

## NOTICE OF FILING

### Details of Filing

Document Lodged:	Defence - Form 33 - Rule 16.32
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	19/05/2023 4:23:11 PM AEST
Date Accepted for Filing:	19/05/2023 4:28:28 PM AEST
File Number:	VID345/2022
File Title:	AUSTRALIAN CONSERVATION FOUNDATION INCORPORATED v WOODSIDE ENERGY LTD & ANOR
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



*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 Defence**

(Filed pursuant to Federal Court Rules 2011 (Cth) r 16.55(1))

VID345/2022

**Federal Court of Australia**  
**District Registry: Victoria**  
**Division: General**

**Australian Conservation Foundation Incorporated**

Applicant

**Woodside Energy Ltd (ACN 005 482 986)** and another named in the Schedule

Respondents

**Preliminary**

- A. Headings used in this Defence to the Applicant's Second Further Amended Statement of Claim dated ~~5 August 17 October 2022~~ 21 April 2023 (**Statement of Claim**) are for convenience only and do not form part of the Defence.
- B. The Respondents do not plead to the particulars in the Statement of Claim.
- C. The Respondents plead to the numbered paragraphs of the Statement of Claim as follows.

**Parties**

- 1. As to paragraph 1, the Respondents:
  - (a) admit paragraph 1(a);
  - (b) admit that the Applicant is an "interested person" within the meaning of s 475(7) of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (***EPBC Act***);

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Filed on behalf of: Woodside Energy Ltd and Woodside Energy Scarborough Pty Ltd, the Respondents

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- (c) admit that:
- (i) the Applicant is incorporated in Australia and has operated for over 50 years;
  - (ii) at all times during the two years immediately before the making of the application, the Applicant's objects included the protection of the environment;
  - (iii) in the two years immediately before the making of the application, the Applicant engaged in a series of activities in Australia for protection and conservation of the environment;
  - (iv) the Applicant's present objects are to "[protect] nature and [advocate] for all living things to live in harmony on the planet that sustains us";
  - (v) the Applicant has over 700,000 supporters;
  - (vi) on 16 June 2022, the Applicant's Chief Executive Officer attended the signing of Australia's new greenhouse gas emissions reduction target by the Prime Minister and Minister for Climate Change and Energy;
  - (vii) the Applicant was part of a consultative group convened for the independent review of the EPBC Act by Professor Graeme Samuel, which was commissioned in 2019;
  - (viii) the Applicant had revenues for the 2020-2021 financial year of approximately \$18.39 million and expenditures of approximately \$14.56 million;
  - (ix) in the 2020-2021 financial year, the Applicant spent approximately \$8.40 million or about 56% of its total expenses on environmental activities;
  - (x) the Applicant campaigned to achieve World Heritage listing for the Great Barrier Reef;
  - (xi) the Applicant has coordinated and engaged in a series of activities in Australia concerning climate change and/or the Great Barrier Reef;
  - (xii) on 6 June 2022, the Applicant (by its solicitors) wrote to the Respondents (by their solicitors) to notify them that it considers that the carrying out of what the letter referred to as the Scarborough Gas Project is conduct constituting an offence or other contravention of the EPBC Act; and

(xiii) on 15 July 2022, the Applicant (by its solicitors) wrote to the Respondents (by their solicitors) requesting that it be consulted in respect of environment plans relating to what the letter referred to as the Scarborough Gas Project under the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (Cth) (**Environment Regulations**); and

(d) otherwise do not know and therefore cannot admit paragraph 1.

2. The Respondents admit paragraph 2.

3. The Respondents admit paragraph 3.

#### **Sources of jurisdiction and power to grant the relief sought**

4. The Respondents admit paragraph 4.

5. The Respondents admit paragraph 5.

6. The Respondents admit paragraph 6.

7. The Respondents admit paragraph 7.

#### **The EPBC Act**

8. The Respondents admit paragraph 8.

9. [Not used.] The Respondents admit paragraph 9.

10. [Not used.] As to paragraph 10, the Respondents:

(a) deny that s 15A(2)(b) of the EPBC Act identifies a "result of conduct" within the meaning of s 4.1(1)(b) of the Criminal Code; and

(b) otherwise admit paragraph 10.

11. The Respondents admit paragraph 11.

12. [Not used.] The Respondents admit paragraph 12. [Not used.]

13. [Not used.] The Respondents admit paragraph 13, save that the words "or agency" should not appear in paragraph 13(a).

14. [Not used.] As to paragraph 14, the Respondents:

(a) deny that s 15C(2)(b) of the EPBC Act identifies a "result of conduct" within the meaning of s 4.1(1)(b) of the Criminal Code; and

(b) otherwise admit paragraph 14.

15. [Not used.] The Respondents admit paragraph 15.

16. The Respondents do not know and therefore cannot admit paragraph 16.
17. The Respondents do not know and therefore cannot admit paragraph 17.
18. The Respondents do not plead to paragraph 18 because it contains no allegation.

18A. The Respondents admit paragraph 18A.

18B. As to paragraph 18B, the Respondents:

- (a) say that at all times the onus lies on the Applicant to plead and prove the facts which entitle it to the relief it claims, including in view of the application of s 25AA(1) of the EPBC Act to those facts;
- (b) say that, in circumstances where s 25AA(1) applies, then the effect of s 25AA(3) is that s 12(1) and s 15B(1) of the EPBC Act do not apply;
- (c) refer to and repeat paragraphs 124 and 126 below; and
- (d) otherwise deny paragraph 18B.

18C. The Respondents admit paragraph 18C.

18D. The Respondents admit paragraph 18D.

19. The Respondents admit paragraph 19.
20. As to paragraph 20, the Respondents:
  - (a) admit paragraph 20(a); and
  - (b) deny paragraph 20(b).
21. The Respondents admit paragraph 21.
22. The Respondents admit paragraph 22.

22A. As to paragraph 22A, the Respondents:

- (a) say that, in order to establish that any of the impacts alleged in paragraphs 98A(j), (k) and (l) of the Statement of Claim (the **Alleged Impacts**) are a consequence of any of the actions alleged in paragraph 47A (**Alleged Actions**), whether as a direct or indirect consequence, the Applicant must:
  - (i) plead and prove a causal connection between the Alleged Action or the Alleged Actions and the Alleged Impacts; and
  - (ii) in order to prove that causal connection, prove that, without the Alleged Action or Alleged Actions, the Alleged Impacts would not occur;

- (b) refer to paragraph 98B below; and
- (c) otherwise deny paragraph 22A.

23. As to paragraph 23, the Respondents:

- (a) admit that s 12(3) of the EPBC Act provides that:

A property has **world heritage values** only if it contains natural heritage or cultural heritage. The **world heritage values** of the property are the natural heritage and cultural heritage contained in the property

- (b) say that the world heritage values of a declared World Heritage property are the natural and cultural heritage values of the property that are included in the World Heritage List established and maintained under Article 11 of the Convention Concerning the Protection of the World Cultural and Natural Heritage (the **World Heritage List**); and
- (c) otherwise deny paragraph 23.

