NATIONAL
COMPETITION
COUNCIL

Comet Ridge to Wallumbilla Pipeline Loop - 15 year no-coverage determination

Draft recommendation

20 March 2015

Contents

Abbreviations and defined terms

APLNG	Australia Pacific LNG Pty Limited
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 CRWPL, received by the Council 13 February 2015.
Blue Energy	Blue Energy Limited
Council	National Competition Council
CRWP	The existing Comet Ridge to Wallumbilla Pipeline
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
CRWPL	The Comet Ridge to Wallumbilla Pipeline Loop - a pipeline that will run between Comet Ridge and Wallumbilla in Queensland (the Comet Ridge Wallumbilla Pipeline Loop – the subject of this application and recommendation
CSG	coal seam gas
GLNG	GLNG Operations Pty Ltd – the applicant
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 CRWPL.
GLNG	GLNG Operations Pty Ltd
GLNG Project	Gladstone Liquefied Natural Gas Project (see paragraph 2.2)
GLNG GTP	The GLNG Gas Transmission Pipeline that transports gas from Fairview to the GLNG LNG Facility at Curtis Island
GLNG Recommendation	The Council's 22 May 2013 final recommendation in relation to the GLNG GTP, *GLNG no-coverage application, Application for a 15 year no coverage determination for the proposed APLNG Pipeline.*
KOGAS	Korea Gas Corporation, a company listed on the Korean Stock Exchange, incorporated by the Korean Government in 1983.
LNG Facility	GLNG's LNG production facility on Curtis Island
LNG market	The downstream international market for LNG
Jemena	Jemena Limited
LNG	liquefied natural gas
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 Industry and Science, the Hon. Ian Macfarlane MP P
RUGS	Roma Underground Gas Storage facility
Santos	Santos Limited
SWQP	South West Queensland Pipeline (Wallumbilla to Ballera) owned and operated by APA Group

1 Draft recommendation

Pipeline Classification

1.1 The Council considers that the Comet Ridge to Wallumbilla Pipeline Loop (**CRWPL**) is appropriately classified as a transmission pipeline (see paragraphs 2.16 to 2.21). As a result, the Commonwealth Minister for Industry and Science, the Hon. Ian Macfarlane MP, is the relevant Minister to receive the Council's recommendation and determine this application (see paragraphs 2.23 and 2.24).

Draft recommendation

1.2 The Council is satisfied that the CRWPL is a greenfields project in that it involves a major extension to the existing Comet Ridge to Wallumbilla Pipeline (**CRWP**) and the GLNG Gas Transmission Pipeline (**GLNG GTP**), both of which are uncovered pipelines (see paragraphs 2.25 to 2.48).

1.3 The Council is not satisfied that pipeline coverage criteria (a), (b) or (d) are met in relation to the CRWPL. The Council therefore intends to recommend that the relevant Minister decide to make a 15-year no-coverage determination (National Gas Law (**NGL**), s 154(2)). The Council's reasoning is set out in this draft recommendation.

1.4 Submissions are now sought in response to the draft recommendation. After considering any further submissions the Council will finalise its recommendation and provide it to the relevant Minister.

1.5 The closing date for submissions on the draft recommendation is **14 April 2015**.

2 Introduction

The application

2.1 On 13 February 2015 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 a new pipeline that will run between Comet Ridge and Wallumbilla in Queensland (the Comet Ridge Wallumbilla Pipeline Loop (**CRWPL**)).

2.2 The ultimate owners of GLNG are Santos Limited (**Santos**) and three overseas energy businesses, PETRONAS, Total and KOGAS. The four companies own and operate a joint venture known as the **GLNG Project**. This is a project to extract coal seam gas (**CSG**) from various areas in the Bowen and Surat Basins with the primary purpose of transporting it to the GLNG Project's liquid natural gas (**LNG**) facilities at Gladstone, where the gas is converted to LNG and loaded onto transport ships for sale to international LNG markets. The GLNG Project is illustrated in **Appendix A**.

2.3 The CRWPL is a 119 km long gas pipeline with a diameter of 610 mm and a design capacity of 750 TJ/day. It runs between the 'Wallumbilla Gas Hub' (a gas pipeline hub near the town of Wallumbilla) and a compressor station named 'PCS-01', approximately 35 km east north east of the town of Injune. The Wallumbilla Gas Hub is within a concentration of CSG fields around Wallumbilla and Roma. At PCS-01 the CRWPL connects to the GLNG GTP, a 420km long pipeline running north and then east to the GLNG Project's LNG Facility at Curtis Island in the port of Gladstone. The GLNG GTP is subject to a 15 year no coverage determination granted in 2013. The CRWPL is illustrated in **Appendix B**.

2.4 The CRWPL is connected to the Roma Underground Gas Storage facility (**RUGS**). A lateral pipeline called the 'R-HCS-02' connects RUGS to the CRWPL. The services provided by the CRWPL, according to GLNG, are gas transportation services:

- from the Wallumbilla Gas Hub to the GLNG GTP inlet at PCS-01, and
- from RUGS to the GLNG GTP inlet at PCS-01.[1]

2.5 The CRWPL runs parallel to the CRWP, a smaller, existing gas pipeline also owned and operated by GLNG. The CRWP also runs between the Wallumbilla Gas Hub and the GLNG GTP inlet. The CRWPL generally runs along the same easement as the CRWP. The CRWP with a diameter of 14 inches (approx. 356 mm), is smaller than the CRWPL. GLNG states that the CRWP is bidirectional, while the CRWPL is only capable of transporting gas from south to north.[2] However, GLNG acknowledges that the CRWPL could operate in a southerly direction if additional compression were installed at Fairview.[3]

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1 Application, page 80.

