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## **Northern Goldfields Interconnect**

Application for a 15-year no-coverage determination under section 151 of the National Gas Access (Western Australia) Law

NON-CONFIDENTIAL VERSION

23 June 2023

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# 1 Application

## 1.1 Application for no-coverage determination

APA Northern Goldfields Interconnect Pty Ltd (ABN: 33 646 298 142), an entity of the APA Group (herein referred to as **APA**), applies to the National Competition Council (**NCC**) under section 151 of the National Gas Access (Western Australia) Law (**NGAL**) for a no-coverage determination for a proposed pipeline known as the Northern Goldfields Interconnect (**NGI**) pipeline, as described in section 3 below.

## 1.2 Applicant's contact details

Applicant	Applicant's Legal Advisers
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## 2 Legal framework for the no-coverage application

The National Gas Law (**NGL**) and National Gas Rules (**NGR**) provide the legislative and regulatory framework for Australia's gas pipelines and markets. Western Australia adopted a modified version of the NGL and NGR under its *National Gas Access (WA) Act 2009* (WA) (referred to in this Application as **NGAL**). As a result, the NGL and NGR that apply in Western Australia are different to those which apply in the other participating jurisdictions.

Relevantly, amendments that are made to the NGL by the South Australian Parliament are not automatically adopted in Western Australia.<sup>1</sup> Instead, these amendments must be declared as 'relevant' by the Western Australian Minister for Energy (**WA Minister**) to apply in Western Australia or the Western Australian Governor may make consequential Regulations that amend the NGAL WA.<sup>2</sup>

### 2.1 Consideration of application for a no-coverage determination

Under the NGAL as it currently applies in Western Australia, a service provider who is proposing to undertake (but has not yet commissioned) a greenfields pipeline project may apply to the NCC for it to recommend to the relevant Minister that the pipeline be granted a 15 year no-coverage determination. Relevantly, a greenfields pipeline project is a project in which a new pipeline that is structurally separate from any existing pipeline, such as the NGL pipeline, is to be constructed.

In making a no-coverage recommendation, the NCC:<sup>3</sup>

- must give effect to the pipeline coverage criteria; and
- in deciding whether or not the pipeline coverage criteria are satisfied must have regard to the National Gas Objective (**NGO**).

In making a no-coverage determination, the Minister must similarly give effect to the coverage criteria, and in doing so must have regard to the NGO (as well as the NCC's recommendation and any relevant submissions or comments).<sup>4</sup>

If the Minister makes a no-coverage determination, the relevant pipeline cannot be determined to be a "covered pipeline" for 15 years after the pipeline is commissioned.<sup>5</sup> This provides the applicant with regulatory certainty for the duration of the no-coverage determination.

### 2.2 Giving effect to the coverage criteria

The pipeline coverage criteria are set out in s 15 of the NGAL, and are as follows:

- 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;*

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<sup>1</sup> NGAL, s 74.

<sup>2</sup> NGAL, ss 7A and 7B.

<sup>3</sup> NGAL, s 154.

<sup>4</sup> NGAL, s 157.

<sup>5</sup> NGAL, s 158.

- (b) *that it would be uneconomic for anyone to develop another pipeline to provide the pipeline services provided by means of the pipeline;*
- (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;*
- (d) *that access (or increased access) to the pipeline services provided by means of the pipeline would not be contrary to the public interest.*

The NCC gives effect to the pipeline coverage criteria as follows (emphasis added):<sup>6</sup>

- (a) *if the NCC is satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline the recommendation must be against making a 15-year no-coverage determination;*
- (b) *if the NCC is not satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline the recommendation must be in favour of making a 15-year no coverage determination.*

The same principles apply to the Minister's determination.<sup>7</sup>

As the NGAL makes clear, the NCC can only recommend against making a 15-year no coverage determination if it is positively satisfied that all of the coverage criteria are satisfied. If the NCC is not satisfied on at least one of the criteria, its recommendation must be in favour of making a no-coverage determination.

In reaching or not reaching that level of satisfaction, being an administrative decision, there is no onus of proof.<sup>8</sup> To be 'satisfied' of each of the coverage criteria requires 'an affirmative belief' in the decision-maker, being more than a chance.<sup>9</sup> This affirmative belief must be based on sufficient proof or information to be 'assured or convinced'.<sup>10</sup>

The High Court has made clear in relation to the similar declaration criteria in Part IIIA of the *Competition and Consumer Act 2010* (Cth) (**CCA**) that there is no 'residual discretion' available once each of the criteria has been properly assessed.<sup>11</sup> Similarly, under the NGAL, if the NCC cannot be positively satisfied that all of the coverage criteria are satisfied, there is no residual discretion to nonetheless recommend against making a 15-year no coverage determination. If the required level of satisfaction cannot be reached on all of the criteria, the recommendation must be in favour of a no-coverage determination.

## 2.3 National Gas Objective

The NGO is set out in section 23 of the NGAL:

*"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*

<sup>6</sup> NGAL, s 154.

<sup>7</sup> NGAL, s 157(2).

<sup>8</sup> *Evans v Secretary, Department of Families, Housing, Community Services and Indigenous Affairs* (2012) 289 ALR 237 at [18].

<sup>9</sup> *BOY19 v Minister for Immigration and Border Protection* [2019] FCA 574 at [55].

<sup>10</sup> *Fire Rescue Commissioner (Vic) v Building Appeals Board* [2021] VSC 217 at [43].

<sup>11</sup> *The Pilbara Infrastructure Pty Ltd v Australian Competition Tribunal* (2012) 246 CLR 379 (**Pilbara HCA**) at [115]-[119] and [192]-[193]. This approach was followed in the later Glencore / Port of Newcastle matter: *Application by Glencore Coal Pty Ltd* [2016] ACompT 6, at [55].

*of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.”*

The NGO requires the consideration and balancing of productive, allocative and dynamic efficiencies in the provision of pipeline services as well as upstream and downstream markets.<sup>12</sup> The NCC Gas Guide notes that the “need for a 'long term' perspective is included as a caution against focusing on short term benefits to consumers which may undermine longer term investment and welfare gains.”<sup>13</sup> The NCC must take into account the economic efficiency focus of the NGO when making a recommendation on a no-coverage application. However, this economic efficiency focus cannot overrule the plain meaning of the coverage criteria set out in section 15 of the NGAL.<sup>14</sup> The construction of the s 15 criteria that best achieves the statutory purpose outlined in the NGO is to be preferred.<sup>15</sup>

## 2.4 Application

This application provides relevant information regarding the NGI pipeline before addressing each of the Coverage Criteria. The Coverage Criteria are addressed having regard to the NGO and the guidance provided by the NCC in its October 2013 publication Gas Guide (**Gas Guide**).

APA submits that criteria (a), (b) and (d) are not satisfied, essentially for the following reasons:

- **Criterion (a) is not satisfied.** The NCC cannot reasonably be satisfied that there would be a material increase in competition in any dependent market arising from regulation of the NGI as a covered or scheme pipeline. In the absence of scheme pipeline regulation, there will be no ability or incentive for APA to exercise market power in a way that would be damaging to upstream or downstream competition. This is a consequence of both the commercial environment for development and operation of the NGI and the regulatory framework that will apply absent a coverage or scheme pipeline determination. The market for supply of energy fuels to industrial and mining customers in Western Australia will continue to be highly competitive, with or without regulation of the NGI as a scheme pipeline.
- **Criterion (b) is not satisfied.** There are both existing pipelines which partially duplicate the NGI, and third parties contemplating further duplicative infrastructure. In light of the existing and potential pipelines in the mid west and Goldfields region which are able to provide equivalent services as the NGI, the NCC cannot be satisfied that it would be uneconomic for anyone to develop another pipeline to provide the same services as the NGI.
- **Criterion (d) is not satisfied.** Given that regulation of the NGI as a covered or scheme pipeline would not deliver any material competition or other benefit, and given the costs of regulation, it would be contrary to the public interest.
- Even if the NCC considers that either of criteria (a) or (b) are satisfied, APA submits that access (and regulation of reference tariffs) would not be in the public interest as any benefit flowing from satisfaction of these criteria is far outweighed by the costs flowing from coverage of the NGI – including the very material costs associated with the effects of tariff regulation on incentives for efficient investment.

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<sup>12</sup> NCC Gas Guide (October 2013)[3.16] (**Gas Guide**).

<sup>13</sup> Gas Guide, [3.16].

<sup>14</sup> Gas Guide, [3.17]-[3.18].

<sup>15</sup> *Thiess v Collector of Customs* (2014) 250 CLR 664 at [23]; NGAL, cl 7(1) of Schedule 2.

The NCC's recommendation should therefore be in favour of making a 'no coverage' determination.



### 3 The Northern Goldfields Interconnect

#### 3.1 Background

The NGI is a new buried pipeline, approximately 580 kilometres long, commencing at Ambania, approximately 50 kilometres east of Geraldton, and connecting into the existing Goldfields Gas Pipeline (GGP), approximately 40 kilometres south of Leinster. The location of the NGI is shown at **Figure 1** below.

**Figure 1 Map of the proposed Northern Goldfields Interconnect and Western Australian pipeline network**



The NGI will include associated aboveground facilities located along the route of the pipeline, including:

- the Rosewick offtake (the connection point between the NGI and the DBNGP);
- the Ambania compressor station (near the start of the pipeline at Ambania (50km east of Geraldton), pressurising gas for transportation through the NGI pipeline to the GGP);
- the Yoweragabbie scraper station (13km south of Mount Magnet);

- mainline valve stations (Carlinda 12.5km west-south-west of Yalgoo and Dandaraga 5km south-east of Sandstone);
- the Wildara delivery station (controlling the flow and pressure of gas from the NGI pipeline to the GGP); and
- the Weebo Inlet station (the connection point between the buried NGI pipeline from the Wildara delivery station to the hot tap connection on the GGP),

with the potential to develop additional future compression at the Yoweragabbie Scraper Station. There are currently no laterals that form part of the NGI.

A more detailed map of the pipeline is set out in **Figure 2** below.

As at the date of this application the NGI has been substantially built but has not yet been fully commissioned.

### 3.2 Pipeline classification

The pipeline classification criterion in s 13(1) is:

*“whether the primary function of the pipeline is to—*

- (a) reticulate gas within a market (which is the primary function of a distribution pipeline); or*
- (b) convey gas to a market (which is the primary function of a transmission pipeline).”*

In determining the primary function of the NGI, the NCC must have regard to the factors in s 13(2) of the NGAL. With respect to these factors:

- The NGI has no current classification status under the NGAL or NGL: (s 13(2)(a)-(c)).<sup>16</sup>
- The external diameter (approximately 300mm), initial design capacity (76TJ/d) and maximum operating pressure of 15.3 MPa (s 13(2)(d)-(e)).
- The length of the NGI (approximately 580km) is consistent with other pipelines that are classified by the NCC as transmission pipelines.
- The NGI conveys gas from one point to another, in a single direction – being injected from a connection point in the Dampier-Bunbury Natural Gas Pipeline (DBNGP) - to the GGP, approximately 40km south of Leinster (s 13(2)(f)).
- The area to be serviced directly by the NGI is the route between the Ambania Compressor Station (near the Rosewick Offtake station) and the Wildara Delivery Station (see **Figure 2** below).

Given these features of the NGI, and in applying the pipeline classification criterion in s 13 of the NGAL, the NGI should be classified as a transmission pipeline. No part of the NGI is used for the reticulation of gas within a market. The primary function of the NGI is to convey gas to industrial customers located in the mid west and Goldfields regions.

<sup>16</sup> We note for the purpose of s 13(2)(c), the NGR does not specify any characteristics or classification of pipelines.

### 3.3 The NGI is not a cross-boundary pipeline

The NGI is situated wholly within Western Australia. It is therefore not a cross-boundary pipeline.<sup>17</sup>

### 3.4 The NGI is a greenfields pipeline project

A no-coverage determination is only available in relation to a 'greenfields pipeline project', meaning:<sup>18</sup>

*"a project for 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."<sup>19</sup>*

The NGI will be structurally separate from any other pipeline:

- the NGI will be licenced by a new Pipeline Licence issued under the *Petroleum Pipelines Act 1969* (WA) which does not cover any other pipeline;
- the NGI will be connected to the DBNGP by way of a hot tap connection, but will otherwise be structurally separate from the DBNGP;
- the NGI will be connected to the GGP by way of a hot tap connection, but will otherwise be structurally separate from the GGP;
- the NGI carries gas from Eradu, just east of Geraldton to Wildara, end points that are distinct from those of other pipelines, including the connected GGP which runs from gas fields in the Carnarvon Basin and the North West Shelf to the Goldfields-Esperance region – as noted by the NCC, where two pipelines carry gas to or from different locations this will support that there is structural separation between the two.<sup>20</sup>

It is therefore a 'greenfields pipeline project' within the meaning of s 149(a) of the NGAL, for the purposes of a no-coverage determination.

