



Office of Environment & Heritage

Your reference: MP07_0103-Mod 2
Our reference: Doc12/36534
Contact: Rachel Lonie, 9995 6837

Mr Clay Preshaw
Department of Planning and Infrastructure
GPO Box 39
SYDNEY NSW 2000

Dear Mr Preshaw

I refer to your email dated 29 August to the Office of Environment and Heritage (OEH) regarding Modification 2 for the Apex Energy NL Gas Project (MP07_0103). The modification seeks to extend the expiry date for the Approved Part 3A project to three years from commencement of drilling of the first bore hole.

OEH notes that although the duration for the approval has been defined, the commencement date has not. OEH recommends that any approval for drilling operations be time limited (i.e. a maximum time specified for commencement to occur in) as Apex Energy's Petroleum Exploration Licence has expired and it could be some time before the operations commence.

Advice has been sought from OEH's Regional Parks and Wildlife Group. It appears that boreholes A113, A115 and A117 are on OEH land. OEH previously advised the Proponent (Attachment 1) that access for exploration purposes or prospecting activity for proposed boreholes A113, A115 and A117 could not precede without the approval of the relevant landholder, in this case the Minister for the Environment, as the boreholes were proposed to be drilled within the Dharawal State Conservation Area (SCA). Since this letter was written, a large part of Dharawal SCA has been gazetted as Dharawal National Park and the remainder as Dharawal Nature Reserve, with a small section only remaining as SCA.

The change in reservation status occurred following consultation with the Department of Mineral Resources and with the approval of the Minister administering the Mining Act 1992. As a result of the changed reservation status an extension or a renewal of the Part 3A approvals for those particular areas is no longer permissible under the *National Parks and Wildlife Act 1974* (the Act). Sections 41 and 54 of the Act state that prospecting and mining are prohibited in national parks, heritage sites and nature reserves except as expressly authorised by an Act of Parliament. OEH therefore advises that it would be unlawful to undertake exploration at proposed boreholes A113, A115 and A117. For this reason, the modification, if granted, must exclude these boreholes from any approval.

OEH recommends that DoP&I ensure that the location of any exploration work is outside national park and nature reserve areas. Further, if any activity is within an SCA the Proponent should be advised that they will need separate approval under NPWS Act. A map layer called NSW National Parks and Wildlife Service (NPWS) Estate can be found at <http://mapdata.environment.nsw.gov.au/DDWA> by searching under "estate" in the keywords.

For the proposed boreholes outside the Dharawal National Park and Nature Reserve, it would be expected that the *Code of Practice for Coal Seam Gas - Well Integrity* would be required as a condition of any approval. OEH also recommends that consideration be given to including specific consideration of *Phytophthora cinnamomi* as this pathogen has been recorded in the subject area and could be spread by the proposed operations. Reference could be made to the Best Practice Management Guidelines for *Phytophthora cinnamomi* within the Sydney Metropolitan Catchment Authority Area (http://www.rbgsyd.nsw.gov.au/plant_info/pests_diseases/phytophthora_dieback).

It is noted that the Planning Assessment Commission approval conditions for Modification 1 included the requirement that a Biodiversity Offset Strategy for *Pultanea aristata* be prepared in consultation with OEH and to the satisfaction of the Director-General within five years of completion of drilling. OEH supports the re-iteration of this requirement in the conditions of approval, if granted.

Should you have any questions in regard to this correspondence please contact Rachel Lonie on 9995 6837 (Monday or Wednesday only).

Yours sincerely

 17/9/12

LOU EWINS
Manager, Planning and Aboriginal Heritage
Conservation and Regulation, Metropolitan
Office of Environment and Heritage

Attachment: OEH letter to Apex Head of Operations dated 26th July 2011



NSW National Parks
and Wildlife Service

Our reference: FIL10/18270
Contact: Diane Garrod (02) 44232170

Mr Chris Rogers
Head of Operations, Apex
21 Southey St
MITTAGONG NSW 2576

Dear Mr Rogers

RE: ACCESS TO PROPOSED GAS BORE HOLES A113, A115 AND A117

I refer to previous discussions and correspondence between the Office of Environment and Heritage and Apex Energy NL regarding the proposal to access the above locations which are located within Dharawal State Conservation Area (SCA) for the purposes of gas exploration and prospecting.

In order to exercise rights under a petroleum title in relation to an SCA, it is necessary for the titleholder to have the consent of the Minister for Resources and Energy. In granting consent in relation to an SCA the Minister for Resources and Energy must also first obtain the concurrence of the Minister for the Environment (s70(3) of the *Petroleum (Onshore) Act 1991*).

Further, any prospecting operations under an exploration licence must only be carried out in accordance with an "access arrangement" entered into with the relevant landholder (s69(c) of the *Petroleum (Onshore) Act 1991*). In this case, the relevant landholder in relation to proposed bore holes A113, A115 and A117 is the Minister for the Environment.

I understand that neither the concurrence of the Minister for the Environment, or an access arrangement, has yet been formally sought or obtained. No access for exploration purposes or prospecting activity within Dharawal SCA can occur without these approvals.

As you may also be aware, the NSW Government has committed to the establishment of Dharawal National Park, which is likely to include lands currently within Dharawal SCA. It is unlawful to prospect or mine for minerals in a national park except as expressly authorised by an Act of Parliament. Work is currently underway to progress creation of the national park.

The Department of Environment, Climate Change and Water is now known as the Office of Environment and Heritage, Department of Premier and Cabinet.

PO Box 707 NOWRA NSW 2541
Tel: (02) 44232170 Fax: (02) 44233122
ABN 30 841 387 271
www.environment.nsw.gov.au

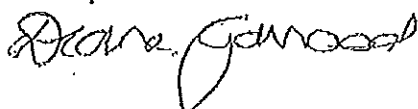
Department of Environment and Climate Change NSW



Given this context, you may wish to reconsider the proposed location of boreholes AI13, AI15 and AI17 within Dharawal SCA. In particular, there would be strong merit in identifying alternative locations outside of Dharawal SCA.

Please contact me on (02) 44232170 should you wish to discuss any aspect of this matter further.

Yours sincerely



DIANE GARROOD
Regional Manager, South Coast
National Parks and Wildlife Service
Office of Environment and Heritage

26 July 2011