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File Title: ASSET ENERGY PTY LTD ACN 120 013 390 v THE COMMONWEALTH
MINISTER FOR INDUSTRY AND SCIENCE AS THE RESPONSIBLE
COMMONWEALTH MINISTER OF THE COMMONWEALTH-NEW
SOUTH WALES OFFSHORE PETROLEUM JOINT AUTHORITY & ANOR
Registry: WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

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No. WAD 36 of 2025

Federal Court of Australia

District Registry: Western Australia

Division: General

Asset Energy Pty Ltd (ACN 120 013 390)

Applicant

The Commonwealth Minister for Industry and Science, as the Responsible Commonwealth Minister of the Commonwealth-New South Wales Offshore Petroleum Joint Authority and another named in the schedule

Respondents

Applicant's Outline of Submissions in Chief

Overview.

1. On 16 January 2025, the Commonwealth-New South Wales Offshore Petroleum **Joint Authority** (constituted by the first and second respondents) made two purported decisions under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cth) (OPGGS Act)*. Those decisions were to refuse the applicant's (**Asset Energy**) applications for a variation, suspension and related extension of the conditions to which Petroleum Exploration **Permit** for Petroleum No. NSW/PEP-11 is subject (the **Applications**). Those decisions should be quashed as:
 - (i) the conclusion of the Joint Authority that the Applications were not in the public interest is not supported by evidence and is otherwise unreasonable or irrational;
 - (ii) the conclusion of the Joint Authority regarding estimated well costings and related financial capacity to undertake work under the Permit was reached by a denial of procedural fairness and is otherwise unreasonable or not supported by evidence; and
 - (iii) the Joint Authority's decisions are otherwise infected by jurisdictional error as it misconstrued and misapplied the powers under ss 264 and 265 of the OPGGS Act.

Relevant background and material relied upon.

2. Asset Energy relies upon its grounds of review and the evidence¹ it has filed in these proceedings. Asset Energy also refers in these submissions to the first respondent's evidence² and certain

¹ Being the affidavit of David Leslie Breeze sworn 12 February 2025 (**First Breeze Affidavit**); and the affidavit of David Leslie Breeze sworn 20 May 2025 (**Second Breeze Affidavit**).

² Being the affidavit of Graeme Albert Waters sworn 2 July 2025 (**Waters Affidavit**).

documents in the compiled **Bundle of Materials** filed 30 April 2025. The essential background may be stated as follows.

3. On or about 24 June 1999 the Permit was granted originally to Flare Petroleum NL.³ Although the Permit was granted originally under the *Petroleum (Submerged Lands) Act 1967* (Cth) it is now regulated, by operation of the transitional provisions, by the OPGGS Act.⁴
4. The Permit is what is known as a ‘work bid exploration permit’. The Permit allows the titleholder to explore for petroleum within the Permit area but is subject to minimum work conditions which specify work that must be completed by the titleholder (typically) within 12-month periods.⁵ The Permit area spans 64 graticular blocks and covers a geographical offshore area of the Sydney basin.
5. It is a condition of the Permit that the minimum work requirements are carried out.⁶ A failure to comply with the Permit conditions can have various adverse consequences including constituting grounds for cancellation of the Permit and any such non-compliance can be considered when determining a renewal application.⁷ Each work requirement under the Permit carries with it an *estimated* and *indicative*⁸ only expenditure for that work.
6. Since 27 October 2006, Asset Energy and Bounty Oil and Gas NL (collectively the **Titleholders**) have held the Permit with their respective interests subsequently being 85% and 15%.⁹ The Permit was last renewed on 13 August 2012.
7. On 24 December 2019, Asset Energy (on behalf of the Titleholders) applied for a variation and suspension of the conditions of the Permit pursuant to s 264 of the OGGPS Act and an extension of the term of the Permit pursuant to s 265 of the OGGPS Act (the **First Application**).¹⁰ The variation, suspension and extension were sought, among other things, to enable Asset Energy (i) further time lawfully to drill an exploration well in year 4 of the work program; and (ii) thereafter to conduct post well studies rather than conduct a three-dimensional seismic survey in year 5 of

³ First Breeze Affidavit, [4] and DLB1.

⁴ OPGGS Act, s 791 and Sched 6 (item 3).

⁵ First Breeze Affidavit, [4] and DLB1. See too OPGGS Act, s 99(5).

⁶ First Breeze Affidavit, [4] and DLB1.

⁷ OPGGS Act, Pt 2.13 Div 1 (see too s 274); s 126(2).

⁸ See the original Permit: First Breeze Affidavit, [4] and DLB1. For the current work program see DLB6.

⁹ First Breeze Affidavit, [5]-[6] and DLB2.

¹⁰ First Breeze Affidavit, [8] and DLB4.

the work program. The National Offshore Petroleum Titles Administrator (**NOPTA**), on behalf of the Joint Authority, accepted the First Application on 23 January 2020.¹¹

8. On 30 January 2021, Asset Energy (on behalf of the Titleholders) applied for a variation and suspension of the conditions of the Permit pursuant to s 264 of the OGGPS Act and an extension of the term of the Permit pursuant to s 265 of the OGGPS Act (the **Second Application**).¹² The variation, suspension and extension were sought, among other things, to enable the applicant further time lawfully to drill an exploration well and to invoke the decision-making principles set out in the *COVID-19 Fact Sheet: Work-Bid Exploration Permits (dated April 2020)*. NOPTA, on behalf of the Joint Authority, accepted the Second Application on 4 February 2021.¹³

Purported decisions refusing the Applications are made on 16 January 2025.

9. On 16 January 2025, the Joint Authority purportedly refused the Applications. On 17 January 2025, the Titleholders were informed of the purported refusal by NOPTA.¹⁴
10. The only member of the Joint Authority who took an active part in the refusal decision was the first respondent as facilitated by s 59(3) of the OPGGS Act.¹⁵ Accordingly, the impugned reasons will be referred to here for the sake of brevity as the **Minister's Final Reasons**.¹⁶
11. The Minister's Final Reasons rejected the Applications on two independent bases, each of which were said to be sufficient¹⁷ to support those Reasons. The first was that the grant of the Applications was not in the public interest (the **Public Interest Ground**). The second was that the Minister had concerns about the Titleholders' estimated well costings and financial capacity (the **Financial Capacity Ground**).

The two premises relied on by the first respondent to support the Public Interest Ground.