24. The Respondents admit paragraph 24.

25. The Respondents admit paragraph 25.

26. The Respondents admit paragraph 26.

27. The Respondents admit paragraph 27.

28. The Respondents admit paragraph 28.

29. The Respondents admit paragraph 29.

30. ~~As to paragraph 30, the Respondents:~~

- ~~(a) admit it accurately records the definitions in s 528 of the EPBC Act, save that the word “scientific” is omitted in paragraph 30(b);~~
- ~~(b) say that, for the purposes of Part 3 of the EPBC Act:~~
  - ~~(i) — the indigenous heritage values of a place are a subset of the National Heritage values of that place; and~~
  - ~~(ii) — the National Heritage values for a place are the values for that place included in the National Heritage List; and~~
- ~~(c) otherwise deny paragraph 30. The Respondents admit paragraph 30.~~

31. The Respondents admit paragraph 31.

## The Great Barrier Reef

32. The Respondents admit paragraph 32.
33. The Respondents do not know and therefore cannot admit paragraph 33.
34. The Respondents do not know and therefore cannot admit paragraph 34.
35. The Respondents do not know and therefore cannot admit paragraph 35.
36. As to paragraph 36, the Respondents:
  - (a) admit paragraphs 36(a) and 36(b); and
  - (b) do not know and therefore cannot admit paragraph 36(c).
37. As to paragraph 37, the Respondents:
  - (a) admit paragraphs 37(a) and 37(b); and
  - (b) do not know and therefore cannot admit paragraph 37(c).
38. As to paragraph 38, the Respondents:
  - (a) refer to and repeat paragraph 23(b) above;
  - (b) say that the world heritage values of the Great Barrier Reef are those values included in the World Heritage List; and

### Particulars

<https://whc.unesco.org/en/list/154/>.

In particular, the world heritage values are those described in respect of each relevant criterion under the heading “Outstanding Universal Value” in the entry for the Great Barrier Reef in the World Heritage List.

- (c) otherwise deny paragraph 38.
39. As to paragraph 39, the Respondents:
  - (a) ~~[Not used.] refer to and repeat paragraph 30(b)(ii) above;~~
  - (b) say that the National Heritage values of the Great Barrier Reef are those included in the National Heritage List; and

### Particulars

<https://www.dcceew.gov.au/parks-heritage/heritage/places/world/gbr>.

In particular, the National Heritage values are those described in respect of each relevant criterion under the heading “Outstanding

Universal Value” in the entry for the Great Barrier Reef in the National Heritage List.

- (c) otherwise deny paragraph 39.
40. [Not used.] ~~As to paragraph 40, the Respondents:~~
- (a) ~~refer to and repeat paragraph 30(b) above;~~
  - (b) ~~say that the indigenous heritage values of the Great Barrier Reef are the National Heritage values included in the National Heritage List, to the extent that they are indigenous heritage values;~~
  - (c) ~~say that it is not permissible to identify the relevant National Heritage values (including indigenous heritage values) by evidence in a particular case; and~~
  - (d) ~~otherwise deny paragraph 40. [Not used.]~~
41. As to paragraph 41, the Respondents:
- (a) admit that mass coral bleaching events occurred in the Great Barrier Reef in 1998, 2002, 2016, 2017, 2020 and 2022; and
  - (b) otherwise do not know and therefore cannot admit paragraph 41.

### The Section 146B Approval

42. The Respondents admit paragraph 42 and say further:
- (a) under Part 10 of the EPBC Act, the Minister may approve the taking of an action or a class of actions in accordance with an endorsed policy, plan or program;
  - (b) on 7 February 2014, the then Commonwealth Minister for the Environment endorsed, under s 146 of the EPBC Act, a program for the environmental management authorisation of petroleum and greenhouse gas activities administered by the National Offshore Petroleum Safety and Environmental Management Authority (**NOPSEMA**) under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth);

### Particulars

Notification of Decision to Endorse the Program to Streamline Offshore Petroleum and Greenhouse Gas Activity Environmental Approvals dated 7 February 2014.

- (c) the program that was endorsed (the **endorsed Program**) was the program described in a document entitled: *Program Report – Strategic Assessment of*



*the environmental management authorisation process for petroleum and greenhouse gas storage activities administered by the National Offshore Petroleum Safety and Environmental Management Authority under the Offshore Petroleum and Greenhouse Gas Storage Act 2006 February 2014*  
~~(Program Report)~~;

- (d) on 27 February 2014, the then Commonwealth Minister for the Environment approved the taking of a class of actions under s 146B of the EPBC Act, being “all actions which are petroleum and greenhouse gas activities taken in Commonwealth waters and in accordance with the endorsed Program”, subject to the exclusions identified in the approval decision (the **Section 146B Approval**); and

### Particulars

Final Approval Decision for the Taking of Actions in accordance with an Endorsed Program under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) dated 27 February 2014.

- (e) pursuant to the endorsed Program, petroleum activities and greenhouse gas activities are subject to the requirements of (among other instruments) the Environment Regulations, including:
- (i) the requirement for the proponent of an “offshore project” to submit for assessment by NOPSEMA an “offshore project proposal” under Part 1A of the Environment Regulations; and
  - (ii) the requirement for an environment plan to be in force for any petroleum or greenhouse gas activity, under Part 2 of the Environment Regulations.
43. The Respondents admit paragraph 43.
44. The Respondents deny paragraph 44 and refer to and repeat paragraph 42(c) above.
45. The Respondents admit paragraph 45, save that:
- (a) they say that an action will not be covered by the Section 146B Approval if any one of the matters in paragraphs 45(a) to 45(c) is true; and
  - (b) they will rely on the Section 146B Approval for its full force and effect.

## The **Scarborough** Project

46. As to paragraph 46, the Respondents:

- (a) say that, on 27 February 2020, the First Respondent submitted to NOPSEMA revision 5 of a document entitled the “Scarborough Offshore Project Proposal” (the **Scarborough OPP**);
- (b) say that the Scarborough OPP was submitted in accordance with the endorsed Program and, in particular, Part 1A of the Environment Regulations, described in paragraphs 42(c) and 42(e) above;
- (c) say that the Scarborough OPP was accepted on 30 March 2020, on the basis that NOPSEMA was satisfied that the proposal met the criteria set out in sub-regulation 5D(6) of the Environment Regulations, namely that the proposal:
  - (i) adequately addressed comments given during the period for public comment; and
  - (ii) was appropriate for the nature and scale of the project; and
  - (iii) appropriately identified and evaluated the environmental impacts and risks of the project; and
  - (iv) set out appropriate environmental performance outcomes that were consistent with the principles of ecologically sustainable development and demonstrated that the environmental impacts and risks of the project would be managed to an acceptable level; and
  - (v) did not involve an activity or part of an activity being undertaken in any part of a declared World Heritage property within the meaning of the EPBC Act; and

### Particulars

Letter from Stuart Smith (Chief Executive Officer of NOPSEMA) to the First Respondent dated 30 March 2020.

Statement of Reasons for Acceptance of Scarborough Offshore Project Proposal dated 6 April 2020.

- (d) otherwise deny paragraph 46.

47. As to paragraph 47, the Respondents:

- (a) say that the Scarborough OPP describes a number of activities in Commonwealth waters proposed to be undertaken by the First Respondent, including (in summary):
  - (i) the drilling of wells;
  - (ii) the installation of infield subsea and surface infrastructure, including a floating production unit;
  - (iii) the installation of a trunkline, for the export of the extracted gas away from the floating production unit;
  - (iv) the operation of the facilities described in sub-paragraphs (ii) to (iii) above, including gas extraction and compression and export; and
  - (v) decommissioning of the facilities;

#### **Particulars**

Those activities are summarised in the Scarborough OPP, p 29.

- (b) say that the First Respondent presently proposes to undertake the activities referred to in paragraph 47(a) above in reference to the fields known as the Scarborough Field and the North Scarborough Field (together, the Scarborough Fields):

#### **Particulars**

The Scarborough Field comprises graticular blocks 3302, 3303, 3304, 3374, 3375, 3376, 3446, 3447 and 3448 on map sheet SE49.

Grant of Petroleum Production Licence WA-61-L by Delegate of the National Offshore Petroleum Titles Administrator, on behalf of the Commonwealth-Western Australia Offshore Petroleum Joint Authority, dated 24 December 2020.

The North Scarborough Field comprises graticular blocks 3230, 3231, 3232 and 3233 on map sheet SE49.

Grant of Petroleum Production Licence WA-62-L by Delegate of the National Offshore Petroleum Titles Administrator, on behalf of the Commonwealth-Western Australia Offshore Petroleum Joint Authority, dated 24 December 2020.