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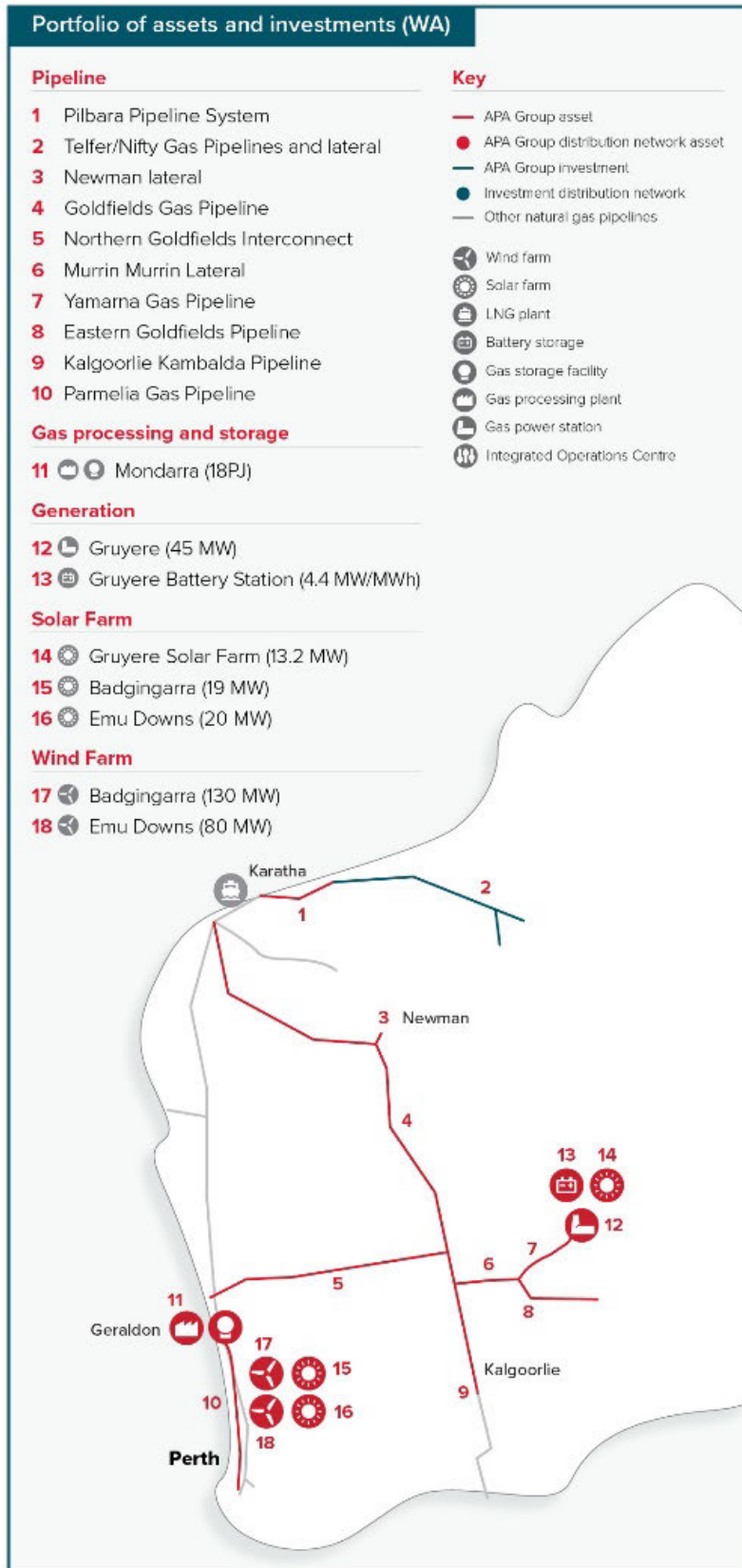
<sup>17</sup> The jurisdictional determination criteria under s 14 of the NGAL will not apply as the NGI is not proposed as a cross-border pipeline.

<sup>18</sup> NGAL, s 149.

<sup>19</sup> NGAL, s 149.

<sup>20</sup> NCC, *Comet Ridge to Wallumbilla Pipeline Loop – 15 year no-coverage determination: Final Recommendation* (28 April 2015) (Final CRWPL Recommendation) at [2.50]. Available [here](#).

**Figure 2 Northern Goldfields Interconnect and other APA assets and investments in WA**



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## 4 Western Australian Gas and LNG Industry

Markets for the supply of gas and other energy fuels in Western Australia are separate and distinct from those in other parts of Australia.

There are several features of the Western Australian gas and LNG industry that distinguish it from the east coast industry:

- *first*, demand for gas in Western Australia is dominated by industrial uses, particularly mining, mineral processing, electricity generation and other industrial uses;
- *secondly*, for many of these use cases, there are numerous alternatives to acquiring natural gas via pipeline infrastructure. Alternatives include trucked diesel, trucked LNG, connection to the SWIS (where applicable) and increasingly on-site or grid-connected renewable generation;
- *thirdly*, Western Australia is home to very large reserves of natural gas and a large number of producers – Western Australia accounts for more than half of Australia's gas reserves, but a fraction of total domestic demand;
- *finally*, domestic reservation policies are in place in Western Australia so that a portion of these reserves are made available to the domestic market.

Principally as a result of these features, the markets for the supply and transportation of energy fuels in Western Australia are highly competitive.

There are also features of energy fuel supply in the mid west and southern parts of Western Australia (where the NGI is located) which distinguish it from supply in northern parts of the state, including the Pilbara region. In particular, industrial customers in the mid west and southern parts of Western Australia tend to be smaller than those in the Pilbara and have different energy needs. Therefore, supply and transportation options for these customers may differ.

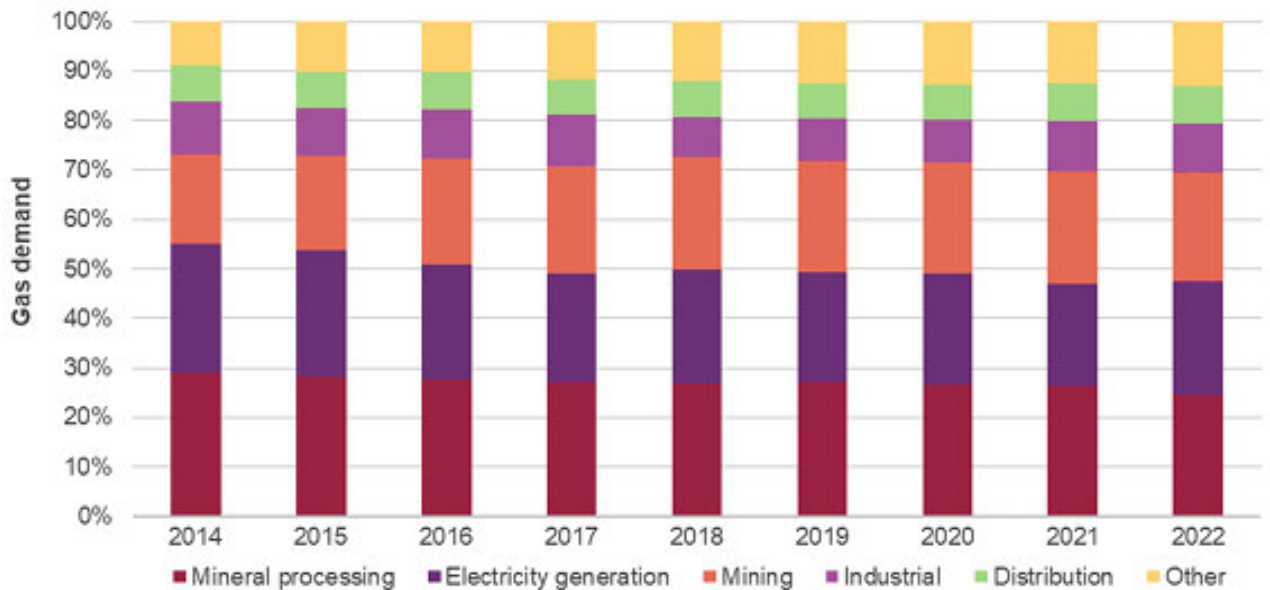
### 4.1 Demand for gas and LNG produced in Western Australia

#### (a) Domestic demand

Domestic demand for gas in Western Australia is made up of (see **Figure 3**):

- large customers using at least 10/TJ/day, accounting for 84% of WA's total domestic gas demand – these include minerals processing (29%), electricity generation (27%), mining (26%) and industrial (12%) customers;
- customers supplied through the retail distribution network account for only 7%, the majority of which will not be serviced by the NGI, instead via connection to the Parmelia Gas Pipeline or the DBNGP directly; and
- other uses accounting for the remainder (roughly 10%).

**Figure 3 Domestic gas demand by usage category, 2014 to 2022<sup>21</sup>**



Note: Annual average of gas demand for 2022 is based on data until 14 November 2022.

AEMO forecasts that gas demand in Western Australia will increase by approximately 16% by 2032 (see **Figure 4**). This is largely a result of:

- committed resource projects that are expected to add a net 43 TJ/day to gas demand by 2026, including four mining projects (gold, iron ore, lithium, nickel) and two lithium processing projects; and
- generation demand in the South West Interconnected System (**SWIS**),<sup>22</sup> which is forecast by AEMO to grow at an average annual rate of 10%. This is at least partly due to the monopoly electricity retailer in the SWIS, Synergy, announcing scheduled closure of all remaining coal-fired generators by 2029.<sup>23</sup>

Increased demand from the closure of coal-fired generators is not expected to be met with sufficient increased renewable generation, leaving a significant gap to be filled by gas-fired generation connected to the SWIS.<sup>24</sup>

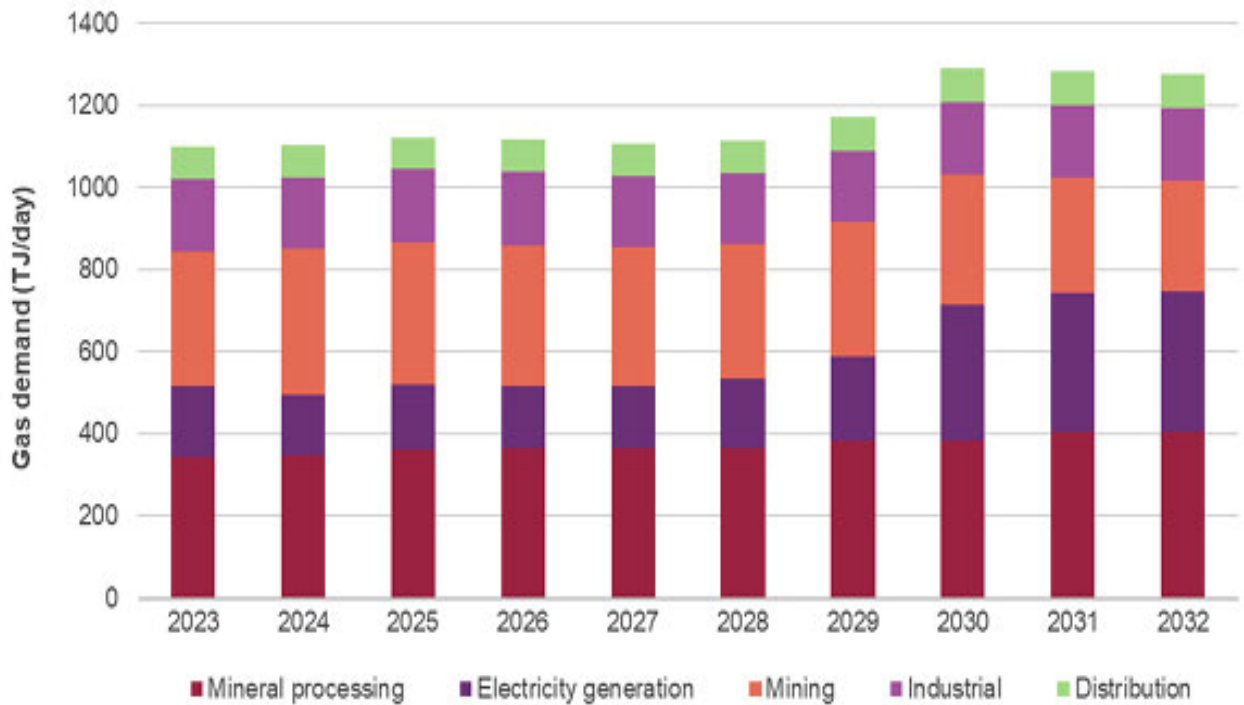
<sup>21</sup> Australian Energy Market Operator (**AEMO**), *2022 Western Australia Gas Statement of Opportunities* (December 2022) (AEMO 2022 WAGSO) at p 25. Available [here](#).

<sup>22</sup> SWIS is the electricity transmission and distribution network in the south-western region of WA extending from Albany in the south, to Kalbarri in the north and to Kalgoorlie in the east.

<sup>23</sup> AEMO 2022 WAGSO at pp 6-7. Available [here](#).

<sup>24</sup> Ibid at p 7. Available [here](#).

Figure 4 Domestic gas forecasts by usage category, 2023 to 2032<sup>25</sup>



There are a number of policies in place to ensure gas produced in WA is directed to securing domestic supply. In particular:

- The Domestic Gas Reservation Policy was introduced by the WA government in October 2006 to make gas equivalent to 15% of exports available for domestic consumption.<sup>26</sup> The Policy is given effect through domestic gas agreements negotiated by the WA government with LNG project developers – there are currently 8 domestic gas agreements with producers on foot.<sup>27</sup> Gas supplied under these arrangements accounts for approximately 54% of WA’s gas supply in 2023.<sup>28</sup>
- The Australian Domestic Gas Security Mechanism (**ADGSM**) was introduced by the Federal Government in July 2017 to require domestic gas exporters to make uncontracted gas volumes available to domestic customers on reasonable market terms competitive with those offered to international customers.<sup>29</sup> This mechanism also confers power on the Minister for Resources to compel gas exporters to redirect supply to the domestic market in the event of a shortage.<sup>30</sup>

<sup>25</sup> Ibid at p 28. Available [here](#).

<sup>26</sup> Economic Regulation Authority Western Australia (**ERA**), *Inquiry into Microeconomic Reform in Western Australia, Domestic Gas Reservation Policy* (July 2014). Available [here](#).

<sup>27</sup> Government of Western Australia, *Implementation of the WA Domestic Gas Policy* (Updated 22 May 2023). Available [here](#).

<sup>28</sup> AEMO 2022 WAGSO at p 4. Available [here](#).

<sup>29</sup> Australian Government, Department of Industry, Sciences and Resources, *Domestic gas supply*. Available [here](#).

<sup>30</sup> Australian Government, Department of Industry, Science and Resources, *Securing Australian domestic gas supply*. Available [here](#).



