

Appeal against the content of, and recommendations in, an EPA report on a proposal:

EPA Report 1727 on the North West Shelf Project Extension Proposal

FURTHER SUBMISSIONS

Appellants:

Hugh Finn, Curtin University

Bill Hare, Adjunct Professor, Murdoch University and Director, Climate Analytics

Peter Newman, Curtin University

Date:

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SUMMARY OF SUBMISSIONS

1. Section 40AA(2) of the *Environmental Protection Act 1986* (WA) ('EP Act') requires the EPA to assess a significant amendment in the context of the approved proposal and have regard to the combined effect that the implementation of the approved proposal and the significant amendment might have on the environment.
2. This 'combined effect' that the implementation of the approved proposal and the significant amendment might have on the environment is therefore a mandatory consideration that informs the EPA's assessment of the significant amendment of an approved proposal.
3. The correct construction of 'effect' in 'combined effect' in section 40AA(2) is the causing of some change in the State's environment – that is, a change in living things, their physical, biological and social surroundings, and interactions between all of these. This includes changes to the climate system of the State and changes caused by the direct effects of anthropogenic carbon dioxide on the State's environment (eg ocean acidification). The State's climate system represents a composite of living things, their physical and biological surroundings, and interactions between all of these.
4. The effects of carbon dioxide emissions from implementation of the approved proposal and the significant amendment will extend long after the estimated closure date (c. 2070) for the North West Shelf project. Understood correctly, the effects are multi-generational.
5. In rough terms, looking at the cumulative flow of carbon dioxide emissions from 1993-2020, about 43% of these emission will still be in the atmosphere in 2093 and about 24% in year 3000. Some 10 to 20% of these emissions will still be in the atmosphere in 10,000 years. In terms of the remaining burden of carbon dioxide in the atmosphere from the emissions from 1993 until 2020, roughly about 50% of the emissions emitted in this period 1993 to 2020 would still be in the atmosphere in 2050, and only a small fraction of the warming affect integrated over the entire

lifetime of dioxide in the atmosphere would have been felt. The peak warming effect of the emissions from 1993 to 2020 would not be felt until the mid-2030s, and would have only dropped by about 5% by 2100 and about 25% 1000 years later.

6. The phrase ‘implementation of the approved proposal and the significant amendment’ in section 40AA(2) refers to the implementation of the approved proposal with its content amended to include the implementation of the significant amendment. For the purposes of section 40AA(2), implementation of the approved proposal extends over the *complete* implementation period for the approved proposal, that is – the full period in which the approved proposal is carried into effect, including any implementation of the approved proposal prior to its modification to include a significant amendment.
7. The phrase ‘have regard to the combined effect that the implementation of the approved proposal and the significant amendment might have on the environment’ therefore requires the EPA to have regard to the effect of the implementation of an approved proposal on the environment across the *complete* implementation period for the approved proposal, including the effect of implementation prior to the implementation of the significant amendment.
8. Inter alia, this construction aligns with section 3(1B) of the EP Act, which provides that a reference in the Act to the effect of a proposal on the environment includes a reference to the cumulative effect of impacts of the proposal on the environment.
9. Construed correctly, section 40AA(2) does not allow the EPA discretion in determining the timeframe in which to consider the combined effect of the implementation of the approved proposal and the significant amendment. That this significant amendment proposal is an extension to the project life of an existing facility does not matter – section 40AA requires the EPA to consider ‘combined effect’ in the context of the *complete* implementation period for the approved proposal.
10. For the North West Shelf Project, implementation of the ‘approved proposal’ began in 1993, under authorisation from Ministerial Statement 320 – or alternatively in 2000, under authorisation from Ministerial Statement 536, for those aspects of the proposal expressly authorised under Ministerial Statement 536 (including subsequent approvals made under Ministerial Statement 536).
11. Section 40AA(2) requires the EPA to have regard to the effect of greenhouse gas emissions from the approved proposal across the *complete* implementation period for the approved proposal, which is from 1993 (or alternatively 2000) until 2070.
12. In its assessment, the EPA only considered greenhouse gas emissions for the period 2020-2070, and did not consider the effect on the environment of greenhouse gas emissions from implementation of the approved proposal prior to 2020.

PART I – CONSTRUCTION OF SECTION 40AA(2)

Section 40AA

13. Section 40AA of the *Environmental Protection Act 1986* (WA) (‘EP Act’) is a new provision (inserted into the EP Act in October 2021). Neither the Explanatory Memorandum for the Environmental Protection Amendment Bill 2020 nor the Second Reading speech for the Bill discuss

the meaning of the phrase ‘combined effect’ or the phrase ‘implementation of the approved proposal and the significant amendment’.

14. Relevantly, sections 40AA(1) and (2) provide:

40AA . Assessment of significant amendments

- (1) This section applies if the Authority assesses a significant amendment of an approved proposal.
- (2) The Authority must assess the significant amendment in the context of the approved proposal and have regard to the combined effect that the implementation of the approved proposal and the significant amendment might have on the environment.

15. Section 3 of the EP Act defines a ‘significant amendment’ in these terms:

significant amendment, of an approved proposal, means —

- (a) a proposal that —
 - (i) is or includes the amendment of an approved proposal; and
 - (ii) is likely, if implemented, to have a significant effect on the environment;

or

- (b) a proposed amendment to implementation conditions relating to an approved proposal if implementation of the proposal under the amended implementation conditions is likely to have a significant detrimental effect on the environment in addition to, or different from, the effect the proposal has in its implementation under the existing implementation conditions

The operation of section 40AA

16. Section 40AA(1) provides that section 40AA applies *if* the EPA assesses a significant amendment of an approved proposal.

17. Section 40AA(2) requires the EPA, as part of its assessment of the significant amendment, to have regard to the combined effect that the implementation of the approved proposal and the significant amendment might have on the environment.

18. Put simply, the combined effect that the implementation of the approved proposal and the significant amendment might have on the environment is a consideration that the EPA must have regard to in its assessment of the significant amendment. This mandatory ‘combined effect’ consideration informs that assessment, and is a subject matter distinct from an assessment of the effect on the environment of the implementation of the significant amendment *proposal*, if that significant amendment proposal is considered as a proposal in and of itself.

19. As we discuss further below:

- (a) Pursuant to the definition of ‘significant amendment’ in section 3, a significant amendment exists in relation to, and is distinct from, an ‘approved proposal’.
- (b) Pursuant to the definition of ‘significant amendment’ in section 3, and leaving aside the circumstance of a proposed amendment to implementation conditions, a significant amendment is a proposal that

is or includes the amendment of an approved proposal and is likely, if implemented, to have a significant effect on the environment.

