

21 October 2020

The Hon. Sussan Ley
Minister for the Environment
Parliament House
CANBERRA ACT 2600

By email: sussan.ley.mp@aph.gov.au

Dear Minister,

Request for the revocation of EPBC Approval No. 2010/5736 – Carmichael Coal Mine and Rail Infrastructure Project, Queensland

1. We act for Ms Claire Galvin and Ms Brooklyn O’Hearn.
2. Ms Galvin and Ms O’Hearn are young community leaders from northern Queensland who are very concerned about the devastating impacts climate changing is having, and will continue to have, on their communities.
3. Ms Galvin is from Cairns and Ms O’Hearn is from Townsville. Our clients have grown up in communities deeply reliant on a healthy Great Barrier Reef for the prosperity of their region. Our clients have observed the worsening impacts of climate change on the Great Barrier Reef with increasing alarm.
4. Ms Galvin and Ms O’Hearn have instructed me to write to you to request that you exercise your power under section 145 of the Environment Protection and Biodiversity Conservation Act 1999 (“EPBC Act”) to revoke EPBC Approval No 2020/5736 for the Carmichael Coal Mine and Rail Infrastructure Project in the Galilee Basin in Queensland (“the Action”). They request that you do this because the robust independent scientific evidence attached to this letter demonstrates that the Action will have a significant impact on the Great Barrier Reef¹ that was not identified in assessing the Action.

¹ We note that on the 6 January 2011 the then Minister determined that the Carmichael Coal Mine and Rail Infrastructure Project was a controlled action as it had the potential to impact on a range of matters of national environmental significance (“MNES”) under Part 3 of the EPBC Act including the Great Barrier Reef World Heritage Area, The Great

5. As you will be aware, the Action was approved by the Environment Minister in October 2015 (“the 2015 Approval”). The Great Barrier Reef has subsequently suffered severe coral bleaching events. In 2020 the Great Barrier Reef experienced the most widespread coral bleaching event recorded, and for the first time, severe bleaching struck all three regions of the Great Barrier Reef.²

6. In his written reasons for the 2015 Approval, Minister Hunt acknowledged the evidence that climate change is the most serious threat to the Great Barrier Reef, including the increased risk of mass coral bleaching³ He then went on to state that in his opinion *“it is not possible to draw robust conclusions on the likely contribution of the project to a specific increase in global temperature”* and that *“As a result it is difficult to identify the necessary relationship between the taking of the action and any possible impacts on relevant matters of national environmental significance which may occur as a result of an increase in global temperature”*.⁴

7. Minister Hunt prefaced these findings with a statement that *“The actual quantity of emissions that is likely to be additional to current global GHG emissions depends on a range of variables. They include whether the coal replaces coal currently provided by other suppliers, whether the coal is used as a substitute for other energy sources, and the efficiency of the coal burning power plants.”*⁵

8. While Minister Hunt’s written reasons for approving the Action in 2015 acknowledged the theoretical possibility of climate change impacts, they expressly found there was insufficient evidence to demonstrate a causal link between the Action and any particular increase in global temperatures. He therefore did not identify climate change impacts, (including coral bleaching) as a significant impact on the Great Barrier Reef.

Barrier Reef National Heritage Place, and the Great Barrier Reef Marine Park Area. This letter refers to those three MNES collectively as “the Great Barrier Reef”. For reference see the Minister’s Referral Decision of 6 January 2011 - available online at http://epbcnotices.environment.gov.au/_entity/annotation/7ec7cbd3-8869-e511-b93f-005056ba00a7/a71d58ad-4cba-48b6-8dab-f3091fc31cd5?t=1600927311509

² See Attachment 3 - Independent expert report of Adjunct Professor Bill Hare, 3 September 2020, page 9.

