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

No: VID 1356 of 2025

AUSTRALIAN CONSERVATION FOUNDATION INC
Applicant

MINISTER FOR THE ENVIRONMENT AND WATER
First Respondent

WOODSIDE ENERGY LTD (ACN 005 482 986)
Second Respondent

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A. INTRODUCTION

1. By further amended originating application filed on 31 March 2026, the Applicant (**ACF**) seeks judicial review of the decision of the First Respondent (**Minister**) pursuant to ss 130(1) and 133(1) of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) (as then in force)[1] to approve an action proposed by the Second Respondent (**Woodside**) described as the North West Shelf (**NWS**) Project Extension (**Approval Decision**). The application is brought pursuant to s 5(1) of the *Administrative Decision (Judicial Review) Act 1977* (Cth) (**ADJR Act**) and s 39B of the *Judiciary Act 1903* (Cth) (**Judiciary Act**).

2. Five grounds of review are advanced. In substance, they contend:

   a. Ground 1: That the Minister erred in making the Approval Decision by considering a matter he was not permitted to consider, namely, the economic benefits that could accrue if a different proposed action, known as the Browse to North West Shelf Project, were approved;

   b. Ground 2: That the Minister erred in making the Approval Decision by leaving a critical aspect of the proposed action undetermined, namely, the quantity and composition of gas proposed to be processed until 2070;

   c. Ground 3: That the Approval Decision is unreasonable in that the Minister lacked an intelligible justification for finding that the Approval Decision would not result in an unacceptable impact on the Dampier Archipelago National Heritage Place;

   d. Ground 4: That the Minister erred in refusing to take into account information about potential indirect impacts of the proposed action because the proposed action was not a "substantial cause" of those impacts within the meaning of s 527E of the EPBC Act; and

   e. Ground 5: That a fair-minded lay observer might reasonably apprehend that the Minister might not have brought an impartial mind to the making of the Approval Decision in accordance with the EPBC Act.

3. ACF seeks orders that the Approval Decision be set aside and remitted to the Minister for reconsideration according to law.

---

[1] As it stood at the time of the Approval Decision (12 September 2025), being compilation number 64. Amendments to the EPBC Act were enacted on 1 December 2025 by way of the *Environment Protection Reform Act 2025* (Cth).

4. ACF has also applied for judicial review of an earlier decision by the Minister (relating to the same proposed action) to decline to reconsider a decision that the action would not be likely to have adverse environmental impacts by reason of its greenhouse gas emissions (**Reconsideration Decision**). That separate proceeding has proceeding number VID1400/2025 and agitates a single ground of review coinciding with Ground 4 in this proceeding. Separate submissions have been filed in support of proceeding VID1400/2025.

B. STANDING

5. ACF is taken to be a person aggrieved by the Approval Decision pursuant to s 487(3) of the EPBC Act for the purposes of the ADJR Act, because: (1) it is an association incorporated in Australia;[2] (2) in the two years prior to the Approval Decision, the Applicant has engaged in a series of activities in Australia for the protection or conservation of the environment, including activities associated with the decision-making processes relating to the approval of the NWS Project Extension[3]; and (3) an object of ACF enshrined in its Constitution is (and was at the time of the Approval Decision) to protect the natural environment.[4] For the same reasons, ACF has standing to seek relief under s 39B of the Judiciary Act.

6. ACF understands that its standing to seek relief is not in issue.

C. FACTUAL AND PROCEDURAL BACKGROUND

7. To place the grounds of review in context, it is necessary to set out the factual and procedural background to the Approval Decision in detail. The following summary is drawn from the statement of reasons for the Approval Decision (**Reasons**) and the documents to which they refer.

8. As to the EPBC Act scheme against which the process occurred, the relevant provisions are set out in Part D below. However, it is useful to set out the following key aspects at the outset.

    a. The EPBC Act contains a set of prohibitions on persons taking actions that have, will have, or are likely to have a significant impact on certain enumerated "matters of national environmental significance", in the absence of approval by the relevant Commonwealth Minister: Pt 3 (prohibitions); Pt 9 (approval).

---

2 Affidavit of Cecile Elizabeth Bester dated 27 February 2026 (**Third Bester Affidavit**) at [4], CB2-1.

3 Third Bester Affidavit at [6]-[8], CB2-3, CB2-4, CB2-5.

4 Third Bester Affidavit at CB2-2, p 10.

b. It is incumbent on a proponent to refer a proposed action to the relevant Commonwealth Minister. In this way, the framing of the action is primarily a matter for the proponent: s 68.

c. Actions that would fall foul of the Pt 3 prohibitions absent approval are called "controlled actions". Deciding whether a referred action is a "controlled action" by reason of one or more of the prohibitions in Pt 3 is the first step in the process: see s 75(1) and Pt 7, Div 2 generally. The controlled action decision essentially fixes the parameters for the matters of national environmental significance that will be considered as part of the ensuing assessment and approval process.

d. An interested person may apply to have a "controlled action" decision reconsidered, including in light of substantial new information: ss 78, 78A.

e. If the Minister considers that a referred action is a component of a larger action (or series of actions) that a proponent proposes to take, the Minister may (but need not) decline to accept the referral and "call in" the larger action: s 74A(1), (2)(c). Subject to that occurring, the action continues through the assessment process as framed by the proponent.

f. If the action is a controlled action, the Minister must choose a manner of assessing its impacts on the relevant matter/s of national environmental significance: see s 87, and Pt 8 generally.

g. Once the impacts of the action have been assessed, the Minister must decide whether or not to approve the taking of the action: see ss 130, 133, and Pt 9, Div 1 generally. The Minister may attach conditions to the approval, within certain parameters: s 134.

h. In deciding whether or not to approve the taking of an action, and what conditions to attach to an approval, the following are "mandatory considerations": "matters relevant to any matter protected by a provision of Part 3 that the Minister has decided is a controlling provision for the action" and "economic and social matters": s 136(1). Further, the Minister must *not* consider any matters that the Minister is not required or permitted to consider by Part 9, Div 1: s 136(5).

C.1 Factual background

C.1.1. The Dampier Archipelago National Heritage Place

9. The Dampier Archipelago National Heritage Place (**Dampier Archipelago NHP**) comprises 36,860 hectares of land and sea in the vicinity of the township of Dampier, Western Australia.[5] It comprises 42 islands, islets and rocks, all of which are considered to have exceptional natural beauty, high conservation values, and outstanding heritage values.[6]

10. Murujuga is the traditional Aboriginal name for the Dampier Archipelago and surrounds, which include the Burrup Peninsula and portions of the National Heritage Listing Area that overlap the Murujuga National Park.[7]

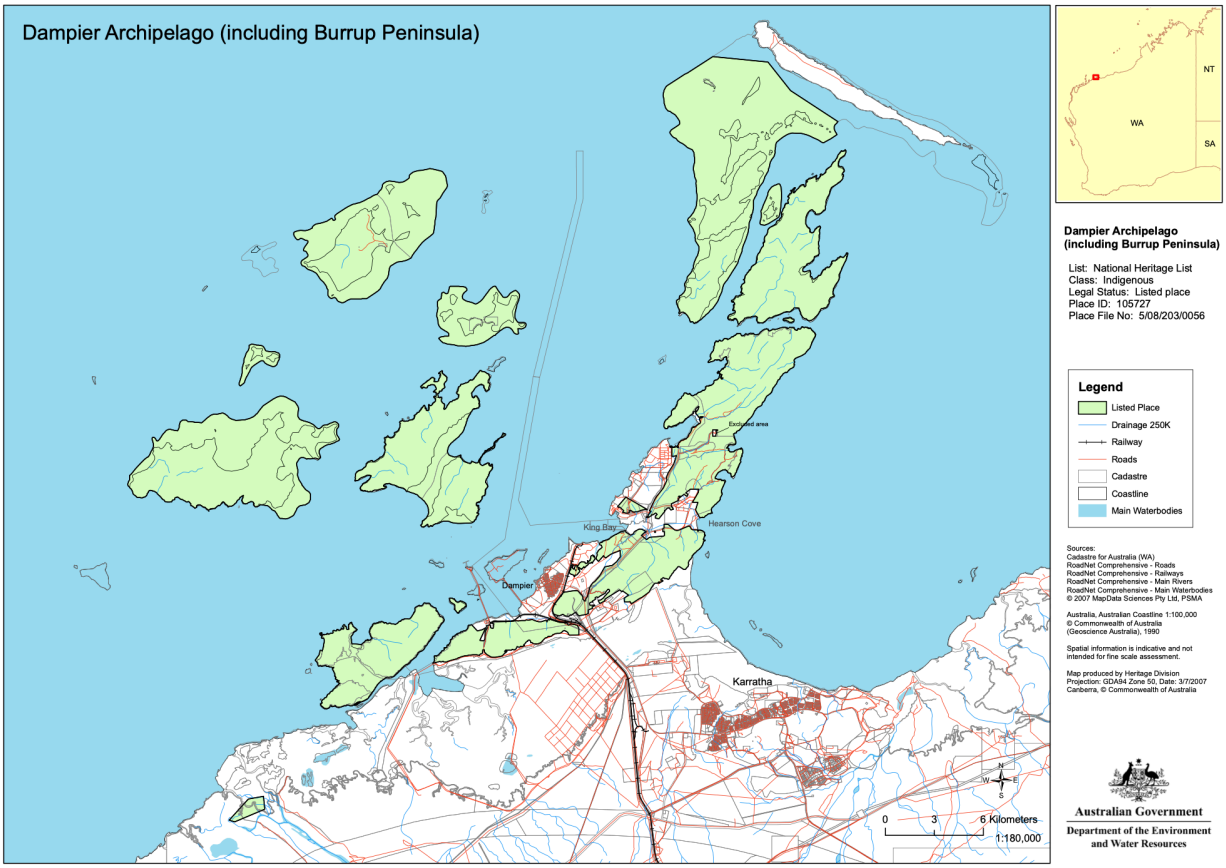

Figure 1: Regional Location of the Dampier Archipelago National Heritage Place: Decision Brief, Document F88 (Attachment J19: Dampier Archipelago (including Burrup Peninsula) National Heritage Place map).

5 Reasons at [56].

6 Reasons at [56].

7 Reasons at [64].

11. The Dampier Archipelago NHP is thought to contain more than one million rock engravings (petroglyphs) and represents one of the most dense and diverse collections of petroglyphs in the world.[8] An example of a rock art panel showing part of the Murujuga landscape is below:

Figure 2: An example of a rock art panel showing part of the Murujuga landscape: Decision Brief, Document F123 (Attachment Q5: Smith et al, The impact of industrial pollution on the rock art of Murujuga, Western Australia), p 2.

12. The Dampier Archipelago region was included on the National Heritage List on 3 July 2007. It satisfied several National Heritage criteria based upon various values. These were:[9]

National Heritage criteria	Values
A Events, Processes (a) the place has outstanding heritage value to the nation because of the place's importance in the course, or pattern of Australia's natural or cultural history	The engravings on the Dampier Archipelago include finely executed images of a wide range of terrestrial, avian and marine fauna, many of which can be identified to species level. Most of the engravings (particularly the marine fauna) are slightly or moderately weathered and were produced following the rise of sea levels about 8000 years ago. There are a number of deeply weathered images of terrestrial fauna which date to the time when the sea was much lower. The different degrees of weathering of particular types of faunal engravings provide an outstanding visual record of the course of Australia's cultural history through the Aboriginal responses to the rise of sea levels at the end of the last Ice Age. There are a number of deeply weathered engraved 'Archaic Faces' in the Dampier Archipelago, including some images unique to the area. 'Archaic Faces' are widely distributed through arid Australia. The 'Archaic Faces' on the Dampier Archipelago demonstrate the long history of contact and shared visual narratives between Aboriginal societies.

8 Reasons at [58].

9 Reasons at [57] (Table 2).

B Rarity (b) the place has outstanding heritage value to the nation because of the place's possession of uncommon, rare or endangered aspects of Australia's natural or cultural history.	At the national level, the Dampier Archipelago is outstanding for its diversity of engraved human forms and the antiquity of depictions of complex scenes showing human activity (both mundane and sacred), which are rare at the national level. There is a very high density of rock engraving sites on the Dampier Archipelago, which when compared with other sites in Australia is rare. There is a high density of standing stones, stone pits and circular stone arrangements on the Burrup Peninsula, and the diversity of these stone features across the Dampier Archipelago are rare at the national level.
C Research (c) the place has outstanding heritage value to the nation because of the place's potential to yield information that will contribute to an understanding of Australia's natural or cultural history.	On the Dampier Archipelago, in areas where archaeological remains (middens, grinding patches, quarries) are associated with large numbers of engravings, there is an outstanding potential to yield information that will contribute to an understanding of the nation's cultural history. The 'Archaic Faces' in the Dampier Archipelago have outstanding potential to yield information contributing to an understanding of the long history of connections between the coast and the Western Desert. The Dampier Archipelago contains engravings of human figures (Anthropomorphs) characteristic of most of the major art provinces in the Pilbara. The different degrees of weathering and the large number of super-positioned engravings in the Dampier Archipelago provides an outstanding opportunity to establish a relative chronology for motifs characteristic of the major style provinces in the Pilbara.
D Principal characteristics of a class of places (d) the place has outstanding heritage value to the nation because of the place's importance in demonstrating the principal characteristics of: (i) a class of Australia's natural or cultural places or; (ii) a class of Australia's natural or cultural environments.	The Pilbara is the richest region of rock engravings in Australia. The rock engravings on the Dampier Archipelago include an extraordinarily diverse range of animal and human figures which are characteristic of regional styles that occur elsewhere in the Pilbara. The Dampier Archipelago is outstanding as a place where engravings of human forms representative of all the style provinces in the Pilbara are found. The standing stones in the Dampier Archipelago are outstanding in a national context for the number of purposes they are known to have served, for example for ceremonies and marking particular places with scarce resources. The finely executed animals identified to species level, the diversity of human forms and the panels of engravings showing scenes of human activity exhibit a high degree of creativity, particularly during the Holocene, which is unusual in Australian rock engravings.
F Creative or technical achievement (f) the place has outstanding heritage value to the nation because of the place's importance in demonstrating a high degree of creative or technical achievement at a particular period.	The finely executed animals identified to species level, the diversity of human forms and the panels of engravings showing scenes of human activity exhibit a high degree of creativity, particularly during the Holocene, that is unusual in Australian rock engravings.

13. On 23 January 2020, the Murujuga Cultural Landscape was nominated for inscription on the World Heritage List.[10] In 2025, it was so inscribed by the World Heritage Committee.[11]

[10] Decision Brief, Document F89 (Attachment J20: Nomination for World Heritage Tentative List - Murujuga Cultural Landscape), p 1.

[11] Decision Brief, Document E20 (Correspondence from FARA dated 18 July 2025), p 1.

C.1.2. Industrial development adjacent to Dampier Archipelago National Heritage Place

14. Industrial development across the southern half of the Burrup Peninsula began in the early 1960s. It commenced with the development of deep-water port facilities to support the Pilbara's emerging iron ore industry.[12] In January 2000, the Western Australian government released a notice of intent to acquire land for the construction of heavy industrial estates on the Burrup Peninsula and nearby Maitland Area.[13] On 16 January 2003, the Burrup and Maitland Industrial Estate Agreement was settled with three local native title claimant groups (the NgarlumaYindjibarndi, the Yaburara-Mardudhunera and the Wong-Goo-Tt-Oo).[14] The agreement allowed for the development of the 'Burrup Strategic Industrial Area' over land across the southern section of the Burrup Peninsula, while also providing for the development of a new conservation estate (later becoming Murujuga National Park) for the protection of Aboriginal heritage.[15]

15. Several industrial facilities, in addition to the facility the subject of this proceeding, now operate on the Burrup Peninsula, including:[16]

    a. The Pluto Liquified Natural Gas (**LNG**) Development, which comprises facilities for processing and exporting gas from offshore gas reservoirs, including the planned expansion of the Pluto LNG Development. The Pluto LNG Development and associated infrastructure is not part of the proposal the subject of the Approval Decision and is subject to its own, separate, approvals;

    b. The Yara Pilbara Fertilisers plant, which exports ammonia to domestic and global markets from the Port of Dampier;

    c. The Yara Pilbara Nitrates Technical Ammonium Nitrate plant, a joint venture with Orica, which converts ammonia into ammonium nitrate and is used by mines throughout the Pilbara region;

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12 Decision Brief, Document F36 (Attachment H9: ERO Appendix H - Rock Art Literature Review), p 6. (Note, all footnote page references refer to the PDF page number). Note also that the Decision Brief itself includes an earlier brief and its numerous attachments bundled together as "Attachment F: Copy of proposed approval decision submission package", and so where we refer to items within that Attachment F, we also give the attachment number of the document as it appeared in that earlier brief. As to the nature and purpose of that earlier brief, see Part C.2.7 of these submissions.

13 Ibid.

14 Ibid.

15 Ibid.

16 Decision Brief, Document F28 (Attachment H1: Draft ERO - Revision 1), p 34.

d. The Burrup Material Facility, at King Bay, which stores spare parts and equipment for offshore facility operations, facilitates logistics and transportation of materials to offshore operations, has a port for offshore vessels (production, drilling, and exploration), and harbours tug boats for oil and gas vessels;

e. The Port of Dampier, which comprises private port terminals. Main import/export activities include iron ore, liquified petroleum gas (**LPG**), diesel, condensate, salt, anhydrous ammonia, bulk cargo, and general cargo;

f. The Dampier Salt, which has salt mining operations on the east side of the Burrup Peninsula and export (shipping) facilities on East Mid Intercourse Island and Mistaken Island; and

g. Rio Tinto's East Intercourse Island and Parker Point shipping terminals for exporting iron ore.

16. As at December 2019, two additional industrial facilities had been proposed. A map indicating the location of these existing and proposed facilities is below:

Figure 3: Map of the Burrup Peninsula indicating the location of existing and proposed industrial facilities as at September 2019: Decision Brief, Document F28 (Attachment H1: Draft ERO - Revision 1), p 35.

17. The industrial facilities on the Burrup Peninsula are located within the perimeter of the 'Murujuga Airshed' (an airshed being a volume of air confined to a geographic region, within

which emissions are contained).[17] It encompasses the entire Burrup Peninsula and includes the population centres of Dampier and Karratha and surrounding areas.[18] The industrial facilities that release or have approval to release significant quantities of air emissions into the airshed include the facilities listed above.[19] Shipping operations mainly associated with the loading of iron ore and LNG at Dampier Port also release emissions into the Murujuga Airshed.[20] A map of the airshed is below:

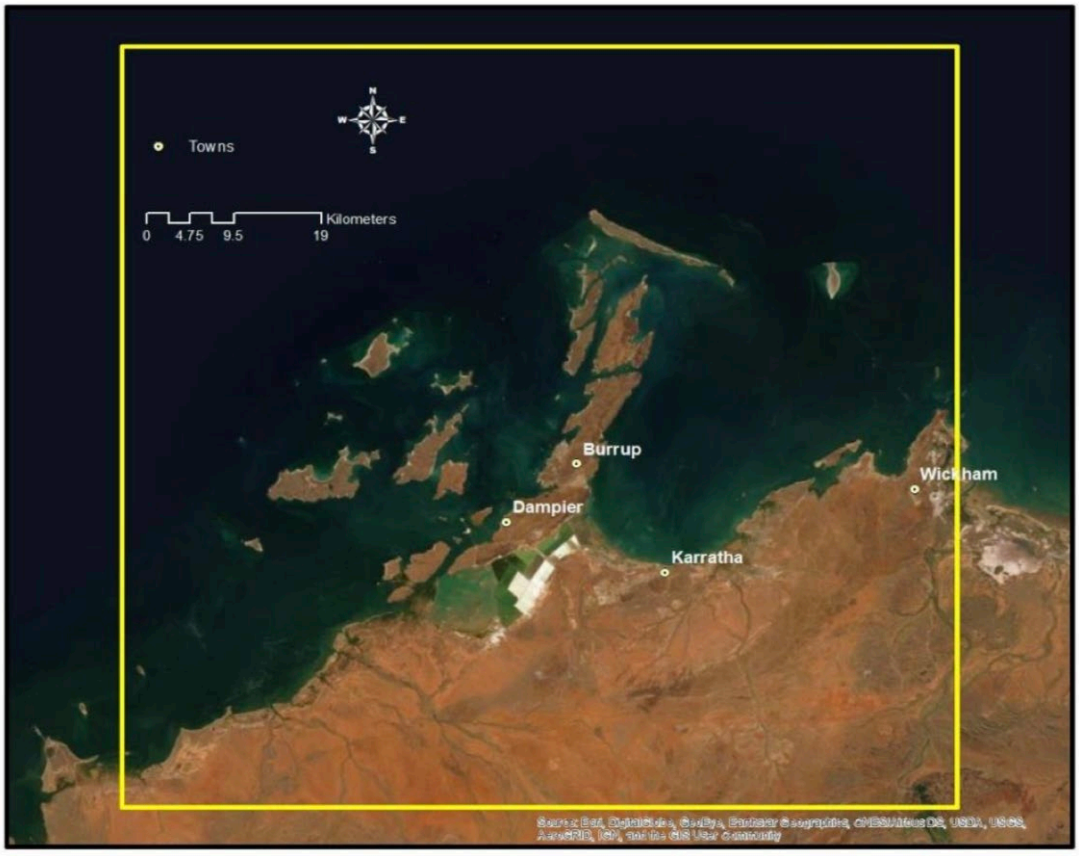

Figure 4: The Murujuga Airshed: Decision Brief, Document F9 (Attachment C: Legal Considerations), p 22.

C.1.3. The existing NWS Project

18. Of significance to this proceeding is the existing NWS Project, which is what has been "extended" by the Approval Decision. According to Woodside, it is one of the world's largest LNG projects, supplying oil and gas to Australian and international markets from offshore gas, oil and condensate fields in the Carnarvon Basin off the north-west coast of Australia.[21] These

17 Decision Brief, Document F28 (Attachment H1: Draft ERO - Revision 1), p 205.

18 Decision Brief, Document F9 (Attachment C: Legal Considerations), p 22.

19 Ibid.

20 Ibid.

21 Decision Brief, Document F17 (Attachment E3: Referral submission package combined), p 1.

fields include fields known as North Rankin and Goodwyn. A map depicting their location is below:

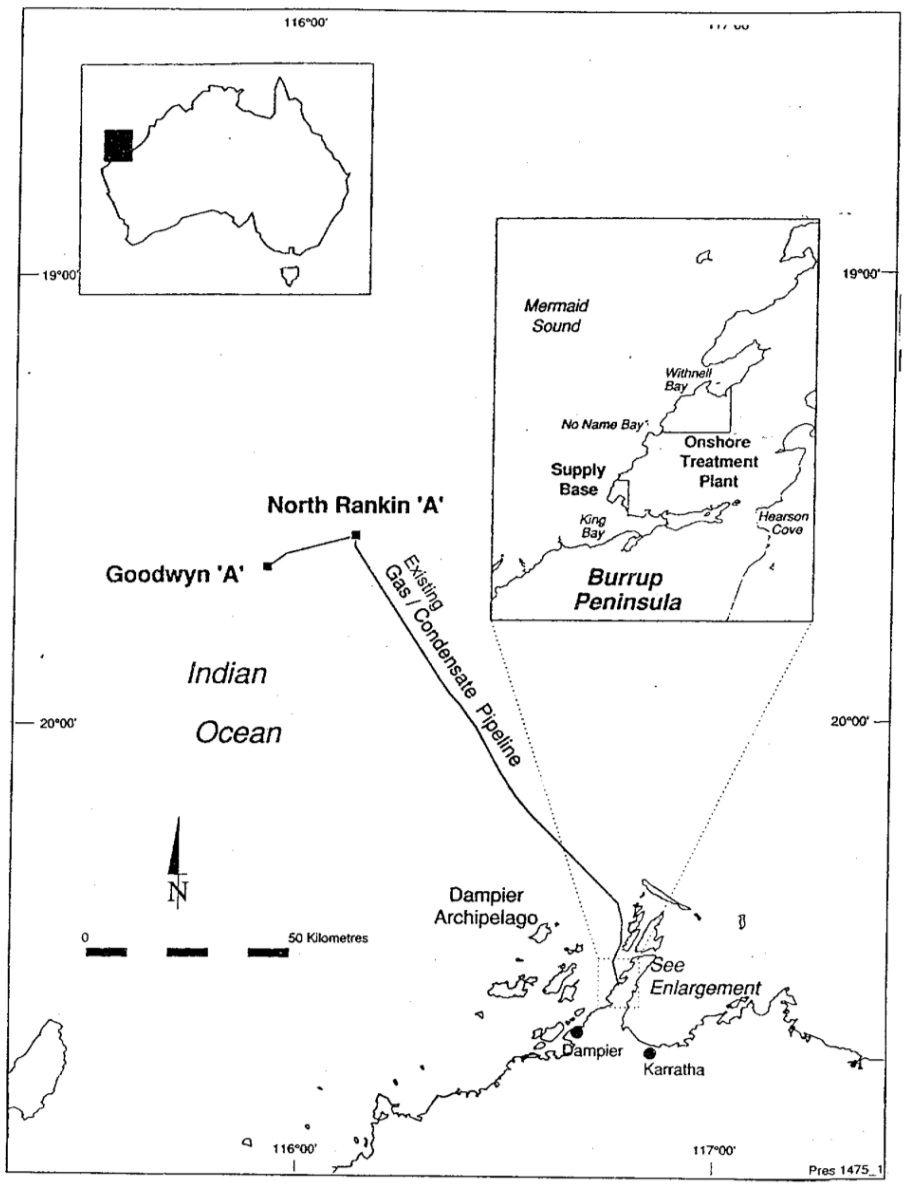

Figure 1. Location map (Source: Woodside Offshore Petroleum PER 1997).

