



**Statement of reasons for reconsideration of controlled action decision: Meandu Mine King 2 East Project, QLD (EPBC 2021/8999) under the *Environment Protection and Biodiversity Conservation Act 1999***

I, Declan O'Connor-Cox, Branch Head, Environment Assessments Queensland Branch, Department of Climate Change, Energy, the Environment and Water (**the department**), delegate for the Minister for the Environment and Water (**the Minister**), provide the following statement of reasons for my decision of 20 June 2025, under section 78C of the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**), to reconsider and confirm the decision made by Andrew McNee of 6 September 2021 under section 75 of the EPBC Act that the proposed action by TEC Coal Pty Ltd (**the proponent**) to expand the existing Meandu Mine to allow for the progression of the King 2 East pit and associated infrastructure (**the proposed action**) is a controlled action and sections 18 and 18A are the controlling provisions.

### Legislation

1. Relevant legislation is set out in Annexure A.

### Background

2. On 27 July 2021, the department received a valid referral from the proponent to expand the existing Meandu Mine to allow for the progression of the King 2 East pit and associated infrastructure.
3. On 6 September 2021, a delegate of the Minister for the Environment (**the delegate**) determined under section 75 of the EPBC Act that the proposed action was a controlled action and sections 18 and 18A are the controlling provisions (**the original referral decision**).
4. On 8 July 2022, Environmental Justice Australia (**EJA**), on behalf of the Environment Council of Central Queensland Inc (**ECCQ**), submitted a reconsideration request, on the basis of the availability of substantial new information (section 78(1)(a) of the EPBC Act) (**the reconsideration request**). On the same day, EJA also submitted reconsideration requests for 18 other coal and gas projects that had been determined to be controlled actions.
5. On 11 August 2022, EJA sent a supplementary letter referring to further substantial new information, which it stated was relevant to this reconsideration request, and to the other 18 reconsideration requests, that had been published since 8 July 2022.
6. On 3 November 2022, a delegate of the Minister determined, based on the information then available, that the reconsideration request was a valid request.
7. On 3 November 2022, the reconsideration request was published on the department's public internet portal and public comments on whether a matter referred to in any of paragraphs 78(1)(a) to (ca) was applicable in relation to the proposed action were invited for 15 business days, from 3 November to 24 November 2022.
8. On 3 November 2022, relevant State and Commonwealth Ministers were informed of the reconsideration request and invited to comment.
9. On 3 November 2022, the proponent was also invited to comment on the reconsideration request.

10. On 10 November 2022, the department sent the proponent a request for further information (**RFI**) on the greenhouse gas (**GHG**) emissions associated with the proposed action, emissions management and consumers of end-product extracted as part of the proposed action.
11. On 29 August 2023, EJA noted that it had provided pre-final-publication versions of the Intergovernmental Panel on Climate Change (**IPCC**) Working Group II (**WGII**) and Working Group III (**WGIII**) Reports as part of the reconsideration request, and that final consolidated versions of those reports had since been released.
12. On 6 October 2023, EJA provided a copy of Annexure III of the WGII Report (Annex III: Scenarios and Modelling Methods) as it had not successfully been provided with the reconsideration request.
13. On 29 April 2024, EJA sent a further supplementary letter to the Minister which enclosed material to further support the position set out in the reconsideration requests.
14. On 20 June 2025, under section 78C of the EPBC Act, I reconsidered and confirmed the referral decision that the proposed action is a controlled action and that the controlling provision for assessment is sections 18 and 18A (listed threatened species and communities).

**Evidence or other material on which my findings were based**

15. My reconsideration decision was based on a brief prepared by the department, which contained the following attachments:

<b>A.</b>	<p>Original referral decision material</p> <p><b>A1.</b> Signed referral brief dated 6 September 2021</p> <p><b>A2.</b> Signed referral decision notice dated 6 September 2021</p> <p><b>A3.</b> Original referral decision briefing package dated 6 September 2021</p>
<b>B.</b>	<p>Request for reconsideration</p> <p><b>B1.</b> Letter from EJA dated 8 July 2022</p> <p><b>B2.</b> Annexure 1</p> <p><b>B3.</b> Sources of Information for Annexure 1</p> <p><b>B4.</b> Annexure 2 – Analysis of research on climate change and its impacts on Matters of National Environmental Significance under the EPBC Act</p> <p><b>B5.</b> Annexure 2.1 – Spreadsheets of data</p> <p><b>B6.</b> Annexure 2.2 – Sources of data for Annexure 2.1</p> <p><b>B7.</b> Annexure 2.3 – Fire Impact Maps</p> <p><b>B8.</b> Letter from EJA providing further material dated 11 August 2022</p>

	<p><b>B9.</b> State of the Environment Report 2021</p> <p><b>B10.</b> Pre-final-publication versions of the IPCC WGII and WGIII Reports</p> <p><b>B11.</b> Final consolidated versions of the IPCC WGII and WGIII Reports</p> <p><b>B12.</b> Letter from EJA regarding IPCC WGII and WGIII Reports dated 29 August 2023</p> <p><b>B13.</b> Letter from EJA regarding Annexure III of the WGII Report (Annex III: Scenarios and Modelling Methods) dated 4 October 2023</p> <p><b>B14.</b> Annexure III of the WGII Report (Annex III: Scenarios and Modelling Methods) provided by EJA via email on 6 October 2023</p> <p><b>B15.</b> Letter from EJA providing further material dated 29 April 2024</p> <p><b>B16.</b> IEA Net Zero Roadmap, 2023 update</p> <p><b>B17.</b> IEA World Energy Outlook, 2023</p> <p><b>B18.</b> Expert report by Ms. Rachel Wilson, 26 April 2024</p>
<b>C.</b>	Reconsideration decision notice - For my signature if I agreed with the recommendation in the brief
<b>D.</b>	<p>Letters - For my signature if I agreed with the recommendation in the brief</p> <p><b>D1.</b> Letter to the designated proponent</p> <p><b>D2.</b> Letter to requestor</p> <p><b>D3.</b> Letter to State Minister</p> <p><b>D4.</b> Letter to Minister for Indigenous Australians, Senator the Hon Malarndirri McCarthy</p> <p><b>D5.</b> Letter to Minister for Climate Change and Energy, the Hon Chris Bowen MP</p> <p><b>D6.</b> Letter to Minister for Infrastructure, Transport, Regional Development and Communication, the Hon Catherine King MP</p> <p><b>D7.</b> Letter to Minister for Resources and Minister for Northern Australia, the Hon Madeleine King MP</p> <p><b>D8.</b> Letter to Minister for Industry and Science, the Hon Tim Ayres MP</p> <p><b>D9.</b> Letter to Minister for Agriculture, Fisheries and Forestry, the Hon Julie Collins MP</p>
<b>E.</b>	Signed validity brief dated 3 November 2022
<b>F.</b>	<p>Commonwealth Ministers' responses to invitation to comment:</p> <p><b>F1.</b> Minister for Indigenous Australians, the Hon Linda Burney MP</p>

	<p><b>F2.</b> Minister for Agriculture, Fisheries and Forestry, Senator the Hon Murray Watt</p> <p><b>F3.</b> Minister for Climate Change and Energy, the Hon Chris Bowen MP</p> <p><b>F4.</b> Minister for Industry and Science, the Hon Ed Husic MP</p> <p><b>F5.</b> Minister for Resources and Minister for Northern Australia, the Hon Madeleine King MP</p> <p><b>F6.</b> Minister for Infrastructure, Transport, Regional Development and Local Government, the Hon Catherine King MP</p>
<b>G.</b>	State Minister response to invitation to comment
<b>H.</b>	Proponent response to invitation to comment
<b>I.</b>	RFI on proposed action's emissions
<b>J.</b>	<p>J1. Proponent final response to RFI</p> <p>J2. Proponent comment on alternatives 2023</p> <p>J3. Proponent comment on alternatives 2024</p>
<b>K.</b>	<p>Public Comments</p> <p><b>K1.</b> Public Portal Comments</p> <p><b>K2.</b> Attachments to Public Portal Comments</p> <p><b>K3.</b> Ministerial Submissions direct to the Minister</p> <p><b>K4.</b> Requestor Submission dated 24 November 2022, including attached World Energy Outlook 2022 (Free Data Set)</p> <p><b>K5.</b> Additional Public Portal Comments</p>
<b>L.</b>	IEA Coal Report 2024 (IEA's annual coal market report for 2024)
<b>M.</b>	Synthesis Report of the IPCC Sixth Assessment Report (AR6)

### Reconsideration request

16. In the reconsideration request, EJA stated that its request was made on the basis of substantial new information about the impacts the proposed action will have or is likely to have on matters of national environmental significance (**MNES**), including a number of MNES not listed in the original referral decision. EJA stated that the information provided with the reconsideration request demonstrated that the proposed action will or is likely to have significant physical effects on a number of MNES because of the GHG emissions associated with the proposed action. EJA requested that the Minister revoke the original referral decision and substitute a new decision under section 75(1) of the EPBC Act, listing all MNES that it had identified as affected by climate change as controlling provisions.

17. EJA estimated the GHG emissions associated with the extraction and combustion of the coal from the proposed action. It contended that, if the proposed action goes ahead, there is a real (as opposed to remote) chance that these GHG emissions will result in physical effects of climate change (fire, ocean heatwaves and acidification, drought, rainfall extremes and flooding) and the proposed action will have, or is likely to have, a significant impact on a number of MNES.
18. EJA analysed documents that referred to climate change and its effects on MNES with reference to certain reports on climate change by authoritative national and international organisations. EJA outlined its methodology and collated its findings in Annexure 2 of its reconsideration request. I noted that some of the key findings are:
  - a. The *Working Group I contribution to the Sixth Assessment Report of the IPCC, Climate Change 2021: The Physical Science Basis*, establishes unequivocally that human actions have caused a global temperature increase.
  - b. The frequency, severity and duration of extreme fire weather conditions have increased in southern and eastern Australia. Extreme fire weather in 2019/2020 was at least 30% more likely than a century ago due to climate change (*Working Group II to the IPCC's Sixth Assessment Report, Climate Change 2022: Impacts, Adaptation and Vulnerability (IPCC WGII Report)*).
  - c. Rising sea surface temperatures have exacerbated marine heatwaves, notably near Western Australia in 2011, the Great Barrier Reef in 2016, 2017 and 2020, and the Tasman Sea in 2015/2016, 2017/2018 and 2018/2019 (IPCC WGII Report).
  - d. The oceans around Australia are acidifying — the average pH of surface waters has decreased since the 1880s by about 0.1, representing an over 30% increase in acidity. These changes have led to a reduction in coral calcification and growth rates on the Great Barrier Reef (IPCC WGII Report; Commonwealth Scientific and Industrial Research Organisation and Bureau of Meteorology, *State of the Climate 2020*).
  - e. Climate change will result in more drought in southern and eastern Australia (IPCC WGII Report).
  - f. Extreme rainfall intensity in northern Australia has been increasing (IPCC WGII Report).
  - g. Governments plan to produce more than twice the amount of fossil fuels in 2030 than would be consistent with limiting warming to 1.5°C (*United Nations Environment Programme, The Production Gap: 2021 Report*).
  - h. All global modelled pathways that limit warming to 1.5°C with no or limited overshoot, and those that limit warming to 2°C, involve rapid and deep and in most cases immediate GHG emission reductions in all sectors (*IPCC WGIII Report, Summary for Policy Makers*).
  - i. As part of further climate change, more extreme fire weather in southern and eastern Australia can be expected (*high confidence*) (IPCC WGII Report).
  - j. In southern Australia, some forest ecosystems (alpine ash, snowgum woodland, pencil pine and northern jarrah) are projected to transition to a new state or collapse due to hotter and drier conditions with more fires (IPCC WGII Report).

- k. Future ocean warming, coupled with periodic extreme heat events, is projected to lead to the continued loss of ecosystem services and ecological functions (*high confidence*) (IPCC WGII Report).
19. The reconsideration request stated that, in order to demonstrate the likely significant impacts of climate change on MNES, EJA reviewed and analysed authoritative sources of information relevant to the protection of MNES. The material included conservation advices, listing advices, management plans, information from the department's Species Profile and Threats database (**SPRAT**), Ecological Character Descriptions for Ramsar Wetlands, World Heritage State Party Reports, International Union for the Conservation of Nature (**IUCN**) Conservation Outlook Assessments for World Heritage properties, management plans for National Heritage places, Commonwealth marine environment report cards and bioregional plans – referred to by EJA as **source material**.
20. EJA subjected this source material to a code-driven, text-mining process that identified statements that appear to acknowledge the impacts of climate change. The code was prepared by Dr Isaac Peterson. A subsequent search was performed to identify statements on the impacts of fire, which EJA stated was a specific focus because of the directness of its impacts on MNES and because of its particular significance for the Australian environment. The outcome of the text-mining process was reviewed by EJA reviewers to confirm each search result was relevant, in the sense of conveying the idea that a value, property or other aspects of an MNES is, will be, or will potentially be vulnerable to or impacted by climate change or the physical effects of climate change. The review process was also used to enable EJA to identify any gaps, incoherence or formatting errors in the results produced by the code.
21. EJA's findings from its text-mining process were that climate change is likely to impact the following MNES:
  - a. the world heritage values of declared World Heritage properties
  - b. the National Heritage values of National Heritage places
  - c. the ecological character of declared Ramsar wetlands
  - d. listed threatened species in the critically endangered category
  - e. listed threatened species in the endangered category
  - f. listed threatened species in the vulnerable category
  - g. listed threatened ecological communities in the critically endangered category
  - h. listed threatened ecological communities in the endangered category
  - i. listed threatened species (other than a species included in the extinct category or a conservation dependent species) and listed threatened ecological communities (other than an ecological community in the vulnerable category)
  - j. listed migratory species
  - k. the environment in a Commonwealth marine area (containing listed marine species)
  - l. the environment in the Great Barrier Reef Marine Park.

