NATIONAL
COMPETITION
COUNCIL

GLNG Pipeline

Application for a 15-year no-coverage determination

Final recommendation

22 May 2013

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Abbreviations and defined terms

APLNG	Australia Pacific LNG Pty Limited
APLNG Pipeline	The proposed APLNG pipeline system from east of Wandoan to Curtis Island, which was the subject of the APLNG Recommendation.
APLNG Recommendation	The Council's 17 July 2012 final recommendation in relation to the APLNG Pipeline, *APLNG no-coverage application, Application for a 15 year no coverage determination for the proposed APLNG Pipeline*.
Application	The application under s 151 of the NGL by GLNG for a 15-year no-coverage determination for the GLNG Pipeline, received by the Council 12 March 2013.
Arrow Energy	Arrow Energy Limited
Blue Energy	Blue Energy Limited
Council	National Competition Council
criterion (a)	Section 15(a) of the NGL
criterion (b)	Section 15(b) of the NGL
criterion (c)	Section 15(c) of the NGL
criterion (d)	Section 15(d) of the NGL
CRWP	Comet Ridge to Wallumbilla pipeline, operated by Santos
CSG	coal seam gas
domestic sales market	The market for the sale of gas centred on the area of Gladstone, Rockhampton and Wide Bay in Queensland.
gas production market	The upstream gas production market within the scope of feasible interconnection with the GLNG Pipeline.
GLNG	GLNG Operations Pty Ltd
GLNG Pipeline	The proposed gas pipeline, described in paras 2.1 and 3.1-3.2 of this report, to be owned by the GLNG Project participants and operated by GLNG.
GLNG Project	The proposal by Santos, PETRONAS, Total and KOGAS (through wholly-owned subsidiaries) to develop gas fields in the Bowen and Surat basins and transport gas via the GLNG Pipeline to the LNG Facility.
KOGAS	Korea Gas Corporation, a company listed on the Korean Stock Exchange, incorporated by the Korean Government in 1983.
LNG market	The downstream international market for LNG

Jemena	Jemena Limited
LNG	liquefied natural gas
LNG Facility	GLNG's proposed LNG facility on Curtis Island
NGL	National Gas Law, which is set out in the Schedule to the *National Gas (South Australia) Act 2008* (SA) and applied as a law of South Australia by that Act and as a law of other States and Territories by an application Act in each jurisdiction.
PETRONAS	Petroleum Nasional Berhad, the Malaysian national oil and gas corporation, wholly owned by the Malaysian Government.
QCLNG	Queensland Curtis LNG
QCLNG Pipeline	The proposed QCLNG pipeline system from the Surat Basin to Curtis Island, which was the subject of the QCLNG Recommendation.
QCLNG Recommendation	The Council's May 2010 final recommendation in relation to the QCLNG Pipeline, *No coverage determination for the proposed QCLNG Pipeline, Application for a 15 year no coverage determination for the proposed QCLNG Pipeline.*
QGP	Queensland Gas Pipeline (Roma (Wallumbilla) via Gladstone to Rockhampton) operated by Jemena
RBP	Roma to Brisbane Pipeline operated by APA Group
relevant Minister	Commonwealth Minister for Resources and Energy the Hon. Gary Gray AO MP
Santos	Santos Limited
SWQP	South West Queensland Pipeline (Wallumbilla to Ballera) owned and operated by APA Group
Total	Total S.A., a limited company incorporated in France.
Tri-Star	Tri-Star Petroleum Company

1 Pipeline classification and no-coverage recommendation

Pipeline classification

1.1 The Council has decided that the GLNG Pipeline (see para 2.1 below) is a transmission pipeline. The Council's reasons for its initial classification decision are set out in section 4 of this report.

1.2 As the Council has decided that the GLNG Pipeline is a transmission pipeline and as the GLNG Pipeline is situated wholly within Queensland (and is therefore neither a cross-border nor an international transmission pipeline), the relevant Minister is the Commonwealth Minister for Resources and Energy the Hon. Gary Gray AO MP (see para 4.8 below).

No-coverage recommendation

1.3 The Council is satisfied that the GLNG Pipeline is a greenfields project in that it involves the construction of a pipeline that will be structurally separate from any existing pipeline.

1.4 The Council is not satisfied that pipeline coverage criteria (a), (b) or (d) are met in relation to the GLNG Pipeline. The Council recommends that the relevant Minister decide to make a 15-year no-coverage determination. The Council's reasoning for its recommendation is set out in sections 6 to 9 of this report.

2 Application and public consultation

Application

2.1 On 12 March 2013 the Council received an application under s 151 of the (National Gas Law (**NGL**) from GLNG Operations Pty Ltd (**GLNG**) for a 15-year no-coverage determination for GLNG's proposed pipeline in Queensland (**Application**). The pipeline (**GLNG Pipeline**) will transport coal seam gas (**CSG**) from the gas fields GLNG is developing at Fairview, Roma, Arcadia, Comet Ridge and Scotia to a liquefied natural gas (**LNG**) facility to be constructed on Curtis Island near Gladstone (**LNG Facility**). The GLNG Pipeline will run for 420km from Fairview to Curtis Island. The pipeline route is shown in **Appendix A** and **Appendix B**.[1]

2.2 The Council is satisfied that the Application meets the requirements of s 151(3) of the NGL. The application fee has been paid.

Public consultation

2.3 The Council conducted its public consultation on the Application in accordance with the 'standard consultative procedure' in the National Gas Rules.

2.4 On 15 March 2013 the Council published a notice in *The Australian* newspaper inviting written submissions on the Application and published the Application on the Council website. The 15 business day period for submissions on the Application ended on 9 April 2013.

2.5 The Council received one submission on the Application, from Tri-Star Petroleum Company (**Tri-Star**). Tri-Star is a group of CSG exploration companies engaged in joint ventures for the production of CSG from fields in Queensland, including the Fairview field operated by Santos and the Spring Gully and Durham Ranch fields operated by APLNG. Tri-Star opposes the making of a 15 year no-coverage determination in relation to the GLNG Pipeline on the grounds that access would materially promote competition in a dependent market, the GLNG Pipeline is uneconomical to duplicate and access would be in the public interest. Its submission adopts the submission it made in 2012 in response to APLNG's 2010 application for a no-coverage determination in relation to the APLNG Pipeline.

2.6 On 19 April 2013, the Council released a draft recommendation (including its initial classification decision), proposing to recommend that the relevant Minister make a no-coverage determination on the basis that pipeline coverage criteria (a), (b) and (d) are not satisfied. Submissions on the draft recommendation closed on 13 May 2013.

2.7 No submissions were received in response to the draft recommendation.

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1 GLNG's description and maps of the GLNG Pipeline can be viewed in the public (non-confidential) version of the Application, which is available on the Council's website: www.ncc.gov.au.

3 The proposed GLNG Pipeline and pipeline service

3.1 The GLNG project is an integrated CSG to LNG project (**GLNG Project**) in Queensland. A map of the GLNG Project is **Appendix A**. The project will be comprised of:

- a number of gas fields in the Bowen/Surat basins in Queensland (see **Appendix B**)
- the proposed GLNG Pipeline, and
- the proposed LNG Facility on Curtis Island near Gladstone.

3.2 The GLNG Project will also use the existing Comet Ridge to Wallumbilla pipeline (**CRWP**).

3.3 The participants in the GLNG Project are:

- Santos Limited (**Santos**) (through Santos GLNG Pty Ltd)
- Petroleum Nasional Berhad (**PETRONAS**) (through PAPL (Downstream) Pty Ltd)
- Total S.A. (**Total**) (through Total GLNG Australia), and
- Korea Gas Corporation (**KOGAS**) (through KGLNG Liquefaction Pty Ltd).

