

# Acceptance of Scarborough Seabed Intervention and Trunkline Installation Environment Plan

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1. On 13 December 2023, I, [REDACTED], [REDACTED] within the National Offshore Petroleum Safety and Environmental Management Authority (**NOPSEMA**), delegate of the Chief Executive Officer of NOPSEMA decided, pursuant to regulation 10 of the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (Cth) (**Regulations**), to accept, the Scarborough Seabed Intervention and Trunkline Installation Environment Plan (Revision 6, October 2023) (**Environment Plan [EP]**). The Environment Plan was submitted by Woodside Energy Scarborough Pty Ltd (ACN 650 177 227) and Woodside Energy (Australia) Pty Ltd (ACN 006 923 879) (**titleholders**), to enable the titleholders to conduct seabed preparation, trunkline installation, dredging and trunkline stabilisation activities in the Operational Area (defined in the EP as the spatial boundary of the Petroleum Activities Program) extending approximately 400 km from the state waters boundary with Western Australia to the Scarborough field approximately 375 km west-northwest of the Burrup Peninsula, Western Australia (**the activity**).
2. The reasons for my decision are set out below. All references to a regulation (**reg**) are to the Regulations unless otherwise stated.

## Legislative Framework

3. The legislation relevant to my decision is set out in **Attachment A**.

## Background

4. On 23 December 2021, the titleholder submitted the Environment Plan (Revision 0, dated December 2021) to NOPSEMA in accordance with regulation 9 of the Environment Regulations.
5. On 04 January 2022, in accordance with Regulation 9AC of the Environmental Regulations, NOPSEMA gave the titleholder notice that the EP did not include material apparently addressing all the provisions of Division 2.3 (Contents of an environment plan), with the titleholder invited to modify and re-submit the EP.
6. On 11 January 2022, the titleholder re-submitted the EP (Revision 1, dated January 2022) to NOPSEMA in accordance with regulation 9 of the Environment Regulations.
7. On 13 January 2022, the EP (Revision 1, dated January 2022) was found to be complete for assessment in accordance with reg 9AA and was published by NOPSEMA on NOPSEMA's website in accordance with reg 9AB.
8. Between 28 February 2022 and 08 September 2023, NOPSEMA issued three notices requiring the titleholders to modify and re-submit the Environment Plan, pursuant to reg 10. In addition, NOPSEMA made three requests for further information during this timeframe, pursuant to reg 9A. The not reasonably satisfied notices identified areas where NOPSEMA considered the Environment Plan did not meet the criteria in reg 10A. The requests for further information outlined areas where further information was required before a decision could be made against the reg 10A criteria. In response to

these requests, the titleholders re-submitted six revisions to the environment plan which incorporated additional information pursuant to reg 9A(3) and modifications pursuant to reg 10. The Environment Plan the subject of this decision was received on 25 October 2023, and is identified as “**Revision 6, October 2023**”.

## Materials

9. The materials which I considered in making my decision are set out in **Attachment B**. Where relevant to my decision, I identify these materials in my reasons below.

## Decision Overview

10. The issue before me was whether the Environment Plan should be accepted under reg 10. In making this decision, I have taken into account and accepted advice and recommendations from the assessment team within NOPSEMA.
11. Prior to considering whether I was reasonably satisfied that the Environment Plan met the criteria in reg 10A, I considered whether the Environment Plan complied with Division 2.3, which sets out the matters which must be included in the Environment Plan.
12. I am satisfied that the Environment Plan contained the matters in Division 2.3. My reasons are set out at [17]-[36] below.
13. In accordance with reg 5G(2) of the Regulations, I must not accept an environment plan unless I am reasonably satisfied that the titleholder is compliant with sub-section 571(2) of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the **OPGGs Act**) in relation to the petroleum activity, and the compliance is in a form that is acceptable to NOPSEMA. On review of the titleholder's financial assurance declaration and confirmation forms, I was reasonably satisfied that the titleholders had demonstrated financial assurance in accordance with those requirements.
14. I then considered whether I was reasonably satisfied that the Environment Plan meets each of the criteria in reg 10A.
15. If I was reasonably satisfied that the Environment Plan met the criteria in reg 10A, I must accept it. However, if I was not reasonably satisfied that the Environment Plan met the criteria in reg 10A, I must:
- give the titleholders further opportunity to re-submit the Environment Plan; or
  - refuse to accept the Environment Plan; or
  - accept the Environment Plan in part for a particular stage of the activity; or
  - accept the Environment Plan subject to limitations or conditions applying to operations for the activity.
16. I considered that the criteria in reg 10A were all satisfied. My reasons are set out at [37] - [134] below. I have also expressed reasons in similar terms in my Statement of Reasons for the WA-61-L and WA-62-L Subsea Infrastructure Installation activity. Any similarity is a product of the similar nature of considerations.

## Findings

### Does the Environment Plan comply with Division 2.3?

17. Reg 12 requires that an Environment Plan must include the matters set out in regs 13-16. As I was satisfied that the Environment Plan met regs 13-16 (for the reasons set out individually below), I was satisfied that reg 12 was met, and that the Environment Plan complied with Division 2.3.

### Regulation 13 – Environmental Assessment

#### *Regulation 13(1) - Description of the activity*

18. Section 3 of the Environment Plan is titled 'Description of Activity' and included the following information:

- a. a comprehensive description of the petroleum activity including the location of the petroleum activity, supported by figures and tables, including coordinates of components of the activity; general details of the construction and layout of the pipeline, pipeline end termination (PLET), offshore borrow ground, spoil ground and other associated subsea infrastructure;
- b. activities associated with pre-lay seabed intervention, trunkline installation, borrow ground dredging and backfill, post-lay seabed intervention including progress surveys, pre-commissioning and preservation;
- c. timing and duration for the activity and stages of the activity including pre-lay seabed intervention, trunkline installation, post-lay seabed intervention including progress surveys;
- d. routine and non-routine emissions and discharges from the petroleum activity, including air emissions and a contingent allowance for hydrotest fluid discharge.
- e. Information relevant for the consideration of environmental impacts and risks was included in the EP such as:
  - i. The petroleum activity is located within an area defined by Commonwealth Petroleum Pipeline Licence WA-32-PL. The trunkline route is approximately 435km long from the Pluto LNG onshore facility to the Scarborough field however this EP relates to the portion of the trunkline proposed in Commonwealth waters from the State waters boundary which is approximately 400km in length. The borrow ground area is located within an area subject to an application for a Petroleum Access Authority to be granted by the Titles Administrator.
  - ii. Water depths in the Petroleum Activity Area range from 31m at the State Waters boundary to 1400m at its deepest point.
  - iii. The estimated duration of activities described under the plan is 24 months conducted anytime over 5 years with earliest start time being Q4 2023. When underway, activities will be 24 hours per day 7 days a week however allowing for operational and weather-related downtime.
  - iv. while not part of the petroleum activity, the EP also evaluates unplanned discharges, and describes the spill response measures proposed to mitigate unplanned releases.

19. I was reasonably satisfied that this information provided a comprehensive description of the activity that met the requirements of reg 13(1).

#### *Regulation 13(2) and (3) - Description of the environment*

20. Regulations 13(2) and (3) requires the Environment Plan to describe the existing environment that may be affected by the activity including the particular relevant values and sensitivities (if any) of that environment. The Environment Plan addressed each of these matters in Section 4, Appendix C,

Appendix G and Appendix H. In particular, the Environment Plan described and included the following information:

- a. a thorough description of the physical and biological environment, and details of the relevant values and sensitivities, that may be affected by the petroleum activity, including under emergency conditions;
- b. the description of the environment has been defined as the spatial boundary of the petroleum activity for the trunkline and the borrow ground area, and also based on an extended Environment that May Be Affected (EMBA) which describes the largest spatial extent where unplanned events could have an environmental consequence on the surrounding environment. Consistent with NOPSEMA expectations, this is based on stochastic modelling of the credible worst-case spill scenario;
- c. that the activity or any part of the activity will not be undertaken in any part of a declared World Heritage Property or National Heritage Place, nor a declared *Ramsar* wetland within the meaning of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), as described in section 4.9.1.9 of the EP;
- d. values and sensitivities of the following Australian Marine Parks (AMPs) in the area that may be affected by the petroleum activity, including under emergency conditions, have been identified as: Montebello Marine Park, Dampier Marine Park, Gascoyne Marine Park, Ningaloo Marine Park, Carnarvon Canyon Marine Park, Abrolhos Marine Park, Eighty Mile Beach Marine Park, Argo-Rowley Terrace Marine Park, and Shark Bay Marine Park. Of these, the proposed activities overlap only with the Montebello Marine Park, and are within 1km from the boundary of the Dampier Marine Park;
- e. in identifying values and sensitivities of the relevant AMPs, the EP has had regard to the North-west Marine Parks Network Management Plan;
- f. values and sensitivities of the following key ecological features (KEFs) as defined by DCCEEW in the area that may be affected by the petroleum activity have been identified as: Ancient coastline at 125 m depth contour; Canyons linking the Cuvier Abyssal Plain and the Cape Range Peninsula; Commonwealth waters adjacent to Ningaloo Reef; Continental Slope Demersal Fish Communities; Exmouth Plateau; Glomar Shoals; Western demersal slope and associated fish communities of the Central West Province; Wallaby Saddle;
- g. Commonwealth and Western Australian managed fisheries in the operational area and the area that may be affected by the petroleum activity have been identified as:
  - i. the southern bluefin tuna fishery, western skipjack tuna fishery, western tuna and billfish fishery, western deepwater trawl fishery and the northwest slope trawl fishery;
  - ii. the Western Australian abalone fishery, mackerel managed fishery, marine aquarium managed fishery, Onslow prawn managed fishery, Pilbara crab managed fishery, Pilbara trawl (interim) managed fishery, Pilbara trap managed fishery, Pilbara line fishery, specimen shell managed fishery, south-west coast salmon managed fishery, west coast deep sea crustacean managed fishery, Nickol Bay prawn managed fishery, Beche-de-mer fishery and the pearl oyster managed fishery;
- h. the cultural features of environment relating to First Nations peoples in the area that may be affected by the petroleum activity have been identified and described in Section 4.9.1, including traditional fisheries and resources; sea country values and people and communities and heritage values. The description of this aspect of the environment has been informed by literature, including a desktop assessment of Sea Country values from publicly available sources, specific studies including ethnographic surveys and archaeological heritage assessments and consultation with First Nations

groups and individuals. No Native Title claims or determinations, or ILUAs were identified within the EMBA; however, a number of Native Title claims or determinations, or ILUAs that are coastally adjacent to the EMBA were identified. In addition, no Indigenous archaeology was identified within the EMBA. An ethnographic survey of the Scarborough Project found no ethnographic sites or values within the EMBA. Sea Country values held by coastally adjacent First Nations groups have been described, where the values may occur within the EMBA (Table 4-16 and Table 4-17). Table 4-27 summarises these cultural features of the environment identified from the various sources and an assessment of potential overlap with the operational area and the EMBA; and

- i. social and economic values relating to maritime archaeological heritage, tourism and recreation, commercial shipping, oil and gas production and defence activities have also been identified and described.

21. Based on the findings above, I was reasonably satisfied that the Environment Plan met the requirements in regs 13(2) and (3).

#### ***Regulation 13(4) – Requirements***

22. I noted that the Environment Plan provided a detailed table at Appendix B identifying various Commonwealth acts and regulations that apply to the activity. Various parts of the Environment Plan, in particular Sections 1.9 (Requirements), 4 (Environment), 6 (Impact and Risk Assessment), 6.9 (EPBC Act Assessment) and Appendix H (Master Description of Existing Environment), provide descriptions of the legislative requirements that apply to the activity and how they are relevant to the environmental management of the activity. The Environment Plan demonstrates that relevant legislative requirements will be met by directly addressing them in the demonstration of acceptable levels of impacts and risks (Section 6).

23. I was therefore reasonably satisfied that the requirements of reg 13(4) were met.

#### ***Regulation 13(5) and (6) - Evaluation of environmental impacts and risks***

24. Section 6 of the EP detailed the environmental impacts and risks, including those arising from potential emergency conditions whether resulting from accident or any other reason, for the activity. The details of the environmental impacts and risks associated with the activity were included in Table 6-1 of the Environment Plan, and included:

- a. planned activities such as physical interaction with marine users, seabed disturbance, routine light emissions, routine atmospheric and greenhouse gas emissions, routine acoustic emissions, routine discharge of bilge water, grey water, deck drainage water, sewage, and putrescible wastes from vessels, and routine discharges from trunkline installation and pre-commissioning; and
- b. unplanned aspects such as accidental hydrocarbon release due to vessel collision or from bunkering, unplanned discharge of deck spills or solid hazardous and non-hazardous wastes including dropped objects, unplanned seabed disturbance, vessel collision with or entanglement with marine fauna, and introduction and establishment of invasive marine species.

25. The Environment Plan contained an evaluation of all the impacts and risks, whether arising directly or indirectly, and including those arising from potential emergency conditions whether resulting from accident or any other reason, appropriate to the nature and scale of each impact or risk. The impact and risk analysis process is described in Section 2.3 and includes assigning a consequence rating (defined in Figure 2-2) for all impacts and risks and a likelihood rating (defined in Figure 2-2) for unplanned events, which together were used to categorise planned and unplanned activities into a rating for the acceptability of the impact or risk (defined in 2.3.5). A description was provided in Table 2-1 about how the titleholder demonstrates that the impacts and risks will be managed to ALARP. The outcome of the

process for the impacts and risks identified in Table 6-3, with the impacts and risks generated by the activity being considered to be acceptable or broadly acceptable when taking into account the application of control measures and considering the extent, severity and duration of any planned or unplanned impacts to environmental receptors. The full evaluation of each individual impact and risk is provided in Section 6 of the EP.

26. The EP included details of the control measures that will be used to reduce the impacts and risks of the petroleum activity to ALARP and an acceptable level (Section 6, and Appendix D). Control measures have been justified through evaluation considering additional, alternative, or improved controls.
27. The evaluation addressed matters of national environmental significance (**MNES**) protected under the EPBC Act, including World Heritage properties, National Heritage properties, *Ramsar* wetlands, listed threatened species and communities, listed migratory species, Commonwealth marine areas, and the Great Barrier Reef Marine Park. The other MNES protected under the EPBC Act are not applicable to the proposed petroleum activity, including nuclear actions and water resources affected by coal seam gas development and large coal mining development.
28. The EP presented facts and evidence in support of the evaluations presented, which included, but is not limited to, the following:
  - a. In relation to Matters Protected under Part 3 of the EPBC Act:
    - i. the EP evaluates the impacts of underwater noise emissions, light emissions and seabed disturbance associated with the petroleum activity. The EP references current, contemporary scientific literature and applicable modelling studies to inform the evaluation, as well as providing predictions of impact (such as received levels of underwater noise) in relation to biologically relevant thresholds;
    - ii. a number of listed threatened and migratory species were identified as occurring within the Operational Area (OA), with multiple biologically important areas (BIAs) of various species identified as overlapping with the OA. For example, this included the pygmy blue whale migration BIA. Relevant recovery plans and conservation advice, including the Conservation Management Plan for the Blue Whale, have been considered in the evaluation.
29. Based on the findings above, I was reasonably satisfied that the requirements of reg 13(5) and (6) were met.

#### ***Regulation 13(7) - Environmental performance outcomes and standards***

30. I considered the environmental performance outcomes and standards (**EPOs**), the environmental performance standards (**EPS**) and measurement criteria provided in Section 6 of the Environment Plan and was satisfied that the:
  - a. EPOs have been set which define performance for the management of the environmental aspects of the activity to ensure that environmental impacts and risks will be of an acceptable level. For example:
    - i. Undertake the Petroleum Activities Program in a manner that ensures no displacement of marine turtles from habitat critical during nesting and inter-nesting periods and marine turtles' biologically important behaviour can continue in BIAs (EPO 5).
    - ii. Undertake the Petroleum Activities Program in a manner that will not modify, destroy, fragment, isolate or disturb an important or substantial area of habitat such that an adverse impact on marine ecosystem functioning or integrity results (EPO 6).

- iii. Undertake the Petroleum Activities Program in a manner that will not have a substantial adverse effect on a population of seabirds or shorebirds, or the spatial distribution of the population (EPO 10).
  - iv. Undertake the Petroleum Activities Program in a manner that will not substantially modify, destroy or isolate an area of important habitat for a migratory species (EPO 12).
  - v. No release of hydrocarbons to the marine environment due to a vessel collision associated with the Petroleum Activities Program (EPO 19).
- b. EPSs have been set for control measures identified as being necessary to reduce the environmental impacts and risks of the petroleum activity to as low as reasonably practicable (**ALARP**) and acceptable levels. For example:
- i. Lighting limited to that required for safe work/navigation (EPS 4.1).
  - ii. Compliance with EPBC Regulations 2000 – Part 8 Division 8.1 (Regulation 8.05 and 8.06) Interacting with cetaceans to minimise potential for vessel strike (PS 6.1.1).
  - iii. Vessel speeds in the Operational Area (excluding Pilbara Port) are restricted  $\leq 10$  knots:
    - When in the pygmy blue whale migration BIA during PBW migration periods (Apr-Jul & Oct-Jan inclusive)
    - When in the humpback whale migration BIA during migration periods (May – Aug and Aug - Oct inclusive) (PS 6.7.1).
  - iv. Chemicals intended or likely to be discharged into the marine environment will be approved through the Woodside chemical assessment process (PS 7.4).
- c. measurement criteria (e.g. records of equipment being present, evidence of compliance with regulations, standards and procedures, evidence of notifications being sent to marine users) are provided that will allow the titleholder to determine whether each EPO and EPS is being met for the duration of the activity.

