

Acceptance of Otway Offshore Operations Environment Plan

Document No: A1167436

Date: 20 January 2025

1. On 11 December 2024, I, [REDACTED] Director Decommissioning – Environment delegate of the Chief Executive Officer of the National Offshore Petroleum Safety and Environmental Management Authority (**NOPSEMA**) decided, pursuant to reg 33 of the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023 (Environment Regulations)*, to accept the Otway Offshore Operations Environment Plan (Document No: CHN-EN-EMP-0001, Revision 11, dated 28 November 2024) (**EP**).
2. The EP was submitted by Cooper Energy (CH) Pty Ltd (ABN 70 615 355 023) (**titleholder**), as a revision at the end of 5-years as required under the Environment Regulations, to enable the titleholder to undertake the petroleum activity described in the EP, which involves the operation of an already existing licenced petroleum pipeline and other petroleum-related works and surveys in Commonwealth waters.
3. The reasons for my decision are set out below. All references to a regulation (**reg**) are to the Environment Regulations unless otherwise stated.

Legislative framework

4. The legislation relevant to my decision is set out in **Appendix B**.

Background

5. On 18 July 2022, the titleholder submitted the EP to NOPSEMA in accordance with the Environment Regulations (Document No: CHN-EN-EMP-0001, Revision 4).
6. On 25 July 2022, NOPSEMA provisionally decided in accordance with reg 27 that the EP included material addressing all of the provisions in Division 2 of the Environment Regulations and published the EP on NOPSEMA's website in accordance with reg 28(1).
7. On 28 July 2022, NOPSEMA notified the titleholder in accordance with reg 33(3)(b) that it was unable to make a decision within the 30 day period required by reg 33(3)(a). On 20 September 2022, NOPSEMA requested further information from the titleholder, pursuant to reg 32. The request identified that further information on a number of the criteria in reg 34 was required. On 12 October 2022 and 6 December 2022 NOPSEMA sent two additional requests for further information from the titleholder in relation to reg 34(h) as a result of decisions of the Federal Court of Australia in *Tipakalippa v National Offshore Petroleum Safety and Environmental Management Authority (No 2) [2022] FCA 1121* on 21 September 2022 and the appeal *Santos NA Barossa Pty Ltd v Tipakalippa [2022] FCAFC 193* on 2 December 2022 (Tipakalippa Appeal). In response to these two letters and the request for further information made on 20 September 2023, the titleholder resubmitted the EP in accordance with reg 32(3) on 31 August 2023 (Document No: CHN-EN-EMP-0001, Revision 5).
8. On 2 October 2023, NOPSEMA made another request for further information from the titleholder. The request identified that further information in relation to the criteria in reg 34(c), (d), (e) and (g) was required. In response to this request, the titleholder resubmitted the EP on 30 January 2024 (Document No: CHN-EN-EMP-0001, Revision 6). incorporating additional information pursuant to reg 32(3).
9. On 29 February 2024, NOPSEMA provided an opportunity to the titleholder to modify and resubmit the EP in accordance with reg 33(5) because it was not reasonably satisfied that the EP submitted met the

acceptance criteria in reg 34(g). In response to this opportunity, the titleholder resubmitted a modified version of the EP on 29 May 2024 (Document No: CHN-EN-EMP-0001, Revision 7).

10. On 1 July 2024, NOPSEMA provide a further opportunity to the titleholder to modify and resubmit the EP in accordance with reg 33(5) as NOPSEMA was not reasonably satisfied that the EP submitted met the acceptance criteria in reg 34(c), (g) and (h). In response to this opportunity, the titleholder resubmitted a modified version of the EP on 13 September 2024 (Document No: CHN-EN-EMP-0001, Revision 9).
11. On 11 October 2024, NOPSEMA notified the titleholder in accordance with reg 33(3)(b) that it was unable to make a decision within the 30 day period required by reg 33(3)(a). On 25 October 2024, NOPSEMA made a further request for further information in relation to the criteria in reg 34(g) and (h). In response to this request, the titleholder resubmitted the EP on 7 November 2024 (Document No: CHN-EN-EMP-0001, Revision 10), incorporating additional information pursuant to reg 32(3).
12. On 11 November 2024, NOPSEMA made a further request for further information in relation to the criteria in reg 34(g). In response to this request, the titleholder resubmitted the EP on 29 November 2024 (Document No: CHN-EN-EMP-0001, Revision 11) incorporating additional information pursuant to reg 32(3).
13. In making the decision I took into account and considered advice from NOPSEMA's assessment team. On 11 December 2024, I decided to accept the EP. I was reasonably satisfied that the EP met the criteria in reg 34. I explain my reasons in further detail below.

Materials

14. The materials considered in making this decision are set out in **Appendix C** and are referenced where relevant in the reasons below.

Decision overview

15. The issue before me was whether the EP should be accepted pursuant to reg 33. This required that I be reasonably satisfied that the EP meets the 'criteria for acceptance' in reg 34.
16. Prior to considering whether I was reasonably satisfied that the EP met the criteria in reg 34, I considered whether the EP complied with Division 2 of the Environment Regulations, which sets out the matters which must be included in an EP.
17. I was satisfied that the EP contained the matters required by Division 2. My reasons for this part of my decision are set out at [20] – [46] below.
18. Further, in accordance with regs 16 and 34, I must not accept an EP unless I am reasonably satisfied that the titleholder is compliant with subsection 571(2) of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPGGGS Act)* in relation to the petroleum activity, and the compliance is in a form that is acceptable to me. On review of the titleholder's financial assurance declaration and confirmation forms, I was reasonably satisfied that the titleholder was compliant with s 571(2), and the financial assurance declaration and confirmation forms were acceptable. I therefore considered that the requirement in reg 16 was met.
19. I then considered the criteria in reg 34 and was reasonably satisfied that the EP met those criteria. I therefore accepted the EP. My reasons for this part of my decision are set out at [50] – [117] below.

Findings

Does the environment plan comply with Division 2?

20. Regulation 20 in Division 2 requires that the EP must include the matters set out in regs 21, 22, 23 and 24. As I was satisfied that the EP met regs 21, 22, 23 and 24 (for the reasons set out individually below), I was satisfied that reg 20 was met and the EP complied with Division 2 of the Environment Regulations.

Environmental assessment: regulation 21

Regulation 21(1) – Description of the petroleum activity

21. Regulation 21(1) requires the EP to contain a comprehensive description of the activity including details of each activity and stage, general details and layout of the facilities, operational details, proposed timetables and any additional information relevant to the consideration of environmental impacts and risks of the activity.
22. I found that the EP addressed each of these matters in Section 3 ('Activity Description') including:
 - (a) A description of the activities that have the potential to impact the environment (Section 3.6) which include:
 - (i) operation of subsea wells, structures, pipelines and umbilicals, and associated inspection, maintenance and repair (**IMR**) activities;
 - (ii) support operations, including vessel operations, remotely operated vehicle (**ROV**) operations, helicopter operations and diver operations; and
 - (iii) geophysical site survey.
 - (b) The location of the activity, which is within Production Licences VIC/L24 and VIC/L30 and Pipeline Licenses VIC/PL37 and VIC/PL42, in Commonwealth waters. In this regard, the EP stated that:
 - (i) the Operational Area is located in the Otway Basin, and includes 500 m around existing wells and either side of linear infrastructure in water depths of approximately <10 m (at the horizontal directional drill shoreline crossing exit in State waters) to 70 m. Location coordinates of the Offshore Otway pipelines and subsea wells are provided in Tables 3-1 and 3-2 of the EP (respectively) and presented in Figure 3-1; and
 - (ii) an Operational Area has been defined for seabed surveys that may be undertaken anywhere within VIC/L24 and VIC/L30 (Section 3.1.1).
 - (c) The scope and bounds of the activity.
 - (d) That the EP will remain in force for a period of 5 years from the date of acceptance.
 - (e) The facilities have been in operation since 2006 and during the assessment period, had been operating under an EP that was accepted in 2017.
 - (f) Drilling activities are no longer included in the scope of this EP.
 - (g) Activities relating to the Victorian State water component of the Casino gas pipeline are included in this single EP for assessment under the *Offshore Petroleum and Greenhouse Gas Storage Act 2010* (Vic)(**Victorian Act**) and *Offshore Petroleum and Greenhouse Gas Storage Regulations 2021* (Vic)(**Victorian Regulations**) which are administered by the Victorian State government Department of Energy, Environment and Climate Action (**DEECA**). Acceptance of the EP by DEECA will only apply to activities within Victorian State waters. As of the date of this document, I understand that the EP revision is still under assessment by DEECA.
 - (h) Information relevant for the evaluation of environmental impacts and risks of the petroleum activity, key aspects of which are:
 - (i) timing and duration of the petroleum activity, including a schedule of the activity, which will occur over the 5-year period of the EP. The estimated duration of the IMR activities is stated as depending on the scope, but are typically 2–4 weeks;

- (ii) general details of support operations, including vessels, ROVs and helicopters, which are provided in Section 3.6.3;
 - (iii) a description of assets (Section 3.3), including the background and current status of equipment;
 - (iv) asset decommissioning (Section 3.4), including indicative decommissioning plan (Table 3-5); and
 - (v) risks and impacts from the petroleum activity, including lower order impacts and risks (Section 6.2; physical presence – interaction with other users, light emissions, atmospheric emissions, cement discharges, other planned discharges, interaction with marine fauna and unplanned discharges), seabed disturbance (Section 6.3), greenhouse gas (**GHG**) emissions (Section 6.4), underwater sound emissions (Section 6.5), introduction, establishment and spread of invasive marine species (**IMS**; Section 6.6) and accidental hydrocarbon release (Section 6.7).
23. Based on the findings above, I found that the EP contained a comprehensive description of the petroleum activity that met the requirements of reg 21(1).

Regulation 21(2) and (3) – Description of the environment that may be affected

24. Regulation 21(2) and (3) requires, in effect, that an EP describe the existing environment that may be affected (**EMBA**) by the activity, including the particular relevant values and sensitivities (if any) of that environment.
25. The EP addressed each of these matters in Section 4 and Appendix 3 (Description of the Environment – Projects and Operations). The description of the environment is informed by Appendix 2 (Protected Matters Search Tool (**PMST**) Searches) which identify if Matters protected under Part 3 of the EPBC Act exist in and around the Operational Area and EMBA. In particular, the EP included:
- (a) A thorough description of the physical and biological environment, and details of relevant values and sensitivities that may be affected by the petroleum activity, including under emergency conditions;
 - (b) A description of the environment which encompasses the Operational Area and monitoring EMBA (hereafter referred to as 'EMBA') (Figure 4-1);
 - (c) A statement that the activity or any part of the activity will not be undertaken in any part of a declared World Heritage Property, National Heritage Place, nor a declared Wetland of International Importance (Ramsar wetland) within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**), as described in Section 4.4 of the EP;
 - (d) A statement that there were values and sensitivities within the EMBA which the EP identified and described, including:
 - (i) the values of National Heritage Places located within the EMBA, including the Great Ocean Road and Scenic Environs (Section 4.4.3, Appendix 2);
 - (ii) one Wetland of International Importance (Ramsar wetland) and three Nationally Important Wetlands located within the EMBA, and one Ramsar wetland within 10 km of the EMBA (Section 4.4.3, Appendix 2 and Appendix 3), being the:
 - Port Phillip Bay (Western Shoreline) and Bellarine Peninsula (Ramsar wetland)
 - Glenelg Estuary and Discovery Bay Wetlands (Ramsar wetland, within 10 km)
 - Aire River
 - Lower Aire River Wetlands
 - Princetown Wetlands.

