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IN THE FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: GENERAL

VID1357/2025

FRIENDS OF AUSTRALIAN ROCK ART INC

Applicant

MINISTER FOR ENVIRONMENT AND WATER

First Respondent

WOODSIDE ENERGY LTD (ACN 005 482 986)

Second Respondent

OUTLINE OF SUBMISSIONS OF THE APPLICANT

A. INTRODUCTION

1. On 12 September 2025, the Minister for Environment and Water (**Minister**) approved the "action" of the person proposing to take the action (**Woodside**), subject to 48 conditions, to continue and extend the operating life of the North West Shelf (**NWS**) Project (**NWSx Project**) through the long-term processing of third-party gas and fluids and NWS Joint Venture field resources through the NWS Project facilities (**Decision**). The approval has effect until 31 December 2070.[1]

2. The Minister's decision to approve the "action" with the attached conditions was purportedly made pursuant to ss 130, 133(1) and 134 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (***EPBC Act***) (as then in force).[2]

3. The Applicant seeks judicial review of the Decision under s 5(1) of the *Administrative Decision (Judicial Review) Act 1977* (Cth) (***ADJR Act***) and s 39B of the *Judiciary Act 1903* (Cth).

4. Prayers 1, 2 and 3 of the Amended Originating Application (**Amended Application**) are directed to the Decision. Each of **Grounds 1-7** contend that the Decision is affected by jurisdictional error and is therefore invalid. On that basis the Applicant seeks a quashing order, a declaration, and an order in the nature of mandamus requiring that

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1 See, "period for which the approval has effect" in Notification of approval decision – North West Shelf Project Extension, Carnarvon Basin, WA (EPBC 208/8335) dated 12 September 2025: Affidavit of Elaine Johnson dated 10 October 2025 at EJ1.

2 The applicable version of the EPBC Act is **Compilation No. 64**.

the proposed action be re-considered and a decision made according to law. The applicant relies primarily on the Minister's Statement of Reasons for Approval (**SOR**)[3] and the material in the **Decision Brief**, being the material relied upon by the Minister in making the Decision.[4]

5. By way of general overview of the grounds, the Applicant contends that in making the Decision, the Minister was required by s 136(1) and failed to consider the economic detriments that may or would arise from or be caused by the Decision (**Ground 1**)[5] or, when considering "economic matters" under s 136(1)(b), made findings that were irrational, illogical or unreasonable including by taking into account purported economic benefits of a separate proposed action (the Browse Development) (**Ground 2**).[6]

6. The key material and advice the Department provided to the Minister to consider whether to approve the NWSx Project with the attached Final Conditions was directed at a materially different "decision" — the Proposed Decision with the attached Proposed Conditions made by the Minister on 28 May 2025. Material changes (identified at paragraph 100) changed the factual basis upon which the Minister (on the advice and information of his Department) ought to have considered the matters required by ss 130, 133, 134 and 136 of the EPBC Act. The Department wrongly characterised the proposed approval with the proposed final conditions as clarifying the Proposed Decision. The documents before the Minister, upon which he relied, therefore failed to prompt the Minister to undertake the tasks required to form the requisite state of satisfaction (**Ground 3**).[7]

7. These same inadequacies in the Department's advice and information provided to the Minister led to him failing to consider the requisite matters to be satisfied that attaching each of proposed Conditions 4-8 (imposing obligations on Woodside to reduce air emissions from the NWSx Project) to the approval satisfied s 134(1) having regard to the impacts of the action on the National Heritage values of the National Heritage place

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3 Statement of Reasons for Approval under the Environment Protection and Biodiversity Conservation Act 1999 dated 12 September 2025: Affidavit of Elaine Johnson affirmed 10 October 2025 at EJ-1.

4 The material was produced by the Minister pursuant to Order 1 of the Orders made 17 November 2025 requiring the Minister serve on each other party the material in the decision brief for the approval decision made on 12 September 2025.

5 See [64]-[73] below.

6 See [74]-[84] below.

7 See [85]-[111] below.

and every other proposed condition on his approval (**Ground 4**).[8] Alternatively, the Minister attached Conditions 4-8 to the approval by reference to whether they were feasible for Woodside to comply with so as to ensure that their attachment would not prevent the proposed action from occurring. In so doing, the Minister proceeded on a misunderstanding of the law, or otherwise reasoned unreasonably (**Ground 5**).[9]

8. Finally, the Applicant contends that the decision to approve the proposed action with the relevant conditions did not comply with s 137A, as it was inconsistent with the National Heritage management principles. Whether s 137A is complied with is an objective condition on the Minister's decision-making powers, non-compliance with which resulted in invalidity (**Ground 6**).[10] Alternatively, the Minister did not lawfully form his state of satisfaction that the approval of the NWSx Project subject to the conditions is not inconsistent with the National Heritage management principles pursuant to s 137A (**Ground 7**).[11]

9. There are overlaps in the Grounds. These overlaps are due to the applicable provisions of the EPBC Act that conditioned the Minister's ultimate statutory task: to determine whether or not to approve the NWSx Project subject to conditions. The Applicant contends the errors alleged in each Ground illustrate the Minister failed to undertake that task within the bounds of the statutory authority reposed in him.

B. STANDING

10. The Applicant is taken to be a person aggrieved by the Decision pursuant to s 487(3) of the *EPBC Act* for the purposes of the *ADJR Act*, because it is an association incorporated in Australia; and in the two years prior to the Decision, the Applicant has engaged in a series of activities in Australia for protection or conservation of, or research into, the environment including activities associated with the decision-making processes relating to the approval of the NWSx Project; and an object of the Applicant's association under its Rules is (and was at the time of the Decision) to promote, lobby

[8] See [85]-[97] and [112]-[121] below.
[9] See [86]-[97] and [122]-[129] below.
[10] See [130]-[145] below. Pursuant to Order 2 of Orders of 13 March 2026, the Court is to first determine the proper construction of s 137A before receiving any further evidence to determine the balance of Ground 6.
[11] See [130]-[131] and [146]-[151] below.

and campaign for conservation and protection of the natural environment.[12] For the same reasons, it has standing to seek relief under s 39B of the *Judiciary Act*.

C. STATUTORY FRAMEWORK

C.1 Purpose

11. The objects of the *EPBC Act* include "the protection of the environment, especially those aspects of the environment that are matters of national environmental significance", referred to as **MNES**, and "the protection and conservation of heritage" (s 3(1)(a) and (ca)). "[E]nvironment" is broadly defined and includes "ecosystems and their constituent parts, including people and communities", "natural and physical resources", "the qualities and characteristics of locations, places and areas", "heritage values of places" and "the social, economic and cultural aspects of [the above]".[13]

12. In order to achieve its objects, the *EPBC Act* recognises an "appropriate role for the Commonwealth" by focussing on "Commonwealth involvement on matters of national environmental significance"; "adopts an efficient and timely Commonwealth environmental assessment and approval process that will ensure activities that are likely to have significant impacts on the environment are properly assessed"; and includes a mechanism to identify National Heritage places "to enhance the protection, conservation and presentation of those places" (s 3(2)(a), (d) and (fa)).[14]

13. One way in which the object of environmental protection is achieved is through consideration of the principles of ecologically sustainable development as part of relevant decision-making processes under the *EPBC Act*. Those principles are set out in s 3A and include that "decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations". The "precautionary principle" is also introduced (and defined) by s 391 (and, relevantly, applies to a decision under s 133).

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12 Affidavit of Elaine Johnson affirmed 13 March 2026 at EJ16.

13 *EPBC Act*, s 528.

14 These objects reflect the scheme's purpose to give effect to the Council of Australian Government's 1997 Agreement "which defines the Commonwealth role by reference to certain matters of national environmental significance" a "major deficiency" of the previous "ad hoc and indirect triggers" "limited the effectiveness of the Commonwealth's contribution to environmental protection": Second Reading Speech, House of Representatives (*Hansard*, 29 June 1999) at 7767. See, Heads of Agreement on Commonwealth and State Roles and Responsibilities for the Environment (November 1997) (**COAG Agreement**).

C.2 Process for environmental assessment and approvals

14. Chapter 2 of the *EPBC Act* is headed "Protecting the environment". Part 3 of Ch 2 sets out requirements for environmental approvals. Relevantly, an action that has, will have, or is likely to have a significant impact on National Heritage values of a National Heritage place is prohibited, with civil and criminal sanctions (ss 15B, 15C).

15. Section 527E provides that an event or circumstance is an "impact" of an action taken by a person for the purpose of the EPBC Act if "the event or circumstance is a direct consequence of the action" or "for an event or circumstance that is an indirect consequence of the action [subject to s 527E(2)] … the action is a substantial cause of that event or circumstance". The EPBC Act does not define "significant impact".[15]

16. Chapter 4 is headed "Environmental assessments and approvals". It deals with the assessment and approval of actions that Pt 3 prohibits without approval (i.e. "controlled actions").[16]

Process for deciding when an action will need approval

17. Part 7 sets out a detailed process for deciding whether approval of an action is needed:

    17.1 Section 67 defines a "controlled action" as "an action that person proposes to take" (often shortened to "proposed action") if the taking of the action without approval under Pt 9 for the purposes of a provision of Pt 3 (i.e. the applicable "controlling provision(s)") would be prohibited by the provision.

    17.2 A person must not take a controlled action unless an approval of the taking of the action is in operation under Pt 9 (s 67A).

    17.3 Section 68 requires a person proposing to take an action that they think may be or is a controlled action to refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action (s 68). (It is an offence to take an action before the Minister has made a decision on (relevantly) a s 68 referral (s 74AA(1)(b)(i)).

    17.4 Section 75 requires the Minister to decide whether a proposed action referred to the Minister is a controlled action and if so, which are the controlling provisions

15 See *Save Our Strathbogie Forest Inc v Secretary to the Department of Energy, Environment and Climate Action* [2024] FCAFC 134; (2024) 306 FCR 331 at [62] (Moshinsky, Charlesworth and Kennett JJ).

16 Section 66 sets out a simplified outline of Ch 4.

for the action under Pt 3. This point in the assessment process "does not require any discretionary balancing of those impacts [on the matter(s) protected by Pt 3] against other considerations".[17]

Assessment of impacts of a controlled action

18. If a proposed action is decided to be a "controlled action", then Pt 8 provides for the assessment of the impacts of the controlled action.

    18.1 The "relevant impacts" of a controlled action are defined in s 82 to be the impacts that the controlled action has, will have, or is likely to have on the matters protected by each applicable "controlling provision".

    18.2 Relevantly, one of the methods the Minister may choose to assess the "relevant impacts of [the] action" is an "accredited assessment process".[18] This method is available to the Minister only if the decision-maker is satisfied that the process is to be carried out under a law of a State; the process will ensure that the relevant impacts are adequately assessed; and they will receive a report of the outcome of the process that will provide enough information on the relevant impacts to let them make an informed decision whether or not to approve the taking of the action (for each controlling provision) under Pt 9 (s 87(4)).

Process for approval of actions and for attaching conditions on approval

19. Part 9 deals with "Approval of actions" (that is, approval of actions that are prohibited absent a Pt 9 approval by the provisions of Pt 3). It is at this stage of the decision-making process that a "discretionary balancing" occurs.[19] The Minister must decide "whether or not to approve, for the purposes of each controlling provision for a controlled action, the taking of the action" (s 130(1)). The Minister's jurisdiction to decide whether or not to approve a "proposed action" is enlivened *after* receiving the "assessment documentation" relating to the controlled action, defined by ss 130(2)(c)–see 133(8)).[20]

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17 *Friends of the Gelorup Corridor Inc v Minister for the Environment and Water* [2023] FCAFC 139; (2023) 299 FCR 236 at [13] (Jackson and Kennett JJ).

18 *EPBC Act*, s 87(4).

19 *Friends of the Gelorup Corridor Inc v Minister for the Environment and Water* [2023] FCAFC 139; (2023) 299 FCR 236 at [13] (Jackson and Kennett JJ).

20 *Friends of the Gelorup Corridor Inc v Minister for the Environment and Water* [2023] FCAFC 139; (2023) 299 FCR 236 at [17]. The language of s 133(1) was amended following the introduction of the EPBC Bill to ensure that "the Minister may only approve the taking of an action if he or she has received an assessment report relating to the action. This will prevent an action being approved without being

20. Following receipt of the assessment documentation, under Pt 9 the Minister's exercise of the power to decide whether or not to approve a "proposed action" is constrained by by Subdivs A and B. Subdiv A constrains the exercise of power in the following ways.

20.1 **Statutory timeframe for deciding whether or not to approve:** The Minister must make the decision within 30 business days after the Minister receives the assessment report (s 130(1A), (1B(a))) or such longer period as the Minster specifies in writing. Failure to comply with a time limit does not affect the validity of a decision under Ch 4 or an assessment or approval under Ch 4 (s 156), but the Minister must cause a statement of reasons to be tabled in each House of Parliament setting out why things were not done within the specified time limit under the Act (s 518(2)). (In this Pt 9 decision-making process, the Minister extended the timeframe three times.[21])

20.2 **Invitations to other Ministers to comment on a proposed decision:** Before the Minister may decide whether or not to approve, and what (if any) conditions to attach to an approval, the Minister must inform any other Minister whom they believe has administrative responsibilities of the decision the Minister proposes to make and to invite comment from those other Ministers on the proposed decision (s 131). A Minister invited to comment may make comments that "relate to economic and social matters relating to the action" and "may be considered by the Environment Minister consistently with the principles of ecologically sustainable development" (s 131(2)).

20.3 **Invitations to the proponent to comment on a proposed decision:** Before the Minister may decide whether or not to approve, and what (if any) conditions to attach to an approval the Minister must: (a) inform the person proposing to take the controlled action (often referred to as the "proponent") of: (i) "the decision the Minister proposes to make" and, relevantly, (ii) "if the Minister proposes to approve the taking of the action– any conditions the Minister proposes to attach to the approval"; and (b) invite the proponent to give the Minister comments in writing "on the proposed decision and any conditions" within 10 business days (s 131AA(1)). In deciding whether or not to approve the taking of the action,

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properly assessed." Supplementary EM to the EPBC Bill at [68]. Compare, cl 133 of EPBC Bill (First Reading) and cl 133 EPBC Bill (Third Reading).

21 Decision Brief, Attachments F109-F111.

the Minister must take into account any relevant comments given to the Minister in response to this invitation to comment (s 131AA(6)). Section 131AA is taken to be an exhaustive statement of the requirements of natural justice hearing rule in relation to decisions to approve and to attach conditions to the approval (s 131AA(7)).

20.4 **The Minister may invite public comment:** Before the Minister decides whether or not to approve, and what (if any) conditions to attach to an approval, the Minister may also invite public comment on the proposed decision and any conditions that the Minister proposes to attach to the approval under s 131A. (The Minister did not do so in the Pt 9 approval process regarding the NWSx Project).

20.5 **The Minister may request further information**: Section 132 empowers the Minister to request further information relevant to their decision-making if they believe on reasonable grounds that they do not have enough information to make an informed decision, including from the person proposing to take the controlled action and any other person the Minister considers appropriate. (The Minister requested further information under s 132 once in the decision-making process regarding the NWSx Project in August 2022.)

21. In addition to the pre-conditions on the power to approve a controlled action set out at paragraph 20 above, the Minister's power to approve a controlled action (under ss 130 and 133(1)) subject to attaching conditions to that approval is relevantly constrained under both Subdivs A and B. Under Subdiv A, that power is constrained in the following ways.

22. The content of an approval must comply with the requirements set out in s 133(2), including to specify "the action … that may be taken"; "each provision of Part 3 for which the approval has effect"; "the period for which the approval has effect"; and to "set out the conditions attached to the approval".

23. Section 134 is headed "Conditions of approval". Under sub-s (1), the Minister may attach a condition to the approval "if he or she is satisfied that the condition is necessary or convenient for (a) protecting a matter protected by a provision of Part 3 for which the approval has effect (whether or not the protection is protection from the action); or (b) repairing or mitigating damage to a matter protected by a provision of Part 3 for

which the approval has effect (whether or not the damage has been, will be or is likely to be caused by the action)." Section 134(2) (which expressly does not limit sub-sec(1)) empowers the Minister to attach a condition to the approval if satisfied it is "necessary or convenient for protecting *from the action* any matter protected by a provision of Pt 3" or "repairing or mitigating damage *caused by the action* to any matter protected by a provision of Pt 3" (emphasis added).

