HOW DO YOU STEER YOUR CLIENTS THROUGH ENVIRONMENTAL IMPACT ASSESSMENTS FOLLOWING THE SUPREME COURT'S DECISION IN *FINCH*?

WHERE WILL FUTURE CHALLENGES COME FROM?[1]

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Summary

This paper looks at the legal landscape following the Supreme Court's judgment in R (on the application of Finch on behalf of the Weald Action Group) v Surrey County Council and others [2024] UKSC 20. In particular it asks; how do you steer your clients through Environmental Impact Assessments following the Supreme Court's judgment? Further, where will future challenges come from?

It is clear that the impact on fossil fuel projects of Finch has already been significant. Future challenges will surround its application to other commodities, the trends in international law and the development of environmental outcome reports.

A INTRODUCTION

1. Some of those attending today's conference may be familiar with the painting 'Charing Cross Bridge' painted in 1902 by Claude Monet, currently on display as part of the whole series at the Courtauld Gallery. At the time Monet was painting in London and often marvelled at London's *"extraordinary fog so very yellow"*.[3] Yellow fogs were common at the time due to large concentrations of sulphurous emissions in the air, notably from coal fired industry on the South Bank of the Thames. This painting was given to Winston Churchill in 1949 by his literary agent Emery Reves as *"a very small token"* of his gratitude for his friendship. He added that he hoped Churchill, by then the Leader of the Opposition, would soon "*dissipate the fog that shrouds Westminster*".

2. Monet's fog over London might have dissipated but similar issues remain for the environment and those issues are increasingly coming before the courts.

[1] Presented at the White Paper '*Environmental Law & Practice: Shaping New Developments into Solution-Focused Answers for Clients*' conference on 19 November 2024 at The Caledonian Club, London, SW1X 7DR.

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[3] Monet wrote in his diary in February 1890: "*an extraordinary fog, completely yellow; I think I did not too bad an impression of it; it's always beautiful.*"

3. Those at this conference will be very familiar with the Supreme Court's decision in *R (on the application of Finch on behalf of the Weald Action Group) v Surrey County Council and others* [2024] UKSC 20. Given that familiarity that background is only briefly summarised.

4. Ms Finch challenged the grant of planning permission by Surrey County Council ("**the council**") to retain a crude oil extraction site of two existing wells, and to expand the site to drill four new wells, for the production of hydrocarbons over a period of 25 years. By a three-to-two majority, the Supreme Court allowed Ms Finch's appeal.[4]

5. Surrey County Council had initially considered that the EIA for the project should include an assessment of the combustion emissions from the oil to be produced. But the council later changed its mind. It accepted as sufficient an environmental statement ("**ES**") which assessed only direct releases of greenhouse gases at the project site over the lifetime of the project and contained no assessment of the impact on climate of the combustion of the oil. In consequence, no information about the combustion emissions was made available to the public or considered by the council before it granted development consent for the project.

6. The issue for the Supreme Court was whether it was unlawful for the council not to require the EIA to include an assessment of the impacts of downstream greenhouse gas emissions resulting from the eventual use of the refined products of the extracted oil.

7. Not always the way in litigation, but in this case, there was in fact a large degree of factual agreement between the parties. It was agreed that the project under consideration involved the extraction of oil for commercial purposes for a period estimated at 20 years, in quantities sufficient to make an EIA mandatory. It was also agreed that it was not merely likely, but inevitable, that the oil extracted would be sent to refineries and that the refined oil would eventually undergo combustion, which would produce GHG emissions. It was also not disputed that these emissions, which could easily be quantified, would have a significant impact on climate. The only issue therefore was whether the combustion emissions were effects of the project at all.

[4] Lord Leggatt, with whom Lord Kitchin and Lady Rose agreed, gave the majority judgment. Lord Sales, with whom Lord Richards agreed, dissented. Below Holgate J had dismissed Ms Finch's claim, and the Court of Appeal 2:1 had dismissed her appeal (though Lewison LJ with serious doubts).

8. The majority of the Supreme Court answered that it was *"plain"* that they were.[5] The majority judgment held that the council's conclusion that the GHG emissions were not indirect effects of the project was unlawful. In carrying out an EIA of a project for the extraction of oil, the authority was required to assess, as an indirect effect of the project, the environmental effects of GHG emissions arising from the ultimate combustion of the oil once refined and used as fuel.

9. In light of the judgment this paper asks: how do you steer your clients through EIAs following the Supreme Court's decision in *Finch* and where will future challenges come from?

B STEERING CLIENTS THROUGH EIAS FOLLOWING *FINCH* – THE JUDGMENT

10. Ms Finch's challenge was initially held to be unarguable by Lang J, who refused permission on the papers in December 2019 and at the renewal hearing. The same submissions were rejected by Holgate J (as he then was) and by Sir Keith Lindblom, who wrote the decision of the majority in the Court of Appeal. In light of that history, both the majority and minority judgments in *Finch* are briefly summarised below.

The majority judgment

11. The following aspects of the majority judgment are of particular note.

12. **Causation:** Giving judgment for the majority, Lord Leggatt was critical of the approach adopted by the Court of Appeal that whether environmental effects, such as the end-use emissions of the oil extracted in this case, must show some *"sufficient causal connection"* between the project and the putative effect. He noted at [59] that *"the concept of 'sufficient causal connection"* is intrinsically vague. The impact would be to leave a wide range of cases in which the question whether a particular environmental impact is or is not an *"effect of the project"* as having no single right or wrong answer – there would be no consistency or means of ensuring consistency between planning authorities.

