ENVIRONMENTAL JUSTICE AUSTRALIA

8 July 2022

The Hon Tanya Plibersek MP
Minister for the Environment and Water
Suite RG 52
House of Representatives
Parliament House

By email: tanya.plibersek.mp@aph.gov.au

Dear Minister Plibersek

Request for reconsideration of decision under s 78A of the *Environment Protection and Biodiversity Conservation Act 1999*: Woodside Energy Ltd – North West Shelf Project Extension (EPBC Act Referral No. 2018/8335)

A. Introduction and summary

1. We are instructed by the Environment Council of Central Queensland Inc (**ECoCeQ**) to request, pursuant to s 78A of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**), that you reconsider the decision of the Minister's delegate made under s 75(1) of that Act, in respect of Woodside Energy Ltd – North West Shelf Project Extension (EPBC Act Referral No. 2018/8335 (the **Proposed Project**), dated 3 May 2019 (the **controlled action decision**).

2. ECoCeQ is a not-for-profit environmental registered charity and association (ABN 56740735001). The organisation's principal objectives are the conservation, protection and enhancement of the natural environment in Australia. In furtherance

of these objectives, ECoCeQ promotes awareness, lobbies government, and is committed to taking advantage of any lawful right or privilege to raise awareness of environmental issues.

3. This reconsideration request is made on the basis of substantial new information about the impacts that the Proposed Project will, or is likely to, have on matters protected by Pt 3 of the EPBC Act. The purpose of the Project is to extract substances comprising molecules including carbon, hydrogen, oxygen, nitrogen and sulphur, from where they are presently stored in the Earth and safely out of the atmosphere (by processes on geological timescales), in order to provide — directly or through a supply chain — those substances, in return for payment, to an entity for the purpose of turning them into gases, including carbon dioxide, nitrous oxide and methane. For the purpose to be fulfilled, those substances must end up in the atmosphere. (Or, at least, the vast majority of them. There is, of course, the possibility of some carbon capture and storage, which is a variable included in scenario modelling. But it is widely recognised that carbon capture and storage will need first to be applied to difficult-to-abate sectors, and in any event, the technology requires time to scale-up. It follows that it will not 100%-abate emissions of more than a small percentage, at best, of the emissions from the Project.)

4. The substantial new information enclosed with this request and summarised in the enclosed Annexures demonstrates that, by those emissions, the Proposed Project will, or is likely to, have significant physical effects on a number of matters of national environment significance (**MNES**), including a number not listed as controlling provisions in the controlled action decision. In essence, there is now a global scientific consensus that widespread and catastrophic harm to people, ecosystems, species and the biosphere as a whole is in train as a result of the greenhouse gas emissions created by burning fossil fuels.

5. Since the controlled action decision, the Intergovernmental Panel on Climate Change (**IPCC**) has published its Sixth Assessment Report — comprising the Working Group I contribution, *Climate Change 2021: The Physical Science Basis* (**WGI AR6**) (**Annexure 1, item 1**), the Working Group II contribution, *Climate Change 2022: Impacts, Adaptation and Vulnerability* (**WGII AR6**) (**Annexure 1, item 2**), and the Working Group III contribution, *Climate Change 2022: Mitigation of Climate Change* (**WGIII AR6**), including Annex III (**Annexure 1, item 3**).

6. The best feasible scenario (i.e., lowest total future CO2-e emissions before net zero) that could be generated with input assumptions fixing the extraction and combustion of the projected volume of gas and fluids in accordance with the Proposed Project as referred to you as the responsible Minister (see B.1 below) has total future CO2-e emissions before net zero substantially higher than the best feasible scenario without those input assumptions.

7. For the reasons set out in this reconsideration request, it is submitted that you should be satisfied that the conditions in s 78(1)(a) are met and:

    a. revoke the controlled action decision by the Minister's delegate setting out the controlling provisions for the Proposed Project under s 78(1)(a) of the EPBC Act, and substitute a new decision under s 75(1) of the EPBC Act which lists all MNES affected by climate change as controlling provisions.

    b. ensure that where the relevant controlling provision arises under s 18 of the EPBC Act, that each relevant subsection relating to the MNES is identified, as is required.