24. The power in s 134(1) is enlivened if the Minister decides to approve the action and if the Minister is "satisfied that the condition is necessary or convenient for protecting a matter which is protected by a provision in Pt 3 for which the approval has effect".[22]

25. Subdivision B is headed "Considerations for approvals and conditions".

26. Within it, s 136 is headed "General considerations". Section 136(1) sets out two mandatory categories of considerations so far as they are not inconsistent with any other requirement of the Subdivision:[23] (a) matters relevant to any matter protected by a provision of Pt 3; and (b) "economic and social matters". As part of considering those two mandatory considerations, the Minister must take into account the factors listed in s 136(2). They include the principles of ecologically sustainable development, the controlled action's assessment report, "any information the Minister has on the relevant impacts of the action", and any "relevant comments" received pursuant to invitations under ss 131 and 131A.

27. Section 137A is titled "Requirements for decisions about National Heritage places". It provides that the Minister "in deciding whether or not to approve" the taking of an action "and what conditions to attach to such an approval" the Minister "must not act inconsistently with" (a) National Heritage management principles, when deciding whether or not to approve a controlled action, and what conditions to attach to any approval decision.

28. Paragraphs 64-65, 72, 86-97, 0-142 below further address the proper construction of the applicable provisions conditioning the Minister's Decision.

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22 *Australian Conservation Foundation v Minister for Environment* [2016] FCA 1042; (2016) 251 FCR 308 at [22] (Griffiths J).

23 *Tarkine National Coalition Inc v Minister for the Environment* [2015] FCAFC 89; (2015) 233 FCR 254 at [25] (Jessup J).

D. FACTUAL BACKGROUND

29. The Dampier Archipelago (including the Burrup Peninsula) National Heritage place was included on the National Heritage List on 3 July 2007. The National Heritage place is thought to contain more than one million "**petroglyphs**" (or "**rock art**") and is one of the most dense and diverse collections in the world.[24] The NWS is on the Burrup Peninsula.[25]

D.1 Procedural history to Pt 9 NWSx Project approval

30. On 14 November 2018, Woodside referred the "proposed action" (i.e. the NWSx Project) to the Minister pursuant to s 68.[26] On 3 May 2019, a delegate of the Minister determined:[27]

    30.1 under s 75, that the "proposed action" is a controlled action and that the controlling provisions were ss 15B and 15C of the *EPBC Act* (National Heritage values of the National Heritage place).

    30.2 under s 87, that the proposed NWSx Project be assessed by an "accredited assessment process" being assessment by the WA Environment Protection Authority (**WA EPA**) under the *Environment Protection Act 1986* (WA) (**EP Act**).

31. Pursuant to the delegate's 13 May 2019 decision, the WA EPA conducted an assessment and, on 30 June 2022, published the **Assessment Report** for the WA Minister for Environment and the Minister.[28] That Assessment Report concluded that the impacts from the proposed NWSx Project on the Dampier Archipelago (including the Burrup Peninsula) National Heritage Place were not "unacceptable" and the NWSx Project may be implemented provided that recommended conditions were attached to the approval.[29]

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24 SOR at [57]-[58].
25 SOR at [61].
26 SOR at [20].
27 SOR at [22].
28 SOR at [23]-[28]. The WA EPA Assessment Report is at Decision Brief, Attachment F10.
29 SOR at [28]-[29]; Decision Brief, Attachment F10 at 75-77.

32. Following the publication of the Assessment Report, 776 appeals were lodged with the WA Office of the Appeals Convenor against the Assessment Report and its recommended conditions.[30]

33. On 26 November 2024, the WA Office of the Appeals Convenor published the Appeals Committee Report to the WA Minister and the WA Minister's Appeals Determination.[31] The WA Minister for Environment in the Appeal Determination recommended that the appeals from the Assessment Report be allowed in part and varied the recommended conditions on the approval (**WA Conditions**).[32] The WA Minister agreed with the WA EPA's assessment that the NWSx Project may be implemented, if subject to the WA Conditions.[33]

34. On 12 December 2024, the WA Minister published Ministerial Statement 1233 (**MS 1233**) that the proposed action may be implemented subject to the WA Conditions.[34] Following receipt of MS 1233, the Department proceeded on the basis that the statutory timeframe for making a decision of whether or not to approve the proposed action pursuant to Pt 9 of the EPBC Act recommenced.[35]

35. On 16 May 2025, the Department provided a "proposed decision package" to the Minister recommending that he approve the action subject to the proposed conditions of approval.[36] That package was accompanied by the Department's Legal Considerations Report (**LCR**) that recommended the action be approved subject to the proposed conditions.[37] On 28 May 2025, the Minister proposed to approve the proposed action subject to conditions (**Proposed Decision**).[38] On the same day, pursuant to s 131(1), the Minister invited comment on the Proposed Decision from other Ministers and, pursuant to s 131AA(1), from Woodside.[39] The invitation to comment requested

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30 SOR at [30].

31 The WA Appeal Convenor Report is at Decision Brief, Attachment F11 and the WA Minister's Appeal Determination is at Attachment F12.

32 SOR at [31]. Decision Brief, Attachment F12 at 2.

33 Decision Brief, Attachment F12 at 2.

34 SOR at [32]; MS 1233 is at Decision Brief, Attachment F13.

35 Decision Brief, Attachment F9 – Legal Considerations Report at 12 [44].

36 Decision Brief, Attachment F1 – Proposed Decision Brief p. 1 (Recommendation 2-3); p. 2 ("Date sent to MO"), [2]-[3].

37 The Legal Considerations Report is at Decision Brief, Attachment F9. The Report's recommendations are at p. 3.

38 SOR at [41]; Decision Brief, Attachment F2 – Attachment A proposed approval decision notice – unsigned (28 May 2025).

39 SOR at [43]; Decision Brief, Attachment F3 – Attachment B1: Letter to proponent (28 May 2025); Attachment F4 – Attachment B2: Letter to Western Australia Minister for the Environment (28 May 2025); Attachment F5 – Attachment B3: Letter to Minister for Climate Change and Energy (28 May

that Woodside provide comments on the Minister's Proposed Decision within 10 business days.[40] The Minister decided not to release the Proposed Decision for public comment.[41]

36. Between 28 May 2025 to 6 September 2025, the Minister consulted with Woodside on the Proposed Decision.

37. On 12 June 2025, Woodside requested an extension to the 10 business days' time limit in which to provide its "formal" written comment.[42] On the same day, the Department acknowledged the request for an extension and noted there was no need to specify a timeframe for tWoodside's "formal response".[43] Woodside provided its "formal response" to the invitation to comment on the Proposed Decision on 23 June 2025 (pursuant to s 131AA(1)(b)).[44] Woodside also provided written "informal" comments,[45] and met with Department officials on 12 occasions on 28 May 2025, 3 June 2025, 6 June 2025, 12 June 2025, 13 June 2025, 18 June 2025, 27 June 2025, twice on 4 July 2025, 25 July 2025, 28 July 2025 and 12 August 2025 and met with the Minister and Department officials on one occasion on 25 August 2025.[46]

38. On 9 September 2025, the Department provided the 'Final Decision Package- North West Shelf Project Extension, Carnarvon Basin, WA' (**Decision Brief**) to the Minister.[47]

39. On 12 September 2025, the Minister decided to approve the taking of the action (i.e. the NWSx Project) subject to attaching conditions to the approval (**Final Conditions**) and published the Decision[48] and his Statement of Reasons.[49]

2025); Attachment F6 – Attachment B4: Letter to the Minister for Resources and Minister for Northern Australia (28 May 2025); Attachment F7 – Attachment B5: Letter to the Minister for Indigenous Australians (28 May 2025); Attachment F8 – Attachment B6: Letter to the Minister for Industry and Innovation and Minister for Science (28 May 2025).

40 Decision Brief, Attachment F3 – Attachment B1: Letter to proponent (28 May 2025).

41 SOR at [42].

42 Decision Brief, Attachment C13 (Email to Department timestamped 12 June 2025 at 8:14PM).

43 Decision Brief, Attachment C13 (Email to Woodside timestamped 12 June 2025 at 7:45PM).

44 Decision Brief, Attachments C7-C9.

45 Decision Brief, Attachments C1, C4, C5, C10, C13, C14, C15, C16, C17, C18, C19 and C20.

46 Department's **recommendation submission** to Decision Brief at [36], [37], [40], [41]; Decision Brief, Attachment C1 (Email to Department timestamped 4 June 2025 at 1:46PM); Attachment C14 (Email to Department timestamped 29 July 2025 at 5:18PM).

47 Recommendation submission, at 2 (see: "Date sent to the MO").

48 Affidavit of Elaine Johnson dated 10 October 2025 at EJ1.

49 Affidavit of Elaine Johnson dated 10 October 2025 at EJ2.

40. The Minister's SOR says that he considered the Decision Brief and all of its attachments prepared by the Department (dated 9 September 2025), including the proposed decision brief dated 28 May 2025.[50] The Minister stated he considered "these documents [i.e. the Final Decision Brief] provide sufficient information for me to decide whether or not to approve the proposed action".[51]

D.2 Key Factual Findings in Statement of Reasons

41. This Section outlines relevant findings in the Minister's Statement of Reasons relevant to Grounds 1 to 7. Other parts of the SOR are referred to where necessary in the submissions on each Ground.

42. The Minister opened the section of the SOR headed "Findings on material questions of fact" stating that he had "considered all impacts that the proposed action would have or is likely to have on the matter protected by the controlling provision for the [proposed] action": **SOR [54].**

43. He found that the Dampier Archipelago (including the Burrup Peninsula) National Heritage place (also referred to in the SOR and accompanying documents as "**Murujuga"**) was included on the National Heritage List on 3 July 2007 for the National Heritage criteria (a), (b), (c), (d) and (f): **SOR [57]**. The National Heritage values are "primarily based on the Aboriginal rock engravings" (also referred to in the SOR and accompanying documents as "petroglyphs**"** or "rock art"): **SOR [59]**.

44. He found that a list of industrial facilities (including the NWS Project) in the Burrup Peninsula (and surrounding population centres) currently release, or have approval to release, significant quantities of air emissions in the "Murujuga Airshed": SOR [70]-[71].

45. **Conclusion on the role of emissions on rock art:** The Minister agreed with the Department that (contrary to Woodside's position) "there is a body of peer-reviewed scientific and other literature, asserting that industrial emissions are adversely affecting the rocks of Murujuga". He noted that there are "multiple lines of scientific and other evidence suggesting that nitrogen oxides (NO_x), sulfur oxides (SO_x), and other acidic airborne emissions are having a significant adverse impact on the rocks of Murujuga":

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50 SOR at [52]. A copy of the "proposed approval decision submission package" is at Attachment F to the Decision Brief.

51 SOR at [53].

SOR [102]. The Department said the body of available scientific information is "ongoing and is not currently adequate to fully understand the likelihood and scale of the impacts on the Murujuga rocks from industrial emissions" but he "further [agreed] with the Department that there is sufficient scientific evidence to conclude that areas of the Burrup Peninsula have been exposed to industrial emissions capable of accelerating rock art weathering": **SOR [104].**

46. **Impacts of the proposed action on NHV of the NHP:** The Minister agreed that Woodside's documentation ("ERD", published in December 2019)[52] does not provide information that verified Woodside's claims regarding the impact of key pollutants emitted from the NWSx Project on the rock art: **SOR [105]-[106]**.

47. The Minister accepted the Department's advice that "the emissions of the proposed action are likely to have an impact on the NHP. The ongoing production of emissions over 45 years will apply pressure on the rock art of Murujuga, as the emissions will be produced over an area which encompasses the entire area of the NHP"; and this impact could cause degradation of the petroglyphs which would impact all five National Heritage values: **SOR [132]**.

48. **Proposed Conditions for approval:** The Minister found that there is a "likely risk of serious and irreversible damage to the petroglyphs as a result of emissions from the proposed action" and there was "uncertainty about that damage": **SOR [151]**. As such it was necessary to engage the precautionary principle to require Woodside to prevent impacts to rock art from the NWSx Project: **SOR [154]**.

49. The Minister agreed with the Department that the WA Conditions are not sufficient to prevent harm to the NHP (**SOR [153]**, and **[165]**), he then outlined the Department's recommended proposed conditions on the approval on which he sought comment pursuant to ss 131 and 131AA: (**SOR [155]**).

50. Relevantly, at SOR [158], he stated that he had proposed to attach to the approval **Proposed Condition 3** "*requiring the proponent to achieve the outcome of no emissions above the detectable limit of air emissions that impact rock art by 31 December 2030*". "Air emissions that impact rock art" were defined as including acid forming emissions (NO_x, SO_x, VOCs, CO, CO_2, CH_4, NH_3 and O_3): **SOR [158]**.

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52 Decision Brief, Attachment F28.

51. Woodside's main comments on the Proposed Conditions are set out at **SOR [162**] and included that "it is not technically feasible to achieve emissions below the limit of detection and therefore Proposed Condition 3 amounts to an 'effective refusal' of the project beyond 2030". The Minister noted that Woodside's position on the Proposed Conditions is "driven by their understanding of the current evidence that there has been no impact to the rock art and that there is no current risk of damage": **SOR [164].**

52. The Minister then referred to (and accepted) the Department's assessment of the body of evidence and risk to rock art described in the Legal Considerations Report (**SOR [166])** and noted the Department had also considered "new scientific research which shows evidence that impacts can occur at the current level of pollution": **SOR [167].**

53. **Final Conditions for approval:** The Minister noted he has considered information provided by Woodside on Proposed Condition 3 (**SOR [171]-[172**]), noted the Proposed Conditions were "developed in the context of uncertainty regarding the details of and appropriateness of the proponent's emission reduction approach and uncertainty in the likelihood and scale of impacts of emissions on rock art as a result of the proposed action**: SOR [173]**.

54. The Minister noted that the Department, during the course of consultation, requested information from Woodside that "the proposed limits were not feasible and, in addition, details of the proposed emissions reductions strategies and the outcomes of feasibility studies on other emissions reductions alternatives considered by [Woodside]": **SOR [174].**

55. The Minister agreed with the Department's "subsequent view that achieving Proposed Condition 3 was not feasible, as set out in the proponent's response" and recorded that the Department therefore "recommended a conditioning strategy which takes the proponent's limitations and the strength of evidence per type of emission into consideration": **SOR [175]**.

56. At **SOR [176]**, the Minister decided, "as such", to impose air emission conditions [i.e. Conditions 4-8] on the approval

> "on the following basis:
>
> - gases arising from the action are likely to impact rock art
>
> - while the precise relationship between emissions and damage is not well understood, less emissions are likely to have a lower impact on the rock art, and

- the conditions should impose the lowest volume of emissions which can feasibly be set while still allowing the action to occur and without permitting an unacceptable impact on the NHP to occur."

57. The Minister agreed with the Department that the WA Conditions are insufficient and further conditions proposed to be attached to the approval are necessary and convenient to protect the National Heritage values of the National Heritage place: **SOR [234]** and that the taking of the action, in combination with the WA Conditions and Final Conditions on the approval, is "likely to result in residual impacts to the values of the [NHP]": **SOR [235]** and **[230]**.

58. Turning to consider "Social and economic matters", the Minister noted that the WA EPA assessment report "concluded that the impacts on social surroundings would be acceptable" (**SOR [238]**) and Woodside's information on social matters: **SOR [240]-[241]**. The Minister also noted "impacts of air quality on human health and amenity" but considered that "the impacts from air quality on human health and amenity would be acceptable if the proposed action was undertaken in accordance with conditions and specifically Condition 2 of MS 1233": **SOR [243]**.

59. As to economic matters, the Minister noted that the WA EPA assessment report did not assess economic matters: **SOR [248]**. Then the Minister addressed the economic information provided by Woodside. That information had been provided both in relation to the NWSx Project alone, and in conjunction with developing the Browse fields (which is a separate proposal): **SOR [249]**. The Minister earlier stated that the NWSx Project does not include the development of offshore gas fields, and that a separate approval is being sought under the Browse to North Shelf Development referral: **SOR [17]**. The Minister then concluded that the "proposed action would result in significant economic benefits to the regional, State and National communities": **SOR [250]**.

60. Under his consideration of the precautionary principle at **SOR [257]**, the Minister agreed with the Department that "increased porosity constitutes an example of accelerated weathering of the rock art which may lead directly to physical changes which may harm the values of the National Heritage place through physical damage which may diminish the visibility, integrity and research values of the rock art". The Minister then found "that the values of the [National Heritage Place] are irreplaceable, and damage is unable to be offset": **SOR [257]**.

