

Our ref: [REDACTED]

By email

and [REDACTED]

2 December 2021

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Queens Park NSW 2022

Attention: CEO and General Counsel / Head of Legal Affairs

Dear Sir / Madam

Email communication sent by 350 Australia dated 30 November 2021 and linked Video titled "Reckless Empire Energy"

1. We act for Empire Energy Group Limited (ACN 002 148 361) ("EEG") and its wholly owned subsidiary, Imperial Oil & Gas Pty Limited (ACN 002 699 578) ("IOG").
2. We refer to:
 - (a) the email sent by Shani Tager of 350 Australia on or about 30 November 2021, a copy of which is **enclosed** with this letter ("**Email**"); and
 - (b) the video entitled "Reckless Empire Energy" a link to which was set out within the Email ("**Video**").
3. This letter sets out certain concerns raised by our clients regarding certain statements in the Email and Video that our clients maintain are demonstrably untrue, misleading and likely to harm the reputations of our clients, the NLC and the Traditional Owners of the Mambaliya Rumburriya Wuyaliya Aboriginal Land Trust land underlying EP187.
4. Our clients request that 350 Australia consider these concerns and take the requested actions set out in paragraph 13 below.

Background

5. Our clients are concerned about several statements in the Email and Video, including:

- (a) two statements which indicate the United States Environmental Protection Agency ("US EPA") fined EEG in connection with certain oil spills in Kansas, namely:
 - (i) Email statements that "...the United States Environmental Protection Agency (EPA) fined it for spilling thousands of litres of oil and wastewater into the Sale River in Kansas!" and "The EPA found that Empire Energy violated environmental regulations..." (**Statement 1**); and
 - (ii) Video statement (at 0:16 of the Video) that "Last year, the EPA fined it for spilling oil into the Saline River in Kansas." (**Statement 2**);
 - (b) three statements in the Email and Video which suggest our clients did not consult with and/or obtain the consent of the Traditional Owners of the land underlying EP187, namely:
 - (i) Email statement that "Traditional Owners told Parliament that they have not consented to Empire Energy fracking on their Country" (**Statement 3**);
 - (ii) Video statement (at 0:17 of the Video) that "Traditional Owners have said NO to Empire Energy fracking on their Country" (**Statement 4**); and
 - (iii) Video statement (at 0:21) that Joni Wilson (a Yanyuwa Garawa woman from Borrooloola) stated "We have not been given any information about fracking, we have not given anyone permission..." (**Statement 5**);
 - (c) three statements in the Email and Video which suggest our clients are reckless and/or have behaved recklessly, namely:
 - (i) the subject heading of the Email, being "Reckless Empire Energy" (**Statement 6**);
 - (ii) the title of the Video, being "Reckless Empire Energy" ("**Statement 7**"); and
 - (iii) the Video statement (at 0:09 and 0:11 of the Video) that "There are 3 reasons [the Government's decision to award grants to IOG] is bad news!. 1. Empire Energy's reckless behaviour" ("**Statement 8**").
6. Statements 1-8 (inclusive) (each a "**Statement**") are of concern to our client for various reasons, including those set out in paragraphs 7-11 below (without limitation).

Our client's specific concerns regarding Statements

Statements 1-2

7. In relation to Statements 1 and 2, our clients note that:



- (a) an agreement was reached Kansas Environmental Protection Authority and Empire Energy E&P, LLC (“**Empire Energy US**”) in respect of certain alleged violations of Federal Water Pollution Control Act and regulations promulgated thereunder, without any admission of liability by Empire Energy US and without any finding of liability by the Kansas EPA; and
- (b) Empire Energy US was not "fined" by the US EPA or the Kansas EPA; rather Empire Energy US agreed to pay USD 37,000 in civil penalties in settlement of the matter.

Statements 3-5

- 8. Our clients have advised us that they have the full, informed and prior consent of the Traditional Owners of the Mambaliya Rrumburriya Wuyaliya Aboriginal Land Trust land underlying EP 187.
- 9. Statements 3-5 (inclusive) ignore the 4 year consultation and negotiation process which our clients undertook with the Traditional Owners of the Mambaliya Rrumburriya Wuyaliya Aboriginal Land Trust land underlying EP187 through the Northern Land Council ("NLC") (the statutory body established in 1973 to protect traditional owners' best interests in relation to their land) prior to gaining such Traditional Owners' full and informed consent on 5 February 2014.
- 10. In doing so, Statements 3-5 (inclusive) are, in our clients' view, demonstrably untrue, misleading and likely to harm the reputations of not only our clients, but also the NLC and the Traditional Owners of the Mambaliya Rrumburriya Wuyaliya Aboriginal Land Trust land underlying EP187, and undermine the very important work which the NLC undertakes on behalf of Traditional Owners. In this regard, our clients note:
 - (a) EP 187 is located on Mambaliya Rrumburriya Wuyaliya Aboriginal Land Trust land, being Aboriginal land under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (“*Land Rights Act*”). To obtain the grant of EP 187, IOG had to comply with Part IV of the *Land Rights Act* which afforded the traditional Aboriginal owners of the land a right to veto the proposed grant of EP 187.
 - (b) Part IV of the *Land Rights Act* required IOG to:
 - (i) provide a comprehensive statement in writing of its proposed petroleum exploration activities;
 - (ii) conduct meetings with traditional Aboriginal owners and Aboriginal people affected by the proposal; and
 - (iii) enter into an agreement relating to those parts of the land that traditional Aboriginal owners were willing for petroleum activities to take place.
 - (c) IOG complied with Part IV of the *Land Rights Act* at all relevant times and continues to do so.



