

Statement of reasons for reconsideration decision under the *Environment Protection and Biodiversity Conservation Act 1999*

I, Tanya Plibersek, Minister for the Environment and Water, provide the following statement of reasons for my decision of 11 May 2023, under section 78C of the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*, to reconsider and confirm the decision by Louise Vickery, Assistant Secretary, Environmental Assessments NSW, ACT of 26 August 2020 under section 75 of the EPBC Act that the proposed action by MACH Energy Australia Pty Ltd (**proponent**), the Mount Pleasant Optimisation Project, is a controlled action and that the controlling provisions are sections 18 and 18A (listed threatened species and communities) and sections 24D and 24E (a water resource, in relation to coal seam gas development and large coal mining development).

Legislation

1. Relevant legislation is set out in Annexure A.

Background

2. On 28 July 2020, the Department of Agriculture, Water and the Environment (now the Department of Climate Change, Energy, the Environment and Water) (the **department**) received a valid referral from the proponent to realign the approved Northern Link Road, increase the open cut coal extraction up to 21 Mtpa within the approved Mount Pleasant Project (EPBC 2011/5795) development area, including accessing deeper coal reserves in the North Pit, continued use of the controlled release dam and associated infrastructure as described in the Continuation of Bengalla Mine, NSW, Water Management Plan, (EPBC Act referral 2012/6378), and to extend the life of the mine to 22 December 2048 (**the proposed action**).
3. On 26 August 2020, a delegate of the then 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, 18A, 24D and 24E were the controlling provisions (**the referral decision**).
4. On 8 July 2022, Environmental Justice Australia (**EJA**), on behalf of the Environment Council of Central Queensland Inc (**ECCQ**), sent a letter, with supporting documents, requesting reconsideration under section 78A of the EPBC Act of the controlled action decision for the proposed action. EJA submitted a reconsideration request on the basis of the availability of substantial new information (section 78(1)(a) of the EPBC Act). 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 the request, that had been published since 8 July 2022.
6. On 3 November 2022, my delegate 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 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 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 11 May 2023, 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 provisions for assessment are:
 - sections 18 and 18A (listed threatened species and communities); and
 - sections 24D and 24E (a water resource, in relation to coal seam gas development and large coal mining development).

Evidence or other material on which my findings were based

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

A.	Original referral decision material A1: Signed referral brief dated 26 August 2020 A2: Signed referral decision notice dated 26 August 2020 A3: Original referral decision briefing package dated 26 August 2020
B.	Request for reconsideration B1: Letter from EJA dated 8 July 2022 B2: Annexure 1 B3: Sources of Information for Annexure 1 B4: Annexure 2 – Analysis of research on climate change and its impacts on Matters of National Environmental Significance under the EPBC Act B5: Annexure 2.1 – Spreadsheets of data B6: Annexure 2.2 – Sources of data for Annexure 2.1 B7: Annexure 2.3 – Fire Impact Maps B8: Letter from EJA providing further material dated 11 August 2022 B9: State of the Environment Report 2021
C.	Reconsideration decision notice
D.	Letters D1: Letter to proponent D2: Letter to requestor D3: Letter to State Minister D4: Letter to Minister for Indigenous Australians, the Hon Linda Burney MP D5: Letter to Minister for Defence and Deputy Prime Minister, the Hon Richard Marles MP D6: Letter to Minister for Climate Change and Energy, the Hon Chris Bowen MP

	<p>D7: Letter to Minister for Infrastructure, Transport, Regional Development and Communication, the Hon Catherine King MP</p> <p>D8: Letter to for Resources and Minister for Northern Australia, the Hon Madeleine King MP</p> <p>D9: Letter to Minister for Agriculture, Fisheries and Forestry, Senator the Hon Murray Watt MP</p>
E.	Signed Validity briefing package dated 3 November 2022
F.	<p>Commonwealth Ministers' responses to invitation to comment:</p> <p>F1: Minister for Indigenous Australians, the Hon Linda Burney MP</p> <p>F2: Minister for Defence and Deputy Prime Minister, the Hon Richard Marles MP</p> <p>F3: Minister for Climate Change and Energy, the Hon Chris Bowen MP</p> <p>F4: Minister for Infrastructure, Transport, Regional Development and Local Government, the Hon Catherine King MP</p> <p>F5: Minister for Resources and Minister for Northern Australia, the Hon Madeleine King MP</p> <p>F6: Minister for Agriculture, Fisheries and Forestry, Senator the Hon Murray Watt.</p>
G.	State Minister response to invitation to comment
H.	Proponent response to invitation to comment & Attachment 1
I.	Request for further information (RFI) on proposed action's emissions
J.	<p>Proponent response to RFI</p> <p>J1: Proponent Response to RFI - Attachment 2</p> <p>J2: Proponent Response to RFI - Scope 3 Methodology</p>
K.	<p>Public Comments</p> <p>K1: Public Portal Comments</p> <p>K2: Public Portal Comments Attachments</p> <p>K3: Public Comments made to the Minister</p> <p>K4: Requestor Submission Attachment – World Energy Outlook 2022 (Free Data Set)</p>
L.	Coal 2022 (IEA's annual coal market report for 2022)
M.	Synthesis Report of the IPCC Sixth Assessment Report (AR6)

Reconsideration request

- In the 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 referral decision. EJA stated that the information provided with the 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 I 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.