- (c) An ‘approved proposal’ remains an ‘approved proposal’ even if a significant amendment is approved and subsequently implemented. Implementation of that approved proposal continues – but continues in modified form – if the content of the approved proposal is changed (ie amended) to include the implementation of the significant amendment.
- (d) The implementation of the approved proposal comprises the *complete* period in which the approved proposal is carried into effect, including any implementation period prior to modification to include a significant amendment.

Use of ‘must’

- 20. The use of ‘must’ in section 40AA(2) indicates that the EPA is required to (1) *assess* the significant amendment in the context of the approved proposal and (2) *have regard to* the combined effect that the implementation of the approved proposal and the significant amendment might have on the environment.

Meaning of ‘in the context of the approved proposal’

- 21. Although the meaning of the phrase ‘in the context of the approved proposal’ is straightforward, the phrase itself does work within section 40AA by indicating a specific framework within which the EPA is to assess the significant amendment.
- 22. The phrase requires the EPA to assess the significant amendment having regard to the circumstances of the approved proposal – relevantly, the EPA cannot assess the significant amendment in isolation, as an independent, stand-alone proposal.

Meaning of ‘combined effect...on the environment’

Meaning of ‘combined’

- 23. The natural and ordinary meaning of the verb ‘combine’ is in the sense of two or more things being put, joined or added together, taken as a whole, considered together or in the aggregate, or otherwise associated, united, or coalesced.

Meaning of ‘effect’

- 24. The natural and ordinary meaning of the noun ‘effect’ is in the sense of a change, result or consequence that is produced or caused by some agency, action or cause.

The meaning of ‘combined effect’ and the definition of ‘significant amendment’

- 25. The meaning of ‘combined effect’ must be broad enough to encompass the two forms of ‘significant amendment’ contemplated in the definition of ‘significant amendment’ in section 3, namely:
 - (a) a *proposal* that is, or includes, the amendment of an approved proposal and is likely, if implemented, to have a significant effect on the environment; and
 - (b) a proposed *amendment to implementation conditions* relating to an approved proposal if implementation of the proposal under the amended implementation conditions is likely to have a significant detrimental effect on the environment in addition to, or different from, the effect the proposal has in its implementation under the existing implementation conditions.

26. Thus the meaning of the phrase ‘combined effect’ must encompass circumstances in which (a) two discrete but related proposals are implemented (the ‘approved proposal’ and the ‘significant amendment’ proposal) or in which (b) the approved proposal is implemented under the amended implementation conditions.

Meaning of ‘might have’

27. The phrase ‘combined effect’ operates in relation to the phrase ‘might have on the environment’, in the sense of ‘combined effect that [the implementation] might have on the environment’.

28. The word ‘might’ is the past tense of ‘may’ and, in this context, indicates that there is a reasonable possibility that a particular ‘combined effect’ on the environment will occur: *Minister for the Environment, Re; Ex parte Elwood* [2007] WASCA 137 [113] (Buss JA).

EP Act context for ‘effect...on the environment’

29. The formulation ‘effect...on the environment’ appears in several contexts in the EP Act, including:

- (a) the definition of ‘significant proposal’ in section 37B – ‘a proposal likely, if implemented, to have a significant effect on the environment and includes a significant amendment of an approved proposal’;
- (b) the definition of ‘significant amendment’ in section 3 – ‘a proposal... likely, if implemented, to have a significant effect on the environment’ and ‘if implementation of the proposal under the amended implementation conditions is likely to have a significant detrimental effect on the environment’; and
- (c) section 3(1B), which provides that a ‘reference in this Act to the effect of a proposal on the environment includes a reference to the cumulative effect of impacts of the proposal on the environment’.

30. As with those other EP Act contexts, the word ‘effect’ in ‘combined effect’ in section 40AA(2) is capable of encompassing a range of distinct effects on the environment. In the context of a Part IV assessment, it may operate in relation to multiple ‘key environmental factors’.

31. Section 3(1) of the EP Act defines ‘environment’ as ‘living things, their physical, biological and social surroundings, and interactions between all of these’.¹

32. This definition of ‘environment’ encompasses the climate system of the State. Relevantly, Article 2 of the *United Nations Framework Convention on Climate Change* (UNFCCC) defines ‘Climate system’ as ‘the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions’. The State’s climate system represents a composite of living things, their physical and biological surroundings, and interactions between all of these.

33. As regards the definition of ‘significant proposal’, in *Environment Protection Authority; Ex parte Chapple* (1995) 89 LGERA 310, 321 Pidgeon J said:

¹ Section 3(2) expands on this definition in relation to ‘social surroundings’.

A proposal to come within the section must be a proposal that appears likely, if implemented, to have a significant effect on the environment. I consider that this must be interpreted to mean that it is likely to cause some change in the environment. (our emphasis)

34. Thus the statutory touchstone for the word ‘effect’ in the EP Act is the *causing of some change in the environment* – that is, the *causing of some change in living things, their physical, biological and social surroundings, and interactions between all of these*, and including the climate system of the State.

35. Relevantly, an ‘effect...on the environment’ includes:

- (a) changes to the climate system of the State (that system being a composite of living things, their physical and biological surroundings, and interactions between all of these); and
- (b) changes caused by the direct effects² of anthropogenic carbon dioxide on the State’s environment, which include ocean acidification and adverse effects on ecosystems and native vegetation.

36. The proper construction of ‘combined effect’ is therefore in the ‘combined’ *causing of some change in living things, their physical, biological and social surroundings, and interactions between all of these*, and including changes in the State’s climate system and changes caused by the direct effects of anthropogenic carbon dioxide on the State’s environment.

37. This construction aligns with the UNFCCC definition of ‘Adverse effects of climate change’. Article 3 of the UNFCCC defines ‘Adverse effects of climate change’ as:

changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare.

38. The statutory touchstone for the *effect of greenhouse gas emissions* under the EP Act is thus not the amount of emissions, but the contribution of those emissions to (a) changes in the climate system of the State; (b) effects on the State’s environment caused by anthropogenic changes in the State’s climate system; and (c) effects of anthropogenic carbon dioxide on the State’s environment.

Section 40AA(2) creates a causal relationship between implementation and combined effect

39. By providing that it is the ‘implementation of the approved proposal and the significant amendment’ that might have the ‘combined effect...on the environment’, section 40AA(2) establishes a causal relationship between *implementation* and the combined *effect*.

40. Thus, the ‘combined effect’ of the ‘implementation of the approved proposal and the significant amendment’ includes the contribution of that *implementation* to (a) changes in the climate system of the State; (b) effects on the State’s environment caused by anthropogenic changes in the State’s climate system; and (c) effects of anthropogenic carbon dioxide on the State’s environment.