Figure 5: Map of offshore gas fields: Decision Brief, Document F17 (Referral submission package combined), p 431.

19. The NWS Project comprises a number of components and facilities, including the Karratha Gas Plant (**KGP**). The KGP was originally commissioned in 1984,[22] and processes natural gas (**feed gas**) and associated fluids extracted from reservoirs underneath the sea floor by facilities that float in Commonwealth waters.[23] The feed gas and associated fluids are transported from the offshore extraction facilities to the KGP via two trunklines (ie, pipelines) that run broadly parallel

22 Decision Brief, Document F28 (Attachment H1: Draft ERO - Revision 1), p 26.

23 Ibid.

to each other.[24] The KGP is authorised to process 18.5 million tonnes of feed gas and fluids each year.[25] The path of the trunklines and the location of the KGP is depicted below:

Figure 6: Map depicting the trunklines (being part of the offshore component) and the KGP (being part of the onshore component): Decision Brief, Document F10 (Attachment D1: Western Australian Assessment Report and recommended conditions), p 19.

24 Ibid.

25 Ibid.

20. A close-up view of the KGP and King Bay Supply Base is below:

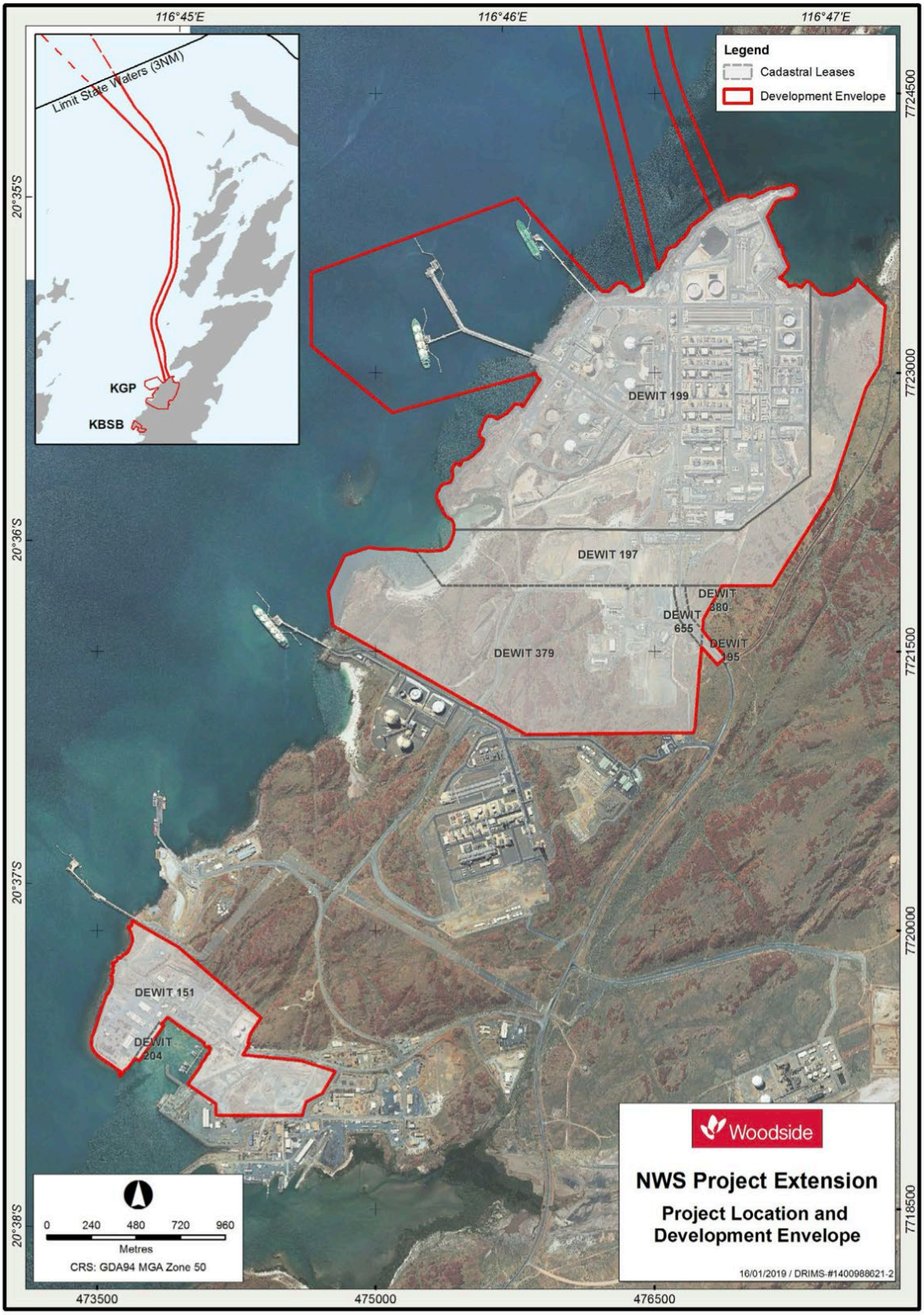

Figure 7: Aerial view of KGP and King Bay Supply Base: Decision Brief, , Document F28 (Attachment H1: Draft ERO - Revision 1), p 24.

21. The proximity of the KGP to the Dampier Archipelago NHP is depicted below:

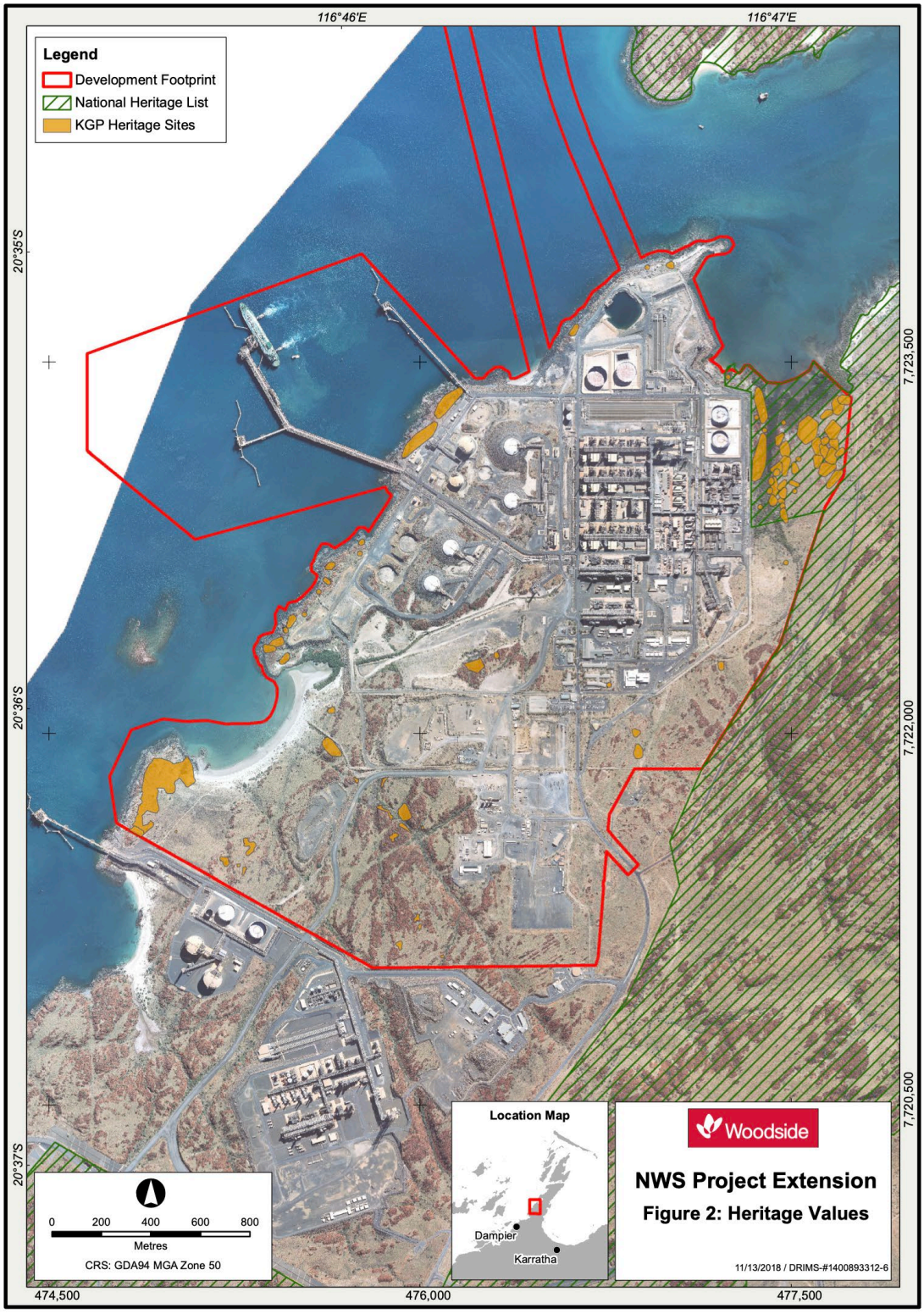

Figure 8: Map depicting proximity of KGP to Dampier Archipelago National Heritage Place: Decision Brief, Document F17 (Attachment E3: Referral submission package combined), p 52.

22. It will be seen that the KGP is located immediately beside the Dampier Archipelago NHP along its eastern boundary, and about a kilometre away from the Dampier Archipelago NHP along its southern boundary.

23. The onshore and State waters component of the NWS Project includes:[26]

a. five LNG processing trains and two domestic gas trains;

b. six condensate stabilisation units and three LPG fractionation units;

c. LPG, LNG, and condensate storage facilities and two jetties for exporting condensate, LPG, and LNG;

d. power generation and supporting utilities and emergency, operational, and storage and loading flares;

e. two subsea trunklines, described as 1TL and 2TL, within State waters and crossing onshore to the KGP;

f. an off-site supply base, used for activities such as diesel storage, refuelling, pilotage, and logistics; and

g. associated infrastructure necessary and incidental to conducting existing NWS Project activities.

24. Once processed by the KGP, the feed gas and associated fluids are prepared for export to international and domestic markets. International markets receive LNG, LPG and condensate via marine vessels.[27] The domestic market receives natural gas via the Dampier to Bunbury Natural Gas Pipeline.[28]

25. The NWS Joint Venture (**NWSJV**) owns the infrastructure used as part of the NWS Project.[29]The NWSJV (together with another entity, CNOOC NWS Private Limited) also owns the resources processed as part of the NWS Project.[30] The NSWJV comprises six companies: Woodside Energy Ltd, BHP Billiton Petroleum (North West Shelf) Pty Ltd, BP Developments Australia

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26 Decision Brief, Document F17 (Attachment E3: Referral submission package combined), p 1-2; Decision Brief, Document F28 (Attachment H1: Draft ERO - Revision 1), p 26.

27 Decision Brief, Document F17 (Attachment E3: Referral submission package combined), p 2.

28 Ibid.

29 Decision Brief, Document F28 (Attachment H1: Draft ERO - Revision 1), p 207.

30 Ibid.

Ltd, Chevron Australia Pty Ltd, Japan Australia LNG (MIMI) Pty Ltd, and Shell Australia Pty Ltd.[31] The lead proponent and operator of the NSWJV is Woodside.[32]

26. Currently, the NWSJV facilities operate pursuant to three authorisations given under the *Environment Protection (Impact of Proposals) Act 1974* (Cth), dated 1979, 1997 and 1998.[33] Under them, only feed gas and associated fluids owned by the NWSJV **(NWSJV field resources)** are allowed to be processed at KPG;[34] processing of third-party gas is not allowed.[35]

27. It is expected that the NSWJV field resources will be exhausted by about 2030.[36]

C.2 Procedural background

C.2.1. The Referral

28. On 14 November 2018, Woodside referred an action to the Minister for approval under the EPBC Act (**Referral**). The Referral states that Woodside is:[37]

> proposing to continue and extend the operating life of the NWS Project through the long-term processing of third party gas and fluids and NWSJV field resources through the NWS Project facilities.

29. The Referral describes "the proposed action" as an action:[38]

> To enable the continued future operation of the NWS Project and the ongoing supply of gas and fluids to domestic and international markets, this NWS Project Extension Proposed Action has been developed to seek approval to continue to use the Existing NWS Project facilities for the:
>
> i) Long-term processing of third party gas and fluids and NWSJV field resources through the NWS Project facilities, which includes:
>
> - Potential changes to feed gas composition;
> - Potential changes to composition of environmental discharge and emissions, although volumes of emissions and discharges are expected to be in line with current levels; and

---

31 Ibid.

32 Ibid.

33 Reasons at [4].

34 Reasons at [3] and [5].

35 Reasons at [5].

36 Reasons at [7].

37 Decision Brief, Document F17 (Attachment E3: Referral submission package combined), p 1.

38 Ibid, p 2-3 (in answer to question 1.2.2).

- Potential construction of additional operational equipment to accommodate potential changes to feed gas composition or management of environmental discharge and emissions.

ii) Ongoing operation of the NWS Project to enable long term processing at the NWS Project facilities, currently expected to be until around 2070, which includes:

- Ongoing use of existing NWS Project facilities to process third party gas and fluids and NWSJV field resources;
- Continued inspection, maintenance, repair (IMR) and improvement programs;
- Continued maintenance dredging associated with jetties and berthing pockets;
- Replacement of equipment, plant and machinery as required (Woodside, as operator of the NWS Project, will look to adopt modern technology for any future plant modifications as reasonably practicable);
- Continued emissions and discharges to the environment (Woodside, as operator of the NWS Project, will continue to assess emission reduction opportunities (including NOx, CO2 and VOC's) that could result in a staged decrease in emissions over time during the formal assessment scoping phase); and
- Continued monitoring and management of environmental impacts.

30. The estimated end date for the proposed action is November 2068[39] (elsewhere referred to as "around 2070"[40]).

31. The Referral sets out Woodside's views of the likely impact of the proposed action on matters of national environmental significance. In particular, it acknowledges that the Dampier Archipelago NHP might be impacted by the proposed action. Specifically, it notes that:[41]

> The following activities have the potential to impact the National Heritage Place:
>
> - Air emissions from the operation of onshore NWS Project facilities that cause deposits on petroglyphs

[39] Ibid, p 8.

[40] Ibid, pp 1, 3, 36, 60, 71-72.

[41] Ibid, p 14 (answer to question 2.2.1).

32. Although the Referral acknowledges that the Dampier Archipelago NHP might be impacted by the proposed action, it describes the potential impact as not significant.[42] Further, it states that the potential impact is not likely to have a significant impact on any matter of national environmental significance.[43] Accordingly, it claims that the proposed action is not a controlled action for the purposes of the EPBC Act.[44] This is said to be because the proposed action is "not expected to result in an increase in emissions or discharges" and will not result in any additional disturbance outside the existing development footprint.[45]

C.2.2. Burrup Hub Vision

33. The NWS Project Extension is, in effect, a vehicle for the ongoing and future processing of NWSJV and third party LNG and fluids. It forms part of Woodside's broader "Burrup Hub Vision".[46]

34. To that end, the Referral notes that the proposed action is "related to other actions or proposals in the region"[47]. As to those, the Referral states:

> The operation of offshore NWS Project assets in Commonwealth waters is related to this NWS Project Extension Proposed Action, in that these assets will continue to feed gas and fluids to the KGP following approval of the Proposed Action.
>
> The NWSJV understands the Browse Joint Venture (BJV) has referred the Browse to NWS Development, which includes long term processing of BJV gas at KGP, subject to all necessary joint venture and regulatory approvals being obtained and appropriate commercial arrangements being finalised. The potential impacts associated with the proposed BJV action will be described in that referral.

35. The Browse to NWS Project was referred under the EPBC Act in 2018 (referral number 2018/8319). No decision to approve it has yet been made. The referral pertaining to it describes the proposed action as:

> develop and extract hydrocarbons from the Brecknock, Calliance and Torosa reservoirs; install and operate two floating production storage and offloading (FPSO) facilities, all approximately 425 km north of Broome; and install and

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42 Ibid, p 16 (answer to question 2.2.2).

43 Ibid, pp 35-36 (answers to questions in section 5). The Referral does not mention climate-related harm arising from greenhouse gas emissions.

44 Ibid, p 36 (answer to question 5.2).

45 Ibid.

46 Reasons, [18]; Decision Brief, Document F17 (Attachment E3: Referral submission package combined), p 56 ("Woodside's Burrup Hub Vision").

47 Ibid, p 11 (answers to question 1.16).

transport hydrocarbons from the FPSO facilities via a 900 km pipeline to the existing pipeline infrastructure near North Rankin Platform.[48]

36. In short, the proposed Browse to NWS Project, which is still under consideration, is the long-term extraction of gas from the Browse Basin and transport to the KGP; and the NWS Project Extension action includes the expected processing of gas at the KGP from the Browse Basin.

37. The actions that together comprise the "Burrup Hub Vision" are encapsulated in a variety of commercial arrangements,[49] and Woodside is the proponent for each one.[50] The entire "vision" involves the proposed development of some 20 to 25 trillion cubic feet of gross (100%) dry gas resources from Scarborough, Browse and Pluto, relying on Woodside's existing LNG facilities, including those that form part of the NWS Project.[51] Woodside proposes to link these facilities to create the 'Burrup Hub' —a regional LNG production centre on the Burrup Peninsula that will supply domestic and export markets for decades[52]. A conceptual diagram depicting the related facilities is below:

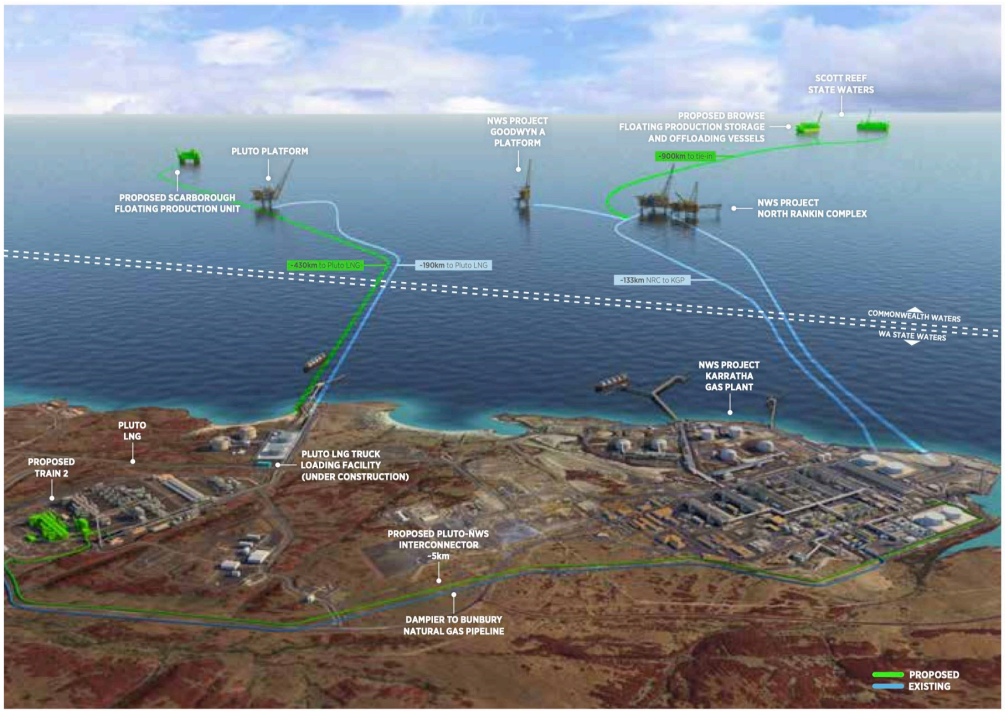

Figure 9: Decision Brief, Document F17 (Attachment E3: Referral submission package combined), page 56 ("Woodside's Burrup Hub Vision")

48 Decision Brief, Document F9 (Attachment C: Legal Considerations), p 6..

49 A table summarising all relevant related projects is at Decision Brief, Document F9 (Attachment C: Legal Considerations), p 6-7.

50 Reasons, [18].

51 See Decision Brief, Document F17 (Attachment E3: Referral submission package combined), p 56 ("Woodside's Burrup Hub Vision").

52 Ibid.

C.2.3. The split referral / controlled action decision

38. The Referral was considered by a delegate authorised to determine:

a. whether the referral should be assessed as a split referral; and

b. whether the proposed action was a controlled action for the purposes of the EBPC Act.

39. On 3 May 2019, that delegate made a "controlled action" decision. Key aspects of that decision are as follows.

40. **Split referral**. The delegate was advised by the Department of Environment and Energy (**Department**) that he had a discretion under s 74A of the EPBC Act to refuse to accept a 'split referral'.[53] The Department noted that Woodside had acknowledged that separate referrals relating to the Burrup Hub Vision comprised "in effect a split referral (i.e. components of a larger action)."[54] The Department advised the delegate that Woodside had argued that "the separate referrals should be accepted so they can structure the separate individual projects according to specific commercial requirements."[55] Having regard to Woodside's "efforts to publicise their approach on their 'Burrup Hub' project" and "commitment to account for all relevant impacts of each action, and ensure each impact can be considered in a timely, effective and efficient manner", the Department considered that there "would be an opportunity for the public to consider all components of the Burrup Hub project, at this referral or concept stage, in its entirety".[56] It advised the delegate that "the objects of the EPBC Act will not be frustrated by the separate submission of the Burrup Hub project referrals", and noted that "the split nature of the Burrup Hub vision referrals will not diminish the assessment of any significant impacts of the set of Burrup Hub vision projects on EPBC Act protected matters; nor will it result in particular controlling provisions — that would be triggered if the referral was for the whole Burrup Hub project — being avoided."[57] For these reasons, the Department recommended that the Referral be accepted for assessment as a split referral.[58] The delegate accepted that recommendation.[59]

53 Decision Brief, Document F15 (Attachment E1: Referral submission – includes links to attachments), p 7.

54 Ibid.

55 Ibid.

56 Ibid.

57 Ibid.

58 Ibid.

59 Ibid, p 2.

41. **Controlled action**. The Department advised the delegate of supplementary information provided by Woodside acknowledging that the proposed action involved[60] (italics in original):

> - *new and altered infrastructure* - new and altered equipment and technology will be constructed and operated: the proponent expects that, soon after the date of any approval of the proposed action to enable third party gas to be processed, major upgrades of onshore receiving facilities will be required to accommodate certain third party gas and fluids, and there will likely be modifications of existing processing equipment and upgrades to metering to accommodate and facilitate processing of third party gas and fluids
>
> - *potential changes in emissions profiles* - there is potential for emissions to change from those which are currently assessed and approved as KGP transitions to a LNG Tolling Facility, as third party gas field feed gas composition may differ from existing NWSJV fields, including changed content of inerts, hydrocarbons and other components
>
> - *new and additional cumulative impacts* – the new emissions and discharges from new sources of gas and fluids are additional to any emissions and discharges that would have arisen from the existing activity, and these ongoing and additional emissions and discharges will give rise to both additional potential impacts from the emissions and discharges, and cumulative impacts.

42. The Department articulated the "key issue" as:

> Possible impacts on the rock art and cultural heritage values of the National Heritage Place, the Dampier Archipelago (including the Burrup Peninsula).[61]

43. As to that issue, the Department advised the delegate that "[t]he (unclear) impact of airborne gas emissions from the KGP on the petroglyphs (rock art values) of the Burrup Peninsula" "have the potential to impact the national heritage values of the [Dampier Archipelago] National Heritage Place".[62] The Department's conclusion was[63] (bold in original):

> The proposed action, if it proceeds, will result in just under 50 years of ongoing release of emissions into the atmosphere of the Burrup Peninsula and surrounds. The information provided by the proponent on the cumulative impacts of both: the extension in the period of emissions released from the KGP, and of possible changes to the composition of those emissions, on the heritage values of the Burrup Peninsula cannot be assessed with confidence or show that approving the project will not cause the National Heritage values to be degraded, damaged, notably altered, modified, obscured or diminished.

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60 Ibid, pp 3-4.

