## MINISTER'S DETERMINATION

In accordance with sections 155 and 156 of the *National Gas Law* (NGL), a Schedule to the *National Gas (South Australia) Act 2008* (SA), I, the Hon Martin Ferguson AM MP, Commonwealth Minister for Resources and Energy, am "the relevant Minister" with responsibility for making a determination on the 15-year no coverage application for the proposed 'QCLNG Pipeline'.

On 19 January 2010 the National Competition Council (NCC) received an application for a 15 year no coverage determination (the application) from Queensland Curtis LNG Pipeline Pty Ltd (QCLNG).

In accordance with the NGL, the application was made to the NCC, and also in accordance with the NGL, the NCC provided their final recommendation to me on 4 May 2010.

### *Decision*

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

This decision is based on the application, submissions made by third parties to the NCC regarding the application and the NCC'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 NCC from the applicant and other parties.

Given the consultation already undertaken by the NCC, I did not invite further submissions.

In regards to section 15 of the NGL, I am satisfied that pipeline coverage criterion (c) is met but I am not satisfied that criteria (a), (b) and (d) are 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.

My Statement of Reasons follows.

### *Description of the Pipeline*

My decision relates to the proposed QCLNG Pipeline (see Map 1 in **Attachment A**). I understand that the proposed QCLNG Pipeline will be a pipeline system comprised of an Export Pipeline and a Collection Header, which will be structurally separate from any existing pipeline. Further description of the proposed QCLNG Pipeline is

available in Annexure 1 of QCLNG's application, which is available to download at: www.ncc.gov.au.

***The Application Process***

On 19 January 2010 the NCC received the QCLNG application for a 15-year no-coverage determination.

Following a public consultation process in which the NCC received three submissions, the NCC published its draft recommendation on 23 March 2010, which classified the proposed QCLNG Pipeline as a transmission pipeline. The NCC's draft recommendation favoured the grant of a 15-year no-coverage determination.

Following a public consultation process in which the NCC received one further submission and a response from the Applicant, the NCC provided me with its final recommendation on 4 May 2010 proposing that a 15 year no-coverage determination be granted. The NCC's draft and final recommendations and the submissions it received are available on the NCC's website www.ncc.gov.au.

In accordance with section 156 of the NGL, I am making this determination within 30 business days of receiving the NCC's final recommendation, and in accordance with Rule 124 of the *National Gas Rules 2009* this will be given to the applicant, the NCC and the Australian Energy Market Commission.

## STATEMENT OF REASONS

In accordance with Rule 124 of the *National Gas Rules 2009*, I provide this statement of reasons for my decision.

**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):** *"The Council is not satisfied that access to the QCLNG Pipeline would promote a material increase in competition in any likely dependent market and therefore cannot be satisfied that coverage criterion (a) is satisfied."*

**Ministerial Findings**

I understand that the QCLNG Project will involve Coal Seam Gas (CSG) extraction from the Surat Basin through to an LNG production facility in the Gladstone State Development Area. I consider that the proposed QCLNG Pipeline will be an integral part of this operation by transporting gas to the LNG facility.

Pipeline coverage criterion (a) requires that I consider whether access to the proposed pipeline would promote a material increase in competition in any likely dependent market. In this case, the likely dependent markets are the upstream and downstream markets of the proposed QCLNG pipeline.

The availability of existing alternatives to the QCLNG Pipeline to upstream gas producers means that the vertically integrated operator of the QCLNG Pipeline is unlikely to have the ability to materially influence competitive outcomes in the upstream gas production market. Accordingly, I have determined that access to the QCLNG Pipeline is unlikely to promote a material increase in competition in the upstream gas market.

In terms of downstream markets, this should be considered as both the global LNG market and the downstream gas sales market in the Gladstone/ Rockhampton/ Wide Bay area, as the main domestic downstream regions capable of being served by the QCLNG Pipeline.

I note that the downstream LNG market is already a competitive international market, and access to the QCLNG Pipeline is unlikely to promote a material increase in competition in this market.