13. It was agreed that oil would ultimately be burned as fuel. Further, the court was clear that the refining process does not break the causal chain between extraction and the ultimate environmental effect of the burning of the oil as fuel. The existence of the

[5] [2024] UKSC 20, at [7].

intermediate process of refinement therefore had no significance. It did not alter the basic nature and intended use of the commodity. Since it was *"inevitable"*, it did not breach the causal connection between the extraction and use of the oil.[6]

14. **Effects of the project:** Effects of a project, whether direct or indirect, need only be assessed when they are *"likely"*. In terms of the meaning of *"the effects of the project"*, the majority held that the concept of *"the effects of a project"* on the environment is not – or at least not obviously – vague. Whether a particular environmental impact is or is not an effect of the project is a question which, in principle, *"admits of only one answer"*. The court was clear that in the *"great majority of cases"* that impression is indeed correct.[7]

15. On the contrary, if evidence is lacking so that *"a possible future occurrence is a matter of speculation or conjecture"*, then a rational person would not feel able to judge that it is *"likely"*. Importantly, such agnosticism is not the same as judging the event to be unlikely. It reflects a belief that there is too little knowledge on which to base a judgment.[8]

16. **Transboundary effects:** The EIA Directive, transposed into domestic law, does not impose any geographical limit on the scope of the environmental effects of a project that must be assessed. It was therefore wrong of the council to confine the EIA in this example to emissions only at the project site. It is in the very nature of 'indirect' effects that they may occur away from their source. The majority emphasised: *"…the EIA Directive does not impose any geographical limit on the scope of the environmental effects of a project…There is no principle that, if environmental harm is exported, it may be ignored."*[9]

17. **Public participation:** The majority emphasised the rationale underpinning the public participation requirements in the EIA regime. First, public participation is necessary to increase the democratic legitimacy of decisions which affect the environment. Second, they serve an important educational function, contributing to public awareness of environmental issues. As the majority put it: *"You can only care about what you know about"*.[10]

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[6] [2024] UKSC 20, at [118].
[7] [2024] UKSC 20, at [59].
[8] [2024] UKSC 20, at [74].
[9] [2024] UKSC 20, at [93].
[10] [2024] UKSC 20, at [21].

18. **The floodgates argument:** Finally, it is worth considering the 'floodgates' argument that was raised. As discussed below, in terms of the future development of *Finch*, some of the most significant passages of the judgment are those at [119] to [124]. As the majority noted, Holgate J at first instance was clearly concerned that the number of activities potentially impacted by this decision had "*ramifications far beyond the legal merits of the present challenge*".[11] Holgate J drew a comparison with the production of other minerals and raw materials for use in industrial processes. The examples were given of the production of metals to be used in vehicles – whereby there would be significant GHG emissions from the vehicles eventually purchased and driven.[12] Another example that was given was a factory that manufactures components for use in the construction of aircraft.[13] In response to this concern, Lord Leggatt held that there were "*sound reasons for distinguishing examples of the kind [Holgate J] gave*", without resorting to the artificial notion that refining crude oil transforms it into something fundamentally different.[14]

19. Oil was said to be a "*very different commodity*" from other commodities – with the examples of iron or steel given.[15] Taking the example of a facility to manufacture steel, the effects the steel is put to will depend on innumerable decisions made "*downstream*" in terms of how the steel is used and how products made from the steel are used. This "*indeterminacy regarding future use would also make it impossible to identify any such effects as "likely" or to make any meaningful assessment of them*" at the time of the decision whether to grant development consent for the construction and operation of the steel factory. Lord Leggatt also added that: "*the number of motor vehicles or aircraft in which such parts will be incorporated and the use which will subsequently be made of them may be so conjectural that no realistic estimate could be made of GHG emissions arising from such use on which a reasoned conclusion could be based*".[16]

20. This analysis in particular, one would expect, will form the basis for future case law on the wider principles that can be drawn from *Finch* and applied to other commodities.

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[11] [2020] EWHC 3566 (Admin) at [4].
[12] [2020] EWHC 3566 (Admin) at [4].
[13] [2020] EWHC 3566 (Admin) at [5].
[14] [2024] UKSC 20, at [120].
[15] [2024] UKSC 20, at [121].
[16] [2024] UKSC 20, at [122].

The minority judgment

21. In Lord Kerr's 2012 Birkenhead Lecture 'Dissenting judgments – self-indulgence or self-sacrifice?' described dissenting judgments as contributing to "*the transparency of the debate*".[17]

22. Lord Sales (with whom Lord Richards agreed) wrote a strong dissenting judgment. The minority judgment focused on the development and purposes of the EIA Directive, relevant case law and wording. Just two themes are emphasised for the purposes of this paper – Lord Sales' approach to the meaning of 'effects' and local decision making.

23. **Effects of the project:** In Lord Sales' dissent, he focused on his interpretation of the wording of the text to conclude that even indirect effects still have to be effects 'of the project' which on a natural reading does not include downstream emissions.[18] Lord Sales therefore agreed with the approach of the High Court in which the question is to be determined by a proper interpretation of the EIA Directive as a matter of law.[19]

24. **Local decision making**: Lord Sales placed particular importance on the fact that decisions concerning EIAs were to be taken locally.[20] For Lord Sales, given the transboundary nature of scope 3 emissions, these are "*big picture*" issues which a local planning authority is simply not in a position to address in any sensible way.[21] In his view, it would be "*constitutionally inappropriate*" for a local planning authority to assume practical decision-making authority based on its own views' of downstream emissions and how this should be balanced with national policy.[22] Further, imposing such a requirement on local decision makers would be contrary to the EU principle of

[17] '*Dissenting judgments – self-indulgence or self-sacrifice?*', the Birkenhead Lecture delivered by Lord Kerr of Tonaghmore (8 October 2012), at page 12.
[18] [2024] UKSC 20, at [276].
[19] [2024] UKSC 20, at [327].
[20] [2024] UKSC 20, at [252].
[21] [2024] UKSC 20, at [255].
[22] [2024] UKSC 20, at [256].

proportionality as it would impose disproportionate costs and burdens on developers and national authorities.[23]

25. Later in Lord Kerr's Birkenhead lecture he said:

> *"Well, it seems to me that the suggestion that a majority opinion is weakened by the existence of a dissent – and its corollary – that a judgment is invested with greater authority if it is unanimous may have been taken as a given in earlier generations but that suggestion is not one which should be now accepted uncritically.*
> …
> *On the contrary, where the majority has been required to address and deal with challenges to their reasoning, their judgments should be the more cogent and compelling as a consequence. After all, arguments which underlie minority opinions do not disappear simply because they have not been expressed in dissenting judgments. Better, surely, to have those arguments plainly put and forthrightly countered than to allow them to go unexpressed and unrefuted, ready to surface on the next opportune occasion."*[24]

26. It is an interesting point. Some might view the dissenting judgment as in some ways undermining the strength of the clear judgment of the majority. In fact, if one considers Lord Kerr's view, those concerns from the courts below have not gone unexpressed and unrefuted – they are directly engaged when one looks at the debate between Lord Leggatt's majority judgment and that of Lord Sales' for the minority.