(b) *Global demand for LNG*

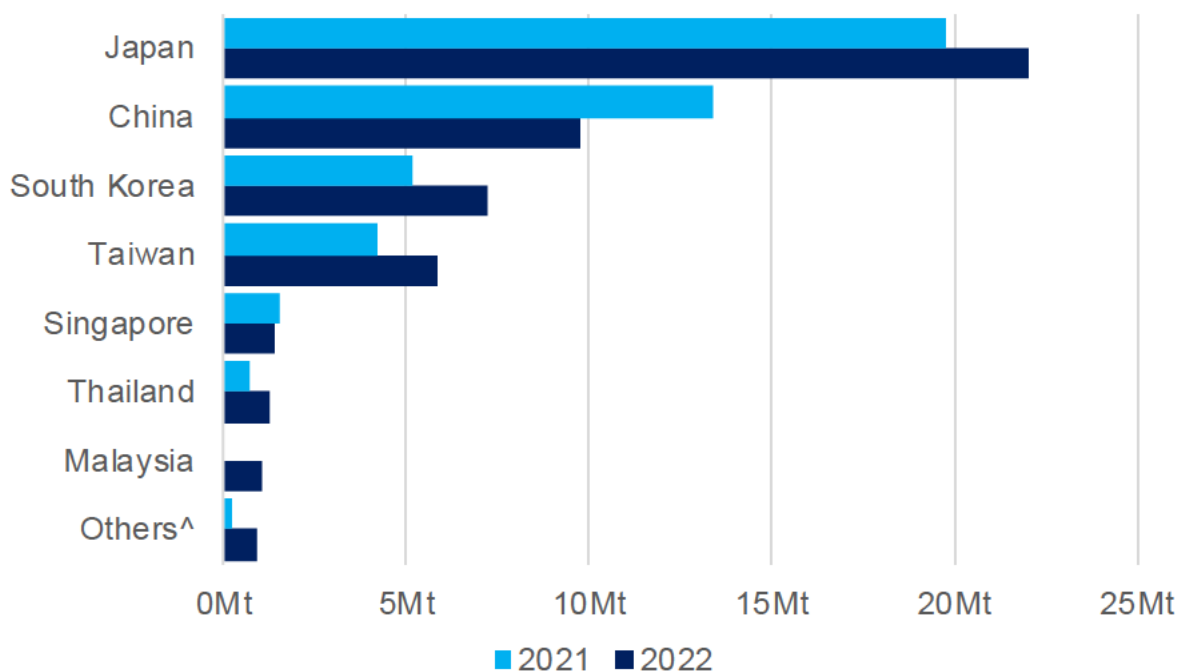
LNG is currently produced from a combination of onshore and offshore projects in WA: the North West Shelf (16.9 mtpa), Pluto (4.9 mtpa), Gorgon (15.6 mtpa), Wheatstone (8.9 mtpa) and Prelude (3.6 mtpa) projects.<sup>31</sup>

Further, the Waitsia joint venture has been granted a partial exemption to export 416 PJ of LNG via the North West Shelf LNG facilities and is the only project to have been granted an exemption from domestic market obligations.<sup>32</sup> This project marks the first time that onshore gas from WA is being exported as LNG and the first time gas that has been supplied at the southern end of the DBNGP but consumed in the north for export from the North West Shelf LNG Facility.<sup>33</sup>

Since 2020, Australia has been the world's largest exporter of LNG with over half of its LNG volumes sourced from reserves in WA.<sup>34</sup> The large majority of LNG produced in WA is sold into the Asia-Pacific region under long-term gas supply agreements, with some volumes sold through the LNG spot market.

Further information relating to WA's LNG export facilities is set out at **Annexure A**.

**Figure 5 Western Australia's LNG production by market (CY21-22)**<sup>35</sup>



Mt = Million tonnes. ^ 2021 includes India, 2022 includes India, Indonesia, Kuwait, Netherlands.

<sup>31</sup> AEMO 2022 WAGSO at p 79. Available [here](#).

<sup>32</sup> Ibid at p 80; Government of Western Australia, *Revised policy to secure domestic gas supply and create jobs* (17 August 2020). Available [here](#).

<sup>33</sup> Government of Western Australia, *WA Government reaches agreement on job creating domestic gas project* (24 December 2020). Available [here](#).

<sup>34</sup> Government of Western Australia, Department of Mines, Industry Regulation and Safety, *Western Australian Mineral and Petroleum Statistics Digest 2021-22*. Available [here](#).

<sup>35</sup> Government of Western Australia, Department of Jobs, Tourism, Science and Innovation, *Western Australia LNG Profile – May 2023*. Available [here](#).



## 4.2 Producers of gas and LNG in Western Australia

Demand for gas in Western Australia is met by a combination of domestic and LNG-linked facilities. As at November 2022, Western Australia had over 60,000PJ of proved and provable (2P) reserves of conventional gas reserves (see **Table 1**).

**Table 1 Western Australia’s natural gas reserves and resources as at August 2022<sup>36</sup>**

Basin	Facilities	Producers <sup>37</sup>	Reserves (2P) (PJ)	Contingent resources (2C) (PJ)
<b>Carnarvon</b>	<ul style="list-style-type: none"> <li>• Varanus Island</li> <li>• Macedon</li> <li>• Devil Creek</li> <li>• Pluto</li> <li>• Gorgon</li> <li>• Wheatstone</li> </ul>	<ul style="list-style-type: none"> <li>• Australian Oil Company No 3 Pty Limited (Southern Carnarvon Basin)</li> <li>• Bounty Oil &amp; Gas NL (Southern Carnarvon Basin)</li> <li>• Rough Range Pil Pty Ltd (Southern Carnarvon Basin)</li> <li>• Chevron Australia Pty Ltd (Northern Carnarvon Basin)</li> <li>• Mobil Australia Resources Company Pty Limited (Northern Carnarvon Basin)</li> <li>• Santos Offshore Pty Ltd (Northern Carnarvon Basin)</li> <li>• Santos WA Northwest Pty Ltd (Northern Carnarvon Basin)</li> <li>• AGI Tubridgi Pty Limited (Northern Carnarvon Basin)</li> <li>• Kato Energy (WA) Pty Ltd (Northern Carnarvon Basin)</li> <li>• Santos (BoI) Pty Ltd (Northern Carnarvon Basin)</li> <li>• Santos WA Southwest Pty Limited (Northern Carnarvon Basin)</li> <li>• Tanami Energy Pty Ltd (Northern Carnarvon Basin)</li> </ul>	51,242	27,542
<b>Perth</b>	<ul style="list-style-type: none"> <li>• Karratha</li> <li>• Beharra Springs</li> <li>• Xyris</li> </ul>	<ul style="list-style-type: none"> <li>• Strike South West Pty Ltd</li> <li>• Talon (Aust) Pty Ltd</li> <li>• Energy Resources Limited</li> <li>• AWE (Beharra Springs) Pty Ltd</li> </ul>	1,570	857

<sup>36</sup> Government of Western Australia, Department of Jobs, Tourism, Science and Innovation, *Western Australia LNG Profile – November 2022*. Available [here](#).

<sup>37</sup> This column reflects the registered holders of production licences in Western Australia according to the Government of Western Australia, Department of Mines, Industry Regulation and Safety’s portal. Available [here](#).

Basin	Facilities	Producers <sup>37</sup>	Reserves (2P) (PJ)	Contingent resources (2C) (PJ)
		<ul style="list-style-type: none"> <li>• Beach Energy (Perth Basin) Pty Limited</li> <li>• PBE Operations Pty Ltd</li> <li>• AWE Perth Pty Ltd</li> <li>• Key Petroleum (Australia) Pty Ltd</li> <li>• Triangle Energy Onshore Pty Ltd</li> </ul>		
<b>Browse</b>	• Prelude (floating LNG vessel)	• Shell Australia Pty Ltd	15,701	19,943

#### 4.3 Transmission infrastructure

Pipeline transmission represents one option for transportation of energy fuels from supply sources to industrial customer sites in WA.

Transmission infrastructure comprises a number of pipelines and interconnectors, as set out in **Table 2**.

**Table 2 Transmission infrastructure in Western Australia**

Pipeline	Description	Maximum capacity	Total contracted capacity	Surplus capacity
Mid West Pipeline (MWP) (non-scheme)	Transports gas from the DBNGP to power generation for mining and minerals processing at Windimurra, and for supply to Mt Magnet.	10.6 TJ/d	CONFIDENTIAL	██████
Goldfields Gas Pipeline (GGP) (some parts are scheme; some parts are non-scheme)	Transports gas from the Carnarvon basin to commercial and industrial users in the Goldfields-Esperance region.	202.5 TJ/d	CONFIDENTIAL	██████
Dampier to Bunbury Natural Gas Pipeline (DBNGP) (scheme, full)	Transports gas from the North West Shelf gas fields near Dampier to customers in the south-west of WA.	845 TJ/d	Unknown	Unknown
Wheatstone Ashburton West Pipeline (non-scheme)	Transports gas from the Wheatstone Gas Plant to DBNGP.	337 TJ/d	Unknown	Unknown

Pipeline	Description	Maximum capacity	Total contracted capacity	Surplus capacity
Pilbara Energy Pipeline (non-scheme)	Transports gas from the Burrup Extension Pipeline, along the Pilbara Coast to Port Hedland, where it interconnects, at the end of the mainline, at Port Hedland, with the Telfer Gas Pipeline. <sup>38</sup>	166 TJ/d	CONFIDENTIAL	██████
Parmelia Gas Pipeline (PGP) (non-scheme)	Transports gas from the Perth Basin, DBGNP and APA's Mondarra storage facility to ATCO's gas distribution network in Perth.	68 TJ/d	CONFIDENTIAL	██████
Fortescue River Gas Pipeline (non-scheme)	Connects the DBGNP to TransAlta's power station situated at Fortescue Metals Group Limited's Solomon Hub iron ore operations.	64 TJ/d	Unknown	Unknown
Telfer Gas Pipeline (non-scheme)	Connects to the Pilbara Pipeline System, delivering gas to the Telfer gold-copper mine and Nifty Copper Mines (via the Nifty Gas Lateral).	29 TJ/d	CONFIDENTIAL	██████

#### 4.4 Trucked LNG infrastructure

Mining and industrial customers in WA are also able to take delivery of gas (in LNG form) and other energy fuels (such as diesel) by truck. Trucking tends to be a particularly close substitute for pipeline transport for smaller industrial customers, such as those in southern parts of Western Australia. These smaller customers can (and do) use trucked LNG or diesel as a compliment to on-site renewable generation.

A number of suppliers have developed truck loading infrastructure adjacent to LNG export terminals or pipelines that have a typical delivery radius of 1000-1200km from the facility. These include:

- **EVOL LNG**

EVOL LNG, a WA-based company owned by Kleanheat and Wesfarmers Chemicals, Energy & Fertilisers, offers 'virtual pipeline' services to power generation and industrial customers in WA. EVOL LNG transports gas received from the North West Shelf via the DBNGP at Kleanheat's LNG plant in Kwinana where the LNG is loaded into LNG road tankers for distribution. These road tankers transport LNG up to 1,200 km from Kwinana to dedicated LNG storage facilities at customer sites maintained by EVOL LNG. These storage facilities are typically sized to store 5-7 days' inventory and re-gasify LNG for use at the customer's site.

<sup>38</sup> APA, pilbara pipeline system. Available [here](#).

EVOL LNG’s customers in the Goldfields-Esperance region typically utilise trucked LNG as a fuel supply solution together with another source such as diesel or renewables.

**Figure 6 EVOL LNG customers in the Goldfields-Esperance Region<sup>39</sup>**



**Table 3 EVOL LNG customers in the Goldfields-Esperance Region**

Customer	Site	Installed generating capacity	Fuel Supply	EVOL LNG storage capacity	Distance from Kwinana
Northern Star Resources <sup>40</sup>	Carosue Dam (north-east of Kalgoorlie)	26 MWe	Dual Fuel Diesel/LNG	2 x 368 kL LNG storage vessel	750 km
Silver Lake Resources <sup>41</sup>	Daisy Milano Gold Mine (south-east of Kalgoorlie)	8 MWe	LNG and Diesel	2 x 200 kL LNG storage vessels	650 km

<sup>39</sup> EVOL LNG, *Our Sites*. Available [here](#).

<sup>40</sup> EVOL LNG, *Carosue Dam Operations: Northern Star Resources*. Available [here](#).

<sup>41</sup> EVOL LNG, *Daisy Milano Gold Mine: Silver Lake Resources*. Available [here](#).



Customer	Site	Installed generating capacity	Fuel Supply	EVOL LNG storage capacity	Distance from Kwinana
Gascoyne Resources <sup>42</sup>	Dalgaranga Gold Project (west of Mount Magnet)	15 MWe	LNG	3 x 350 kL LNG storage vessels	680 km
Red 5 <sup>43</sup>	Darlot Gold Mine	12 MWe	Dedicated LNG with Diesel back-up	2 x 200 kL LNG storage vessels	911 km
Ora Banda Mining <sup>44</sup>	Davyhurst Gold Mine (north-west of Kalgoorlie)	7.5 MWe	LNG and Diesel	1 x 368 kL LNG storage vessel	716 km
Aurrene Mt Ida Pty Ltd	Mt Ida Gold Mine (under construction)	12 MWe	LNG	4 x 90 kL LNG storage vessels, 1 x 368 kL storage vessel	871 km
Horizon Power <sup>45</sup>	Esperance Power Station	22 MWe	LNG and renewables (battery, wind and solar)	4 x 368 kL LNG storage vessels	691 km

- **CEFA**

CEFA is a WA-based company has developed an LNG hub in Mount Magnet (**Mid-West LNG Hub**) to service remote mining and industrial customers in Western Australia. CEFA's Mid-West LNG Hub is connected to the MWP and receives gas via the DBNGP under a 5-year gas supply agreement with the Waitsia Joint Venture parties for delivery to customers in the mid west region within a 1000km radius.<sup>46</sup> CEFA estimates that over 25 years of operation, its Mid-West LNG Hub could displace around 3 billion litres of imported diesel with domestic natural gas.<sup>47</sup>

CEFA's customers in WA include:

- WA Kaolin's Wickepin Project, 600km south of Mount Magnet in respect of which CEFA has signed a 15 year LNG Supply Agreement;<sup>48</sup>
- Westgold Resources' gold mines in Meekatharra, Cue and Fortnum north of Mount Magnet, where four gas-fired power stations supplied by CEFA will replace six diesel-fired power stations and be incorporated with solar power and battery storage solutions.<sup>49</sup>

<sup>42</sup> EVOL LNG, *Dalgaranga Gold Project: Gascoyne Resources*. Available [here](#).

<sup>43</sup> EVOL LNG, *Darlot Gold Mine: Red 5*. Available [here](#).

<sup>44</sup> EVOL LNG, *Davyhurst Gold Mine: Ore Banda Mining Ltd*. Available [here](#).

<sup>45</sup> EVOL LNG, *LNG for power generation*. Available [here](#).

<sup>46</sup> CEFA, *CEFA signs 5-year contract with Beach Energy and Mitsui E&P Australia* (July 2021). Available [here](#).

<sup>47</sup> CEFA, *Plans for Mid-West LNG Hub at Mount Magnet to boost industry and remote communities* (September 2020). Available [here](#).