61. The Minister then relevantly went on to agree with the Department "that the proposed action is consistent with the National Heritage Management objectives since the conditions of approval for the action will be to protect the petroglyphs for future generations": **SOR [294]**. The Minister then concluded at **SOR [295]** and **SOR [297]** that approving the action subject to the proposed conditions would comply with s 137A.

62. The Minister noted the "conditions imposed are commensurate with the conservation outcome the conditions are designed to achieve" (**SOR [305]**) and a practical and cost-effective means of protecting and conserving the NHP consistent with the objects of the EPBC Act (**SOR [306]**).

63. At the end of the Statement of Reasons under the heading 'Reasons for decision', the Minister states that:

    63.1 In deciding whether or not to approve the taking of the proposed action, I have taken into account all of the matters discussed above: **SOR [307]**.

    63.2 In light of my findings above, I have decided to approve the taking of the action subject to conditions: **SOR [308]**.

    63.3 I consider that the application of stringent emissions reductions conditions means that the action will not have an unacceptable impact on the National Heritage values of the National Heritage place: **SOR [309]**.

    63.4 I accept that there is uncertainty in the evidence and that a consequence of imposing stringent emissions reduction obligations relating to NOx and VOCs progressively, rather than immediately, is that there is a higher likelihood of the action having an impact on the NHP in the short-term. However, I am satisfied that the any likely short-term impact on the NHP would be small and therefore outweighed by the social or economic factors: **SOR [310]**.

    63.5 I consider that the proposed conditions of approval adequately manage the risk of significant impact to the National Values of the Dampier Archipelago (including the Burrup Peninsula) National Heritage place: **SOR [311]**.

E. GROUNDS 1 AND 2: ECONOMIC MATTERS

E.1 Ground 1: The Minister failed to consider the mandatory relevant consideration of economic detriments

Key points

- **Alleged jurisdictional error:** Failure to consider mandatory relevant consideration of economic detriments.
- **Part of SOR revealing jurisdictional error**: **SOR [237]-[252]**
- **Key contentions**: The Minister must consider "economic matters" under s 136(1). That encompasses both economic benefits *and* detriments. There was substantial evidence of economic detriments before the Minister but the SOR does not reveal any consideration of those, which the Court would expect to be addressed had economic detriments been considered.

64. Economic and social matters are mandatory considerations under s 136(1)(b) of the *EPBC Act* as part of the balancing exercise in deciding whether or not to approve the controlled action, and what (if any) conditions to attach if the action is approved. The Minister purported to consider "economic and social matters" at **SOR [237]-[252]** under the heading "Social and economic matters", with economic matters addressed under the relevant sub-heading at **SOR [248]-[252]**.

65. The text of s 136(1) identifies two categories of mandatory considerations (one of which is economic and social matters) and gives content to those categories by identifying more specific considerations in s 136(2). Section 136(2)(a) directly applies s 3A by requiring the Minister's decision-making as to approval and any conditions on approval of a controlled action to take into account the principles of ecologically sustainable development.[53] It is otherwise left to the Minister's discretion to determine what is lawfully relevant within the scope of the mandatory categories.[54] The scope of "economic matters" for the purposes of s 136(1)(b) includes economic benefits as well as economic detriments, consistently with the use of the neutral term "matters" and with

[53] See also Minister for the Environment (Cth), *Reform of Commonwealth Environment Legislation* (Consultation Paper, 1998) at 16 [2.3.5]; Senate Environment, Communications, Information Technology and the Arts Legislation Committee, Environment Protection and Biodiversity Conservation Bill 1998 and Environmental Reform (Consequential Provisions) Bill 1998 (Report, April 1999) at 100 [8.14], 102 [8.19]

[54] *Tarkine National Coalition Inc v Minister for the Environment* [2015] FCAFC 89; (2015) 233 FCR 254 at [25], [44] (Jessup J).

its ordinary meaning of "topic", "circumstance" or "subject" being used when "matters" is otherwise used throughout the *EPBC Act*.[55]

66. Woodside, despite being invited to provide information as to economic matters both "positive and negative",[56] provided information only as to "economic benefits" of the NWSx Project. In the Minister's consideration of "economic matters" he only referred to Woodside's economic information.

67. However, before the Minister was substantial material as to the economic detriments of the NWSx Project. The range of that material before the Minister is set out in **Annexure A.** The Applicant highlights the volume of comments on economic detriments, which address topics ranging from systemic and market risks of the NWSx Project, to specific economic risks and consequences from emissions from the NWSx Project on rock art, as well as consequences from loss of tourism and indirect economic risks and consequences from greenhouse gas emissions associated with NWSx Project. The following discrete matters bear emphasis:

67.1 The Applicant submitted that "the proposal raises a range of other significant strategic and economic risks that were not assessed because they were considered outside the scope of the state process. This includes serious consequences for the WA domestic gas market, impacts on consumers and the state's economy. The transitioning of the NWS facility to a 'third party tolling facility' (which is already exporting gas from WA's onshore reserves) is a fundamental change to the WA gas market, resulting in the linking of WA's domestic gas prices to higher international market prices. This transition is the inevitable result of the proposed NWSx" and that "Further evidence has been presented by The Australia Institute for example recent research by the Institute has found that WA's wholesale gas and electricity prices have tripled since 2020, when the WA Government first permitted the supply of onshore domestic gas to the NWS facility for export. Woodside and other suppliers to the WA domestic gas market have reported a doubling in the price of gas that they supply to WA consumers over the last 5 years. These impacts of the NWSx

55 See, eg, *EPBC Act* s 136(1)(a), (4). See *Registrar of Titles (WA) v Franzon* [1975] HCA 41; (1975) 132 CLR 611 at 619 (Mason J; Barwick CJ and Jacobs J agreeing); *Australian Securities and Investments Commission v Commonwealth Bank of Australia* [2023] FCAFC 135; (2023) 299 FCR 604 at [130] (O'Bryan J; Moshinsky J and Jackman J agreeing).

56 Decision Brief, Attachment F114.

proposal on the WA domestic gas market have not been considered as part of the assessment, or at all by the WA Government";[57]

67.2 The Australia Institute submitted that, based on its analysis, the NWSx Project would "contribute almost nothing to Western Australian or Australian public finance, and if it operates at or near the capacity approved under the extension would result in over $200 billion of royalty free gas to Woodside";[58]

67.3 The Applicant submitted that "[p]olicy settings that continue to support the rapid expansion of both domestic gas use and LNG export capacity will see the WA gas market inevitably take on similar dynamics to the eastern states gas market. Not only will this impact the competitiveness of the WA economy by driving up gas prices for consumers and businesses, but it will have other serious negative consequences for the state";[59]

67.4 The Applicant submitted that "There has been a low return to government from gas resources to date";[60]

67.5 Mr Nesci had submitted that "The general predictions are that both export volumes and domestic consumption are forecast to decline significantly by 2050 as global and domestic energy systems transition towards renewables and net zero emissions targets" and that "All major scenarios, forecast a significant decline in LNG exports by 2050, with some forecasting exports at less than 20% of current levels, especially under scenarios aligned with net zero emissions targets and accelerated renewable adoption. This can be seen with mature LNG markets in Asia (such as Japan and South Korea) are projected to significantly reduce their LNG imports as they transition to renewables and pursue net zero targets";[61]

67.6 The Urban Impact Project had submitted that, from higher than average air ambient pollution, "The health costs from mortality alone is estimated to be in the order of $11-24 billion per year".[62]

57 Decision Brief, Attachments E2 and F1, at 35-36.
58 Decision Brief, Attachment I1 at 340-341.
59 Decision Brief, Attachment F118 at 537.
60 Decision Brief, Attachment F118 at 692.
61 Decision Brief, Attachment I1 at 410-432.
62 Decision Brief, Attachment F118 at 723.

68. Absent from the Minister's SOR is any reference to any of the material as to economic detriments. Nor did the Minister make any findings indicating he had regard to that material. Throughout **SOR [248]-[252]**, the Minister only referred to "significant economic benefits", and the "long-term value" of the facility to be provided by the proposed action. Absent also from the Department's Legal Considerations Report which the Minister relied upon as an "accurate description" (**SOR [255]**)[63] is any mention of adverse economic consequences. Reading the SOR fairly and as a whole, there is nothing to suggest that the Minister had regard to adverse economic consequences of the proposed action. The written statement of reasons from the Minister can and should be taken as the statement of the matters that he "adverted to, considered and [took] into account"[64] — there is no evidence to suggest or indicate that adverse economic consequences were otherwise considered by the Minister.

69. The Minister's lack of consideration of economic detriments is underscored by contrasting how he approached the consideration of "social matters". In that context, at **SOR [238]-[243]**, he considered the social "impacts" of the proposed action including as to impacts on rock art and concerns about restricting "access to areas of cultural significance" (**SOR [240]**). He also noted at **SOR [243]** the social "impacts of air quality on human health and amenity". There is no such consideration with respect to economic adverse impacts.

70. The generalised discussion as to "Community concerns raised during the assessment" at **SOR [246]** does not disclose any consideration of economic detriments. There was neither any clear or express reference to the material set out in Annexure A nor any findings made consistent with consideration of that material. Instead, **SOR [246]** only contains highly generalised statements such as "[c]oncerns with extending the facility's operation to 2070". That does not disclose any specific consideration of economic detriments.[65] No "beneficial construction" of the SOR can transform such a sweeping general statement into consideration as required by law, and deflect the argument that the Minister committed jurisdictional error.[66]

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63 See Decision Brief, Attachment F9.

64 *NBMZ v Minister for Immigration and Border Protection* [2014] FCAFC 38; (2014) 220 FCR 1 at [16] (Allsop CJ and Katzmann J); *Taulahi v Minister for Immigration and Border Protection* [2016] FCAFC 177; (2016) 246 FCR 146 at [69] (Kenny, Flick and Griffiths JJ).

65 *Minister for Immigration and Citizenship v SZRKT* (2013) 212 FCR 99 at [71]-[72].

66 *Minister for Home Affairs v Ogawa* [2019] FCAFC 98; (2019) 269 FCR 536 at [115]-[117] (Davies, Rangiah and Steward JJ).

71. There is no authority on the proper construction of "economic matters" nor what its consideration requires.[67] The approach is therefore one guided by orthodox principles of statutory construction, applied to the factual context outlined above. That approach makes clear that the Minister was required to consider the material both as to economic benefits and detriments of the NWSx Project.

72. At the level of principle, where the Minister has before them material which indicates that there are, or may be, economic detriments, the Minister must consider that material as part of the consideration of "economic matters".[68] Such material forms a necessary part of the content of the mandatory consideration of "economic matters" where it is clearly articulated on the material that is before the Minister and because it is "part of the legal framework in which the decision is made".[69] Two features of the legal framework warrant emphasis.

   72.1 *First*, the principles of ecologically sustainable development must be taken into account under s 136(2)(a) and adverse economic consequences inhere within the long- and short-term economic considerations which form part of the principles of ecologically sustainable development under s 3A(a). Indeed, ss 270(3)(c), 271(3)(c) and 287(3)(c) of the *EPBC Act* elucidate that "adverse social and economic impacts" are within the principles of ecologically sustainable development. This is consistent with a statutory scheme concerned with the protection of the environment by which environmental considerations *add to* (rather than fundamentally alter) the Minister's decision-making calculus. Absent the protections of the *EPBC Act*, this calculus would already involve a cost-benefit analysis of economic and social matters and thus a consideration of the economic benefits and adverse consequences of a proposed action.

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67 See generally *Friends of the Gelorup Corridor Inc v Minister for the Environment and Water* [2023] FCAFC 139; (2023) 299 FCR 236 at [90], [93] (Jackson and Kennett JJ); *Minister for the Environment v Sharma* [2022] FCAFC 35; (2022) 291 FCR 311 at [87] (Allsop CJ).

68 See *Plaintiff M1/2021 v Minister for Home Affairs* [2022] HCA 17; (2022) 275 CLR 582 at [25] (Kiefel CJ, Keane, Gordon and Steward JJ); *Esposito v Commonwealth* [2015] FCAFC 160; (2015) 235 FCR 1 at [124]-[125] (Allsop CJ, Flick and Perram JJ). See generally *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* [1986] HCA 40; (1986) 162 CLR 24, 45 (Mason J).

69 *Taulahi v Minister for Immigration and Border Protection* [2016] FCAFC 177; (2016) 246 FCR 146 at [84] (Kenny, Flick and Griffiths JJ). See also *Minister for Immigration and Citizenship v SZJSS* [2010] HCA 48; (2010) 243 CLR 164 at [27], citing *Minister for Immigration and Multicultural Affairs v Yusuf* [2001] HCA 30; (2001) 206 CLR 323 at [82]-[84].

72.2 *Second*, the *EPBC Act* contemplates public comment being made as to proposed actions and that material being before the Minister. Where this material is before the Minister upon an invitation being made under s 131A, then s 136(2)(f) mandates consideration of that material. Where this material is before the Minister through general ministerial correspondence, the Minister must also take into account any relevant comments which are clearly made on the material before the Minister.[70] The criterion of relevance is informed by the surrounding statutory context as to the principles of ecologically sustainable development and the mandatory category of consideration as to economic matters. The result is that any public comments received which makes clear representations as to adverse economic consequences (as with economic benefits) must be considered.

73. Accordingly, the Minister failed to take economic detriments into account when it was mandatory, as a matter of law, to do so. This error was material because there is a realistic possibility that consideration of adverse economic consequences could have resulted in a different decision,[71] as it was part of the evaluative task that the Minister was required to undertake as part of his decision-making under ss 130, 133 and 134.

E.2 Ground 2: The Minister's findings of the economic benefits of the NWSx Project were otherwise infected by jurisdictional error

Key points

- **Alleged jurisdictional errors:** Legally unreasonable and/or illogical and/or irrational conclusion as to the "economic benefits" of the NWSx Project
- **Part of the SOR revealing jurisdictional error: SOR [237]-[252]**
- **Key contentions:** Even if the Minister considered economic detriments (Ground 1), the SOR does not provide an evident or intelligible justification for the Minister's conclusions about economic benefits without addressing the evidence of detriments explicitly. In any event, there was no evident or intelligible justification, or logical basis, for the Minister to take into consideration the economic benefits of a wholly

70 *Plaintiff M1/2021 v Minister for Home Affairs* [2022] HCA 17; (2022) 275 CLR 582 at [25] (Kiefel CJ, Keane, Gordon and Steward JJ).

71 *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] HCA 12; (2024) 280 CLR 321 at [7] (Gageler CJ, Gordon, Edelman, Steward, Gleeson and Jagot JJ). See also *Browne v Assistant Commissioner of Police (Victoria)* [2026] FCA 15 at [105] (Bennett J); *SYLN v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2019] FCA 1986 at [77] citing *Lu v Minister for Immigration and Multicultural and Indigenous Affairs* [2004] FCAFC 340; (2004) 141 FCR 346.

separate and contingent project (the Browse Development) when considering "economic matters" for the NWSx Project.

74. In any event, the Minister's finding that the "proposed action would result in significant economic benefits to the regional, State and National communities" and "demonstrat[ed] the long-term value of this facility to the WA energy market" (**SOR [250]-[251]**) lacked any evident or intelligible justification.[72] That is so for two reasons.

75. The first reason overlaps with the failure to consider economic detriments as explained above in **Section E.1**. Instead, the Minister only referred to: (i) under s 136(2)(b), that the WA EPA Assessment Report did not assess economic matters (**SOR [248]**); and (ii) under s 131AA(6), the economic information provided by Woodside. Indeed, the entirety of the Minister's consideration as to economic matters at **SOR [250]** is copied from the economic information provided by Woodside to the Department.[73] That does not supply any evident or intelligible justification for finding there were to be "significant economic benefits" especially because Woodside's economic information did not address the material concerning economic detriments, despite the Department having invited both positive and negative information from Woodside.

76. The second reason concerns the Minister's consideration of the economic benefits from development of the Browse fields (**Browse Development**) at **SOR [250(c)]** and **SOR [251]**, which Woodside had proffered as part of its economic information. Consideration of these putative economic benefits was unlawful because such claimed benefits were in relation to a wholly distinct project to the NWSx Project and there was otherwise no explanation or evident justification for reliance on such speculative material.