12. The Public Interest Ground rested on two related premises to support the conclusion that 'it would not be in the public interest to grant the First Application or Second Application in light of the community opposition to the gas exploration activities being conducted in areas including

¹¹ First Breeze Affidavit, [9] and DLB5.

¹² First Breeze Affidavit, [10] and DLB6.

¹³ First Breeze Affidavit, [11] and DLB7.

¹⁴ First Breeze Affidavit, [52] and DLB49.

¹⁵ See the correspondence between the respondents in Tabs 4, 6-7 of the Bundle of Materials.

¹⁶ First Breeze Affidavit, [52] and DLB51.

¹⁷ Minister's Final Reasons, [75], [125], and [130].

the Permit area'.¹⁸ The *first* premise was that 'the bipartisan support for the [*Environmental Planning and Assessment Amendment (Sea Bed Mining and Exploration) Act 2024 (NSW) (EPAA Act)*] was evidence of a high level of public opposition within NSW to the exploration to be conducted under the Permit'.¹⁹

13. The *second* premise was that 'in his Second Reading Speech [for the Bill that became the EPAA Act] Minister Scully stated that many Members of [the] Parliament [of New South Wales] had raised concerns about offshore mineral or petroleum exploration or mining for commercial purposes either in or adjacent to NSW coastal waters'.²⁰ The first respondent then inferred that '[a]s the role of a Member of Parliament is to represent their electorate [that statement] may be relied on as representing a broadly held community opposition within NSW to gas exploration activities being conducted either in or adjacent to NSW coastal waters'.²¹ The relevant extract from Hansard was then annexed to the Minister's Final Reasons (as annexure 44).

The two interrelated premises relied on to support the Financial Interest Ground.

14. The Financial Interest Ground refers to the first respondent's conclusion that there was uncertainty as regards the Titleholders' financial capacity. That conclusion relied on two interrelated²² premises, being *first* that the Titleholders 'may not have accurately estimated the proposed well cost, and that the actual cost may be substantially higher';²³ and *second* 'the uncertain and speculative nature of the information regarding the Titleholders' ability to raise the necessary capital to undertake the Permit works'²⁴. These conclusions were reached notwithstanding NOPTA's advice and recommendation to the contrary that if the Applications were to be granted then the requisite capital would likely be raised for the work program.²⁵
15. Relevant to the grounds of review here was the conclusion that Asset Energy substantially underestimated the potential costs of the proposed exploration well. At the time that Asset Energy submitted both Applications the estimated and indicative cost of the proposed well was

¹⁸ Minister's Final Reasons, [75]

¹⁹ Minister's Final Reasons, [73].

²⁰ Minister's Final Reasons, [74].

²¹ Minister's Final Reasons, [74].

²² Minister's Final Reasons, [101].

²³ Minister's Final Reasons [100]. See too at [81]-[99], and [124]-[125].

²⁴ Minister's Final Reasons, [125]. See too at [101]-[124].

²⁵ See, Minister's Final Reasons, [49]-[55]. See too the Undisclosed Advice (as defined at [54] below), p 12.

\$15m under the Permit as it then stood.²⁶ The evidence is that the Titleholders (on the guidance of NOPTA) wished to demonstrate consistent costs between the existing and revised work program.²⁷ Accordingly, this figure was amended to \$20m in the First Application to account for removal of the 3d seismic survey. The First Application was accompanied by a quotation that the proposed well would then cost approximately \$23m (**CDE Offer**).²⁸ The CDE Offer is annexed to the Minister's Final Reasons (at annexure 41(G)).

Further context and the delay in making the decisions.

16. Some 1,820 days (or approximately five years) passed between the First Application being accepted and determined. A period of 1,442 days (or almost four years) passed between the Second Application being accepted and determined. These delays call for a further explanation as they form part of the context against which the Minister's Final Reasons are to be read.
17. Between 5 February 2020 and 6 August 2020, NOPTA sent Asset Energy four requests for further information about the First Application and Asset Energy provided responses.²⁹
18. On 16 December 2021, NOPTA sent Asset Energy a letter indicating that the then Joint Authority intended to refuse the First Application and inviting Asset Energy to make further submissions.³⁰ Asset Energy provided these submissions on 22 January 2022. On or about 30 March 2022, the then purported Joint Authority refused the First Application. On 14 February 2023, that decision was set aside by this Court on the ground of apprehended bias.³¹
19. During the period set out at paragraphs 17 to 18 above, the Second Application was not considered by the Joint Authority due to the First Application remaining undetermined.³²
20. From on or about 23 March 2023, and because of the decision in [2023] FCA 86, the Joint Authority recommenced the process of considering the Applications.³³ This resulted in:³⁴ (i) three

²⁶ First Breeze Affidavit, DLB28 at [32] and annexure 3.

²⁷ See First Breeze Affidavit, DLB28 at [18] & [21]; DLB30 at [1(a)]; DLB48 at [19(a)(c)]. See Minister's Final Reasons, [95].

²⁸ First Breeze Affidavit, [54].

²⁹ First Breeze Affidavit, [12]-[19] and DLB8-15.

³⁰ First Breeze Affidavit, [20]-[23] and DLB16-17, DLB20.

³¹ *Asset Energy Pty Ltd v Commonwealth Minister for Resources* [2023] FCA 86; (2023) 179 ALD 278.

³² First Breeze Affidavit, [29] and DLB26.

³³ First Breeze Affidavit, [30]-[31] and DLB27-28.

³⁴ First Breeze Affidavit, [32]-[46] and DLB29-43.

additional requests for further information and related responses (ii) correspondence regarding the composition of the Joint Authority; and (iii) various requests for clarification as to when a decision would be made.

21. On 5 August 2024, Asset Energy commenced judicial review proceedings in the Federal Court of Australia seeking orders to compel the Joint Authority to make a decision as regards the Applications.³⁵ That application was never determined as on 18 September 2024, NOPTA provided Asset Energy with a preliminary set of reasons sent on behalf of the first respondent and inviting comment on the same (the **Minister's Preliminary Reasons**). On 15 November 2024, Asset Energy provided its further submissions, and, in turn, the final decision was made and the Minister's Final Reasons were proffered (see [9] to [14] above).
22. The Permit was due to expire on 12 February 2021³⁶ (being 389 days after the First Application was lodged) but had been kept in force by s 265A(1) of the OPGGS Act whilst the Applications were considered. The Permit remains in force by an order of this Court dated 17 March 2025.

The Public Interest Ground in the Minister's Final Reasons provides no basis for refusal.

