

# Offshore project proposal decision making

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## Abbreviations, Acronyms and Definitions

CEO	Chief Executive Officer
DAWE	Department of Agriculture, Water and the Environment
Decision maker	CEO of NOPSEMA
Environment Regulations	Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023
EP	Environment plan
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPO	Environment performance outcome
ESD	Ecologically sustainable development
NOPSEMA	National Offshore Petroleum Safety and Environmental Management Authority
OPGGs Act	<i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i>
OPP	Offshore project proposal
Program	The environmental management authorisation process for petroleum and greenhouse gas storage activities administered by NOPSEMA under the Environment Regulations endorsed by the Minister for Environment under section 146 of the EPBC Act <sup>1</sup> .

<sup>1</sup> [Strategic assessment of the environment management authorisation process for offshore petroleum and greenhouse gas storage activities under the Offshore Petroleum and Greenhouse Gas Storage Act 2006](#)

Proponent	A person who submits an offshore project proposal to the Regulator
World Heritage property	A declared World Heritage property is an area that has been included in the World Heritage List or declared by the Minister to be a World Heritage property

## General principles

### 1. Introduction

The Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023 (Environment Regulations) require submission of, public consultation on and NOPSEMA's assessment and acceptance of an 'offshore project proposal' (OPP) prior to the commencement of offshore projects for petroleum recovery. A NOPSEMA decision to accept an OPP is a form of project-level approval that gives proponents the opportunity to continue with more detailed environmental planning and assessment.

It is important to note that NOPSEMA's acceptance of an OPP does not authorise a titleholder to carry out any project-related offshore activities in an offshore area. Rather, it allows the titleholder to submit activity-specific environment plans (EPs) for project-related activities to NOPSEMA for assessment and decision. It is an offence for a titleholder to carry out an activity if there is not an EP in force for the activity.

The intent of the OPP assessment process is to deliver the same environmental outcomes as the process for environmental assessments under the EPBC Act. Goals of the OPP process are to:

- Provide an environmental assessment process to evaluate offshore projects that have potential for significant impacts on matters protected under Part 3 of the EPBC Act;
- Provide the public with an opportunity to review and provide input during the development of proposed offshore projects;
- Allow NOPSEMA to make a whole-of-project assessment of the acceptability of proposed offshore projects;
- Ensure that decisions relating to new offshore projects are made taking into account whether, based on information before the decision-maker at the time, if project activities were to be authorised to proceed, those activities would be able to be carried out in a manner consistent with the principles of ecologically sustainable development (ESD); and
- Provide a regulator's decision on the acceptability of an offshore project, to inform industry's investment decisions.

Offshore petroleum and some greenhouse gas activities also have access to the EPBC Act (Part 10) class of actions approval under the endorsed NOPSEMA EPBC Act Program<sup>2</sup> (refer to s3.3 of this Guideline).

<sup>2</sup> Streamlining Offshore Petroleum Environmental Approvals - Program report

## 2. Purpose

The purpose of this guideline is to set out the considerations of NOPSEMA in making decisions in accordance with the legislated criteria relevant to OPPs. This guideline:

- Communicates the key factors that influence NOPSEMA's decision making in relation to decision making criteria for:
  - suitability of an OPP for publication (Regulation 9(4)) ('Stage 1' of the OPP assessment process); and
  - whether to accept or refuse to accept an OPP (Regulation 13(4)) ('Stage 2' of the OPP assessment process);
- Provides information for proponents and stakeholders to understand NOPSEMA's regulatory decision making;
- Imparts transparency on the way in which NOPSEMA's OPP regulatory decisions are made.

This guideline should be read in conjunction with the Environment Regulations, NOPSEMA's published policies and NOPSEMA's OPP content requirements guidance note (GN1663).

## 3. OPP decision making

### 3.1. Criteria for acceptance of an OPP

Under the Environment Regulations there are two stages of assessment and decision making for an OPP. Decision making under this two-stage process requires NOPSEMA to make judgements regarding:

- The suitability of an OPP for publication for public comment (regulation 9); and
- Whether to accept the OPP (regulation 13).