27. The great difficulty with the approach of the majority in the Court of Appeal in *Finch* was that, in theory, local planning authorities could reach entirely different conclusions on an important issue of principle, on essentially the same facts. Provided their reasons for arriving at those conclusions were adequate, the powers of the court to intervene would therefore be extremely limited and depend to a large extent on the strengths and weaknesses of the written reasons of the planning authority. This would have resulted in inconsistency and failed to guarantee the consistently high level of environmental protection which is the objective of EIA.

28. The clear and detailed majority judgment from the Supreme Court is to be welcomed. The question then is how do you steer your clients through Environmental Impact Assessments following the Supreme Court's judgment? Further, where will future challenges come from?

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[23] [2024] UKSC 20, at [259].

[24] *'Dissenting judgments – self-indulgence or self-sacrifice?'*, the Birkenhead Lecture delivered by Lord Kerr of Tonaghmore (8 October 2012), at pages 10 to 11.

C IMPACTS OF *FINCH*

29. The consequences of this decision are potentially far reaching.

30. In terms of the impact of *Finch* on energy projects – as the OEP observed in its submissions to the Supreme Court – in practice the proportion of projects requiring EIA is low relative to total applications for planning permission.[25] However, crucially, the environmental information gained by assessment – comprising both the developer's Ess and the outputs of consultation with specialist statutory bodies and the public – informs but does not dictate the ultimate decision. In respect of future projects, the identification of adverse effects under EIA does not mean that permission or consent should necessarily be withheld. The process is intended to inform project design and decision-making, including informing measures which may be necessary to avoid, mitigate or compensate for certain effects.[26]

31. In terms of the impact of *Finch* it is helpful to consider it first from the perspective of fossil fuel projects and also as part of a piece of developing international jurisprudence.

Fossil fuels

32. The impact of Finch has been evident in several recent decisions. Most notably the decision has impacted planning applications for future oil extraction and other fossil fuel projects in the UK.

33. The Supreme Court's decision in Finch will have significant ramifications for companies involved in fossil fuel projects in the UK. First and foremost, companies seeking approval for new oil and gas projects will now need to include a comprehensive assessment of the downstream or scope 3 emissions that will result from the burning of the fossil fuels they extract. As the majority expressly said, in respect of certain projects "*such as oil refineries, power stations and waste disposal installations among others*" are

[25] As noted in [7.5] to the Explanatory Memorandum to the 2017 Regulations, there are around 500 to 600 environmental statements submitted each year in England through the planning system, representing about 0.1% of all planning applications. EIA therefore only applies to a very small proportion of projects.

[26] As Lord Hoffmann said in *R v North Yorkshire CC Ex p. Brown* [2000] 1 A.C. 397, at p.404, the purpose is "*to ensure that planning decisions which may affect the environment are made on the basis of full information*".

regarded as "*inherently likely*" to have significant effects on the environment and therefore automatically require development consent and an EIA.[27]

34. Lord Leggatt stressed: "*The legislation does not prevent the competent authority from giving development consent for projects which will cause significant harm to the environment. But it aims to ensure that, if such consent is given, it is given with full knowledge of the environmental cost*".[28] However, the *Finch* decision has resulted in the government withdrawing opposition to challenges to several projects.

35. In light of *Finch*, the government withdrew its defence of the proposed coal mine in Cumbria, but the developer, West Cumbria Mining, continued to defend the decision to approve planning permission for the mine. In *Friends of the Earth Ltd v Secretary of State for Levelling Up, Housing and Communities* [2024] EWHC 2349 (Admin) Holgate J quashed the Secretary of State's decision to grant planning permission for a new coal mine in Cumbria where he had not assessed the impact of GHG emissions from burning that coal as part of the EIA process. Taking into account the common ground in that case that the burning of the Whitehaven coal is an inevitable consequence of its extraction from the mine, in Holgate J's judgment it was "*plain*", following *Finch* , that the GHG emissions from that combustion were significant likely indirect effects of the project.[29] The inspector, for whom Holgate J had sympathy had made three legal errors on causation: (1) he applied the sufficient causal connection test, which was held to be incorrect in *Finch;* (2) he took into account irrelevant factors – intervening processes, lack of control by the developer, and future regulatory controls; (3) he took into account his conclusions on substitution.[30] The Secretary of State did not commit error (3) but did commit errors (1) and (2).[31]

36. Of interest is how the judge treated the substitution argument advanced by WCM, that the use of the Whitehaven coal would result in US coal remaining in the ground:[32]

> "*[106] To the extent that substitution for US coal would result in a reduction in GHG emissions, that could potentially be offset against the GHG emissions attributable to the burning of the Whitehaven coal. Assuming that there will be no other demand for it, the US coal would*

[27] [2024] UKSC 20, at [14].
[28] [2024] UKSC 20, at [6].
[29] [2024] EWHC 2349 (Admin), at [101].
[30] [2024] EWHC 2349 (Admin), at [97] – [98].
[31] [2024] EWHC 2349 (Admin), at [100].
[32] [2024] EWHC 2349 (Admin), at [106].

not be burnt. But that offsetting does not mean that substitution of US coal is a relevant factor in determining whether the burning of Whitehaven coal is a likely significant effect of the proposed development. Any such offsetting which could be justified should not be confused with the question whether the extraction of Whitehaven coal is in law a relevant cause of the burning of that coal. Likewise, the fact that the 2011 Regulations require the "significance" of an effect to be assessed, which can have a quantitative aspect, does not justify eliding these two different issues of cause and effect."

37. Also of interest are the judge's comments on the responsibility for producing information on GHG emissions, which was found to rest firmly with the developer:[33]

"[112] It is well-established that the concept of a legal burden of proof has no place in the multi-factoral context of public inquiries. But planning policies may have the practical effect of requiring a developer, or as the case may be a LPA, to produce evidence to satisfy a criterion, or to show that a particular beneficial or harmful effect will or will not occur, sometimes to a particular policy standard. If that party fails to do so, the policy may well indicate the consequence for decision-making, subject, of course, to any other material considerations. Accordingly, that party faces a policy requirement to produce adequate evidence to satisfy the decision-maker on the point. Policies may be concerned with the risk of a harm occurring. As a general proposition, the more serious the risk (generally a combination of likelihood and consequences), so the decisionmaker may expect more cogency in, or apply a precautionary approach to, the material addressing that risk (Satnam at [108]).'