2 Application, page 37.

3 Application, page 9.

2.6 There are two other joint ventures that are presently operationally engaged in extracting CSG from the Surat and Bowen Basins and transporting it to Curtis Island for LNG production and sale. These are the Australia Pacific LNG (**APLNG**) Project and the Queensland Curtis LNG (**QCLNG**) Project. Like the GLNG Project, the APLNG and QCLNG Projects are vertically integrated across CSG extraction, gas transmission and LNG production sectors. Each project operates large gas transmission pipelines, intended for project use only, running between Curtis Island and Queensland CSG fields. The routes of the major CSG-LNG gas project transmission pipelines are shown in **Appendix C**.[4]

2.7 Other gas pipelines relevant to this application are listed below.

- The Queensland Gas Pipeline (**QGP**), owned by Jemena Limited.
- The Southwest Queensland Pipeline (**SWQP**), owned by APA Group Limited (**APA Group**).
- The Berwyndale to Wallumbilla Pipeline (**BWP**), owned by APA Group.
- The Darling Downs Pipeline (**DDPL**), owned by Origin Energy.
- The Spring Valley to Wallumbilla pipeline (**SGPL**), owned by Origin Energy.
- The Roma to Brisbane pipeline (**RBP**), owned by APA Group.

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

2.9 The application contains a limited amount of material for which confidentiality was sought. The Council has agreed to accept this material on a confidential basis.

2.10 The Council notes that the CRWPL has yet to be commissioned and therefore a 15 year no-coverage application can be made in relation to it (see NGL s 151(1)).

Council's consideration process

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

2.12 On 19 February 2015 the Council published a notice in *The Australian* newspaper inviting written submissions on the application and published a public version[5] of application on the Council website. The period for submissions on the application ended on 12 March 2015.

2.13 The Council did not receive any submissions on the application.

2.14 On the basis of information and submissions received to date the Council has prepared this draft recommendation. The draft recommendation sets out the Council's views at this stage of its consideration of this application and its intended

[4] Note that the map at Appendix C is dated 2012, and includes some LNG projects proposed at that time which have not progressed to completion.

[5] This version excludes the confidential material referred to in paragraph 2.9.

recommendation. Submissions are now sought in response to the draft recommendation. After considering any further submissions (including from the applicant), the Council will finalise its recommendation and provide it to the relevant Minister.

2.15 The closing date for submissions on the draft recommendation is 14 April 2015.

Pipeline classification and relevant Minister

2.16 As part of its consideration of an application for a 15 year no-coverage determination, the Council must decide whether a pipeline is a transmission pipeline or a distribution pipeline (see NGL, s 155(1)). It does this by applying the pipeline classification criterion in s 13(1) of the NGL. This 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.

2.17 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);
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> (d) the diameter of the pipeline;
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> (e) the pressure at which the pipeline is or will be designed to operate;
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> (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.

2.18 Among other things, the classification of a pipeline determines which Minister (State or Commonwealth) receives the Council's recommendation and determines a 15 year no-coverage application.

2.19 GLNG submits that the CRWPL should be classified as a transmission pipeline because it will not reticulate gas within any market. GLNG submits that the conclusion that the CRWPL is a transmission pipeline is reinforced because:

- the pipeline has no classification status under the NGL
- the CRWPL is linear and conveys gas from two points to a single end point

- the pipeline has an external diameter (610 millimetres), design capacity (750 TJ/d) and maximum operating pressure (up to 15,300 kPa) that are all larger than standard distribution pipelines and are consistent with, or greater than, the design features of modern transmission pipelines in Australia
- the length of the CRWPL (119 kilometres) is consistent with other pipelines that are described as transmission pipelines by the Australian Energy Regulator
- the area to be served by the CRWPL is the route between the APA compressor station and PCS-01, and the route between the R-HCS-02 lateral and the PCS-01 compressor station.

Pipeline Classification Decision

2.20 The Council accepts that the CRWPL will not reticulate gas within a market. The Council also notes that the CRWPL:

- 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.

2.21 **The Council's pipeline classification decision is that the CRWPL is a transmission pipeline.**

Relevant Minister

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

2.23 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'.

2.24 **The relevant Minister is the Commonwealth Minister for Industry and Science, the Hon. Ian Macfarlane MP**.

Is the CRWPL a greenfields pipeline?

2.25 The NGL defines a greenfields pipeline project in this way:

> ***greenfields pipeline project*** means a project for the construction of—
>
> (a) a pipeline that is to be structurally separate from any existing pipeline (whether or not it is to traverse a route different from the route of an existing pipeline); or

(b) a major extension to an existing pipeline that is not a covered pipeline; or

(c) a major extension to a covered pipeline by means of which light regulation services are provided if that extension is exempted by the AER under section 19. [NGL s 149]

2.26 The applicant claims that the CRWPL "is structurally separate from any other pipeline and therefore is a greenfields pipeline project under the first limb of the definition in s 149". [Application page 36]

2.27 The applicant contends that the CRWPL does not directly connect to the CRWP, the GLNG GTP or any other pipeline and is only able to connect to other pipelines by means of non-pipeline infrastructure. The applicant also states that the operation of the CRWPL does not depend on any other existing pipeline and gas can enter and exit the CRWPL without co-mingling with gas from any other pipeline.

2.28 Notwithstanding the CRWPL and CRWP run in parallel for much of their length, the applicant notes that the two pipelines can be operated entirely independently and have separate metering and pressure controls.

2.29 The applicant also notes that the CRWPL "will only be capable of operating in a northerly direction"[6] whereas the CRWP is capable of bi-directional operation. As previously noted, however, the applicant acknowledges that southerly operation is possible: see paragraph 2.5.

2.30 After expounding on the basis on which the CRWPL is structurally separate from any other pipeline, the application then states:

> If, contrary to GLNG's submission on this point, the CRWP Loop [CRWPL] was determined not to be "structurally separate", then it would necessarily follow that the CRWP Loop was nonetheless still a "greenfields pipeline project", on the basis that it satisfied paragraph (b) of the definition of that term in section 149 of the NGL [Application page 37].

2.31 The application did not initially elaborate on the basis for this alternative claim. In particular it did not set out the applicant's views on which pipeline or pipelines the CRWPL might be an extension of and why any such extension should be considered "major". Prior to giving public notice of the application the Council sought additional submissions from the applicant in relation to these issues. The applicant provided its response by way of a letter from its solicitors dated 17 February 2015. This letter was published on the Council's website at the same time as the public version of the application.

