17 August 2012

Research Director
Agriculture, Resources and Environment Committee
PARLIAMENT HOUSE QLD 4000
BY EMAIL: arec@parliament.qld.gov.au

Dear Sirs

Reducing regulatory burdens for Queensland's agriculture and resource industries Paper No. 1, July 2012

Origin Energy Resources Limited (**Origin**) is pleased to take the opportunity to provide a response to the Agriculture, Resource and Environment Committee's inquiry into reducing regulatory burdens for Queensland's agriculture and resource industries.

Background

Origin is a project partner of the Australia Pacific LNG Project (**Project**), being a coal seam gas (**CSG**) to liquefied natural gas (**LNG**) joint venture partnership between Origin, ConocoPhillips and Sinopec.

The Project is expected to have a 30 year life and consists of:

- The development of Australia Pacific LNG's Walloons gas fields in the Surat Basin in south central Queensland with up to 10,000 CSG wells.
- Construction and operation of a gas transmission pipeline to connect the Walloons gas fields with the LNG facility.
- Construction and operation of an LNG facility on Curtis Island near Gladstone.

In April 2009, the Project was declared to be a significant project for which an environmental impact statement (**EIS**) is required pursuant to the *State Development and Public Works Organisation Act 1971* (**SDPWO Act**).

The (former) Department of Infrastructure and Planning coordinated the impact assessment process for the Project on behalf of the Coordinator-General in accordance with that Act. The Coordinator-General's evaluation report on the EIS was issued in November 2010 (**CG's report**). The report recommended that the Project proceed, subject to stringent conditions that apply to the whole Project as well as to the Project's individual components (gas fields, gas transmission pipelines and LNG facility).

Separate referrals for each component of the Project (gas fields, pipeline and LNG facility) were also made under the *Environment Protection and Biodiversity Conservation Act 1999* to the Australian Government Minister for the Environment, Heritage and the Arts, who subsequently determined that each referral was a controlled action. The Minister approved the Project subject to conditions on 21 February 2011.

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Origin, as the upstream operator of the Project, is currently in the process of applying for numerous 'secondary' approvals for the gas fields and pipeline components of the Project based on Queensland legislation. It therefore has contemporary and relevant experience which may demonstrate regulatory impacts relevant to this inquiry.

Origin seeks to provide the inquiry with an insight into the regulatory burden impacting upon the CSG industry. Through its involvement in the extensive approvals process for the Project, Origin has identified several unwarranted (and possibly unintended) regulatory impacts for resource industries, particularly the CSG industry.

Regulatory Burden

The Committee seeks comment on the combination of methods that will be most beneficial to reducing unreasonable regulatory requirements for Queensland's agriculture and resource industries whilst balancing environmental protections. Origin's main focus in this submission is on the environmental obligations relating to CSG operations (although these methods may be applicable to other forms of regulation applying to the resource industry).

The methods raised in the Inquiry Issues Paper that are best placed to deliver efficient and effective regulation for resources in Queensland are:

(a) Better policy development established through consultation with industry and improved consideration of industry expertise;

(b) Review of legislation within departments or through the established regulatory review office; and

(c) Better regulatory information available to stakeholders to improve information exchange with government departments, reduce delays and regulatory costs.

The relevance of each method is addressed throughout this submission.

Origin is of the view that, in relation to the impact of environmental regulation on its CSG operations:

(a) There is an opportunity to reduce the regulatory burden of unnecessary and overlapping secondary approval requirements where an EIS process has been undertaken; and

(b) the approvals process under the *Environmental Protection Act 1994* (**EP Act**) might be simplified for such projects.

Each of these issues is discussed below.

Reducing regulatory burden of the secondary approval requirements where an EIS process has been undertaken

Origin has experienced inconsistent and overlapping regulatory requirements when obtaining secondary approvals. For the Project, this includes environmental authorities under the *Environmental Protection Act 1994*, development approvals under the *Sustainable Planning Act 2009* and permits under the *Nature Conservation Act 1992*, amongst many others.