8. This reconsideration request is structured as follows:

    a. **Part B** addresses, by way of background, the details of the Proposed Project (see [10]-[12] below), the relevant controlled action decision (see [13]-[14] below) and the legislative context (see [15]-[23] below).

    b. **Part C** provides an overview of the request, including the materials provided with this request. It also addresses why this is a valid request for reconsideration which you, as the responsible Minister, are now bound to determine (see [24]-[44] below).

    c. The **Annexures** address the following:

        i. **Annexure 1** is a list of the materials on which this request relies. Copies of each document listed in that Annexure have been provided with this request. We note that this includes two expert reports, of Professor David Karoly and Professor Lesley Hughes, in support of this request.

        ii. **Annexure 2** provides a detailed analysis of the materials on which this request relies, including of the way in which that material demonstrates the impacts, or likely impacts, of climate change on MNES. The following materials form part of this annexure:

            - **Annexure 2.1** contains spreadsheets of data compiled from reviewing authoritative sources of information relevant to the protection of MNES, to identify whether that material considers climate change to pose a relevant risk to MNES.

            - **Annexure 2.2** is a list of the authoritative sources of information from which the data in **Annexure 2.1** has been drawn.

            - **Annexure 2.3** contains maps showing the impact of the 2019/2020 bushfires, specifically, on various MNES protected by Pt 3 of the EPBC Act.

d. **Part D** addresses the relationship between this reconsideration request and the approval of the Proposed Project.

9. The ways in which this reconsideration request satisfies the statutory criteria are addressed in **Part C** below.

B. Background

B.1. The Proposed Project

10. The Proposed Project is 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 (**NWSJV**) field resources through the NWS Project facilities.[1] The designated proponent is Woodside Energy Ltd (ACN: 005 482 986) as operator for, and on behalf of the NWSJV.

11. At present, the existing NWS Project processes natural gas and fluids from field resources to produce up to 18.5 Mtpa of liquefied natural gas (**LNG**) at the North West Shelf Project. The existing NWS Project includes key processing, storage and offloading facilities.[2]

12. Under the Proposed Project, these onshore and offshore facilities will be used for continued operation, as set out in the referral, up to 2070. The proponent estimates the scope 1, scope 2 and scope 3 greenhouse gas emissions resulting from the Proposed Project as follows:[3]

    a. **Scope 1** GHG emissions are estimated to be up to 7.7 Mtpa CO2-e (unmitigated). Total scope 1 emissions over the 50-year life of the extension proposal (with no mitigation) are expected to be 385 million tonnes (Mt) of CO2-e7.

    b. With mitigation presented in the proponent's GHG management plan, Scope 1 greenhouse gas emissions from the extension proposal are estimated to:

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1 Australian Government Department of the Environment and Energy, *Notification of Referral Decision and Designated Proponent – controlled action and Decision on Assessment approach – accredited assessment: North West Shelf Project Extension, Carnarvon Basin (EPBC 2018/8335)*, (3 May 2019) <https://epbcpublicportal.awe.gov.au/all-referrals/project-referral-summary/project-referral-decision-no-comment/?id=0bb38f8e-bcf2-e811-b86c-005056ba00a7>.

2 Woodside Energy Ltd, *Referral - Submission #3799 – North West Shelf Project Extension,* (1 November 2018) <https://epbcpublicportal.awe.gov.au/_entity/sharepointdocumentlocation/75adabd0-95b3-ec11-983f-00224818a857/2ab10dab-d681-4911-b881-cc99413f07b6?file=2018-8335%20referral.pdf>.

3 Environment Protection Authority of Western Australia (EPA), Report 1727 - North West Shelf Project Extension Proposal (27 June 2022) <https://www.epa.wa.gov.au/sites/default/files/EPA_Report/EPA%20Report%201727%20-%20North%20West%20Shelf%20Extension%20Project%20-%20assessment%20report.pdf>, pgs iii-iv; 10-12. It is noted that the EPA, in recommending approval, has recommended certain conditions be applied to require the proponent to reduce the Scope 1 greenhouse gas emissions.

commence at 7.7 Mtpa of CO2-e; achieve net-zero GHG emissions by 2050 by reducing life of extension proposal emissions by 246.15 Mt of CO2-e; be partially offset through the purchase and surrender of offsets to make up any shortfall in achieving the net scope 1 GHG emissions reduction targets through avoidance and reduction actions; result in net scope 1 GHG emissions over the 50-year life of the extension proposal of up to 138.85 Mt of CO2-e.

c. **Scope 2** GHG emissions are estimated to be less than 0.002 Mtpa CO2-e;

d. **Scope 3** emissions from third-party consumption of LNG, LPG, Domgas and condensate, will be approximately 80.19 Mtpa of CO2-e based on currently available and quantifiable information.