- (iii) the values and sensitivities of the Australian Marine Park (**AMP**) Apollo within the EMBA (Section 4.4.3, Appendix 2);
 - (iv) the values and sensitivities of State Protected Areas within the EMBA (Section 4.4.3, Appendix 2);
 - (v) nine Threatened Ecological Communities (**TECs**) are likely to occur within the EMBA, with the following three TECs occurring in coastal areas (Section 4.3.3, Appendix 2):
 - Giant Kelp Forests of South East Australia.
 - Subtropical and Temperate Coastal Saltmarsh.
 - Assemblages of Species Associated with Open-Coast Salt-Wedge Estuaries of Western and Central Victoria Ecological Community.
 - (vi) the EMBA overlaps the Bonney Upwelling Key Ecological Feature (**KEF**) and the West Tasmania Canyons KEF (Section 4.4.3 and Appendix 2);
 - (vii) 70 listed threatened and 46 listed migratory species or their habitat which occur, may occur or are likely to occur, in the Operational Area (Section 4.4.2 and Appendix 2), and 108 listed threatened and 73 listed migratory species or their habitat which occur, may occur or are likely to occur, in the EMBA (Section 4.4.2 and Appendix 2);
 - (viii) the 14 biologically important areas (**BIAs**) for species in the Operational Area (Section 4.4.2, Appendix 2). In particular, the Operational Area overlaps with nine BIAs in Commonwealth and State waters, the distribution range BIA for white sharks, the distribution range and foraging BIA (annual high use area) for pygmy blue whales and foraging BIA for several seabirds, including Wedge-tailed shearwater, Wandering albatross, Antipodean albatross, Common diving petrel, Buller's albatross, Shy albatross, Campbell albatross, Indian Yellow-nosed albatross and Black-browed albatross; and
 - (ix) in addition to the BIAs overlapping the Operational Area, the EMBA overlaps with aggregation, known core range and migration and resting on migration BIAs for southern right whales, foraging BIA for white sharks, breeding BIAs for seabirds, Wedge-tailed Shearwater and the Common diving petrel, foraging BIAs for the Short-tailed shearwater, little penguin, Australasian gannet and White-faced Storm petrel, and an aggregation BIA for the Australasian gannet (Section 4.4.2 and Appendix 2).
- (e) The social, economic and cultural features of the EMBA, specifically:
- (i) a description of the Commonwealth managed fisheries with management areas that overlap with the Operational Area and the EMBA. The Bass Strait Central Zone Scallop, Eastern Tuna and Billfish, Skipjack (eastern), Small Pelagic (western sub-area), Southern Bluefin Tuna overlap with the Operational Area and in particular the Southern and Eastern Scalefish and Shark Fishery (**SESSF**) and Southern Squid Jig fishery were identified as having a potential interaction with the activity in the Operational Area, based on current distribution of target species and fishing effort (Section 4.4.3);
 - (ii) a description of the state-managed fisheries with management areas that overlap with the Operational Area, including the Victorian Rock Lobster Fishery, Giant Crab Fishery, Abalone Fishery, Scallop, Wrasse Fishery, Ocean General fishery. The Victorian Rock Lobster Fishery, Victorian Giant Crab Fishery, Abalone Fishery, Wrasse Fishery and Octopus Fishery were identified as having a potential interaction with the activity, based on current distribution of target species and fishing effort (Section 4.4.3);

- (iii) recreation and tourism activities and coastal settlements (Section 4.4.3);
 - (iv) shipping (Section 4.4.3);
 - (v) oil and gas production and exploration activities (Section 4.4.3);
 - (vi) defence activities (Section 4.4.3); and
 - (vii) other offshore infrastructure (subsea communication cables and a desalinisation plant) (Section 4.4.3).
- (f) A description of currently recognised Native Title, Sea Country and Heritage Values (Section 4.4.4), along with specific input received through the consultation process (Section 11.2.1.3); and
- (g) Section 11.2.1.3 and Appendix 3, which present details of onshore native title claims, determinations and Indigenous Land Use Agreements (**ILUAs**) made under the *Native Title Act 1993*, 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.
26. Based on the information contained in Section 4, Section 11.2.1.3 (consultation), Appendix 2 and Appendix 3 of the EP (some of which is summarised above), I found that the EP met the requirements of reg 21(2) and (3).

Regulation 21(4) – Requirements

27. Reg 21(4) requires the EP to describe the requirements, including legislative requirements, that apply to the activity and are relevant to the environmental management of the activity, and to demonstrate how those requirements will be met.
28. Section 2 of the EP identified the Commonwealth and State/Territory legislative requirements that apply to the activity, as well as the relevant industry standards and guidelines, and international agreements and conventions. The evaluation of environmental impacts and risks in Sections 6 and 7 of the EP provided a description of the legislative requirements that apply to the activity and are relevant to the environmental management of the activity, as well as a demonstration of how the requirements will be met.
29. I considered that the EP included sufficient information on the legislative and environmental requirements that apply to the activity and demonstrated how the titleholder proposed they will be met throughout the life of the activity.
30. I considered that the EP met the requirements of reg 21(4).

Regulation 21(5) and (6) – Evaluation of environmental impacts and risks

31. Reg 21 (5) and (6) require that the EP include details of the environmental impacts and risks for the activity, an evaluation of all the impacts and risks appropriate to the nature and scale of each impact or risk, and details of the control measures that will be used to reduce the impacts and risks of the activity to as low as reasonably practicable (**ALARP**) and an acceptable level. The evaluation must evaluate all of the environmental impacts and risks arising directly or indirectly from all operations of the activity, and potential emergency conditions, whether resulting from an accident or other reasons.
32. Details of the environmental impacts and risks associated with the petroleum activity, including those arising from potential emergency conditions whether resulting from an accident or any other reason, are provided in Sections 6 and 7 of the EP. The impacts and risks are assessed for a range of identified sensitive receptors, including:
- (a) Marine mammals;
 - (b) Marine reptiles;

- (c) Fish and sharks;
 - (d) Seabirds/shorebirds;
 - (e) Seabed/benthic habitats and communities;
 - (f) Water quality; and
 - (g) Socio-economic receptors (including heritage, protected areas, fisheries, shipping, tourism and coastal settlements).
33. 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 is presented in detail in Sections 6 and 7 of the EP. These comprised:
- (a) Planned aspects:
 - (i) Physical presence (Section 6.2.1 and Section 7);
 - (ii) Emissions – Light (Section 6.2.1 and Section 7);
 - (iii) Emissions – Atmospheric (Section 6.2.1 and Section 7);
 - (iv) Planned Discharges – Cement (Section 6.2.1 and Section 7);
 - (v) Planned Discharges – Other (Section 6.2.1 and Section 7);
 - (vi) Planned Discharges – Cooling Water and Brine; Sewage, greywater and putrescible; deck drainage and bilge (Section 6.2.1 and Section 7);
 - (vii) Seabed disturbance (Section 6.3 and Section 7);
 - (viii) Atmospheric Greenhouse gas (GHG) emissions (Section 6.4 and Section 7); and
 - (ix) Underwater sound emissions (Section 6.5 and Section 7).
 - (b) Unplanned aspects:
 - (i) Interaction with marine fauna (Section 6.2.2 and Section 7);
 - (ii) Unplanned Discharge – Minor loss of containment (**LOC**) (Chemicals and Hydrocarbons) (Section 6.2.2 and Section 7);
 - (iii) Unplanned Discharge – (Hazardous/Non-hazardous Waste) (Section 6.2.2 and Section 7);
 - (iv) Introduction, Establishment and Spread of IMS (Section 6.6 and Section 7); and
 - (v) Accidental hydrocarbon release (Section 6.7 and Section 7).
34. The EP includes details of the control measures that will be used to reduce the impacts and risks of the activity to ALARP and an acceptable level (Section 6 of the EP).
35. Based on the matters summarised above, I concluded that the EP met the requirements of reg 21(5) and (6).

Regulation 21(7) - Environmental performance outcomes and standards

36. Reg 21(7) requires that the EP set environmental performance standards (**EPS**) for the control measures identified in reg 21(5)(c), set out environmental performance outcomes (**EPO**) and include measurement criteria to determine whether each EPO is being met.
37. I considered the EPOs, EPSs and measurement criteria provided in Section 9 of the EP and found that EPOs have been set which define performance for the management of the environmental aspects of the

petroleum activity to ensure that environmental impacts and risk will be of an acceptable level. For example, EPOs adopted include:

- (a) Undertake the activity in a manner that will not interfere with other marine users to a greater extent than is necessary for the exercise of right conferred by the titles;
 - (b) No serious or irreversible changes to seabed which may adversely impact on biodiversity, ecological integrity, social amenity or human health;
 - (c) No serious or irreversible change in water quality which may adversely impact on biodiversity, ecological integrity, social amenity or human health;
 - (d) No substantial and unrecoverable impacts to cultural heritage;
 - (e) No serious or irreversible harm to a threatened or migratory listed species;
 - (f) Impacts to marine fauna from activity noise emissions will be limited to temporary behavioural change localised to the noise source, with no species population-level impacts;
 - (g) Any whale can continue to utilise the area without injury;
 - (h) Activities do not cause displacement of any blue whale from a foraging area;
 - (i) Activities do not prevent any southern right whale from utilising a migration BIA or habitat critical to the survival of the species (**HTCS**);
 - (j) The risk of behavioural disturbance to southern right whales inside and adjacent to BIAs and HCTS and is minimised;
 - (k) Air emissions requirements from vessels within the Operational Area are consistent with Marine Order 97 requirements;
 - (l) Manage direct and indirect GHG emissions from the Otway Offshore Operations consistent with Australia's international GHG emissions commitments, as outlined in the Climate Change Act 2022 (Commonwealth);
 - (m) Impacts to values and sensitivities are minimised in the event of a loss of hydrocarbons;
 - (n) No spill of chemicals or hydrocarbons to the marine environment;
 - (o) No unplanned discharge of waste or objects to the marine environment;
 - (p) No vessel strikes with protected marine fauna during the petroleum activity;
 - (q) The activity does not prevent any cultural practice from taking place;
 - (r) The activity does not destroy any cultural features; and
 - (s) No introduction, establishment or spread of a known or potential invasive marine species.
38. The EPSs have been set for control measures identified as being necessary to reduce the environmental impacts and risks of the activity to ALARP and acceptable levels.
39. Measurement criteria are provided that will allow the titleholder to determine whether each EPO and EPS is being met for the duration of the activity.
40. Based on the matters set out above, I found that the EP met the requirements of reg 21(7).