The objective of the EIS is to ensure that all potential environmental, social and economic impacts of the Project are identified and assessed and, where possible, how any adverse impacts would be avoided or mitigated. This should negate, as far as practicable, the need for further environmental assessment as part of the secondary approvals processes. However, this is not Origin's experience.

Origin acknowledges that efforts are being made, through the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*, to remove the current duplication of process in the *Environmental Protection Act 1994* where petroleum and mining activities have already undertaken an EIS.

However, there are other secondary approval processes that are sources of regulatory burden that are equally in need of streamlining to remove duplicitous and unnecessary approval processes.

Waterway crossings

The regulation of waterway crossings is sometimes inconsistent in approach across industries and is an example of unnecessary duplication.

For the Project, the environmental impacts of waterway crossings are addressed by the EIS and the CG's report. By way of example, the conditions of the CG's report require that, prior to the issue of environmental authorities for the gas transmission pipeline component of the Project, an EM Plan be developed addressing, inter alia, creek crossings and waterway barrier works.[1] Relevantly, the EM Plan is required to include:

(a) a detailed assessment of aquatic values along the pipeline route, with site specific data that accurately and comprehensively describes the environmental values and ecological condition of each aquatic site;

(b) demonstration that mitigation measures for permanent creek crossings are consistent with AS2885 - Pipelines - Gas, Liquid and Petroleum and the Australian Pipeline Industry Association Code of Environmental Practice;

(c) the design of all creek crossings and waterway barrier works is required to take account of matters discussed in Waterway barrier works development approvals (Fish Habitat Management Operational Policy FHMOP 008, DPI&F, July 2009); and

(d) the rehabilitation of disturbed riparian areas must also be addressed by the EM Plan.

The purpose of an EM Plan is to propose environmental protection commitments to help the administering authority decide the conditions of an environmental authority (chapter 5A activities).[2]

[1] CG's Report, Appendix 3, Part 3, Condition 1.

[2] s 310D *Environmental Protection Act 1994*

Subsequent to the development of EM Plans, conditions with respect to waterway crossings have been included in the environmental authorities (chapter 5A activities) for the Condabri gas fields[3] and the main gas transmission pipeline.[4]

Accordingly, the environmental impacts of waterway crossings for the Project are comprehensively regulated by the combined effect of the CG's report and subsequent environmental authorities.

Nevertheless, under the current regulatory framework, development permits under the *Sustainable Planning Act 2009* (**SPA**) are required for waterway barrier works. There are an estimated 3,500 waterway crossings required over the whole of the Project.[5] This process is cumbersome and involves significant duplication with the processes already undertaken through the preparation and assessment of the EIS and environmental authority applications.

Self-assessable codes have been developed to assist individuals and organisations where proposed waterway barrier works meet legislative and policy requirements under the *Fisheries Act 1994*. Where waterway crossings comply with one of these codes, a development permit for waterway barrier works is not required. However, in the majority of cases, these self-assessable codes do not apply to waterway crossings required for projects such as the Project.

Recommendation

The requirement for a development permit under SPA for each waterway crossing is duplication of the approval process and, arguably unnecessary given the already comprehensive regulation the waterway crossings attract. This has the effect of placing an unreasonable regulatory burden upon both the Proponent and the State.

This issue is the result of multiple pieces of legislation applying to one activity, thereby creating overlapping obligations. A review of activities that trigger overlapping legislative obligations would go some way into streamlining the development process for CSG operations.

The issue of waterway crossing could be avoided through a new or amended self-assessable code that applies to a holder of an environmental authority (chapter 5A activities). For example, a code with a similar application to the new Guideline for riverine protection permits[6].

