

14 June 2016

Mr Jim Reeves
Director-General
Department of Environment and Heritage Protection
GPO Box 2454
BRISBANE QLD 4001

By post and email: jim.reeves@ehp.qld.gov.au

Dear Mr Reeves

Australia Pacific LNG Pty Ltd: Coal Seam Gas activities within the Hopeland Excavation Caution Zone

1. We act for Lock the Gate Alliance Limited in relation to the above matter.
2. Our client is a not-for-profit organisation whose objectives are to protect Australia's natural, cultural and agricultural resources from inappropriate mining activities, and to educate and empower all Australians to demand sustainable solutions to food and energy production.
3. Our client is concerned that coal seam gas (**CSG**) activities are proposed to be carried out, or are currently being carried out, as part of the Australia Pacific Liquefied Natural Gas Project (**Project**) by Australia Pacific LNG Pty Ltd (**APLNG**), or Project partner Origin Energy Limited (**Origin**), or their contractors, in that part of Petroleum Lease 272 that overlaps with the Hopeland Excavation Caution Zone (**HECZ**).
4. As you are aware, the Department of Environment and Heritage Protection (**DEHP**) imposed the 312km² HECZ around the township of Hopeland due to the nature and extent of the underground contamination present within the HECZ. This contamination is alleged to have been caused by the malfunction of the Pilot Underground Coal Gasification Facility previously operated by Linc Energy Limited (**Linc**) at Hopeland, and is the subject of ongoing legal proceedings.
5. Given that the environmental assessment and approval process for the Project clearly did not contemplate the existence of the HECZ contamination, our client seeks to ensure that APLNG and/or Origin have carried out, or will carry out, an appropriate assessment of the risks of conducting CSG activities within the HECZ, prior to the conduct of such activities.

Nature and extent of the HECZ contamination

6. We are instructed that, at present, there is no clear understanding of the precise extent and location of the HECZ contamination relative to the location of APLNG and/or Origin's proposed CSG activities within the HECZ.

7. In addition, it is evident from the expert report prepared for the DEHP in regard to the contamination allegedly caused by Linc,¹ that the HECZ contamination is potentially widespread, of high impact and, in part, irreversible.² The report alleges that Linc's activities have resulted in substantial fracturing of the landform and the release of contaminants into the soil atmosphere and overburden in the Hopeland area.³ Moreover, such contaminants are variously described as asphyxiating, carcinogenic, toxic and/or explosive.⁴
8. Accordingly, it is imperative that APLNG and/or Origin undertake a specific risk assessment of the interaction of their CSG activities and the HECZ contamination. Due to the extremely hazardous nature and wide extent of the HECZ contamination, our client considers that any such assessment should be specifically tailored to the HECZ contamination, and be additional to the general procedures for managing contamination currently required by the approval of the Project. This is because these procedures clearly did not contemplate the existence of the HECZ contamination, or the discovery of any contamination of such significance, and are therefore, in our client's view, inadequate to manage the serious environmental risks posed by the conduct of CSG activities within the HECZ.

Inadequacy of approved procedures for contamination management

9. The Project is being carried under Environmental Authority Permit No. EPPG00968013 (**EA**), which was initially approved on 18 September 2013⁵. As such, the environmental assessment for the Project, and the grant of the EA, occurred prior to the discovery of the HECZ contamination. Accordingly, the risks associated with this contamination in conjunction with CSG activities were not assessed as part of the approval of the Project.
10. Moreover, whilst the Environmental Impact Statement (**EIS**) for the Project notes that the "*disturbance of existing contaminated land presents the greatest risk of project activities affecting the environment and human health*,"⁶ it is clear that the EIS did not anticipate the discovery of contamination to the extent understood to be present in the HECZ. Indeed, the EIS notes that the Walloons Gas Fields were anticipated to be generally free from existing contamination, apart from localised risks associated with historical rural land uses, such as cattle dips, spray races and unauthorised waste dumps.⁷
11. In order to manage the risks of the discovery of unexpected contamination, the EIS and the Environmental Management Plan for the Walloons Gas Fields (**EMP**) require that all pre-existing contaminated sites be identified prior to construction of the Project.⁸ Moreover, if contamination is discovered, the EIS and the EMP

¹ Gilbert & Sutherland (2015) *Investigation into Linc Energy Ltd Underground Coal Gasification Facility*, prepared for DEHP, June 2015.

² *Ibid.*, p. 7; p. 10

³ *Ibid.*, p. 9.

⁴ *Ibid.*, p. 3.

⁵ Walloons Rehabilitation Plan (Q-4000-15-MP-1005) dated 22 November 2013, at p. 9.

⁶ APLNG Project EIS, Volume 2, Chapter 5, p. 3.

⁷ *Id.*, pp. 13-14.

⁸ EMP, APLNG Project EIS, Volume 2, Chapter 24, pp. 14-15.

require all work in the proximity of the contamination to cease so that inspection and assessment of contamination levels can be carried out.⁹ Additionally, the EMP requires appropriate remediation measures to be recommended and implemented before construction on the Project can continue.¹⁰

12. In our client's view, whilst this management system may be sufficient to deal with the minor contamination sources (such as cattle dips, etc.) anticipated to be discovered at the time of the Project's approval, it is not adequate to appropriately assess the risks posed by the significantly more hazardous and extensive contamination located throughout the 312km² HECZ.
13. Accordingly, our client considers that, in addition to their obligations under the EIS and EMP, APLNG and/or Origin should be required to cease all CSG activities within the HECZ until such time as a specific and coordinated contamination assessment and remediation system is developed in relation to the HECZ contamination, to the extent that it interacts with APLNG and/or Origin's CSG activities.