22. EJA's findings included that climate change decreases habitat availability by increasing fragmentation, changes species' distribution, facilitates the spread of invasive species, increases erosion rates, and decreases water quality. EJA's conclusions about the impact of climate change on MNES from this process are discussed further under the Protected Matters heading below.
23. EJA sought from Professor Lesley Hughes, a Distinguished Professor of Biology and Interim Executive Dean at Faculty of Science and Engineering at Macquarie University, an independent expert opinion on the analysis and conclusions in the reconsideration request. Professor Hughes' opinion is that the material used by EJA and EJA's analysis of that material supports the following propositions:
- a. There is a real (as opposed to a remote) chance that a consequence of continued emission of GHG emissions into the atmosphere — including through the combustion of coal and/or gas — will be an increase in the regularity, scope and intensity of climate hazards (such as fire, heat extremes, marine heatwaves and ocean acidification, heavy precipitation and flooding, and drought).
  - b. There is a real (as opposed to a remote) chance that those events (or one or more of them) will adversely affect the following MNES:
    - i. the world heritage values of declared World Heritage properties
    - ii. the National Heritage values of National Heritage places
    - iii. the ecological character of declared Ramsar wetlands
    - iv. listed threatened species in the critically endangered category
    - v. listed threatened species in the endangered category
    - vi. listed threatened species in the vulnerable category
    - vii. listed threatened ecological communities in the critically endangered category
    - viii. listed threatened ecological communities in the endangered category
    - ix. listed threatened species (other than a species included in the extinct category or a conservation dependent species) and listed threatened ecological communities (other than an ecological community in the vulnerable category)
    - x. listed migratory species
    - xi. the environment in a Commonwealth marine area (containing listed marine species)
    - xii. the environment in the Great Barrier Reef Marine Park.
24. EJA also sought from Professor David Karoly, an honorary Professor in the School of Geography, Earth and Atmospheric Sciences at the University of Melbourne, an expert report on the analysis and conclusions on the climate system and the physical impacts of climate change in the reconsideration request. Professor Karoly's opinion is that the material used by EJA and EJA's analysis of that material supports the following propositions:
- a. There is an approximately linear relationship between anthropogenic carbon dioxide (**CO<sub>2</sub>**) emissions and global temperature, such that every tonne of CO<sub>2</sub>

emissions adds to global warming. Reaching net zero anthropogenic CO<sub>2</sub> emissions is a requirement to stabilise human-induced global temperature at any level.

- b. Limiting human-induced global warming requires deep reductions in CO<sub>2</sub> and other GHG emissions (compared to historical and present rates) in the coming decades. The modelled pathways for limiting global warming necessitate drastic cuts to the use of fossil fuels and require a substantial amount of fossil fuels to remain unburned.
  - c. Human-induced climate change will cause unavoidable increases in multiple climate hazards in Australia, including fire, heat extremes, marine heatwaves and acidification, heavy precipitation and flooding and drought. These physical effects become larger in direct relation to increased global warming.
  - d. There is a real (as opposed to a remote) chance that a consequence of continued emission of GHG emissions into the atmosphere — including through the combustion of coal and/or gas — will be an increase in the regularity, scope and intensity of climate hazards (such as fire, heat extremes, marine heatwaves and ocean acidification, heavy precipitation and flooding, and drought).
  - e. There is a real (as opposed to a remote) chance that those events (or one or more of them) will adversely affect the following MNES:
    - i. the world heritage values of declared World Heritage properties
    - ii. the National Heritage values of National Heritage places
    - iii. the ecological character of declared Ramsar wetlands
    - iv. listed threatened species in the critically endangered category
    - v. listed threatened species in the endangered category
    - vi. listed threatened species in the vulnerable category
    - vii. listed threatened ecological communities in the critically endangered category
    - viii. listed threatened ecological communities in the endangered category
    - ix. listed threatened species (other than a species included in the extinct category or a conservation dependent species) and listed threatened ecological communities (other than an ecological community in the vulnerable category)
    - x. listed migratory species
    - xi. the environment in a Commonwealth marine area (containing listed marine species)
    - xii. the environment in the Great Barrier Reef Marine Park.
25. Professor Karoly also considered that additional material is likely to strengthen the analysis in Annexure 2 of the reconsideration request. Professor Karoly stated that:
- a. One of the key risks provided in *IPCC Sixth Assessment Report Working Group II Fact Sheet – Australasia: Climate Change Impacts and Risk* is the “Inability of

institutions and governance systems to manage climate risks (high confidence)", which is of particular relevance to this case.

- b. There is an additional climate hazard - sea level rise and extreme sea level and storm surge events - that is increasing in frequency and intensity due to climate change along all Australian coasts. Coastal inundation associated with this climate hazard is likely to have major impacts on coastal ecosystems and coastal wetlands.
- c. The State of the Environment 2021 Report (**SOE Report**) (which had not been published at the time Professor Karoly provided his report) was likely to supplement the material in Annexure 1 and Annexure 2, but was unlikely to change any of the propositions.

26. EJA's supplementary letter dated 11 August 2022 referred to the SOE Report as additional information to support its request of 8 July 2022. In that supplementary letter, EJA highlighted the following from the SOE Report as key findings relevant to the reconsideration requests:

- a. Warming of the Australian climate, and associated changes in the climate system, are driven by increased concentrations of greenhouse gases in the atmosphere. Changes to the climate are inevitable, based on greenhouse gases that have already been emitted, but further changes in the second half of the 21<sup>st</sup> century will depend on the level of future global emissions.
- b. The intensity and frequency of extreme weather-related events – including heatwaves, droughts, bushfires and floods – are changing. Ongoing increases in land and sea temperatures across Australia driven by climate change have coincided with multiple extreme weather events, devastating impacts on many of Australia's unique natural ecosystems and caused the death of many individuals of many species.
- c. Pressures on Australian biodiversity have not improved since the 2016 State of the Environment Report and outcomes for species and ecosystems are generally poor. Multiple pressures are interacting to amplify threats to biodiversity, and abrupt changes in ecological systems that are occurring. In particular, climate change and associated extreme events, compounded by other pressures, have had a major impact on biodiversity over the past 5 years, with consequences likely to be evident for many years to come. Many species and ecosystems will require their status to be assessed or reassessed in the coming years, and urgent recovery actions will be needed to avert extinction.
- d. Climate change (affecting water temperature, salinity, acidification, circulation and ocean nutrients) remains one of the pressures with the highest impact on the Australian marine environment. Substantial and widespread degradation of Australia's marine environmental values is expected if the pressures identified in the SOE Report are not addressed.

27. I noted that the department had also considered the SOE Report and identified additional relevant themes:

- a. Climate change is seen as one of the most significant threats to the Outstanding Universal Value of World Heritage properties globally. Identified climate change-related impacts to Australian World Heritage properties in the last 5 years include:

bushfires which cause loss of vegetation and other landscape impacts, mass coral bleaching events, significant seagrass dieback and marine ecosystem changes, increased drying, vegetation community decline, increased habitat reduction, changes to saltwater and freshwater wetlands, increased wetness and more waterway sedimentation due to intense wet events after drought.

- b. A 2016 national review of National Heritage Places (Wildlife Heritage & Marine Division 2017) found that 67% of National Heritage Places experienced climate change pressures.
  - c. The *Great Barrier Reef Marine Park Authority Outlook Report (2019)* identified the main threat to the Great Barrier Reef as climate change. Marine heatwaves have been associated with coral bleaching on the Great Barrier Reef in successive years, resulting in impaired recruitment and recovery of reefs. Before 2016, only 2 mass coral bleaching events had occurred in the Great Barrier Reef. Following the bleaching event of 2016, there were further mass bleaching events in 2017 and 2020. Projections reported by the IPCC indicate that coral reefs are expected to decline globally by a further 70-90% (relative to 2015) at 1.5°C global warming, and by more than 99% at 2°C global warming.
  - d. Threats to migratory seabirds include the redistribution of their prey in response to climate change and the southwards movement of some species due to climate change.
  - e. Ramsar wetlands are vulnerable to further hydrological changes and drying under future climate change scenarios. Drought conditions, in conjunction with increased consumptive water use, result in a decrease in flows into wetlands and reduction in inundation. The *2019 Aerial Survey of Wetland Birds in Eastern Australia* (Porter et al. 2019) found that the wetland area index was the lowest since surveys began in 1983.
28. In addition to the material in EJA's request, in making my decision I also considered the *Sixth Assessment Report (AR6) Synthesis Report: Climate Change 2023* released by the IPCC on 20 March 2023. This report synthesises the findings from the IPCC's earlier reports on climate science, impacts and adaptation, and mitigation of climate change, including in relation to the contribution of GHG emissions from fossil fuel infrastructure.
  29. I took into account both the pre-final-publication versions of the IPCC WGII and WGIII Reports and the final consolidated versions of those reports in making my decision, and noted that the department had done the same in preparing my brief.
  30. In EJA's further supplementary letter dated 29 April 2024, EJA provided further material in support of its reconsideration request. The enclosed material included:
    - a. The *2023 IEA's Net Zero Roadmap: A Global Pathway to keep the 1.5°C Goal in Reach*. This report includes data and analysis that maps out a pathway for the global energy sector to achieve net zero CO<sub>2</sub> emissions by 2050 and play its part in achieving the 1.5°C goal.
    - b. The *IEA's World Energy Outlook 2023*. The report revises its 2022 projections in its stated policies scenario on the direction of the energy economy, based on the actual state in different sectors, countries and regions.
    - c. An expert report by Ms Rachel Wilson, dated 26 April 2024. This report provides an opinion from an economist with expertise in the electricity and fossil fuels

markets and modelling, that supports the substitution submission made in the reconsideration requests. I noted that Ms Wilson's opinions include that one cannot know with a level of certainty or confidence that any particular forecast will be correct to 2050, as to either coal or gas markets, and that similarly it is "unknowable" what will be the effect of removal of a particular supply of coal or gas from the coal or gas markets.

31. EJA noted in its letter that it had already provided 2022 versions of the IEA reports in Annexure 1 of the reconsideration request. I considered both the newer and older versions of the IEA reports in making my decision, in addition to the Expert report of Ms Rachel Wilson.

### **Submissions and consultation**

32. Under section 78B of the EPBC Act, public comment on the reconsideration request was invited for 15 business days from 3 November to 24 November 2022 and comments were also sought from the proponent and relevant State and Commonwealth Ministers, as described above.
33. I took into account the public comments, proponent comments and comments from relevant State and Commonwealth Minister which are summarised below.

#### Commonwealth Ministers

34. On 3 November 2022, in accordance with section 78B(4) of the EPBC Act, the following Commonwealth Ministers were informed of the reconsideration request and invited to give the department, within 15 business days, information about whether a matter referred to in any of paragraphs 78(1)(a) to (ca) of the EPBC Act was applicable in relation to the proposed action:
- a. Minister for Indigenous Australians, the Hon Linda Burney MP
  - b. Minister for Agriculture, Fisheries and Forestry, Senator the Hon Murray Watt
  - c. Minister for Climate Change and Energy, the Hon Chris Bowen MP
  - d. Minister for Industry and Science, the Hon Ed Husic MP
  - e. Minister for Resources and Minister for Northern Australia, the Hon Madeleine King MP.
35. On 24 November 2022, a representative of the National Indigenous Australians Agency responded on behalf of the Minister for Indigenous Australians and noted they had no comment on the reconsideration request.
36. On 24 November 2022, a representative of the Department of Agriculture, Fisheries and Forestry responded on behalf of the Minister for Agriculture, Fisheries and Forestry and noted that they had no comment on the reconsideration request.
37. On 28 November 2022, a representative of the Department of Climate Change, Energy, the Environment and Water responded on behalf of the Minister for Climate Change and Energy and noted they had no comment on the reconsideration request.
38. On 9 December 2022, the Minister for Industry and Science responded that he had no comment on the reconsideration request.
39. On 13 December 2022, a representative of the Department of Industry, Science and Resources (DISR) responded on behalf of the Minister for Resources and Minister for

Northern Australia and noted (also referring to the other projects subject to EJA's reconsideration request of 8 July 2022):

*DISR supports the sustainable development of all resource projects where they are conducted in compliance with relevant environmental protection legislation. The support of DISR for the original assessment of projects was subject to the proponent obtaining the relevant environmental approvals, required by State and Commonwealth agencies. New information provided in the reconsideration requests does not alter the original conditional support of DISR toward the reconsidered projects.*

40. On 14 December 2022, a representative of the Department of Infrastructure, Transport, Regional Development, Communications and the Arts responded on behalf of the Minister for Infrastructure, Transport, Regional Development and Local Government and stated that they had no comment on the reconsideration request.

State Ministers

41. On 3 November 2022, in accordance with section 78B(5) of the EPBC Act, Mr Chris Loveday, as delegate for the Hon Meaghan Scanlon MP, Queensland Minister for Environment and the Great Barrier Reef, was informed of the reconsideration request and invited to give, within 15 business days, comment on whether a matter referred to in any of paragraphs 78(1)(a) to (ca) of the EPBC Act was applicable in relation to the proposed action, and any other information they considered relevant to the reconsideration.
42. On 28 November 2022, Mr Loveday responded, noting he considered that, as the referral decision is made by the Commonwealth Environment Minister under the EPBC Act, the reconsideration decision is the Minister's alone, and he had no further comments to provide.

Public submissions

43. As required under section 78B(6) of the EPBC Act, the reconsideration request was published on the department's public internet portal on 3 November 2022. Public comments on whether a matter referred to in any of paragraphs 78(1)(a) to (ca) was applicable in relation to the proposed action were invited for 15 business days, from 3 November 2022 to 24 November 2022.
44. The department received 838 comments through its public portal.
45. On the public portal, members of the public were invited to answer the five prompts set out in Table 1 below.