23. The Public Interest Ground in the Minister's Final Reasons provides no basis for refusing the Applications for two reasons. The *first* reason is that there is no evidence to support that conclusion. The *second* reason is that, further and in the alternative, the relevant reasoning of the first respondent as evidenced in the Minister's Final Reasons was unreasonable and/or irrational.

There is no evidence to support the Public Interest Ground.

24. The making of factual findings and the drawing of inferences in the context of an administrative decision absent evidence is an error of law.³⁷ So, where an administrative decision maker decides a question of fact when there is no evidence to support that finding, he or she makes an error of law and the question as to what material could support a factual finding is a question for judicial determination. It is well observed that the expression 'absence of evidence' means 'not a skerrick of [probative] evidence' to support the relevant factual finding.³⁸

³⁵ See First Breeze Affidavit, [47]-[48], [51] and DLB44-45, DLB48.

³⁶ Minister's Final Reasons, [3].

³⁷ *Kostas v HIA Insurance Services Pty Ltd* [2010] HCA 32; (2010) 241 CLR 390, [91]. See too *Administrative Decisions (Judicial Review) Act 1977* (Cth), s 5(1)(f) (**ADJR Act**).

³⁸ *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Viane* [2021] HCA 41; (2021) 274 CLR 398, [17] (Keane, Gordon, Edelman, Steward and Gleeson JJ). See too *Wang v ASIC* [2019] FCA 1178, [68] (Bromwich J).

25. Here, the first respondent's decision as regards the Public Interest Ground rested *solely* on the passage of the EPAA Act and the truth of a statement in the related second reading speech. This is not a case where the first respondent's decision as regards the public interest was made in accordance with his 'personal or specialised knowledge or by reference to that which is commonly known'.³⁹ Rather, the first respondent relied on certain external objective facts. Such a finding of fact 'cannot be asserted without any basis at all'.⁴⁰

The Minister is disabled from relying on the second reading speech due to parliamentary privilege.

26. Asset Energy asserts that there was no evidence available to the first respondent to support the Public Interest Ground within the Minister's Final Reasons. This position must be accepted as this Court is disabled⁴¹ from accepting the truth of the parliamentary statement made by the Hon Paul Scully MLA in determining this issue. Given that the truth of that statement was the central factual hook on which the Public Interest Ground hung, without it there is no basis for the first respondent's conclusion that there was widespread public opposition to the grant of the Applications. This is for the following reasons.
27. *First*, Art. 9 of the *Bill of Rights 1689* (UK) 1 Wm & M Sess 2 c 2 provides that: 'the Freedom of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament'. Article 9 remains the source of parliamentary privilege in New South Wales by operation of s 6 of the *Imperial Act Application Act 1969* (NSW)⁴² and applies notwithstanding this matter being within federal jurisdiction.⁴³
28. *Second*, Art. 9 applies broadly beyond the executive to curial proceedings such that 'courts will not allow any challenge to be made to what is said or done within the walls of Parliament in performance of its legislative functions and protection of its established privileges.'⁴⁴ Blackstone supported a broad view of Art. 9 lest 'it were easy for the executive power to devise some new

³⁹ *Viane* [2021] HCA 41; (2021) 274 CLR 398, [17] (Keane, Gordon, Edelman, Steward and Gleeson JJ).

⁴⁰ *Viane* [2021] HCA 41; (2021) 274 CLR 398, [20] (Keane, Gordon, Edelman, Steward and Gleeson JJ).

⁴¹ See WN Hohfeld, 'Fundamental Legal Conceptions as Applied in Judicial Reasoning' (1913) 23 *Yale Law Journal* 16, 55.

⁴² See too *Egan v Willis* (1998) 195 CLR 424, [22]-[24] (Gaudron, Gummow and Hayne JJ).

⁴³ See *Judiciary Act 1903* (Cth), s 79 and *Evidence Act 1995* (Cth), s 10(1).

⁴⁴ *Prebble v Television New Zealand Ltd* [1995] 1 AC 321 (PC), 332 (Lord Browne-Wilkinson).

case, not within the line of privilege [and that] [t]he dignity and independence of the two Houses are therefore in great measure preserved by keeping their privileges indefinite'.⁴⁵

29. This broad view of Art. 9 is supported by the cases. A leading authority is the advice of the Privy Council in *Prebble v Television New Zealand Ltd* [1995] 1 AC 321. The modern rationale for Art. 9 was discussed by Lord Browne-Wilkinson who gave the advice of the Board (at 334):

The important public interest protected by such privilege is to ensure that the member or witness *at the time he speaks* is not inhibited from stating fully and freely what he has to say. If there were any exceptions which permitted his statements to be questioned subsequently, at the time when he speaks in Parliament he would not know whether or not there would subsequently be a challenge to what he is saying. Therefore he would not have the confidence the privilege is designed to protect.

30. His Lordship then confirmed that the privilege applies to all curial proceedings and that the privilege is institutional and not merely a rule of evidence in that it cannot be waived by an individual or litigant.⁴⁶ So, in *Comalco Ltd v Australian Broadcasting Corporation* (1983) ACTR 1, Blackburn CJ said that a court applies Art. 9 of the Bill of Rights (at 5):

not by refusing to admit evidence of what was said in Parliament, but by refusing *to allow the substance of what was said in Parliament to be the subject of any submission or inference*. The court upholds the privileges of Parliament ... by its control over the pleadings and the proceedings in court. (emphasis added).

31. *Third*, the principles enunciated immediately above apply to judicial review proceedings.⁴⁷ In *R v Secretary of State for Trade; Ex parte Anderson Strathclyde plc* [1983] 2 All ER 233, Dunn J (at 239) held that there was no basis for distinguishing between the use of Hansard to support a civil cause of action or otherwise the use of such material in judicial review proceedings for a decision made outside of parliament. The same approach has been adopted in Australia. In *Hamsher v Swift* (1992) 33 FCR 545, French J (as his Honour was then) disabled an applicant for judicial review from relying on the respondent minister's statement in the Commonwealth Parliament 'for the purpose of establishing his intention or otherwise inhibiting the drawing of inferences from the proceedings in the Parliament of which that statement formed a part' (at 564). This approach was followed in *Artinian v The Commonwealth* [1997] FCA 1604, where Hill J refused to allow an extract from the Senate Hansard recording the deliberations of a Standing Committee from being tendered for a purpose beyond the fact the impugned statement was made. Likewise, in *Mees v Roads Corporation* [2003] FCA 306; (2003) 128 FCR 418, Gray J disabled the respondents (including a minister) from relying on the truth of matters recorded in Hansard. His Honour's detailed reasoning (at [85]) is worthy of repetition here:

⁴⁵ William Blackstone, *Commentaries on the Laws of England: Book I* (first published 1768, OUP 2016) 160.