[115] A similar analysis applies to the application of the 2011 Regulations in the light of the decision of the Supreme Court in Finch. It was for WCM to assess in its ES the very large amount of GHGs which would be emitted from the burning of the Whitehaven coal. In so far as WCM wished to claim that the US substitution effect would be just as large, so that there would be no net increase in GHG emissions, or alternatively that there would be some lesser offsetting effect, it was for WCM to produce information in its ES to demonstrate that point, including legal causation in relation to substitution. Regulation 22 of the 2011 Regulations confirms that it is the applicant who is responsible for producing information which is legally essential for a compliant ES.

[116] Following the Supreme Court in Finch at [152] to [154], WCM needed to produce full information (in the sense previously explained) on those two effects which it claimed balanced each other out (or resulted in some offset). The public was entitled to participate in a EIA process in which they could respond to such material. It was not for the public to have to produce key components of that information."

38. After very detailed factual analysis,[34] the judge found that there were gaps on this information in the ES and that these were not rectified by evidence at the inquiry or by findings by the inspector or Secretary of State: indeed in some places there appeared to be a finding there would only be partial substitution.[35]

39. *Finch* has also impacted extraction projects at Wressle and Biscathorpe. The campaigner Sandie Stratford argued that North Lincolnshire Council acted unlawfully by granting

[33] [2024] EWHC 2349 (Admin), at [112], [115], [116].

[34] [2024] EWHC 2349 (Admin), at [117] – [189].

[35] [2024] EWHC 2349 (Admin), at [170].

permission for Egdon Resources to expand operations at its Wressle site without first submitting an EIA. The legal challenge was based on the decision in *Finch*. Following receiving a pre-action protocol letter, both the local authority and developer, Egdon Resources, confirmed they will not be resisting the legal challenge. Mark Abbott, chief executive officer at Egdon Resources, an interested party in the case, said it would "*not be resisting this legal challenge*". He said it "*instead will be providing the council with the required information so that it can take into account the consequences of the Finch decision*".[36] In respect of Biscathorpe, the High Court hearing was held in June 2024, however in light of *Finch* being handed down in June 2024 the defendants (the Secretary of State for Levelling Up, Housing and Communities and Egdon Resources) accepted an invitation to concede the case.[37]

40. There are further decisions on the horizon. Judicial review challenges were brought in the Scottish courts against the decision of the UK Government and the North Sea Transition Authority to grant consent for the development of the Rosebank and Jackdaw oil and gas fields. Rosebank is the largest untapped oil and gas field in the UK. Those challenges were stayed pending the decision in *Finch* because one of the grounds of challenge in each case was that there had been a failure properly to assess the effect of downstream emissions from the respective developments. The government confirmed that it would not challenge the judicial review.[38]

41. However, Shell and Equinor continue to defend the challenge, with the case being heard on 12 November 2024. Shell, which operates the Jackdaw gas field has said: *"We accept the Supreme Court's ruling in the Finch case, but will argue that Jackdaw is a vital project for UK energy security that is already well under way. Stopping the work is a highly complex process, with significant technical and safety issues now that infrastructure is in place and drilling has started in the North Sea."*[39] In many ways this case illustrates two issues – the arguments that will be made surrounding energy security and the impact of *Finch* on existing projects.

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[36] See BBC News, '*Oil-drilling expansion challenge to go uncontested*' by Charis Scott-Holm (24 October 2024) available at: https://www.bbc.co.uk/news/articles/ckgv2742kzeo.
[37] See BBC News, '*Wolds oil drilling plans quashed in landmark ruling*' by Richard Madden (11 July 2024) available at https://www.bbc.co.uk/news/articles/cqql0g6kvz5o.
[38] See BBC News, '*UK government will not fight Rosebank oil field legal challenge*' by Angus Cochrane (29 August 2024) available at: https://www.bbc.co.uk/news/articles/c30393m4z50o.
[39] See S&P Global, '*UK's Rosebank, Jackdaw oil and gas projects to face fresh legal setback*' (25 September 2024) available at: https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/oil/092524-uks-rosebank-jackdaw-oil-and-gas-projects-to-face-fresh-legal-setback.

International perspectives

42. Given the comments by the Supreme Court majority on transboundary effects, the international context will inform any anticipation of the direction that future cases will take. Indeed a theme emerges generally in climate change litigation as to when and where emissions should be calculated. This was also an issue that emerged in *Finc*h.

43. Some recent international perspectives on this are notable.

(i) The ITLOS Advisory Opinion

44. On 21 May 2024, the International Tribunal for the Law of the Sea ("**ITLOS**") issued a landmark Advisory Opinion confirming that the parties to the United Nations Convention on the Law of the Sea ("**UNCLOS**") (of which the UK is one) are obliged to take measures to combat marine pollution caused by climate change.[40] In particular, there is an obligation to conduct environmental impact assessments, contemplated in article 206 of the United Nations Convention on the Law of the Sea ("**the Convention**"). The Convention, requires States to assess the potentially harmful effects of a planned activity prior to its execution and to disseminate the obtained results thereafter.[41]

45. As the Tribunal explained, although article 206 of the Convention does not specify the scope and content of an EIA, it indicates some of the components that are relevant.[42] Importantly, the ITLOS ruled unanimously that 'pollution of the marine environment' includes GHG emissions absorbed by the oceans, as GHG emissions have harmful effects on marine ecosystems and marine life.[43] The ruling covers all GHG emissions introduced directly or indirectly to oceans, regardless of the emission source or proximity to the ocean.[44]

46. What is also of note are the Tribunal's comments on transboundary effects and the role of States. In particular that specific obligations on States are imposed. Therefore, even though the Convention is discharged exclusively through participation in the global

[40] International Tribunal for the Law of the Sea Advisory Opinion, documents relating to the ruling are available at: https://www.itlos.org/en/main/cases/list-of-cases/request-for-an-advisory-opinion-submitted-by-thecommission-of-small-island-states-on-climate-change-and-international-law-request-for-advisory-opinionsubmitted-to-the-tribunal/.

[41] ITLOS Advisory Opinion, at [352] to [354].

[42] ITLOS Advisory Opinion, at [357].

[43] ITLOS Advisory Opinion, at page 147.

