

MINISTER'S DETERMINATION

I, the Hon Gary Gray AO MP, Minister for Resources and Energy, being the relevant Minister to make 15 year no-coverage determinations on gas transmission pipelines under section 156 of the National Gas (Queensland) Law (NGL), make the following decision in relation to an application from GLNG Operations Pty Ltd (GLNG).

The Application Process

On 12 March 2013, GLNG 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 (which opposed the application), the Council published its draft recommendation on 19 April 2013. The Council's draft recommendation classified the proposed GLNG 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 released its final recommendation on 22 May 2013 recommending that I decide to make a 15 year no-coverage determination. 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, and rule 124(2)(a) of the National Gas Rules made under 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 coverage recommendation. Considering the opportunity for interested parties to provide submissions to the Council, I have not requested further submissions or comments in relation to the application.

Description of the Pipeline

My decision relates to the proposed GLNG Pipeline (see Map 1 in **Attachment A**). I understand that the proposed GLNG Pipeline will begin in Fairview, north of Wallumbilla, at the Fairview Pipeline Compressor Station and interconnecting with GLNG's existing Comet Ridge to Wallumbilla Pipeline. The GLNG pipeline will run north and then north-east to Curtis Island near Gladstone, Queensland following the easement corridor provided by the Queensland Gas Pipeline and joining the Northern Infrastructure corridor within the Callide Infrastructure Corridor State Development Area. A further description of the proposed GLNG Pipeline is available in Chapter 2.7 and Annexure 5 of GLNG's application, which is available to download on the Council's website: www.ncc.gov.au.

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, the submission to the Council and the Council's final recommendation. 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 I am not satisfied that criteria (a), (b) and (d) are met. Given that I am not satisfied that 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 GLNG.

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 GLNG Operations Pty Ltd (GLNG).

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 GLNG pipeline is unlikely to promote a material increase in competition in the gas production market. The Council does not consider that criterion (a) is satisfied.*

Ministerial Findings

I understand that the GLNG project involves producing Coal Seam Gas (CSG) from gas fields in Fairview, Roma, Arcadia, Comet Ridge and Scotia in the Surat and Bowen basins, and transporting the CSG to GLNG's proposed Liquefied Natural Gas (LNG) processing plant at Curtis Island. The GLNG project will utilise the existing pipeline from Wallumbilla to Comet Ridge. The GLNG pipeline will track north and then north-east along the same route as the Queensland Gas Pipeline (QGP) in order to utilise existing corridors.

Pipeline coverage criterion (a) requires that I consider whether access to the services provided by means of the proposed GLNG pipeline would materially improve the opportunities and environment for competition in a dependent market. 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 GLNG pipeline;
- a downstream domestic gas sales market within the Gladstone-Rockhampton-Wide Bay area; and
- a downstream global LNG market.

Although vertically integrated, there is little incentive for GLNG to restrict LNG production because it is unlikely that GLNG would be able to influence world prices. Small tenement holders within a 100 kilometre corridor of the proposed GLNG pipeline have options to partner with other LNG projects or access the QGP or Roma to Brisbane Pipeline (RBP).

In addition, I understand from the NCC determination that '*the Queensland Government has indicated that the initial capacity of the RBP and QGP has been expanded, with more expansions either underway or planned*', which would provide capacity for small tenement holders should they be seeking it. As such, I have determined that access to the proposed GLNG 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 including

through the QGP, and will likely have further options to bypass the GLNG pipeline when other CSG to LNG pipelines begin operation. Access to the proposed GLNG 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 GLNG pipeline is unlikely to promote a material increase in competition.

Therefore, I am not satisfied that criterion (a) is 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 does not consider that criterion (b) is satisfied.*

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.

Consistent with the decision of the High Court of Australia in *Pilbara Infrastructure Pty Ltd v Australian Competition Tribunal* (2012) 246 CLR 379; [2012] HCA 36 (Pilbara), criterion (b) is not satisfied where there is someone in the market who might profitably build another facility to provide the relevant pipeline services. I note that this has overturned previous interpretations of criterion (b) which focussed on the presence of natural monopoly characteristics or on net social benefits.

The Council found that *“At least two other market participants – QCLNG and APLNG – consider that it is profitable to build a pipeline to transport gas from the Surat/Bowen basins to Curtis Island... the development of multiple pipelines essentially providing the same services illustrates 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 GLNG pipeline”*.

Without further guidance or legal precedent on the application of criterion (b), I am reluctant to agree that the presence of existing pipelines necessarily demonstrates that another pipeline would be profitable to build although I agree that it does tend to indicate that it might be profitable to build another pipeline. Even if the APLNG and QCLNG pipelines are considered to be already ‘developed’ (existing) and cannot be used as evidence of private profitability, there are other CSG to LNG projects in the Surat/Bowen basin that are envisaging the construction of similar pipelines. For example, should the Arrow LNG project proceed there may be a pipeline developed from Kogan to Curtis Island. This tends to indicate that there is someone who may find it economical to develop another pipeline to provide the pipeline services.

As such, I am not satisfied that criterion (b) is 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 GLNG 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 GLNG'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 GLNG Pipeline, the Council is not satisfied that access to the pipeline services would not be contrary to the public interest. The Council considers 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 that might indicate whether the overall costs of access outweigh the benefits.