- (c) say that the activities described in paragraph 47(a) above in reference to the Scarborough Fields are part of what may conveniently be described as the **Scarborough Project**;
- (d) say that, in addition to the Scarborough Fields, there are two other fields, known respectively as the Thebe Field and the Jupiter Field, which are included in the Scarborough OPP that was assessed and accepted by NOPSEMA;

### Particulars

The Thebe Field is the area covered by retention lease WA-63-R, comprising graticular blocks 2798, 2799, 2870, 2871, 2941, 2942, 2943 and 3014 on map sheet SE49.

The Jupiter Field is the area covered by retention lease WA-61-R, comprising graticular blocks 3091, 3162 and 3163 on map sheet SE49.

- (e) say further that the possible future development of the Thebe Field and the Jupiter Field is subject to, inter alia:
  - (i) the application for and grant of production licences in respect of those fields;
  - (ii) the acceptance of environment plans by NOPSEMA for activities in respect of those fields;
  - (iii) the taking of commercial decisions by the holders of title to those fields; and
  - (iv) the negotiation and execution of commercial agreements in relation to the development of those fields and the processing of gas from them;
- (f) say that, in this Defence, the Respondents will:
  - (i) use the term **Greater Scarborough Fields** to refer collectively to the Scarborough Fields, the Thebe Field and the Jupiter Field; and
  - (ii) use the term **Greater Scarborough Gas** to refer to gas extracted from the Greater Scarborough Fields;
- (g) say that, apart from preparatory engineering and procurement work, none of the activities described in paragraph 47(a) above has begun;
- (h) say that each of the activities described in paragraph 47(a) above is a “petroleum activity” within the meaning of regulation 4 of the Environment Regulations;

- (i) say that none of the activities described in paragraph 47(a) above may be commenced without an accepted environment plan for that activity under the Environment Regulations;
- (j) say that, subject to obtaining acceptance of each required environment plan, and on present estimates (which are subject to revision), the operation of the facilities referred to in paragraph 47(a)(iv) above is proposed to begin in around 2026; and
- (k) otherwise deny paragraph 47.

47A. As to paragraph 47A, the Respondents:

- (a) refer to and repeat paragraphs 47(a) to 47(j) above;
- (b) say that s 523(1) of the EPBC Act provides that an action includes, amongst other things, a “project” and “an activity or series of activities”;
- (c) admit that the Project is within the definition of “action” in s 523(1); and
- (d) otherwise deny paragraph 47A.

48. As to paragraph 48, the Respondents:

- (a) refer to and repeat paragraph 47 above;
- (b) say that the precise details and timing of activities are matters that will evolve, including by reference to the process under the Environment Regulations for obtaining acceptance of an environment plan for each activity, project schedule requirements, availability of vessels and mobile offshore drilling units, weather and unforeseen circumstances; and
- (c) otherwise deny paragraph 48.

49. The Respondents deny paragraph 49 and say that:

- (a) on 22 November 2021, Woodside Petroleum Ltd announced the taking of the decision described as the “final investment decision” to the Australian Stock Exchange in respect of the Project; and

**Particulars**

ASX Announcement made by Woodside Petroleum Ltd on 22 November 2021, available at:  
<https://www.woodside.com.au/docs/default-source/asx-announcements/2021-asx/060.-scarborough-and-pluto-train-2-developments-approved.pdf>.

- (b) Woodside Petroleum Ltd was the ultimate holding company of the Respondents and is now known as Woodside Energy Group Ltd.

50. As to paragraph 50, the Respondents:

- (a) refer to and repeat paragraphs 47(a) to ~~47(j)~~ ~~47(f)~~ above; and
- (b) otherwise deny paragraph 50.

51. ~~[Not used.] The Respondents deny paragraph 51 and say:~~

- (a) ~~the Scarborough Project is proposed to involve petroleum recovery from the fields described in sub-paragraphs (b) and (c) below, known as the Scarborough Field and the North Scarborough Field (together, the Scarborough Fields);~~
- (b) ~~retention lease WA-1-R ceased to be in force upon the grant of production licence WA-61-L in respect of the area known as the Scarborough Field (which was formerly the subject of retention lease WA-1-R);~~

#### **Particulars**

~~The Scarborough Field comprises graticular blocks 3302, 3303, 3304, 3374, 3375, 3376, 3446, 3447 and 3448 on map sheet SE49.~~

~~Grant of Petroleum Production Licence WA-61-L by Delegate of the National Offshore Petroleum Titles Administrator, on behalf of the Commonwealth-Western Australia Offshore Petroleum Joint Authority, dated 24 December 2020.~~

- (c) ~~retention lease WA-62-R ceased to be in force upon the grant of production licence WA-62-L in respect of the area known as the North Scarborough Field (which was formerly the subject of retention lease WA-62-R);~~

#### **Particulars**

~~The North Scarborough Field comprises graticular blocks 3230, 3231, 3232 and 3233 on map sheet SE49.~~

~~Grant of Petroleum Production Licence WA-62-L by Delegate of the National Offshore Petroleum Titles Administrator, on behalf of the Commonwealth-Western Australia Offshore Petroleum Joint Authority, dated 24 December 2020.~~

- (d) ~~in addition to the Scarborough Fields, there are two other fields, known respectively as the Thebe Field and the Jupiter Field, which were included in the Scarborough OPP that was assessed and accepted by NOPSEMA; and~~

### Particulars

~~The Thebe Field is the area covered by retention lease WA-63-R, comprising graticular blocks 2798, 2799, 2870, 2871, 2941, 2942, 2943 and 3014 on map sheet SE49.~~

~~The Jupiter Field is the area covered by retention lease WA-61-R, comprising graticular blocks 3091, 3162 and 3163 on map sheet SE49.~~

- (e) ~~in this Defence, the Respondents will:~~
- ~~(i) — use the term **Greater Scarborough Fields** to refer collectively to the Scarborough Fields, the Thebe Field and the Jupiter Field; and~~
  - ~~(ii) — use the term **Scarborough Gas** to refer to gas extracted from the Greater Scarborough Fields.~~

52. [Not used.] ~~As to paragraph 52, the Respondents:~~

- ~~(a) say that the Scarborough Project is proposed to involve the items of conduct in paragraphs 52(a) to 52(d); and~~
- ~~(b) otherwise deny paragraph 52.~~

52A. The Respondents deny paragraph 52A and refer to and repeat paragraphs 47 and 47A above, and paragraphs 54A and 98A(a) below.

53. [Not used.] ~~As to paragraph 53, the Respondents:~~

- ~~(a) refer to and repeat paragraph 51(d) above;~~
- ~~(b) say further that the development of the Thebe Field and the Jupiter Field is subject to, inter alia:~~
  - ~~(i) — the grant of production licences in respect of those fields;~~
  - ~~(ii) — the acceptance of environment plans by NOPSEMA for activities in respect of those fields;~~
  - ~~(iii) — the taking of commercial decisions by the holders of title to those fields; and~~
  - ~~(iv) — the negotiation and execution of commercial agreements in relation to the development of those fields and the processing of gas from them; and~~
- ~~(c) otherwise do not know and therefore cannot admit paragraph 53.~~

54. [Not used.] ~~The Respondents deny paragraph 54.~~

54A. As to paragraph 54A, the Respondents:

- (a) say that, subject to satisfaction of the requirements of the Environment Regulations and obtaining any other necessary approvals, the Respondents intend to optimise the long-term recovery of gas from the Scarborough Fields and sell the processed gas to third parties for consumption to the extent that it is lawful and commercially viable to do so, consistently with reg 4.06(1)(b)(ii) of the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* (Cth); and
- (b) otherwise deny paragraph 54A.

55. The Respondents do not know and therefore cannot admit paragraph 55, and refer to and repeat ~~paragraphs 53 and 54~~ paragraph 47(e) above.