[44] ITLOS Advisory Opinion, at [172].

efforts, "*States are required to take all necessary measures, including individual actions as appropriate*".[45]

47. Advisory opinions are not directly legally binding on any State. However, the 169 signatory states are obliged by the Convention to adopt national laws, regulations, and other necessary legal instruments, to comply with their obligations (see, for example, Articles 207, 211 and 212) and to cooperate with other states in establishing international rules, standards, practices, and procedures.[46]

48. It is perhaps another example of a trend that decisions should be made with full knowledge of the consequences.

(ii) International courts

49. It is notable that the Supreme Court majority did have regard to the Norwegian decision of *Greenpeace Nordic v The State of Norway (represented by the Ministry of Petroleum and Energy)*, Case No 23-099330TVI-TOSL/05, which was decided after the oral hearing in *Finch*. The Norwegian case is a sequel to proceedings brought to challenge the grant of licences by the Norwegian government for petroleum production.[47] In *Greenpeace Nordic v The State of Norway (represented by the Ministry of Petroleum and Energy)* all three projects involved the extraction of petroleum in quantities which made an EIA mandatory before consent could be granted. However, the EIAs carried out did not assess the combustion emissions from the oil and gas to be produced. On 18 January 2024 the Oslo District Court ruled that there was a legal requirement to assess the combustion emissions under both the EIA Directive and the Norwegian regulations which implement the EIA Directive. Lord Leggatt considered this judgment to be persuasive and that it accorded with his interpretation of the EIA Directive.[48]

50. However, the direction in international case law is not solely in one direction on this issue.

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[45] ITLOS Advisory Opinion, at [202].

[46] ITLOS Advisory Opinion at [266] to [280]. See also 'Reflections on the ITLOS Advisory Opinion' published by the British Institute of International and Comparative Law (30 May 2024).

[47] *Nature and Youth Norway v The State of Norway (represented by the Ministry of Petroleum and Energy)*, judgment dated 22 December 2020, HR-2020-2472-P (Case No 20- 051052SIV-HRET).

[48] [2024] UKSC 20, at [173].

51. The majority's reasoning in *Finch* conflicts with the Australian case *Environment Council of Central Queensland Inc v Minister for the Environment and Water (No 2)* [2023] FCA 1208. As one of the world's largest exporters of coal and gas, Australia's domestic regulation of fossil fuels plays an important part in global greenhouse gas emission reduction efforts.[49]

52. In *Environment Council of Central Queensland Inc v Minister for the Environment and Water (No 2)* (also referred to as the *Living Wonders* decision) the Federal Court dismissed two judicial review proceedings brought by the by the Environment Council of Central Queensland regarding the climate change effects of scope 3 coal mining emissions to Matters of National Environmental Significance under the Environmental Protection and Biodiversity Conservation Act 1999 ("**the 1999 Act**").

53. On 11 October 2023, Justice McElwaine delivered the judgment of the Australian Federal Court. The case is the latest in a series of Australian climate cases seeking to use the 1999 Act to require the Australian government to scrutinise new fossil fuel projects like coal mines based on their potential climate impacts.

54. The Federal Court found no legal error in the Environment Minister's reasoning that large export-oriented coal mines will produce *"no net increase"* in global emissions and/or have emissions which are too *"small"* to warrant detailed assessment under the 1999 Act.[50]

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[49] In other Australian climate cases determined by courts at the State level, there has been significant progress in recent years in addressing the climate impacts of fossil fuel. For instance, in the 2019 New South Wales ('NSW') in the case of *Gloucester Resources v Minister for Planning* (2019) 234 LGERA 257, Chief Judge Preston of the NSW Land and Environment Court ruled against a new open-cut coal mine proposal on various environmental grounds, including that such a mine would be *"at the wrong time … because the GHG emissions of the coal mine and its coal product will increase global total concentrations of GHGs at a time when what is now urgently needed, to meet generally agreed climate targets, is a rapid and deep decrease in GHG emissions"*.
Further, in the landmark *Waratah Coal* decision issued in November 2022, President Kingham of the Queensland Land Court recommended that the Queensland State government refuse a thermal coal mine in the Galilee Basin, citing human rights obligations and taking account the mine's potential climate impacts that would stem from the combustion of the coal once mined. See *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* (No 6) [2022] QLC 21.

[50] *Living Wonders* [2023] FCA 1208 at [61].

55. The Court indicated that whether the Minister's powers under the legislation had to be exercised to ensure explicit, detailed consideration of the climate impacts of fossil fuel proposals was a matter for Australia's Parliament.[51]

56. As summarised by Justice McElwaine, these grounds sought to challenge the Minister's two key conclusions, described by his Honour as 'the net increase conclusion' and 'the relative contribution conclusion'.[52] The former is sometimes known as 'the market substitution argument', putting forward the proposition that stopping a particular coal or other fossil fuel project will not have any net benefit in addressing climate change or lowering global GHG emissions as it will be replaced by another such project elsewhere in the world to meet market demand for the fossil fuel in question.[53] Indeed the Minister in this case had concluded that it was *"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"*. In making this finding, the Minister looked at section 527E of the 1999 Act[54] concerning indirect impacts.

57. The Federal Court rejected all ten judicial review grounds raised by the applicant in *Living Wonders*. Justice McElwaine's reasoning in each instance followed similar lines. His Honour stressed at the outset of the judgment that the Court was *'not concerned with the merits of the Minister's decision*' and that – in the context of judicial review proceedings – *"[t]he judicial function is a limited one"*.[55] The way the Minister had

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[51] *Living Wonders* [2023] FCA 1208 at [7].

[52] *Living Wonders* [2023] FCA 1208 [61].

[53] Justine Bell-James and Briana Collins, '*"If We Don't Mine Coal, Someone Else Will": Debunking the "Market Substitution Assumption" in Queensland Climate Change Litigation*' (2020) 37 Environ Plan L J 167.

[54] Section 527E provides:

"***Meaning of impact***

(1) For the purposes of this Act, an event or circumstance is an impact of an action taken by a person if:

(a) the event or circumstance is a direct consequence of the action; or

(b) for an event or circumstance that is an indirect consequence of the action--subject to subsection (2), the action is a substantial cause of that event or circumstance.

…

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."

[55] *Living Wonders* at [5].

reasoned in reaching her 'no net increase' and 'relative contribution' conclusions was an approach that the Court considered was open to her based on the statutory language and would thus not be questioned by the Court in judicial review.

