

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 21/06/2022 3:50:15 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged:	Concise Statement
File Number:	VID345/2022
File Title:	AUSTRALIAN CONSERVATION FOUNDATION INCORPORATED v WOODSIDE ENERGY LTD & ANOR
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 21/06/2022 4:58:40 PM AEST

A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

### Important Information

As required by the Court's Rules, 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 and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



**Concise Statement**

No. \_\_\_\_\_ of 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

**A. IMPORTANT FACTS GIVING RISE TO THE CLAIM**

**The Applicant**

1. The Applicant is incorporated in Australia and has operated for over 50 years.
2. In the two years immediately before the date of filing, the Applicant has engaged in a series of activities in Australia for protection and conservation of the environment including, but not limited to:
  - (a) commissioning reports on the role of gas in Australia's contribution to climate change, such as the Australia Institute "Weapons of gas destruction" report (September 2020);
  - (b) making a submission to the Senate Environment and Communications Reference Committee Inquiry into the *Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020* (Cth) (November 2020);
  - (c) successfully seeking judicial review of a Commonwealth decision not to apply certain provisions of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) to the original North Galilee Water Scheme referral in the Federal Court of Australia;

Filed on behalf of (name & role of party)	Australian Conservation Foundation Incorporated, Applicant
Prepared by (name of person/lawyer)	Brendan Dobbie
Law firm (if applicable)	Environmental Defenders Office Ltd
Tel (02) 7229 0026	Fax
Email	brendan.dobbie@edo.org.au
<b>Address for service</b>	
(include state and postcode)	Suite 8.02, 6 O'Connell St Sydney NSW 2000

- (d) organising the “Rally for our Reef” in relation to a proposed coal mine in Queensland and its impact on the Great Barrier Reef; and
  - (e) making media comments on the protection of the natural values of the Great Barrier Reef including in relation to the development of fossil fuel projects.
3. At all material times, the objects of the Applicant included protection of nature and advocacy for all living things to live in harmony on the planet that sustains us.

### **The Scarborough Gas Project**

4. **Woodside** Energy Ltd (the First Respondent) is proposing to develop the Scarborough gas resource located in Commonwealth waters approximately 375 km off the Burrup Peninsula in Western Australia through new offshore facilities. Parts of the project comprising offshore activities (**Scarborough Gas Project**) are the subject of a proposal accepted by the National Offshore Petroleum Safety and Environmental Management Authority (**NOPSEMA**) on 30 March 2020.
5. Key components of the Scarborough Gas Project include: drilling of the Scarborough and North Scarborough gas fields with potential for future fields to be added; installation of subsea infield infrastructure, including wells; installation of a floating production unit; installation of an approximately 430 km long trunkline from the floating production unit to the Burrup Peninsula where Woodside has existing gas processing facilities; commissioning and operation of the trunkline and production facilities, including the extraction and delivery of recovered gas; and, maintenance of all infrastructure over the life of the project.

### **Progress and status of the Scarborough Gas Project**

6. In February 2019, Woodside submitted an “offshore project proposal” (**OPP**) to NOPSEMA pursuant to reg 5A(1) of the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (Cth) (**Environment Regulations**).
7. On 30 March 2020, NOPSEMA accepted version 5 of the OPP pursuant to reg 5D(5)(a) of the Environment Regulations.
8. On 8 November 2021, **Woodside Energy** Scarborough Pty Ltd (the Second Respondent), as the relevant “titleholder” within the meaning of the Environment Regulations, submitted an environment plan pursuant to reg 9(1) of the Environment Regulations (the “Scarborough Drilling and Completions Environment Plan” (**Drilling Plan**)), pursuant to which it proposes to drill and install up to ten Scarborough development wells for the Scarborough Gas Project.

9. According to the Drilling Plan, the activities the subject of that plan could potentially begin in the second half of 2022.
10. On 22 November 2021, Woodside made a final investment decision to proceed with the Scarborough Gas Project.
11. On 23 December 2021, Woodside Energy submitted an environment plan pursuant to reg 9(1) of the Environment Regulations (the “Scarborough Seabed Intervention and Trunkline Installation Environment Plan” (**Trunkline Plan**)), pursuant to which it proposes to prepare and install a trunkline to transport gas from the offshore field for the Scarborough Gas Project.
12. According to the Trunkline Plan, subsea intervention activities the subject of that plan are expected to start in quarter 4, 2022.
13. NOPSEMA has not yet made a decision to accept either the Drilling Plan or the Trunkline Plan under reg 10 of the Environment Regulations.
14. Subject to NOPSEMA accepting one or both of the environment plans, Woodside proposes:
  - (a) to start producing gas pursuant to the Scarborough Gas Project, following the drilling of wells and the installation of the trunkline and the floating production unit; and
  - (b) that the first shipment of liquefied natural gas (LNG) from the Scarborough Gas Project to customers for use (combustion) as energy will occur in 2026.
15. The Scarborough Gas Project is:
  - (a) as a whole an “action” for the purposes of the EPBC Act; and
  - (b) also, or in the alternative, comprised of a series of “actions” for the purposes of the EPBC Act.
16. The precise activities to be carried out as part of the Scarborough Gas Project, and the nature and timing of those activities, are known to the Respondents. The Applicant intends to say more as to the “actions” comprising the Scarborough Gas Project following compulsory production.