14. 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.
15. 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 request. I noted that some of the key findings are:
 - a. the *Working Group I contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (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 (**CSIRO**) and Bureau of Meteorology (**BOM**), *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); and
 - 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).
16. The 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, 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 Properties, Commonwealth marine environment report cards and bioregional plans – referred to by EJA as **source material**.
17. 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 a 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.
18. I noted that 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); and
 - l. the environment in the Great Barrier Reef Marine Park.
19. 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. I took into account EJA's conclusions about the impact of climate change on MNES, as discussed further under the Protected Matters section below.
20. 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 greenhouse gas 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); and
- xii. the environment in the Great Barrier Reef Marine Park.

21. 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 CO₂ emissions and global temperature, such that every tonne of CO₂ emissions adds to global warming. Reaching net zero anthropogenic CO₂ emissions is a requirement to stabilise human-induced global temperature at any level.
- b. Limiting human-induced global warming requires deep reductions in CO₂ and other greenhouse gas 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 requires 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); and
- xii. the environment in the Great Barrier Reef Marine Park.

22. 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 AR6 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**) is likely to supplement the material in Annexure 1 and Annexure 2, but is unlikely to change any of the propositions.
23. 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 21st 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; and

- 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.

24. I noted that the department 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; and
- 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.

25. In addition to the material in EJA's request, in making my decision I also considered the *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.

Submissions and consultation

26. 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.
27. I took into account the public comments, proponent comments and comments from relevant State and Commonwealth Minister which are summarised below.

Commonwealth Ministers

28. 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 Defence, the Hon Richard Marles MP;
 - c. Minister for Climate Change and Energy, the Hon Chris Bowen MP;
 - d. Minister for Infrastructure, Transport, Regional Development and Local Government, the Hon Catherine King MP;
 - e. Minister for Resources and Minister for Northern Australia, the Hon Madeleine King MP; and
 - f. Minister for Agriculture, Fisheries and Forestry, Senator the Hon Murray Watt.
29. 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.
30. 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.
31. On 17 November 2022, the delegated contact for the Minister for Defence responded and noted that they had no comment on the reconsideration request.
32. 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.
33. 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:

- a. 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.

34. 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 reconsideration request.

State Ministers

35. On 3 November 2022, in accordance with section 78B(5) of the EPBC Act, the Minister for Planning, the Hon Anthony Roberts MP, 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.
36. On 23 November 2022, the delegate for the Minister of Planning, Mr Tim Kirby, responded to confirm that the Mount Pleasant Optimisation Project has been approved by the NSW Independent Planning Commission and already assessed in a manner specified in Schedule 1 to the Bilateral Agreement made under section 45 of the EPBC Act, relating to environmental assessment between the Commonwealth and the NSW government.

Public submissions

37. On 3 November 2022, in accordance with subsection 78B(6) of the EPBC Act, the reconsideration request was published on the department's website and public comments were invited until 24 November 2022 on whether a matter referred to in any of paragraphs 78(1)(a) to (ca) was applicable. 872 public submissions were received through the public portal.
38. 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	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. *(The current version of the EPBC Act can be accessed through the department's website).	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)?

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

- Yes – 816 responses;
- No – 9 responses; and
- Blank – 47 responses.

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

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

- Comment – 821 responses; and
- Blank – 51 responses.

41. 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 referral decision was made;
- c. the reconsideration request includes a scientific consensus of recent, factual and scientific information about climate change from documents such as IPCC reports and the 2021 State of the Environment Report;

- d. the reconsideration request includes information that the project 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. the Minister is required to take into account the precautionary principle when assessing fossil fuel projects;
- g. the government's newly legislated emissions targets mean that the impacts of this project should be re-assessed, including concerns that the timeline of the project extends to 2048;
- h. the proposed action will affect cultural heritage, areas and species of significance to the First Nations people;
- i. climate change impacts must be limited;
- j. the project should not proceed;
- k. in line with section 78C (1)(b)(ii) of the EPBC Act, the Minister should revoke the previous decision in accordance with subsection 78(1), and substitute a new decision which includes all MNES;
- l. the contribution of projects to climate change is not currently considered enough under environmental assessments, and therefore the project should be re-assessed to take into account holistic, direct and indirect climate impacts from GHG emissions;
- m. climate change will have social impacts, including to intergenerational equity and both mental and physical health; and
- n. the Minister has a moral responsibility and obligation to make decisions that will protect MNES and the future of the environment and to reduce climate change impacts on human health and biodiversity.

42. Of the 9 respondents that answered 'No' in response to Question 1, only 3 respondents provided comments. The department noted that the substance of these comments indicated that a 'Yes' response was in fact intended. The comments are summarised below:

- a. the request qualified as substantial new information because the material shows good reasoning that coal and gas proposals will do harm and the world in 2022 has experienced extreme weather conditions due to climate change;
- b. the fossil fuel industry tries to bury information (the department assumes this is a reference to information on climate change) for its own short-term gain; and
- c. there are never guarantees that mining will not damage the environment (e.g., by damaging the groundwater table and causing air pollution) and remediation never returns a damaged area to its former condition.