<sup>48</sup> CEFA, *CEFA Signs 15-year contract with WA Kaolin* (May 2021). Available [here](#).

<sup>49</sup> Australian Mining, *New power agreements ensure greener shade of gold* (11 July 2022). Available [here](#).

- **Woodside and EDL**

Woodside and EDL supply LNG from its truck loading facility near Karratha from the Pluto LNG export terminal. Woodside estimates this facility can load up to 20,000 tonnes of LNG per year, displacing up to 300 million litres of diesel.<sup>50</sup> The facility has a delivery radius of approximately 1200 km.

Customers include:

- Sheffield Resources' Thunderbird mineral sands project in the Dampier Peninsula, under a 5-year agreement for approximately 650 TJ per annum delivered to the KMS LNG storage facility for power generation by KMS;<sup>51</sup>
- Strandline's Coburn mineral sands project 240km north of Geraldton, under a 10-year agreement;<sup>52</sup>
- Abra Mining's Abra Base Metals' project 200km north of Meekatharra, under a 5-year agreement;<sup>53</sup>
- Calidus Resources' Warrawoona Gold project near Port Hedland, under a 7-year agreement.<sup>54</sup>

Recent changes to the Gas Services Information Rules which governs the WA Gas Bulletin Board require gas production facility operators trucking LNG direct to a customer to report volume data to AEMO on a monthly basis.<sup>55</sup> AEMO commenced publication of trucked LNG information on the WA Gas Bulletin Board in January 2023, however, we note these volumes likely understate the volume of LNG transported to customers by truck as the rule applies only to gas production facility operators such as Woodside at Pluto and not 'virtual pipeline' providers such as EVOL LNG and CEFA.

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<sup>50</sup> LNG Prime, *Woodside, EDL ink two Pluto LNG trucking deals* (16 July 2021). Available [here](#).

<sup>51</sup> LNG Prime, *Woodside, EDL pen another Pluto LNG trucking deal* (26 September 2022). Available [here](#).

<sup>52</sup> LNG Prime, *Woodside, EDL ink two Pluto LNG trucking deals* (16 July 2021). Available [here](#).

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Government of Western Australia, *Decision on trucked LNG information on the Gas Bulletin Board* (17 August 2022). Available [here](#).

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## 5 Criterion (a) – Promotion of Competition

The NCC must recommend that a no-coverage determination be made if it is not satisfied:

*...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.*

In the Gas Guide, the NCC describes the purpose of criterion (a) in relation to coverage as follows:

*The purpose of criterion (a) is to limit coverage to circumstances where it is likely to materially enhance the environment for competition in at least one dependent market. Whether competition will be materially enhanced depends critically on the extent to which the incumbent service provider can and is likely, in the absence of coverage, to use market power to adversely affect competition in a dependent market(s). If the service provider has market power, as well as the ability and incentive to use that power to adversely affect competition in a dependent market, coverage would be likely to improve the environment for competition, offering the prospect of tangible benefits to consumers (including reduced prices and better service provision).<sup>56</sup>*

The Gas Guide then sets out the steps that the NCC will use to consider criterion (a) as follows:

- identification of the relevant dependent (upstream or downstream) markets;
- consideration of whether the identified market(s) is separate from the market for the pipeline service; and
- assessment of whether access (or increased access) would be likely to promote a materially more competitive environment in the dependent markets by considering whether the service provider has an ability and incentive to exercise market power in those dependent market(s).

The NCC notes that, in assessing whether criterion (a) is satisfied, it will assess whether access (or increased access) on reasonable terms and conditions would be likely to promote a materially more competitive environment in a relevant dependent market.<sup>57</sup>

### 5.1 The Gas Guide approach remains the correct approach under the NGAL

The NCC's Gas Guide explains that the relevant counterfactual for the assessment of any competition effects is access to the pipeline on (unregulated) commercial terms:<sup>58</sup>

*The phrase 'access (or increased access) to pipeline services' refers to the right to access pipeline services consequent upon coverage under the NGL. That is, it refers to a regulated right to access pipeline services under the NGL rather than access that may be available under individual commercial arrangements.*

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<sup>56</sup> Gas Guide, [3.23].

<sup>57</sup> Gas Guide, [3.24].

<sup>58</sup> Gas Guide, [3.38].

In other words, the relevant comparison is between *regulated* access to the pipeline and *unregulated* access. Criterion (a) will only be satisfied if the conditions for competition would be materially improved in the scenario with regulated access.

APA notes that, since the Gas Guide was published, criterion (a) in Part IIIA of the CCA has been considered in the context of Glencore's application for declaration of services at the Port of Newcastle. In that matter, the Full Federal Court considered that the relevant counterfactual for the criterion (a) assessment was a scenario without any access to the relevant facility (as opposed to a scenario with access on unregulated terms). The Court considered that, under criterion (a) in Part IIIA (as it was at that time<sup>59</sup>):

*The decision-maker is required to make a prediction or forecast of the conditions or environment for improving competition in a dependent market with access or increased access on the one hand, and without access or increased access on the other.*<sup>60</sup>

On appeal, the High Court confirmed that the relevant comparison for the purpose of criterion (a) in Part IIIA was “*comparing the extent of future competition in an upstream or downstream market if there was access with the same if there was no access*”.<sup>61</sup>

Notwithstanding the findings of the Full Federal Court and High Court in *Port of Newcastle*, APA considers that the Gas Guide approach to criterion (a) in the NGAL remains the correct approach *in the context of the NGAL access regime*.

The statutory context in which the coverage criteria are applied under the NGAL is materially different to the statutory context of declaration decisions under Part IIIA. Under the NGAL, if there is no coverage determination applying to a pipeline, there will still be a right for third parties to seek access to the pipeline and obligations on the service provider not to prevent or hinder access by any third party to pipeline services.<sup>62</sup> Moreover various mechanisms designed to ensure access on reasonable terms will still apply, including information disclosure obligations<sup>63</sup> and a right to arbitration of any access disputes<sup>64</sup>. Access remains otherwise achievable. This is in contrast with Part IIIA, where a decision not to declare a service entails that there is no right of access for third parties and no ability to access any of the regulatory protections available to users of declared services under Part IIIA. Access is typically not otherwise achievable.

Under the NGAL, a scenario in which there is *no access* to the pipeline is an entirely unrealistic counterfactual. This situation cannot arise given the regulatory framework for non-scheme pipelines under the NGAL.

In short:

- under Part IIIA, the relevant counterfactual to declaration is a world in which third parties may have no ability to access the facility at all; whereas
- under the NGAL, the relevant counterfactual is a world in which there are still mechanisms in place to ensure access on reasonable terms, but no *ex ante* approval of reference tariffs and other terms of access.

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<sup>59</sup> Criterion (a) in Part IIIA was subsequently amended following the Harper Review. However the NGAL criteria were not similarly amended.

<sup>60</sup> *Port of Newcastle Operations Pty Ltd v Australian Competition Tribunal* [2017] FCAFC 124 at [86].

<sup>61</sup> *Port of Newcastle Operations Pty Limited v Glencore Coal Assets Australia Pty Ltd & Ors* [2021] HCA 39 at [24].

<sup>62</sup> NGAL, s 133.

<sup>63</sup> NGR, Part 23.

<sup>64</sup> NGAL, Chapter 6A.



Accordingly, APA submits that the proper construction of “access” in criterion (a) refers to a regulated right to access pipeline services under the NGAL. Accordingly, the relevant comparison in assessing “access” is between regulated access to the pipeline and unregulated access. Criterion (a) will only be satisfied if the conditions for competition would be materially improved in the scenario with regulated access.

Following this approach, the NCC cannot reasonably be satisfied that criterion (a) would be satisfied, for reasons discussed below.

However, even if the alternative approach is adopted, whereby the relevant counterfactual is no access to the pipeline (which APA submits would not be the correct approach), the NCC still could not be satisfied that access to the NGI would promote a material increase in competition in any relevant dependent market.

## **5.2 The market in which the pipeline services will be provided**

NGI pipeline services will be provided in a market which includes various options for transportation of energy fuels to mining, mineral processing and other industrial customers in the mid west and Goldfields region of Western Australia.

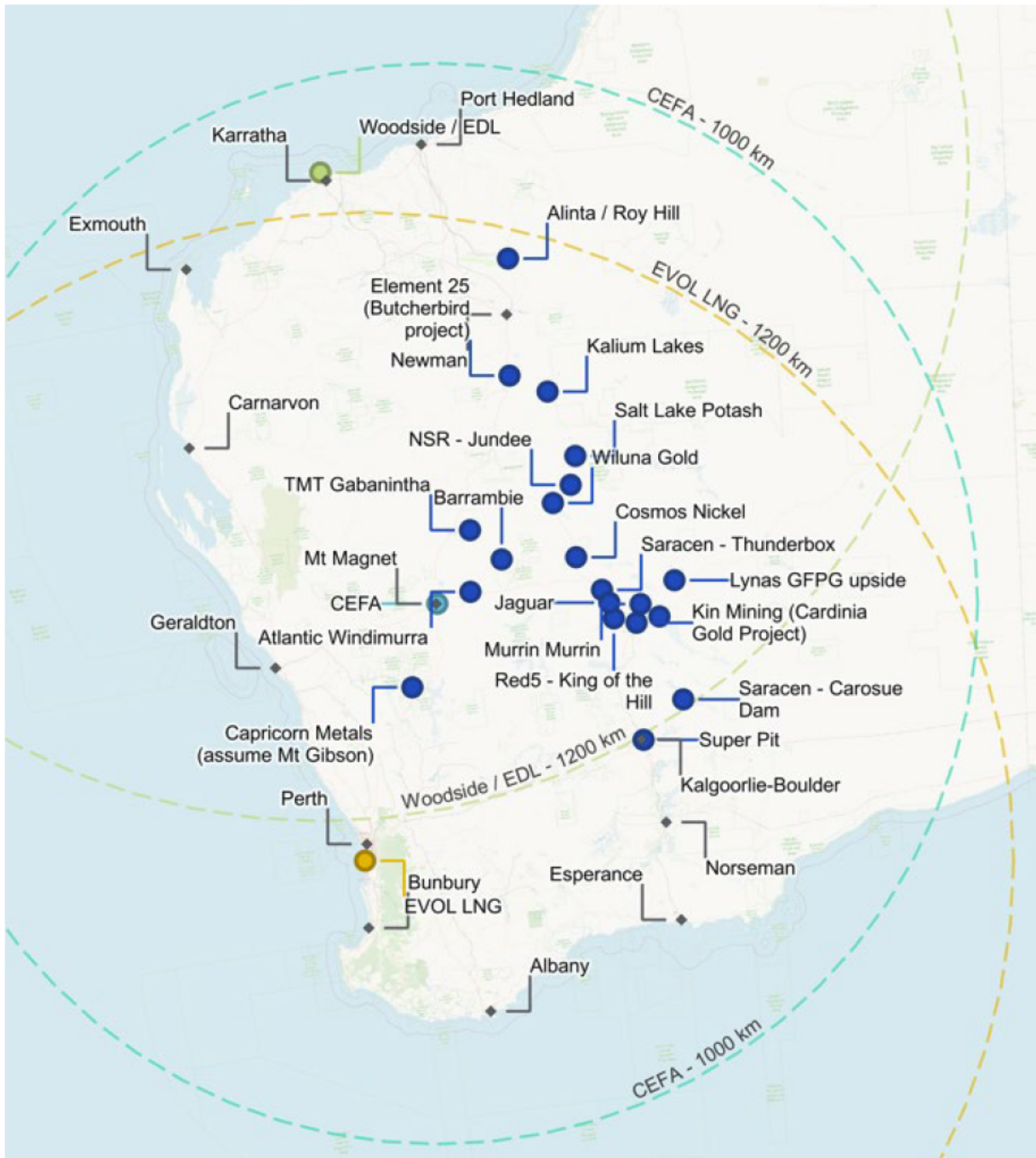
Customers for NGI pipeline services have a range of options for transportation of energy fuels to their facilities. These include:

- transportation of gas from Western Australia’s vast gas reserves via several possible pipeline routes;
- trucking of LNG from domestic LNG production facilities; and
- trucking of diesel, to use either as a stand-alone power source or to supplement on-site renewable generation.

APA understands that most, if not all, prospective customers on the NGI would at least have the option of trucked LNG and/or diesel. Prospective customers in the Goldfields-Esperance fall within the 1000 km delivery radii of EVOL LNG’s Kwinana plant and CEFA’s Mid-West LNG Hub as well as within the southern edge of the 1200km delivery radius of Woodside and EDL’s Pluto truck loading facility.

Further, customers within this region have relatively low demand and rely on a combination of renewables and other fuels for generation (see EVOL LNG customers above at 4.4). For these customers, investment in renewables with trucked LNG or diesel delivered to on-site storage to meet firming needs is a commercially viable substitute to gas delivered by pipeline.

Figure 7: Geographic range of trucked LNG facilities<sup>65</sup>



Some prospective customers of the NGI have in the interim taken up trucked LNG and diesel solutions:

- **CONFIDENTIAL**

<sup>65</sup> This map represents APA's understanding of the delivery radius of trucked LNG providers based on publicly available information as summarised in section 4.4 above as well as the location of potential customers within these radii.

- **CONFIDENTIAL**

- **CONFIDENTIAL**

Moreover, customers can, and frequently do, switch between these supply options.

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APA is acutely aware of these options being available to prospective customers. APA's investment and commercial decisions (including decisions around pricing of gas transportation services) take into account the risk of substitution to these competitive alternatives.<sup>66</sup>

While it is not necessary to define the precise boundaries of the market in which the NGI services will be provided, APA considers that this market at least includes services for transportation of energy fuels to mining, mineral processing and other industrial customers in the mid west and Goldfields region of Western Australia – including trucking of fuels such as diesel and LNG directly to customer sites.

### 5.3 Dependent market

For the purposes of this application, APA has identified only one market where there may be some potential for regulation of the NGI to affect the conditions for competition. This is the market for **supply of energy fuels (including natural gas) to industrial customers in the mid west and Goldfields regions of Western Australia.**

#### (a) Product scope

This market would include at least the upstream production of natural gas and sale of gas to domestic wholesale customers in the mid west and Goldfields regions. Suppliers in this market would at least include any gas producers in the Perth and Carnarvon basins which are within the scope of feasible interconnection with the NGI (including by way of connecting pipelines such as the GGP and DBNGP).

