NOTICE OF FILING AND HEARING

Filing and Hearing Details

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File Title:	ASSET ENERGY PTY LTD ACN 120 013 390 v THE COMMONWEALTH MINISTER FOR INDUSTRY AND SCIENCE AS THE RESPONSIBLE COMMONWEALTH MINISTER OF THE COMMONWEALTH-NEW SOUTH WALES OFFSHORE PETROLEUM JOINT AUTHORITY & ANOR
Registry:	WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Form 66
Rule 31.01(1)

Originating application for judicial review

No. of 2025

Federal Court of Australia

District Registry: Western Australia

Asset Energy Pty Ltd (ACN 120 013 390)

Applicant

The Commonwealth Minister for Industry and Science, as the Responsible Commonwealth Minister of the Commonwealth-New South Wales Offshore Petroleum Joint Authority and another named in the schedule

Respondents

To the Respondents

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place:

Date:

Signed by an officer acting with the authority of the District Registrar

Filed on behalf of (name & role of party) Asset Energy Pty Ltd, Applicant
Prepared by (name of person/lawyer) Timothy Masson
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The applicant applies to the Federal Court of Australia pursuant to s 5 of the *Administrative Decisions (Judicial Review) Act 1977* (Cth) and s 39B of the *Judiciary Act 1903* (Cth) to review two purported decisions of the Commonwealth-New South Wales Offshore Petroleum **Joint Authority**, constituted under s 56 of the *Offshore Petroleum and Greenhouse Gas Storage* ***Act*** *2006* (Cth). Those two decisions relate to applications to vary and suspend the conditions of Petroleum Exploration **Permit** NSW–11, pursuant to s 264(2) of the Act, and to extend the term of the Permit, pursuant to s 265 of the Act.

Details of claim.

The applicant is aggrieved by the two decisions of the Joint Authority because:

1. The applicant holds an 85% interest in the Permit.

2. Section 98 of the Act provides that the applicant is only permitted to explore for "petroleum" (including naturally occurring hydrocarbons in gaseous, liquid or solid state) in the relevant area of the Permit in accordance with conditions imposed on the Permit.

3. Conditions have been imposed on the Permit pursuant to s 99 of the Act requiring, among other things, that particular work be undertaken in specified periods of time.

4. On 24 December 2019, the applicant applied for a variation and suspension of the conditions of the Permit pursuant to s 264 of the Act and an extension of the term of the Permit pursuant to s 265 of the Act (the **First Application**). The variation, suspension and extension were sought, among other things, to enable the applicant (i) further time lawfully to drill an exploration well; and (ii) thereafter to conduct post well studies rather than conduct a three-dimensional seismic survey. The National Offshore Petroleum Titles Administrator (**NOPTA**), on behalf of the Joint Authority, accepted the First Application on 23 January 2020.

5. On 30 January 2021, the applicant applied for a variation and suspension of the conditions of the Permit pursuant to s 264 of the Act and an extension of the term of the Permit pursuant to s 265 of the Act (the **Second Application**). The variation, suspension and extension were sought, among other things, to enable the applicant further time lawfully to drill an exploration well and to invoke the decision-making principles set out in the *COVID-19 Fact Sheet: Work-Bid Exploration Permits (dated April 2020)*. NOPTA, on behalf of the Joint Authority, accepted the Second Application on 4 February 2021.

6. On 16 January 2025, the Joint Authority purportedly decided to refuse both the First Application and the Second Application (collectively, the **Decision**).

7. On 17 January 2025, NOPTA, on behalf of the Joint Authority, notified the applicant of the Decision and provided a **Statement of Reasons** for that Decision.

8. Because of the Decision:

   (a) the applicant is unable to proceed with the proposed work program under the Permit; and

   (b) the permit is now set to expire 2 months from 17 January 2025 in accordance with s 265A(2)(a) of the Act.

9. For the reasons set out in paragraphs 1 to 8 above, the applicant's interests are adversely affected by the Decision and the applicant has standing to bring these proceedings in respect of the Decision.