31. Based on the findings above, I was reasonably satisfied that the requirements of reg 13(7) are met.

#### **Regulation 14 - Implementation strategy for the EP**

32. In relation to the requirements in reg 14, Section 7 of the Environment Plan includes:

- a. an implementation strategy for the activity in accordance with regulation 14 of the Environment Regulations (reg 14(1));
- b. a commitment in Section 7.17.2.3 to report to NOPSEMA in relation to the titleholder's environmental performance for the activity monthly for recordable incidents, annually during the activity, and then within three months of completing the activity (reg 14(2));
- c. a description of the environmental management system (**EMS**) for the activity in Sections 1.9 and 7 of the EP, including specific measures to be used to ensure that, for the duration of the activity, the environmental impacts and risks of the activity continue to be identified and reduced to a level that is ALARP, control measures described in the EP are effective in reducing the environmental impacts and risks of the activity to ALARP and an acceptable level, and EPOs and EPSs set out in the EP are being met. The EP review process and management of change process are described in Section 7.14 and 7.15 respectively (reg 14(3));
- d. a clear chain of command, setting out the roles and responsibilities of personnel in relation to the implementation, management and review of the Environment Plan, including during emergencies or

- potential emergencies (reg 14(4)). For example, Section 7.4 outlines the organisation structure and the roles and responsibilities of key project team members including responsibilities for environmental performance monitoring and reporting (Table 7-4). The roles and responsibilities of key personnel involved in spill preparation and response are outlined in Appendix D;
- e. measures to ensure that each employee or contractor working on, or in connection with, the activity is aware of their responsibilities in relation to the Environment Plan, including during emergencies or potential emergencies, and has the appropriate competencies and training (reg 14(5)). For example, the titleholder has made commitments to inductions and pre-activity meetings to raise awareness of Environment Plan responsibilities in Section 7.4, which also outlines the measures that are in place for ensuring employee and contractor competency, including the necessary awareness, training and induction requirements to fulfil their duties;
  - f. sufficient monitoring, recording, audit, management of nonconformance and review of the titleholder's environmental performance and the implementation strategy to ensure that the EPOs and EPSs in the Environment Plan are being met (Sections 7.9 to 7.14) (reg 14(6)). For example, internal and external reporting obligations are identified and the titleholder commits to conducting a program of periodic monitoring, auditing and marine assurance for the duration of the activity and outcomes of these processes may lead to management review or change and revision;
  - g. sufficient monitoring of, and maintaining a quantitative record of, emissions and discharges (whether occurring during normal operations or otherwise), such that the record can be used to assess whether the EPOs and EPSs in the Environment Plan are being met (reg 14(7)). Monitoring (Section 7.9) effort includes periodic records and routine reports. Examples of activity specific monitoring includes the Tiered Monitoring and Management Framework (Section 7.10) for dredging activities and Management of Marine Fauna (Section 7.11);
  - h. an oil pollution emergency plan (**OPEP**) with provision for the updating of the plan, made up of the following components: Woodside Oil Pollution Emergency Arrangements (Australia), Oil Pollution First Strike Plan (Appendix J) and Oil Spill Preparedness and Response Mitigation Assessment (Appendix D) (reg 14(8));
  - i. the OPEP (Appendices D and J) includes adequate arrangements for responding to and monitoring oil pollution and includes:
    - i. the control measures necessary for timely response to an emergency that results or may result in oil pollution;
    - ii. the arrangements and capability that will be in place for the duration of the activity to ensure timely implementation of the control measures including arrangements of ongoing maintenance of response capability;
    - iii. the arrangements and capability that will be in place for monitoring the effectiveness of the control measures and ensuring that the EPSs for the control measures are met; and
    - iv. the arrangements and capability in place for monitoring oil pollution to inform response activities (reg 14(8AA));
  - j. arrangements for testing the response arrangements in the OPEP that are appropriate to the response arrangements and to the nature and scale of the risk of oil pollution for the activity (Sections 7.19.6-7 and Appendix D) (reg 14(8A));
  - k. the arrangements for testing the response arrangements includes a statement of the objectives of testing, a proposed schedule of tests, mechanisms to examine the effectiveness of response



arrangements against the objectives of testing, and mechanisms to address recommendations arising from tests. These tests are the titleholder's common arrangements for spill response across its Australian operating assets and activities (Table 7-14 and Figure 7-7) (reg 14(8B));

- l. the proposed schedule of tests provides for:
  - i. testing the response arrangements when they are introduced;
  - ii. testing the response arrangements when they are significantly amended;
  - iii. testing the response arrangements not later than 12 months after the most recent test;
  - iv. if a new location for the activity is added to the Environment Plan after the response arrangements have been tested, and before the next test is conducted – testing the response arrangements in relation to the new location as soon as practicable after it is added to the plan; and
  - v. if a facility becomes operational after the response arrangements have been tested and before the next text is conducted – testing the response arrangements in relation to the facility when it becomes operational (regulation 14(8C));
- m. monitoring of impacts to the environment from oil pollution and response activities that is appropriate to the nature and scale of the risk of the environmental impacts and risks for the activity and is sufficient to inform any remediation activities (Appendix D) (reg 14(8D));
- n. the arrangements established in Appendix D and Appendix J are consistent with the national system for oil pollution preparedness and response, as outlined in Woodside Oil Pollution Emergency Arrangements (Australia) (reg 14(8E));
- o. appropriate ongoing consultation during the implementation of the petroleum activity with relevant authorities of the Commonwealth, a State or Territory and other relevant interested persons or organisations (reg 14(9)). In particular, Section 5.7 and Section 7.17.2.1 outline the arrangements for ongoing stakeholder consultation. The EP also provides for ongoing consultation with relevant cultural authorities in relation to the identification, assessment, and consideration of cultural values relevant to the petroleum activity (Appendix L); and
- p. the implementation strategy complies with the Act, the regulations and any other environmental legislation applying to the activity (as outlined in Section 1.9 and Appendix B) (reg 14(10)).

33. Based on the findings above, I was reasonably satisfied that the requirements of reg 14 are met.

#### **Regulation 15 - Details of titleholders and liaison person**

34. Section 1.8 of the Environment Plan, headed 'Details of Titleholders and Public Affairs Contact' relevantly:
- a. includes a heading 'Titleholder' identifying Woodside Energy Scarborough Pty Ltd, and providing the relevant address and contact details, in addition to the ACN;
  - b. under the heading 'Nominated Liaison Person' includes the relevant address and contact details; and
  - c. confirms that any changes to the details provided under Section 1.8 will be communicated in writing within 2 weeks or as soon as reasonably practicable.

35. Based on the findings above, I am reasonably satisfied reg 15 was met.

#### **Regulation 16 - Other information in the EP**

36. I considered that the Environment Plan met reg 16 as it contained:

- a. a statement of the titleholder's corporate environmental policy in Appendix A;
- b. the information required under reg 16(b), specifically a report on all consultations under reg 11A of any relevant person by the titleholder in Section 5 and Appendix F of the EP and the Sensitive Information Report (Revision 6, dated October 2023), including: a summary of each response made by a relevant person (see Appendix F, Table 1). The titleholder has provided a summary of responses received from relevant persons, such that relevant claims or objections can be adequately identified;
- c. an assessment of the merits of any objection or claim raised during relevant persons consultation (see Appendix F, Table 1). The titleholder has identified claims and objections raised by relevant persons and assessed the merit of each objection or claim about the adverse impact of the activity described in the EP. Where there was merit to relevant claims or objections regarding the adverse impact of the activity to which the EP relates, the titleholder has considered the claims against the content of the EP to ensure relevant management measures have been included (see Appendix F, Table 1 and Section 6.10). The consultation has progressed to resolve objections and claims made by relevant persons as far as reasonably practicable. The titleholder's assessment of merit and all responses to objections and claims were reasonable and supported by evidence;
- d. a statement of the titleholder's response, or proposed response, if any, to each objection or claim (see Appendix F, Table 1). Where there has been a claim or objection identified, the titleholder has provided a response or proposed response to each objection or claim that has been raised;
- e. a copy of the full text of any response by a relevant person was included in the Sensitive Information Report; and
- f. details of any reportable incidents in relation to the proposed activity in section 7.17.4.

### Should the Environment Plan be accepted?

37. Regulation 9A(4) of the Regulations requires that when making my decision as to whether the Environment Plan should be accepted under reg 10, I must consider the further information that the titleholder has provided pursuant to requests made by NOPSEMA for that information. The information which I considered was contained in the various re-submitted versions of the Environment Plan culminating in the final revision (Revision 6).
38. Against this background (and having considered the materials at Attachment B), I made the following findings against each criterion for acceptance of the Environment Plan found in reg 10A.

#### Regulation 10A(a) - The Environment Plan is appropriate for the nature and scale of the activity

39. I noted that the Environment Plan included a description of the scope and bounds of the activity. In particular, the Environment Plan provides details of the proposed location, spatial extent, timeframe, and duration of the seabed intervention and pipeline installation activities (see above at [18]).
40. I considered that the Environment Plan contained a thorough description of the activity components with the greatest potential to generate impacts and risks to the environment throughout the activity duration. In particular, the Environment Plan thoroughly applies a logical process to identify and describe the activity components that may present sources of impact and/or risk to the environment and provides more detail on activity components with the greatest potential to generate impacts and risks to the environment, particularly the activities associated with dredging and trunkline installation. The Environment Plan also comprehensively describes the amount and types of equipment and property that will be brought into the title areas and used to undertake the activity.
41. I also considered that the Environment Plan contained a thorough description of the environment that may be affected by the activity, including:

- a. matters protected under Part 3 of the EPBC Act. In particular, the EP thoroughly applies a logical process to identify and describe the matters protected under Part 3 of the EPBC Act that overlap with the areas that may be affected by impacts and risks from the planned and/or unplanned aspects of the activity. The EP has utilised relevant information to adequately inform and support the descriptions, such as information available on DCCEEW's website including plans of management, threat abatement plans, threatened species recovery plans, marine bioregional plans and published scientific papers.
  - b. key physical, biological, social, economic values and sensitivities of the environment of the Commonwealth marine area that overlap with the areas that may be affected by impacts and risks from the planned and/or unplanned aspects of the activity. In particular, the EP applies a logical process to identify and describe the key physical, biological, social, economic, and cultural features, values and sensitivities of the environment that overlap with the EMBA. The EP utilises relevant references and information sources, such as contemporary peer reviewed scientific literature and other authoritative sources, to adequately inform and support the descriptions.
42. Specifically in relation to a description of First Nations cultural features of the environment occurring in the EMBA, I am satisfied that the EP includes information that is appropriate to the nature and scale of the activity as it has been informed by relevant references and sources of information such as bespoke assessments and studies, marine surveys, literature reviews and relevant persons consultation and on this basis is sufficient for informing the impact and risk assessment in the EP. In particular:
- a. the description is supported by multiple sources of relevant and suitable information. For example, there are details of onshore native title claims, determinations and Indigenous Land Use Agreements (ILUAs) made under the Native Title Act 1993, information published in State and Commonwealth Marine Park Management Plans, information on the cultural features of marine ecosystems including the broader concept of "sea country", and information on Indigenous archaeology in the offshore marine environment.
  - b. the existing Research and Desktop Literature Assessments have informed the EP content in sections 4.9.5 and 6.10. For example, a Historic Underwater Heritage search of the Australasian Underwater Cultural Heritage Database, which records all known Maritime Cultural Heritage (shipwrecks, aircraft, relics and other underwater cultural heritage) in Australian waters did not contain records of sites within the Operational Area, nor within 10 km of the Operational Area.
  - c. a description of the physical characteristics of the seabed environment along the Scarborough pipeline route and associated work areas which is informed by specific assessments and studies such as:
    - i. an assessment of geomorphic features along the pipeline route and broader EMBA, incorporating the inner (nearshore), middle and outer (offshore) shelf (Scarborough Pipeline Cultural Heritage Assessment (University of Western Australia, 2021) (**UWA UCH Assessment**)). The assessment found that in the EMBA:
      - A. the inshore shelf holds prospective submerged landscapes such as, paleochannels, relict waterholes, clay pan features, or igneous rock outcrops and submerged barrier systems which outcrop at the seabed.
      - B. the middle shelf is flat, relatively featureless and covered by a thick layer of recent marine sediments.

- C. the outer shelf possesses a highly prospective cultural landscape with several locations on the outer edge of the continental shelf having value landforms (i.e., karst depressions, tidal channels).
  - D. However, the assessment found that the pipeline route does not intersect with any submerged features hosting or potentially hosting cultural heritage sites within the inner, middle or outer shelf areas.
- ii. The EP acknowledges the Operational Area and EMBA intersect the Western Australian coastline presently underwater but which was likely above sea level in the Pleistocene Epoch between 2.5 million to 10,000 years ago, which First Nations people occupied, as well as deeper offshore waters that were not inhabited. I also note that the location of the pipeline and associated work area is adjacent to the Pluto Trunkline for the first ~200km from the Commonwealth waters boundary and as a result, has been subject to previous disturbance.
  - iii. the UWA UCH Assessment predictive model assessed the seabed within the Operational Area and parts of the EMBA for the presence of submerged places, locations and areas of the environment with cultural connections. The assessment incorporated site surveys and an archaeological assessment within the submerged landscape and did not identify the presence of Underwater Cultural Heritage (**UCH**) material or culturally significant landforms or features within the Operational Area. However, to address concerns raised by the Murujuga Aboriginal Corporation (**MAC**) Circle of Elders during consultation, further investigative studies were undertaken. Surveys included a Side Scan Sonar Review (Nutley 2022) and ROV Inspection of Barrier Systems (Nutley 2023a) which incorporated verification of submerged physical features by an archaeologist. These studies did not identify any cultural features associated with submerged places, locations and areas within the Operational Area. I note that the titleholder has adopted control measures for unexpected finds (C 2.10, C 2.11 and C 2.12) and managing new information (C 16.3, C 16.7 and C 16.8) and EPO 28, EPO 31 and EPO 32, which ensures that any potential impacts or risks to newly identified cultural features will be managed to ALARP and acceptable levels.
  - iv. the Borrow Ground UCH Assessment (Nutley 2023b), which did not identify any potential UCH presence in the offshore borrow ground. In considering the results of this assessment, I recognise there are some limitations in the coverage of the seabed surveys supporting the assessment and therefore the subsequent understanding of UCH presence within the entire borrow ground area. However, I note that the assessment identified the presence of modern sediments in the borrow ground and therefore it is unlikely to contain presence of UCH. The EP commits to future investigative survey effort controls (C16.5 and C16.8) and adaptive management strategies involving the Cultural Heritage Management Committee prior to any dredging activities occurring in this area to address this uncertainty. I consider that the additional controls are sufficient given the low likelihood of UCH presence in the borrow ground.
- d. the description of cultural features of people and communities in the OA and EMBA is provided and is supported by the results from a number of assessments and studies including:
    - i. a desktop assessment of sea country values (Section 4.9.1.5.1) undertaken by the titleholder where it reviewed publicly available literature for any records of previously identified cultural features that may occur within the Operational Area or EMBA. A summary of sea country values and cultural features identified through the assessment is presented in Table 4-24 linked to the First Nations groups who hold those values (where identified). For example, values identified for the Thalanyji people include marine resources such as turtles, dugong, fish, and Thalu ceremonial

sites for the increase of marine species and a connection to country which includes Barrow and the Montebello Islands;

- ii. A Cultural Heritage Management Plan (**CHMP**) which was developed in consultation with MAC Circle of Elders for the nearshore installation of the Scarborough trunkline in the Dampier Archipelago and surrounding WA state waters. The CHMP identifies a list of cultural features relevant to the environment affected by the nearshore trunkline installation and adjacent sea country (in the EMBA) and are summarised in Table 4-25.
- iii. first nations ethnographic heritage assessments were undertaken to identify cultural features of the environment within the Scarborough project development footprint. These assessments identified no ethnographic sites or values within the EMBA. I recognise that there is some uncertainty about the suitability of these ethnographic surveys to provide a comprehensive understanding of ethnographic sites and values in the EMBA, including those intangible values associated with stories, dreaming, mythology, song or other cultural practice. This uncertainty exists given that the ethnographic studies were undertaken by a limited group of traditional custodian representatives (i.e. MAC Circle of Elders) and for another purpose (i.e. the EP describes that the survey purpose as providing an understanding of the cultural heritage values associated with the submerged landscape). The EP notes that further ethnographic heritage studies may be undertaken in the future where agreed with the First Nations organisation e.g. work in conjunction with Buurabayji Thalanyji Aboriginal Corporation (**BTAC**), representing the Thalanyji people, to further articulate their sea country values which extends north of Onslow, off the coast of the Pilbara including Barrow Island and the Montebello and Mackerel Islands.
- iv. Noting the information on cultural features of people and communities provided by MAC and in light of [iii], I recognise that there is a level of uncertainty in the articulation of all Thalanyji sea country cultural features of the environment, given that the EP has been informed through publicly available information (Section 4.9.1.5.1). However, I am satisfied that the titleholder has taken reasonable steps to understand and describe Thalanyji sea country features using information that was publicly available, and consider that BTAC were provided with reasonable opportunity to share further information with the titleholder about their sea country interests during relevant person consultation. I have formed this view given BTAC have made claims during consultation, which indicates an understanding of the nature of the project and its potential risks, that BTAC have agreed further information could be provided to Woodside on an ongoing basis, and specific arrangements are in place and continue to be developed to facilitate receipt of information with adaptive management. I note that this may include support for BTAC to engage independent expert advice, which Woodside offered to provide in March 2023 (Appendix F of the EP) [see my reasons [99] to [115]]. I note that the titleholder has adopted control measures C 16.1, C 16.2, C 16.3 and has measures in place that will ensure that new information and changes to impacts and risks continue to be managed and EPO 28, which states there will be “No impact to cultural features and heritage values, as stated in Table 4-27, greater than a consequence level of F from the Petroleum Activities Program” will ensure that any potential impacts or risks to newly identified cultural features will be managed to ALARP and acceptable levels.
- e. The Environment Plan also demonstrates that the titleholder’s understanding of the environment was informed through relevant persons consultation with traditional custodians. The consultation undertaken with First Nations relevant persons has built upon the knowledge of cultural features of the environment available through published research in the area. A summary of the values raised by First Nations relevant persons during consultation for this activity are presented in Table 4-26.

Based on the desktop assessment and information obtained from First Nations relevant persons, the titleholder identified a number of cultural features (Table 4-27) including, but not limited to:

- A. songlines;
- B. creation/ dreaming sites, sacred sites and ancestral beings;
- C. cultural obligations to care for country;
- D. knowledge of country/ customary law and transfer of knowledge;
- E. connection to country, access to country;
- F. kinship systems and totemic species, resource collection; and
- G. marine ecosystems and marine species.