**Table 1: Public comment questions and response options**

Question Number	Question	Response Options
1	Do you consider there is substantial new information available about the impacts the action has, will have or is likely to have on a matter protected under Part 3* of the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth) (EPBC Act)?	Yes/No or Blank

2	Provide reasons for your answer and/or any comments below.	Text Comment or Blank
3	Do you consider there has been a substantial change in circumstance that was not foreseen at the time of the first referral decision and that relates to the impacts the action has, or will have or is likely to have on a matter protected under Part 3* of the EPBC Act?	Yes/No or Blank
4	Provide reasons for your answer and/or any comments below.	Text Comment or Blank
5	<p>If applicable, provide any other comments on whether you consider there are reasons to revoke the first referral decision and substitute a new decision. This may include any other comments on whether a matter referred to in any of paragraphs 78(1)(a) to (ca) of the EPBC Act applies in relation to the action.</p> <p>*(The current version of the EPBC Act can be accessed through the department's website).</p>	Text Comment or Blank

**Question 1: Do you consider there is substantial new information available about the impacts the action has, will have or is likely to have on a matter protected under Part 3 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act)?**

46. The department received the following responses in relation to Question 1:

- Yes – 787 responses
- No – 6 responses
- Blank – 45 responses

**Question 2: Provide reasons for your answer and/or any comments below.**

47. The department received the following responses in relation to Question 2:

- Comment – 792 responses
- Blank – 46 responses

48. I noted that the public comments raised similar issues to public comments the department received in relation to other reconsiderations requests made by EJA. Respondents who answered 'Yes' in response to Question 1 made comments summarised as follows:

- a. the reconsideration request includes information that is new and substantial because the information did not exist when the first decision was made or was not before the decision maker when the referral decision was made
- b. information about the climate change fuelled 2019-20 bushfires and the impacts on species, communities and other protected areas was not available when the first decision was made

- c. the reconsideration request includes recent, factual and scientific information about climate change from documents such as IPCC reports and the 2021 State of the Environment Report
  - d. the proposed action will increase GHG emissions which will accelerate climate change and extreme weather events such as floods and droughts
  - e. the reconsideration request includes information that details the climate change-related impacts of the proposed action on MNES
  - f. re-assessment of the proposed action must take into account the precautionary principle
  - g. the government's newly legislated emissions targets mean that the impacts of the mine should be re-assessed
  - h. the project should not proceed
  - i. the proposed action will affect culturally significant places for Indigenous people
  - j. undertaking the proposed action would contravene international agreements and conventions, be morally irresponsible, and would lessen Australia's international reputation
  - k. Australia should move away from fossil fuels to ensure resource sustainability, social and economic stability, and to safeguard the planet for future generations
  - l. the approval of the proposed action would be inconsistent with scientific advice and would result in global warming exceeding 1.5°C in global temperature with catastrophic results, some of which are irreversible
  - m. the current environmental assessment system is inadequate to consider climate change
  - n. new fossil fuel extraction will only prolong the use of old fossil fuel based technologies and delay the transition to renewable energy technologies
  - o. the proposed action will open up the region to further development, facilitating further impacts
  - p. the State of our Climate 2022 (Bureau of Meteorology) shows Australia's climate has warmed by an average of  $1.47 \pm 0.24$  °C since national records began in 1910
  - q. the International Energy Agency has also confirmed that if the world is to achieve net zero by 2050, globally there can be no new fossil fuel projects beyond 2021.
49. The respondents who answered 'No' in response to Question 1 made comments summarised as follows:
- a. 'N/A';
  - b. recent reports on climate change released since 2021 do not constitute new information that was not known at the time of the preparation of the preliminary documentation for the referral;

- c. scientific consensus on climate change, and the impact of greenhouse gas emissions, is longstanding and predates the preliminary documentation being assessed; and
  - d. as data accumulates both nationally and globally, we are becoming increasingly sure of the increasing danger.
50. Respondents whose response to Question 1 was 'blank' made comments similar to some of those summarised in paragraph 48 as well as other comments summarised as follows:
- a. do not destroy jobs in rural communities (by refusing projects such as the proposed action). The science of climate change is a field where dogma has overtaken unbiased investigation or historical records of contradictory evidence
  - b. concerns about health and wellbeing impacts as a result of climate change. Health impacts need to be considered when assessing new coal projects
  - c. the world needs to transition to renewable energy for the sake of future generations
  - d. opposition to any new fossil fuel projects
  - e. this coal mine expansion is putting the future of Australia at risk
  - f. past governments didn't consider the climate impacts of this project's emissions
  - g. better-informed decisions can be made regardless of whether the information is new or not.

**Question 3: Do you consider there has been a substantial change in circumstance that was not foreseen at the time of the first referral decision and that relates to the impacts the action has, or will have or is likely to have on a matter protected under Part 3 of the EPBC Act?**

51. The department received the following responses in relation to Question 3:
- Yes – 110 responses
  - No – 589 responses
  - Blank – 139 responses

**Question 4: Provide reasons for your answer and/or any comments below.**

52. The department received the following responses in relation to Question 4:
- Comment – 530 responses
  - Blank – 308 responses
53. I noted that the public comments raised similar issues to public comments the department received in relation to other reconsiderations requests made by EJA. Respondents who answered 'Yes' to Question 3 made comments summarised as follows:
- a. the condition of the environment is further worsening and being degraded because of climate change
  - b. there is a need to consider cumulative impacts of coal and gas projects and GHG emissions

- c. there is a new government with different policies and commitments in relation to climate change
- d. there has been an increase in extreme weather events impacting communities and the environment
- e. the Final Report of the Independent Review of the Environment Protection and Biodiversity Act 1999 (Samuel Review) highlighted the ineffectiveness of the EPBC Act regarding climate change
- f. there has been a significant increase in scientific knowledge and public understanding regarding consequences of environmental harm
- g. the rapid and accelerating change in climate has led to climate emergency and environmental tipping points
- h. data on Australian climate heating used to assess the proposed action (using projected world climate heating of 1.2 °C) have been grossly underestimated, and heating is actually closer to double the world rate, at 2.3 °C.

54. Respondents who answered 'No' for Question 3 made comments summarised as follows:

- a. not applicable (N/A)
- b. the reconsideration requestor is not relying on this argument for their legal intervention
- c. the reconsideration request provided substantial new information
- d. climate science has been known for a long time and has been ignored
- e. the environmental impacts from climate change were foreseeable
- f. there has been a change in acknowledgement of the circumstances documented by scientists and experienced by the population
- g. the 2022 State of the Climate Report confirms the climate issue that has been tracked over many years.

**Question 5: If applicable, provide any other comments on whether you consider there are reasons to revoke the first referral decision and substitute a new decision. This may include any other comments on whether a matter referred to in any of paragraphs 78(1)(a) to (ca) of the EPBC Act applies in relation to the action.**

55. The department received the following responses in relation to Question 5:

- Comment – 673 responses
- Blank – 165 responses

56. The majority of the responses made comments similar to those in Questions 2 and 4, and raised similar issues to public comments received in relation to other reconsideration requests made by EJA, and also raised the following issues:

- a. global warming must be limited to 1.5°C
- b. climate change will impact future generations

- c. climate change is having impacts on people's physical and mental health
- d. climate change has economic and social impacts, including impacts to food security
- e. concern about climate change impacts on the Great Barrier Reef, Ningaloo Reef and other protected areas, plant and animal species
- f. there should be no new gas or coal projects
- g. the Samuel Review outlines that cumulative impacts and future challenges like climate change are not effectively considered under the EPBC Act
- h. the need to take responsibility for the emissions of our exported fossil fuels that are burned overseas and contribute to global climate change
- i. global contributions to climate change impacts other countries, such as our Pacific neighbours
- j. concerns about impacts on Aboriginal and Torres Strait land and heritage
- k. humanity must be considered before economic profits
- l. there is a lack of support and funding for Australian environmental research
- m. the capacity for the Australian environment and its people to recover from climate change effects is diminishing
- n. support for renewable energy and decarbonising our economy is the future, no more "business as usual"
- o. "every emission counts" – feelings of shame/guilt/stress about Australia's role in accelerating climate change
- p. Scope 3 emissions need to be included in assessment and reporting
- q. approving this project is incompatible with goals to achieve net-zero emissions
- r. potential damage to agricultural industries
- s. the proponent proposes to expand the existing mine to maintain Meandu Mine's total extraction of approximately no more than 11 million tonnes per annum (Mtpa) of thermal coal. Current supply for combustion at the associated Tarong power stations is approximately 7 Mtpa
- t. the proponent intends to extract an additional 105 million tons of coal, contributing total emissions (Scopes 1, 2 and 3) of the proposed action estimated to be 255.15 Mt CO<sub>2</sub>
- u. Meandu mine expansion is more than is required to supply the Tarong power stations, and will supply more coal than is necessary for their remaining lifespan.

Other public comments received

57. Three additional public submissions relating to EJA's 18 reconsideration requests were submitted through the online portal for another project (EPBC 2022/09393) which was open

for comment on a referral. The submissions were made during the public comment period for EJA's 18 reconsideration requests and I have taken them into account.

Public comments – made directly to the Minister

58. In addition to the above public comments, members of the public also wrote directly to the Minister regarding the proposed action, or generally concerning EJA's 18 reconsideration requests. These comments were provided outside of the department's formal public comment process. The Minister received 38 direct submissions concerning the proposed action. Of these submissions, three did not agree with the premise of the reconsideration request, noting, in summary:
- a. The EPBC Act is not the appropriate legislative instrument to regulate carbon emissions.
  - b. There is no proof that fossil fuels are linked to climate change.
59. The remaining 35 direct submissions either supported the reconsideration request and/or considered the proposed action should not proceed. The submissions made comments similar to those discussed in paragraphs 48, 533 and 566 and also raised the following additional concerns summarised as follow:
- a. The projects under reconsideration pose unacceptable risks including potential threats to national security
  - b. Damage to Australia's climate reputation which must now be addressed, due to
    - i. Subsidisation of coal and gas industries
    - ii. Pursuit of carbon offsetting to reach net zero targets
    - iii. Allowing mining sector to self-report/under-report their carbon emissions.
60. EJA (on behalf of the ECCQ) also made a submission to the Minister on 24 November 2022 on the 18 reconsideration requests. The submission referred to the International Energy Agency (IEA) *World Energy Outlook 2022* which provides an update to the IEA's *Net Zero by 2050 – A Roadmap for the Global Energy Sector Emissions by 2050 (NZE 21)*. In particular, EJA noted that the update to the NZE 21 confirms previous scenarios presented by the IEA and IPCC, being that deep reductions are required in coal and gas markets to meet temperatures below 1.5°C, and those markets do not require the approval of long lead-time gas projects or any new coal mines or coal mine extensions. It also noted that the update to the NZE 21 confirms that:
- a. If the proposed action (or any of the other Proposed Projects, being the proposed action and the other projects also subject to EJA's reconsideration request of 8 July 2022) is assumed to be approved and exist, then, at minimum, emissions resulting from the extraction of coal and gas from the proposed action would result in reaching a minimum temperature which is above 1.5°C. Less harmful scenarios cannot occur in a future with any of the Proposed Projects.
  - b. In order to achieve the updated NZE 21 scenario, total energy supply of coal has already peaked, and total energy supply of natural gas will peak by 2030. In light of this, the demand for the coal or gas that would be extracted pursuant to each of the Proposed Projects (being the proposed action and the other projects also subject

to EJA's reconsideration request of 8 July 2022) is not fixed and it cannot be said that the impacts will necessarily be the same in a future without the Proposed Project as they would be in a future with it.

- c. There are many scenarios (and other technically-feasible scenarios which have been validated by the IPCC AR6 WGIII) which cannot be achieved with input assumptions equivalent to the projected future supply of coal or gas entailed by the 18 Proposed Projects.

- 61. In making my decision, I took into account the public submissions that were made directly to the Minister as well as those received through the public portal.

### **Proponent comments**

#### **Proponent's submission on the reconsideration request**

- 62. On 3 November 2022, in accordance with section 78B(2) of the EPBC Act, the proponent was invited to comment on the reconsideration request.
- 63. On 15 December 2022, the proponent provided its response to the invitation to comment.
- 64. In the proponent's response dated 15 December 2022, it stated that:
  - a. the revocation of the original referral decision is not warranted.
  - b. there is no proper or reasonable basis for revocation of the decision.
  - c. the Minister cannot be reasonably satisfied that the reconsideration request provides substantial new information about the impacts that the proposed action will have on the matters protected under the EPBC Act.
- 65. The proponent considered that the proposed action will deliver lower GHG emissions than the alternative, which is where mining is confined to the existing approved surface rights area of Meandu Mine (the ESR Case). This is because the proposed action is an extension of the existing approved mine and will enable the continuation of mining activity in a more efficient and cost-effective manner than if mining is constrained to the existing approved surface rights area.
- 66. In its response, the proponent stated the reconsideration request relies on flawed and irrelevant assumptions for the following reasons:
  - a. the coal from Meandu Mine is not exported, nor provided to any other third party as part of a market, as suggested in paragraph 38 of the reconsideration request. The proposed action will also not impact any seaborne coal market, which the reconsideration request relies upon.
  - b. the proposed action does not rely on the creation, expansion or maintenance of any market structure that would not exist without its approval. The proposed action appears to have erroneously been grouped with a number of projects that are either greenfield or brownfield projects selling into commoditised markets.
  - c. if the proposed action did not proceed, the same demand for coal to fuel the Tarong and Tarong North power stations (collectively the Tarong power stations) would still exist. The alternative to meet that demand, being to extract coal from

within the existing approved surface rights area (i.e. the ESR Case), would deliver greater GHG emissions than the proposed action, primarily due to predicted increased fugitive emissions from deeper excavation, and comparative difficulty of extraction (increased haulage).

- d. the reconsideration request erroneously estimates the emissions from the proposed action as 255.15 Mt CO<sub>2</sub>. The report titled “Meandu Mine and King 2 East Project – Comparative Greenhouse Gas Emissions Assessment” by Katestone Environmental Pty Ltd dated 15 December 2022 (December 2022 Katestone Report) (see below) and Annexure A to the proponent’s response to the invitation to comment provide the projected emissions.
  - e. the reconsideration request provides no evidence of any causal connection between the GHG emissions from the proposed action itself and the impact to any of the species alleged. Instead, the reconsideration request relies on a claim that every tonne of GHG emitted from the proposed action should be collectively counted with all other global GHG emissions to establish the alleged significant impact on MNES, without identifying any particular source of impacts on any particular MNES.
  - f. the allegation that the GHG emissions resulting from the burning of coal that contribute to the global state of affairs which causes climate change and potential MNES impacts is far too removed from the impacts of the proposed action to be a relevant impact under the EPBC Act, and cannot be considered a reasonably foreseeable consequence of the proposed action.
  - g. the reconsideration request requires that each project be held responsible for the cumulative effect of multiple projects, including future proposals. This approach would render the legislation ineffective/unworkable and as such cannot be supported as a proper interpretation.
  - h. even if it was considered that cumulative emissions were relevant to a controlled action decision under the EPBC Act (which the proponent does not accept), the reconsideration request does not demonstrate that a change in potential impacts on MNES is likely to happen with a high degree of certainty as a consequence of the proposed action. It also ignores the effect of government policy to achieve a reduction of GHG emissions, including for example, the Safeguard Mechanism under which emissions from the Australian electricity sector are accounted for and the Nationally Determined Contribution.
67. The proponent stated that its parent company, Stanwell Corporation Limited (Stanwell), is currently establishing a portfolio of renewable generation and energy storage. Under the Queensland Energy and Jobs Plan the Tarong power stations will be coal-fired generators until 2035, at which time the site will be repurposed as a clean energy hub. This can occur only after Queensland has sufficient dispatchable clean energy in place and network upgrades have been carried out. In the meantime, the Tarong power stations will support the orderly transition to renewable energy by providing stable, reliable and affordable energy, fuelled by the Meandu Mine including the proposed action.
68. The original referral decision (of 6 September 2021) determined that the controlling provisions for the controlled action were listed threatened species and communities under sections 18 and 18A of the EPBC Act. The referral also considered the potential for impact

on listed migratory species. The proponent considered that, after a review of the evidence in support of the reconsideration request, there is no substantial new information relating to the likely impacts on the relevant species and communities from the proposed action and there are not likely to be significant impacts on different protected matters such that there would be different or additional controlling provisions to be considered for the proposed action.