41. As regards the application of the causal relationship in section 40AA(2) between combined effect and implementation in the assessment of this significant amendment, we note three points:

² For carbon dioxide emissions these effects are long-term and cumulative.

42. First, all anthropogenic greenhouse gas emissions contribute to climate change and, thus, all Scope 1 and Scope 3 emissions from the approved proposal and the significant amendment will impact on the environment: *Gloucester Resources Ltd v Minister for Planning* (2019) 234 LGERA 257, 370 [514].
43. Second, it is possible – and indeed, is now common practice in climate science, actuarial science, environmental impact assessment, litigation, loss and damage negotiations, and elsewhere – to make attributions between a stream of emissions from an individual company or project and a specific range of climate impacts. This is true for a range of impacts, including extreme temperature, extreme precipitation and even fire risk.³
44. Third, the ‘combined effect’ of carbon dioxide emissions has an important temporal dimension that no reasonable decision-maker can fail to have regard to. Any assessment of the effect of carbon dioxide emissions on the environment of the State must reflect the very long lifetime of carbon dioxide in the atmosphere, with resultant very long-term consequences of carbon dioxide emissions for the climate and ocean acidification. In short, emitted carbon dioxide goes on warming the atmosphere for millennia.
45. Although it is straightforward to calculate the relative fractions of carbon dioxide emissions from the North West Shelf Project that would remain after each decade or century, neither the proponent nor the EPA have done this.
46. In rough terms, looking at the cumulative flow of carbon dioxide emissions from 1993-2020, about 43% of these emission will still be in the atmosphere in 2093, and about 24% in year 3000. Some 10 to 20% of these emissions will still be in the atmosphere in 10,000 years. In terms of the remaining burden of carbon dioxide in the atmosphere from the emissions from 1993 (the time at which the North West Shelf Project became an ‘approved proposal’ – see Part II) until 2020, roughly about 50% of the emissions emitted in this period 1993 to 2020 would still be in the atmosphere in 2050 and only a small fraction of the warming affect integrated over the entire lifetime of dioxide in the atmosphere would have been felt. The peak warming effect of the emissions from 1993 to 2020 would not be felt until the mid-2030s, and would have only dropped by about 5% by 2100 and about 25% 1000 years later.
47. Thus the effects of carbon dioxide emissions from implementation of the approved proposal and the significant amendment will extend long after the estimated closure date (c. 2070) for the North West Shelf Project and, thus, long after the proposal itself is ‘fully implemented’. Understood correctly, the effects are multi-generational.
48. In this context, we emphasise that section 15 of the EP Act provides that it is the objective of the EPA to use its best endeavours to protect the State’s environment and to prevent, control and abate pollution and environmental harm. To do so, the EPA must assess the significant amendment in terms of its impact on the State’s climate system, having regard to the over-arching aim – stated in Article 2 of the UNFCCC – of preventing dangerous interference with that climate system.

³ See, by way of example, a recent study quantifying the contribution of major carbon producers to increases in vapour pressure deficit and burned area in western US and southwestern Canadian forests:
<https://iopscience.iop.org/article/10.1088/1748-9326/acbce8>

Interference to the State’s climate system encompasses not only climate change but other related factors such as ocean acidification and deoxygenation.

Effect ‘on the environment’ not the amount of greenhouse gas emissions

49. In accord with section 44(2)(a) of the EP Act, the EPA has organised its environmental impact assessment procedure around 14 environmental factors. The EPA’s *Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures* define an ‘environmental factor’ as ‘(f)eatures or characteristics of the environment that may be impacted or affected by, or are otherwise relevant to the assessment of, a proposal that the EPA uses as an organising principle for environmental impact assessment’.
50. In EPA Report 1727, the EPA identified ‘greenhouse gas emissions’ as one of key environmental factors it considered in its assessment of the significant amendment.
51. Anthropogenic greenhouse gas emissions themselves are not part of the State’s ‘environment’. A discharge to the atmosphere of greenhouse gases arising from the extraction, processing, transport or combustion of natural gas is not part of the ‘physical, biological and social surroundings’ of a living thing. For greenhouse gas emissions, the operation of EP Act references to ‘effect...on the environment’, including to ‘combined effect’ in section 40AA(2), is to the *effect* of those emissions on the environment.
52. We emphasise this point because, as we discuss in Part II, in assessing the significant amendment, the EPA only considered greenhouse gas emissions for the implementation period in which the significant amendment is being implemented (ie 2020-2070), and did not consider greenhouse gas emissions arising from implementation of the approved proposal prior to 2020. Logically, if the EPA did not consider the pre-2020 greenhouse gas emissions, then the EPA cannot be said to have considered the effect of those emissions on the State’s environment and, accordingly, the EPA failed to have regard to the ‘combined effect’ of the implementation of the approved proposal and the significant amendment, as section 40AA(2) required it to do.
53. For comprehensiveness, and for the same reasons, we also submit that the EPA’s assessment of the significant amendment failed to assess ‘combined effect’ of the implementation of the approved proposal and the significant amendment by reference to the ‘risk of environmental harm associated with climate change’, as contemplated in the EPA’s objective for the Greenhouse Gas Emissions factor in both the April 2020 and April 2023 versions of *Environmental Factor Guideline – Greenhouse Gas Emissions*.
54. The April 2020 version of the guideline, which the EPA had regard to its assessment, provides that the environmental objective of the Greenhouse Gas Emissions factor is:
 - To reduce net greenhouse gas emissions in order to minimise the risk of environmental harm associated with climate change.

The April 2020 version also relevantly provides:

The section 15 objective, combined with the established link between GHG emissions and the risk of climate change, and the broad acknowledgement that the warming climate will impact the Western

Australian environment, means that the EPA can consider the effects of proposals which would increase the State's emissions, and contribute to environmental harm.

The objective in the April 2023 version is relevantly similar:

To minimise the risk of environmental harm associated with climate change by reducing greenhouse gas emissions as far as practicable.

55. In the April 2023 version of the guideline, the EPA indicates a view as to how the 'combined effect' provision in section 40AA as it applies to greenhouse gas emissions:

The EPA will have regard to this guideline when considering proposals under Part IV of the EP Act. This includes new proposals, changes to existing proposals (including expansions) and changes to existing implementation conditions.

Generally, GHG emissions from a proposal will be considered where they are reasonably likely to exceed:

- 100,000 tonnes CO₂-e of scope 1 emissions in any year; or
- 100,000 tonnes CO₂-e of scope 2 emissions in any year.