Implementation strategy for the EP: regulation 22

41. The EP includes content addressing the requirements of reg 22, including the following elements of the implementation strategy:

- (a) The interval between reporting to NOPSEMA in relation to the titleholder's environmental performance for the activity (reg 22(7)) is defined in the EP as not being more than one year (Section 10.13);
- (b) A description of the environmental management system (**EMS**) that will be used to ensure that impacts and risks continue to be identified and that controls measures are effective in reducing environmental impacts and risks to ALARP and acceptable levels so that the EPOs and EPSs continue to be met (Sections 5, 6, 9 and 10.1)(reg 22(2));
- (c) Establishment of a clear chain of command, setting out the roles and responsibilities of personnel, including during emergencies (Section 10.5). The chain of command and roles and responsibilities of key personnel involved in spill preparation and response are defined in the 'Cooper Energy Victorian Oil Pollution Emergency Plan' (**OPEP**) (VIC-EPER-EMP-0001) (reg 22(3));
- (d) 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 EP, including during emergencies, and has the appropriate competencies and training. Section 10.6 outlines the measures that are in place for ensuring employee and contractor competency, including necessary awareness, training, and induction requirements. The OPEP defines the emergency response training, competency, and exercise requirements to ensure the emergency response personnel are aware of their roles and responsibilities (reg 22(4));
- (e) Provision for sufficient monitoring, recording, audit, management of non-conformance and review of the titleholder's environmental performance and the implementation strategy to ensure that the EPOs and EPSs in the EP are being met (Section 10.13);
- (f) Sufficient monitoring of, and maintaining a quantitative record of, emissions and discharges, such that the record can be used to assess whether the EPOs and EPSs in the EP are being met (Section 10.13.1) (reg 22(6));
- (g) An OPEP (VIC-EPER-EMP-0001) with the provision for updating of the plan (reg 22(8));
- (h) The OPEP outlines appropriate arrangements for responding to and monitoring oil pollution and includes the (22(9)):
 - (i) control measures necessary for timely response to an emergency that results or may result in oil pollution such as source control, shore protection and deflection, oiled wildlife response, shoreline clean-up, waste management and an operational and scientific monitoring program (**OSMP**);
 - (ii) 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. For example, Australian Marine Oil Spill Centre (AMOSC) participating membership, and environmental service provider, labour hire and vessel provider agreements;
 - (iii) 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) arrangements and capability in place for monitoring oil pollution to inform responses, such as the OSMP, satellite imagery contracts, tracking buoys, trained aerial surveillance and emergency response personnel.
- (i) 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 (Section 10.7.2). Section 1.6 of the OPEP includes a description 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;

- (j) The arrangements in the OPEP are consistent with the national system for oil pollution preparedness and response (reg 22(11));
- (k) Provision for 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. Section 11.2.6 outlines the arrangements for ongoing consultation, ranging from notifications to further consultation engagements (reg 22(15)); and
- (l) The implementation strategy complies with the Act, the regulations and any other environmental legislation applying to the activity (reg 22(16)).

42. Based on the matters set out above, I concluded that the EP met the requirements of reg 22.

Details of titleholder and liaison person: regulation 23

- 43. Details for the titleholder were included in Table 1-2 of the EP, including the name, contact details and Australian Business Number (**ABN**) as well as the contact details of the titleholder's nominated liaison person.
- 44. Section 10.11.2 of the EP also contained appropriate arrangements for notifying NOPSEMA of a change in the titleholder, the nominated liaison person, or of a change in the contact details of either.
- 45. Based on these matters, I considered that the EP met the requirements of reg 23.

Other information in the EP: regulation 24

- 46. I considered that the EP met reg 24 as it contains:
 - (a) The titleholder's Health, Safety, Environment and Community policy (Figure 10-2); and
 - (b) The information required under reg 24(b), specifically a report on all consultations under reg 25 with any relevant person by the titleholder in Section 11, Appendix 4 (the sensitive information part of the EP), which includes:
 - (i) a summary of each response made by a relevant person. The EP (Tables 11-5, 11-6 and 11-7) contains a summary of each response made by a relevant person. The summary adequately reflects the responses received from relevant persons, such that relevant claims or objections can be adequately identified;
 - (ii) an assessment of the merits of any objection or claim raised during relevant persons consultation (Tables 11-5, 11-6 and 11-7). 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;
 - (iii) a statement of the titleholder's response, or proposed response, if any, to each objection or claim. 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;
 - (iv) a copy of the full text of any response by a relevant person in the Sensitive Information Report; and
 - (v) details of any reportable incidents in relation to the proposed activity in Section 10.12 of the EP.

Should the environment plan be accepted?

47. Under reg 33 of the Environment Regulations, in order to accept the EP, I had to be reasonably satisfied that the criteria in reg 34 were met. It was also open under reg 33 to accept the EP in part or with conditions, or to refuse the EP.
48. Regulation 32(4) requires that, when making my decision as to whether the EP should be accepted, I was required to consider the further information that the titleholders provided pursuant to the requests made by NOPSEMA. The information the titleholders provided in response to those requests was contained in the resubmitted versions of the EP (as set out at [5] – [13]) which resulted in the final version of the EP (Revision 11).
49. Against this background (and having considered the materials in Appendix 4), I made the following findings against each criterion for acceptance of the EP in reg 34.

The EP is appropriate to the nature and scale of the activity: regulation 34(a)

50. I noted that Section 3 included a description of the scope and bounds of the activity. In particular, the EP provided details of the proposed location, spatial extent, timeframe, and duration of the decommissioning activities (see above at [22]). The EP also described expected abandonment and decommissioning timelines for wells and subsea infrastructure in the Otway Basin.
51. The EP contained a thorough description of the activity components with the greatest potential to generate impacts and risks to the environment throughout the activity duration, and, appropriately, provides more detail on activity components with the greatest potential to generate impacts and risks to the environment.
52. I considered that Section 4, Appendix 2 and Appendix 3 of the EP contained a thorough description of the environment, and appropriately addressed relevant values and sensitivities (including matters protected under Part 3 of the EPBC Act) (see above at [25]). I noted the description of the EMBA includes areas that may be affected by potential emergency conditions in the event of an oil pollution incident which is conservatively defined through stochastic modelling of the worst-case spill scenario (a subsea well LOC).
53. I considered the level of detail included in the EP to be appropriately scaled to the nature of the impacts and risks. A greater level of detail is included in the EP on the EMBA by planned operations (Operational Area), compared with the broader environment that may be exposed to low levels of hydrocarbon (in the unlikely event of a worst-case hydrocarbon release). Specifically, the EP includes:
 - (a) A logical process that is applied to identify and describe the matters protected under Part 3 of the EPBC Act that may be present within the Operational Area and EMBA. The EP utilises relevant information to adequately inform and support the descriptions, such as information available on the Department of Climate Change, Energy, Environment and Water (**DCCEEW**) website such as plans of management, threat abatement plans, threatened species recovery plans and marine bioregional plans (Section 2, Section 4, Appendix 2 and Appendix 3);
 - (b) A description of the key physical, biological, social, economic, and cultural features, values and sensitivities of the environment of the Commonwealth marine area. In particular, the EP appropriately identifies and describes the key physical, biological, social, economic, and cultural features, values and sensitivities of the environment that overlap with the EMBA. I considered that the EP utilises relevant references and information sources to adequately inform and support the descriptions, such as contemporary peer-reviewed scientific literature and other authoritative sources (Section 4, Appendix 2 and Appendix 3);
 - (c) A description of First Nations cultural features and heritage values of the EMBA (Section 7 and Appendix 3). In particular, the EP describes:

- (i) that Otway operations and associated activities occur in both Commonwealth and State waters, hence the EMBA incorporates coastal and island shorelines and a seabed environment that is, and was previously, occupied by First Nations people;
- (ii) consideration of both tangible and intangible aspects relating to First Nations cultural features was given and was supported by multiple sources of relevant and suitable information. For example, the EP (Section 4.4.4, Table 4-6) includes details of cultural features of the environment relating to First Nations People's Heritage sites and values and potential for overlap with the Operational Area and/or monitoring EMBA;
- (iii) 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 as relevant to the EMBA. The EP also provided opportunities through relevant persons consultation to inform the description of the potential for First Nations cultural features within the EMBA (which I discuss further below);
- (iv) the desktop assessment of sea country values (Section 4.4.4 and Appendix 3) undertaken by the titleholder where it reviewed publicly available literature for any records of previously identified sea country values or cultural features that may occur within the Operational Area or EMBA. A summary of sea country values or cultural features identified through the desktop assessment, and related to relevant First Nation groups, is presented in Table 4-6; and
- (v) consultation with relevant persons has built on 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 7-1. Based on the desktop assessment and information obtained from First Nations relevant persons, the titleholder identified a number of cultural features and heritage values including, but not limited to:
 - coastal/island places and objects
 - submerged sites
 - sea country
 - songlines
 - creation/dreaming sites, sacred sites and ancestral beings
 - cultural obligations to care for country
 - knowledge systems
 - connection to country
 - culturally significant species
 - marine protected areas
 - marine ecosystems and marine species.

54. I also noted that a sufficiently robust method, consistent with internationally recognised standard ISO 31000:2018 Risk Management - Guidelines, was applied in the EP for the identification and evaluation of the environmental impacts and risks of the petroleum activity (Section 5). I considered that the detail and rigour applied to the impact and risk assessments (Sections 6 and 7) is commensurate to the nature and scale of the environmental impacts and risks generated by the petroleum activity. Further, I was satisfied that information provided during relevant persons consultation had been appropriately considered, evaluated, and incorporated into the EP where it was relevant.

55. I considered that there was a clear demonstration in the EP 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.
56. Based on the matters set out above, I was reasonably satisfied that the EP was appropriate for the nature and scale of the activity, meeting the requirements of reg 34(a).

The EP demonstrates that the environmental impacts and risks of the activity will be reduced to as low as reasonably practicable: regulation 34(b)

57. In determining whether the EP demonstrated that the environmental impacts and risks of the activity will be reduced to ALARP, I considered the following:
- (a) Section 5 describes the process applied to evaluate whether impacts and risks are reduced to ALARP. A clear, systematic, and reproducible process for the evaluation of all impacts and risks is outlined, which details the control measures to be implemented. The process included an evaluation of additional potential control measures and justifies why control measures are either adopted or rejected to demonstrate that the environmental impacts and risks of the activity will be reduced to ALARP. I noted that the evaluation of the adoption of control measures is based on cross-functional team consideration of realistic and feasible controls that can reduce the environmental risk;
 - (b) The titleholder applied the environmental risk assessment process (described in Section 5) appropriately for planned and unplanned aspects of the activity, in particular for higher order impacts and risks, and evaluated seabed disturbance (Section 6.3), GHG emissions (Section 6.4), underwater sound emissions (Section 6.5), invasive marine species (Section 6.6), and accidental hydrocarbon releases (Section 6.7). 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 and risks from the activity will be reduced to ALARP;
 - (c) The evaluation of impacts and risks has informed the selection of suitable control measures to either reduce the consequence or likelihood of impacts and risks. The control measures described through Sections 6 and 7 (and summarised in Section 9) 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 matched to the nature and scale of the potential impacts and risks. The EP provided a reasonable demonstration, which I agreed with, that there are no other practical control measures that could reasonably be taken to reduce impacts and risks any further;
 - (d) Available information obtained on the cultural features of the environment was adequately considered (Section 4.4.4) and the EP evaluated potential impacts and risks to cultural features and heritage values (Section 7). The information provided during relevant person consultation was appropriately incorporated into the ALARP evaluation where applicable; particularly First Nations cultural features and heritage values;
 - (e) The EP describes the intrinsic links between environmental receptors and cultural heritage and evaluated and included control measures and associated EPSs for underwater sound (Section 6.5.5), IMS (Section 6.5.5), accidental hydrocarbon release (Section 6.7.5) and spill response relevant to reducing potential impacts and risks to First Nations cultural values to ALARP. The EP also includes additional control measures specific to cultural heritage in Section 7 (CM4: 'Ongoing Consultation' and CM39: 'Underwater Cultural Heritage Disturbance Risk Management Measures'), with associated EPSs in Section 9;
 - (f) The potential impacts from the activity to listed threatened and migratory species (including marine mammals, bird, fish and reptile species) (Matters of National Environmental Significance [MNES]) were considered during the EP assessment process;

- (g) The EP adequately identified and evaluated the potential impacts and risks from the activity to cetaceans and other marine fauna, by being informed by the likelihood of species presence, distribution and behaviour within the EMBA. In particular:
- (i) the evaluation of impacts and risks to threatened and migratory cetaceans and other marine fauna were supported by peer-reviewed literature and informed by applying suitable control measures, including those set out within the *Environment Protection and Biodiversity Conservation Regulations 2000 (EPBC Regulations)* – ‘Part 8 Division 8.1 Interacting with cetaceans’, and implementation of further adaptive management controls; and
 - (ii) the EP considered, evaluated, and detailed all reasonable control measures that could reduce impacts to threatened and migratory species, particularly whales, to ALARP (Section 6.5.5).
- (h) The EP provided reasons that were supported by evidence for why the adopted controls to manage underwater sound impacts, in particular to blue whales and southern right whales, 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 (CM) adopted include:
- (i) undertaking a pre-IMR campaign underwater noise risk review (CM17);
 - (ii) ensuring all vessel operators comply with ‘EPBC Regulations 2000 – Part 8 Division 8.1 interacting with cetaceans’ in relation to distances to marine fauna (CM13);
 - (iii) maintaining critical equipment on vessels to ensure efficient operation (including vessel combustion equipment and thrusters) (CM10);
 - (iv) implementing speed restrictions whereby vessels undertaking petroleum activities in the operational areas overlapping with preferred calving and nursing areas (<10 m water depth) within 1 km of the coastline will operate at <10 knots during times when southern right whales are expected to be present (including peak and shoulder seasons) (CM39: ‘Vessel Speed’); and
 - (v) implementing the Whale Disturbance Risk Management Procedure (CM18).