- (d) IOG applied for EP 187 on 12 April 2010 and was granted that exploration permit on 20 March 2015 after:
- (i) IOG signed a comprehensive Exploration Deed with the NLC on 5 February 2014 (**Exploration Deed**); and
 - (ii) the Federal Minister for Indigenous Affairs consented to the grant on 23 December 2013.
- (e) The Traditional Owners determined that 24 discrete areas within EP 187 were areas in which they did not wish any petroleum activities to proceed and each of those areas were specifically excluded from the grant of EP 187. IOG respected this determination and has done so at all times since.
- (f) The Traditional Owners of the Mambaliya Rrumburriya Wuyaliya Aboriginal Land Trust land underlying EP187 were represented by the NLC.
- (g) Section 23(3) of the *Land Rights Act* requires that in carrying out its functions with respect to any Aboriginal land in its area the NLC:
- "shall have regard to the interests of, and shall consult with, traditional Aboriginal owners (if any) of the land and any other Aboriginals interested in the land and, in particular, shall not take any action, including but not limited to, the giving of consent or the withholding of consent, in any matter in connexion with land held by a Land Trust, unless the Land Council is satisfied that:*
- (a) the traditional Aboriginal owners (if any) of that land understand the nature and purpose of the proposed action and, as a group, consent to it; and*
- (b) any Aboriginal community or group that may be affected by the proposed action has been consulted and has had adequate opportunity to express its views to the Land Council."*
- (h) Furthermore, section 42(6) of the *Land Rights Act* prohibits the NLC from consenting the grant of an exploration licence (such as EP 187) unless:
- (i) it is satisfied that the traditional Aboriginal owners (if any) of the land understand the nature and purpose of the terms and conditions and, as a group, consent to them;
 - (ii) it is satisfied the terms and conditions are reasonable; and
 - (iii) it has agreed with the applicant upon the terms and conditions.
- (i) The NLC is a Commonwealth statutory entity which is funded to carry out such functions, with current funding of an amount in excess of \$40 million per annum. The NLC employs teams of anthropologists, lawyers,

minerals and energy officers, regional officers and other support personnel to enable it to discharge its functions.

- (j) In addition to information provided by IOG, the NLC independently informed itself of issues associated with hydraulic fracturing, including sending NLC representatives to the United States of America to investigate hydraulic fracturing.
- (k) Further, in its answers to questions taken on notice during the Senate Environment and Communications References Committee into oil and gas exploration and production in the Beetaloo Basin, public hearing on 2 August 2021 (received 23 August 2021), the NLC described the consultation and negotiations that took place with Traditional Owners *specifically* in respect of EP 187, as follows:

"Pursuant to its obligations under Part IV of the Land Rights Act, the NLC proceeded to conduct consultations with the traditional Aboriginal owner and affected groups.

The NLC consulted traditional Aboriginal owners and affected groups through May, October and November 2011, including at a well-attended meeting in Borroloola on 18 May 2011 to which all members of traditional owner and affected groups were invited.

Through October and November 2011, the NLC facilitated comprehensive sacred site surveys with senior site custodians from the traditional owner groups.

On 7 and 8 November 2013, the NLC conducted final consultation meetings, where the traditional Aboriginal owners consented to the grant of EP 187 over certain parts of the original application area. Significant parts of the original application area were excised from grant where sacred sites had been mapped in the course of the recent surveys.

EP 187 was granted on 20 March 2015. Since then, prior to any proposed program of works on the permit area, the NLC has facilitated work program meetings with company representatives, to which all traditional Aboriginal owners have been invited.

Following the lifting of the Northern Territory Government's moratorium on hydraulic fracturing, and in between COVID-related lockdowns, work program meetings have occurred on 10 November 2018 and 11 November 2020.

On 12 November 2020, senior traditional Aboriginal owners, as nominated by their families, participated in an inspection of the Carpentaria-I wellsite on the permit area."

- 11. In light of this, our clients maintain that it is demonstrably untrue and misleading to suggest that the Traditional Owners of EP 187 have not been consulted and/or

have not consented to the exploration activities authorised by EP 187. The NLC could not have signed the Exploration Deed unless it was satisfied:

- (a) the Traditional Owners of the land on which EP 187 sits understood the nature and purpose of the proposed action and, as a group, consented to it; and
- (b) any Aboriginal community or group that may be affected by the exploration activities on EP 187 has been consulted and has had adequate opportunity to express its views to the Land Council.

Statements 6-8

- 12. In relation to Statements 6-8 (inclusive), our clients note that 350 Australia has provided no evidence to support its assertion that Empire Energy is "reckless" or has behaved "recklessly" and our clients reject Statements 6-8 in the strongest possible terms.

Request

- 13. Our clients request that 350 Australia takes the following steps **by no later than 5pm (AEDT) on Monday 6 December 2021:**
 - (a) issue a statement retracting the Email and Video on 350 Australia's website, on 350 Australia's Facebook page and to all recipients of the Email;
 - (b) remove the Video (and all references to it) from 350 Australia's Facebook and other social media pages;
 - (c) confirm to us in writing that the steps referred to paragraphs 13(a)-13(b) (inclusive) have been completed.
- 14. Our clients continue to reserve all rights.

Yours faithfully

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