56. The Respondents deny paragraph 56.

**The alleged actions of the Respondents**

57. The Respondents deny paragraph 57 and refer to and repeat paragraphs 47 and 47A above.

58. [Not used.] As to paragraph 58, the Respondents:

- (a) ~~refer to and repeat paragraphs 47(a) and 47(b) above;~~
- (b) ~~otherwise deny paragraph 58;~~
- (c) ~~say that the allegation in paragraph 58 is embarrassing, including because it is unclear to what the defined term “Actions” is intended to refer; and~~
- (d) ~~will rely on the EPBC Act for its full force and effect.~~

58A. The Respondents deny paragraph 58A and:

- (a) refer to and repeat paragraph 42 above and paragraphs 98A and 98B below; and
- (b) say further that the Section 146B Approval applies to the Project and each of the activities proposed to form part of it, such that the Minister is taken to have approved the Project and each of the activities proposed to form part of it when undertaken in accordance with the endorsed Program.

58B. As to paragraph 58B, the Respondents:

- (a) say that the effect of s 146D(1)(a)(i) of the EPBC Act is that the Minister is taken to have decided that any petroleum and greenhouse gas activity to which the Section 146B Approval applies is a controlled action; and



- (b) otherwise deny paragraph 58B.

59. As to paragraph 59, the Respondents:

- (a) in so far as the paragraph alleges that the Respondents know the precise details of the ~~Searborough~~ Project and the steps to be undertaken, refer to and repeat paragraph 48 above;
- (b) in so far as the paragraph alleges the Applicant's intention, do not know and therefore cannot admit that allegation; and
- (c) otherwise deny paragraph 59.

### **Greenhouse gas emissions and climate change**

60. The Respondents deny paragraph 60, in so far as paragraph 60 contains any allegation, and say further that, in general:

- (a) the allegations in paragraphs 61 to 67 are not "matters of basic climate science" or "common knowledge"; and
- (b) the allegations are not framed with sufficient precision or particularity so as to be capable of being admitted.

61. As to paragraph 61, the Respondents:

- (a) say that greenhouse gas concentrations in the atmosphere:
  - (i) are the result of cumulative anthropogenic and non-anthropogenic greenhouse gas emissions; and
  - (ii) consist in part of carbon dioxide, methane and nitrous oxide from human activity;
- (b) say that whether, and the extent to which, greenhouse gas emissions accumulate in the atmosphere from human activity depends, among other things, on the extent of carbon sequestration; and
- (c) otherwise deny paragraph 61.

62. The Respondents admit paragraph 62.

63. As to paragraph 63, the Respondents:

- (a) say that global warming is only one aspect of climate change; and
- (b) otherwise admit paragraph 63.

64. As to paragraph 64, the Respondents:
- (a) say that anthropogenic greenhouse gas emissions contribute to climate change only if those greenhouse gas emissions result in a substantial net increase in atmospheric concentrations of greenhouse gases; and
  - (b) otherwise deny paragraph 64.
65. As to paragraph 65, the Respondents:
- (a) refer to and repeat paragraph 64(a) above; and
  - (b) otherwise deny paragraph 65.
66. The Respondents admit paragraph 66.
67. The Respondents deny paragraph 67 and refer to and repeat paragraph 64(a) above.

### **Tipping points and tipping cascades**

68. As to paragraph 68, the Respondents:
- (a) say that tipping points refer to a critical threshold ~~s beyond which a system reorganises, often abruptly and/or irreversibly in a system that, when exceeded, can lead to a significant change in the state of the system, often with an understanding that the change is irreversible;~~ and

### **Particulars**

United Nations Intergovernmental Panel on Climate Change (*IPCC*), Sixth Assessment Report (AR6-WG1), Annex VII: Glossary (p 2251), available here:

[https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC\\_AR6\\_WGI\\_AnnexVII.pdf](https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_AnnexVII.pdf)

~~IPCC, *Special Report: Global Warming of 1.5°C* (2018), [3.5.5] (p 262).~~

- (b) otherwise do not know and therefore cannot admit paragraph 68.
69. The Respondents do not know and therefore cannot admit paragraph 69.
70. The Respondents do not know and therefore cannot admit paragraph 70.
71. The Respondents do not know and therefore cannot admit paragraph 71.
72. The Respondents do not know and therefore cannot admit paragraph 72.
73. The Respondents do not know and therefore cannot admit paragraph 73.
74. The Respondents do not know and therefore cannot admit paragraph 74.

- 75. The Respondents do not know and therefore cannot admit paragraph 75.
- 76. The Respondents do not know and therefore cannot admit paragraph 76.
- 77. The Respondents do not know and therefore cannot admit paragraph 77.
- 78. The Respondents do not know and therefore cannot admit paragraph 78.

**Greenhouse gas emissions, climate change and the Great Barrier Reef**

- 79. The Respondents deny paragraph 79, in so far as paragraph 79 contains any allegation, and say further that, in general:
  - (a) the allegations in paragraphs 80 to 94 are not “matters of common knowledge”; and
  - (b) the allegations are not framed with sufficient precision or particularity so as to be capable of being admitted.
- 80. The Respondents do not know and therefore cannot admit paragraph 80.
- 81. The Respondents do not know and therefore cannot admit paragraph 81.
- 82. As to paragraph 82, the Respondents:
  - (a) say that oceans absorb and store most of the excess heat in the climate system; and
  - (b) otherwise do not know and therefore cannot admit paragraph 82.
- 83. As to paragraph 83, the Respondents:
  - (a) refer to and repeat paragraph 66 above; and
  - (b) otherwise do not know and therefore cannot admit paragraph 83.
- 84. As to paragraph 84, the Respondents:
  - (a) refer to and repeat paragraph 66 above; and
  - (b) otherwise do not know and therefore cannot admit paragraph 84.
- 85. As to paragraph 85, the Respondents:
  - (a) refer to and repeat paragraph 66 above; and
  - (b) otherwise do not know and therefore cannot admit paragraph 85.
- 86. As to paragraph 86, the Respondents:
  - (a) admit that carbon dioxide emissions are, in part, absorbed by oceans; and
  - (b) otherwise do not know and therefore cannot admit paragraph 86.

87. The Respondents do not know and therefore cannot admit paragraph 87.
88. The Respondents do not know and therefore cannot admit paragraph 88.
89. As to paragraph 89, the Respondents:
- (a) say that warming temperatures alter the sex ratios of turtles;
  - (b) refer to and repeat paragraph 66 above; and
  - (c) otherwise do not know and therefore cannot admit paragraph 89.
90. As to paragraph 90, the Respondents:
- (a) admit that global warming has contributed to marine heatwaves in the Great Barrier Reef;
  - (b) admit that marine heatwaves have contributed to mass bleaching events in the Great Barrier Reef in 1998, 2002, 2016, 2017, 2020 and 2022;
  - (c) do not know and therefore cannot admit paragraph 90(c);
  - (d) refer to and repeat paragraphs 61 to 67 above; and
  - (e) otherwise deny paragraph 90.
91. The Respondents do not know and therefore cannot admit paragraph 91.
92. The Respondents do not know and therefore cannot admit paragraph 92.
93. The Respondents do not know and therefore cannot admit paragraph 93.
94. The Respondents do not know and therefore cannot admit paragraph 94.

