19 November 2018

CC:

Dear [Name]

Re: Albany Wave Energy Project – Request for Extension to submit Funding Plan

Carnegie appreciates the opportunity to present an updated funding plan for the Albany Wave Energy Project as requested in the letter from the Department of Primary Industries and Regional Development (DPIRD) on October 5th. Given that the proposed Research and Development (R&D) tax incentive changes would have a material impact on the Project’s funding plan, Carnegie believes this is a prudent check for all key Project stakeholders to ensure the Project still delivers the intended value to the research and development of Carnegie’s WA owned and developed CETO wave energy technology, the broader Australian marine renewable energy industry, the Great Southern region as well as the State and Federal Governments.

However, since Carnegie first received and acknowledged the Department’s request for a revised funding plan, the status and certainty of the proposed R&D tax incentive changes has changed. On October 5th, when Carnegie received the Department’s letter, there were no known consultations or enquiries about the Bill. Whilst Carnegie continued to explore opportunities to influence this decision, the R&D tax incentive changes were looking likely to proceed. This changed on October 18th, when the Bill was referred to the Senate Economic Legislation Committee for an inquiry with a report due on December 3rd. Last week, on November 15th, the inquiry was subsequently extended, and the Committee received an extension to report by February 11th, 2019. In addition, on October 24th the Bill was considered by the Senate Standing Committee for the Scrutiny of Bills; the committee raised some concerns about the Bill and posed questions to the Treasurer. As far as Carnegie is aware, those questions have not yet been addressed by the Treasurer.

As a result, Carnegie now believes that there is increased uncertainty about whether the proposed R&D Tax incentive changes will be enacted, and importantly, in what final form. This is not a binary yes/no decision point because there are multiple changes in the Bill that could impact the Project. For instance, some of the potential non-binary outcomes include:

- Additional industries such as energy and resources receive an exemption from the $4m annual cap on cash refunds (as currently proposed for Clinical Trials).
- The $4m annual cap on cash refunds is increased to $6m, $8m or other value.
- The $4m annual cap on cash refunds is introduced gradually, with the value of the annual cap decreasing over a number of financial years.
- The implementation date for all changes could be pushed out to only apply to future financial years.
Considering this increased uncertainty about the proposed R&D tax changes, and their potentially material impact on the Project’s funding plan, Carnegie believes it would be better to submit a revised funding plan once this has been clarified. Until the R&D tax incentive programme is clarified, Carnegie would only be reasonably able to present the Department with some potential funding plan scenarios, not a single plan with a high level of confidence.

With the Senate Economics Legislation Committee not due to report back until February 11th, 2019, Carnegie would not expect any legislative resolution on R&D tax incentive until at least mid-late February.

As a result, Carnegie requests that the Department extend the timeframe to submit the updated funding plan until mid-late March, which should allow time for the Federal Government to make a final decision about the proposed changes and consequently allow Carnegie to present an updated funding plan with a higher level of certainty and confidence. This additional time will also allow Carnegie to finalise a number of other ongoing initiatives which will support a strengthened funding plan. To provide further context, some of the ongoing factors feeding into the updated plan are:

R&D Tax Consultation & Legislation

As described above, Carnegie is primarily requesting additional time to complete the updated funding plan to allow time for Federal Government to determine whether the proposed Research & Development Tax changes will actually be implemented (and in what form). The uncertainty around this continues. However, with a number of questions and inquiries by the Federal Senate, Carnegie believes there is increased possibility that the proposed changes will not all be implemented. As such, delivering a plan before receiving confirmation of the final changes and impact on the Project would be challenging and could lead to a sub-optimal outcome for all Project stakeholders.

As the Department is already aware, changes to the R&D Tax Incentive Program were first proposed in May 2018, and then drafted in the Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2018. This Federal Bill was introduced and read for the first time in September 2018. Carnegie has been and continues to advocate for the Federal Government to reject the proposed changes to the R&D legislation. The proposed changes would negatively impact innovation in Australia and would adversely impact the Albany Wave Energy Project which formally commenced based on a funding model that included the existing R&D tax incentive program. Carnegie is not the only company that would be negatively impacted by these changes, other companies and industry associations are also calling for the Federal Government to reject the proposed changes as currently drafted.

On October 18th, the Bill was referred to the Senate Economics Legislation Committee for an inquiry and was expected to report back on December 3rd, 2018. Carnegie submitted a consultation response to this Senate inquiry. Carnegie would like to thank and applaud the Western Australian State Government for their submission to this process. It is encouraging to see the State Government recognising the economic impact of these changes on a wide range of industries in the State. On November 15th, the committee received an extension and is now due to report back on February 11th, 2019.

In addition, the Bill was considered by the Senate Standing Committee for the Scrutiny of Bills on October 24th. This committee has requested comment from the Treasury regarding the retrospective application of these changes as “The committee has a long-standing scrutiny concern about provisions
that have the effect of applying retrospectively, as it challenges a basic value of the rule of law that, in general, laws should only operate prospectively (not retrospectively). The committee has a particular concern if the legislation will, or might, have a detrimental effect on individuals.” As such, the Committee has requested the Treasurer to explain why it is necessary to retrospectively apply these proposed changes and whether anyone would be detrimentally affected by the retrospective application. The Albany Wave Energy Project is one of several clear cases where the retrospective application is having a detrimental impact.

Carnegie believes that the earliest that the Senate Economic Committee report could be considered, the Senate Scrutiny Committee concerns could be addressed by Treasury and any legislation potentially enacted, would be in mid-late February 2019. As such, Carnegie believes it would be best to wait to finalise the updated funding plan until mid-late March when Carnegie hopes to have better clarity on whether/how the proposed R&D tax changes will be implemented and how it will impact the Project.

Carnegie continues to develop potential opportunities to revise the funding plan if the proposed R&D tax changes do proceed as currently drafted. However, it would be premature to present an updated funding plan with this material consideration still uncertain.
In summary, Carnegie confirms that it remains committed to the Albany Wave Energy Project and would like to provide the Department a very clear funding plan showing how the Project will be delivered. As the proposed R&D changes have a material impact on the funding available for the Project, and as it is unclear whether these proposed changes will be enacted, Carnegie believes it would be best to submit a revised funding plan once this has been clarified. Until questions around the proposed R&D tax changes are resolved, Carnegie would only be reasonably able to present potential scenarios, not a single plan with a high level of confidence.

Extending the deadline to mid-late March should allow the funding plan to reflect the Federal Government’s final decision regarding R&D tax and allow Carnegie to resolve other considerations as outlined above. We stand ready to discuss this request in further detail. Thank you for your consideration.

Yours sincerely,

Jonathan Fievez
Chief Executive Officer