THE HON MARTIN FERGUSON AM MP

MINISTER FOR RESOURCES AND ENERGY
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Mr David Crawford
President
National Competition Council
GPO Box 250
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28 AUG 2012

Dear Mr Crawford

Thank you for your letter of 17 July 2012 concerning the National Competition Council's final recommendation on an application from Australia Pacific LNG Gladstone Pipeline Pty Limited (APLNG) for a 15 year no-coverage determination for the proposed APLNG pipeline.
I understand that the Council has classified this proposed pipeline as a transmission pipeline and as such I am the relevant Minister with responsibility for making the final determination on this matter.

I have decided to grant a 15 year no-coverage determination for the APLNG Pipeline. Please find attached my determination and statement of reasons. In making my decision I have carefully considered the pipeline coverage criteria, the National Gas Objective and the Council's final recommendations.

Given the two public consultation processes undertaken by the Council, I did not seek further submissions. I have also written to the applicant and the Australian Energy Market Commission to advise them of my decision. Under the National Gas Rules, my decision and statement of reasons must be published on the Council's website. I would appreciate if you could arrange for this publication.

Yours sincerely

Martin Ferguson

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MINISTER'S DETERMINATION

I, the Hon Martin Ferguson AM MP, Minister for Resources and Energy, being the relevant Minister to make 15 year no-coverage determinations on gas transmission pipelines under section 151 of the National Gas Law (NGL), make the following decision in relation to an application from the Australian Pacific LNG Gladstone Pipeline Pty Limited (APLNG).

The Application Process

On 2 May 2012, APLNG applied to the National Competition Council (the Council) for a 15-year no-coverage determination (the application).

Following a public consultation process in which the Council received one submission from Tri-Star Petroleum Company (opposed to the application), the Council published its draft recommendation on 19 June 2012. The Council's draft recommendation classified the proposed APLNG Pipeline as a transmission pipeline and favoured the grant of a 15-year no-coverage determination.

Following a second round of public consultations, in which the Council received no further submissions, the Council provided me with its final recommendation on 17 July 2012 proposing that a 15 year no-coverage determination be granted. The Council's draft and final recommendations and the submission it received are available on the Council's website: www.ncc.gov.au.

In accordance with section 156 of the NGL, I am providing my determination to the applicant, the Council and the Australian Energy Market Commission within 30 business days of receiving the Council's final recommendation. Considering the opportunity for interested parties to provide submissions to the Council, I have not requested further submissions or information.

Description of the Pipeline

My decision relates to the proposed APLNG Pipeline (see Map 1 in **Attachment A**). I understand that the proposed APLNG Pipeline will begin east of Wandoan at the APLNG hub and run north and northeast for 360 kilometres to Curtis Island near Gladstone, Queensland. A further description of the proposed APLNG Pipeline is available in Annexure 1 of APLNG's application, which is available to download at: http://www.ncc.gov.au/index.php/application/application_for_a_15_year_no-coverage_determination_for_proposed_aplng_pipe

Decision

In accordance with Part 2 of Chapter 5 of the NGL, I am making a 15 year no-coverage determination in response to the application.

This decision is based on the application, submissions and the Council's draft and final recommendations. In making my determination, I gave effect to the pipeline coverage criteria in section 15 of the NGL.

In deciding whether or not the pipeline coverage criteria are satisfied in relation to the pipeline, in accordance with section 157(1) of the NGL, I:

1. have had regard to the national gas objective in section 23 of the NGL;
2. have had regard to the NCC no-coverage recommendation; and
3. took into account submissions and comments received by the Council from the applicant and other parties.

In regards to section 15 of the NGL, I am satisfied that pipeline coverage criteria (c) is met but that criteria (a), (b) and (d) are not met. Given that I have determined that not all of the pipeline coverage criteria are satisfied in relation to the proposed pipeline, in accordance with section 157(2)(b) of the NGL, I must make a 15 year no-coverage determination in favour of APLNG.

My Statement of Reasons follows.

STATEMENT OF REASONS

In accordance with Rule 124 of the *National Gas Rules*, I provide this statement of reasons for my decision to grant a 15 year no-coverage determination to APLNG.

Pipeline coverage criterion (a): That access (or increased access) to pipeline services provided by means of the pipeline would promote a material increase in competition in at least 1 market (whether or not in Australia), other than the market for the pipeline services provided by means of the pipeline.