2.32 While maintaining its preferred position that the CRWPL is structurally separate from any other pipeline, the applicant considers that if this were not the case the CRWPL is a greenfields pipeline because its constitutes a major extension to both the GLNG GTP and the CRWP and neither of these pipelines is a covered pipeline. The

[6] The CRWPL could transport gas in a southerly direction with the addition of compression at Fairview (see Application, page 9).

letter of 17 February also provided explanations of why the CRWPL could be considered to involve a "major" extension to these pipelines. These explanations considered at paragraphs 2.44 to 2.46 below.

2.33 There appear to be three possible ways in which the CRWPL might be a greenfield pipeline project as defined in s 149:

(a) as a structurally separate pipeline, as asserted by the applicant

(b) as a major extension of the existing CRWP

(c) as a major extension of the existing GLNG GTP.

2.34 If none of these apply, the CRWPL is not a greenfields pipeline project and a 15 year no-coverage determination is not available.

2.35 The Council has reservations about whether the CRWPL is structurally separate from any other pipeline. The CRWP and CRWPL are authorised under a common pipeline license (PPL 118). The two pipelines also appear to share end points connecting to the Wallumbilla Hub and the inlet to the GLNG GTP. While there may be some intervening compressor or metering facilities, the intercession of these does not, in the Council's view, structurally separate the pipelines.

2.36 While the Council notes the applicant's contentions that the CRWPL and CRWP can operate separately, it is not clear that they will do so. Once the gas flow in the CRWP changes to a northerly direction, both pipelines will serve the same purpose—to transport gas to the GLNG GTP for onward transport to the GLNG LNG Facility at Curtis Island. The CRWPL and CRWP together with the GLNG GTP and RUGS facility will also provide line pack and storage allowing greater flexibility in the operation of the overall system they are part of. The pipelines will be complements. Finally the Council notes, as a minor point, the new pipeline is referred to as a "loop". This suggests it is an extension of a principal pipeline, which must be the CRWP.

2.37 The Council has also considered whether the CRWPL is structurally separate to the GLNG GTP. The Council notes that in the description of the pipeline route and end points contained in Annexure 5 the CRWPL is described a travelling "north east to PCS-01 … where it will connect with the GLNG GTP inlet" [Application, page 104].

2.38 The Council is aware that in its recommendation in relation to a no-coverage determination for the GLNG GTP, it took the view that the CRWP and the GLNG GTP were structurally separate because it accepted GLNG's submissions (in that matter) that the GLNG GTP:

> 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.

2.39 It is reasonable to assume, as the applicant has, that the same conclusion would be reached in respect of structural separation of the CRWPL and the GLNG GTP, where the circumstances appear to be the same.

2.40 However, if two pipelines can be regarded as structurally separate because they are separated by a compressor station or metering facility, or because other pipelines connect at the same location, this could significantly expand the scope of 15 year no-coverage applications and in ways that are inconsistent with the National Gas Objective. It might, for example, allow an application for a no-coverage determination for a minor extension of a pipeline, or for what amounts to an extension of a covered pipeline—if a compressor station were used to separate such extensions from an existing pipeline.

2.41 Whether the CRWPL qualifies as a greenfields pipeline project on the basis of paragraph (a) or paragraph (b) of the definition in s 149 does not appear to be of consequence in this case so long as neither the CRWP nor the GLNG GTP is a covered pipeline and the CRWPL is a major extension of a pipeline to which it connects.

2.42 Neither the CRWP nor the GLNG GTP is a covered pipeline.

2.43 In the letter of 17 February 2015 the applicant explains why the CRWPL could be regarded as a major extension to both the CRWP and the GLNG GTP.

2.44 In respect of viewing the CRWPL as a major extension of the CEWP, the applicant contends that the CRWPL can be seen as "elongating", "spreading out" and "enlarging the scope of" the CRWP and materially increasing the extent the CRWP can be used to transport gas for onward transport on the GLNG GTP.

2.45 In respect of the CRWPL as a major extension of the GLNG GTP, the applicant submits the CRWPL will extend the distance covered by the GLNG GTP by 28% and deliver over half of the estimated volume of gas that can be carried on the GLNG GTP. The applicant also points to the critical role the GRWPL has in conjunction with the GLNG GTP in transporting gas to its LNG Facility, the value of its investment in the CRWPL, and the economic and regional development benefits of its overall LNG production project.

2.46 If the CRWPL does not qualify as a greenfields pipeline on the basis of being structurally separate to any other pipeline (paragraph (a)), the Council considers that it would do so on the basis of paragraph (b) due to it being a major extension of the (uncovered) GLNG GTP and the GRWP pipelines. The CRWPL involves a substantial additional investment by GLNG and will contribute substantially to GLNG's ability to source and transport gas for processing at its LNG Facility. Relative to the GLNG GTP and the CRWP, the new pipeline represents a major extension in length, volume/capacity and value of investment terms, and in terms of contribution to the overall GLNG Project.

2.47 In the Council's view, compressors and metering facilities will often be integral to a pipeline. Similarly a hub or similar facility that allows gas to flow between several pipelines is more appropriately regarded as a means of connecting rather than separating pipelines.

2.48 At this stage in its consideration of this application, notwithstanding the position it reached in its recommendation in relation to the GLNG GTP, the Council is of the view

that the CRWPL is more appropriately considered as a greenfields pipeline under paragraph (b) of the definition in s 149 of the NGL.

3 Making a no-coverage determination

3.1 In making its recommendation on an application for a 15-year no-coverage determination, the Council must give effect to the pipeline coverage criteria (see box 3A) and have regard to the national gas objective (see box 3B) (NGL, s 154(1)).

3.2 The national gas objective is set out in s 23 of the NGL.

3.3 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)).[7]

3.4 Accordingly, if the Council considers that any one or more of the coverage criteria is not met, it must recommend in favour of a no-coverage determination.

3.5 The applicant contends that criterion (a), (b) and (d) are not satisfied in relation to the CRWPL. The applicant accepts that criterion (c) is satisfied.

Box 3A: Coverage criteria

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

Box 3B: National gas objective

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.

[7] 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).

4 Criterion (a)

4.1 Criterion (a) considers whether access would materially promote competition in a dependent market(s). Under criterion (a) the Council must assess whether access would materially improve the opportunities and environment for competition in a dependent market.

4.2 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).

4.3 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. In these circumstances, criterion (a) is not satisfied.