B.2. The controlled action decision

13. On 3 May 2019, a delegate of the Federal Minister for the Environment determined that the Proposed Project was a controlled action under s 75 of the EPBC Act. At that time, the decision-maker, the Minister's delegate, determined that the controlling provision for the Proposed Project was:

    a. National Heritage places (sections 15B and 15C of the EPBC Act).

14. The decision-maker, the Minister's delegate, did not properly consider or consider at all information on the adverse impacts on MNES of the greenhouse gas emissions resulting from the Proposed Project aggregating with other greenhouse gases in the atmosphere.

B.3. Legislative framework

15. Section 78A(1) provides that a person may request that you reconsider a decision made under s 75(1) on the basis of a matter in s 78(1)(a) to (ca). The requirements for a valid request under s 78A(1) are set out in s 78A(2) and Pt 4A of the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth) (**EPBC Regulations**).

16. Section 78C provides that, upon receipt of a request under s 78A and following you taking steps to seek information and comment as required by s 78B, you must:

    a. reconsider the controlled action decision; and

    b. either:

        i. confirm the decision; or

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

17. Section 78(1)(a) provides that you may revoke a controlled action decision under s 75(1) and substitute a new decision if you are satisfied that the revocation and substitution is warranted by the availability of substantial new information about the impacts that the action has or will have, or is likely to have, on a matter protected by a provision of Pt 3 of the EPBC Act.[4]

18. "Substantial information" is information that is real or of substance, and not trivial or inconsequential.[5] Information is "new" if it was not before the Minister (or the Minister's delegate) at the time of the making of the controlled action decision, even if it was in existence at the time.[6]

19. A controlled action decision under s 75(1) is made on the basis of whether the proposed action, if taken without relevant approval, would be prohibited by a provision of Pt 3 —namely, whether the action "has", "will have" or "is likely to have" a significant (adverse) impact on any of the matters protected by Pt 3. Whether revocation and substitution of the controlled action decision is warranted by substantial new information, for the purposes of s 78(1), should therefore also be determined by reference to the same test (in light of the substantial new information). One consequence of the decision-making under s 78(1) involving asking the same question as under s 75(1) — namely, whether the action has, will have or is likely to have a significant (adverse) impact on any of the matters protected by Pt 3 — is that you are required to have regard to the precautionary principle in making a decision under s 78(1).[7]

20. The matters protected by Pt 3, and the relevant controlling provision for each MNES, are listed in tabular form in s 34 of the EPBC Act. Section 34 makes clear that each of the subsections of s 18 is a distinct controlling provision protecting a separate MNES.

21. An "impact" of an action can include an event or circumstance that is an indirect consequence of the action, provided the action is a substantial cause of that event or circumstance and, where relevant, the requirements in s 527E(2) are met.[8] As the Department's Policy Statement acknowledges, an impact that evidence strongly suggests might manifest itself many years later, or occurs at a substantial

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4 The Department's policy provides that the original decision will be revoked if any of the grounds in s 78(1) are satisfied: Department of Environment and Energy, Environment Protection and Biodiversity Conservation Act 1999 (Cth) Policy Statement — *Reconsideration: Implementing the requirements of sections 78, 78A, 78B and 78C of the EPBC Act*, 4, 6, 9.

5 EPBC Act Policy Statement for Reconsideration Requests, 6.

6 EPBC Act Policy Statement for Reconsideration Requests, 6.

7 EPBC Act, s 391.

8 EPBC Act, s 527E(1)(b).

geographic distance from the location of the original action, may still be an indirect consequence that is substantial enough to be considered an impact.[9]

22. A "significant" impact is an impact that is important, notable or of consequence having regard to its context or intensity.[10] A significant impact is "likely" if it is a real or not remote chance or possibility.[11]

23. If you receive a valid request for reconsideration, the steps prescribed by ss 78B (concerning informing the proponent and inviting comments and other information) and 78C (which requires you to reconsider the relevant s 75 decision) apply.

C. Request for reconsideration

24. This request relies on the following material.

25. First, the material listed in **Annexure 1**, which, broadly speaking, reflects the most up-to-date understanding of the climate system and climate change, and the physical impacts of climate change, together with the contributions of WGI, WGII and WGIII to AR6.