3.4 The participants have appointed GLNG as the operator of the GLNG Pipeline and the LNG Facility and GLNG has made the Application on behalf of the GLNG Project participants.

3.5 The Council accepts GLNG's submission that the GLNG Pipeline will be structurally separate from any other pipeline and is therefore a greenfields pipeline project for the purposes of s 149.[2] GLNG submits that the GLNG Pipeline will not be directly connected to the CRWP and that the CRWP will be one of a number of pipelines feeding gas to new facilities at Fairview, where gas will enter the GLNG Pipeline for transport to Curtis Island.

3.6 The Council considers that the service to be provided by the GLNG Pipeline will be the transport of CSG from the Bowen/Surat basins to Curtis Island. The service will not be provided to any parties unrelated to GLNG and all of the capacity of the GLNG Pipeline is expected to be used by the GLNG Project participants.

Other existing and proposed projects and pipelines

3.7 A number of other LNG projects and existing and proposed pipelines are relevant to the Council's consideration of the Application.

[2] In the Application, GLNG submits that the GLNG Pipeline will be structurally separate from any other pipeline and that the GLNG Pipeline would satisfy s 149(b) of the NGL because, insofar as it interconnects with the CRWP, it is a major extension to an existing pipeline. It cannot be both. Following a request for clarification from the Council, GLNG states that the GLNG Pipeline and CRWP will be structurally separate.

3.8 GLNG identifies four proposed LNG projects, in addition to the GLNG Project, involving the production and export of LNG at Gladstone:

- the APLNG project
- the QCLNG project
- the Arrow Energy LNG project, and
- the Gladstone LNG Project—Fisherman's Landing (Application, pp 29-30).

3.9 The QCLNG, APLNG and Arrow energy projects all include the development of pipelines from the Bowen/Surat basins to Curtis Island.

3.10 There are also a number of existing pipelines that are relevant to the consideration of criteria (a) and (b) in relation to the GLNG Pipeline:

- the Roma to Brisbane Pipeline (**RBP**)
- the Queensland Gas Pipeline (**QGP**), and
- the South West Queensland Pipeline (including the Queensland-South Australia-New South Wales Link).

3.11 The map at **Appendix C** shows the ownership of gas projects and the ownership and routes of the existing and proposed pipelines in southeastern Queensland. The map at **Appendix D** shows eastern Australian gas basins and the gas transmission network.

4 Pipeline classification and relevant Minister

4.1 The Council must decide whether the GLNG Pipeline is a transmission pipeline or distribution pipeline (see NGL, s 155(1)), applying the pipeline classification criterion in s 13(1) of the NGL. The criterion requires that pipelines be classified according to whether their primary function is to:

- reticulate gas within a market—in which case the pipeline is a distribution pipeline, or
- convey gas to a market—in which case it is a transmission pipeline.

4.2 Without limiting s 13(1), s 13(2) requires the Council to have regard to a range of factors in determining the primary function of a pipeline. Those factors are:

(a) the characteristics and classification of, as the case requires, an old scheme transmission pipeline or an old scheme distribution pipeline;

(b) the characteristics of, as the case requires, a transmission pipeline or a distribution pipeline classified under this Law;

(c) the characteristics and classification of pipelines specified in the Rules (if any);

(d) the diameter of the pipeline;

(e) the pressure at which the pipeline is or will be designed to operate;

(f) the number of points at which gas can or will be injected into the pipeline;

(g) the extent of the area served or to be served by the pipeline;

(h) the pipeline's linear or dendritic configuration.

Submissions

4.3 GLNG submits that the GLNG Pipeline should be classified as a transmission pipeline because it will not reticulate gas within any market but is intended to convey gas from the upstream gas fields to the LNG Facility. GLNG submits that the conclusion that the GLNG Pipeline is a transmission pipeline is reinforced because the pipeline:

- has no classification status under the NGL
- conveys gas from one point (Fairview gas field) to another (the LNG Facility)
- has an external diameter of 1067mm, average capacity of 1400TJ/d and maximum operating pressure of up to 10.2Mpag, all of which are larger than for standard distribution pipelines, and
- two similar pipelines were classified as transmission pipelines by the Council in May 2010 and July 2012.

4.4 No party submits that the GLNG Pipeline should not be classified as a transmission pipeline.

Decision

4.5 The Council agrees that the primary purpose of the GLNG Pipeline is to convey gas from the Bowen/Surat basins to the LNG Facility and that no part of the pipeline will reticulate gas within a market. The Council also notes that the GLNG Pipeline:

- has no classification status under the NGL
- will be linear rather than dendritic, and
- will have a larger diameter and capacity and higher operating pressure than is ordinarily the case for distribution pipelines.

4.6 The Council's pipeline classification decision is that the GLNG Pipeline is a transmission pipeline.

4.7 As the GLNG Pipeline is to be situated entirely within Queensland, it will not be an international pipeline or a cross-boundary pipeline (NGL, s 155(2)).

Relevant Minister

4.8 Under s 2 of the NGL, for a transmission pipeline wholly within a participating jurisdiction, the relevant Minister is the 'designated Minister' as defined in the relevant application Act. Section 9 of the *National Gas (Queensland) Act 2008* (Qld) defines 'designated Minister' as the 'Commonwealth Minister' which is defined in s 2 of the NGL as 'the Minister of the Commonwealth administering the *Australian Energy Market Act 2004* of the Commonwealth'.

4.9 The relevant Minister is the Commonwealth Minister for Resources and Energy, the Hon. Gary Gray AO MP.

5 Making a 15 year no coverage determination

5.1 In making its recommendation on an application for a 15-year no-coverage determination, the Council must give effect to the pipeline coverage criteria and have regard to the national gas objective (NGL, s 154(1)).

5.2 The pipeline coverage criteria, in s 15 of the NGL, are that:

(a) 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 (**criterion (a)**)

(b) it would be uneconomic for anyone to develop another pipeline to provide the pipeline services provided by means of the pipeline (**criterion (b)**)

(c) 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 (**criterion (c)**), and

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

5.3 The national gas objective, in s 23 of the NGL, is as follows.

> The objective of this Law 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.

5.4 If satisfied that all coverage criteria are met, the Council must recommend against the relevant Minister making a no-coverage determination. If not satisfied that all criteria are met, it must recommend in favour of a no-coverage determination (NGL, s 154(2)).[3] Accordingly, if the Council considers that any one or more of the criteria is not met, it must recommend in favour of a no-coverage determination. The following four sections of this report present the Council's consideration of the GLNG Pipeline against each coverage criterion.

3 In considering the Council's recommendation and making his or her decision the relevant Minister must consider the same matters and requirements as the Council (NGL, s 157).

6 Criterion (a)

6.1 Criterion (a) requires that

> access (or increased access) to the 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.

6.2 Access would be likely to improve the environment for competition where a service provider has market power that it uses to limit competition in a market other than the market for the pipeline services (ie in an upstream or downstream market, referred to as a dependent market). Criterion (a) requires an assessment of whether access would materially improve the opportunities and environment for competition in a dependent market. The assessment is concerned with the process of competition, rather than the particular commercial interests or pursuits of any party.

6.3 In assessing whether criterion (a) is satisfied, the Council:

- identifies relevant dependent (upstream or downstream) markets
- considers whether the identified dependent markets are separate from the market for the pipeline service, and
- assesses whether access (or increased access) would be likely to promote a materially more competitive environment in the dependent market(s).

6.4 If a dependent market is already effectively competitive or if the service provider has little ability or incentive to exercise market power in any dependent market, then access is unlikely to materially improve the competitive environment such that criterion (a) is satisfied.

Dependent markets

6.5 GLNG submits that the relevant markets are:

- an upstream market for the production of gas for both domestic consumption and LNG production, encompassing the area that could be serviced by the GLNG Pipeline (**gas production market**)
- a downstream gas sales market in Gladstone, Rockhampton and Wide Bay, with scope for interconnection to existing pipeline networks to access consumers across Queensland and eastern Australia (**domestic sales market**), and
- a downstream international LNG market (**LNG market**).