77. *First*, the Browse Development is separate from, and non-essential to, the NWSx Project. Consideration of any benefits it might realise is not permitted under the *EPBC Act*. Fundamentally, the Minister's decision-making under ss 130(1) and 133(1) is directed to whether to approve "the taking of *the* action", the use of the definite article pinpointing that the lynchpin of consideration is the specific proposed action – the NWSx Project. The "matters" required or permitted to be considered must therefore

72 *Minister for Immigration and Citizenship v Li* [2013] HCA 18; (2013) 249 CLR 332 at [76] (Hayne, Kiefel and Bell JJ), [105] (Gageler J).

73 Compare Decision Brief, Attachments F9, F112, F115 and SOR [250].

bear sufficient connection to the proposed action. That is consistent with *Tarkine National Coalition Inc v Minister for the Environment*, where Jessup J (with whom Kenny and Middleton JJ agreed) rejected an argument that the Minister was obliged "take account of circumstances which were not consequences of the proposal at all, but which presumptively came about by other actions".[74]

78. In circumstances where the Browse Development was merely a proposal that was generally "part of a larger vision" for Woodside but otherwise expressly noted to be "not part of the proposed action" and indeed far less progressed than other related proposals under that vision including the Pluto Gas Project, no such connection is established.[75] The Minister was accordingly not at liberty to consider economic matters connected with the Browse Development pursuant to s 136(5).

79. *Second*, and in any event, the Browse Development is a wholly contingent project. It does not presently exist beyond a proposal which has been submitted to the Department for assessment. It was under assessment at the time of the Minister's decision in the present case to approve the NWSx Project. There is also no timeframe within which assessment of the Browse Development is due to be completed. Nor is there any indication as to whether the Browse Development would be approved, and on what conditions (if any).

80. The Minister did not explain or show any justification for essentially accepting the economic benefits proffered by Woodside with effective certainty. The Minister did not engage with the layers of contingency which attended the Browse Development, and which was apparent on the face of the material before the Minister, beyond a passing reference to the Browse Development being "under assessment" at **SOR [249]** and "potential" at **SOR [251]**. That reference does not indicate any recognition by the Minister as to the speculative nature of the economic benefits, as he did not then translate or apply any of that contingency into his consideration of the economic benefits claimed about the Browse Development. That would have been the logical and necessary approach as the expected economic benefits (of a presently non-existent project) would necessarily be a function of likelihood and the scale of the impact. The

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74 *Tarkine National Coalition Inc v Minister for the Environment* [2015] FCAFC 89; (2015) 233 FCR 254 at [43] (Jessup J).

75 See Decision Brief, Attachment F101 at [8]. See also at Attachment F15.

Minister's reasoning process was thus not supported by any logical grounds,[76] and otherwise lacked any intelligible basis.

81. That the Minister reasoned erroneously is also supported through comparison with decision-making in other statutory contexts that takes into account contingencies. For example, under the *Competition and Consumer Act 2010* (Cth), in the context of mergers assessed against a counterfactual with forward-looking reasoning as to whether there is likely to be a substantial lessening of competition, it is the total consideration of the potential effects, "both positive and negative, with such effects having different degree of likelihood (from mere possibilities to near certainties)" that is necessary.[77] That is, the overall evaluation of an effect requires identification of the likelihood or probability of the effect together with the substance of the effect (positive or negative).

82. So too in the context of the *Migration Act 1958* (Cth) under which, for instance, the risk of reoffending is typically considered as part of the analysis of whether a mandatory character cancellation of a visa should be revoked. In that context, it has been held that the "nature and circumstances of past offending are integral to any assessment of the risk, or likelihood, of future offending".[78]

83. Analogously, it was impermissible for the Minister to note, on the one hand, that the Browse Development was contingent (in the sense that it was "under assessment") and, on the other hand, proceed to consider the claimed benefits (stretching to 2063) as if these were certainties.[79]

84. It is also no answer that Woodside had provided information about the claimed economic benefits of the Browse Development, which the Minister was then required to consider under s 131AA(6). Not only would that seek to rewrite the statutory requirement in s 131AA(6) that "the Minister must take into account any *relevant*

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76 *Minister for Immigration and Citizenship v SZMDS* [2010] HCA 16; (2010) 240 CLR 611 at [103] (Crennan and Bell JJ).

77 *Applications by Telstra Corporation Limited and TPG Telecom Limited (No 2)* [2023] ACompT 2 at [118]. See also *Australian Competition and Consumer Commission v Pacific National Pty Ltd* (No 2) [2019] FCA 669 at [1279] (Beach J).

78 *CKL21 v Minister for Home Affairs* [2022] FCAFC 70; (2022) 293 FCR 634 at [74] (Moshinsky, O'Bryan and Cheeseman JJ); *Assistant Minister for Immigration and Border Protection v Splendido* [2019] FCAFC 132; (2019) 271 FCR 595 at [78] (Mortimer J; Moshinsky J agreeing).

79 See generally in the context of how the application of the precautionary principle in decision-making under the *EPBC Act* mirrors the evaluation of the possibility together with the specific impact as in competition law: *Save Our Strathbogie Forest Inc v Secretary, Department of Energy, Environment and Climate Action* [2024] FCA 317; (2024) 306 FCR 316 at [348] (Horan J); *Friends of the Gelorup Corridor Inc v Minister for the Environment and Water* [2023] FCAFC 139; (2023) 299 FCR 236 at [93] (Jackson and Kennett JJ).

comments given to the Minister" (emphasis added), but it would also conflate the Minister's statutory duty to consider particular *sources* of information with the particular *matters* which the Minister can or must consider as part of his decision-making under ss 133 and 136. Merely because a matter is raised in a mandatory *source* of information does not make it a mandatory or relevant matter to be considered.[80]

F. GROUNDS 3 TO 5: CONDITIONS ATTACHED TO THE APPROVAL

85. Each of **Grounds 3 to 5** impugn the Minister's state of satisfaction when he considered and decided to approve the NWSx Project with the attached Final Conditions. Each Ground directs attention to the powers in ss 130, 133 and 134 of the *EPBC Act* (read with s 136 and the objects of the Act) and what the Minister must be satisfied of in order for their lawful exercise.

86. Having regard to the legislative framework set out in **Section C** above (see especially at paragraphs 19-26) the power to approve an action (under ss 130 and 133) travels in tandem with, and is interrelated to, the power to attach conditions to an approval (under s 134). This interrelationship assumes particular significance given the factual context in which the Minister came to exercise the powers.

87. As Jackson and Kennett JJ in *Gelorup Corridor* recognised: "Sections 130, 133 and 134 of the EPBC Act, read together, impose a duty to make a decision of a particular kind". The decision must be either:[81]

    87.1 to approve the proposed action;

    87.2 to approve the proposed action with conditions; or

    87.3 to refuse to approve the proposed action.

88. One consequence of this interrelationship is that the powers are non-sequential in their exercise: the Minister must know what condition or conditions they propose to attach to the approval of an action before making an approval decision under ss 130 and 133(1).[82] Indeed, absent that knowledge *before* deciding to approve an action the

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80 See *Friends of the Gelorup Corridor Inc v Minister for the Environment and Water* [2023] FCAFC 139; (2023) 299 FCR 236 at [20] (Jackson and Kennett JJ).

81 *Gelorup Corridor* [2023] FCAFC 139; (2023) 299 FCR 236 at [63] (Jackson and Kennett JJ).

82 *Lansen v Minister for Environment and Heritage* [2008] FCAFC 189; (2008) 174 FCR 14 at [63] (Moore and Lander JJ).

Minister could not form the requisite state of satisfaction that attaching each condition to the approval satisfied the requirement in s 134(1) (or s 134(2)).

89. The interrelationship is consistent with the stated purposes of ss 133 and 134 in the extrinsic material.[83]

90. In addition, numerous provisions in Pt 9 contemplate that the power to approve an action and the power to attach a condition to the approval are interrelated. For example, the invitation to comment provisions in ss 131(1) and 131AA(1) require that the Minister must seek comment on the proposed decision (which includes the proposed approval *and* any conditions attaching to that approval). Other examples not outlined in **Section C** above are ss 131A(a), 132A(3), 134(1A)(a)-(b), (3A), (3b), 135(2), s 136(4), (5), 137, 138, 139, 140.

91. Both the powers to approve and to attach a condition on an approval are relevantly conditioned by the mandatory considerations in s 136(1).

92. An important consequence of the legislative scheme's focus on the impact to the protected MNES and the mandatory considerations in s 136 is that a necessary step in the decision-making approval process is an assessment of whether those impacts are acceptable in the light of the benefits the proposed action may bring. If the Minister decides that the impacts are not acceptable, then the Minister must consider whether conditions can be devised to attach to the approval that will result in the impacts being acceptable (by limiting or reducing those impacts) and what those conditions are that would achieve that end.[84] A necessary anterior step to this assessment is the need to identify what the impacts of approving the taking of the action are on the protected subject matter – either if the action is approved without any conditions or if the action is approved with conditions.

93. Furthermore, if the attachment of a condition to an approval makes the difference between the impacts of the action being unacceptable or acceptable then the Minister

83 Clause 133 provided that "The Environment Minister may approve the taking of an action *subject to any necessary conditions* (emphasis added) and cl 134 provided "This clause provides that the Minister may attach conditions to an approval only if she or he is satisfied that the condition is necessary or convenient for protecting a matter protected by a relevant provision of Part 3, or repairing or mitigating damage to that matter (or those matters)": Explanatory Memorandum to the EPBC Bill 1999 at 54 [226]-[227]. See, *Acts Interpretation Act 1901* (Cth), s 15AB.

84 *Friends of the Gelorup Corridor Inc v Minister for the Environment and Water* [2023] FCAFC 139; (2023) 299 FCR 236 at [64] (Jackson and Kennett JJ).

must have an understanding of what the imposition of the condition will achieve.[85] This in turn impacts the Minister's decision to approve or not approve. This was the relevant legal context in which the Minister came to consider whether or not to approve NWSx Project with conditions attached to that approval to reduce air emissions from the proposed action. The Applicant submits this legal framework required the Minister to first identify the impacts from the NWSx Project to the National Heritage place and then to assess whether the approval with all the proposed conditions (i.e. Final Conditions) attached has an acceptable impact on the protected subject matter (i.e. the National Heritage values of the National Heritage place) before he could lawfully exercise the power to approve the action with conditions.

94. It is important to have particular regard to the proper construction of s 134 given how the Minister made the Decision.

95. As noted in **Section C** above, s 134(1) (and s 134(2)) confers a discretion on the Minister to attach a condition to the approval of the action "if he or she is satisfied that the condition is necessary or convenient for" "protecting a matter protected by [a controlling provision] in Part 3" (i.e. a MNES) or "repairing or mitigating damage to a matter protected by a [controlling provision] in Part 3" (ie, a MNES). Under s 134(4), in deciding whether to attach a condition the Minister must relevantly consider information provided by the proponent; and "the desirability of ensuring as far as practicable that the condition is a cost-effective means for the Commonwealth and a person taking the action to achieve the object of the condition." A failure to consider information provided by a proponent does not invalidate a decision about attaching a condition to the approval (s 134(5)).

96. While in some statutory contexts a power to do things "necessary or convenient" is construed as one of considerable latitude,[86] the discretion in s 134(1) (and (2)) is different. Textually, the provision does not use the "familiar" language of "*to do all*

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85 *Friends of the Gelorup Corridor Inc v Minister for the Environment and Water* [2023] FCAFC 139; (2023) 299 FCR 236 at [65] (Jackson and Kennett JJ).

86 *Palmer v Australian Electoral Commission* [2019] HCA 24; (2019) 269 CLR 196 at [44] (Kiefel CJ, Bell, Keane, Nettle, Gordon and Edelman JJ), [65] (Gageler J). Although, it is well-recognised that such a power will not support the doing of a thing which departs from the scheme of the enactment by which the power is conferred: *Palmer v Australian Electoral Commission* [2019] HCA 24; (2019) 269 CLR 196 at [65] (Gageler J); *Morton v Union Steamship Co of New Zealand Ltd* [1951] HCA 42; (1951) 83 CLR 402 at 410.

things necessary or convenient";[87] rather, once enlivened, s 134 empowers the Minister to impose a condition attaching to the approval only if satisfied it is "necessary or convenient" to achieve specified ends: to protect the subject matter of the controlled action (a MNES) or to repair or mitigate damage to that subject matter. Thus, the words "necessary or convenient" are used as a constraint or limitation, rather than as an empowering provision. Considering its role in the statutory scheme, properly understood, s 134(1) provides a mechanism by which the Minister may approve an action if he or she is satisfied that condition(s) can be attached to that approval to protect or to repair or mitigate damage to the MNES to an extent where the action – that would otherwise be prohibited under the provisions of Pt 3 – can go ahead.

97. The extrinsic materials concerning s 134 generally,[88] and s 134(4)(aa) specifically,[89] reinforce the language of s 134 (read with ss 131AA, 130, 133 and 136). The requirements in s 134(4) (with s 131AA(1)(b), (6)) to provide the proponent with natural justice and to consider the proponent's comments do not override or modify the criterion in s 134(1). Section 134 in its terms does not give a proponent a right to appeal or negotiate conditions on an approval with the aim of achieving an objective with less commercial or operational impacts on the action that is the subject of the Pt 9 approval process.

F.1 Ground 3: The Minister relied on materially outdated information and as such did not form requisite state of satisfaction before approving NWSx Project with the attached Final Conditions

Key points

- **Alleged jurisdictional error:** The Minister did not undertake the task required to form the requisite state of satisfaction and/or did not have a rational basis upon which to make the Decision.
- **Parts of the materials revealing jurisdictional error:** SOR [48]-[49], [52]-[53]; Recommendation Submission to Decision Brief at 1-2, [33]-[34], [54], [55]; Attachment F1 [30]-[32]; LCR at 3[1], [197]-[199], [200]-[201]; [278]-[279].
- **Key Contentions:** The factual basis upon which the Minister performed his statutory function had materially changed from when he made the proposed decision (for the reasons at paragraph 100 below). Due to material inadequacies in the departmental

87 *Northern Land Council v Quall* [2020] HCA 33; (2020) 271 CLR 394 at [33] (Kiefel CJ, Gageler and Keane JJ).

88 Senate Committee on the Environment, Communications, Information Technology and the Arts, Committee's Report on EPBC Bill at [8.60]-[8.66].

89 Supplementary Explanatory Memorandum to the EPBC Bill at 11 [73].

material and advice, the Minister relied on outdated advice (LCR) and proceeded on a flawed premise and failed to perform task required under ss 130, 133, 134 and 136 of the EPBC Act.

98. For the reasons set out in paragraphs 87-93 above, the Minister had to, in fact, consider certain matters before forming the requisite state of satisfaction to approve the taking of the action with the attached Final Conditions, before making the Decision (pursuant to ss 130, 133, 134 and 136). Each step in the Minister's decision-making process to approve the taking of an action with conditions must have a rational basis and conform to "the rules of reason and justice",[90] be formed through an "intelligible decision-making process,[91] and proceed on a correct understanding of the law.[92]

99. The key material provided by the Department to Minister for the purpose of considering whether to approve the NWSx Project with the Final Conditions was directed at a materially different "decision": the *Proposed Decision* made by the Minister on 28 May 2025. The Department's advice wrongly characterised the "several changes" to the Decision notice as serving "to clarify conditions and to further align with the Western Australian approval"[93] (rather than making the changes to the Proposed Decision described at paragraph 100 below). The documents before the Minister, upon which he relied,[94] therefore failed to prompt the Minister to form the requisite state of satisfaction before deciding to approve the NWSx Project subject to the Final Conditions. This Court should infer that the Minister did not "in reality" form the state of satisfaction required by the applicable law and/or that he had did not have a rational basis upon which to make the Decision and therefore the Minister made a jurisdictional error.[95]

Material changes to the approval following Proposed Decision

100. By around 12 September 2025, when the Minister came to consider whether or not to approve the NWSx Project, the content of the proposed approval (i.e. the approval

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90 *Friends of the Gelorup Corridor Inc v Minister for the Environment and Water* [2023] FCAFC 139; (2023) 299 FCR 236 at [62], [65] (Jackson and Kennett JJ).

91 *ABT17 v Minister for Immigration and Border Protection* [2020] HCA 34; (2020) 269 CLR 439 at [20] (Kiefel CJ, Bell, Gageler and Keane JJ).

