

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating Application for Judicial Review - Form 66 - Rule 31.01(1)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 27/03/2026 1:13:42 PM AEDT
Date Accepted for Filing: 31/03/2026 2:22:17 PM AEDT
File Number: VID1356/2025
File Title: AUSTRALIAN CONSERVATION FOUNDATION INC. v MINISTER FOR
THE ENVIRONMENT AND WATER & ANOR
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: To Be Advised
Time and date for hearing: To Be Advised
Place: To Be Advised



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Further Amended Originating application for judicial review

No. of 2025

Federal Court of Australia
District Registry: Victoria
Division: General

Australian Conservation Foundation Inc.

Applicant

Minister for the Environment and Water and another named in the schedule

Respondents

To the First and Second Respondents

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing: [Registry will insert time and date]

Place: [address of Court]

The Court ordered that the time for serving this application be abridged to [Registry will insert date, if applicable]

Date:

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of (name & role of party) Australian Conservation Foundation Inc., Applicant
Prepared by (name of person/lawyer) Cecile Bester
Law firm (if applicable) Environmental Justice Australia
Tel (03) 8341 3140 Fax _____
Email cecile.bester@envirojustice.org.au
inshani.ward@envirojustice.org.au

Address for service c/o Environmental Justice Australia, Suite 301, Level 3
(include state and postcode) 60 Leicester Street, Carlton, Victoria 3053



The application

The Applicant applies to the Court, pursuant to s 5(1) of the *Administrative Decisions (Judicial Review) Act 1977* (Cth) and ss 39B(1) and (1A)(c) of the *Judiciary Act 1903* (Cth) to review the decision of the First Respondent (**Minister**) under ss 130(1) and 133 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**), made on 12 September 2025, to approve the Second Respondent (**Woodside**) taking the action described as the North West Shelf (**NWS**) Project Extension (**NWS Project Extension**) (EPBC 2018/8335) (**Approval Decision**).

Details of claim

Standing

1. The Applicant is a person aggrieved by the Approval Decision pursuant to s 487(3) of the EPBC Act in that:
 - a. The Applicant is Australia's national environmental organisation. It is an incorporated association under the *Associations Incorporation Act 1991* (ACT) and a registered charity (ABN 22 007 498 482).
 - b. Since 1965, and in the 2 years immediately preceding the decision, the Applicant has engaged in a series of activities for protection or conservation of the environment.
 - c. In particular, in relation to the Approval Decision and the history of the NWS Project Extension decision-making process:
 - i. In November 2022, the Applicant made a submission in response to an invitation for public comment, concerning a request for reconsideration under s 78 of the EPBC Act.
 - ii. The NWS Project Extension was referred by the Minister for assessment in accordance with an "accredited assessment process" under the *Environmental Protection Act 1986* (WA). The Applicant made submissions and was an active participant in the statutory appeal process under that legislation.
 - iii. The Applicant wrote to the Minister on various occasions expressing its concerns about the environmental impacts of the proposed action, including a detailed letter on 20 December 2024 and provision of an expert report on 13 March 2025.



- d. At the time of the Approval Decision, the Applicant's objects and purpose, as set out in cl 2 of its Constitution, included protection and conservation of the environment.

Grounds of application

Ground 1

2. In making the Approval Decision, and contrary to s 136(5) of the EPBC Act, the Minister considered a matter that the Minister was not required or permitted by Div 1 of Pt 9 of the EPBC Act to consider, namely, the economic benefits of the "Browse to North West Shelf Development".

Particulars

- a. The Browse to North West Shelf Development is a separate proposed action under the EPBC Act, for which Woodside is the proponent, and which has not been approved: Minister's **Reasons** for Approval Decision, paragraph [17].
- b. The Reasons state at paragraph [250(c)]:
- "I consider that the proposed action would result in significant economic benefits to the regional, State and National Communities, including
- [...]
- (c) Combined, the Browse to North West Shelf Development and NWS Project Extension 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% 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 2019-2063, 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.”

c. The Reasons state at paragraph [251]:

“[...] I note that, as part of Woodside’s potential Browse to NSW 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.”

Ground 2

3. 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 composition and resulting air emissions.