Frameworks for decision making at each stage of an OPP assessment include the regulatory construct that the decision maker be 'reasonably satisfied'. This construct gives NOPSEMA a level of discretion in making administrative decisions on OPPs. Specifically, a NOPSEMA decision maker will be reasonably satisfied when:

- the criteria in regulation 9 and 13 are met; and
- there is an objective, reasonable basis for that satisfaction supported by the facts, evidence and reasoning presented by the proponent in the OPP.

In assessing an OPP submission, a team of NOPSEMA assessors exercise professional judgement over the facts, evidence and reasoning presented in the OPP, to make findings against the relevant requirements and criteria for the OPP. In accordance with the relevant NOPSEMA assessment policy and procedures, these findings inform the decision maker when deliberating on whether they are or are not reasonably satisfied that relevant decision criteria are met.

Each criterion in regulations 9 and 13 is interpreted and explained in this guideline. For an OPP to be deemed suitable for publication or acceptance, the decision maker will need to be reasonably satisfied that all criteria are met.

## 3.2. Principles of administrative decision making and ecologically sustainable development (ESD)

When making decisions in accordance with regulations and 13 NOPSEMA:

- applies the principles of administrative decision making set out in Appendix A to this Guideline; and
- takes into account the principles of ecologically sustainable development (ESD) as set out in Part 3A of the EPBC Act (see Appendix B), noting the principles are referred to in decision-making criteria for suitability for publication and acceptance of an OPP.

## 3.3. EPBC Act and NOPSEMA's Program responsibilities

### 3.3.1. EPBC Act requirements

NOPSEMA's environmental authorisation processes (OPP and Environment Plan) together, as the Program, ensure that equivalent environmental protection outcomes to those achieved under the EPBC Act processes continue to be achieved without the need for separate referral and decisions under the EPBC Act.

NOPSEMA applies and complies with EPBC Act protection responsibilities under the environmental management authorisations Program endorsed by the Minister for Environment under section 146 of the EPBC Act (the Program) by implementing Program commitments in Table 2 and mechanisms set out in Table 6 of the Program report<sup>3</sup>.

### 3.3.2. Program requirements

In implementing the Program, NOPSEMA conducts assessments of OPPs and environment plans against the requirements of the Program, including the acceptance criteria and content requirements under the Environment Regulations. NOPSEMA is obliged to take into account all relevant considerations in exercising its decision-making power.

To ensure that appropriate environmental outcomes are able to be achieved during implementation of activities that part of an offshore project, decisions at the project level must take into account program requirements that apply to activities via EPs. That is, specific program commitments outlined in Table 2 of the Program report must be applied during decision making on offshore projects.

## Criteria for decision making

## 4. Regulation 9(4) – suitability for publication (Stage 1)

NOPSEMA refers to its assessment of the suitability of an OPP for publication as 'Stage 1', as this is the first part of a two-part assessment process for an OPP under the Environment Regulations.

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<sup>3</sup> Streamlining Offshore Petroleum Environmental Approvals: 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*, Program Report, February 2014

## 4.1. Criterion – 9(4)(a) Appropriate identification and evaluation of environmental impacts and risks

### 4.1.1. Outline

The criterion in paragraph 9(4)(a) is that the OPP appropriately identifies and evaluates the environmental impacts and risks of the project. In applying judgements to the matter of *appropriateness*, NOPSEMA considers whether the OPP sufficiently identifies and evaluates project impacts and risks that are relevant to the various project elements and component activities and the environment that may be affected.

### 4.1.2. Intent and context

At Stage 1 of an OPP assessment, the information provided in an OPP that is relevant to this criterion needs to be sufficient to allow the public to understand the environmental impacts and risks of the project and make reasonably-informed comment on the OPP. At this stage of an assessment, NOPSEMA does not specifically consider whether the environmental impacts and risks will be managed to an acceptable level.

Note: Further information may be requested in Stage 2 of the assessment to support the decision maker in determining whether or not to accept the OPP.