This market would also include suppliers of alternative fuels for power generation at mining, mineral processing and other industrial sites – including suppliers of diesel and domestic LNG. Customers would include large industrial customers which are within the scope of feasible interconnection with the NGI and connected pipelines.

The ACCC has previously noted that there is a degree of substitution between gas and other fuels (including diesel) for power generation in Western Australia.<sup>67</sup> In particular, remote resource developments in Western Australia will, in most cases, have a choice of diesel, or if physically available, gas, for energy generation at the mining sites. These

<sup>66</sup> For example: APA, *Presentation to the Mid-West Economic Summit, Geraldton* (February 2021) at p 7.

<sup>67</sup> ACCC, *Final Determination: The North West Shelf Project – Authorisations – A91220 – A91223* (8 September 2010). Available [here](#).

mining sites often have their own energy generation units due to a requirement for relatively large electricity loads associated with the extraction and processing of minerals.

For reasons discussed above, APA considers that the potential for substitution is now much greater than previously identified by the ACCC, such that these alternative fuel options should now be considered to be in the same market as natural gas. In particular, since the ACCC's consideration, domestic LNG production and trucking facilities have significantly expanded and now represent a close substitute for piped natural gas, at least for the type of customers who may potentially use the NGI.

(b) Geographic scope

For the purposes of this Application, APA considers that it not necessary to precisely define the geographic boundaries of the dependent energy fuel supply market.

Rather, the Application tests for any potential effect on competition in the dependent market on its narrowest possible geographic definition – that is, defining this market narrowly by reference to the location of customers expected to use the NGI (i.e. the mid west and Goldfields regions).

It may be that the dependent market is in fact geographically broader than this. However, criterion (a) is not satisfied on the narrow geographic market definition, it is not necessary to also test potentially broader definitions. The NCC has previously observed that if access would not materially increase competition in a narrowly defined market, then it would not do so in a more broadly defined market.<sup>68</sup>

As demonstrated below, there is no likely promotion of competition even on this narrow definition of the wholesale market.

(c) Global LNG and retail markets

Though the NCC has considered the downstream global LNG market as a dependent market in the context of previous 'no coverage determinations', we do not consider this market to be relevant to this application. The NGI does not flow towards any LNG export facility.

We also do not consider there to be any relevant potential impact on competition in the regulated retail market for supply of gas to small customers in the Kalgoorlie-Boulder region. It is not currently anticipated that the NGI would be used to supply this retail market.

**5.4 Is the dependent market separate from the market in which the pipeline services will be provided?**

APA submits that the production of gas, the sale of gas to downstream domestic customers, the transportation of gas through transmission or distribution pipelines, LNG production and the sale of LNG gas are all functionally separate activities. While the "markets" in which these activities occur are dependent, they are economically separate and distinct. In particular, the production of gas and the sale of gas either to downstream domestic customers or as LNG are economically separate and distinct from the market for pipeline services.

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<sup>68</sup> QCLNG Recommendation at [6.17]; APLNG Recommendation at [6.11].

The NCC acknowledged this in the Final QCLNG Recommendation, the Final APLNG Recommendation and the Final GLNG Recommendation.<sup>69</sup> Accordingly, the market in which the pipeline services will be provided is separate from the dependent markets identified above.

## 5.5 No material enhancement of competition in any dependent market

As discussed above, the relevant question under criterion (a) is whether access to the NGI as a covered or scheme pipeline would promote a material increase in competition in any of the relevant dependent markets.

Consistent with the Gas Guide, in considering whether criterion (a) is likely to be satisfied, we compare the likely state of competition in the relevant dependent markets in two scenarios:

- 1 **Scheme Pipeline Scenario.** This is a scenario in which the NGI is a scheme pipeline and APA must submit an access arrangement (including reference tariffs) for ERA approval.
- 2 **Non-scheme Pipeline Scenario.** This is a scenario in which the NGI is not a scheme pipeline and APA is therefore not required to have reference tariffs and other terms of access approved by the ERA. Instead, terms of access are negotiated between APA and shippers. For the purposes of these negotiations, APA will need to publish certain prescribed transparency information and comply with the negotiation procedures set out in Part 23 of the NGR.<sup>70</sup> If a user cannot agree with APA on the terms of access, it will be able to seek arbitration under Part 12 of the NGR.

Access to the NGI will be available in both scenarios. The main difference is that, in the Scheme Pipeline Scenario, there will be an ERA-approved reference tariff.

Consistent with the decision of the Tribunal in *Duke*, the NCC has stated that it considers a matter that is key to the assessment of criterion (a) is whether the service provider has market power that can be leveraged in way that could be damaging to upstream or downstream competition:<sup>71</sup>

*Whether competition will be materially enhanced as a result of access depends critically on the extent to which the incumbent service provider can and is likely, in the absence of coverage, to use market power to adversely affect competition in a dependent market. If a service provider has market power, and the ability and incentive to use that power to adversely affect competition in a dependent market, coverage would be likely to improve the environment for competition.*

APA adopts this as the framework for analysis under criterion (a).

As explained below, NGI will not be in a position to exercise market power given the alternative transportation options available to customers. Moreover, even if NGI is seen

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<sup>69</sup> NCC, *No-Coverage Determination for the Proposed QCLNG Pipeline: Final Recommendation* (May 2010) (**Final QCLNG Recommendation**) at [6.27]. Available [here](#); NCC, *APLNG No-Coverage Determination: Recommendation to the relevant Minister* (17 July 2012) (**Final APLNG Recommendation**) at [6.17]. Available [here](#); NCC, *GLNG Pipeline, Application for a 15-year no-coverage determination: Final Recommendation* (22 May 2013) (**Final GLNG Recommendation**) at [6.13]. Available [here](#).

<sup>70</sup> We note Part 23 currently applies in WA but may be replaced by Part 11 of the NGR (as amended for application in the eastern states).

<sup>71</sup> Gas Guide, [3.65].



to have some degree of market power, APA will have neither the incentive nor the ability to use that market power to adversely affect competition in any dependent market.

(a) NGI will be constrained by other transportation options available to shippers

As discussed above, potential NGI customers will continue to have a range of options for transporting energy fuels to their facilities. This is particularly true of those smaller industrial and mining customers, where trucking is likely to be a close substitute for pipeline transport. Given their somewhat lesser energy requirements, there is greater potential for these customers to use trucking (potentially in combination with on-site renewable generation) as an alternative to piped natural gas.

The availability of these other transportation options will impose a meaningful competitive constraint on the NGI. Indeed, this continues to impose a constraint on APA in its negotiations with prospective customers for transportation service on the NGI.

(b) No incentive to act in a way that would be damaging to upstream or downstream competition

APA has no incentive to deny access to the NGI, or to provide access on terms that would be damaging to upstream or downstream competition.

APA's operation of the NGI will not be vertically integrated with any upstream or downstream operations. APA is neither a producer of gas in the Perth or Carnarvon Basins, nor does it supply gas to customers in the mid west or Goldfields regions.

APA therefore has no incentive to hinder access by any participant in these upstream or downstream markets. APA also has no interest in conferring a competitive advantage on any user of the NGI.

On the contrary, APA's incentive will be to ensure maximum utilisation of the NGI, by providing open access to all potential users.

(c) NGI's incentive to provide access on terms which reflect the outcomes of workable competition

The NCC has noted that where a service provider is not vertically integrated and faces excess capacity, its incentives (absent any regulation) are actually likely to be aligned with the promotion of competition in dependent markets:<sup>72</sup>

*...[if] a service provider has no vertical interests in a dependent market(s), and its facility has excess capacity, then it may be profit maximising for the service provider to promote competition in the dependent market(s), reduce margins and prices in the dependent market(s), and increase incremental demand for the services provided by the facility.*

In APA's investment 'Base Case', peak contracted capacity is **CONFIDENTIAL** of its initial design capacity potential of 76TJ/d.

APA expects spare capacity will remain available in the short to medium term as the timing of prospective customer projects has been delayed by several factors including:

- the COVID-19 pandemic and resulting increased cost of labour and materials;

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<sup>72</sup> NCC, *Declaration of Services - A guide to Declaration under Part IIIA of the Competition and Consumer Act 2010 (Cth)* (April 2018) at p 34, para 3.31. Available [here](#).

- increased cost of capital for new infrastructure and credit support requirements;
- merger and acquisition activity involving prospective customers has stalled momentum in uptake of capacity – for example, **CONFIDENTIAL**
- renewables and carbon reduction optionality – as noted above, some prospective customers have opted to deploy capital to expand renewables infrastructure as an alternative to expanding pipeline infrastructure;
- market volatility resulting in customers entering voluntary administration and receivership – for example, **CONFIDENTIAL**

With a level of the NGI's capacity expected to be uncontracted, APA will have a very strong incentive to offer terms of access which reflect the outcomes of a workably competitive market. APA's cost of delivering the NGI capacity is essentially fixed and sunk.

(d) Open access assured

In addition to the strong commercial incentives outlined above, APA will be under an obligation to provide access to all potential users (subject to capacity constraints) on reasonable terms and conditions.

If a 'no coverage' determination is made and the NGI remains a non-scheme pipeline, APA will still be subject to various open access obligations, including:

- it will be prohibited from engaging in conduct for the purpose of preventing or hindering access by any third party to pipeline services;<sup>74</sup>
- it will be required to publish prescribed transparency information as set out in Part 10 of the NGR;<sup>75</sup> and
- it will be required to provide access to pipeline services in accordance with the requirements of the NGR;<sup>76</sup>
- it will need to negotiate the terms of access in good faith,<sup>77</sup> and in accordance with the access negotiation framework set out in Part 23 of the current NGR.

This means that even if there were incentives for APA to deny or restrict access to the NGI (which there is not), it would be prevented from doing so. There will be open access to the NGI, with or without scheme pipeline regulation.

<sup>73</sup> **CONFIDENTIAL**

<sup>74</sup> NGL, s 133.

<sup>75</sup> NGL s 136C.

<sup>76</sup> NGL, s 148C.

<sup>77</sup> NGL, s 148D.

(e) Relevant dependent market already highly competitive

The wholesale supply of gas in Western Australia, and more generally the supply of energy fuels to industrial customers, is already highly competitive. Competition is supported by many structural features of the market, including:

- very large reserves of gas available for supply to the domestic market, with a significant portion of these reserves required to be made available for domestic consumption; and
- a large number of producers required to supply into the domestic market. Varanus Island and Gorgon were the State's largest domestic gas producers, followed by Macedon, Wheatstone, Reindeer/Devil Creek, the North West Shelf, Pluto, as well as Beharra Springs, Walyering and Waitsia in the Perth basin.

These structural features of the wholesale gas supply market will be unaffected by regulation of the NGI.

The high degree of competition is reflected in markedly lower prices for wholesale gas in the WA market compared to the east coast market. The latest annual report from the WA Department of Mines, Industry Regulation and Safety report an average price for WA domestic gas sales reported to the State Government of \$4.17 per Gigajoule (GJ) in 2021–22.<sup>78</sup> This compares to an average price for supply in the south-eastern states of around \$12 / GJ.<sup>79</sup>

(f) Any difference in transmission costs not material to upstream or downstream competition

At this stage it is unclear to what extent, if any, regulation of the NGI as a scheme pipeline would affect the tariffs actually paid by shippers for transportation of gas between the relevant supply and demand locations. This is for a number of reasons, including:

- Major customers are already entering into GTAs on commercial (unregulated) terms. In several cases, these customers are seeking long-term GTAs to support similarly long-term supply arrangements for their mining operations. The prices paid under any long-term GTAs will be unaffected by regulation of the NGI as a scheme pipeline.
- As noted above, APA expects to have significant spare capacity on the NGI and will therefore have a strong incentive to conclude contract negotiations by offering terms which reflect the outcomes of workable competition. Indeed, APA's incentive will be to offer favourable terms in the early years of the NGI's operations, in order to stimulate demand.
- Given this incentive, it is not clear that a regulated reference tariff would necessarily be lower than those that will be offered commercially by APA.

At most, there may be a marginal difference between commercially agreed tariffs and those that would be approved by the ERA.

Any marginal effect on NGI tariffs will not be material to competition in any dependent market. This is because the supply of energy fuels to downstream customers is already highly competitive, and gas transmission costs are a very small component of the total supply costs for these customers. Any marginal change in NGI tariffs will not alter the

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<sup>78</sup> Government of Western Australia, Department of Mines, Industry Regulation and Safety, *Western Australian Mineral and Petroleum Statistics Digest 2021-22* at p 40. Available [here](#).

<sup>79</sup> ACCC, *Gas Inquiry 2017 – 2030: Interim report* (January 2023) at p 48, Chart 2.10. Available [here](#).



conditions for competition in the supply of energy fuels to large mining and industrial customers. Competition in these markets will continue to be driven by broader supply and demand dynamics in those markets.

- (g) Regulation of the NGI as a scheme pipeline would not promote a material increase in competition in any relevant market

The NCC cannot reasonably be satisfied that there would be a material increase in competition in any dependent market. In the absence of scheme pipeline regulation, there will be no ability or incentive for APA to exercise market power in a way that would be damaging to upstream or downstream competition. The market for supply of energy fuels to industrial customers in Western Australia will continue to be highly competitive, with or without regulation of the NGI as a scheme pipeline.

While APA considers that the alternative approach to criterion (a) (per *Port of Newcastle*) would not be the correct approach under the NGAL, even on this alternative approach criterion (a) would not be satisfied. Even without access to the NGI, suppliers of energy fuels to industrial customers will have multiple options to transport fuels to those customers, allowing for effective competition in the market for supply of those energy fuels.

