

Notice

Environmental Protection Act 1994

Decision about an application for an environmental authority

This statutory notice is issued by the administering authority pursuant to section 198 of the Environmental Protection Act 1994 to advise you of a decision on your application for an environmental authority.

To: Waratah Coal Pty Ltd
C/- C J Feltham Town Planning
GPO Box 1538
BRISBANE QLD 4001

cjfeltham@bigpond.com

ATTN: Mr Cameron Feltham

Our reference: 101/0032704 | C-EA-100147684

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1. Application details

The application for an environmental authority was received by the Department of Environment and Science on 1 February 2022.

Application reference number: 2201-27010 SRA | A-EA-NEW-100147681.

Land description: 2/SP136836.

2. Decision

The administering authority has decided to **refuse the application** in accordance with section 172(2) of the *Environmental Protection Act 1994* (EP Act).

3. Considerations

3.1 Material and Legislation

Section 176 of the EP Act states that in deciding the application, the administering authority must: comply with any relevant regulatory requirement; and have regard to the application; any response given for an information request; and the standard criteria.

In making this decision, in accordance with section 176 of the EP Act, the administering authority considered the following material and legislation:

- a) Section 36 of the *Environmental Protection Regulation 2019* (EP Reg), which prescribes the matters about which the administering authority must consider to impose conditions in relation to, when making an environmental management decision.

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- b) The application submitted on 28 January 2022 and all supporting information provided during the assessment process including the response to the information request.
- c) All representations made by submitters for the development approval application.
- d) Work request responses and advice provided by the Department of Environment and Science (the Department) technical specialists within the Technical Support Unit.
- e) The relevant legislation including:
 - a. The EP Act (and subordinate legislation)
 - b. The *Planning Act 2016*
 - c. The *Human Rights Act 2019* (HR Act)
 - d. The *Vegetation Management Act 1999*
 - e. The *Nature Conservation Act 1992* (and subordinate legislation)
 - f. the *Environment Protection and Biodiversity Conservation Act 1999*
 - g. The *Environmental Offsets Act 2014* (and subordinate legislation)
 - h. The *Regional Planning Interests Act 2014*
 - i. The *Waste Reduction and Recycling Act 2011*
 - j. Environmental Protection (Air) Policy 2019
 - k. Environmental Protection (Noise) Policy 2019
 - l. Environmental Protection (Water and Wetland Biodiversity) Policy 2019
- f) The relevant Commonwealth or state government plans, standards, agreements or requirements about environmental protection or ecologically sustainable development, including:
 - a. The Queensland Energy and Jobs Plan 2022
 - b. Australia's 2030 emissions reduction target
 - c. Australia State of the Environment Report 2021
 - d. Queensland Climate Action Plan and Queensland Climate Adaptation Strategy 2017
 - e. Powering Queensland Plan 2017

3.2. Relevant Chronology

On 28 January 2022, Waratah Coal Pty Ltd (the Applicant) submitted a development application for a material change of use – public utility, environmentally relevant activities and hazardous chemical facility under the Jericho Shire Planning Scheme 2006. In accordance with section 115 of the EP Act, a development application is taken to be an application for an environmental authority (EA). The Department is the technical agency responsible for the assessment of the associated EA for a prescribed environmentally relevant activity.

This was a re-submission of an application originally lodged on 19 December 2019 and was made in response to a call-in notice issued in accordance with section 103 of the *Planning Act 2016* by the Minister for State Development, Infrastructure, Local Government and Planning and the Minister Assisting the Premier on Olympic and Paralympic Games Infrastructure.

This application sought approval for a 1,400 megawatt (MW) ultra-supercritical high efficiency low emissions power station (the Project) adjacent to the proposed Waratah Galilee Coal Mine Project. The Project is proposed to be located 30km north-west of the town of Alpha on Lot 2 SP136836, within the local government area of Barcaldine Regional Council. The subject site for the Project is 1,310 hectares. The adjacent proposed Galilee Coal Mine is intended to provide the Project with approximately 4 million tonnes

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of coal feed per annum. The Project is intended to service the energy requirements of the Galilee Coal Mine operations and the public network.