#### **Woodside's "scope 3 emissions plan"**

95. The Respondents admit paragraph 95 and say further that:
- (aa) they refer to and repeat paragraph 49(b) above and paragraph 98A below:
  - (a) the "scope 3 emissions plan" was published in Woodside Petroleum Ltd's *Climate Report 2021* on or around 17 February 2022 (**Climate Report 2021**);
  - (b) when the Climate Report 2021 refers to "scope 3 emissions", it is referring to emissions generated by the activities of third parties, including third parties who consume gas ~~produced~~ sold by Woodside Petroleum Ltd or its subsidiaries;
  - (c) the concept of "scope 3 emissions" is a mechanism for accounting and reporting greenhouse emissions in accordance with the Greenhouse Gas Protocol Corporate Accounting and Reporting Standard published by the

World Business Council for Sustainable Development and the World Resources Institute;

- (d) whether and the extent to which greenhouse gas emissions, or net greenhouse gas emissions, will be emitted into the atmosphere from the end use consumption of any Greater Scarborough Gas is not a matter within either Respondent's control and will depend on matters such as the purpose for which the gas is consumed and the technology used to consume the gas and potentially abate the emissions (including by sequestration);
- (e) the Climate Report 2021 did not relate specifically to the ~~Scarborough~~ Project or the end use consumption of any Greater Scarborough Gas, and instead summarised Woodside Petroleum Ltd's climate-related plans, activities, progress and climate-related data for the corporate group of which it was the ultimate holding company; ~~and~~
- (f) the Scarborough OPP addressed "scope 3 emissions" in the context of the ~~Scarborough~~ Project and the end use consumption of any Greater Scarborough Gas; and

#### Particulars

Scarborough OPP, [7.1.3] (pp 372 – 392), with measures to mitigate greenhouse gas emissions described in [7.1.3.6] (in particular, pp 390 – 392).

- (g) Woodside Energy Group Ltd's updated Climate Report 2022 was published on or around 27 February 2023, which also contains a plan with respect to scope 3 emissions.

96. The Respondents admit paragraph 96.

97. As to paragraph 97, the Respondents:

- (a) say that the allegation is vague and embarrassing because the terms "specific measures" and "materially reduce" have no identified meaning;
- (b) refer to and repeat paragraphs ~~58(c) and~~ 95**(b), (c), (d) and** (f) above;
- (c) deny that any scope 3 emissions are "from" any of the Alleged Actions; and
- (d) otherwise do not know and therefore cannot admit paragraph 97.

98. As to paragraph 98, the Respondents:

- (a) say that the allegation is vague and embarrassing because the terms "concrete plans" and "materially reduce" have no identified meaning;

- (b) refer to and repeat paragraphs ~~s 58(c) and~~ 95(f) above; and
- (c) otherwise do not know and therefore cannot admit paragraph 98.

### **The alleged impacts**

98A The Respondents deny paragraph 98A and say as follows:

- (a) in the Scarborough OPP, the Respondents estimated the gross contingent resource of the Scarborough Fields to be 11.1 trillion cubic feet (tcf) of dry gas;

#### **Particulars**

Scarborough OPP, p 49.

- (b) in the Scarborough OPP, the Respondents estimated the gross contingent resource of the Greater Scarborough Fields to be 13 tcf of dry gas;

#### **Particulars**

ASX Announcement made by Woodside Petroleum Ltd on 8 November 2019 available at:

[https://www.woodside.com/docs/default-source/asx-announcements/2019-asx-announcements/scarborough-resource-volume-increased-by-52.pdf?sfvrsn=32aa96f7\\_2](https://www.woodside.com/docs/default-source/asx-announcements/2019-asx-announcements/scarborough-resource-volume-increased-by-52.pdf?sfvrsn=32aa96f7_2)

- (c) any gas extraction, offshore processing and compression activities undertaken for Greater Scarborough Gas is likely to produce greenhouse gas emissions (gas extraction, offshore processing and compression emissions);

#### **Particulars**

Gas extraction, offshore processing and compression emissions are typically from three key sources:

- (i) the use of fuel to power compression for export and associated processing and utilities;
- (ii) the combustion of hydrocarbons that are not able to be processed, known as flaring; and
- (iii) fugitive emissions, being minor leaks of hydrocarbon gases that occur from those processes or uncommuted hydrocarbons that pass through the flare or gas turbines.

In the Scarborough OPP, the Respondents estimated the gas extraction, offshore processing and compression emissions for all

Greater Scarborough Gas (based on the assumptions and methodologies described in the Scarborough OPP, and expressed as a carbon dioxide-equivalent figure (**CO<sub>2</sub>e**) in terms of millions of tonnes (**Mt**)) as follows:

<u><b>Emission source</b></u>	<u><b>Annual (MtCO<sub>2</sub>e)</b></u>	<u><b>Total expected field life (MtCO<sub>2</sub>e)</b></u>
<u><b>Fuel gas</b></u>	<u><b>0.41</b></u>	<u><b>9.88</b></u>
<u><b>Flaring</b></u>	<u><b>0.04</b></u>	<u><b>1.38</b></u>
<u><b>Fugitives</b></u>	<u><b>0.01</b></u>	<u><b>0.26</b></u>
<u><b>Total scope 1</b></u>	<u><b>0.47</b></u>	<u><b>11.52</b></u>

- (d) any gas extraction, offshore processing and compression emissions for Greater Scarborough Gas will be subject to applicable Australian laws and environmental standards as they exist from time to time;
- (e) Greater Scarborough Gas that is extracted is likely to be processed to liquefied natural gas (**LNG**) at facilities known as the “Pluto LNG facility” located onshore, on the Burrup Peninsula in Western Australia;
- (f) any onshore processing of Greater Scarborough Gas is likely to be undertaken by Woodside Burrup Pty Ltd;
- (g) any onshore processing of Greater Scarborough Gas is likely to generate greenhouse gas emissions (**onshore processing emissions**);

#### **Particulars**

Greenhouse gas emissions associated with onshore processing are principally from fuel combustion, flaring, fugitive emissions and venting of reservoir CO<sub>2</sub>.

In the Scarborough OPP, the Respondents estimated the onshore processing emissions for all Greater Scarborough Gas (based on the assumptions and methodologies described in the Scarborough OPP and expressed as a MtCO<sub>2</sub>e figure) as follows:

<u><b>Onshore processing</b></u>	<u><b>Annual (MtCO<sub>2</sub>e)</b></u>	<u><b>Total expected field life (MtCO<sub>2</sub>e)</b></u>
<u><b>Reservoir emissions</b></u>	<u><b>0.02</b></u>	<u><b>0.55</b></u>
<u><b>Processing emissions (fuel and flare)</b></u>	<u><b>2.82</b></u>	<u><b>87.42</b></u>
<u><b>Onshore processing total</b></u>	<u><b>2.84</b></u>	<u><b>87.97</b></u>

- (h) any onshore processing, including any onshore processing emissions for Greater Scarborough Gas, will be subject to applicable Australian laws and environmental standards as they exist from time to time;
- (i) the Respondents propose to sell Greater Scarborough Gas that is extracted and processed to third parties, ultimately for end use consumption;

### **Particulars**

Pursuant to the Western Australia Domestic Gas Policy, gas equivalent to 15% of LNG production from each LNG export project (which is capable of commercial development) will be reserved and made available for Western Australian consumers: see <https://www.wa.gov.au/government/publications/wa-domestic-gas-policy>.

Otherwise, the likely markets for Greater Scarborough Gas that is extracted and processed are in Asia, including China, India, Japan and Korea and other countries in South East Asia.

Many of the potential markets for Greater Scarborough Gas that is extracted and processed are projected to be unable to build sufficient renewables to meet their projected 2050 electricity demand.

There are a number of possible end uses of Greater Scarborough Gas that is extracted and processed, including generating electricity, manufacturing petrochemicals and producing fertiliser.

The customer to whom Greater Scarborough Gas that is extracted and processed is sold by the Respondents may not be the end user.

- (j) any end use consumption of Greater Scarborough Gas (including related processes such as transport of the LNG) is likely to generate greenhouse gas emissions (**consumption emissions**):



### **Particulars**

The quantity of consumption emissions generated depends on a number of variables, including the distance travelled to the point of consumption, the use to which the gas is being put and the technology employed in that use.