6.6 GLNG submits that the production of gas, the sale of gas to downstream domestic customers and the transportation of gas through transmission or distribution pipelines, LNG production and the sale of LNG are all functionally separate activities. It submits that the markets for production and sale of gas are economically separate and distinct from the market for pipeline services.

6.7 Tri-Star submits that access to the GLNG Pipeline 'will promote a material increase in competition in either upstream or downstream markets, including the market for export of CSG as LNG' (Tri-Star 2013). In arguing this, Tri-Star adopts its 2012 submission on the application by APLNG for a no-coverage determination in relation to the APLNG Pipeline. In that submission, Tri-Star said that access would promote competition in the upstream gas production market and the downstream domestic market in Gladstone. Tri-Star's 2012 submission adopted the submission made by Blue Energy Limited (**Blue Energy**) on QCLNG's 2010 application, in which Blue Energy submitted that relevant markets included the market for the wholesale supply of CSG, a tenements market for sale of CSG exploration permits or interests in permits and a market for toll manufacture of LNG (see Blue Energy 2010).

Council's assessment

6.8 In relation to the markets identified by Blue Energy (and adopted by Tri-Star), the Council considers that the conclusions it reached in the QCLNG Recommendation (NCC 2010, pp 15-16) and the APLNG Recommendation (NCC 2012, pp 16-17) are applicable to the GLNG Pipeline:

- *Wholesale CSG market*: CSG is sufficiently substitutable between domestic use and LNG manufacture such that domestic and export market outcomes are most likely to be integrated. If high international prices lead gas producers to direct gas to LNG production then the outcome is likely to be reduced quantities of gas for domestic use and consequently higher domestic gas prices (though it is not possible to predict whether prices would achieve parity). The Council's analysis therefore considers a single upstream gas production market.
- *Tenements market*: Consideration of competition outcomes in such a market is likely to encompass the same considerations as for an upstream gas production market such that a finding that competition is or is not promoted in the upstream gas production market would also apply to any tenements (or exploration rights) market. The Council therefore does not separately consider a tenements (or exploration rights) market.
- *Toll LNG market*: The Council does not consider that there is a relevant downstream dependent market for the toll manufacture of LNG as it appears unlikely that anyone would seek to develop an LNG plant remote from a source of gas without an associated pipeline and gas supply contracts or an LNG plant and pipeline without a secured supply of gas.

Gas production market

6.9 The Council understands that '[w]hile different technologies can be used for extracting CSG and other unconventional gas, once extracted it is indistinguishable from conventional natural gas' (Geoscience Australia and ABARE 2010, p 87). However, whether or not the gas production market is necessarily confined to CSG, the bulk of gas produced in the Surat and Bowen basins in Queensland is CSG and any distinction for the purpose of considering competition effects in the context of the GLNG Pipeline is unlikely to be material.

6.10 The Council considers that there is a single upstream gas production market, rather than separate gas markets for LNG manufacture and domestic sales (see also NCC 2010, p 15). The Council considers that the geographic extent of the gas production market is relevantly delineated by the area that could be serviced by the pipeline. The Council also accepts that the approach taken by ACIL Tasman in its report for GLNG provides a reasonable approximation of the scope of the relevant gas production market, ie a 100km corridor from Fairview to Curtis Island (ACIL Tasman identifies three ‘unaligned’ CSG producers for whom connection to the GLNG Pipeline may be commercially advantageous: Petrochina, Westside Corporation and Blue Energy) (ACIL Tasman 2013, pp 58-9).

Domestic sales market

6.11 Downstream domestic users of gas include large and small industrial users and households. Other participants in the domestic gas sales market are gas wholesalers dealing directly with large industrial customers and gas retailers.

6.12 The Council considers that the downstream domestic gas sales market encompasses those regions where there is customer demand capable of being served or potentially served by the GLNG Pipeline. This market at least extends to the Gladstone-Rockhampton area—which is capable of being directly served by the GLNG Pipeline with interconnection via the QGP—and to the Wide Bay area (via the Wide Bay Pipeline). GLNG submits that a wider market is appropriate, because of the interconnection of Gladstone into the Australian gas transmission system, but agrees with the view expressed by the Council in the APLNG and QCLNG recommendations that if access would not materially increase competition in a narrower market then it would not do so in a more broadly defined market.

LNG market

6.13 The Council considers that there is a separate downstream market for LNG and that that market is international.

6.14 The LNG market does not yet appear to be truly global (IGU 2011, p 17), although it appears to be moving in that direction (see, eg: OGJ 2013 and Ernst & Young 2013). Considerable disparity has been reported between gas prices in Asia and the rest of the world (IGU 2011, pp 5, 6 and 18; BP plc 2012, p 27) and, as virtually all Australian LNG is sold in Asia (AEMO 2012, p 3-9), the LNG market may relevantly be centred on Asia. The Council considers that, if access to the GLNG Pipeline would not materially promote competition in an Asia-centred market, it would not do so in a more broadly defined international market.

Conclusion on dependent markets

6.15 The Council considers that the most relevant dependent markets are:

- the upstream gas production market within the scope of feasible interconnection with the GLNG Pipeline
- the downstream gas sales market centred on the Gladstone-Rockhampton-Wide Bay area, and
- the downstream international LNG market.

6.16 These dependent markets are economically separate and distinct from the market for the pipeline services.

Promotion of competition

6.17 GLNG submits that the GLNG Project participants do not have market power and are unable to adversely affect competition in the gas production market, gas sales market or LNG market. It submits that, even if the participants did have market power, they do not have the ability or incentive to use it because of the integral nature of the GLNG Pipeline within the GLNG Project and the participants' contractual obligations to supply LNG to the foundation customers.

6.18 GLNG assesses criterion (a) through the following factors (drawn from the form of regulation factors in s 16 of the NGL):

- barriers to entry
- network externalities (interdependencies)
- prospective pipeline users' countervailing market power
- alternative pipelines and substitutable services, and
- incentives to exercise market power unilaterally or in co-ordination with third parties.[4]

Gas production market—submissions

6.19 While GLNG concedes that it could have market power because of the economies of scale of the GLNG Pipeline, it submits that the economies of scale must be considered within the constraints of the GLNG Project, ie that the pipeline is being built as a fit-for-purpose component of the project. GLNG submits that the GLNG Project participants will use all capacity on the GLNG Pipeline and that demand for pipeline services by the LNG industry will exceed the supply potential of the GLNG Pipeline (hence the development of other pipelines serving LNG facilities at Curtis Island).

6.20 In relation to potential interdependencies, GLNG submits that Santos will continue to sell gas from the Cooper Basin in Mt Isa and Brisbane and its ownership of other gas

4 GLNG submits that, in considering whether access would materially promote competition in a dependent market, the Council 'must consider the "form of regulation factors" in section 16 of the NGL' (Application, [7.7]). While the Council does consider that there is a relationship between the issues arising in relation to coverage (or non-coverage) and the form of regulation (in coverage matters), it does not consider that it 'must' apply the form of regulation factors in assessing criterion (a).

tenements is not a competitive concern because it (ultimately) only holds a 30 per cent interest in the GLNG Project. GLNG submits that PETRONAS, Total and KOGAS will have the incentive to maximise their use of the GLNG Pipeline and obtain the best price for capacity, if any, that may be sold to third parties. It submits that the presence of the other pipelines being constructed to serve other LNG facilities will constrain the ability of the GLNG Project participants to engage in anticompetitive conduct (Application, p 64). It also submits that it has no incentive to undertake coordinated conduct because it intends to use all capacity on the GLNG Pipeline to serve the LNG Facility and there are a number of other pipelines available to upstream producers. It says that to the extent it has market power, its incentives to use that market power are limited, despite the vertically integrated nature of the GLNG Project, because:

- the GLNG Pipeline is expected to be operating at full capacity almost all the time in order to meet LNG commitments, and
- attempts to foreclose upstream producers from transporting gas would not succeed because of the bypass opportunities, and foreclosure would simply result in GLNG missing out on revenue (Application, pp 66-7).