It is worth noting that the legislative framework applying to petroleum activities is inconsistent with that applying to mining activities which, with limited exceptions, do not require development approvals where development is

[3] For example, conditions (B8) to (B14) of EA PEN 101674310

[4] For example, conditions (D29) to (D51) of EA PEN 101808610

[5] The majority of the waterway crossings will not attract the application of any of the three self-assessable codes apply (for minor, temporary or regulatory constructed temporary works).

[6] Guideline - Activities in a watercourse, lake or spring associated with a resource activity or mining operations (WAM/2008/3435).

authorised under the *Mineral Resources Act 1989*.[7] Therefore, the most logical solution would be amendment of the *Petroleum and Gas (Production and Safety) Act 2004* to include the equivalent of section 319 of the *Mineral Resources Act 1989* for petroleum activities.

Permits under the Nature Conservation Act 1992

The *Nature Conservation Act 1992* (**NCA**) requires separate permits for various matters regulated by that Act, including activities affecting protected plants, protected animals and protected areas.

It is estimated that, for the next 5 years of the Project, approximately 1,000 permits will be required under the NCA. This includes clearing permits, damage mitigation permits and rehabilitation permits.

These permits are required despite the fact that Species Management Plans (**SMP**) are required to be prepared and approved by the Commonwealth Department of Sustainability, Environment, Water, Population and Communities (**DSEWPAC**) and the Queensland Department of Environment and Heritage Protection (**DEHP**). These SMPs include specific management and mitigation measures to be adopted to avoid or minimise impacts on threatened flora and fauna, which includes species protected under the NCA.

Furthermore, there is no explicit recognition of the information contained in SMPs when making an application for a permit under the NCA. The application requirements are broadly stated, which often leads to requests for information that reproduce and duplicate information already contained in the SMP.

These issues are a significant cause of delay and uncertainty to proponents. It is common for the processing of a NCA permit to take more than the prescribed 40 business days, even though SMPs have been prepared and approved for the relevant species. Given the nature of these permits, they are often sought to be obtained immediately prior to the commencement of petroleum activities in an area. In many cases, delay in the processing of an application will directly translate to delay in the commencement of these activities, which may have significant scheduling and financial implications.

Recommendation

Better regulatory information, by way of a guideline, may reduce delays in processing of such permits. However, the reproduction and duplication of matters in the SMP raises a more significant issue and that is the need for permits at all.

Similar to the proposal to do away with EM Plans under the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*, in appropriate circumstances, much of the information requirements for NCA permits could be removed where SMPs have been prepared.

That is, where an EIS adequately addresses matters requiring further approval under the NCA, performance-based regulation, such as requiring compliance with

[7] Section 319 of the *Mineral Resources Act 1989*.

SMPs would streamline processes and avoid unnecessary duplication without impacting upon the objective of preserving the environmental outcome.

Simplifying the process for environmental authorities under the EP Act

Two issues that might be addressed for environmental authorities are overly prescriptive conditions and excessive regulation associated with amendment applications.

(a) Overly prescriptive conditions

The environmental authorities (chapter 5A activities) so far issued for various components of the Project contain conditions which are largely prescriptive rather than performance targeted.

Given the scale and timeframes associated with the Project, prescriptive conditions are not suitable as they have unintended consequences for some operational works as well as restrict in certain cases a company's ability to employ innovative techniques that may provide a better environmental and social outcome. Rigid conditions do not take account of unforeseen operational impacts that require flexibility in approach for certain activities whilst still Project still complies with the purpose and intent of the environmental conditions. As an alternative, performance based conditions have a number of advantages, including:

(i) greater clarity and accountability as to the environmental outcome; and

(ii) flexibility for the proponent as to how that outcome may be achieved.

The CG's report requires the development, approval and implementation of a number of management plans addressing various aspects of the Project. These include, by way example, environmental management plans, social impact management plans, significant species management plans, traffic management plans, noise management plans, CSG water management plans and waste management plans.