26. Secondly, the analysis in **Annexure 2** of key authoritative materials, which were produced by either the Australian government, Australian State or Territory governments or the International Union for Conservation of Nature (**IUCN**) (to which Australia is a State member[12]) and which variously address the impact of climate change on each MNES. In brief, the analysis in **Annexure 2**, by reference to the materials in **Annexure 1**, establishes the following propositions:

    a. *First*, it is unequivocal that human influence has warmed the atmosphere, ocean and land. There is an approximately linear relationship between cumulative anthropogenic 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. (See **Annexure 2, Pt B**).

    b. *Second*, limiting human-induced global warming requires deep reductions in CO_2 and other greenhouse gas emissions in the coming decades. Without a strengthening of current policies, greenhouse gas emissions are projected to

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9 EPBC Act Policy Statement on "Indirect Consequences" of an Action, 2.

10 *VicForests v Friends of Leadbeater's Possum Inc* [2021] FCAFC 66; 389 ALR 552 at [62]; Significant Impact Guidelines 1.1, 3.

11 *Polaris Coomera Pty Ltd v Minister for the Environment* [2021] FCA 254, [212]-[226]; Significant Impact Guidelines 1.1, 3.

12 IUCN, *IUCN Members*, (Web Page, 8 July 2022) <https://www.iucn.org/about/members/iucn-members>.

rise beyond 2025, leading to a median global warming of 3.2 [2.2 to 3.5]°C by 2100. A significant proportion of total net anthropogenic greenhouse gas emissions comes from the energy supply sector. The modelled pathways for limiting warming necessitate drastic cuts to the use of coal, oil and gas, and requires a substantial amount of fossil fuels to remain unburned. (See **Annexure 2, Pt C**.)

c. *Third*, human-induced climate change will cause unavoidable increases in multiple climate hazards. In Australia, the physical effects of increasing global warming include fire, heat extremes, marine heatwaves and acidification, heavy precipitation and flooding, and drought. The regularity, scope and intensity of these events increases in direct relation to increasing global warming. Every 0.5°C of global warming causes clearly discernible increases in the intensity and frequency of hot extremes, precipitation events, and agricultural and ecological droughts. (See **Annexure 2, Pt D**.)

d. *Fourth*, these physical effects of increased global warming in Australia are likely to have a significant impact on the following MNES:

i. the world heritage values of declared World Heritage properties (EPBC Act, ss 12, 15A);
ii. the National Heritage values of National Heritage places (EPBC Act, ss 15B, 15C);
iii. the ecological character of declared Ramsar wetlands (EPBC Act, ss 16, 17B);
iv. listed threatened species in the critically endangered category (EPBC Act, s 18(2));
v. listed threatened species in the endangered category (EPBC Act, s 18(3));
vi. listed threatened species in the vulnerable category (EPBC Act, s 18(4));
vii. listed threatened ecological communities in the critically endangered category (EPBC Act, s 18(5));
viii. listed threatened ecological communities in the endangered category (EPBC Act, s 18(6));
ix. listed threatened species and listed threatened ecological communities (EPBC Act, s 18A);
x. listed migratory species (EPBC Act, ss 20, 20A);
xi. the environment in a Commonwealth marine area (EPBC Act, ss 23(2), 24A(3), (4)) (containing listed marine species[13]);

[13] As a constituent part of the Commonwealth marine area: EPBC Act, s 528 (definition of "environment"), Ch 5, Pt 13, Div 4.

xii. the environment in the Great Barrier Reef Marine Park (EPBC Act, ss 24B(2), 24C(5), (7)).

(See **Annexure 2, Pt E**.)

27. In all feasible scenarios in which the Proposed Project is carried out as referred, there will very likely be events of the kind described above constituting adverse impacts on the MNES listed above. These will be caused by the increasing concentration of greenhouse gases absorbed by the Earth System, including (in those scenarios) from combustion by another person of the product from the Proposed Project, facilitated and intended by the proponent in carrying out the Proposed Project. Feasible scenarios with much lower total emissions, and correspondingly less increase in the regularity, scope and intensity of those events, are available in a future without the Proposed Project.

28. The expert reports of Professor David Karoly, climate scientist, and Professor Lesley Hughes, ecologist (see **Annexure 1, items 10 and 11**) comprise independent, expert opinions on the material that forms the basis of this reconsideration request. In summary, the report of Professor Karoly, confirms that:

    a. the Sixth Assessment Report of the IPCC provides the most recent comprehensive global assessment of the current state of scientific knowledge about observed and projected future climate change, impacts and adaptation to climate change, and approaches to reducing human-caused climate change;

    b. limiting human-caused climate change requires rapid and deep reductions in carbon dioxide and other greenhouse gas emissions. Achieving net zero human-related emissions of carbon dioxide is required to stabilise human-induced global warming at any level; and

    c. human-caused climate change has caused and will continue to cause unavoidable increases in multiple climate hazards in Australia.

