

NOPSEMA Response to the “Independent Audit of NOPSEMA’s consideration of exploration in the Great Australian Bight”

1. Background and purpose

On 16 May 2019, the Minister for Resources and Northern Australia and the Minister for the Environment announced that a re-elected Liberal National Government would commission an independent audit of NOPSEMA’s consideration of exploration in the Great Australian Bight. The audit was to be undertaken by Australia’s Chief Scientist, Dr Alan Finkel AO FAA FTSE.

Terms of reference for the audit were released on 28 June 2019 and stated the purpose of the audit was *“to provide an independent assurance that NOPSEMA’s assessment and decision making processes regarding the current proposed exploration activity are consistent with the requirements of the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (the Environment Regulations).”*

2. Audit findings and summary NOPSEMA response

NOPSEMA welcomed the opportunity to have its consideration of exploration in the Great Australian Bight opened to scrutiny by the independent audit team under the direction of Australia’s Chief Scientist.

The Chief Scientist’s Audit Report, released on 20 September 2019, recognises NOPSEMA as a *“highly skilled, professional and competent regulator”* with *“appropriate processes and practices to ensure environment plans are assessed against relevant, sufficient and complete scientific and technical information”*.

Importantly the report did not raise any formal recommendations with respect to NOPSEMA’s assessment and decision making processes and confirmed that *“NOPSEMA has appropriate processes and procedures in place to meet its regulatory requirements under the Environment Regulations.”* NOPSEMA will continue to apply these processes to the consideration of all activities, including those proposed in the Great Australian Bight.

The audit raised several opportunities for improvements to the transparency of the environmental decision making process and greater clarification for interested stakeholders on how NOPSEMA makes decisions and key requirements under the Environment Regulations.

The Minister for Resources and Northern Australia has modified NOPSEMA’s Ministerial Statement of Expectations to incorporate the opportunities for improvement identified in the audit. NOPSEMA’s CEO has taken action and updated NOPSEMA’s published Statement of Intent to provide a high level overview of the measures NOPSEMA is taking to address the opportunities identified in the report.

NOPSEMA recognises growing community interest in the progression of petroleum activities through the regulatory assessment process. Further, NOPSEMA acknowledges that stakeholders are seeking to have more insight into regulatory decision-making. To enhance transparency, where there is heightened stakeholder interest in an activity, NOPSEMA will publish further explanatory information on its website regarding the nature of interim steps prior to accepting or refusing an environment plan.



NOPSEMA will also provide clearer guidance regarding assessment criteria relevant to levels of impact and risk, as well as further clarification of what it considers when assessing whether titleholders have appropriately identified and consulted with relevant persons.

NOPSEMA notes that several opportunities for improvement have been raised for other organisations and will work constructively and cooperatively with relevant stakeholders, including Commonwealth departments and agencies where NOPSEMA's involvement and contribution can be of benefit.

3. Detailed response to individual findings and opportunities

Detailed responses and intended actions against each of the Chief Scientist's findings and opportunities are provided in Table 1 below. The timing of the actions is dependent on resources and engagement with stakeholders. The actions are being progressively completed through 2019 with a view to completion in early 2020.

NOPSEMA plans to report on progress and seek input to actions taken to address the findings via the NOPSEMA Community and Environment Reference Group.

Table 1 – Summary of NOPSEMA’s response to the Chief Scientist Audit.

Chief Scientist Audit		NOPSEMA response and proposed action(s) (if any)
Findings (extract)	Opportunities	
<p>NOPSEMA has appropriate processes and practices to ensure environment plans are assessed against relevant, sufficient and complete scientific and technical information.</p> <p>NOPSEMA has clear guidance material in place to assess environmental impacts and risks.</p> <p>Stakeholders desired a greater level of transparency from NOPSEMA during the assessment and decision-making process, prior to a final decision on the environment plan.</p>	<p>1. NOPSEMA could enhance transparency during the assessment and decision-making process – for example, by providing further public detail of requests for written information and opportunities for the titleholder to modify and resubmit an environment plan.</p>	<p>NOPSEMA recognises there can be significant interest in the progression of some petroleum activities through the assessment process and acknowledges that stakeholders are seeking to have more insight into decision-making including interim deliberative process steps. NOPSEMA also seeks to ensure that good administrative decision making principles, as identified under the <i>Administrative Decisions Judicial Review Act 1977</i> (ADJR Act), are implemented to provide a fair process for all parties.</p> <p>NOPSEMA notes the Department of Industry, Innovation and Science (DIIS) conducted a policy review of the transparency and consultation provisions of the Environment Regulations during 2018 and 2019. The review process specifically considered the transparency of interim decision making steps during assessments and sought broad stakeholder feedback on the concept. The review process culminated in regulatory changes to increase transparency of the assessment process and decision making by NOPSEMA on environment plans which came into force in April 2019. These measures did not extend to changing the Australian Government’s policy position or regulations to provide for increased transparency of deliberative process steps and NOPSEMA’s interactions with titleholders during assessments.</p> <p>Actions:</p> <ol style="list-style-type: none"> a. In order to enhance transparency, NOPSEMA will amend its Environment Plan Assessment Policy to require publication of further explanatory information regarding the nature of interim steps (i.e. prior to accepting or refusing to accept an environment plan). Where there is heightened public interest in assessments, NOPSEMA will publish further explanatory information in a manner that ensures adherence to good decision-making principles and is in accordance with the law. For example, content would be published on NOPSEMA’s website to provide updates and explain actions taken by NOPSEMA. b. For each final decision on environment plans where public comments have been received or where otherwise considered appropriate, NOPSEMA will include information in Key Matters Reports that document how requests for information or

