government official told Western Australia's parliament that the cost of the negotiation between 2009 and May 2012 alone was \$40.4 million.
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Gladstone LNG funding to negotiate

- The TO group were funded for two lawyers.
- “When we sought funding for environmental scientists and other things to look at the impact of the industry on the harbour and on the foreshore in particular, that was denied. They were doing the EISs—the average seemed to be about 12,000 pages—and the only response that our group did was one that I did. We didn’t have professional advice. We didn’t have financial or economic advice. We had some advice on taxation, and lawyers, but for us to have a holistic approach we would have needed a range of support that just wasn’t forthcoming. What we were facing was already a hurricane, and we didn’t have any defences to it.”

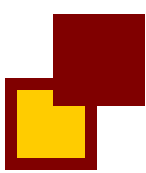
Tony Johnson, PCCC




Have the Gladstone Agreements been publically controversial?

Do you have any idea of what was in those agreements? Did the content ever come to your attention?

“They did, but I can’t remember what was in them. I suppose that the upshot is that a contest about them doesn’t stand out in my memory. Of all the things that were being contested, they were not one of them, at least at the level that I dealing with....It’s also fair to say that a lot of the dominant land use contest was about whitefella land use.”



Andrew Fraser, former Deputy Queensland Premier who had Cabinet level responsibility for Gladstone LNG during the Bligh government



Have the Gladstone Agreements been publically controversial?

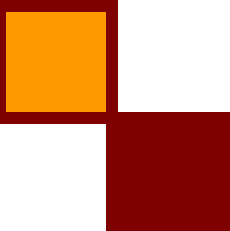
“Yeah, we’ve had some adverse publicity, but nothing that has gone mainstream, it’s been in Indigenous publications. We have had a protest here, people from the PCCC, I had an effigy of myself burnt in the street. It was an interesting day. They were quite irate at the time. Looking for attention.”

Did they get it?

“No.” Gladstone LNG manager 1



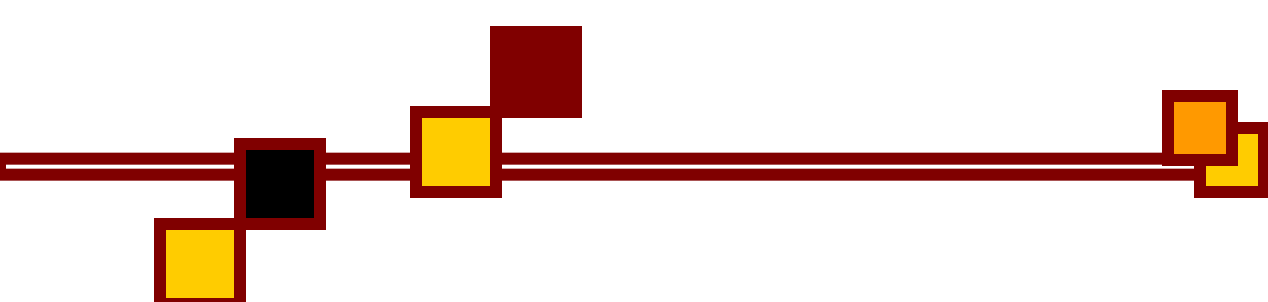
Why these differences?

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- Capacity of Indigenous organisations
 - Ability to form alliances
 - Level of native title rights
 - Use of media
 - State government practice



The State of Western Australia: very involved

- The State acted as the proponent for the gas hub
- A succession of Premiers and Deputy Premiers actively involved.
- Multiple threats of compulsory acquisition
- Wayne Bergmann of the Kimberley Land Council could get Colin Barnett on the phone (there was even litigation and a Four Corners program about their phone calls)
“I can’t remember the detail of that phone call and I, can I stress I speak to Wayne Bergmann frequently. I spoke to him last week. He re-visited my office.” (Colin Barnett, Four Corners, ABC TV)



The State of Queensland: noticeably absent

- “What would happen is, they [Queensland government] would pretty much stay away—it was only when we got involved in a speed bump or sticking point, that they would bring out the compulsory acquisition stick again, courtesy of QG officials. They wanted the negotiations to go on between the TO group and the company. When push came to shove, we got shoved. And so if it starts at the top like that, what could we expect further down?” (Tony Johnson, PCCC TO)



Queensland

- “[T]he State has a traditional way of not offering any assistance to traditional owners in the negotiation process, even though it’s a three party agreement. It’s only where there is a surrender of native title that the State becomes involved. But with a RTN, it’s a three party as well, but they don’t become involved in that either. They don’t offer anything.”

- *Do you think that they should become more actively involved?*

“For the benefit of the native title parties it would be nice. The State uses the position that the proponent wants it, the proponent should pay for it.” (Senior LNG manager 2)



Queensland

- *What was the relevant department you were dealing with?*

“Mines maybe.”

Natural Resources?

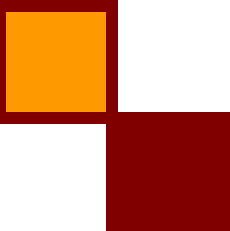
“Not sure, that’s how regularly I spoke to them.”

(Craig Jones, Gladstone LNG for Santos and later Arrow)

- “The regulators in Queensland in this space are not overly proactive. With the cultural heritage stuff, if we have an issue they will ask us whether we have a CHMP, we say yes, and they say they don’t want to know about it, figure it out.” (Gladstone LNG manager 1)



Queensland

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- *What leverage does a company have?*

“There is compulsory acquisition, that’s the main one.”

Gladstone LNG manager 2



How should the State behave?

- “I think that government does set a tone, and an ethos. Big companies that are keen to preserve their national and international reputations will respond to that tone and ethos.” (Eric Ripper, former Deputy Premier, Western Australia, in charge of Browse LNG under the Gallop/Carpenter governments)
- “If you are a mining company, and you are not imbued with a sense of reconciliation, and you want to get your projects up with a minimum of delay you can divide and rule...One of the challenges for government is to set up a clear process for ensuring that Aboriginal opinions on these matters are properly heard, so that people are not able to go in and create confusion”. (Geoff Gallop, former Premier WA)



How should the State behave?

- *What role should government play in these sorts of negotiations between Indigenous people and resource companies?*

“Set the rules of the game....The government shouldn’t be the price setter because you would end up with allocative inefficiency. I think it’s also remarkably paternalistic to think that government needs to decide what the fair price is. And I think that if we are going to have aspirations of what Indigenous communities are capable of achieving, then the idea that government needs to be their agent in a negotiation is paternalistic.” Andrew Fraser

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