6.21 According to GLNG, potential customers are able to bypass the GLNG Pipeline because large producers are building their own pipelines and small producers have a range of options available to them, such as the QGP and RBP (Application, p 65). The ACIL Tasman report states that no small independent tenement holders within 100km of the GLNG Pipeline are likely to find access commercially attractive, principally because of tie-in distances, given that most of them are similar distances from either the QGP (directly or via the Dawson Valley Pipeline) or closer to the RBP (ACIL Tasman 2013, pp 64-5). GLNG also argues that the GLNG Pipeline will be unattractive to small producers because of the narrow specification of gas that it will accept, since all gas transported must meet the requirements of the LNG Facility. It submits that the upfront costs of connecting to the GLNG Pipeline and the lower cost of using the QGP (as modelled by ACIL Tasman) make connection to the GLNG Pipeline less commercially viable than to the QGP (Application, pp 66-7).

6.22 Tri-Star submits that access to the GLNG Pipeline would promote a material increase in competition in the market for the export of CSG as LNG. As noted above at 6.7, the Council considers this to be the same market as the LNG market. Tri-Star submits that access to downstream LNG projects is wholly dependent on access to 'market pipelines from upstream integrated projects' and that no access to downstream LNG markets is or will be available without access to the QCLNG, APLNG or GLNG pipelines (Tri-Star 2013). Adopting its submission on APLNG's 2012 application for a no-coverage determination (in turn adopting the Blue Energy submission on QCLNG's 2010 application), it submits that GLNG will have strong incentives to deny junior CSG producers access as this would maximise the likelihood that GLNG (and not another producer) will ultimately have the opportunity to exploit the reserves. Tri-Star argues (adopting the Blue Energy submission) that smaller producers would not use the QGP or RBP as neither can be used to service an LNG plant (both carry a mix of CSG and conventional gas so gas delivered will not be suitable for use in any proposed plant and the RBP does not go near a proposed plant) and both are capacity constrained (Tri-Star 2012).

Gas production market—Council's assessment

6.23 While GLNG's vertical integration into the upstream gas production market may give it an incentive to refuse access to other gas producers, this incentive (where the pipeline has spare capacity) is likely to be limited. As the LNG market is competitive, GLNG has little incentive to restrict the volume of Australian LNG production because this is unlikely to affect LNG prices. In the APLNG Recommendation, the Council considered that the geographic scope of the gas production market extends from Fairview to Gilbert Gully, which means that smaller CSG producers would have as many as four potential joint venture or farm-out partners (depending upon how many of the proposed integrated CSG-LNG projects proceed), in addition to the existing pipelines. In the present case, the upstream market considered by GLNG and ACIL Tasman is a 100km corridor around the GLNG Pipeline, which does not extend as far as the market considered in the APLNG Recommendation. However, the Council does not consider that this changes its conclusion as the only tenement holder with tenements that are potentially served by the GLNG Pipeline but not the other proposed pipelines is Blue Energy, which is potentially served by the QGP.[5]

6.24 The Council is not persuaded by Tri-Star's submissions that the QGP and RBP would not be used by producers such as Tri-Star because the pipelines are capacity constrained and do not serve LNG facilities. At the time that it made the submissions upon which Tri-Star relies, Blue Energy claimed that the capacity of the RBP (208 TJ/d in 2010) and the QGP (142 TJ/d or 52 PJ/a in 2010) was insufficient. At that time, the operators of the QGP and RBP each advised the Council that they could expand capacity on their respective pipelines to meet additional demand (see QCLNG Recommendation, p 20). Capacity of the RBP and QGP is currently reported to be 219TJ/d and 142TJ/d respectively (DEWS 2012, p 5; AER 2012, p 106). Moreover, since Blue Energy made its submission:

- the Queensland Government has indicated that the initial capacity of the RBP and QGP has been expanded, with more expansions either underway or planned and 'being undertaken in a timely manner' (DEWS 2012, p 11[6])

5 Blue Energy itself notes the proximity of its holdings to an existing pipeline: Blue Energy 2013a, 2013b, 2013c. In response to QCLNG's 2010 no-coverage application, Blue Energy submitted that it would not use the QGP because it cannot supply an LNG plant and is capacity constrained. These submissions by Blue Energy, having been adopted by Tri-Star in relation to the GLNG Pipeline, are addressed by the Council in paras 6.24 and 6.25.

6 In its 2011 Gas Market Review, the Queensland Government found that, as no speculative incremental capacity exists, new smaller customers must wait to piggyback future large expansion, effectively denying them timely access to pipelines. As pipeline owners had indicated to the Queensland Government that the NGL makes incremental capacity investment difficult, the Queensland Government recommended a review of the relevant

- APA Group informed the Council that a 10 per cent capacity expansion of the RBP is expected to be completed and that APA Group will base its access arrangement for the RBP on capacity of 232TJ/d from July 2012 (APA Group 2012)
- Jemena informed the Council that the QGP was running at close to full capacity but may be capable of expansion to 260 PJ/a (Jemena 2012), and
- Liquefied Natural Gas Limited (**LNGL**) notified the Australian Stock Exchange that Jemena had completed a pre-FEED study on expansion of the QGP, reporting that the QGP could be expanded to allow for gas supply in 2014 for a 1.5mtpa gas train at LNGL's proposed LNG project at Fisherman's Landing (LNGL 2011).

6.25 The ability of the RBP and QGP to serve existing LNG projects is not material since the Council does not consider that there is a separate market for the production of gas in the Surat Basin for the production of LNG (see para 6.10 above).

6.26 The Council considers that GLNG is unlikely to be able to materially affect competitive outcomes in the gas production market and access to the GLNG Pipeline is unlikely to promote a material increase in competition in the gas production market.

Domestic sales market—submissions

6.27 GLNG adopts in respect of the domestic sales market its submissions in respect of the gas production market about barriers to entry, interdependency and incentives to exercise market power or engage in co-ordinated conduct.

6.28 It submits that international and domestic downstream customers are likely to have strong countervailing power given the availability of alternative pipelines (Application, p 68). It submits that, as for the upstream market, the Gladstone, Rockhampton and Wide Bay area is served by a number of pipelines, including:

- the existing or expanded QGP
- the existing or expanded QGP combined with backhaul on the RBP and/or South West Queensland pipeline, and
- any spare capacity on the four other pipelines it identified as being proposed by other parties intending to develop LNG facilities at Curtis Island (Application, p 69).

6.29 GLNG submits that the GLNG Pipeline is a less attractive option for customers than the alternatives and that the existence of these alternatives limits any market power GLNG might have in the downstream domestic gas sales market, or its ability to exercise that power.

sections of the legislation (DEEDI 2011, pp 52-3).

Domestic sales market—Council's assessment

6.30 The Council considers that its conclusions in relation to the domestic gas sales market in relation to the APLNG and QCLNG pipelines are also applicable to the GLNG Pipeline.

6.31 GLNG's incentive or ability to exercise market power in the domestic gas sales market is likely to be constrained by the existence of a range of proposals for LNG projects involving a transmission pipeline and several already existing pipelines (see paras 3.8—3.9 above). Accordingly, the Council considers that access to the GLNG Pipeline is unlikely to promote a material increase in competition in the domestic gas sales market.