In circumstances such as these, where management plans address many of the issues encountered by an activity, it would simplify matters for environmental conditions to be performance-based (for example, by requiring compliance with the relevant management plan) rather than prescriptive, so that a degree of flexibility with respect to variables such as site circumstances can be accommodated.

It is understood that model conditions have been designed to provide for consistency between environmental authorities. In our experience this has so far been largely unsuccessful as they themselves have included rigid, and at times unachievable, conditions that are often not applied consistently from tenure to tenure.

Recommendation

The approach for reducing the effect of inflexible, prescriptive conditions and to improve efficiency of the regulatory framework is best addressed, through better policy development involving adequate consultation with industry prior to policy implementation and through industry working groups to assist in the formulation of key operating conditions.

Accordingly, a less prescriptive approach to environmental conditions and a more performance-based focus will simplify the process for environmental authorities and enable greater consistency and certainty for proponents, government and other stakeholders.

(b) Excessive regulation associated with amendment applications

The prescriptive nature of environmental authority conditions often results in the need to amend environmental authorities. This is likely an unintended consequence of the legislation as relatively small operational work changes may trigger an amendment to existing environmental authorities. This issue is an example of where the regulatory impact of onerous obligations upon CSG operations has become more pronounced as the Project progresses.

The process to amend environmental authorities is overly cumbersome and lengthy. Origin acknowledges that efforts are being made, through the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*, to streamline this process. This will be achieved by distinguishing between minor and major amendments, and only requiring public notification of major amendments in certain circumstances.

Recommendation

The requirement to amend environmental authorities and the attached amendment process itself creates an unnecessary regulatory burden which might be addressed through a review process undertaken by a regulatory review committee and also by furnishing better regulatory information about these issues to industry. A suitable outcome might be:

(a) performance-based conditions to reduce the need for amendment applications; or

(b) a simplified amendment process for environmental authorities for significant projects.

Issue - plan of operations

The amendments proposed under the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* include a new requirement that the holder of an existing environmental authority relating to a petroleum lease that involves an ineligible ERA must provide a plan of operations within 6 months of the commencement of the that Act. Amongst other things, the plan of operations must include a plan showing where all activities are to be carried out on the land.

It is anticipated that this may present a significant burden on the holder of the existing environmental authority as it might not be a simple exercise to convert the existing operational plan into a plan of operations.

Recommendation

This issue could have been avoided with more extensive consultation with industry prior to the amendment. Having said this, the impact of this provision could be reduced through better regulatory information by way of a guideline prepared in consultation with industry. The guideline should outline the expectations of the government in converting current operational plans into the newly formed plan of operations. As far as possible, this should make use of the information contained in any existing operational plan.

Conclusion

In support of the process undertaken by the Committee, Origin believes addressing unreasonable regulatory requirements (a snapshot of some have been provided within this submission) will reduce some of regulatory inefficiencies applying to CSG operations. Origin firmly believes the regulatory burden currently experienced by CSG operators can be addressed without compromising the environmental objectives within the regulatory framework.

In this regard, Origin encourages more frequent consideration of industry raised issues and viewpoints through targeted policy development and reviews, comprehensive regulatory information developed in consultation with industry and a regulatory review of known burdensome regulations including intersecting and overlapping regulations contained in multiple pieces of legislation. As a starting point Origin believes:

(c) the impact of secondary approval requirements for resource projects should be open to review where an EIS process has been undertaken; and

(d) the approvals process under the *Environmental Protection Act 1994* (**EP Act**) might be reviewed and simplified for large resource projects.

Origin notes the Queensland Government has established an Office of Best Practice Regulation within the Queensland Competition Authority (QCA) to facilitate a robust system for consistent regulatory review process in Queensland. Origin welcomes the opportunity to further address the issues raised and other burdensome regulatory obligations that interfere with the efficient operation of CSG businesses in Queensland.

Should the Committee wish to discuss any aspects of this submission please contact me or alternatively contact Brett Campbell on (07) 3028 5241.

Yours sincerely

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