92 *Palmer v Western Australia* [2021] HCA 5; (2021) 272 CLR 505 at [158] (Gageler J); *Graham v Minister for Immigration and Border Protection* [2017] HCA 33; (2017) 263 CLR 1 at [57]; *R v Connell; Ex parte Hetton Bellbird Collieries Ltd* [1944] HCA 42; 69 CLR 407, 430 (Latham CJ).

93 Recommendation submission at 2.

94 SOR at [52]-[53].

95 *Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Palme* [2003] HCA 56; (2003) 216 CLR 212 at [39] (Gleeson CJ, Gummow and Heydon JJ); *R v Australian Stevedoring Industry Board; Ex parte Melbourne Stevedoring Co Pty Ltd* [1953] HCA 22; (1953) 88 CLR 100, 120.

together with the attached Final Conditions) had changed from when he had decided on or around 28 May 2025 as the Proposed Decision to invite comment on, in the following material ways:

100.1 The conditions that were attached to the Proposed Decision materially changed in that the Proposed Conditions were more stringent than the conditions proposed to be attached to the approval in the Decision, as the Final Conditions attached to the approval of the NWSx Project allowed for more air emissions from the NWSx Project than allowed under the proposed conditions.[96]

100.2 There was scientific evidence relating to the impacts of air emissions on the rock art of the National Heritage place that was not before the Minister when he made the Proposed Decision. That evidence included research undertaken as part of a PhD dissertation[97] and information provided by the Applicant.[98] That material was considered by the Department and the Minister.[99] As characterised by the Minister in his SOR, the "new scientific research … shows evidence that impacts [to the rock art] can occur at the current level of pollution".[100]

101. In the context of this Pt 9 approval (as summarised in **Section D.2** above at paragraphs 43-47), the changes identified in paragraph 96 altered the factual basis upon which the statutory task required by ss 130, 133, 134 and 136 was to be performed by the Minister when he came to decide whether or not to approve the NWSx Project with the Final Conditions of (1) identifying the impacts of the proposed action on the MNES, namely the National Heritage values of the National Heritage place if the proposed action was to be approved with the Final Conditions; and (2) assessing whether those impacts are acceptable in light of the benefits that the proposed action may bring.

Key documents before, and considered by, the Minister when considering whether to approve the NWSx Project with the attached Final Conditions

102. In advance of the Proposed Decision, the Department provided a Legal Considerations Report to the Minister.[101] The Legal Considerations Report was the document

96 Compare, Proposed Condition 3 in Notification of proposed approval decision at Attachment F2 p. 2 with Conditions 5-8 in Notification of Approval Affidavit of Elaine Johnson dated 10 October 2025 at EJ-1. See also SOR at [102], [176], [190], [207], [310].
97 Decision Brief, Attachment E5 and E24; Recommendation submission at [33].
98 Decision Brief, Attachments E1-E3, E20; Recommendation submission at [34].
99 SOR at [48], [49], [102], [104], [120], and [167].
100 SOR at [167].
101 Decision Brief, Attachment F9.

containing the Department's analysis and conclusions of the impacts from the NWSx Project on the National Heritage values of the National Heritage place and formed the basis for the Department's recommendations to the Minister for the Proposed Decision.[102]

103. As described by the Department in the Proposed Decision Brief, the Legal Considerations Report:[103]

103.1 Identified the "matters which [the Minister] must and may consider in making your proposed decision on whether or not to approve the proposed action, including the likely impacts of the proposed actions for the purpose of each controlling provision, principles of ecologically sustainable development, economic and social matters, and matters relevant to listed threatened species and communities" (including by reference to the applicable provisions of the *EPBC Act*); and

103.2 The Department's "analysis and conclusions in respect of these matters and the recommended proposed decision".

104. The Legal Considerations Report identified the impacts *of the Proposed Decision* on the rock art,[104] and had assessed the acceptability of those impacts balanced against the other matters the Minister must or may consider under Pt 9 of the EPBC Act.[105] The analysis of impacts had regard to several factors (including the scientific evidence available at the time the Report was prepared).[106] As part of the assessment of the acceptability of the then identified impacts, the Legal Considerations Report had regard to 'Matters of National Environmental Significance – Significant Impact Guidelines 1.1'.[107] The Legal Consideration Report's recommendations to the Minister to approve the proposed action *subject to the Proposed Conditions* were based upon this analysis and associated conclusions.[108]

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102 Decision Brief, Attachment F1 at [30]-[32].
103 Decision Brief, Attachment F1 at [31].
104 Decision Brief, Attachment F9 at 43 [197]-[198].
105 Decision Brief, Attachment F9 at 43 [199].
106 Decision Brief, Attachment F9 at [199].
107 Decision Brief, Attachment F91.
108 Attachment F9 – Legal Considerations Report at p. 3 [1], [200]-[201]; [278]-[279]. See also, Attachment F1 Proposed Decision Brief dated 19 May 2025 at [29]-[32].

105. The Legal Considerations Report was prepared to provide a recommended decision that "reflects [the Minister's] proposed decision"[109] – being, a necessary, but not the final, step before the Minister decided whether or not to approve the taking of the action with any conditions pursuant to ss 130, 133 and 134 of the EPBC Act.

The Department did not provide the Minister with documents or advice to form the requisite state of satisfaction in relation to the approval subject to the Final Conditions

106. There was no updated equivalent analysis to that in the Legal Considerations Report before the Minister when he came to decide whether or not to approve the NWSx Project subject to the Final Conditions.[110]

107. The advice provided by the Department before the Minister considered whether to approve the NWSx Project, proceeded on the wrong premise that the Minister's decision merely had the effect of "clarify[ing]" the final conditions on the approval following the consultation with Woodside on the Proposed Decision.[111] On that basis, it advised the Minister that the action will not have an "unacceptable impact" on the NHV of the NHP if subject to the Final Conditions.[112]

108. This characterisation is inconsistent with the Department's acknowledgment that the Final Conditions concerning air emissions reductions had changed.[113] Indeed, the bulk of the Department's recommendation submission to the Minister is addressed to the changes prompted by the Woodside consultation. It is also inconsistent with the Department accepting, considering, and notifying the Minister of information regarding new scientific evidence on the impacts and potential impacts of the rock art from emissions from the NWS.[114]

109. It follows that the Decision Brief was materially deficient. Relevantly, the Department failed to update, and relied upon,[115] the advice and documentation before the Minister to provide the Minister with information on the impacts and acceptability of those

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109 Attachment F1 – Proposed Decision Brief at 1 (see, recommendation 2) and 6 [29].

110 Instead, the cover page of the Department's recommendation submission recommended that the Minister consider the information in the Decision Brief, including the Proposed Decision Brief and the Legal Considerations Report; comments on the Proposed Decision; and approve the action subject to the Final Conditions: Recommendation submission at 1.

111 Recommendation submission at 2 [5], [65].

112 Recommendation submission at 2 [6].

113 Recommendation submission at 2 [5].

114 SOR at [48]-[49]; Recommendation submission at [33]-[34], [55]. Decision Brief, Attachments E1-E3, E5 and Attachment E24.

115 Recommendation submission at 10 [54].

impacts on the NHP of the proposed approval *with the Final Conditions* to provide him with a rational basis upon which to perform his statutory task. At a minimum, the Minister required equivalent analysis and recommendations to that outlined at paragraph 104 and correct advice on the matters upon which he needed to consider, and be satisfied of to perform his statutory task, having regard to the matters identified at paragraph 100. Such material deficiency in the documents before, and advice to, the Minister spells the invalidity of his decision, as he failed to "in reality" form the requisite state of satisfaction.[116] Such an approach to the departmental material and advice is not technical or pedantic, it recognises that the Minister's power to approve the taking of an action subject to any conditions is significant (indeed, critical) to the proper operation of the *EPBC Act*.[117]

110. The statements such as at **SOR [54], [230]-[233], [309]-[311]** do not lead to any different conclusion. A "beneficial construction" of the SOR,[118] cannot remedy the deficiencies in the Decision Brief and the Department's advice to the Minister that in turn infected his decision-making.[119]

111. There is a realistic possibility that the Decision that was in fact made could have been different if the Minister had regard to material regarding the impacts of approving the NWSx Project with the Final Conditions on the rock art and assessed the acceptability of those impacts as required by the applicable law before deciding to approve the proposed action subject to conditions. That is sufficient to establish the error was material.[120] It is not necessary or appropriate for a court to inquire into how those factors could or would have been weighed by the Minister.[121]

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116 *Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Palme* [2003] HCA 56; (2003) 216 CLR 212 at [39] (Gleeson CJ, Gummow and Heydon JJ); *R v Australian Stevedoring Industry Board; Ex parte Melbourne Stevedoring Co Pty Ltd* [1953] HCA 22;(1953) 88 CLR 100, 120.

117 *Williams v Minister for Justice and Customs* [2007] FCAFC 33; (2007) 157 FCR 286 at [47] (Gyles, Allsop and Buchanan JJ). See also, *Minister for Immigration and Multicultural & Indigenous Affairs v Schwart* [2003] FCAFC 229 at [31]-[33] (Tamberlin, Mansfield and Emmett JJ).

118 *Minister for Immigration & Ethnic Affairs v Wu Shan Liang* [1996] HCA 6; (1996) 185 CLR 259, 272.

119 *Minister for Home Affairs v Ogawa* [2019] FCAFC 98; (2019) 269 FCR 536 at [117]; *Davis v Minister for Immigration* [2023] HCA 10; (2023) 279 CLR 1 at [25] (Kiefel CJ, Gageler and Gleeson J), quoting *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* [1986] HCA 40; (1986) 162 CLR 24, 65-66 (Brennan J).

120 *LPDT* [2024] HCA 12; (2024) 280 CLR 321 at [7], [14] (Gageler CJ, Gordon, Edelman, Steward, Gleeson and Jagot JJ). See *Browne v Assistant Commissioner of Police (Victoria)* [2026] FCA 15 at [89] (Bennett J).

121 *Browne v Assistant Commissioner of Police (Victoria)* [2026] FCA 15 at [105] (Bennett J).

F.2 Ground 4: The Minister failed to undertake the task required by s 134(1) by relying on materially outdated and inadequate material when attaching Conditions 4-8

Key points

- **Alleged jurisdictional error:** The Minister did not undertake the task required by s 134(1) to form the requisite state of satisfaction or proceeded on a misunderstanding of the law when attaching Conditions 4-8.
- **Parts of the materials/SOR revealing jurisdictional error**: SOR [132], [151], [153], [154], [158], [162]-[176] (and SOR [177]-[213]); LCR [189]-[199]; [278]-[279].
- **Key Contentions:** The department material and advice (LCR) was materially outdated and failed to provide the Minister with a rational basis and/or prompt him to reach the requisite state of satisfaction in deciding whether to approve the NWSx Project with the Final Conditions.

112. Before making the Decision (which included Conditions 4-8), the Minister had to consider whether attaching each of Conditions 4-8 to the approval satisfied s 134(1) having regard to the impacts of the action on the National Heritage values of the National Heritage place and every other proposed final condition on his approval. The Court should infer that he failed to undertake that task or misunderstood the relevant law when he purportedly did so because of the inadequacy of the material before him such that, "in reality", the Minister was not satisfied of the requisite matters.[122] In attaching Conditions 4-8 to the approval, the Minister therefore fell into jurisdictional error.

Key documents before, and considered by, the Minister when deciding whether to attach Conditions 4-8

113. In considering whether to attach Conditions 4-8 (relevantly the conditions necessary to protect the rock art from air emissions from the NWSx Project), the Minister considered, and relied upon, the Department advice and the Legal Considerations Report. The Department's submission and recommendations accompanying the Decision Brief (**recommendation submission**) provided advice on the amendments to Proposed Condition 3 (the air emissions condition attached to the Proposed Decision) following the Department's consultation with Woodside. Woodside's comments on

122 *Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Palme* [2003] HCA 56; (2003) 216 CLR 212 at [39] (Gleeson CJ, Gummow and Heydon JJ); *R v Australian Stevedoring Industry Board; Ex parte Melbourne Stevedoring Co Pty Ltd* [1953] HCA 22; (1953) 88 CLR 100, 120 (Dixon CJ, Williams, Webb and Fullagar JJ).

Proposed Condition 3 are summarised by the Department at [51]-[57] of the recommendation submission. The Department's advice about the amendments to Proposed Condition 3 is at [63]-[69] of that recommendation submission.

114. The advice that the Department provided on Proposed Condition 3 in the Legal Considerations Report ahead of the Minister considering the Proposed Decision is at **Attachment F9 [189]-[196]**; **[278]-[279]**. At **LCR [279]**, the Department refers to the earlier detailed discussion of its reasons for recommending the conditions, states its "view is that the conditions proposed to be attached to the approval at Attachment A are necessary or convenient to protect the matters protected by a provision of Part 3". As addressed paragraphs 104-105 above, the Legal Considerations Report also identified the impacts to the National Heritage place and assessed the acceptability of those impacts as part of the basis for recommending the Minister approve the NWSx Project *with the Proposed Conditions* (including Proposed Condition 3).

115. The Minister's key factual findings relating to the attachment of Conditions 4-8 (the amendments to Proposed Condition 3)[123] are at paragraphs 45-57 of **Section D**.**2** above.

116. In summary, the Minister found that the WA Conditions were not sufficient to prevent impacts to the rock art from the NWSx Project; that there was a likely risk of serious and irreversible damage" to the rock art from air emissions from the NWSx Project; and the impacts to the rock art from air emissions would impact all five National Heritage values of the National Heritage place.[124] Due to the context, severity and scale of these potential impacts a precautionary approach was necessary to require Woodside to prevent impacts to rock art.[125] The key parts of the Minister's reasoning for then deciding to attach Conditions 4-8 to the approval is at **SOR [162]-[176]** (see also **SOR [177]-[213]**).

The Minister failed to form the requisite state of satisfaction before attaching Conditions 4-8 to the approval

117. The material and advice provided by the Department, upon which the Minister relied, when attaching Conditions 4-8 to the approval was materially outdated and failed to provide the Minister with a rational basis to reach the requisite state of satisfaction on

123 Proposed Condition 3: "*requiring the proponent to achieve the outcome of no emissions above the detectable limit of air emissions that impact rock art by 31 December 2030*." (SOR[158]).

124 SOR at [132], [151], [153], [165].

125 SOR at [154].

a correct understanding of the law in deciding whether to approve the NWSx Project *with the Final Conditions*.

118. Further, the evidence does not support an inference that the Minister independently considered the material and obtained the requisite state of satisfaction when attaching Conditions 4-8 to the approval.

119. In that regard, the Applicant submits the key parts of the Minister's reasoning (**SOR [169]-[176]**) for attaching Conditions 4-8 to the approval do not employ language to explain precisely (or at any level of generality) why the Minister is so satisfied that each of those Conditions are necessary to protect the rock art from the impacts of the NWSx Project having regard to all of the impacts on the National Heritage place from the approval with the Final Conditions. Having regard to the relevant paragraphs and the structure of the SOR, a "beneficial construction" based upon the general statement regarding his purported state of satisfaction in s 134(1) in relation to all the Final Conditions (**SOR [298]**) or his statements about the acceptability of the impacts from Conditions 4-8 at **SOR [309]**, and Conditions 5 and 7 at **SOR [310]** cannot be deployed to reach the contrary conclusion that he had, in reality, correctly understood the law and considered the matters necessary to reach the requisite state of satisfaction.

120. That the Minister's reasons do not do so follows from the fact that the Department failed to put before him documents that considered at all, or adequately, or otherwise advise him on these matters when recommending he approve the NWSx Project with the attached Final Conditions.

121. For the same reasons given at paragraph 111 in relation to Ground 3, given the evaluative nature of the task, this error was material.

F.3 Ground 5: Alternatively, the Minister misunderstood the law or acted unreasonably when attaching Conditions 4-8

Key points

- **Alleged jurisdictional error:** The Minister asked himself the wrong legal question under s 134(1) (misunderstood the law), or reasoned unreasonably, when attaching Conditions 4-8 by asking whether he was satisfied each is feasible for Woodside such that attaching condition would not prevent action from being approved.
- **Parts of SOR revealing jurisdictional error**: SOR [162]-[176].

- **Key Contentions:** In light of the overall factual and legal context, the attachment of Conditions 4-8 on the basis of feasibility for Woodside was contrary to the criterion in s 134(1); or legally unreasonable having regard to subject, scope and purpose of the power in s 134(1).

122. In the alternative to Ground 4, the Court should find that the Minister erred when he attached each of Conditions 4-8 by reference to whether they were feasible for Woodside to comply with, so to ensure their attachment would not prevent the proposed action from occurring. In so doing, the Minister asked himself the wrong legal question under s 134(1) (and thereby misunderstood the law), or otherwise acted unreasonably.