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?

43. The department received the following responses in relation to Question 3:

- Yes – 129 responses;
- No – 600 responses; and
- Blank – 143 responses.

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

44. The department received the following responses in relation to Question 4:

- Comment – 553 responses; and
- Blank – 319 responses.

45. Responses that answered 'Yes' for Question 3 are summarised as follows:

- a. the further worsening and degradation of the climate which may have been debatable by the previous government is now accepted by this government and thus the reversal of the previous decision should be made;
- b. there has been a significant increase in scientific knowledge and public understanding regarding the consequences of environmental harm;
- c. there has been a significant change in weather events impacting communities; and
- d. the rapid and unpredicted change to the climate is a substantial change in circumstances that was not foreseen at the time of the first referral decision.

46. 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. the circumstances are much the same as they were when the project was first assessed;
- e. climate change and the impact fossil fuels have upon it has been understood for a while, but these circumstances have not been considered in this project until now; and
- f. there has not been a substantial change in circumstances, however, there has been a change in acknowledgement of the circumstances documented by scientists and experienced by the population.

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.

47. The department received the following responses in relation to Question 5:
- Comment – 707 responses; and
 - Blank – 165 responses.
48. The majority of the responses made comments similar to those in Questions 2 and 4 and also raised the issues summarised below:
- a. concern about climate change impacts on biodiversity, including specific environmental, culturally and socially significant species and places, including the Koala and Mountain Pygmy Possum and the Great Barrier Reef, Australian alpine environment and other protected areas;
 - b. there should be no new gas or coal projects;
 - c. *the Final Report of the Independent Review of the Environment Protection and Biodiversity Act 1999 (Samuel Review)* outlines that cumulative impacts and future challenges like climate change are not effectively considered under the EPBC Act;
 - d. the need to take responsibility for the emissions of our exported fossil fuels that are burned overseas and contribute to global climate change;
 - e. Australia should move away from fossil fuels to ensure resource sustainability, social and economic stability and towards renewable energy projects; and
 - f. climate change is a global responsibility and concern, as there are global contributions to climate change that affect everyone, including our Pacific neighbours.

Other public comments

49. In addition to the public comments summarised above, members of the public also wrote directly to me regarding the proposed action. I received 43 direct submissions concerning the proposed action. Of these submissions, 3 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; and
 - b. there is no proof that fossil fuels are linked to climate change.
50. The various concerns raised in the 40 other submissions were similar to the matters discussed above and also raised the following additional concerns, summarised below:
- a. a lack of analysis for the final pit void in the environmental impact statement (**EIS**) for the project; and

- b. the link between the Mount Pleasant Optimisation Project and the adjacent Dartbrook mine, which was recently banned from developing an open-cut pit.

51. EJA (on behalf of ECCQ) also made a submission to me on 24 November 2022 on this reconsideration request and the 17 other requests it had made in relation to different projects. 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 degrees, 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 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 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; and
- c. there are many scenarios (and other technically-feasible scenarios which have been validated by the IPCC AR6 Working Group III) which cannot be achieved with input assumptions equivalent to the projected future supply of coal or gas entailed by the 18 Proposed Projects.

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

Proponent comments

Proponent response to reconsideration request

53. On 3 November 2022, in accordance with section 78B(2) of the EPBC Act, the proponent was invited to comment on the reconsideration request.

54. On 28 November 2022, the proponent provided their response to the invitation to comment. In summary, the proponent submitted that:

- a. The reconsideration request does not comply with s78A(2)(c) of the EPBC Act and reg 4AA.01(3) of the *Environment Protection and Biodiversity Conservation Regulations 2000* because the reconsideration request does not contain new

information that demonstrates that a change in the potential “impacts” of the proposed action is likely to happen with a high degree of certainty.

- b. EJA throughout its reconsideration request either ignores that the word “impact” is defined in s 527E of the EPBC Act or misapplies the defined term whenever it is used in other provisions of the EPBC Act or the Regulations.
- c. In the alternative, even if the reconsideration request did comply with s78A(2)(c) of the EPBC Act and reg 4AA.01(3), the revocation and substitution of the referral decision is not warranted by the availability of that information because the proposed action is not likely to have a significant “impact” on any additional matters protected by the provisions of Part 3 of the EPBC Act for the following reasons:
 - i. the events and circumstances, the increased risk of which is predicted to be brought about by climate change, are not “impacts” of the proposed action within the meaning of the EPBC Act because the proposed action is not a substantial cause of those events and circumstances as required by section 527E(1)(b) of the EPBC Act;
 - ii. in other words, the Scope 3 emissions of the proposed action do not qualify as an “indirect consequence” of the proposed action and consequently are not “impacts” of the proposed action;
 - iii. the impact of the proposed greenhouse gas emissions of the proposed action, which are confined to Scope 1 and 2 emissions only, as opposed to total global atmospheric greenhouse gas concentrations, are not likely to have a significant “impact” on matters protected by Part 3 of the EPBC Act, and
 - iv. there is no error in the identification of listed threatened species and communities (sections 18 and 18A) as controlling provisions in the Decision Notice.