Grounds of application.

Error of law.

1. In making the Decision the Joint Authority made an error of law by misconstruing its discretionary powers under sections 264 and 265 of the Act.

Particulars

i. Properly construed, the discretionary power contained in s 265 of the Act to extend the term of a permit should not be exercised conjointly and on the same basis as the discretionary power under s 264 of the Act, which allows for a variation or suspension of proposed works.

ii. Properly construed, the discretionary power contained in s 265 of the Act requires that the discretionary power in s 264 first be satisfied as an essential preliminary before the power in s 265 is engaged.

iii. Properly construed, the discretionary power under s 264 of the Act must be exercised to determine whether a variation or suspension is appropriate. If a proposed variation or suspension is appropriate under s 264 of the Act, the question of extension under s 265 then depends upon whether it is reasonable to grant a permit holder to undertake the varied works, or whether it is necessary to accommodate (by way of an extension) a period of suspension or variation which has already been determined as appropriate.

iv. The Joint Authority, in its Statement of Reasons at [63], adopted an approach to the discretionary powers contained in ss 264 and 265 which collapsed the analysis of matters that would be relevant under the separate steps required by those sections into a single overarching

discretion. The Joint Authority considered that the matters relevant to the exercise of the discretion under s 265 were also relevant to the exercise of the discretion under s 264 as "any suspension of a condition of the Permit [under s 264] would be rendered futile if the period of the Permit were not extended [under s 265]".

v. The incorrect construction of ss 264 and 265 of the Act as adopted by the Joint Authority in sub-paragraph (iv) above, was material to the Decision in that the Joint Authority did not determine whether an extension under s 265 of the Act was justifiable given a pre-existing determination under s 264.

vi. For the reasons set out in sub-paragraphs (i) to (v) above, the Joint Authority's Decision is infected by an error of law.

Lack of evidence and unreasonableness regarding the public interest.

2. Further or in the alternative, there was no evidence or material before the Joint Authority to justify the conclusion that the grant of the First Application and/or Second Application was not in the public interest.

Particulars

i. In the Statement of Reasons at [75], the Joint Authority concluded that it would not be in the public interest to grant the First Application or the Second Application because of community opposition to gas exploration activities in areas including the geographical area of the Permit.

ii. The sole evidentiary basis for the conclusion in sub-paragraph (i) above was said to be the passage by the Parliament of New South Wales of the *Environmental Planning and Assessment Amendment (Sea Bed Mining and Exploration) Act 2024* (NSW) (**EPAA Act**) and statements made in a second reading speech in support of the related Bill by the Hon. Paul Scully: see Statement of Reasons at [56], and [73] to [75] (inclusive).

iii. The Parliament of New South Wales created no prohibition or duty in the EPAA Act that prevents the applicant carrying out the activities in the existing or proposed work program attaching to the Permit.

iv. Under s 3 of the EPAA Act, the Parliament of New South Wales conferred a power on the minister governing that Act to make exemptions from that Act by way of regulations.

v. The statements of the Hon. Paul Scully and other members of the Parliament of New South Wales made in that Parliament cannot, as a matter of law, be relied upon as evidence of the truth or correctness of what was said outside of Parliament, due to the statements made in Parliament being the subject of Parliamentary Privilege.

vi. Even if the statements of the Hon. Paul Scully could be used by the Joint Authority and are not the subject of Parliamentary Privilege, they cannot be used to determine the intentions of Parliament in enacting the EPAA Act as it cannot be supposed that members necessarily agreed with the Minister's reasoning or his conclusions.

vii. For the reasons set out in sub-paragraphs (i) to (vi) above, there was no evidence to satisfy the Joint Authority's conclusion that the grant of the First Application and/or Second Application was not in the public interest.

3. Further or in the alternative, the conclusion of the Joint Authority that the First Application and/or Second Application was not in the public interest was unreasonable (in the sense that it was a conclusion which was so unreasonable that no reasonable person could have reached it) in the circumstances.