Dependent markets

4.4 GLNG submits that the following markets were relevant under criterion (a).

(a) A market for the production of gas upstream of the CRWPL for the purpose of supplying gas to downstream customers, either as LNG or for domestic consumption (**gas production market**).

(b) A market for the sale of gas in domestic markets downstream of the CRWPL. The area of this market includes the Gladstone, Rockhampton, Moura and Wide Bay regions supplied via the CRWPL and then the GNLG GTP, as well as broader geographical regions potentially connected to upstream gas supplies via the CRWPL and a range of other pipeline infrastructure with which it could potentially be connected (**domestic sales market**).

(c) A downstream market for the international sale of LNG (**LNG market**).

4.5 The Council considers that these markets are separate from the market for the service provided by the CRWPL.

4.6 This assessment of the dependent markets is the same assessment the Council made in response to three previous no-coverage applications for regarding gas transmission pipelines part of larger projects to export CSG extracted in the Bowen/Surat Basins as LNG from Gladstone, being the QCLNG Recommendation (NCC 2010, pages 15-16), the APLNG Recommendation (NCC 2012a, pages 16-17) and the GLNG Recommendation (NCC 2013b, pages 13-15).

4.7 The Council's agrees that the markets identified by the applicant are the appropriate dependent markets for consideration under criterion (a).

Promotion of competition

4.8 GLNG made the following general submission as to relationship between the CRWPL and dependent markets.

> [T]he pipeline services provided by the CRWP Loop will not be relevant to, or have any significant impact on, these markets, given that the route covered by the CRWP will not be useful to third parties on a standalone basis, there are no transport options available from PCS-01 to an LNG Facility (other than the GLNG GTP, which is subject to a no-coverage determination), third parties are able to use alternative pipelines, and the use of those alternatives is likely to be more attractive to third parties than the use of the CRWP Loop.[8]

4.9 The Council considers that the two downstream markets identified—the domestic sales market and the LNG market—exhibit common competition characteristics, such that it is appropriate to consider them together when assessing criterion (a). The Council has therefore assessed the effect of competition generally on upstream markets (gas production market) and downstream markets (domestic sales market and the LNG market).

4.10 GLNG submits that 'the geographical dimension of the market for the [CRWPL] pipeline service … is limited by the area within which producers of CSG can physically and cost effectively access the CRWP Loop.'[9] The Council agrees, and also agrees with GLNG that this is the appropriate area to assess whether access to the CRWPL service would materially affect competition in upstream and downstream dependent markets.

Upstream—Gas production market

4.11 GLNG commissioned ACIL Allen to identify and assess third parties who could potentially seek access to the CRWPL.[10] ACIL Allen focused on gas tenements within 50km of the CRWPL, and which were not aligned to one of the major CSG to LNG export projects (see paragraph 2.6), or otherwise subject to existing exploitation arrangements. ACIL Allen identified only one such tenement: ATP 854 owned by Eureka Petroleum Pty Ltd, a wholly-owned subsidiary of Blue Energy Limited (**Blue Energy**). Tenement ATP 854 is within 50km of the CRWPL. GLNG submits that Blue Energy is unlikely to seek access to the services of the CRWPL to exploit tenement ATP 854 for the following reasons.[11]

(a) The tenement does not contain any proven gas reserves; it is only a '3C contingent resource' (broadly meaning that exploration indicates the possibility of economic gas reserves in the tenement).

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8 Application, page 57

9 Application, page 58

10 Application, Annexure 7

11 Application, pages 58 to 60

(b) Blue Energy's website states that the QGP runs through the tenement and that 'gas located … is therefore well located to access this infrastructure' to move gas to Gladstone, or to domestic markets via Wallumbilla. In GLNG's submission, Blue Energy has therefore indicated a preference for the QGP for this tenement.

(c) Under GLNG's plans for the CRWPL, the GLNG Project will use all of the pipeline's capacity.[12] Third party access would require substantial capacity expansion and additional interconnections. Any spare capacity would be interruptible on an unpredictable basis. Further, GLNG submits that any gas entering its pipelines would have to meet a narrower than standard specification.

(d) Any third party user would have to subordinate its use to the needs of GLNG. This would include: indemnifying GLNG for off-specification gas and additional costs the GLNG may incur as a result of third party usage; usage rights being subject to GLNG's flexibility requirements; injecting gas at an appropriate pressure required by GLNG.

4.12 On the above bases, GLNG submits that access to the QGP would therefore most likely be a more attractive and economic option for a third party wishing to exploit ATP 854.

4.13 GLNG submits that even if there were other gas tenement owners close to the CRWPL that ACIL Allen had not identified, that may potentially use the CRWPL, the same factors would make access to the CRWPL unattractive. It states that 'gas producers in the vicinity of the CRWP Loop already have a range of options for developing their projects which do not depend on access to the CRWP Loop – these include selling gas or otherwise partnering with any of the major LNG projects, obtaining transport on the QGP, and other interconnecting pipelines'.[13]

4.14 GLNG further submits that the presence of other pipeline infrastructure in the vicinity of the CRWPL and the number of independent infrastructure operators and LNG projects mean that it does not have the ability to exercise market power in the upstream production market. It submits that facilities-based competition exists between LNG projects seeking to purchase gas to transport to Curtis Island, to the benefit of producers in the production market. GLNG submits that producers can also sell gas for domestic consumption using the QGP and other pipeline infrastructure. These options for upstream producers illustrate countervailing market power and low barriers to entry in the production market, GLNG submits. It states that it therefore has little ability to exercise market power in the gas production market.

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[12] GLNG notes that there are significant practical barriers to capacity expansion: the expense would be of the order of magnitude of hundreds of millions of dollars, and would need to include installing further compression at the Wallumbilla Hub. Any effort to loop the CRWPL would require additional tenure and governmental approvals given that the loop would need to be outside the existing CRWP / CRWPL easement: Application, page 57

[13] Application, page 61

4.15 In any case, GLNG submits that even if it had an ability to exercise market power, it would have little incentive to do so because its overriding commercial objective is to maximise the output of its LNG Facility, and hence to purchase gas to fill any available capacity on the CRWPL.

4.16 GLNG submits that, therefore, access to the CRWPL would not cause a material increase in competition in the upstream gas production market.