#### **Minister’s approval of the Endorsed Program**

17. On 27 February 2014, the Minister responsible for administering the EPBC Act made a final approval decision in respect of the taking of actions in accordance with an endorsed program, namely the “Strategic Assessment of the environmental management authorisation process for petroleum and greenhouse gas storage activities administered by [NOPSEMA] under the



*Offshore Petroleum and Greenhouse Gas Storage Act 2006*” (**Endorsed Program**) pursuant to s 146B of the EPBC Act (**Minister’s decision**).

18. For the purposes of s 146B(2)(b) of the EPBC Act, the action or class of actions that may be taken in accordance with the Endorsed Program is “[a]ll actions which are petroleum and greenhouse gas activities taken in Commonwealth waters and in accordance with the endorsed Program, subject to the exclusions described below.”
19. The approved class of actions excludes actions which are petroleum and greenhouse gas activities that, among other things, “have, will have or are likely to have a significant impact on the world heritage values of the Great Barrier Reef World Heritage property or on the national heritage values of the Great Barrier Reef National Heritage place”.
20. The Scarborough Gas Project is itself a “petroleum activity” within the meaning of the Endorsed Program. In the alternative, each of the activities proposed to be carried out pursuant to the Scarborough Gas Project is a “petroleum activity”.

#### **Impacts of the Scarborough Gas Project on the Great Barrier Reef**

21. The natural, probable and likely effects and impacts of the carrying out of the Scarborough Gas Project include:
  - (a) the recovery of up to 11.1 trillion cubic feet of dry gas from the commercially recoverable resource within the Scarborough gas fields;
  - (b) the onshore processing of recovered gas, for use as energy;
  - (c) the delivery and sale of that gas;
  - (d) the burning and consumption of that gas;
  - (e) the creation of greenhouse gas emissions, including at least 878 million tonnes (**Mt**) of carbon dioxide-equivalent (CO<sub>2</sub>-e) greenhouse gas emissions; and
  - (f) contributing to anthropogenic climate change, which is causing global average surface and sea surface temperatures to rise.
22. The Great Barrier Reef is a World Heritage property and a National Heritage place.
23. The Great Barrier Reef has suffered, and will continue to suffer, mass coral bleaching events as a result of current levels of anthropogenic climate change and the corresponding increase in global average surface and sea surface temperatures.

24. The Scarborough Gas Project is likely to have a significant impact on the world heritage and national heritage values of the Great Barrier Reef by causing the release of greenhouse gas emissions into the global atmosphere which are likely to:
  - (a) increase global average surface temperature by at least 0.000394°C, which will result in the deaths of millions of corals during each future mass bleaching event.
  - (b) act cumulatively with those greenhouse gases that are already in the global atmosphere to contribute to further anthropogenic climate change, which will result in further mass coral bleaching events and coral deaths.
25. In addition to the effects and impacts described in [21] and [24], there is a real risk that greenhouse gas emissions caused by the Scarborough Gas Project could cause a “tipping cascade” whereby the global average temperature increases irreversibly to 4°C above pre-industrial levels, which would have a significant impact on the world heritage and national heritage values of the Great Barrier Reef.
26. The impacts of the actions comprising the Scarborough Gas Project will be the subject of detailed expert evidence, which will further articulate those impacts.

## **B. RELIEF SOUGHT FROM THE COURT**

27. The Applicant seeks the relief set out in the Originating Application.

## **C. PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT**

28. By reason of the facts set out in Part A above, the Respondents are proposing to engage in conduct consisting of an act, namely, the implementation of the Scarborough Gas Project, that constitutes a contravention of ss 12, 15A, 15B and 15C of the EPBC Act. In particular:
  - (a) the Scarborough Gas Project is an “action” within the meaning of the EPBC Act;
  - (b) the Respondents propose to carry out the Scarborough Gas Project, including by recovering gas from offshore areas;
  - (c) in carrying out the Scarborough Gas Project, the Respondents will engage in conduct which consists of an act or omission contravening ss 12(1), 15A(2), 15B(1) and 15C(2) of the EPBC Act.

## **D. ALLEGED HARM SUFFERED**

29. The Applicant does not seek damages arising from the Respondents’ contraventions in these proceedings.

**Certificate of lawyer**

I, Brendan Dobbie, certify to the Court that, in relation to the concise statement filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 21 June 2022



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Signed by Brendan Dobbie

Lawyer for the Applicant

**Schedule**

No. of 2022

Federal Court of Australia

District Registry: Victoria

Division: General

**Respondents**

Second Respondent: Woodside Energy Scarborough Pty Ltd (ACN 650 177 227)

Date: 21 June 2022