

## SUBMISSION IN RESPONSE TO DRAFT RECOMMENDATION - APPLICATION FOR COVERAGE REVOCATION DETERMINATION IN RESPECT OF DAWSON VALLEY PIPELINE

1. This submission is made by **WestSide Corporation Limited ACN 117 145 516 (“WestSide”)** on behalf of **WestSide CSG A Pty Ltd ACN 138 989 358 (“WestSide A”)**, **WestSide CSG D Pty Ltd ACN 140 474 362 (“WestSide D”)** and **Mitsui E&P Australia Pty Ltd ACN 108 437 529 (“MEPAU”)** as participants in the Meridian SeamGas Joint Venture (**“Participants”** or **“Joint Venture”**).

2. This submission is structured as follows:

**Section 1:** Submission in relation to Criterion (b)

**Section 2:** Submission in relation to Criterion (a)

**Section 3:** Submission in relation to Criterion (d)

**Section 4:** Submission in relation to Criterion (c)

**Section 5:** Conclusion

**Attachment A:** Letter dated 20 June 2014 from QNP, including copy of application lodged under *Strategic Cropping Land Act 2011*

**Attachment B:** Letter dated 25 June 2014 from QNP [Confidential]

3. The Applicant notes that since the Application for a Coverage Revocation Determination (**“Application”**) was lodged on 15 May 2014, Landbridge Energy Australia Pty Limited has increased its voting power in the Applicant from 19.99% to 50.28% (as at 14 July 2014). The Applicant and the JV Participants are not aware of any reason why this change would alter any of the material or submissions contained in the Application.

# **1. Criterion (b) – “that it would be uneconomic to develop another pipeline to provide the services provided by means of the DVP”**

## **1.1. Original submission by Applicant**

1. In the Application, WestSide made no submission in relation to criterion (b). This was on the basis of the Applicant’s view that criteria (a) and (d) were not satisfied, and that a coverage revocation determination must therefore be made. The fact that no submission was made in relation to criterion (b) should not be taken as implying that the Applicant considers criterion (b) is satisfied in relation to the DVP.

## **1.2. Draft Recommendation**

2. In paragraph 3.16 of the Draft Recommendation, the Council notes that to conclude that criterion (b) is satisfied, “*..the Council must be affirmatively satisfied that it would be uneconomic (unprofitable) for anyone to develop another pipeline to provide the pipeline services provided by the DVP.*’
3. The conclusion in the Draft Recommendation is that “*..criterion (b) is likely to be satisfied.*”<sup>1</sup> The considerations which led to this initial view are set out in paragraphs 3.17 and 3.18 as follows.

3.17 “In the Council’s view, it is unlikely that any new pipeline developed to provide the same services as the DVP would be profitable on a stand-alone basis. Such a new pipeline would be likely to attract only small volumes of gas. Furthermore such a pipeline would be required to compete with an established pipeline with a significantly higher level of utilisation and established interconnection arrangements. The established pipeline also has available capacity either as currently configured, or as a result of expansion opportunities, that would involve low costs relative to construction of a new pipeline.

3.18 However, the Council notes that a new pipeline developed to provide the same or similar services as the DVP would be relatively short. It might be possible for the QNP or a party seeking to produce and sell gas from the vicinity of the DVP to profitably develop a pipeline to connect to another pipeline in the area (including the QGP) in conjunction with its existing business or as part of a broader development. If so, criterion (b) would not be satisfied. At this stage, no party has indicated any consideration or, or intention to, develop a pipeline on such a basis. This suggests that such a pipeline may be unprofitable even as part of a broader development.”