123. The impugned parts of the Minister's Statement of Reasons are at **SOR [162]-[176]** (and especially at **SOR [171]-[176]** (outlined in **Section D.2** at paragraphs 53-56above)). The Applicant also highlights **SOR [191], [197], [209], [211]** in which the Minister provides further reasoning for the attachment of Conditions relating to specific air emission pollutants employing the language of "practicable" and "achievable".[126]

124. The Applicant submits that the Minister's reasons for attaching Conditions 4-8 demonstrate he attached them because he was satisfied that they were feasible (in the sense of practicable and achievable) for Woodside to comply with such that their attachment to his approval would not prevent the NWSx Project from occurring. Such an approach is both contrary to the criterion in s 134(1) and is based on the flawed legal premise that the action *will* be approved and that conditions attached to that approval can then be fashioned in order to make compliance feasible for Woodside. That premise is contrary to the text and purpose of s 134 and impermissibly decouples the powers to approve a controlled action and to condition an approval (contrary to the interrelated operation of ss 130, 133 and 134).

125. In accordance with the principle at paragraphs 87-97, the Applicant submits that s 134(1) provided a mechanism by which the Minister may approve the NWSx Project if satisfied that condition(s) on air emissions could be devised to protect the MNES from the impacts of the NWSx Project to an extent where the controlled action can go ahead.

126. Nothing in the text of s 134 indicates the Minister's task when deciding whether to attach each of Conditions 4-8 was to ask himself whether he is satisfied that the

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126 Cf the general statement at SOR [298] of the purported satisfaction of s 134(1) in relation to all the Final Conditions.

proposed Condition is "feasible" (or, for that matter, "practicable" or "achievable") for Woodside such that attaching that condition would not prevent the action from being approved. The Minister must consider whether each condition is a "cost-effective means" for the proponent of achieving the "object of the condition" but only "so far as practicable" (s 134(4)(b)).[127] That consideration, however, does not override or displace the criterion in s 134(1), nor does it permit the Minister to attach a condition so as to ensure Woodside can feasibly comply if that attachment would be contrary to the object of the condition. Such an exercise of the power would be contrary to the purpose for which it is conferred.

127. Further or alternatively, the error may be characterised as one of legal unreasonableness.[128] The Minister came to exercise his power in s 134(1) to attach Conditions 4-8 following his findings that impacts of air emissions on the rock art from the NWSx Project warranted the imposition of the precautionary principle to protect the rock art, and his rejection of both (a) the sufficiency of the applicable WA Conditions and (b) Woodside's understanding of the science. Between making the Proposed Decision upon which he sought comment and considering whether to approve the NWSx Project he had also considered and accepted new scientific information that showed evidence of impacts to the rock art from the current level of emissions from the NWS. Nevertheless, he decided to amend Proposed Condition 3 and attach Conditions 4-8 to the approval for the reasons at **SOR [267]-[276]**. Considering the factual context and the purpose of s 134(1), the Minister transgressed the implied condition of reasonableness when deciding to attach Conditions 4-8 to the approval of the NWSx Project.[129]

128. However the error may be characterised, it is material. If the type of error here attracts a threshold of materiality then there is a realistic possibility the Minister could have made a different decision in fact if he had asked himself the correct legal question.[130]

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127 Note at SOR [305] the Minister considered all the Final Conditions are "commensurate with the conservation outcome the conditions are designed to achieve and at SOR [306] noted he considered s 134(4)(b).

128 *ABT17 v Minister for Immigration* [2020] HCA 34; (2020) 269 CLR 439 at [19] (Kiefel CJ, Bell, Gageler and Keane JJ).

129 *Minister for Immigration and Citizenship v Li* [2013] HCA 18; (2013) 249 CLR 332 at [64]-[72] (Hayne, Kiefel and Bell JJ) (and see *Minister for Immigration and Border Protection v Stretton* [2016] FCAFC 11; (2016) 237 FCR 1 at [2]-[13] (Allsop CJ), [50]-[62] (Griffiths J)).

130 *LPDT* [2024] HCA 12; (2024) 280 CLR 321 at [3], [6], [7].

The result is that the Decision is invalid, noting also that Conditions 4-8 are fundamental to the approval and thus incapable of severance.

129. In any event, for the reasons addressed at paragraphs 118-120 above, the Applicant submits that even if (for the sake of argument) the Minister (wrongly in law) intended to make Proposed Condition 3 (what became Conditions 4-8) "feasible" for Woodside the applicable provisions of Pt 9 (ss 130, 133, 134 and 136) required him to consider afresh whether the impacts of approving the NWSx Project with all of the Final Conditions (including each of Conditions 4-8) was acceptable – and he failed to do so.

G. GROUNDS 6 AND 7: NATIONAL HERITAGE MANAGEMENT PRINCIPLES

130. Ground 6 alleges that the Minister's Decision is invalid because it did not comply with the objective condition in s 137A(a) that the Decision not be inconsistent with the National Heritage Management Principles. Ground 7 contends that, in the alternative, the Minister's Decision is invalid because the Minister could not legally form the requisite state of satisfaction that s 137A(a) was complied with.

131. From time to time, the two alternative constructions underpinning Grounds 6 and 7 have been described, especially in this Court,[131] as a difference between objective jurisdictional facts and subjective jurisdictional facts. That terminology however should not distract from the central question of whether s 137A here requires the Minister's Decision to be actually or objectively consistent with that provision, or whether it is sufficient if the Minister formed lawfully the satisfaction that the Decision complied with s 137A.

G.1 Ground 6: The Minister's Decision could only be valid if there was objective compliance with s 137A(a)

Key points • **Alleged jurisdictional error**: Failure to comply with condition on decision-making authority • **Part of SOR revealing jurisdictional error**: **SOR [287]-[295]**

131 See, eg, *Ali v Minister for Home Affairs* [2020] FCAFC 109; (2020) 278 FCR 627 at [40]-[41] (Collier, Reeves and Derrington JJ); *Law v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2020] FCA 1726 at [16]-[17] (Stewart J). See generally *EHF17 v Minister for Immigration and Border Protection* [2019] FCA 1681; (2019) 272 FCR 409 (Derrington J).

- **Key contentions**: Section 137A is an objective condition on the Minister's decision-making power under ss 130, 133 and 134, breach of which results in invalidity

132. Section 137A(a) of the *EPBC Act* requires the Minister "not [to] act inconsistently with" the National Heritage Management Principles in deciding whether or not to approve the taking of an action, and what conditions to attach to such an approval. The prescribed National Heritage Management Principles are contained in Sch 5B to the *Environmental Protection and Biodiversity Conservation Regulations 2000* (Cth). Objective 1 in managing National Heritage places is to "identify, protect, conserve, preserve and transmit, to all generations, their National Heritage values".[132] Objective 4 in managing National Heritage places is to "ensure that their use and presentation is consistent with the conservation of their National Heritage values". The Dampier Archipelago, which includes the Burrup Peninsula, has since 3 July 2007 been listed as a National Heritage place.[133]

Compliance with s 137A is determined objectively

133. Section 137A(a) is a condition on the Minister's exercise of his decision-making power, relevantly here under ss 133 and 134, compliance with which is a matter for objective determination. That is a result of ordinary statutory construction of s 137A.[134]

134. *First*, the text of s 137A(a) is framed as an objective condition and does not turn on any subjective consideration of a state of affairs.[135] It is expressed in terms of prohibition, using mandatory language that "the Minister must not act inconsistently" with the specified matters in "deciding whether or not to approve for the purposes of section 15B or 15C the taking of an action, and what conditions to attach to such an approval".

135. *Second*, effect should be given to the deliberate drafting of s 137A(a) in objective terms. In *Plaintiff M96A/2016 v Commonwealth*, Gageler J observed in the context of s 198(1A) and s 198AD(2) of the *Migration Act 1958* (Cth), that where a duty to remove was triggered by a transitory person "no longer need[ing] to be in Australia for that

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132 *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth) Sch 5B.

133 Commonwealth, *Gazette*, No S127, 3 July 2007.

134 *Corporation of the City of Enfield v Development Assessment Commission* [2000] HCA 5; (2000) 199 CLR 135 at [28], [32]-[34] (Gleeson CJ, Gummow, Kirby and Hayne JJ); *Gedeon v Commissioner of the New South Wales Crime Commission* [2008] HCA 43; (2008) 236 CLR 120 at [43]-[46]; *Timbarra Protection Coalition Inc v Ross Mining NL* [1999] NSWCA 8; (1999) 46 NSWLR 55 at [37], [39] (Spigelman CJ; Mason P and Meagher JAagreeing)

135 Cf *R v Connell; Ex parte Hetton Bellbird Collieries Ltd* [1944] HCA 42; (1944) 69 CLR 407, 430 (Latham CJ).

[temporary] purpose (whether or not the purpose has been achieved)", that the statutory language of those circumstances was "unequivocal" and "does not depend, expressly or by implication, on the opinion, satisfaction or belief of any officer".[136] Importantly, his Honour went on to say that "[e]stablished drafting techniques are available to be used to make the holding of a particular state of mind by the repository a precondition to the performance of a duty or to the exercise of a power" and that "their availability cannot be assumed to have been overlooked by the parliamentary drafters".[137] In the *EPBC Act*, Parliament has opted for drafting other powers to be conditioned on the Minister being "satisfied" of particular matters such as in ss 134(1) and 145D(2), and including in connection with National Heritage places such as in ss 34BA, 37E, and 51A. Parliament has eschewed that kind of drafting in s 137A(a), "in favour of casting the precondition to the performance of the duty to remove in manifestly objective terms".[138]

136. *Third*, the purpose of the *EPBC Act* includes to provide for the protection of the "environment" (a concept expressly defined by reference to the specified MNES upon which the statutory scheme focuses).[139] That protection of a specific MNES such as National Heritage is best given effect to through s 137A being construed objectively rather than a matter for Ministerial satisfaction, given the statutory text and context.

Non-compliance with s 137A results in invalidity

137. The second question then is whether objective non-compliance with s 137A results in invalidity. That is a question of statutory construction,[140] which is answered in the affirmative.

138. *First*, jurisdiction "encompasses all of the conditions which the statute expressly or impliedly requires to be observed in or in relation to the decision-making process in order for the decision-maker to make a decision of that kind".[141] As a condition on the exercise of the Minister's power to approve the taking of a controlled action and

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136 (2017) 261 CLR 582 at [37]-[38].

137 *Plaintiff M96A/2016 v Commonwealth* [2017] HCA 16; (2017) 261 CLR 582 at [39].

138 *Plaintiff M96A/2016 v Commonwealth* [2017] HCA 16; (2017) 261 CLR 582 at [39] (Gageler J).

139 See eg, s 528 (definition of "environment").

140 *Minister for Immigration, Citizenship and Multicultural Affairs v Miller* [2024] HCA 13; (2024) 278 CLR 628 at [24]; *Project Blue Sky Inc v Australian Broadcasting Authority* [1988] HCA 28; (1998) 194 CLR 355 at [91] (McHugh, Gummow, Kirby and Hayne JJ).

141 *Hossain v Minister for Immigration and Border Protection* [2018] HCA 34; (2018) 264 CLR 123 at [23] (Kiefel CJ, Gageler and Keane JJ).

attaching conditions, s 137A goes to the Minister's jurisdiction. That is especially since decision-making for the purposes of ss 133 and 134 is regulated by the balance of Subdiv A as well as Subdiv B, rather than being left to ministerial discretion writ large or by reference to open-textured criteria such as the "public interest".

139. *Second*, unlike other provisions under the *EPBC Act* which condition the power to approve a controlled action and to attach conditions to that approval that may be varied or expressly do not affect the validity of such decisions,[142] no such express note is made with respect to s 137A.

140. *Third*, from the detailed and specific process of assessment and approval under Pt 9 and through decision-making being guided by the principles of ecologically sustainable development under s 136(2), a legislative purpose can be discerned to invalidate any decision-making pursuant to ss 130, 133 and 134 decision which fails to comply with s 137A.[143]

141. *Fourth*, s 137A was introduced (along with the other National Heritage-related provisions) into the *EPBC Act* as part of a recognition that the existing *Australian Heritage Commission Act 1975* (Cth) was "fail[ing] to provide substantive protection for heritage places of national significance".[144] The provisions were said in the second reading speech to "significantly improve the conservation and management of natural, historic and Indigenous heritage in Australia" including through the "heritage values of places of national significance receiv[ing] appropriate statutory protection".[145] The extrinsic material highlights that the introduction of s 137A along with all of the other National Heritage provisions was to strengthen protection for heritage places, [146] which is best achieved through non-compliance with s 137A resulting in invalidity.

142. The proper construction of s 137A then is similar to the provision considered in *Gedeon v Commissioner of the New South Wales Crime Commission*.[147] In that case, the High

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142 See, eg, *EPBC Act* ss 134(5) and 156(3).

143 *Project Blue Sky Inc v Australian Broadcasting Authority* [1998] HCA 28; (1998) 194 CLR 355 at [91] (McHugh, Gummow, Kirby and Hayne JJ). See also *Stanley v Director of Public Prosecutions (NSW)* [2023] HCA 3; (2023) 278 CLR 1 at [19] (Gageler J), [206] (Jagot J). See generally *Acts Interpretation Act 1901* (Cth) s 15AA.

144 Explanatory Memorandum, Environment and Heritage Legislation Amendment Bill (No 1) 2002 (Cth) at 5. See also Commonwealth, House of Representatives, *Parliamentary Debates* (27 June 2002) at 4543. The provision was introduced through the *Environment and Heritage Legislation Amendment Act (No 1) 2003* (Cth) Sch 1, cl 18.

145 Commonwealth, House of Representatives, *Parliamentary Debates* (27 June 2002) at 4543-4544.

146 See, ss 15B and 15C, 34BA. 37E, 51A, 146H, and Div 1A.

147 (2008) 236 CLR 120.

Court noted that s 7(1) of the *Law Enforcement (Controlled Operations) Act 1997* (NSW) was "expressed in the terms of prohibition" and "delimit[ed] the scope for any exercise of authority", such that it "convey[ed] the notion of a contraction in the content of" the available power to authorise the conduct of a controlled operation.[148] With s 7(1) operating as a statutory constraint on power, the Court considered that if s 7(1) could be established, then any purported authority to conduct a controlled operation under s 6 would be "beyond power" and so invalid. Importantly, the Court's consideration of whether s 7(1) is transgressed occurs at an "earlier stage of legal analysis" that means that no "question of abuse of discretion or unreasonable decision making arises".[149]

143. There is no authority of this Court considering the interpretation of s 137A. However, there are authorities that have assumed,[150] or concluded,[151] that other provisions specifying "Requirements" on particular Pt 9 approval decisions are not "jurisdictional facts".

144. In *Rainforest Reserves Australia Inc v Minister for Environment and Water* (***Rainforest Reserves***), Shariff J considered the operation of s 140 that requires the Minister not act inconsistently with certain international conventions and agreements. There, his Honour addressed an argument that s 140 operated as a jurisdictional fact in that it was put as a necessary condition for enlivening the Minister's jurisdiction to make the decision to approve the proposed action.[152] Justice Shariff considered that it was ss 130 and 133 which relevantly conferred power and that there was no (express) textual indication that exercise of such power is conditional upon s 140.[153] His Honour further stated that s 140 "lends itself to being a matter of opinion and impression, as opposed to an objective fact".[154]

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148 *Gedeon v Commissioner of the New South Wales Crime Commission* [2008] HCA 43; (2008) 236 CLR 120 at [46] (Gummow, Kirby, Hayne, Heydon, Crennan and Kiefel JJ). Compare *Stanley v Director of Public Prosecutions (NSW)* [2023] HCA 3; (2023) 278 CLR 1 at [197]-[202] (Jagot J).

149 *Gedeon v Commissioner of the New South Wales Crime Commission* (2008) 236 CLR 120 at [47] (Gummow, Kirby, Hayne, Heydon, Crennan and Kiefel JJ). See also *Plaintiff M96A/2016 v Commonwealth* [2017] HCA 16; (2017) 261 CLR 582 at [38] (Gageler J).

150 See *Australian Conservation Foundation v Minister for the Environment* [2016] FCA 1042; (2016) 251 FCR 308 at [33], [86], [113], [201], [205].

151 *Rainforest Reserves Australia Inc v Minister for Environment and Water* [2025] FCA 532; (2025) 311 FCR 98.