4.17 The Council generally agrees with CRWPL's submissions regarding the upstream gas production market. There are a range of alternative pipeline infrastructure options available to upstream CSG producers in the vicinity of the CRWPL, such that they have alternative options to sell their gas in downstream markets.

4.18 Given the vertical integration of the GLNG Project across the upstream production, transportation infrastructure, and downstream gas sale markets, it may have some incentive to limit access to transportation infrastructure. However, the Council considers that the impact of any such incentives on competition in the gas production markets is likely to be insignificant given that there are two other vertically integrated LNG producers presently operating in competition with the GLNG Project in the same markets, in addition to pipelines such as the QGP offering (or potentially offering) haulage services.

4.19 The Council does not consider that access to the CRWPL will materially promote competition in the gas production market.

Downstream—domestic gas sales market and LNG market

4.20 GLNG's submissions regarding the effect of access to the CRWPL on the domestic gas sales market and the LNG market are not dependent on the geographical scope of either downstream market. GLNG submits the domestic market can be conceived of as comprising the Gladstone, Rockhampton, Moura and Wide Bay regions, as gas transported via the CRWPL can be sold to those regions via the CRWPL and the GLNG GTP. However, the domestic gas sales market can also be considerably broader, as gas transported via the CRWPL, in combination with connecting pipeline infrastructure could also potentially be sold in a considerably wider area. GLNG submits, however, that if criterion (a) is not met in relation to a market based on the narrower geographic area, consideration of a broader market is unnecessary.

4.21 GLNG submits that the same reasoning applies to the geographic dimension of the LNG market. GLNG notes that the Council has previously commented that the LNG market appears to not yet be truly international, with price differentials between geographic regions, with the majority of Australian LNG sold to Asia.[14] GLNG argues that if criterion (a) is not met in relation to the Asian market, it is unnecessary to consider a broader international market.

[14] Application, page 61, references NCC (2013) paragraph 6.14.

4.22 The Council agrees with GLNG's submissions regarding the sufficiency of considering only the narrower geographic market definitions of the downstream markets. This is consistent with reasoning adopted in prior Council recommendations.[15]

4.23 Regarding the downstream domestic market in Gladstone and surrounding areas, GLNG submits that customers are already serviced by the QGP pipeline, which can provide the same service as the CRWPL, and which, it submits, would likely be a more commercially attractive option. Further, any gas sourced using the CRWPL would still need to travel via the QGP and other existing pipelines to reach customers. In any case, for given the reasons summarised in paragraph 4.15, GLNG submits that the CRWPL is unlikely to be an attractive component of supply infrastructure for these customers.

4.24 The Council agrees that the availability of alternative infrastructure and sources of supply (in particular the QGP) means that GNLG does not have market power in the downstream domestic market arising from the CRWPL. The Council therefore agrees that access to the CRWPL is unlikely to materially promote competition in the domestic sales market.

4.25 GLNG submits that the LNG market is effectively competitive. Hence, GLNG has no market power in the LNG market that it could use to limit competition in the LNG market. The Council agrees that the LNG market, whether considered in Asia or internationally, is effectively competitive. Further, the Council previously found that access to the GLNG GTP would not promote a material increase in competition in the LNG market.[16] Given that access to the GLNG GTP is required to sell gas transported on the CRWPL in the LNG market, it follows that access to the CRWPL is unlikely to affect competitive outcomes in that market.

Conclusion on criterion (a)

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

[15] NCC (2010) paragraph 6.25; NCC (2012) paragraph 6.18; NCC (2013) paragraph 6.8

[16] NCC (2013) paragraph 6.34

5 Criterion (b)

5.1 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'.

5.2 This coverage criterion is essentially the same as criterion (b) in the declaration criteria in Part IIIA of the *Competition and Consumer Act 2010* (**CCA**).[17] 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.

5.3 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.

5.4 In *Pilbara HCA* the High Court interpreted criterion (b) such that the term 'anyone' includes the owner of the facility (or pipeline) in question. The Court also found that it is sufficient if developing another facility/pipeline is profitable as an element of a larger project that is profitable, whether or not the facility/pipeline in question is profitable on a standalone basis.

5.5 The Council has expressed concern regarding this interpretation.[18] In its review of Part IIIA of the CCA,[19] the Productivity Commission (**PC**) recommended that criterion (b) 'should be satisfied where total foreseeable market demand for the infrastructure service over the declaration period could be satisfied by the facility'[20] and recommended that the CAA be amended to achieve this[21] (as well as other amendments). The PC stated its preferred test was based on the natural monopoly test.[22] The PC also noted that, while it preferred a natural monopoly test, if a private profitability test were to be retained, the scope of the term 'anyone' should exclude the provider of the service.[23]

5.6 However, no amendments have been made to criterion (b), or otherwise in response to the PC Review.

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17 Sections 44G(2)(b) and 44H(4)(b) of the CCA.

18 See in particular National Competition Council 2013, *Annual Report 2012-13*, pages 1-2 and 25-26, as well as National Competition Council 2012, *Annual Report 2011-12*, pages 3-4 and National Competition Council 2014, *Annual Report 2013-14*, page 12

19 Productivity Commission 2013, National Access Regime, Inquiry Report no. 66, Canberra (**PC Review**)

20 PC Review, page 167

21 PC Review, page251

22 PC Review, page 160

23 PC Review, page 251

5.7 Thus, coverage criterion (b) involves an assessment of whether it would be profitable for anyone, including the operator of the CRWPL, to build another pipeline to transport gas between Wallumbilla and Comet Ridge.

Application

5.8 GLNG submits that the purpose of the CRWPL is to provide additional capacity for the transportation of gas to the GLNG Project's LNG Facility. Regarding the profitability of developing another pipeline, it submits:

> There is ample evidence of recent and ongoing private investment in analogous transmission pipeline infrastructure which demonstrates the private profitability of construction of such pipelines to serve LNG projects in the vicinity of the CRWPL Loop.[24]

5.9 In this regard the applicant points to the QGP and the CRWP, 'non-covered pipelines which provide haulage services over a route which is substantially similar to the route which is covered by the CRWP Loop'. [25] GLNG also notes the presence of existing and planned transmission pipelines used by the other major projects producing CSG in the Surat and Bowen Basins for transport to Gladstone to produce LNG.