### 4.1.3. Factors that influence decision making

When making a decision regarding the *appropriateness of the identification* of environmental impacts and risks in an OPP, the decision maker considers:

- **Whether the proponent has identified all of the relevant pathways for environmental impacts and risks** from the project and its component activities.
- **The completeness of the proponent's description of the existing environment** that may be affected by the project, including whether:
  - matters protected under Part 3 of the EPBC Act are adequately identified and described utilising relevant information including, though not limited to, information available on the Department of Agriculture, Water and the Environment (DAWE) website such as plans of management, threatened species recovery plans, conservation advices, bioregional plans and spatial data (e.g. National Conservation Values Atlas); and
  - Any other key physical, biological and socio-economic features, values and sensitivities of the environment of the Commonwealth marine area or on Commonwealth land that are applicable and have been identified and described using relevant published references and information sources.

When making a decision regarding the *appropriateness of the evaluation* of environmental impacts and risks in an OPP, a decision maker considers:

- **Whether all identified environmental impacts and risks have been evaluated**, with more effort applied to the environmental aspects of the project with the greatest potential for impact/risk.
- **Whether a systematic evaluation process is applied consistently** throughout the OPP that provides for:
  - defining acceptable levels of environmental impact and risk supported by relevant context including legislative requirements (e.g. relevant requirements of the EPBC Act and the endorsed NOPSEMA

Program<sup>4</sup>), policy frameworks, scientific literature, standards, guidelines, plans of management and stakeholder consultation;

- evaluation of the predicted extent, severity and duration of environmental impacts and risks supported by interpretation and analysis of relevant published science and project-specific environmental studies;
  - identification of uncertainty associated with predictions of all environmental impacts resulting from the project and both likelihood and consequence metrics for all risks to the environment associated with unplanned events;
  - comparison of the predicted environmental impacts and risks with the defined acceptable levels and the case made by the proponent that impacts will be of an acceptable level;
  - analysis of management action(s) required to reduce environmental impacts and risks, where those impacts and risks, if left untreated, may exceed defined acceptable levels; and
  - well-supported conclusions as to why and how the acceptable level(s) of impacts and risks will be met.
- **The description of the range of feasible alternatives** to the project and justification for why these represent all of those that are possible or can be achieved.
  - **The adequacy of the proponent's explanation, analysis and reasoning, for discarding the feasible alternative(s)**, in particular those feasible alternatives that have reduced environmental impacts and risks when compared to the preferred option.

## 4.2. Criterion – 9(4)(b) Environmental performance outcomes

### 4.2.1. Outline

This criterion requires the OPP to set out environmental performance outcomes (EPOs) that are consistent with the principles of ESD and relevant to the identified environmental impacts and risks for the project. A decision maker must consider whether the EPOs presented meet both of these requirements when deciding if an OPP is suitable for publication.

### 4.2.2. Intent and context

The EPOs are measurable levels of the performance required for the management of environmental aspects of an activity to ensure that environmental impacts and risks will be of an acceptable level<sup>5</sup>. For Stage 1 of an OPP assessment, the intent of the criterion is to ensure that an OPP provides content to enable the public to make informed comment on the proposed EPOs for the project's impacts and risks and how they relate to the principles of ESD.

### 4.2.3. Factors that influence decision making

When making a decision regarding the *consistency of EPOs with the principles of ESD*, the NOPSEMA decision maker considers:

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<sup>4</sup> The NOPSEMA Program consists of the Environment Regulations inclusive of amendments that took effect from 28 February 2014 and the Program commitments as specified in the Program Report - Streamlining Offshore Petroleum Environmental Approvals, Program Report February 2014

<sup>5</sup> Proponents are encouraged to refer to the OPP contents requirements guidance note for guidance on establishing EPOs (Ref: N-04790-GN16630)

- Whether EPOs are generally consistent with the meaning of an EPO in Regulation 5 of the Environment Regulations.
- The reasons provided in the OPP as to **why the proponent considers that the EPOs are consistent with the principles of ESD** taking into account all ESD principles set out in section 3A of the EPBC Act.