LNG market—submissions

6.32 GLNG submissions in relation to the LNG market essentially reiterate its submissions in respect of other markets in light of the submission that the LNG market is highly competitive:

- given Australia's contribution to the global LNG industry and the role of the GLNG Pipeline in that industry, the pipeline's economies of scale are unlikely to operate as a barrier to entry
- the interdependencies identified in relation to the gas production market are even less significant in the LNG market because the effect of Santos' ownership of additional fields is negligible within the LNG market
- LNG buyers generally are large with substantial countervailing power in that they are able to secure their requirements from alternative suppliers not just in Australia but in other parts of the world
- even if access enables an additional LNG train to be built at another facility, this additional train would not materially promote competition in the LNG market; it unlikely to have any effect on price, which is determined in the international market, and
- GLNG has no incentive to exercise market power in the LNG market because:
    - other proponents are expected to build pipelines to Curtis Island
    - GLNG has a limited ability to foreclose access since access would be highly unlikely to affect LNG prices, and
    - the primary commercial objective in operating the GLNG Pipeline is to provide a secure supply to the LNG Facility so as to fulfil the contractual obligations to foundation customers (Application, pp 70-72).

LNG market—Council's assessment

6.33 The Council agrees that the LNG market, whether Asia-centred or global, is already a competitive international market and that access to the GLNG Pipeline is unlikely to promote a material increase in competition in the downstream LNG market.

6.34 In 2011, Australia was the fourth largest exporter of LNG, with 25.9 billion cubic metres of exports out of total global LNG trade movements of 330.8 billion cubic metres (BP plc 2012, p 28). Australia may become the second largest exporter of LNG behind Qatar by 2015 (AEMO 2011, p 2-8) and may overtake Qatar as the largest LNG exporter by 2018 (BP plc 2013, p 53). However, even if Australia's share of the global LNG market continues to grow, GLNG is only one of several current or potential LNG exporters in Australia and is unlikely to be able to materially affect competitive outcomes in the LNG market.

Conclusion on criterion (a)

6.35 Access to the GLNG Pipeline is unlikely to promote a material increase in competition in any likely dependent market. The Council does not consider that criterion (a) is satisfied.

7 Criterion (b)

7.1 Criterion (b) requires that 'it would be uneconomic for anyone to develop another pipeline to provide the pipeline services provided by means of the pipeline'.

7.2 This coverage criterion is essentially the same as criterion (b) in the declaration criteria in Part IIIA of the *Competition and Consumer Act 2010*. The interpretation of the two provisions is inextricably linked with Court and Tribunal decisions in relation to each being adopted in respect of the other.

7.3 The High Court in *The Pilbara Infrastructure Pty Limited v Australian Competition Tribunal* [2012] HCA 36; (2012) 290 ALR 750 (***Pilbara HCA***) considered how declaration criterion (b) should be interpreted. It held that the provision 'is to be read as requiring the decision maker to be satisfied that there is not anyone for whom it would be profitable to develop another facility' (at [77]). In doing so the High Court overturned previous interpretations of this criterion, which had focussed on the presence of natural monopoly characteristics.

7.4 Thus, coverage criterion (b) asks whether anyone could profitably develop another pipeline to provide the pipeline services provided by the GLNG Pipeline.

Application and submissions

7.5 GLNG submits that it is particularly relevant in the case of the GLNG Pipeline that the analysis of whether it would be economical to develop an alternative pipeline includes consideration of the profitability of building a pipeline as part of a larger project. GLNG submits that criterion (b) is not satisfied because there are a number of proponents proposing to build gas pipelines in the Surat and Bowen basins that will provide the same or similar services as the GLNG Pipeline and it is therefore evident that it is economically and commercially feasible for other parties to develop alternative facilities to provide the pipeline service. GLNG identifies the projects of APLNG, QCLNG, Arrow Energy and Gladstone LNG—Fisherman's Landing.

7.6 Tri-Star submits that

> it is not commercially feasible for others in the market place for CSG to LNG export, such as the QCLNG Project and the APLNG Project, to develop alternative accessible pipelines as these projects have been granted the benefit of 15 year no coverage determinations (Tri-Star 2013).

7.7 It also submits that the GLNG Pipeline will have sufficient capacity to satisfy reasonably foreseeable demand and it will therefore be uneconomical for anyone to develop another pipeline.

Council's assessment

7.8 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 Council accepts that 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.

7.9 In relation to Tri-Star's submissions on criterion (b), the Council does not accept that the no coverage determinations in relation to the APLNG and QCLNG pipelines bear on this question. Further, while the GLNG Pipeline is expected to have sufficient capacity to meet foreseeable demand, the source of that foreseeable demand is expected to come from the GLNG Project participants or related companies (including Tri-Star through its involvement in a joint venture with a GLNG Project participant.

Conclusion on criterion (b)

7.10 The Council does not consider that criterion (b) is satisfied.

8 Criterion (c)

8.1 Criterion (c) requires that

> access (or increased access) to the pipeline services provided by means of the pipeline can be provided without undue risk to health or safety.

8.2 GLNG submits that it will operate the GLNG Pipeline in accordance with its licence, all applicable Queensland and Federal laws and good industry practice. It does not consider human health or safety would be as risk if parties were to access services provided by the GLNG Pipeline (Application, pp 74—5).

8.3 Tri-Star did not comment on criterion (c).

8.4 The safe use of natural gas transmission pipelines through appropriate operator practice and regulation is well established in Australia. The Council sees no basis to suggest that access to the services provided by the GLNG Pipeline would compromise human health or safety.

Conclusion on criterion (c)

8.5 The Council is satisfied in respect of criterion (c).

9 Criterion (d)

9.1 Criterion (d) requires that

> access (or increased access) to the pipeline services provided by means of the pipeline would not be contrary to the public interest.

9.2 'Public interest' is not defined in the NGL. Where, as in the case of criterion (d), there are no positive statutory indications of the considerations upon which the public interest is to be assessed, assessment of the public interest 'imports a discretionary value judgment to be made by reference to undefined factual matters' (see: *Pilbara HCA*, at [42] and *Water Conservation and Irrigation Commission (NSW) v Browning* (1947) 74 CLR 492, at 505 (Dixon J)).

9.3 Criterion (d), being expressed in the negative, does not require the Council to be affirmatively satisfied that access would be in the public interest, only that access would not be contrary to the public interest (*Re Services Sydney Pty Ltd* [2005] ACompT 7; (2005) 227 ALR 140, [192]). Criterion (d) requires consideration of whether there exist any matters that lead to the conclusion that coverage would be contrary to the public interest (*Re Duke Eastern Gas Pipeline Pty Ltd* [2001] ACompT 2; (2001) ATPR 41-821, [145]).

9.4 The nature of greenfields exemptions means the test is applied slightly differently to the test in coverage matters as it imports a double negative. Assuming all other coverage criteria are met, the Council must recommend:

- against a no-coverage determination if it is satisfied that access to the pipeline would not be contrary to the public interest, and
- in favour of a no-coverage recommendation if it is **not** satisfied that access would **not** be contrary to the public interest.

Application and submissions

9.5 GLNG submits that, even if the Council considers that criteria (a) and (b) are satisfied, criterion (d) is not satisfied because 'the costs of coverage … would outweigh the public interest, which means that access would be contrary to the public interest' (Application, [9.7]). GLNG submits that the GLNG Pipeline 'is integral to the entire GLNG Project (ie the GLNG Project cannot proceed without the Pipeline)' and coverage 'would jeopardise the GLNG Project given the purpose for which the [GLNG] Pipeline has been designed and constructed' (Application, [9.7]). It submits that

> the costs which must be considered as against the public interest are [therefore] those which would arise should the GLNG Project not proceed or, if it did proceed, which would be incurred by virtue of the GLNG project having to operate with third parties using the [GLNG] Pipeline (Application, [9.7]).