I believe that the existing alternative options means that access to the QCLNG Pipeline is unlikely to promote a material increase in competition in the downstream gas market in the Gladstone/ Rockhampton/ Wide Bay area.

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):** *"On the basis of the Applicant's estimates of foreseeable demand and the capacity of the proposed QCLNG Pipeline, at the peak of demand it appears likely that it would be necessary, or at least less costly, to develop an additional pipeline. On that basis and at that point in time criterion (b) would not be satisfied.*

*Given the construction of a 42 inch pipeline as planned by the Applicant, it appears to be economical to develop another facility to meet peak demand for the service of transporting gas from the Surat Basin to Gladstone, although at lesser levels of demand it is uneconomic to do so.*

*More importantly, however, if criterion (b) is considered on the basis of whether a single pipeline, albeit larger than the Applicant proposes to construct, can meet foreseeable demand at a lesser cost than two or more pipelines then it appears to the Council that this question is appropriately answered in the affirmative and criterion (b) is satisfied.*

*The Council considers that in the context of an application for a no coverage determination, having regard to the National Gas Objective, it should adopt a broader view of criterion (b) than that which might appropriately drive an applicant's commercial decisions. On this basis the Council is satisfied that criterion (b) is met."*

**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.

In making my assessment on this criterion, I have given consideration to the NCC's Final Recommendation, the submissions received by the NCC from the applicant and other parties, and the National Gas Objective.

I do not agree with the Council's adoption of a "broader view of criterion (b)."

I have assessed criterion (b) based on the parameters and specifications of the proposed investment by the Applicant. I have considered the proposed "pipeline services provided by means of the pipeline", rather than pipeline services that could be provided by a pipeline that is "larger than the Applicant proposes to construct."

The National Gas Objective seeks to "promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas."

In the context of the National Gas Objective I have weighed up the competing considerations between commercial decisions and the optimal economic scenario that arise when making an assessment of this criterion. In relation to the applicant's

proposal, balancing the commercial considerations and the national interest, I have assessed criterion (b) against the proposed capacity provided by the Applicant.

When assessed against the proposed capacity provided by the Applicant, the NCC notes that "it appears likely that it would be necessary, or at least less costly, to develop an additional pipeline."

I note that the Freehills submission on behalf of Santos notes that there are a number of other pipelines proposed, and the Santos-Petronas joint-venture itself is proposing a pipeline investment in addition to the QCLNG.

Accordingly, I am not satisfied that it is uneconomic to develop another pipeline to provide the pipeline services provided by means of the pipeline.

Therefore, 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 that coverage criterion (c) is satisfied."*

**Ministerial Findings**

I am satisfied that access (or increased access) to the pipeline services provided by means of the proposed QCLNG pipeline could be provided without undue risk to human health or safety.

I note that submissions from the applicant and other parties, as well as the NCC's recommendation, all state that there is no known reason why access to the proposed QCLNG pipeline would provide undue risk to human health and safety. 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):** *"The extent of any benefit from access depends critically on likely effects on competition in dependent markets (criterion (a)). At paragraph [6.53] the Council found that access to the QCLNG Pipeline would not promote a material increase in competition in any dependent market. In the absence of a material promotion of competition in any market (or any other potential benefits arising from access) and given the costs that would result from coverage of the QCLNG Pipeline, the Council considers that coverage would be contrary to the public interest and coverage criterion (d) is not met."*

**Ministerial Findings**

Pipeline coverage criterion (d) requires consideration as to whether access (or increased access) to the proposed pipeline would not be contrary to the public interest.

As noted in the NCC final recommendation, this criterion *"involves a broad view of the overall costs and benefits of coverage of a pipeline and consideration of other public interest issues which do not fall within the other coverage criteria".*

In line with the National Gas Objective, I believe that it is important to encourage efficient investment in capital intensive infrastructure assets such as gas transmission pipelines.

In considering the costs and benefits in the public interest, the granting of a no-coverage determination improves regulatory certainty for investors.