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## 6 Criterion (b) – Uneconomic to Duplicate

The NCC must recommend that a no-coverage determination be made if it is not satisfied that:

*...it would be uneconomic for anyone to develop another pipeline to provide the pipeline services provided by means of the pipeline.*

### 6.1 Approach to criterion (b)

The High Court's decision in *The Pilbara Infrastructure Pty Limited v Australian Competition Tribunal* 246 CLR 379 (HCA) (**Pilbara HCA**) considered the appropriate interpretation of "uneconomical", as it appeared in the equivalent Part IIIA criteria. The High Court observed:

*The better view of criterion (b) is that it uses the word "uneconomical" to mean "unprofitable". It does not use that word in some specialist sense that would be used by an economist. Further, criterion (b) 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. It is not to be read as requiring the testing of an abstract hypothesis: if someone, anyone, were to develop another facility. When used in criterion (b) "anyone" should be read as a wholly general reference that requires the decision maker to be satisfied that there is no one, whether in the market or able to enter the market for supplying the relevant service, who would find it economical (in the sense of profitable) to develop another facility to provide that service.*

Consistent with Pilbara HCA, this application considers whether there is evidence that it would be "uneconomic" to develop another pipeline, in the sense that it would be "unprofitable" to do so.<sup>80</sup>

Also consistent with Pilbara HCA, we treat the reference to "anyone" as including existing and potential market participants – including the owner of the facility (or in this context, pipeline) that forms the subject of the inquiry.<sup>81</sup>

"Another pipeline" in this context refers to a pipeline as defined in the NGAL other than the pipeline that is the subject of the application. The NGAL defines a pipeline as:

- (a) *a pipe or system of pipes for the haulage of natural gas, and any tanks, reservoirs, machinery or equipment directly attached to that pipe or system of pipes; or*
- (b) *a proposed pipe or system of pipes for the haulage of natural gas, and any proposed tanks, reservoirs, machinery or equipment proposed to be directly attached to the proposed pipe or system of pipes; or*
- (c) *a part of a pipe or system of pipes or proposed pipe or system of pipes referred to in paragraph (a) or (b)*<sup>82</sup>

Consistent with the definition under the NGAL, 'another pipeline' need not be an entirely new pipeline and may be a part of a pipeline or pipeline system. Further, the other pipeline need not duplicate the pipeline that is the subject of the application exactly as it

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<sup>80</sup> Pilbara HCA at [77].

<sup>81</sup> Pilbara HCA at [105].

<sup>82</sup> NGAL, s 2.

is the services provided by the pipeline that are central to the inquiry. The Council has accepted pipeline transmission infrastructure “in the ‘immediate vicinity’ as well as the broader region” will be relevant to assessment under criterion (b).<sup>83</sup>

The Council notes in the Gas Guide that the relevant time horizon for assessment will vary from case to case, determined with regard to the long-term interests of consumers as a focus and the timing and probability of the foreseeable changes in supply and demand conditions (e.g., development and/or technological enhancements).<sup>84</sup>

Importantly, in applying criterion (b), the NCC need not be positively satisfied that it would be economic to for another pipeline to be developed to provide the pipeline services provided by means of the NGI. Rather, if the NCC cannot be satisfied that it would be uneconomic to do so, the recommendation must be in favour of a no-coverage determination.

## 6.2 The pipeline services provided by means of the NGI

Criterion (b) asks whether it would be uneconomic for anyone to develop another pipeline to provide “*the pipeline services provided by means of the pipeline*”.

The pipeline services provided by means of the NGI will be transportation services taking gas from the Perth and Carnarvon Basins (originating at the Rosewick offtake station which connects to the DBNGP) to customers in the mid west and Goldfields regions of Western Australia. At this stage it is unclear to what extent customers will require transportation along the full length of the NGI. It is expected that at least some customers will seek access to the full length of the pipeline (originating at Rosewick and connecting to the GGP), while others may require delivery at intermediate points where their facilities are located.

For the purposes of criterion (b), it is not necessary to precisely identify the pipeline services that will be provided by the NGI by reference to the receipt and delivery points specified by each customer. Indeed it is not possible to do this given that NGI has not yet been commissioned and customers have not yet committed to GTAs.

Rather, the question under criterion (b) is whether it would be uneconomic to develop another pipeline to provide the services that, in broad terms, will be available on the NGI – i.e. transportation of gas from the Perth and Carnarvon Basin to customers in the mid west and Goldfields regions of Western Australia.<sup>85</sup>

## 6.3 Developing another pipeline

There are multiple ways in which third parties can develop another pipeline to provide the pipeline services provided by means of the NGI. These include:

- 1 A third party could develop another open access pipeline like the NGI, offering transportation of gas from the Perth Basin to points along the NGI.

<sup>83</sup> Final CRWPL Recommendation at [5.11]; Final GLNG Recommendation at [7.8] – the Council considered that development of the QCLNG and APLNG pipelines demonstrated that it was likely to be privately profitable for another party to develop an alternative pipeline to provide the services provided by means of the GLNG Pipeline. Neither the QCLNG nor APLNG pipelines exactly duplicate the route of the GLNG pipeline.

<sup>84</sup> Gas Guide, [3.95].

<sup>85</sup> This is consistent with the approach taken by the NCC in relation to previous no-coverage applications. For example in the Final GLNG recommendation, the NCC considered whether it would be profitable to build a pipeline to transport gas from the Surat/Bowen basins to Curtis Island. The NCC considered other nearby pipelines including QCLNG and APLNG to be relevant to this assessment even though the routes and receipt / delivery points for these pipelines were not the same as GLNG.

- 2 An existing open access pipeline such as the MWP could be extended or augmented to provide the same services.
- 3 A large mining or industrial customer could develop its own pipeline to transport gas from the Perth Basin to one or more of its sites along the route of the NGI or in the Goldfields region.

APA considers that each of these options is likely to be at least feasible, and may well be profitable for some parties.

As discussed below, there is evidence that some parties consider some of these options are *likely* to be profitable.

#### 6.4 Profitability of developing another pipeline

The profitability of developing another pipeline to transport gas eastbound from the Perth Basin will ultimately depend on expected demand from mining and industrial customers in the mid west and Goldfields regions.

The cost of developing a pipeline with the capacity and geographic reach of the NGI are clearly substantial. APA estimates that the total capital cost of the NGI will be around **CONFIDENTIAL**.

However this capital outlay is likely to be recoverable over the life of the investment either:

- for an open access pipeline where there is expected to be strong demand from customers over an extended period; or
- as part of a large mining or mineral processing project.

As discussed in section 5, APA does not expect the NGI to be fully contracted in its investment 'Base Case', and there is some risk that expected demand may not materialise (e.g. if customers choose a different fuel or transportation option for their operations). **CONFIDENTIAL**

It is important to note that the NGI is expected to be a profitable investment for APA, *even though it is largely duplicative of the existing MWP*. This in itself indicates that, where a pipeline already exists to transport gas to customers in the mid west and Goldfields regions, it may well be profitable to develop another pipeline.

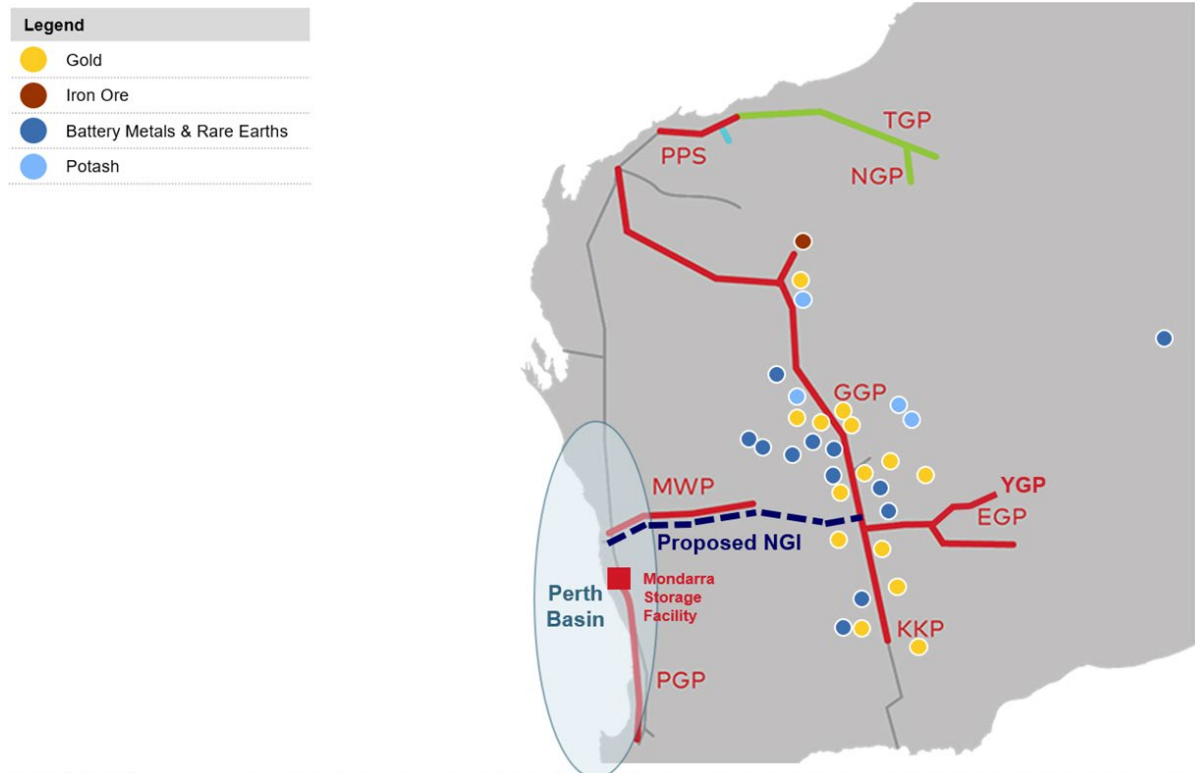
The profitability of pipelines in this part of Western Australia is underpinned by current and expected future demand for transportation services from large mines, mineral processing facilities and other industrial customers in the mid west and Goldfields regions.

Mines and projects in this region are expected to contribute to a substantial increase in gas consumption in Western Australia over the next 9 years:<sup>86</sup> AEMO's 2022 Gas Statement of Opportunities for Western Australia notes a number of committed projects that are expected to contribute to increased demand **CONFIDENTIAL**

<sup>86</sup> AEMO 2022 WAGSO at pp 6-7. Available [here](#).

The locations of some major projects in the mid west and Goldfields region are shown in **Figure 8** below.

**Figure 8 Mines and mineral processing projects in the Mid West and Goldfields region**



**6.5 Evidence that third parties consider it may be profitable to develop another pipeline**

There is evidence of existing and planned investment in pipeline infrastructure that demonstrates the likely profitability of construction of pipelines to serve the anticipated growth in demand from customers in the mid west and Goldfields regions.

A current example of a third party considering such a development is set out below.

*Mindax / AGIG infrastructure corridor*

Mindax Limited, a Western Australian minerals exploration company, and AGI Operations Pty Ltd are currently investigating the development of an infrastructure corridor (including a gas pipeline) along a route that is very close to the route of the NGI. If developed, the infrastructure corridor would enable the provision of gas transportation services to customers in the mid west region.

In November 2022 the parties announced that they had entered into a binding heads of agreement to fund scoping studies to understand the feasibility and costs associated with

the development of infrastructure for the export of iron ore from the mid west region.<sup>87</sup> The parties have since commenced pre-feasibility studies to examine the economics of developing shared infrastructure for magnetite iron ore projects in the Yilgarn Mining Province in the mid west.<sup>88</sup>

The pre-feasibility study is expected to inform investment decisions regarding the necessary infrastructure corridor for slurry and water as well as gas pipelines.<sup>89</sup> The corridor is expected to extend from the Oakajee Port (25km north of Geraldton, approximately 55km west of Ambania where the NGI begins) to the Yilgarn region at Mount Forrest, just south of the planned location of the Dandaraga Main Line Valve on the NGI. **Figure 10** below shows the proximity of Mount Forrest to the Dandaraga Main Line Valve (noted as KP465) and the eastern end of the NGI.

**Figure 9 Mindax / AGIG infrastructure corridor**



<sup>87</sup> Mindax Limited, *Company Update: Agreement Signed with AGIG* (9 November 2022). Available [here](#).

<sup>88</sup> Mindax Limited, *Company Update: ASX Announcement* (22 May 2023). Available [here](#).

<sup>89</sup> *Ibid* at p 2.



The Mindax / AGIG project is an example of a third party considering development of a pipeline principally for their own use, but with the potential to also serve third party demand. The Mindax / AGIG pipeline is first and foremost conceived as a pipeline to service the Mindax iron ore project at Mount Forrest, but may also have capacity to meet expected increases in demand for gas from other projects in the region. Mindax has indicated that should the project proceed, it will deliver benefits for the parties' own mine development activities as well as those of third parties.<sup>90</sup> **CONFIDENTIAL**

As shown in **Figure 10** below, Mount Forrest is located south-west of the intersection between the GGP and NGI in close proximity to other mine sites in this region.

Thus, the potential profitability of the pipeline development is likely underpinned by both the economics of the Mount Forrest project and also expected demand from third parties.

### 6.6 Potential for development of an existing pipeline – the MWP

As shown in **Figure 10** below, the route of the existing MWP is substantially similar to the route covered by the proposed NGI. Like the NGI, the MWP transports gas from the DBNGP to mines and minerals processing projects at the eastern end of the MWP, including at Windimurra and Mount Magnet. It duplicates more than half of NGI's route.

**Figure 10 MWP and NGI**



<sup>90</sup> Ibid at p 2.

The MWP represents a pipeline that has already been developed and provides pipeline services akin to those that will be provided on the NGI (albeit not with the geographic reach of the NGI). Insofar as the NGI will provide pipeline services to customers along or close to the route of the MWP, the forward-looking cost of developing an alternative pipeline to deliver those services will be negligible – another pipeline has already been developed which can profitably deliver those services.

Moreover, the existence of the MWP means that where there is demand for additional services beyond the current capacity or geographic reach of the MWP, the cost of developing another pipeline to deliver these services is likely to be greatly reduced. As an existing pipeline that substantially duplicates the route of the NGI, a large proportion of sunk costs have already been expended.<sup>91</sup> The incremental capital and operating costs required to extend the MWP to the interconnect with the GGP are likely to be much less than the cost of a full duplication of the NGI.

## 6.7 Conclusion

In light of the existing and potential pipelines in the mid west and Goldfields region which are able to provide the same service or services as the NGI, the Council cannot be satisfied that it would be uneconomic for anyone to develop another pipeline to provide the same services as the NGI.

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<sup>91</sup> Gas Guide, [3.88](e).