When making a decision regarding the *relevance of EPOs to the identified environmental impacts and risks*, the decision maker considers whether:

- EPOs have a sufficient breadth of scope so as to be **relevant to each of the environmental impacts and risks identified in the OPP**, noting that a single EPO may apply to multiple impacts and risks where they are logically grouped by the proponent.
- it is evident that EPOs are **applicable to the management** of the project's environmental aspects and they are able to be **linked to the proponent's<sup>6</sup> defined acceptable levels** of environmental impact and risk.

### 4.3. Criterion – 9(4)(c) No project activity undertaken in a World Heritage property

#### 4.3.1. Outline

This criterion requires that the OPP includes content for the decision maker to be reasonably satisfied that the proposal does not involve an activity or part of an activity being undertaken in any part of a declared World Heritage property within the meaning of the EPBC Act<sup>7</sup>.

#### 4.3.2. Intent and context

World Heritage properties are places that have universal value that transcends the value they hold for a particular nation (DAWE, 2020<sup>8</sup>). The overarching intent of this requirement is to protect Australian declared World Heritage properties, by preventing planned offshore projects and activities from occurring in these areas.

A declared World Heritage property has a specific meaning under the EPBC Act. Under the EPBC Act, a declared World Heritage property is one that is included on the World Heritage List, or if not yet on the list, specified in a declaration made under section 14 of the EPBC Act.

#### 4.3.3. Factors that influence decision making

When making a decision whether the project involves any activity or any part of an activity in any part of a declared World Heritage property, a decision maker considers:

- Content of the OPP that describes the locations of the project and project activities in the context of the boundaries of declared World Heritage properties.

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<sup>6</sup> At stage 1 of the assessment process, NOPSEMA assesses the relevance of EPOs by considering whether there is a linkage between the EPO and the proponent's defined acceptable level of impact. NOPSEMA may not agree that the proponent's defined acceptable levels of environmental impact or risk are appropriate at this stage.

<sup>7</sup> Environmental monitoring activities or responses to environmental emergencies associated with project activities located inside the boundaries of a declared World Heritage property are excluded from this criterion, given their purpose in mitigating risk and understanding environmental effects. Environmental monitoring and response activities are specifically provided for under criteria for acceptance of an EP.

<sup>8</sup> <https://www.environment.gov.au/heritage/about/world-heritage>, cited 2 August 2020



- The clarity and consistency of the information presented in the OPP, including maps and figures, that describes the location of the project and planned project activities in the context of any part of a declared World Heritage property.

#### 4.4. Criterion – 9(4)(d) OPP sufficiently addresses content requirements (Regulation 7)

##### 4.4.1. Outline

This criterion requires the OPP to address matters required by regulation 7 of the Environment Regulations and for the relevant content to be sufficient. Regulation 6(4) relates to the form of an OPP and Regulation 7 relates to content requirements.

A decision-maker must be reasonably satisfied that the proposal meets each of the requirements under regulation 7 when deciding that an OPP is suitable for publication.

##### 4.4.2. Intent and context

The intent of Regulation 7 is for a proponent to develop a comprehensive written submission to be presented in a form that allows the public to easily review it and provide informed feedback on the environmental impacts and risks of the project, alternative options, EPOs and any other relevant environmental protection and management matters.

With inclusion of the word “sufficiently”, this criterion affords the decision maker some discretion in deciding whether the OPP addresses all content requirements.

##### 4.4.3. Factors that influence decision making

When making a decision regarding the sufficiency of OPP content required by regulation 7, the decision maker considers:

- Whether the OPP includes **information that addresses each of the content requirements in regulation 7** with enough clarity, consistency and detail **to allow the public to make informed comments. The decision maker considers factors** including:
  - **The clarity and consistency of the description of each activity that is part of the project** including project location, facilities that are proposed to be used to undertake the activity and proposed timetable for carrying out the project and component activities.
  - **The level of detail given when describing actions proposed to be taken following completion of the project**, including measures that will allow structures, property and equipment to be removed when no longer in use and ensure compliance with the requirements of section 572 of the OPGGS Act.
- The **adequacy of the description of the existing environment that may be affected including the identification and description of values and sensitivities of the environment** (e.g. matters protected under Part 3 of the EPBC Act) that may be affected by the project.
- The **inclusion of EPOs** considering the factors that influence decision making outlined in section 3.2.3 of this guideline.
- The evidence in the OPP of effort put towards identifying and **describing feasible alternatives to the project or any activity that is part of the project** taking into account the factors that influence

decision making relevant to the feasible alternatives analysis outlined in section 3.1.3 of this guideline.