152 *Rainforest Reserves Australia Inc v Minister for Environment and Water* [2025] FCA 532; (2025) 311 FCR 98 at [58].

153 *Rainforest Reserves Australia Inc v Minister for Environment and Water* [2025] FCA 532; (2025) 311 FCR 98 at [82].

154 *Rainforest Reserves Australia Inc v Minister for Environment and Water* [2025] FCA 532; (2025) 311 FCR 98 at [85].

145. *Rainforest Reserves* is not about s 137A and, thus, this Court is not bound to follow the decision unless satisfied it is "plainly wrong". The reasoning in *Rainforest Reserves* should not be applied to s 137A in light of its proper construction of s 137A explained above at paragraphs 0 to 142.

G.2 Ground 7: Alternatively, the Minister erred by not lawfully being satisfied that that he would not be acting inconsistently with s 137A(a) by his Decision

Key points

- **Alleged jurisdictional error**: Legally unreasonable and/or irrational and/or illogical formation of state of satisfaction as to compliance with statutory requirement
- **Part of SOR revealing jurisdictional error**: **SOR [287]-[295]**
- **Key contentions**: If s 137A is a state of affairs of which the Minister was required to be satisfied, then he did not lawfully form any requisite state of satisfaction because he relied upon the LCR which was based on the *proposed conditions* for the *Proposed Decision* rather than the (materially different) Final Conditions.

146. In the alternative, if s 137A is a subjectively assessed condition on the Minister's decision-making powers, relevantly under ss 130, 133 and 134, then the Minister must nonetheless be lawfully satisfied that there is compliance with it before deciding to approve the action with (any) attached conditions (**Ground 7**).

147. The Minister's SOR does not support the Minister having lawfully formed that state of satisfaction.

148. The Minister's consideration of s 137A(1)(a) in the SOR is concise: **SOR [287]-[295].** It follows the parts of the SOR where he accepted the Department's advice on the impacts of air emissions on the rock art; relied upon the (materially outdated) LCR's identification and assessment of the acceptability of those impacts; and proposed to attach his Final Conditions (including Conditions 4-8).

149. The Minister then identifies his obligation under s 137A at **SOR [287]**. After noting discrete aspects of the statutory scheme and the relevant management plan, the Minister agreed with the Department "that the proposed action is consistent with the National Heritage Management objectives since the conditions of approval for the action will be to protect the petroglyphs for future generations": **SOR [294]**. He then states he is "satisfied that approving the action, subject to the recommended conditions, would not be inconsistent with the National Heritage Management Principles or the Murujuga National Park Management Plan": a transplant of departmental advice contained in the

Legal Considerations report.[155] Having done so, the Minister concludes at **SOR [295]** that approving the action subject to the proposed conditions (i.e. Final Conditions) would comply with s 137A.

150. The dispositive paragraph of the Minister's reasoning on his state of satisfaction that his Decision complies with s 137A is **SOR [294]**. That paragraph is relevantly identical to a paragraph in the LCR.[156] The LCR advice to the Minister on compliance with s 137A relevantly was addressed to the Proposed Decision and relied upon the Department being satisfied that the impacts of the NWSx Project "will be appropriately managed by the [WA Conditions], and the [Proposed Conditions].[157] The documents before the Minister did not otherwise identify whether and/or how the decision to approve the NWSx Project with the attached Final Conditions was not inconsistent with s 137A.

151. As such, this Court should infer that there was no rational basis for the Minister to be satisfied that the Decision relevantly complied with s 137A and/or, that the Minister unreasonably, irrationally and/or illogically relied upon the materially outdated advice in the LCR to form his state of satisfaction. There is a realistic possibility the Minister could have made a different decision if the error had not been made.[158] Thus, the error is jurisdictional.

H. CONCLUSION

152. The Court should grant the relief sought by the Applicant by way of its Amended Application filed on 13 March 2026, with costs.

Date: 13 April 2026

Sashi Maharaj KC
Christopher Tran
Selena Bateman
Priyanka Banerjee

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155 Decision Brief, Attachment F9 at [275].
156 Decision Brief, Attachment F9 – Legal Considerations Report at [274].
157 Decision Brief, Attachment F9 – Legal Considerations Report at [273].
158 *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] HCA 12; (2024) 280 CLR 321 at [7] (Gageler CJ, Gordon, Edelman, Steward, Gleeson and Jagot JJ).

Annexure A: Documents before the Minister identifying economic detriments associated with the NWSx Project

	Decision Brief reference	Document title	Relevant extracts
1	F118 at 19-67	Attachment P2: Ministerial submissions direct to the Minister – includes sensitive content (Submission of Australasian Centre for Corporate Responsibility)	• "Based on our assessment, the NWS may have provided false or misleading information and withheld information relevant to the unmitigated environmental impacts and viable options to reduce these impacts." (p 19) • "Despite the clear shortcomings of the NWS' Proposal and the EPA Report, the ministers may choose to approve the Proposals on the basis of economic benefits. Industry modelling shows that NWS will provide a decreasing contribution to the government, even if the Browse project is developed. The ministers should note that, historically, NWSJVs have systemically overstated the economic benefits they provide." (pp 27-28) • "Any economic benefits that could be used to justify the Proposal's negative environmental impacts are not articulated in the Proposal. Previous NWSJV claims of economic benefits have been systematically exaggerated. The vast majority of the NWS is owned by overseas investors, so only a small fraction of profits are retained by Australians." (p 29)

	Decision Brief reference	Document title	Relevant extracts
2	F118 at 155-156	Attachment P2: Ministerial submissions direct to the Minister – includes sensitive content (Submission of James Geelan)	• [Approval of the NWSx Project and related projects will] "alienate tens of thousands of voters for an economic outcome that everyday Australians may never even see." (p 155)
3	F118 at 241-246	Attachment P2: Ministerial submissions direct to the Minister – includes sensitive content (Submission of Environmental Justice Australia on behalf of Environmental Council of Central Qld)	• "…one cannot know with any level of certainty or confidence that any particular forecast will be correct to 2050, as to the either coal or gas markets, and that similarly it is unknowable what will be the effect of removal of a particular supply of coal or gas from the coal or gas markets." (p 246) • "The significance of it being unknowable what will be the effect, to 2050, of the removal of a particular of coal or gas that might otherwise be assumed in a given model … is that it is contrary to science, and irrational, to make a finding that (for example) such removal will not (or even likely will not – or any other kind of probabilistic finding) have a bearing on coal supply or demand, or on coal consumed." (p 246)
4	F118 at 280-291	Attachment P2: Ministerial submissions direct to the Minister – includes sensitive	• "The EPA has also not assessed economic or social matters in the (purported) assessment report." (p 281) • "Economic and Social Matters

	Decision Brief reference	Document title	Relevant extracts
		content (Submission of the Australian Conservation Foundation)	50. In addition to National Heritage values of National Heritage places, you are required by s 136(1)(b) of the Act to consider economic and social matters in making your decision. 51. The Full Court of the Federal Court of Australia has affirmed on a number of occasions that this provision permits you to consider a wide range of matters. Your consideration is not limited to 'impacts' of the Proposed Action.19 Your consideration is also not limited to 'beneficial' economic and social matters, and includes a broad range of adverse outcomes should the Proposed Action be approved. 52. ACF considers that the risks posed by the Proposed Action each raise relevant economic and social matters which you must consider alongside the risk posed to National Heritage values of National Heritage places. The EPA Report does not provide an assessment of relevant economic and social matters. 53. In particular, you must have regard to the risk to Australian economic and social life posed by the climate change consequences of an action that will produce at least 4 billion tonnes of greenhouse gas emissions" (p 291)
5	F118 at 326-335	Attachment P2: Ministerial submissions direct to the Minister – includes sensitive	• "Extending the NWS facility's life will result in dramatic increases in GHG emissions. FARA submits that the EPA has failed to properly consider the many long-term deleterious impacts of the NWS extension on global climate. In

	Decision Brief reference	Document title	Relevant extracts
		content (Submission of Friends of Australian Rock Art Inc)	particular, the EPA recommendations have not appropriately considered the serious impacts of Scope 3 emissions on: (1) the ongoing loss of Australian cultural heritage and Murujuga's rock art; (2) the loss of biodiversity and increased environmental degradation which together will result in unsustainable ecosystems; and (3) the degradation of social and economic systems including critical infrastructure, to name a few." (p 331)
6	F118 at 497-537	Attachment P2: Ministerial submissions direct to the Minister – includes sensitive content (Submission of Friends of Australian Rock Art Inc)	• "The proposal raises other strategic and economic risks that may be outside of the scope of the EPA to assess, including serious consequences for the WA domestic gas market, impacts on consumers and the state's economy. These matters, which are outlined below, should be considered by the Minister separately from any EPA assessment." (p 501) • "251) Policy settings that continue to support the rapid expansion of both domestic gas use and LNG export capacity will see the WA gas market inevitably take on similar dynamics to the eastern states gas market. 252) Not only will this impact the competitiveness of the WA economy by driving up gas prices for consumers and businesses, but it will have other serious negative consequences for the state, including o very significant environmental impacts associated with large-scale onshore gas development,

	Decision Brief reference	Document title	Relevant extracts
			○ economic and other risks associated with an economy that is highly carbon intensive and not aligned with national or global decarbonization and temperature goals. ○ Large and growing volumes of WA's domestic gas reserves allocated to their lowest value and highest polluting use." (p 537)
7	F118 at 690-699	Attachment P2: Ministerial submissions direct to the Minister – includes sensitive content (Submission of Dr MA Ferland on behalf of Friends of Australian Rock Art Inc)	• "FARA is very concerned … that Woodside's Burrup Hub may not be financially viable, and that it is not financially advantageous to the citizens of WA and Australia when all environmental costs are considered. There has been a low return to government from gas resources to date (https://treasury.gov.au/review/review-of-the-petroleum-resource-rent-tax/final-report) and approval of further gas-related development will serve to further 'lock-in' this mega-project to the long-term detriment of Australians…" (p 692)
8	F118 at 700-703	Attachment P2: Ministerial submissions direct to the Minister – includes sensitive content (Submission of Submission of Friends of Australian Rock Art Inc)	• "This WA Government always supports industry's mantra of 'Jobs, Jobs, Jobs' … but it is well known that these jobs only occur during the construction phase, and drop back to mere hundreds after that – whereas the renewable energy sector will employ thousands forever! It is time that Australia honestly calculates the very real costs of inaction and reluctance to dramatically reduce emissions, including the negative impacts on public health, coastal infrastructure, biodiversity-related tourism, insurance losses, and the economy." (p 702)

	Decision Brief reference	Document title	Relevant extracts

9	F118 at 714-765	Attachment P2: Ministerial submissions direct to the Minister – includes sensitive content (Submission of Urban Impact Project)	• "The people living and working in areas with higher than average air ambient pollution suffer greater health injustice, with more:
			  ○ days off school/work;
			  ○ medical expenditures;
			  ○ health service utilization such as doctor's visits, outpatient visits, emergency room visits, hospitalization; and even death." (p 719)
			• "The health costs from mortality alone is estimated to be in the order of $11-24 billion per year." (p 723)

10	F118 at 970-1012 (duplicate at E2)	Attachment P2: Ministerial submissions direct to the Minister – includes sensitive content (Submission of Friends of Australian Rock Art Inc)	• [The State assessment does not satisfy the requirements of the EPBC Act including due to] "A failure to consider economic and social consequences of the proposal, especially for Traditional Custodians in the manner required under the EPBC Act" (p 973) • "Finding 12: The State assessment does not meet the requirements of the EPBC Act because it did not consider the impacts of the proposal on the health and wellbeing of Traditional Custodians. These impacts are mandatory relevant considerations for the EPBC Act because it concerned inter-generational equity including: a) the continuation of cultural traditions are part of, and essential to the ongoing maintenance of the heritage values, and b) health and wellbeing impacts

	Decision Brief reference	Document title	Relevant extracts
			must be considered in their own right under the broader requirement to consider economic and social matters (s 136(1)(b)).” (p 975) • “Finding 13: There are very significant economic impacts associated with the proposal which have not been considered as part of the State assessment. These include local economic impacts, fundamental changes to Western Australia’s domestic gas market, and broader economic considerations. The State assessment therefore does not meet section 136(1)(b)) of the EPBC Act because it has not considered matters of economic and social impact.” (p 976) • “health and wellbeing impacts must be considered in their own right under the broader requirement to consider economic and social matters (s 136(1)(b)).” (p 1004) • “In addition to the specific health risks and impacts felt by Traditional Custodians, there are likely to be significant and more widely felt health impacts connected with climate change and cultural heritage impacts of the NWSx.” (p 1004) • “There are likely to be significant economic impacts and effects of the proposal, which now require careful consideration and assessment. Significant economic effects will be associated with impacts to the heritage values and visitor experience resulting from the ongoing operation of the NWSx. The value of tourism, research, and other activity connected with World Heritage

	Decision Brief reference	Document title	Relevant extracts
			Listing of Murujuga is potentially very significant over the timeframe that the proposed extension will operate and beyond. The value of continued cultural tradition and connection to the heritage values is also likely to be significant, while impacts and disruption to these activities leads to reduced economic participation and increased health and other costs borne by the community and government. Furthermore, the proposal raises a range of other significant strategic and economic risks that were not assessed because they were considered outside the scope of the state process. This includes serious consequences for the WA domestic gas market, impacts on consumers and the state's economy. The transitioning of the NWS facility to a 'third party tolling facility' (which is already exporting gas from WA's onshore reserves) is a fundamental change to the WA gas market, resulting in the linking of WA's domestic gas prices to higher international market prices. This transition is the inevitable result of the proposed NWSx." (p 1004) • "Evidence of these impacts is contained in the report From Provider to Parasite - excess LNG export capacity and state energy policies as emerging threats to WA's domestic gas market, environment, and economy.[50] Further evidence has been presented by The Australia Institute for example recent research by the Institute has found that WA's wholesale gas and electricity prices have tripled since 2020,

	Decision Brief reference	Document title	Relevant extracts
			when the WA Government first permitted the supply of onshore domestic gas to the NWS facility for export.[51] Woodside and other suppliers to the WA domestic gas market have reported a doubling in the price of gas that they supply to WA consumers over the last 5 years.[52] These impacts of the NWSx proposal on the WA domestic gas market have not been considered as part of the assessment, or at all by the WA Government. Broader economic considerations also have also escaped assessment to date. For example the current arrangements for gas exports from Commonwealth Waters mean that no royalties are paid on this gas[53] which may be the majority of gas exported by the NWSx over its proposed lifetime. This represents a significant net loss of value to the people of Australia, and should be subject to assessment to determine whether the ongoing export of royalty-free gas at the NWS facility is in the public interest." (pp 1004-1005)
11	E3	Email from FARA with video link (Talk by Piers Vestegen)	• [Research from The Australia Institute shows] "zero royalties are paid on 80% of gas exported from WA…" • "Since that decision was taken… to allow the export of our onshore gas by Woodside and North West Shelf we've seen a tripling of wholesale gas prices here in Western Australia. And it's not just gas that's going up, it's electricity that goes up."