9.6 GLNG identifies these costs as including increasing inefficiencies and disruptions, reducing incentives to invest in the GLNG Project, reducing incentives to invest in CSG and LNG production in Australia, limiting or reducing the economic and development benefits if growth of the CSG and LNG industries are stunted by investment disincentives, and the costs of addressing any coverage application and the costs of regulation. GLNG asserts that the GLNG Project will bring a range of benefits to Australia, Queensland and to regional economies and that not making a no-coverage determination in respect of the GLNG Pipeline would reduce those benefits.

Council's assessment

9.7 The Council's task under criterion (d) is to identify whether there is any matter that might result in access (or increased access) to the pipeline services provided by the GLNG Pipeline being contrary to the public interest even if the other coverage criteria are met. Where another coverage criterion is not satisfied that is the end of the matter—coverage is not available.

9.8 The Council has considered (as is required by the NGL) whether there are any matters, including matters identified in the Application and submissions, that lead to the conclusion that access or increased access would be contrary to the public interest.

9.9 The Council considers that there are no unusual regulatory or other costs involved in the regulation of the GLNG Pipeline relevant to this assessment. The Council notes that GLNG identifies no regulatory costs that are not intrinsic to the regulation of a pipeline.

9.10 GLNG provides estimates of the costs of regulation, based on the assumption that the GLNG Pipeline would be fully regulated (if covered). The Council cannot of course prejudge the outcome of an assessment against the form of regulation factors in s 16 of the NGL but it appears to the Council that GLNG's estimates are very much at the high end of the likely costs of regulating the GLNG Pipeline (if not actually 'worst case'). However, the Council accepts that the costs of any regulation of the GLNG Pipeline would not be inconsequential.

9.11 While the Council does not doubt that the prospect of a no-coverage determination is important in GLNG's decision making, the Council does not consider that the prospect of access will discourage efficient investment. Any access arrangement must provide an infrastructure owner with a risk-adjusted commercial return on its investment, while protecting the owner's legitimate interests and prioritising its reasonably anticipated use of the infrastructure.

9.12 Regarding GLNG's statements relating to the possible effect of access upon investment incentives and potentially consequent costs to the public interest, the Council notes that the key purpose of the no coverage regime in the NGL is to improve regulatory certainty for proposed investments that are efficient from a national perspective. In this regard, it is important to distinguish *efficient* investment from investment *per se*. Any significant infrastructure investment in Australia may create benefits, both private benefits for the investor through its return on the investment, and public interest benefits for Australia associated with the increased economic activity arising from the investment itself and its ongoing operations. But infrastructure investment is undesirable from the view of Australia's public interest if it depends on monopoly power and material constraints on competition in markets dependent on the infrastructure, and if the infrastructure owner's market power is unregulated. This principle is encapsulated in the national gas objective.

9.13 The Council considers GLNG's suggestion that coverage would jeopardise the GLNG Project to be unrealistic. A decision not to make a no-coverage determination in relation to the GLNG Pipeline would not imperil the investment benefits that GLNG claims would arise from the GLNG Project.

Conclusion on criterion (d)

9.14 Notwithstanding that actual regulatory cost 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.

9.15 The Council considers that criterion (d) is not met.

10 Information taken into account by the Council

Table 10.1 Application and submissions

Author	Date	Title	Confidentiality
GLNG Operations Pty Ltd (**GLNG**)	12 March 2013	*Application for 15-year no coverage determination under section 151 of the National Gas Law*	Yes. Separate confidential and publication versions provided to Council.
Tri-Star Petroleum Company (Tri-Star)	9 April 2012[sic]	Letter to Council: *Application for 15 year no-coverage determination for GLNG Operations Pty Limited (on behalf of the Participants)—GLNG Pipeline*	No

Table 10.2 References[7]

Author	Date	Title	Confidentiality
ACIL Tasman	2013	*Gas Demand Study*, 25 January 2013, commissioned by GLNG and attached to the Application at Annexure 7	Yes. Separate confidential and publication versions provided to Council.
APA Group	2012	Email: *APLNG no coverage application: Questions re RBP and Wide Bay*, 18 June 2012	No
Australian Energy Market Operator (AEMO)	2012	*2012 Gas Statement of Opportunities for Eastern and South Eastern Australia*	No
	2011	*2011 Gas Statement of Opportunities for Eastern and South Eastern Australia*	No
Blue Energy	2013a	*Surat Basin 854P*, retrieved at: www.blueenergy.com.au/01_cms/details.asp?ID=19	No
	2013b	*Surat Basin 817P*, retrieved at www.blueenergy.com.au/01_cms/details.asp?ID=20	No
	2013c	*Surat Basin ATP 819P*, retrieved at: www.blueenergy.com.au/01_cms/details.asp?ID=120	No
	2010	Letter to Council, *Application for 15 year no-coverage determination for QCLNG pipeline*, 15 February 2010	No
BP plc	2013	*BP Energy Outlook 2030*, January 2013	No

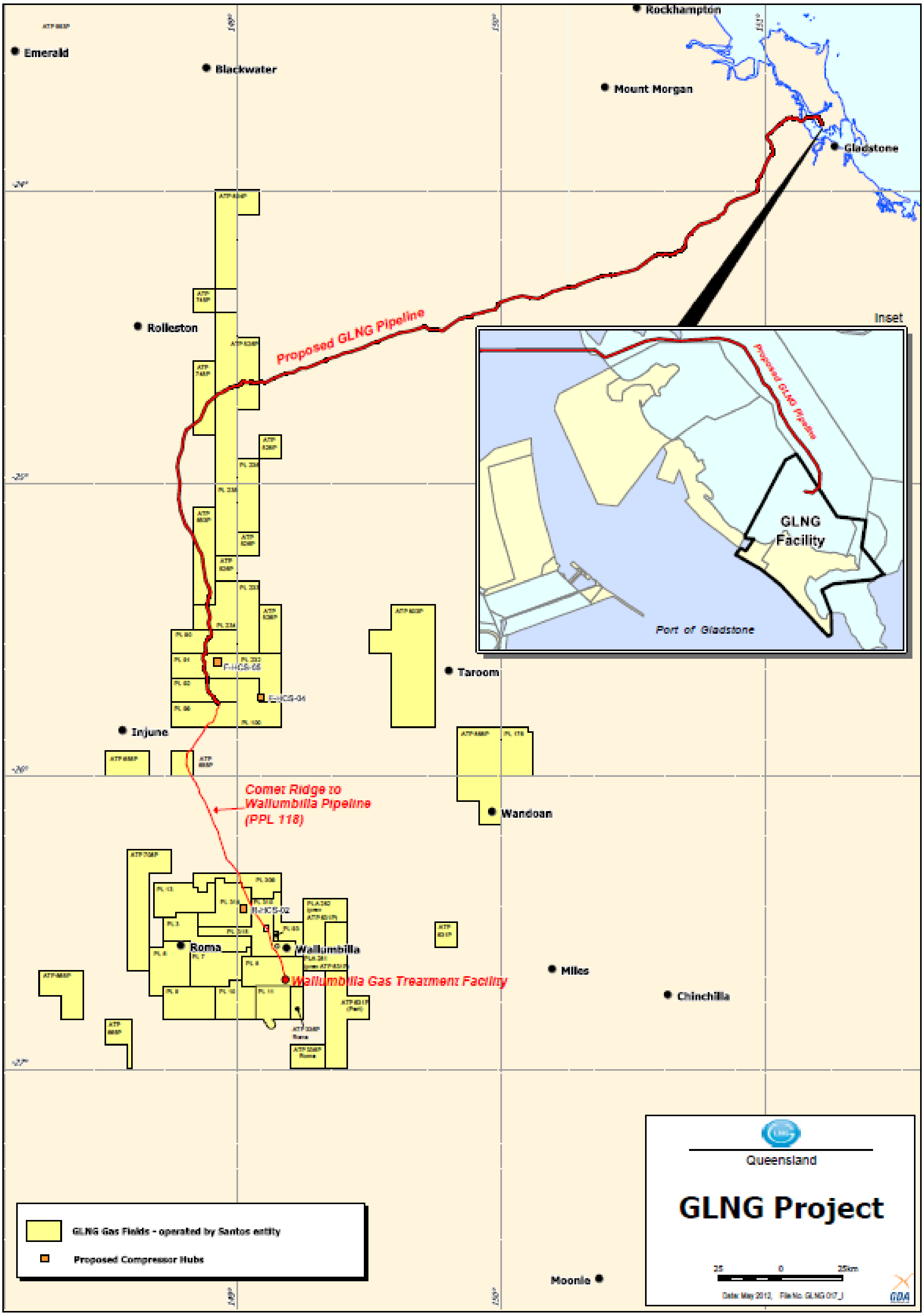
7 Table 10.2 lists, for the purposes of s 261(7)(e) of the NGL, the reports and materials relied on by the Council in making its recommendation.