58. Based on the above, I was reasonably satisfied that the EP demonstrated that the environmental impacts and risks of the activity will be reduced to ALARP and met the requirements of reg 34(b).

The EP demonstrates that the environmental impacts and risks of the activity will be of an acceptable level: regulation 34(c)

59. In determining that the EP demonstrated that the environmental impacts and risks of the activity will be of an acceptable level, I found that:
- (a) Section 5 of the EP describes a clear, systematic, and reproducible process for demonstrating how environmental impacts and risks will be of an acceptable level and the statements and conclusions drawn by the titleholder in the EP have been sufficiently supported with scientific literature. The process is commensurate with the nature and scale of the activity and the severity of its impacts and risks with more effort and rigour applied 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) The process undertaken by the titleholder to determine acceptable levels of impact and risk for the petroleum activity involved consideration of the ‘Cooper Energy Risk Management Protocol’, the principles of ecologically sustainable development (ESD) as defined under the EPBC Act, legislative and other requirements (including applicable plans of management, recovery plans, conservation advice

- and other guidance for matters protected under the EPBC Act), internal context and external context (including feedback received by the titleholder during relevant persons consultation);
- (c) 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 and commonwealth marine areas;
 - (d) The EP has had regard to relevant policy documents, guidance, bioregional plans, wildlife conservation plans, management plans, instruments under the EPBC Act, conservation advice, marine bioregional plans, and other information on the DCCEEW website. In particular, an assessment of the activity against the relevant objectives and action areas in these documents is provided in Sections 2, 6 and 7;
 - (e) The EP demonstrates that the activity is not inconsistent with a recovery plan or a threat abatement plan for a listed threatened species or ecological community, a management plan or IUCN Reserve Management Principles in operation for an Australian Marine Park or a management plan for a Commonwealth Heritage Place. For example, the titleholder has demonstrated that marine fauna interactions from the petroleum activity will be managed in a manner that is not inconsistent with the Conservation Management Plan for the Blue Whale 2015–2025 (Commonwealth of Australia 2015) and the National Recovery Plan for the Southern Right Whale *Eubalaena australis* (DCCEEW 2024); and
 - (f) The titleholder has identified and addressed areas of uncertainty in the impact and risk evaluations (Sections 6). Predictions of environmental impact and risk are suitably conservative and supported by appropriate modelling where applicable (e.g. underwater noise modelling [Section 6.5, Appendix 6] and oil spill modelling [Section 6.7, Appendix 5]).
60. In relation to planned aspects of the activity, predictions have been made regarding impacts and risks to the environment that are considered suitably conservative and result in the inclusion of appropriate controls given the nature of the activity. For example, the environmental impact and risk assessments undertaken in Section 6 includes consideration of aspects typical for the nature and scale of operations activities, such as physical presence, planned emissions (light, noise, atmospheric and GHG), and vessel and activity discharges.
61. In relation to unplanned aspects of the activity, the EP gives appropriate consideration to risks, such as unplanned interactions with marine fauna, introduction of IMS, unplanned discharge of waste (hazardous and non-hazardous), accidental releases of hydrocarbons from vessel collisions, and well loss of containment. Uncertainty has been addressed in the evaluation of oil pollution incidents through the application of appropriately conservative stochastic modelling and appropriate justification of assumptions made. The evaluation of risks posed by spill scenarios (e.g. subsea well loss of containment and surface vessel loss of containment, evaluated in Section 6.7) 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.
62. In relation to impacts and risks to cultural features of the environment, I considered that the EP (particularly Section 7) demonstrated that this will be of an acceptable level because:
- (a) Section 4.4.4 adequately identifies First Nations cultural features and heritage values;
 - (b) The evaluation of impacts and risks to cultural features considered multiple sources of relevant and suitable information, including that gathered through consultation with First Nations relevant persons, and First Nations people's Country and Sea Country Plans. This includes those matters presented in EP Section 4.4.4 and listed above under paragraph [53(c)];
 - (c) The evaluation also addresses additional matters raised by First Nations relevant persons in relation to the identification of cultural features and heritage values that may be present in the EMBA and could

be directly or indirectly affected by the activity. For example, environmental receptors that are also cultural features identified through consultation as having particular value to First Nations peoples have been considered in Section 7.1. These cultural features include the Bonney upwelling, Deen Maar, eel migration and whale migration, with impacts and risks evaluated in Section 6 and Section 7;

- (d) I was satisfied that the outcomes of consultation with First Nations relevant persons informed the control measures the titleholder implemented for reducing impacts and risks to acceptable levels; and
 - (e) The impact and risk evaluation (Sections 6 and 7) outlines, and I accept, that:
 - (i) with the adopted control measures implemented, impacts and risks to cultural features from planned or unplanned activities will be managed to an acceptable level such that there are no impacts to cultural heritage features and no significant impacts to cultural heritage values. This includes, for example, impacts to whales from underwater sound emissions (Section 6.5) or in the highly unlikely event of an accidental hydrocarbon release to the environment from a vessel (Section 6.7); and
 - (ii) appropriate control measures have been adopted to ensure that any impacts to First Nations cultural features will be managed to an acceptable level. For example, controls to ensure that the activity does not destroy any cultural feature of the environment are evaluated and adopted (e.g. CM39: 'Underwater Cultural Heritage Disturbance Risk Management Measures').
63. Specifically, in relation to MNES, I considered that the EP demonstrates that the potential impacts (such as injury or significant behavioural disturbance) to threatened and migratory whales will be of an acceptable level because:
- (a) Whilst the Operational Area overlaps a number of BIAs for threatened, protected or migratory marine fauna (Section 4.4.2), the ongoing operational nature of the activity and short-term duration of IMR activities, along with implementation of suitable controls to reduce potential impacts described in the EP demonstrated that the activity would not be inconsistent with the Conservation Management Plan for the Blue Whale 2015–2025 (Commonwealth of Australia 2025), Guidance on Key Terms within the Blue Whale Conservation Management Plan (DAWE 2021), Blue Whale Conservation Management Plan – FAQs (NOPSEMA 2021), and the National Recovery Plan for the Southern Right Whale *Eubalaena australis* (DCCEEW 2024);
 - (b) The evaluation considers anthropogenic generation of sound by other nearby operators that may be conducted in the Otway Basin within the timeframe of the project, and the potential for cumulative underwater noise impacts from these and the activities described in the EP (Section 6.5.4.3);
 - (c) The EP uses sound transmission loss modelling undertaken by relevant experts to predict impacts and risks from underwater sound emissions to marine fauna, and in particular to blue whales and southern right whales (Table 7-10);
 - (d) The evaluation of the predicted level of impact derived from noise modelling was compared with relevant literature to demonstrate that the environmental impacts of the activity will be managed to an acceptable level. In particular, the EP (Section 6.5.4) considered recent research on blue whale and southern right whale distribution patterns published in peer-reviewed literature that indicated the possibility of presence of those species in and around the Operational Area; and
 - (e) The EP describes a range of control measures to reduce underwater sound impacts to marine fauna to an acceptable level, including:
 - (i) undertaking a pre-IMR campaign underwater noise risk review (CM17);
 - (ii) ensuring all vessel operators comply with 'EPBC Regulations 2000 – Part 8 Division 8.1 interacting with cetaceans' in relation to distances to marine fauna (CM13);

- (iii) maintaining critical equipment on vessels to ensure efficient operation (including vessel combustion equipment and thrusters) (CM10);
 - (iv) implementing speed restrictions whereby vessels undertaking petroleum activities in the operational areas overlapping with preferred calving and nursing areas (<10 m water depth) within 1 km of the coastline will operate at <10 knots during times when southern right whales are expected to be present (including peak and shoulder seasons) (CM39: 'Vessel Speed'); and
 - (v) implementing the 'Whale Disturbance Risk Management Procedure' (CM18).
64. I found the EP demonstrated that with the implementation of the proposed management measures, the petroleum activity is not expected to injure or result in biologically significant behavioural disturbance to blue whales and southern right whales, and therefore will be managed to an acceptable level.
65. I also found the EP provided an appropriate evaluation of impacts and risks specific for the nature and location of the activity and relevant environmental receptors. I considered that the evaluation is commensurate to the level of impact or risk presented and provides justifiable conclusions that impacts and risks will be managed to an acceptable level (Sections 6 and 7). The impact and risk evaluations demonstrate that the acceptable level will be met, and that the EPOs will be achieved.
66. I considered that information provided during relevant persons consultation had been appropriately considered, evaluated, and incorporated into the EP where it was relevant. The titleholder has considered information gathered from the consultation process when demonstrating impacts and risks will be managed to an acceptable level. In particular, Section 7 of the EP evaluated potential impacts and risks to First Nations cultural heritage values and sensitivities and was informed by information gathered through consultation with First Nations peoples. The EP also includes ongoing consultation and notification (CM4) to ensure that First Nations people will be central to the management of First Nations people's heritage sites and values and ensure potential impacts and risks remain at an acceptable level.
67. Based on the above, I was reasonably satisfied that the EP demonstrated that the environmental impacts and risks of the activity will be of an acceptable level and meet the requirements of reg 34(c).

The EP provides for appropriate environmental performance outcomes, environmental performance standards, and measurement criteria: regulation 34(d)

68. Section 9 of the EP contains EPOs, EPSs and measurement criteria for impacts and risks of the petroleum activity (and I refer to [50] – [66] above for more detail on these).
69. The EP provides appropriate relevant EPOs, which I considered:
- (a) Unambiguous and addressed all the identified environmental impacts and risks for the activity;
 - (b) When read in conjunction with associated EPSs, establish measurable levels for management of environmental aspects of the 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 as low as reasonably practicable; and
 - (d) Are consistent with the principles of ESD and relevant requirements (such as plans of management, recovery plans, conservation advice and other guidance for matters protected under the EPBC Act), considering items (a) and (c) above).
70. I also noted that the EP provides appropriate EPSs that:
- (a) Contain clear and unambiguous statements of environmental performance. The statements of environmental performance describe how each of the adopted control measures will function and perform to effectively reduce environmental impacts and risks to an acceptable level; and

- (b) Have clear measurement criteria that link to the EPSs and will provide a record that the EPSs have been met. The measurement criteria are suitable for verifying that the defined levels of environmental performance are being met, and for the purpose of monitoring compliance.
71. I considered that the EPOs, EPSs and measurement criteria are clearly linked and complementary of one another, as presented in Table 9–1 'EPOs, Standards and Measurement Criteria' (Section 9).
72. Based on the above, I was reasonably satisfied that the EP provided for appropriate EPOs, EPSs and measurement criteria and met the requirements of reg 34(d).