Particulars

- a. At present, the NWS Project facilities are only authorised to process natural gas and other fluids from the North West Shelf Joint Venture (**NWSJV**) field resource.
- b. A critical aspect of the NWS Project Extension is the long-term processing of “third party gas and fluids” from sources other than the NWSJV field resource.
- c. The “key issue for consideration in this assessment is the impact of air emissions [as a result of the NWS Project Extension] on the rock art” at the Dampier Archipelago: Reasons at [75].
- d. The NWS Project Extension will include, as a result of the processing of third-party gas and fluids, “changes to feed gas composition (including changed content of inerts, hydrocarbons and other components) and composition of environmental discharges and emissions ... as third-party gas and fluids may differ from existing NWSJV fields”: Reasons at [8].
- e. At present, “the degree of emissions similarity or difference is unknown for third party gas providers”: Reasons at [106], and see generally [105]-[110]; [212].
- f. Approval conditions 5, 6, 7 and 8 of the Approval Decision impose restrictions on particular emissions types, in light of “the proponent’s limitations and the strength of evidence per type of emission”: Approval Decision, approval conditions 5, 6, 7 and 8; Reasons at [175].
- g. Approval condition 4 requires Woodside to prepare and implement an Air Quality Management Plan which, amongst other things, “describes and quantifies all of



the expected air emissions from the proposal”, the concept of “air emissions” being undefined: Approval Decision, approval condition 4, read with condition 3-5(3) of the “Western Australian approval”, being the document titled Ministerial Statement 1233 dated 12 December 2024.

- h. Approval conditions 11(a) and 15(a) of the Approval Decision requires Woodside to monitor and report on all “air emissions” (being a defined list of emissions covered by approval conditions 5, 6, 7 and 8).
- i. The Approval Decision makes no provision for the Minister to assess the composition of third-party feed gas or the impacts of the air emissions as reported by Woodside in accordance with the conditions from time to time.
- j. Approval condition 16 of the Approval Decision requires Woodside to notify the Department “if it detects that any air emission [as defined] arising from the Action has exceeded a limit specified in Conditions 5, 6, 7 or 8”.
- k. Approval condition 38 of the Approval Decision requires Woodside to report to the Department the details of non-compliance with (amongst other things) the approval conditions, and to specify what corrective measures “[it] proposes to undertake”.
- l. There is no requirement in the approval conditions for Woodside actually to take those corrective measures, or otherwise respond to non-compliance with the approval conditions arising from new kinds of air emissions or impermissible levels of air emissions.
- m. Accordingly, a critical aspect of the NWS Project Extension, and the “key issue for consideration” in the Approval Decision, being the composition of, and accordingly impact of, future air emissions on the rock art, was undetermined.

Ground 3

- 4. 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.

Particulars

- a. The Applicant refers to and repeats the particulars to paragraph 3 above.



- b. In deciding whether or not to approve the taking of the NWS Project Extension, the Minister had to assess whether the impacts of the action are acceptable and, if not, what conditions could result in those impacts being acceptable: *Friends of the Gelorup Corridor Inc v Minister for the Environment and Water* (2023) 299 FCR 236 at [64].
- c. In imposing conditions on an approval, the Minister must be satisfied that the condition is necessary or convenient for protecting the national heritage values of the Dampier Archipelago, or repairing or mitigating damage to those values: ss 134(1), (2).
- d. Where the effect of the conditions is indeterminate because they leave significant issues to be ascertained at a later time, there is no rational basis for concluding that those conditions will make the impact of the NWS Project Extension acceptable: *Gelorup* at [65].
- e. The approval conditions leave a key aspect of the NWS Project Extension, namely, the composition of third-party gas feed and consequent air emissions over at least 40 years, to remain undetermined:
- f. In the premises, the Minister had no rational basis for concluding that the approval conditions, in their totality, would make the impacts of air emissions from NWS Project Extension on the national heritage values of the Dampier Archipelago acceptable.

Ground 4

5. 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.

Particulars

- a. In making the Approval Decision, the Minister was required to consider “matters relevant to any matter protected by a provision ... the Minister ha[d] decided [was] a controlling provision for the action”: EPBC Act, s 136(1)(a). In doing so, he was required to “take into account ... any information he had on the relevant impacts of the proposed action”: EPBC Act, s 136(2)(e).
- b. The national heritage values of the Dampier Archipelago were matters protected by the provisions the Minister had decided were controlling provisions for the proposed action: *Reasons* at [55]. Accordingly, he was required to take into account any information he had on the relevant impacts of the proposed action on those values.