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1 At paragraph 3.19

### 1.3. Submission in response to Draft Recommendation

4. The Applicant submits that the conclusion in the Draft Recommendation is incorrect for the following reasons.
5. A third party, Queensland Nitrates Plant (“QNP”) is developing a stand-alone pipeline from its plant to interconnect with the QGP and is actively pursuing the approvals required for construction of the pipeline:
  - (a) A project manager, CNCProjects, has been engaged to assist QNP in obtaining permits: <http://www.cncprojects.com.au/portfolio/qnp-gas-pipeline/>
  - (b) Petroleum Survey Licence PSL88 has been granted under the *Petroleum and Gas (Production and Safety) Act 2004*;
  - (c) Permit number EPSX02149914 has been issued under the *Environmental Protection Act 1994*. A copy of the Permit can be downloaded from [www.ehp.qld.gov.au/management/env-authorities/details.php?permit\\_reference=EPSX02149914](http://www.ehp.qld.gov.au/management/env-authorities/details.php?permit_reference=EPSX02149914)  
The grant of PSL88 is referred to on pages 1 of the Permit and page 3 of the accompanying conditions.
  - (d) An application has been lodged under the *Strategic Cropping Land Act 2011* (application SCLVA 2014/000146), as advertised in the Northern Star newspaper.
6. According to the application referred to in paragraph 5(d), the proposed pipeline is approximately 18km in length and will run from the QGP (owned by Jemena) to QNP. It appears that the pipeline will run virtually parallel to the DVP.
7. QNP has written to WestSide in relation to the application under the *Strategic Cropping Land Act 2011*, and a copy of QNP’s letter dated 20 June 2014 is attached as **Attachment A**. In addition, QNP has also written to WestSide confirming that QNP is proposing to construction the gas transmission pipeline, and requesting the opportunity the meet to discuss the proposed alignment of the pipeline and arrangements for crossings of easements and the DVP and MLP. [Confidential]
8. The Applicant understands that QNP will be the foundation shipper for the proposed QNP pipeline. However, the QNP pipeline may provide additional regional gas supply capacity from the QGP for other users in the area, or may facilitate delivery into the QGP of gas produced from regional gas producers [confidential]. This could potentially include the Joint Venture.
9. While the Applicant was aware that QNP were considering developing the QNP pipeline when the Application was being prepared in April/May 2014, it was not certain that QNP would proceed with the proposed pipeline and so limited weight was placed on this in the

Application. . In light of the steps taken recently by QNP, the Applicant considers that weight can and should be given to the development of the QNP pipeline.

10. The Applicant submits that the fact QNP has determined to develop its pipeline demonstrates that it is not uneconomic for another party to develop a pipeline to provide the services provided by the DVP. Accordingly, the Applicant submits that the Council cannot be satisfied that criterion (b) is satisfied.
11. In addition to the matters discussed at paragraphs 5-10 above, the Applicant submits as follows in relation to points in paragraph 3.17 of the Draft Decision:
  - (a) the fact that any new pipeline would only attach small volumes of gas does not of itself mean that the pipeline would be uneconomic, including because of the relative short distance involved in connecting a new pipeline to the QNP or to the Harcourt JV site. As recognised in the Draft Recommendation, *“In addition to the QGP ...the GLNG and several other pipelines serving Gladstone LNG production are reasonably proximate to the area currently served by the DVP.”*<sup>2</sup>
  - (b) the existence of “established interconnection arrangements” does not mean that any new pipeline would not be able to easily and efficiently establish such arrangements. The technical and safety issues involved in such arrangements are well understood and it is standard practice for arrangements to be agreed for interconnection of new facilities into existing pipelines, as evidenced by the recent agreement between the Joint Venture and the owners of the GLNG pipeline; ;
  - (c) the DVP is expected to have no spare capacity from 2015. While the exact timing of this is not finalised, it is likely that the existing capacity on the DVP will be fully utilised by the Participants from the second half of FY 2015 as production increases pursuant to the agreements with GLNG participants<sup>3</sup>. Due to the characteristics of the DVP, the option of expanding capacity by compression is probably not feasible and any material increase in the capacity of the DVP would require looping.. There is some benefit in looping the existing pipeline compared with development of a new pipeline because easements are already in place for the existing pipeline. However, there is little difference in the environmental and community consultation processes applicable to looping or construction, and looping presents no benefit in relation to the major costs of developing a new pipeline, being the costs of the linepipe and construction. Accordingly, the costs to a third party of funding an expansion of the DVP would not be particularly “low” relative to the costs they would incur in constructing a stand-alone pipeline.

