

Ref: EPBC 2013/6890

Mr Michael Herrington Chief Operating Officer Merlin Energy Pty Ltd PO Box 1571 TOOWONG DC QLD 4066

Dear Mr Herrington

Thank you for your letter of 21 October 2013, concerning the South Georgina Basin Exploration Project (the Project), south-west of Boulia, Queensland (EPBC 2013/6890).

The action considered as part of the referral decision for the Project specifically indicated that no stimulation would occur and that this was outside of the scope of the State Environmental Authority for the project. This was part of the basis upon which the referral decision that the action is not a controlled action if undertaken in a particular manner, was taken.

You have now indicated that there is an intention to hydraulically fracture a number of the wells and that you will need to amend the Environmental Authority to permit this. This differs from the information considered in making the referral decision for the project. There is no legislative provision of the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) to vary the details in a particular manner decision.

It is for you to consider whether to submit a new referral under the EPBC Act is necessary, because what you referred and what you will undertake will differ.

In relation to the application of the water trigger, this is limited to coal seam gas and coal mining activities and excludes shale gas.

The department's EPBC Act Compliance and Enforcement Policy (C&E Policy) provides for the responses available to allegations against the EPBC Act. The C&E Policy provides the department the option to not take further action in some cases of allegations against the EPBC Act.

In this instance, if the action is taken as per the letter, outside the description of the particular manner and on the assurance that there would be no significant impact to any matters of national environmental significance, the department would be unlikely to take any action against Merlin Energy Pty Ltd.

You should also be aware that any decision of this department not to take an action in response to an identified contravention of the EPBC Act does not preclude third parties from seeking independent relief through the courts or using other mechanisms available under national environmental law. This advice contained in this correspondence does not limit or influence any provisions which remain available to third parties or the Minister under the EPBC Act.

However, as always, the risk remains on the approval holder, should your action have an impact on any matter of national environmental significance, compliance action from the department may ensue.

Yours sincerely

Deb Callister

Assistant Secretary

Queensland and Sea Dumping Assessment Branch

November 2013