In the Scarborough OPP, the Respondents estimated the greenhouse gas emissions that may result from the third party consumption of all Greater Scarborough Gas (based on the assumptions and methodologies described in the Scarborough OPP and expressed as a MtCO<sub>2</sub>e figure) as follows:

<b><u>Third party consumption (scope 3)</u></b>	<b><u>Average year (MtCO<sub>2</sub>e)</u></b>	<b><u>Total expected field life (MtCO<sub>2</sub>e)</u></b>
<i>1b. Consumption – LNG using EcolInvent factor (transport, regasification, distribution, and combustion)</i>	<u>22.12</u>	<u>685.84</u>
<i>2. Consumption – Domgas (distribution and combustion)</i>	<u>2.99</u>	<u>92.69</u>
<b><u>Total (1b+2)</u></b>	<b><u>25.11</u></b>	<b><u>778.53</u></b>

- (k) any transport of Greater Scarborough Gas to a customer may, depending on the applicable commercial arrangements, be undertaken:
  - (i) by or on behalf of the customer; or
  - (ii) by or on behalf of the Respondents;
- (l) any end use consumption of Greater Scarborough Gas that is extracted and processed will be subject to the national and sub-national legal and policy frameworks relating to anthropogenic global greenhouse gas emissions in the states where the gas is consumed including, for states that have ratified the Paris Agreement, legal and policy frameworks made in the context of the Paris Agreement;
- (m) it is not within the contemplation of the Respondents, nor is it a reasonably foreseeable or likely consequence of the Project, the activities proposed to

form part of the Project or of the extraction, processing, transportation or end use consumption of Greater Scarborough Gas, that there will be any, or any substantial, increase in greenhouse gas concentrations in the global atmosphere at all or over the life of the Project;

### **Particulars**

- (i) Greenhouse gas concentrations in the global atmosphere over the life of the Project will be the cumulative result of historical and net future global greenhouse gas emissions (both anthropogenic and non-anthropogenic).
- (ii) The amount of future anthropogenic global greenhouse gas emissions, including the amount of net future anthropogenic global greenhouse gas emissions, over the life of the Project will depend upon, amongst other things:
  - (A) global demand for energy;
  - (B) sources of energy to meet the global demand, including sources of fuels;
  - (C) whether particular sources of fuels for energy generation (such as natural gas) will displace other sources of fuels which are likely to generate greater greenhouse gas emissions (such as coal; when used to generate electricity, natural gas emits around half the life cycle emissions of coal);
  - (D) the use of and advancements in technology in the extraction, processing, transportation and combustion of fuels for energy generation;
  - (E) offset and sequestration; and
  - (F) international, national and sub-national legal and policy frameworks relating to the above and to anthropogenic global greenhouse gas emissions.
- (iii) There is uncertainty as to how or to what extent the global energy transition to a lower carbon economy will evolve.
- (iv) The IPCC has recognised numerous possible energy transition pathways consistent with limiting global warming to 1.5°C, many of which involve significant reliance on natural gas.

- (v) For example, in the AR6-WG3 report, the IPCC states that, in pathways that limit warming to 1.5°C (with a greater than 50% probability and with no or limited overshoot), the potential global use of gas in 2050 ranges from 30% above 2019 levels to 85% below them (see AR6-WG3, *Summary for Policymakers* (2022), [C.3.2]).
- (vi) Gas projects already in operation would be insufficient to meet the consumption of gas projected as part of a number of IPCC pathways that are forecast to limit warming to 1.5°C because of the progressive depletion of gas in existing projects.
- (vii) Further particulars may be provided before trial.
- (n) it is not within the contemplation of the Respondents, nor is it a reasonably foreseeable or likely consequence of the Project, the activities proposed to form part of the Project or the extraction, processing, transportation or end use consumption of Greater Scarborough Gas that there will be:
  - (i) any, or any material, effect on global demand for energy;
  - (ii) any increase, or any substantial increase, in the amount of future anthropogenic global greenhouse gas emissions, including the amount of net future anthropogenic global greenhouse gas emissions; or
  - (iii) any increase, or any substantial increase, in the risk of the occurrence of a tipping point of the climate system; and
- (o) it is within the contemplation of the Respondents, and it is a reasonably foreseeable and likely consequence of the Project, the activities proposed to form part of the Project and the extraction, processing, transportation or end use consumption of Greater Scarborough Gas that the gas:
  - (i) will or may displace coal as a fuel for electricity generation;
  - (ii) will or may result in lower anthropogenic global greenhouse gas emissions, and lower atmospheric global greenhouse gas concentrations, than if the Project did not occur; and
  - (iii) by reason of paragraph (ii) above, will or may reduce the risk of occurrence of a tipping point of the climate system.

98B The Respondents deny paragraph 98B and say that, irrespective of the Project, the activities proposed to form part of the Project or the extraction, processing,

transportation or end use consumption of Greater Scarborough Gas, it is likely that, over the life of the Project:

- (a) global demand for energy, including for energy to produce electricity, will continue to grow (or, alternatively, will not decline);
- (b) that demand will or may not be able fully to be met by renewable energy sources (the **renewable energy shortfall**);
- (c) the renewable energy shortfall will or may be met predominantly by coal or gas; and
- (d) in the absence of the Project or Greater Scarborough Gas, there will likely be either:
  - (i) less gas to compete with coal, at all or effectively, to meet the renewable energy shortfall; or
  - (ii) the same or a greater total amount of gas, but either:
    - (A) from a source or sources which would result in the same or similar levels of greenhouse gas emissions as would be the case in respect of Greater Scarborough Gas; or
    - (B) from a source or sources which will result in higher levels of greenhouse gas emissions than would be the case in respect of Greater Scarborough Gas.

98C The Respondents deny paragraph 98C, refer to and repeat paragraphs 98A and 98B above and say further that:

- (a) none of the Alleged Impacts is capable of being characterised as a “direct consequence” of any of the Alleged Actions, the Project, the activities proposed to form part of the Project or the extraction, processing, transportation or end use consumption of Greater Scarborough Gas, within the meaning of s 527E(1) of the EPBC Act; and
- (b) because the EPBC Act does not apply to acts, omissions, matters or things outside the Australian jurisdiction by reason of s 5(2) of the EPBC Act, and because no contrary intention relevantly appears in the EPBC Act, any greenhouse gas emissions generated outside the Australian jurisdiction and their impacts are not within the scope of the EPBC Act.

98D The Respondents deny paragraph 98D, refer to and repeat paragraphs 47, 47A, 98A and 98B above and say further that:

- (a) of the activities done by someone other than the Respondents described in paragraphs 98A(e) to (f) and (i) to (k) above:
  - (i) for the purposes of this proceeding, the Respondents accept that any onshore processing described in paragraphs 98A(e) to (f) and the transport of gas on behalf of the Respondents described in paragraph 98A(k)(ii) will be done at the direction or request of the Respondents for the purpose of s 527E(2)(c) of the EPBC Act; and
  - (ii) none of the other activities described in those sub-paragraphs will be done at the direction or request of the Respondents;
- (b) the Alleged Impacts cannot be “indirect consequences” of the Project or any of the activities proposed to form part of it within the meaning of s 527E of the EPBC Act because:
  - (i) on the proper construction of ss 527E(1)(b) and (2), in order to be an indirect consequence of a primary action, the impact must be a direct consequence of a relevant secondary action; and
  - (ii) none of the Alleged Impacts is a direct consequence of any alleged secondary action; and
- (c) any actions that occur outside the Australian jurisdiction cannot be “actions” or “secondary actions” within the meaning of s 527E of the EPBC Act because:
  - (i) the EPBC Act does not apply to acts, omissions, matters or things outside the Australian jurisdiction by reason of s 5(2) of the EPBC Act; and
  - (ii) no contrary intention relevantly appears in the EPBC Act.

98E As to paragraph 98E, the Respondents:

- (a) refer to and repeat paragraphs 18B and 98A to 98D above, and paragraphs 124 and 126 below; and
- (b) otherwise deny paragraph 98E.

99. [Not used.] As to paragraph 99, the Respondents:

- (a) refer to and repeat paragraph 58(c) above; and
- (b) otherwise deny paragraph 99.