Proposals should not be split into separate referrals to avoid consideration of GHG emissions. Generally, the EPA will assess changes to existing proposals and implementation conditions in the context of the ongoing (but not past) GHG emissions from the existing proposal. The EPA will have regard to whether the combined effect of the existing proposal and the expansion or change are reasonably likely to exceed the above amounts. (our emphasis)

56. The *amount* of greenhouse gas emissions arising from implementation of approved proposed and the significant amendment is not the 'combined effect' that section 40AA(2) requires the EPA to have regard to. The amount of greenhouse gas emissions arising from implementation of approved proposed and the significant amendment is a relevant aspect of *implementation* because of the effect those emissions 'might have on the environment', including changes to the State's climate system, effects of those climate system changes on the State's environment, and the direct effects of carbon dioxide emissions (eg ocean acidification).

57. We consider the proper construction of 'combined effect' further below.

Meaning of 'implementation'

58. The EP Act operates in relation to a proposal until that proposal has been 'fully implemented'. A proposal will not cease to be a 'proposal', as defined in s 3(1), while the project, plan or programme etc in question has not been carried into effect completely: *Elwood* [100]-[101].

59. The 'implementation' of a proposal thus broadly encompasses the 'carrying into effect' of a proposal, once a decision has been made that the proposal may be implemented, and in accord with the implementation agreement or decision and the implementation conditions imposed.

60. In the context of the EP Act, the 'implementation' of a proposal covers the period in which the proposal is being carried into effect, from the point of implementation approval through actions to commence the proposal (eg construction of proposal infrastructure) through operation of the

proposal (eg use of proposal infrastructure) and through the conclusion of the proposal (eg removal of proposal infrastructure and rehabilitation of the proposal site).

Implementation of an ‘approved proposal’

61. Section 3 of the EP Act defines an ‘approved proposal’ as ‘a proposal the implementation of which is authorised under a Ministerial statement’. Thus, the ‘implementation’ of an ‘approved proposal’ commences once the implementation of that proposal is authorised under a Ministerial statement’. In Part II we discuss the point at which the North West Shelf Project became an ‘approved proposal’, noting that the project began prior to the commencement of the EP Act.

Meaning of ‘implementation of the approved proposal and the significant amendment’

62. Pursuant to the definition of ‘significant amendment’ in section 3, a significant amendment exists in relation to, and is distinct from, an ‘approved proposal’.

63. Thus an ‘approved proposal’ remains an ‘approved proposal’ even if a significant amendment is approved and subsequently implemented. If a significant amendment is approved, then the content of the ‘approved proposal’ changes (ie is amended) to include the content of the significant amendment.

64. The meaning of the phrase ‘implementation of the approved proposal and the significant amendment’ is informed by the two types of significant amendment indicated in the definition of ‘significant amendment’, discussed above.

Type 1 – an amendment to implementation conditions

65. If the significant amendment is a proposed *amendment to implementation conditions*, two things follow. *First*, the operation of the phrase ‘implementation of the approved proposal and the significant amendment’ overlaps with the phrase ‘implementation of the proposal under the amended implementation conditions’. *Second*, the operation of phrase ‘combined effect’ overlaps with the definitional question of whether the implementation of the proposal under the amended implementation conditions is ‘likely to have a significant detrimental effect on the environment in addition to, or different from, the effect the proposal has in its implementation under the existing implementation conditions’ (our emphasis).

66. This aspect of the definition for ‘significant amendment’ differs from the now amended section 45C(2), which Allanson J considered in *Conservation Council of WA Inc v Chairman, Environmental Protection Authority* [2022] WASC 58.

67. Prior to the EP Act amendments in October 2021, section 45C(2) provided:

The Minister must not give approval under subsection (1) if the Minister considers the change or changes to the proposal might have a significant detrimental effect on the environment in addition to, or different from, the effect of the original proposal.

68. In contrast to the pre-October 2021 version of section 45C, the current definition of ‘significant amendment’ refers to the ‘implementation’ of the proposal, and also creates a causal relationship between implementation of the proposal and the effect on the environment.

69. Section 40AA(2), read with the current definition of ‘significant amendment’, therefore requires the EPA to consider whether the implementation of the approved proposal under the amended implementation conditions is likely to have a significant detrimental effect on the environment in addition to, or different from, the effect on the environment which the amended proposal as it has been implemented in fact has had or will have under the existing implementation conditions.
70. The EPA is therefore required to make a comparison between the effect on the environment which the amended proposal as it has been implemented in fact has had or will have under the existing implementation conditions, and the effect on the environment which the implementation of the approved proposal under the amended implementation conditions is likely to have.

Type 2 – a proposal

71. If the significant amendment is a *proposal*, then the assessment relates to the implementation of the approved proposal and a proposal ‘that is, or includes, the amendment of an approved proposal and is likely, if implemented, to have a significant effect on the environment’.
72. Relevantly, implementation of the approved proposal continues – but continues in modified form – if the content of the approved proposal is changed (ie amended) to incorporate the implementation of the significant amendment. The phrase ‘implementation of the approved proposal and the significant amendment’ therefore refers to the implementation of the approved proposal *with its content modified to include the implementation of the significant amendment*.
73. Construed correctly, the phrase ‘implementation of the approved proposal and the significant amendment’ refers to the *complete* implementation of the approved proposal, across the full period in which the approved proposal is carried into effect, including both (a) the implementation of the approved proposal prior to the implementation of the significant amendment and (b) the implementation of the approved proposal *with its content modified to include the implementation of the significant amendment*.
74. Subject to the particular circumstances of a proposal,⁴ the *complete* implementation period will extend from the initial actions to implement the approved proposal to the point where the approved proposal is carried into effect completely (ie fully implemented).
75. On this construction, the work of the phrase ‘...and the significant amendment’ is to indicate that the *implementation* of the approved proposal changes upon approval of the significant amendment to include the implementation of the content of that significant amendment.
76. On this construction, the phrase ‘combined effect’ applies to the *complete* implementation of the approved proposal, and the EPA is therefore obliged to have regard to the effect on the environment of the implementation of the approved proposal both prior to and after the modification of the approved proposal to include the implementation of the significant amendment.
77. We emphasise that this construction only requires the EPA to have regard to the effect on the environment of the *complete* implementation of the approved proposal – it remains for the EPA, in accordance with the objective facts, to determine what weight or value to apply to the different

⁴ For example, if the implementation of a proposal began prior to the commencement of the EP Act.

effects that occur across the complete period of implementation in the course of its assessment of the significant amendment.

78. The phrase ‘combined effect’ reinforces the *change* in the implementation of the approved proposal that occurs when the content of the approved proposal transforms to include the implementation of the significant amendment, and the possibility for this *change* in implementation to result in new or altered effects on the environment – in addition to the cumulative effects that occur as the effects of the implementation of the modified approved proposal are added to the effects caused previously by the prior implementation of the approved proposal.
79. On this construction, the EPA fails to comply with section 40AA(2) if it fails to consider the effect on the environment of the *complete* implementation of the approved proposal – eg if it considers only the effect on the environment of implementation after implementation of the significant amendment commences.⁵ As we discuss below, the EPA erred in its assessment of the significant amendment by only having regard to the effect of greenhouse gas emissions after implementation of the significant amendment commences and not for the *complete* implementation of the approved proposal.