61 Ibid, p 8.

62 Ibid, p 9.

63 Ibid, p 10.

> Given the concerns raised about the potential impact of emissions on the rock art of the Dampier Archipelago (including the Burrup Peninsula), and the proponent's advice that they are unable to provide all of the additional information requested at this stage, the Department recommends that, applying the precautionary principle, you decide the proposal is a controlled action, for non-climate change related impacts only, and that sections 15B and 15C are controlling provisions for the action, on the basis that the proponent has not demonstrated that potential significant impacts could be avoided or mitigated effectively.
>
> This is because, on the information available and applying the precautionary principle, the Department considers that it is **likely** the proposed action will have a significant impact on national heritage values of the Dampier Archipelago (including the Burrup Peninsula) listed national heritage place (section 15B & 15C).

44. The delegate accepted these conclusions and determined that ss 15B and 15C were the relevant controlling provisions for the proposed action.[64]

45. In the context of making the controlled action decision, the delegate also considered the proposed action's likely contribution to greenhouse gas emissions and, by extension, its likely contribution to climate-related environmental impacts on matters of national environmental significance.[65] The Department recommended that the delegate consider "section 23 and section 24A[66] and decide whether it is possible the GHG emissions from the proposed action could have a significant adverse impact on the environment of the Commonwealth Marine Area, and hence whether that protected matter is a controlling provision for the proposed action".[67] In this regard, the Department noted:[68]

> The Department's *Matters of National Environmental Significance: Significant impact guidelines 1.1* … notes that a 'significant impact' is an impact which is important, notable or of consequence, having regard to its context or intensity. The Department considers the significance thresholds in the context of GHG emissions to 'the environment' are whether there is a real chance or possibility that the GHG emissions resulting from the action will*, in the Commonwealth Marine Area*:

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64 Ibid, p 2.

65 Ibid, p 16ff.

66 Sections 23 and 24A of the EPBC Act provided, relevantly, that a person must not take in a Commonwealth marine area an action "that has, will have or is likely to have a significant impact on the environment" (s 23(1)) and that "a person commits an offence if: (a) the person takes an action; and (b) the action is taken in a Commonwealth marine area; and (c) the action results or will result in a significant impact on the environment." (s 24A(1)). Commonwealth marine areas include "any waters of the sea inside the seaward boundary of the exclusive economic zone" (s 24).

67 Decision Brief, Document F15 (Attachment E1: Referral submission – includes links to attachments), p 16.

68 Ibid.

- modify, destroy, fragment, isolate or disturb an important or substantial area of habitat such that an adverse impact on marine ecosystem functioning or integrity in a Commonwealth Marine Area results
- have a substantial adverse effect on a population of a marine species or cetacean including its life cycle (for example, breeding, feeding, migration behaviour, life expectancy) and spatial distribution
- result in a substantial change in air quality or water quality (including temperature) which may adversely impact on biodiversity, ecological integrity; social amenity or human health.

46. The Department went on to describe how the term "impact" is defined in the EPBC Act. In this regard, the Department informed the delegate that:[69]

> An event or circumstance is an impact of an action if it is a direct consequence of the action (see s 527E(1)(a)). For an event or circumstance that is an indirect consequence to *[sic]* the action to be an impact of that action:
>
> - the action must be a substantial cause of that event or circumstance (see section 527E(1)(b)); and
> - the additional requirements in s 527E(2) must also be met. These are:
> - the event or circumstance is a consequence of a secondary action, being an action that is taken by another (secondary) person as a consequence of the primary action and not at the direction or request of the person taking the primary action; and
> - the primary action facilitates, to a major extent, the secondary action; and
> - the secondary action is within the contemplation of the person taking the primary action or is a reasonably foreseeable consequence of the primary action; and
> - the event or circumstance is within the contemplation of the person taking the primary action or is a reasonably foreseeable consequence of the primary action.

47. In the Department's view, there were two potentially relevant sources of GHG emissions that the delegate should consider when deciding what were the 'adverse impacts' of the proposed action.

48. Direct emissions. The first source was "GHG emissions as a result of processing (liquefaction) of gas at the KGP", being "direct emissions" from the "the action itself, i.e. the emissions from the KGP where the proposed action is to be taken."[70] The Department noted that Woodside had

69 Ibid, p 16-17.

70 Ibid, p 17.

indicated that "up to 7.7 Mt of CO2-e will continue to be emitted from the KGP per annum as part of the proposed action"[71]. It considered that:[72]

> if the GHG emissions from the KGP are of an amount that would be expected to result in an increase in atmospheric CO_2 in the Commonwealth Marine Area, those emissions, as well as any flow-on consequences to the marine environment such as ocean warming and acidification, would be an event or circumstance that would be a direct impact of the proposed action [and] would therefore be considered an impact of the proposed action (within the meaning of s 527E(1)(a)).[73]

49. The Department further considered that "the GHG emissions from the KGP (7.7 Mt of CO_2-e per annum over the life of the proposed action) are of a sufficient amount that may result in an increase in atmospheric CO_2 in the Commonwealth Marine Area."[74]

50. However, the Department concluded that, in fact, the projected emissions (and their consequential effects on the Commonwealth Marine Area) would not be likely to be significant. This was for two reasons. First, the Department noted "national and international emissions control frameworks operating to manage and mitigate GHG emissions in Australia".[75] Secondly, the Department noted the:[76]

> inability to establish the necessary causal relationship between:
>
> - the proposed action, which will result in GHG emissions of 7.7 Mt CO_2-e per annum until November 2068; and
> - the small magnitude of the net increase in atmospheric CO_2 content expected at any specific location as a result of the proposed action — at present the proposed action would contribute an additional (approximately) 0.015 per cent to annual global GHG emissions; and
> - an observable increase in atmospheric CO_2 in the Commonwealth Marine Area specifically.

51. The Department regarded these considerations as sufficient to establish either:

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71 Ibid.

72 Ibid.

73 Ibid.

74 Ibid.

75 Ibid, p 20.

76 Ibid.

a. "that the direct GHG emissions from the proposed action will not result in any climate change related impacts (within the meaning of s 527E) on the environment in the Commonwealth Marine Area"[77] (underline added); or

b. "if … the direct GHG emissions from the proposed action would be impacts within the meaning of s 527E, the Department considers that the magnitude of such impacts is sufficiently low the proposed action is **not likely** to have a significant impact[78] on the environment of the Commonwealth Marine Area."[79] (bold in original)

52. Indirect emissions. The second source was "GHG emissions resulting from the transport to and combustion overseas of the LNG that is produced at the KGP" being "indirect emissions"[80]. The Department ultimately considered that such indirect emissions would not constitute impacts within the meaning of s 527E(1)(b) and (2) of the EPBC Act. Its reasons for that conclusion are worth setting out in full (italics in original):[81]

> This section considers whether the LNG combusted overseas as a result of the proposed action could result in indirect events or circumstances that are 'impacts' on the environment in the Commonwealth Marine Area, within the meaning of sections 527E(1)(b) and (2).
>
> In relation to the referral EPBC 2018/8319 (the proposed action being the extraction of fluid hydrocarbons from Scott Reef in the Commonwealth Marine Area [i.e. the Browse to NWS Project]), the Minister's delegate accepted that the emissions from the processing, and then the transport to and combustion overseas, of the gas that originated at Scott Reef was likely to be sufficient to result in an increase in global GHG emissions and an ensuing increase on the level of CO_2 in the atmosphere. Noting that the atmosphere is part of the 'environment' for the purposes of the EPBC Act (see section 528) and that the relevant protected matter in that referral was 'the environment generally' (in the Australian jurisdiction), the delegate considered that:
>
> - the increase in CO_2 in the atmosphere was an indirect consequence of the extraction of the gas from Scott Reef and that it satisfied the test in section 527E(1)(b) and (2); and
>
> - the increase in CO_2 in the atmosphere was therefore an impact on the environment (as were flow-on consequences to other aspects of the environment); and

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77 Ibid.

78 Recalling that "significant impact" is described in the Matters of National Environmental Significance: Significant impact guidelines 1.1 as "an impact which is important, notable or of consequence, having regard to its context or intensity."

79 Decision Brief, Document F15 (Attachment E1: Referral submission – includes links to attachments).

80 Ibid, p 21.

81 Ibid, pp 21-22.

- the level of that impact was likely to be significant.

On that basis, sections 23 and 24A were determined to be controlling provisions for that action.

In contrast, the Department considers that the increase in atmospheric CO_2 and the consequential physical effects of climate change as a result of the overseas combustion of the LNG processed at the KGP are not impacts of this proposed action, within the meaning of section 527E(1)(b) and (2).

This is because, in the Department's view, the requirement at s 527E(2)(e) — that the primary action must facilitate, *to a major extent*, the secondary action — is not satisfied in this case.

Here, the primary action is the action that is the subject of the referral (being the operation and extension of the KGP) and the secondary action is the burning of the gas overseas by third parties. While the Department considers the primary action will facilitate the burning of gas overseas, the Department does not think it does so 'to a major extent'. This is because:

- The ordinary meaning of 'major' is 'very important or significant' …
- While the liquefaction of gas is a step in the chain from gas extraction to LNG combustion, the Department considers the processing of the gas at the KGP is not a 'very important or significant' step. In contrast, the Department considers that the secondary action is facilitated 'to a major extent' by the extraction of the gas that is processed as part of the proposed action from its point of origin — that is a step that is 'very important or significant', unlike the processing of the gas at the KGP.
- In support, gas processing could, for example, occur at any location.

On this basis, the Department considers that the requirement at s 527E(2)(e) is not met for this proposed action in relation to the environmental consequences of the overseas combustion of the gas processed at the KGP. Because an event or circumstances must satisfy the requirements at both section 527E(1)((b) and 527E(2) (including section 527E(2)) to be an indirect impact of the proposed action, it is not necessary to address the other requirements here.

53. Thus the Department considered that the proposed action would not be a "substantial cause" of adverse impacts arising from the combustion of gas processed at the KGP facility, not because the impacts themselves would not be significant, but rather because the activities inherent in the proposed action (ie, the processing of gas) would not facilitate "to a major extent" the secondary action (burning of the gas), which was accepted to be the cause of those impacts. Accordingly, the Department concluded that "there will [be] no indirect impacts, within the meaning of section 527E of the EPBC Act, on the environment in the Commonwealth Marine Area from the proposed action."[82]

82 Ibid, p 22.

54. For the same reasons, the Department concluded that there would be no indirect impacts of the proposed action on any other matter of national environmental significance.[83] The delegate accepted that conclusion, and, therefore, declined to determine that any other controlling provisions applied to the proposed action.

C.2.4. Impact assessment process

55. On 4 December 2018, the Western Australian Environmental Protection Agency (**WA EPA**), to whom the proposed action had also been referred for assessment, determined that the proposed action would be assessed at the level of Public Environmental Review under Part IV of the Western Australian *Environmental Protection Act 1986* (WA) (**EP Act**).[84]

56. At the same time as the split referral / controlled action decision (3 May 2019), the delegate decided that the assessment of the impacts of the NWS Project Extension for the purposes of the EPBC Act proceed by way of an "accredited assessment" process,[85] namely, the assessment by the WA EPA pursuant to the EP Act. The key events in the assessment process were as follows.

57. On 28 February 2019, WA EPA requested comments from the Department on a draft Environmental Scoping Document (**ESD**) it had prepared.[86] The ESD details what is required in the proponent's environmental review document (**ERD**), being a document required under the EP Act that sets out the proposed action and its anticipated environmental impacts. On 21 March 2019, the Department provided comments on the draft ESD to the WA EPA.[87] From 6 June 2019 to 20 June 2019, the draft ESD was published for public review and, on 29 August 2019, it was finalised, approved, and published on the WA EPA website.[88] Following review and comments by the Heritage Branch of the Department, a revised draft ESD was published for public review between 18 December 2019 and 12 February 2020.[89]

58. An extraordinary number of public submissions were provided in response to the draft ESD: 19,869 in total.[90] All except seven opposed the proposal.[91] Several common issues were raised,

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83 Ibid, p 22-23.

84 Decision Brief, Document F9 (Attachment C: Legal Considerations) at [26].

85 Decision Brief, Document F15 (Attachment E1: Referral submission – includes links to attachments) pp 2, 25-26; as to which see EPBC Act, s 87(4).

86 Decision Brief, Document F9 (Attachment C: Legal Considerations) at [27].

87 Ibid.

88 Ibid.

89 Ibid at [28]-[29].

90 Ibid at [30].

91 Ibid.

chief amongst which was "Air quality including data and assessment of air emissions between 2020 and 2070". [92]

59. The issues raised by the submissions were considered by the WA EPA's assessment process and appeals process.[93]

60. On 1 July 2020, the WA EPA received Woodside's response to the submissions, which was then provided to the Department.[94] The Department provided comments on 23 February 2021.[95] On 30 June 2022, the proponent's final Response to Submissions document and supporting appendices were published on the WA EPA website.[96] The same day, the WA EPA published the state assessment report[97], including recommended conditions, for a public comment period between 30 June 2022 and 21 July 2022.[98] In its report, the WA EPA noted that Woodside had committed to reduce nitrogen oxide emissions (a type of emissions apt to damage the Murujuga rock art) from the KGP by 40% by the end of 2030.[99]

61. A "record number" of appeals were made in relation to the project: 776.[100] Of these, over half related to concerns about likely impacts from acidic air emissions from the proposed action on Murujuga rock art and inadequacy of WA EPA's assessment.[101]

62. On 10 August 2022, a delegate requested further information from Woodside[102] to ensure the Minister would have enough information to make an informed decision about the proposed action.[103] In particular, the Department requested that, following the completion of the appeals process for the proposed approval of the NWS Project Extension, the final Ministerial Statement

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92 Ibid.

93 Ibid at [31].

94 Ibid at [32].

95 Ibid at [33].

96 Ibid at [34].

97 Ibid at [36]; a copy of which is Decision Brief, Document F10 (Attachment D1: Western Australian Assessment Report and recommended conditions).

98 Decision Brief, Document F9 (Attachment C: Legal Considerations) at [36].

99 Decision Brief, Document F10 (Attachment D1: Western Australian Assessment Report and recommended conditions), p 7.

100 Decision Brief, Document F9 (Attachment C: Legal Considerations) at [37].

101 Ibid.

102 Pursuant to the power to do so under s 132 of the EPBC Act.

103 Decision Brief, Document F9 (Attachment C: Legal Considerations) at [38].

from the WA Minister for the Environment be provided to ensure that the (Commonwealth) Minister would be aware of any changes to conditions resulting from the appeals process.

63. The continuation and conclusion of the WA EPA impact assessment process is set out further below in Part C.2.6.

C.2.5. Application to reconsider controlled action decision

64. It is convenient here, chronologically, to deal with an EPBC Act process that commenced in parallel while the accredited assessment process was underway: namely, a request that the Minister reconsider the controlled action decision of the delegate dated 3 May 2019.

65. On 8 July 2022, Environmental Justice Australia (**EJA**) lodged, on behalf of its then-client, the Environment Council of Central Queensland Inc, a reconsideration request under section 78A of the EPBC Act (**Reconsideration Request**).[104]

66. The Reconsideration Request was received as part of a larger request for reconsideration of controlled action decisions made in relation to 19 coal and gas referrals, on the basis of "substantial new information".[105]

67. The Reconsideration Request stated[106] that the information provided with the reconsideration request demonstrated that, if the proposed action proceeds, there is a real (as opposed to remote) chance that these GHG emissions will result in physical effects of climate change (fire, ocean heatwaves and acidification, drought, rainfall extremes and flooding) and, as a result, the proposed action will have, or is likely to have, a significant impact on a number of matters of national environmental significance, including:

a. the world heritage values of declared World Heritage properties

b. the National Heritage values of National Heritage places

c. the ecological character of declared Ramsar wetlands

d. listed threatened species in the critically endangered category

e. listed threatened species in the endangered category

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104 Ibid at [39]; Affidavit of Cecile Elizabeth Bester dated 27 February 2026 (**Second Bester Affidavit**), [5], CB2.

105 Second Bester Affidavit at [6]; and see EBPC Act, s 78(1)(a).

106 Decision Brief, Document F99 (Attachment L1: Request for reconsideration from Environmental Justice Australia) at [29] and [26].

f. listed threatened species in the vulnerable category

g. listed threatened ecological communities in the critically endangered category

h. listed threatened ecological communities in the endangered category

i. listed threatened species (other than a species included in the extinct category or a conservation dependent species) and listed threatened ecological communities (other than an ecological community in the vulnerable category)

j. listed migratory species

k. the environment in a Commonwealth marine area (containing listed marine species); and

l. the environment in the Great Barrier Reef Marine Park.

68. Those contentions were supported by two expert reports: one provided by Professor David Karoly, an honorary Professor in the School of Geography, Earth and Atmospheric Sciences at the University of Melbourne; the other provided by Professor Lesley Hughes, Distinguished Professor of Biology and Interim Executive Dean of the Faculty of Science & Engineering at Macquarie University. The request contended that these expert reports established that:[107]

a. There is an approximately linear relationship between anthropogenic carbon dioxide (CO_2) emissions and global temperature, such that every tonne of CO_2 emissions adds to global warming. Reaching net zero anthropogenic CO_2 emissions is a requirement to stabilise human-induced global temperature at any level.

b. Limiting human-induced global warming requires deep reductions in CO_2 and other GHG emissions (compared to historical and present rates) in the coming decades. The modelled pathways for limiting global warming necessitate drastic cuts to the use of fossil fuels and require a substantial amount of fossil fuels to remain unburned.

c. Human-induced climate change will cause unavoidable increases in multiple climate hazards in Australia, including fire, heat extremes, marine heatwaves and acidification, heavy precipitation and flooding and drought. These physical effects become larger in direct relation to increased global warming.

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107 Ibid at [26] and [29].

d. There is a real (as opposed to a remote) chance that a consequence of continued emission of GHG emissions into the atmosphere — including through the combustion of coal and/or gas — will be an increase in the regularity, scope and intensity of climate hazards (such as fire, heat extremes, marine heatwaves and ocean acidification, heavy precipitation and flooding, and drought).

e. There is a real (as opposed to a remote) chance that those events (or one or more of them) will adversely affect the matters of national environmental significance listed in paragraph 67 above.

69. On 3 November 2022, a delegate determined that the Reconsideration Request from EJA met the formal requirements of the EPBC Act and the *Environment Protection and Biodiversity Conservation Regulations 2000* and was, therefore, a valid request.[108]

70. On 3 November 2022, the Department sent the Reconsideration Request to Woodside with an invitation to comment.[109] From 3 November 2022 to 24 November 2022, the Department published the Reconsideration Request and invited public comments.[110] A total of 2,614 comments were received, with a majority (2,321) supporting the request.[111] The Reconsideration Request was also sent to relevant State and Commonwealth Ministers with an invitation to comment.[112] The last of these comments was received on 22 December 2022.[113]

71. Woodside's comments were received on 31 January 2023,[114] and were resubmitted following some questions from the Department on 4 September 2023.[115] It opposed the Reconsideration Request, and submitted that the information supporting it did not relate to the proposed action, but instead related to the effect of greenhouse gas emissions generally.[116]

72. Also on 31 January 2023, Woodside provided additional information about the expected greenhouse gas emissions referrable to the proposed action. It stated that about 8.76% of these emissions would be generated from the proposed action itself and energy generation sources

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108 Decision Brief, Document F100 (Attachment L2: Validity submission for EJA request).

109 Reconsideration Decision Brief, p 13 [34]..

110 Second Bester Affidavit, CB3 (Letter from Kylie Calhoun dated 3 November 2022).

111 Decision Brief, Document F9 (Attachment C: Legal Considerations) at [40].

112 Second Bester Affidavit, CB5-CB10 (Ministerial responses); and see Affidavit of Cecile Elizabeth Bester dated 10 October 2025 (**First Bester Affidavit**), CB5 (Reconsideration Reasons), pp 144-145 [43]-[51].

113 First Bester Affidavit, CB5 (Reconsideration Reasons), p 145 [51].

114 Ibid, p 151 [71]; Second Bester Affidavit, CB10 (Woodside's response to the reconsideration request).

115 First Bester Affidavit, CB5 (Reconsideration Reasons), p 152 [76].

116 First Bester Affidavit, CB5 (Reconsideration Reasons), p 151 [73].

needed for it to occur (scope 1[117] and 2 emissions[118]), while about 91.24% emissions would be generated from the combustion of the gas processed by proposed action (scope 3 emissions[119]) by third parties within Australia (13%) and overseas (87%). Woodside elaborated that:

a. The proposed action's expected total average annual emissions (scope 1, 2, and 3) within Australia represent 3.63% of Australia's estimated annual national emissions from the Paris Agreement inventory for the 2020 reporting year[120]; and

b. The proposed action's total average annual emissions (scope 1, 2 and 3) within Australia and outside Australia combined represent 0.183% of global emissions (measured in CO_2-e) in 2019.[121]

73. Between 11 May 2023 and 3 December 2024, the Minister made decisions in respect of six of the 19 reconsideration requests that had been submitted on 8 July 2022, each of which confirmed the controlled action decision.[122] The reasons for each decision were substantially the same.[123] Two of those reconsideration decisions were the subject of proceedings in this Court[124] and the Full Court[125] in late 2023 and early 2024. The reconsideration decision in respect of the NWS Project Extension was made much later, as explained below in Part C.2.7 and Part C.2.8.

C.2.6. Continued impact assessment under EPBC Act

74. In September 2024, the WA Office of the Appeals Convenor published the Appeals Committee's Report to the WA Minister for Environment in respect of the appeals from the WA EPA's

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117 Scope 1 emissions refer to "direct emissions which are produced from sources within the boundary of an organisation and as a result of that organisation's activities (e.g. fugitive organisation's emissions from gas production).": First Bester Affidavit, CB5 (Reconsideration Reasons), p 152 [75](a).

118 Scope 2 emissions refer to "indirect emissions which occur outside of the boundary of an of organisation from the generation of electricity that is consumed by the organisation": First Bester Affidavit, CB5 (Reconsideration Reasons), p 152 [75](b).

119 Scope 3 emissions refer to "direct indirect emissions, other than electricity, which occur outside of the boundary of an organisation as a result of actions by the organisation (e.g regasification and burning of the product gas from the proposed action by a third party to make steel or generate electricity).": First Bester Affidavit, CB5 (Reconsideration Reasons), p 152 [75](c).

120 First Bester Affidavit, CB5 (Reconsideration Reasons), p 153 [80].

121 Ibid, p 153 [81].

122 Second Bester Affidavit, CB11-CB17; Affidavit of Cecile Elizabeth Bester dated 2 March 2026 at [4], CB3-1.

123 Compare Second Bester Affidavit, CB11-CB17.

124 *Environment Council of Central Queensland Inc v Minister for the Environment and Water (No 2)* [2023] FCA 1208.

125 *Environment Council of Central Queensland v Minister for the Environment and Water* [2024] FCAFC 56; 304 FCR 91.

determination.[126] On 26 November 2024, the WA Minister for Environment recommended that the appeals be allowed in part and that certain parts of the WA EPA's recommended conditions be strengthened to provide additional protections.[127] Ultimately, on 12 December 2024, the WA Minister for Environment published Ministerial Statement 1233 (**MS1233**).[128] MS1233 permitted the proposed action to be implemented subject to conditions.

75. In its Report to the WA Minister for Environment, the Appeals Convenor noted that Woodside had made a commitment to reduce nitrogen oxide emissions from the KGP by 60% by 2030.[129] That commitment was incorporated into a condition in MS1233 (condition 3-5(1)(e)) requiring the NSWJV participants to prepare an Air Quality Management Plan setting out measures that would be taken to achieve the outcome of reducing NOx emissions from the proposal by 60% by 2030.[130] In addition, MS1233 required that LNG production capacity be limited to 18.5 million tonnes per annum, that CO_2-e emissions be limited to 7.7 million tonnes per annum, and that nitrogen oxide emissions be limited to 8,900 tonnes per annum.[131]

76. On 13 December 2024, the Department received MS1233 for the proposed action from Woodside. On the same day, the delegate extended the timeframe for making the approval decision to 28 February 2025 to ensure the Reconsideration Request from EJA would be dealt with before the approval decision.[132]

77. During December 2024 and January 2025, the Department and Woodside corresponded in relation to the provision of additional information relevant to the proposed action.[133]

78. Thereafter, the Department proceeded to consider the suitability of the conditions imposed by MS1233. What follows is a summary of that process.

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126 Cf Reasons at [31]; Decision Brief, Document F11 (WA Appeals Convenor Report dated September 2024); Document F12 (Attachment D3: WA Minister's Appeal Determination dated 26 November 2024).

127 Reasons at [31]; Decision Brief, Document F12 (Attachment D3: WA Minister's Appeal Determination dated 26 November 2024).

128 First Bester Affidavit, CB2; Decision Brief, Document F13 (Attachment D4: Ministerial Statement 1233).

129 Decision Brief, Document F11 (WA Appeals Convenor Report dated September 2024), p 46.

130 Decision Brief, Document F13 (Attachment D4: Ministerial Statement 1233), p 5.

131 Decision Brief, Document F13 (Attachment D4: Ministerial Statement 1233), p 2.

132 Decision Brief, Document F9 (Attachment C: Legal Considerations) at [44].

133 Decision Brief, Document F9 (Attachment C: Legal Considerations) at [45]-[46].

79. On 4 February 2025, the Department received from the WA State government a confidential report from the Murujuga Rock Art Monitoring Program, titled Monitoring Studies Report 2024 (**MRAMP 2024 Report**).[134] The report provided information about the potential effects of industrial emissions from the KGP (among other facilities) to the rock art located in the Dampier Archipelago National Heritage Place[135].