100. [Not used.] As to paragraph 100, the Respondents:

- (a) ~~say that the allegation is vague and embarrassing because the terms “associated with” and “Scarborough Project gGas” have no clearly identified meaning;~~
- (b) ~~admit paragraphs 100(b), 100(c) and 100(d) in relation to any Scarborough Gas;~~
- (c) ~~say that they presently expect greenhouse gases will be emitted into the atmosphere from the end use consumption of any Scarborough Gas as a natural and probable consequence of the extraction and transportation of that Scarborough Gas;~~
- (d) ~~refer to and repeat paragraph 95(d) above; and~~
- (e) ~~otherwise deny paragraph 100.~~

101. [Not used.] As to paragraph 101, the Respondents:

- (a) ~~say that the extraction and transportation of any Scarborough Gas will facilitate, to a major extent, the end use consumption of that Scarborough Gas;~~
- (b) ~~say that greenhouse gas emissions are likely to result from any gas extraction, processing and compression activities described in paragraph 47(a) above and are likely to be emitted from the onshore processing of any Scarborough Gas;~~
- (c) ~~refer to and repeat paragraphs 58(c) and 100(a) above; and~~
- (d) ~~otherwise deny paragraph 101.~~

102. [Not used.] As to paragraph 102, the Respondents:

- (a) ~~say that it is within their contemplation that Scarborough Gas will be consumed by end users and that that consumption will generate some greenhouse gas emissions;~~
- (b) ~~say that the end use consumption of Scarborough Gas and the generation of some greenhouse gas emissions from that consumption is reasonably foreseeable;~~
- (c) ~~refer to and repeat paragraphs 58(c), 95(d) and 100(a) above; and~~
- (d) ~~otherwise deny paragraph 102.~~

103. ~~[Not used.] As to paragraph 103, the Respondents:~~
- ~~(a) admit that the greenhouse gas emissions referred to in paragraphs 104 to 107 below are estimated emissions of carbon dioxide and other greenhouse gases, including methane and nitrous oxide;~~
  - ~~(b) say that the estimates of those emissions described in paragraphs 104 to 107 below are expressed as a CO<sub>2</sub>-equivalent figure (CO<sub>2</sub>e); and~~
  - ~~(c) otherwise deny paragraph 103.~~
104. ~~[Not used.] As to paragraph 104, the Respondents:~~
- ~~(a) say that the greenhouse gas emissions resulting from gas extraction, processing and compression activities (typically from fuel combustion, flaring and fugitive emissions) were estimated in the Scarborough OPP at 0.47 million tonnes (Mt) CO<sub>2</sub>e annually and 11.52 MtCO<sub>2</sub>e over the total expected life of the Greater Scarborough Fields;~~

**Particulars**

~~Scarborough OPP, pp 376—377.~~

- ~~(b) say further that the estimates referred to in sub-paragraph (a) above were based on the assumptions and methodologies described in the Scarborough OPP; and~~

**Particulars**

~~Scarborough OPP, [7.1.3.2] (pp 375—381).~~

- ~~(c) otherwise deny paragraph 104.~~

105. ~~[Not used.] As to paragraph 105, the Respondents:~~

- ~~(a) say that the greenhouse gas emissions from the onshore processing of Scarborough Gas (principally from fuel combustion, flaring and fugitive emissions) and venting of reservoir CO<sub>2</sub>, were estimated in the Scarborough OPP at 2.84 MtCO<sub>2</sub>e annually and 87.97 MtCO<sub>2</sub>e over the total expected life of the Greater Scarborough Fields;~~

**Particulars**

~~Scarborough OPP, pp 378—379.~~

- ~~(b) say that the estimates referred to in sub-paragraph (a) above were based on the assumptions and methodologies set out in the Scarborough OPP;~~

**Particulars**

~~Scarborough OPP, [7.1.3.2] (pp 375—381).~~

- (c) ~~say that the onshore processing of Scarborough Gas is to be undertaken by Woodside Burrup Pty Ltd and is the subject of an authorisation, among others, granted under the *Environmental Protection Act 1986* (WA); and~~
- (d) ~~otherwise deny paragraph 105.~~

106. [Not used.] ~~As to paragraph 106, the Respondents:~~

- (a) ~~say that the greenhouse gas emissions generated by end-use consumption of Scarborough Gas were estimated in the Scarborough OPP at 25.11 MtCO<sub>2</sub>e annually (on average) and 778.53 MtCO<sub>2</sub>e over the total expected life of the Greater Scarborough Fields;~~

**Particulars**

~~Scarborough OPP, p 380.~~

- (b) ~~say that the estimates referred to in sub-paragraph (a) above were based on the assumptions and methodologies set out in the Scarborough OPP; and~~

**Particulars**

~~Scarborough OPP, [7.1.3.2] (pp 375—381).~~

- (c) ~~otherwise deny paragraph 106.~~

107. [Not used.] ~~As to paragraph 107, the Respondents:~~

- (a) ~~say that the sum of the estimates given in the Scarborough OPP referred to in paragraphs 104(a), 105(a) and 106(a) above is:
 
  - (i) ~~28.42 MtCO<sub>2</sub>e annually (on average); and~~
  - (ii) ~~878.02 MtCO<sub>2</sub>e over the total expected life of the Greater Scarborough Fields; and~~~~
- (b) ~~otherwise deny paragraph 107.~~

108. [Not used.] ~~As to paragraph 108, the Respondents:~~

- (a) ~~refer to and repeat paragraph 47(e) above;~~
- (b) ~~say that, subject to satisfaction of the requirements of the Environment Regulations and obtaining any other necessary approvals, the Respondents intend to maximise the volume of gas extracted from the Scarborough Fields~~



and sold to third parties for consumption to the extent that it is lawful and commercially viable to do so; and

(c) ~~otherwise deny paragraph 108.~~

109. [Not used.] ~~The Respondents deny paragraph 109 and say that estimates of emissions generated by third party consumption of gas extracted from the Thebe Field and Jupiter Field were included in the estimates described in paragraphs 106(a) and 107(a) above. [Not used.]~~

110. [Not used.] ~~As to paragraph 110, the Respondents:~~

(a) ~~admit that they have not estimated any greenhouse gas emissions associated with third party consumption of gas from other proximate undeveloped fields;~~

(b) ~~refer to paragraph 54 above; and~~

(c) ~~otherwise deny paragraph 110.~~

111. [Not used.] ~~The Respondents deny paragraph 111 and:~~

(a) ~~refer to and repeat paragraph 58(c) above;~~

(b) ~~say that the allegations are embarrassing because no comparator is specified by reference to which it is alleged that the greenhouse gas emissions will be higher; and~~

(c) ~~say that it is not within the contemplation of the Respondents, nor is it a reasonably foreseeable or likely consequence of any of the activities described in paragraph 47(a) above or of the third party processing or consumption of any Scarborough Gas, that there will be any, or any substantial, increase in greenhouse gas concentrations in the global atmosphere at all or over the life of the Scarborough Project.~~

### **Particulars**

(i) ~~Greenhouse gas concentrations in the global atmosphere over the life of the Scarborough Project will be the cumulative result of historical and net future global greenhouse gas emissions.~~

(ii) ~~Historical and future global greenhouse gas emissions over the life of the Scarborough Project are both anthropogenic and non-anthropogenic.~~

(iii) ~~Historical and future global greenhouse gas emissions over the life of the Scarborough Project are neither known nor knowable.~~