The EPA applied this construction in its assessment of Optimised Mardie Project

80. The EPA has in fact already applied this construction of section 40AA(2) in its assessment for the Optimised Mardie Project.
81. In EPA Report 1740, published in June 2023, the EPA considered the combined effect of the approved proposal and a significant amendment in terms of the *complete* implementation of the approved proposal. For example:
- ‘The EPA has assessed the likely residual impacts of the Optimised Mardie Project on vegetation to be clearing of up to 695 ha of ‘Good’ to ‘Excellent’ condition vegetation, and a combined clearing of up to 3,014 ha’ (page 59) and ‘The combined effect of the approved project (2,319 ha) and the Optimised Mardie Project will be up to 3,014 ha of good to excellent native vegetation cleared’ (page 63).
 - ‘The combined effect of the approved project and the Optimised Mardie Project will be disturbing 202 individuals of *M. tridens*’ (page 8).
 - ‘The Optimised Mardie Project would increase the number and area of crystalliser ponds, thereby increasing the risk of changes to groundwater regimes and quality... The combined proposal might result in an increased risk of changes to groundwater regimes and quality relative to the predevelopment case’ (page 28).

Our construction allows for the range of effects that may occur during implementation

82. In assessing the ‘combined effect’ of the ‘implementation of the approved proposal and the significant amendment’, the EPA may need to consider effects of the implementation of the approved proposal that (a) have already occurred; (b) are occurring; and (c) have yet to occur.
83. A construction of section 40AA(2) that requires the ‘combined effect’ to be considered across the *complete* period in which the approved proposal is implemented ensures all of these effect

⁵ Assuming that implementation of the approved proposal commenced prior to the assessment of the significant amendment.

circumstances are considered in an assessment, and provides a rational, comprehensive and consistent temporal framework for assessments of significant amendments.

Effects that have already occurred when the significant amendment is implemented

84. By way of example, the clearing of native vegetation is a common effect of the implementation of an approved proposal. Such clearing often occurs in the construction phase of a project, and thus will typically have already occurred by the time that a significant amendment is proposed.
85. However, as the EPA determined in its assessment of the Optimised Mardie Project, that previous loss of native vegetation is an aspect of the implementation of the approved proposal that must be considered in determining the ‘combined effect’ of the implementation of the approved proposal and the significant amendment. That past loss of vegetation would typically be considered as part of the disturbance ‘envelope’ for the approved proposal, and the ‘combined effect’ to comprise both the clearing already undertaken for the approved proposal and the clearing proposed to be undertaken for the significant amendment.⁶
86. Other common examples of effects of the implementation of the approved proposal that may ‘have already occurred’ by the time a significant amendment is proposed include: *fauna disturbance* (eg number of animals killed or disturbed in the construction phase); *contamination of the environment* with persistent organic pollutants, heavy metals, or other contaminants through past discharges; and *alteration of ecological processes* (eg changes to hydrological regimes such as alteration of surface water flows due to water extraction or construction of infrastructure).
87. Relevantly, effects on the environment caused by the implementation of the significant amendment may be the same as, or different from, the effects of the implementation of an approved proposal that ‘have already occurred’. Our construction of section 40AA(2) ensures that the operation of the phrase ‘combined effect’ is broad enough to encompass both.

Effects that are occurring (or continue) when the significant amendment is implemented

88. Effects of the implementation of the approved proposal may also continue while the significant amendment is being implemented.
89. These continuing (or ‘are occurring’) effects may be separate from, or in addition to, the effects on the environment caused by implementation of the significant amendment. For example, the approved proposal and the significant amendment may involve the discharge of the same, or different, kinds of waste. Implementation of the significant amendment may also modify or supplant an effect of the approved proposal, as when existing infrastructure is replaced or expanded.
90. Again, a construction of section 40AA(2) is required that allows the operation of the phrase ‘combined effect’ to encompass all of these different ‘effect’ circumstances.

⁶ The ‘combined effect’ would also include any ‘yet-to-occur’ clearing, which had previously been approved as part of the approved proposal.

Our construction provides a consistent temporal framework for assessment of ‘combined effect’

91. Applying ‘combined effect’ across the *complete* implementation period of the approved proposal provides a consistent and comprehensive temporal framework for considering the full range of effects that ‘implementation of the approved proposal and significant amendment’ might cause – including effects that ‘have already occurred’ at the time that the significant amendment is implemented and effects of the approved proposal that will continue when the significant amendment is implemented.
92. This consistent temporal framework applies equally to a significant amendment that is a proposal to extend the operation of an existing facility.⁷
93. In this assessment of the significant amendment, the EPA’s consideration of effects only from the time that the significant amendment is implemented fails to consider the cumulative effects of the implementation of the approved proposal for greenhouse gas and NOx emissions, which are part of the ‘combined effect’ of the implementation of the approved proposal and the significant amendment that section 40AA(2) obliges them to have regard to.

The EPA’s approach to section 40AA(2)

94. Construed correctly, section 40AA(2) does not allow the EPA to pick and choose the point at which to begin considering the ‘combined effect’ – the EPA must consider the effects of the implementation of the approved proposal prior to the assessment of the significant amendment.
95. The EPA appears to be proceeding on a basis that, in applying section 40AA(2), the EPA can consider some effects across the *complete* implementation period for the approved proposal, but that is also open to the EPA to consider other effects only from the time that the significant amendment is implemented.
96. We emphasise that in contrast to the operation of section 45C in the past (ie pre-October 2021 amendments), section 40AA(2) does not allow the EPA discretion to determine on a case-by-case (or effect-by-effect) basis whether or not it is appropriate to consider the effects that the implementation of the approved proposal has had on the environment. Under section 40AA(2), the EPA must consider those effects.
97. Inconsistencies regarding the treatment of combined effects are already emerging in EPA assessments.
98. For example, as discussed above, the assessment of the Optimised Mardie Project considered some effects across the *complete* implementation period.
99. However, in its assessment of the North West Shelf Project significant amendment, the EPA only considered the effects of greenhouse gas emissions and the effects of NOx on the weathering of rock art from the time that the significant amendment is implemented. Further, the EPA appeared only to consider the ‘combined effect’ of NOx emissions in the context of ‘the combined effect of

⁷ In this case, with some changes to the facility infrastructure (eg to mitigate greenhouse gas emissions and air emissions).

existing industry, an approved urea proposal and a proposed methanol plant on air quality at sensitive receptor locations’, an approach which arguably considers cumulative impacts but fails to comply with what section 40AA(2) requires.