⁴⁶ *Prebble* [1995] 1 AC 321 (PC), 335–337. See too *Hamsher v Swift* (1992) 33 FCR 545, 564 (French J).

⁴⁷ There are authorities to the contrary outside of this jurisdiction: *Jennings v Buchanan Ca106/01* [2002] NZCA 363, [41].

The proposition that a statement made to parliament can be tendered to a court to prove the truth of its contents, but that the truth of its contents cannot be the subject of any contest in the court, is fraught with difficulty. If accepted, it would have the effect of enabling a member of parliament to create unchallengeable truth with respect to a factual situation, simply by making a statement to parliament containing assertions of fact. The notion of manufactured truth is irreconcilable with the duty and function of a court to find the facts relevant to the issues in dispute in a case before it. Issues would arise as to the length of time for which a statement to parliament could be considered operative to compel acceptance by a court of the facts stated. The unacceptability of the proposition is demonstrated by postulating the existence of more than one statement to parliament, when there is a conflict between the statements. Plainly, a court could not be placed in the situation in which opposing parties tender the conflicting statements and the court is obliged to accept the truth of each of them. *There are therefore many sound reasons for taking the view that it is not open to a party to tender a statement made to parliament as evidence of the truth of the facts stated.* (emphasis added)

32. The decision of Gray J was applied with approval by Mortimer J (as her Honour was then) in *Guy v Crown Melbourne Ltd (No 2)* [2018] FCA 36; (2018) 355 ALR 420, to conclude that the respondent in a misleading or deceptive conduct case was disabled from referring to Hansard to ‘prove that what the Minister said about the purpose of the legislative reform was true, [as] that would be an infringement of parliamentary privilege’ (at [398]). The decision of Gray J was applied again with approval by McLure J (as her Honour was then) in an administrative law context in *Re MacTiernan* [2004] WASC 264 who observed that the truth of the contents of a parliamentary statement cannot be the ‘subject of any contest in a Court’ (at [45]).
33. *Finally*, the question arises as to what this Court is to do with the purported truth of the parliamentary statement of the Hon Paul Scully MLA and related Hansard which was central to the Public Interest Ground and annexed to the Minister’s Final Reasons. Asset Energy accepts that the impugned statement can be utilised by the first respondent for the limited purpose of establishing that the member’s statement was made to the Parliament of New South Wales. But Asset Energy otherwise submits that the impugned statement cannot be relied upon by the first respondent for its truth in opposition to the ‘no evidence’ or ‘unreasonableness/irrationality’ grounds of review. The first respondent cannot use a parliamentary statement to prove what was said was true, such a use would involve allowing the substance of what was said in the Parliament of New South Wales to be the subject of a submission or inference.
34. Here Asset Energy cannot contest the truth of the impugned parliamentary statement by saying, for example, that it was an overstatement by reference to contrary public polling,⁴⁸ it ceased to be true due to further supply constraints regarding the east coast gas market (given it was made on 7 February 2024),⁴⁹ or that properly construed it needs to be read as confined to the metes and

⁴⁸ See First Breeze Affidavit, DLB28, [15] and annexure 1.

⁴⁹ See First Breeze Affidavit, DLB48, [7].

bounds of the issues dealt with by the EPAA Act. Likewise, Asset Energy cannot rely on positive statements in Hansard to create the unfalsifiable truth that the Permit and related Applications are in the public interest⁵⁰ or that the EPAA Act is otherwise unconstitutional.⁵¹ But the logical corollary of these points, as stated by Gray J in *Mees*, must be that a parliamentary statement cannot be used by an administrative decision maker to create his or her own unfalsifiable truth.

35. There is no injustice to the respondents here by the operation of parliamentary privilege. The first respondent was at liberty to decide on what basis he would determine the Applications and what evidence he would use. He chose a second reading speech. The second respondent was able to review the first respondent's preliminary reasons and provide comment if she so chose.
36. Once the truth of the Hon Paul Scully MLA's parliamentary statement is put to one side then there is nothing significant left of the Public Interest Ground. The lack of evidence here was critical to the conclusion reached as the impugned parliamentary statement provided an essential premise without which the relevant conclusion reached in the Minister's Final Reasons cannot be sustained.⁵² Further, any decision based on such paucity of evidence 'is not compatible with a rational process' and therefore liable to be set aside on grounds of irrationality.⁵³

The reasoning underpinning the Public Interest Ground was unreasonable and/or irrational in the circumstances.

37. Further and in the alternative to the 'no evidence' ground set out immediately above the reasoning underpinning the Public Interest Ground was unreasonable and/or irrational in the circumstances. The principles applicable can be stated shortly.
38. *First*, it is to be assumed here that the Commonwealth Parliament does not intend the donee of an administrative power to exercise that power unreasonably.⁵⁴ So, the same applies as regards ss 264 and 265 of the OPGGS Act.

⁵⁰ See, for example, Commonwealth of Australia, *Parliamentary Debates*, House of Representatives, 19 June 2023, p 4583; Commonwealth of Australia, *Parliamentary Debates*, Senate, 9 February 2023, pp 263-4.

⁵¹ See First Breeze Affidavit, DLB48, [9] and appendix G to DLB48.

⁵² On competing approaches to this issue see: *Navoto v Minister for Home Affairs* [2019] FCAFC 135, [64] (the Court); *EPU19 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (No 2)* [2021] FCA 1536, [192] (Perry J).

⁵³ *Kostas* [2010] HCA 32; (2010) 241 CLR 390, [16] (French CJ).

⁵⁴ *Minister for Immigration and Citizenship v Li* [2013] HCA 18; (2013) 249 CLR 332, [29] (French CJ); [63] (Hayne, Kiefel and Bell JJ); [88] (Gageler J); *Minister for Immigration and Border Protection v Eden* [2016] FCAFC 28; (2016) 240 FCR 158, [58] (the Court). See too ADJR Act ss 5(1)(e) and 2(g).