- f. In relation to potential cultural connections to whale species, I considered information on whale occurrence and areas of biological importance documented in the EP including that the humpback whale and pygmy blue whale migration BIAs intersect a portion of the Operational Area and that the potential presence of other migratory cetacean species including the fin, sei and killer whale within or adjacent to the Operational Area.
- g. In relation to potential cultural connections to turtle species, I considered that the operational area intersects marine turtle BIAs for Hawksbill, Green, Flatback and Loggerhead and Habitats Critical for Hawksbill, Green and Flatback turtles (Figure 4-9 and 4-10) and is within 20km of 9 nesting beaches with the closest distance being 6.6 km from Legendre Island (borrow ground) (Table 4-13).
- h. I note that further assessments and studies may be undertaken in conjunction with First Nations groups or other parties to enhance an understanding of cultural features of the environment through ongoing commitments and adaptive management controls in Section 6.10. I was reasonably satisfied that this uncertainty has been addressed in the EP through relevant persons consultation with a broader group of First Nations groups to inform the titleholder's understanding of the potential for First Nations cultural heritage values within the EMBA, and the studies and assessments undertaken on cultural features of the environment (Section 4.9.1.5.1). Specifically, where information relating to the identification of First Nations cultural heritage values was provided to the titleholder during relevant persons consultation it has been incorporated into the description in the EP (Section 4.9.1.5.3);
- i. during the assessment process, an expert report was obtained by NOPSEMA from Extent Heritage to assist NOPSEMA's understanding and consideration of cultural features of the environment for the Scarborough Project, including the deep-water component of the Scarborough Seabed Intervention and Trunkline Installation activity. Extent Heritage concluded that there is no potential for any in-situ First Nations submerged terrestrial archaeological deposits within the subject area based on consideration of the location and water depths of the area relative to the Pleistocene coastal landscape, and that there are no known records of First Nations submerged archaeological deposits within Commonwealth waters. Additionally, the report notes that the subject area is located well beyond the inundated coastal plain Aboriginal people would have lived on during the Pleistocene, and likely beyond the extent of visual sight lines from the Last Glacial Maximum (LGM) coast and beyond the extent that Aboriginal watercraft were likely to have travelled. The conclusions in the report are consistent with information presented in the EP that does not identify any known First Nations archaeological sites in the OA or EMBA located in Commonwealth waters.

43. the EP includes sufficient information on legislative requirements that are relevant to the activity and a demonstration of how they will be met. In particular, the EP includes an outline of the legislative

requirements that are relevant to the activity and explains how they will be complied with throughout the life of the EP as part of the process that the EP applies for evaluating whether environmental impacts and risks of the activity will be of an acceptable level.

44. I also noted that a sufficiently robust method, consistent with internationally recognised standard ISO 31000:2018 Risk Evaluation, has been applied in the EP for the identification and evaluation of environmental impacts and risks of the petroleum activity (Section 2.2). The detail and rigour applied to the impact and risk assessments (Section 6) is commensurate to the magnitude of the impacts and risks related to the petroleum activity, and the level of analysis and evaluation is proportionate to the nature and scale of the environmental impacts and risks generated by the petroleum activity. For example:
- a. the Environment Plan has identified and evaluated all environmental impacts and risks that may arise from the activity, whether arising directly or indirectly, and including those arising from potential emergency conditions whether resulting from an accident or any other reason;
  - b. evaluations of impacts and risks provided in the Environment Plan are specific for the nature and location of the activity and the environment receptors that may be affected; and
  - c. the Environment Plan applies more detail and rigour to the impact and risk assessments where there is a higher degree of scientific uncertainty in predictions of impacts and risks and/or severity of potential consequence of impacts and risks. The Environment Plan provides details of the additional studies that were undertaken by the titleholder to adequately support and inform those impact and risk evaluations, including underwater sound modelling, light modelling impact assessment, dredge modelling and oil spill trajectory modelling.
45. I considered that there is a clear demonstration in the Environment Plan that the evaluation of impacts and risks informed the selection of suitable control measures appropriate for the nature and scale of the activity to either reduce the consequence/severity or likelihood of environmental impacts and risks.
46. Based on the findings above, I was reasonably satisfied that the EP met the requirements of reg 10A(a).

**Regulation 10A(b) - The Environment Plan demonstrates that the environmental impacts and risks of the activity will be reduced to as low as reasonably practicable**

47. Having regard to the Environment Plan:
- a. Section 2 of the EP describes the process applied to evaluate whether impacts and risks are or will be reduced to ALARP. Section 6 of the EP presents a clear, systematic, defensible and reproducible process for the evaluation of all impacts and risks, which details the control measures to be implemented, including an evaluation of additional potential control measures, and justifies why control measures are either adopted or rejected (with reasoned conclusions) to demonstrate that the environmental impacts and risks of the activity will be reduced to ALARP. The evaluation of the adoption of control measures is based on environmental benefits and the consideration of the feasibility and cost/sacrifice of implementation. The control measures adopted are considered by NOPSEMA to be sufficient for the impacts and risks presented.
  - b. I considered that the titleholder has applied the environmental risk assessment process (described in Section 2) appropriately for planned aspects of the activity, in particular for higher order hazards associated with the activity, such as seabed disturbance and planned discharges. For such higher order impacts and risks, I accepted that the exploration of alternative, additional or improved control measures had been evidenced, and that the control measures adopted demonstrate that environmental impacts will be reduced to ALARP.

- c. Unplanned aspects of the activity are described in Section 6 of the EP, including accidental introduction and establishment of invasive marine species, unplanned discharge of hazard and non-hazardous waste, collision with marine fauna, unplanned seabed disturbance, and unplanned hydrocarbon and chemical releases. These aspects are appropriately described and evaluated to give confidence that the control measures selected are appropriate and risks are reduced to ALARP.
- d. The evaluation of impacts and risks has informed the selection of suitable control measures to either reduce the consequence/severity or likelihood of impacts and risks. The control measures outlined in Section 6 of the EP are sufficiently detailed to demonstrate they will be effective in reducing the impacts and risks for the duration of the activity. The level of detail in the ALARP assessment is commensurate to the nature and scale of the potential impacts and risks. For higher order impacts and risks, the exploration of alternative, additional or improved control measures is evident by the titleholder. The EP has demonstrated, through reasoned and supported arguments that there are no other practical control measures that could reasonably be taken to reduce impacts and risks any further.
- e. The EP considers information gathered from the consultation process when demonstrating impacts and risks are or will be reduced to ALARP and each impact and risk evaluated in Section 6 of the EP (i.e., demonstration of ALARP tables) addresses the range of matters raised by relevant persons. For example, advice from DCCEEW relating to BIAs, feedback from the Department of Defence and requirements for notifications. I note that the Environment Plan evaluates and includes control measures that address impacts and risks on First Nations cultural features, including those that relate to the women's only gender-restricted material provided to NOPSEMA as part of the Environment Plan (see [106 and 113]). I am satisfied that impacts and risks described in the EP will be reduced to ALARP based on that evaluation and those control measures that will be implemented.
- f. I am satisfied that the EP adequately identifies and evaluates the potential impacts and risks from the activity to protected matters under the EPBC Act, by being informed by the likelihood of species presence, distribution and behaviour within the area that may be affected by petroleum activity impact pathways and supported with peer-reviewed literature. Particular examples include:
  - i. the evaluation of impacts and risks to threatened and migratory whales were informed by applying suitable control measures, including those set out within EPBC Regulations 2000 – Part 8 Division 8.1 Interacting with cetaceans;
  - ii. the EP considered, evaluated, and detailed all reasonable control measures that could reduce impacts to threatened and migratory whales to ALARP.
- g. I considered that the EP provided reasons that were supported by evidence for why the adopted controls for protected matters reduce the potential impacts to the point that any additional or alternative control measures are either not feasible, or their cost would be grossly disproportionate to the benefit that would be achieved. Examples of control measures adopted to mitigate impacts to threatened and migratory whales include:
  - i. The use of trained vessel crew as Marine Fauna Observers (MFOs) on Pipe Supply Vessels or DP Bulk Carriers (B-Type vessels), Pipelay Vessel (PV) and Offshore Construction Vessel (OCV) to observe and record cetacean presence /activity as required (C 6.2)
  - ii. Implement adaptive management procedures so that only one B-type vessel (Pipe Supply Vessels or DP Bulk Carrier) on dynamic positioning (DP) (including for refuelling) at any one time within 25 km of PV and pipelay activities. i.e. second B-type (Pipe Supply Vessels or DP Bulk Carrier) may be within the 25 km zone so long as it's not on DP (C 6.5)



- iii. Critical equipment onboard OCV, Rock Installation Vessel (RIV) and Trailing Suction Hopper Dredge (TSHD) subject to periodic maintenance to ensure optimal performance (C 6.6)
  - iv. Manage vessel speed in the humpback and pygmy blue whale BIAs in migration seasons within the Operational Area (excluding Pilbara Port) (C 6.7)
  - v. Carry out maintenance and inspection regime on PV thrusters prior to mobilisation to Operational Area, to ensure optimal performance (C 6.9); and
  - vi. project vessels will not travel greater than 6 knots within 250 m of a whale shark and not allow the vessel to approach closer than 30 m of a whale shark (C 6.10)
- h. I am satisfied that the EP adequately identifies and evaluates the potential impacts and risks from the activity to cultural features of the environment, by being informed by the likelihood of tangible and intangible values within the area that may be affected by petroleum activity and supported with multiple lines of evidence. In particular:
- i. the EP has considered the evaluation of impacts and risks to marine ecosystems which may hold both cultural and environmental value (see Section 4.9.1), with cultural and environmental values intrinsically linked. In addition to the specific controls for cultural features and heritage values (Section 6.10), the controls and performance standards in Section 6.7 and Section 6.8 will also reduce impacts to cultural features and heritage values, including marine species and habitats;
  - ii. the EP considered, evaluated, and detailed all reasonable control measures that could reduce impacts to cultural features of the environment to ALARP.
- i. I considered that the EP provided reasons that were supported by evidence for why the adopted controls for cultural features, reduce the potential impacts to the point that any additional or alternative control measures are either not feasible, or their cost would be grossly disproportionate to the benefit that would be achieved. Control measures adopted include:
- i. Apply a 'living heritage' management approach. Woodside seeks advice and incorporates Traditional Custodian cultural knowledge across their activities. Cultural safety considerations are factored into their workforce and also their interactions with First Nations people (C 16.1)
  - ii. Implement a program, which is compliant with Corporate Woodside Policies Strategies and procedures, to undertake ongoing consultation with Traditional Custodians whose functions, interests and activities may be affected by the Petroleum Activities Program (C 16.2)
  - iii. The environmental impacts and risks of the activity will continue to be managed to as low as reasonably practicable and an acceptable level for cultural features and heritage values (C 16.3)
  - iv. Project inductions to all relevant marine crew, prior to the individual commencing the activity, will include information on cultural features and heritage values, including tangible and intangible cultural heritage (C 16.4)
  - v. Prior to the commencement of borrow ground dredging activities, undertake a Multi Beam Echo Sounder (MBES) survey over specific areas of the Borrow Ground that may be disturbed by dredging (C 16.5)
  - vi. Borrow Ground Multi Beam Echo Sounder (MBES) data collected to be:
    - Reviewed by a qualified maritime archaeologist to identify cultural features and prospective areas within the Borrow Ground prior to seabed disturbance.
    - Any identified cultural features or prospective areas will be referred to the Heritage Management Committee (C16.8) prior to Borrow Ground seabed disturbance.

- vii. During assessment by Heritage Management Committee, borrow ground dredging to avoid any identified cultural features or prospective areas (C 16.6)
  - viii. A Heritage Management Committee is established with representatives from the MAC, Woodside and relevant experts (C 16.7)
  - ix. New information from further archaeological or ethnographic studies relevant to MAC will be considered by the Heritage Management Committee (C 16.8)
  - x. Activities under the Petroleum Activities Program will be carried out in accordance with any protection declarations relevant to the Operational Area, under Sections 9, 10, 12 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (ATSHP Act)* (C 2.9)
  - xi. Unexpected finds of potential UCH sites / features, including first nations UCH are managed in accordance with the Unexpected Finds Procedure set out in Section 7.7 (C 2.10)
  - xii. Relevant vessel crew and Remotely Operated Vehicle (ROV) operators will be advised in an induction of the potential to encounter UCH, and of their requirement to follow the Unexpected Finds Procedure (C2.10) (C 2.11)
  - xiii. Report any potential UCH finds to relevant stakeholders and authorities in accordance with the Unexpected Finds Procedure, *Underwater Cultural Heritage Act 2018* and the *ATSHP Act* (C 2.12)
  - xiv. Implement management procedures to reduce noise impact potential to pygmy blue whales and humpback whales during contingent pipe unloading operations (while two B-types (Pipe Supply Vessels or DP Bulk Carriers) on DP alongside the PV) (C 6.5); and
  - xv. Manage vessel speed in the humpback and pygmy blue whale BIAs in migration seasons within the Operational Area (excluding Pilbara Port) (C 6.7)
- j. The analysis of impacts to a range of environmental sensitivities within the EP include consideration of the objections and claims raised by relevant persons in relation to the management of impacts to reduce these to ALARP.

48. Based on the findings above, I was reasonably satisfied that the EP met the requirements of reg 10A(b).

**Regulation 10A(c) - The Environment Plan demonstrates that the environmental impacts and risks of the activity will be of an acceptable level**

49. Having regard to the EP, I considered that:

- a. Section 6 of the EP applies a clear, systematic, defensible, and reproducible process for demonstrating how environmental risks will be of an acceptable level. The process is commensurate with the nature and scale of the activity and the severity of its impacts and risks. The statements and conclusions drawn by the titleholder in the EP have been sufficiently supported with scientific literature. For example, the titleholder has applied more effort and rigour to evaluations where there is a higher degree of scientific uncertainty in predictions of impacts and risks and/or severity of potential consequence of impacts and risks;
- b. Section 2.3.5 of the EP describes the process undertaken by the titleholder to determine acceptable levels of impact and risk for the petroleum activity, including through consideration of the principles of ESD, internal context, external context and other requirements;
- c. The titleholder has implemented the following controls:
  - i. adoption of EPOs and controls relevant to the activity;
  - ii. adoption of additional specific controls where required;

- iii. impact Significance Level / Risk Consequence levels for receptors are equal to or less than the significant impact level defined in the Scarborough OPP (Section 6.5; Table 6-3) and are therefore consistent with the EPOs and managed to an acceptable level of impact or risk; and
  - iv. consideration of internal/external context and other requirements specific to the activity (including issues raised during EP stakeholder consultation);
  - d. the EP demonstrates that the petroleum activity is not likely to have a significant impact on MNES protected under the EPBC Act, including World Heritage properties, National Heritage properties, *Ramsar* wetlands, listed threatened species and communities, listed migratory species, Commonwealth marine areas, and the Great Barrier Reef Marine Park;
  - e. the EP includes appropriate and accurate content to demonstrate that the proposed activity is not inconsistent with relevant key documents such as recovery plans, conservation advice and management plans, which are outlined in Section 6.9. In particular, an assessment of the activity against the relevant objectives and action areas in these plans is provided in Table 6-38, Table 6-39, Table 6-40, Table 6-41 and Table 6-42; and
  - f. in relation to planned aspects of the activity (Section 6), predictions have been made regarding impacts and risks to the environment that are suitably conservative and result in the inclusion of appropriate controls given the nature of the activity. For example, the environmental assessment includes consideration of aspects typical for trunkline installation activities, such as light emissions, acoustic emissions, disturbance to benthic habitats, atmospheric and greenhouse gas emissions, project vessel marine discharges (i.e. sewage, grey water, putrescible waste, deck and bilge water and brine or cooling water) and trunkline-related discharges such as hydrotest water.
50. In relation to the particular MNES that were the focus of the detailed topic assessment (as per [NOPSEMA's Environment Plan Assessment Policy](#)) I considered that:
- a. Acceptable levels of impact were defined in the EP according to the definitions set out in the OPP, the principles of ESD as defined under Section 3A of the EPBC Act, external context such as relevant persons consultation and relevant statutory documents including the Recovery Plan for Marine Turtles in Australia, Conservation Management Plan for the Blue Whale (Section 6.9), DSDMMP approved Condition 6 of Ministerial Statement No. 1172 approved under the EP Act 1986 (WA) (Section 1.9) and conservation advice for *Rhincodon typus* (whale shark) (Appendix H).
  - b. Impact pathways that could affect the protected matters, such as whale sharks, pygmy blue and humpback whales, marine turtles and Australian Marine Parks were described taking into account the potential presence of the protected matter. The operational area intersects the whale shark foraging BIA (Figure 4-8), pygmy blue whale migration BIA and the humpback whale migration BIA (Figures 4-12 and 4-13) and the Montebello AMP and is 250km from the Dampier AMP. The activity is not inconsistent with the relevant marine parks management plans. The operational area also intersects marine turtle BIAs for Hawksbill, Green, Flatback and Loggerhead and HCFS for Hawksbill, Green and Flatback (Figure 4-9 and 4-10) and is within 20 km of 9 nesting beaches with the closest distance being 6.6 km from Legendre Island (borrow ground) (Table 4-12). These values are also culturally sensitive to First Nations people and the EP recognises that this may include aspects of the activity such as physical presence having a cultural impact on the values (Section 6.10).
  - c. Acceptable levels were compared to predicted levels of impact determined by robust scientific methodologies. For example, predicted levels of impact to the Dampier Marine Park Habitat Protection Zone were derived from a modelling study for dredging disturbance in the borrow ground are shown in Figure 6-3 (ref. RPS 2020). Predicted levels of impact to the Montebello Marine Park Multiple Use Zone were derived from surveys of seabed habitat in the trunkline route compared to

seabed in other areas in and outside of the marine park (Sections 4.4.3.1, 4.5.2, 6.7.2 and 6.7.3). Predicted levels of lighting with the potential to impact to turtles were determined by light modelling and a desktop lighting assessment (Appendix K and Appendix L of the OPP). Predicted levels of noise were determined by a worst-case credible scenario (Table 6-14) for noise propagation modelling (ref. Connell et al. 2022, Appendix K) and a cumulative impact assessment (Section 6.7.6).