Improving regulatory certainty and encouraging efficient investment is in the public interest and is consistent with the National Gas Objective. This is particularly so when assets subject to access regimes form part of a capital intensive vertically integrated production process with a long operating life.

I am therefore satisfied that coverage would be contrary to the public interest.

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

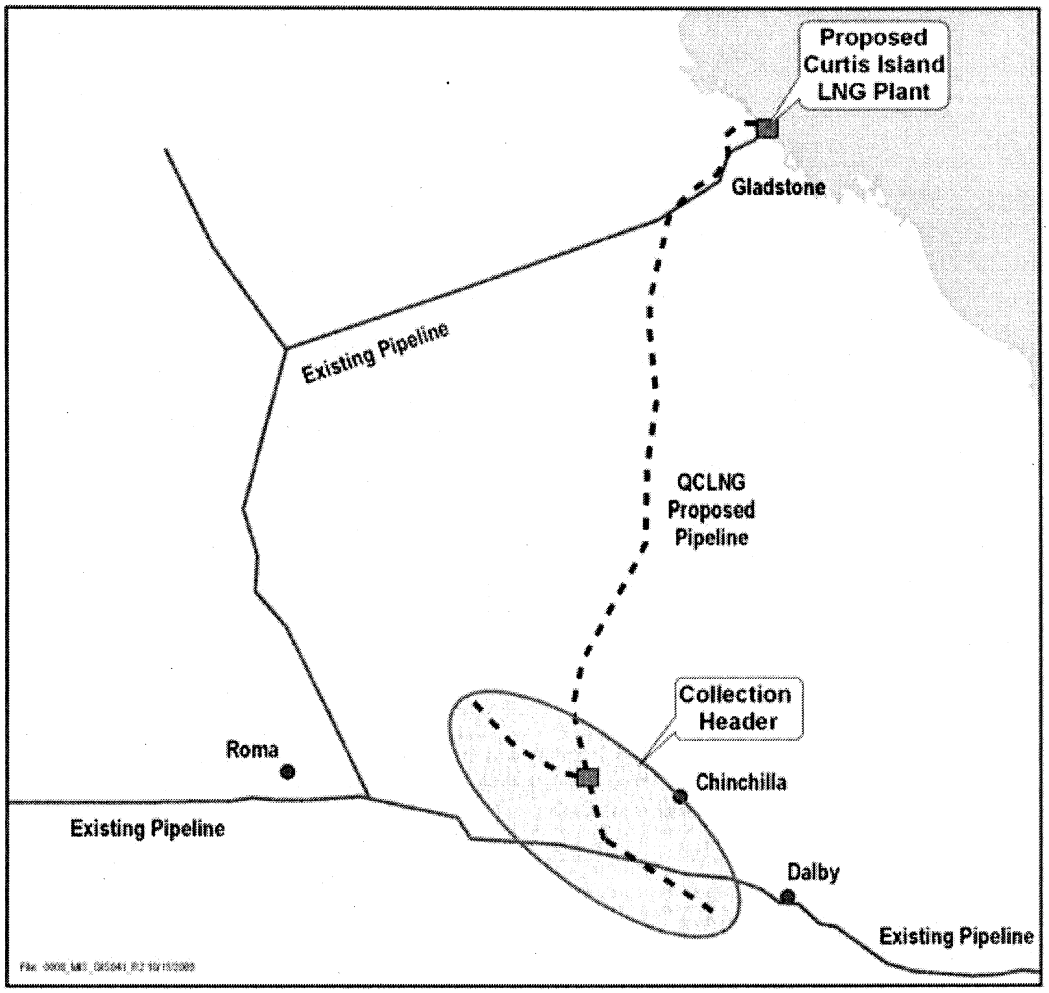
**Determination**

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
Commonwealth Minister for Resources and Energy

15th June 2010

## Map 1: Proposed QCLNG Pipeline




**Source: Page 6 of the application from QCLNG Pipeline Pty Ltd**