- Whether content is present that describes requirements relevant to the environmental management of the project and how these requirements will be met.
- The **appropriateness of the detailing and evaluation of environmental impacts and risks** considering the factors that influence decision making outlined in section 3.1.3.
- Whether **reports of environmental studies undertaken to support the evaluation of impact and risks are available for review by the public** (appended to OPP or web links provided).
- The form of the OPP, including **whether it is judged overall to be a suitable document on which the public can make comment**, including by providing for an evidence-based assessment of impacts and risks, is considered legible and interpretable by the public.
- **References to and application of relevant materials published on the DAWE website<sup>9</sup>.**

## 5. Regulation 13(4) – Acceptability of the proposal (Stage 2)

NOPSEMA refers to its assessment of another copy of the OPP submitted by a proponent following the close of the public comment period as ‘Stage 2’, as this is the second part of a two-part assessment process for an OPP under the Environment Regulations. A key distinction between Stage 1 and Stage 2 of the OPP assessment process, is that decision criteria for the Stage 2 assessment prompt explicit consideration of how the proponent demonstrates that environmental impacts and risks will be managed to an acceptable level. A decision to accept or refuse the proposal is under regulation 13(1) and 13(2), with the criteria outlined in 13(4).

### 5.1. Criterion – 13(4)(a) Public comments adequately addressed

#### 5.1.1. Outline

This criterion requires a proponent to implement a thorough process to demonstrate consideration of public comments received during the public comment period and explain how comments received have been addressed. A summary of all comments must be included in any OPP submitted to NOPSEMA following the public comment period. This includes an assessment of the merits of each objection or claim made and statements that support the proponent’s decision on what changes (if any) were made to the OPP in response to the comments.

#### 5.1.2. Intent and context

A public comment period allows the public to understand the environmental impacts and risks of new projects, review the proponent’s proposed EPOs, and provide comments early in the planning process for proposed offshore projects. This provides proponents with the opportunity to identify any new relevant information in relation to impacts and risks identified by the public so that these can be adequately addressed prior to the Stage 2 assessment by NOPSEMA.

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<sup>9</sup> For example, this may be relevant to describing the environment, evaluating environmental impacts and risks and defining EPOs and include regard given to materials such as policy documents, conservation advices, guidelines, Ramsar Information Sheets, Ramsar Ecological Character Descriptions, gazettal instruments, bioregional plans, wildlife conservation plans, and EPBC Act guidance documents and World Heritage area Statements of Outstanding Universal Value, as relevant.

### 5.1.3. Factors that influence decision making

When making a decision regarding whether public comments have been adequately addressed, the decision maker considers factors including:

- Information given in support of how the **proponent has comprehensively identified and appropriately characterised** all comments received.
- **The proponent's assessment of the merits of any objections or claims** such as how it has taken into account the facts, reasons and evidence in supporting conclusions of its assessment.
- Whether suitable reasoning is provided by the proponent to support why its chosen or proposed **responses to comments could be considered appropriate**.
- Where objections or claims are determined to have merit, **how appropriate alterations have been made to the OPP**.

## 5.2. Criterion – 13(4)(b) Appropriate for the nature and scale of the project

### 5.2.1. Outline

This criterion relates to the overall approach to developing the OPP and requires that the level of rigour and effort applied to addressing the various content requirements, and evaluating impacts and risks, is commensurate to the potential impacts and risks to the environment.

### 5.2.2. Intent and context

The level of rigour and effort applied to OPP content, including supporting predictions, analysis and conclusions in relation to the project's environmental impacts and risks, can be scaled as appropriate in accordance with the nature and scale of the project.