55. In particular, the proponent submitted that the increased risk of the events and circumstances described in the request, that is predicted to be brought about by climate change, will be caused by the total concentration of GHGs in the atmosphere emitted over time from all sources. The proponent submitted that the proposed action's contribution to the events and circumstances that may be caused by climate change will be tiny and not significant.

56. The proponent noted that the international framework for addressing global GHG emissions is relevant to whether the proposed action is a substantial cause of climate change. The proponent stated that approximately 93% of the proposed action's total estimated GHG emissions will be emissions generated outside Australia, which will be counted as the scope 1 emissions of the country where the combustion occurs. This international framework is considered further below at [73]-[79].

57. The proponent also disputed the GHG emission estimates contained in the request, and the description of the proposed action in the request.

58. The proponent included with its submission a coal market substitution study prepared by CRU Consulting (**CRU**) which was prepared for the New South Wales (**NSW**) Independent Planning Commission as part of the NSW planning approval process.
59. The CRU modelling involves the study of seaborne thermal coal demand and supply to 2050 (the proposed action's life is to 2048) and considered the emissions that would result from alternative sources of supply of coal (from Russia, South Africa, China, Indonesia and India) if the proposed action was not approved. If these alternative supplies of coal were consumed instead, the modelling predicts an additional 9-26% CO₂_e, depending on the alternative source of supply, could be emitted relative to the proposed action.

Request for further information on GHG emissions from the proponent

60. 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; and
 - c. consumers of end-product extracted as part of the proposed action.
61. The RFI sought that GHG emissions estimates should be aggregated in million tonnes carbon dioxide equivalent (**Mt CO₂_e**) and defined GHG by reference to section 7A of the *National Greenhouse and Energy Reporting Act 2007* (Cth). 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 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

62. On 30 November 2022, the proponent responded to the department's RFI about the projected emissions associated with the proposed action. Scope 1 emissions from the proposed action account for approximately 1.8% of total emissions from the proposed action and are expected to occur through the combustion of diesel (43%) and the release of fugitive emissions (54%). Scope 2 emissions from the proposed action come from electricity consumption and represent 0.2% of the proposed action's total projected emissions. The majority of the emissions associated with the proposed action are scope

3, deriving from the combustion of saleable product coal by third parties within Australia and overseas. The proponent's full breakdown of the emissions associated with the proposed action is set out in Table 2 below.

Table 2: Proponent's estimate of GHG emissions associated with the proposed action (Mt CO_{2-e})

	Scope 1	Scope 2	Scope 3		Total (Scope 1, 2 & 3)	
			Australia	Overseas	Australia	Globally (includes Aust.)
Annual average	0.4	0.0	1.1	19.1	1.5	20.6
Total	9.5	1.2	27.7	496.5	38.3	534.8

63. The proposed action's *total average annual* emissions (Scope 1, 2, and 3) *within Australia* represent 0.25% of Australia's annual emissions for the 2020 reporting year.
64. The proposed action's *total average annual* emissions (Scope 1, 2 and 3) *within Australia and outside Australia combined* represent 0.042% of global emissions in 2019.
65. I noted that the proponent's estimate of total emissions over the life of the proposed action (534.8 Mt CO_{2-e}) is significantly lower than the 874.17 Mt CO_{2-e} estimate provided by EJA in their initial letter to me.
66. The department advised that EJA sourced emissions data from the proponent's publicly available EIS. The EIS, developed for both NSW and Commonwealth assessment processes, contains emissions data for the proposed action (Mount Pleasant Optimisation Project, EPBC 2020/8735) and the existing Mount Pleasant Coal Project (2011/5795).
67. The Mount Pleasant Coal Project (2011/5795) was approved under the EPBC Act in 2012 and is a separate and distinct action from the proposed action which is the subject of this reconsideration decision. For this reason, I was satisfied that the emissions estimates provided by the proponent totalling 534.8 Mt CO_{2-e} are the correct estimates for the proposed action.

Response to RFI Question 2: Emissions Management

68. 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. conditions for GHG management and reporting at the Mount Pleasant Operation as required under the development consent conditions of SSD-10418.
 - b. Conditions under the SSD-10418 Development Consent include:
 - i. condition B31; requiring the proponent to take all reasonable and feasible steps to minimize Scope 1 and 2 emissions generated by the project

- ii. condition B32; requiring the development of an Air Quality and Greenhouse Gas Management Plan for the proposed action to the satisfaction of the Planning Secretary
 - iii. condition B34; requiring Scope 1 and 2 emissions data in the Air Quality and Greenhouse Gas Management Plan to be updated every three years during the life of mining operations
 - iv. condition B35; requiring the applicant to implement the approved Air Quality and Greenhouse Gas Management Plan
 - v. condition B36; requiring the proponent to comply with Scope 1 and Scope 2 emissions performance measures
 - vi. condition D11; requiring the proponent to submit to the NSW Department of Planning and Environment a report reviewing the environmental performance of the development, including details on Scope 1 and 2 emissions
 - vii. condition B37, which requires the proponent to offset excess CO_{2-e} emissions (by retiring Australian Carbon Credit Units) for any exceedances of the performance measures outlined in condition B36.
- c. complying with applicable Commonwealth emissions reduction legislation (in particular the Safeguard Mechanism) and meeting reporting obligations set out under the *National Greenhouse and Energy Reporting Act 2007* (NGER Act).