5.10 GLNG also submits that there are 'significant examples of investments to increase the capacity of transmission pipelines through looping or compression which suggest it would be privately profitable to develop another pipeline' (Application, page 53). The applicant points to recent and potential future capacity expansions of the QGP.

Council's assessment

5.11 The Council generally agrees with GLNG's submissions that the presence of significant existing and ongoing investment in pipeline transmission infrastructure, both in the immediate vicinity of the CRWPL, and more broadly between the Surat/Bowen basins and Gladstone, demonstrates that the Council cannot be satisfied that it would be uneconomic to develop another pipeline to provide the CRWPL's pipeline services.

5.12 The Council notes that, in developing the CRWPL, GLNG has had the advantage of developing it alongside the CRWP, a pipeline it owns. This means it is cheaper for GLNG to build the CRWPL than it would be for a third party to build a pipeline along the same route.

5.13 For example, the CRWPL is to be built along the same easement as the CRWP for the majority of its route. Another party would need to pay additional costs for land tenement rights. In building the CRWPL, GLNG would likely have been able to take advantage of prior pipeline approvals, as well as geographic and geological surveys, which a third party would need to pay for. This factor is insufficient to satisfy the Council that building an alternative pipeline is uneconomic.

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[24] Application, page 52, paragraph 6.7

[25] Application, page 52, paragraph 6.7

Conclusion on criterion (b)

5.14 The Council is not satisfied that it would be uneconomic for anyone to develop another pipeline to provide the services provided by means of the CRWPL. The Council does not consider that criterion (b) is satisfied.

6 Criterion (c)

6.1 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.

6.2 The applicant accepts that human health and safety would not be at risk if other parties were to have access to the CRWPL.

6.3 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 consider that access to the services provided by the CRWPL would compromise human health or safety.

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

7 Criterion (d)

7.1 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.

7.2 '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)).

7.3 Criterion (d), being expressed in the negative, does not require the Council to be affirmatively satisfied that access would be in the public interest, but rather 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]).

Application

7.4 GLNG notes that critical issue for both the Council and the Minister under criterion (d) in the GLNG GTP no-coverage application was that criterion (a) was not satisfied.

7.5 GLNG submits that access to the CRWPL would involve substantial regulatory costs. It estimates that these would include between $226 000 and $313 000 per annum for each year of an initial access arrangement period.[26] GLNG further submits that access to the CRWPL would create costs and risks for the GLNG Project, because GLNG would lose operational flexibility which may result in wasted gas and lost sales, and the risk of losses consequent on third parties injecting 'off-specification gas' into the GLNG Project's infrastructure. Finally, GLNG submits that a failure to grant a no-coverage determination for the CRWPL would create investment uncertainty, which 'may result in some parties reassessing the commercial viability of their proposed projects or later expansion plans'.

7.6 GLNG submits that even if criteria (a) and (b) were not met, criterion (d) would not be met on the basis of the submissions summarised in paragraph 7.5 above.

7.7 GLNG submits that if a no-coverage determination is not granted, 'significant regulatory and investment uncertainty would result' and 'may result in some parties [in the LNG and pipelines industry] reassessing the commercial viability of their proposed projects or later expansion plans' (Application, page 75).

[26] Application, page 73

Council's assessment

7.8 The critical issue for the Council under criterion (d) continues to be the outcome of criterion (a). Given that the Council is not satisfied that criterion (a) is met in relation to the CRWPL, it cannot be satisfied that access would lead to any public interest benefits of the kind that may be expected to flow from access to pipelines, in particular, competition-related benefits. The Council is unaware of any issues particular to the CRWPL that would make access contrary to the public interest. Therefore, in line with the approach to criterion (d) outlined in the Council's Gas Guide, the outcome of criterion (d) largely turns on the outcome of criterion (a).

7.9 The Council does not agree with GLNG's submissions that access to the CRWPL would be contrary to the public interest even if criterion (a) and criterion (b) were satisfied, because of alleged regulatory costs and investment disincentives. Where criterion (b) and particularly criterion (a) are met, access will be in the public interest as the benefits flowing from improved competition in dependent markets will outweigh any public cost flowing from regulatory costs to the service provider. Further, the Council disagrees that any failure to grant the no-coverage determination sought by GLNG would lead to general investment disincentives against the public interest. The notional access would be on reasonable terms and conditions, such that a service provider whose service is accessed would receive at least an economic return on its investment, and its other interests are protected.

Conclusion on criterion (d)

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

8 Council's conclusion

8.1 The Council is not satisfied that criterion (a), (b) or (d) is met in respect of the CRWPL. In terms of s 154(2) of the NGL the Council must therefore recommend in favour of a no-coverage determination.

Appendix A Information taken into account by the Council

Table A.1 Application and submissions

Author	Date	Title	Confidentiality
GLNG Operations Pty Ltd (**GLNG**)	13 February 2015	*Application for 15-year no coverage determination under section 151 of the National Gas Law*	Yes. Separate confidential and publication versions provided to Council.
	17 February 2015	Letter to NCC responding to questions regarding whether the CRWPL is a "greenfields pipeline project" under s 149 of the NGL	

Table A.2 References[27]

Author	Date	Title	Confidentiality
ACIL Allen	2013	*Comet Ridge—Wallumbilla Pipeline Looping Project*, 12 February 2015, commissioned by GLNG and attached to the Application at Annexure 7	No.
National Competition Council (NCC)	2014	*Annual Report 2013-14*	
	2013a	*Annual Report 2012-13*	
	2013b	*GLNG no-coverage application, Application for a 15 year no coverage determination for the proposed APLNG Pipeline*, 22 May 2013	No
	2012a	*APLNG no-coverage application, Application for a 15 year no coverage determination for the proposed APLNG Pipeline*, 17 July 2012	
	2012b	*Annual Report 2011-12*	
	2010	*No coverage determination for the proposed QCLNG Pipeline, Application for a 15 year no coverage determination for the proposed QCLNG Pipeline*, May 2010	
Productivity Commission	2013	National Access Regime, Inquiry Report no. 66, Canberra	No