69. The proponent's submission included, in support of its position:
- a. The December 2022 Katestone Report. The December 2022 Katestone Report is a comparative assessment of the estimated GHG emissions of the life of mine plans for the proposed action and the ESR Case.
  - b. a report titled "2021/8999 – Meandu Mine King 2 East Project, MNES: Threatened and Migratory Species" by WSP dated 13 December 2022 (WSP Report). The submission stated that the WSP Report confirmed that no new information has been provided with the reconsideration request in relation to the MNES that are relevant to the proposed action.
70. On 19 June 2024, the proponent wrote to the department providing further information in relation to the proposed action. The proponent stated that it has taken additional steps, and the present feasibility and practicability of any other alternative (including the ESR case referenced above) would now require re-assessment in light of the current circumstances. The proponent stated that it did not now consider pursuit of the ESR case to be a viable alternative, nor is there any existing viable and practicable alternative for the transport of coal to the Tarong power stations from an alternative fuel source. The proponent submitted that establishing an alternative logistical solution would require a considered and comprehensive strategic plan, addressing not only coal quantity and quality requirements but also noting the lack of rail infrastructure and additional emissions associated with the fuel consumption for road movements. The department noted that the proponent's letter included the 2023 GHG analysis report by Katestone Environmental Pty Ltd titled "Meandu Mine and King 2 East Project – Comparative Greenhouse Gas Emissions Assessment" dated June 2023 (**June 2023 Katestone Report**). The emissions data from the June 2023 Katestone report is discussed below. The department determined that the 19 June 2024 response supersedes the 15 December 2022 response in relation to a viable alternative for the transport of coal to the Tarong power stations from an alternative fuel source.

*Request for further information on GHG emissions from the proponent*

71. On 10 November 2022, the department sent the proponent a RFI on the GHG emissions associated with the proposed action. The RFI requested information on:
- a. Scope 1, 2, and 3 emissions associated with the proposed action
  - b. emissions management
  - c. consumers of end-product extracted as part of the proposed action.
72. The RFI sought that GHG emissions estimates should be aggregated in million tonnes carbon dioxide equivalent (**Mt CO<sub>2</sub>-e**) and defined GHG by reference to section 7A of the *National Greenhouse and Energy Reporting Act 2007* (Cth) (**NGER Act**). It also defined Scope 1, 2 and 3 GHG emissions by reference to the department's National Greenhouse Accounts Factors workbook, which categorises emissions as follows:

- a. Scope 1 – direct emissions which are produced from sources within the boundary of an organisation and as a result of that organisation’s activities (e.g. fugitive emissions from a coal extraction at a mine).
- b. Scope 2 – indirect emissions which occur outside of the boundary of an organisation from the generation of electricity that is consumed by the organisation.
- c. Scope 3 – indirect emissions, other than electricity, which occur outside of the boundary of an organisation as a result of actions by the organisation (e.g. the burning of the product coal from the proposed action by a third party to make steel or generate electricity).

*Response to RFI Question 1: Scope 1, 2, and 3 emissions associated with the proposed action*

73. On 15 December 2022, the proponent responded to the department’s RFI about the projected emissions associated with the proposed action. I noted that the department reviewed the information provided and sought clarification on the proponent’s response. The proponent resubmitted their response to the RFI on 23 June 2023 and enclosed the June 2023 Katestone Report. The proponent responded with further information on 19 June 2024. The department’s brief to me considered the proponent’s resubmitted response to the RFI of 23 June 2023 and the further updated information provided on 19 June 2024.
74. The proponent identified the activities resulting in Scope 1, 2 and 3 GHG emissions associated with the proposed action. The proponent stated, as set out in the June 2023 Katestone Report, that over the planned life of the proposed action (2025-2039), Scope 1 emissions are expected to account for 1.06% of total emissions from the proposed action. The emissions are expected to occur through the combustion of diesel for machinery/equipment (1.00%), and the release of fugitive emissions (0.06%). Scope 2 emissions from the proposed action are expected from electricity consumption and would represent 0.30% of the proposed action’s total projected emissions. The majority of the emissions associated with the proposed action are Scope 3, representing 98.60%, deriving from the combustion of product coal in Australia by the proponent’s parent company, Stanwell (owner of Tarong power stations). The Katestone Report notes that these percentages are rounded so do not total 100%.
75. The proponent’s full breakdown of the emissions expected to be associated with the proposed action is set out in Table 2 below. The above assumptions are based on a 2019 mine plan, with a proposed mining period until 2039. This plan is beyond the Tarong power stations’ projected withdrawal date of 2036-37.

**Table 2: Proponent’s estimate of GHG emissions associated with the proposed action (Mt CO<sub>2</sub>-e)**

	Scope 1	Scope 2	Scope 3		Total (Scope 1, 2 & 3)	
	Australia		Australia	Overseas	Australia	Globally (includes Aust.)
<b>Annual average</b>	0.037	0.009	3.200	N/A	3.246	3.246
<b>Total</b>	0.560	0.132	47.997	N/A	48.689	48.689

76. The proponent also advised that the proposed action’s *total average annual* emissions (Scope 1, 2, and 3) *within Australia* represent 0.7% of Australia’s estimated annual national emissions reported in the Quarterly Update of Australia’s National Greenhouse Gas

Inventory for December 2022. The department estimates that, according to the 2022 Paris Agreement inventory, the proposed action's *total average annual emissions* (Scope 1, 2, and 3) *within Australia* represent 0.75% of Australia's estimated annual national emissions.

77. Further, the proponent advised the proposed action's *total average annual emissions* (Scope 1, 2 and 3) *within Australia and outside Australia combined* represent 0.0065% of global emissions (measured in CO<sub>2</sub>-e) in 2019, which was the latest year with reported data available at the time. The department advised that 2022 data is now available and based on the latest reported data the department estimated that the proposed action's *total average annual emissions* (Scope 1, 2 and 3) *within Australia and outside Australia combined* represent 0.0065% of 2022 global emissions.
78. I noted that the proponent's estimate over the life of the proposed action (48.69 Mt CO<sub>2</sub>-e) is lower than the estimate of 255.15 Mt CO<sub>2</sub>-e provided by EJA in their initial letter to the department. The department advised that this large discrepancy is due to a difference in scope, with the EJA estimate being for the entire Meandu mine (the existing mine and the proposed action), while the proponent's estimate is only for the proposed action. The proposed action referred under the EPBC Act relates to the new K2E mining area, separate to the existing mine. The assessment of the proposed action under the EPBC Act relates only to the impacts of mining in the K2E area. As such, the department's consideration of emissions in its brief to me was based on the proponent's estimates of emissions from the volume of coal to be extracted from the location of the new K2E mining area. The proponent has advised the department that the proposed action does not increase the expected life of mine for the Meandu Mine, or that mine's total production rates.

*Response to RFI Question 2: Emissions Management*

79. The proponent also advised the department of the measures that are proposed to avoid, reduce and monitor emissions associated with the proposed action, including:
- a. The proponent noted that Scope 1 emissions are largely fuel related. A range of measures are implemented at Meandu Mine to reduce overall diesel and electricity usage, with estimated reductions of 0.05 million t CO<sub>2</sub>-e over the life of the mine (being the broader Meandu Mine and measuring its life from 2022-2037 based on typical production). This includes initiatives to reduce vehicle movements and improve fleet efficiency including coal handling and preparation plant upgrades, a dozer fleet upgrade, a pit recovery project and a lighting system upgrade.
  - b. Reductions in Scope 1 emissions may not be limited to those described above. The mine planning process at Meandu Mine includes efficiency reviews, incorporating GHG emission reduction benefits through continuous improvement of the mine plan directed to minimising activity intensity. Life of mine planning is revised every 2-3 years, with subsequent further annual, 3-monthly and weekly optimisations conducted on an ongoing basis.
  - c. The mine plan for the proposed action incorporates the following:
    - i. Minimising the total volume of 'box cutting' waste and the proportion of out-of-pit waste when establishing and progressing mining in the northern end of the extended K2E mine pit (to reduce truck movements, a rise in elevation along haulage paths and haul lengths – all of which minimise diesel consumption).

- ii. The progressive rehabilitation process was improved through revised landform design and the planned placement of waste and / or landform reshaping from proximal sources (to reduce truck movements and diesel consumption).
  - iii. The coal combustion product storage strategy was adjusted, with longer term storage reallocated (to reduce total waste movements and truck haulage required for backfilling after mining is complete) and mixed plant rejects haulage shortened to target particular areas to minimise reject haulage distances (and reduce truck movements and diesel consumption).
- d. The black thermal product coal from Meandu Mine underpins the operational efficiency of the Tarong power stations, which are among the youngest and most efficient generators in the National Electricity Market.
- e. The Scope 3 emissions associated with the proposed action are also to be considered in the context of the emission reduction strategies of Stanwell for the Tarong power stations, which have implemented measures including:
- i. the use of supercritical boiler technology at Tarong North Power Station, making it one of the most efficient coal-fired power stations in Australia. The supercritical boiler design increases efficiency and reduces emissions by using higher steam pressures and temperatures, which convert more of the heat energy from the coal into electrical energy
  - ii. ongoing monitoring of plant efficiency and GHG emissions to identify trends and undertaking activities on plant to ensure efficiency is maintained. This includes plant maintenance to reduce energy leakage, cleaning of heat exchangers and operational adjustments
  - iii. an ongoing interest and commitment to investigating and increasing the beneficial reuse of coal combustion products from the Tarong power stations, noting that coal combustion products are typically used in construction-related applications in place of more GHG emission intensive materials.
- f. The proponent noted that the Meandu Mine does not trigger (and has not ever triggered) the Australian Government's Safeguard Mechanism, established under Part 3H of the NGER Act, as its Scope 1 emissions are below 100,000 tonnes of carbon dioxide equivalent (**t CO<sub>2-e</sub>**) per year. It is not projected to trigger the threshold with the addition of the proposed action.
- g. GHG emissions from the Tarong power stations are subject to the 'Safeguard Mechanism'. In 2020/21, the total sectoral GHG emissions of grid-connected generators was 148 Mt CO<sub>2-e</sub>, substantially below the sectoral baseline of 198 Mt CO<sub>2-e</sub>, and a reduction from 176 Mt CO<sub>2-e</sub> in 2014/15.

*Response to RFI Question 3: Consumers of end-product*

80. As noted above, the proponent stated that the majority of the emissions associated with the proposed action are scope 3 emissions from the combustion of product coal by a third party. The only consumer of the product coal from the Meandu Mine (and the proposed action) is the Tarong power stations, which are located in Australia (directly adjacent to the Meandu

Mine). The Tarong power stations are owned and operated by Stanwell, of which the proponent, TEC Coal Pty Ltd, is a wholly owned subsidiary. Stanwell is a government owned corporation under the *Government Owned Corporations Act 1993* (Qld).

81. I noted that the Australian Government has committed to reduce national GHG emissions, track progress towards those commitments, and report annually on Australia's GHG emissions. Australia submitted its first nationally determined contributions (**NDCs** – being emissions reduction commitments) to the United Nations Framework Convention on Climate Change (**UNFCCC**) in 2015. In June 2022, Australia submitted an updated NDC that strengthens our 2030 target to 43% below 2005 levels and reaffirms the net zero emissions by 2050 target.

### **International and domestic initiatives, and frameworks for addressing climate change**

82. In making my decision, I took into account the department's advice on the international and domestic initiatives, and frameworks for addressing climate change to the extent it was relevant to whether there is substantial new information about the impacts that the proposed action has or will have, or is likely to have, on a matter protected by a provision of Part 3. The following discussion reflects the department's advice on the relevant international and domestic initiative and frameworks for addressing climate change, which I accepted.

#### *International coal initiatives*

83. I noted that there are several international voluntary initiatives concerning the phase out of unabated coal power generation. These include the Powering Past Coal Alliance, which commits members to phase out existing unabated coal power generation, and the No New Coal Coalition, which commits parties to not build any new or additional coal power projects.

#### *International momentum behind the transition away from fossil fuels*

84. The Global Stocktake, agreed at 28<sup>th</sup> Conference of the Parties (**COP28**) to the UNFCCC, saw parties agree to transition away from fossil fuels in energy systems. This was the first time all parties to the Paris Agreement have acknowledged the need to transition away from fossil fuels under the UNFCCC.
85. The Global Stocktake decision also called on parties to the Paris Agreement to triple renewable energy capacity globally and doubling the global average annual rate of energy efficiency improvements by 2030, and to accelerate efforts towards the *phase-down* of unabated coal power.
- a. Over 120 countries, including Australia, also signed the Global Pledge on Renewables and Energy Efficiency, which commits them to work together to triple the world's installed renewable energy generation capacity to at least 11,000GW by 2030 and collectively to double the global average annual rate of energy efficiency improvements from around 2% to over 4% every year until 2030.

#### *Regional Action*

86. The Asia-Pacific Energy Cooperation has set two energy goals through its Energy Working Group:
- a. To improve energy intensity by at least 45 percent by 2035 compared to 2005 levels

- b. To double the share of modern renewables in the energy mix by 2030, relative to the numbers from 2010.
- 87. The Association of Southeast Asian Nations (ASEAN), while not having an emissions reduction target, does have the:
  - a. *ASEAN Strategy for Carbon Neutrality*, which includes eight strategies to deliver the carbon-neutral journey
  - b. *ASEAN Plan of Action of Energy Cooperation*, which sets aspirational targets of 23% share of Renewable Energy in total primary energy supply, and 35% share of renewable energy in ASEAN installed power capacity by 2025.
- 88. The European Council and Parliament reached a provisional agreement on a new EU Regulation to reduce energy sector methane emissions in Europe and in global supply chains in November 2023.
  - a. The regulation will oblige the fossil gas, oil and coal industry to properly measure, monitor, report and verify their methane emissions according to the highest monitoring standards, and take action to reduce them.
  - b. The agreement now requires formal adoption by both the European Parliament and the Council. Once this process is completed, the new legislation will be published in the Official Journal of the Union and enter into force.
- 89. In 2023 the Asia Zero Emissions Community (**AZEC**) was launched by 11 partner countries to advance decarbonisation in Asia towards the goal of carbon neutrality while achieving economic growth and energy security. During the launch, the then Japanese Prime Minister Kishida said the community would ‘create a huge new decarbonisation market in Asia.’ Through the AZEC countries apply for Japanese funding for energy projects. Most approved projects have been fossil fuel-based technologies such as Liquid Nitrogen Gas (**LNG**), ammonia co-firing with coal plants and carbon capture and storage.

