

NOTICE OF FILING

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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



Sia Lagos

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 59
Rule 29.02(1)

Affidavit

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

Respondents

First Affidavit of: **David Leslie Breeze**
Address: Unit 12, 114 Cedric Street, Stirling WA 6021
Occupation: Director
Date: 12 February 2025

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Filed on behalf of (name & role of party) Asset Energy Pty Ltd, Applicant
 Prepared by (name of person/lawyer) Timothy Masson
 Law firm (if applicable) Ensign Legal
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 (include state and postcode)

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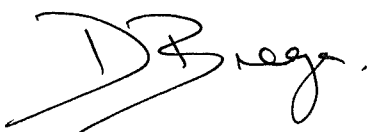
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I, David Leslie Breeze, Managing Director, say on oath:

1. I am the Managing Director of the applicant (**Asset**) and I am authorised to make this affidavit on the applicant's behalf.
2. The facts and matters deposed to in this affidavit are, unless stated to the contrary, within my personal knowledge and belief and are true. Where matters contained in this affidavit are outside my personal knowledge, I believe them to be true and have identified the source of my information and belief.
3. When I annex a document to this affidavit, I annex a true copy of that document.

The Permit.

4. On or about 24 June 1999, Exploration Permit Number "NSW PEP-11" was granted under the *Petroleum (Submerged Lands) Act 1967* (Cth) (**Permit**). Annexure **DLB1** to this Affidavit is a copy of the Permit.
5. Since about 27 October 2006, Asset and Bounty Oil & Gas Pty Limited have been the registered holders of the Permit.
6. On or about 19 April 2012, Asset acquired a cumulative 85% interest in the Permit. The transfer was approved by a Delegate of the National Offshore Petroleum Titles Administrator (**NOPTA**) on 3 July 2012. Annexure **DLB2** is a copy of the Deed of Assignment, Assumption and Transfer dated 19 April 2012.
7. From time to time, the term of the Permit has been extended and the conditions of



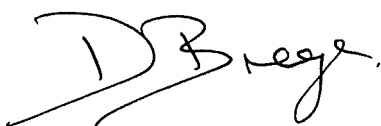

the Permit have been suspended and varied. The most recent approval of the Commonwealth-New South Wales Offshore Petroleum Joint Authority (**Joint Authority**) of a suspension of conditions and extension of the term of the Permit was on 8 January 2018. Annexure **DLB3** to this Affidavit is a copy of the letter approving the suspension and extension of conditions dated 8 January 2018.

The First Application.

8. On or about 24 December 2019, Asset (in its capacity as operator of the joint venture relating to the Permit) made an application to NOPTA for a variation and suspension of the conditions of the Permit and an extension of the term of the Permit (**First Application**). The variation, suspension and extension were sought to, among other things, (i) enable Asset as operator of the joint venture further time lawfully to drill an exploration well; and (ii) thereafter conduct post well studies rather than conduct a three-dimensional seismic survey. Annexure **DLB4** to this Affidavit is a copy of the First Application under a covering letter dated 24 December 2019.
9. On or about 23 January 2020, NOPTA accepted the First Application. Annexure **DLB5** to this Affidavit is a copy of the email dated 23 January 2020 from NOPTA accepting the First Application.

The Second Application.

10. On or about 30 January 2021, Asset (in its capacity as operator of the joint venture relating to the Permit) made a further application to NOPTA for a variation and suspension of the conditions of the Permit and an extension of the term of the Permit (**Second Application**). The variation, suspension and extension were sought to, among other things, enable Asset further time to comply with years 4 and 5 of the work program attaching to the Permit. Annexure **DLB6** to this Affidavit is a copy of the Second Application dated 30 January 2021.
11. On or about 4 February 2021, NOPTA accepted the Second Application. Annexure **DLB7** to this Affidavit is a copy of the email dated 4 February 2021 from NOPTA accepting the Second Application including the preceding email chain.

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Initial history of the First Application.