Failure to address the HECZ contamination in the Project's Plan of Operations and Constraints Planning and Field Development Protocol

14. We are further instructed that our client's concerns regarding the adequacy of the assessment of the risks posed by CSG activities within the HECZ are heightened by the fact that APLNG and Origin appear to have completely failed to address the HECZ contamination in the Project's operational and management policies to date.
15. For example, the Walloons Development Area Plan of Operations, January 2016 – December 2016 (Q-4000-15-RP-1040) (**Plan of Operations**) contains absolutely no mention of the HECZ contamination. We note that the Plan of Operations is required by section 287 of the *Environment Protection Act 1994* (**EP Act**), and that section 288(1)(c)(ii) of the EP Act requires the Plan of Operations to include an action program for complying with the conditions of the EA. Given that the interaction of CSG activities and the HECZ contamination is, in our client's view, likely to present a significant risk of environmental harm, and therefore potentially result in breaches of the conditions of the EA, we consider it surprising that the most recent version of the Plan of Operations does not specifically address the HECZ contamination.
16. Moreover, we note that under condition A32 of the EA, APLNG is required to prepare an Annual Environmental Report that must, amongst other things, identify any amendments required to the EMP and the Constraints Planning and Field Development Protocol (**Constraints Protocol**), required under condition A10 of the EA. In this regard, we also note that condition A11 of the EA requires the Constraints Protocol to identify all soils and landscape constraints, such as the HECZ contamination.

⁹ APLNG Project EIS, Volume 2, Chapter 5, p. 30; Ibid.

¹⁰ EMP, APLNG Project EIS, Volume 2, Chapter 24, pp. 14-15.

17. The Annual Environmental Reports do not appear to be publicly available, and therefore it is not possible to confirm whether they identify amendments required to the EMP and the Constraints Protocol. However, we note that no recent amendments appear to have been made to the EMP or the Constraints Protocol. Indeed, it appears that the Constraints Protocol has not been updated since the version published in August 2011 (Q-LNG01-15-MP-0109).¹¹

18. We consider that the discovery of the HECZ contamination should warrant the update of the Plan of Operations, EMP and the Constraints Protocol. The fact that these documents have not been amended to specifically address the HECZ contamination, in our client's view, casts doubt upon the seriousness with which APLNG and/or Origin are treating their obligations to adequately assess and manage the risks associated with their CSG activities within the HECZ.

Options available to DEHP to ensure adequate risk management

19. We are instructed that our client has obtained correspondence indicating that DEHP is currently in discussions with APLNG about the proposed CSG activities within the HECZ.¹²

20. Our client would be grateful if you could inform us of the nature and content of these discussions, and any assessment or investigation of the risks posed by CSG activities within the HECZ undertaken, or proposed to be undertaken, by the DEHP, APLNG and/or Origin.

21. As noted above, our client considers that the HECZ contamination requires a specific and coordinated risk assessment process above and beyond the general contamination management system required by the approval of the Project. In this regard, we note that in circumstances where an environmental risk is discovered after approval for an activity has been granted, such as in the present matter, the DEHP has certain legislative options available under the EP Act to manage the unassessed risk. For example, under section 215 of the EP Act, the DEHP has discretion to amend the Project's EA where, for example, it is satisfied that the EA was issued on the basis of a miscalculation of the environmental values affected or likely to be affected by the Project. In our view, the discovery of the HECZ contamination is a factor that is likely to alter the Project's anticipated impacts on relevant environmental values, and therefore would provide justification to amend the EA to include a condition specifically dealing with the management of the HECZ contamination.

Our client's request

22. Having regard to the above discussion, our client respectfully requests the DEHP to do the following:

¹¹ See, Annual Environmental Return, EPBC 2009/4974 Gas Fields, 2015 – 2016 (Q-LNG01-15-AT-1135), p. 7.

¹² See, Letter from Hon. Dr Steven Miles to Tom Marland dated 17 May 2016; Letter from Paul Woodland, Office of the Hon. Dr Anthony Lynham, to Shay Dougall dated 30 May 2016.

- a. Provide a detailed outline of the nature and content of all DEHP discussions with APNLG and/or Origin to date regarding CSG activities within the HECZ, including in relation to any risk assessments and/or investigations that have been, or will be, undertaken in this regard;
- b. Ensure that all of APLNG and/or Origin's CSG activities within the HECZ cease until APLNG has complied with its commitments under the EIS and the EMP by:
 - i. Identifying all contaminated sites within the HECZ prior to the commencement of CSG activities;¹³ and
 - ii. Carrying out inspections and assessments of contamination levels at any contaminated sites identified,¹⁴ and developing appropriate management and remediation strategies for such contaminated sites;¹⁵
- c. Ensure that APLNG amends and updates the Plan of Operations, EMP and Constraints Protocol to specifically deal with the risks posed by CSG activities within the HECZ; and
- d. Consider exercising its discretion to amend the EA to include an additional condition requiring APLNG to develop a specific and coordinated contamination assessment and remediation system in relation to the HECZ contamination, to the extent that it interacts with APLNG and/or Origin's CSG activities.

23. Our client would be grateful if you could provide a detailed response to the above matters by **Monday, 4 July 2016**.

If there are any matters that you would like to discuss please do not hesitate to contact the writer on (02) 9262 6989 or by e-mail brendan.dobbie@edonsw.org.au.

Yours sincerely,

EDO NSW



Brendan Dobbie
Solicitor

Our Ref: 1522927

¹³ EMP, APLNG Project EIS, Volume 2, Chapter 24, pp. 14-15.

¹⁴ APLNG Project EIS, Volume 2, Chapter 5, p. 30; Ibid.

¹⁵ EMP, APLNG Project EIS, Volume 2, Chapter 24, pp. 14-15.