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2 Draft Recommendation, paragraph 4.25

3 See paragraphs 19, 24 and 25 of the Application

12. For the reasons outlined above, being the development of the proposed QNP pipeline and the general matters discussed in paragraph 11, the Applicant submits that the Council cannot be satisfied that criterion (b) is satisfied.

- 2. Criterion (a): that access (or increased access) to pipeline services provided by means of the pipeline would promote a material increase in competition in at least one market (whether or not in Australia), other than the market for the pipeline services provided by means of the pipeline;**

**2.1. Original submission by Applicant**

- 13.** The Application identified three dependent markets which can be generally described as follows:
- (a)** Downstream retail gas market in Queensland
  - (b)** Eastern Australian upstream market for production and sale of gas
  - (c)** Market for gas transmission services in Australia.
- 14.** As recognised in the Draft Recommendation<sup>4</sup>, the Applicant's reasoning was "...essentially that the volumes of gas transported on the DVP (let alone the incremental volumes that might result from access or increased access) are so small relative to the volumes of gas produced, transported and sold in these dependent markets that whether or not access is available will not materially promote competition".

**2.2. Draft Recommendation**

- 15.** The Draft Recommendation concludes that access or increased access to the DVP is unlikely to have a material effect on competition in these markets – see paragraphs 4.14 (downstream gas market), 4.15 (broadly defined upstream market) and 4.17 (broad market for gas transmission services).
- 16.** The Draft Recommendation also proposes that there is an "upstream market for gas production and sale in the vicinity of the DVP"<sup>5</sup>. In relation to this market, the Draft Recommendation identifies a number of matters that make it unlikely that access or increased access to the DVP would materially increase competition in this market<sup>6</sup>.

**2.3. Submission in response to Draft Recommendation**

- 17.** The Applicant supports the conclusion in the Draft Recommendation that criterion (a) is not met.
- 18.** The Applicant does not agree with the conclusion in the Draft Recommendation that an upstream market in the vicinity of the DVP exists, separate from the broader upstream market. The Draft Recommendation does not include detailed analysis on this issue; in fact, it appears that such a market is regarded as existing merely because there are 2 producers of gas in the vicinity of the DVP.

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4 Paragraph 4.4

5 Paragraph 4.18 and 4.22.

6 See paragraphs 4.23 – 4.25

19. In the Final Decision in relation to the application for coverage of the South East Pipeline System (SEPS), the Council considered that *“Gas from south east South Australia upstream of the SEPS is part of this competitive [broad upstream] market”*<sup>7</sup>. This was despite submissions by the applicant that the relevant upstream market was an upstream market centred on Katnook comprising local producers and other shippers delivering gas to Katnook<sup>8</sup>.
20. Consistent with the reasoning in the SEPS Final Recommendation, the Applicant submits that any gas produced upstream of the DVP must also be seen as part of this competitive upstream market.
21. In the event that the Council does not accept the submission in paragraph 21, and proceeds on the basis of a separate “local” market for gas production, the Applicant submits that criterion (a) is not satisfied in relation to such market for the following reasons:
- (a) The only producer in the vicinity of the DVP other than the Participants is the Harcourt JV. Since the acquisition of the DVP by the Participants in 2010, the Harcourt JV has not made any formal or informal request for access to services provided by the DVP. It is therefore difficult to conclude that continued regulated access to the DVP will promote a material increase in competition in that market;
  - (b) There will be no available capacity on the DVP from approximately 2015 and additional capacity would be required to be funded by third parties. The cost to the third party of such additional capacity will not necessarily be significantly lower than the cost of constructing a stand alone pipeline<sup>9</sup>.
  - (c) A third party, QNP, is proposing to build a pipeline adjacent to the DVP which will be capable of delivering gas to the QGP<sup>10</sup>. Once constructed, this pipeline will provide a competitive alternative for delivery of gas into the QGP for Harcourt JV and any other potential producer in the vicinity of the DVP.