- d. The National Light Pollution Guidelines recommends a 20km precautionary distance for predicting light impacts to marine fauna, however, light modelling undertaken for the activity predicted distances of light emissions from the project vessels would be between 3.2 km to 5.8 km and that at this level light flow would be visible but unlikely to impact turtle hatchling behaviour. All nesting beaches were located at distances further than this, with the minimum distance being Legendre 6.6km distant (Section 6.7.4). Distances at which noise decreases below behavioural disturbance thresholds for whales were 16.5 km or ~13km including ANIMAT modelling to account for movement. Distances to temporary threshold shift (TTS) were tens of metres for cetaceans and 150m for turtles. Whale sharks are expected to only be exposed to behavioural disturbance (Section 6.7.6). BIAs were substantially larger than these distances. Dredge plume modelling determined that sediment dispersion thresholds would remain below levels that could cause impacts to seabed biota although could cause a detectable change in water quality over the short term (Section 6.7.2). The impact and risk evaluation of various impact pathways demonstrate the implementation of commensurate controls will be manage impact and risk to acceptable levels.
- e. Areas of uncertainty in predictions of impact to protected matters are addressed by the implementation of precautionary control measures. Areas of uncertainty in the predictive modelling for the dredge plume in the borrow ground are addressed by the inclusion of a 250m buffer between the borrow ground and the Dampier AMP, a tiered monitoring and management framework (Control 2.2, Section 7.10), that includes: early detection of unexpected impacts, adaptive management actions, water quality monitoring and a dredge plume assessment study to ensure that the prediction that water turbidity will not affect benthic habitats is verified. The potential for impacts to coral spawning critical windows of sensitivity are being managed by C2.1 that includes the possibility of suspending dredging during spawning windows.
- f. Areas of uncertainty in the impact assessment of light on marine turtles are addressed by the implementation of additional control measures (C 4.4, 4.5 and 4.6) during December and April, which includes peak turtle hatchling emergence (Section 6.7.4). These control measures limit crew transfers at night, turning off vessel lights and use of block out blinds/curtains when vessels are within 20km of turtle nesting beaches. Precautionary control measures to reduce the impacts of noise on and likelihood of collision with marine turtles, whale sharks and humpback and pygmy blue whales include implementation of approach distances in according with EPBC Regulations 2000 Part 8 Div 8.1 (C6.1 and 6.10), limiting vessel speed in humpback and pygmy blue whale migratory seasons and within 250 m of whale sharks (C6.7, C6.10) , trained crew to observe for pygmy blue and humpback whales and implement management measures to reduce noise during multi-vessel activities (C6.2, 6.5, Table 7-6). I recognise that relevant person consultation has informed the implementation of select control measures, for example the inclusion of humpback whales in C6.5.

51. In relation to the assessment of impacts and risks from the activity on cultural features of the environment I considered that:

- a. Acceptable levels of impact to cultural features of the environment had been described in a number of EPOs including:

- i. EPO28 – “No impact to cultural features and heritage values, as stated in Table 4-27, greater than a consequence level of F from the Petroleum Activities Program”.
  - i. EPO 23 - Undertake the Petroleum Activities Program in a manner that will prevent a substantial adverse effect on a population of marine mammals or the spatial distribution of the population.
  - ii. EPO 31 - No adverse impact to unexpected finds of Underwater Cultural Heritage without a permit.
- b. The ‘acceptable level’ definition had been appropriately informed by multiple lines of information, including information gathered through relevant person consultation, bespoke assessments/studies and literature to support the description of cultural features of the environment and recognised the intrinsic link between protection of cultural and environmental values.
- c. The EP provided a well-supported evaluation in Section 6.10 of potential impacts and risks from the activity to cultural features of the environment described in the EP having considered information about the cultural feature and impacts and risks gathered through relevant persons consultation and information from studies, assessments and published material. For example, the evaluation of potential impact and risk to select marine species which hold cultural value is supported by robust scientific methodologies, literature and relevant person consultation. The assessment concluded that impacts will be negligible and risks will be moderate/low and I consider that with the implementation of adopted control measures, impacts and risks are of an acceptable level.
- d. Each impact and risk evaluated in Section 6.10 of the EP addresses matters raised through relevant persons consultations and includes an assessment of impacts and risks to cultural features of the environment. The outcomes of consultation with First Nations relevant persons has informed the control measures for reducing impacts and risks to acceptable levels.
- e. Appropriate control measures have been adopted to ensure that any impacts to First Nations cultural features, including those that relate to the women’s only gender restricted material provided to NOPSEMA as part of the Environment Plan (see [106 and 113]), will be managed to an acceptable level (see C 16.1, 16.2, 16.3, 16.4, 16.5, 16.6, 16.7, 16.8, 2.9, 2.10, 2.11, 2.12, 6.5 and 6.7.).
- f. I recognise that while the defined acceptable level appears appropriate, further engagement will be undertaken with First Nations relevant persons to continue to identify and manage any new information on cultural features of the environment that may be affected by the activity. I note that the titleholder has adopted measures for this purpose such as the Program of Ongoing Engagement with Traditional Custodians (EPO 30 and C 16.2), through engaging the MAC Heritage Management Committee and ‘living heritage’ management approach (C 16.1) and through ongoing dialogue with Traditional Custodians. I am reasonably satisfied that the application of the adaptive management controls summarised in Section 6.10 are appropriate to manage the impacts and risks to cultural features to a level that is acceptable.
- g. I am reasonably satisfied that the EP has incorporated a number of measures in Sections 6.10 and 7.6 to address areas of uncertainty in both the description of cultural features of the environment and management of impacts and risks appropriate for the nature and scale of the petroleum activities. For example, should further information become available to inform the description of Thalanyji Sea Country, the Management of Change and Management of Knowledge process (C 16.3; PS16.3.1) will be applied to manage potential impact to newly identified cultural values or features to ALARP and acceptable levels and in alignment with EPO 28.
52. In relation to unplanned aspects of the activity (Section 6), I was satisfied that the EP gives appropriate consideration to the accidental introduction and establishment of invasive marine species, unplanned

discharge of hazard and non-hazardous waste, collision with marine fauna, unplanned seabed disturbance, and unplanned hydrocarbon and chemical releases. Uncertainty has been addressed in the evaluation of oil pollution incidents through the application of appropriately conservative stochastic modelling and recognition of assumptions made, and the scalability of spill response options have been considered. The evaluation of risks posed by spill scenarios includes consideration of potential impacts to the receptors outlined in the description of the environment (Section 4) and informs the selection of appropriate spill response options.

53. I considered that the EP provides an appropriate evaluation of impacts and risks, because it is specific for the nature and location of the activity and the relevant environmental receptors. The evaluation is commensurate to the level of impact or risk presented by the activity and provides justifiable conclusions that impacts and risks will be managed to an acceptable level (Section 6). The impact and risk evaluations demonstrate that the acceptable level will be met, and that the EPO will be achieved with implementation of the proposed management measures.
54. Information provided during relevant persons consultation is appropriately considered, evaluated, and incorporated into the EP. The titleholder has considered information gathered from the consultation process when demonstrating impacts and risks will be managed to an acceptable level. For example, impacts of light emissions from the activity was raised during consultation, which the titleholder considered in the demonstration of acceptability for this impact.
55. For the above reasons, I am reasonably satisfied that the requirements of reg 10A(c) are met.

**Regulation 10A(d) - The Environment Plan provides for appropriate environmental performance outcomes, environmental performance standards and measurement criteria**

56. Section 6 of the Environment Plan contain the EPOs, EPSs and measurement criteria for impacts and risks of the petroleum activity.
57. The Environment Plan provides EPOs that I considered are:
- a. relevant to identified environmental impacts and risks for the petroleum activity;
  - b. when read in conjunction with associated EPS, establish measurable levels for management of environmental aspects of the petroleum activity;
  - c. when read in conjunction with the relevant environmental impact/risk evaluation and adopted management measures, demonstrate that the environmental impacts and risks will be managed to an acceptable level; and
  - d. considered consistent with the principles of ESD, considering items a-c above.
58. The Environment Plan includes EPSs that:
- a. are clearly linked to control measures for all impacts and risks; and
  - b. for each control measure, contain statements of performance which clarify how the control measure is to function in order to effectively reduce and mitigate impacts and risks; and
  - c. have clear measurement criteria that link to the EPS and will provide a record that the EPS has been met.
59. I considered that the EPOs, EPSs and measurement criteria are all linked and complementary because they are consolidated in a table for each of the environmental aspects with EPSs and measurement criteria set out in relation to each EPO. Therefore, I accepted that they can easily be monitored for compliance, by both the titleholder and NOPSEMA, to ensure environmental impacts and risks are being reduced to as low as reasonably practicable and to an acceptable level.

60. For the above reasons, I am reasonably satisfied that the Environment Plan provides for appropriate EPOs, EPSs and measurement criteria, and reg 10A(d) was met.

**Regulation 10A(e) - The Environment Plan includes an appropriate implementation strategy and monitoring, recording and reporting arrangements**

61. Regulation 10A(e) requires that I be reasonably satisfied that that strategy and the monitoring, recording and reporting arrangements were appropriate.

62. I noted that the implementation strategy outlined in Section 7 provides a range of systems, practices and processes (outlined in further detail below) which I was satisfied provided for all impacts and risks to continue to be managed to ALARP and acceptable levels for the duration of the activity.

63. In this regard, I note the titleholder has adopted a number of measures in response to consultation with relevant persons to ensure that impacts and risks continue to be identified and reduced to ALARP and of an acceptable level during the activity. This includes, but not limited to:

- a. a Thalanyji Sea Country Management process (Section 7.6) to support the identification of cultural features of the Thalanyji people within the EMBA, through ongoing engagement with BTAC.
- b. a 'Program of Ongoing Engagement with Traditional Custodians', which is provided at Appendix L of the EP. This Program includes specific ongoing consultation activities with First Nations relevant persons, including support of additional ethnographic studies, support for capacity building for ongoing consultation processes and the establishment of consultation protocols/frameworks.
- c. an 'Unexpected Finds Procedure' (Section 7.7) in response to consultation with the Western Australian Museum to adaptively manage and respond to any discovery of UCH as defined under the *Underwater Cultural Heritage Act 2018*.

64. I was satisfied that the management of change (MOC) process was adequately described in Section 7.15 and was appropriate because:

- a. management of changes relevant to the scope of the activity, will be managed in accordance with regulation 17;
- b. changes will be assessed as per the environmental risk management methodology (outlined in Section 2.3) to determine the significance of any potential new environmental impacts or risks not provided for in the EP;
- c. minor changes that do not trigger a requirement for a formal revision under reg 17, will be considered a 'minor revision' and tracked in an 'MOC Register';
- d. any relevant new information on cultural values will be assessed using the MOC process;
- e. Section 7.7 includes a detailed description of Woodside's 'Unexpected Finds Procedure'; and
- f. Section 7.14.2 provides a reasonable description of the titleholders' learning and knowledge sharing processes.

65. Section 1.8.4 of the EP describes the titleholder's environmental management system, the Woodside Management System (presented in Figure 1-1 of the EP). I was satisfied that this was appropriate as the system provides a structured framework of documentation (compass and policies, expectations, processes and procedures, and guidelines) that set common expectations governing how all employees and contractors will work. I also noted the titleholder's commitment in Section 7.1 that the activity will be managed in accordance with the Woodside Management System and the Implementation Strategy in Section 7 of the EP.

66. I was satisfied that the EP (Section 7.8) included appropriate training and competency requirements relevant to the EP with all personnel on the project vessels required to be competent to perform assigned positions. For example, Section 7.19.2 outlines the minimum levels of competency for the key incident management team positions. Inductions are provided to all relevant personnel before mobilising to or on arrival at the activity location. The induction covers the HSE requirements and environmental information specific to the activity location. Relevant crew onboard the vessels will undertake cetacean observation training prior to commencing activities, as detailed in Section 7.8.4. Overall, appropriate commitment is made to training to ensure that all employees and contractors have suitable competencies.
67. The key roles and responsibilities of personnel involved in the implementation, management and review of the EP are appropriately outlined in Section 7.4. The roles and responsibilities for personnel involved in oil spill preparation and response are outlined in Oil Spill Preparedness and Response Mitigation Assessment (Appendix D) and the Woodside Oil Pollution Emergency Arrangements (Australia).
68. An appropriate OPEP, comprised of Woodside Oil Pollution Emergency Arrangements (Australia), Oil Spill Preparedness and Response Mitigation Assessment (Appendix D), and Oil Pollution First Strike Plan (Appendix J) has been provided that includes arrangements that are suitable, given the spill scenarios presented, and addresses each of the EP content requirements in regulation 14. Specifically:
- the Oil Spill Preparedness and Response Mitigation Assessment (Appendix D) details the oil pollution response control measures that will be used to reduce the impacts and risks of the activity to ALARP and an acceptable level, the arrangements for responding to and monitoring oil pollution to inform response activities, the arrangements for updating and testing the oil pollution response arrangements and control measures, and provides for the monitoring of impacts to the environment from oil pollution and response activities; and
  - the Oil Pollution First Strike Plan (Appendix J) provides the oil pollution arrangements and control measures in an operational deployment context.
69. I noted that arrangements were in place for monitoring, recording, audit, management of non-conformance and review of the titleholder's environmental performance. For example, system components for monitoring and recording of information relevant to the activity are outlined, including routine reporting and notifications. The Environment Plan also provides for auditing and inspection of performance, including non-compliant incident investigation and tracking of close-out actions and arrangements are in place to allow monitoring of, and maintaining a quantitative record of, emissions and discharges (whether occurring during normal operations or otherwise). I considered that these records can be used to assess whether the EPOs and EPSs in the Environment Plan are being met, and accepted that all of the arrangements were appropriate in the context of the nature and scale of the activity.
70. I noted that monitoring, recording and reporting arrangements are adequately described in Sections 7 and 7.17 includes routine internal and external reporting requirements and incident reporting arrangements. Monitoring and recording arrangements are described in Section 7.9. I considered that these arrangements were appropriate as these sections detailed that the information collected will:
- be based on the EPOs, controls, standards and measurement criteria in the EP; and
  - include environmental discharges reports that record volumes of planned and unplanned discharges to ocean and atmosphere.
71. The EP also provides for appropriate auditing, review and management of non-conformances with EPOs and EPSs in Section 7.12. For example, the EP states that internal auditing will be performed to cover each key project activity including pre-mobilisation inspection/audit, at least one operational compliance audit and vessel based HSE inspections conducted fortnightly. Non-conformances are entered into an incident



management system and assigned corrective actions that are monitored and closed out in a timely manner.

72. The EP provides for the implementation of ongoing consultation arrangements in Section 7.17, with planned notifications to relevant persons and organisations outlined in Table 7-9. I considered that these arrangements were appropriate because the titleholder:
- a. has committed to continue to update relevant persons and organisations via community forums and provide notification of significant changes to the activity;
  - b. provides a mechanism to subscribe to its website which can be utilised by relevant persons and organisations and those interested in the activity to remain up to date on the activity;
  - c. During the life of the EP, the titleholder will assess any new stakeholders identified for relevancy as per the process outlined in Section 5.3 and assess new feedback received as per the process in Section 5.6; and
  - d. has prepared an 'Program of Ongoing Engagement with Traditional Custodians', which is provided at Appendix L of the EP. This Program includes specific ongoing consultation activities with First Nations relevant persons.
73. In light of the findings above, I considered the ongoing consultation arrangements described in the EP, as required by regulation 14(9), are appropriate.
74. Based on the findings above, I was reasonably satisfied that the EP met the requirements of reg 10A(e).

**Regulation 10A(f) - The Environment Plan does not involve the activity or part of the activity, other than arrangements for environmental monitoring or for responding to an emergency, being undertaken in any part of a declared World Heritage property within the meaning of the EPBC Act**

75. As I stated above (at [20.c]), the description of the environment and Protected Matters Search Tool (PMST) output evidenced that that neither the activity, nor any part of it, will be undertaken in any part of a declared World Heritage Property within the meaning of the EPBC Act.
76. In circumstances where the activity is not being undertaken in, and could not have any environmental impact upon, a World Heritage Property, I am reasonably satisfied that reg 10A(f) was met.

**Regulation 10A(g) - The Environment Plan demonstrates that the titleholder has carried out the consultations required by Division 2.2A and the measures (if any) that the titleholder has adopted, or proposes to adopt, because of the consultations are appropriate**

77. Reg 10A(g) has two components which the Environment Plan must demonstrate:
- a. first, that consultation has occurred as per the requirements in Division 2.2A of the Regulations. Division 2.2A requires that the titleholder consults with each 'relevant person' as defined in reg 11A(1), and imposes certain requirements for how that consultation is to occur (as specified in reg 11A(2)-(4))(subparagraph (i)); and
  - b. second, that the titleholder adopted, or proposed to adopt, appropriate measures in light of those consultations (subparagraph (ii))
78. The Act and Regulations do not define what constitutes 'consultation' for the purposes of reg 11A (and therefore satisfaction of reg 10A(g)(i)). However, there must first be identification of the relevant persons to be consulted, followed by consultation, the purpose of which is to ensure that the titleholder has ascertained, understood and addressed all the environmental impacts and risks that might arise from its proposed activity.