Response to RFI Question 3: Consumers of end-product

69. As noted above, the proponent predicted that the majority of the emissions associated with the proposed action are scope 3 emissions from the combustion of product coal by third parties. The proponent noted in their response to the department's request for information that, given the highly variable nature of the international coal market, it is inherently difficult to project the percentage of product that would be sold into each potential market.
70. The proponent provided information about the customer countries/jurisdictions. They are ranked from largest to smallest by percentage of expected product volume in Table 3 below.

Table 3: Product destination by percentage of product volume

Rank	Country/Jurisdiction	Product Volume (%)
1.	Japan	32.5
2.	South Korea	30.0
3.	Malaysia	10.0
4.	Taiwan	10.0
5.	Vietnam	5.0
6.	Australia	5.0

-	Other assorted customer countries	7.5
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71. The proponent stated that, apart from Taiwan, each customer country is a party to the Paris Agreement. The countries to which the coal is exported have announced or adopted domestic laws and policies to achieve their targets to reduce their GHG emissions as set out in their nationally determined contributions (**NDCs**), set out in Table 4 below.

Table 4: The NDCs of each export country party to the Paris Agreement

Country/Jurisdiction	NDC
Japan	Reduce GHG emissions by 46% by 2030 from 2013 levels. Net zero commitment by 2050.
South Korea	Net zero by 2050. Reduce GHG emissions by 40% by 2030 from 2018 levels.
Malaysia	Reduce GHG emissions by 45% by 2030 from 2005 levels.
Vietnam	Unconditional target of reducing GHG emissions by 9% compared to business as usual by 2030. Conditional target of reducing GHG emissions by 27% compared to business as usual by 2030.
Australia	Reduce national GHG emissions by 43% from 2005 levels by 2030. Achieve net zero emissions by 2050.

72. Taiwan's Intended NDC (enforced under its *Greenhouse Gas Reduction and Management Act*) is comparable to those of countries who are signatories to the Paris Agreement and includes reducing GHG emissions by 50% by 2050 from 2005 levels.

International and domestic frameworks for addressing climate change

73. In making my decision, I took into account the department's advice on the international and domestic frameworks for addressing climate change to the extent it was relevant to whether there is substantial new information about the impacts that the action has or will have, or is likely to have, on a matter protected by a provision of Part 3.
74. The international climate treaties – the Paris Agreement, adopted on 12 December 2015 and the United Nations Framework Convention on Climate Change (UNFCCC), adopted on 9 May 1992 – are the primary multilateral mechanisms governing the international response to climate change.
75. The Paris Agreement entered into force on 4 November 2016. 195 members of the UNFCCC are parties to the Paris Agreement, including Australia. The temperature goal of the Paris Agreement is to limit the increase in global average temperature to well below 2°C and pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels.
76. 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 greenhouse gas inventory. As a result, emissions associated with the combustion of exported Australian coal are accounted for in the national greenhouse gas inventories of the importing countries.

77. 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.
78. Under Article 4 of the Paris Agreement, Parties aim to reach global peaking of GHG emissions as soon as possible, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removal by sinks of GHG in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty. 151 governments around the world, including Australia, have announced intentions to reach net zero emissions.
79. 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.

Domestic Measures

80. The *Climate Change Act 2022* (Cth) sets out Australia's emissions reduction targets in legislation – 43% below 2005 levels by 2030 and net zero emissions by 2050.
81. These targets are supported by a suite of measures, including:
 - a. the National Reconstruction Fund, which will provide up to \$3 billion for renewable and low emissions technology investment;
 - b. the decarbonisation of existing industries and creation of new clean energy industries through the \$1.9 billion Powering the Regions Fund;
 - c. the National Energy Transformation Partnership to achieve net zero emissions in the electricity system by 2050 and reach 82% renewable electricity by 2030;
 - d. \$157.9 million to deliver a suite of measures to support the secure and sustainable transformation of Australia's energy system;
 - e. \$20 billion investment to upgrade the electricity grid to manage more renewable energy;
 - f. introducing climate reporting standards for financial institutions and large publicly listed companies;
 - g. support for new and emerging technologies;
 - h. \$200 million investment in new community batteries across Australia to help lower energy bills, support the grid and maximise the benefits of Australia's rooftop solar installations;
 - i. \$100 million to establish solar banks around Australia, providing access to solar for around 25,000 households who are unable to install rooftop solar;