The EP includes an appropriate implementation strategy and monitoring, recording and reporting arrangements: regulation 34(e)

73. Regulation 34(e) requires that I be satisfied that the EP includes an appropriate implementation strategy and appropriate monitoring, recording and reporting arrangements.
74. The implementation strategy contains a description of the EMS for the activity, consistent with the requirements of reg 22(2). I noted that the implementation strategy outlined in Section 10 provides a range of systems, practices and processes (outlined in further detail below) which provide for all impacts and risks to continue to be managed to ALARP and acceptable levels for the duration of the activity.
75. I found that the management of change (**MOC**) process was adequately described in Section 10.11 because the process describes that:
- (a) An impact/risk assessment will be undertaken to ensure that impacts and risks from the change can be managed to meeting the nominated EPOs set out in the accepted EP as well as be ALARP and of an acceptable level;
 - (b) Risk assessment outcomes will be reviewed as to whether a revision is required under reg 39(2); and
 - (c) Changes that do not trigger a requirement for a formal revision under reg 39(2) will be considered an 'internal update' and the change logged for implementation and inspection.
76. I found that the implementation strategy includes 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 EP, including during emergencies or potential emergencies, and has the appropriate competencies and training, consistent with the requirements of reg 22(4). The key roles and responsibilities of personnel involved in the implementation, management and review of the EP are outlined in Section 10.5 and the roles and responsibilities for personnel involved in oil spill preparation and response are outlined in Section 3 of the OPEP.
77. An OPEP has been provided that includes arrangements that are suitable, given the spill scenarios presented. Specifically, the OPEP:
- (a) 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
 - (b) Contains immediate (first strike plan) response measures that provides the oil pollution arrangements and control measures in an operational deployment context.
78. I found that the monitoring, recording and reporting arrangements were described in Sections 10.12, 10.13 and 10.14, and include routine internal and external reporting requirements and incident reporting arrangements. I found these Sections detailed that the information collected will:
- (a) Be based on the control measures, EPOs and EPSs set out in the EP; and

- (b) Include environmental emission and discharge reports that record volumes of planned and unplanned discharges to marine environment and atmosphere (Section 10.13.1).
79. The EP also provides for auditing, review and management of non-conformances of the titleholder's environmental performance and the implementation strategy in Section 10.13. In response to audit and inspection non-compliances, corrective actions will be implemented and tracked to completion as per the 'Incident Investigation and Reporting Protocol' (Section 10.13.6). I considered such processes would ensure prompt action and appropriate corrective measures were taken.
80. The EP provides for the implementation of ongoing consultation arrangements in Section 11.2.6. I considered the ongoing consultation arrangements described in the EP, as required by reg 22(15), are appropriate. In particular, I noted that the titleholder has committed to:
- (a) Provide agreed milestone activity notifications where requested;
 - (b) Provide for ongoing consultations with newly identified relevant persons;
 - (c) Provide for ongoing consultation with existing relevant persons, which includes relevant authorities of the Commonwealth and State;
 - (d) Consult in the event of an emergency, including the addition of relevant First Nations contacts to the Emergency Contact Register (Table 9-1);
 - (e) Implement Management of change processes to acknowledge any feedback received from persons or organisations during the life of the EP; and
 - (f) Undertake routine external reporting requirements.
81. Based on the above, I was reasonably satisfied that the EP includes an appropriate implementation strategy and monitoring, recording and reporting arrangements and meets the requirements of reg 34(e).

The EP does not involve the activity, or part of the activity, other than arrangement 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: regulation 34(f)

82. I was satisfied that the EP clearly describes the boundaries of the petroleum activity (Section 3, Appendix 2), and demonstrates that no part of the activity will be undertaken in any part of a World Heritage Property within the meaning of the EPBC Act.
83. Based on the above, I was reasonably satisfied that 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 or a declared World Heritage property and meets the requirements of reg 34(f).

The EP demonstrates that the titleholder has carried out the consultations required by Division 3, and the measures (if any) that are adopted because of the consultations are appropriate: regulation 34(g)

84. Regulation 34(g) requires that the EP demonstrates:
- (a) The titleholder has carried out the consultations required by reg 25 (reg 34(g)(i)). This requires that the titleholder consults with each 'relevant person' as defined in reg 25(1), and imposes certain requirements for how that consultation is to occur (as specified in reg 25(2)–(4)); and
 - (b) The measures (if any) that the titleholder has adopted, or proposes to adopt, because of the consultations are appropriate (reg 34(g)(ii)).
85. Overall, I must be reasonably satisfied that consultation undertaken was appropriate and adapted to the nature of the interests of the relevant persons.

86. I noted that the titleholder's consultation methodology (Section 11) and the sensitive information part of the EP were particularly relevant to this criterion.
87. I found that Section 11.2 of the EP provides descriptions of the consultation process 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 of time to engage in the consultation process.
88. I noted that Section 11.2 contains references to the terms "functions", "interests" and "activities" for the purpose of identifying relevant persons under reg 25(1) and that their use is consistent with the definitions provided in NOPSEMA's 'Consultation in the course of preparing an environment plan guideline' (N-04750-GL2086). I considered the interpretation and application of the terms in the EP to appropriately promote the objects of the Environment Regulations, including that offshore petroleum and greenhouse gas activities are carried out in a manner consistent with the principles of ESD.
89. I found that the EP describes a clear process for the identification, and broad capture of relevant persons, in accordance with reg 25(1). This is because:
- (a) The process (Section 11.2) provides for the identification of relevant persons within all the categories of relevant persons defined by reg 25(1)(a), (b), (d) and (e). Regulation 25(1)(c) was not relevant to this activity as the EP does not relate to activities in the Principal Northern Territory offshore area. The relevant person identification methodology for a suitable range of categories is presented in Table 11-1 and Section 11.2.1;
 - (b) The titleholder considered both the Operational Area and the broader EMBA in undertaking consultation (Section 11.2.1.2 and Table 11-2). The broadest extent of the EMBA has been determined by reference to the event of a hydrocarbon release resulting from the petroleum activity (Figure 4-1);
 - (c) Table 11-1 indicates how consultation requirements were met and includes a review of the guidance published in NOPSEMA's 'Consultation in the course of preparing an environment plan guideline';
 - (d) A description of the functions, interests or activities of those persons or organisations identified as relevant persons under reg 25(1) is provided in Table 11-2;
 - (e) Table 11-2 provides the titleholder's assessment of the persons or organisations that are considered to be a relevant person within the broad categories of "Commonwealth and State agencies or authorities" (21), "Commonwealth and State fisheries" (25), "businesses" (3), environmental non-governmental organisations "eNGOs" (7), "environment groups" (15), "First Nations" (6), "Local Governments and MPs" (20), "oil and gas" (5), "other" (2), "recreational fishing" (21), "research" (4), "Surf Life Saving Clubs" (16), and "tourism" (11).
 - (f) The titleholder identified two organisations under Reg 25(1)(e), Gunditjmara Aboriginal Cooperative Ltd and Winda Mara Aboriginal Corporation, both of which are community organisations representing interests of Aboriginal people whose interests are also represented by relevant persons identified under 25(1)(d), specifically, Gunditj Mirring Traditional Owners Aboriginal Corporation (**GMTOAC**) and Eastern Maar Aboriginal Corporation (**EMAC**) (see "First Nations" in Table 11-2).
 - (g) The identification of relevant persons in the EP has been informed by multiple sources of information, such as NOPSEMA's guideline on Consultation with Commonwealth agencies with responsibilities in the Commonwealth Marine area (N-04750-GL1887) and the Victorian Aboriginal Heritage Council's list of Registered Aboriginal Parties (**RAPs**); and
 - (h) The process (Section 11.2) includes 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, advertising in national, state and relevant local newspapers and participating in a community information session.

90. The information below ([91] – [94]), provides examples of the titleholder's consultations with Commercial Fisheries and First Nations relevant persons set out in the EP that I considered when making my decision as to whether reg 34(g) was met.

Commercial Fisheries 'relevant persons'

91. The consultation records (Table 11-5, 11-6 and Appendix 4) indicate that the following commercial fisheries relevant persons provided some feedback, objection or claim, in response to the information, which the titleholder responded to and there remains no outstanding feedback, objections or claims. For example:
- (a) In February 2023, the Australian Fisheries Management Authority (**AFMA**) highlighted the importance to continue consultation with fishers. No further communication was received by the titleholder in response to further communication being sent in April 2023; and
 - (b) Abalone Council Victoria and Port Campbell Professional Fishermen's Association both responded to correspondence in July 2023 requesting information as to whether Cooper Energy is planning to undertake any exploration in the Otway Basin in the near future, and noting concerns about damages to fishing resources from seismic airguns. No further communication was received by the titleholder in response to further communications being sent to these relevant persons in August 2023.
92. In addition, the titleholder entered into arrangements with peak bodies the Seafood Industry Victoria (**SIV**) and the South East Trawl Fishing Industry Association (**SETFIA**) to disburse information from the titleholder to the individual licence holders in the region. The titleholder received no feedback, objections or claims from any individual licence holders.

First Nations 'relevant persons'

93. I noted that the titleholder has tailored their approach to First Nations consultation to assess the possible consequence of the proposed activity on their functions, interests, or activities. My evaluation of the titleholders' application of this approach is presented below:
- (a) The EP recognises that traditional Custodians are First Nations Australians (Table 4-6 and Section 7.1) who hold cultural rights and interests or who perform cultural activities over particular lands and waters and with connection to sea country. The EP provides for them to be identified and consulted as a relevant person (Table 11-2);
 - (b) Section 11.2.2 specifically addresses consultation with First Nations people, noting the method has been customised for the region. This includes reference to RAPs under the *Aboriginal Heritage Act 2006* (Vic), which are considered to be the primary source of advice and knowledge relating to Aboriginal Places or Aboriginal objects in the region;
 - (c) The methodology includes specific information pertaining to consultation with First Nations, under Section 11.2.2. The process identifies that nominated representative corporations are the point of contact with First Nations people, and guidance is to be sought from these groups in conducting consultation;
 - (d) The EP's consultation records (Table 11-6, 11-7 and Appendix 4) present evidence that relevant representative corporations were requested to forward consultation information to their members, and the titleholder asked for feedback on appropriate methods to be consulted (e.g. correspondence dated 22 November 2023).