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		<p>opportunities to modify and resubmit resulted in changes to the environment plan during the assessment process.</p> <p>c. NOPSEMA will work with DIIS to review the transparency of the assessment and decision-making process after one year of the amended regulations being in effect to consider whether further regulatory transparency provisions may be warranted.</p>
<p>“As low as reasonably practicable” (ALARP) and “acceptable” are not concepts well understood by all community stakeholders.</p>	<p>2. NOPSEMA could provide clearer guidance to the public on what it considers when it assesses environmental impact and risk to be as low as reasonably practicable and acceptable.</p>	<p>NOPSEMA recognises that “as low as reasonably practicable” (ALARP) and “acceptable” levels of impact and risk are subjective criteria and may be unfamiliar to some stakeholders. Generic and simplified quantitative descriptions cannot be given in relation to these concepts due to the diverse and varied environments existing in Australia’s offshore areas. There is an opportunity for NOPSEMA to build stakeholders understanding of these concepts and make better connections between NOPSEMA’s decision-making criteria and content specifically about impacts and risks.</p> <p>Action:</p> <p>a. To provide clearer guidance regarding levels of impact and risk, NOPSEMA will update information on its public website, to explain decision-making and typical factors that are considered when assessing impact and risk, along with where in environment plans this information can be reviewed to better appreciate activity-specific information.</p> <p>b. NOPSEMA’s Assessment Policy will be amended to require that where Key Matters Reports are issued for decisions (Action 1(b)), they will explain areas of consideration and address key environmental impact and risk topics.</p>
<p>Parties consulted by the titleholder as relevant persons feel appropriately included in regulatory processes. Parties not consulted as relevant persons by the titleholder said they did not always understand why they were not determined to be relevant persons. The titleholder has outlined in its environment plan an extensive</p>	<p>3. NOPSEMA could provide further clarification to the public of what it considers when it assesses whether titleholders have appropriately identified and</p>	<p>NOPSEMA acknowledges there appears to be confusion regarding the distinction between statutory relevant person consultation and broader community engagement. NOPSEMA recognises some stakeholders are dissatisfied in instances where they do not fall into the category of a ‘relevant person’ in accordance with the Environment Regulations. As a result opportunity for input to the preparation of an environment plan or to NOPSEMA’s assessment of an environment plan may be limited to a public comment process. NOPSEMA promotes and encourages titleholders to undertake broad engagement with stakeholders and has documented good practice guidance, however this is not covered by legislation and cannot be enforced by NOPSEMA. The current suite of information products produced by NOPSEMA on this topic may contribute to misunderstanding regarding what is required to comply with</p>

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commitment to engagement with communities, but some stakeholders remained unsatisfied.	consulted with relevant persons.	<p>statutory relevant person consultation provisions versus what is suggested to titleholders as good practice engagement with other stakeholders beyond the statutory relevant person consultation required by the Environment Regulations.</p> <p>Action:</p> <ul style="list-style-type: none"> a. Publish a regulatory Bulletin to clarify what NOPSEMA considers when it assesses whether titleholders have appropriately consulted with relevant persons to address confusion between statutory consultation with ‘relevant persons’ and community engagement, which is not regulated and cannot be enforced by NOPSEMA. b. Amend existing regulatory guidance and resources on NOPSEMA’s website to further clarify the requirements for statutory consultation with ‘relevant persons’ versus broader stakeholder engagement.
	4. Titleholders could consider ongoing community engagement opportunities for stakeholders not meeting the regulatory definition of relevant persons.	<p>NOPSEMA notes the Chief Scientist has identified this as consideration for titleholders.</p> <p>As mentioned above, NOPSEMA will continue to promote that titleholders implement good practice in community engagement while also ensuring information is readily provided to stakeholders to explain and clarify that community engagement is not regulated and cannot be enforced by NOPSEMA.</p>