The nature and scale of a project is determined by:

- The project as it is described in the OPP, in particular those project components with greatest potential to generate impacts and risks to the environment.
- The physical size of the project as well as the extent, intensity, duration and timing of threats to the environment from the project overall and individual activities that are part of the project.
- The environmental setting of the project and all activities that comprise the project, including the sensitivity and vulnerability of particular environmental features to threats posed by the project.
- The likelihood of risks being realised and the associated consequences to the environment should these risks be realised.
- The extent, severity and persistence (recoverability) of impacts on the environment from the combined aspects of the project and individual activities that may take place throughout the life of the project.

### 5.2.3. Factors that influence decision making

When making a decision regarding whether the OPP is appropriate for the nature and scale of the project a decision maker considers whether the submission:

- **Describes a clear and logical process for identifying the various key characteristics and activities of the project, particularly those that have potential to impact the environment** and demonstrate that the process is followed consistently.
- **Uses a clear and logical process for identifying and describing relevant values and sensitivities of the environment that may be affected**, including the adequacy of the description of the environment necessary to inform the evaluation of impacts and risks. For example that:
  - The description of those matters protected under Part 3 of the EPBC Act is informed by relevant documents published on the DAWE website.
  - Relevant sensitivities of the receiving environment are acknowledged and described, giving particular attention to the features of those sensitivities (e.g. their relative ecological importance, seasonality of presence/abundance of fauna) most likely to be impacted or at risk due to the project.
- **Includes adequate supporting information, including baseline studies where necessary, to underpin the description of environmental values and sensitivities** that may be affected by the project.
- **Demonstrates that the detail given when addressing each of the content requirements set out in Regulation 7 is reasonably matched to the project and its environmental impact and risk profile.** In particular, that the effort and scientific rigour applied to the descriptions of the project, receiving environment, requirements that apply and the evaluation of environmental impacts and risks, is greater for those project aspects more likely to have a substantial adverse or irreversible effect on biodiversity, ecological, social or cultural environmental values.
- **Describes feasible alternatives to the project (or activities) and compares the environmental impacts and risks** predicted for the project and the alternative with the level of assessment effort afforded to project / activity design elements and engineering controls that have the greatest potential for avoiding or substantially reducing impacts of the project from the outset.
- **Explains how the OPP has regard to relevant materials published on the DAWE website<sup>10</sup>.**

### 5.3. Criterion – 13(4)(c) Appropriate identification and evaluation of environmental impacts and risks

#### 5.3.1. Outline

This criterion is central to an OPP given that the evaluation of environmental impacts and risks sets out the facts, reasons and evidence as to why an offshore project is environmentally acceptable and EPOs are appropriate and are able to be met.

#### 5.3.2. Intent and context

The overall intent of this criterion is to provide a robust and defensible case that all environmental impacts and risks from the project will be managed to an acceptable level. The appropriate identification and evaluation of impacts and risks requires a comprehensive explanation of how the project may affect the

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<sup>10</sup> For example, this may be relevant to describing the environment, evaluating environmental impacts and risks and defining EPOs and include regard given to materials such as policy documents, conservation advices, guidelines, Ramsar Information Sheets, Ramsar Ecological Character Descriptions, gazettal instruments, bioregional plans, wildlife conservation plans, and EPBC Act guidance documents and World Heritage area Statements of Outstanding Universal Value, as relevant.

environment with reasoned, supported predictions of the extent, severity and duration of environmental impacts and risks, including consideration of cumulative environmental impacts.

The external context that informs the definition of environmental impacts and the definition of acceptable levels includes Australian Government policies, relevant documentation on the DAWE website relevant to matters protected under Part 3 of the EPBC Act<sup>11</sup>, guidelines for environmental management (e.g. Australian and New Zealand Guidelines for Fresh and Marine Water Quality) and advice from stakeholders.