	Decision Brief reference	Document title	Relevant extracts
			• "These facilities are not in our national interest, they're not in our economic interest, and they're not helping to reduce our energy prices or our gas prices. In fact, they're doing the opposite. They're driving up our gas prices and electricity prices."
12	I1 at 1-4	Ministerial Submissions direct to the Minister – combined (Submission of Samantha Walker (Ngarluma Traditional Owner) co-signed with others)	• "The Proposed Decision fails to appropriately weigh the profound social, cultural and environmental impacts of this project. In particular, we raise the following concerns, supported by new and material information" (p 2) • "<u>1. Economic Misrepresentation and Community Harm</u> Claims that the project will secure economic benefits and energy security have been strongly challenged. Recent analysis from The Australia Institute shows up to $215 billion worth of gas could be handed to Woodside royalty-free. Meanwhile, Traditional Owners live in poverty —some with twenty people in a three-bedroom home. *"We have never said no to industry — all we have asked is to work with Us, not against us. We live in poverty. What about my children? My Elders live in poverty when we have a massive billion-dollar industry in our backyard. My people are dying. My Country is crying out for help. It is sick."* The Ngarluma Yindjibarndi Foundation Ltd (NYFL) is the Traditional Owner orgamnisation for the North West Shelf project area. I seen this firsthand. NYFL

	Decision Brief reference	Document title	Relevant extracts
			works tirelessly to deliver social, cultural and economic change for our community. However, the Land Access Agreement signed in 1998 is dramatically unfit for purpose. It fails to adequately protect cultural values, mitigate past and ongoing impacts to Country, or deliver any sustained form of social or economic wellbeing to Traditional Owners. It is severely remiss of the Commonwealth to consider approving a major project while relying on an outdated agreement that is in urgent need of modernisation to reflect contemporary standards of consent, benefit-sharing, and cultural protection. How can the Commonwealth do this?" (p 2) • "Minister, the social and economic wellbeing of Ngarda-ngarli is going backwards. Environmental approvals made in the name of national progress must not be allowed to worsen inequality and cultural harm." (p 3)
13	I1 at 27-28	Ministerial Submissions direct to the Minister – combined (Submission of Frederic Morin-Gagnon)	• "[the NWSx Project] doesn't make sense economically. We do not have a gas shortage. The gas will be exported. No royalties will be paid… It's like giving away 200 billion dollars of gas for free…" (p 28)
14	I1 at 34-35	Ministerial Submissions direct to the Minister –	• [The NWSx Project] "threatens to… **Put corporate profit before communities:** The project offers little economic benefit to Australians, instead serving the interests of multinational corporations and the gas lobby" (p 35)

	Decision Brief reference	Document title	Relevant extracts
		combined (Submission of The Australia Institute)	
15	I1 at 71-72	Ministerial Submissions direct to the Minister – combined (Submission of Roger Hyland)	• "The UWA report maintains that the pollution levels are astronomically higher at present and that a rock sample taken over 20 years ago, held at the University of Melbourne, shows almost no damage to the surface of the rock. This directly contradicts statements from Murajuga, who seem to be more interested in supporting the damaging industry than preserving this incredible piece of world heritage. In the interview it was suggested that there is actually no compelling reason to keep the industrial plant close to Murajuga. It could easily be relocated with benefits to other communities who need investment. Murujuga would remain as a site of cultural and global significance and communities dependent on the tourism will continue to reap benefits and the world will still access to evidence of some of the earliest human activity on the planet." (p 72)
16	I1 at 99-102	Ministerial Submissions direct to the Minister – combined (Submission of Surfrider Foundation Surf Coast)	• "Woodside is quick to talk up its economic credentials but the benefits of the extraction of oil and gas in the Kimberley's all go overseas. Over 90% of the gas Woodside extracts goes overseas to Asian and European markets." (p 101) • "In fact recent data tells us that the domestic demand for gas has fallen in recent years while Japan's reliance on renewables and nuclear power has increased. Japan

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			doesn't need our gas to get off coal… it needs our gas to continue making profits from resales in the Asian market." (p 102) • " In summary the decision to extend the licence for Woodside Energy on the North-West Shelf is a disaster from an environmental and First Nations cultural perspective and a disaster from an economic perspective. For short term financial gain you are setting up Australia (and the world) for a future of fires and floods with declining GDP in Australia and around the world" (p 102)
17	I1 at 109-113	Ministerial Submissions direct to the Minister – combined (Submission from various interested organisations)	• "**New information regarding economic impacts, given uncertain future gas supplies.** There is considerable new information and analysis demonstrating that the claims being made in justification of the proposal (for example that it will provide energy security and economic benefits) may be misleading. Given the uncertainty of offshore gas to supply the North West Shelf export facility, this facility is already placing a very large (and growing) demand on WA's onshore domestic gas reserves, resulting in the diversion of gas from the domestic market and flow on WA gas and energy price impacts. New analysis from The Australia Institute estimates that around $215 billion worth of gas is likely to be given away to Woodside royalty-free over the life of the project." (p 112)

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18	I1 at 170-172	Ministerial Submissions direct to the Minister – combined (Submission of Lorraine Bower)	• "I would not be supportive of this project under any circumstances, but it seems that there isn't even a strong economic argument in the project's favour. Although I have only a basic understanding of economic matters, I read that Woodside and its foreign partners will profit from the nation's mineral wealth while delivering "almost nothing" to the national purse (The Guardian). The independent economist Chris Richardson argues that the resources rent tax has proved entirely unfit for purpose. The Grattan Institute says that it would have no impact on the major national policy challenges of power costs, availability and reliability" (p 171)
19	I1 at 173-175	Ministerial Submissions direct to the Minister – combined (Submission of Illawarra Knitting Nannas against Greed)	• "Yet far from phasing these industries out and taking immediate action, Minister Watt approved Woodside's application to expand the North West Shelf LNP project to 2070. This will make the climate crises worse and wreck Australia's future and economy. It seems that the fossil fuel juggernaut is unstoppable. Why do they have so much power?" (p 173) • "4. How are Australians benefiting when: a. Offshore gas is grossly undertaxed. b. Australia subsidises the fossil fuel industry that should be totally self-funded. We know that enormous industry profits are made.

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			c. The gas is sold off-shore and then we buy back. This expansion is not for Australians. Speeding up the roll out of renewables is needed urgently not new gas projects or expansions. d. Who will pay for the stranded assets and damage to the environment? e. Australians are concerned about social justice. Our emission are global, whether burnt here or overseas. Where is the accountability to Australians and our Pacific neighbours — denial of accountability for stage 3 emissions is not acceptable. This just leaves third world nations to suffer even greater indignities which is not in Australia's interests. This decision and other gas and coal approvals vastly reduces Australia's credibility when arguing to host the next COP 31. It blows our mind that this decision was made in the context of worsening climate crises. In 2025 we experienced massive floods in Queensland, NSW and parts of WA whilst SA and western Victoria are in drought. Heat, floods, and drought kill. Climate change (just in 2025) has cost the Australian economy more that 2 billion dollars. Indeed, approving the WA North West Shelf demonstrates that the Federal Labor government fails to commit to stopping the marching climate" (p 174)
20	I1 at 178-182	Ministerial Submissions direct to the Minister –	• "Adding 20 years of North West Shelf fuel exposure would raise wholesale prices and stranded-asset risk" (p 181)

	Decision Brief reference	Document title	Relevant extracts
		combined (Submission of Holly Kaye-Smith)	
21	I1 at 218-219	Ministerial Submissions direct to the Minister – combined (Submission of Maxine Barry)	• "The emissions cost equals 3 times the value of its purported GNP contribution. Gas will be stranded well before 2070. It's hard to see how it stacks up economically. I have noted that WA has sufficient gas for its needs and the project does not help the East Coast." (p 218)
22	I1 at 340-341	Ministerial Submissions direct to the Minister – combined (Submission of The Australia Institute)	• "Australia Institute analysis shows the North West Shelf gas extension will: o contribute almost nothing to Western Australian or Australian public finance, and if it operates at or near the capacity approved under the extension would result in over $200 billion of royalty free gas to Woodside representing the greatest giveaway of natural resources in Australia's history.[4] o Threaten Western Australia's domestic gas supply.[5] o Increase Western Australian gas and electricity prices.[6]" (pp 340-341)
23	I1 at 360-363	Ministerial Submissions direct to the Minister – combined (Submission of	• "What is the governments' estimation of the "carbon externality" in the economy? Recent international estimates range between US$150-250. In 2015 the US government estimate was US$125. If correct this more than wipes out all

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		John Bradford and Helen Chalk)	conventional "economic growth" putting this country in the absurd situation of running an economy that is steadily making most people worse off and likely damaging if not destroying the future of the young people of Australia. This "climate externality" includes the costs of mental ill health resulting from current and expected climate impacts. Attribution science can calculate such costs." (pp 362-363)
24	I1 at 364-366	Ministerial Submissions direct to the Minister – combined (Submission of John Bradford and Helen Chalk)	• "We particularly request a response to our fifth question: what is the governments' estimate, (if, in fact, it has one!), of the negative carbon externality in the economy? In this context (and also the context of our forth question), we refer you to the IPCC advice that some ten gigatons of Co2-e must be removed from the atmosphere every year to sustain the Paris goals, (see attachment). The current measured cost of this removal is roughly A$1 Trillion – every year!" (p 365)
25	I1 at 410-432	Ministerial Submissions direct to the Minister – combined (Submission of Mark Nesci)	• "I do understand that Woodside Energy is a strong pillar for gas security for Australia with operating revenue at AUD$13.18 billion and paying a total Australian taxes, royalties, and levies of AUD$4.15 billion and a NPAT of $3.57 billion, in 2024. 1,2,3,4 The Northwest Shelf extension until 2070 secures Woodside's role as a major energy supplier, underpinning long-term revenue streams from both domestic gas (14% of WA demand) and LNG exports (about

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			40% of Australia’s shipments). I can see why you are keen to sign this deal and put it to bed. It should be realised that corporate Gas companies are not your friend the only friendship they have is with their shareholders, with a focus on high returns and subsequent C-level bonuses. Gas companies like Woodside can see the “writing on the wall” and need to maximise returns while there is an opportunity, before the decline of fossil fuel use in the next 20 years. To elaborate further, there has been several scenario-based studies provide insight into how Australia's gas production, exports and domestic consumption could evolve to 2050, reflecting uncertainties in global energy transition pace, technology adoption, and policy settings. A handful of insights are more optimistic about the Gas market, but even these positive viewpoints have the overall the predictions about the Australia’s gas production, which is currently dominated by exports. The general predictions are that both export volumes and domestic consumption are forecast to decline significantly by 2050 as global and domestic energy systems transition towards renewables and net zero emissions targets. The pace of this transition and the resulting gas demand will depend on technological advancements, policy decisions and international market dynamics. 5,6,7 Some

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			global gas industry key points from that Woodside will be aware of are as follows - ○ **Exports**: All major scenarios, forecast a significant decline in LNG exports by 2050, with some forecasting exports at less than 20% of current levels, especially under scenarios aligned with net zero emissions targets and accelerated renewable adoption. 6,7 This can be seen with mature LNG markets in Asia (such as Japan and South Korea) are projected to significantly reduce their LNG imports as they transition to renewables and pursue net zero targets. Furthermore, Australia's LNG exports face increasing competition from lower-cost producers, especially as backfill projects become less commercially viable in a low-carbon world.6 ○ **Domestic Use**: Domestic gas demand is expected to fall, but the pace and magnitude depend on the speed of renewable energy adoption. Alternatives to gas, such as electrification and hydrogen, are becoming more viable and are being prioritised in decarbonisation strategies. Under progressive scenarios, domestic use could be 50%–87% of current levels by 2050, as climate policies are pushing for rapid reductions in greenhouse gas emissions. 6,7

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			○ **Production**: Total gas production is likely to peak by 2030 and then steadily decline, with forecasts ranging from 60% to 90% of current output by 2050, depending on scenario8. In addition, Australia faces rising production costs simultaneously with the declining gas reserves, particularly from 2030 onwards. This means less gas will be available for export, and what remains will be more expensive to produce, further eroding Australia's competitiveness in the global LNG market.8,6,9 ○ **Industry and Power Generation**: Industrial use and gas-powered electricity generation are expected to remain the primary domestic demand drivers, with gas playing a critical role in supporting renewables and providing feedstock for key industries.10 ○ **Policy and Market Risks**: The pace of renewable adoption, availability of long-duration storage, green hydrogen scale-up and international climate policy alignment are critical uncertainties.6,7 ○ **Risk of Stranded Assets**: The rapid decline in export demand increases the risk that new gas projects could become stranded assets, especially if key policy and market changes materialise faster than anticipated.6" (pp 410-411)

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			• "**New Projects Risk Oversupply and Lock-i**n: Approving and developing new large-scale gas projects now risks oversupply or stranded assets in the market by the 2030s and 2040s, especially if domestic and export global demand plateaus or falls in line with net zero targets.14,15,16" (p 411) • "**Long-Term Demand**: As renewables and storage scale up, the overall demand for gas is projected to decline sharply, especially after 2035, with gas increasingly relegated to peaking and emergency roles.11,12" (p 411) • "**Employment Impact**: Extending the project would temporarily sustain direct and indirect employment in gas extraction, processing and infrastructure, especially in Western Australia and related supply chains. However, as gas demand falls and the energy system decarbonises, employment in the gas sector will decline, with job losses expected by 2040–2050. The net effect will depend on the pace of renewable energy investment and the effectiveness of workforce transition programs.11,12" (p 412)
26	F11	Attachment D2: WA Appeals Convenor Report	• "A number of appellants argued that the EPA had not considered the intergenerational impacts of global warming to 1.5°C or above, such as impacts on human health and the health, diversity, and productivity of the environment. Appellants pointed out the likely social and economic costs of a changing climate, for example in the way of increased costs to the public health system, disaster

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			relief and infrastructure. To address these costs, a number of appellants suggested that a carbon fund be established." (p 39) • "The Committee also notes that, in the context of the EPA's assessment framework, it is not within the EPA's remit to assess the intergenerational impacts on human health and the broader social and economic impacts of a changing climate in the context of a single proposal." (p 40)
27	F59	Attachment I20: RTS - Final - November 2021 (Submission No. GHG-7)	• "Given the above and adverse impacts the substantial GHGs from the NWSP Proposal will have on species, ecosystems and social, economic and cultural impacts, it cannot be considered acceptable or allowed to proceed. The EPA must therefore recommend against approval of the NWSP Proposal" (p 71)
28	F59	Attachment I20: RTS - Final - November 2021 (Submission No GHG-10)	• "My submission is made as a concerned and who is concerned about the consequences of this project, both with regards to the pollutants and greenhouse gases generated, damage to this precious area of Western Australia, as well as the economic viability of the project longer term… In addition, the economic arguments for natural gas seem to be rapidly changing as the unit price for renewables reduces, and thus the climate and direct environmental risks will be for short term gain." (p 73)

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29	F59	Attachment I20: RTS - Final - November 2021 (Submission No GHG-11)	• “Every month brings more certainty that fossil fuel extraction is costing us more than it is worth, not just in the deaths of humans and animals but also in economic terms.” (p 75)
30	F59	Attachment I20: RTS - Final - November 2021 (Submission No GHG-27)	• “Economic considerations may become less important as the cost of renewable sources of energy decreases and the price of burning gas increases” (p 84)
31	F59	Attachment I20: RTS - Final - November 2021 (Submission No GHG-44)	• “The EPA must include the full impacts of the proposed gas project in its decision, including the profoundly significant effect that the huge emissions of the project will contribute to global negative climate change and therefore on all of WA for literally hundreds of years to come… I ask you give adequate weight to the global science re the proven link between emissions and negative climate change and I must insist that any presented facts or opinions from any stakeholder - is assessed against the science on climate change. For example, a demonstrated economic argument in isolation - without it being assessed against the proven degradation such a project will cause to the WA environment - is not a complete assessment based on all the science.” (pp 97-98)

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32	F59	Attachment I20: RTS - Final - November 2021 (Submission No GHG-70)	• "The science tells us we should be very wary of gas. Is it really necessary.... do the benefits really outweigh the costs to the whole world." (p 115)
33	F59	Attachment I20: RTS - Final - November 2021 (Submission No GHG-162)	• "The unexpected damage to both us and our economy are just the beginning if we do not take every drastic action we can to leave fossil fuels in the ground" (p 135)
34	F59	Attachment I20: RTS - Final - November 2021 (Submission No GHG-419)	• "It is a matter of fact that the marine habitat where Woodside are proposing to drill for gas and oil is a sensitive and vulnerable environment and home to threatened marine species. How can any economic benefit compare to the long term negative externalities of these types of projects?" (p 208)
35	F59	Attachment I20: RTS - Final - November 2021 (Submission No GHG-481)	• "I vehemently oppose drilling for gas and oil on the Scott Reef. I have dived there as a tourist in WA, and besides the economic loss to tourism (especially when the Great Barrier Reef is essentially dying), it's an extremely irresponsible thing to do. The drilling process and the risks of mining the Reef are far too great for a short term economic gain." (p 226)
36	F59	Attachment I20: RTS - Final - November 2021 (Submission No GHG-557)	• "The value of the Reef to the tourist economy long term far outweighs the return from oil, which will have a limited life, and cause permanent damage and possible destruction of the ecosystem." (p 247)

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37	F59	Attachment I20: RTS - Final - November 2021 (Submission No SA-RA-18)	• "Rock art on Burrup Peninsula is unique in the world, having significant cultural and social, as well as economic value, but industry has already caused changes in acidity, microbial growth and colour of rocks containing the art. Continuation of large nitrogen emissions and deposition on the rocks will prolong acid rain, stimulate microbial growth and result in further deterioration of the rock art." (p 253)