The Department had the opportunity to request information via a notice that was issued on 24 February 2022. A response to the notice was provided by the Applicant on 27 June 2022. The Department has also considered the submissions made on the development application during the public consultation period which commenced 25 November 2022.

3.3 Key Considerations

The Department identified the following concerns which informed the decision to refuse the application. The legislative sections relevant to the decision are discussed further in section 4 of this notice:

- a) The Project is proposing to use a non-renewable resource which causes the release of CO₂ (a greenhouse gas). The Project proposes to use 4 million tonnes of coal per annum and emit 9.427 million tonnes of CO₂-equivalent/year as scope 1 emissions, not including emissions associated with construction or decommissioning.
- b) The Applicant has stated that this Project will be carbon neutral through the purchasing of carbon credits, carbon capture and storage (CCS), biomass co-firing, and/or carbon offsets, however:
 - the Applicant has not sought approval for CCS or the burning of biomass as a mitigation measure;
 - the feasibility and timeframe for approval of CCS as a greenhouse gas abatement measure for this Project cannot be determined;
 - the feasibility of supplementing coal with biomass cannot be determined; and
 - the feasibility of carbon offsets is not certain.
- c) The Project will emit greenhouse gas emissions through the combustion of coal which is known to cause climate change, for which the science is regarded as having reached a state of sufficient certainty as to its fundamentals. Therefore, in the absence of surety of a carbon neutral proposal, the Department considers the power station will contribute to longer-term and cumulative global climate change impacts.
- d) The Project will contribute towards irreversible climate change impacts that are anticipated to undermine biological diversity and ecological integrity.
- e) The Project cannot guarantee it will maintain or enhance the health, diversity and productivity of the environment for the benefit of future generations.
- f) The Project as proposed would be the second highest emitter of total scope 1 (being the greenhouse gas emissions that are the emissions released to the atmosphere as a direct result of the activity, or series of activities at a facility level). in comparison with Queensland's existing coal-fired power stations.
- g) The Project, as proposed, would sit among the top 100 greenhouse gas emission sources in Australia.
- h) Based on Queensland's 2019 total greenhouse gas emissions, the Project would increase Queensland's emissions output by approximately 5.73%.

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- i) The Project is expected to impede Queensland's achievement of its renewable energy targets of 50% by 2030 and 70% by 2032, and the national and Queensland commitments to achieve net zero emissions by 2050.
- j) Approximately 91.8% of the public representations made via submissions opposed the Project, citing concerns relating to climate change and the ability to meet national and state level emissions targets.
- k) The application material states that the site is subject to final detailed design, therefore the environmental risks can only be assessed to the extent of the information supplied and the feasibility of the Project cannot be guaranteed.
- l) The Department has concluded that the risks cannot be managed through conditions under an EA. An EA does not have the ability to prevent the ongoing, long-term and cumulative impacts of greenhouse gas releases that the Project would emit.
- m) The Department is unable to impose a condition on the EA requiring the Project to be carbon neutral, such considerations are outside of the scope of this assessment. For example, carbon capture storage projects require a separate assessment and approval under the EP Act.
- n) The Project would benefit the local area economically and create employment opportunities for the community. A workforce of 1,000 people would likely be employed over the 36-to-42-month construction period, and an operational workforce of up to 90 people would be required during the estimated 50 year life of the Project. The Department has considered the social and economic benefits of the Project, however the proposed benefits balanced against the seriousness and irreversibility of the threats of climate change do not weigh in favour of approval.
- o) The Department has considered the relevant legislation and does not support an approval of the Project in consideration of:
 - the precautionary principle;
 - intergenerational equity;
 - conservation of biological diversity and ecological integrity;
 - Commonwealth or State Government plans, standards, agreements or requirements about environmental protection or ecologically sustainable development;
 - the character, resilience and values of the receiving environment;
 - all submissions made by the Applicant and submitters;
 - the public interest; and
 - compatibility with human rights.

As outlined in the Reasons for Decision.