### 5.3.3. Factors that influence decision making

When making a decision regarding whether the proposal has appropriately identified and evaluated environmental impacts and risks the decision maker scrutinizes the proponent's case made in the submission and considers whether the submission:

- **Applies a clear and logical process for defining the acceptable level of environmental impact and risk** that is appropriate and relevant to the environment that may be affected by the project including activities that are part of the project.
- **Provides defined accepted levels of impact and risk which have a clear basis in the analysis of relevant facts and evidence, which the decision-maker could, after assessment on balance, agree:**
  - Has taken into account the ecological, biodiversity, cultural and social features of the environment that may be affected
  - Are consistent with requirements derived from the OPGGS Act, other relevant legislation including the EPBC Act and relevant standards
  - Are supported by relevant scientific literature as appropriate
  - Have taken into account other relevant context, considered relevant to the facts and circumstances of the project and OPP.

**The submission applies an evidence-based evaluation process to demonstrate that the project is able to be managed such that environmental impacts and risks will be acceptable including:**

- A comparison of the predicted environmental impacts (extent, severity and duration) with the defined acceptable levels.
- Outcomes and conclusions of the impact and risk evaluation supported with logical, clear and well-founded evidence and reasons.
- An evaluation of the potential cumulative environmental impacts.
- An evaluation of relevant indirect impacts, having regard to EPBC Act Policy Statement - 'Indirect consequences' of an action: Section 527E of the EPBC Act.
- Provides for appropriate referencing, such that the accuracy and reliability of the information used to support the evaluation can be determined.

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<sup>11</sup> Relevant publications and information on the DAWE website: policy documents, recovery plans, threat abatement plans, conservation advices, guidelines, Ramsar Information Sheets, Ramsar Ecological Character Descriptions, plans of management; gazettal instruments, bioregional plans, wildlife conservation plans, and EPBC Act guidance documents and World Heritage area Statements of Outstanding Universal Value.

- **Acknowledges and accounts for uncertainty associated with predicted environmental impacts of the project, and identifies both likelihood and consequence metrics for all risks to the environment associated with unplanned events.** Consideration may be given to how:
  - proponent measures to account for uncertainty are commensurate with the degree of predictive uncertainty, intensity, severity and duration of impacts and the environmental value of the receptors that may be affected,
  - the proponent has had regard to relevant principles of ESD in accounting for and addressing uncertainty,
  - uncertainty is accounted for in an OPP through proponent commitments to programs of monitoring and management that:
    - verify impacts will remain at or below the acceptable level.
    - monitor, mitigate and manage environmental impacts and risks in ways that provide confidence the project is able to be managed to ensure that those impacts and risks will be acceptable.
- **Demonstrates that the evaluation of impacts and risks is appropriate to the nature and scale of the project taking into account the factors that influence decision making in section 5.2.3.**
- **Includes content that enables the decision maker to judge whether a decision to accept the OPP would be not inconsistent<sup>12</sup> with:**
  - a **recovery plan or threat abatement plan** for a listed threatened species or ecological community,
  - a **management plan in operation for a Commonwealth reserve** (e.g. an Australian Marine Park), or if there is no management plan in operation, the **Australian IUCN Reserve Management Principles**, or
  - a **management plan for a Commonwealth heritage place.**

to the extent these are relevant to the project and the nature of its environmental impacts and risks.
- **Includes content that enables the decision maker to judge whether the OPP proposes activities that would contravene<sup>13</sup>:**
  - a plan of management for a World Heritage property;
  - a plan of management for a National heritage place; or
  - a plan of management for a Ramsar wetland.
- **If a relevant plan of management is not in place, includes content that enables the decision maker to judge whether all reasonable steps have been taken to ensure that the OPP is not inconsistent<sup>14</sup> with the:**
  - Australian World Heritage management principles;
  - National Heritage management principles;

<sup>12</sup> Under the Program and the EPBC Act, a decision to accept the OPP must not be inconsistent with the relevant statutory instruments

<sup>13</sup> Under the Program and the EPBC Act, a decision to accept the OPP must not contravene the relevant plans of management

<sup>14</sup> Under the Program, all reasonable steps need to be taken to ensure a decision to accept the OPP is not inconsistent with the relevant management principles, if there is no plan of management in place.