### **International framework for addressing climate change**

- 90. The international climate treaties – the Paris Agreement, adopted on 12 December 2015 and the UNFCCC, adopted on 9 May 1992 – are the primary multilateral mechanisms governing the international response to climate change.
- 91. The Paris Agreement entered into force on 4 November 2016. There are 198 parties to the UNFCCC, of which 195 members are parties to the Paris Agreement, including Australia. The department noted in its brief to me that on 20 January 2025, the United States initiated the process to withdraw from the Paris Agreement. This process will take approximately 12 months to be finalised. Once finalised there will be 194 parties to the Paris Agreement. The Paris Agreement “aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:
  - a. Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;”.

92. Under the Paris Agreement, all parties must prepare, communicate and maintain successive NDCs and pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions. Under the Paris Agreement, emissions that occur within a party's jurisdiction are accounted for within that party's national GHG inventory. Emissions associated with the combustion of exported Australian coal are accounted for in the national GHG inventories of the importing countries.
93. In Australia, emissions reduction targets and national climate mitigation policies are the responsibility of the Minister for Climate Change and Energy, the Hon Chris Bowen MP.
94. Under Article 4 of the Paris Agreement, Parties "aim to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty."
95. The Australian Government has committed to reduce national GHG emissions, track progress towards those commitments, and report annually on Australia's GHG emissions. Australia submitted its first NDC to the UNFCCC in 2015. In June 2022, Australia submitted an updated NDC that strengthens our 2030 target to 43% below 2005 levels and reaffirms the net zero emissions by 2050 target.
96. On 12 December 2023, the Australian Government agreed to the Parties' first Global Stocktake under the Paris Agreement. At paragraph 28 of the Global Stocktake report "calls on Parties to contribute to the following global efforts, in a nationally determined manner, taking into account the Paris Agreement and their different national circumstances, pathways and approaches:
  - a. Tripling renewable energy capacity globally and doubling the global average annual rate of energy efficiency improvements by 2030
  - b. Accelerating efforts towards the phase-down of unabated coal power
  - c. Accelerating efforts globally towards net zero emission energy systems, utilizing zero- and low-carbon fuels well before or by around mid-century
  - d. Transitioning away from fossil fuels in energy systems, in a just, orderly and equitable manner, accelerating action in this critical decade, so as to achieve net zero by 2050 in keeping with the science
  - e. Accelerating zero- and low-emission technologies, including, inter alia, renewables, nuclear, abatement and removal technologies such as carbon capture and utilization and storage, particularly in hard-to-abate sectors, and low-carbon hydrogen production
  - f. Accelerating and substantially reducing non-carbon-dioxide emissions globally, including in particular methane emissions by 2030
  - g. Accelerating the reduction of emissions from road transport on a range of pathways, including through development of infrastructure and rapid deployment of zero and low-emission vehicles

- h. Phasing out inefficient fossil fuel subsidies that do not address energy poverty or just transitions, as soon as possible”.

### **Domestic Measures**

97. The *Climate Change Act 2022* (Cth) enshrines Australia’s emissions reduction targets in legislation – 43% below 2005 levels by 2030 and net zero emissions by 2050.
98. These targets are supported by a suite of measures, including:
  - a. The Australian Government’s commitment to 82% renewable electricity by 2030, a national target to ensure a timely transition away from reliance on increasingly unreliable and uneconomic ageing coal generation to a more reliable system with lower cost and emissions.
  - b. A Capacity Investment Scheme, to encourage new investment in renewable energy by underwriting 23GW renewable generation and 9GW clean dispatchable capacity.
  - c. The National Reconstruction Fund, which will provide up to \$3 billion for renewable and low emissions technology investment.
  - d. The decarbonisation of existing industries and creation of new clean energy industries through the \$1.9 billion Powering the Regions Fund.
  - e. The National Energy Transformation Partnership to coordinate action by the Commonwealth states and territories to achieve net zero emissions in the electricity system by 2050 and reach 82% renewable electricity by 2030.
  - f. \$20 billion investment to upgrade the electricity grid to manage more renewable energy through the Rewiring the Nation program.
  - g. Introducing climate reporting standards for financial institutions and large publicly listed companies.
  - h. \$224.3 million investment in new community batteries across Australia to support the grid and maximise the benefits of Australia’s rooftop solar installations, through the Community Batteries for Household Solar program.
  - i. \$102.2 million for the Community Solar Banks program to establish solar banks around Australia, providing access to solar for around 25,000 households who are unable to install rooftop solar.
  - j. \$83.8 million to develop and deploy microgrid technology across First Nations communities.
  - k. Australia’s first National Electric Vehicle Strategy.
  - l. The Future Gas Strategy that maps the Australian Government’s plan for how gas will support the Australian economy’s transition to net zero.
  - m. Reforms to the Safeguard Mechanism.
  - n. National Hydrogen Strategy.

### *Future Gas Strategy*

99. In May 2024, the Federal Government released the Future Gas Strategy (the strategy) which maps the plan for how gas will support the transition to net zero. The objectives of the strategy are to:
- a. support decarbonisation of the Australia economy
  - b. safeguard energy security and affordability
  - c. entrench Australia's reputation as an attractive trade and investment destination
  - d. help our trade partners on their own paths to net zero.
100. The strategy outlines the role that gas will have in helping both Australian and international economies transition to global net zero. The long-term role of gas-powered generation is to provide firming and peaking support as the grid becomes increasingly powered by renewable energy.
101. Additionally, the strategy outlines that LNG will continue to play a significant role in reducing the carbon intensity of the region's energy mix, particularly by replacing more emission intensive fuels like coal, while supporting energy security and stability.
102. Importantly, the strategy specifies that the current emissions from the extraction and production of gas must reduce for Australia to reach net zero by 2050.

#### *Safeguard Mechanism*

103. The Safeguard Mechanism requires Australia's largest GHG emitters to keep their net emissions below emissions limits (baselines). The Safeguard Mechanism applies to facilities that have direct (Scope 1) emissions of more than 100,000 tonnes CO<sub>2</sub>-e in a financial year.
104. The reformed Safeguard Mechanism commenced on 1 July 2023 and requires facility baselines to decline each year, reducing net emissions in line with Australia's climate targets. The reforms introduced a requirement that information on Scope 1 emissions estimates provided in the course of assessment under the EPBC Act must be reported to the Climate Change Authority, the Minister for Climate Change and the Secretary of the relevant department, on the approval of the proposed action if the proposed action is likely to result in:
- a. a new designated facility (that is, a facility the operation of which will result in a total amount of covered emissions of greenhouse gases during a financial year with a carbon dioxide equivalence exceeding 100,000 tonnes or more), or
  - b. an increase in the emissions of a facility which is already covered by the Safeguard Mechanism.
105. The proponent advised in its response to the RFI that its facility, which is the subject of the proposed action, does not trigger the Safeguard Mechanism as its Scope 1 emissions are below the 100,000 tonnes CO<sub>2</sub>-e in a financial year, and the threshold is not projected to be triggered with the K2E Project.

#### **Statutory framework for reconsideration decisions**

106. I noted that, pursuant to section 78C of the EPBC Act, I must reconsider the original referral decision and either confirm the decision or revoke the decision in accordance with subsection 78(1), and substitute a new decision for it.

107. Under section 78(1) of the EPBC Act, I may revoke a decision made under section 75(1) about an action and substitute a new decision under that section for the first decision, but only if one of the circumstances in section 78(1)(a)-(ca) applies.
108. EJA's reconsideration request was made on the basis of section 78(1)(a). EJA submitted that I should be satisfied that the revocation and substitution is warranted by the availability of substantial new information about the impacts that the proposed action has or will have or is likely to have on a matter protected by a provision of Part 3 (**protected matter**) (paragraph 78(1)(a)).
109. The department advised that section 78(1)(aa) contained another ground for reconsideration which appeared potentially applicable having regard to the information in EJA's request and provided through the section 78B consultation process. Under section 78(1)(aa), I may revoke a decision and substitute a new decision if I am satisfied that the revocation and substitution is warranted by a substantial change in circumstances that was not foreseen at the time of the first decision has occurred that relates to the impacts that the proposed action has or will have or is likely to have on a protected matter.
110. Under section 75 of the EPBC Act, I am required to decide whether the proposed action that is the subject of the referred proposal is a controlled action, and which provisions of Part 3 (if any) are controlling provisions for the proposed action. In making my decision, I must consider all adverse impacts the proposed action has, will have, or is likely to have, on the matter(s) protected by a provision (or provisions) of Part 3. I must not consider any beneficial impacts the proposed action has, will have or is likely to have on the protected matters.
111. Section 391 provides that I must take account of the precautionary principle in making a decision under section 75, to the extent I can do so consistently with the other provisions of the EPBC Act. The department advised that, while a reconsideration decision is not a decision listed in section 391 as a decision where the precautionary principle must be taken into account, section 78C(1) requires me to reconsider a section 75 decision, and a section 75 decision is listed in section 391.

### **Findings on material questions of fact**

112. My findings on material questions of fact in relation to my reconsideration decision, addressing the relevant requirements of the EPBC Act, are set out below.
113. The reconsideration request of 8 July 2022 says that there is substantial new information about the impacts that the proposed action has or will have, or is likely to have, on various matters protected by Part 3 of the EPBC Act and that this warrants the revocation and substitution of the original referral decision. My consideration of the reconsideration request and findings are set out below, with respect to each of the protected matters specified in the request:
  - a. the world heritage values of declared World Heritage properties (sections 12 and 15A)
  - b. the National Heritage values of National Heritage places (sections 15B and 15C)
  - c. the ecological character of declared Ramsar wetlands (sections 16 and 17B)
  - d. listed threatened species in the critically endangered category (section 18(2))
  - e. listed threatened species in the endangered category (section 18(3))

- f. listed threatened species in the vulnerable category (section 18(4))
  - g. listed threatened ecological communities in the critically endangered category (section 18(5))
  - h. listed threatened ecological communities in the endangered category (section 18(6))
  - i. listed threatened species and listed threatened ecological communities (section 18A)
  - j. listed migratory species (sections 20 and 20A)
  - k. the environment in Commonwealth marine areas (sections 23(2), 24A(3), (4)) (containing listed marine species)
  - l. the environment in the Great Barrier Reef Marine Park (sections 24B(2), 24C(5), (7)).
114. I also considered whether any of the grounds at sections 78(1)(aa) to (d) may be the basis for a decision to reconsider the original referral decision. I accepted the department's advice that they would not be, for the following reasons:
- a. The requirements for the grounds at sections 78(1)(b) to (ca) are not met because the original referral decision was a controlled action decision, and those grounds only apply where the original referral decision was that the proposed action was 'not a controlled action'.
  - b. The requirement for the ground at section 78(1)(d) is not met because the reconsideration request was not made under section 79.
  - c. The requirements for the ground at section 78(1)(aa) are not met because, for the reasons set out with respect to the ground at section 78(1)(a), below and having regard to the information provided by EJA and through the section 78B consultation process, I was not satisfied that there has been a substantial change in circumstances that relates to the impacts of the proposed action.

### **World heritage values of declared World Heritage properties (sections 12 and 15A)**

#### **Referral information**

115. The original referral decision does not include this controlling provision because the proposed action does not occur within or adjacent to any declared World Heritage properties. The delegate considered it unlikely that the proposed action would have a significant impact on the world heritage values of declared World Heritage properties given the nature and scale of the proposed action, its potential impacts, and its distance from declared World Heritage properties.
116. Climate-related evidence was not considered by the delegate in relation to this protected matter. No consideration was given to potential climate change flow-on effects of GHG emissions, or GHG emissions as impacts on protected matters from the proposed action.

Substantial new information about the impacts of the proposed action

117. In the reconsideration request, EJA identified over 470 documents that it considers demonstrate the likely significant impacts of climate change on matters protected under this controlling provision. These publicly available documents include World Heritage nominations, management plans for World Heritage properties and the IUCN World Heritage Outlook.
118. I found that this information is substantial new information as:
- a. much of the information contained in the reconsideration request was not before the delegate and so is considered new information; and
  - b. the information is of substance and is not trivial or inconsequential, and demonstrates that climate change has various effects on this protected matter.
119. The information in the reconsideration request identifies 17 of the 20 Australian declared World Heritage properties as likely to be impacted by climate change:
- a. Budj Bim Cultural Landscape
  - b. Fossil Mammal Sites
  - c. Gondwana Rainforests of Australia
  - d. Great Barrier Reef
  - e. Greater Blue Mountains
  - f. Heard and MacDonal Islands
  - g. K'gari (Fraser Island)
  - h. Kakadu
  - i. Lord Howe Island
  - j. Macquarie Island
  - k. Ningaloo Coast
  - l. Purnululu National Park
  - m. Shark Bay
  - n. Tasmanian Wilderness
  - o. Uluru Kata-Tjuta National Park
  - p. Wet Tropics of Queensland
  - q. Willandra Lakes Region.
120. The information in the reconsideration request identifies that climate change and its flow-on effects are affecting or will affect the ecology of the identified declared World Heritage properties. Based on the information provided, the extent of the effects appears to vary between the properties, reflecting their unique natural environments. In summary, World Heritage properties containing ecosystems and/or species with low temperature range tolerances (e.g. alpine and coastal environments) are more susceptible to climate change. In general, climate change reduces the resilience of ecosystems due to the increased risks from a range of factors including:

- a. Altered (or reduced) abundance and distribution of species critical (and/or unique) to the ecological integrity of the property.
- b. Altered hydrological flows causing increasing incursions of saltwater into freshwater (and the reverse) damaging important feeding and breeding habitat.
- c. Invasive/pest species gaining a greater foothold.
- d. Extreme temperature events causing heat stress to susceptible plants and animals (e.g. the Spectacled Flying Fox *Pteropus conspicillatus*).
- e. Altered or inappropriate fire regimes associated with temperature extremes.

Does the information relate to the impacts that the proposed action has or will have, or is likely to have, on the world heritage values of a declared World Heritage property?