80. In particular, the MRAMP 2024 Report provided the first evidence from the MRAMP that showed the likely impacts of industrial emissions.[136] The porosity of the weathered rind of granophyre rock surfaces was found to be significantly more porous close to industrial areas, the port, and towns, and lower elsewhere in less impacted areas such as on the northern and western islands.[137] That conclusion was supported by another key finding showing that chamber studies had demonstrated a mechanism by which air pollutant exposure could lead to dissolution and increased porosity, and that this has been confirmed chemically and physically.[138] While other potential causes of the detected increase in porosity were not ruled out, the Report set out evidence that industrial emissions had led to detected impacts.[139]

81. Specifically, the Report showed that increases in porosity were correlated with proximity to industry, and covered a large area of the Dampier Archipelago National Heritage Place.[140] A 2023 precursor to the MRAMP 2024 report[141] stated that there are "no sites on Murujuga where pollution is entirely absent" and that even "remote sites in the far north of the Burrup Peninsula …. experience high concentrations of pollution under some conditions".[142] According to the Department, "the MRAMP 2024 Report's conclusions indicate that it appears that some

134 Decision Brief, Document F9 (Attachment C: Legal Considerations) at [47].

135 Decision Brief, Document F120 (Attachment Q2: Murujuga Rock Art Monitoring Program: Monitoring Studies Report); the key findings are summarised in Decision Brief, Document F9 (Attachment C: Legal Considerations) from [100].

136 Decision Brief, Document F9 (Attachment C: Legal Considerations) at [100].

137 Ibid.

138 Ibid at [101].

139 Ibid at [102].

140 Ibid at [102].

141 Decision Brief, Document F119 (Attachment Q1: Murujuga Rock Art Monitoring Program: Monitoring Studies Report).

142 Ibid, p 171; Decision Brief, Document F9 (Attachment C: Legal Considerations) at [103].

anthropogenic impacts have occurred, and that the dominant mechanism for any effect appears to be direct impact of emissions through an increased acidity pathway"[143].

First ECASS Report

82. In due course, the MRAMP 2024 Report was considered by the Environmental Contamination Advice and Standards Section (**ECASS**), a unit within the Department.

83. The Department asked ECASS to advise it about the potential impacts of industrial emissions from the continued operation of KGP. In doing so, ECASS considered a range of scientific reports and data. In a report provided to the Department on or about 21 February 2025, later provided to the Minister,[144] ECASS advised that (footnote included in original):[145]

> Based on multiple lines of evidence [ECASS] considers that on the balance of probabilities it is more likely than not that industrial air emissions from the Karratha Gas Plant (and other emitters in the surrounding area) are resulting in the accelerated and irreversible weathering of the rocks that the Murujuga art is etched into, and that accelerated weathering is likely to continue under the proposed action unless emissions are appropriately conditioned.
>
> … The Section notes that there are multiple lines of scientific and other evidence suggesting that nitrogen oxides (NOx), sulfur oxides (SOx), and other airborne emissions including ammonia (NH_3) and ozone (O_3) are having a significant adverse impact on the rocks of Murujuga, as per the *Matters of National Environmental Significance: Significant impact guidelines 1.1 – Environment Protection and Biodiversity Conservation Act 1999*.[146]
>
> […]
>
> Despite … scientific uncertainties [about the exact processes involved in adverse impacts to the rocks of Murujuga, ECASS] considers there to be sufficient information to suggest that irreversible weathering to rocks of Murujuga are likely if NO_x, SO_x, and other airborne emissions continue to be emitted without appropriate mitigation. For example, the Murujuga Rock Art Conservation Project has separately identified that rocks from the Burrup Peninsula will decompose when exposed to acids lower than pH 6, and that field pH results indicate that rocks from across the Burrup Peninsula are being exposed to pH conditions capable of resulting in accelerated rock weathering.

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143 Decision Brief, Document F9 (Attachment C: Legal Considerations) at [104].

144 Decision Brief, Document F83 (Attachment J15: ECAS line area advice received).

145 Ibid, pp 6-7.

146 In the context of ECASS advice a 'significant impact' can be understood to mean 'an impact which is important, notable, or of consequence, having regard to its context or intensity' (Commonwealth of Australia 2013: 2). Further 'it is not necessary for a significant impact to have a greater than 50% chance of happening; it is sufficient if a significant impact on the environment is a real or not remote chance or possibility.' (Commonwealth of Australia 2013: 3).

> […]
>
> In addition, [ECASS] notes that there is insufficient information available to determine the volume and chemical properties of the emissions from the processing of gas from the proposed Browse to NWS Expansion Project at the Karratha Gas Plant (KGP), nor to determine the contribution of the processing of this gas to the projected impact of NWS. Robust real-time and remotely telemetered stack and emissions monitoring should be considered.

84. ECASS was specifically asked whether it was possible to determine a "safe limit of emissions" for the proposed action. It answered that question in the negative, stating:[147]

> [ECASS] considers that there is currently insufficient information available to define EQCs [ie, Environmental Quality Criteria] for the Murujuga airshed or to set industrial air emission limits for the proposed action that would, with a high degree of confidence, be sufficiently protective of the rocks of Murujuga and the associated rock art.

85. That conclusion reflected Woodside's own conclusion based upon a synthesis of literature on the potential impact of industrial air emissions on Murujuga rock art. It concluded that:[148]

> …[C]urrently there is no empirical evidence for an acceptable critical acid load for rock surfaces on the Burrup Peninsula, beyond which rock art would be impacted.

86. As to Woodside's commitment to reduce nitrogen oxide emissions by 40% by 2030, ECASS advised:[149]

> The Proponent has not demonstrated that a 40% reduction in the volume of NOx emissions will be protective of Murujuga's rocks (or why a 40% reduction is material to the environment). Further, despite the proposed quantity reductions of NOx [ECASS] considers it highly likely that the KGP will continue to be the major emitter of industrial air emissions into the Murujuga airshed by a considerable margin.

87. ECASS added that that it considered there to be:[150]

> considerable uncertainty about whether the minimum quantity reductions required for NOx (Condition 3-5(1)(e)) … will be sufficiently protective of the environment as the reviewed document set contains no information supporting the required reductions levels.

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147 Decision Brief, Document F83 (Attachment J15: ECAS line area advice received), p 21.

148 Decision Brief, Document F36 (Attachment H9: ERO Appendix H – Rock Art Literature Review), p 13.

149 Decision Brief, Document F83 (Attachment J15: ECAS line area advice received), p 19.

150 Ibid, p 11.

88. Finally, in view of the uncertainty of the precise mechanism by which industrial emissions impacted the Murujuga rocks, ECASS recommended that emissions controls be set for a "broader range" of chemicals including, "initially", "CO_2, NOx, SOx, NH_3, CH_4, O_3, and VOCs [Volatile Organic Compounds]".[151]

Second ECASS Report

89. On 11 April 2025, the Department sought further advice from ECASS, which was provided on or about 24 April 2025.[152] Among other things, the Department provided ECASS with draft approval conditions and asked for its comments on them. In particular, ECASS was asked to advise on a condition (condition 4) regulating certain industrial emissions levels to make it "achievable for the proponent, for example, by replacing 'zero' with 'below levels of detection'". ECASS supported that proposed condition.[153] ECASS advised:[154]

> To assist in making the conditions more readily achievable, [ECASS] considers that wording such as "no detectable emissions" or "air emissions below the level of reporting" would be a more appropriate. The rationale being that if emissions can't be detected then there is a considerably reduced potential for the emissions to impact rocks and rock art; and that this level does not assume "no emissions, ever".

90. In accordance with that advice, ECASS further advised that (footnote added):[155]

> Given the scientific uncertainties about the causative nature of impacts on the rocks of Murujuga, on a precautionary basis the Proponent should ensure that by 2030, when the NWS projects' current approval is understood to lapse, there are no detectable emissions of the following airborne contaminants from [the] North West Shelf facility:
>
> - NO and NO_2 (NOx);
> - SO and SO_2 (SOx);
> - NH_3;
> - NHO_3;
> - CH_4;
> - O_3;

151 Ibid, p 22.

152 Decision Brief, Document F90 (Attachment J21: ECAS Line Area advice).

153 Ibid, pp 2, 9.

154 Ibid, p 9.

155 Ibid, p 13.

- VOCs (BETX and Naphthalene).[156]

For similar reasons, emissions of CO_2 and airborne particulates (PM 2.5 and PM10) should be reduced to 50% of their 2025 emission levels by not later than 30 June 2030, and a further 10% of the 2025 emission levels every 5 years thereafter, for the life of the approval.

Emissions should be measured in terms of both load and concentration, at the various points of emission throughout the facility and as loads and concentrations in the surrounding airshed.

Legal Considerations Report

91. Following ECASS's second report, the Department prepared a Legal Considerations report.[157] That report synthesised virtually all of the information relevant to the proposed action that the Department had received to date.[158] Based on the available evidence and noting the gaps in information which prevented a more complete understanding of the impact of the proposed action, the Department concluded as follows (underlining added):[159]

> – The department considers that the emissions of the proposed action is likely to have an impact on the NHP. <u>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</u>;
>
> – <u>The department considers that over the lifetime of the project that this impact could cause degradation, damage, notable alteration, modification, obscuring, or diminishing of the values of the National Heritage Place</u> because the petroglyphs of Murujuga could be degraded to a level that would significantly impact the values of the NHP across Murujuga; and
>
> – The department considers that degradation of the petroglyphs would impact all five values (A, B, C, D and F). Accelerated weathering would affect the different degrees of petroglyph weathering present. The different degrees of weathering are a key value as they provide an outstanding visual record of the course of Australia's cultural history through responses to the rise of sea levels. Accelerated weathering would also reduce the visual quality of all engravings, and in particular, the finely executed engravings of animals that are currently identifiable to species levels.
>
> …

156 A helpful table summarising the air emissions that impact rock art appears as Appendix A to the Legal Consideration Report (p 63).

157 Decision Brief, Document F9 (Attachment C: Legal Considerations)

158 Note: the Legal Considerations report does not address greenhouse gas emissions or climate change.

159 Ibid, p 33 [154]-[155].

– The MRAMP 2024 report (Attachment Q2) provides good evidence that accelerated weathering in the form of increased porosity has occurred as a result of industrial emissions since the industry began on the Burrup Peninsula (~60 years);

– The WA EPA's assessment of the proponent's air quality modelling (Attachment D1) indicates that in the industrial environment the proposed action would be likely to be undertaken in (scenario 2 and 3; Attachment H6), the total concentration of noxious emissions is projected to increase. In these scenarios, the proposed action is the largest contributor of NOx, and VOCs and seconds largest contributor of SOx next to shipping emissions data;

– While the Dampier Power Plant is identified as a likely driver of the increases in porosity, there is evidence that the KGP would likely also have been a significant or equivalent contributor to historical impacts …. The department notes that the largest statistically significant increases in porosity were identified in the locality of the Dampier Power Station as well as KGP …;

– It is therefore reasonable to consider that over the life of the proposed action a further increase in porosity could reasonably occur as a consequence of the proposed action, because the emissions attributable to the proposed action would be responsible for a significant proportion of this impact, and are by themselves sufficiently significant to be likely to have this impact;

– The spatial extent of an overall potential increase in porosity could possibly be equivalent to that seen in figure 7.6-9 of the MRAMP 2024 report …;

– That increase in porosity falls within the scope of accelerated weathering;

– That increase in porosity could also lead to changes in bacterial colonisation by bacterial species identified as having roles in the formation of patina, levels of Manganese in patina which could impact visible contrast/definition of the engravings …; and

– There are numerous other pathways being investigated through which impacts from emissions may impact the rock art. Given the high proportion of emissions from the proposed action there is a risk that the action would contribute to any not yet understood processes which may impact the rock art.

92. The Department noted that:[160]

> it has not been demonstrated that a 40% or 60% reduction in the volume of NOx emissions will be protective of Murujuga's rocks (or why a 40% or 60% reduction is material to the environment) and the department does not consider that there is

[160] Ibid, p 39 [179].

> sufficient evidence that the 60% reduction required by the conditions of MS1233 will be sufficient to protect the values of the NHP.

93. The Department advised that:[161]

> Given the severity of potential impacts to the NHP the department considers that reduction of emissions to as low as possible is necessary.

94. For these reasons, the Department disagreed that the conditions proposed by the WA Appeals Committee embodied in MS1233 would be effective. The Department considered that those conditions "are not sufficient to prevent harm to the [Dampier Archipelago] NHP."[162] It summarised one of its concerns as follows (underlining added):[163]

> The department considers there to be sufficient information to suggest that irreversible weathering to rocks of Murujuga is likely if NOx, SOx, VOCs and other airborne emissions continue to be emitted without appropriate mitigation. Without the conclusions of the MRAMP, including final EQC and clear information on the governance of enforcement of resulting standards, it is not yet known what the safe levels of emissions for the proposed action will be, nor exactly what the emissions of concern are. … These uncertainties mean that the department <u>does not consider it possible to set outcomes-based conditions based on impacts to the rock art due to increases in rate of weathering as such understandings are yet to be achieved</u>.

95. Ultimately, the Department considered that "a precautionary approach which requires the proponent to prevent impacts to the rock art is necessary",[164] and recommended additional conditions[165]. One of those was a condition requiring the NSWJV to achieve "no emissions above the detectable limit" by 2030. Its reasons for recommending that condition were as follows:[166]

> Given the high levels of uncertainty regarding the details of the proposed action, the potential impacts of the proposed action and the details and efficacy of proposed or potential mitigations, the department does not consider it is possible to apply outcomes-based conditions which mirror those of MS1233. Further, given the state of knowledge, there is currently no way for an impact to be measured as attributable to the action.
>
> The research is unable to, at this time, identify all the potential emissions of interest and the levels at which no impact could be safely understood to occur. As

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161 Ibid, p 39 [180].

162 Ibid, p 40 [185].

163 Ibid, pp 40-41 [185(a)].

164 Ibid, p 41 [186].

165 Ibid, p 60 [278].

166 Ibid, p 42 [190]-[192].

> a result, the department considers that it is necessary to take a precautionary approach which requires that emissions which the department considers are evidenced as involved in processes which harm the rock art through degradation of the values of the Dampier Archipelago NHP (including Burrup Peninsula) values A, B, C, D, and F … be restricted. Therefore, in addition to the chemicals identified by the WA EPA (NO_x, VOCs, SO_x, O_3), the department also considers other acid forming emissions (CO, CO_2, CH_4, NH_3) are indicated by the evidence as likely to impact the rock art and noting the large volume of CO and CO_2 emitted by the KGP …, the department considers these should be included as part of a precautionary approach to preventing impacts to rock art due to air emissions.
>
> The department therefore recommends Condition 3 which requires 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 include acid forming emissions (NO_x, SO_x, VOCs, CO, CO_2, NH_3, O_3) as well as particulate matter which may be produced by activities such as flaring (Appendix A). The target of 2030 aligns with the proponent's projected completion of the processing of NWSJV gas.

C.2.7. Reconsideration Decision and Proposed Approval Decision

96. The Reconsideration Request in respect of the 3 May 2019 controlled action decision was briefed to the Minister's Office on or about 16 May 2025, nearly three years after it had been made.[167] The brief notes: "Timing: 19 May 2025 – as the final approval decision for EPBC 2018/8335 is due 31 May 2025" (being the final approval decision for the NWS Project Extension).[168]

97. Also on or about 16 May 2025, the proposed action was briefed to the Minister's office for a proposed approval decision with conditions.[169] In respect of the Reconsideration Request, it notes "Brief recommending confirmation of original decision with Minister".[170] In respect of reconsideration requests generally, it advises "[t]here is no statutory timeframe for making a reconsideration decision, but a referral decision [i.e. a controlled action decision] cannot be revoked once an action have [sic] been approved, refused or taken under the Act".[171]

98. Around four days after being briefed about the Reconsideration Request, on 20 May 2025, the Minister made a decision (**Reconsideration Decision)**.[172]

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167 Second Bester Affidavit at [12].

168 Reconsideration Decision Brief, page 1.

169 Decision Brief, Document F1 (Proposed Decision Brief), p 2; as to the process to which that "proposed" decision related, see EPBC Act, s 131AA(1).

170 Ibid, p 5.

171 Ibid p 4.

172 First Bester Affidavit, CB5 (Reconsideration Reasons), p 130.

99. On 28 May 2025, the Minister made the Proposed Approval Decision, by which he proposed to approve the NSW Project Extension subject to conditions reflecting those that had been recommended by the Department.[173] He invited comments from Woodside within 10 days, but did not invite comments from the public.[174]

100. The details of each decision follow.

C.2.8. Reconsideration Decision

101. By the Reconsideration Decision, the Minister decided to confirm the controlled action decision (ie, to confirm that the only controlling provisions for the proposed action were ss 15B and 15C).[175]

102. Contrary to the advice in the Reconsideration Decision Brief, there is a statutory timeframe for making a reconsideration decision: namely, "[a]s soon as practicable after the end of the time within which information or comments may be given under s 78B", being 10 business days after various interested parties are given an opportunity to comment: EPBC Act, s 78C(1). This Reconsideration Decision was made nearly three years after the Reconsideration Request had been made, and about 840 days after the "end of the time within which information or comments [were] given under section 78B".

103. The Minister did not provide reasons for his decision at the time he made it.

104. On 22 May 2025, ACF wrote to the Minister "to preserve [its] rights for the duration of the judicial review period" in respect of the Reconsideration Decision, requesting advance notice of any intention to approve the NWS Project Extension in that period.[176] This was done to ensure that it would have an opportunity to consider and, potentially, seek judicial review of the Reconsideration Decision before the Approval Decision was made.[177] ACF could not realistically seek judicial review of the Reconsideration Decision before the reasons for it were provided.

105. The Minister did not respond to ACF's request.

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173 Decision Brief, Document F1 (Proposed Decision Brief).

174 See EBPC Act, s 131AA(1).

175 First Bester Affidavit, CB5 (Reconsideration Reasons); Second Bester Affidavit at [13], CB19.

176 Second Bester Affidavit at [14], CB20.

177 Ibid.

106. Immediately after the Minister announced the Proposed Approval Decision, on 28 May 2025, ACF requested reasons for the Reconsideration Decision, pursuant to s 13 of the ADJR Act.[178]

107. Pursuant to s 13(2) of the ADJR Act, the Minister's reasons were due to be furnished to ACF by 25 June 2025, at the latest. The Minister did not provide any reasons by that date.

108. ACF followed up on the reasons twice, in July and August 2025.[179]

109. The Minister ultimately provided reasons for the Reconsideration Decision on 29 September 2025, some two weeks after he made the final Approval Decision, and three months after the statutory deadline for them.[180] The reasons were relevantly identical to the reasons for rejecting the other reconsideration requests made in relation to other coal and gas projects.

110. It is convenient at this point to note that the Minister's Reconsideration Reasons differed from the reasons of the delegate in making the controlled action decision.[181] Relevantly, the Minister reasoned as follows:

a. **First**, he found that the information provided was substantial new information because:[182]

   i. much of the information contained in the reconsideration request was not before the delegate and so was new information;

   ii. the information is of substance and is not trivial or inconsequential, and demonstrates that climate change has various effects on the protected matter.

b. **Secondly**, he accepted that, to be satisfied that revocation and substitution of the original controlled action decision was warranted by the availability of substantial new information, he would need to be satisfied that the information is about the impacts the proposed action has or will have, or is likely to have, on one or more of the relevant protected matters.[183]

178 Second Bester Affidavit at [16], CB22.

179 Ibid at [17]-[19], CB23-CB25.

180 Ibid at [20], CB26-CB27; First Bester Affidavit, CB5 (Reconsideration Reasons).

181 Discussed above at paragraphs [42] to [55].

182 First Bester Affidavit, CB5 (Reconsideration Reasons) at [152].

183 First Bester Affidavit, CB5 (Reconsideration Reasons) at [156].

c. **Thirdly**, he accepted that, having regard to the information provided with the Reconsideration Request and via the ensuing consultation process, the physical effects of climate change on, for example, the world heritage values of declared World Heritage properties would be, if anything, indirect consequences of the proposed action: ie, events or circumstances removed in time and distance from the proposed action itself, namely, the processing of gas.[184]

d. **Fourthly**, he "determined that for the information in the reconsideration request to be about the impacts of the proposed action under section 527E of the EPBC Act, it must show that the proposed action is a substantial cause of the physical effects of climate change on the world heritage values of a declared World Heritage property"[185].

e. **Fifthly**, he found that proposed action would not be "a substantial cause of the stated physical effects of climate change on the world heritage values of declared World Heritage properties" because (underlining added):[186]

i. "The information does not demonstrate that the proposed action will cause any net increase in global GHG emissions and global average temperature (and so, any of the stated physical effects of climate change on the world heritage values of declared World Heritage properties)." The Minister considered that whether this would happen "is subject to multiple variables"; and

ii. "Even if that were demonstrated, any contribution from the proposed action to global GHG emissions would be very small. It is therefore not possible to say that the proposed action will be a substantial cause of the stated physical effects of climate change on the world heritage values of declared World Heritage properties".

111. It can be seen, therefore, that the last two mentioned reasons (ie, those in (e)(i) and (e)(ii)) differ from the reasons of the delegate who made the original controlled action decision. As will be recalled, the delegate accepted that the action met the test in 527E(1)(b) (there was no finding that the action's contribution was "too small", such that it failed to meet the "substantial cause" element). The delegate also found that the impacts (caused by the action's contribution to climate change) would be significant. Rather, he found that, however significant those impacts might be,

184 First Bester Affidavit, CB5 (Reconsideration Reasons) at [161].

185 First Bester Affidavit, CB5 (Reconsideration Reasons) at [162].

186 First Bester Affidavit, CB5 (Reconsideration Reasons) at [163].

the proposed action would not facilitate them "to a major extent". The Minister, by contrast, found that the indirect consequences of the proposed action would not be substantial causes of the effects of climate change at all.

112. The Minister considered that his reasoning with respect to the potential impact of the proposed action on the world heritage values of a declared World Heritage property applied *mutatis mutandis* to the potential impact of the proposed action on other matters of national environmental significance.

113. Accordingly, he concluded that the new information provided did not demonstrate that the proposed action would be a substantial cause of the physical effects of climate change on any matter of national environmental significance.

114. For this reason, he decided to "confirm the decision of 3 May 2019, that the proposed action was a controlled action and National Heritage Place (section 15B and 15C) was the controlling provision."[187]

C.2.9. Proposed Approval Decision

115. The Proposed Approval Decision appears to have been made for the purposes of s 131AA(1) of the EPBC Act,[188] which requires the Minister to inform a proponent of a decision that the Minister proposes to make, along with any proposed conditions, and to give the proponent an opportunity to comment within 10 business days. Significantly, the Minister considered that sufficient public consultation had occurred for the proposed action and that the views of the public were well understood. For this reason, he decided, pursuant to s 131A of the EPBC Act, not to release the Proposed Approval Decision to the public.

116. The Proposed Approval Decision was sent to Woodside for comment the same day, on 28 May 2025.[189]

117. Within the Proposed Approval Decision, the "proposed action" was described as:

> To continue and extend the operating life of the North West Shelf (NWS) Project through the long-term processing of third-party gas and fluids and NWS Joint Venture field resources through the NWS Project facilities. See EPBC Act referral 2018/8335

187 First Bester Affidavit, CB4 (Reconsideration Decision).

188 See Reasons at [43].

189 Affidavit of Inshani Sappideen Ward dated 30 March 2026, IW8.

118. The proposed conditions included those relating to the avoidance and mitigation of air emissions that impact rock art. The conditions provided, relevantly (bold text in original):[190]

> 3) To avoid harm to the **Dampier Archipelago (including Burrup Peninsula) National Heritage Place** due to **air emissions that impact rock art** as a result of the action the approval holder must achieve the outcome of no **air emissions that impact rock art** above the **detection limit** by 31 December 2030 until the **completion of the Action**.
>
> 4) The approval holder must, until the **completion of the Action**, undertake monitoring of **air emissions that impact rock art** capable of demonstrating achievement of no **air emissions that impact rock art** above the detection limit. The air emissions monitoring must:
>
> a) Set the **detection limit** in consultation with an **EPA accredited auditor**;
>
> b) Measure **point source emissions** and **fugitive emissions** from the Action;
>
> c) Include real-time monitoring that is aggregated to hourly time steps, for reporting at hourly, daily, monthly and annual time steps;
>
> d) Be consistent with **publicly available air quality standards**;
>
> e) Follow an air quality emissions monitoring program that has been prepared by a suitably qualified expert and reviewed and endorsed by an **EPA accredited auditor**; and
>
> f) The **monitoring data** must be retained by the approval holder and made publicly available if requested until the **completion of the Action**.

