



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID345/2022

**AUSTRALIAN CONSERVATION FOUNDATION INCORPORATED**

Applicant

**WOODSIDE ENERGY LTD** and another named in the schedule

Respondent

## **ORDER**

**JUDGE:** JUSTICE MOSHINSKY

**DATE OF ORDER:** 31 July 2023

**WHERE MADE:** Melbourne

### **THE COURT ORDERS BY CONSENT THAT:**

#### ***Definitions***

1. For the purposes of this order:

***Administrative Staff*** means a non-legal staff member who has an exclusively administrative role in relation to the Proceeding, including administration in respect of any Discovered Documents.

***AGS*** means the Australian Government Solicitor.

***EDO*** means the Environmental Defenders Office (ABN 72 002 880 864), the solicitors on the record for the applicant in the Proceeding.

***EDO In-House Scientific Officer*** means a non-legal staff member of EDO who is employed on the basis of their scientific expertise and applies such expertise in relation to the Proceeding, including in respect of any Discovered Documents.

***FCR*** means the *Federal Court Rules 2011*.

***Confidential Documents*** means the documents identified as confidential and/or commercially sensitive in any discovery production list(s) provided to EDO and AGS by the respondents in the Proceeding, including duplicated copies of the identified documents.



**Confidential Information** means information contained in the Confidential Documents or which is otherwise identified by the respondents as confidential and/or commercially sensitive, including duplicated copies of this information.

**Confidentiality Undertaking** means the undertaking attached at Annexure B to this order.

**Discovered Documents** means documents in respect of which the respondents give discovery under paragraph 2 of this order.

**Discovery Categories** means the discovery categories attached at Annexure A to this order.

**Proceeding** means Federal Court of Australia Proceeding No. VID345 of 2022.

**Support Staff** means any persons providing administrative, IT, document management, printing, process service or other litigation-related services through an external vendor providing such services to EDO.

### **Discovery**

2. Pursuant to r 20.16 of the FCR, the respondents give discovery to the applicant and Intervener of:
  - a. a first tranche of documents within the Discovery Categories by 4.00 pm AEST on 4 August 2023;
  - b. any second tranche of documents within the Discovery Categories or responsive to any additional categories agreed pursuant to paragraph 15 by 4.00 pm AEST on 28 August 2023; and
  - c. any third and final tranche of documents within the Discovery Categories or responsive to any additional categories agreed pursuant to paragraph 15 by 4.00 pm AEST on 15 September 2023, together with a list of documents verified pursuant to r 20.17 of the FCR,

and for each tranche, the respondents provide electronic inspection of the Discovered Documents subject to the confidentiality regime set out in paragraphs 4 to 13 of this order and any claims for privilege.

3. Discovery under paragraph 2(a) to (c) of this order is to be given in electronic format, in accordance with the discovery plan in a form to be agreed between the applicant and respondents before 4 August 2023.



***Confidential, irrelevant information***

4. Subject to paragraphs 5 and 6 of this order, the respondents may redact any information in the Discovered Documents which is Confidential Information that is irrelevant to the issues raised in the Proceeding.
5. If the respondents apply redactions to Confidential Information that is irrelevant to the issues raised in the Proceeding, they must provide a schedule justifying each redaction made, including:
  - a. a description of the general nature of the information redacted (subject to the terms of any relevant confidentiality obligation); and
  - b. the reason for the redaction.
6. If the applicant disputes any redactions made pursuant to paragraph 4 above, then it must seek to resolve that dispute with the respondents. If the applicant and the respondents are unable to resolve that dispute within 10 business days of it having been raised by the applicant, then the applicant may apply to the Court for an order that the redacted information be produced.

***Confidentiality regime***

7. Inspection or disclosure of Confidential Documents and Confidential Information is confined to:
  - a. the solicitors of EDO, EDO Administrative Staff, the EDO In-House Scientific Officer, Support Staff and the General Counsel of the applicant where such inspection or disclosure is necessary for the conduct of the Proceeding and counsel acting for the applicant in the Proceeding;
  - b. the solicitors of AGS, AGS Administrative Staff, Lauren Davies, Legal Officer, Environment and Dispute Resolution Branch of the Department of Climate Change, Energy, the Environment and Water in the Proceeding where such inspection or disclosure is necessary for the conduct of the Proceeding and counsel acting for the Intervener in the Proceeding; and
  - c. expert witnesses for the applicant in the Proceeding, where such inspection or disclosure is necessary for the conduct of the Proceeding.
8. Any person the subject of paragraph 7 of this order must sign and provide to the solicitors for the respondents a Confidentiality Undertaking before inspecting or receiving Confidential Documents or Confidential Information.