58. This approach is possibly in some conflict with the approach of the UK Supreme Court. The majority effectively dismissed the 'market substitution' argument with Lord Leggatt stating: *"Leaving oil in the ground in one place does not result in a corresponding increase in production elsewhere: see UNEP's 2019 Production Gap Report, p 50…"*[56]

59. The Environment Council of Central Queensland appealed to the Full Federal Court, which was heard over two days in February 2024.[57] The judgement was delivered on 16 May 2024.[58] All three members of the Court agreed that the appellant's appeal should be dismissed, but for different reasons to Justice McElwaine. In summary, Chief Justice Mortimer and Justice Colvin found that the appellant had misinterpreted the Minister's reasons for her decision, and that its arguments about those reasons being unlawful were therefore incorrect. It had been argued that the Minister had applied a "what-if" scenario – in which if the mines did not proceed but others of similar capacity did, there would be no net impact. The majority characterised the Minister's reasoning as being that because there were multiple variables affecting whether the mines would cause a net increase in global emissions – and because any net increase to emissions that did occur would be very small – she could not be satisfied that emissions from the mines, if they went ahead, would be a 'substantial cause' of the climate harms to protected species, places and ecosystems.[59] She had not applied the counterfactual approach suggested. It may be noted that the majority highlighted the inadequacy of the present Australian legislation:[60] *"Notwithstanding [the] conclusions on the grounds of appeal, the arguments on this appeal do underscore the ill-suitedness of the present legislative scheme of the EPBC Act [61]to the assessment of environmental threats such as climate change and global warming and their impacts on [matters of national environmental significance] in Australia."*

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[56] [2024] UKSC 20, at [2].

[57] See the full and helpful summary at https://livingwonders.org.au/about-these-court-cases/legal-updates/ from which the section is drawn.

[58] *Environment Council of Central Queensland Inc v Minister for the Environment and Water* [2024] FCAFC 56

[59] Ibid,, para. [77], [104].

[60] Ibid. para.[140].

[61] Environment Protection and Biodiversity Conservation Act 1999.

60. Justice Horan in the minority accepted the appellant's characterisation of the Minister's reasoning process, but found that this way of reasoning was permitted under the law. He accepted that the Minister was required to identify the direct and indirect consequences of the mines going ahead, and not to hypothesise what might happen in a future in which these mines do not go ahead. However, he also found that the Minister was able to have regard to the many uncertainties and 'variables' relevant to what those consequences might be. Contrary to the appellant's arguments, he found that it was legally permissible for the Minister to conclude that the variables affecting the potential contribution of the mines' emissions to climate harms meant she could not be satisfied these emissions would be a 'substantial cause' of impacts to the species and places protected by the law.[62] Justice Horan also agreed with Chief Justice Mortimer and Justice Colvin's comments about the ill-suitedness of the national environmental laws to assessing the impacts of climate change on Australia's protected places, species and ecosystems.[63]

D STEERING CLIENTS THROUGH FUTURE EIAS

61. Lord Leggatt noted it was "*inevitable that economic, social and policy factors will outweigh environmental factors in many instances*".[64] At present, which instances these will be remains undefined.

(i) Impact on fossil field projects in the near future

62. In terms of steering clients through future EIAs. The new Labour government has pledged not to issue any new oil and gas licenses, but nor will it revoke existing licenses.[65]

63. The government has also announced plans to produce new environmental guidance to give greater certainty to the oil and gas industry.[66] This guidance was said to be necessary in light of the decision in *Finch.*

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[62] Ibid. para. [172], [175].

[63] Ibid. para. [194].

[64] [2024] UKSC 20, at [153].

[65] See Labour website, '*Make Britain a clean energy superpower*' available at: https://labour.org.uk/change/make-britain-a-clean-energy-superpower/.

[66] Department for Energy Security and Net Zero and Michael Shanks MP, 'Certainty for oil and gas industry in light of landmark ruling' (29 August 2024) available at: https://www.gov.uk/government/news/certainty-for-oil-and-gas-industry-in-light-of-landmark-ruling.

64. The intention is that the updated government guidance should provide greater clarity as to how downstream GHG emissions should be weighed against other factors and will be of use to those making decisions and those applying for permission for future projects. On 30 October 2024 the government announced that it would "*consult with industry on updated environmental guidance*".[67] The government has said it will act quickly on draft guidance, so it can be implemented from Spring 2025. The closing date for that consultation is 8 January 2025.[68] Separately, the government will consult before the end of the year on the implementation of its commitment not to issue new oil and gas licences to explore new fields.[69]

65. The draft guidance will supplement the Offshore Petroleum Regulator for Environment and Decommissioning's ("**OPRED's**") existing EIA guidance (which it says is unchanged in light of *Finch*). OPRED has said that when the draft guidance is finalised after consultation, operators will therefore be expected to refer to both documents as necessary when seeking to understand what is expected of them under the Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020.[70] The draft guidance only covers scope 3 emissions (and not scope 1 or 2 emissions).[71] In terms of what OPRED is proposing:

    a. **Substitution:** OPRED says that the *Finch* judgment "*recognises that the production of hydrocarbons from a proposed project may in some cases lead to a corresponding decrease in production elsewhere (referred to as "substitution")*". The draft guidance provides that even if developers consider this to be the case for their project, any substitution is not considered to be a relevant factor in determining whether scope 3 emissions from a project's downstream activities are an effect that needs to be assessed in the ES3. The ES should set out, so far as is possible, both an assessment of the effects of

[67] Department for Energy Security and Net Zero and Michael Shanks MP, 'Updated oil and gas guidance following Supreme Court ruling' (30 October 2024) available at: https://www.gov.uk/government/news/updated-oil-and-gas-guidance-following-supreme-court-ruling.
[68] Open consultation, 'Consultation on draft supplementary EIA guidance' (30 October 2024) available at: https://www.gov.uk/government/consultations/consultation-on-draft-supplementary-eia-guidance.
[69] Department for Energy Security and Net Zero and Michael Shanks MP, '*Updated oil and gas guidance following Supreme Court ruling*' (30 October 2024) available at: https://www.gov.uk/government/news/updated-oil-and-gas-guidance-following-supreme-court-ruling.
[70] See open consultation, 'Consultation on draft supplementary EIA guidance' (30 October 2024) available at: https://www.gov.uk/government/consultations/consultation-on-draft-supplementary-eia-guidance.
[71] Department for Energy Security & Net Zero, '*Environmental Impact Assessment (EIA) – Assessing effects of scope 3 emissions on climate: Draft supplementary guidance for assessing the effects of scope 3 emissions on climate from offshore oil and gas projects*' (October 2024), at page 5.