119. The phrases appearing in bold text were defined relevantly as follows:[191]

a. "air emissions that impact rock art" was defined to mean:

> industrial emissions from point, fugitive, and diffuse sources including but not limited to acid forming airborne emissions such as:
>
> − nitrogen oxides (NOx) including nitric oxide (NO) and nitrogen dioxide (NO2),
>
> − sulphur oxides (SOx) including sulphur oxide and sulphur dioxide (SO2),
>
> − carbon oxides (COx) including carbon monoxide (CO) and carbon dioxide (CO2),

[190] Ibid, p 48, IW8.

[191] Ibid, p 56 – 58, IW8.

- volatile organic compounds (VOCs) including benzene, toluene, ethylbenzene, xylenes and naphthalene BTEX-N),
- methane (CH4),
- ammonia (NH3),
- ozone (O3),
- particulate matter (including PM2.5 and PM10); and

b. "detection limit" was defined to mean:

> the lowest possible concentration at which the method can detect (but not quantify) a substance with confidence that the detection is not a false positive (or false negative) value.

C.2.10. Negotiation of conditions between Proposed Approval Decision and Approval Decision

120. In the months following the making of the Proposed Approval Decision, frequent correspondence ensued between the Department and Woodside as to the conditions the Minister had proposed to attach to the approval of the action, being those considered at the time of the Proposed Approval Decision to be "necessary or convenient" for protection of the rock art and to mitigate damage to it, pursuant to s 134(1).

121. In the ordinary course, a proponent would have 10 business days to respond to proposed conditions (s 131AA(1)(b)). What ensued in this case was over three months of negotiations on those conditions, via email, text message, and in-person conferences, during which Woodside had the opportunity to provide its own mark-ups to various iterations of the proposed conditions, to achieve a mutual objective of conditions that were "implementable". In the result (and as described further below in Part C.2.11), the conditions attached to the Approval Decision are significantly watered down from those attached to the Proposed Approval Decision.

122. The chronology of how that negotiated outcome was achieved is contained in the Affidavit of Inshani Sappideen Ward dated 30 March 2026 (**Ward Affidavit**), and in the documents contained in Part C of the Decision Brief. A thorough account of them in the context of the submission on Ground 5, is given in Part E.4.3.

C.2.11. Briefing Note preceding Approval Decision

123. On 9 September 2025, the Department provided to the Minister a briefing note in relation to the proposed action (**Briefing Note**).[192] Relevantly, it recommended that the Minister approve the proposed action and do so on conditions different from, and substantially less stringent than, those set out in the Proposed Approval Decision.

124. Much of the information included in the Briefing Note mirrors the Legal Consideration Report. Relevantly, the Briefing Note advised the Minister that:

> 54. … [B]ased on multiple lines of evidence the department considers that on the balance of probabilities it is more likely than not that industrial air emissions from the KGP (and other emitters in the surrounding area) are resulting in the accelerated and irreversible weathering of the rocks that the Murujuga art is etched into, and that accelerated weathering is likely to continue under the proposed action unless emissions are appropriately regulated.
>
> 55. The department has also considered new scientific research which shows evidence that impacts can occur at the current level of pollution … . The inconsistency in findings between these contemporary studies supports the department's assessment that a precautionary approach which offers protection beyond the conditions of MS 1233 is required.
>
> 56. The department does not agree with the proponent that emissions are adequately managed by MS 1233 as is discussed at length in the legal considerations ….
>
> 57. The department therefore continues to recommend a precautionary conditioning approach to emissions.

125. As to the "precautionary conditioning approach", the Department advised (underlining and emphasis added):

> At a high level, consistent with a precautionary approach, the department considers that:
>
> i. gases arising from the action are likely to impact rock art,
>
> ii. while the precise relationship between emissions and damage is not well understood, <u>less emissions are likely to have a lower impact on the rock art</u>, and

[192] Signed decision brief MS25-000744 titled 'Final Decision Package - North West Shelf Project Extension, Carnarvon Basin, WA (EPBC 2018/8335).

iii. 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 NHP to occur**.

126. Taking that approach, the Department recommended four conditions (numbered 5, 6, 7, and 8), each dealing with a particular sub-set of industrial emissions.

127. Condition 5 was framed as follows (emphasis in original):

> To avoid and mitigate harm to the **Dampier Archipelago (including Burrup Peninsula) National Heritage Place** arising from **air emissions**, the approval holder must:
>
> a) ensure that **NOx** emissions as a result of the Action do not exceed the **relevant NOx concentration limits** under **normal operating conditions**; and
>
> b) ensure that total annual **NOx** emissions as a result of the Action do not exceed the **relevant annual NOx limit** in any 12-month period.

128. The phrases "relevant NOx concentration limits" and "relevant annual NOx limit" were defined, respectively, as follows:

> **Relevant NOx concentration limits** within the period specified in Column A for the following table, is the value given in Column B and at the emission points given in Column C. The mass of NOx emitted refers to the mass of nitric oxide (NO) and nitrogen dioxide (NO_2) expressed as the equivalent mass of nitrogen dioxide (NO_2) measured dry, reference to standard temperature and pressure (STP), and at a 15% O2 reference level.

Relevant NOx Concentration Limit		
Column A	**Column B**	**Column C**
Period	**Relevant concentration**	**Emission points**
1 January 2031 to 31 December 2040	62 **mg/m³** [30 **ppmv**] at a 15% O_2 reference level	In each stack for LNG processing trains, and turbines for power generation.
1 January 2041 to **completion of the Action**	62 **mg/m³** [30 **ppmv**] at a 15% O_2 reference level	In each stack for LNG processing trains, domestic gas processing equipment, and turbines for power generation.

Relevant annual NOx limit, for a 12-month period ending within the period specified in Column A of the following table, is the value given in Column B. The mass of NOx emitted refers to the mass of nitric oxide (NO) and nitrogen dioxide (NO_2) expressed as the equivalent mass of nitrogen dioxide (NO_2).

Relevant annual NOx Limit	
Column A:	**Column B:**
Period	**Relevant annual NOx limit (tonnes)**
1 January 2031 - 31 December 2035	3065
1 January 2036 – 31 December 2040	2682
1 January 2041 – 31 December 2045	2299
1 January 2046 – 31 December 2050	1916
1 January 2051 – 31 December 2055	1533
1 January 2056 – 31 December 2060	1150
From 1 January 2061	767

129. Condition 6 was framed as follows:

> To avoid and mitigate harm to the **Dampier Archipelago (including Burrup Peninsula) National Heritage Place** arising from **air emissions**, the approval holder must from the commencement of the action and thereafter until the **completion of the Action** ensure that **SO_2** emissions as a result of the Action do not exceed 100 tonnes in any 12-month period.

130. The Department advised that this would "ensure that the current levels of SO_2 [would] not be exceeded" during the life of the proposed action.

131. Condition 7 was framed as follows:

> To avoid and mitigate harm to the **Dampier Archipelago (including Burrup Peninsula) National Heritage Place** arising from **air emissions**, the approval holder must ensure that total annual **VOCs** emissions as a result of the Action do not exceed the **relevant annual VOCs limit** in any 12-month period.

132. The phrase "relevant annual VOCs limit" was defined as follows:

Relevant annual VOCs limit, for a 12-month period ending within the period specified in Column A of the following table, is the value given in Column B.

Relevant annual VOCs Limit	
Column A:	**Column B:**
Period	**Relevant annual VOCs limit (tonnes)**
1 January 2031 - 31 December 2035	10557
1 January 2036 – 31 December 2040	9677
1 January 2041 – 31 December 2045	8797
1 January 2046 – 31 December 2050	7917
1 January 2051 – 31 December 2055	7037
1 January 2056 – 31 December 2060	6157
From 1 January 2061	5277

133. The Department advised that condition 7 would require:

> the proponent to achieve a reduction of 40% of the current total VOCs output (17595 tpa) by 2030 (as per MS 1233) and also require[] the proponent to continue to reduce the total annual VOCs output in any 12-month period by a further 5% (from the baseline of 17,595 tpa) every 5 years from the end of 2030 until January 2061. This would achieve a 70% reduction in VOCs from 2061.

134. And condition 8 was framed as follows:

> To avoid and mitigate harm to the **Dampier Archipelago (including Burrup Peninsula) National Heritage Place** arising from **air emissions** the approval holder must, until the completion of the Action, ensure that the average annual **CO**, **CO_2** **CH_4** and **PM** emissions produced as a result of the Action are no greater than the **CO**, **CO_2** **CH_4** and **PM** emissions produced in the 12 months preceding the date of this approval decision.

135. It may be seen, therefore, that the conditions required that:

a. Annual nitrogen oxide emissions be reduced to 60% by 2030, and then progressively decreased further until 2061, by which time NOx emissions would be reduced 90% from the initial baseline.

b. Annual sulphur dioxide emissions be limited to 100 tonnes per annum.

c. Annual VOCs emissions be limited to 10557 tonnes per annum by 2030, and then reduced progressively further until 2061.

d. Average annual carbon monoxide, carbon dioxide, methane and particulate matter emissions be kept no higher than current levels for the duration of the proposed action.

136. Evidently, these conditions were far looser than the original proposed condition forbidding these chemicals from being emitted "above the detectable limit" from 2030.

137. In addition to these conditions, condition 9 required the approval holder to:

> a) comply with Condition 2-4 and Condition 2-5 of the Western Australian Approval;
>
> b) undertake the analyses of international and Australian industry best practice emissions reductions as required by Condition 3-5(6-7) of the Western Australian Approval; and
>
> c) implement international and Australian industry best practice emissions reduction technology to minimise air emissions.

C.2.12. Approval Decision

138. On 12 September 2025, the Minister decided to approve the proposed action on the conditions set out above. In terms, the "action" the Minister decided to approve was:

> To continue and extend the operating life of the North West Shelf (NWS) Project through the long-term processing of third-party gas and fluids and NWS Joint Venture field resources through the NWS Project facilities. See EPBC Act referral 2018/8335

139. The Approval Decision is stated to have effect until 31 December 2070.

140. All of the foregoing submissions lend meaning to the description of what was actually approved by the Approval Decision, namely: what it means to "continue and extend", what is the NWS Project, the NWSJV, the NWSJV field resources, the NWS Project facilities, and what exactly was contained in the initial EPBC Act referral 2018/8335.

141. The action is in part an "extension" of the existing NWS Project, in the temporal sense, but also an expansion of its capabilities to facilitate the processing of wholly new, as-yet unknown resources.

142. Neither the composition nor the quantity of the "third-party gas and fluids" to be processed "long-term" is defined. Woodside was "unable to provide to the department information on the composition of emission types that are expected for any new third-party resource".[193] Accordingly, the Department could not be sure what "the volume and chemical properties of the

193 Reasons at [212].

emissions from the processing of gas from the proposed Browse to NWS Expansion Project at the Karratha Gas Plant" would be.[194]

143. It follows that the Approval Decision purports to authorise Woodside to process an undefined quantity and composition of "third-party gas and fluids" until the end of 2070. That period of time was selected, in rather circular fashion, "to allow the proponent sufficient time to undertake the proposed action".[195] As will be explained further, when this "action" is considered in isolation (which the Minister decided it should be) it is, in reality, little more than a vessel the contents of which are unknown. It is only the conditions that give it some definition.

C.2.13. Reasons for Approval Decision

144. The Minister published his reasons for the Approval Decision on the same day as the decision was made. As articulated in the Reasons, the Minister reasoned as follows.

a. **First**, the Minister set out the factual background to the Referral. In this regard, he articulated the "action" that Woodside proposed to undertake. Specifically, he noted that Woodside (italics in original):

> 2) … proposes to continue and extend (until November 2068) the operating life of the North West Shelf (NWS) Project through the long-term processing of third-party gas and fluids and North West Shelf Joint Venture (NWSJV) field resources through the NWS Project facilities at the Karratha Gas Plant (KGP), located approximately 18 km northwest of Karratha, WA.
>
> 3) The proposed action also seeks to transition the existing NWS Project facilities to facilities that are commercially capable of accepting gas for processing from other resource owners. The NWS Project facilities currently only process field resources from the NWSJV. The NWS Project is owned by the NWSJV participants.
>
> …
>
> 14) The proposed action includes altering the KGP so that it may be operated and maintained to take *and* process gas from both the NWSJV and other third-party sources (including the Browse to North West Shelf Development).

145. **Secondly**, the Minister set out the procedural background to the Referral. Here, he noted that the proposed action was a controlled action and that the controlling provisions for it were ss 15B

194 Decision Brief, Document F83 (Attachment J15: ECAS line area advice received), p 7.

195 Reasons at [312].

and 15C of the EPBC Act. He noted further that the proposed action had undergone WA EPA Assessment, which resulted in proposed conditions embodied in MS1233.[196] Finally, he noted that the action had been the subject of a reconsideration request under s 78(1) of the EPBC Act, which request had been refused for the reasons set out at paragraph 110.e) above.

146. **Thirdly**, he set out his findings on material questions of fact. Relevantly, he found:

a. "That the National Heritage values of the Dampier Archipelago (including the Burrup Peninsula) have the potential to be impacted by the proposed action"[197];

b. "That the key issue for consideration in this assessment is the impact of air emissions on the rock art"[198];

c. "That, for the same reasons identified above in relation to the reconsideration request[199] from [Environmental Justice Australia], I do not consider that the physical impacts of climate change are impacts of the proposed action within the meaning of 'impact' in section 527E of the EPBC Act."[200]

d. "there are multiple lines of scientific and other evidence suggesting that nitrogen oxides (NOx), sulfur oxides (SOx), and other acidic airborne emissions are having a significant adverse impact on the rocks of Murujuga."[201]

e. "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."[202]

f. "the proponent advised that the proposed action could, in part, be characterised by the changes in emissions due to third-party sources and that the new emissions profile had not undergone environmental assessment. I note that the ERD anticipates changes to these emissions and that the proponent considers that these 'may be limited or controlled via engineering and operational controls'. I agree with the department that the ERD does not provide information to verify the proponent's claims and that the degree of emissions

196 First Bester Affidavit, CB2; Decision Brief, Document F13 (Attachment D4: Ministerial Statement 1233).

197 Reasons at [55].

198 Reasons at [75].

199 The Minister here refuses to consider the project's contribution to climate change "for the same reasons" as in the reconsideration request, suggesting that the Reconsideration Reasons already existed. They were not published until 29 September 2025.

200 Reasons at [80].

201 Reasons at [102].

202 Reasons at [104]

similarity or difference is unknown for third party gas providers. I also consider that the ERD provides limited information on the total emissions quantity and quality for the proposed action, does not provide a project life timeline of anticipated changes in feed sources, nor how chemical composition of feed sources will change over time."[203]

g. "there is a real risk that a similar or equivalent impact to that detected by the MRAMP could occur over the life of the proposed action, in circumstances where the action is a likely future majority contributor of emissions on the Burrup Peninsula."[204]

h. "despite [Woodside's] statements to the contrary, [Woodside's] feasibility assessment concerning mitigations [of air emissions] may not be properly informed and I agree with my department that numerous options to prevent impacts to the values of the NHP may exist."[205]

147. Amidst the Minister's findings on material questions of fact, he considered the contribution of the proposed action to the concentration of harmful emissions on the Burrup Peninsula in the context of other projects in that location. In particular, he noted that the WA EPA assessed the "potential cumulative impacts of the proposed action"—ie, the impact of the proposed action, taken in combination with the impact of other actions—and proposed conditions apt to mitigate these cumulative impacts. The Minister then stated:

> 115) I note the department's advice to me that the assessment of the proposed action and any conditions of approval could only consider the impacts of the Karratha Gas Plant and that a cumulative assessment and conditioning approach, taking into account and seeking to reduce the emissions from other projects, is not available to me and is not appropriate under the EPBC Act.

148. On the basis of that observation, it may be inferred that the Minister limited his assessment of the adverse impacts of the proposed action to those likely to occur as a consequence of the proposed action viewed in isolation, rather than in the context of other existing projects or those forming part of Woodside's Burrup Hub Vision. That is to say the Minister proceeded to assess the discrete impacts of the proposed action, rather than the cumulative impacts of the proposed action taken together with other existing and proposed actions.

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203 Reasons at [106].

204 Reasons at [117].

205 Reasons at [129].

149. **Fourthly**, on the basis of the factual findings the Minister made, he reached the following conclusions:

> 131) I consider that, when assessed against the heritage criteria for which it was listed, there is a real chance or possibility that the proposed action will cause the loss of, or degrade or damage, or notably alter, modify, obscure or diminish, the Dampier Archipelago (including the Burrup Peninsula) National Heritage Place's National Heritage values.
>
> 132) I accept the advice of my department that, based on the available evidence and noting the gaps in information that prevent a more complete understanding of the impact, the following conclusions should be made:
>
> a) 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;
>
> b) that over the lifetime of the project that this impact could cause degradation, damage, notable alteration, modification, obscuring, or diminishing of the values of the National Heritage Place because the petroglyphs of Murujuga could be degraded to a level that would significantly impact the values of the NHP across Murujuga; and
>
> c) that degradation of the petroglyphs would impact all five values (A, B, C, D and F). Accelerated weathering would affect the different degrees of petroglyph weathering present. The different degrees of weathering are a key value as they provide an outstanding visual record of the course of Australia's cultural history through responses to the rise of sea levels. Accelerated weathering would also reduce the visual quality of all engravings, and in particular, the finely executed engravings of animals that are currently identifiable to species levels.

150. **Fifthly**, in light of these projected impacts, the Minister turned to what conditions ought to be imposed. In this regard, he noted the conditions embodied in MS1233. He also noted the conditions recommended by the Department in the Briefing Note, summarised above. Finally, he had regard to Woodside's comments on the conditions proposed in the Proposed Approval Decision. As noted already, he decided to impose the conditions recommended by the Department. His reasons for that decision were, relevantly, as follows:

> 173) I note that the proposed conditions were developed in the context of uncertainty regarding the details of and appropriateness of the proponent's emissions reduction approach and uncertainty in the likelihood and scale of impacts of emissions on rock art as a result of the proposed action.
>
> 174) In the course of consultation, the department wrote to the proponent on several occasions to request information demonstrating 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 the proponent. I note that the proponent responded at different times during the consultation process and provided information regarding emissions they consider relevant to the proposed action and how they intend to achieve the reductions required by MS 1233.

175) I agree with the department's subsequent view that achieving Proposed Condition 3 was not feasible, as set out in the proponent's response. The department recommended a conditioning strategy which takes the proponent's limitations and the strength of evidence per type of emission into consideration.

176) As such, I will impose conditions 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.

151. **Sixthly**, the Minister set out the conditions he proposed to impose, and the reasons for the parameters of each of conditions 5, 6, 7, and 8.

152. **Seventhly**, he reached this conclusion:

234) I agree that the WA conditions are insufficient to manage the likely impacts to the NHP resulting from the proposed action. I therefore agree that the further conditions proposed to be attached to the approval are necessary and convenient to protect the National Heritage values of the National Heritage place.

235) I also agree with the department's conclusion that the taking of the action, despite proposed avoidance and mitigation measures, in conjunction with the WA conditions and the conditions I intend to impose, is likely to result in residual impacts to the values of the Dampier Archipelago (including the Burrup Peninsula) National Heritage place.

236) My final conclusion as to the acceptability of this residual impact, and therefore whether or not I should approve the action, is set out below.

153. **Eighthly**, he turned to the "social and economic matters" relevant to the proposed action.

a. As to social matters, he had regard to the WA EPA assessment report's conclusion that the impacts of the proposed action on social surroundings would be acceptable if the

proposed action were undertaken according to the conditions embodied in MS1233.[206] He noted community concerns raised during the EPBC Act assessment process, but made no findings as to these concerns.[207]

b. As to economic matters, the Minister noted they were "outside the scope of assessment" carried out by the WA EPA;[208] accordingly, they were assessed by the Minister alone. In light of Ground 1 of this application, it is useful to set out the Minister's assessment of the "economic matters" in full. His assessment was as follows:

> 249) I note the proponent provided economic information under two scenarios: the current operation of NWS Project processing NWS resources only; and the economic impacts from developing the Browse fields (EPBC 2018-8319 under assessment) and processing via North West Shelf Project infrastructure and the North West Shelf Project Extension.
>
> 250) I consider that the proposed action would result in significant economic benefits to the regional, State and National communities, including:
>
> a) The NWS Project currently employs approximately 900 people and 1,300 contactor staff to support operational activities, and up to an additional 1400 contractors per annum during maintenance campaigns, and the proponent advises that this number of operating employees would continue under the proposed action. In 2023, more than 280 Karratha Gas Plant employees and their families resided in the City of Karratha, including 86 apprentices and trainees and 37 Indigenous employees. Approximately 80% of the Karratha Gas Plant workforce was residential in 2023.
>
> b) In 2023, the NWS Project contributed A$1,788 million to the Australian economy, including A$989 million of expenditure with Western Australian-based businesses. In the 2024-25 financial year, the NWS Project is expected to deliver A$614 million in royalties to Western Australia. Over the past four decades, the NWS Project has paid more than A$40 billion in federal royalties and excise.
>
> c) Combined, the Browse to North West Shelf Development and NWS Project Extension proposals is estimated to:
>
> i) contribute $6.6 billion annually to the Gross Domestic Profit of Australia between the years 2019-2063 ($289 billion in total), of which 99%

206 Reasons at [238].

207 Reasons at [244]-[247].

208 Reasons at [248].

will be in Western Australia (using 2018 figures). This annual contribution is equivalent to 0.25 percent of Australia's 2023-2024 financial year GDP $2.604.2 billion (Source ABS);

ii) have a capital expenditure of $36 billion in Western Australia between the years 20192063, including $8.6 billion expenditure on the NWS Project Extension, and have an annual average operating expenditure in WA of $493 million;

iii) generate approximately 1800 jobs during construction, and an average of 720 jobs, including up to 320 jobs in the Karratha region, during operation; and

iv) indirectly, create an average of more than 2700 jobs per annum between 2019 and 2063, with almost 1400 jobs created in Karratha and Broome (using 2018 figures), and $50 million on localised spending in Karratha.

251) I note that the NWS Project supplied 14% of Western Australia's total domestic gas supply, and that the proponent provided estimates of future supply. On 30 August 2024, the proponent confirmed that, as required by the WA Domestic Gas Policy, 15% of the total production will be made available to WA consumers over the life of the proposed action, and I accept this figure as the likely future domestic supply outcome. I note that, as part of Woodside's potential Browse to NWS development, the proponent states that domestic gas volumes of more than 200TJ/d could be processed through KGP infrastructure, demonstrating the long-term value of this facility to the WA energy market.

252) The proponent did not state what proportion of exports would be supplied to other countries as these details are yet to be finalised. I accept the proponent's statement that, with NWS reserves in decline, and without long-term third-party gas supply being secured, it may not be economically viable to continue operating all domestic gas and LNG processing infrastructure at KGP.

154. **Ninthly**, the Minister took into account those factors that s 136 of the EPBC Act expressly required him to take into account, including:

a. That decision-making processes should effectively integrate both long-term and short-term economic, environmental, social, and equitable considerations;

b. The precautionary principle, as to which the Minister reasoned as follows:

261) In approving the proposed action, I have concluded that there is insufficient scientific information to know of, and understand, the likelihood and scale of the impacts of the proposed action on the

National Heritage place and that there is a threat of serious or irreversible environmental damage from air emissions.

262) Consistent with the precautionary principle, I will not use the lack of scientific certainty as a reason to postpone measures to prevent environmental degradation. Consistent with this approach, my department has recommended, and I have accepted, conditions of approval as measures to prevent such environmental degradation.

c. Inter-generational equity;

d. The promotion of improved valuation, pricing and incentive mechanisms; and

e. WA EPA Assessment report;

f. other specified information pertaining to relevant impacts of the proposed action;

g. Woodside's environmental history; and

h. Matters relevant to National Heritage places, including National Heritage management principles and management plans, agreements for National Heritage places.

155. **Tenthly**, he summarised his overall conclusion as follows (emphasis added):

307) In deciding whether or not to approve the taking of the proposed action, I have taken into account all of the matters discussed above.

308) In light of my findings above, I have decided to approve the taking of the action subject to conditions.

309) 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.

310) 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 any likely short-term impact on the NHP would be small and therefore outweighed by the social or economic factors.

311) I consider that the proposed conditions of approval adequately manage the risk of significant impact to the National Values of the Dampier Archipelago (including Burrup Peninsula) National Heritage Place.

156. Paragraph 310 of the Minister's reasons is key. It reflects:

a. An acceptance that the conditions imposed by the Minister would elevate the risk of the proposed action having an adverse impact on the Dampier Archipelago NHP;

b. A satisfaction that any such impact would be "small" owing to the conditions imposed;

c. Accordingly, a satisfaction that such an impact would be "outweighed" by the social or economic factors addressed in the reasons; and

d. Accordingly, an ultimate satisfaction that such an impact would be "acceptable" in the circumstances.