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7 Final Recommendation, 8 April 2013, paragraph 6.38

8 Ibid, paragraph 6.4

9 See paragraph 11(c) above

10 See paragraphs 5-11 above

### **3. Criterion (d) – “access (or increased access) to the services provided by the pipeline would not be contrary to the public interest”**

#### **3.1. Original submission by Applicant**

22. The Application essentially proceeded on the basis adopted by the Council in the Final Recommendation on SEPS:  
*“Overall, the Council accepts that the costs of light regulation will not be inconsequential. In such circumstances (where the Council is not satisfied under criterion (a) that there will be a public benefit resulting from a material promotion of competition and has identified costs from regulation), the Council considers that generally it cannot be satisfied in respect of criterion (d)”<sup>11</sup>.*
23. On the basis that criterion (a) was not satisfied, and that there were not inconsequential costs of regulation, the Applicant submitted that criterion (d) was not satisfied.

#### **3.2. Draft Recommendation**

24. The Draft Recommendation does not proceed on the basis adopted in the SEPS application. Instead, the Draft Recommendation proceeds on the basis that *the most appropriate approach to considering criterion(d) is to seek generally to identify any matter that could mean access (or increased access) might be contrary to the public interest and then assess whether the likelihood and consequences of that matter make access contrary to the public interest”<sup>12</sup>,*.
25. The Council’s preliminary view in the Draft Recommendation is that criterion (d) is satisfied on the basis that the only potential matter which has been identified are the costs of regulation, and that *“While the costs of regulation are not insignificant, they are not unusual or remarkable”<sup>13</sup>*. Additionally, the Draft Recommendation notes that the prospects of light regulation being available are high, and that the cost of regulation would reduce if the pipeline were subject to light regulation<sup>14</sup>.

#### **3.3. Submission in response to Draft Recommendation**

26. The Applicant notes the preferred approach to criterion (d) as adopted by the Council. While no submission is made on whether or not that approach is correct, the Applicant submits that criterion (d) is not satisfied if that approach is adopted.
27. In assessing the likely costs of regulation, the Applicant submits that the costs of regulation of the DVP are “unusual or remarkable”:

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11 Final Recommendation page 39

12 Draft Recommendation, paragraph 5.18

13 Ibid, paragraph 5.19

14 Ibid, paragraph 5.10 and 5.20



- (a) The costs of regulation have been estimated at \$120,000 per annum. Even if the costs of regulation were half this, an on-going annual cost of \$60,000 to the service provider would appear to be “unusual” or “remarkable” in circumstances where there are no third parties using or seeking access
  - (b) The forecast costs of \$120,000 represent approximately 10% of the allowable revenue under the approved Access Arrangement<sup>15</sup>. Continuation of access regulation effectively implies an acceptance that regulatory costs could comprise up to 10% of the costs of transportation on a regulated pipeline. While recognising that it is not a simple arithmetic or formulaic matter to determine what is “unusual” or “remarkable”, the Applicant submits that such a situation could reasonably be considered as “unusual” or “remarkable”.
- 28.** The conclusions in paragraph 27 are even more compelling in a situation as currently exists where the only potential third party user has not actively sought to obtain services on the pipeline and/or a stand-alone pipeline is being built which will provide the same services as those provided by the covered pipeline.

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<sup>15</sup> Application, paragraph 92

**4. Criterion (c) – “that access (or increased access) to the services provided by the pipeline can be provided without undue risk to human health or safety**

- 29.** The Applicant accepts that access (or increased access) to the services provided by the DVP can be provided without undue risk to human health or safety. The Applicant accepts that the DVP satisfies criterion (c).

## **5. Conclusion: revocation.**

- 30.** The Applicant submits that as the Council cannot be satisfied that none of criteria (a) (b) or (d) are satisfied, a coverage revocation determination should be made.