9. EDO shall take all reasonable steps to ensure that all persons to whom disclosure of Confidential Documents is made or who inspect Confidential Documents in accordance with paragraph 7(a) and (c) of this order:
  - a. do not use the Confidential Documents or disclose Confidential Information in any affidavit, witness statement, expert report or other document filed or served in the Proceeding except:
    - i. as part of a confidential exhibit or annexure, which has been marked 'Confidential'; or
    - ii. in a confidential section of any report or statement, which has been marked 'Confidential';
  - b. immediately notify the respondents' solicitors of any suspected or actual unauthorised use, copying or disclosure of the Confidential Documents or Confidential Information; and
  - c. except as required by law, within 28 days of the conclusion of the Proceeding, either by judgment or other resolution, return to the solicitors for the respondents any Confidential Documents and any documents containing any Confidential Information (including any copies), unless such documents are otherwise destroyed.
10. AGS shall take all reasonable steps to ensure that all persons to whom disclosure of Confidential Documents is made or who inspect Confidential Documents in accordance with paragraph 7(b) of this order:
  - a. do not use the Confidential Documents or disclosure of Confidential Information in any affidavit, witness statement, expert report or other document filed or served in the Proceeding except:
    - i. as part of a confidential exhibit or annexure, which has been marked 'Confidential'; or
    - ii. in a confidential section of any report or statement, which has been marked 'Confidential';
  - b. immediately notify the respondents' solicitors of any suspected or actual unauthorised use, copying or disclosure of the Confidential Documents or Confidential Information; and
  - c. except as required by law, within 28 days of the conclusion of the Proceeding, either by judgment or other resolution, return to the solicitors for the respondents any Confidential Documents and any documents containing any Confidential Information (including any copies), unless such documents are otherwise destroyed.



11. Confidential Documents and Confidential Information, where included or referred to in any way in any affidavit, witness statement, expert report, submissions or other document filed or served in the Proceeding are not to be made available for public inspection in the Court Registry or online or disclosed or referred to in open court. The parties shall take all reasonable steps to ensure compliance with this order.
12. Subject to compliance with paragraphs 9(a) and 10(a) of this order, nothing in this order prevents disclosure of Confidential Documents or Confidential Information for the purposes of conduct of the Proceeding to any Judge, employee or other personnel of this Court.
13. Nothing in this order limits any obligations of the parties arising at general law, including the implied undertaking not to use documents discovered in the Proceeding other than for the purposes of the Proceeding.

#### ***Evidence***

14. By 4.00 pm AEST on 21 December 2023, the applicant file and serve any evidence on which it intends to rely in the proceeding.

#### ***Further conferral***

15. By 4.00 pm AEST on 4 August 2023, the legal representatives for the applicant and the respondents complete their conferral in relation to any additional subparagraph(s) to categories 1 and 7 of the Discovery Categories and programming orders beyond paragraph 14 of these orders, that are presently not agreed.

#### ***Case management hearing***

16. The proceeding be listed for a further case management hearing for consideration of any further programming orders, or orders for discovery, at 4.30 pm AEST on 8 August 2023.

Date that entry is stamped: 31 July 2023

*Sia Lagos*  
Registrar



## Annexure A

### ***Preliminary note***

*The phrase 'documents that record' used in this document is intended to capture the primary document or documents that convey the information sought rather than all documents that refer to the same information, but which (other than to refer to that information) are not themselves relevant to any issue in dispute. In this document, the word "record" has its ordinary meaning (ie, "to indicate or state").*

1. Documents of the type listed in (a) to (d) below, to the extent that they set out the Respondents' current plans as to the components and timing of gas extraction, offshore processing and compression and export of gas from the Scarborough Fields or Greater Scarborough Fields (as those terms are defined in the Further Amended Defence):
  - a. Environment Plans and the Field Development Plan submitted respectively to the National Offshore Petroleum Safety and Environmental Management Authority and National Offshore Petroleum Titles Administrator;
  - b. project updates provided to the market;
  - c. the most recent version, as at the date of discovery, of the Gantt chart entitled 'Scarborough Project – L1 to RFSU' schedule; and
  - d. the most recent version, as at the date of discovery, of the 'Summary Monthly Progress Report' for the Project, being a report on the progress of the Project.
2. Documents that record current estimates of the reserves of gas and/or gross contingent resource held in the Scarborough Fields and/or the Greater Scarborough Fields.
3. Documents that record current estimates of the total greenhouse gas emissions likely to be generated from:
  - a. The gas extraction, offshore processing and compression activities undertaken for Greater Scarborough Gas (FAD, [47(f)(ii)]);
  - b. The onshore processing of Greater Scarborough Gas; and/or
  - c. The end use consumption of Greater Scarborough Gas (including related processes such as transport of the LNG).
4. Documents that record current estimates of the annual greenhouse gas emissions likely to be generated from:
  - a. The gas extraction, offshore processing and compression activities undertaken for Greater Scarborough Gas;
  - b. The onshore processing of Greater Scarborough Gas; and/or