157. It is convenient now to turn to the statutory framework.

D. STATUTORY FRAMEWORK

158. The essential structure of the EBPC Act has been summarised in a number of Full Court decisions.[209] So far as relevant to this proceeding, the EBPC Act provided[210] as follows.

D.1.1. Objects

159. Section 3(1) provided that:

> **3 Objects of Act**
>
> (1) The objects of this Act are:
>
> (a) to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; and
>
> (b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and
>
> (c) to promote the conservation of biodiversity; and
>
> (ca) to provide for the protection and conservation of heritage; and

209 *Tarkine National Coalition Inc v Minister for the Environment* [2015] FCAFC 89; 233 FCR 254 at [3]-[24] (Jessup J); *Australian Conservation Foundation Inc v Minister for the Environment and Energy* [2017] FCAFC 134; 251 FCR 359 at [2]-[9] (Dowsett, McKerracher and Robertson JJ); *Triabunna Investments Pty Ltd v Minister for Environment and Energy* [2019] FCAFC 60; 270 FCR 267 at [29]-[42] (Flick J); *Friends of the Gelorup Corridor Inc v Minister for the Environment and Water* [2023] FCAFC 139; 299 FCR 236 at [10]-[24] (Jackson and Kennett JJ); *Environment Council of Central Queensland Inc v Minister for the Environment and Water (No 2)* [2023] FCA 1208; 413 ALR 318 at [37]ff.

210 As noted at the outset, the version of the Act that applies to this proceeding is compilation number 64, as in force on 12 September 2025, being the date of the Approval Decision.

(d) to promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous peoples; and

(e) to assist in the co-operative implementation of Australia's international environmental responsibilities; and

(f) to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; and

(g) to promote the use of indigenous peoples' knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge.

D.1.2. "Actions" and "matters of national environmental significance"

160. Chapter 2 set out provisions with respect to the protection of the environment. Part 3 set out requirements for environmental approvals. Division 1 set out requirements relating to matters of national environmental significance. It contained several Subdivisions each dealing with a specific matter of national environmental significance. For example, Subdiv A dealt with World Heritage and Subdiv AA dealt with National Heritage.

161. Within Subdiv AA, s 15B provided, relevantly, that a constitutional corporation[211] "must not take an action that has, will have or is likely to have a significant impact on the National Heritage Values of a National Heritage Place". "Action" was broadly defined in s 523 to mean:

523 ***Actions***

(1) Subject to this Subdvision, ***action*** includes:

(a) a project; and

(b) a development; and

(c) an undertaking; and

(d) an activity or series of activities; and

(e) an alteration of any of the things mentioned in (a), (b), (c), or (d).

162. Section 15C made it an offence for a constitutional corporation to take an action a breach of s 15B, but sub-s 15(16) provided that the offence-making provision did not apply if "an approval for the taking of the action by the constitutional corporation … is in operation under Part 9 for the purposes of this section).

211 There is no dispute that Woodside is a constitutional corporation.

D.1.3. Assessment

163. Chapter 4 dealt with environmental assessments and approvals. Part 7 was headed "Deciding whether approval of actions is needed". Division 1 dealt with the referral of proposals to take action. Section 67 provided:

> **What is a *controlled action*?**
>
> An action that a person proposes to take is a controlled action if the taking of the action by the person without approval under Part 9 for the purposes of a provision of Part 3 would be (or would, but for section 25AA or 28AB, be) prohibited by the provision.
>
> The provision is a controlling provision for the action.

164. Section 67 prohibited a person from taking a controlled action without approval.

165. In light of that prohibition, s 68 allowed people to refer actions to the Minister for decisions as to whether they would be allowed. Specifically, s 68(2) provided:

> A person proposing to take an action that the person thinks is not a controlled action may refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.

166. Section 68 was the provision pursuant to which Woodside referred to the Minister the proposed action in this case.

167. Section 74A provided:

> (1) If the Minister receives a referral in relation to a proposal to take an action by a person, and the Minister is satisfied the action that is the subject of the referral is a component of a larger action the person proposes to take, the Minister may decide to not accept the referral.

168. Section 74A was the provision pursuant to which the delegate exercised the discretion to accept the 'split referral' submitted by Woodside.

169. Division 2 of Pt 7 regulated Ministerial decisions about whether referred actions needed approval. Section 75 provided (notes omitted):

> **75 Does the proposed action need approval?**
>
> *Is the action a controlled action?*
>
> (1) The Minister must decide:

(a) whether the action that is the subject of a proposal referred to the Minister is a controlled action; and

(b) which provisions of Part 3 (if any) are controlling provisions for the action.

(1AA) To avoid doubt, the Minister is not permitted to make a decision under subsection (1) in relation to an action that was the subject of a referral that was not accepted under subsection 74A(1).

Minister must consider public comment

(1A) In making a decision under subsection (1) about the action, the Minister must consider the comments (if any) received:

(a) in response to the invitation under subsection 74(3) for anyone to give the Minister comments on whether the action is a controlled action; and

(b) within the period specified in the invitation.

Considerations in decision

(2) If, when the Minister makes a decision under subsection (1), it is relevant for the Minister to consider the impacts of an action:

(a) the Minister must consider all adverse impacts (if any) the action:

(i) has or will have; or

(ii) is likely to have;

on the matter protected by each provision of Part 3; and

(b) must not consider any beneficial impacts the action:

(i) has or will have; or

(ii) is likely to have;

on the matter protected by each provision of Part 3.

170. Section 76 empowered the Minister to request more information before making a decision, and s 77 required the Minister, within 10 business days after deciding whether an action is a controlled action or not, to give notice of the decision to "the person proposing to take the action" and, in certain cases (as here), certain State and Federal Ministers.

171. Section 78 empowered the Minister to reconsider "controlled action" decisions made pursuant to s 75. Relevantly, it provided:

78 Reconsideration of decision

Limited power to vary or substitute decisions

(1) The Minister may revoke a decision (the ***first decision***) made under subsection 75(1) about an action and substitute a new decision under that subsection for the first decision, but only if:

(a) the Minister is satisfied that the revocation and substitution is warranted by the availability of substantial new information about the impacts that the action:

(i) has or will have; or

(ii) is likely to have;

on a matter protected by a provision of Part 3.

172. Section 78A set out what a reconsideration request made by a person (other than a Minister of a State or self-governing Territory) must include, and s 78B obliged the Minister, upon receiving such a request, to inform interested persons, including, relevantly the proponent of the referred action (s 78B(2)) and members of the public (s 78B(6)) and invite their comments within 10 business days. Section 78C required the Minister to reconsider the decision and give notice about the outcome of the reconsideration. In terms, s 78C provided:

78C Minister must reconsider decision and give notice of outcome

Reconsideration of decision

(1) As soon as practicable after the end of the time within which information or comments may be given under section 78B in relation to a request under section 78A to reconsider a decision about an action, the Minister must:

(a) reconsider the decision; and

(b) either:

(i) confirm the decision; or

(ii) revoke the decision in accordance with subsection 78(1), and substitute a new decision for it.

(1A) To avoid doubt, the Minister must not revoke the decision if subsection 78(3) or (3A) applies in relation to it.

Notice of outcome of reconsideration

(2) The Minister must give written notice of the outcome of the reconsideration to:

(a) the person who requested the reconsideration; and

(b) the person proposing to take the action (if that person is not the person referred to in paragraph (a)); and

(c) the designated proponent of the action (if the designated proponent is not the person referred to in paragraph (a) or (b)); and

(d) if the reconsideration relates to an action referred to in subsection 78B(5)—the appropriate Minister of the State or Territory.

(3) After giving notice as described in subsection (2), the Minister must publish notice of the outcome of the reconsideration. The regulations may specify how the publication is to be made. Subject to any such regulations, the publication must be made in a way the Minister considers appropriate.

Reasons for outcome of reconsideration

(4) The Minister must give reasons for the outcome of the reconsideration to a person who:

(a) has been given notice of the outcome of the reconsideration under paragraph (2)(a), (b) or (c); and

(b) within 28 days after being given the notice, has requested the Minister to provide reasons.

The Minister must do so as soon as practicable, and in any case within 28 days after receiving the request.

173. Part 8 of Ch 4 dealt with assessing the impacts of controlled actions. Section 82 provided, relevantly:

82 What are the *relevant impacts* of an action?

If the Minister has decided the action is a controlled action

(1) If the Minister has decided under Division 2 of Part 7 that an action is a controlled action, the relevant impacts of the action are the impacts that the action:

(a) has or will have; or

(b) is likely to have;

on the matter protected by each provision of Part 3 that the Minister has decided under that Division is a controlling provision for the action.

174. Further, s 527E defined "impact" as follows:

527E Meaning of *impact*

(1) For the purposes of this Act, an event or circumstance is an ***impact*** of an action taken by a person if:

(a) the event or circumstance is a direct consequence of the action; or

(b) for an event or circumstance that is an indirect consequence of the action—subject to subsection (2), the action is a substantial cause of that event or circumstance.

(2) For the purposes of paragraph (1)(b), if:

(a) a person (the ***primary person***) takes an action (the ***primary action***); and

(b) as a consequence of the primary action, another person (the ***secondary person***) takes another action (the ***secondary action***); and

(c) the secondary action is not taken at the direction or request of the primary person; and

(d) an event or circumstance is a consequence of the secondary action;

then that event or circumstance is an ***impact*** of the primary action only if:

(e) the primary action facilitates, to a major extent, the secondary action; and

(f) the secondary action is:

(i) within the contemplation of the primary person; or

(ii) a reasonably foreseeable consequence of the primary action; and

(g) the event or circumstance is:

(i) within the contemplation of the primary person; or

(ii) a reasonably foreseeable consequence of the secondary action.

175. Part 8 empowered and required the Minister to choose an assessment approach for the controlled action and, relevantly, empowered the Minister to decide that the action should be assessed by an "accredited assessment process", which included the assessment process carried out by the WA EPA here.

D.1.4. Approval

176. Part 9 of Ch 4 dealt with approval of actions. Section 130 prescribed what the Minister must decide, and the time within which such a decision must be made. Relevantly, s 130 provided:

> (1) 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.
>
> (1A) The Minister must make the decision within the relevant period specified in subsection (1B) that relates to the controlled action, or such longer period as the Minister specifies in writing.

177. Section 131 required the Minister, before deciding whether or not to approve a controlled action, to invite comments from relevant Ministers, and section 131AA required the Minister, also before deciding whether or not to approve a controlled action, to invite comments from the proponent of the proposed action.

178. By contrast, s 131A did not require, but instead allowed the Minister, before deciding whether or not to approve a controlled action, to invite comments from the public.

179. Section 133 dealt with the grant of approvals. Relevantly, it provided:

> **133 Grant of approval**
>
> *Approval*
>
> (1) After receiving the assessment documentation relating to a controlled action, or the report of a commission that has conducted an inquiry relating to a controlled action, the Minister may approve for the purposes of a controlling provision the taking of the action by a person.
>
> (1A) If the referral of the proposal to take the action included alternative proposals relating to any of the matters referred to in subsection 72(3), the Minister may approve, for the purposes of subsection (1), one or more of the alternative proposals in relation to the taking of the action.
>
> *Content of approval*
>
> (2) An approval must:
>
> (a) be in writing; and
>
> (b) specify the action (including any alternative proposals approved under subsection (1A)) that may be taken; and
>
> (c) name the person to whom the approval is granted; and

(d) specify each provision of Part 3 for which the approval has effect; and

(e) specify the period for which the approval has effect; and

(f) set out the conditions attached to the approval. …

180. Section 134 dealt with conditions of approvals, providing, relevantly:

134 Conditions of approval

…

Generally

(1) The Minister may attach a condition to the approval of the action 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).

Conditions to protect matters from the approved action

(2) The Minister may attach a condition to the approval of the action if he or she is satisfied that the condition is necessary or convenient for:

(a) protecting from the action any matter protected by a provision of Part 3 for which the approval has effect; or

(b) repairing or mitigating damage that may or will be, or has been, caused by the action to any matter protected by a provision of Part 3 for which the approval has effect. This subsection does not limit subsection (1).

…

Considerations in deciding on condition

(4) In deciding whether to attach a condition to an approval, the Minister must consider:

(a) any relevant conditions that have been imposed, or the Minister considers are likely to be imposed, under a law of a State or self-governing Territory or another law of the Commonwealth on the taking of the action; and (aa) information provided by the person

proposing to take the action or by the designated proponent of the action; and

(b) 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.

181. Finally, s 136 set out what considerations the Minister may, must, and must not take into account when making approval decisions and deciding what conditions should attach to them. Relevantly, it provided:

> **136 General considerations**
>
> *Mandatory considerations*
>
> (1) In deciding whether or not to approve the taking of an action, and what conditions to attach to an approval, the Minister must consider the following, so far as they are not inconsistent with any other requirement of this Subdivision:
>
> (a) matters relevant to any matter protected by a provision of Part 3 that the Minister has decided is a controlling provision for the action;
>
> (b) economic and social matters.
>
> *Factors to be taken into account*
>
> (2) In considering those matters, the Minister must take into account:
>
> (a) the principles of ecologically sustainable development; and
>
> (b) the assessment report (if any) relating to the action; and
>
> …
>
> (e) any other information the Minister has on the relevant impacts of the action (including information in a report on the impacts of actions taken under a policy, plan or program under which the action is to be taken that was given to the Minister under an agreement under Part 10 (about strategic assessments)); and
>
> (f) any relevant comments given to the Minister in accordance with an invitation under section 131 or 131A; …
>
> …
>
> *Minister not to consider other matters*
>
> (5) In deciding whether or not to approve the taking of an action, and what conditions to attach to an approval, the Minister must not

consider any matters that the Minister is not required or permitted by this Division to consider.

E. SUBMISSIONS

E.1 Ground 1 – Impermissibly taking into account the economic benefits of the Browse to NWS Project

182. It will be recalled that Woodside's proposed Browse to NWS Project is the long-term production of gas from the Browse Basin and transportation of the gas to the KGP; and that its NWS Project Extension action includes the expected processing of gas at the KGP from the Browse Basin.[212] It will also be recalled that the Minister's delegate accepted those two actions as a "split referral", even though they were components of the one larger action.[213] Part of the reason for proceeding on that basis was "the specific commercial requirements" of each action.[214] The consequence of that decision was that the two actions proceeded to undergo separate referral, assessment and approval processes. The Browse to NWS Project is (still) not approved.

183. In deciding to approve the NWS Project Extension, the Minister ultimately concluded that "any likely short-term impact on the NHP would be small and therefore outweighed by the social or economic factors".[215] The Minister found that the economic factors included the considerable *combined* economic effect of the NWS Project Extension and the Browse to NWS Project: in the order of a $6.6 billion annual contribution to the Australian GDP until 2063, capital expenditure in Western Australia of $36 billion, an average of 2,700 jobs per annum and $50 million on localised spending in Karratha.[216] The materials before the Minister included an assessment (procured by Woodside) that the two projects combined would result in an estimated almost $63 billion "of total taxation and royalty payments … to be directly paid as a result of the proposed Project".[217] The Minister noted that the Browse to NWS Project "[demonstrates] the long-term value of this facility [i.e. the NWS Project] to the WA energy market".[218]

184. As set out in full above, s 136(1) contains two mandatory considerations for the Minister in deciding whether or not to approve an action: matters relevant to any matter protected by a

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212 See Part C.2.2.

213 See Part C.2.3.

214 Decision Brief, Document F15 (Attachment E1: Referral submission – includes links to attachments), p 7.

215 Reasons at [310].

216 Reasons at [250(c)]-[251].

217 Decision Brief, Document F112 (Attachment O1: Browse and North West Shelf Project Extension economic impact assessment), p 2.

218 Reasons at [251].

provision of Part 3 that the Minister has decided is a controlling provision; and "economic and social matters". As a majority of the Full Court has observed, s 136(1) of the EPBC Act is inherently a weighing exercise[219] of "two broadly expressed and incommensurable sets of factors: the impacts of the proposed action on MNES; and 'economic and social matters'"[220]. The decision "is in that sense a political one".[221] But it is not unbounded. The Minister was not required or permitted to consider the economic benefits of the separate, unapproved Browse to NWS Project action and, by doing so, he erred: s 136(5).

185. The mandatory consideration "economic and social matters", albeit broadly phrased, should not be read to permit, far less to require, the Minister to take into account the economic benefits of an action that is yet to be approved. There are three primary reasons for that.

186. **First**, the context of the "action"-driven, sequential scheme of the EPBC Act approval and assessment process supports a construction of "economic and social matters" as being facts, events, or circumstances pertaining to the action the subject of the approval decision, and not pertaining to a separate action. As the majority in *Gelorup* described the task: "What is required, in our view, is that the assessment of the likely impacts of the proposed action on MNES, and the weighing of those impacts against the social and economic benefits of the proposed action, be done consistently with the precautionary principle."[222]

187. A proponent frames its own action upon referral (s 68), and that becomes the subject on which the ensuing process operates. It is "the" action, namely, *that* action, that is the subject of a decision about whether approval of the action is needed (Part 7), a decision about the selection of an approach to assessment of the environmental impacts (Part 8, Div 3), the assessment process itself (Part 8, Div 3A-Div 7), and a decision about whether or not to approve the taking of the action — including the mandatory considerations in s 136(1) — and any conditions to attach to it (Part 9, Div 1).

188. The Minister has the power to call together two (or more) related actions into one "larger action" for assessment and approval (ss 70, 74A(1)(c)). If that option is taken, an ultimate approval decision under ss 130(1) and 133(1) would be about that larger action, and the exercise required by s 136(1) would weigh the impacts of both components of it against "economic and social

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219 *Friends of the **Gelorup** Corridor Inc v Minister for the Environment and Water* [2023] FCAFC 139; 299 FCR 236 at [63], [93] (Jackson and Kennett JJ, Feutrill J "largely agreeing").

220 Ibid at [63] (Jackson and Kennett JJ).

221 Ibid.

222 Ibid at [93].

matters" pertaining to the whole. Essentially, the Minister has the option to consider the "incommensurable" impacts and benefits of components of a larger action in the one approval process. If the Minister does not take that option, ss 130(1) and 133(1) require him to decide whether or not to approve each action separately, in light of the considerations in s 136(1). What the scheme does not contemplate is what occurred here, namely, that the Minister could opt *not* to call the components together, assess them *separately* in environmental respects, yet assess them *together* in economic respects.

189. The Minister was advised that "[t]he impacts of these projects taken as a whole, and the referral of these activities separately is of significant public interest and concern",[223] but considered that "a cumulative assessment and conditioning approach … is not available to me and is not appropriate under the EPBC Act".[224] The Department's advice to him in that regard included that the WA EPA took a "cumulative approach to total industry emissions", and that ECASS advised taking such an approach "across all EPBC approval holders in the region", but that such an approach "is not within the conditioning scope of this decision, which is concerned with the impacts of this proposed action".[225] So much may be accepted.

190. But a similar approach must condition and limit what "economic and social matters" requires the Minister to consider, or else the weighing exercise in s 136(1) would undermine the primary environmental protection objects of the legislation, by giving economic considerations greater weight. It leads to a slanted approach, taken here, in which the Minister, for the purposes of s 136(1)(a), *must only* consider the environmental impacts of one action — those impacts being the central concern of the EPBC Act — but for the purposes of s 136(1)(b), *must* tip the scales by accumulating the economic benefits of other actions still undergoing assessment. And it would encourage a proponent to, figuratively speaking, gerrymander its related actions for the purposes of environmental impact assessment — knowing that the impacts will not be considered as a whole — but still rely on the combined economic effect of them multiple times in favour of each approval. That cannot be taken to have been the intention of the legislature.

191. **Secondly**, "economic and social matters" must be read to mean matters that exist or will probably exist, and cannot be read to mean matters that are purely hypothetical or contingent on a Minister's separate consideration and exercise of statutory power. As at the time of the Approval Decision, the economic benefits of the Browse to NWS Project remained to be

223 Briefing Note at [7].

224 Reasons at [115].

225 Decision Brief, Document F9 (Attachment C: Legal Considerations Report) at [176] (emphasis added) and [186].

considered and weighed against the environmental impacts of *that* action, in the course of the s 136(1) exercise required in *that* future approval decision. The outcome of that decision may be that the Browse to NWS Project is not approved — yet here the Minister reasoned as if its approval were a *fait accompli*. At the time of the Approval Decision, and at present, the economic benefits of the Browse to NWS Project were, and are, speculative. For that reason, the Minister was not permitted to take them into account as "demonstrating the long-term value" of the NWS Project Extension.

192. **Thirdly**, to prejudge — or appear to prejudge — the outcome of a future decision whether to approve a separate action would be unlawful, and s 136(1)(b) cannot properly be construed so as to permit or require the Minister to do that by assuming that a different action will be approved. That sort of impermissible reasoning is what the Minister engaged in in this case.

E.2 Grounds 2 and 3 – failure to determine key aspect of action, and legal unreasonableness

193. It is convenient to deal with Grounds 2 and 3 together. Respectively, they contend:

> Ground 2: The Approval Decision was not authorised pursuant to ss 130(1), 133 and 134 of the EPBC Act, being the Minister's powers to approve the NWS Project Extension with conditions, because the Approval Decision impermissibly leaves undetermined the substance of a critical aspect of the action that affects the impact of it, namely, the composition of third-party feed gas and resulting air emissions.
>
> Ground 3: The Approval Decision was legally unreasonable, in that the Minister had no rational basis for being satisfied that the conditions of approval, in their totality, would make the impacts of the NWS Project Extension on the national heritage values of the Dampier Archipelago acceptable, in circumstances where:
>
> a. the composition of emission types that are to be expected to be processed from third-party sources are unknown; and
>
> b. the approval has effect until 31 December 2070.

194. It will be recalled that the "action" referred to and approved by the Minister was an action:

> To continue and extend the operating life of the North West Shelf (NWS) Project through the long-term processing of third-party gas and fluids and NWS Joint Venture field resources through the NWS Project facilities.

195. An essential feature of that action was the "third-party gas and fluids" that Woodside sought permission to process. That feature was essential because only once it was known with sufficient

certainty could an assessment of its impacts—both direct and indirect; adverse and beneficial—rationally take place.

196. Here, the quantity and composition of "third-party gas and fluids" was not known. Woodside could not say where the third-party gas and fluids might come from, how much of them there might be, nor what chemical composition they might have. An assessment of the similarity or difference between current air emissions and the potential emissions (both direct and indirect) was accepted by the Minister to be impossible.[226]

197. This rendered the proposed action fatally indeterminate. Of course, some degree of indeterminacy may be unavoidable.[227] But a proposed action must be sufficiently concrete to enable a rational assessment of its impacts to occur. As Jackson and Kennett JJ explained in *Gelorup*:

> [58] Although members of the Court in *Triabunna Investments Pty Ltd v Minister for Environment and Energy* [2019] FCAFC 60; 270 FCR 267 noted that the scheme of the EPBC Act permits flexibility, including modification of a proposed action between referral and approval (at [43] (Flick J)) and some scope for judgment in how a "proposed action" is identified at the s 75 stage (at [191]–[193] (Mortimer J)), the proposed action must nevertheless have some degree of stability, as it is the subject of a sequence of decisions and assessments that the EPBC Act envisages as applying to the same subject-matter. At least when it is approved, the "action" needs to be identifiable because its boundaries are the boundaries of an exemption from one or more statutory prohibitions in Part 3.

198. Here, the proposed action was not indeterminate at the margins; it was indeterminate at its core. The very thing for which approval had been sought—the processing of gas and fluids for 45 years—was almost wholly undefined. At best, it was defined negatively: a proposal to process gas and fluids *different from* those which were being currently processed. But an action defined negatively cannot suffice. Such a description would be determinate about what the action does *not* involve, but would leave indeterminate what the action *does* involve. That is the problem here.

199. To be sure, the Minister was aware of information hypothesising that the third-party gas and fluids might be sourced from "the Browse fields".[228] But that possibility was, as already noted, speculative at the time the Approval Decision was made. Given that fact, there was no intelligible

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226 Reasons at [106], [212].

227 See, eg, *Triabunna Investments Pty Ltd v Minister for Environment and Energy* [2019] FCAFC 60; 270 FCR 267 at [43].

228 Reasons at [249].

justification for the Minister to assume that the gas and fluids would be sourced from the Browse fields. Such an assumption would have entailed prejudging the outcome of the Browse Development referral, something which it was not open to the Minister to do.

200. It is anticipated that the Respondents may contend that certainty as to the quantity or composition of the gas and fluids to be processed as part of the proposed action was unnecessary here, because conditions were attached to the proposed action restricting all air emissions that could possibly affect the Dampier Archipelago NHP. But such a contention is flawed for two reasons.