- c. The Minister had before him information about the physical effects of climate change on the national heritage values of the Dampier Archipelago: Reasons at [35]. He refused to take into account that information because he found that it was “not about impacts the proposed action has or will have, or is likely to have, on ... protected matters”: Reasons at [39].
- d. The Minister made that finding on the basis that the proposed action is not a “substantial cause” (within the meaning of s 527E(1)(b) of the EPBC Act) of the physical effects of climate change on the national heritage values of the Dampier Archipelago: Reasons at [39], [80].
- e. The Minister made that further finding on two bases:
 - i. That the proposed action would not be likely to result in a “net increase” in greenhouse gas emissions and global average temperature and thus make a “net” contribution to the physical effects of climate change: Reasons at [39](a), read with the Minister’s reasons for the reconsideration decision dated 25 September 2025 (**Reconsideration Reasons**) at [174]; and
 - ii. Even if the proposed action would result in a net increase in global greenhouse gas emissions and global average temperature, any net contribution would be “very small” as a proportion of global greenhouse gas emissions and as a matter of raw global temperature increase: Reasons at [39](b), and Reconsideration Reasons at [178]-[183].
- f. Each basis was flawed in that each assumed that the phrase “substantial cause” within in s 527E(1)(b) required nothing more than an arithmetical analysis of (1) the gross amount of greenhouse gas emissions relevant to the proposed action; and (2) whether that amount was likely to be “netted off” by equivalent emissions from other sources or was simply “very small” as a proportion of global greenhouse gas emissions or as a matter of raw global temperature increase: cf *Environment Council of Central Queensland Inc v Minister for the Environment and Water* [2024] FCAFC 56 at [132].
- g. Properly construed, the phrase “substantial cause” in s 527E(1)(b) has a qualitative meaning that cannot be reduced to arithmetical analysis.
- h. In the premises, the Minister erred:
 - i. in finding that the proposed action was not a “substantial cause” of the physical effects of climate change on the national heritage values of the Dampier Archipelago; and, therefore



- ii. in refusing to take into account of the physical effects of climate change on the national heritage values of the Dampier Archipelago.

Ground 5

6. By reason of the sequencing of the Reconsideration Decision and Approval Decision and the sequencing of the publication of reasons for them, 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.

Particulars

- a. On 3 May 2019, a delegate of the Minister determined under s 75 of the EPBC Act that the NWS Project Extension is a controlled action (**controlled action decision**).
- b. On 8 July 2022, the Environment Council of Central Queensland (**ECOCQ**), requested, pursuant to s 78A of the EPBC Act, that the Minister reconsider the controlled action decision on the basis of substantial new information (s 78(1)(a)) (**Reconsideration Request**).
- c. Also on 8 July 2022, ECOCQ submitted 18 other requests for reconsideration of controlled action decisions that had been made in respect of coal and gas projects, on the basis of the same substantial new information.
- d. Section 78C of the EPBC Act required the Minister to decide the Reconsideration Request “as soon as reasonably practicable” after the end of a period in which information and comments may be given on it pursuant to s 78B.
- e. Section 78B of the EPBC Act provided that the Minister must inform certain interested persons of a reconsideration request and give them 10 business days to comment on it.
- f. Section 78(1)(a) of the EPBC Act empowered the Minister to revoke the controlled action decision if satisfied that revocation and substitution was warranted by the availability of substantial new information.
- g. However, s 78(3)(a) of the EPBC Act provided that the Minister “must not” revoke the controlled action decision after approving or refusing the controlled action.
- h. On or about 3 November 2022:
 - i. the Reconsideration Request made in respect of the NWS Project Extension was sent to Woodside with an invitation to comment;



- ii. all 19 reconsideration requests were published on the Department's public internet portal and public comments were invited for a period of 15 business days; and
- iii. all 19 reconsideration requests were conveyed to relevant State and Commonwealth Ministers with an invitation to comment
- i. The last response from the relevant State and Commonwealth Ministers was received by the Department on 22 December 2022.
- j. The response from Woodside was received on 31 January 2023.
- k. Between 11 May 2023 and 3 December 2023³⁴, the Minister made decisions in respect of 6 of the 19 reconsideration requests that had been made on 8 July 2022, each of which confirmed the controlled action decision. The reasons for each decision were substantially the same.
- l. Two of those reconsideration decisions were the subject of proceedings in this Court and the Full Court in late 2023 and early 2024: *Environment Council of Central Queensland v Minister for the Environment and Water* [2024] FCAFC 56.
- m. The Reconsideration Request was only briefed to the Minister's Office on or about 16 May 2025, nearly three years after it had been made. The brief notes: "Timing: 19 May 2025 – as the final approval decision for EPBC 2018/8335 is due 31 May 2025".
- n. Also on or about 16 May 2025, the NWS Project Extension was briefed to the Minister's Office for a proposed approval decision with conditions. In respect of the Reconsideration Request, it notes "Brief recommending confirmation of original decision with Minister".
- o. On 20 May 2025, the Minister made the Reconsideration Decision for the NWS Project Extension, and confirmed the controlled action decision. This was nearly three years after a reconsideration request had been made, and around 840 days after the "end of the time within which information or comments [were] given under section 78B" (EPBC Act, s 78C).
- p. The Reconsideration Decision was not made as soon as reasonably practicable, as required by s 78C.
- q. On 22 May 2025, ACF wrote to the Minister seeking assurances that the NWS Project Extension would not be approved until after reasons for the Reconsideration Decision had been provided.