39. *Second*, where the purported unreasonableness results from an administrative decision that is said not to have been logical or rational, the correct approach ‘is to ask whether it was open to the Tribunal to engage in the process of reasoning in which it did engage and to make the findings it did make on the material before it’.⁵⁵ That is to say, unreasonableness may be evidenced from the means by which a decision has been reached and not merely the end result.⁵⁶ So, while the rules of evidence quite clearly do not apply to the Joint Authority, it is still a requirement that the evidence relied on provides a rational and logical basis for the conclusions reached.⁵⁷
40. *Third*, it is accepted by Asset Energy that the ground of review based on unreasonableness is not made out *solely* because of the weight which was afforded by an administrative decision maker to competing and relevant incommensurate factors.⁵⁸ So, the question is not one of weight, but rather whether a rational or logical decision-maker could arrive at the relevant decision on the evidence before the first respondent.⁵⁹ Likewise, a decision will be ‘unreasonable’ where it lacks an evident and intelligible justification.⁶⁰ This task is performed having regard to this Court’s supervisory jurisdiction⁶¹ and the scope and purpose of ss 264 and 265 of the OPGGS Act.⁶²
41. *Finally*, if it is established that the Minister’s Final Reasons are infected by unreasonableness then it follows that that error will have materially affected the first respondent’s related decision.⁶³
42. Here, there was no reasonable or intelligible basis for the first respondent’s decision as regards the Public Interest Ground. This is because neither the bipartisan support for the EPAA Act in the Parliament of New South Wales nor the related parliamentary statement of the Hon Paul Scully MLA are sufficient to conclude that the refusal of the Applications was in the public interest. This is for the following reasons.

The first respondent’s reasoning infringes the logical principle of non-contradiction.

⁵⁵ *Minister for Immigration and Citizenship v SZMDS* [2010] HCA 16; (2010) 240 CLR 611, [133] (Crennan and Bell JJ).

⁵⁶ *Plaintiff S183/2021 v Minister for Home Affairs* [2022] HCA 15; (2022) 96 ALJR 464, [43] (Gordon J).

⁵⁷ *Pochi v Minister for Immigration and Ethnic Affairs* (1979) 36 FLR 482, 492 (Brennan J).

⁵⁸ See, eg, Julius Stone, *Legal System and Lawyer’s Reasonings* (Maitland Publications 1964) 263–4.

⁵⁹ See *DCP16 v Minister for Immigration and Border Protection* [2019] FCAFC 91, [85]–[86] (the Court).

⁶⁰ *Li* [2013] HCA 18; (2013) 249 CLR 332, [76] (Hayne, Kiefel and Bell JJ).

⁶¹ *Minister for Immigration v SZVFW* [2018] HCA 30; (2018) 264 CLR 541, [11] (Kiefel CJ); [58] (Gageler J).

⁶² *Li* [2013] HCA 18; (2013) 249 CLR 332, [77] (Hayne, Kiefel and Bell JJ).

⁶³ *MZAPC v Minister for Immigration and Border Protection* [2021] HCA 17; (2021) 273 CLR 506, [33].

43. *First*, relevant here is the puzzling reasoning of the first respondent which says contemporaneously that: (i) he did not rely at all on the legal effect of the EPAA Act in his reasoning;⁶⁴ but (ii) he nonetheless relied on the bipartisan passage of the Bill which became the EPAA Act as ‘evidence of a high level of public opposition within NSW to the exploration to be conducted under the Permit’.⁶⁵ This reasoning raises the following logical conundrum: if the legal effect of the EPAA Act is not considered *at all* by the first respondent then what is the probative value of the fact that the related Bill was passed with bipartisan support. Put another way, the bipartisan support relied on by the first respondent was for what? That bipartisan support can only ever be logically relevant if one considers what it is for.
44. The fatal logical flaw in the first respondent’s reasoning in this regard is that it infringes the principle of non-contradiction. A proposition and its negation cannot simultaneously be true. The only purpose of the Bill is that it provides the means to create the legal effects as evidenced in the EPAA Act. It follows that the first respondent cannot say contemporaneously that he will not rely on the legal effect of the EPAA Act but will rely on the fact that those effects had bipartisan support. If the effects of the EPAA Act were not to be afforded weight, then the support for that Act cannot be afforded any weight. A stream cannot rise above its source.

Excessive deference was afforded to the passage of the EPAA Act and related parliamentary statement.

45. *Second*, relevant to the analysis immediately above is the fact that the EPAA Act does not prohibit the activities proposed in the existing or proposed work program to which the Permit is subject.⁶⁶ This is a reason why the first respondent must have said that he would not rely on the legal effect of the EPAA Act.⁶⁷ That Act does not impact the Permit as the Permit area and the related activities are outside the relevant geographical reach of the EPAA Act (indeed the proposed exploration well is to be some 26km offshore which is approximately 20.5km outside of the area regulated by the EPAA Act). Of course, this is hardly surprising because if the EPAA Act alters, impairs or detracts from the operation of the OPGGS Act then it would be invalid.⁶⁸

⁶⁴ Minister’s Final Reasons, [72].

⁶⁵ Minister’s Final Reasons, [73].

⁶⁶ See, EPAA Act, Sched 1, s 2(1). See further, *Interpretation Act 1987* (NSW), s 58; *Coastal Waters (State Powers) Act 1980* (Cth), ss 4 and 5; *OPGGS Act*, s 8; Anne Twomey, *The Constitution of New South Wales* (Federation Press 2004) 40–42.

⁶⁷ Minister’s Final Reasons, [71].

⁶⁸ *Commonwealth v Australian Capital Territory* [2013] HCA 55; (2013) 250 CLR 441, [59] (the Court).

46. So, the reliance on the enactment of the EPAA Act in the Minister's Final Reasons is a *non-sequitur*. If, for example, an exploration well can be drilled in the Permit area without contravening the EPAA Act, then the enactment of the EPAA Act (with or without bipartisan support) cannot be used as a basis for concluding that there is widespread public opposition to the Applications.

47. Further, and importantly, the OPGGS Act creates a national regime and must be administered consistently and coherently across offshore areas. The powers in ss 264 and 265 are not to be curtailed by the enactment of a New South Wales statute that governs only onshore waters.

The statement of the Hon Paul Scully MLA was taken out of context and is of no probative value.