201. **First**, it involves collapsing the distinction drawn by the EPBC Act between an "action" on the one hand and "conditions" attaching to it on the other. As the provisions set out above make clear, the legislative scheme contemplates the referral of an "action", so that, relevantly, (1) a determination can be made about whether it is a "controlled action" and, if so, (2) an assessment can take place of its "impacts". Only once the "action" is ascertained with sufficient precision can the Minister (1) evaluate what the action's impacts are; (2) assess whether they will be acceptable or unacceptable impacts and, if the latter; (3) determine whether conditions can be attached to the action to make its impacts acceptable. Again, As Jackson and Kennett JJ explained in *Gelorup*:

> [64] … The statutory scheme more generally means, in our view, that a necessary step in the decision-making process is an assessment of whether those impacts are acceptable in the light of the benefits that the proposed action may bring. If the decision-maker considers that the impacts are not acceptable, the next question for the decision-maker must be whether conditions can be devised that will result in the impacts being acceptable (by limiting or reducing those impacts or, possibly, by bringing about a benefit that offsets them) and what those conditions are.

202. Here, because the "action" was indeterminate at its core, it was not possible rationally for the Minister to ascertain and evaluate: (1) the true "impacts" of the action (both direct and indirect); (2) whether they would be acceptable; if not, (3) whether conditions could be devised to make them acceptable; and, if so, (4) what those conditions should be.

203. **Secondly**, even if it were rationally open to the Minister to ascertain the *adverse* impacts of the proposed action without knowing what the relevant gas or fluids might be, it was not rationally open to him to ascertain the *beneficial* impacts of the proposed action without knowing the same thing. Here, it is to be recalled that the Minister did not make the Approval Decision on the simple premise that the proposed action would have no adverse impacts on the Dampier Archipelago NHP at all; rather, he made the Approval Decision on the two-fold premise that:

a. the proposed action would be "likely to result in residual impacts to the values of the Dampier Archipelago (including the Burrup Peninsula) National Heritage Place"[229]; but

b. those residual impacts "would be small and therefore outweighed by the social and economic factors"[230] (underlining added).

204. In virtue of the second proposition, it was incumbent on the Minister to ascertain the likely economic benefits of the proposed action, something which necessitated an understanding of the composition and quantity of the third-party gas and fluids that Woodside proposed to process. Only once an understanding of the composition and quantity of the third-party gas and fluids was in hand could a rational assessment be made of: (1) the likely markets for the future gas and fluids to be processed at the KGP; (2) the likely revenue to be earned in consequence of that processing; and (3) whether such markets and revenue would be likely to continue to exist and be earned, respectively, until about 2070.

205. Other than in relation to the Browse Development—whose future existence was a matter of speculation at the time of the Approval Decision was made—the Reasons are bereft of any such analysis. Indeed, it was impossible for the Minister to embark upon any such analysis absent clarity as to the type and amount of gas and fluids that Woodside proposed to process—clarity which the Minister himself acknowledged he lacked.[231] Ultimately, because the Minister lacked clarity as to the type and amount of the third-party gas and fluids that Woodside proposed to process, it was not rationally possible for him to gauge the economic benefits of the proposed action; and, as a consequence, it was not rationally possible for him to undertake the "balancing exercise" that the EBPC Act mandated he carry out.

206. It follows that the Approval Decision was either unauthorised by the EPBC Act or legally unreasonable. It was unauthorised because it was incumbent on the Minister to grapple with whether the adverse impacts of the proposed action were outweighed by the social and economic benefits of the proposed action—an exercise which the Minister could not, and did not, rationally undertake. Alternatively, the Approval Decision was legally unreasonable in that the Minister lacked any evident or intelligible justification for finding either (1) that "any likely short-term impact on the [Dampier Archipelago] NHP would be small" or (2) that, whatever the magnitude

229 Reasons at [230].

230 Reasons at [310].

231 Reasons at [106].

of such a short-term impact, it would be "outweighed by the social or economic factors", since those findings were available only once the gas and fluids appertaining to the action were known.

E.3 Ground 4 – misconstruction of "substantial cause"

207. Ground 4 contends:

> The Minister erred in failing to take into account information he had about the physical effects of climate change on the national heritage values of the Dampier Archipelago.

208. This ground targets the Minister's refusal to take into account[232] information about the "physical impacts of climate change" in determining whether to approve the proposed action. The Minister refused to take this information into account because he found that it was not "about the impacts of the proposed action".

209. The Minister's reasons for that finding are set out in his reasons for refusing the Reconsideration Request.[233] Those reasons are relevantly identical to the Minister's[234] reasons for refusing reconsideration requests for two EPBC Act referrals relating to the Narrabri mine and Mount Pleasant mine, respectively. The Minister's reasons for refusing those reconsideration requests were analysed in detail by the Full Court in ***Environment Council of Central Queensland*** *v Minister for the Environment and Water* [2024] FCAFC 56; 304 FCR 91. Since the Minister's reasons for refusing those reconsideration requests are relevantly identical to the Minister's reasons for refusing this Reconsideration Request, it is convenient to set out the Full Court's analysis of those reasons in the context of this application.

210. According to the Full Court, the Minister reasoned as follows:

a. **First**, the Minister accepted that the information produced in support of the reconsideration request was properly characterised as "substantial new information". In terms, the Minister found that:

> a. much of the information contained in the request was not before the delegate and so is considered new information; and

232 Reasons at [80].

233 They are incorporated and summarised in the Reasons at [35]-[39].

234 The Minister who refused the reconsideration requests made in respect of the controlled action decisions for the Narrabri underground mine and the Mount Pleasant Optimisation Project was Ms Tanya Plibersek MP.

b. the information is of substance and is not trivial or inconsequential, and demonstrates that climate change has various effects on this protected matter.

…

The information in the reconsideration request identifies that climate change and its flow-on effects are affecting or will affect the ecology of the identified declared World Heritage properties. Based on the information provided, the extent of the effects appears to vary between the properties, reflecting their unique natural environments. In summary, World Heritage properties containing ecosystems and/or species with low temperature range tolerances (e.g. alpine and coastal environments) are more susceptible to climate change. In general, climate change reduces the resilience of ecosystems due to the increased risks from a range of factors including:

a. Altered (or reduced) abundance and distribution of species critical (and/or unique) to the ecological integrity of the property.

b. Altered hydrological flows causing increasing incursions of saltwater into freshwater (and the reverse) damaging important feeding and breeding habitat.

c. Invasive/pest species gaining a greater foothold.

d. Extreme temperature events causing heat stress to susceptible plants and animals (e.g. the Spectacled Flying Fox Pteropus conspicillatus).

e. Altered or inappropriate fire regimes associated with temperature extremes.[235]

b. **Secondly**, the Minister identified (correctly) that the next critical step in the reasoning process was to determine "whether the information relates to adverse impacts of the proposed action on this protected matter is discussed below".[236]

c. **Thirdly**, the Minister correctly informed himself of s 527E of the EPBC Act[237].

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235 *Environment Council of Central Queensland* at [25], [26]. Identical findings were made in this case: see Reconsideration Reasons at [152] and [154].

236 *Environment Council of Central Queensland* at [32]. The Minister did the same here: see Reconsideration Reasons at [155].

237 *Environment Council of Central Queensland* at [33]. The Minister did the same here: Reconsideration Reasons at [158].

d. **Fourthly**, the Minister made the first of two "positive findings" that "the substantial new information could be *about* the *indirect* consequences (or impacts) of the taking of the proposed action"[238] (italics in original), namely:

> I considered that the reconsideration request contains information which demonstrates in a general sense that climate change from anthropogenic sources of GHG emissions has and/or will have physical effects on protected matters. In particular, I accepted that the combustion of coal and/or gas on a global scale results in GHG emissions, which increases the effects of climate change, including the regularity, scope and intensity of climate hazards. I accepted that these effects of climate change will adversely affect the MNES identified by EJA in their application.[239]

As to this finding, the Full Court observed:

> [36] Therefore, by this point, the Minister had accepted the existence of a causative link between the global combustion of coal and/or gas and the effects of climate change and had also accepted that unabated climate change is having or will have adverse effects upon MNES. These findings were expressed as a matter of certainty not as matters of likelihood or possibility. However, there remained the question posed by the legislation as to whether the new information that had been provided indicated that the proposed action itself will have or is likely to have an impact upon MNES. That is to say, the Minister had to reach a conclusion as to whether the new information that had been provided related to an impact on MNES that the proposed action itself would have or was likely to have. Given the earlier findings about the certainty of the causal connection on a global scale, the answer to that question required findings as to the likely extent, if any, of the contribution of the proposed action to the accepted global impact.

e. **Fifthly**, the Minister made the second "positive finding" that "the substantial new information could be *about* the *indirect* consequences (or impacts) of the taking of the proposed action", namely:[240]

> To the extent that the information may be relevant to the physical effects of climate change caused by the proposed action, the request contains information about emissions resulting from the combustion by third parties of the coal to be extracted in the proposed action. I accepted the department's advice that, having regard to the information provided by EJA and through the section 78B consultation process, the physical effects of climate change on the world heritage values of declared World Heritage properties (which the request is about) are, if anything, indirect consequences of the proposed action: they are events or circumstances

238 *Environment Council of Central Queensland* at [35].

239 The Minister made the same finding here: Reconsideration Reasons at [160].

240 *Environment Council of Central Queensland* at [37].

that are removed in time and distance from the taking of the action, which is the extraction of coal.[241]

The Full Court's assessment of this finding was:

> [38] Located as it is after the heading which correctly framed the question under s 78(1)(a), and after the reference to s 527E, we are comfortably persuaded that the correct understanding of the Minister's reasoning here is that she was making a *conditional* positive finding as to indirect consequences. The finding was to the effect that the new information showed that there were indirect consequences of the proposed action if they were demonstrated to be of significance for the accepted global effect. It anticipated the Minister's later reasoning … which concerned whether a decision not to approve the proposed action would have any substantial consequence for the certain causative link between aggregate global combustion of coal and/or gas and climate change with consequent certain impacts of that global consumption upon MNES in Australia.

The Full Court characterised the Minister's finding thus: "that the action would have *indirect* impacts on MNES if it contributed to the global impact to a degree that fell within the concept of a 'substantial' cause."[242]

f. **Sixthly**, the Minister concluded[243] that the proposed action "was not a substantial cause of the stated physical effects of climate change on the world heritage values of declared World Heritage properties" (and, therefore, that the information provided in support of the reconsideration request was not "about impacts the proposed action has or will have, or is likely to have") because:

> a. the information does not demonstrate that the proposed action will cause any net increase in global GHG emissions and global average temperature (and so, any physical effects of climate change on the world heritage values of declared World Heritage properties). I considered that whether this will happen is subject to multiple variables; and
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> b. even if that were demonstrated, any contribution from the proposed action to global GHG emissions would be very small. It is therefore not possible to say that the proposed action will be a

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241 The Minister made an identical finding here, albeit in respect of "gas" rather than "coal": Reconsideration Reasons at [161].

242 *Environment Council of Central Queensland* at [40].

243 See *Environment Council of Central Queensland* at [47]-[48].

substantial cause of the physical effects of climate change on the world heritage values of declared World Heritage properties.[244]

211. Overall, the Full Court characterised the Minister's reasoning in this way (italics in original):

> [76] … The Minister accepted almost all of the appellant's contentions, right up to the question whether the extension and longer operation of the coal mine is a "substantial cause" of consequences such as coral bleaching. It is at this point the Minister rejected the appellant's contentions. The extension and longer operation of the mine, she found, is *a* cause of these kinds of indirect consequences, but not a "*substantial* cause" (italics added). This was her reasoning on both limbs set out at [at paragraph [209.f] of these submissions above] – the first through considering global net GHG emissions and global average temperature (if the mine continued to operate) and finding the burning of the coal from this mine would not increase net GHG emissions; and the second through considering the proportional contribution to global GHG emissions from the burning of coal produced by the extension of the mine, on the contrary assumption that the burning of that coal would increase global net emissions.
>
> [77] … [The Minister] accepted that if the operation of the mine was likely to make a substantial contribution to the certain effects of global GHG emissions upon climate change (and consequent certain adverse effects upon MNES) then there would be relevant adverse impact and the new information would relate to that impact. … She was however not persuaded at a factual level that the extended operation of the mine was a substantial cause of these adverse consequences, for the purposes s 527E(1)(b). In substance, to put it another way, the Minister found the GHG emissions causing global warming would predominately be coming from other sources than the extended operation of the Mt Pleasant mine.

212. It is submitted that the Full Court's analysis of the Minister's reasons applies equally to the Minister's reasoning process here.

213. Notwithstanding the foregoing analysis, the Full Court emphasised this:

> [46] … [I]t is appropriate to note what was *not* argued on this appeal. Neither in grounds of review before the primary judge, nor in grounds of appeal before this Court, was any argument developed by the appellant about a fundamentally different interpretation of the phrase "substantial cause" in s 527E(1)(b) to the one adopted by the Minister. There was no developed argument about whether the phrase had a qualitative meaning that could not, for example, be reduced to an arithmetical analysis, where the cause was a global one (combustion of coal) and the impacts were also global, although relevantly felt across a wide range of MNES within Australia. … [T]here were some assertions made before the primary judge that "substantial cause" had a different meaning. However, they were not developed in any detailed way, and they certainly did not amount to an

244 The Minister made identical findings here: Reconsideration Reasons at [163].

argument that the approach taken by the Minister was not open because it involved a misconstruction of that phrase.

214. The point not argued in *Environment Council of Central Queensland* is the point that is argued here.

215. The Minister's reasons for concluding that the proposed action "was not a substantial cause of the stated physical effects of climate change" was premised upon an assumption that the requisite enquiry as to "substantial cause" involved nothing more than an arithmetical computation involving:

a. a calculation of the quantity of the greenhouse gases that would be emitted if the gases and fluids processed as part of the proposed action were combusted;

b. a calculation of the global temperature increase that would follow from the combustion of that amount of greenhouse gases; and

c. determination of whether the quantity of greenhouse gas emissions was either:

i. "small" enough to be cancelled out by other independent events (thus resulting in no net emissions); or

ii. in any event, "small" in absolute terms, when compared with the total amount of greenhouse gases emitted globally each year.

216. It was wrong of the Minister to construe s 527E as though findings of the kind mentioned immediately above (in (i) and (ii)) sufficed to determine whether the proposed action was "a substantial cause of the stated physical effects of climate change".

217. Contrary to the construction adopted by the Minister, the test for whether an action qualifies as a "substantial cause of the physical effects of climate change" is not one that turns solely on whether the effects of the action are numerically 'large' enough in either a 'net' or 'absolute' sense. The test is broader.

218. **First**, climate change is not the sort of problem that lends itself to simple quantitative analysis. There are two salient aspects here. The first is that the problem is global. Because the global atmosphere is so large, every greenhouse-gas-emitting action will have a relatively "small" effect. If the test is whether an action's effects on the climate are greater than "small", then the test will never be met. The second salient feature is that the problem of climate change is a stock

problem, not a flow problem. To illustrate[245], imagine a bathtub filling with water. In determining whether the bath is about to overflow, it is not just the flow of water, it is how much water is in the bath. Climate change is similar. It is not so much the rate of greenhouse gases emissions that matters (a flow problem), it is the concentration of greenhouse gases in the atmosphere that does (a stock problem). Returning to the bathtub analogy, once the bathtub is close to – or already – overflowing, then *every* additional amount of water becomes significant, however proportionality or absolutely "small" it is. The "smallness" of the addition is not the only thing that matters; the state of the thing that is being added to also does.

219. These salient features of the problem of climate change bear on the question what it means for an action to be a "substantial cause" of the physical effects of climate change for the purposes of the EPBC Act. The question whether a greenhouse-gas-emitting action qualifies as a "substantial cause of the physical effects of climate change" is not concluded merely by undertaking an arithmetical analysis of how many greenhouse gases the action is likely to emit; it also involves a qualitative analysis of the significance of adding that amount of greenhouse gas to the atmosphere at a time when the physical effects of climate change are already beginning to be felt. What matters is not just *how much* greenhouse gas an action is likely to emit; but *what atmosphere* the action is likely to emit them into.

220. Such analysis is wholly absent from the Minister's reasons. Its absence is explained by the Minister's adoption of a construction of s 527E that limits the factual enquiry required by the section to one that focusses solely on the 'size' of the greenhouse gas emissions likely to result from the proposed activity, nothing more.

221. **Secondly**, the text of s 527E is clearly wide enough to permit the wider factual enquiry just discussed. When faced with a "constructional choice"[246] as to whether s 527E invites the narrow arithmetical approach of the Minister or the broader evaluative approach urged here, the objects of the EPBC Act clearly favour the latter construction. The Minister's construction stultifies the fundamental purpose of the EPBC Act — "to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance" via comprehensive environmental impact assessment—and does so in drastic fashion. It all but ensures that the indirect adverse effects on matters of national environmental significance from actions that contribute to overseas greenhouse gas emissions escape

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245 To be clear, the analogy is illustrative only. All analogies are imperfect, and it is not pretended that the analogy here is anything other than imperfect, too.

246 See *Port of Newcastle Operations Pty Ltd v Glencore Coal Assets Australia Pty Ltd* (2021) 274 CLR 565 at 594-595 [88]-[89], citing *Taylor v Owners – Strata Plan No 11564* (2014) 253 CLR 531 at 557 [66] and *SAS Trustee Corporation v Miles* (2018) 265 CLR 137 at 149 [20]. See also *Acts Interpretation Act 1901* (Cth), s 15AA.

environmental assessment on the footing that they are not impacts at all. For an Act whose purpose is the protection of the environment that is an odd result. In circumstances where the construction agitated by ACF is open, it is a construction that ought to be preferred.

222. Further, this broader evaluative approach is also consonant with the EPBC Act's objectives to assist in the "co-operative implementation of Australia's international environmental responsibilities"[247] which includes those obligations provided for in the *Convention on Biological Diversity* (**Biodiversity Convention**) and the *Framework Convention on Climate Change* (**UNFCCC**).[248] The International Court of Justice's *Advisory Opinion on Obligations of States in respect of Climate Change* has clarified that State parties to the Biodiversity Convention and the UNFCCC (amongst the broader framework of customary international law and treaties) have obligations "to ensure the protection of the climate system and other parts of the environment from anthropogenic greenhouse gas emissions".[249] A failure to take appropriate action to protect the climate system from GHG emissions "including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of subsidies – may constitute an internationally wrongful act which is attributable to that State."[250]

223. All States have a responsibility to conduct environmental impact assessments "with respect to particularly significant proposed individual activities contributing to GHG emissions to be undertaken within their jurisdiction or control, on the basis of the best available science."[251] These international law developments indicate a developing consensus as to the relevant causal question. Where an interpretation of s 527E is open which accords with Australia's international obligations with respect to climate change, it ought to be preferred.[252]

224. It follows that the Minister erred in concluding that the proposed action "was not a substantial cause of the stated physical effects of climate change". He adopted an unduly narrow

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247 Section 3(1)(e) of the EPBC Act.

248 See: *Minister for the Environment v Sharma* [2022] FCAFC 35 at [788]-[789] (Allsop CJ). Also see: Convention on Biological Diversity [1993] ATS 32 and United Nations Framework Convention on Climate Change [1994] ATS 2.

249 International Court of Justice (Advisory Opinion on Obligations of States in respect of Climate Change) [2025] General List No.187, [129], [197], [200], [325]-[330] and [316].

250 Ibid, [427].

251 International Court of Justice (Advisory Opinion on Obligations of States in respect of Climate Change) [2025] (**ICJ AO**) at [298].

252 *Macoun v Commissioner of Taxation* [2015] HCA 44; (2015) 257 CLR 519 at [67]**;** *Minister for Immigration and Multicultural and Indigenous Affairs v QAAH of 2004* [2006] HCA 53; (2006) 231 CLR 1 at 15 [34]; *Minister for Immigration and Border Protection v WZAPN* [2015] HCA 22; (2015) 254 CLR 610 at [53].

construction of s 527E which infected his analysis. It further follows that the Minister erred (by reason of his misconstruction of s 527E) in failing to take into account the information provided to him regarding the physical effects of climate change on the national heritage values of the Dampier Archipelago NHP. Those physical effects were "about" the proposed action in that the proposed action could be said to "substantially cause" them. In making the Approval Decision, the Minister ought to have had regard to the information provided to him, and he erred in failing to do so.

E.4 Ground 5 – apprehended bias

225. Ground 5 contends:

> A fair-minded lay observer might reasonably apprehend that the Minister might not have brought an impartial mind to the making of the Approval Decision in accordance with the EPBC Act.

226. The particulars to paragraph 6 of the further amended originating application set out the circumstances giving rise to that reasonable apprehension. In summary, there were departures from statutory requirements and professional administrative norms in:

a. the sequencing of the Reconsideration Decision and the Approval Decision, and

b. the negotiations between Woodside and the Department

which gives rise to a reasonable apprehension of undue partiality towards Woodside, and towards securing the approval of the action.

E.4.1. The test for apprehended bias

227. The well-established "double might" test for apprehended bias involves three steps: (1) identifying the factor which it is said might lead the decision-maker to resolve the question other than on its merits; (2) articulating how that factor might cause a deviation from a neutral evaluation of the merits; and (3) assessing the reasonableness of that apprehension from the perspective of a fair-minded lay observer.[253]

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253 *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337 at [8] (Gleeson CJ, McHugh, Gummow and Hayne JJ, with Callinan J agreeing); recently confirmed in *SunshineLoans Pty Ltd v Australian Securities and Investments Commission* [2026] HCA 8 at [1] (Gageler CJ and Gleeson J), [60] (Gordon J), [105] (Edelman J); and see *QYFM v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2023) 279 CLR 148 at [38] (Kiefel CJ and Gageler J), [67] (Gordon J).

228. The content of the test differs somewhat between judicial and administrative decision-makers, because considerable latitude is given to the political concerns of Ministers in making decisions. Ministers are not precluded from having regard to the political benefits of a particular outcome or acting in accordance with policy in making a decision.[254]

229. But it is important not to collapse the distinction between a decision-maker having a political preference (including a stated one), and a reasonable apprehension of prejudgment on the part of a decision-maker in the sense that the outcome was a *fait accompli*. Here, one relevant factor may be that decision-maker has acted other than in accordance with statutory requirements in pursuing an outcome, as occurred here in numerous ways.[255] Another is where the interactions between a decision-maker and a proponent go beyond the ordinary practice of a decision-maker meeting with and assisting a proponent,[256] such that the two have worked so closely together in formulating a decision, and "an understanding … as to what would probably be acceptable", that a reasonable bystander would apprehend that its acceptance was a foregone conclusion.[257] A reasonable apprehension of bias may arise where "the person interested in the outcome [is] so influential or dominant that a fair-minded person might reasonably apprehend that the decision-maker might not make the decision impartially".[258]

230. The fair-minded observer is taken to know the actual circumstances of the case.[259] Here, those circumstances include at least the various features of the EPBC Act, the dual roles of the Minister as a statutory decision-maker and a Minister, and all public and private communications during the decision-making process.[260] They also include an appreciation that it may be departmental practice to "assist proponents with referrals and to meet to discuss them".[261]

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254 ***Hot Holdings*** *Pty Ltd v Creasy* (2002) 210 CLR 438 at [70] (McHugh J); *Minister for Immigration and Multicultural Affairs v Jia Legeng* (2001) 205 CLR 507 at [63], [102] (Gleeson CJ and Gummow J).

255 Cf ***Wilderness Society*** *Inc v Turnbull* [2007] FCA 1178; (2007) 96 ALD 655 at [147] (Marshall J).

256 Cf *Wilderness Society* [2007] FCA 1178; (2007) 96 ALD 655 at [147] (Marshall J).

257 *R v Planning Commission (SA); ex parte City of Burnside* (1986) 45 SASR 487 at 504, and generally 503-505 (Olsson J).

258 *Hot Holdings* (2002) 210 CLR 438 at [74] (McHugh J).

259 *Laws v Australian Broadcasting Tribunal* (1990) 170 CLR 70 at 87 (Mason CJ and Brennan J).

260 ***Barngarla*** *Determination Aboriginal Corporation RNTBC v Minister for Resources* [2023] FCA 809; (2023) 299 FCR 50; [171]-[173] (Charlesworth J).

261 *Wilderness Society* [2007] FCA 1178; (2007) 96 ALD 655; at [147] (Marshall J); Affidavit of Kylie Jane Calhoun dated 7 April 2026 (**Calhoun Affidavit**) at [70], [72].

231. It is necessary to look at not only discrete aspects of the evidence, but also the overall impression that might arise in the mind of the fair-minded observer, having regard to all of the material in its proper context.[262] To that end, the evidence is set out in some detail below.

E.4.2. The sequencing of the Reconsideration Decision and Reconsideration Reasons

232. The evidence going to this aspect of Ground 5 is contained primarily in the Second Bester Affidavit (with one correction in the Fourth Bester Affidavit), and is a distillation of a number of features of the procedural history set out in Part C above. The facts can be briefly restated.

233. On 3 May 2019, the delegate made the "controlled action" decision:[263] s 75. On 8 July 2022, EJA, on behalf of the Environment Council of Central Queensland Inc, made the Reconsideration Request:[264] s 78(1)(a). It was one of 19 such requests made at the same time in relation to coal and gas referrals.[265]

234. For the purposes of s 78B of the EPBC Act, the last of the comments received on the Reconsideration Request came in to the Department around 31 January 2023.[266] Section 78C of the EPBC Act required the Minister to decide the Reconsideration Request "as soon as reasonably practicable" thereafter. The Minister did not do so, in breach of the requirements of s 78C.