79. Whether the steps and actions taken by a titleholder amount to 'consultation' will vary depending upon the particular circumstances, and must reflect the characteristics of the relevant persons affected by the titleholder's proposed activity. However, consultation does not require every opportunity to be afforded. It also does not mean that, where those being consulted do not consider they have been properly consulted, 'consultation' has not been carried out. Overall, I must be reasonably satisfied that consultation undertaken was appropriate and adapted to the nature of the relevant persons, and that reasonable opportunity to participate in the preparation of the EP was given.
80. NOPSEMA received a number of communications from relevant persons raising issues and/or expressing concerns with and objections to the Environment Plan. Those communications raised the same issues, concerns and objections as were raised during the consultation with the titleholder required by reg 11A, and are addressed in my reasons below regarding whether reg 10A(g) is met.
81. Section 5 of the EP provides descriptions of the consultation processes and the rationale used to determine who and how to consult with relevant persons, including the approach to provision of sufficient information to allow the relevant person to make an informed assessment of the possible consequences of the activity on the functions, interests or activities of the relevant person and to allow the relevant person a reasonable period for the consultation.
82. Section 5 of the EP describes a clear process for the identification and broad capture of relevant persons in accordance with regulation 11A(1) within all of the categories defined in subregs 11A(1)(a)-(e). I considered that the process was appropriate as it included:
- a. reference to multiple sources of information, such as publicly available materials (such as management plans for AMPs, Department of Agriculture, Fisheries and Forestry (DAFF) Fisheries Status Reports), review of databases and registers (such as commercial fishing catch and effort data), published guidance (such as AFMA consultation guidance), consultation for Scarborough OPP, as well as advice from authorities and other relevant persons (such as advice from the Director of National Parks, and Native Title Representative Bodies).
  - b. consideration of published guidance developed by relevant persons detailing their functions, interests, or activities and how and when they wish to be consulted on activities. For example, the titleholder refers to guidance published by WAFIC in relation to consultation with commercial fishing licence holders in WA-managed fisheries where licence holders will only be affected by an unplanned event.
  - c. details and evidence of the steps taken by the titleholder to create awareness of the petroleum activity and the consultation process, to encourage potentially relevant persons that the titleholder may not be aware of, to make themselves known to the titleholder. For example, the titleholder published notices in national, state and local newspapers, hosted community reference group information sessions with the Karratha Community Liaison Group and the Exmouth Community Liaison Group, ran a geotargeted sponsored social media campaign to local communities and held community information sessions in Roebourne, Broome, Derby, Exmouth, Kununurra and Karratha, among others. In addition, the titleholder maintained consultation materials on its website, which included information regarding the purpose and approach to consultation, activity summaries and contact details. Links and/or a QR code for the website was included in published notices and social media campaigns.
  - d. details of how the titleholder will make an assessment to determine whether an individual or organisation who has self-identified as a relevant person, is or is not, considered to be a relevant person for the purposes of regulation 11A having regard to each person's stated functions, interests and activities.

83. I considered that the nature of the activity, description of the environment and the possible impacts and risks of the activity have been appropriately taken into account by the titleholder in determining whether the activity may be relevant to authorities, or determining whose functions, interests and activities may be affected. This is because:
- a. the titleholder has considered the nature and scale of the activity and all of the possible impacts and risks of the activity when determining who to consult with;
  - b. the titleholder considered all the known environmental values and sensitivities within the full extent of the environment that may be affected by the planned and unplanned impacts and risks of the activity when determining relevant persons. For example, the titleholder has conservatively applied the results of oil pollution risk modelling to the identification of relevant persons.
84. I also considered the content of Section 5, Appendix F, and the sensitive information part of the EP and that the titleholder's approach to the provision of sufficient information allowed the relevant persons to make informed assessments of the possible consequences of the activity on their functions, interests or activities and a reasonable period for the consultation was provided. I formed this view because:
- a. the EP includes a description of the approach to provision of sufficient information that takes into account the functions, interests or activities of relevant persons and the impacts and risks that may affect them. The titleholder has tailored the information to suit the needs of the different types of relevant persons and provided information in a form which I am satisfied is readily assessable and appropriate for the relevant person being consulted, including fact sheets, presentations, verbal briefings, graphics and videos;
  - b. the titleholder sufficiently informed relevant persons of the purpose of consultation, including advising relevant persons of the titleholder's obligations for consultation. This includes sharing the reasons for the consultation and providing a copy of NOPSEMA's 'Consultation on offshore petroleum environment plans' Brochure as part of consultation;
  - c. the information provided by relevant persons throughout the consultation process has assisted the titleholders to ascertain, understand and address all of the environmental impacts and risks that might arise from its proposed activity; and
  - d. Consultation with relevant persons commenced in August 2021, and has been ongoing until October 2023. Where further relevant persons have been identified, the titleholders have engaged with these relevant persons and consulted with them specifically in a variety of forms including meetings, presentations and through written communications. Comprehensive efforts were made by the titleholder to facilitate the consultation, and follow-up more recently identified relevant persons, so that they had all reasonable opportunities to engage in the consultation process (see Appendix F).
85. Having considered the considered the detailed description of the consultation process in the EP, for reasons set out in [77]-[84] above, I consider that the approach adopted by the titleholder for identifying relevant persons was appropriate. I also considered that the titleholder has provided sufficient information which allowed for relevant persons to participate in informed consultation. Further, given the period of time afforded by the titleholder for consultation and the evidence of multiple engagements with relevant persons, including multiple opportunities for the relevant persons to provide information to the titleholder, that a reasonable period for the consultation has been given. My more detailed reasons are set out below.

### *Relevant Persons under Regulation 11A(1)(a)-(c)*

86. Relevant persons under reg 11A(1)(a)-(c) are each Commonwealth, State or Northern Territory Department or agency to whom the activity in the EP may be relevant, in addition to the Department of each responsible State Minister or Northern Territory Minister.
87. Table 5-3 of the EP identified 18 Commonwealth and State Departments and agencies in the marine, environment and industry fields, and Section 5.3 provided further detail of the identification process, which I considered to be appropriate. The titleholder then made an assessment whether the activities to be carried out under the EP may be relevant to Commonwealth and State bodies. Of the 18 Commonwealth and State bodies identified, all were assessed as being relevant persons.
88. I noted that consultation with the relevant persons under reg 11A(1)(a)-(c) occurred, in accordance with GL1887 – Consultation with Commonwealth agencies with responsibilities in the marine area – January 2023, via email unless otherwise requested. Emails were sent to the relevant bodies on 31 August 2021, requesting responses by 30 September 2021. Emails were again sent (with updated information) on 27 January 2023, requesting responses by 26 February 2023. Reminder emails were sent by the titleholder as this date approached.
89. I considered that sufficient information was provided to allow the relevant persons under reg 11A(1)(a)-(c) to make an informed assessment of the possible consequences of the activity on the functions, interests or activities of the relevant person. In particular, I noted that, in many of the cover emails for respective bodies, the titleholder provided a table of further information specific to the functions, interests or activities of the relevant person. For example, specific details of “Implications for Parks Australia interests” was sent to the Director of National Parks, and specific details of “Potential risks to commercial fishing and proposed mitigation measures” was sent to the Australian Fisheries Management Authority (AFMA) and commercial fishing licence holders, and various other examples contained in the EP (Appendix F and Sensitive Information Report).
90. I considered that a reasonable period was provided for the consultations. Relevant persons were initially provided with 30 days to respond, and consultations continued with relevant persons where requested.
91. I noted that the consultation emails sent to each relevant person contained the following statement in accordance with Regulation 11A(4):
- “Please let us know if your feedback for any of the activities proposed under an Environment Plan is sensitive and we will make this known to NOPSEMA upon submission of the Environment Plan to ensure this information remains confidential to NOPSEMA.”*
92. Finally, I noted that most relevant persons under reg 11A(1)(a)-(c) provided no feedback or objections to the activity in response to the consultation requests. Where a response was received, it was in the nature of feedback, as opposed to objections against the activity. Where feedback was received, the EP identified this and indicated what changes were made to the EP in response. For example, a large part of the feedback was that certain bodies should be notified of things or provided documents when they occur or become available. The EP contains the details of this reporting or commits to providing these documents. I considered that these measures were appropriate, and therefore reg 10A(g)(ii) was met.
93. Considering the matters at [86]-[92], I was reasonably satisfied that, in relation to relevant persons as defined by reg 11A(1)(a)-(c), the EP demonstrates that the titleholder has carried out the consultations required by Division 2.2A and the measures (if any) that the titleholder has adopted, or proposes to adopt, because of the consultations are appropriate, as required by reg 10A(g).

### *Relevant Persons under Regulation 11A(1)(d)*

94. Relevant persons under reg 11A(1)(d) are considered to be 'a person or organisation whose functions, interests or activities may be affected by the activities to be carried out under the environment plan, or the revision of the environment plan.'
95. I considered that the EP provided clear details of the processes that have been applied to identifying and determining who are relevant persons, as well as the processes undertaken for consulting with them. In particular, the EP correctly states that the terms "functions", "interests" and "activities" for the purpose of identifying relevant persons under reg 11A(1)(d) is to be interpreted and applied broadly by the titleholder in a manner consistent with the objects of the Regulations and the EPBC Act. The EP also utilised NOPSEMA's 'Consultation in the course of preparing an environment plan guideline' (N-04750-GL2086) (**NOPSEMA's consultation guideline**) in defining the terms;
96. The EP identified and considered the following broad categories within the scope of reg 11A(1)(d):
- Commercial fisheries (Commonwealth and State) and peak representative bodies, such as Western Australian Fishing Industry Council (**WAFIC**) and individual licence holders in Commonwealth-managed Northwest Slope Trawl Fishery;
  - Recreational marine users and peak representative bodies, such as Recfishwest and Marine Tourism WA;
  - Titleholders and Operators, such as Chevron and Inpex Alpha Ltd;
  - Peak industry representative bodies, such as APPEA (now AEP);
  - Traditional Custodians and nominated representative corporations, such as Ngarluma Yindjibarndi Foundation Limited (**NYFL**) and BTAC;
  - Native Title Representative Bodies (**NTRBs**), such as Yamatji Marlpa Aboriginal Corporation (**YMAC**);
  - Local government and recognised local community/reference/liason groups or organisations, such as Exmouth Community Reference Group; and
  - Other non-government groups or organisations, such as Conservation Council of Western Australia and Greenpeace Australia Pacific.
97. The EP documented the titleholder's consideration of a number of organisations that self-identified through the consultation process; however, the titleholder concluded that the functions, interests and activities were not affected by the activity (e.g., Friends of Australia Rock Art. Inc (**FARA**)).
98. I will first explain my conclusions on Traditional Custodians, nominated representative corporations and NTRBs, and then my conclusions on the other six 'relevant persons' categories identified at [96] above.

### *Traditional Custodians and nominated representative corporations and NTRBs*

99. I considered that the titleholders' methodology, as identified in the EP, allows for sufficiently broad capture of First Nations relevant persons through identifying which natural person(s) are to be approached and how the information will be given to allow each "relevant person" to assess the possible consequence of the proposed activities on their functions, interests or activities; so that consultation is not fixed to a rigid process (for example, a "simple (or quick) email"). I considered that this methodology was consistent with the purpose and intention behind reg 11A to ensure that the titleholders had 'ascertained, understood and addressed all the environmental impacts and risks that might arise from its proposed activity'.

100. I also noted that the titleholders' methodology allows for First Nations people or groups with a connection to sea country to be identified and consulted as relevant persons as it is recognised that this may constitute an interest under regulation 11A(1)(d)<sup>1</sup>.
101. I was satisfied that the titleholders' process for relevant persons identification has provided for the broad capture of First Nations representative groups such as NTRBs and nominated representative corporations (e.g. Prescribed Body Corporates (PBCs)) by identifying and consulting with all relevant groups along the full extent of the coastline adjacent to the EMBA as relevant persons.
102. The consultation undertaken by the titleholders with Traditional Custodian relevant persons places an emphasis on directing consultation through First Nations representative groups (e.g. NTRBs and nominated representative corporations). Nevertheless, having regard to the information before me, I was satisfied that the titleholders made considerable efforts to ensure that individual relevant persons were identified or able to self-identify (by asking the NTRBs and PBCs to identify any persons and by wider media and public engagements to invite identification).
103. I was reasonably satisfied that the consultation process provided for broad capture of ascertainable First Nations persons and organisations who may have their functions, interests or activities affected because:
- a. the identification of relevant persons has been informed appropriately by the operational aspects of the activity and the associated impacts and risks, including the highly unlikely scenario of an oil pollution incident, which has been evaluated without implementation of mitigation strategies that would be implemented to reduce the volume, duration and extent of any oil pollution incident. The identification process accounted for cultural connections to sea country by identifying and consulting with all relevant groups along the full extent of the coastline adjacent to the EMBA as relevant persons;
  - b. process appropriately utilised the nominated representative corporations as the point of contact with Traditional Custodian groups and individuals and sought the guidance of these groups in conducting consultation. The nominated representative corporations were consulted in their own right and encouraged to advise of other Traditional Custodian groups or individuals with whom the titleholder should consult. For example, the titleholders asked the identified First Nations representative groups if they are aware of any individuals, who in accordance with Indigenous tradition, may have spiritual and cultural connections to the environment that may be affected by the activity that have not yet been afforded the opportunity to provide information that may inform the management of the activity, and no additional individuals were identified, although there were indications by one First Nations group that there 'may' be other relevant persons;
  - c. opportunities were provided over at least a 10-month period for First Nations groups or individuals to self-identify as relevant persons in response to widely advertised community information sessions and public facing notices or advertisements, such as (but not limited to) geo-targeted social media campaigns and information stands at community festivals, and all individuals that self-identified were consulted as relevant persons; and
  - d. While I recognised there were limitations to each of the individual enquiry methods, I was satisfied that the combination of approaches implemented, when considered holistically, reasonably provided for traditional owners with a connection to sea country, which may constitute an interest for the purposes of regulation 11A(1)(d), to be identified and consulted as a relevant person.

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<sup>1</sup> - *Santos NA Barossa Pty Ltd v Tipakalippa* [2022] FCAFC 193; (2022) 296 FCR 124 [67]-[68].

104. The First Nations people/groups that have been identified as relevant persons in the EP includes two NTRBs (YMAC and the Kimberly land Council (KLC)), 16 First Nations nominated representative corporations (i.e., various PBCs and Murujuga Aboriginal Corporation (MAC)) and two other First Nations groups that made themselves known to the titleholder as a relevant person (e.g. NYFL and Save our Songlines, including individual representatives). I have considered the titleholder's consultation with the NTRB and nominated representative corporation relevant persons at paragraph [105] and the titleholder's consultations with SOS and individual representatives including Ms Alec and Ms Cooper at paragraph [106].
105. In relation to the titleholders' consultations with NTRBs and nominated representative corporation relevant persons, I considered the summary of consultation provided at Table 1, Appendix F and the full text consultation records provided in the sensitive information part of the Environment Plan. I was reasonably satisfied that the consultations required by Division 2.2A have been carried out with each of these relevant persons because:
- a. the methods applied to consultation with these relevant persons were appropriate and reasonably adapted to the nature of the interests of these relevant persons. In particular:
    - i. the titleholders' approach to consultation with these relevant persons was flexible and adaptive, such that the consultation was undertaken, to the extent it was reasonably practicable, according to the relevant person's preferred method of engagement. For example, when these relevant persons expressed interest in engaging in the consultation process and provided feedback on their preferred method for the consultation, the titleholders accepted that feedback and adapted their approach to engaging with them based on their preferred method which typically resulted in the provision of additional verbal briefings and/or presentations supported with information in pictorial or graphic form;
    - ii. the titleholder adapted their approach to consultation in an appropriate manner to accommodate the provision of culturally restricted or sensitive information from relevant persons. Relevant persons were made aware that they could request the establishment of cultural protocols with the titleholders for the purposes of sharing information in a culturally appropriate and safe way if required, and of the NOPSEMA 'Draft policy for managing gender restricted information' (PL2098); and
    - iii. the purpose of the consultation and the opportunity being afforded was communicated by the titleholders to these relevant persons using clear, simple and directly expressed terms that were aligned with the intent of consultation under regulation 11A being to enable the titleholder to better understand environmental impacts and risks that relevant persons consider that the activity will cause or lead to, and to refine or change the measures it proposes to address those impacts and risks. I note that relevant persons were provided with the NOPSEMA brochure 'Consultation on offshore petroleum environment plans: Information for the community', and made aware that the invitation to participate in consultation provides an opportunity for relevant persons to inform the titleholders of, and share with them, the nature of cultural interests that they may have within the environment that may be affected by the activity. The nominated representative corporations were also made aware that the invitation to consult was inclusive of all of their members; and
    - iv. Further, I noted that the process considered availability and accessibility issues of relevant persons and made provision for travelling to regional locations to meet with relevant persons. For example, representatives of the titleholder travelled to regional locations to identify and meet potential relevant persons at widely advertised community information sessions

(at Roebourne on 5, 10, 19 and 24 May 2023, 22 June 2023 and 19 July 2023; Exmouth on 17 June 2023; Broome, Derby and Kununurra on 12, 13 and 15 June 2023 respectively; and Karratha on 28 and 29 June 2023) and information stands at community festivals (at Karratha on 5 and 6 August 2023; and Onslow on 18 August 2023) (Section 5.9.1).

- b. the titleholder has provided sufficient information to these relevant persons to allow them to make an informed assessment of the possible consequences of the activity on their functions, interests, or activities. In particular:
- i. tailored information has been provided to these relevant persons in a readily accessible form and format. For example, simplified plain English consultation information sheets developed by Indigenous representatives for a Traditional Custodian audience were provided to the nominated representative corporations to share with their individual members, and the NTRB was provided with extracts of relevant sections of the Environment Plan containing First Nations cultural features and heritage values-related information. The titleholder also used clear, simple, and directly expressed terms within email correspondence to make it clear to the nominated representative corporations that the invitation to participate in consultation provides for an opportunity to inform the titleholder of the nature of cultural interests that the nominated representative corporation or their members may have within the EMBA. Nominated representative corporations were provided presentations of materials at nominated meetings, along with other materials, including responses to questions raised. This included providing First Nations relevant persons with a copy of the NOPSEMA 'Consultation on offshore environment plans' Brochure;
  - ii. additional information was provided to these relevant persons in an interactive manner, and consultation was adapted in response to the feedback received from relevant persons. The titleholder responded to requests for meetings and made itself available to meet to provide presentations and answer any questions. On a number of occasions this included provision of additional verbal briefings and/or presentations supported with information in pictorial or graphic form;
  - iii. where relevant persons raised queries, objections or claims regarding the adverse impacts of the activity during the consultation process, the full text consultation records in the Sensitive Information Part of the EP demonstrate that the titleholder provided responses to these queries, objections or claims. Further to this, when these relevant persons made reasonable requests for additional support to assist them with understanding the information provided so they could make an informed assessment of consequence, the titleholder met these requests. For example, the titleholder offered funding for the attendance of independent environmental scientists at consultation meetings and offered to financially support the provision of independent third-party advice;
  - iv. accurate and comprehensive information was provided to these relevant persons about the activity that was relevant and necessary to allow for an informed assessment. For example, the consultation details within the Environment Plan (including the full text records in the sensitive information part) demonstrate that the information that was provided to these relevant persons included clear details regarding the nature of the activity (e.g. location, timing, types of equipment etc.), the planned and unplanned environmental impacts and risks associated with the activity, the extent of the environment that may be affected by all environmental impacts and risks of the activity, the environmental values and sensitivities known to occur within the environment that may be affected by the activity, and the control measures that the titleholders'



are proposing to implement to manage environmental impacts and risks to ALARP and acceptable levels.