100. We submit that there is no reasonable, non-arbitrary basis by which the EPA can apply different implementation timeframes (or contexts) when considering the effects on the environment of native vegetation loss, greenhouse gas emissions, and NOx emissions when applying section 40AA(2). All three effects are relevantly similar in terms of their effect on the environment, and specifically their cumulative effect on the environment, as described below.

101. In contrast, our construction – by requiring the EPA to have regard to effects across the *complete* implementation of the approved proposal – provides a transparent and consistent framework, while preserving the EPA’s power to determine, in accordance with the objective facts, what weight or significance to be given to particular effects.

Native vegetation loss

102. The cumulative effect of native vegetation loss emerges not only from the cumulative (or aggregate) area of vegetation that is lost, but also through fragmentation, disruption of ecological process, and other related consequences.

103. Although revegetation may mitigate some consequences of native vegetation loss, many of the consequences are irreversible at ecological timescales – see, for, the submission of members of The Beeliar Group regarding rehabilitation for mining in the northern Jarrah Forest⁸: [link](#)

NOx emissions and acceleration of rock art weathering

104. The EPA accepts that there is, at least, valid scientific concern that NOx emissions accelerate the weathering of rock art within Murujuga. This effect (the acceleration of weathering) is a cumulative (and irreversible) effect on the environment because weathering is a degradation process for a social surrounding, reflecting the action of weathering agents (eg NOx emissions from the North West Shelf project prior to implementation of the significant amendment) over time and involving the incremental decomposition of non-organic materials.

105. Although there are other emitters of NOx (and other volatile compounds) in the area, their contribution does not displace the section 40AA(2) requirement for the EPA to consider the effect of the approved proposal across the course of its *complete* implementation, including potential effects of NOx emissions from the approved proposal that have already occurred (ie have occurred prior to 2020).

106. As discussed, the EPA, as an expert advisory body, can determine the weight or significance of the effect of NOx emissions in a ‘combined effect’ section 40AA(2) context, and the degree of scientific uncertainty that exists for that effect. However, section 40AA(2) requires the EPA to have regard to all relevant effects of the implementation of the approved proposal across the *complete*

⁸ Available here: https://thebeeliargroup.files.wordpress.com/2022/10/2022-08-29-public-submission-the-beeliar-group-worsley-mine-expansion_revised-proposal.pdf (and through <https://thebeeliargroup.com/submissions/>).

implementation period, including cumulative effects of NO_x emissions from the approved proposal on rock art.

Greenhouse gas emissions

107. Two points are relevant in describing the effect on greenhouse gas emissions on the ‘environment’ of the State, and specifically their cumulative effect.
108. First, Scope 1 and Scope 3 greenhouse gases emitted during implementation of the approved proposal prior to 2020 have already contributed to climate change and to effects of climate change on the State’s environment. These effects of climate change on the State’s environment are cumulative, in the basic sense that such effects continue to occur (adding to the effects that have already occurred) and become severe as climate change intensifies.
109. In the context of an ‘effect...on the environment’ pursuant to section 40AA(2), there is no material difference between the cumulative effect on the environment of the clearing of native vegetation and the cumulative effect of climate change on the State’s environment. Indeed, while some of the effects of native vegetation loss may be reversible, the effects of the approved proposal’s greenhouse gas emissions on the State’s environment are for practical purposes not reversible.
110. In this regard, the EPA’s assertion that *‘The EPA considers that it is not possible to draw a direct link between the Proposal’s (or any single proposal’s) emissions and a specific environmental impact’* (page 9 of the report on the appeal) is not relevant to the application of section 40AA(2). Further, this assertion, while representing the considered option of the EPA, is factually incorrect, and should not operate as an objective fact on which the EPA relies in its assessment of proposals under Part IV of the EP Act and in advising the Minister generally.
111. Section 40AA(2) and the definition of ‘environment’ in section 3 operate in relation to the State’s environment generally, and it is not necessary for the EPA to make a causal link between the specific emissions of the approved proposal and a specific climate-related effect on the State. For the purposes of section 40AA(2), the relevant question is whether the implementation of the approved proposal has an effect on the State’s environment – and specifically, whether the Scope 1 (and Scope 3) emissions have an effect on the State’s environment. They do, and it is then a matter for EPA, as an expert body, to assess the significance of that effect.
112. We emphasise that the State’s ‘environment’ includes the State’s climate system, which is a composite of living things, their physical and biological surroundings, and interactions between all of these.
113. The EPA’s assessment in Report 1727 the EPA proceeds as if the implementation of the approved proposal prior to the implementation of the significant amendment had made no contribution to climate change and caused no effect on the State’s environment. The contribution of an emitter to climate change is a function of past emissions which, for long-lived gases like carbon dioxide, will broadly reflect cumulative emissions from that emitter. The situation is more complex for shorter-lived greenhouse gases.

114. As we described above, it is now common practice in science, law and elsewhere to make attributions between a stream of emissions from an individual company or project and a specific range of climate impacts. This is true for a range of impacts, including extreme temperature, extreme precipitation and even fire risk.⁹
115. Second, carbon dioxide and some other gases are long-lived greenhouse gases with long atmospheric lifetimes.
116. Thus, as we have quantified above, some amount of the Scope 1 (and Scope 3) greenhouse gases emitted during implementation of the approved proposal from 1993 (or 2000) continue to remain in the atmosphere and continue to contribute to climate change (including effects of climate change on the State’s environment). For example, carbon dioxide emitted from the North West Shelf project in 2000 will still have a substantial warming impact in 2100 and in the millennia that follow, and so continue to contribute to climate change and consequent impacts on the environment of the State.

Cumulative impacts

117. In its section 16(e) strategic advice, *Potential cumulative impacts of proposed activities and developments on the environmental, social and cultural values of Exmouth Gulf*, published in August 2021, the EPA said:
- The EPA recognises the increasing importance of assessing and managing cumulative environmental impacts. This is established in section 3(2)(1B) of the amended EP Act, where the assessment of proposals includes the consideration of cumulative effects of the impacts of a proposal. The assessment of cumulative impacts broadly encompasses the successive, incremental and combined impacts of one or more activities on the environment, arising from past, present and reasonably foreseeable future actions. Consideration of cumulative impacts shifts the focus from a single activity, development or proposal to the receiving environment as a whole.
118. A determination of the ‘combined effect’ of the implementation of the approved proposal and the significant amendment pursuant to section 40AA(2) overlaps with a consideration of cumulative effects of the impacts of a proposal, and a ‘cumulative’ effect perspective may inform a ‘combined effect’ determination.
119. However, the ‘combined effect’ provision in section 40AA(2) has a distinct operation within the EP Act.