- (e) In Section 11.2.1.2 of the EP, the titleholder notes that it has advertised so as to invite self-identification by relevant persons.
94. In applying the methodology described above, groups representing First Nations people were identified by the titleholder as relevant persons for the purpose of the activity described in the EP (Table 11-2) and consulted with in the course of preparing the EP (Table 11-6 and 11-7). The groups included:
- (a) The Bunurong Land Council Aboriginal Corporation (**BLCAC**) which was consulted via emails sent on the 25 August 2023 and 22 November 2023. Whilst an email read receipt to the November communication was obtained, no response from BLCAC was received by the titleholder;
- (b) The EMAC was consulted between May 2023 and November 2023, including a meeting held on 18 July 2023. At the time of the EP submission, I noted that the titleholder had recognised and resolved objections and claims raised by EMAC, as follows:
- (i) The EP recognises the EMAC's feedback regarding environmental and cultural sensitives in Table 4-6 and Appendix 3, and has assessed potential impacts to these in Sections 7 where applicable;
- (ii) The titleholder responded to concerns raised around the need for early contact to be made with EMAC in the event of an oil spill, in order for EMAC to provide advice on the risks to cultural heritage (Section 8.6.5); and
- (iii) The titleholder attended cultural awareness training on 28 April 2023 with the EMAC.
- (c) The Wadawurrung Traditional Owners Aboriginal Corporation (**WTOAC**) was consulted between May 2023 and November 2023. There was some discussion about WTOAC holding a meeting with the titleholder, however, despite email follow-up from the titleholder on 29 May 2023 confirming that there would be no work undertaken on Wadawurrung Country, and a further offer via email on 25 August 2023 to meet in September 2023, no meeting was held. No other feedback, objections or claims were made by WTOAC; and
- (d) The GMTOAC was consulted between May 2023 and November 2024, including via a number of exchanged correspondences (letters and emails), and participation in an in-person consultation day on 17 February 2024. Although the titleholder indicated that it was moving to an ongoing consultation phase in August 2023, the Sensitive Information Report contained further exchanges by email and letter between the GMTOAC or the Environmental Justice Australia (**EJA**) representing the GMTOAC and the titleholder up to 28 November 2024, and the EP was updated accordingly (e.g. Table 11-7 and Appendix 4). I noted that:
- (i) the EP recognises information about Sea Country values of the Guditjmara people (see Table 4-6, Section 7 and Appendix 3) and of intangible cultural heritage values (e.g. Table 7-2 summarises impacts and risks to cultural features including intangible cultural features). The information in the EP is based on a review of available literature, information directly provided by the GMTOAC and its members, including the information contained in a letter by the GMTOAC to the titleholder dated 5 February 2024 (sent out by GMTOAC on 14 February 2024) and information available in the recently published '2023-2033 Guditjmara Nyamat Mirring Plan'. This information includes, for example that:
- the surrounding waters are significant breeding grounds and habitats for culturally significant species to the Guditjmara people and also hold intangible heritage as well as submerged tangible heritage for the community
 - the cultural, spiritual and resource importance of animal species such as Kooyang (short-finned eel), Karntubul (whales) and Koorn Moorn (seals)
 - the Bonney Upwelling is a dominant ecological feature of Guditjmara Sea Country

- Deen Maar Island and its surrounds hold deep spiritual significance to Gunditjmara people.
- (ii) the EP demonstrates that the titleholder recorded and addressed specific claims made by GMTOAC regarding operational aspects of the project throughout the consultation process. This included, for example, providing adequate responses and addressing specific questions or claims raised during the 17 February 2024 workshop. This was followed up with meeting minutes sent by the titleholder by email on 5 April 2024 and covered topics such as:
- how eels and whales are protected
 - impacts to whale migration
 - what the role of GMTOAC would be in an oil spill response
 - cumulative impacts.
- (iii) the EP also demonstrates that matters raised by GMTOAC were taken into consideration. For example, the EP considered cumulative impacts from the petroleum activities in the Otway Basin, such as impact to important fauna species under Sections 6.5.4.3 (cumulative underwater noise emissions).
- (iv) when considered in their entirety, the records provided in the EP satisfy me that the consultation undertaken with GMTOAC between May 2023 and November 2024:
- was undertaken by way of a genuine, two-way exchange of information in good-faith and following reasonable communication protocols
 - was sufficient in nature for the GMTOAC to make an informed assessment of the possible consequences of the activity on their functions, interests or activities, and was consistent with the level of information provided to other groups and individuals
 - allowed for a reasonable period of time for consultation
 - sought to engage additional groups or individuals of the Gunditjmara native title group by going through the corporation, in line with the methodology presented in Section 11.
95. I found that these methods were appropriate and reasonably adapted to the nature of the interests of GMTOAC.
96. I found that the nature of the activity, description of the environment and the potential impacts and risks of the activity have been taken into account for the purpose of the titleholder identifying relevant Commonwealth or State agencies or authorities, or identifying whose functions, interests and activities may be affected by the activity. Notably:
- (a) 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 (Sections 5, 6 and 7) when identifying relevant persons; and
- (b) The titleholder considered the nature and scale of the activity and the description of the Environment when identifying relevant persons (Sections 3 and 4 and Appendix 3).
97. I was reasonably satisfied that the consultation process provided for broad capture of ascertainable persons and organisations who may have their functions, interests or activities affected by the proposed activity for the purposes of reg 25(1) and reg 34(g)(i). This was because the EP describes a clear process for the identification and broad capture of relevant persons ([86] – [96]).
98. I found that effective consultation had taken place with relevant persons in accordance with reg 25(2), (3) and (4). This is because the titleholder:

- (a) Consulted with each person or organisation identified as a relevant person in the EP (Tables 11-2, 11-3, 11-4, 11-5, 11-6, 11-7 and 11-8);
- (b) Advised relevant persons of the requirement on the titleholder to undertake consultation. This included providing relevant persons with a link to NOPSEMA's Consultation on offshore environment plans Brochure after its publication in May 2023. Table 11-6 and 11-7 records these as being provided to relevant persons in May 2023 and records of material provided are included in Appendix 4 (Sensitive information Report);
- (c) Provided relevant persons with sufficient information to allow the relevant person to make an informed assessment of the possible consequences of the activity on their functions, interests or activities, in accordance with reg 25(2). Specifically, the:
 - (i) EP includes a description of the approach for 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 (Section 11.2.1.4). This included a link to the titleholder's website that contained online materials and information relevant to the functions, interests or activities of these relevant persons;
 - (ii) titleholder tailored the information to suit the needs of the different types of relevant persons and provided information in a form that could be readily understood and appropriate for the relevant person being consulted;
 - (iii) titleholder used different materials to support the provision of information that was suited to the relevant person being consulted, such as graphics, verbal briefings and presentations (Tables 11-5, 11-6 and 11-7, Appendix 4);
 - (iv) titleholder considered relevant persons' views of what constitutes sufficient information and considered requests for additional information by relevant person and other persons the titleholder chose to contact;
 - (v) titleholder responded to requests, including through provision of additional information in relation to impacts and risks of the activity; and
 - (vi) consultation material provided sufficient information about the environment, and impacts of the activity 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. Consultation materials included emails and information sheets with links to further detailed information, newspaper advertisements and custom PowerPoint presentations for meetings.
- (d) Allowed a reasonable period of time for consultation, in accordance with reg 25(3). In particular:
 - (i) the titleholder has been consulting with relevant persons under reg 25(1)(a)–(c) for many years due to the ongoing nature of the Otway offshore operations activity, this EP constituting a 5-year revision;
 - (ii) specific information relating to the activities described in the EP was provided to relevant persons in May and August 2023. The titleholder continued to engage directly with some relevant persons thereafter. I considered the timeframe of, at minimum 6 months and up to 19 months to engage in consultation was reasonable;
 - (iii) the EP identifies that the titleholder published advertisements in a national, state and relevant local newspapers in July 2023 advising of the proposed activities and requesting feedback;
 - (iv) the EP (Section 11.2.1.5) describes the approach taken to determining a reasonable period for consultation, which was based on consideration of a relevant person's particular circumstances

and included consideration of the nature, scale and complexity of the activity, as well as the extent and severity of potential impacts and risks on each relevant person's functions, interests or activities;

- (v) the process for relevant persons consultation provided for the titleholder to take into account any availability and accessibility issues of relevant persons (e.g. Table 11-7); and
- (vi) the process considered relevant persons' views of what constitutes a reasonable period for consultation and considered requests for additional time by relevant persons. For example, additional time was provided to continue consulting with GMTOAC beyond August 2023 (where the titleholder otherwise moved to an ongoing consultation phase for this EP), flexibility was provided to engage, and regular enquiries were made regarding the status of the consultation plan.

- (e) Identified and addressed all correspondence and claims received from relevant persons by the date of the final EP submission to NOPSEMA. The manner in which the titleholder addressed responses is summarised in the EP (Table 11-5, 11-6 and 11-7), for each relevant person. This for the most part, involved the titleholder preparing and sending written correspondences (letters or email) to the relevant persons addressing their response(s). In some cases, records were provided indicating that a phone call had been returned or a meeting organised and held. Records of any written responses were also included in the sensitive information report; and
- (f) Informed relevant persons that they may request that particular information provided during consultation not be published, in accordance with reg 25(4).

99. I found that information gathered through the consultation process was incorporated into the EP and effectively informed the identification of environmental values and sensitivities, to ensure impacts and risks are reduced to ALARP and acceptable levels. In particular, it was evident that information from relevant persons:

- (a) Supported the existing identification of environmental values and sensitivities (Section 4, Appendix 2 and Appendix 3);
- (b) Has been considered in the evaluation of environmental impacts and risks, and in the titleholder's processes for demonstrating that the environmental impacts and risks of the activity will be reduced to ALARP and acceptable levels. For example, where values and sensitivities were identified by RAPs, this has been incorporated into the evaluation of risks and impacts to First Nations Cultural heritage values and sensitivities (Section 7); and
- (c) Has been considered in the titleholder's processes for demonstrating that the environmental impacts and risks of the activity will be reduced to ALARP and acceptable levels.

100. Based on the information outlined in [84] – [99] above, I was reasonably satisfied that the consultation process provided for broad capture of ascertainable persons and organisations who may have their functions, interests or activities affected by the proposed activity for the purposes of reg 25(1) and reg 34(g)(i).

101. I considered that the titleholder's assessment of the merit of all responses to objections and claims was reasonable and supported, and the measures adopted because of the consultation were appropriate as required by reg 34(g)(ii). In this regard:

- (a) The titleholder has resolved objections and claims raised by relevant persons as far as reasonably practicable, and has demonstrated that the additional control measures adopted because of the consultations are appropriate, through the processes described under paragraph [98(e)] above and evaluation of additional control measures and changes made to the EP;

- (b) This consultation summary report (Tables 11-5, 11-6 and 11-7), provides a clear listing of all objections and claims, catalogued against the evaluation and response provided by the titleholder;
- (c) In some cases, the titleholder's assessment of the merits of objections and claims resulted in the adoption of additional control measures to demonstrate that impacts and risks will be reduced to ALARP and acceptable levels. For example, control measure CM39 'Underwater Cultural Heritage Disturbance Risk Management Measures' at Table 9-1 was identified through consultation with First Nations people; and
- (d) In other cases, the titleholder's assessment of the merits of objections and claims did not result in additional control measures being adopted, as they were not practicable and/or necessary for the EP to demonstrate that impacts and risks will be reduced to ALARP and acceptable levels.