29. Further, the report of Professor Karoly and that of Professor Hughes each confirms that the material referred to in Annexure 1 and the analysis in Annexure 2 support the following propositions:

    a. 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.

b. There is a real (as opposed to a remote) chance that a consequence of continued emission of greenhouse gas 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).

c. There is a real (as opposed to a remote) chance that those events (or one or more of them) will adversely affect the MNES listed at [26.d] above.

30. It is submitted that this material satisfies the statutory requirement of "substantial new information", because: 1) it was not before the decision-maker, the Minister's delegate, at the time the s 75 decision for the Project was made (that is, it is "new"); and 2) it addresses, in a detailed and authoritative manner, matters relevant to decision-making under ss 75 and 78 (that is, it is "real" and "of substance"). In particular, the recent work of the IPCC in WGI AR6, WGII AR6 and WGIII AR6 provides substantial new information as to how further emission of greenhouse gases will cause events of the kind described above. The other information provided should be understood as substantial new information in its own right, or alternatively as information that — when taken together with WGI AR6, WGII AR6 and WGIII AR6— establishes that the IPPC materials provide substantial new information about the impacts that the Proposed Project has or will have, or is likely to have, on a matter protected by a provision of Part 3.

31. By reason of the matters summarised above and detailed in the Annexures, the information provided includes substantial new information about the impacts that the Proposed Action will have, or is likely to have, on the MNES listed at [26.d], and that the Proposed Project is likely to have a significant impact on those MNES. The majority of those MNES have not been specified as controlling provisions in the controlled action decision. Therefore, having regard to the material supporting this request and the precautionary principle, you should revoke the controlled action decision and substitute for it a controlled action decision identifying each of the provisions listed at [26.d] as a controlling provision.

32. For the avoidance of doubt, it is submitted that this request meets each of the statutory requirements for a valid reconsideration request, because:

a. it is in writing;[14]

[14] EPBC Act, s 78A(2)(a).

b. it explains the basis on which the controlled action decision should be reconsidered,[15] and identifies s 78(1)(a) as the ground relied upon to make the request;[16]

c. it includes the sources of information provided and the details of when that information became available:[17]

   i. for the information referred to in **Annexure 1 and Annexure 2.2**, when that information became available is specified in those Annexures;

   ii. the information referred to in **Annexure 2.1 and Annexure 2.3** became available during the course of preparing this reconsideration request, between approximately October 2021 and June 2022.

d. it contains new information that was not considered when the controlled action decision was made, either because that information did not exist at the time of the decision or, if it did exist, it was not placed before the decision-maker, the Minister's delegate;[18]

e. as outlined above and detailed in the Annexures, the new information demonstrates that a change in the potential impacts of the action is likely to happen with a high degree of certainty.[19]

33. Consequently, upon receipt of this request, you will be required to take the steps required by ss 78B and 78C of the EPBC Act.

34. For completeness, we note that, in assessing this request, you might be tempted by the "substitution argument": that there is not substantial new information about likely significant impacts on MNES because the impacts will necessarily be the same in a future without the Proposed Project as they would be in a future with it. You should not adopt that reasoning, or any form of it, for the following reasons.

35. If the Proposed Project goes ahead, the emissions from the molecules to be extracted will (in cumulation with emissions from other sources) likely result in significant impacts. The science evaluated and synthesised in WGI AR6 establishes that there is a linear relationship between emissions and effects: every tonne of CO2 is material.

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15 EPBC Act, s 78A(2)(b).

16 EPBC Regulations, reg 4AA.01(2)(b).

17 EPBC Regulations, reg 4AA.01(2)(b)-(c).

18 EPBC Regulations, reg 4AA.01(3)(a).

19 EPBC Regulations, reg 4AA.01(3)(b).

36. Accordingly, the extent of the impacts will depend on the extent of total future emissions, before human beings limit emissions to net zero. This insight allows for the carbon budget method of identifying what must be done to limit warming to a particular temperature above pre-industrial.

37. The Proposed Project is, relevantly, an action that the proponent proposes to take, and has therefore referred to the Minister. The Minister's function under s 75 was to consider the Proposed Project (as a proposed action), on the premise that it goes ahead. The Minister was required to ask, "if this action were taken, what would be the likely significant impacts?"

38. If one assumes (as the Minister had to) that the Proposed Project will be taken, this has consequences for the minimum possible total future emissions before net zero.