PART II – WHEN THE NWS PROJECT BECAME AN ‘APPROVED PROPOSAL’

Context

120. The North West Shelf Project was commenced prior to the commencement of the EP Act. Inter alia, the *North West Gas Development (Woodside) Agreement Act 1979* (WA) was relevant to the initial authorisation for the Project. The EPA considered the Project at that time – see *North West Shelf Development Project: Report and Conclusion* (WA EPA, 1979).

⁹ See, by way of example, a recent study quantifying the contribution of major carbon producers to increases in vapour pressure deficit and burned area in western US and southwestern Canadian forests:
<https://iopscience.iop.org/article/10.1088/1748-9326/acbce8>

121. As described in the Consultative Environmental Review document for Assessment 782¹⁰:
In May 1979 Woodside Petroleum Development Pty Ltd submitted an Environmental Impact Statement/Environmental Review and Management Programme (EIS/ ERMP), for the phased construction of a natural gas production and processing facility at Withnell Bay on the Burrup Peninsula. Environmental impacts were assessed and as a result of these studies an environmental management programme was established by Woodside from that time. In March 1980 the EIS/ERMP was amended to include the possibility of producing liquefied petroleum gas (LPG) at the site. The first phase of the Project began in early 1982 with the construction of the domestic gas train (Domgas). The LNG phase of the work was begun in late 1985 with additional capacity installed from late 1989.

122. As the PER states, at page 14:

The NWS Project commenced in 1984 with the commissioning of the Karratha Gas Plant (KGP) in Western Australia (WA). Since then the KGP has undergone several expansions and additional facilities have been installed. At present, and subject to Ministerial Statement 536 (MS 536), the Existing NWS Project processes natural gas and associated fluids from NWSJV field resources to produce up to 18.5 million tonnes per annum (mtpa) of liquefied natural gas (LNG) at the KGP.

Woodside now proposes to operate the NWS Project to around 2070 as an LNG facility that is commercially capable of accepting gas for processing from other resource owners.

Referral of the North West Shelf Extension proposal

123. The *North West Shelf Project Extension* proposal was referred in 2018 as a ‘significant – change to approved proposal (MS 320, MS 334, MS 482, MS 536)’ proposal.

124. Pursuant to the transitional provisions in the EP Act for the *Environmental Protection Amendment Act 2020* (WA) and specifically section 133M for referred proposals, the North West Shelf Project Extension proposal transmogrified into a ‘significant amendment’ proposal upon the amendments to the EP Act that commenced in October 2021. Page 3 of EPA Report 1727 states:

The Extension Proposal is a significant amendment to the components of the existing North West Shelf Project which are subject to MS 320, MS 334, MS 482 and MS 536. The Extension Proposal was referred to the Environmental Protection Authority (EPA) by the proponent on 14 November 2018.

125. EPA Report 1727 states at page 10:

The EPA has assessed the ongoing operation of the existing North West Shelf Project (including those elements approved under MS 320, MS 334, MS 482 and MS 536). The construction and commissioning of the physical elements approved under MS 320, MS 334, MS 482 and MS 536 are complete.

The North West Shelf Project became an ‘approved proposal’ in 1993 (or, alternatively, in 2000)

126. Relevantly, a ‘proposal’ under the EP Act can be a policy, plan or programme; a project, undertaking or development; a change in land use; an amendment of a proposal, or a ‘significant amendment’. There is no controversy that the North West Shelf Project constitutes a ‘proposal’ for the purposes of the EP Act, in the sense of being a project, undertaking or development.

127. It is submitted that the North West Shelf project became an ‘approved proposal’ under the EP Act from 24 August 1993, which is the date for Ministerial approval under MS 320. At that time,

¹⁰ <https://www.epa.wa.gov.au/proposals/additional-facilities-liquefied-petroleum-gas-project-within-existing-onshore-treatment>

FURTHER SUBMISSIONS

implementation of the proposal became authorised by a Ministerial statement made under the EP Act.

128. We submit that the comments in EPA Report 1727 referring to the ‘elements approved under MS 320, MS 334, MS 482 and MS 536’ and indicating that ‘construction and commissioning of the physical elements approved under MS 320, MS 334, MS 482 and MS 536’ are contextual only, and that the entire content of the North West Shelf project proposal became an ‘approved proposal’ as at 24 August 1993.

129. An alternative construction is that the phrase ‘the implementation of the approved proposal’ in section 40AA(2) operates only in relation to those aspects of a proposal that are directly authorised under a Ministerial statement. If that construction is correct, then we submit that North West Shelf project became an ‘approved proposal’ under the EP Act from 11 February 2000, which is the initial date for Ministerial approval under MS 536, but only for those aspects of the proposal authorised under MS 536 (including subsequent approvals made under MS 536).

Table 1: Ministerial Statements for the North West Shelf project	
Ministerial Statement	
320 Dated 24 August 1993	The proposal is to establish additional facilities for liquefied petroleum gas (LPG) extraction and export within the existing onshore treatment plant at the Burrup Peninsula. The existing Gas Treatment Plant occupies 231ha on a lease at Withnell Bay, near Dampier on the Burrup Peninsula about 1,300km north of Perth. The area within the lease has undergone major development, with the portions of Plant constructed to date consisting of a domestic gas plant, a liquefied natural gas (LNG) plant, LNG storage facilities, condensate storage facilities, a ship jetty, ship loading equipment, and administration buildings. The proposal involves the installation of two LPG storage tanks, a chiller unit, fire protection equipment, an auxiliary substation and associated infrastructure within the existing process area and a new ship jetty parallel with, and to the north of, the existing jetty. No extension of the Plant boundary would be required.
334 Dated 11 January 1994	The intended location for disposal of dredge spoil is proposed to be changed from land disposal in No Name Creek (as approved in Ministerial Statement 320) to marine disposal in a previously used offshore disposal ground.
482 Dated 13 July 1998	The Proposal is to install a second undersea gas trunk line from the existing offshore Goodwin/North Rankin production platforms to a new terminal located in the existing onshore treatment plant at Withnell Bay on the Burrup Peninsula.
536 Dated 11 February 2022, and including attachments dated: 11 February 2000; 25 February 2005 (change to project description, approval date 25 Feb 2005); 7 June	Woodside Energy Limited proposes to construct and operate additional Liquefied Natural Gas (LNG) processing trains, the current proposal being for two trains with a total additional capacity of 8 Mtpa at its onshore gas plant on the Burrup.