- c. the titleholders' have allowed a reasonable period for the consultation with these relevant persons. In particular:
- i. consultation occurred with two NTRBs (YMAC from July 2022 and KLC from February 2023) and with the nominated representative corporations over a period of approximately ten months (i.e. since January 2023);
  - ii. within that consultation period, the Environment Plan demonstrates that a substantial amount of effort was applied by the titleholders to afford opportunities to these relevant persons to share information and engage in two-way dialogue for the purposes of consultation under regulation 11A. There has been an iterative process of information provision and various opportunities to provide feedback in writing or verbally at meetings. Where relevant persons were not responsive during the consultation process, the Environment Plan demonstrates that the titleholders made reasonable efforts to continue to engage with them to understand how their functions, interests or activities may be affected. In particular, consultation records in the Environment Plan (including the sensitive information part), show that the titleholders attempted to follow up with these relevant persons on multiple occasions, using multiple methods (e.g. telephone calls, emails and/or face to face meeting attempts) and over a reasonable timeframe (e.g. multiple months); and
  - iii. the Environment Plan also demonstrates that these relevant persons had numerous opportunities to identify First Nations cultural features and heritage values in the environment that may be affected by the activity and provide feedback on the proposed approach to managing the activity so that potential environmental impacts and risks on these features and values will be reduced to ALARP and acceptable levels. The consultation details within the Environment Plan (including the full text records in the sensitive information part) satisfy me that genuine attempts were made by the titleholders to understand the First Nations cultural features and heritage values identified by these relevant persons in the environment that may be affected by the activity. All First Nations cultural features and heritage values identified by these relevant persons have been appropriately incorporated into the Environment Plan to demonstrate how potential environmental impacts and risks on these features and values will be reduced to ALARP and acceptable levels (refer to Tables 4-26 and 4-27, section 4.9 and section 6.10 of the Environment Plan). Where these relevant persons expressed interest in a particular environmental value such as (but not limited to) whales and marine turtles, the titleholders provided clear details about how they were proposing to manage the activity's environmental impacts and risks on those values and sought feedback from the relevant persons that resulted in the modification of some existing control measures and some additional control measures being adopted (refer to Table 1, Appendix F of the Environment Plan).

106. In relation to the titleholder's consultations with Save Our Songlines and individual representatives (Ms Alec and Ms Cooper), I considered the summary of consultation provided at Table 1, Appendix F and the full text of consultation records provided in the Sensitive Information Part of the EP. I was reasonably satisfied that the consultations required by Division 2.2A has been carried out with these relevant persons because:

- a. the methods applied to consultation with these relevant persons were appropriate and reasonably adapted. In particular:

- i. the titleholder's approach to consultation with these relevant persons was undertaken according to their preferred method of engagement as far as reasonably practicable. For example, the titleholders' accommodated reasonable requests to meet with these relevant persons at their preferred location which included (but was not limited to) travelling to regional locations and attending a meeting on country at Hearson's Cove at the Burrup Peninsula on 14 March 2023. Following a request that the titleholders communicate with SOS and individual representatives through the Environmental Defenders Office, the titleholders did so. The meetings had agreed protocols, including in relation to gender-restricted and sensitive information. I noted that there was a request made by the relevant persons for a meeting at Rosemary Island that was unable to be met by the titleholders. I have considered this matter further at [113], however am satisfied that, despite this request being unable to be met, the approach to consultation adopted by the titleholders facilitated consultation as required by reg 11A;
  - ii. the titleholders agreed to and conducted the consultation in accordance with the cultural protocols requested by these relevant persons. Only female representatives attended consultation meetings with these relevant persons and gender-restricted information was managed to ensure that it was only received by and visible to female representatives of the titleholders; and
  - iii. the purpose of the consultation and the opportunity being afforded was communicated to these relevant persons in a way which satisfies me that the relevant persons had an understanding of the purpose of the consultation and the role which they would have in the two-way dialogue. I noted that on 19 July 2023 and 3 August 2023, these relevant persons were provided with the NOPSEMA brochure 'Consultation on offshore petroleum environment plans: Information for the community'.
- b. the titleholders have provided sufficient information to these relevant persons to allow them to make an informed assessment of possible consequences of the activity on their functions, interests or activities. In particular:
- i. tailored information has been provided to these relevant persons in a readily accessible form and format. These relevant persons were provided with activity specific consultation information sheets on 26 August 2022 and 2 December 2022 and provided with a link to the draft Environment Plan published on NOPSEMA's website on 2 December 2022. Information regarding the activity was delivered in verbal format (often supported with PowerPoint presentations that contained various pictorials and graphics) during numerous meetings that were attended by these relevant persons including on country on 14 March 2023, online on 25 July 2023, and in person on 12 September 2023 and 4 October 2023;
  - ii. additional information was provided to these relevant persons in an iterative manner in response to all reasonable requests made during the consultation. When these relevant persons raised queries, objections or claims regarding the activity during the consultation process, the full text consultation records in the sensitive information part of the Environment Plan demonstrate that the titleholders provided responses to the queries, objections or claims. I noted that there were some cases where the titleholders did not provide all of the information that was requested during the consultation process (e.g. heritage survey reports that are the intellectual property of other Traditional Custodians). I have addressed this concern below at [107h] and why I did not consider that this meant that sufficient information had not been provided. I was therefore reasonably satisfied that the titleholders' provided sufficient information for the purposes of consultation and made every effort to meet the relevant persons' requests for additional information; and

- iii. accurate and comprehensive information was provided to these relevant persons about the activity that was relevant and necessary for allowing an informed assessment. The consultation details within the Environment Plan (including the full text records in the sensitive information part) demonstrate that the information that was provided to these relevant persons included clear details regarding the nature of the activity (e.g. location, timing, types of equipment etc.), the planned and unplanned environmental impacts and risks associated with the activity, the extent of the environment that may be affected by all environmental impacts and risks of the activity, the environmental values and sensitivities known to occur within the environment that may be affected by the activity, and the control measures that the titleholders' are proposing to implement to manage environmental impacts and risks to ALARP and acceptable levels. I noted that, during meetings, these relevant persons asked targeted and specific questions about impacts and risks from the activity, and how they would be managed.
  - c. the titleholders have allowed a reasonable period for the consultation with these relevant persons. In particular:
    - i. consultation has occurred with these relevant persons over a period of more than 12 months;
    - ii. I considered that the titleholders afforded many opportunities for these relevant persons to share information and engage in two-way dialogue. I noted that, after these relevant persons self-identified as relevant persons for the purposes of consultation under regulation 11A in relation to the activity in June 2022, the titleholders and the relevant persons exchanged a high volume of emails, letters and telephone calls regarding consultation for the activity. The titleholders made multiple offers and attempts to meet with these relevant persons over a period of more than six months until the first meeting took place in March 2023. In total, there were four meetings that took place between the titleholders and these relevant persons, and the Environmental Defenders Office were present during these meetings. During these meetings, the activity was discussed in detail and the relevant persons were encouraged to share with the titleholder any concerns that they had in relation to how the activity may affect their functions, interests or activities; and
    - iii. the Environment Plan demonstrates that these relevant persons were afforded a number of opportunities to identify, and did identify, First Nations cultural features and heritage values in the environment that may be affected by the activity and provide feedback on the proposed approach to managing the activity so that potential environmental impacts and risks on these features and values will be reduced to ALARP and acceptable levels. I considered that the titleholders took a precautionary approach and, where any potential impact, risk or concern was raised, in a meeting or correspondence, the titleholder identified these, made genuine efforts to understand them and then addressed them in the EP, including whether any additional control measures were required to reduce impacts and risks to ALARP and acceptable levels (refer to Tables 4-26 in section 4.9.1 and section 6.10 of the Environment Plan). For example, these relevant persons expressed interest in a particular environmental value such as (but not limited to) whales and marine turtles and the titleholders provided clear details about how they were proposing to manage the activity and sought feedback from the relevant persons during consultation. As a result of that two-way dialogue, the titleholders modified some existing control measures and some additional control measures were adopted (refer to Table 1, Appendix F of the Environment Plan).
107. I was aware that First Nations relevant persons raised feedback or concerns regarding the adequacy of the consultation process, and why they considered that consultation had not been completed. Whether or not a relevant person agrees that they have been adequately consulted is not determinative

of whether I am satisfied regulation 10A(g) is met. I need to consider all the facts and circumstances of the consultation. My consideration of the feedback and concerns regarding the adequacy of the consultation was as follows:

- a. some First Nations relevant persons raised concerns about the information provided being too technical, sophisticated and lengthy or not suitable for a Traditional Custodian audience. Having considered the information that was provided, I found that the titleholder had provided these First Nations relevant persons with tailored information in a readily accessible form and format such as plain English consultation information sheets developed by Indigenous representatives for a Traditional Custodian audience. I also found that the titleholders provided opportunities for these relevant persons to receive additional support with facilitating their understanding of the information provided to them, such as by funding the attendance of independent environmental scientists at consultation meetings, offering to financially support the provision of independent third-party advice (this was not taken up by any of these relevant persons), and making relevant project personnel and subject matter experts available to attend consultation meetings to assist with explaining information in further detail and answering any questions. I was satisfied that the way the information was presented, and the opportunities provided to clarify and explain the activity, were suitable and appropriate;
- b. some First Nations relevant persons raised concerns with the timeframe for consultation not being reasonable. The titleholder commenced the consultation process as early as August 2021 for one Traditional Custodian group and no later than February 2023 for all other First Nations relevant persons. Since that time, there have been ongoing opportunities provided by the titleholders to First Nations relevant persons to identify themselves and provide information to the titleholders. I found that the concerns about the timeframes were raised by the relevant persons late in the consultation process after many months of engagement by the titleholders, including an iterative process of information provision and various opportunities to provide feedback in writing or verbally at meetings. I also noted that the shortest period for consultation (from when the First Nations relevant person was contacted and an offer to meet made until the submission of the EP) was nine months;
- c. some First Nations relevant persons raised concerns about their lack of capacity to engage in the consultation process in a meaningful way. This included requests for consultation protocols/agreements by some groups (e.g. NTGAC, Yinggarda Aboriginal Corporation (YAC) and NYFL). The titleholders agreed to progress these agreements, though I note that none of the agreements were finalised at the time of Environment Plan submission. Whilst the agreements were not yet finalised, the titleholders nevertheless facilitated meetings and discussions with these groups to enable them to identify and address any rights, functions or interests which may be affected by the activity. For example, the EP contains evidence that these relevant persons were informed that the titleholder can provide various forms of assistance to support participation in consultation (which was not taken up by all of these relevant persons), and that the titleholders provided relevant persons with various forms of additional assistance in response to reasonable requests (e.g. by covering the costs associated with meeting sitting fees, travelling to the desired meeting locations of the relevant persons, funding the attendance of independent environmental scientists at consultation meetings, and offering to financially support the provision of independent third-party advice which was not taken up by any relevant persons);
- d. some First Nations relevant persons stated that there may be other First Nations people with cultural heritage values in the environment that may be affected by the activity that had not had an opportunity to participate in consultation. I found these statements to be too general for me to place

any weight on them. It was not stated how these relevant persons had identified other possible relevant persons, nor how the titleholders might to identify and consult with them. I was reasonably satisfied that the titleholders had adopted a methodology of identifying relevant persons which enabled the broad identification of First Nations relevant persons (see paragraphs 99 to 104), and that all First Nations relevant persons who could be ascertained were identified, or could have self-identified, and were consulted by the titleholders;

- e. a nominated representative corporation (i.e. BTAC) informed the titleholders that they have cultural values including sea country interests in the environment that may be affected by the activity but that BTAC has not yet developed these values into a format that can be articulated beyond their own culture. BTAC requested support from the titleholders to define and articulate its values in a manner that could be more clearly understood by the offshore sector, government and the community. I noted that the titleholders agreed to provide support for this including offering to fund an ethnographic survey and requesting advice on a scope of work for the ethnographic survey in July 2023, and providing financial support for independent environmental management technical advice and anthropological technical advice in March 2023 that was not taken up by BTAC at the time that the Environment Plan was submitted for assessment in November 2023. In response to consultation with the titleholder, BTAC agreed that, subject to formalising an arrangement with Woodside for resources and technical support, that information on sea country could be provided by BTAC on an ongoing basis, that any new information will be managed via adaptive management. Woodside and BTAC entered into a cost agreement to facilitate this arrangement in September 2023. Whilst the sea country interests and cultural values have not been articulated by BTAC at this time, the titleholders have identified that the activity may impact upon Thalanyji Sea Country, and have included control measures in the Environment Plan to continue to gather information and reduce impacts and risks. I also note that BTAC understood the nature of the activity and was able to make claims about management of risks. For example, in their letter dated 20 February 2023, BTAC proposed that emergency response capabilities be locally provided, and rangers be employed. Given these reasons, I was satisfied that sufficient information and reasonable time had been provided to BTAC to share any information it considered necessary for informing the management of impacts and risk on their interests, and that the measures that the titleholder has adopted, and proposed to be adopted in the agreement between the parties, were appropriate;
- f. Claims were raised by SoS, and individual representatives, that consultation that had occurred to date was for, and only in relation to, the Scarborough 4D Marine Seismic Survey EP and had not been undertaken on the activities in this Environment Plan. Records in the EP show that information about the activity was provided on 22 August 2022 and 2 December 2022 and during meetings on 14 March 2023, 25 July 2023, 12 September 2023 and 4 October 2023, including subsequent follow-up correspondence. During meetings on 14 March 2023, questions about the activity were asked by SoS and individual representatives and claims about the effects on their interests were shared with the titleholder. For example, , questions about the underwater cultural heritage surveys for the pipeline route, concerns about the installation of the pipeline and concerns about impacts on the continent shelf from pipeline installation during the meeting on 12 September 2023 and questions and concerns about cultural awareness training for the pipeline activity and concerns about the pipeline cracking and its location in the Montebello Marine Park on 4 October 2023. On this basis and for the reasons set out above in [106] and [107], I am satisfied that the EP demonstrates that 11A consultation with SoS and representatives has occurred for the activities in the EP;
- g. the consultation records show that Ms Cooper requested a meeting at Rosemary Island in order to share further information in a culturally safe way. Although the titleholders declined a meeting at this location, I considered that the reasons for doing so (cultural sensitivities expressed by others and

the safety of travellers) were reasonable. The titleholders offered a range of alternative locations for the meeting, including locations where Ms Cooper had previously requested meetings to share information, and also other alternative means by which Ms Cooper could share her information (e.g. Ms Cooper travelling to the island and recording her stories, the titleholders remaining offshore whilst Ms Cooper told her stories onshore, or circumnavigating around the island whilst Ms Cooper told her stories from the vessel). I note Ms Cooper declined to share the further information at the alternative meeting locations proposed by the titleholders and that none of the alternative means for Ms Cooper to share the further information were agreed by the titleholder and Ms Cooper (Table 1, Appendix F). I acknowledge that Ms Cooper felt disrespected that she could not provide information from Rosemary Island, however I do not consider that the titleholders refusal to travel to Rosemary Island, where many alternatives were offered, means that the obligation in reg 11A has not been discharged;

h. as noted above, on some occasions, the titleholders did not provide information that was requested during the consultation process (largely being documentary information such as reports and studies). I considered that the titleholders had provided sufficient information for the relevant persons to make an informed assessment. Where additional information was requested, it was additional information to that which I already consider having been sufficient. Further, where the titleholder did not provide information, I considered that there were sound reasons for not doing so. For example, the titleholders did not provide heritage survey reports that were requested by some SoS, including Ms Cooper, because the reports were the property of other Traditional Custodians and the titleholders did not have permission to share them. Instead, the titleholders provided the outcomes of these surveys (where possible) or offered alternatives to obtain the information (such as indicating that Ms Cooper may be able to request a copy from the First nations group to whom it relates).

108. I note that a request was made by Ms Cooper to meet with NOPSEMA representatives at Rosemary Island. NOPSEMA declined this invitation. The legislative regime requires titleholders to consult with relevant persons and address the appropriateness of the measures it proposes to adopt in response to the consultation in the EP. The sharing of information directly with NOPSEMA would not accord with regulation 11A.

109. For the reasons given above, I found that consultation as required by reg 11A(2) and reg 11A(3) with Traditional Custodians (individuals and/or groups/entities), nominated representative corporations and NTRBs had been undertaken. I acknowledge that some relevant persons may have a different view. However, I am satisfied on the information before me that a reasonable opportunity has been afforded to relevant persons to be consulted on the activity and that evidence of this was included within the Environment Plan.

110. I note that there is evidence in the consultation records that the titleholders have advised First Nations relevant persons that they may request that particular information they provide is not published in accordance with regulation 11A(4) and it is evident that these requests have been addressed by the significant volume of sensitive material that was not to be published with the EP.