48. *Third*, the impugned parliamentary statement made by the Hon Paul Scully MLA, assuming that the truth of the statement can be used here which is not conceded, was made in the specific context of the passage of a Bill that in no way impacted on the activities that could be undertaken under the Permit. That statement cannot be used or read in context to determine the intention of Parliament in enacting the EPAA Act as it 'should not be supposed that members necessarily agreed with the Minister's reasoning or his conclusions'⁶⁹ in passing the related Bill. Importantly, and relevant here, is that the Hon Paul Scully MLA and unspecified members of the New South Wales Parliament to whom he refers did not have the benefit of the Applications, the Titleholders' submissions and NOPTA's advice regarding the Applications to inform their views. Also relevant is the fact that the Hon Paul Scully MLA otherwise conceded in the impugned statement that the EPAA Act did not relevantly apply to the offshore area of New South Wales.

Asset Energy was denied procedural fairness regarding estimated well costings that underpinned the Financial Interest Ground in the Minister's Final Reasons.

49. It is uncontroversial that the Joint Authority was required to afford procedural fairness to the Titleholders in considering the Applications.⁷⁰ Procedural fairness extends to, in the oft quoted words of Brennan J, 'in the ordinary case [and] where no problem of confidentiality arises an opportunity ... to deal with adverse information that is reliable, relevant and significant to the decision to be made'.⁷¹ What is important from his Honour's observation is that it is the administrative process which must be fair not the final outcome of that process.⁷² Given the focus

⁶⁹ *Wilson v First County Trust Ltd [No 2]* [2004] 1 AC 816, [66] (Lord Nicholls).

⁷⁰ *CPCF v Minister for Immigration and Border Protection* [2015] HCA 1; (2015) 255 CLR 514, [367] (Gageler J).

⁷¹ *Kioa v West* (1985) 159 CLR 550, 629 (Brennan J).

⁷² *Applicant VEAL of 2002 v Minister for Immigration* [2005] HCA 72; (2005) 225 CLR 88, [16].

on process, proper disclosure in the context of procedural fairness ‘what is “credible, relevant and significant” information must be determined before the final decision is reached’.⁷³

50. So, the question is what the rules of procedural fairness require to ensure there is no practical injustice⁷⁴ to Asset Energy. This is to be determined having regard to the statutory context and the facts and circumstances of the case. As the Full Court explained in *Commissioner for Australian Capital Territory Revenue v Alphaone Pty Ltd* (1994) 49 FCR 576 (at 591–592):

Where the exercise of a statutory power attracts the requirement for procedural fairness, a person likely to be affected by the decision is entitled to put information and submissions to the decision-maker in support of an outcome that supports his or her interests. That entitlement extends to the right to rebut or qualify by further information, and comment by way of submission, upon adverse material from other sources which is put before the decision-maker. It also extends to require the decision-maker to identify to the person affected any issue critical to the decision which is not apparent from its nature or the terms of the statute under which it is made. The decision-maker is required to advise of any adverse conclusion which has been arrived at which would not obviously be open on the known material.

51. Asset Energy was denied procedural fairness as it was not provided with the opportunity properly to respond to (i) the adverse information acquired by the first respondent in relation to the estimated costs of the proposed exploration well; and/or (ii) the Titleholders’ related financial capacity to pay for the properly estimated costs of the proposed exploration well given that information. This is for the following reasons.
52. *First*, at no point in time during the lengthy decision-making process did NOPTA or the Joint Authority request revised estimated costings for the proposed exploration well. This is the case notwithstanding seven requests for further information being issued by NOPTA to Asset Energy on behalf of the Joint Authority.⁷⁵ On or about 18 September 2024 the Minister’s Preliminary Reasons were provided to Asset Energy. Those Preliminary Reasons were the first time in what was then 1,701 days since the First Application was accepted that the Joint Authority expressed any concern that the Titleholders may have underestimated the proposed exploration well costs.
53. *Second*, on or about 15 November 2024 Asset Energy responded to the Minister’s Preliminary Reasons. In doing so Asset Energy’s stated position was that accepting the first respondent’s then position, which was that the proposed well will cost c.\$41m, that nonetheless ‘the Applications should still be granted as the Titleholder will have, and will raise, sufficient capital to complete the proposed work programs’.⁷⁶ The figure of c.\$41m was based on the amount it cost the

⁷³ *VEAL* [2005] HCA 72; (2005) 225 CLR 88, [17] (Gleeson CJ, Gummow, Kirby, Hayne and Heydon JJ).

⁷⁴ *Minister for Immigration and Border Protection v SZSSJ* [2016] HCA 29; (2016) 259 CLR 180, [82] (the Court).

⁷⁵ First Breeze Affidavit, [12]–[19], [32]–[35], and [37]–[38] and DLB8–15, DLB29–32, DLB34–35.

⁷⁶ See the response in First Breeze Affidavit, DLB48 at [19(e)].

Titleholders to drill an exploration well in 2010 adjusted in a rough and ready way for inflation.⁷⁷ The salient point for present purposes was that on 15 November 2024 Asset Energy was willing pragmatically and appropriately to accede to the Minister's then costings to put any issue of significantly underestimating such costs to one side.

54. *Third*, after the matters referred to in paragraphs 52 and 53 above, the first respondent received, on request, two further contemporaneous undisclosed advices (collectively, the **Undisclosed Advice**) from NOPTA regarding the Applications. The Undisclosed Advice was not provided to Asset Energy prior to the final decision being made.⁷⁸
55. *Fourth*, the Undisclosed Advice contains an analysis by NOPTA of the potential costs of the proposed exploration well. This analysis was said to be based on 'permanently confidential information provided to NOPTA via regulatory submissions from titleholders (Annual Titles Assessment Reports and Daily Drilling Reports) [and that] NOPTA is aware of actual expenditure incurred on operational activities such as drilling a well'.⁷⁹ The estimated figure for the proposed exploration well arrived at by NOPTA in the Undisclosed Advice was 'A\$36 million using a jack-up rig or \$A53 million using a semi-submersible rig'.⁸⁰
56. *Fifth*, the Undisclosed Advice was, to adopt the language in the cases, 'reliable, relevant and significant' to the decision as evidenced by the Minister's Final Reasons (to which it forms annexures 51 and 52). This is because the estimated figures arrived at by NOPTA in the Undisclosed Advice were relied upon by the first respondent to conclude that the amount which the Titleholders' estimated for the existing and proposed work was substantially underestimated.⁸¹ Likewise, the estimated figures arrived at by NOPTA in the Undisclosed Advice were then relied upon by the first respondent to conclude that it was speculative whether the applicant could raise sufficient capital to complete the proposed work program. Put simply, the Undisclosed Advice underpinned the Financial Interest Ground for refusing the Applications, it ought to have been provided to Asset Energy for comment and review.