FURTHER SUBMISSIONS

2005 (change to project description, approval date 7 June 2005); 29 August 2006 (change to project description, approval date 29 Aug 2006); 18 July 2019 (Attachment 4, change to proposal under section 45C, approval date 18 Jul 2019).	
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PART III – SECTION 40AA – APPLICATION TO THIS ASSESSMENT

Context

130. As the phrase ‘implementation of the approved proposal and the significant amendment’ includes the *complete* implementation of the approved proposal, the EPA was obliged to consider the effects on the environment of the approved proposal prior to the implementation of the significant amendment, in its application of section 40AA(2) to the assessment of significant amendment (the ‘Extension Proposal’).

131. As discussed in Part II, we submit that the implementation of the approved proposal commenced in 1993, when approval was given under Ministerial Statement 320, or alternatively in 2000, for those aspects of the approved proposal authorised under Ministerial Statement 536.

132. Thus, to comply with section 40AA(2), the EPA must have regard to the effect on the environment of greenhouse gas emissions emitted during the *complete* implementation of the approved proposal, which include the time period from 1993 (or alternatively 2000) until the implementation of the significant amendment.

The EPA’s assessment of the effect of greenhouse gas emissions

133. The EPA’s assessment of greenhouse gas emissions only considered greenhouse gas emissions for the period 2020-2070. The EPA did not consider emissions arising from implementation of the approved proposal prior to 2020. We discuss the basis for this conclusion below.

134. Page 11 of EPA Report 1727 states:
It should be noted that the Extension Proposal is to operate the existing North West Shelf Project up to 2070. For the assessment, the GHG emissions have been calculated for a 50-year operating period (2020 to 2070).

135. Relevantly, the PER and the contents and recommendations of EPA Report 1727 both refer only to estimates of Scope 1 and Scope 3 emissions for the over the ‘50 year life of project’ for the significant amendment. The PER EPA Report 1727 do not refer to Scope 1 and Scope 3 emissions from the ‘approved proposal’.

136. The PER only provides estimates of the Scope 1 and Scope 3 emissions of the significant amendment over the proposed ‘50 year life of project’ (i.e. the proposed extension to the operating life of the NWS Project) – see pages 111-114 (section 6.4.4.1).

137. EPA Report 1727 contains four references to ‘life of proposal’ emissions, all of which take the ‘proposal’ to refer to the significant amendment proposal (and not to the approved proposal):

page 15

The Extension Proposal will not increase GHG emissions beyond the maximum 7.7 Mtpa for the existing North West Shelf Project. However, as the Extension Proposal is for the ongoing use of the North West Shelf Project up to 2070, the Extension Proposal would result in an increase to the total life of proposal emissions.

page 16

To provide a consistent framework for this case-by-case assessment, the EPA usually considers a proposal’s annual and total (life of proposal) contributions to GHG emissions...

page 16

In relation to the scope 1 GHG emissions from the Extension Proposal, the EPA had particular regard to:

- annual and total (life of proposal) contributions to GHG emissions...

page 16

In its consideration, the EPA has noted:

- Total (life of proposal) scope 1 GHG emissions from the Extension Proposal would be up to 385 Mt of CO₂-e with no mitigation (based on 50 years of operation). With the proponent’s proposed mitigation, the Extension Proposal would result in net scope 1 GHG emissions estimated at up to 138.85 Mt of CO₂-e (assuming that net GHG emissions are constant within each five-year period) over the 50-year project lifetime (to 2070). With mitigation, the Extension Proposal’s lifetime net scope 1 GHG emissions will reduce by 246.15 Mt of CO₂-e.

138. EPA Report 1727 makes seven references to ‘combined’ effects. The Environmental Scoping Document (published August 2019) and the PER (published December 2019) do not use the phrase ‘combined effect’. The seven references to ‘combined effect’ in EPA Report 1727 are given below:

page iii

The EPA has identified the key environmental factors (listed below) in the course of the assessment. The EPA has assessed the ongoing operation of the existing North West Shelf Project (including those elements approved under Ministerial statements 320, 334, 482 and 536). The EPA has regard to the combined and cumulative effects on the environment.

page 3

In assessing the Extension Proposal, the EPA has assessed the environmental effects of the Extension Proposal in the context of the ongoing operation of the existing North West Shelf Project. The EPA has had regard to the combined effects there might be on the environment and has considered the implementation conditions that should be applied to ensure the combined and ongoing effects of the amended proposal can be implemented consistently with the EPA’s current environmental factors objectives.

page 10

The EPA has had regard to the combined and cumulative effect that the implementation of the Extension Proposal may have on the following environmental factors.

page 27

The ‘worst-case’ scenario (FBSIA) enabled the EPA to consider the combined effect of existing industry, an approved urea proposal and a proposed methanol plant on air quality at sensitive receptor locations. This scenario did not include the proponent’s proposed air emissions improvements.

The ‘FBSIA-KIO’ enabled the EPA to consider the combined effect of existing industry, the Extension Proposal, an approved urea proposal and a future proposed methanol plant on air quality at the sensitive receptor locations. This scenario includes the proponent’s proposed air emissions improvements.

page 57

The EPA has assessed the proposal in the context of the existing North West Shelf Project and had regard to the combined and cumulative effect that the implementation of the approved proposal may have on marine environmental quality.

139. EPA Report 1727 contains only one reference to ‘implementation of the approved proposal’:

page 57

The EPA has assessed the proposal in the context of the existing North West Shelf Project and had regard to the combined and cumulative effect that the implementation of the approved proposal may have on marine environmental quality.

140. These points above indicate that the EPA, in applying section 40AA to its assessment of the significant amendment, only considered greenhouse gases emissions from the time that the proposed significant amendment is implemented, and did not consider greenhouse gas emissions arising from the implementation of the approved proposal prior to the implementation of the significant amendment (ie prior to 2020).

Did the EPA comply with the section 40AA(2) requirement?

141. Section 40AA(2) requires the EPA to bring an active intellectual process to the matter of the combined effect that the implementation of the approved proposal and the significant amendment might have on the environment.

142. Thus, there is the factual question of whether or not the EPA complied with the obligation in section 40AA(2) to have regard to the combined effect that the implementation of the approved proposal and the significant amendment might have on the environment in assessing the significant amendment.

143. As the written reasons for decision of an administrative decision-maker, the section 44 report of the EPA (Report 1727) may be taken to be a statement of those matters averted to, considered and taken into account by the EPA. In this regard, and bearing in mind the legislative purpose and prescribed content of the report, the report is not to be ‘scrutinised upon over-zealous judicial review by seeking to discern whether some inadequacy may be gleaned from the way in which the reasons are expressed’: *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259, 272.

144. However, the EPA cannot be said to have brought an active intellectual process to the issue of the combined effect that the implementation of the approved proposal and the significant amendment might have on the environment, if the empirical information (objective facts) necessary to underpin that intellectual process did not exist – that is, if that information is not contained in any assessment material provided by the proponent or in the content of Report 1727 itself.