111. I was, accordingly, reasonably satisfied that reg 10A(g)(i) was met.

112. Having found that reg 10A(g)(i) was satisfied, I then considered whether the titleholders adopted, or proposed to adopt, appropriate measures in light of those consultations. I was reasonable satisfied that the measures adopted by the titleholder as a result of the consultations were appropriate for the following reasons:

- a. The EP includes a summary of any feedback, objections or claims raised by First Nations relevant persons in Table 1 of Appendix F, along with Woodside's assessment of merits of any feedback, objections or claims and its response, and corresponding further measures.
  - b. The Environment Plan demonstrates the titleholder has considered any feedback provided from First Nations relevant persons regarding the proposed approach to management of the environmental impacts and risks of the activity relating to the protection of cultural features of the environment.
  - c. The titleholder has adopted a range of control measures in response to the consultation with First Nations relevant persons to ensure that the activity's impacts and risks to cultural features of the environment will be of an acceptable level and reduced to ALARP. For example,
    - i. the titleholder modified a number of adaptive noise management controls in section 6.7.6 relating to pygmy blue whales to also include humpback whales given its importance as a totemic species to some First Nations groups, and
    - ii. the establishment of a Heritage Management Committee(s) to consider new cultural information and provide recommendations on lowering the risk of impacts to ALARP, with the committee including representatives from First Nations groups, relevant experts and the titleholder.
  - d. The titleholder has adopted further measures as a result of the consultations with First Nations relevant persons. In particular:
    - i. the Thalanyji Sea Country Management process (Section 7.6) to identify cultural features of the Thalanyji people within the EMBA through ongoing consultation with BTAC.
    - ii. Support of additional ethnographic studies and efforts to define sea country values (e.g., MAC and BTAC), along with appropriate measures for managing new information such as that which may be generated through further studies or ethnographic work undertaken in the region.
    - iii. a proposed Program of Ongoing Engagement with Traditional Custodians (Appendix L) which sets out the titleholders' commitment to ongoing engagement and support of Traditional Custodians' capacity to care for and manage Country, including Sea Country. This measure was adopted to support the capacity and capability of nominated representative corporations with their participation in ongoing consultation so that potential impacts and risks on cultural features and heritage values can continue to be managed to ALARP and acceptable levels during the life of the activity.
    - iv. Establishing consultation protocols/frameworks with First Nations groups (where the group has requested it), for future EP and ongoing consultation processes (Appendix L).
113. I note that Ms Cooper met with female representatives of the titleholders on 12 September 2023. The information shared at this meeting was recorded in a transcript and contained gender-restricted material (women only). The transcript was provided to NOPSEMA as part of the Environment Plan, and communicated and stored in a way that was only accessible to female staff. I reviewed this women's only gender-restricted material and after reviewing the records of consultation with Ms Cooper within the Environment Plan, determined that the Environment Plan already contains the information about cultural and heritage features of the environment that are explained within the gender-restricted material. I am therefore satisfied that the cultural features raised by Ms Cooper during that meeting on 12 September 2023 have been identified in the Environment Plan (refer to Table 4-26 in Section 4.9.1 of the Environment Plan), and addressed in the evaluation of impacts and risks with appropriate measures adopted to demonstrate that the impacts and risks will be reduced to ALARP and acceptable levels (section 6.10).

114. On the basis outlined above, I was reasonably satisfied that the measures adopted by the titleholders because of the consultations are appropriate, and reg 10A(g)(ii) was met.
115. Accordingly, for the reasons set out above, I am reasonably satisfied that consultation as per the requirements of reg 10A(g), insofar as they relate to Traditional Custodians (individuals and/or groups/entities) and nominated representative corporations and NTRBs has been satisfied.

***Other 'relevant persons'***

116. The EP clearly identifies who has been identified as a relevant person, includes details of the rationale the titleholder has used to determine who they consider fall within that definition and broadly describes the functions, interests or activities of those persons or organisations identified as relevant persons under reg 11A(1)(d). The EP includes reference to multiple sources of information used by the titleholder to assist in the identification of relevant persons, such as publicly available materials, review of databases and registers, published guidance, previous history and advice from authorities and other relevant persons.
117. Eight non-government groups or organisations have been identified in the EP as relevant persons, including the Australian Conservation Foundation (**ACF**), Greenpeace Australia Pacific (**GAP**), Conservation Council of Western Australia (**CCWA**), The Wilderness Society and Say No to Scarborough Gas.
118. Table 5-1 and Table 5-2 of the EP provide a comprehensive overview of the identification and assessment of the relevant persons falling within reg 11A(1)(d). I considered the nature of the activity, description of the environment and the possible impacts and risks of the activity have been taken into account when determining whose functions, interests and activities may be affected. For example:
- a. the titleholder considered all known environment values and sensitivities within the full extent of the environment that may be affected by the planned and unplanned impacts and risks of the activity when determining relevant persons; and
  - b. the titleholder considered the nature and scale of the activity and all of the possible impacts and risks of the activity when determining relevant persons.
119. I was satisfied that the process of identifying these other relevant persons was sufficient and appropriate to the activity.
120. Having identified these relevant persons, I considered the information that had been provided to them in accordance with reg 11A(2). I considered that the information provided was sufficient, in particular:
- a. the EP includes a description of the approach to provision of sufficient information that takes into account the functions, interests or activities of relevant persons and the possible consequences of the activity that may affect them;
  - b. the titleholder sufficiently informed relevant persons of the purpose of consultation, including advising relevant persons of titleholder obligations for consultation;
  - c. the consultation provided sufficient information about the environment and impacts on the environment to allow relevant persons to make an informed assessment of the possible consequences of the activity on their functions, interests or activities;
  - d. the consultation provided relevant persons with the opportunity to provide input and engage in a genuine two-way dialogue. I noted that offers were made to meet and discuss with relevant persons and steps were taken by the titleholder to create awareness of the activity and to encourage potentially relevant persons to make themselves known to the titleholder;



- e. the titleholder tailored the information to suit the needs of the different types of relevant persons and provided information in a form that is readily accessible and appropriate for the relevant person being consulted. Further, the titleholder used different materials to support the provision of information that was suited to the relevant person being consulted, such as pictorials, graphics and maps;
  - f. the titleholder considered relevant persons' views of what level of information is sufficient to allow the relevant person to make an informed assessment of the possible consequences of the activity on the functions, interest or activities of the relevant person. In particular, the titleholders considered requests for additional information by certain relevant persons and provided such additional information in response to reasonable requests. Although there are examples where the titleholder did not provide certain relevant persons with additional information requested (e.g., scientific literature, copy of the latest version of the EP), I am satisfied that sufficient information was made available to the relevant person including: a link to the publicly available EP; the Consultation Information Sheet; numerous email responses tailored to a relevant person's objections and claims raised; as well as the measures the titleholder proposes to adopt as a result of the consultation undertaken.
121. I am satisfied that a reasonable period was provided for the consultations. This is because:
- a. the EP (Section 5) describes the approach taken to determining a reasonable period for consultation that is based on case-by-case consideration of the relevant person's particular circumstances and includes consideration of the nature, scale and complexity of the activity;
  - b. the process for relevant persons consultation provides for the titleholder to take into account any availability and accessibility issues of relevant persons;
  - c. the titleholder notes a period of more than 250 days was provided for consultation on this activity, from the date of first advertising to the date of EP submission to NOPSEMA, to support the case that the period allowed for consultation has been reasonable; and
  - d. the titleholder considered relevant persons' views of what constitutes a reasonable period for consultation, considered requests for additional time by relevant persons, with additional time provided in response to reasonable requests. I also noted that the titleholder was proactive in sending reminders to relevant persons about impending dates for providing any response.
122. Taking all of these matters into account, I am satisfied that a reasonable period for consultation had been given (as per reg 11A(3)).
123. I accepted that reg 11A(4) was satisfied because relevant persons were informed (in similar terms to those at [91] above), that they may request that particular information provided during consultation not be published and information subject to such a request was not published.
124. For the purposes of reg 10A(g)(ii), I found that:
- a. information gathered through the consultation process with the other relevant persons under reg 11A(1)(d) has been incorporated into the EP, and effectively informed the identification of environmental values and sensitivities to ensure impacts and risks are reduced to as low as reasonably practicable and acceptable. For example, information obtained from relevant persons has informed the identification of environmental values and sensitivities where relevant and information obtained from relevant persons has been considered in the evaluation of environmental impacts and risks, and in the titleholders' processes for demonstrating that the environmental impacts and risks of the activity will be reduced to as low as reasonably practicable and acceptable levels where relevant. This includes, but is not limited to, the provision of notifications to relevant persons and

other marine users as agreed to during consultation and amendments made to the OPEP as a result of relevant persons' feedback received in the preparation of the EP, and a revised cumulative underwater noise impact assessment being undertaken in response to information received;

- b. the titleholder's assessment of merit and all responses to objections and claims are reasonable and supported, and the measures adopted (if any) because of the consultation are appropriate. For example:
- i. in some cases, the titleholder's assessment of the merits of objections and claims did not result in the adoption of additional control measures because additional control measures were not reasonably practicable to implement and/or necessary to demonstrate that impacts and risks will be reduced to as low as reasonably practicable and acceptable levels. Those items that were the subject of objections and claims which NOPSEMA considered to be reasonable were required to be addressed through requests for information and opportunities to modify and resubmit. For example, in relation to controls for mitigating noise impacts to blue whales, the titleholders adopted additional control measures or improved performance standards which addressed the objections and claims of relevant persons.
  - ii. in other cases, the titleholder's assessment of the merits of objections and claims resulted in no additional control measures being adopted. As stated above [at b(i)], I am satisfied that the titleholder has demonstrated that these other control measures were not reasonably practicable to implement and/or were not necessary to demonstrate that the impacts and risks of the activity will be reduced to as low as reasonably practicable and acceptable levels. For example, relevant persons that claimed that the activity should not proceed. In relation to GAP, I considered the summary of consultation provided at Table 1, Appendix F presents a suitable demonstration that the titleholder has provided sufficient information over a reasonable period of time, for the relevant person to participate in consultation and make an informed assessment of the possible consequences of the activity on their functions, interests or activities. The record demonstrates a protracted engagement with the relevant persons on this activity. The full text of consultation records provided in the Sensitive Information Report indicate that the relevant person has demonstrated an understanding of the activity, engaged with the information, asked questions and raised a number of objections and claims. The EP demonstrates that the titleholder has assessed the merits of the objections and claims raised and provided a response.

125. I was satisfied that the measures which the titleholder adopted in response to the consultation were appropriate. Accordingly, I was reasonably satisfied that the EP met the requirements of reg 10A(g)(ii).

126. Considering the matters discussed above, I was reasonably satisfied that, in relation to relevant persons as defined by reg 11A(1)(d), the EP demonstrates that the titleholder has carried out the consultations required by Division 2.2A and the measures (if any) that the titleholder has adopted, or propose to adopt, because of the consultations are appropriate, as required by reg 10A(g).

#### ***Relevant persons under Regulation 11A(1)(e)***

127. Reg 11A(1)(e) states that a titleholder must consult with 'any other person or organisation that the titleholder considers relevant'. The titleholder consulted with one person or organisation under 11A(1)(e); Karratha Community Liaison Group (KCLG).

128. I was reasonably satisfied that consultations with the KCLG met the requirements in reg 11A(2)-(4). The EP demonstrates that consultation took the form of emails and presentations (where requested), and were over a reasonable period (ranging from August 2021 until February 2023). The information provided to the relevant persons was sufficient which included the consultation information sheets and the information that was provided was tailored to the particular relevant person.

129. Appendix F, Table 1 of the EP demonstrates that no objections or claims were raised by any of these relevant persons, and that control measures because of the consultations were not necessary. I agreed with the conclusions in this table. No substantive responses were received (as opposed to queries), which required the titleholder to consider additional measures.
130. I also acknowledged the ongoing consultation commitment in the EP. I considered this was appropriate measure which would ensure that any future feedback, objections or claims which may arise from such persons would be assessed and reported.
131. I was therefore reasonably satisfied that Reg 10A(g) was met in relation to 'relevant persons' as defined by reg 11A(1)(e).

### **Regulation 10A(h) - The Environment Plan complies with the Act and the regulations.**

132. I considered the EP and was satisfied that it was compliant with the Act and Regulations, in particular that:
- a. the EP details that all equipment installed above the mudline has been designed to allow for removal from the seabed at the completion of the activity. The EP includes commitments for including functional decommissioning within infrastructure engineering and design to enable removal at a later time, developing decommissioning plans within appropriate timeframes and aligning with relevant legislative requirements. I was reasonably satisfied that this demonstrated that the activity complied with s 572;
  - b. consultation with relevant persons (Section 5) has informed the titleholder in its obligations under sections 280 of the OPGGS Act that the proposed petroleum activity will not interfere with navigation, fishing, conservation of resources of the sea and seabed, other offshore electricity infrastructure and petroleum activities, and the enjoyment of native title rights and interests (within the meaning of the Native Title Act 1993) to a greater extent than is necessary for the reasonable exercise of the titleholder's rights and obligations.
133. For the reasons set out above (at [18] – [36]) I was satisfied that the EP addressed the content requirements of regs 13-16 of the Environment Regulations with enough clarity, consistency and detail commensurate to the nature and scale of the activity. Specifically:
- a. the titleholder has submitted the EP in writing as required by regulation 9(6) of the Environment Regulations; and
  - b. the EP commits to complying with the requirements in regulations 26, 26A, 26AA, 26B, 26C, 27, 28 and 29 regarding various notifications and reporting to NOPSEMA as well as storage and access to records (Section 7.16).
134. Based on the above, I was reasonably satisfied that the EP met the requirements of regulation 10(h).

### **Other Considerations**

#### ***Principles of Ecological Sustainable Development***

135. The Regulations provide that their object is to ensure that any activity or greenhouse gas activity carried out in an offshore area is carried out in a manner consistent with the principles of ESD set out in section 3A of the EPBC Act. I considered that, the EP was consistent with the principles of ESD, as provided below:
- a. Decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations (the 'integration principle'):

- i. The EP included the titleholder's evaluation of the socio-economic, cultural and ecological features of the EMBA by the activity and consultation with relevant persons. The Environment Plan demonstrates an integrated approach to considering all environmental features, including relevant social, cultural and economic features that make up the definition of environment in reg 4. Further, the Environment Plan includes an evaluation of the potential impacts and risks of the activity on cultural heritage, commercial fisheries, traditional fisheries, tourism and recreation, commercial shipping, oil and gas and defence activities. I considered that these matters were consistent with ensuring that this decision-making process should effectively integrate both long-term and short-term economic, environment, social and equitable considerations.
- b. If 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 (the 'precautionary principle'):
  - i. The EP detailed the titleholder's evaluation of environmental impacts and risks, the reasons and evidence in support of how the impacts and risks will be of an acceptable level and suitable approaches for addressing scientific uncertainty associated with predictions of environmental impacts and risks and the measures in place for continuing to identify and manage impacts and risks during the life of the activity. Consideration was also given in the EP to the effectiveness of management measures in ensuring the petroleum activity will not result in serious or irreversible environmental harm, specifically it was noted that the petroleum activity will not have a significant impact on a MNES and will not result in serious or irreversible environmental damage.
- c. 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 'intergenerational principle'):
  - i. the EP identifies the measures adopted by the titleholder to minimise the environmental impacts and risks of the activity. The titleholder applied the mitigation hierarchy, such that where avoidance was not possible, control measures were adopted to ensure impacts and risks are managed to as low as reasonably practicable and an acceptable level. I considered this was consistent with the intergenerational principle.
- d. The conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making (the 'biodiversity principle'):
  - i. The EP included the titleholder's evaluation of environmental impacts and risks to the biodiversity and ecological values of the Commonwealth marine area, including EPBC Act listed threatened and/or migratory species, and the EPOs defined in the EP. I noted that the titleholder defined acceptable levels of impact and risk for biodiversity and ecological values at levels that are below the significant impact criteria defined in Significant Impact Guidelines 1.1 – Matters of National Environment Significance for matters protected under Part 3 of the EPBC Act. I have specifically considered at paragraph [47] and [50] above, that the impacts and risks to whales have been reduced to ALARP and will be of an acceptable level;
  - ii. There is evidence that the titleholder undertook a robust evaluation of environmental impacts and risks using appropriate impact assessment tools (such as acoustic modelling) to provide the basis for assessing higher order impacts and risks and demonstrating that impacts and risks will be managed at or below the acceptable level;

- iii. The EP contains an assessment against relevant requirements of statutory instruments to demonstrate that the activity would not be inconsistent with these instruments (such as the Marine Turtle Recovery Plan);
  - iv. The environmental impact and risk evaluations and EPOs collectively demonstrate that the activity will be managed so that impacts and risks to biological diversity and the ecological integrity of the Commonwealth marine area will be of an acceptable level;
  - v. I concluded that the activity will not have a significant impact on MNES protected under the EPBC Act, including World Heritage properties, National Heritage properties, *Ramsar* wetlands of international significance, listed threatened species and communities, listed migratory species, Commonwealth marine areas, and the Great Barrier Reef Marine Park.
- e. Improved valuation, pricing and incentive mechanisms should be promoted (the 'valuation principle'):
- i. The EP construct is such that the titleholder is required to bear the costs relating to environmental management of the activity, to ensure that environmental impacts and risks are managed to ALARP and to an acceptable level. I considered that the onus is on the titleholder to protect ecological services and capital associated with the EMBA of the activity, and to the extent that the valuation principle is relevant for an individual activity, the EP demonstrates compliance with Australian government legislation and policy requirements relating to environmental management.

***The Program: protected matters under Part 3 of the EPBC Act***

136. The Program endorsed under s 146 of the EPBC Act outlines the environmental management authorisation process for offshore petroleum and greenhouse gas activities administered by NOPSEMA and requires NOPSEMA to comply with Program responsibilities and commitments.
137. In implementing the Program, NOPSEMA conducts assessments of Environment Plans against the requirements of the Program, which include meeting the acceptance criteria and content requirements under the Regulations (which I have detailed above). Specific Program commitments relating to protected matters under Part 3 of the EPBC Act are outlined in Table 2 of the Program report and must be applied during decision making with respect to offshore projects and activities.
138. I considered matters protected under Part 3 of the EPBC Act, including listed threatened and migratory species and the Commonwealth marine area, and was reasonably satisfied that the activity under the EP met the requirements of the Program on the basis that:
- a. The activity will not result in unacceptable impacts on any of the species and is not inconsistent with relevant recovery plans and threat abatement plans for listed threatened species. I note my reasons above (see [49 - 50]) where I have considered these documents when determining the acceptability of the Environment Plan where impacts to listed threatened species and ecological communities may arise;
  - b. there are control measures in place to ensure that impacts to the Commonwealth marine area will be of an acceptable level, having regard to relevant policy documents, gazettal instruments, bioregional plans, wildlife conservation plans, plans of management and EPBC Act guidance documents on the DCCEEW website (see [49-50]).
  - c. there are control measures in place to ensure that the petroleum activity will not result in unacceptable impacts to a migratory species or an area of important habitat for a migratory species,

having regard to relevant policy documents, conservation advice, wildlife conservation plans and guidelines on the DCCEEW website (see [49-50]).