NCC final conclusion on criterion (a): *Access to the APLNG Pipeline is unlikely to promote a material increase in competition in any likely dependent market*

Ministerial Findings

I understand that the APLNG project involves producing Coal Seam Gas (CSG) from the Walloons gas fields in the Surat and Bowen basins, and transporting the CSG to APLNG's proposed Liquefied Natural Gas (LNG) processing plant at Curtis Island. I consider that the proposed APLNG pipeline will be integral to the APLNG project.

Pipeline coverage criterion (a) requires that I consider whether access to the proposed APLNG pipeline would promote a material increase in competition in any of the relevant dependent markets. I agree with the Council's finding that the relevant dependent markets include:

- a single upstream gas production market within the scope of feasible interconnection to the proposed APLNG pipeline;
- a downstream domestic gas sales market within the Gladstone-Rockhampton-Wide Bay area; and
- a downstream global LNG sales market.

Although vertically integrated, there is little incentive for APLNG to restrict LNG production because it is unlikely that world prices would be affected. I consider that smaller CSG producers within the scope of feasible connection to the APLNG pipeline will have access to new joint venture opportunities, as well as existing pipeline alternatives. As such, I have determined that access to the proposed APLNG pipeline is unlikely to promote a material increase in competition in the upstream gas production market.

I agree with the Council's finding that downstream domestic gas sales in the Gladstone-Rockhampton-Wide Bay area have existing supply options through the Queensland Gas Pipeline, and will likely have further options when proposed pipelines are commissioned in the future. Access to the proposed APLNG pipeline is unlikely to promote a material increase in competition in this market.

I consider that the downstream global LNG market is already a competitive international market, and access to the proposed APLNG pipeline is unlikely to promote a material increase in competition.

Therefore, I am satisfied that criterion (a) is not met.

Pipeline coverage criterion (b): That it would be uneconomic for anyone to develop another pipeline to provide the pipeline services provided by means of the pipeline.

NCC final conclusion on criterion (b): *The Council accepts that it is likely to be privately profitable for someone in the market place to develop an alternative pipeline to provide the services provided by means of the APLNG Pipeline.*

The Council does not consider that criterion (b) is satisfied. Depending on the High Court's decision, the Council proposed to revisit this conclusion in the event that the High Court determines the current appeal against the Full Court decision prior to the Council finalising its recommendation on the Application.

Ministerial Findings

Pipeline coverage criterion (b) requires me to consider whether it would be uneconomic for anyone to develop another pipeline to provide the pipeline services provided by means of the pipeline. As held by the Full Court of the Federal Court of Australia, criterion (b) is not satisfied where there is someone in the market who might profitably build another facility to provide the relevant service. I acknowledge that the High Court of Australia is currently reviewing this decision and the Council considers an alternative interpretation may apply to the assessment of the pipeline coverage criteria in future applications.

As there are currently three LNG projects proposed in Queensland in addition to the APLNG Project, it is likely that others will find it economically feasible to develop an alternative pipeline.

In making my assessment on this criterion, I have given consideration to the National Gas Objective, which is to *"promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas"*.

I am satisfied that criterion (b) is not met.

Pipeline coverage criterion (c): That access (or increased access) to the pipeline services provided by means of the pipeline can be provided without undue risk to human health or safety.

NCC final conclusion on criterion (c): *The Council is satisfied in respect of criterion (c).*

Ministerial Findings

I am satisfied that access (or increased access) to the pipeline services provided by means of the proposed APLNG pipeline could be provided without undue risk to human health or safety. I note that no submissions from the applicant or other parties, including the Council, presented any opinions to suggest otherwise. I also note that

the gas industry in Australia is characterised by the safe use of pipelines through appropriate operator practice and regulation.

Therefore, I am satisfied that criterion (c) is met.

Pipeline coverage criterion (d): That access (or increased access) to the pipeline services provided by means of the pipeline would not be contrary to the public interest.

NCC final conclusion on criterion (d): *Notwithstanding that actual regulatory costs of access may be somewhat lower than the Applicant's estimates, the Council's finding that access would not promote a material increase in competition in any likely dependent market (in the absence of any other potential benefits) is critical. Given that there are some costs that would result from coverage of the APLNG Pipeline, the Council's view is that access to the pipeline services would be contrary to the public interest and that criterion (d) is not met.*

Ministerial Findings

Pipeline coverage criterion (d) requires me to consider whether access to the proposed pipeline would not be contrary to the public interest. Criterion (d) allows for the consideration of any additional matters, without affecting the findings within other criteria. I accept the Council's advice that I must be satisfied that the overall costs of access do not outweigh the benefits.

In line with the National Gas Objective, it is important to encourage efficient investment in capital intensive infrastructure assets such as gas transmission pipelines. The granting of a no-coverage determination improves regulatory certainty for investors.