Author	Date	Title	Confidentiality
	2012	*BP Statistical Review of World Energy*, June 2012	No
Ernst & Young	2013	*Global LNG, Will new demand and new supply mean new pricing?*	No
Geoscience Australia and Australian Bureau of Agricultural and Resource Economics (Geoscience and ABARE)	2010	*Australian Energy Resource Assessment*, Canberra	No
International Gas Union (IGU)	2011	*World LNG Report 2011*	No
Jemena Limited (Jemena)	2012	Email: *Description/capacity of the QGP,* 8 June 2012	No
Liquefied Natural Gas Limited (LNGL)	2011	*ASX/Media release, Gladstone "Fisherman's Landing" LNG project update, Gas delivery plan*, 17 June 2011	No
National Competition Council (NCC)	2012	*APLNG no-coverage application, Application for a 15 year no coverage determination for the proposed APLNG Pipeline*, 17 July 2012	No
	2010	*No coverage determination for the proposed QCLNG Pipeline, Application for a 15 year no coverage determination for the proposed QCLNG Pipeline*, May 2010	
Oil & Gas Journal (OGJ)	2013	*LNG Update: Global LNG pricing evolves; supply, demand struggle toward balance,* 4/1/2013, retrieved at: www.ogj.com/content/ogj/en/articles/print/volume-111/issue-4/special-report-lng-update/lng-update-global-lng-pricing-evolves-supply.html (copy with NCC)	No
State of Queensland, Department of Employment, Economic Development and Innovations (DEEDI)	2012	*Queensland's coal seam gas overview*, February 2012	No
	2011	*2011 Gas Market Review: Queensland*	No
State of Queensland, Department of Energy and Water Supply (DEWS)	2012	*2012 Gas Market Review: Queensland*	No
Tri-Star Petroleum Company	2012	Letter to Council, *Application for 15 year no-coverage determination for Australia Pacific LNG Gladstone Pipelines Pty Limited*, 25 May 2012	No

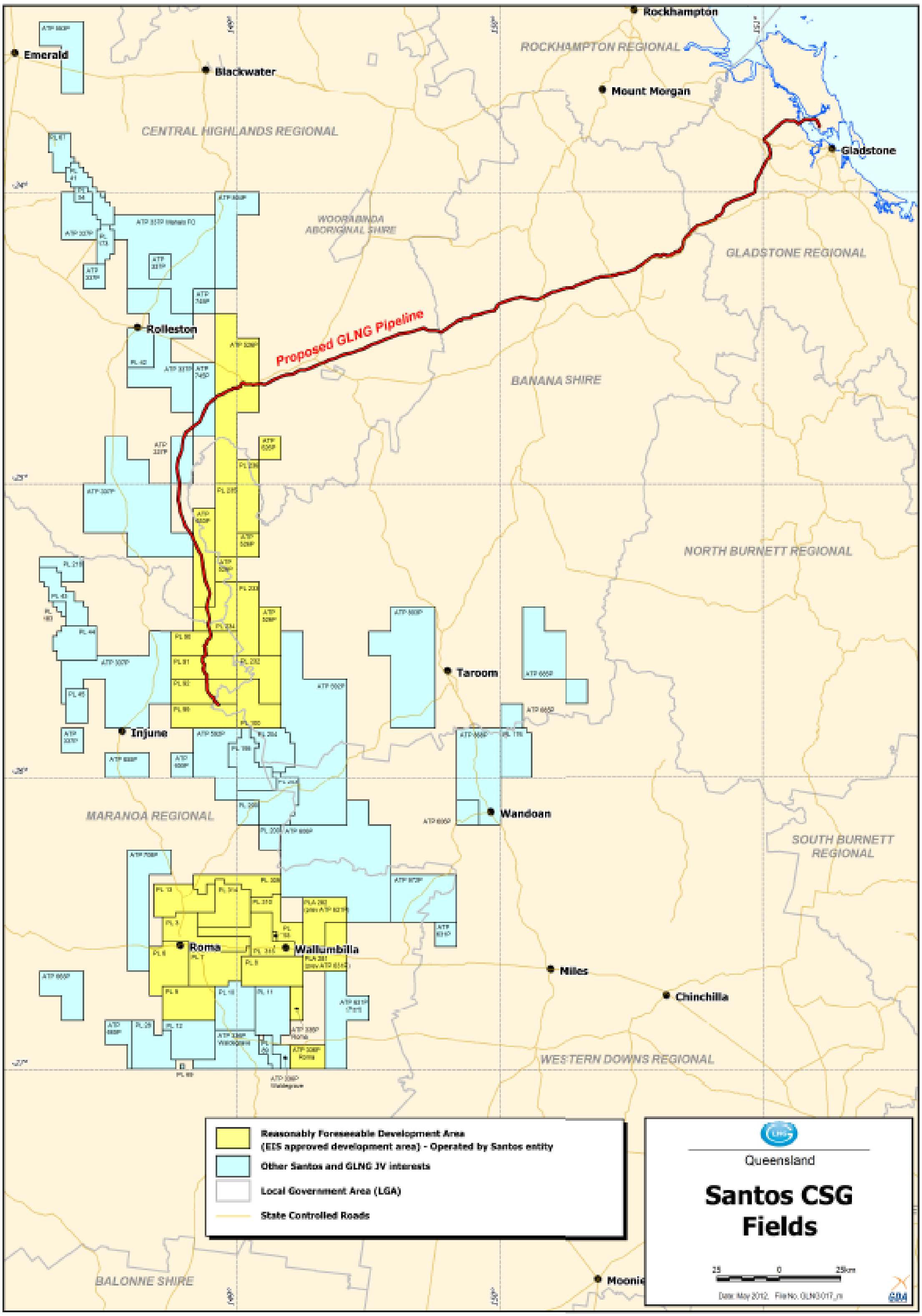
Table 12.3 Legal sources

Tribunal and court decisions
Re Duke Eastern Gas Pipeline Pty Ltd [2001] ACompT 2; (2001) ATPR 41-821
Re Services Sydney Pty Ltd [2005] ACompT 7; (2005) 227 ALR 140
The Pilbara Infrastructure Pty Limited v Australian Competition Tribunal [2012] HCA 36; (2012) 290 ALR 750 (***Pilbara HCA***)
Legislation
Australian Energy Market Act 2004 (Cth)
Competition and Consumer Act 2010 (Cth)
National Gas Rules 2009
National Gas (South Australia) Act 2008 (SA) (**NGL**)
National Gas (Queensland) Act 2008 (Qld)