GMTOAC's specific concerns

102. From February 2024, the GMTOAC initially, and subsequently through their legal representatives EJA, argued that they were not satisfied with the manner in which consultation had been undertaken. These objections and claims were raised communicated to the titleholder in a number of letters dated 5 February 2024 (GMTOAC), 21 March 2024 (EJA), 19 April 2024 (EJA), 29 May 2024 (EJA), 7 June 2024 (EJA), 9 September 2024 (EJA) and 11 and 15 November 2024 (EJA) (Table 11-7 and Appendix 4). NOPSEMA also received correspondence directly from EJA in this regard, which was forwarded to the titleholder.
103. The objections raised were in summary, that:
- (a) GMTOAC operates on a full-participation model of representation, whereby all members are given notice of, and the opportunity to participate in, decision making including consultation with project proponents;
 - (b) GMTOAC is concerned that it has not received sufficient information or been provided with adequate time to participate in consultation with the titleholder;
 - (c) GMTOAC does not view the interactions that have taken place to date between GMTOAC and the titleholder to constitute consultation in relation to a number of environment plans, including this EP;
 - (d) Consultation for the purposes of GMTOAC's membership requires more than emails and a single meeting between the titleholder and GMTOAC's staff members or officers who do not have authority to participate in consultation on behalf of the group on consequential matters;
 - (e) Information provided at the information session (17 February 2024) only represents a limited, partial, introduction to the nature, risks and impacts of relevant activities of interest to the group and GMTOAC's members require further consultation;
 - (f) GMTOAC's members need to take appropriate, independent technical and technical legal advice on the impact of proposed activities on Gunditjmara Sea Country, individually and cumulatively; and
 - (g) GMTOAC has developed a consultation protocol ('Consultation Plan'), which will they expect to be implemented in order to commence consultation and provide a better opportunity and time for all members to participate in a co-designed consultation process and supporting capacity building to deal with their current environment plan consultation workload in the Otway basin.
104. EJA also communicated these objections and claims to NOPSEMA through copied and direct correspondence (Table 11-7 and 11-8, Appendix 4).
105. The titleholder responded to the claims raised through written correspondences (emails and/or letters) to GMTOAC and EJA dated 23 May 2024, 5 and 12 September 2024 and 28 November 2024).
106. In relation to these specific claims raised by GMTOAC and EJA (see [102] – [104] above) between February and November 2024, while I acknowledge that GMTOAC genuinely considers consultation has not been

undertaken in accordance with the Environment Regulations, having regard to the information before me, I was reasonably satisfied that consultation had occurred in accordance with reg 25. In this regard, I found that:

- (a) The titleholder first contacted GMTOAC in relation to the EP and relevant person consultation process approximately 18 months prior to the submission of the final EP for assessment (i.e., the initial contact occurred in May 2023). The titleholder had engaged in consistent communication with GMTOAC since that time with willingness to engage and discuss the activity;
- (b) The EP consultation records (as summarised in Table 11-7) show that during that time a two-way exchange of information occurred during early engagements and that the titleholder made multiple offers to consult between 29 May 2023 and November 2024, including:
 - (i) on 29 May 2023, an email was sent to initiate the consultation process which included an information sheet;
 - (ii) there were multiple calls and emails in June and July 2023 to ensure information was being received and establishing points of contact. The email of 5 July 2023 also indicated the titleholder would be agreeable to provide support to GMTOAC through payment of prescribed fees;
 - (iii) the titleholder then visited the GMTOAC Lake Condah office in July 2023 to try and set up a meeting. At this visit GMTOAC confirmed that they were aware of the request to set up a meeting and confirmed contact details;
 - (iv) the titleholder sent an email dated 25 August 2023 with information regarding the activity, which also requested the consultation information and links to their activities page website be shared with any community members who would be interested in being consulted. The titleholder also sent an email dated 22 November 2023 with information regarding the activity and which included a quick response table seeking feedback on how GMTOAC would like to be consulted;
 - (v) GMTOAC sent an email on 7 December 2023 inviting the titleholder to speak to GMTOAC and the Gunditjmara community in relation to their project. In an email dated 13 December 2023 the titleholder confirmed they would like to participate. GMTOAC then advised in an email dated 11 January 2024 that the titleholder could present at an industry consultation meeting which would be held on 17 February 2024. There were multiple calls, emails and text messages made by the titleholder in December 2023 and January 2024 seeking to clarify the information that should be presented at the 17 February 2024 industry consultation meeting;
 - (vi) the titleholder presented to GMTOAC and members of the Gunditjmara community on 17 February 2024 as part of the industry consultation session, during which project information was shared with attendees (through a power point presentation) and further consultation offered. The titleholder also assisted in funding the consultation day as requested by GMTOAC; and
 - (vii) the titleholder followed-up on this meeting with meeting minutes for GMTOAC agreement in correspondence dated 5 April 2024.
- (c) The titleholder had prepared adapted communication material (e.g., power points presentations with images, photos, maps and diagrams) to facilitate the conversations at the meeting held on 17 February 2024;
- (d) Additional correspondence (emails and letters) were exchanged between 17 February 2024 and 28 November 2024 between the titleholder and GMTOAC. The titleholder sent correspondence on 19 March 2024, 23 May 2024, 5 September 2024, 12 September 2024 and 28 November 2024. This

- included the titleholder addressing all of the GMTOAC and EJA claims and objections which is also summarised in [102] – [105], above;
- (e) The EP also includes evidence that demonstrates the titleholder acknowledged GMTOAC's request to develop a consultation plan, and sought update on its progress, (e.g. correspondence dated 5 September 2024);
 - (f) The EP included additional information on cumulative impacts in response to objections and claims raised by GMTOAC;
 - (g) GMTOAC (via EJA) provided the titleholder with the 'Gunditjmara Consultation and Negotiation Protocol' (**Protocol**) (also referred to as the 'Consultation Plan') on 11 November 2024, following the adoption of the Consultation Plan by Gunditjmara on 26 October 2024 (according to written correspondence from EJA to the titleholder on 11 November 2024); and
 - (h) The Protocol was provided to the titleholder approximately 8 months after GMTOAC had initially informed the titleholder that it was preparing such a plan, and approximately 18 months after consultation commenced.
107. The titleholder responded to the Protocol (correspondence dated 28 November 2024) indicating they remain committed to genuine and respectful consultation with GMTOAC and the Gunditjmara and they will engage with the Protocol to the extent that it is possible and appropriate to do so. The titleholder also confirmed they were willing to fund reasonable costs of GMTOAC and the Gunditjmara people to facilitate ongoing engagement in relation to the EP.
108. While I acknowledged the concerns and claims raised by the GMTOAC (and EJA), having considered the engagements and interactions summarised above, I was reasonably satisfied that the GMTOAC had been provided with a reasonable opportunity to identify how their functions, interests and activities may be affected, had been able to engage in an appropriate and adapted two-way exchange of information in relation to the activity, and had been given the necessary information (including additional information that was requested) to make an informed assessment of the possible consequences of the activity, and inform the content of the EP. I was reasonably satisfied that consultation had been carried out with the GMTOAC in accordance with reg 25.
109. In addition, the timeline that the titleholder allowed for consultation with First Nations relevant persons was substantially greater than the benchmark periods for consultation under other legislative instruments and policies as outlined in Section 11.2.2.1 of the EP. The judicial commentary in the Tipakalippa Appeal supports the proposition that the consultation process must be capable of being discharged within a reasonable period of time.
- The "Gunditjmara Consultation & Negotiation Protocol" was given to the titleholder by EJA/GMTOAC late in the consultation process, but the law does not require titleholders to enter into agreements with relevant persons or to obtain consent from relevant persons for their offshore petroleum activities to proceed.
110. The titleholder also offered opportunities for First Nations people to self-identify in response to public facing notices and implemented consultation processes through which relevant individuals with First Nations Sea Country interests (including Gunditjmara interests) could engage with the process.
111. I also note that the titleholder consulted the EMAC, which also represents the Gunditjmara people whom GMTOAC represent, providing another avenue for relevant individuals to self-identify [89], [94]. The EP also provides records indicating government and other organisations were consulted with regards First Nations cultural heritage matters in the course of preparing the EP.
112. I considered that where contact details of specific Gunditjmara people were not readily ascertainable, the titleholder had employed a suitable methodology of identifying relevant persons. This enabled the broad

identification of First Nations relevant persons, and provided the opportunity for all First Nations relevant persons who could be ascertained to be consulted by the titleholder. Whether or not a relevant person agrees that they have been adequately consulted is not determinative of whether I was satisfied that reg 25 is met. Rather, I must consider all of the facts and circumstances presented in the information that is before me, as set out above under [84] – [111]. Having done so, I was reasonably satisfied that consultation with the identified First Nations relevant persons has been carried out in accordance with reg 25.

Conclusion as to the acceptance criteria at regulation 34(g)

113. I noted that relevant persons that responded to the consultation other than the GMTOAC did not make any objections or claims relating to adverse effects of the activity. Where there were objections or claims raised by a relevant person under reg 25(1), the EP demonstrates that the titleholder assessed the merit of each objection or claim and determined whether or not additional measures were required in response.
114. I found that some relevant persons provided feedback during consultation which was not related to an adverse impact of the activity, and that the titleholder identified the feedback and indicated what changes were made to the EP in response (Tables 11-5, 11-6 and 11-7).
115. Based on the above, I was reasonably satisfied that the EP met the requirements of reg 34(g)(i) and (ii), which are that the EP demonstrates that the titleholder has carried out the consultations required by reg 25 and the measures that the titleholder has adopted, or proposes to adopt, because of the consultation are appropriate.

The EP complies with the Act and Regulations: regulation 34(h)

116. In determining whether the EP complies with the OPGGS Act, the Environment Regulations and any other regulations made under the OPGGS Act, as required by reg 34(h) I found that, among other things, the EP:
- (a) Clearly delineates information in the EP as being relevant to either Commonwealth or Victorian state waters given the cross-jurisdictional overlap of the activity;
 - (b) Is consistent with the 'Objects' of the Environment Regulations, including the principles of ESD;
 - (c) Includes an EP summary (Section 1.1) as required by reg 35(7);
 - (d) Adequately addresses section 572 of OPGGS Act regarding the maintenance and removal of property;
 - (a) Has been submitted in as required by reg 26(6); and
 - (b) Commits to complying with the requirements in regs 47, 48, 49, 50, 51, 52, 53 and 54 regarding various notifications and reporting to NOPSEMA.
117. Based on the above, I was reasonably satisfied that the EP complies with the OPGGS Act, the regulations made under the OPGGS Act and meets the requirements of reg 34(h).

Other considerations

Correspondence received directly by NOPSEMA

118. NOPSEMA received direct communications from third parties raising issues and/or expressing concerns with, and objections to, the EP throughout the course of the assessment. Information received directly from third parties was forwarded to the titleholder for consideration in the preparation of the EP.
119. The following external correspondence was directly received by NOPSEMA:
- (a) GMTOAC wrote directly to NOPSEMA in a letter dated 5 February 2024, in which they made reference to multiple title holders and proposed activities in the Otway basin, including the activities covered in this EP. The letter provides information on cultural heritage values in the area and raises concerns about the consultation approach undertaken; and

(b) EJA (representing GMTOAC) wrote directly to NOPSEMA on 4 April 2024, 25 June 2024 and 25 October 2024 to further raise concerns regarding the consultation process undertaken to date regarding this (and other) proposed activities in the Otway basin, and to request access to the EP under assessment.

120. The correspondence was processed in accordance with NOPSEMA's third party correspondence process, which includes forwarding the correspondence to the titleholder so that the titleholder can address the concerns raised in the correspondence as part of the consultation process for the EP (e.g. [104]).

121. I found that matters raised in the correspondence and addressed in the EP were either consistent with matters previously raised in the course of the consultation process, and/or had been adequately addressed in the EP, as considered above under [84] – [115].

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

122. The Program endorsed under section 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.

123. In implementing the Program, NOPSEMA conducts assessments of EPs against the requirements of the Program, which includes meeting the acceptance criteria and content requirements under the Environment Regulations. 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.

124. 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 listed threatened species and is not inconsistent with relevant recovery plans and threat abatement plans for listed threatened species. For example, I found the activity is not inconsistent with the Conservation Management Plan for the Blue Whale 2015–2025 (Commonwealth of Australia 2015) and National Recovery Plan for the Southern Right Whale *Eubalaena australis* (Commonwealth of Australia 2024). I considered these documents when determining the acceptability of the EP where impacts to listed threatened species may arise. Also see my reasons above [50] – [72];
- (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. For example, I found the titleholder had regard to the 'Assessing and Managing Impacts to Underwater Cultural Heritage in Australian Waters (Commonwealth of Australia 2024) guideline' when evaluating impacts and adopting controls in the EP (e.g. CM39: 'Underwater Cultural Heritage Disturbance Risk Management Measures'). Also see my reasons above [50] – [72]; and
- (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, wildlife conservation plans and guidelines on the DCCEEW website. For example, I found the EP requires for all project vessels to comply with the 'EPBC Regulations – Part 8 Division 8.1 interacting with cetaceans' in relation to distances to cetaceans' (CM13). See my reasons above [50] – [72].