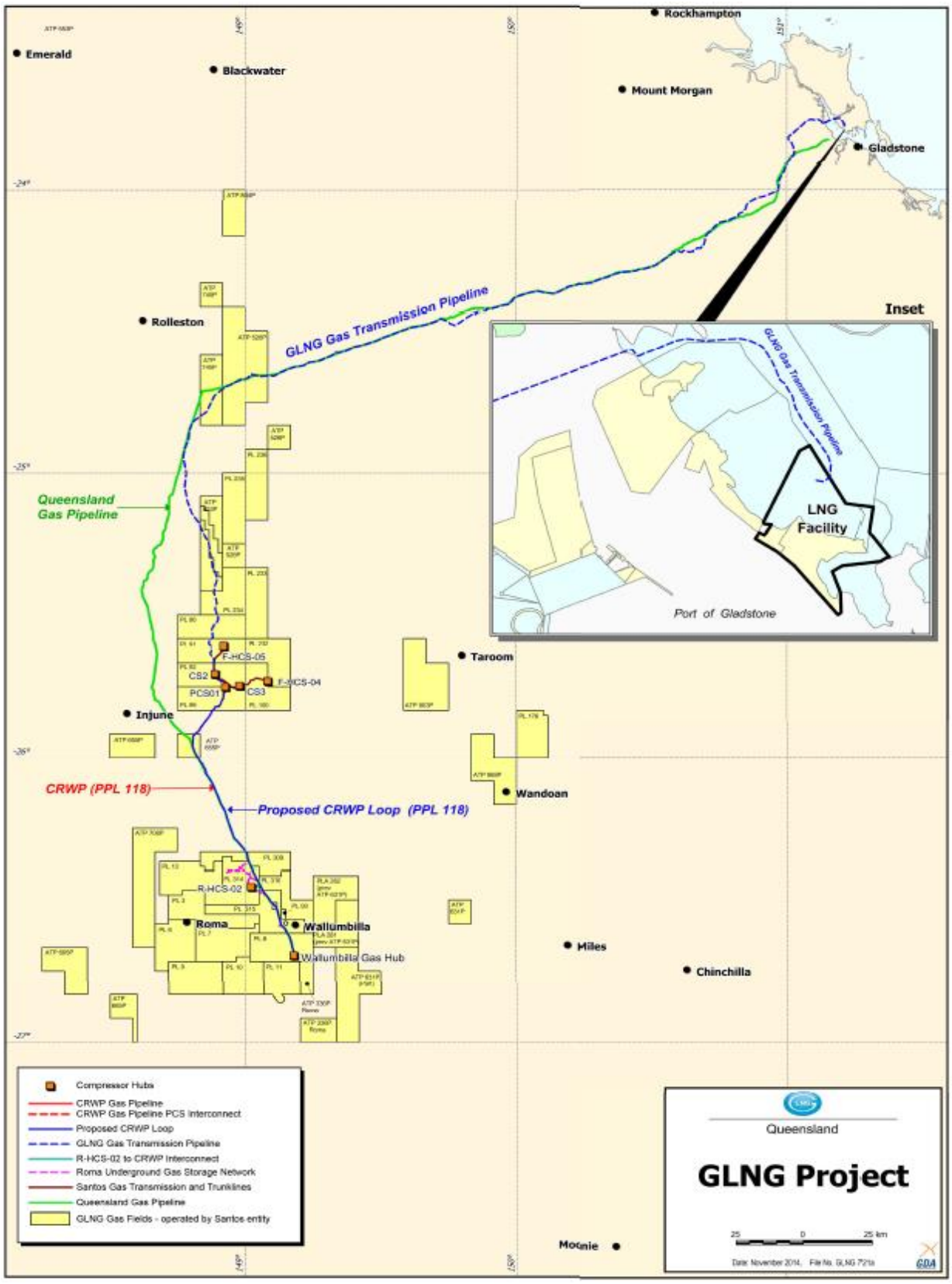
Table A.3 Legal sources

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

[27] 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.

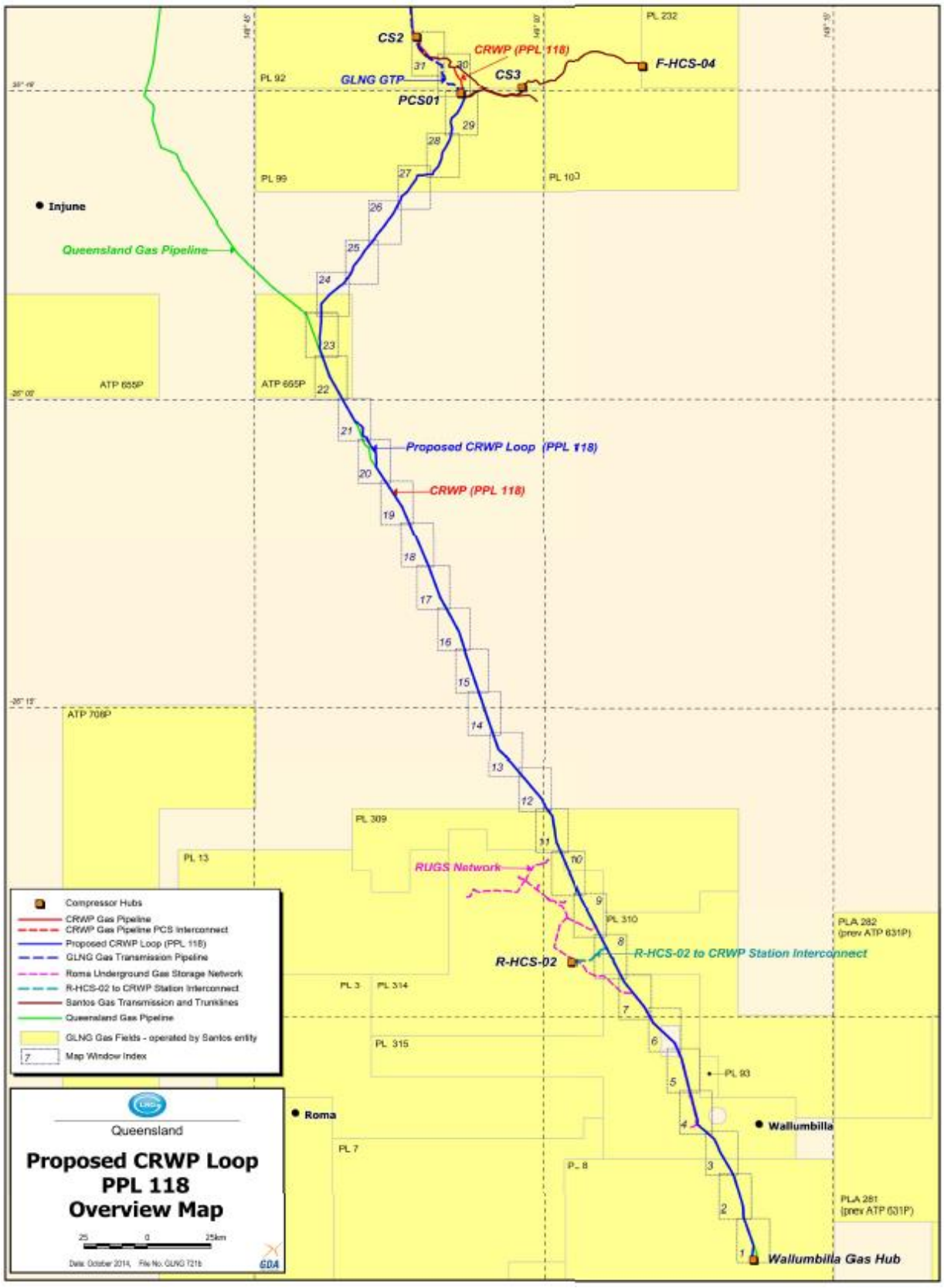
The Pilbara Infrastructure Pty Limited v Australian Competition Tribunal [2012] HCA 36; (2012) 290 ALR 750 (***Pilbara HCA***)
Legislation
Australian Energy Market Act 2004 (Cth)
Competition and Consumer Act 2010 (Cth)
National Gas Rules 2009
National Gas (South Australia) Act 2008 (SA) (**NGL**)
National Gas (Queensland) Act 2008 (Qld)

