

NOTICE OF FILING

Details of Filing

Document Lodged:	Outline of Submissions
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
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File Number:	VID1400/2025
File Title:	AUSTRALIAN CONSERVATION FOUNDATION INC. v MINISTER FOR THE ENVIRONMENT AND WATER & ANOR
Registry:	VICTORIA 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.



No: VID 1400 OF 2025

AUSTRALIAN CONSERVATION FOUNDATION INC
Applicant

MINISTER FOR THE ENVIRONMENT AND WATER
First Respondent

WOODSIDE ENERGY LTD (ACN 005 482 986)
Second Respondent

APPLICANT'S REPLY

1. These submissions reply to the “threshold issue” raised in Woodside’s submissions.
2. ACF has replied to the Minister’s submissions in its reply in VID1356/2025. The Minister does not agitate the “threshold issue”.
3. The “threshold issue” has no practical significance here. Section 78(3) states, relevantly:

The Minister must not revoke [a controlled action decision] after:

- (a) the Minister has granted or refused an approval of the taking of the action.
4. Woodside contends that because the Minister has “granted an approval”, the Minister is precluded from revoking the controlled action decision, rendering ACF’s challenge to the Reconsideration Decision moot.
5. The contention is misconceived. It assumes that s 78(3) applies whenever an approval has been granted in fact, regardless of whether the approval is valid in law. That is not the proper construction. Section 78(3) operates on the premise that a valid approval has been granted. An invalid approval is no approval at all, with the consequence that s 78(3) has no work to do: see, by analogy, *Minister for Immigration and Multicultural Affairs v Bhardwaj* (2002) 209 CLR 597 at 616 [53]; on the fact/law distinction see *Oakey Coal Action Alliance Inc v New Acland Coal Pty Ltd* (2021) 272 CLR 33 at 64 [94]; *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Moorcroft* (2021) 273 CLR 21 at 37-38 [20].

6. ACF submits that the Approval Decision is invalid in VID1356/20250. It does so partly on the ground that the Minister erred in failing to take into account information he had about the physical effects of climate change on the national heritage values of the Dampier Archipelago (Ground 4). That ground is the same ground agitated in this proceeding.
7. It follows that, to determine whether the Approval Decision is valid (and, by extension, whether s 78(3) has any work to do in relation to this proceeding), the Court must grapple with and resolve the ground that is common to both proceedings. Only if that ground and all other grounds in VID1356/2025 are rejected does s 78(3) arise here. If any of the grounds in VID1356/2025 succeed, with the consequence that the Approval Decision is invalid, then s 78(3) will have no application here, because there will have been no “approval” in law.
8. It follows that s 78(3) does not raise a “threshold issue” in the circumstances of these proceedings. Instead, it raises an issue that is reached only once the entirety of proceeding VID 1356/2025 is resolved (*ipso facto*, adversely to ACF). Section 78(3) makes no practical difference to the result in either of the two proceedings before the Court.

Dated: 7 July 2026



A SCOTT KC



J UNDERWOOD



H DOUGLAS