Particulars

i. The applicant repeats the particulars contained in sub-paragraphs (2.i) to (2.vi) in the ground of review (lack of evidence) as contained in paragraph 2 above.

Denial of procedural fairness regarding confidential well costings advice.

4. Further or in the alternative, in making the Decision, the Joint Authority breached the rules of natural justice and the applicant was denied procedural fairness because the applicant was not provided with the opportunity:

(a) to respond to issues raised by the Joint Authority in relation to the costs of the proposed works; or

(b) to respond to issues raised by the Joint Authority in relation to the applicant's financial capacity to pay for the properly estimated costs of the proposed works.

Particulars

i. On or about 18 September 2024, NOPTA wrote to the applicant attaching the first respondent's **Preliminary Statement of Reasons** regarding the First Application and Second Application.

ii. The Preliminary Statement of Reasons expressed concern, for the first time, that the applicant may have underestimated the cost of a proposed exploration well which formed part of the existing and proposed work program for the Permit.

iii. On or about 15 November 2024 the applicant responded to the Preliminary Statement of Reasons.

iv. On or about 4 December 2024, the Joint Authority received, on request, two further contemporaneous confidential advices (collectively, the **Confidential Advice**) from NOPTA regarding the First Application and the Second Application, which were not provided to the applicant. The Confidential Advice regarding the First Application and Second Application are on materially similar terms: see Statement of Reasons at [49], [53], [54] and [86].

v. The Confidential Advice contained an analysis by NOPTA of the potential costs of the proposed exploration well. This analysis was said to be based on "permanently confidential information provided to NOPTA via regulatory submissions from titleholders (Annual Titles Assessment Reports and Daily Drilling Reports) [and that] NOPTA is aware of actual expenditure incurred on operational activities such as drilling a well": see the Confidential Advice at page 10.

vi. The estimated figure for the proposed exploration well arrived at by NOPTA in the Confidential Advice was "A$36 million using a jack-up rig or $A53 million using a semi-submersible rig": see the Confidential Advice at page 10.

vii. The estimated figure arrived at by NOPTA in the Confidential Advice was relied upon by the Joint Authority in the Statement of Reasons to conclude that the amount which the applicant estimated for the existing and proposed work was substantially under-estimated: see Statement of Reasons at [86], and [100].

viii. The estimated figure arrived at by NOPTA in the Confidential Advice was relied upon by the Joint Authority in the Statement of Reasons to conclude that it was speculative whether the applicant could raise sufficient capital to complete the

proposed work program: see Statement of Reasons at [86], [94], [100], [109], [124], and [125].

ix. Neither the estimated figures of the proposed exploration well arrived at by NOPTA in the Confidential Advice nor the methodology behind those figures were put to the applicant.

x. The Joint Authority was aware that, at all material times, the applicant did not consider that more precise information regarding the cost of its proposed exploration well was required: see Statement of Reasons at [97].

xi. If the applicant had been put on notice of the matters referred to in sub-paragraphs (iv) to (viii) above, it would have made submissions to address the perceived concerns and criteria going to the question of the proposed costs of the exploration well including whether the examples used by NOPTA to arrive at its proposed figure were sufficiently analogous to the applicant's proposed exploration well.

xii. The Joint Authority's assessment of the applicant's financial capacity, including by reference to the estimated cost of the proposed exploration well, was material to the Decision.

xiii. The Joint Authority did not properly assess the financial capacity which the applicant required to carry out the proposed exploration well, by reason of not properly estimating that proposed cost.

xiv. For the reasons set out in sub-paragraph (i) to (xiii) above, the Joint Authority denied the applicant procedural fairness by failing to provide the applicant with the opportunity to make submissions to the Joint Authority about the capacity of the applicant to raise the funds to pay for the properly estimated costs to carry out the proposed exploration well.

Errors in evidentiary analysis of estimated well costings and unreasonableness.

5. Further or in the alternative, in making the Decision:

(a) the Joint Authority had no or no sufficient evidence to conclude that the applicant had failed to estimate accurately the costs of its proposed exploration well; further or alternatively

(b) the Joint Authority's conclusion on that issue was unreasonable (in the sense of being a conclusion which was so unreasonable that no reasonable person could have made it).