- ~~(iv) — The amount of future anthropogenic global greenhouse gas emissions, including the amount of net future anthropogenic global greenhouse gas emissions, over the life of the Scarborough Project will depend upon, amongst other things:~~
  - ~~(A) — global demand for energy;~~
  - ~~(B) — sources of energy to meet the global demand, including sources of fuels;~~
  - ~~(C) — whether particular sources of fuels for energy generation (such as natural gas) will displace other sources of fuels which are likely to generate greater greenhouse gas emissions (such as coal and oil);~~
  - ~~(D) — the use of and advancements in technology in the extraction, transportation and combustion of fuels for energy generation;~~
  - ~~(E) — offset and sequestration; and~~
  - ~~(F) — international, national and sub-national legal and policy frameworks relating to the above and to anthropogenic global greenhouse gas emissions.~~
- ~~(v) — Scarborough Gas is intended to be sold to third parties for end use consumption, including for electricity generation.~~
- ~~(vi) — It is not within the contemplation of the Respondents, nor is it a reasonably foreseeable or likely consequence of the Scarborough Project, that the Scarborough Project or Scarborough Gas will:~~
  - ~~(A) — have any, or any material, effect on global demand for energy;~~
  - ~~(B) — have any, or any material, effect on global demand for or the end use consumption of natural gas as a source of fuel for electricity generation; or~~
  - ~~(C) — have any, or any material, effect on the amount of future anthropogenic global greenhouse gas emissions, including the amount of net future anthropogenic global greenhouse gas emissions.~~

~~(vii) — It is within the contemplation of the Respondents, and it is a reasonably foreseeable and likely consequence of the Scarborough Project, that the Scarborough Project and any Scarborough Gas:~~

~~(A) — will displace other sources of fuels which are likely to generate greater greenhouse gas emissions (such as coal and oil); and~~

~~(B) — will result in no higher anthropogenic global greenhouse gas emissions, and no higher atmospheric global greenhouse gas concentrations, than if the Scarborough Project did not occur.~~

~~(viii) — Further particulars may be provided before trial.~~

112. ~~[Not used.] The Respondents do not know and therefore cannot admit paragraph 112.~~

113. ~~[Not used.] As to paragraph 113, the Respondents:~~

~~(a) refer to and repeat paragraph 58(c) above; and~~

~~(b) deny paragraph 113.~~

114. ~~[Not used.] The Respondents deny paragraph 114.~~

115. ~~[Not used.] The Respondents deny paragraph 115.~~

116. The Respondents deny paragraph 116.

### **The alleged contraventions**

117. ~~[Not used.] As to paragraph 117, the Respondents:~~

~~(a) refer to and repeat paragraph 47 above;~~

~~(b) admit that, if the Respondents, as part of the Scarborough Project, extract gas from the subsurface, process that gas on the floating production unit or export gas or processed gas to a place for further distribution, they will mean to engage in that conduct for the purposes of s 5.2(1) of the *Criminal Code*; and~~

~~(c) otherwise deny paragraph 117.~~

118. ~~[Not used.] As to paragraph 118, the Respondents:~~

~~(a) refer to and repeat paragraphs 37, 38 and 39 above;~~

- (b) ~~say they are aware of the values described in respect of each relevant criterion under the heading “Outstanding Universal Value” in the entry for the Great Barrier Reef in the World Heritage List;~~
  - (c) ~~say they are aware of the values described in respect of each relevant criterion under the heading “Outstanding Universal Value” in the entry for the Great Barrier Reef in the National Heritage List; and~~
  - (d) ~~otherwise deny paragraph 118.~~
119. [Not used.] ~~As to paragraph 119, the Respondents:~~
- (a) ~~say that they are aware of the matters admitted or alleged in paragraphs 60 to 67 above; and~~
  - (b) ~~otherwise deny paragraph 119.~~
120. [Not used.] ~~As to paragraph 120, the Respondents:~~
- (a) ~~as to paragraphs 120(c), 120(d) and 120(e), say that they propose, subject to the matters described in paragraphs 47(e), 48(b) and 53(b) above, to extract Scarborough Gas ultimately for delivery to and consumption by third parties;~~
  - (b) ~~as to paragraph 120(f), refer to and repeat paragraphs 95(d), 100(c), 102(a) and 102(b) above; and~~
  - (c) ~~otherwise deny paragraph 120.~~
121. [Not used.] ~~The Respondents deny paragraph 121 and refer to and repeat paragraphs 58(c), 60 to 67, 79 to 94 and 113 above.~~
122. [Not used.] ~~As to paragraph 122, the Respondents:~~
- (a) ~~say that the relevant circumstance for the purpose of s 5.4 of the *Criminal Code* is:~~
    - (i) ~~for s 15A(2) of the EPBC Act, that “the action is likely to have a significant impact on the world heritage values” of the Great Barrier Reef; and~~
    - (ii) ~~for s 15C(2) of the EPBC Act, that “the action is likely to have a significant impact on the National Heritage values” of the Great Barrier Reef;~~
  - (b) ~~deny that they are aware that there is a substantial risk that either of those circumstances exists or will exist;~~

- (c) ~~admit that they know of the matters alleged in paragraphs 122(a), 122(b), 122(c), 122(d) and 122(e) to the extent, and only to the extent, that those matters have been admitted in this Defence; and~~
  - (d) ~~otherwise deny paragraph 122.~~
123. ~~[Not used.] The Respondents deny paragraph 123 and:~~
- (a) ~~refer to and repeat paragraphs 61(a), 61(b), 64(a) and 111(c) above;~~
  - (b) ~~say that the risks presented by climate change are to be addressed by international, national and sub-national legal and policy frameworks;~~
  - (c) ~~say that the consumption of Scarborough Gas in states that have ratified the Paris Agreement would be subject to those states' national and sub-national legal and policy frameworks made in the context of the Paris Agreement; and~~
  - (d) ~~say that the activities that are part of the Scarborough Project are subject to domestic Australian environmental approval processes, including:~~
    - (i) ~~the processes described in paragraph 42(e) above; and~~
    - (ii) ~~the provision of the EPBC Act under which the Commonwealth Minister may request referral of an action if the Minister believes a person proposes to take an action that the Minister thinks may be or is a controlled action (s 70).~~
124. The Respondents deny paragraph 124 and say further that the Respondents will not contravene s 12(1) of the EPBC Act irrespective of the application of s 25AA of the EPBC Act.
125. ~~[Not used.] The Respondents deny paragraph 125.~~
126. The Respondents deny paragraph 126 and say further that the Respondents will not contravene s 15B(1) of the EPBC Act irrespective of the application of s 25AA of the EPBC Act.
127. ~~[Not used.] The Respondents deny paragraph 127. [Not used.]~~
128. ~~[Not used.] The Respondents deny paragraph 128.~~
- 128A. The Respondents deny paragraph 128A.

## Relief

129. As to paragraph 129, the Respondents deny that the Applicant is entitled to the relief claimed in the Amended Originating Application dated 21 April 2023.

130. Further, should this Honourable Court declare that any activity in relation to the Scarborough Project, the activities proposed to form part of the Project or the extraction, processing, transportation or end use consumption of Greater Scarborough Gas would constitute a contravention of s 67A, s 12(1) or s 15B(1) of the EPBC Act, one or more of the following provisions of the EPBC Act, namely:

- (a) section 12(1);
- (b) section 15A(2);
- (c) section 15B(1); and
- (d) section 15B(4); and
- (e) section 15C(2);

then such activity would not occur whilst such a declaration remained in force, or until authorisation for the activity to occur in a manner that did not constitute a contravention was obtained.

Date: 19 May 2023



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Signed by Philip Blaxill

Lawyer for the Respondents

This pleading was prepared by Philip Blaxill, lawyer, and settled by Damian Clothier KC, Frances Gordon SC and Jacqueline Fumberger of counsel.

**Certificate of lawyer**

I, Philip Blaxill, certify to the Court that, in relation to the further amended defence filed on behalf of the Respondents, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 19 May 2023



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Signed by Philip Blaxill

Lawyer for the Respondents

**Schedule**

VID345/2022

Federal Court of Australia  
District Registry: Victoria  
Division: General

**Woodside Energy Scarborough Pty Ltd (ACN 650 177 227)**

Second Respondent