³ Statement of Reasons for a Decision made under section 145 of the *Environmental Protection and Biodiversity Conservation Act 1999* by Minister for the Environment Greg Hunt, 14 October 2015, page 27 [Paragraphs 131]

⁴ Statement of Reasons for a Decision made under section 145 of the *Environmental Protection and Biodiversity Conservation Act 1999* by Minister for the Environment Greg Hunt, 14 October 2015, page 27 [140]

⁵ Statement of Reasons for a Decision made under section 145 of the *Environmental Protection and Biodiversity Conservation Act 1999* by Minister for the Environment Greg Hunt, 14 October 2015, page 26 [Paragraph 138]

9. Our clients have instructed us to obtain independent expert evidence to ascertain whether it is possible to draw conclusions on the link between the Action proceeding, subsequent increased greenhouse gas emissions, and climate change impacts on the Great Barrier Reef. We note that we have asked each expert to provide their written independent expert evidence in accordance with the Federal Court of Australia's Expert Witness Code of Conduct, and include a description of their qualifications and experience. We **attach** that independent expert evidence, for your consideration. The three independent expert reports are:
- **Attachment 1** – Independent expert report of Mr Tim Buckley, financial analyst, on which other coal mining projects in the Galilee Basin in Queensland the Action will facilitate;
 - **Attachment 2** – Independent expert report of Associate Professor Paul Burke, economist, on thermal coal demand and future emissions from the Action; and
 - **Attachment 3** – Independent expert report of Adjunct Professor Bill Hare, climate scientist, on the impacts of the Action on the Outstanding Universal Value of the Great Barrier Reef.
10. We are of the view that this expert evidence provides a clear basis upon which you may revoke the 2015 Approval, using your power to do so under section 145 of the EPBC Act. The expert evidence provides information about the significant impact the Action will have on the Great Barrier Reef that was not identified in assessing the action. We suggest that it is open to you to find that the Action would not have been granted approval in 2015, if this information was available to the Minister at the time. In particular, the Minister could not have approved the Action due to section 137 of the EPBC Act which requires that the Minister not act inconsistently with Australia's obligations under the World Heritage Convention.
11. Below we have set out a summary of the key findings of the expert evidence we have obtained on behalf of our clients, and how this constitutes new information about the impact the Action will have on the Great Barrier Reef.
12. The Expert evidence from Mr Tim Buckley of IEEFA (Attachment 1 to this letter) demonstrates that greenhouse gas emissions from two additional proposed coal mines in the Galilee Basin must be considered as impacts of the Action. This is because the Action can be considered a substantial cause of the greenhouse gas emissions of the China Stone and Hyde Park coal mines, and therefore meets the definition of "impact" of the Action under section 527E of the EPBC Act. Mr Buckley's expert report demonstrates that the China Stone and Hyde Park coal mines will be facilitated by the development of

the Action, to a major extent.⁶ Further, it is clear that the development of those neighbouring mines is either within the contemplation of Adani Mining Pty Ltd or is a reasonably foreseeable consequence of the building of the Action. Therefore, the additional greenhouse gas emissions caused by the China Stone and Hyde Park Mines are clearly either within the contemplation of Adani Mining Pty Ltd or a reasonably foreseeable consequence of the development of those mines.⁷

13. The expert evidence from Associate Professor Paul Burke (Attachment 2 to this letter) states that the market substitution assumption is implausible in the case of the Action and that it is much more likely that the extraction of coal from the mine would lead to a net increase in emissions. Associate Professor Burke finds that the opening of a new thermal coal mine would lead to a number of effects including an increase in global thermal coal consumption equal to up to 50% of the output of the new mine.⁸

14. Finally, the expert evidence from Adjunct Professor Bill Hare (Attachment 3 to this letter) finds that the Action and the neighbouring China Stone coal mine and Hyde Park Coal mine will have a significant impact on the Outstanding Universal Value of the Great Barrier Reef. The causal link between the impacts of the Action and how the increase in greenhouse gas emissions it will cause will have a significant impact on the Great Barrier Reef has been set out in detail. Key findings include:

- There are multiple lines of evidence that strongly support the conclusion that new coal production is highly likely, if not virtually certain, to be inconsistent with limiting global warming to 1.5 degrees Celsius;⁹
- Global warming of 1.5 degrees Celsius threatens, at the least, severe damage to the Outstanding Universal Value of the Great Barrier Reef and a further loss of 70% to 90% of reef-building corals is projected, and will, at the least, severely damage the condition of integrity, which is essential for the Great Barrier Reef to retain its World Heritage listing;¹⁰
- Global warming of 1.5 degrees Celsius threatens severe damage to the Outstanding Universal Value of the Great Barrier Reef and to the condition of integrity of the World Heritage Area. If global warming extends above 1.5 degrees Celsius for any significant period, a further 0.5

⁶ See Attachment 1 - Buckley, Tim, Director of Energy and Finance Studies, IEEFA, Independent Expert Report – Carmichael Coal and Rail Project, March 2020, pages 4 - 7.