⁷⁷ Minister's Preliminary Reasons, [61]-[62].

⁷⁸ First Breeze Affidavit, [53].

⁷⁹ Undisclosed Advice, p 10.

⁸⁰ Undisclosed Advice, p 10.

⁸¹ See, for example, Minister's Final Reasons, [86], [94], [100], [109], [124], and [125].

57. *Sixth*, the Joint Authority was aware that, at all material times, the Titleholders did not consider that more precise information regarding the cost of its proposed exploration well was required.⁸² So much is clear from the record and evidence.⁸³ The financial capacity of the Titleholders is not a mandatory consideration for the purposes of ss 264 and 265 of the OPGGS Act. Revised well costings formed no part of any request for further information (tellingly, information regarding ‘documentary evidence detailing the discussions/negotiations held to date with third parties in relation to sourcing a drilling rig’ and potential rig reservation fees were requested on 5 February 2020 and 12 September 2023 respectively and responses provided).⁸⁴ The proposed changes to the work program were minor and so did not seek to impose any additional financial burden to the existing program.⁸⁵ The proposed figure for the estimated work program reflected the pre-existing indicative well costings under the Permit.⁸⁶ The costings were not binding conditions but merely indicative such that the final cost would be determined by the market.⁸⁷ The Titleholders were willing to accede to the first respondent’s 18 September 2024 costings.⁸⁸ The Titleholders had, in any event, formulated a funding strategy to raise c.\$73m in capital that was accepted by NOPTA.⁸⁹ A quotation (being the CDE Offer) for c.\$23m was provided with the First Application which was not substantially in excess of \$20m in any event and the passage of time (and inflation) from the provision of that quotation can hardly be held against the Titleholders. The above explains why the earlier decision of the Joint Authority that was quashed in [2023] FCA 86 did not conclude that the well costings had been underestimated.⁹⁰
58. *Seventh*, if Asset Energy had been made aware of the Undisclosed Advice and/or that it would be used to form the negative finding of fact that the Titleholders significantly underestimated the proposed well costs then it would have done things differently.⁹¹ It would have made submissions to address the perceived concerns and criteria going to the question of the proposed costs of the

⁸² Minister’s Final Reasons, [97].

⁸³ Second Breeze Affidavit, [6].

⁸⁴ First Breeze Affidavit, DLB8–9, and DLB33–34.

⁸⁵ See First Breeze Affidavit, DLB28 at [18] & [21], DLB30 at [1(a)], DLB48 at [19(a)(c)]; Minister’s Final Reasons, [82], [95].

⁸⁶ See First Breeze Affidavit, DLB28 at [18] & [21], DLB30 at [1(a)], DLB48 at [19(a)(c)]; Minister’s Final Reasons, [82], [95].

⁸⁷ See Undisclosed Advice, p 10; and First Breeze Affidavit, DLB48 at [19(e)].

⁸⁸ See First Breeze Affidavit, DLB48 at [19(e)].

⁸⁹ See Undisclosed Advice, p 12. See too First Breeze Affidavit, DLB48 at [20(c)].

⁹⁰ First Breeze Affidavit, [23] and DLB-20.

⁹¹ Second Breeze Affidavit, [7].

exploration well and obtained updated quotations. After this process, Asset Energy could have agreed or disagreed with the costings in the Undisclosed Advice and updated the Applications accordingly. If this occurred there would have been no basis for concluding that the Titleholders ‘may not have accurately estimated the proposed well cost, and that the actual cost may be substantially higher’.⁹² This was an issue raised late by the first respondent with a simple solution.

59. *Eighth*, the first respondent’s assessment of the Titleholders’ financial capacity, including by reference to the estimated well costings, was material to the Minister’s Final Reasons. This is because, ‘there is a realistic possibility that the decision that was made in fact *could* have been different if the relevant disclosure had been made.’⁹³
60. *Finally*, there are no *prima facie* issues of confidentiality that would have prevented disclosure of the Undisclosed Advice because, as noted above, that Advice was ultimately annexed to the Minister’s Final Reasons and provided to Asset Energy. Further, Asset Energy does not accept the bare assertions of confidentiality in the Waters Affidavit. In any event, confidentiality must yield to procedural fairness. Even if the Undisclosed Advice was underpinned by confidential information, the substance or gist of that information could have been disclosed.⁹⁴

There was no evidence to support the prejudicial conclusions regarding well costings, or such conclusions were otherwise unreasonable.

61. Further and in the alternative, there was no sufficient evidence before the first respondent to conclude that the Titleholders had failed to estimate accurately the costs of its proposed exploration well and/or that the reasoning process that led to that conclusion was unreasonable in the circumstances. This is for the following reasons.
62. *First*, the indicative cost of the estimated exploration well in the Applications was \$20m. As noted above, the Titleholders did not consider that more precise information regarding the cost of its proposed exploration well was required, and the first respondent was aware of this fact.⁹⁵ Further, the factual matters set out in paragraph 57 above are repeated here.
63. *Second*, on 18 February 2020 Asset Energy provided NOPTA with the CDE Offer (dated January 2020). Under the CDE Offer a vessel referred to as the ‘COSLProspector Semi-Submersible’ rig

⁹² Minister’s Final Reasons, [100]. See too [94], [95], and [125].

⁹³ *LPDT v Minister for Immigration* [2024] HCA 12; (2024) 280 CLR 321, [7].

⁹⁴ *VEAL* (2005) 225 CLR 88, [29]; *Minister for Immigration v Maman* [2012] FCAFC 13; (2012) 200 FCR 30, [61].