Particulars

i. In or about January 2020 the applicant received a proposal from COSL Drilling Europe to drill the proposed exploration well which formed part of the existing and proposed work program for the Permit (**CDE Offer**).

ii. Under the CDE Offer a vessel referred to as the "COSLProspector Semi-Submersible" rig was to be utilised by the applicant to drill the proposed exploration well.

iii. The cost of the charter of the COSLProspector rig to drill the proposed exploration well under the CDE Offer involved three components:

a. a lump sum of USD$3m for "mobilisation [of the vessel] … from New Zealand";

b. USD$360,000 as the "operating daily rate"; and

c. a lump sum of USD $2m for "demobilisation [of the vessel] … to New Zealand": see CDE Offer at pages 18 and 19.

iv. To accept the CDE Offer, the applicant had to acquire, for the benefit of COSL Drilling Europe, "an **On-Demand bank guarantee** with a reputable Western bank for the sum of US$16m": see CDE Offer at page 19.

v. On or about 18 February 2020, the applicant provided the CDE Offer to the Joint Authority via NOPTA as evidence of procurement activity including rig cost of the proposed works relating to the exploration well within the Permit area.

vi. The Joint Authority concluded, in its Statement of Reasons, that the proposed works (for a period of 31 days) under the CDE Offer would cost approximately USD$27.16m (or AUD$39.5m) (the **Joint Authority CDE Offer Calculation**): see Statement of Reasons at [91] and [92].

vii. The Joint Authority CDE Offer Calculation was used by the Joint Authority to make the material adverse finding of fact that the applicant had underestimated significantly the likely costs of the works it would be required to undertake in accordance with the Permit should the First Application and/or Second Application be granted: see Statement of Reasons at [93], [100], [109], [124], and [125].

viii. The Joint Authority CDE Offer Calculation was incorrect in that the Joint Authority assumed erroneously that the On-Demand bank guarantee of USD$16m, being in the nature of a security, could not be utilised to meet the costs of the proposed exploration well under the CDE Offer or would otherwise be returned intact if the costs of the proposed exploration well were paid separately.

ix. Properly construed, the CDE Offer provides that the cost of the proposed exploration well would be USD$16.16m and not USD$27.16m (assuming 31 days of work as the Joint Authority did in its Statement of Reasons): see Statement of Reasons at [91].

x. The figure of USD$16.16m (being the true cost of the CDE Offer and which would be approximately AUD$23 million: see at [91](a)) as of January 2020 is not significantly higher than the indicative value of AUD$20m which the applicant provided as the minimum estimated expenditure commitment for the exploration well under the work program.

xi. For the reasons set out in sub-paragraphs (i) to (x) above, the Joint Authority erred in concluding that the applicant underestimated significantly the likely cost of the works it would be required to undertake in accordance with the Permit.

Orders sought.

1. The Decision be quashed or set aside.
2. It be declared that the Decision is void and of no effect.
3. The first respondent and the second respondent, together comprising the Joint Authority, reconsider the First Application and Second Application according to law.
4. The respondents pay the applicant's costs in the application.
5. Such further or other orders as this Honourable Court thinks fit.

Applicant's address

The Applicant's address for service is:

Place: C/- Timothy Masson
Ensign Legal
Level 9/200
St Georges Terrace
PERTH WA 6000

Email: tim@ensignlegal.com.au

The applicant's address is Unit 12, Level 1, 114 Cedric Street, Stirling WA 6021.

Service on the Respondents

It is intended to serve this application on all respondents.

Date: 12 February 2025

Ensign Legal per Jim Mason

Signed by Ensign Legal
Solicitors for the Applicant

Schedule

No. of 2025

Federal Court of Australia
District Registry: Western Australia

Respondents

Second Respondent:	**Minister for Natural Resources, as Responsible State Minister of the Commonwealth-New South Wales Offshore Petroleum Joint Authority**

Date: 12 February 2025