⁷ Meaning of “Impact” – section 527E(2) of the EPBC Act.

⁸ Attachment 2 – Burke, Paul, Associate Professor at Arndt-Corden Department of Economics and the Crawford School of Public Policy at the Australian National University, Independent report: Thermal and coal demand and future emissions from the Carmichael Coal Mine, 24 June 2020, page 7.

⁹ Attachment 3 - Independent expert report of Adjunct Professor Bill Hare, 3 September 2020, pages 26 and 28.

¹⁰ Attachment 3 - Independent expert report of Adjunct Professor Bill Hare, 3 September 2020, page 7.

degrees Celsius of warming to 2 degrees Celsius will [very likely] destroy the Outstanding Universal Value of the Great Barrier Reef and the condition of integrity of the World Heritage Area;¹¹

- Warming beyond 2 degrees Celsius appears likely to result in the extirpation of the Great Barrier Reef; ¹²
- The remaining carbon budget from January 2020 for a likely probability (a 66% or greater chance) to limit global warming to 1.5 degrees Celsius, from the start of 2020, is about 235 GtCO₂(billion tonnes of CO₂); ¹³
- The remaining carbon budget from January 2020 for a likely probability (a 66% or greater chance) to limit global warming to 2 degrees Celsius, from the start of 2020, is about 985 GtCO₂ (billion tonnes of CO₂); ¹⁴
- Total carbon dioxide emissions that would result from burning the coal anticipated to be produced by the Action and the China Stone and Hyde Park coal mines are estimated at 13.7 GtCO₂ (billion tonnes of CO₂), equivalent to 5.8% of the carbon budget remaining to limit warming to 1.5 degrees Celsius and about 1.4 % of the budget to hold warming to 2 degrees Celsius; ¹⁵
- If the damage to the Great Barrier Reef caused by the total carbon dioxide emissions of the proposed Carmichael, China Stone and Hyde Park coal mines was quantified as a linear extrapolation from the fraction of the global 1.5 degree carbon budget (5.8%) to the area of Reef as a proxy for the scale of severe damage to the Great Barrier Reef this would amount to about 13,980 – 17,980 square kilometres being severely damaged or lost; ¹⁶
- Applying the evidence of Associate Professor Burke, that a new thermal coal mine would lead to an increase in global thermal coal consumption that is equal to up to 50% of the output of the new mine, we asked Adjunct Professor Hare to quantify the expected damage to the Great Barrier Reef of 50% of the emissions of the proposed mines. Adjunct Professor Hare finds that fifty percent of the emissions resulting from the Action and the China Stone and Hyde Park Coal Mines will use about 2.9% of the projected remaining carbon budget for 1.5 degrees Celsius. ¹⁷

¹¹ See Attachment 3 - Independent expert report of Adjunct Professor Bill Hare, 3 September 2020, page 45.

¹² See Attachment 3 - Independent expert report of Adjunct Professor Bill Hare, 3 September 2020, page 45.

¹³ See Attachment 3 - Independent expert report of Adjunct Professor Bill Hare, 3 September 2020, page 19.

¹⁴ See Attachment 3 - Independent expert report of Adjunct Professor Bill Hare, 3 September 2020, page 20.

¹⁵ See Attachment 3 - Independent expert report of Adjunct Professor Bill Hare, 3 September 2020, page 36.

¹⁶ See Attachment 3 - Independent expert report of Adjunct Professor Bill Hare, 3 September 2020, page 40.

¹⁷ See Attachment 3 - Independent expert report of Adjunct Professor Bill Hare, 3 September 2020, page 41.

- Adjunct Professor Hare finds that 2.9% is a significant fraction of the global carbon budget available if warming is to be limited to 1.5 degrees Celsius. He finds that if the damage to the Great Barrier Reef was quantified as a linear extrapolation from the fraction of the global 1.5 degrees Celsius carbon budget caused by the proposed new coal mines (2.9%) to the area of the Reef, as a proxy for the scale of severe damage to the Great Barrier Reef, this would amount to about 6,990-8990 square kilometres of the Great Barrier Reef being severely damaged or lost.¹⁸
- Adjunct Professor Hare concludes that the Action and the China Stone and Hyde Park Coal Mines are incompatible with the protection of the Great Barrier Reef.¹⁹