***The Program: cumulative Environmental impacts***

139. In the context of the Program, cumulative impact refers to the direct and indirect impacts of several different activity actions that may influence the natural environment or other users within a locality or region which, when considered together, have a greater impact on the offshore marine environment than each action or influence considered individually.
140. I considered the potential for cumulative environmental impacts to the Commonwealth marine area as required by the Program. I am reasonably satisfied that the environmental impacts of the activity combined with existing and proposed future pressures on the Commonwealth marine area, particularly to noise sensitive receptors including threatened and migratory whales, would be of an acceptable level because:
- a. the Environment Plan has evaluated the potential for cumulative impacts to relevant environmental receptors in the Commonwealth marine area that may be affected by the activity and adopts suitable control measures. In assessing the potential for cumulative environmental impacts, the Environment Plan has considered multiple noise exposures from the activity combined with other previous and proposed future noise generating activities in the region with overlapping temporal and/or spatial noise exposure extents; and
  - b. the Environment Plan has evaluated the potential for cumulative impacts to cetaceans from noise exposure from multiple vessels over the duration of the activity, as well as previous and potential future activities such as marine seismic surveys over consecutive seasons in areas that are considered biologically important for marine mammal species. The cumulative impact assessment concludes that impacts resulting from cumulative exposure to underwater noise are unlikely for species that do not remain within, or adjacent to, the operational area for extended periods of time due to biologically important behaviours. Precautionary control measures have been adopted to ensure potential cumulative impacts to threatened and migratory whales with migratory corridors that intersect the operational area are managed to as low as reasonably practicable and an acceptable level.
  - c. the Environment Plan identifies that the confirmed start and end dates for the activity will be considered in conjunction with other proposed activities that are part of the Scarborough project to ensure consideration of possible concurrent and cumulative impacts.

***The Program: indirect consequences of an action***

141. Under the Program, NOPSEMA must have regard to EPBC Act requirements, including *EPBC Act Policy Statement - 'Indirect consequences' of an action: section 527E of the EPBC Act (indirect consequences policy)*. NOPSEMA considers the policy to determine where indirect consequences may be considered an 'impact' of an activity. This consideration is on a case-by-case basis against the circumstances of the activity in accordance with the criteria set out in the policy.
142. In assessing the Environment Plan, I had regard to the indirect consequences policy, in relation to indirect greenhouse gas (GHG) emissions. I gave consideration as to whether the activity is a substantial cause of GHG emissions from the processing, consumption, and combustion of gas, and are facilitated to a major extent by the activity, within the contemplation of the titleholder and are a reasonably foreseeable consequence of the activities described in the EP.
143. Having regard to the indirect consequences policy, and the assessment teams' findings and conclusions, I agreed that:

- a. the activity is a defined stage in the broader Scarborough project development, for which there is an accepted Offshore Project Proposal (which sets the framework for management of emissions from processing, consumption and combustion of Scarborough gas);
- b. the activity the subject of this EP relates to the subsea intervention works and installation of a pipeline. The extraction of gas for onshore processing is therefore not authorised by my decision;
- c. while the activity is a necessary precursor to the extraction of gas, further activities, including drilling, completions, and installation of floating production infrastructure, are required prior to the point any gas can be extracted and transported for gas processing and sale;
- d. extraction and supply of gas for processing and subsequent sale, transport, consumption & combustion will require a future approval through an environment plan for operations.
- e. Future activities require their EP under the Environment Regulations, including consideration of the indirect consequences policy and appropriate coverage of impacts of any activity based on the case specific circumstances. In the case of the Environment Plan, there is no resource extraction component to the activity and future regulatory approvals are required prior to any activity with a resource extraction component occurring. Therefore, I consider that emissions from gas processing, consumption and combustion of Scarborough gas are not facilitated to a major extent by the activity and would not be considered a substantial cause of emissions generated in the future from processing, consumption, or combustion of gas.

## Conclusion

144. For the reasons set out above, I was reasonably satisfied that the EP met the following criteria set out in sub-regulation 10A of the Environment Regulations and should therefore be accepted:
- a. the EP is appropriate for the nature and scale of the activity; and
  - b. the EP demonstrates that the environmental impacts and risks of the activity will be reduced to as low as reasonably practicable; and
  - c. the EP provides for appropriate EPOs, EPSs, and measurement criteria; and
  - d. the EP includes an appropriate implementation strategy and monitoring, recording and reporting arrangements; and
  - e. the EP does not involve the activity or part of the activity, other than arrangements for environmental monitoring or for responding to an emergency, being undertaken in any part of a declared World Heritage property within the meaning of the EPBC Act; and
  - f. the EP demonstrates that:
    - i. the titleholder has carried out the consultations required by Division 2.2A; and
    - ii. the measures (if any) that the titleholder has adopted, or proposes to adopt, because of the consultations are appropriate; and
  - g. the EP complies with the Act and the regulations.

Signed

  


22 December 2023

## Attachment A – Legislative Framework

145. All offshore petroleum activities that are undertaken for the purpose of petroleum recovery, other than on an appraisal basis, are required to have an Offshore Project Proposal (OPP) accepted by NOPSEMA under the Environment Regulations or an equivalent approval by the Environment Minister under the EPBC Act.
146. The OPP framework enables a proponent to achieve a whole of project authorisation; however, it does not permit offshore petroleum activities to commence until an EP (or multiple EPs) for the activities has been accepted by NOPSEMA under the Environment Regulations.
147. Additional approvals may be required before a titleholder can commence a petroleum activity. A Well Operations Management Plan (WOMP) is required to be accepted by NOPSEMA under the Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011 for petroleum activities that involve well-related activities. A Safety Case is required to be accepted by NOPSEMA under the Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009 for facilities involved in the petroleum activity.
148. The Environment Regulations provide that:
- a. Before commencing a petroleum activity<sup>2</sup>, a titleholder must submit an EP for the petroleum activity to the Regulator (regulation 9(1)).
  - b. A petroleum activity means any operation or works in an offshore area carried out for the purpose of (a) exercising a right conferred on a petroleum titleholder under the OPGGS Act by a petroleum title; or (b) discharging an obligation imposed on a petroleum titleholder by the OPGGS Act or a legislative instrument under the OPGGS Act (regulation 4).
  - c. An EP for a petroleum activity that is, or is part of, an offshore project may only be submitted if the Regulator has accepted an OPP that includes that activity or if the Environment Minister has made a decision or granted approval under the EPBC Act relating to an action that is equivalent or includes that activity (regulation 9(3)).
  - d. If a titleholder submits an EP, the Regulator may request the titleholder to provide further written information about any matter required by the Environment Regulations to be included in the EP (regulation 9A).
  - e. If a titleholder receives a request under regulation 9A, they must provide the information requested by incorporating the information into the EP and resubmitting the EP within the period specified or within a longer period agreed to by the Regulator.
  - f. If the EP is resubmitted under regulation 9A, the Regulator must have regard to that further information in making the decision under regulation 10.
  - g. Within 30 days after the day the Regulator publishes the EP (under regulation 9AB) if the Regulator is:
    - i. reasonably satisfied that the EP meets the criteria set out in regulation 10A, the Regulator must accept the EP (regulation 10(1)(a));
    - ii. not reasonably satisfied that the EP meets the criteria set out in regulation 10A, the Regulator must give the titleholder notice in writing (regulation 10(2)); or

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<sup>2</sup> Petroleum activity is defined under regulation 4 of the Environment Regulations.



- iii. if the Regulator is unable to make a decision on the EP within the 30 day period, the Regulator must give the titleholder notice in writing and set out a proposed timetable for consideration of the EP (regulation 10(1)(c)).
  - h. A notice to a titleholder under regulation 10(2) must:
    - i. state that the Regulator is not reasonably satisfied that the EP submitted by the titleholder meets the acceptance criteria set out in regulation 10A;
    - ii. identify the criteria set out in regulation 10A about which the Regulator is not reasonably satisfied; and
    - iii. set a date by which the titleholder may resubmit the EP.
  - i. Pursuant to regulation 5G, NOPSEMA must not accept an environment plan unless it is reasonably satisfied that the titleholder is compliant with subsection 571(2) of the Act in relation to the petroleum activity, and the compliance is in a form that is acceptable to NOPSEMA.
  - j. Regulation 10A provides the acceptance criteria the Regulator must consider in determining whether to accept an EP, and includes that the plan:
    - i. is appropriate for the nature and scale of the activity;
    - ii. demonstrates that the environmental impacts and risks of the activity will be reduced to ALARP;
    - iii. demonstrates that the environmental impacts and risks of the activity will be of an acceptable level;
    - iv. provides for appropriate environmental performance outcomes (EPOs), environmental performance standards (EPSs) and measurement criteria;
    - v. includes an appropriate implementation strategy and monitoring, recording and reporting arrangements;
    - vi. does not involve the activity or part of the activity, other than arrangements for environmental monitoring or for responding to an emergency, being undertaken in any part of a declared World Heritage property within the meaning of the EPBC Act;
    - vii. demonstrates that:
      - A. the titleholder has carried out the consultation required by Division 2.2A; and
      - B. the measures (if any) that the titleholder has adopted, or proposes to adopt, because of the consultation are appropriate; and
    - viii. complies with the OPGGS Act and the Environment Regulations.
  - k. Regulation 10(6)b provides that the Regulator may accept the plan subject to limitations or conditions applying to operations for the activity.
149. The Environment Regulations provides for the authorisation of a petroleum activity, but does not authorise an oil spill, which is considered for risk evaluation and contingency planning in the EP only. Section 569 of the OPGGS Act places obligations on petroleum titleholders to control the flow and prevent the escape of petroleum within the permit area, lease area or licence area.
150. The Environment Regulations impose a duty on the titleholder to demonstrate to NOPSEMA in the EP that a proposed activity will be carried out in a manner:
- a. consistent with the principles of ecological sustainable development set in section 3A of the EPBC Act; and

- b. by which impacts and risks of the activity will be reduced to as low as reasonably practicable (ALARP) and acceptable levels.

## Appendix A: Key materials considered in making the decision

151. In making this decision, NOPSEMA considered the documents making up the EP submission in accordance with legislative requirements and NOPSEMA's policies and procedures. The key material that NOPSEMA had regard to in making this decision includes, but not limited to:

- a. The EP, comprising:
  - i. Scarborough Seabed Intervention and Trunkline Installation Environment Plan (Revision 6, October 2023);
  - ii. Scarborough Seabed Intervention and Trunkline Installation – Oil Pollution First Strike Plan (Revision 0, 14 December 2021); and
  - iii. Sensitive Stakeholder Information Report – Scarborough Seabed Intervention and Trunkline Installation Environment Plan (Revision 6, October 2023).
  - iv. Material referenced in the EP that was important evidence for making the case that impacts and risks will be managed to ALARP and acceptable levels.
- b. Scarborough Offshore Project Proposal (OPP) (Document No. SA0006AF0000002, Revision 5) and supporting documentation (Appendices A, B, C, D, E, F, G, H, I, J, K, L, and M), accepted by NOPSEMA on 30 March 2020 (as referred to by the titleholder under regulation 31 in the EP);
- c. The legislative framework relevant to EP assessments, including:
  - i. the OPGGS Act;
  - ii. the Environment Regulations; and
  - iii. the Program<sup>3</sup>.
- d. NOPSEMA Environment plan assessment policies, guidelines and guidance:
  - i. NOPSEMA Assessment policy (N-04000-PL0050);
  - ii. NOPSEMA Environment plan assessment policy (N-04750-PL1347);
  - iii. NOPSEMA Financial assurance for petroleum titles policy (N-04730-PL1780);
  - iv. NOPSEMA Section 572 Maintenance and removal of property regulatory policy (N-00500-PL1903);
  - v. NOPSEMA Managing gender-restricted information (draft) (N-04750-PL2098);
  - vi. NOPSEMA Financial assurance for petroleum titles guideline (N-04730-GL1381);
  - vii. NOPSEMA Environment plan decision making guideline (N-04750-GL1721);
  - viii. NOPSEMA Consultation in the course of preparing an Environment Plan guideline (N-04750-GL2086);
  - ix. NOPSEMA Environment plan content requirements guidance note (N-04750-GN1344);
  - x. NOPSEMA Making submissions to NOPSEMA guideline (N-04000-GL0225);
  - xi. NOPSEMA Petroleum activities and Australian marine parks guidance note (N-04750-GN1785);

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<sup>3</sup> <https://www.environment.gov.au/protection/assessments/strategic/offshore-petroleum-greenhouse-gas>

- xii. NOPSEMA Consultation with Commonwealth agencies with responsibilities in the marine area guideline (N-06800-GL1887);
  - xiii. NOPSEMA Oil pollution risk management guidance note (N-04750-GN1488);
  - xiv. NOPSEMA Operational and scientific monitoring programs information paper (N-04750-IP1349);
  - xv. NOPSEMA Acoustic impact evaluation and management information paper (N-04750-IP1765)
  - xvi. NOPSEMA Petroleum activity guidance note (N-04750-GN1343);
  - xvii. NOPSEMA Source control planning and procedures information paper (N-04750-IP1979);
  - xviii. NOPSEMA Environmental bulletin — oil spill modelling (April 2019);
  - xix. NOPSEMA Blue Whale Conservation Management Plan – Frequently asked questions (November 2021); and
  - xx. NOPSEMA Consultation on offshore petroleum environment plans brochure (May 2023).
- e. Procedures:
- i. NOPSEMA Environment plan assessment standard operating procedure (N-04750-SOP1369).
- f. Other relevant documents and records:
- i. recorded findings and conclusions of NOPSEMA's assessment team regarding assessment of how the EP met the acceptance criteria set out in regulation 10A of the Environment Regulations;
  - ii. relevant advice from other agencies or organisations:
    - A. advice received on 22 March 2022 from the Protected Species and Communities Branch at the Department of Climate Change, Energy, the Environment and Water (DCCEEW) (formerly Department of Agriculture, Water and the Environment) in response to NOPSEMA's request for information on biologically important areas for blue whales;
    - B. advice received on 27 July 2022 from the National Indigenous Australians Agency (NIAA) in response to NOPSEMA's request for advice on the appropriate cultural authority to provide information on the cultural heritage values and relevant persons associated with sea country off the Burrup Peninsula;
    - C. letter dated 05 October 2022 from the National Offshore Petroleum Titles Administrator (NOPTA) in response to NOPSEMA's request for information related to the geological field integrity of the Scarborough Field Development;
    - D. expert report of Extent Heritage Pty Ltd (dated 18 October 2022), engaged by NOPSEMA to provide Aboriginal cultural heritage advice in relation to the Scarborough 4D B1 Marine Seismic Survey (MSS) and broadly applicable to the geographic area of the activity.
  - iii. Published consultation guidance by relevant persons:
    - A. Australian Fisheries Management Authority, Petroleum industry consultation with the commercial fishing industry, available at: <https://www.afma.gov.au/petroleum-industry-consultation-commercial-fishing-industry>;
    - B. Department of Agriculture, Fisheries and Forestry (DAFF), Fisheries and the environment – Offshore Petroleum and Fisheries, available at: <https://www.agriculture.gov.au/agriculture-land/fisheries/environment/opgga>;

- C. Department of Climate Change, Energy, the Environment and Water, Interim Engaging with First Nations People and Communities on Assessments and Approvals under the *Environment Protection and Biodiversity Conservation Act 1999* (2023);
  - D. WA Department of Fisheries, Guidance statement for oil and gas industry consultation with the Department of Fisheries, Fisheries Occasional Publication No. 113, July 2013;
  - E. WA Department of Transport, Offshore Petroleum Industry Guidance Note, Marine Oil Pollution: Response and Consultation Arrangements, July 2020; and
  - F. Western Australian Fishing Industry Council, Consultation approach for unplanned events, available at: <https://www.wafic.org.au/what-we-do/access-sustainability/oil-gas/consultation-approach-for-unplanned-events/>.
- iv. relevant published, peer-reviewed scientific literature, including the scientific literature cited in the EP;
  - v. relevant policies, plans of management, recovery plans, conservation advice and other guidance for matters protected under the EPBC Act, including, but not limited to:
    - A. Department of the Environment, Water, Heritage and the Arts, Significant Impact Guidelines 1.1 – Matters of National Environmental Significance, EPBC Act Policy Statement (2013);
    - B. Department of Sustainability, Environment, Water, Population and Communities, 'Indirect consequences' of an action: Section 527E of the EPBC Act, EPBC Act Policy Statement (2013);
    - C. Department of the Environment and Energy, National Light Pollution Guidelines for Wildlife Including Marine Turtles, Seabirds and Migratory Shorebirds (2020);
    - D. Commonwealth of Australia, Recovery Plan for Marine Turtles in Australia 2017–2027 (2017);
    - E. Commonwealth of Australia, Conservation Management Plan for the Blue Whale 2015–2025 (2015);
    - F. Department of Agriculture, Water and the Environment, Guidance on key terms within the Blue Whale Conservation Management Plan (2021);
    - G. Commonwealth of Australia, Conservation Management Plan for the Southern Right Whale 2011-2021 (2012);
    - H. Commonwealth of Australia, Threat Abatement Plan for the impacts of marine debris on the vertebrate wildlife of Australia's coasts and oceans (2018);
    - I. Commonwealth of Australia, Wildlife Conservation Plan for Seabirds (2020);
    - J. Department of Sustainability, Environment, Water, Population and Communities, Marine Bioregional Plan for the North-west Marine Region (2012); and
    - K. Director of National Parks, North-west Marine Parks Network Management Plan (2018).
  - vi. relevant legislative requirements that apply to the activity and are relevant to the environmental management of the activity.
- g. decision made by the Full Federal Court of Australia in the matter of *Santos NA Barossa Pty Ltd v Tipakalippa* [2022] FCAFC 193, on 02 December 2022.
  - h. decision made by the Full Federal Court of Australia in the matter of *Cooper v NOPSEMA (No 2)* [2023] FCA 1158, on 28 September 2023.