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## 7 Criterion (c) – Health and Safety

### 7.1 Statutory Test

Under criterion (c), the NCC must recommend that the exemption be granted if it is not satisfied:

*...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.*

### 7.2 Gas Guide

In the Gas Guide, the NCC states the following:

*“The rationale for this criterion is that coverage should not occur where access (or increased access) to pipeline services may pose a legitimate risk to human health or safety.”<sup>92</sup>*

The NCC comments in the Gas Guide that access must be possible without compromising system and operational integrity, and safe scheduling must be feasible. The NCC and Minister have previously adopted an analysis of criterion (c) that is consistent with the view that the existence of relevant safety regulations in the relevant jurisdiction, and the NGL provisions relating to the safe operation of pipelines in the context of access arrangements, satisfy this criterion.<sup>93</sup>

### 7.3 Application of criterion (c) to the NGL Pipeline

APA will operate the NGL pipeline in accordance with its petroleum pipeline licence, all applicable Western Australian and Federal laws and good industry practice, which will ensure that human health and safety is not at risk as a result of the operation of the NGL pipeline.

### 7.4 Conclusion

APA does not consider that human health or safety would be at risk if parties were to access the services provided by the NGL pipeline.

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<sup>92</sup> Gas Guide, [3.97].

<sup>93</sup> Final QCLNG Recommendation at [6.89]; Final APLNG Recommendation at [8.4]; Final GLNG Recommendation at [8.4]; The Hon Martin Ferguson AM MP, Commonwealth Minister for Resources and Energy, *Decision on APLNG’s no coverage application* (28 August 2012) at pp 4-5. Available [here](#); The Hon Martin Ferguson AM MP, Commonwealth Minister for Resources and Energy, *Decision on QCLNG’s no-coverage application* (15 June 2010) at p 5. Available [here](#).

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## 8 Criterion (d) – Public interest

The NCC's recommendation must be in favour of a no-coverage determination if it is not satisfied:

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

### 8.1 NCC's approach

The NCC's approach to criterion (d) for the purpose of greenfields incentive exemptions is to assess whether access (or increased access) would not be contrary to the public interest.<sup>94</sup> To find that access is contrary to the public interest requires that any cost of access outweigh any benefits.<sup>95</sup>

'Public interest' is not defined in the NGAL or NGR, however, the NCC considers that this criterion captures a broad range of issues "*with a particular focus on public interest issues raised directly by the National Gas Objective*"<sup>96</sup> to which efficient investment is central:

*"...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."*<sup>97</sup>

The NCC has noted in previous recommendations that the satisfaction of criterion (a) is critical to assessing the extent of benefits<sup>98</sup> – that is, whether there is a material increase in competition in any dependent market. Absent a material increase in competition in a dependent market or other potential benefit and where coverage would give rise to costs, the NCC has found that access would be contrary to the public interest and criterion (d) would not be met.<sup>99</sup>

### 8.2 Application of criterion (d) to the NGI

As set out above, APA submits neither criterion (a) or (b) is satisfied with respect to the NGI. This means that there can be little (if any) public interest in imposing tariff regulation, but material cost. It follows that criterion (d) cannot be satisfied and the Council must recommend making a 'no coverage' determination.

However, in the event the Council considers either criteria (a) or (b) are satisfied, APA submits that criterion (d) is still not able to be satisfied, because the costs of regulation will substantially outweigh any public interest.

There are two categories of cost that are discussed below:

- direct regulatory costs; and
- much more significantly, the effect of regulation on incentives for efficient investment.

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<sup>94</sup> Final CRWPL Recommendation at [6.91].

<sup>95</sup> *Re Duke Eastern Gas Pipeline* [2001] ACompT 2.

<sup>96</sup> Gas Guide [3.105]

<sup>97</sup> NGL, s 32.

<sup>98</sup> Final APLNG Recommendation at [9.12]; Final CRWPL Recommendation at [7.8]; Final QCLNG Recommendation at [6.97]; Final GLNG Recommendation at [9.14].

<sup>99</sup> Final GLNG Recommendation at [9.14]; Final APLNG Recommendation at [9.13]; Final QCLNG Recommendation at [6.97].

### 8.3 Impact on efficient investment

(a) Future investment in greenfields pipeline projects

Provisions for 'no-coverage' determinations were introduced for the express purpose of providing greater certainty regarding the regulatory coverage of greenfield pipelines and thereby encouraging further investment in greenfield pipelines.<sup>100</sup>

Introduction of these provisions followed on from recommendations of the Productivity Commission (PC), which were directed at promoting greenfields pipeline investment through mitigation of 'regulatory risk' and the risk of asymmetric truncation of project returns. The PC explained the concept of regulatory risk as follows:<sup>101</sup>

*Regulatory risk occurs when additional risks are imposed on a project's returns due to uncertainty about a regulator's future behaviour. This increase in project risk, if there is no compensating increase in the expected return of the project, will act as a deterrent to investors.*

The PC noted that two types of regulatory risk arise under the gas pipelines access regime:<sup>102</sup>

- coverage risk — uncertainty about whether a pipeline will be covered; and
- parameter risk — uncertainty about the regulatory parameters that will be applied if a pipeline is covered.

Binding 'no-coverage' rulings were recommended as a key measure to address coverage risk and thereby promote efficient investment in new greenfields pipeline projects.

The PC separately identified the risk of tariff regulation leading to asymmetric truncation of project returns.<sup>103</sup> This risk is particularly acute in the context of greenfields projects where there is a high degree of uncertainty around the amount and timing of customer demand. The business case for such projects necessarily involves a degree of risk and uncertainty around demand for the pipeline services. There is also the likelihood that there will be at least periods of lower returns that will need to be offset by periods of higher returns. The prospect of tariff regulation being applied at some point during the early years of a pipeline's life means that any higher returns will be truncated, while leaving the service provider to bear the burden of lower return periods.

The NGI is an example of a greenfields project that involves considerable risk and uncertainty around the timing and amount of customer demand. While APA typically requires new projects to be at least partially underwritten by customer contracts before committing to capital expenditure, APA proposed the NGI based on feedback from shippers and without contracting the planned capacity.

It is therefore the type of project for which a no-coverage determination would provide essential support for private investment. In this way, a no-coverage determination would be consistent with the NGO, which is:

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<sup>100</sup> *Gas Pipelines Access (South Australia) (Greenfields Pipeline Incentives) Amendment Bill*, Second Reading Speech. Available [here](#).

<sup>101</sup> Productivity Commission, *Gas Access Regime: Inquiry report* (August 2004) at p 394.

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid* at section 9 and Appendix B.

*“...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.”<sup>104</sup>*

In the absence of a no-coverage determination, the regulatory risk and risk of asymmetric truncation referred to by the PC would persist, putting future investment at risk.

(b) Ongoing investment in the NGI

As an operator of both scheme (covered) and non-scheme (uncovered) pipelines, APA has observed the impact of scheme pipeline regulation on the service provider’s ability to invest in response to customer needs.

The regulatory framework for non-scheme pipelines has been supportive of efficient investment because it allows operators to meet market needs as they arise. On its non-scheme and light regulated pipelines, APA has a strong track record of investing in anticipation of capacity demand. APA closely monitors the supply/demand balance on its pipelines and where it identifies a potential demand shortfall, it will seek to respond quickly with targeted investment. In some cases, this investment may be partially underpinned by customer contracts, with commercially agreed tariffs which provide an appropriate return on investment. However, reflecting that gas pipeline capacity investment is often “lumpy”, APA will typically take some demand risk, for at least part of the capacity and/or part of the life of the investment (i.e., recontracting risk beyond the expiry of any initial contracts).

An example of this is APA’s recent and ongoing investment to expand the capacity of the East Coast Gas Grid. In late 2020, based on its monitoring of the gas supply/demand balance, APA identified a looming risk to winter gas supply in the southern states from 2023. APA identified an opportunity to incrementally expand the ECGG to address this supply shortfall by increasing winter peak capacity of the ECGG by 25 per cent. The project involves capital investment of around \$270 million and involves two stages:

- Stage 1 will add 12% capacity from Wallumbilla to Wilton, along the SWQP and MSP; and
- Stage 2 will add a further 13% capacity through additional compression and associated works.

APA was able to reach a final investment decision (**FID**) in May 2021 within 6 months of identifying the opportunity.<sup>105</sup> Stage 1 works commenced shortly after FID. In May 2022, APA was able to commence Stage 2 expansion on the basis of strong confidence in Stage 1 contracting and anticipation of continuing customer demand for transportation capacity.<sup>106</sup>

The NGI itself is also an example of APA’s ability to respond quickly and efficiently to meet market needs absent coverage. The project progressed from investment decision to commissioning in less than 3 years (November 2020 – July 2023).

By contrast, investment in full regulation pipelines has at times been delayed by several years or prevented by regulatory hurdles. Full regulation can hamper investment in several ways:

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<sup>104</sup> NGAL, s 23.

<sup>105</sup> APA, *APA Commences 25% Expansion Of East Coast Grid, Enters Into Agreement With Origin Energy* (5 May 2021). Available [here](#).

<sup>106</sup> APA, *APA Commences Stage Two Of East Coast Gas Grid Expansion* (25 May 2022). Available [here](#).

- *first*, investment may need to be delayed to allow time for the regulator to review the prudence of the planned investment;
- *secondly*, investments that are made in advance of anticipated demand, or where the timing and amount of demand is uncertain, may not satisfy the regulator's prudence criteria. At the very least, there may be some resistance from the regulator to approving the investment, leading to additional delay and regulatory costs;
- *finally*, even where an investment is approved by the regulator, the return on investment will be capped at the regulatory WACC. This level of return may not be sufficient to justify investments where there is risk and uncertainty around customer demand.

A recent example of the regulatory process creating timing and cost risk for investment was APA's expansion of the Victorian Transmission System. Based on AEMO projections of supply shortfalls, APA proposed investment to enhance security of supply of the Victorian Transmission System. The initial proposal was rejected by the AER in its Draft Decision. APA submitted a revised proposal based on concerns raised by the Victorian Minister for Energy and AEMO regarding security of supply for winter 2023. The AER approved the revised submission. While this investment was made, there were clear uncertainties and inefficiencies created by the regulatory framework.<sup>107</sup>

Based on this experience, APA considers that tariff regulation of the NGI would create material risks to future investment. A no-coverage determination would create an environment that is more conducive to ongoing efficient investment, consistent with the NGO.

#### 8.4 Direct regulatory costs of coverage

The NCC has recognised in the Gas Guide as well as previous recommendations that regulatory costs are relevant to consideration of criterion (d) and, further, the costs of regulation in some cases can and do outweigh the benefits of regulating access.<sup>108</sup> This is likely to be the case where regulation would not deliver any benefit in terms of promoting competition in any upstream or downstream market.

APA anticipates that if the NGI were to become a 'covered' or 'scheme' pipeline, it would incur significant additional costs, including at least:

- around \$800,000 expected to be incurred by APA in preparing access arrangements for regulatory approval and complying with various obligations applicable to scheme pipelines under the NGAL and NGR; and
- around \$200,000 in costs of the ERA and other public bodies in carrying out their functions in relation to a covered pipeline.

This comes to a total estimated cost of \$1 million for each access arrangement review. We note this is a conservative estimate based on APA's expertise and experience in operating covered pipelines.

In addition to these costs associated with an access arrangement process, the ERA passes on costs associated with its ongoing regulatory functions to regulated pipeline

<sup>107</sup> AER, *AER makes a final decision on APA's Victorian Transmission System for 2023-27 access arrangement period* (9 December 2022). Available [here](#).

<sup>108</sup> Gas Guide, [3.121]-[3.125]; Final QCLNG Recommendation at [9.10].

operators. For example, for the GGP, this is a cost of approximately **CONFIDENTIAL** [REDACTED].

This implies a total direct administrative cost of regulation of approximately **CONFIDENTIAL** [REDACTED].

## 8.5 Conclusion

APA submits that access would be contrary to the public interest on the basis that criteria (a) and (b) are not met.

Even if the Council considers that either of criteria (a) or (b) are met, APA submits that access (and regulation of reference tariffs) would not be in the public interest as any benefit flowing from satisfaction of these criteria is far outweighed by the costs flowing from coverage of the NGI, being the:

- costs of regulation; and
- the impact of tariff regulation on efficient investment.

## 9 Compliance checklist

The following table summarises the information required by rules 121 and 122 of the NGR and the location in this Application where further information can be found.

Rule	Requirement	Summary	Reference
<b>Pipeline Description</b>			
121(1)(a)	The route of the pipeline.	The NGI Pipeline is a pipeline system comprised of a 580-kilometre-long pipeline from Ambania, connecting to the existing Goldfields Gas Pipeline.	See section 3.1
121(1)(b)	The end points of the trunk of the pipeline (ie, the points defining the extremities, where the trunk begins and ends).	The NGI pipeline will start at Ambania, approximately 50 kilometres east of Geraldton. It will end at the existing Goldfields Gas Pipeline, approximately 40 kilometres south of Leinster. The NGI pipeline also includes supporting aboveground facilities, including a compressor station at Ambania and other supporting infrastructure.	See section 3.1
121(1)(c)	If a lateral forms part of the pipeline – the point where the lateral interconnects with the trunk and the end point of the lateral	There are currently no laterals that form part of the NGI.	See section 3.1
121(1)(d)	The range of diameters for the principal pipes (including laterals).	The entire pipeline will have an external diameter of 300mm.	See section 3.2
<b>Greenfields Pipeline Description</b>			
121(2)(a)	The geographical area served by the pipeline.	See above under rules 121(1)(a) and 121(1)(b)	See section 3.1
121(2)(b)	The points at which natural gas is to be injected into the pipeline.	Gas will be injected into the NGI from the DBNGP at the Rosewick Offtake Station at a minimum pressure of 6.5Mpa that then steps up via the NGI compressors (Ambania) to 15.3MPa.	See section 6.2
<b>15-year No-Coverage Determinations</b>			
122(1)(a)	The name and contact details for the applicant.	The Applicant is APA Northern Goldfields Interconnect Pty Ltd (ABN 33 646 298 142). The Applicant's contact details are set out in section 1.2 above.	See section 1.2
122(1)(b)	A short description sufficient to identify the pipeline and its route together with a website address at which a map of the route, and a description, of the pipeline can be inspected.	The pipeline and its route are described above. A map of the route and description of the pipeline can be found <a href="#">here</a> .	See section 3.1
122(1)(c)	A statement of the basis on which the project for the construction of the pipeline is to be regarded as a greenfields pipeline project.	The NGI pipeline is a greenfields pipeline project as it is structurally separate from any other pipeline.	See section 3.4