- j. \$75 million to develop and deploy microgrid technology across First Nations communities;
 - k. \$2 billion for a new *Hydrogen Headstart* program to scale up development of Australia's renewable hydrogen industry;
 - l. \$1.3 billion for a Household Energy Upgrades Fund and \$310 million for a Small Business Energy Incentive that will encourage and support households and small businesses to make energy saving upgrades;
 - m. developing Australia's first National Electric Vehicle Strategy; and
 - n. reforms to the Safeguard Mechanism.
82. The Safeguard Mechanism requires Australia's largest GHG emitters to keep their net emissions below an emissions limit (a baseline). The Safeguard Mechanism applies to facilities that emit more than 100,000 tonnes CO_{2-e} covered emissions in a financial year. Covered emissions are defined as scope 1 emissions.
83. On 30 March 2023, the Government passed the Safeguard Mechanism (Crediting) Amendment Bill 2023 to reform the Safeguard Mechanism effective 1 July 2023. From that date, all facilities to which the Safeguard Mechanism applies will be subject to the reforms (including new facilities and expansions to existing facilities). Among other things, the reforms will require the baseline for each facility to decline in line with Australia's climate targets of 43% below 2005 levels by 2030 and net zero by 2050. Also I will be required to provide any estimate received of the scope 1 emissions of actions I approve under the EPBC Act to the Climate Change Authority, the Minister for Climate Change and the Secretary of the relevant department, if I am satisfied that an action is likely to result in:
- a. a facility becoming subject to the Safeguard Mechanism, or
 - b. an increase in the emissions of a facility which is already subject to the Safeguard Mechanism.
84. The proponent advised in its response to the RFI that its facility, which is the subject of the proposed action, is already covered by the Safeguard Mechanism.

Coal markets

85. The IEA has been publishing coal market reports every December since 2011. *Coal 2022*, released in December 2022, is the latest report and provides an analysis of recent trends in coal demand, supply and trade, as well as forecasts to 2025 for demand, supply and trade. The key findings of *Coal 2022* include the following:
- a. global coal demand in 2022 will surpass 8 billion tonnes for the first time;
 - b. global coal demand will plateau at 8 billion tonnes through to 2025;
 - c. China and India, the world's largest coal consumers, are also the biggest producers, and the top two coal importers;
 - d. while the European Union's consumption of coal increased during 2021, efforts to expand renewables and improve energy efficiency will see demand return to a downward trajectory as soon as 2024;

- e. international trade is reshuffling due to trade sanctions on Russian coal – the gap in Russian coal supplies in Europe has largely been filled by South Africa and other smaller producers; and
- f. despite record coal prices, in general there is a lack of appetite for investment in coal, particularly thermal coal (i.e. coal used in electricity generation).

Statutory framework for reconsideration decision

- 86. I noted that, pursuant to section 78C of the EPBC Act, I must reconsider the referral decision and either confirm the decision or revoke the decision in accordance with subsection 78(1), and substitute a new decision for it. 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.
- 87. EJA's 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 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)).
- 88. The department advised that section 78(1)(aa) contained another ground for reconsideration which may apply 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 action has or will have or is likely to have on a protected matter.
- 89. Under section 75 of the EPBC Act, I am required to decide whether the 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 action. In making my decision, I must consider all adverse impacts the action has, will have, or is likely to have, on the matter protected by each provision of Part 3. I must not consider any beneficial impacts the action has, will have or is likely to have on the matter protected by each provision of Part 3.
- 90. 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

- 91. 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.
- 92. 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 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 (EPBC Act, section 18(2));
- e. listed threatened species in the endangered category (EPBC Act, section 18(3));
- f. listed threatened species in the vulnerable category (EPBC Act, section 18(4));
- g. listed threatened ecological communities in the critically endangered category (EPBC Act, section 18(5));
- h. listed threatened ecological communities in the endangered category (EPBC Act, section 18(6));
- i. listed threatened species and listed threatened ecological communities (EPBC Act, 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); and
- l. the environment in the Great Barrier Reef Marine Park (sections 24B(2), 24C(5), (7)).

93. 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 action was 'not a controlled action';
- b. the requirement for the ground at section 78(1)(d) is not met because the request was not made under section 79; and
- 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 action.

World Heritage values of declared world Heritage properties (sections 12 and 15A)

Referral information

94. I noted that 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.
95. 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

96. In the 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 places and the IUCN World Heritage Outlook.
97. I found that this information is substantial new information because:
- a. much of the information contained in the 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.
98. 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 MacDonald 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; and
 - q. Willandra Lakes Region.
99. 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*); and
 - 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?

100. I noted that the information in the reconsideration request shows 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.
101. I accepted the department's advice that, to be satisfied 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. 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

102. 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)).

103. 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.

104. I considered that the 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 named by EJA in their application.

105. To the extent that the information may be relevant to the physical effects of climate change caused by the proposed action, the 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 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 action, which is the extraction of coal.

106. Therefore, I determined that for the information in the request to be about the impacts of the proposed action under section 527E of the EPBC Act, the proposed action must be 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

107. 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 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 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?