In considering the benefits of access, the Council has noted that the *"finding that access would not promote a material increase in competition… is critical."* Without any other apparent public benefit, access is likely to be contrary to the public interest.

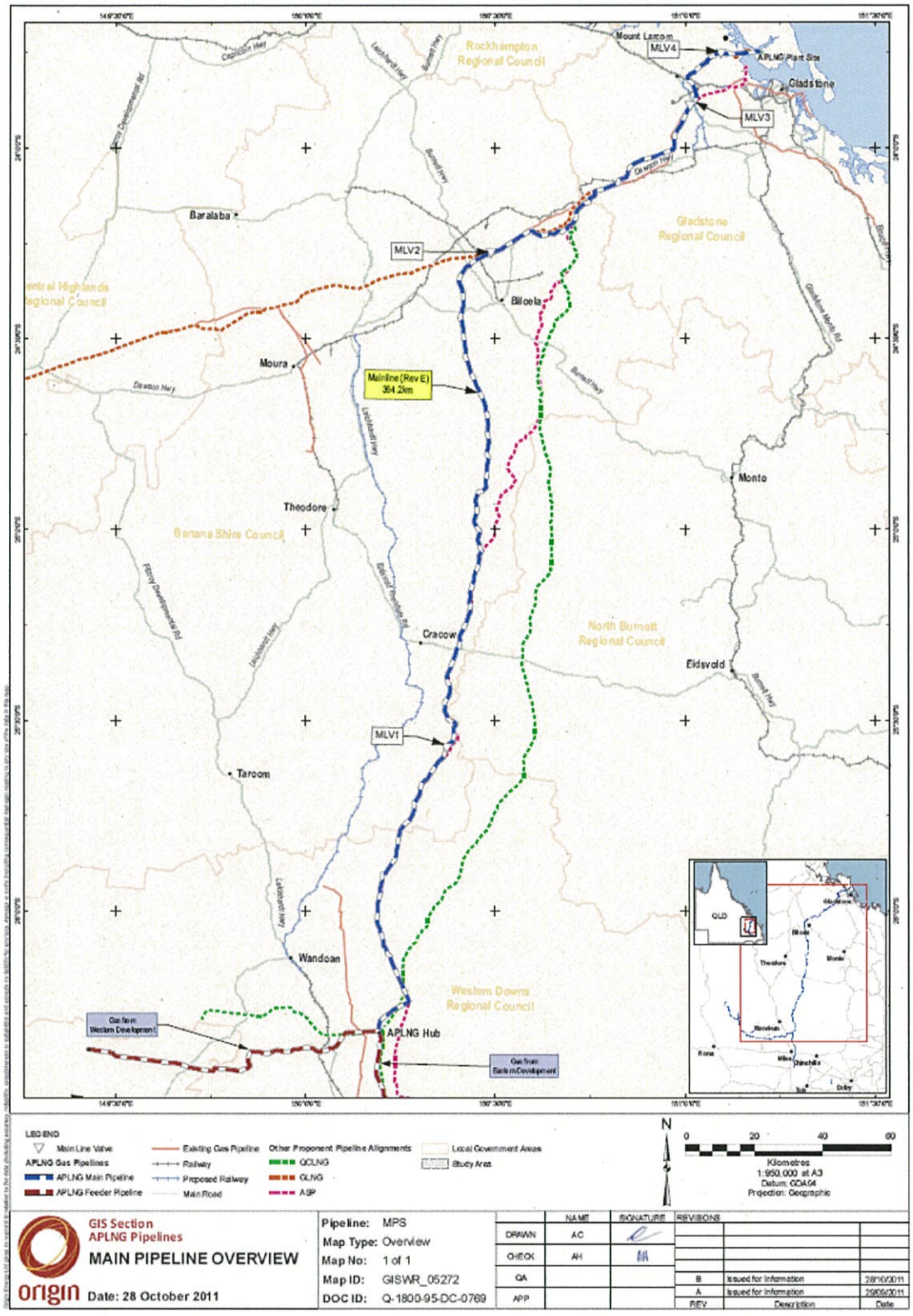
Therefore, I am satisfied that criterion (d) is not met.

Given that I have determined that not all of the pipeline coverage criteria are satisfied in relation to the proposed pipeline, in accordance with 157(2)(b) of the NGL, I must grant a 15-year no-coverage determination.

The Hon Martin Ferguson AM MP
Minister for Resources and Energy

28th August 2012

Map 1: Proposed APLNG Pipeline



Source: Page 46 of the application from APLNG Pipeline Pty Limited