121. I noted that the information in the reconsideration request identified that climate change is having or will have adverse effects on the flora, fauna and ecosystems of the identified World Heritage properties. This will, in turn, have adverse effects on the world heritage values of those properties. Whether the information relates to adverse impacts of the proposed action on this protected matter is discussed below.
122. I accepted the department's advice that, to be satisfied under section 78(1)(a) of the EPBC Act that revocation and substitution of the original referral decision is warranted by the availability of substantial new information, I must be satisfied that the information is about the impacts the proposed action has or will have, or is likely to have, on one or more of the relevant protected matters.
123. For the reasons explained below, I was not satisfied that the information is about the impacts of the proposed action, in accordance with the meaning of 'impact' in s 527E of the EPBC Act.

Statutory test

124. Section 527E of the EPBC Act defines 'impact' for the purposes of the Act. An event or circumstance is an impact of a proposed action if:
- a. the event or circumstance is a direct consequence of the action (s 527E(1)(a)), or
  - b. for an event or circumstance that is an indirect consequence of the action – subject to sub-s 527E(2), the action is a substantial cause of that event or circumstance (s 527E(1)(b)).
125. Section 527E(2) provides for the purposes of paragraph (1)(b) that if:
- (a) a person (the primary person) takes an action (the primary action); and
  - (b) as a consequence of the primary action, another person (the secondary person) takes another action (the secondary action); and
  - (c) the secondary action is not taken at the direction or request of the primary person; and
  - (d) an event or circumstance is a consequence of the secondary action;

then that event or circumstance is an impact of the primary action only if:

(e) the primary action facilitates, to a major extent, the secondary action; and

(f) the secondary action is:

(i) within the contemplation of the primary person; or

(ii) a reasonably foreseeable consequence of the primary action; and

(g) the event or circumstance is:

(i) within the contemplation of the primary person; or

(ii) a reasonably foreseeable consequence of the secondary action.

126. I considered that the reconsideration request contains information which demonstrates in a general sense that climate change from anthropogenic sources of GHG emissions has and/or will have physical effects on protected matters. In particular, I accepted that the combustion of coal and/or gas on a global scale results in GHG emissions, which increases the effects of climate change, including the regularity, scope and intensity of climate hazards. I accepted that these effects of climate change will adversely affect the MNES identified by EJA in their request.
127. To the extent the information may be relevant to the physical effects of climate change caused by the proposed action, the reconsideration request contains information about emissions resulting from the combustion by third parties of the coal to be extracted in the proposed action. I accepted the department's advice that, having regard to the information provided by EJA and through the section 78B consultation process, the physical effects of climate change on the world heritage values of declared World Heritage properties (which the reconsideration request is about) are, if anything, *indirect consequences* of the proposed action: they are events or circumstances that are removed in time and distance from the taking of the proposed action, which is the extraction of coal.
128. Therefore, I determined that for the information in the reconsideration request to be about the impacts of the proposed action under section 527E of the EPBC Act, it must show that the proposed action is a substantial cause of the physical effects of climate change on the world heritage values of a declared World Heritage property.

#### Applying the statutory test

129. I determined that the proposed action is not a substantial cause of the stated physical effects of climate change on the world heritage values of declared World Heritage properties. Therefore, the information is not about impacts the proposed action has or will have, or is likely to have, on the world heritage values of declared World Heritage properties. As explained below, this is because:
- a. The information does not demonstrate that the proposed action will cause any net increase in global GHG emissions and global average temperature (and so, any of the stated physical effects of climate change on the world heritage values of declared World Heritage properties). I considered that whether this will happen is subject to multiple variables; and

- b. Even if that were demonstrated, any contribution from the proposed action to global GHG emissions would be very small. It is therefore not possible to say that the proposed action will be a substantial cause of the stated physical effects of climate change on the world heritage values of declared World Heritage properties.

Will the proposed action cause a net increase in GHG emissions and global average temperature?

130. I accepted the department's advice that the likely contribution of the proposed action's emissions towards a net increase in global GHG emissions and global average temperature is subject to a number of variables.
131. One variable is whether any emissions generated by the combustion of the coal from the proposed action will be offset, mitigated or abated. I noted that the Tarong power stations, the sole customers of the product coal, are already subject to the Safeguard Mechanism (discussed at paragraphs 79 and 103 to 105 above).
132. As set out at paragraph 811 above, Australia has an NDC under the Paris Agreement to reduce national emissions and adapt to the impacts of climate change. Under the Paris Agreement (referred to at paragraphs 90-96 above), each Party must submit an NDC every five years. These NDCs are required to reflect increased ambition over time. Parties may also submit new or updated NDCs at any time. When the coal produced by the proposed action is combusted by the Tarong power stations, the emissions that are generated would be counted as Scope 1 emissions of Australia, and may in future be subject to further obligations requiring mitigation actions or offsetting (pursuant to a new or updated NDC, for example).
133. Further, as set out at paragraph 96 above, a Global Stocktake has been agreed to by Parties under the Paris Agreement, which includes a call to transition away from fossil fuels in energy systems to achieve net zero by 2050. As set out at paragraphs 833 to 899, there are international and regional initiatives including the Powering Past Coal Alliance, Global Pledge on Renewables and Energy Efficiency and ASEAN Plan of Action on Energy Cooperation, which are directed at encouraging a transition from coal powered energy to renewable energy.
134. The level of global GHG emissions from the proposed action may also be subject to any changes or additions to the Tarong power stations' existing emissions reduction strategies (as described at paragraph 79), and any changes to the efficiency of the stations. More broadly, I accepted the department's advice that, if the proposed action does not proceed, this will not necessarily affect the level of GHG emissions globally or the extent to which the world heritage values of declared World Heritage properties will be impacted by the physical effects of climate change stated in the reconsideration request. That will be subject to a range of other factors, including the level of emissions from sources other than the proposed action.
135. I considered that these factors make it very difficult to estimate the likely net increase (if any) in global GHG emissions from the proposed action's emissions and, by extension, the extent of any net increase in global average temperature and the extent to which the world heritage values of declared World Heritage properties will be impacted by the stated physical effects of climate change.

136. I was not satisfied that the proposed action is likely to result in a net increase to GHG emissions or affect the extent to which the world heritage values of declared World Heritage properties will be impacted by the stated physical effects of climate change.
137. I took into account EJA's submissions that it is not possible for me to be satisfied that the same or a worse impact will necessarily occur in scenarios without the proposed project. EJA stated that:

"It is not open to you to rationally be satisfied that the same or worse impact will necessarily occur in scenarios without the Proposed Project. That is because, the best feasible future scenarios (in terms of total future emissions before the achievement of net zero greenhouse gas emissions, and consequent level of warming) cannot eventuate if the Proposed Project is to exist. ...

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

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

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

138. The reconsideration request also stated that, in all feasible scenarios in which the proposed action is carried out, there will very likely be physical effects of climate change on World Heritage properties, and, conversely, that feasible scenarios with lesser increases in those effects are available in a future without the proposed action.
139. I agreed with the department's advice that EJA's analysis at paragraphs 137 to 138 above does not address the relevant statutory question, which requires me to consider, in light of new information, whether the proposed action is a substantial cause of the event or circumstance, as outlined at paragraphs 124 to 128 above.

Even if the proposed action were to cause a net increase in GHG emissions and global average temperature, would it be a substantial cause of any physical effects of climate change on the world heritage values of declared World Heritage Properties?

140. In addition, and in any event, I considered whether, if the information in the reconsideration request demonstrated that the proposed action would result in a net increase in global GHG emissions and global average temperature, that increase would be a substantial cause of the physical effects of climate change on the world heritage values of declared World Heritage properties. I determined that there is no reasonable basis for concluding that the proposed action will be a *substantial cause* of those effects.
141. As outlined at paragraph 77 above, in response to a request by the department for information, the proponent provided information demonstrating that the average total annual GHG emissions (Scope 1, 2 and 3) from the proposed action represents approximately 3.246 Mt CO<sub>2</sub>-e or 0.0065% of global annual emissions (measured in CO<sub>2</sub>-e). The proponent used Climate Watch's Historical GHG Emissions 2019 data, the latest data available at the time, as the basis for its calculations, consistently with the department's request for information. The department noted that since then, 2021 data has been reported. Based on the latest available data, the department estimated that the proposed action's *total average annual emissions* (Scope 1, 2 and 3) *within Australia and outside Australia* combined represent 0.0066% of the 2021 global annual emissions
142. Further, the proponent estimated, in response to the same request for information, that the total GHG emissions associated with the proposed action would be approximately 48.689 Mt CO<sub>2</sub>-e. I noted that the department estimated that the likely increase in global temperature that could arise from the proposed action's estimated total GHG emissions, in a scenario where it could be shown that the proposed action would result in a net increase in global GHG emissions and global average temperature, is approximately 2.191 x10<sup>-5</sup> °C or 0.0000219°C. The department prepared this estimate assuming a one-for-one relationship between temperature and tonnes of GHG emissions, based on the information EJA provided about findings by the IPCC Working Group I that the relationship between anthropogenic CO<sub>2</sub> and global temperature has thus far been approximately linear, meaning that each 1,000 gigatons of cumulative CO<sub>2</sub> emissions contributes to an approximate 0.45°C increase in global temperature.
143. The IEA *Coal 2024* report also noted global coal consumption in 2023 was 8,687 million tonnes. The proposed action's maximum annual output is 11 Mtpa and this represents 0.14% of the global coal consumption that was reached for 2022. The department estimated that, based on the latest IEA Coal data, the proposed action's maximum annual output represents 0.13% of the global coal consumption. The IEA *Coal 2024* report notes that global coal demand in 2024 will surpass 8.77 billion tonnes for the first time. The figures above reflect recent data regarding coal consumption. I accepted the department's advice that future coal demand cannot be predicted with any certainty and is subject to a wide range of variables.
144. In considering the amounts outlined above, I noted that the IPCC has estimated that total warming from GHG emissions to date is approximately 1.09°C. In view of the amounts outlined at paragraphs 141 to 143 above, I found that the amount of coal to be combusted from the proposed action, and any possible increase in net global GHG emissions and global average temperature that would result from combusting this amount of coal, are very small. I concluded that the proposed action would not be a 'substantial' cause of the physical effects of climate change on World Heritage properties.

145. The reconsideration request asserts that ‘there is an approximately linear relationship between cumulative anthropogenic CO<sub>2</sub> emissions and global temperature, such that every tonne of CO<sub>2</sub> emissions adds to global warming’, and I accepted this. However, for the reasons discussed above, I did not accept that the contribution that this proposed action makes to emissions will be a ‘substantial cause’ of the physical effects of climate change on the world heritage values of declared World Heritage properties.

Policy Statement on ‘Indirect consequences’ of an action

146. I noted that the reconsideration request cites the following excerpt from the department’s *Policy Statement on ‘Indirect consequences’ of an action: Section 527E of the EPBC Act (Policy Statement)*. In the Policy Statement, this excerpt appears under the heading: ‘is the impact too remote from the action?’:

*...an impact that evidence strongly suggests might manifest itself many years later, or occurs at a substantial geographic distance from the location of the original action, may still be an indirect consequence that is substantial enough to be considered an impact.*

147. For the reasons set out above, I was not satisfied that there is any relevant impact.

Conclusion

148. For the reasons given at paragraphs 115 to 147 above, I found that the information in the reconsideration request and the information provided in the department’s consultation on the request do not demonstrate that the proposed action will cause a net increase in global GHG emissions and global average temperature (and, therefore, the relevant physical effects of climate change on the world heritage values of declared World Heritage properties). The difficulty in estimating the likely contribution (if any) of the proposed action to the relevant physical effects of climate change on the world heritage values of declared World Heritage properties is one reason that I found that the proposed action is not a substantial cause of those effects.
149. Further, I found that, even if it could be shown that the emissions from the project would result in an increase in net global GHG emissions and global average temperature, the contribution of the proposed action would be very small. I concluded that the ‘substantial cause’ requirement for an indirect impact under section 527E(2) of the EPBC Act is not satisfied.
150. As such, I determined that the new information is not about the impacts the proposed action has, will have or is likely to have on the world heritage values of declared World Heritage Properties.

**National Heritage values of National Heritage places (sections 15 and 15C)**

Referral information

151. The original referral decision does not include this controlling provision because the proposed action does not occur within or adjacent to any National Heritage places. The delegate considered it unlikely the proposed action would have a significant impact on National Heritage places given the nature and scale of the proposed action, its potential impacts, and its distance from National Heritage places.

152. Climate-related evidence was not considered by the delegate in relation to this protected matter. As noted above, no consideration was given to potential climate change flow-on effects of GHG emissions, or GHG emissions, as impacts on protected matters from the proposed action.

Substantial new information about the impacts of the proposed action

153. EJA identified over 230 documents that it considers demonstrate the likely significant effects of climate change on matters protected under this controlling provision. These publicly available documents include information in the Australian Heritage database and management plans for National Heritage places.
154. I considered that this information is substantial new information as:
- a. much of the information contained in the reconsideration request was not before the delegate and so is considered new information; and
  - b. the information is of substance and is not trivial or inconsequential, and demonstrates that climate change has various effects on this protected matter.
155. The information in the reconsideration request related to 19 National Heritage places:
- a. Australian Alps National Parks and Reserves
  - b. Dampier Archipelago
  - c. Elizabeth Springs
  - d. Glass House Mountains National Landscape
  - e. Grampians Greater Gariwerd National Park
  - f. Ku-ring-gai Chase National Park
  - g. Kurnell Peninsula Headland
  - h. Lesueur National Park
  - i. Porongurup National Park
  - j. Recherche Bay (NE Peninsula) Area
  - k. Stirling Range National Park
  - l. Warrumbungle National Park
  - m. Witjira-Dalhousie Springs National Park
  - n. K'gari (Fraser Island)
  - o. Great Barrier Reef
  - p. Greater Blue Mountains
  - q. Macquarie Island
  - r. Uluru-Kata Tjuta National Park

s. Wet Tropics of Queensland.

156. The last six places listed above are also declared World Heritage properties. In respect of those six places, EJA relied on the information it provided for the World Heritage properties. The discussion below therefore relates to the information EJA provided in relation to the 13 National Heritage places that are not also World Heritage properties.
157. Broadly, the information presented by EJA about the effects of climate change on National Heritage places showed there are effects on biodiversity in these places due to changing population size and distribution of species, the modification of species composition, and alteration of the geographical extent of habitats and ecosystems. Climate change is likely to exacerbate many existing threats to the ecological integrity of National Heritage places such as:
- a. Decreasing and changing water flows
  - b. Fire weather
  - c. Invasive species
  - d. Habitat fragmentation and the loss of key habitat such as hollow bearing trees.