a project's scope 3 emissions and provide a robust justification of the proposed substitution and its extent.[72] For the assessment of scope 3 emissions, the production figures used to derive the estimates should reflect a reasonable worst-case scenario.

b. **Baseline scenarios:** OPRED has said that an "*ES should quantify the difference between GHG emissions from a proposed project and the baseline scenario*". In terms of the 'baseline scenario', current and historical emissions data may be used to establish a baseline scenario. If alternative development options were considered for a project, then alternative baseline scenarios can be used to address uncertainty in the overall assessment.[73]

c. **Methodologies:** OPRED is not proposing to prescribe a particular methodology to estimate scope 3 emissions but highlighting that whatever method is chosen the expectation is that the relevant scope 3 categories are included in the assessment. An ES should explain the methodology adopted.[74]

d. **Significant effects:** Advice is provided in the section on "Evaluating significance of the likely effects of scope 3 emissions on climate" in the draft supplementary EIA guidance.[75] The draft guidance includes that the ES will need to consider how the GHG emissions associated with a proposed project impact climate. The ES should also outline what steps will be taken towards reducing GHG emissions over the project lifetime.[76]

e. **Cumulative effects:** Further advice is provided in the section on "Consideration of cumulative effects" in the draft supplementary EIA guidance.[77] OPRED emphasises that it may be that a project in isolation may not have a significant effect on the environment, but in combination with or in cumulation with other relevant existing or planned projects in the area, "*the effect could become significant*". The guidance

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[72] *ibid* at page 6.

[73] *ibid*, at page 9.

[74] *ibid*, at page 9.

[75] *ibid*, at page 10.

[76] Department for Energy Security & Net Zero, '*Environmental Impact Assessment (EIA) – Assessing effects of scope 3 emissions on climate: Draft supplementary guidance for assessing the effects of scope 3 emissions on climate from offshore oil and gas projects*' (October 2024), at page 8.

[77] *Environmental Impact Assessment (EIA) – Assessing effects of scope 3 emissions on climate Consultation on draft supplementary guidance for assessing the effects of scope 3 emissions on climate from offshore oil and gas projects*', at page 10.

therefore provides that given the nature of the assessment, the ES should consider the interaction of a proposed project with other existing and known future projects. A developer will therefore need to consider cumulation of effects.[78]

f. **Mitigation measures**: An ES must present a comprehensive description of the features of a proposed project or measures to avoid, prevent, reduce or offset likely significant adverse effects of the proposed project on the environment. If any mitigation measures are identified in an ES, then a delivery plan should be provided for those measures to be considered in the assessment of the proposed project.[79]

g. **Environmental protection objectives:** The consultation adds that scope 3 emissions will impact the UK's carbon budgets to the extent that any resulting emissions take place in the UK. However, understanding a proposed project's scope 3 emissions is important to understanding its potential contribution to global carbon emissions.[80]

66. As outlined above, it is expected that this guidance will be applied from Spring 2025, however projects in the interim would be wise to be aware of his draft guidance and consider it when preparing their applications.

(ii) Other commodities

67. *Finch* therefore has clear implications for projects concerning fossil fuel extraction. However, the decision also has wider implications because of the Supreme Court's guidance on the meaning of "effect" and establishing the chain of causation. This is particularly relevant for the question of 'where will future challenges come from'?

68. The next frontier will include how *Finch* will be applied to developments that are not for the extraction of fossil fuels. The judgment will no doubt lead to further cases on the application of the majority judgment to other types of projects.

69. In the majority judgment, Lord Leggatt did explain that it was not a requirement of the EIA process to measure or assess putative effects which are incapable of assessment,

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[78] Department for Energy Security & Net Zero, '*Environmental Impact Assessment (EIA) – Assessing effects of scope 3 emissions on climate: Draft supplementary guidance for assessing the effects of scope 3 emissions on climate from offshore oil and gas project*s' (October 2024), at pages 8 to 9.

[79] *Environmental Impact Assessment (EIA) – Assessing effects of scope 3 emissions on climate Consultation on draft supplementary guidance for assessing the effects of scope 3 emissions on climate from offshore oil and gas projects*', at page 10.

[80] *ibid*, at page 11.

such as where effects will depend on innumerable decisions made downstream.[81] Oil was said to be a *"very different commodity"* from *"iron or steel"*.[82] This is because they have *"many possible uses and can be incorporated into many different types of end product used for all sorts of different purposes"*.[83]

70. This indeterminacy regarding future use will – depending on the circumstances – make it impossible to identify any such effects as *"likely"* or to make any meaningful assessment of them at the time of the decision. In terms of future case law expanding *Finch* beyond oil and other fossil fuel projects, these will be some of the most significant passages in the judgment.

71. Applicants for new developments will now have to consider downstream effects. However in many cases there may be no obvious causative link, or if there is, it may well be the case that no meaningful assessment can made of the effects. It would be sensible to scope out downstream effects at scoping stage, or indeed scope in any specific downstream effects and agree the parameters of the assessment with the planning authority.

72. Our methodologies will also improve over time. This is relevant to the point made by the majority that it was common ground that general estimates of combustion emissions can be made using methodology such as that described in guidance issued by the Institute of Environmental Management and Assessment. Estimating the combustion emissions which will occur if the project proceeds is not a difficult task.[84] Applicants will need to consider the information they have – for instance if it is known what use a certain commodity will be put to with certainty, as compared with a situation where it is not known the use the commodity will be put to.

73. For EIA development, developers and LPAs should give careful thought to the chain of causation and whether there is sufficient evidence and a recognised methodology for assessing whether the downstream effects of a project are likely. If so, they should be scoped into the EIA for the project.

(iii) EORs

[81] [2024] UKSC 20, at [121].

[82] *Ibid*.

[83] [2024] UKSC 20, at [121].

[84] [2024] UKSC 20, at [81].

74. As the majority expressly said in *Finch*, they we are concerned with the law as it stood in September 2019 when the council's decision to grant development consent for the project was taken. This was before the United Kingdom left the European Union and it was not suggested that the analysis of the case was affected by any changes made to English law as a result of Brexit. Of course, as time goes on, divergence will occur.