Appendix B GLNG Project



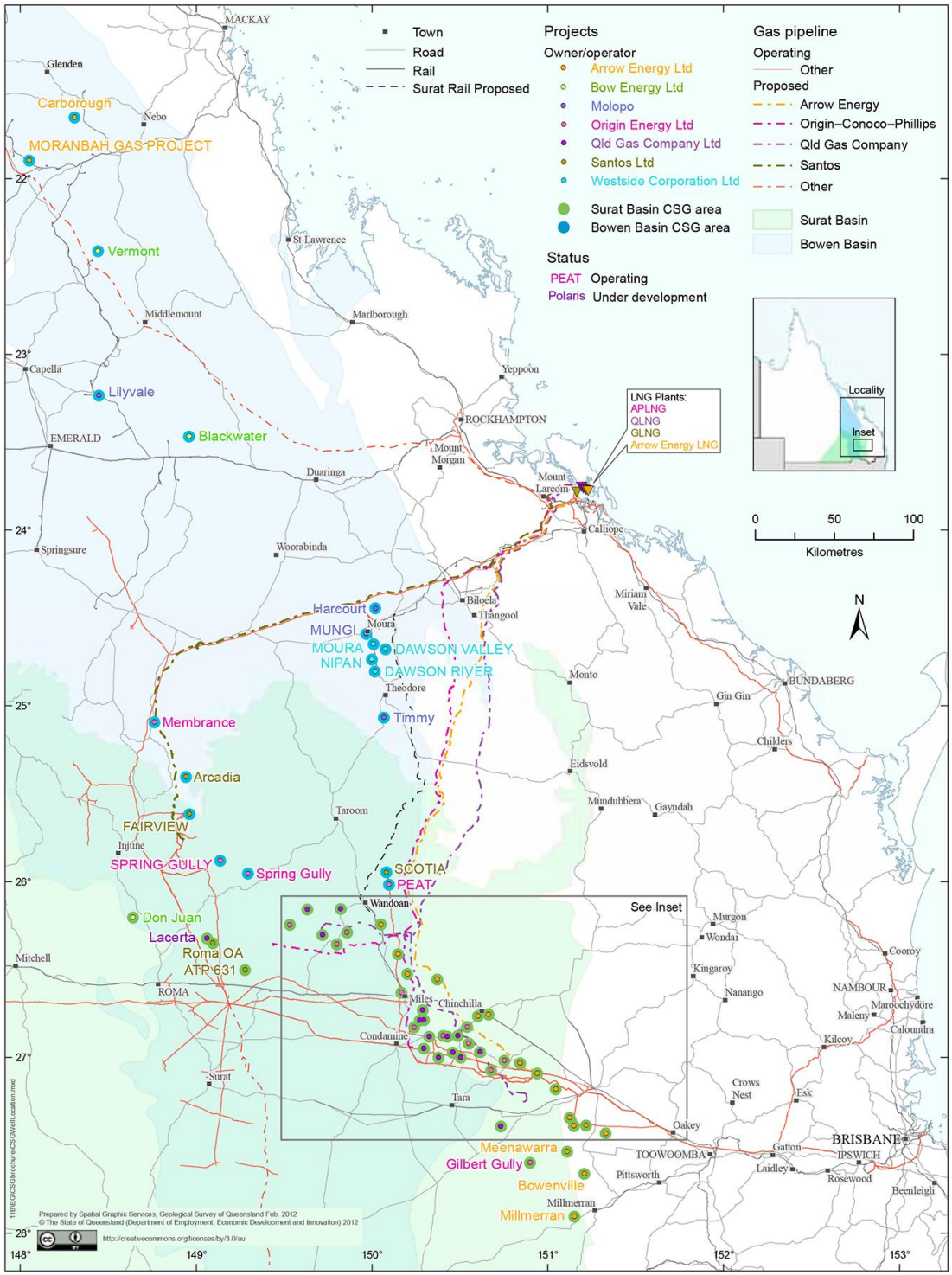
Source: GLNG, Application, Annexure 4

Appendix C Comet Ridge to Wallumbilla pipeline loop



Source: GLNG, Application, Annexure 5

Appendix D Southeast Queensland: gas projects and pipelines



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