235. The Minister was not briefed with the Reconsideration Request until approximately 2½ years later, around 16 May 2025, at the same time as the approval was briefed to him.[267] The Minister made the Reconsideration Decision on 20 May 2025, having been advised that it was government policy to make reconsideration decisions prior to final approval of an action.[268]

236. In the meantime, between 11 May 2023 and 3 December 2024, six of the 19 reconsideration requests that had been submitted on 8 July 2022 had been decided. The reasons for them were substantially the same,[269] and to the effect explained in paragraph 110 above, and discussed in

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262 *Barngarla* [2023] FCA 809; (2023) 299 FCR 50 at [177] (Charlesworth J).

263 Decision Brief, Document F16 (Attachment E2: Referral decision notice).

264 Second Bester Affidavit at [5], CB2.

265 Second Bester Affidavit at [6].

266 Second Bester Affidavit, CB4-CB9 (Ministerial responses); and see First Bester Affidavit, CB5 (Reconsideration Reasons), pp 144-145 [43]-[51].

267 See paragraphs 75-77 above; accepting that a brief had been provided slightly earlier, in March 2025, but returned due to the government being in caretaker mode: Calhoun Affidavit at [49]-[52].

268 Decision Brief, Document F1 (Proposed Decision Brief), p 4.

269 Compare Second Bester Affidavit, CB11-CB17; Fourth Bester Affidavit, CB3-1.

relation to Ground 4 in Part E.3. Two of those reconsideration decisions were the subject of litigation in late 2023 and early 2024 which, it might be inferred, delayed the final approval decision in respect of the Narrabri and Mt Pleasant coal mining operations.[270]

237. On 22 May 2025, ACF requested that it have advance notice of any intention to approve the NWS Project Extension, "to preserve [its] rights for the duration of the judicial review period".[271] The Department did not respond.

238. As soon as the Proposed Approval Decision was made on 28 May 2025, ACF formally requested reasons for the Reconsideration Decision. The deadline for those reasons (under s 13(2) of the ADJR Act), was 28 days, being 25 June 2025 at the latest. None were provided, and ACF followed up twice, in July and August.[272] ACF or other interested parties could not meaningfully consider judicial review of the Reconsideration Decision until reasons for it were provided. The *Environment Council of Central Queensland* litigation demonstrates that the filing of a judicial review application in relation to the Reconsideration Decision would have had the potential to delay the Approval Decision from being made or implemented, or render the Approval Decision invalid, if the Reconsideration Decision was set aside by a Court.

239. As will be seen in the following Part E.4.3, at the point that ACF requested reasons for the Reconsideration Decision, and notwithstanding the Minister's Proposed Approval Decision had contemplated a final Approval Decision within 10 days, by 28 June 2025 the Department had only just received a formal submission from Woodside on the proposed Approval Conditions, and the negotiations continued for months.

240. Ultimately, the Reconsideration Reasons were provided only after that process concluded, and two weeks after the Approval Decision itself was made. Notwithstanding, the Approval Reasons refer to the substance of the Reconsideration Reasons as if those reasons had already been made, with certain key passages reproduced verbatim.[273]

241. Given the Minister had nearly three years to consider the Reconsideration Request and prepare reasons for it, and given the Reconsideration Reasons reflect the reasons published in respect of other reconsideration decisions made in the meantime, it is to be inferred that the reasons for

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270 See paragraph 74 above.

271 Second Bester affidavit, CB20.

272 See generally paragraphs 82-85 above.

273 Approval Reasons [34]-[39].

making the Reconsideration Decision were known and could have been provided within the statutory timeframe set by the ADJR Act.

242. On or about 1 August 2025, the Department's internal "update" about the NWS included "consider and sign the statement of reasons for the reconsideration request before making a final decision on the North West Shelf Project Extension".[274] Inferentially, the reasons were available, or at least could have been available if the Department was concerned to meet the requirements of the ADJR Act, well before the final Approval Decision was made.

243. The Calhoun Affidavit explains, in essence, that: the statutory timeframes for making the Reconsideration Decision and producing the Reconsideration Reasons were missed due to the NWS project reconsideration request being assigned a lower priority based on its forecast final decision period, and due to a particularly busy period after ACF requested the reasons.

244. In respect of the 19 reconsideration requests, Ms Calhoun's evidence is that "[t]he Department prioritised making decisions on [them] on the basis of the forecast final decision period for each project" and "[t]he project timeframes were the main factor that governed the forecast final decision".[275] This Reconsideration Request was given "lower priority"[276] because of the litigation arising out of other reconsideration requests, and because, in view of the WA Appeals Committee process, "any final approval decision on [the NWS Project Extension] was likely to be delayed".[277] Ms Calhoun is not aware of any actual decision to delay the Reconsideration Decision, other than "taking into account priority matters and resourcing".[278] There was a small period between late March and early May 2025, in which the decision had been briefed to the (then) Minister, but was returned due to the government being in caretaker mode.[279]

245. In respect of the preparation of the Reconsideration Reasons, Ms Calhoun's evidence is that the Department "commenced preparing a draft soon after the reconsideration package was provided" and by the time ACF requested reasons on 28 May 2025, they were "substantially progressed".[280] On 14 July 2025, a draft briefing package was cleared to be progressed to the Minister's office.[281] According to Ms Calhoun "providing the statement of reasons within [the ADJR] timeframe is

274 Ward Affidavit, IW32, p 205.

275 Calhoun Affidavit at [22].

276 Ibid at [27].

277 Ibid at [26].

278 Ibid at [48].

279 Ibid at [49]-[52].

280 Ibid at [62].

281 Ibid at [62.5].

not always achievable".[282] The actual reasons for the delay from then on are scant — it was a "very busy period for the Minister and his office", including because of "the NWS Project Extension approval decision made on 12 September 2025".[283] The details of that busy time for the NWS Project Extension Approval Decision are set out comprehensively in Part E.4.3 below.

246. Ms Calhoun's evidence is entirely consistent with a reasonable apprehension on the part of a fair-minded observer that priority was given to securing the approval of the NWS Project Extension against the interests of its opponents.

247. The prioritisation of the "forecast final decision", and progressing the final Approval Decision, over and above compliance with the timeframes for delivering the Reconsideration Decision and Reconsideration Reasons, implies to the reasonable observer that the Reconsideration Decision and the Approval Decision were foregone conclusions. Specifically, a reasonable observer might infer from the fact that the reconsideration decision brief was withheld until shortly before the approval decision brief, that it was not in the contemplation of the Department that the Reconsideration Decision would be made against the interests of Woodside, or that the Approval Decision would be made against the interests of Woodside. If there was any possibility that a contrary decision on the Reconsideration Request might have been made, there would not have been such a patent disregard of the statutory timeframes, which exhibited a "dismissive attitude"[284] towards the interests of the key opponents of this project.

248. Even accepting that it was all for administrative convenience, it is entirely reasonable to apprehend from the circumstances, including those elaborated by Ms Calhoun, that the administrative convenience was directed towards:

    a. securing an ultimate approval of the NWS Project Extension, in a timely fashion; and

    b. avoiding delays that might have been by detractors seeking to challenge the Reconsideration Decision.

E.4.3. <u>The negotiations between the Department and Woodside</u>

249. It will be recalled that, in the Proposed Approval Decision, the Minister proposed conditions which — it can be inferred — he considered were "necessary or convenient" for protecting the NHP, or mitigating damage to the NHP: s 134(1). It will also be recalled that the action is

282 Ibid at [64].

283 Ibid at [67].

284 See *Barngarla* [2023] FCA 809; (2023) 299 FCR 50 at [187] (Charlesworth J).

essentially the conditions of approval — in that they are what give substance to what will occur at the NWS Project facilities.

250. As introduced above in Part C.2.10, the months between the Proposed Approval Decision and the Approval Decision were a busy period of "extensive consultation"[285] between the Department and Woodside about the proposed conditions of approval, and what would be "implementable" to enable the continued operation of the KGP. In that time the Department, in view of the Minister, was aggressively lobbied by Woodside on the conditions, and went to great lengths to accommodate Woodside's "revisions". Woodside was so "influential or dominant",[286] that the Department changed the Proposed Approval Decision from an "effective refusal" into a *different* Approval Decision that had been pre-approved by Woodside, and on significantly watered down environmental conditions. The Minister's Reasons do not explain *why* he had changed his view that the originally proposed conditions were no longer "necessary or convenient" to meet the objects of the EPBC Act — only that they were not "feasible" for Woodside.[287]

251. This is not a case in which the Department was "assisting" Woodside with its application, or meeting to "[discuss] timelines", as may be the ordinary course.[288] And it was far beyond any procedural fairness process, whether that contemplated by the Act or otherwise. What the evidence shows is a relationship between senior members of the Executive and an EPBC Act applicant that was akin to joint venturers working together to draft a document and "close" a deal.

252. At times, Woodside was so dominant that the ordinary roles of an authority vis-à-vis an applicant were reversed — notably, it was given several "final" copies of the Minister's Decision Notice, and effectively given the opportunity to pre-approve it. Each time, it came back with mark-ups and comments, and each time, the Department made changes on request.

253. It is not a case in which the source of the apprehended bias was one outside of the Minister's control, one of which he was unaware, or a fault in the process that "tainted" the advice to him.[289] Rather, it was the conduct of the Department in negotiating the decision with Woodside, of which

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285 Calhoun Affidavit at [70], [72].

286 *Hot Holdings* (2002) 210 CLR 438 at [74] (McHugh J).

287 Reasons at [162], [171], [175]-[176], [194(a)], [195].

288 Cf *Wilderness Society* [2007] FCA 1178; (2007) 96 ALD 655 at [147] (Marshall J).

289 Cf *Hot Holdings* (2002) 210 CLR 438 (in that case, a conflict of interest on the part of a bureaucrat peripherally involved in the decision-making process).

the Minister was kept well aware. Ultimately, he was briefed with the key mark-ups from the proponent, and endorsed what occurred.

254. By the time Woodside was satisfied, around 6 September 2025, that the Minister's final Decision Notice was "a document *we* can accept"[290], a reasonable observer would apprehend that the actual decision was a foregone conclusion — that it might have been made not on its merits, but on the basis that its terms were finally acceptable to Woodside.

E.4.4. The evidence

255. Woodside's initial reaction to the Proposed Approval Decision, on 4 June 2025, was that it had "concerns" with the requirement in proposed conditions 3 and 4 that emissions be below the "detection limit" as being "fundamentally at odds with an approval to operate beyond 2030",[291] and unduly onerous.[292] They referred to the need to "ensure a workable approval within the requirements of the EPBC Act".[293]

256. On 10 June 2025, following a meeting with the Department, it provided its own draft of proposed conditions 3 and 4 to "align with the [Department's] goal of delivering a workable approval protecting the national heritage values of Murujuga and permitting the extended operation of the [KGP] beyond 2030".[294]

257. Text messages were exchanged around that time between Ms Kylie Calhoun of the Department and Mr L of Woodside about the Department's "messaging" regarding the proposal, and the Department's intention to give Woodside "visibility" into that messaging.[295] Woodside asked if they could have prior knowledge of any media statement by the Department.[296]

258. On 12 June 2025, the Department provided Woodside with a "document that outlines some initial thoughts on Woodside's comments", and held a meeting with Woodside.[297] Later that day, Mr L emailed the Department requesting an extension of time in which to provide

290 Ward Affidavit, p 393, IW51 (italics added).

291 Decision Brief, Document C1 (Email from Woodside with informal feedback on proposed conditions), pp 1-2.

292 Ibid, p 4.

293 Ibid, p 1.

294 Decision Brief, Document C4 (Email from Woodside with informal feedback), p 1.

295 Ward Affidavit, IW15.

296 Ward Affidavit, IW14.

297 Ward Affidavit, IW18.

comments on the proposed conditions, and requested that the Department's media statement be "aligned".[298]

259. Woodside's formal response to the Proposed Approval Decision arrived on 23 June 2025.[299] In it, Woodside submitted (building on its earlier submissions):

a. It was 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;[300]

b. Not all emissions listed in the proposed conditions are relevant to the proposed action;

c. Proposed Condition 4 of the proposed decision is unduly onerous and duplicative;[301] and

d. Emissions are adequately regulated by MS 1233 and request that the conditions of approval be modified to align with the conditions of MS 1233.[302]

260. Between 25 June 2025 and 4 July 2025, text messages were exchanged between: Ms Rachel Parry, then Deputy Secretary of the Department and Mr D (Woodside Vice President, Corporate Government Relations); Ms C of the Department, and Mr C of Woodside; and Ms Kylie Calhoun of the Department and Mr L of Woodside.[303] Broadly speaking, they relate to setting up a meeting on 4 July 2025, and to the question of what further information the Department may need.

261. They also included the following exchange between Ms Parry and Mr D:[304]

> Hi Mr D […] On another note, I have also taken on responsibility for environmental law reform, so at some point we can talk through that as well.
>
> Rachel - keen to engage on the latter subject (as well as the former! [being the conditions of approval]) Maybe set a discussion next week or wait until clear of the current issue? Mr D

298 Ward Affidavit, IW18.

299 Ward Affidavit, IW20; Decision Brief, Documents C7-C9 (Email from Woodside containing proponent response, and attachments).

300 See Decision Brief, Document C9 (Woodside response attachment: Supporting Technical Information) at [3], [12(c)], [32]-[35].

301 Ibid at [38]-[39].

302 Ibid at [36]-[37].

303 Ward Affidavit, IW21, IW22, IW23, IW25.

304 Ibid, IW21.

Let's wait till current matter is cleared and then we'll move onto the next thing!

262. On 3 July 2025, the Department emailed Woodside its "further questions about the information provided", and on 7 July 2025, Woodside responded with its answers.[305]

263. Internally, on 10 July 2025, the Department requested further advice from ECASS on (amongst other things) what range of percentage reduction in NOx might be achievable through the application of Selective Catalytic Reduction technology, and what the resulting ammonia emissions might be; and whether the reduction in the former could justify the increase in the latter.[306]

264. ECASS concluded on 16 July 2025 that "[NOx] reductions in the order of 90-95%, and up to 98%, are achievable using current Selective Catalytic Reduction (SCR) technology alone", and that "[a]nalysis of ECASS' Conceptual Site Model (CSM) suggests a potential for negligible impacts on the structural integrity of rocks of Murujuga from any increase in ammonia".[307] That advice was provided with the caveats that ECASS has "not visited the Karratha Gas Plant (KGP), has not participated in a site inspection, and does not have a detailed understanding of the KGP's operational processes", as well as the fact that it was based in part "on information previously provided to governments by the Proponent".[308]

265. Between 10 July 2025 and 23 July 2025, text messages were exchanged between Ms Parry and Mr D making arrangements for a further discussion, and in which Mr D requested "an interim step whereby we could review the proposed revised condition" and Ms Parry responded "there will be an interim step where you view proposed condition set for feedback on implementability".[309]

266. On 23 July 2025, the Department held a meeting with the Minister's office to convey "a summary of the proponent's comments on conditions, what we have or have not adopted from those comments and a short justification".[310] In short, in respect of proposed condition 3, the Department had removed the requirement to achieve no air emissions that impact rock art, changed the definition of air emissions to only include those which, in Woodside's view, were

305 Decision Brief, Document C10 (Woodside email response).

306 Decision Brief, Document E18 (ECAS advice), p 2.

307 Decision Brief, Document E18 (ECAS advice), pp 2-3, 5-6.

308 Ibid, p 2.

309 Ward Affidavit, IW27.

310 Ward Affidavit, IW29.

relevant to the KGP, and either adopted or partially adopted all of Woodside's proposed changes to proposed condition 4.[311]

267. On 29 July 2025 and 31 July 2025, the Department and Woodside exchanged emails concerning how to manage NOx emissions in an "implementable" way.[312]

268. On 1 August 2025, the Department sent the Minister's office a written update about the progress of the negotiations on the conditions with Woodside.[313]

269. On Friday, 8 August 2025, Mr D texted Ms Parry asking "Any update on timing?",[314] and Ms Parry responded (emphasis added): "Hi Mr D. You will have <u>full condition set on Monday for a quick turnaround</u>. Everything on track."[315] Mr D responded "We will be looking forward to the document on Monday and understand the quick turnaround."[316]

270. On Monday, 11 August 2025 at 1.59pm, Mr D texted Ms Parry and said "just checking as to when we might see the document. We have the team on standby for fast turn around but would be good to have a sense as to when we need to jump into action!"[317]

271. On 11 August 2025 at 17.55pm, the Department sent Woodside a copy of the final Decision Notice that would be sent to the Minister for approval, being a document titled "Attachment A – Final Decision 2018-8335 – Final Decision Notice_clean". Contrary to the conversation between Ms Parry and Mr D, the covering email indicated that it was only "For your information".[318] On the same day, the Department sent the Minister's Office the same document, noting that it had also "been sent to Woodside as FYI".[319]

272. On 11 August 2025 at 7.21pm, Mr D texted Ms Parry (emphasis added):[320]

> Rachel – based on our very quick read, there are <u>two issues that fit the "allergic reaction" definition that you described recently</u>. This related to NoX especially the continuous monitoring of all point sources versus predictive along with

311 IW29, pp 192-194 (email attachment).

312 Decision Brief, Document C14 (Email from Woodside on NOx concentrations).

313 Ward Affidavit, IW32.

314 Ward Affidavit, IW33.

315 Ward Affidavit, IW35.

316 Ibid.

317 Ibid.

318 Ward Affidavit, IW34 (including attachment).

319 Ward Affidavit, IW34 (including attachment); and again on 15 August 2025: Ward Affidavit, IW40.

320 Ward Affidavit, IW35.

> 30ppm limit which is significantly lower than the previously discussed 49ppm. As I believe you are in Perth, and the critical timing of next steps, suggest we need to get in a room tomorrow to bottom out. Mr D

273. Ms Parry responded the following morning at 7.53am:[321] "Hi Mr D . Kylie is reaching out to Mr L today but has discussed these points with him previously … I will [] be keeping a close eye on this to ensure we reach a landing point today."

274. On 12 August 2025 at 5.57pm, Woodside sent the Department an email with extensive notes on the proposed final Decision Notice, and attached a copy of it with Woodside's requested changes in red mark-up. The covering email stated that (emphasis added):[322]

> [Certain] conditions are not implementable as currently drafted. We have proposed solutions (described below and in the attached mark-up) to meet the intent of implementable conditions which, in line with the EPBC act are necessary or convenient for protecting the national and world heritage values of Murujuga while also ensuring that the conditions are a cost-effective means for both the Commonwealth and Woodside to achieve the objects of the conditions so as to enable the extended operation of Karratha Gas Plant to continue processing remaining NWS reserves and Other Resource Owners gas.

275. On 12 August 2025 at 6.26pm, Mr D emailed Ms Parry and said:[323]

> Rachel – we have provided a written response along with markups to the document. If those markups are acceptable and there are no other changes, the conditions would be implementable. Available as you might need to discuss.

276. On 14 August 2025, Mr D texted Ms Parry stating that he was "getting significant pressure from above to know if we have implementable conditions or not. When are we going to know?"[324] Ms Parry responded that she would let him known as soon as she had a "read out".[325]

277. Between 18 and 22 August 2025, Mr D and Ms Parry exchanged text messages and phone calls about the timing of the approval.[326]

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321 Ward Affidavit, IW37.

322 Ward Affidavit, IW36 (and attachment); Decision Brief, Document C15 (Woodside comment on conditions).

323 Ward Affidavit, IW38.

324 Ward Affidavit, IW39.

325 Ibid.

326 Ward Affidavit, IW41.

278. On 20 August 2025, Woodside emailed the Department yet more comments on the proposed Final Decision, and presented "the following perspective, new information and supporting evidence ahead of a final recommendation".[327]

279. On Saturday, 23 August 2025, Mr D emailed the Department a document titled "NWS Extension Conditions Table" to "facilitate discussion".[328] The document is a table setting out the "Woodside Position" on the "Proposed Federal Conditions (provided on June 11th)". In respect of the conditions as they concerned "CO2, CO, PM, CH4 emissions", "Turbine stack NOx concentration limit conditions", and "Monitoring and compliance", Woodside's position was "Condition must be revised". In respect of each, Woodside "proposed the following solution".

280. On Sunday, 24 August 2025, Ms Calhoun emailed Ms Parry with an updated version of Woodside's table, with a new column headed "DCCEEW", in which the Department proposed to revise each of the conditions in respect of which Woodside's position was "Condition must be revised".[329]

281. Also on Sunday, 24 August 2025, Ms Parry emailed Woodside another version of the final Decision Notice, being a document titled "Attachment A – Final Decision 2018-8335 – Final Decision Notice", "that has been updated with consideration of the comments that you provided below".[330] The highlighted changes to the conditions reflect the changes set out in Ms Calhoun's updated table.

282. On Monday, 25 August 2025, Ms Parry texted Mr D asking "any thoughts on the condition set sent through yesterday?".[331] Mr D responded:[332]

> Rachel – the proposed changes to conditions 8 and 10 actually make the problem worse. Specifically: 1. On condition 8, the move to an emissions intensity basis fails to recognise that while absolute emissions fall, intensity increases as the plant throughput decreases. As written, this would kill any new large ORO.[333]
>
> 2. Condition 10 fails to recognise that the NWS commenced TP gas processing in 2022 via the interconnector from Pluto. The condition as written would require

327 Ward Affidavit, IW44.

328 Ward Affidavit, IW42 (with attachment).

329 Ward Affidavit, IW43.

330 Ward Affidavit, IW44 (and attachment); Decision Brief, Document C17 (Email to Woodside with revised Final Decision Notice).

331 Ward Affidavit, IW45.

332 Ibid.

333 "ORO" stands for Other Resource Owner, i.e. third-party feed gas producer.

the NWS to comply with the new monitoring requirements from the date of approval. As written, it is not [implementable].

283. Mr D followed up with "Call later this afternoon to map pathway to closure?" and "Helpful if we were to send a markup of your document from yesterday?".[334]

284. The following day, Woodside provided another mark-up of the final Decision Notice, with the following comments in the covering email (emphasis added):[335]

> - Some of the conditions that we had previously advised as needing change have not been addressed.
> - Changes which have been made on several of the already unimplementable proposed conditions have increased the impact by rendering these conditions unimplementable from the day of the final decision or within a year …
>
> […]
>
> In order to arrive at conditions that are both implementable and protect national heritage, consistent with recognised scientific studies the following amendments are needed: […]
>
> […]
>
> A markup of the conditions is attached to support your review and allow for timely resolution of this process.

285. Between 1 September 2025 and 5 September 2025, Mr D and Ms Parry exchanged text messages about the timing of "a resolution".[336]

286. On 5 September 2025, Ms Parry texted Mr D to tell him that an email would be with him shortly.[337] At 10.06am that day, Ms Parry emailed Woodside "the final condition set [which] will go forward as part of the final decision package for the Minister. Thank you for your ongoing engagement and previous advice on implementability of the conditions and the clarifications of the definitions."[338] The email attached another version of the final Decision Notice. Mr D texted Ms Parry that day, foreshadowing a "clarification so we don't misinterpret".[339]

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334 Ibid.

335 Ward Affidavit, IW46; Decision Brief, Document C18 (Woodside comment on conditions).

336 Ward Affidavit, IW48.

337 Ward Affidavit, IW48.

338 Ward Affidavit, IW50 (with attachment); Decision Brief, Document C19 (Email to Woodside with revised Final Decision Notice).

339 Ward Affidavit, IW51.

287. The following day, Saturday 6 September 2025, Mr D texted Ms Parry (emphasis added):[340]

> Rachel – we are about to send you our response which identifies 3 items of factual correctness which if modified would then constitute a document we can accept.

288. Also on 6 September 2025, Woodside emailed the Department with three proposed changes to the conditions, and re-iterating concerns that condition 5 created a "compliance risk".[341]

289. On Sunday, 7 September 2025, Ms Parry forwarded Woodside's comments to the Minister's office with the note "[w]e will be working through it and updating the final condition set to reflect their factual points. On their last point [about the concerns with condition 5], will discuss with the team what the issue is there."[342]

290. On Friday, 12 September 2025, Ms Parry emailed Woodside a letter notifying it "of the EPBC approval of the North West Shelf Project Extension and the accompanying decision notice signed by Minister Watt this morning".[343]

291. The same day, Mr D texted Ms Parry:[344]

> Thanks Rachel! We got there! Touch base next week on EPBC!

292. Ms Parry reacted to his message with a thumbs up.

F. CONCLUSION

293. For the foregoing reasons, the Approval Decision should be set aside and remitted to the Minister for reconsideration according to law.

Dated: 20 April 2026

A SCOTT KC **J UNDERWOOD** **H DOUGLAS**

340 Ward Affidavit, IW51.

341 Decision Brief, Document C20 (Woodside comment on conditions).

342 Ward Affidavit, IW52.

343 Ward Affidavit, IW55.

344 Ward Affidavit, IW56.