- c. The end use consumption of Greater Scarborough Gas (including related processes such as transport of the LNG),  
  
in each year that the above activities are expected to be undertaken.
- 5.
  - a. The file note and Excel workbook dated 2 December 2019 (WDS.001.001.4358), which contain the method used for the calculations of – and the assumptions underpinning the calculations of – the greenhouse gas emissions estimates provided in the OPP; and
  - b. all documents used in the creation of the above.
- 6. Documents that record any current plans adopted by the Respondents and to be implemented during the activities described in [47(a)(iv)] of the Further Amended Defence, to mitigate, abate, offset or otherwise reduce greenhouse gas emissions, including greenhouse gas emissions from:
  - a. any gas extraction, offshore processing and compression activities undertaken for Greater Scarborough Gas;
  - b. any onshore processing of Greater Scarborough Gas; or
  - c. any end use consumption of Greater Scarborough Gas.
- 7. Any executed agreements to sell gas, which gas is likely to include gas sourced from the Scarborough Fields or Greater Scarborough Fields, redacted other than terms addressing the following:
  - a. the destination markets for gas;
  - b. the identity of buyers and end users;
  - c. the length of the agreement; and
  - d. the volume of gas contracted.
- 8. Documents that record the likely or possible end uses of Greater Scarborough Gas (for example, generating electricity, manufacturing petrochemicals and producing fertiliser) and/or the possible or likely locations in which the gas will be consumed.
- 9. Documents that record the proportion of Greater Scarborough Gas that is extracted and processed that is currently anticipated to be sold to each of the likely markets for Greater Scarborough Gas as referred to in the Particulars to paragraph 98A(i) of the FAD or the global market.





## Annexure B

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

Minister for the Environment and Water

Intervener

### Confidentiality Undertaking to the Court

On [date], I [full name], [position], [company] of [address], hereby undertake to the Federal Court of Australia (the **Court**) that, subject to the terms of this undertaking and any order of the Court:

1. I acknowledge for the purpose of this undertaking:
  - (a) **AGS** means the Australian Government Solicitor.
  - (b) **EDO** means the Environmental Defenders Office (ABN 72 002 880 864), the solicitors on the record for the Applicant in the Proceeding.
  - (c) **Confidential Documents** means the documents identified as confidential and/or commercially sensitive in any discovery production list(s) provided to EDO and AGS by the Respondents in the Proceeding, including duplicated copies of the identified documents.
  - (d) **Confidential Information** means information contained in the Confidential Documents or which is otherwise identified by the Respondents as confidential and/or commercial sensitive, including duplicated copies of this information.
  - (e) **Proceeding** means Federal Court of Australia Proceeding No. VID345 of 2022.
2. I will at all times keep confidential the Confidential Documents and any Confidential Information.





3. I will only use the Confidential Documents and any Confidential Information for the purposes of the conduct of the Proceeding.
4. I will not disclose, divulge or discuss either directly or indirectly the content or the effect of the Confidential Documents or any Confidential Information, except to, or with any person:
  - (a) who has signed a confidentiality undertaking in the form of this undertaking; and
  - (b) to whom disclosure of the Confidential Documents is permitted pursuant to an order made in the Proceeding,unless the prior written consent of the Respondents has first been given or an order of the Court permitting such disclosure, divulgence or discussion has been made.
5. I will not copy the Confidential Documents, except where such copies are necessary for the purpose of the conduct of the Proceeding.
6. I will establish and maintain effective security measures to safeguard the Confidential Documents and any Confidential Information from unauthorised use, access, copying or disclosure, and use the same degree of care that a reasonably prudent person would use to protect that person's own confidential information.
7. Subject to an order of the Court, I will not use the Confidential Documents or Confidential Information in any affidavit, witness statement, expert report or other document filed or served in the Proceeding, except:
  - (a) as part of a confidential exhibit or annexure, which has been marked 'Confidential'; or
  - (b) in a confidential section of any report or statement, which has been marked as 'Confidential'.
8. I acknowledge that, subject to complying with the requirements of paragraph 7, nothing in this undertaking prevents disclosure of Confidential Documents or Confidential Information for the purposes of the conduct of the Proceeding to any Judge, employee or other personnel of the Court.
9. I will immediately notify [EDO/AGS] of any suspected or actual unauthorised use, copying or disclosure of the Confidential Documents or any Confidential Information.  
[Note: This clause not required for undertakings from the EDO or AGS. Amend above to EDO/AGS as appropriate.]
10. Except as required by law, within 28 days of the settlement or conclusion of the Proceeding, I will return to the solicitors for the Respondents any Confidential



Documents or documents containing Confidential Information (including any copies), unless such documents are otherwise destroyed, and I will certify in writing to such solicitors that I have done so.

11. I acknowledge that paragraph 4 of this undertaking does not apply to disclosure required by law, provided that the Respondents' solicitors are notified in writing prior to such disclosure being made.

Signed by [name] on [date] in the presence of [name]:

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Signature

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Witness signature



**Schedule**

No: VID345/2022

Federal Court of Australia

District Registry: Victoria

Division: General

Second Respondent      WOODSIDE ENERGY SCARBOROUGH PTY LTD