108. 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.
109. One variable is whether any emissions generated by the combustion of the coal from the proposed action will be offset, mitigated or abated. The countries or jurisdictions where the prospective buyers of the coal are expected to combust the coal may at any time implement new policies or regulations regarding emissions within their borders.
110. As set out at paragraph 70 above, the countries where it is anticipated that the coal from the proposed action will be consumed (Japan, South Korea, Malaysia, Vietnam and Australia) each have respective nationally determined contribution (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 74 to 79 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. The emissions generated by combusting coal (including coal from the proposed action) would be counted as scope 1 emissions in the country where combustion occurred and may be subject to mitigation actions or offsetting.
111. Taiwan is not a member of the United Nations and is excluded from the UNFCCC. Domestically, however, it has an Intended NDC that includes a 2030 target and has committed to net zero emissions by 2050.

112. The level of global GHG emissions will also likely be subject to the emissions reduction policies of power companies, and any changes to the efficiency of their power plants. The department brief included examples of changes to the emissions reduction policies of certain companies. For example, power companies in Japan have committed to being carbon-neutral by 2050 including phasing out inefficient power plants.
113. 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 worldwide or the extent to which the world heritage values of declared World Heritage properties will be impacted by the physical effects of climate change. That will be subject to a range of other factors, including the level of emissions from sources other than the proposed action.
114. I considered that these factors make it very difficult to estimate the likely net increase 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 physical effects of climate change.
115. I considered that it is also likely that, if the proposed action does not proceed, the prospective buyers will purchase an equivalent amount of coal from a supplier other than the proponent, which would result in an equivalent amount of GHG emissions when combusted, when compared with the amount estimated for the proposed action. As stated at paragraphs 58-59 above, the proponent engaged CRU Consulting to provide modelling for seaborne thermal coal demand and supply until 2050. I noted that, if the likely alternative supplies of coal were consumed instead, the modelling predicts that an additional 9-26% CO_{2-e}, depending on the alternative source of supply, could be emitted relative to the proposed action.
116. I took into account that the IEA *Coal 2022* report states that in 2022, China increased its imports from Indonesia and Russia when it reduced its imports from Australia. International trade also started to reshuffle due to the decline in Russian exports from international trade sanctions. The gap left by Russian coal supplies in Europe has been largely filled by suppliers from South Africa, Colombia and other small producers such as Tanzania and Botswana. Indonesia also shifted its exports to Europe to help offset the Russian shortfall. The report noted that China and India will continue to boost their coal production to overcome supply shortages, more than offsetting the decline in Russian production due to trade sanctions. I considered it reasonable to assume that, should the proposed action not proceed, the market would respond through an increase in supply elsewhere, in circumstances where there is still anticipated demand for the coal from the proposed action.
117. 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 physical effects of climate change.
118. I took into account EJA's submission 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 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.”

119. The 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.
120. I agreed with the department’s advice that EJA’s analysis, described at paras 118 to 119 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 102 to 106 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?

121. In addition, and in any event, I considered whether, if the information in the 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.

122. 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 20.6 Mt CO_{2e} or 0.042% of global annual emissions in 2019. 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.
123. Further, the proponent estimated, in response to the same request for information, that the total GHG emissions associated with the project would be approximately 534.8 Mt CO_{2e}. 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 2.4×10^{-4} °C or 0.00024°C. The department prepared this estimate assuming a one-for-one relationship between temperature and tons of GHG emissions, based on the information EJA provided about findings by the IPCC Working Group I that the relationship between anthropogenic CO₂ and global temperature has thus far been approximately linear.
124. The IEA *Coal 2022* report also noted global coal consumption in 2022 was predicted to reach 8 025 million tonnes. The proposed action's maximum annual output is 21 million tonnes per annum (**Mtpa**) and this represents 0.26% of the global coal consumption that was predicted for 2022. Further, the IEA *Coal 2022* report predicts global coal consumption will reach 8 038 Mt in 2025.
125. In view of the amounts outlined at paragraphs [122] to [124] above, I found that the amount of coal to be combusted from the proposed action, and the 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.
126. The request asserts that 'there is an approximately linear relationship between cumulative anthropogenic CO₂ emissions and global temperature, such that every tonne of CO₂ emissions adds to global warming', and I accepted this. However, for the reasons discussed above, I did not accept that the contribution this 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

127. I noted that the 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.

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

Conclusion

129. For the reasons at paragraphs 94 to 128 above, I found that the information in the request and the information provided through the 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).

130. 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.

131. 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 a National Heritage place (sections 15 and 15C)

Referral information

132. I noted that 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 that 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.

133. 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

134. 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.

135. I considered that this information is substantial new information because:

- a. much of the information contained in the 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.

136. 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; and
- s. Wet Tropics of Queensland.

137. 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 places.

138. Broadly, the information presented by EJA about the effects of climate change on National Heritage places showed that 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; and
- 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 National Heritage Places?

139. I accepted the department's advice that the information shows 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.
140. For the same reasons as those set out at paragraphs 104 to 105 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 the flow-on climate change effects would, if anything, 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.
141. For the same reasons as those set out at paragraphs 106 to 128 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

142. I found that the new information is not about the impacts the proposed action has, will have or is likely to have on National Heritage Places.