15. In considering whether the Minister would have granted the 2015 Approval, if the information in the independent expert evidence outlined above had been available at the time, we note that you must apply the precautionary principle. This is because the Minister would have had to apply the precautionary principle to this information as a principle of ecologically sustainable development that must be taken into account under section 136(2)(a) and section 391 of the EPBC Act. This requires that lack of full scientific certainty should not be used as a reason for postponing measures to prevent degradation of the environment, where there are threats of serious or irreversible environmental damage.²⁰ Applying the precautionary principle to the independent expert evidence provided, while the precise quantity of specific damage to the Great Barrier Reef from the increased emissions caused by the Action has not been quantified with certainty, it is clear that there will be significant damage to the Great Barrier Reef caused by the impacts of the Action. The lack of full certainty of the amount of damage must not be used as a reason for postponing measures to prevent that damage.

16. Further to the above, you must also apply the principle of inter-generational equity to your consideration of whether the Minister would have granted the approval.²¹ As you are aware, that principle provides that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations. The evidence clearly shows that the Action will have a significant impact where the health of the Great Barrier Reef will not be maintained for the benefit of future generations.

¹⁸ See Attachment 3 - Independent expert report of Adjunct Professor Bill Hare, 3 September 2020, pages 41 and 44.

¹⁹ See Attachment 3 - Independent expert report of Adjunct Professor Bill Hare, 3 September 2020, page 45.

²⁰ EPBC Act Section 3A "principles of ecologically sustainable development" (b).

²¹ EPBC Act section 136(2) and Section 3A "ecologically sustainable development" (c).

17. It is our clients' contention, that on the evidence available to you today and attached to this request, the position taken by Minister Hunt in the 2015 Approval has become wholly unsupportable. Since Minister Hunt approved the Action in 2015, our clients have grown up watching the Great Barrier Reef suffer three mass coral bleaching events over five years, including the most widespread coral bleaching recorded, just this year, caused by climate change and worsened by the ongoing mining and burning of Australian coal. They urge you to consider the expert evidence we have obtained on their behalf, and revoke approval of the Action in order to avoid the significant detrimental impacts it will have on the Great Barrier Reef. Doing so will also protect their communities from the current and future devastating impacts the destruction of the Great Barrier Reef causes, and give hope to their generation for a vibrant and prosperous future for North Queensland. Our clients want a future for northern Queensland where their communities can rely on a healthy Great Barrier Reef to help recover from the devastating impacts on the tourism industry of the current COVID-19 health crisis.
18. Our clients are active in their communities, doing everything within their power to provide hope for a safe climate future, given the clear and alarming warmings from pre-eminent scientists across the world. All they ask is that you do the same, with the clear powers and duties that you have under our national environment law to protect the Great Barrier Reef.
19. We note that in deciding whether or not to revoke the approval of the Action, you may have regard to the history in relation to environmental matters (environmental history) of Adani Mining Pty Ltd, the environmental history of its executive officers, and the environmental history of its parent body and the parent body's executive officers. We ask, that in doing so, you consider the many findings of breaches of environmental laws relevant to these matters that have occurred since 2015. Many of those breaches are outlined in detail in the legal reports referenced below.²²

Yours sincerely,



Ariane Wilkinson
Senior Lawyer
Environmental Justice Australia

²² The Adani Brief Update, January 2019, Environmental Justice Australia, available online at https://www.envirojustice.org.au/wp-content/uploads/2019/03/Adani-Brief_update_2019.pdf; The Adani Brief, February 2017, Environmental Justice Australia, available online at https://www.envirojustice.org.au/wp-content/uploads/2018/12/adani_brief_eja.pdf and Suitable Scrutiny, August 2020, Environmental Justice Australia, available online at https://www.envirojustice.org.au/wp-content/uploads/2020/09/Environmental-Justice-Australia-Briefing-Note_Suitable-Scrutiny_25-August-2020.pdf.

Attachments:

Attachment 1 – Independent Expert Report – Carmichael Coal and Rail Project by Mr Tim Buckley, Director of Energy and Finance Studies, Institute for Energy Economics and Financial Analysis, March 2020.

Attachment 2 – Independent Report: Thermal coal demand and future emissions from the Carmichael Coal Mine by Associate Professor Paul Burke, Arndt-Cordon Department of Economics, Crawford School of Public Policy, Australian National University, 24 June 2020; and

Attachment 3 – Independent expert report by Bill Hare, Director, Climate Analytics and Adjunct Professor, Murdoch University, 2 October 2020.