39. Why? The Proposed Project constitutes a proposal to provide a particular product, to a particular market, in a particular volume, of a particular quality, at a particular price, for a particular duration. The Proposed Project can only exist in scenarios where there is sufficient demand for that product, in that market, to support that volume of product, of that quality, at that price, for that duration. Obviously, there is no possible scenario in which the only emissions from natural gas and fluids for the duration of the Proposed Project come from the Proposed Project. If the Proposed Project is assumed to exist, the minimum possible emissions for the duration of the Proposed Project massively exceed the total emissions from the product from the Proposed Project itself.

40. Accordingly, if the Proposed Project is assumed to exist, the minimum likely significant impact from the accumulation of emissions including those from the Proposed Project is the impact resulting from the total temperature above pre-industrial that will result from the minimum total future emissions in a scenario in which the Proposed Project can exist: in which the market buys and uses its product for the duration of the Proposed Project.

41. It is not open to you to rationally be satisfied that the same or worse impact will necessarily occur in scenarios without the Proposed Project. That is because, the best feasible future scenarios (in terms of total future emissions before the achievement of net zero greenhouse gas emissions, and consequent level of warming) cannot eventuate if the Proposed Project is to exist. The IPCC has evaluated a range of mitigation scenarios for feasibility: see WGIII AR6, Chs 2, 3 and 4, and Annex III. As to scenarios and energy, see WGIII AR6, Ch 6. These scenarios can be correlated to scenarios used by WGI to identify global warming by 2100, including by determining total future greenhouse gas emissions (CO2-e) and using a carbon budget approach. Further, one may have regard to the categorisation of scenarios (C1 to C8) by WGIII AR6, by temperature correlation.

42. This can be explained by a simple hypothetical. If a coal miner refers a proposed coal mine to the Minister, by which it proposes to extract and sell 10Mtpa of thermal coal on the seaborne thermal coal market, every year from 2030 to 2050, the Minister must, in making the s 75 decision, assume that coal mine will exist. The minimum likely significant impacts from the accumulated greenhouse gas emissions, including those from that coal mine, are the minimum impacts from a total temperature increase of total future emissions in a world in which: (a) there is a coal market out to 2050; (b) within that coal market, there is a seaborne thermal coal market out to 2050; (c) within that thermal seaborne coal market out to 2050, there is sufficient demand for seaborne thermal coal such that all of the coal from the proposed coal mine is burned, together with all of the more desirable coal on the seaborne thermal coal market from 2030 to 2050 (with desirability determined by the market, primarily by reference to quality, cost and price). By contrast, if the existence of that mine is not assumed, there are feasible scenario available where there is no coal market out to 2050, no seaborne thermal coal market, or a smaller seaborne thermal coal market out to 2050. As demonstrated by WGIII AR6, there is a large range of better feasible scenarios (in terms of lowest temperature increase) which are simply not available if one assumes the existence of the coal mine with 10Mtpa on the seaborne thermal coal market out to 2050.

43. The same analysis is available for the Proposed Project. It could be precisely modelled for the Proposed Project, but detailed modelling is not necessary to demonstrate it as a matter of logic.

44. It follows that it would be irrational to conclude that the likely significant impacts will necessarily be the same with or without the Proposed Project.

D. Consideration of the relationship between this reconsideration request and approval of the Proposed Project

45. Finally and in relation to how this reconsideration request impacts on the approval process for the Proposed Project, we draw your attention to the Department's Policy Statement. In particular, we highlight the Department's Policy Statement wherein it provides that in circumstances where a reconsideration request is made and the approval decision has not yet been made:[20]

    a. the reconsideration request will be dealt with **before** the approval decision; and

    b. such a situation may involve the Minister extending the time for making the approval decision in accordance with the EPBC Act.

[20] EPBC Act Policy Statement on 'Other considerations', 11.

46. We submit that, consequently, you will be required to take all of the steps required by ss 78B and 78C of the EPBC Act **before** you proceed to taking any step required by Pt 9 of the EPBC Act, relating to the approval of the Proposed Project.

47. Should you proceed to the approval decision of the Proposed Project, contrary to the above requirements, we request you provide us with **10 days written notice** of your intention to approve the Proposed Project.

48. Should you require further information in respect of this request for reconsideration, please contact Hollie Kerwin, Principal Lawyer, on 03 8341 3105 or Retta Berryman, Senior Lawyer on 03 8341 3118.

Yours faithfully

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