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

Referral information

143. I noted that the original referral decision for the proposed action does 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.
144. 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

145. 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.

146. I considered that this information is substantial new information because:
- a. much of the information contained in the 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.
147. The information in the 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; and
 - d. longer drier periods, increasing evaporation which affect salinity and groundwater levels.
148. 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?

149. 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 shows 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.
150. For the same reasons as those set out at paragraphs 104 to 105 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, if anything, be indirect consequences of the proposed action on the ecological character of Ramsar wetlands for the purposes of the EPBC Act.
151. For the same reasons as those set out at paragraphs 106 to 128 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 Ramsar wetlands.

Conclusion

152. 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

153. 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 a significant impact to habitat for listed threatened species and ecological communities.
154. 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

155. EJA has identified over 2000 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.
156. I considered that this information is substantial new information as:
- a. some of the information contained in the 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.

Listed threatened fauna

157. 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.
158. The information in the 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

159. EJA considers that 1048 listed floral species are likely to be affected by climate change. The EJA information 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.
160. 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

161. 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.
162. 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, and
 - 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?

163. I accepted the department's advice that the information provided by EJA shows climate change is having, or will have, adverse effects on the habitats of listed threatened species and the composition of listed threatened ecological communities.
164. For the same reasons as those set out at paragraphs 104 to 105 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, if anything, be indirect consequences of the proposed action on listed threatened species and ecological communities for the purposes of the EPBC Act.

165. For the same reasons as those set out at paragraphs 106 to 128 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

166. 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.
167. 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. I considered that 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

168. I noted that the original referral decision does not include this controlling provision because the project area does not harbour important habitat and/or an ecologically significant proportion of any migratory species. The delegate considered it unlikely the proposed action would have a significant impact on migratory species given the nature and scale of the proposed action and its potential impacts.
169. 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

170. 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 Species Profile and Threats Database and conservation and listing advices.
171. I considered that this information is substantial new information as:
- a. some of the information contained in the 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.

172. EJA considers that 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?

173. I accepted the department's advice that the information provided by EJA shows climate change is having, or will have, adverse effects on migratory species.
174. For the same reasons as those set out at paragraphs 104 to 105 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, if anything, be indirect consequences of the proposed action on listed migratory species for the purposes of the EPBC Act.
175. For the same reasons as those set out at paragraphs 106 to 128 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

176. 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 migratory species.

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

Referral information

177. I noted that the original referral decision for the proposed action does not include this controlling provision because the proposed action does not occur in a Commonwealth marine area and the delegate considered it unlikely the proposed action would have a significant impact on the environment in a Commonwealth marine area given the nature and scale of the proposed action, its potential impacts and its distance from Commonwealth marine areas.
178. 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

179. 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.
180. I considered that this information is substantial new information as:
- a. much of the information contained in the 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.
181. EJA considers that the environment in five of the six Commonwealth marine areas (**CMA**) and over 390 listed marine species are likely to be impacted by climate change.
182. The information in the 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; and
 - 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.
183. The information in the 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 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?

184. I accepted the department's advice that the information provided by EJA shows 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.

185. For the same reasons as those set out at paragraphs 104 to 105 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, if anything, be indirect consequences of the proposed action on the environment in a CMA for the purposes of the EPBC Act.
186. For the same reasons as those set out at paragraphs 106 to 128 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

187. 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

188. I noted that the original referral decision for the proposed action does not include this controlling provision because the proposed action is not being undertaken in the Great Barrier Reef Marine Park (**the Park**). The delegate considered it unlikely the proposed action would have a significant impact on the Park given the nature and scale of the proposed action.
189. 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

190. 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 Great Barrier Reef under the World Heritage controlling provision.
191. I considered that this information is substantial new information as:
- a. much of the information contained in the 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.
192. The EJA information identified that climate change is the most serious threat to the environment in the Greater Barrier Reef and compounds the impacts of other existing

threats such as land-based run off, coastal development, and direct use (particularly fishing).

193. For example, climate change reduces the Reef'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?

194. I accepted the department's advice that the information provided by EJA shows 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.
195. For the same reasons as those set out at paragraphs 104 to 105 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, if anything, be indirect consequences of the proposed action on the environment of the Park for the purposes of the EPBC Act.
196. For the same reasons as those set out at paragraphs 106 to 128 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

197. 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.

Other matters for decision making

Precautionary principle

198. As a request was 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. In making a decision under section 75, I am required to take account of the precautionary principle 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 applied in the original referral decision.
199. In making my decision to confirm the referral decision, I took into account the precautionary principle. I considered that, while the information in the 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 for the purposes of the EPBC Act. I

therefore was not satisfied that the revocation and substitution of the original decision was warranted by substantial new information about the impacts the proposed action has or will have, or is likely to have, on protected matters.

Conclusion

200. In light of the findings described in paragraphs [91]-[199] 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 action has or will have, or is likely to have, on protected matters.
201. As discussed above at [93], 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.
202. 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) and sections 24D and 24E (a water resource, in relation to coal seam gas development and large coal mining development).

**Tanya Plibersek,
Minister for the
Environment and
Water**

signature



date of decision

11 May 2023

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.