⁹⁵ Minister’s Final Reasons, [97]; and Second Breeze Affidavit, [6].

was to be utilised by the Titleholders to drill the proposed exploration well. The cost of the charter of the COSLProspector rig to drill the proposed exploration well under the CDE Offer involved three components:⁹⁶ (i) a lump sum of USD\$3m for ‘mobilisation [of the vessel] ... from New Zealand’; (ii) USD\$360,000 as the ‘operating daily rate’; and (iii) a lump sum of USD \$2m for ‘demobilisation [of the vessel] ... to New Zealand’. To accept the CDE Offer, the applicant had to acquire, for the benefit of COSL Drilling Europe, ‘an On-Demand bank guarantee with a reputable Western bank for the sum of US\$16m’.⁹⁷

64. *Third*, the Minister’s Final Reasons state that the proposed works (for a period of 31 days) under the CDE Offer would cost approximately USD\$27.16m (or AUD\$39.5m) (the **Joint Authority CDE Offer Calculation**).⁹⁸
65. *Fourth*, the Joint Authority CDE Offer Calculation was used by the first respondent to make the material adverse finding of fact that the Titleholders had underestimated significantly the likely costs of the works it would be required to undertake in accordance with the Permit should the First Application and/or Second Application be granted.⁹⁹
66. *Fifth*, the Joint Authority CDE Offer Calculation was incorrect in that the Joint Authority assumed erroneously that the On-Demand bank guarantee of USD\$16m, being in the nature of a security, could not be utilised to meet the costs of the proposed exploration well under the CDE Offer or would otherwise be returned intact if the costs of the proposed exploration well were paid separately. Properly construed, the CDE Offer provides that the cost of the proposed exploration well would be USD\$16.16m and not USD\$27.16m (assuming 31 days of work as specified in the Minister’s Final Reasons).¹⁰⁰
67. *Sixth*, the figure of USD\$16.16m being the true cost of the CDE Offer and which would be approximately AUD\$23 million as of January 2020¹⁰¹ is not significantly higher than the indicative value of AUD\$20m which Asset Energy provided as the minimum indicative cost of the exploration well under the work program.

⁹⁶ CDE Offer, pp 18-19.

⁹⁷ CDE Offer, p 19.

⁹⁸ Minister’s Final Reasons, [91] and [92].

⁹⁹ Minister’s Final Reasons, [93], [100], [124], and [125].

¹⁰⁰ Minister’s Final Reasons, [91].

¹⁰¹ See Minister’s Final Reasons, [91].

68. Finally, the first respondent has used the passage of time and inflation against the Titleholders. At the time the First Application was accepted the most relevant quotation for the proposed works was c.\$23m being only c.15% more than the indicative cost of \$20m. Such a minimal discrepancy cannot sustain a conclusion that the proposed works were *substantially* underestimated.

The first respondent misconstrued the discretionary powers under ss 264 & 265 of the OPGGS Act.

69. The first respondent fell into jurisdictional error as he misconstrued the powers under ss 264 and 265 of the OPGSS Act.¹⁰² This is for the following reasons.

70. First, s 264 of the OPGGS Act exists for the purpose of allowing the Joint Authority to vary, suspend, or exempt a permittee from compliance with permit conditions. Although the discretionary power in s 264 is drafted broadly, it must be exercised consistently with the aims and purposes of that provision.¹⁰³ If the changes are so desirable, then the power to grant an extension to the life of a permit by reference to those changes in s 265 is enlivened. Properly construed, the discretionary power contained in s 265 requires that the discretionary power in s 264 first be satisfied as an essential preliminary¹⁰⁴ before the power in s 265 is engaged.

71. Second, a broad power to amend and suspend a bundle of statutory rights (i.e. s 264) is not an invitation to question whether it is in the public interest for those rights to exist in the first place.¹⁰⁵ Indeed, quite tellingly, such matters cannot even be considered in a renewal application under the OPGGS Act which is a strong contextual indicator that such matters cannot be considered under s 264.¹⁰⁶ Likewise, the question of extension under s 265 then depends upon whether it is reasonable to grant a permit holder an extension to undertake the varied works, or whether it is necessary to accommodate (by way of an extension) a period of suspension or variation which has already been determined as appropriate.

72. Third, the first respondent here consciously eschewed this approach to ss 264 and 265 of the OPGGS Act preferring to enlarge the matters that could be considered for the purposes of s

¹⁰² *Plaintiff M1/2021 v Minister for Home Affairs* [2022] HCA 17; (2022) 275 CLR 582, [27].

¹⁰³ *The Commonwealth v AJL20* [2022] HCA 17; (2021) 273 CLR 43, [130] (Edelman J).

¹⁰⁴ *Forrest & Forrest Pty Ltd v Wilson* [2017] HCA 30; (2017) 262 CLR 510, [63] (Kiefel CJ, Bell, Gageler and Keane JJ).

¹⁰⁵ See, for example, *Swan Hill Corporation v Bradbury* (1937) 56 CLR 746, 762 (Dixon J).

¹⁰⁶ OPGGS Act, s 125(2).

264.¹⁰⁷ This was said to be the case because ‘any suspension of a condition of the Permit [under s 264] would be rendered futile if the period of the Permit were not extended [under s 265]’.¹⁰⁸

73. *Fourth*, the use of s 265 to inform the correct approach to s 264 of the OPGGS Act led the first respondent into error. For example, he did not consider or determine whether an extension under s 265 of the Act was justifiable given a pre-existing determination under s 264. It also led the first respondent to consider wider issues beyond whether a minor amendment and related extension should be made to an *existing* permit namely whether it was desirable for that Permit to exist in the first place. Any public interest analysis here needs to be directed to the *limited* statutory task under ss 264 and then 265 of the OPGGS Act. That analysis is to be directed to whether any specific application for a variation, exemption, suspension and related extension is in the public interest. It cannot, however, be determined, as was done here, by asking at a high level of generality whether the Permit itself is in the public interest or whether it is desirable for exploration to occur *at all* under an exploration permit. Those are matters properly to be considered under the regime created by the OPGGS Act on grant or conversion.¹⁰⁹ This is because the statutory powers of *variation, suspension* and/or *exemption* in s 264 provide no textual¹¹⁰ or purposive basis for questioning the *existence* or *public desirability* of the Permit.

Conclusion.

74. The orders sought in Asset Energy’s originating application dated 12 February 2025 ought to be made. The impugned decisions of the Joint Authority ought to be quashed and the respondents, together comprising the Joint Authority, be ordered to reconsider the Applications according to law. The first respondent ought to pay Asset Energy’s costs to be assessed or agreed.

Date: 5 August 2025

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¹⁰⁷ Minister’s Final Reasons, [62]-[64].

¹⁰⁸ Minister’s Final Reasons, [63].

¹⁰⁹ See OPGGS Act, ss 104-107, and 168-171.

¹¹⁰ *Macquarie Dictionary* (9th edn, Macquarie 2023), 540 (exemption), 1550 (suspension), 1705 (variation).

Schedule

No. WAD36 of 2025

Federal Court of Australia

District Registry: Western Australia

Division: General

Respondents

Second Respondent:

**Minister for Natural Resources, as Responsible State Minister of
the Commonwealth-New South Wales Offshore Petroleum Joint
Authority**