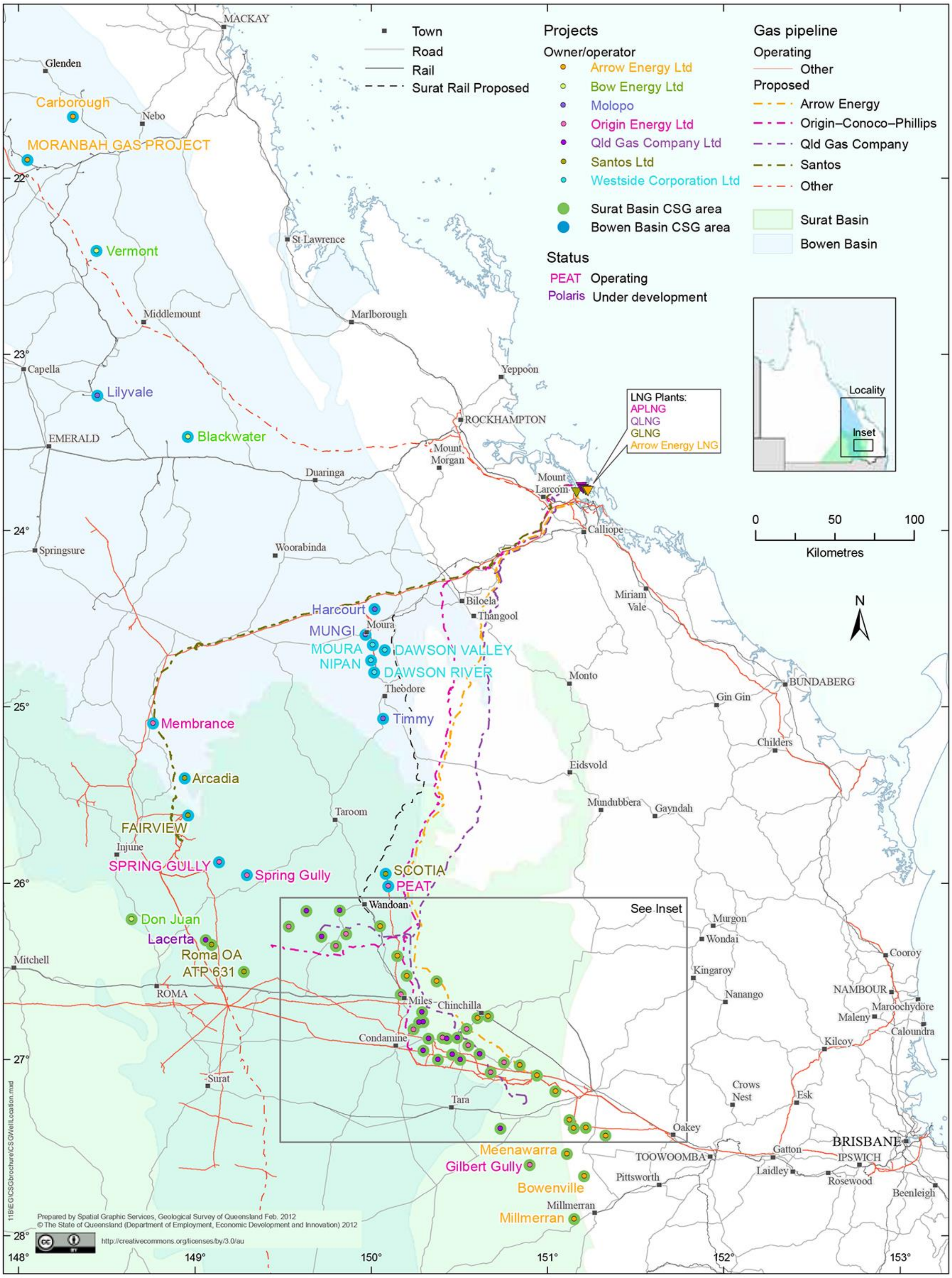
Appendix A GLNG Project and route of GLNG Pipeline



Appendix B Santos GLNG Project gas fields



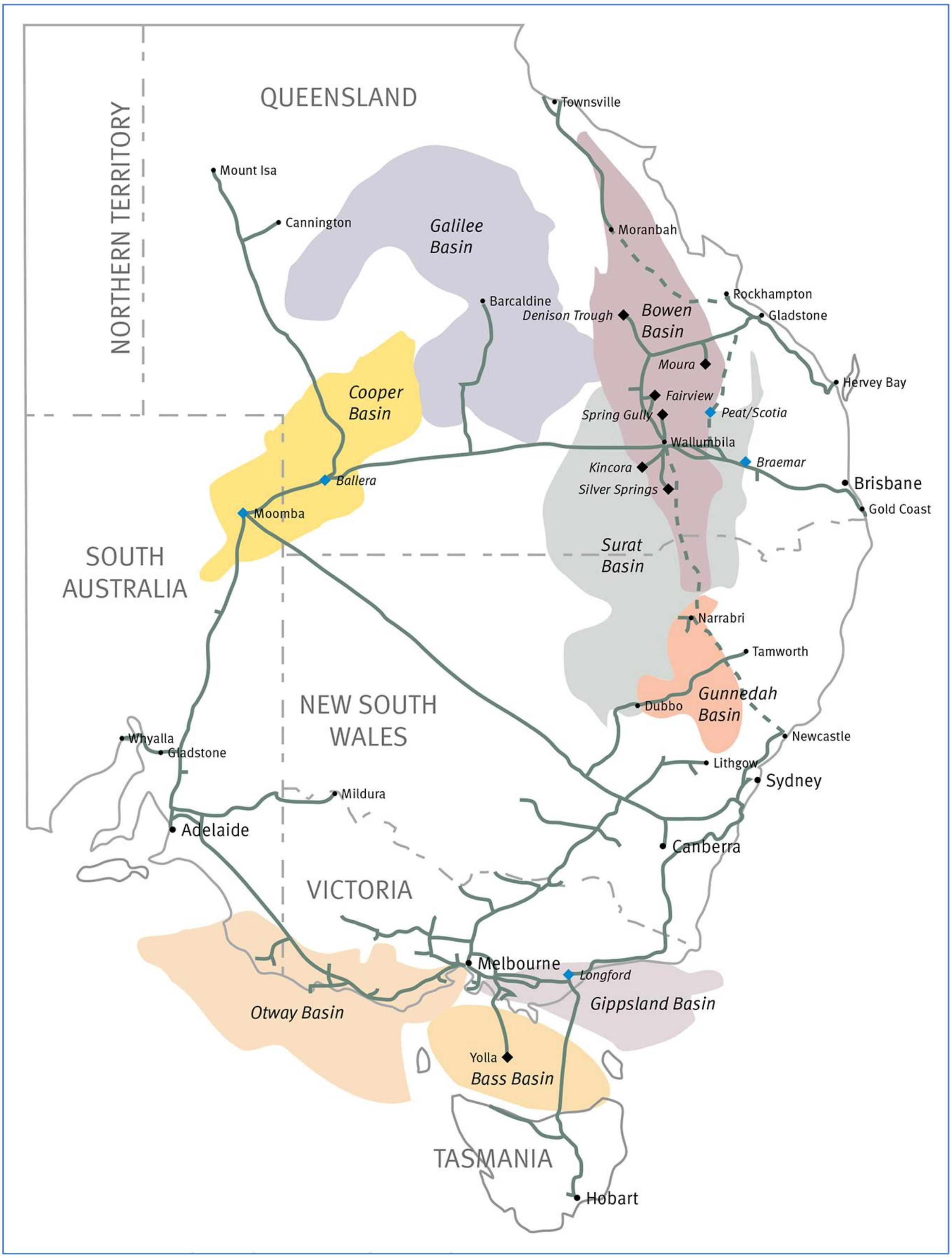
Appendix C Southeast Queensland—gas projects and pipelines



Updated January 2012
Prepared by Geological Survey of Queensland

Source: DEEDI 2012 (inset not reproduced)

Appendix D Eastern Australian gas basins and transmission network



Source: DEWS 2012