- r. ACF did this 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. ACF could not realistically seek judicial review of the Reconsideration Decision before the reasons for that decision were provided.
- s. The Minister did not respond to ACF's request.
- t. On 28 May 2025, the Minister announced a proposal to approve the NWS Project Extension with conditions.
- u. The Minister invited comments from Woodside within 10 days, but did not invite comments from the public.
- v. Immediately afterwards, on 28 May 2025, ACF requested reasons for the Reconsideration Decision, pursuant to s 13 of the *Administrative Decisions (Judicial Review) Act 1977 (Cth) (ADJR Act)*.
- w. 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 requests during that time, it is to be inferred that the reasons for making the Reconsideration Decision were known, and existed in either their final or near-to-final form, at the time of ACF's request.
- x. 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.
- y. The Minister did not provide any reasons by that date.
- z. 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", which circumstance suggests reasons had been prepared by that date.
- aa. On 12 September 2025, the Minister made the Approval Decision.
- bb. Some two weeks later, on 29 September 2025, the Minister provided the Reconsideration Reasons.
- cc. Between May and September 2025, the Department and Woodside engaged in detailed negotiations via email, text message, and in conferences, about the conditions ultimately to be attached to the approval of the NWS Project Extension. Those negotiations indicate:



- i. Inferentially, that the Department had an objective or goal of ensuring the extended operation of the Karratha Gas Plant by approving the NWS Project Extension;
 - ii. Woodside had extraordinary access to, and direct participation in, the Department's deliberations about the content of the conditions to attach to the approval; and
 - iii. The final conditions were the product of negotiation with Woodside to achieve an approval with "implementable" conditions.
- dd. The filing of a judicial review application in relation to the Reconsideration Decision had the potential to:
- i. delay the Approval Decision from being made or implemented;
 - ii. render the Approval Decision invalid, if the Reconsideration Decision was set aside by a Court on judicial review.
- ee. By reason of:
- i. the sequencing of the Reconsideration Decision, the Approval Decision, and the giving of the Reconsideration Reasons, which has the appearance of having been designed to limit delays from litigation; and
 - ii. the circumstances of the negotiations between the Department and Woodside between May and September 2025, which has the appearance of a collaborative approach to achieving a mutual objective of approval.
- 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.
- ff. In the circumstances, a fair minded lay observer might reasonably apprehend that the Minister might have been biased:
- i. in favour of Woodside in approving the NWS Project Extension; and/or
 - ii. against persons with standing to seek judicial review of the Reconsideration Decision.

Orders sought

1. An order quashing or setting aside the decision.
2. An order remitting the matter for reconsideration according to law.
3. Costs.



4. Any other order the Court considers appropriate.

Applicant's address

The Applicant's address for service is:

Place: c/o Environmental Justice Australia, solicitor, of Suite 301, Level 3, 60 Leicester Street,
Carlton VIC 3053

Email: cecile.bester@envirojustice.org.au

The Applicant's address is Level 1, 60 Leicester Street, Carlton VIC 3053

Service on the Respondent

It is intended to serve this application on all Respondents.

Date: ~~10 October 2025~~ 27 February 2026 ~~17 March 2026~~

A handwritten signature in blue ink that reads "CBester".

Signed by Cecile Bester
Lawyer for the Applicant



Schedule

No. of 2025

Federal Court of Australia

District Registry: Victoria

Division: General

Respondents

Second Respondent: **Woodside Energy Ltd**
(ABN 63 005 482 986)

Date: ~~10 October 2025~~ 27 February 2026 17 March 2026