4. Reasons for Decision

An assessment and decision to determine whether to grant or refuse an EA application must be decided in accordance with section 172 of the EP Act. In making this decision, the Department's delegate must apply the criteria under section 176 of the EP Act and ensure that the decision complies with section 58(1) of the

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HR Act. In consideration of the relevant decision criteria (outlined above) and in consideration of the HR Act, the application is refused on the following grounds:

4.1 Precautionary Principle

Considered in accordance with section 176(2)(ii) of the EP Act and defined under section 3.5.1 of the Intergovernmental Agreement on the Environment (the Agreement) as follows:

Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the application of the precautionary principle, public and private decisions should be guided by:

- 1. careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment; and*
- 2. an assessment of the risk-weighted consequences of various options.*

Items a) to c), f) to h) and k) to n) in section 3.3 of this Notice apply to the decision against this criteria. To summarise the conclusions of the assessment, the application material was insufficient to enable the administering authority to determine the environmental harm that may occur as a result of the proposed activities, noting the proposal has the potential to cause unacceptable environmental harm. Approval of this Project would not be consistent with the precautionary principle

4.2 Intergenerational Equity

Considered according to section 176(2)(ii) of the EP Act and defined under section 3.5.2 of the Agreement as follows:

The present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

Items a) to h) and k) to n) in section 3.3 of this notice apply to the decision against this criteria. In summary, the application did not demonstrate that the proposed release of greenhouse gases is sustainable over the life of the Project. Approval of the Project would be considered unequitable in relation to the impacts to future generations that will be forced to manage, mitigate, finance, and adapt to global climate change threats.

Approval of the Project would not be consistent with the principles of intergenerational equity.

4.3 Conservation of Biological Diversity and Ecological Integrity

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Considered in accordance with section 176(2)(ii) of the EP Act and defined under section 3.5.3 of the Agreement as follows:

Conservation of biological diversity and ecological integrity should be a fundamental consideration.

Items a), c) to h), k) and n) in section 3.3 of this Notice apply to the decision against this criteria. To summarise the conclusions of the assessment, the Project will contribute towards irreversible climate change impacts. It is understood that climate change represents a direct threat to ecological integrity and biological diversity.

Approval of the Project would not be consistent with the principles of the conservation of biological diversity and ecological integrity.

4.4 Commonwealth or State Government Plans, Standards, Agreements or Requirements About Environmental Protection or Ecologically Sustainable Development;

Considered in accordance with section 176(2)(ii) of the EP Act.

Items a), c), d), g) to j) and n) in section 3.3 of this Notice apply to the decision against this criteria.

To summarise the conclusions of the assessment, the proposed Project is inconsistent with or is considered to impede on the success of actions under Commonwealth and State government plans, standards, agreements or requirements about environmental protection or ecologically sustainable development. For example, the Queensland Energy and Jobs Plan sets a 70% renewable energy target by 2032, and approval of the Project proposal would increase emissions output by 5.73% (based on 2019 Queensland emissions data).

Approval of this Project would not be consistent with Commonwealth or State Government plans, standards, agreements or requirements about environmental protection or ecologically sustainable development.

4.5 The Character, Resilience and Values of the Receiving Environment;

Considered in accordance with section 176(2)(ii) of the EP Act.

Items a), c) to h), k), l) and n) in section 3.3 of this Notice apply to the decision against this criteria.

To summarise the conclusions of the assessment, the Project will contribute to the impacts of climate change, thereby contributing to long-term and cumulative impacts to the character, resilience, and values of the receiving environment.

Approval of this Project would not be consistent with actions required to protect the character, resilience and values of the receiving environment.

4.6 All Submissions Made by the Applicant and Submitters;

Considered in accordance with section 176(2)(ii) of the EP Act.

Items a) to j) and n) in section 3.3 of this Notice apply to the decision against this criteria.

To summarise the conclusions of the assessment, the material submitted by the Applicant has been determined to be insufficient in enabling the administering authority to determine the environmental harm that may occur as a result of the proposed activities. The majority of public representations made against the application opposed the proposal, for reasons described below.