12. On or about 5 February 2020, NOPTA sent Asset a request for further information about the First Application. Annexure **DLB8** to this Affidavit is a copy of NOPTA's request for information by letter dated 5 February 2020.
13. On or about 18 February 2020, Asset responded to NOPTA's request for further Information dated 5 February 2020. Annexure **DLB9** to this Affidavit is a copy of Asset's response by letter dated 18 February 2020.
14. On or about 27 February 2020, NOPTA sent Asset a request for further information about the First Application. Annexure **DLB10** to this Affidavit is a copy of NOPTA's request for information by letter dated 27 February 2020.
15. On or about 13 March 2020, Asset responded to NOPTA's request for further information dated 27 February 2020. Annexure **DLB11** to this Affidavit is a copy of Asset's response by email dated 13 March 2020 attaching a letter dated 12 March 2020.
16. On or about 20 March 2020, NOPTA sent Asset a request for further information about the First Application. Annexure **DLB12** to this Affidavit is a copy of NOPTA's request for information by email dated 20 March 2020.
17. On or about 27 March 2020, Asset responded to NOPTA's request for further information dated 20 March 2020. Annexure **DLB13** to this Affidavit is a copy of Asset's response by email dated 27 March 2020 enclosing two attachments.
18. On or about 2 July 2020, NOPTA sent Asset a request for further information about the First Application. Annexure **DLB14** to this Affidavit is a copy of NOPTA's request for information by letter dated 2 July 2020.
19. On or about 6 August 2020, Asset responded to NOPTA's request for further information dated 2 July 2020. Annexure **DLB15** to this Affidavit is a copy of Asset's response by letter dated 6 August 2020.

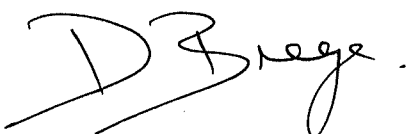
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20. On or about 16 December 2021, NOPTA sent Asset a letter indicating that the then Joint Authority intended to refuse the First Application and inviting Asset to make submissions. Annexure **DLB16** to this Affidavit is a copy of the letter dated 16 December 2021.
21. On or about 22 January 2022, Asset sent NOPTA further submissions in response to the letter dated 16 December 2021. Annexure **DLB17** to this Affidavit is a copy of the submissions by letter dated 22 January 2022.
22. On or about 30 March 2022, NOPTA sent Asset a letter which stated the then Joint Authority had refused the First Application (**Purported Decision**). Annexure **DLB18** to this Affidavit is a copy of the Purported Decision.
23. On or about 4 May 2022, NOPTA sent Asset a **Statement of Reasons** for the Purported Decision. Annexure **DLB19** to this Affidavit is a copy of an email dated 4 May 2022 attaching the Statement of Reasons. Annexure **DLB20** to this Affidavit is a copy of the Statement of Reasons.
24. On 14 February 2023, the Purported Decision was set aside by the Federal Court of Australia on the ground of apprehended bias. Annexure **DLB21** to this Affidavit is a copy of the decision of the Federal Court of Australia (**Federal Court Decision**).

Initial history of the Second Application.

25. The Second Application sought to invoke the decision-making principles set out in the **COVID-19 Fact Sheet: Work-Bid Exploration Permits (dated April 2020)**. Annexure **DLB22** to this Affidavit is a copy of the COVID-19 Fact Sheet taken from NOPTA's website.
26. In late 2021 a report was published on NOTPA's website titled "*National Offshore Petroleum Title Administrator: 2020–21 Annual Report of Activities*". Although I cannot remember the precise date on which I first read the *2020–21 Annual Report of Activities* to the best of my recollection it was shortly after it was published. Page 17 of the report records a "key activity highlight" as "[s]upport for





industry through the COVID-19 pandemic by allowing extra flexibility with exploration permits: 54 Applications approved". Annexure **DLB23** to this Affidavit is a copy of the 2021–21 Annual Report of Activities taken from NOPTA's website.

27. On or about 17 February 2021, NOPTA sent Asset a request for further information about the Second Application. Annexure **DLB24** to this Affidavit is a copy of NOPTA's request for information by letter dated 17 February 2021.
28. On or about 17 March 2021, Asset responded to NOPTA's request for further information dated 17 February 2021. Annexure **DLB25** to this Affidavit is a copy of Asset's response by email dated 17 March 2021 with attachments.
29. On or about 23 March 2021, NOPTA sent Asset an email which stated that the Second Application would not be considered until the Joint Authority made a decision with respect to the First Application. Annexure **DLB26** to this Affidavit is a copy of NOPTA's email dated 23 March 2021 with the preceding email chain.