*Does the information relate to the impacts that the proposed action has or will have, or is likely to have, on the National Heritage values of a National Heritage place?*

158. I accepted the department's advice that the information in the reconsideration request identified that climate change is having or will have adverse effects on the flora, fauna and ecosystems of the identified National Heritage places. This will in turn have adverse effects on the National Heritage values of those places.
159. For the same reasons as those set out at paragraphs 124 to 128 above in relation to the world heritage values of declared World Heritage properties, having regard to the information provided by EJA and through the section 78B consultation process, I found that flow-on climate change effects would be indirect consequences of the proposed action on the National Heritage values of the identified National Heritage places for the purposes of the EPBC Act.
160. For the same reasons as those set out at paragraphs 129 to 147 above in relation to the world heritage values of declared World Heritage properties, I found that the proposed action is not a substantial cause of the stated physical effects of climate change on the National Heritage values of the identified National Heritage places.

### Conclusion

161. I found that the new information is not about the impacts the proposed action has, will have or is likely to have on the National Heritage values of National Heritage places.

### **Ecological character of declared Ramsar wetlands (sections 16 and 17B)**

#### Referral information

162. The original referral decision did not include this controlling provision because the proposed action does not occur within or adjacent to any Ramsar listed wetland of international importance. The delegate considered it unlikely that the proposed action would have a significant impact on the ecological character of a declared Ramsar wetland given the nature

and scale of the proposed action, its potential impacts, and its distance to Ramsar listed wetlands of international importance (it is 100-150km upstream of the Moreton Bay Ramsar site).

163. Climate-related evidence was not considered by the delegate in relation to this protected matter. As discussed above, no consideration was given to potential climate change flow-on effects of GHG emissions, or GHG emissions, as impacts on protected matters from the proposed action.

*Substantial new information about the impacts of the proposed action*

164. EJA has identified over 50 documents that it considers demonstrate the likely significant impacts of climate change on matters protected under this controlling provision. These publicly available documents include the ecological character descriptions for Ramsar sites.
165. I considered that this information is substantial new information as:
- a. much of the information contained in the reconsideration request was not before the delegate and so is considered new information; and
  - b. the information is of substance and is not trivial or inconsequential, and demonstrates that climate change has various effects on this protected matter.
166. The information in the reconsideration request identified 51 of Australia's 53 Ramsar wetlands as likely to be affected by climate change. The effects of climate change identified in the information relate predominately to changes associated with altered water balance, including:
- a. Rising sea levels that increase the incursion of salt water into estuary waters and freshwater wetland habitat, affecting the freshwater biota within the wetlands.
  - b. The increased intensity of tidal storm surges, increasing foreshore shoreline erosion and inundation processes.
  - c. Altered rainfall patterns, affecting water quality, ground water recharge and vegetation.
  - d. Longer drier periods, increasing evaporation which affect salinity and groundwater levels.
167. The information in the reconsideration request also shows that climate change exacerbates existing pressures on Ramsar wetlands from water resource developments, invasive species and drought.

*Does the information relate to the impacts that the proposed action has or will have, or is likely to have, on the ecological character of declared Ramsar wetlands?*

168. The ecological character of a Ramsar wetland is the combination of the ecosystem components, processes and benefits/services that characterise the wetland at a given point in time. I accepted the department's advice that the information in the reconsideration request identified that climate change is altering the water balance of Ramsar wetlands which, in turn, is having adverse effects on the ecological character of declared Ramsar wetlands.
169. For the same reasons as those set out at paragraphs 124 to 128 above in relation to the world heritage values of declared World Heritage properties, having regard to the information provided by EJA and through the section 78B consultation process, I found that flow-on

climate change effects are indirect consequences of the proposed action on the ecological character of declared Ramsar wetlands for the purposes of the EPBC Act.

170. For the same reasons as those set out at paragraphs 129 to 147 above in relation to the world heritage values of declared World Heritage properties, I found that the proposed action is not a substantial cause of the stated physical effects of climate change on the ecological character of declared Ramsar wetlands.

### Conclusion

171. I found that the new information is not about the impacts the proposed action has, will have or is likely to have on the ecological character of Ramsar wetlands.

### **Listed threatened species and ecological communities (sections 18 and 18A)**

#### Referral information

172. I noted that the original referral decision includes controlling provisions under sections 18 and 18A because the delegate considered it likely the proposed action would result in significant impacts to one listed threatened species, the Black-breasted Button-quail, due to the clearing of habitat critical to the survival of the species, among other things. The delegate also considered that there was a real chance or possibility that the proposed action may result in a significant impact on at least 8 other listed threatened species.
173. Climate-related evidence was not considered by the delegate in relation to these protected matters. As discussed above, no consideration was given to potential climate change flow-on effects of GHG emissions, or GHG emissions, as impacts on protected matters from the proposed action.

#### Substantial new information about the impacts of the proposed action

174. EJA has identified over 2,000 documents that it considers demonstrate the likely significant impacts of climate change on matters protected under these controlling provisions. These publicly available documents include conservation advices and listing advices for individual species and the IUCN Red List assessments. EJA divided its information for these provisions into three groups – listed fauna, listed flora and listed ecological communities. The department's analysis of this information was grouped in the same way, which I have adopted below.
175. I considered this information is substantial new information as:
- some of the information contained in the reconsideration request was not before the delegate and so is considered new information; and
  - the information is of substance and is not trivial or inconsequential, and demonstrates that climate change has various effects on this protected matter.

#### Listed threatened fauna

176. EJA considers that 366 listed faunal species are likely to be affected by climate change. The information in the reconsideration request identified that climate change is likely to increase the frequency and severity of droughts, floods, and bushfire due to increased temperature and altered rainfall patterns. These weather events will affect the availability and distribution of breeding and foraging habitats for listed faunal species. For example, reduced waterflows can result in the loss of streamside vegetation and floods and bushfires impact on the water

quality of aquatic environments. The effects of climate change are more pronounced for fauna with restricted area of occupancy and low-density populations at those sites.

177. The information in the reconsideration request also identified other sources of physical pressures on listed faunal species such as water extraction, feral predation, feral herbivores, introduced pests and developments (e.g. roads and agriculture).

Listed threatened flora

178. EJA considers that 1,048 listed floral species are likely to be affected by climate change. The information in the reconsideration request identified that climate change will cause Australia's climate to get hotter and drier, resulting in the potential for increased drought and climate-induced bushfires of increased intensity and frequency. This change in climate will affect the habitat suitability of listed floral species – particularly those which occur in small, fragmented populations with specific habitat requirements (e.g. moisture content) or in a highly restricted geographic range (e.g. alpine regions). In addition, the effects of extreme rainfall flood events associated with climate change may affect listed floral species, for example, by leading to the erosion of swampy floodplain habitat and causing physical damage to listed flora.
179. The information in the reconsideration request also identified other pressures on listed floral species, such as habitat fragmentation, encroachment from developments, introduced pests and diseases, and human recreational activities (e.g. bushwalking, camping and abseiling).

Listed ecological communities

180. EJA considers that 74 listed threatened ecological communities are likely to be affected by climate change. The information in the reconsideration request identified that climate change poses a serious long-term threat to terrestrial, coastal, and aquatic ecosystems that are listed threatened ecological communities. Wetlands, swamps, moist open forest, and rainforests will be under greater stress from a drier climate. Coastal ecological communities will be impacted by rising sea levels.
181. The information in the reconsideration request also noted that climate change not only directly threatens the species within ecological communities that cannot adapt, but it is also likely to exacerbate existing threats including:
- a. Loss of habitat
  - b. Altered hydrological regimes
  - c. Altered fire regimes
  - d. The spread of invasive species and disease
  - e. Tree decline due to prolonged drought and heat stress
  - f. Human activities.

Does the information relate to the impacts that the proposed action has or will have, or is likely to have, on listed threatened species and ecological communities?

182. I accepted the department's advice that the information in the reconsideration request identified that climate change is having, or will have, adverse effects on the habitats of listed threatened species and the composition of listed threatened ecological communities.

183. For the same reasons as those set out at paragraphs 124 to 128 above in relation to the world heritage values of declared World Heritage properties, having regard to the information provided by EJA and through the section 78B consultation process, I found that flow-on climate change effects are indirect consequences of the proposed action on listed threatened species and ecological communities for the purposes of the EPBC Act.
184. For the same reasons as those set out at paragraphs 129 to 147 above in relation to the world heritage values of declared World Heritage properties, I found that the proposed action is not a substantial cause of the stated physical effects of climate change on listed threatened species and ecological communities.

### Conclusion

185. I found that the new information is not about the impacts the proposed action has, will have or is likely to have on listed threatened species and ecological communities.
186. I noted the department's advice that, because the original referral decision specified sections 18 and 18A as controlling provisions, impacts on listed threatened species and ecological communities will be assessed for the purposes of the decision whether or not to approve the proposed action. The further information provided by EJA would not warrant the revocation and substitution of the original decision in relation to the identified controlling provisions, including the controlling provisions under sections 18 and 18A.

### **Listed migratory species (sections 20 and 20A)**

#### Referral information

187. The original referral decision does not include this controlling provision because the proposed action area does not represent an important habitat and/or does not contain an ecologically significant proportion of any migratory species. The delegate considered it unlikely the proposed action would substantially modify, destroy or isolate an area of important habitat for any of these species or seriously disrupt the lifecycle of an ecological significant proportion of the population of a migratory species.
188. Climate-related evidence was not considered by the delegate in relation to this protected matter. As discussed above, no consideration was given to potential climate change flow-on effects of GHG emissions, or GHG emissions, as impacts on protected matters from the proposed action.

#### Substantial new information about the impacts of the proposed action

189. EJA has identified over 150 documents and information that it considers demonstrate the likely significant impacts of climate change on matters protected under this controlling provision. This publicly available material includes information about individual species from the department's SPRAT and conservation and listing advices.
190. I considered this information is substantial new information as:
- a. some of the information contained in the reconsideration request was not before the delegate and so is considered new information; and
  - b. the information is of substance and is not trivial or inconsequential, and demonstrates that climate change has various effects on this protected matter.

191. EJA considers 133 listed migratory species are likely to be impacted by climate change. The information in the reconsideration request identifies relationships between climate change and listed migratory species, for example:
- a. Migratory waders – global warming and associated changes in sea level are likely to have long-term effects on breeding, staging, and non-breeding grounds.
  - b. Cold water marine mammals – increasing ocean temperatures predicted by climate change scenarios could potentially decrease the extent of their occurrence with warmer water extending southwards.
  - c. Marine turtles – changing temperatures and weather patterns associated with climate change are likely to have both direct physiological effects on marine turtles as well as indirect effects through impacts on critical habitats.

*Does the information relate to the impacts that the proposed action has or will have, or is likely to have, on listed migratory species?*

192. I accepted the department's advice that the information in the reconsideration request identified that climate change is having, or will have, adverse effects on migratory species.
193. For the same reasons as those set out at paragraphs 124 to 128 above in relation to the world heritage values of declared World Heritage properties, having regard to the information provided by EJA and through the section 78B consultation process, I found that flow-on climate change effects are indirect consequences of the proposed action on listed migratory species for the purposes of the EPBC Act.
194. For the same reasons as those set out at paragraphs 129 to 147 above in relation to the world heritage values of declared World Heritage properties, I found that the proposed action is not a substantial cause of the stated physical effects of climate change on listed migratory species.

*Conclusion*

195. I found that the new information is not about the impacts the proposed action has, will have or is likely to have on listed migratory species.

**Environment in a Commonwealth marine area (sections 23 and 24A)**

*Referral information*

196. The original referral decision does not include this controlling provision because the proposed action does not occur in a Commonwealth marine area (CMA). Based on the information provided in the referral and given the nature and scale of the proposed action, its potential impacts, and its distance from a CMA, the delegate concluded that the proposed action was unlikely to have a significant impact on the environment in a CMA.
197. Climate-related evidence was not considered by the delegate in relation to this protected matter. As discussed above, no consideration was given to potential climate change flow-on effects of GHG emissions, or GHG emissions, as impacts on protected matters from the proposed action.

Substantial new information about the impacts of the proposed action

198. EJA has identified over 540 documents that it considers demonstrate the likely significant impacts of climate change on the matter protected under this controlling provision. These publicly available materials include bioregional plans, species group and marine environment report cards and region profiles.
199. I considered that this information is substantial new information as:
- a. much of the information contained in the reconsideration request was not before the delegate and so is considered new information; and
  - b. the information is of substance and is not trivial or inconsequential, and demonstrates that climate change has various effects on this protected matter.
200. EJA considers that the environment in five of the six CMAs and over 390 listed marine species are likely to be impacted by climate change.
201. The information in the reconsideration request identifies the relationships between climate change related events and the environment in CMAs, for example:
- a. Increased frequency of storms – may cause habitat modification by altering coastal landscapes, particularly sandy beaches and low-lying islands, resulting in changes to the structure, function, and capacity of coastal ecosystems to deliver ecosystem function.
  - b. Sea level rise – may have consequences when combined with increasing cyclone frequency, particularly for habitats associated with inshore dolphins and some breeding seabirds.
  - c. Ocean acidification – may have physiological effects on many species and may also cause changes to the composition of ecological community structures dependent on hard substrate environments, which may in turn impact on food sources for higher trophic level species.
202. The information in the reconsideration request identifies that one third of reef building corals face an elevated extinction risk from climate change, and that climate change may thus threaten all sea snakes, which are coral reef specialists. The information in the reconsideration request also indicates that climate change, and associated changes in sea level, are likely to have a long-term impact on the breeding, staging, and non-breeding grounds of migratory shorebirds. In general, species that inhabit low-lying areas (e.g. beaches and atolls) will be subject to inundation and loss of habitat, and species that are geographically bounded will be impacted by rising temperatures.

Does the information relate to the impacts that the proposed action has or will have, or is likely to have, on the environment in a Commonwealth marine area?

203. I accepted the department's advice that the information in the reconsideration request identified that climate change is, or will have, adverse effects on the environment in a CMA, in particular ecosystems and their constituent parts which in turn impact on the qualities and characteristics of locations and places within a CMA.
204. For the same reasons as those set out at paragraphs 124 to 128 above in relation to the world heritage values of declared World Heritage properties, having regard to the information provided by EJA and through the section 78B consultation process, I found that flow-on

climate change effects are indirect consequences of the proposed action on the environment in a CMA for the purposes of the EPBC Act.