With consideration of the submissions made by the Applicant and submitters, an approval of this Project is not supported.

4.7 the Public Interest.

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Considered in accordance with section 176(2)(ii) of the EP Act.

Items a), c) to j) and n) in section 3.3 of this Notice apply to the decision against this criteria.

To summarise the conclusions of the assessment, the Project has the potential to contribute to serious and irreversible environmental harm through its contribution to climate change impacts which cannot be mitigated, managed and regulated via an EA. The Project conflicts with Commonwealth and State government plans and agreements in place to manage environmental harm. Submissions made regarding the application demonstrated significant opposition to the Project.

Approval of this Project would not be consistent with the public interest.

4.8 Human Rights

Considered in accordance with section 58(1) of the HR Act. It is not considered that there are any exemptions under s58(2) that apply to this decision.

4.8.1 The right to recognition and equality before the law

Items a), c) e) to h) and n) in section 3.3 of this Notice apply to the decision against this criteria.

To summarise the conclusions of the assessment, adverse impacts of climate change may disproportionately affect: children; older people; people living in poverty; other disadvantaged people and First Nations people.

Approval of this Project would not be consistent with the right to recognition and equality before the law.

4.8.2 The Right to life (section 16)

Items a), c) e) to h) and n) in section 3.3 of this Notice apply to the decision against this criteria.

To summarise the conclusions of the assessment, the Project will emit greenhouse gases to the atmosphere which contribute to climate change, which may impact individual or community health, and therefore a person's right to life. Such impacts include limitations (but are not limited to) on access to food, clean water, suitable housing and clean air as a result of extreme weather events and bushfires.

Approval of this Project would not be consistent with the right to life.

4.8.3 Property rights (section 24)

Items a), c) and e) to h) section 3.3 of this Notice apply to the decision against this criteria.

To summarise the conclusions of the assessment, the Project will emit greenhouse gases to the atmosphere which contribute to climate change impacts and subsequently, property rights.

Approval of this Project would not be consistent with property rights.

4.8.4 The right to privacy (section 25)

Items a), c) and e) to h) in section 3.3 of this Notice apply to the decision against this criteria.

To summarise the conclusions of the assessment, the Project will emit greenhouse gases to the atmosphere which contribute to climate change impacts and subsequently, privacy (home) rights.

Approval of this Project would not be consistent with the right to privacy.

4.8.5 The right to protection of families and children (section 26(2))

Items a) and c) to h) in section 3.3 of this Notice apply to the decision against this criteria.

To summarise the conclusions of the assessment, the Project's contribution to climate change may restrict a child's right to the protection that is in the child's best interests. Issues of equity and intergenerational equity (discussed above) are relevant to the Project's contribution to

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climate change via the release of greenhouse gas emissions. Younger generations will be forced to adapt and manage climate change impacts that were induced decades and generations before.

Approval of this Project would not be consistent with the right to protection of families and children.

- 4.8.6 The cultural rights of Aboriginal and Torres Strait Islander Peoples (sections 27 and 28) Items a) and c) to h) in section 3.3 of this Notice apply to the decision against this criteria. To summarise the conclusions of the assessment, Indigenous people are deeply connected culturally and spiritually to the land and wildlife and, their wellbeing is inextricably linked to being able to care for Country and ability to pass on knowledge and traditions. The Projects contribution to climate change may deny Aboriginal and Torres Strait Islander peoples the right to maintain and strengthen their relationship to the land and their ability to conserve and protect the environment. Approval of this Project would not be consistent with the cultural rights of Aboriginal and Torres Strait Islander Peoples.

The Department has concluded that its decision to refuse the application is compatible with human rights.

5. Review and appeal rights

You may apply to the administering authority for a review of this decision within 10 business days after receiving this notice. You may also appeal against this decision to the relevant court. Information about your review and appeal rights is attached to this notice. This information is guidance only and you may have other legal rights and obligations.



Signature

2 November 2023

Date

Tristan Roberts
Department of Environment and Science
Delegate of the administering authority
Environmental Protection Act 1994

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Attachments

Information sheet: Internal review and appeal (ESR/2015/1742)