History of the First Application and Second Application after the Federal Court Decision.

30. On or about 23 March 2023, NOPTA sent a letter to Asset:
 - (a) providing an opportunity to give updated information in support of the First Application and/or Second Application; and
 - (b) providing options as to whether the First Application and Second Application should be consolidated into a new application or determined separately.

Annexure **DLB27** to this Affidavit is a copy of the letter from NOPTA to Asset dated 23 March 2023.

31. On or about 18 April 2023, Asset responded by letter to NOPTA's letter dated 23 March 2023. Annexure **DLB28** to this Affidavit is a copy of the letter dated 18 April 2023.

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32. On or about 22 May 2023, NOPTA sent Asset a letter requesting further information regarding the First Application and Second Application. Annexure **DLB29** to this Affidavit is a copy of NOPTA's request for information by letter dated 22 May 2023.
33. On or about 28 June 2023, Asset responded to NOPTA's request for further information dated 22 May 2023. Annexure **DLB30** to this Affidavit is a copy of Asset's response by letter dated 28 June 2023.
34. On or about 2 August 2023, NOPTA sent Asset a letter requesting further information regarding the First Application and Second Application. Annexure **DLB31** to this Affidavit is a copy of NOPTA's request for information by letter dated 2 August 2023.
35. On or about 29 August 2023, Asset responded to NOPTA's request for further information dated 2 August 2023. Annexure **DLB32** to this Affidavit is a copy of Asset's response by letter dated 29 August 2023.
36. On or about 30 August 2023, NOPTA sent Asset a letter inviting comment on the composition of the Joint Authority. Annexure **DLB33** to this Affidavit is a copy of NOPTA's letter dated 30 August 2023.
37. On or about 12 September 2023, NOPTA sent Asset an email requesting further information regarding the First Application and Second Application. Annexure **DLB34** to this Affidavit is a copy of NOPTA's request for information by email dated 12 September 2023.
38. On or about 2 October 2023, Asset responded to NOPTA's request for further information dated 12 September 2023. Annexure **DLB35** to this Affidavit is a copy of Asset's response by letter dated 2 October 2023.
39. On 17 October 2023, Asset received an email from NOPTA which stated that NOPTA had made a recommendation to the Joint Authority with respect to the First Application and Second Application. Annexure **DLB36** to this Affidavit is a copy of NOPTA's email dated 17 October 2023.



40. On or about 23 October 2023, Asset responded to NOPTA's letter dated 30 August 2023. Annexure **DLB37** to this Affidavit is a copy of Asset's response by letter dated 23 October 2023.
41. On or about 24 January 2024, Asset sent a letter to NOPTA requesting an update as to when the First Application and Second Application will be determined. Annexure **DLB38** to this Affidavit is a copy of Asset's letter dated 24 January 2024.
42. On or about 14 March 2024, NOPTA responded to Asset's request dated 24 January 2024. Annexure **DLB39** to this Affidavit is a copy of NOPTA's response by email dated 14 March 2024.
43. On or about 11 April 2024, Asset (by its solicitors, Ensign Legal) sent a letter to NOPTA requesting an update as to when the First Application and Second Application will be determined. Annexure **DLB40** to this Affidavit is a copy of the letter dated 11 April 2024.
44. On or about 23 April 2024, NOPTA responded to Ensign Legal's letter dated 11 April 2024. Annexure **DLB41** to this Affidavit is a copy of NOPTA's response by letter dated 23 April 2024.
45. On or about 24 June 2024, Asset (by its solicitors, Ensign Legal) sent a letter to NOPTA requesting an update as to when the First Application and Second Application will be determined. Annexure **DLB42** to this Affidavit is a copy of Asset's letter dated 24 June 2024.
46. On or about 25 July 2024, NOPTA responded to Asset's request dated 24 June 2024. Annexure **DLB43** to this Affidavit is a copy of NOPTA's response by letter dated 25 July 2024.

Further judicial review proceedings.

47. On 5 August 2024, Asset commenced judicial review proceedings in the Federal Court of Australia against the members constituting the Joint Authority seeking orders in the nature of mandamus to compel the respondents to make a decision

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with respect to the First Application and Second Application. Annexure **DLB44** to this Affidavit is a copy of Asset's judicial review application in proceeding number WAD216/2024.