The Program: Cumulative environmental impacts

125. In the context of the Program, cumulative impacts refers to the direct and indirect impacts of a number of different petroleum 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.
126. In the context of NOSPEMA's Decision Making Guidelines for offshore petroleum activities, cumulative environmental impacts are successive, additive, or synergistic impacts of collectively significant activities or projects with material impacts on the environment that have the potential to accumulate over temporal and spatial scales.
127. I considered the potential for cumulative environmental impacts to the Commonwealth marine area as required by the Program, noting the titleholder had specifically evaluated cumulative impacts in relevant parts of the EP. For example, I particularly noted Section 6.5.4.3 (Underwater Sound Emissions), where the EP evaluates other petroleum activities that are either underway, or proposed to commence, in the Otway Basin within the project timeframe, and identifies controls to reduce the risk of underwater sound emissions impacting cetaceans (e.g. CM17).
128. After considering the information presented in the EP, I was reasonably satisfied that, due to the localised nature and scale of the activity, the potential cumulative impact factors, the receptors at risk, the relative distance to other oil and gas activities and adopted controls, cumulative impacts of the activity were of an acceptable level.

Conclusion

129. For the reasons set out above, I was reasonably satisfied that the EP met the criteria for acceptance set out in reg 34. Being also satisfied that the titleholder was compliant with s 571(1) (and reg 16), I accepted the EP.

SIGNED




Director Decommissioning – Environment

20 January 2025

Appendix A: Relevant Terms

130. In this statement, the words and phrases have the following meaning, some of which are identically defined in the Environment Regulations:

- (a) The *Offshore Petroleum and Greenhouse Gas Storage Act 2006* is referred to as the **OPGGGS Act**.
- (b) The National Offshore Petroleum Safety and Environmental Management Authority is referred to as **NOPSEMA**.
- (c) The *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023* are referred to as the Environment Regulations.
- (d) The Otway Offshore Operations Environment Plan (Document No. CHN-EN-EMP-0001, Revision 11, dated 28 November 2024) and other documents submitted to NOPSEMA as part of the environment plan.
- (e) The *Environment Protection and Biodiversity Conservation Act 1999* is referred to as the **EPBC Act**.
- (f) The titleholder means 'Cooper Energy (CH) Pty Ltd'
- (g) The term 'petroleum activity' means in this case the operation of a licenced petroleum pipeline and other petroleum-related works and surveys within the relevant production licences.
- (h) The term 'environment' means:
 - (i) ecosystems and their constituent parts, including people and communities;
 - (ii) natural and physical resources;
 - (iii) the qualities and characteristics of locations, places, and areas;
 - (iv) the heritage value of places; and
 - (v) the social, economic, and cultural features of the matters mentioned in paragraphs (i), (ii), (iii) and (iv).
- (i) The term 'environmental impact' means any change to the environment, whether adverse or beneficial, that wholly or partially results from an activity.
- (j) The term 'control measure' means a system, an item of equipment, a person or a procedure, that is used as a basis for managing environmental impacts and risks.
- (k) The term 'environmental management system' includes the responsibilities, practices, processes, and resources used to manage the environmental aspects of an activity.
- (l) The term 'environmental performance' means the performance of a titleholder in relation to the environmental performance outcomes and standards mentioned in an environment plan.
- (m) The term 'environmental performance outcome' (**EPO**) means a measurable level of performance required for the management of environmental aspects of an activity to ensure that environmental impacts and risks will be of an acceptable level.
- (n) The term 'environmental performance standard' (**EPS**) means a statement of the performance required of a control measure.
- (o) The term 'principles of ecologically sustainable development' (**ESD**) means the principles of ESD set out in Section 3A of the EPBC Act.
- (p) The term 'relevant person' has the meaning provided under reg 25 of the Environment Regulations.

- (q) The term 'Operational Area' is taken to be the operational area for the petroleum activity as defined in Section 3.1.1 of the EP.
- (r) The Program Report – Strategic Assessment of the environmental management authorisation process for petroleum and greenhouse gas storage activities administered by the National Offshore Petroleum Safety and Environmental Management Authority under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* that was endorsed on 7 February 2014, is referred to as the Program.
- (s) The term 'as low as reasonably practicable' is referred to as '**ALARP**.'

Appendix B: Legislative Framework

131. The Environment Regulations provide that:

- (a) Before commencing a petroleum activity, a titleholder must submit an environment plan for the petroleum activity to NOPSEMA (reg 26(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 (reg 5)
- (c) An environment plan for a petroleum activity that is, or is part of, an offshore project may only be submitted if NOPSEMA 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 (reg 26(3))
- (d) If a titleholder submits an environment plan, NOPSEMA may request the titleholder to provide further written information about any matter required by the Environment Regulations to be included in the environment plan (reg 32)
- (e) If a titleholder receives a request under reg 32, they must provide the information requested by incorporating the information into the environment plan and resubmitting the environment plan within the period specified or within a longer period agreed to by NOPSEMA
- (f) If the environment plan is resubmitted under reg 32, NOPSEMA must have regard to that further information in making the decision under reg 33
- (g) Within 30 days after the day NOPSEMA publishes the environment plan (reg 28) if the NOPSEMA is:
 - (i) reasonably satisfied that the environment plan meets the criteria set out in reg 34, NOPSEMA must accept the environment plan (reg 33(1)(a));
 - (ii) not reasonably satisfied that the environment plan meets the criteria set out in reg 34, NOPSEMA must give the titleholder notice in writing (reg 33(5)); or
 - (iii) if NOPSEMA is unable to make a decision on the environment plan within the 30-day period, NOPSEMA must give the titleholder notice in writing and set out a proposed timetable for consideration of the environment plan (reg 33(3)(b)).
- (h) A notice to a titleholder under reg 33(5) must:
 - (i) state that NOPSEMA is not reasonably satisfied that the environment plan submitted by the titleholder meets the acceptance criteria set out in reg 34;
 - (ii) identify the criteria set out in reg 34 about which NOPSEMA is not reasonably satisfied; and
 - (iii) set a date by which the titleholder may resubmit the environment plan.

132. Pursuant to reg 16, 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 activity, and the compliance is in a form that is acceptable to NOPSEMA.

133. Regulation 34 provides the acceptance criteria NOPSEMA must consider in determining whether to accept an environment plan, and includes that the plan:

- (a) Is appropriate for the nature and scale of the activity;
- (b) Demonstrates that the environmental impacts and risks of the activity will be reduced to ALARP;

- (c) Demonstrates that the environmental impacts and risks of the activity will be of an acceptable level;
 - (d) Provides for appropriate environmental performance outcomes (**EPOs**), environmental performance standards (**EPSs**) and measurement criteria;
 - (e) Includes an appropriate implementation strategy and monitoring, recording, and reporting arrangements;
 - (f) 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;
 - (g) Demonstrates that:
 - (i) the titleholder has carried out the consultation required by Division 3;
 - (ii) the measures (if any) that the titleholder has adopted, or proposes to adopt, because of the consultation are appropriate; and
 - (h) Complies with the OPGGS Act and the Environment Regulations.
134. Regulation 33(10)(a)(ii) provides that NOPSEMA may accept the plan subject to limitations or conditions applying to operations for the activity.
135. 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.
136. The Environment Regulations impose a duty on the titleholder to demonstrate to NOPSEMA in the environment plan 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 ALARP and acceptable levels.

Appendix C: Key materials considered in making the decision

137. In making this decision, I considered the documents making up the EP submission in accordance with legislative requirements and NOPSEMA policy and procedure. The material that I had regard to in making this decision included:

- (a) The EP comprising:
 - (i) Otway Offshore Operations Environment Plan (Document No. CHN-EN-EMP-0001, Revision 11, dated 28 November 2024);
 - (ii) Offshore Victoria Oil Pollution Emergency Plan (Document No. VIC-ER-EMP-0001, Revision 9, dated 31 August 2023);
 - (iii) Offshore Victoria Operational and Scientific Monitoring Plan (Document No. VIC-ER-EMP-0002, Revision 5, dated September 2023);
 - (iv) Otway Offshore Operations Environment Plan Appendices (not dated); and
 - (v) Sensitive Information Otway Offshore Operations EP 2022 (not dated).

138. The legislative framework relevant to EP assessments, including:

- (a) The OPGGS Act;
- (b) The Environment Regulations; and
- (c) The EPBC Act Program¹.

139. Policies and Guidelines:

- (a) NOPSEMA Assessment policy (N-04000-PL0050);
- (b) NOPSEMA Environment plan assessment policy (N-04750-PL1347);
- (c) NOPSEMA Environment plan decision making guidelines (N-04750-GL1721);
- (d) NOPSEMA Consultation in the course of preparing an Environment Plan guideline (N-04750-GL2086);
- (e) NOPSEMA Consultation with Commonwealth agencies with responsibilities in the marine area (N-04750-GL1887);
- (f) NOPSEMA Section 572 Maintenance and removal of property regulatory policy (N-00500-PL1903);
- (g) NOPSEMA Section 270 Consent to surrender title regulatory policy (N-00500-PL1959);
- (h) NOPSEMA Petroleum activity guidance note (N-04750-GN1343);
- (i) Department of Climate Change, Energy, Environment and Water (DCCEEW), Significant Impact Guidelines 1.1 – Matters of National Environmental Significance, EPBC Act Policy Statement (2013); and
- (j) Department of Sustainability, Environment, Water, Population and Communities' (DSEWPac) 'Indirect consequences' of an action: Section 572E of the EPBC Act (2013).

140. Guidance:

- (a) NOPSEMA Environment plan content requirements guidance note (N-04750-GN1344);
- (b) NOPSEMA Petroleum activities and Australian marine parks guidance note (N-04750-GN1785); and

¹ <https://www.environment.gov.au/protection/assessments/strategic/offshore-petroleum-greenhouse-gas>

(c) NOPSEMA Oil pollution risk management guidance note (N-04750-GN1488).

141. Procedures:

(a) NOPSEMA Environment plan assessment standard operating procedure (N-04750-SOP1369).

142. Other relevant documents and records:

(a) Relevant published, peer-reviewed scientific literature, including the scientific literature cited in the EP and relevant national/international standards such as the Australian and New Zealand Guidelines for fresh and marine water quality (ANZG 2018); and

(b) Relevant policies, plans of management, recovery plans, conservation advice and other guidance for matters protected under the EPBC Act, including:

- (i) Commonwealth of Australia (2008) Conservation Advice on *Dermochelys coriacea*;
- (ii) Commonwealth of Australia (2015) Conservation Management Plan for the Blue Whale (2015–2025) – A Recovery Plan under the Environment Protection and Biodiversity Conservation Act 1999;
- (iii) Commonwealth of Australia (2017) Recovery Plan for Marine Turtles in Australia 2017–2027;
- (iv) Commonwealth of Australia (2018) Threat Abatement Plan for the impacts of marine debris on vertebrate wildlife of Australia's coasts and oceans;
- (v) Commonwealth of Australia (2019) Draft Wildlife Conservation Plan for Seabirds;
- (vi) DCCEEW (2022) National Recovery Plan for Albatrosses and Petrels;
- (vii) DCCEEW (2023) National Light Pollution Guidelines for Wildlife;
- (viii) DCCEEW (2024) National Recovery Plan for the Southern Right Whale *Eubalaena australis*; and
- (ix) DSEWPaC (2013) Recovery Plan for the Australian Sea Lion (*Neophoca cinerea*).

143. Relevant legislative requirements that apply to the activity and are relevant to the environmental management of the activity.

144. Relevant Federal Court of Australia authority.