205. For the same reasons as those set out at paragraphs 129 to 147 above in relation to the world heritage values of declared World Heritage properties, I found that the proposed action is not a substantial cause of the stated physical effects of climate change on the environment in a CMA.

### Conclusion

206. I found that the new information is not about the impacts the proposed action has, will have or is likely to have on the environment in a CMA.

### **Environment in the Great Barrier Reef Marine Park (sections 24B and 24C)**

#### Referral information

207. The original referral decision does not include this controlling provision because the proposed action is not being undertaken in the Great Barrier Reef Marine Park (the Park). Based on the information contained in the referral documentation, the nature and scale of the proposed action and its potential impacts, and the distance to the Park (it is located approximately 300 km south-west of the southern extent of the Park), the delegate considered that the proposed action was unlikely to have a significant impact on the environment in the Park.
208. Climate-related evidence was not considered by the delegate in relation to this protected matter. As discussed above, no consideration was given to potential climate change flow-on effects of GHG emissions, or GHG emissions, as impacts on protected matters from the proposed action.

#### Substantial new information about the impacts of the proposed action

209. EJA has identified over 13 documents and information that it considers demonstrate the likely significant impacts of climate change on matters protected under this controlling provision. These publicly available materials include bioregional plans, species group and marine environment report cards and region profiles. The information provided for this controlling provision was the same information as provided for the Park under the World Heritage controlling provision.
210. I considered that this information is substantial new information as:
- a. much of the information contained in the reconsideration request was not before the delegate and so is considered new information; and
  - b. the information is of substance and is not trivial or inconsequential, and demonstrates that climate change has various effects on this protected matter.
211. The information in the reconsideration request identified that climate change is the most serious threat to the environment in the Park and compounds the impacts of other existing threats such as land-based run off, coastal development, and direct use (particularly fishing).
212. For example, climate change reduces the Park's resilience, with thermal extremes causing mass mortality of adult coral and a decline in coral recruitment, as well as mass mortality of fish and invertebrates, in shallow northern reef lagoons in 2016. Small changes in sea levels also increase erosion, which has effects on turtle and seabird nesting beaches and causes

land inundation, affecting tidal habitats (e.g. brackish saltmarsh habitats are being displaced by mangroves).

Does the information relate to the impacts that the proposed action has or will have, or is likely to have, on the environment in the Great Barrier Reef Marine Park?

213. I accepted the department's advice that the information in the reconsideration request identified that climate change is having, or will have, adverse effects on the environment in the Park, in particular its ecosystems and constituent parts, which can in turn impact on the qualities and characteristics of locations and places with the Park and its heritage values.
214. For the same reasons as those set out at paragraphs 124 to 128 above in relation to the world heritage values of declared World Heritage properties, having regard to the information provided by EJA and through the section 78B consultation process, I found that flow-on climate change effects are indirect consequences of the proposed action on the environment of the Park for the purposes of the EPBC Act.
215. For the same reasons as those set out at paragraphs 129 to 147 above in relation to the world heritage values of declared World Heritage properties, I found that the proposed action is not a substantial cause of the stated physical effects of climate change on the environment in the Park.

Conclusion

216. I found that the new information is not about the impacts the proposed action has, will have or is likely to have on the environment in the Park.

**Precautionary principle**


217. As a request has been made pursuant to section 78A of the EPBC Act, I accepted the department's advice that I was required to reconsider the decision under section 75 (about whether an action is a controlled action and which provisions of Part 3 (if any) are controlling provisions for the action). As noted above, in making a decision under section 75, I am required to take account of the precautionary principle (section 391) to the extent that I can do so consistently with the other provisions of the EPBC Act. The precautionary principle is that a lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage. I noted that the precautionary principle was taken into account in the original referral decision.
218. In making my decision to confirm the referral decision, I took into account the precautionary principle. I considered that, while the information in the reconsideration request demonstrates that there is a risk of serious or irreversible harm arising from climate change, for the reasons I have explained above, the GHG emissions from the proposed action do not cause 'impacts' on protected matters. I was therefore not satisfied that the revocation and substitution of the original referral decision was warranted by substantial new information about the impacts of the proposed action.

**Conclusion**

219. In light of the findings described at 112-222 above, I was not satisfied that the revocation and substitution of the original referral decision was warranted by the availability of substantial new information about the impacts that the proposed action has or will have, or is likely to have, on protected matters.

- 220. As discussed above at 114, I also considered whether any of the grounds at sections 78(1)(aa) to (d) may be the basis for a decision to reconsider the original referral decision, but found that they would not be.
- 221. Therefore, I decided to confirm the original decision that the proposed action is a controlled action and that the controlling provisions are sections 18 and 18A (listed threatened species and communities).

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<b>name and position</b>	<b>Declan O'Connor-Cox, Branch Head, Environment Assessments Queensland</b>
<b>signature</b>	
<b>date of decision</b>	17/9/25

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## Annexure A - Relevant extracts from the Environment Protection and Biodiversity Conservation Act 1999

### 78 Reconsideration of decision

#### *Limited power to vary or substitute decisions*

- (1) The Minister may revoke a decision (the **first decision**) made under subsection 75(1) about an action and substitute a new decision under that subsection for the first decision, but only if:
- (a) the Minister is satisfied that the revocation and substitution is warranted by the availability of substantial new information about the impacts that the action:
    - (i) has or will have; or
    - (ii) is likely to have;
 on a matter protected by a provision of Part 3; or
  - (aa) the Minister is satisfied that the revocation and substitution is warranted by a substantial change in circumstances that was not foreseen at the time of the first decision and relates to the impacts that the action:
    - (i) has or will have; or
    - (ii) is likely to have;
 on a matter protected by a provision of Part 3; or
  - (b) the following requirements are met:
    - (i) the first decision was that the action was not a controlled action because the Minister believed the action would be taken in the manner identified under subsection 77A(1) in the notice given under section 77;
    - (ii) the Minister is satisfied that the action is not being, or will not be, taken in the manner identified; or
  - (ba) the following requirements are met:
    - (i) the first decision was that the action was not a controlled action because of a provision of a bilateral agreement and a management arrangement or an authorisation process that is a bilaterally accredited management arrangement or a bilaterally accredited authorisation process for the purposes of the agreement;
    - (ii) the provision of the agreement no longer operates in relation to the action, or the management arrangement or authorisation process is no longer in force under, or set out in, a law of a State or a self-governing Territory identified in or under the agreement; or
  - (c) the following requirements are met:
    - (i) the first decision was that the action was not a controlled action because of a declaration under section 33 and a management arrangement or an authorisation process that is an accredited management arrangement or an accredited authorisation process for the purposes of the declaration;
    - (ii) the declaration no longer operates in relation to the action, or the management arrangement or authorisation process is no longer in operation under, or set out in, a law of the Commonwealth identified in or under the declaration; or
  - (ca) the following requirements are met:
    - (i) the first decision was that the action was not a controlled action because of a declaration under section 37A and a bioregional plan to which the declaration relates;
    - (ii) the declaration no longer operates in relation to the action, or the bioregional plan is no longer in force; or
  - (d) the Minister is requested under section 79 to reconsider the decision.

- Note 1: Subsection 75(1) provides for decisions about whether an action is a controlled action and what the controlling provisions for the action are.
- Note 2: A person (other than a Minister of a State or self-governing Territory) may request the Minister to reconsider a decision made under subsection 75(1) about an action on the basis of a matter referred to in any of paragraphs 78(1)(a) to (ca). See section 78A.
- Note 3: If the Minister decides to revoke a decision under subsection (1) and substitute a new decision for it, the Minister is not required to carry out the processes referred to in sections 73 and 74 again before making the new decision.

*Reversing decision that provision of Part 3 is not controlling provision*

- (2) A provision of Part 3 letting an action be taken if the Minister has decided that a particular provision (the **prohibiting provision**) of that Part is not a controlling provision for the action does not prevent the Minister from acting under subsection (1) to revoke a decision that the prohibiting provision is not a controlling provision for an action and substitute a decision that the prohibiting provision is a controlling provision for the action.

*Decision not to be revoked after approval granted or refused or action taken*

- (3) The Minister must not revoke the first decision after:
- (a) the Minister has granted or refused an approval of the taking of the action; or
  - (b) the action is taken.

*General effect of change of decision*

- (4) When the first decision is revoked and a new decision is substituted for it:
- (a) any provisions of this Chapter that applied in relation to the action because of the first decision cease to apply in relation to the action; and
  - (b) any provisions of this Chapter that are relevant because of the new decision apply in relation to the action.

*Change of designation of proponent*

- (5) If the Minister believes a person (the **first proponent**) designated under section 75 as proponent of an action is no longer an appropriate person to be the designated proponent of the action, the Minister may revoke the designation and designate another person (the **later proponent**) as proponent of the action.

*Consent to designation*

- (6) The Minister may designate the other person as proponent of the action only if:
- (a) he or she consents to it and the person proposing to take the action agrees to it; or
  - (b) the other person is the person proposing to take the action.

*Effect of change of designated proponent*

- (7) If the Minister revokes the designation of the first proponent and designates the later proponent:
- (a) the provisions of this Chapter that applied to the first proponent cease to apply to the first proponent in relation to the action but apply to the later proponent; and
  - (b) for the purposes of those provisions the later proponent is taken to have done anything the first proponent did in relation to the action; and

- (c) for the purposes of those provisions anything done in relation to the first proponent in relation to the action is taken to have been done in relation to the later proponent.

#### **78A Request for reconsideration of decision by person other than State or Territory Minister**

- (1) A person (other than a Minister of a State or self-governing Territory) may request the Minister to reconsider a decision made under subsection 75(1) about an action on the basis of a matter referred to in any of paragraphs 78(1)(a) to (ca).

Note: Section 79 deals with requests for reconsideration by a Minister of a State or self-governing Territory.

- (2) A request under subsection (1) must:
  - (a) be in writing; and
  - (b) set out the basis on which the person thinks the decision should be reconsidered; and
  - (c) if the regulations specify other requirements for requests under subsection (1)—comply with those requirements.
- (3) If a request is made under subsection (1) in relation to a decision that an action is a controlled action, or that particular provisions are controlling provisions for an action, then:
  - (a) if the request is made by the designated proponent of the action—Part 8 ceases to apply in relation to the action until the Minister makes a decision in relation to the request; but
  - (b) if the request is made by another person—the application of Part 8 in relation to the action is not affected by the making of the request (subject to the outcome of the reconsideration).
- (4) If:
  - (a) because of paragraph (3)(a), Part 8 has ceased to apply in relation to an action; and
  - (b) the Minister confirms the decision that is the subject of the request under subsection (1);
 then:
  - (c) the application of Part 8 in relation to the action resumes (as does any assessment process under that Part that had previously commenced in relation to the action); and
  - (d) for the purposes of the resumed application of Part 8, a day is not to be counted as a business day if it is:
    - (i) on or after the day the Minister received the request; and
    - (ii) on or before the day the Minister confirms the decision.

#### **78B Minister must inform interested persons of request and invite comments**

- (1) The Minister (the ***Environment Minister***) must comply with this section if he or she receives a request under section 78A to reconsider a decision made under subsection 75(1) about an action.

##### *Informing designated proponent of request and inviting comments*

- (2) If the request is made by a person other than the designated proponent of the action, the Environment Minister must:

- (a) inform the designated proponent of the request in accordance with subsection (3); and
  - (b) invite the designated proponent to give the Environment Minister, within 10 business days, comments on the request.
- (3) For the purpose of paragraph (2)(a), the Environment Minister must inform the designated proponent of the request by giving the designated proponent such information relating to the request as the Minister considers appropriate. The Minister need not (for example) reveal the identity of the person who made the request.

*Inviting other Commonwealth Ministers to provide information*

- (4) The Environment Minister must:
- (a) inform any other Minister who the Environment Minister believes has administrative responsibilities relating to the action of the request; and
  - (b) invite each Minister informed to give the Environment Minister, within 10 business days, information about whether a matter referred to in any of paragraphs 78(1)(a) to (ca) is applicable in relation to the action.

*Inviting comments from appropriate State or Territory Minister*

- (5) If the request relates to an action proposed to be taken in a State or self-governing Territory and the Environment Minister thinks the action may have an impact on a matter protected by a provision of Division 1 of Part 3 (about matters of national environmental significance), the Environment Minister must:
- (a) inform the appropriate Minister of the State or Territory of the request; and
  - (b) invite that Minister to give the Environment Minister, within 10 business days:
    - (i) comments on whether a matter referred to in any of paragraphs 78(1)(a) to (ca) is applicable in relation to the action; and
    - (ii) any other information that the Minister of the State or Territory considers relevant to the reconsideration.

Note: Subsection (5) also applies in relation to a request that relates to an action that is to be taken in an area offshore from a State or the Northern Territory. See section 157.

*Inviting public comment*

- (6) The Environment Minister must publish on the internet:
- (a) the request; and
  - (b) an invitation for anyone to give the Environment Minister, within 10 business days (measured in Canberra), comments in writing on whether a matter referred to in any of paragraphs 78(1)(a) to (ca) is applicable in relation to the action.

**78C Minister must reconsider decision and give notice of outcome**

*Reconsideration of decision*

- (1) As soon as practicable after the end of the time within which information or comments may be given under section 78B in relation to a request under section 78A to reconsider a decision about an action, the Minister must:
- (a) reconsider the decision; and
  - (b) either:
    - (i) confirm the decision; or

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

*Notice of outcome of reconsideration*

- (2) The Minister must give written notice of the outcome of the reconsideration to:
  - (a) the person who requested the reconsideration; and
  - (b) the person proposing to take the action (if that person is not the person referred to in paragraph (a)); and
  - (c) the designated proponent of the action (if the designated proponent is not the person referred to in paragraph (a) or (b)); and
  - (d) if the reconsideration relates to an action referred to in subsection 78B(5)—the appropriate Minister of the State or Territory.
- (3) After giving notice as described in subsection (2), the Minister must publish notice of the outcome of the reconsideration. The regulations may specify how the publication is to be made. Subject to any such regulations, the publication must be made in a way the Minister considers appropriate.

*Reasons for outcome of reconsideration*

- (4) The Minister must give reasons for the outcome of the reconsideration to a person who:
  - (a) has been given notice of the outcome of the reconsideration under paragraph (2)(a), (b) or (c); and
  - (b) within 28 days after being given the notice, has requested the Minister to provide reasons.

The Minister must do so as soon as practicable, and in any case within 28 days after receiving the request.