75. This paper is written against the backdrop of the Levelling Up and Regeneration Act 2023 ("**LURA 2023**"). From the commencement date (26 December 2023), the Secretary of State will have new powers under Part 6 of LURA 2023 to establish a system of Environmental Outcomes Reports ("**EOR**") to replace EIA and SEA. Section 153(1) of LURA 2023 provides that EOR regulations may make provision requiring an EOR to be prepared in relation to a proposed relevant consent[85] or plan.[86]

76. It is possible that LURA 2023 could provide the foundation for replacing, in its entirety, the provisions of the complex and detailed EIA and SEA Regulations.

77. At [56] and [57] of the Explanatory Notes to LURA 2023 provide some background on how an outcomes-based approach is intended to operate:

> *"The Bill introduces an outcomes-based approach that will allow the government to set clear and tangible environmental outcomes which a plan or project is assessed against. This will allow decision-makers and local communities to clearly see where a plan or project is meeting these outcomes and what steps are being taken to avoid and mitigate any harm to the environment. These outcomes will be set following consultation and parliamentary scrutiny but will, for the first time, allow the government to reflect its environmental priorities directly in the decision-making process.*
>
> *By moving to an outcomes-based approach, and taking powers to address procedural issues with the current system, the Bill provides the opportunity to go further for the environment and to turn passive assessment into a more active tool to support environmental regeneration."*

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[85] As per section 154(8): '"*Consent" means any consent, approval, permission, authorisation, confirmation or decision (however described, given or made) that is required, or otherwise provided for, by or under any enactment in relation to a project."*

[86] As per section 154(6): '"*Relevant plan" means a plan or programme which –*

(a) relates, or may relate, to a project or to environmental protection in the United Kingdom or a relevant offshore area, and

(b) is specified or described in EOR regulations for the purposes of this subsection."

78. At the time of writing this paper, the previous government had consulted on some of the 'principles' behind the EOR regime[87] – however, no response to that consultation has been published. The consultation said the goal was to "*simplify and streamline the assessment process*".

79. At this stage, there is little detail on how EORs will differ from the EIA process. However, section 156 of LURA 2023 does contain a non-regression guarantee.

80. Therefore in terms of steering clients through future EIAs – *Finch* has certainly been a catalyst for a number of important changes on the horizon, both those that will be coming in over the next few months and in the years to come.

81. It will be interesting to see how the EOR regime is implemented. The EIA regime has built up over many decades – within the UK but also, importantly, through EU jurisprudence. That case law and jurisprudential guidance at the very least provides certainty. It is expected that much of that jurisprudence from the EIA regime should at least inform how the EOR regime is to work and be interpreted. However, the lack of a clearly stated purpose for the EOR regime could mean that any eventual EOR regime is 'rudderless'.

82. It may also be noted that in the area of *renewable energy* projects, there are movements to relax EIA requirements. Spain issued a Royal Decree on December 27, 2023, which temporarily eliminated EIA requirements for 150MW solar farms and 75MW wind energy projects in large parts of the country, subject to certain conditions including the project being in an area of low environmental sensitivity.[88] Picking up on that approach, the EU proposes a directive amending Directive 2018/2001 on the promotion of the use of energy from renewable sources, which would require the designation of 'renewables acceleration areas for one or more types of renewable energy sources' which must be 'sufficiently homogeneous land and sea areas where the deployment of a specific type or types of renewable energy is not expected to have significant environmental effects,

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[87] Department for Levelling Up, Housing and Communities, '*Environmental Outcomes Reports: a new approach to environmental assessment*' (published 17 March 2023). A consultation ran from 17 March 2023 to 9 June 2023. The Consultation Description was given as:

> "*Part 6 of the Levelling Up and Regeneration Bill will secure powers to implement a new system of environmental assessment known as Environmental Outcomes Reports. This will allow the government to replace the EU-derived Strategic Environmental Assessment and Environmental Impact Assessment processes with a streamlined system that places greater focus on delivering our environmental ambitions.*"

[88] 'How Spain eliminated environmental impact assessments for most renewable projects' (17 February 2023), available at: https://www.samdumitriu.com/p/how-spain-eliminated-environmental.

in view of the particularities of the selected territory'. The thinking behind these areas has been explained as follows:[89]

> "*EU Member States may prepare one single plan for all renewables acceleration areas and technologies or technology-specific plans identifying one or more renewables acceleration areas. Each plan should be subject to an overarching, high-level environmental assessment. Once designated, renewable energy projects that comply with the rules and measures identified in the plan or plans prepared by Member States, should benefit from a presumption of not having significant effects on the environment and would therefore be exempt from carrying out their own environmental impact assessment. In addition, projects located in renewables acceleration areas are proposed to benefit from accelerated administrative procedures, including a 'tacit agreement' in case of a lack of response by the competent authority on an administrative step by the established deadline; in effect, a non-response is a deemed consent.*"

E CONCLUSION

83. The International Energy Agency's ("**IEA**") World Energy Outlook 2023 report, launched at the end of October 2023, reiterates the significant energy transition challenge ahead if we are to 'keep the door to 1.5°C open'.[90] The IEA noted that the 'key actions required to bend the emissions curve downwards to 2030 are widely known' and embrace 'measures to ensure an orderly decline in the use of fossil fuels.

84. The *Finch* decision is an important part of that picture –"*You can only care about what you know about*".[91] In his dissent Lord Sales quoted Hamlet in aid of his conclusion that the EIA Directive was being given an *"artificially wide interpretation"*.[92] Others might have quoted Duke Vincentio in *Measure for Measure*: *"all difficulties are but easy when they are known"*.[93] The difficulties faced in the reduction of GHG emissions are far from easy, but as the majority in *Finch* made clear – they must be known and understood. The decision in *Finch* is an important step in that direction.

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Ruth Keating

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[89] 'Keeping an eye on the Europeans (and the Welsh)' (18 August 2023), available at: https://www.bdbpitmans.com/news-and-insights/1009-keeping-an-eye-on-the-europeans-and-the-welsh/

[90] International Energy Agency, World Energy Outlook 2023 (October 2023) ('IEA Report) 22.

[91] [2024] UKSC 20, at [21].

[92] [2024] UKSC 20, at [332]. This was in turn a quote from Lord Bingham in *Brown v. Scott* [2003] 1 AC 681, 703, warning against assuming legislation could "offer relief from '*The heart-ache and the thousand natural shocks That flesh is heir to.*'"

[93] Measure for Measure, Act IV, scene II.