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<p>NOPSEMA has well-documented processes to appropriately take into account matters protected under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (EPBC Act) and Australian Marine Park values as part of the assessment process. Titleholders are aware of the requirement to take account of these matters. However, there is limited public information for stakeholders detailing how NOPSEMA takes matters protected under the EPBC Act into account.</p>	<p>5. NOPSEMA could provide clearer public guidance on how it considers matters protected under the EPBC Act and the principles of ecologically sustainable development in its decision-making.</p>	<p>NOPSEMA acknowledges that there is a complex set of requirements that apply to offshore petroleum activities arising from the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (EPBC Act). Although these are documented in the EPBC Program Report, NOPSEMA’s Environment Plan Decision-making Guidelines, Environment Plan Content Requirements Guidance and Guidance for Petroleum Activities and Australian Marine Parks, NOPSEMA recognises there is value in publishing a consolidated list of EPBC Act-related requirements and how NOPSEMA considers these along with the principles of Ecologically Sustainable Development (ESD).</p> <p>Actions:</p> <ul style="list-style-type: none"> a. NOPSEMA will publish guidance to clarify how NOPSEMA considers matters protected under the EPBC Act and principles of ESD in decision-making. b. Existing guidance material (Decision Making Guidelines, Guidance Note for Petroleum Activities and Australian Marine Parks) will be amended to better clarify requirements that apply and/or how NOPSEMA considers these matters in its decision-making.
<p>A number of documents that NOPSEMA and titleholders are required to take into account as part of environment plan drafting and assessment are managed by other government agencies external to NOPSEMA. These agencies are responsible for updating this information at regular intervals and there is a possibility that some documents are not up-to-date. NOPSEMA has demonstrated it is aware these documents contain potentially outdated information and the audit team is satisfied NOPSEMA has appropriate processes and practices in place to ensure environment plans reference</p>	<p>6. The Commonwealth Government could ensure documents and information from other organisations on which NOPSEMA and titleholders relies rely are maintained and kept up-to date to reflect current and emerging science.</p>	<p>NOPSEMA notes the Chief Scientist has identified this as a consideration for the Commonwealth Government.</p> <p>NOPSEMA acknowledges that there is an opportunity for holders of documents and information that titleholders and NOPSEMA rely on to play a role in ensuring such information is up to date and reflects current and emerging science. NOPSEMA will work with the relevant Departments (for example the Department of Environment and Energy) to assist in identifying relevant documents and information and input to their actions to respond to this consideration.</p>

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<p>complete scientific and technical information, including additional up to-date information as required, and that this information is used appropriately in its assessment and decision-making process. The audit team is satisfied the potentially outdated plans do not limit NOPSEMA’s process for assessment and decision-making consistent with the Environment Regulations.</p>		
<p>The stakeholders with whom the audit team met held NOPSEMA’s engagement approach in high regard. The audit team’s consultations found a lack of understanding about oil-spill modelling and the potential impacts or risks of a credible worst-case oil spill. The maps of the worst-case oil spill models have been incorrectly interpreted by some stakeholders as what might occur from a single spill, rather than being the combination of many scenarios intended to determine the boundary of the area addressed by the environment plan.</p>	<p>7. Titleholders could consider ways to better present oil-spill modelling, including individual oil spill scenarios, to communicate the risk and likely extent of an oil spill.</p>	<p>NOPSEMA notes the Chief Scientist has identified this issue as a consideration for titleholders. NOPSEMA acknowledges this issue and will continue to encourage titleholders both individually and collectively through the relevant industry associations. NOPSEMA has prepared high level information and education material to explain oil spill risk evaluation, however titleholder documents at times include oil spill risk evaluation outputs presented in a way that enable them to be misinterpreted or misrepresented. While this does not present an issue to NOPSEMA’s oil spill risk specialists, who are trained and experienced in interpreting spill risk evaluation, NOPSEMA acknowledges the potential for the community and some stakeholders to misinterpret this information.</p> <p>NOPSEMA will continue to publish information that seeks to clarify key principles and provides advice on how to interpret spill risk evaluation both generally and, where relevant, in Key Matters Reports.</p>



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<p>There is a role for governments and their agencies to better explain, on a continuous basis, how the regulatory regime works to manage risks to the environment. The audit team’s consultation sessions indicated communities wanted more information on the measures in place to prevent an oil spill and the plan if a spill occurs.</p>	<ol style="list-style-type: none"> 8. Governments could better explain to the public how the offshore industry is regulated and governed. This would help create a greater understanding of the low probability of risks eventuating. 9. Governments could better promote, and publish, how a response will be coordinated in the event of an oil spill, including where a spill crosses jurisdictional boundaries. 10. Governments could consider options to improve the transparency of measures a titleholder proposes to reduce the risk of an oil pollution incident. 	<p>NOPSEMA notes the Chief Scientist has identified this as consideration for Government.</p> <p>NOPSEMA will work with relevant agencies in support of any action they may take to address this opportunity.</p>