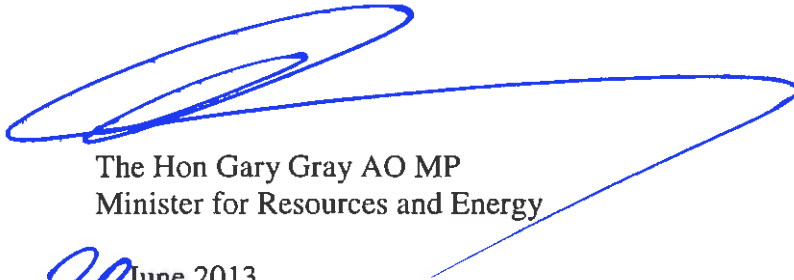
In line with the National Gas Objective, it is important to encourage efficient investment in capital intensive infrastructure assets such as gas transmission pipelines. The granting of a no-coverage determination improves regulatory certainty for investors.

I consider that coverage would not jeopardise the GLNG project, even though the costs of regulation would not be inconsequential. In light of my findings under criterion (a) that access to the pipeline is unlikely to promote a material increase in competition, without any other apparent public benefit, access is likely to be contrary to the public interest.

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

Given that I am not satisfied that 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 make a 15-year no-coverage determination.

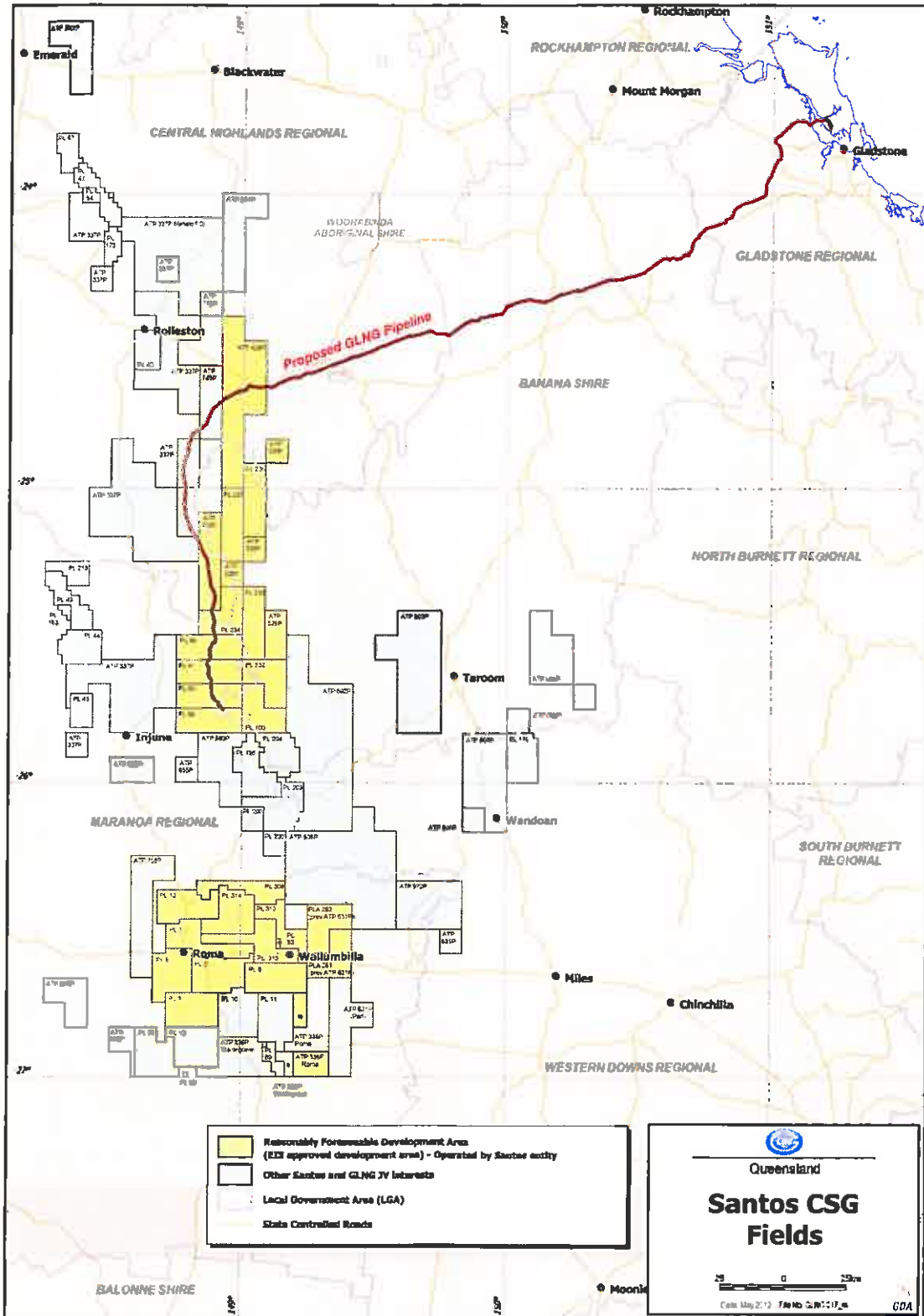
This determination takes effect from the date of this determination set out below.

A large, stylized handwritten signature in blue ink, consisting of several loops and a long horizontal stroke.

The Hon Gary Gray AO MP
Minister for Resources and Energy

 20 June 2013

Map 1: Proposed GLNG Pipeline



Source: Page 117 of the application from GLNG Operations Pty Ltd