The final preliminary steps to the purported making of a final decision with respect to the First Application and Second Application.

48. On or about 18 September 2024, NOPTA sent Asset a letter indicating that the first respondent had formed the preliminary view that the appropriate decision of the Joint Authority was to refuse the First Application and Second Application. The letter attached a **preliminary statement of reasons** in support of the first respondent's view. The letter said that the first respondent intended to notify the second respondent under s 59(3) of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) of his final decision but invited Asset to make submissions in response to the preliminary statement of reasons within 30 days. Annexure **DLB45** to this Affidavit is a copy of the letter and attached preliminary statement of reasons (absent annexures) dated 18 September 2024.
49. On or about 9 October 2024, Asset sent a letter to NOPTA requesting that it have until 15 November 2024 to respond to the preliminary statement of reasons. Annexure **DLB46** to this Affidavit is a copy of the letter dated 9 October 2024.
50. On or about 10 October 2024, NOPTA responded to Asset's letter dated 9 October 2024 and stated that the first respondent had extended the deadline to respond to his preliminary statement of reasons until 15 November 2024. Annexure **DLB47** to this Affidavit is a copy of NOPTA's response by letter dated 10 October 2024.
51. On or about 15 November 2024, Asset sent NOPTA further submissions in response to the statement of preliminary reasons. Annexure **DLB48** to this Affidavit is a copy of the submissions by letter dated 15 November 2024.

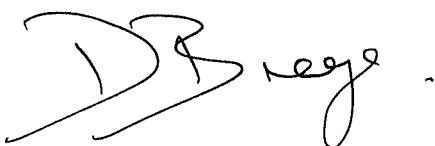


Purported final decision by the Joint Authority with respect to the First Application and Second Application.

52. On or about 17 January 2025, Asset received a letter from NOPTA dated 17 January 2025 informing Asset that the Joint Authority had decided to refuse the First Application and Second Application. Enclosed with the letter was a **final statement of reasons** (with 52 annexures) and a notice purportedly issued under s 265A of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) (**OPPGS Act**):
- (a) Annexure **DLB49** to this Affidavit is a copy of the letter from NOPTA to Asset dated 17 January 2025.
 - (b) Annexure **DLB50** to this Affidavit is a copy of the notice purportedly issued under s 265A of the OPPGS Act that was attached under the cover of the letter from NOPTA to Asset dated 17 January 2025.
 - (c) Annexure **DLB51** to this Affidavit is a copy of the final statement of reasons (including annexures 1 to 52) that was attached under the cover of the letter from NOPTA to Asset dated 17 January 2025.

Content of the final statement of reasons.

53. On or about 28 January 2025, and after reviewing the final statement of reasons, I became aware that NOPTA provided **confidential advice** to the Joint Authority on or about 4 December 2024. A copy of the confidential advice was annexed to the statement of reasons at annexures 51 and 52. The confidential advice related to the First Application and Second Application. I confirm that the applicant had not been provided with a copy of the confidential advice prior to 17 January 2025.
54. The final statement of reasons refers to a proposal from COSL Drilling Europe made to the applicant in January 2020 to drill the proposed exploration well which formed part of the existing and proposed work program for the Permit (**CDE Offer**). I confirm that:

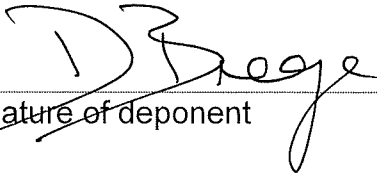
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- (a) the CDE Offer was sent to the Joint Authority by way of an enclosure to the letter dated 18 February 2020 which is referred to in paragraph 13 of this affidavit above; and
- (b) on the swearing of this affidavit, I have reviewed annexure 41 (attachment G) to the statement of reasons (being **DLB51**) and confirm that attachment G is a true copy of the CDE Offer.

Sworn by the deponent
at Perth
in Western Australia
on 12 February 2025
Before me:

)
)
)
)
)


Signature of deponent



Signature of witness

Oscar Sergio Dell'Anna
A legal practitioner who has held a practice certificate
For at least 2 years and who holds a current practice certificate