Rule	Requirement	Summary	Reference
122(1)(d)	A statement of expenditure already made on the construction of the pipeline and an estimate of the expenditure yet to be made together with a statement of the basis on which the estimate has been made.	APA have committed approximately <b>CONF DENTIAL</b> to the design and construction of the NGI as at the date of this application.  As at the date of this application, this amount has been largely spent. The pipeline has been constructed but not yet commissioned.	See section <b>6.4</b>
122(1)(e)	An estimate of the pipeline's capacity and an estimate of the extent to which the pipeline's capacity is likely to be utilised by the applicant or associates of the applicant.	The pipeline's initial design capacity maximum is estimated to be 76 TJ/d. The pipeline has not been designed to be utilised by APA or its associates.	See section <b>3.2</b>
122(1)(f)	A statement of the services to be provided by means of the proposed pipeline.	The pipeline services provided by means of the NGI will be transportation services taking gas from the Perth and Camarvon Basins (originating at the Rosewick offtake station which connects to the DBNGP) to customers in the mid west and Goldfields regions of Western Australia.	See section <b>6.2</b>
122(1)(g)	A statement of the locations to be served by the proposed pipeline and, in relation to each downstream location, a statement of other sources of natural gas available at the relevant location.	The NGI will serve customers in the Goldfields-Esperance region of WA as shown in <b>Figure 8</b> above. Customers in this region may also source natural gas from the DBNGP, the GGP or by trucked LNG that is re-gasified on-site.	See <b>Figure 8</b>
122(1)(h)	A statement of any existing pipelines, and any proposed pipelines of which the applicant is aware, that serve (or will serve) any of the same locations or that pass (or will pass) within 100 km of any of the same locations.	The NGI will connect to the DBNGP and the GGP and passes within 100km of the MWP.	See section <b>3.2</b>
122(1)(i)	An estimate of the reserves of natural gas available at any upstream location to be served by the pipeline and an estimate of the rate of production from that location.	The WA Department of Jobs, Tourism, Science and Innovation estimates: <ul style="list-style-type: none"> <li>• the Camarvon Basin has 51,242 PJ; and</li> <li>• the Perth Basin has 1,570 PJ,</li> </ul> of proved and provable reserves as at February 2023. Domestic gas production facilities in these basins have the following rates of production in FY22: <sup>109</sup> <ul style="list-style-type: none"> <li>• Varanus Island – 216 TJ/d;</li> <li>• Macedon – 195 TJ/d;</li> <li>• Devil Creek – 120 TJ/d;</li> <li>• Karattha – 49 TJ/d;</li> <li>• Pluto – 20 TJ/d;</li> </ul>	N/A

<sup>109</sup> AEMO 2022 WAGSO. Available [here](#).

Rule	Requirement	Summary	Reference																												
		<ul style="list-style-type: none"> <li>• Wheatstone – 200 TJ/d;</li> <li>• Xyris – 25 TJ/d.</li> </ul> <p>LNG production facilities operating in these basins have the following capacity:<sup>110</sup></p> <ul style="list-style-type: none"> <li>• North West Shelf – 16.9 Mtpa;</li> <li>• Pluto - 4.9 Mtpa;</li> <li>• Gorgon – 15.6 Mtpa;</li> <li>• Wheatstone – 8.9 Mtpa;</li> <li>• Prelude – 3.6 Mtpa;</li> </ul> <p>APA is not aware of the rate of production for these facilities.</p>																													
122(1)(j)	An estimate of expected demand at each downstream location to be served by the pipeline including for each location a description of the expected customer base and an indication of the revenue expected from each location.	<p>As shown below, APA estimates the customer base and revenue from January 2027 onwards to be <b>CONFIDENTIAL</b></p> <table border="1" data-bbox="715 757 1273 1281"> <tr> <td colspan="4" data-bbox="715 757 1273 833"><b>CONFIDENTIAL</b></td> </tr> <tr> <td data-bbox="715 833 874 909">[REDACTED]</td> <td data-bbox="874 833 1034 909">[REDACTED]</td> <td data-bbox="1034 833 1129 909">[REDACTED]</td> <td data-bbox="1129 833 1273 909">[REDACTED]</td> </tr> <tr> <td data-bbox="715 909 874 985">[REDACTED]</td> <td data-bbox="874 909 1034 985">[REDACTED]</td> <td data-bbox="1034 909 1129 985">[REDACTED]</td> <td data-bbox="1129 909 1273 985">[REDACTED]</td> </tr> <tr> <td data-bbox="715 985 874 1061">[REDACTED]</td> <td data-bbox="874 985 1034 1061">[REDACTED]</td> <td data-bbox="1034 985 1129 1061">[REDACTED]</td> <td data-bbox="1129 985 1273 1061">[REDACTED]</td> </tr> <tr> <td data-bbox="715 1061 874 1137">[REDACTED]</td> <td data-bbox="874 1061 1034 1137">[REDACTED]</td> <td data-bbox="1034 1061 1129 1137">[REDACTED]</td> <td data-bbox="1129 1061 1273 1137">[REDACTED]</td> </tr> <tr> <td data-bbox="715 1137 874 1214">[REDACTED]</td> <td data-bbox="874 1137 1034 1214">[REDACTED]</td> <td data-bbox="1034 1137 1129 1214">[REDACTED]</td> <td data-bbox="1129 1137 1273 1214">[REDACTED]</td> </tr> <tr> <td data-bbox="715 1214 874 1281">[REDACTED]</td> <td data-bbox="874 1214 1273 1281">[REDACTED]</td> <td data-bbox="1034 1214 1129 1281">[REDACTED]</td> <td data-bbox="1129 1214 1273 1281">[REDACTED]</td> </tr> </table> <p><b>CONFIDENTIAL</b></p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<b>CONFIDENTIAL</b>				[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	N/A
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122(1)(k)	The identity of all parties with an interest in the proposed pipeline and the nature and extent of each interest.	The pipeline will be owned and operated wholly by the Applicant.	See section 1.2																												
122(1)(l)(i)	A description of any relationship between the owner, operator and controller of the pipeline (or any 2 of them).	See above.	See section 1.2																												

<sup>110</sup> Government of Western Australia, Department of Jobs, Tourism, Science and Innovation, *Western Australia LNG Profile – February 2023*. Available [here](#).

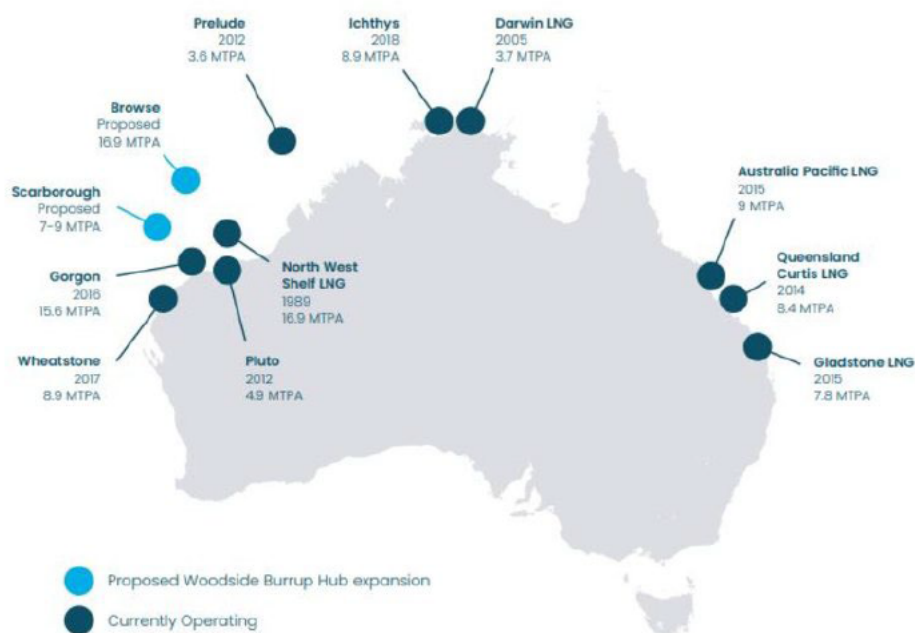
Rule	Requirement	Summary	Reference
122(1)(l)(ii)	A description of any relationship between the owner, operator or controller of the pipeline and a user of pipeline services or a supplier or consumer of gas in any of the locations served by the pipeline.	APA's operation of the NGL will not be vertically integrated with any upstream or downstream operations. APA is neither a producer of gas in the Perth or Camarvon Basins, nor does it supply gas to customers in the mid west or Goldfields regions.	See section 5.5
122(1)(l)(iii)	A description of any relationship between the owner, operator or controller of the pipeline and the owner, operator or controller of any other pipeline serving any one or more of the same locations.	APA is a party to the Goldfields Gas Transmission Joint Venture (APA 88.2%, Alinta 11.8%), the owner of the GGP.	N/A
122(1)(m)	A statement of whether it would be feasible to expand the capacity of the pipeline and, if so, an explanation of how the capacity might be expanded and an estimate of the cost.	APA considers it may be feasible to expand the NGL to increase nameplate capacity to 105TJ/d through addition of mid-line compression. APA estimates expansion in this manner would cost approximately <b>CONFIDENTIAL</b>	N/A
122(1)(n)	An estimate of the annual cost to the service provider of regulation.	APA estimates the annual cost associated with regulation under the NGL to be approximately <b>CONFIDENTIAL</b> per annum.	N/A

## Annexure A – LNG export facilities

In WA there are **five** operating LNG export projects. These are the North West Shelf, Pluto, Gorgon and Wheatstone projects, all of which source gas from the Carnarvon Basin and have onshore LNG trains in the Pilbara region. The Prelude project is a floating LNG vessel located in the Browse Basin offshore WA. Please refer to the below, which are found at page 3 [here](#) and page 17 of [here](#). Finally, in December 2021, Clean Energy Fuels Australia's (CEFA's) LNG facility at Mt Magnet was brought online. Gas is sourced from the Waitsia joint venture. This is the third small-scale LNG plant in WA supplying LNG to off-grid customers (page 14 [here](#)).

The **below** diagram shows the five LNG Facilities / Projects that are currently operational in WA.

Figure 2: Australian LNG Projects and annual capacity - current and proposed



No.	Facility	Overview
1	Gorgon	<ul style="list-style-type: none"> <li>The Project became fully operational in March 2017 and has a lifespan of 40 years.</li> <li>This is situated on Barrow Island, 60 kilometres off the coast of WA. It's offshore facilities currently include eighteen high-rate, big bore development wells and a subsea gas gathering system. The Project's onshore facilities include an LNG processing plant comprising three processing trains with a combined production capacity of 15.6 mtpa of LNG and a loading jetty.</li> <li>LNG for domestic market is transported via a 44-mile sub-sea pipeline to the mainland. The pipeline from Barrow Island is tied-in with the Dampier to Bunbury Natural Gas Pipeline (DBNGP).</li> <li><b>Customers:</b> Gorgon is a major source of gas to WA and key supplier of energy to the state for years to come. Long term contracts have been signed with WA customers (both industry and government) for volumes from the first tranche (~150 terajoules per day). A major recipient of gas from Gorgon is Synergy, WA's energy utility (see <a href="#">here</a>).</li> </ul>

No.	Facility	Overview
2	Wheatstone	<ul style="list-style-type: none"> <li>The Wheatstone project, also operated by Chevron, is located 12 kilometres west of Onslow. The project is now fully operational with Trains 1 and 2 commencing LNG production in October 2017 and June 2018 respectively, with a combined capacity of 8.9 mtpa. The Project's offshore facilities include well infrastructure, subsea installations and a platform. The Project has a projected lifespan of 30 years, which includes environmental approval to expand to 25 mtpa of LNG.</li> <li>The Wheatstone Project is a joint venture between Australian subsidiaries of Chevron (64.14 percent), Kuwait Foreign Petroleum Exploration Company (KUFPEC) (13.4 percent), Woodside Energy Group Ltd (13 percent), and Kyushu Electric Power Company (1.46 percent), together with PE Wheatstone Pty Ltd, part-owned by JERA (8 percent).</li> <li><b>Customers:</b> Around 85 percent of their equity LNG from the Wheatstone Project has been committed to buyers in Asia. These agreements include JERA (4.1 MTPA), Kyushu Electric (0.7 MTPA) and Tohoku Electric (0.9 MTPA). Chevron Australia has also signed an additional SPA with JERA for 0.4 MTPA of LNG from the Wheatstone Project (see <a href="#">here</a>).</li> <li>In addition, JERA, through a related company, has acquired from Chevron Australia a 10 percent participating interest in the Wheatstone field licenses and an eight percent interest in the Wheatstone natural gas processing facilities. Kyushu Electric has also acquired 1.83 percent of Chevron Australia's equity share in the Wheatstone field licenses and a 1.46 percent interest in the Wheatstone natural gas processing facilities (see <a href="#">here</a>).</li> </ul>
3	Pluto	<ul style="list-style-type: none"> <li>The WBPL-operated LNG project commenced LNG production in 2012. The onshore facilities comprise a single LNG processing train, LNG storage tanks and an export jetty. The Pluto Project has a production capacity of 4.9 mtpa of LNG, and usually operates unmanned (with operations controlled from the onshore Pluto Gas Plant).</li> <li>In November 2021, a final investment decision was made for a second LNG train for the Pluto project with a capacity of 5 million tonnes a year. Pluto Train 2 is expected to begin exporting LNG in 2026.</li> </ul>
4	North West Shelf	<ul style="list-style-type: none"> <li>The NWS LNG Project has been exporting LNG since 1989. The onshore NWS facilities include the Karratha Gas Plant, comprising five LNG processing trains with a combined production capacity of 16.9 mtpa, as well as storage and loading facilities. The offshore production facilities include the North Rankin Complex, Goodwyn A and Angel platforms and the Okha floating production storage and offloading vessel.</li> <li><b>Customers:</b> See <a href="#">here</a> and <a href="#">here</a>.</li> </ul>
5	Prelude	<ul style="list-style-type: none"> <li>The Shell-operated Prelude Project comprises a floating LNG production facility in the Browse Basin, off Western Australia's Kimberley Coast. The Project is the largest floating LNG offshore facility in the world, with a production capacity of 3.6 mtpa of LNG with an expected operating life of 25 years.</li> </ul>