- Australian Ramsar management principles; and
- Commonwealth Heritage management principles.

## 5.4. Criterion – 13(4)(d) Appropriate environmental performance outcomes

### 5.4.1. Outline

This criterion requires proponents to set out the intended EPOs that will be achieved if the project is to proceed in order to demonstrate that impacts from the project will be of an acceptable level.

### 5.4.2. Intent and context

The intent is that the EPOs set the level of environmental performance that can be achieved should the project proceed, to demonstrate that the principles of ESD and the defined acceptable levels of impact and risk can be met. The EPOs are to be relevant to identified environmental impacts and risks, consistent with the principles of ESD and equivalent to or better than the defined acceptable level of impact.

### 5.4.3. Factors that influence decision making

When making a decision regarding whether the proposal has set out appropriate EPOs a decision maker considers whether:

- **EPOs reflect levels of environmental performance required for the management of the project that will deliver outcomes equal to or better than the defined acceptable level** of environmental impacts and risks.
- **EPOs are consistent with the principles of ESD**, having regard to OPP content that supports why this may be so (e.g. relevant facts and reasons underpinning the evaluation of environmental impacts and risks).
- **EPOs provide clear commitment(s) to implement programs of monitoring and adaptive management** in cases where such commitments are necessary to demonstrate the project could be implemented consistent with principles of ESD and be considered in further detail during the EP assessment process.
- **EPOs reflect levels of environmental performance for management, which if demonstrated to be achievable, would enable the decision maker to accept the OPP and not act inconsistently with relevant requirements of the Program and EPBC Act.**
- The suite of **EPOs address all of the identified environmental impacts and risks**, noting that one EPO may relate to multiple impacts and risks.
- **The EPOs are consistent with conclusions drawn from the evaluation of environmental impacts and risks** and reflect how management would need to perform such that impacts and risks to the environment would not exceed pre-defined acceptable levels.
- **The EPOs are clear and provide a suitable environmental performance level against** which the environmental performance of the project could be determined either:
  - **In isolation, providing a clear, measurable and verifiable benchmark** that is consistent with the defined acceptable level of impact or risk; or

- **In connection with other context provided in the evaluation of impacts and risks** that supports a demonstration that the environmental impacts and risks are able to be managed to meet the defined acceptable level.
- The EPOs, when considered in combination with the evaluation of impacts and risks, **provide confidence that the project is able to be managed to ensure environmentally acceptable standards of protection will be achieved.**

## 5.5. Criterion – 13(4)(e) World heritage properties

### 5.5.1. Outline

This criterion requires that the OPP includes content for the decision maker to be reasonably satisfied that the proposal does not involve an activity or part of an activity being undertaken in any part of a declared World Heritage property within the meaning of the EPBC Act<sup>15</sup>.

Also refer to section 3.3.1.

### 5.5.2. Intent and context

The overarching intent of this requirement is to protect declared World Heritage properties in Australia, by preventing planned offshore projects and activities from occurring in these areas. Any change made to the OPP following public comment should not include any planned project activity being proposed in a declared World Heritage property.

Also refer to section 4.3.2.

### 5.5.3. Factors that influence decision making

When making a decision about whether the project involves any activity or any part of an activity in any part of a declared World Heritage property, a decision maker considers:

- Content of the OPP that describes the locations of the project and project activities in the context of the boundaries of declared World Heritage properties.
- The clarity and consistency of the information presented in the OPP, including any relevant responses to public comments, maps and figures, that describe the location of the project and planned project activities in the context of any part of a declared World Heritage property.

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<sup>15</sup> While this decision criterion specifically relates to the location of a project or any part of a project within a World Heritage property, NOPSEMA will not accept an OPP for an offshore project that is located outside a World heritage property and poses unacceptable impacts to the world heritage values of a World Heritage property.



## Appendix A: Principles of administrative decision making

NOPSEMA applies the following principles of administrative decision making in making decisions under regulations 9 and 13. They relate to the grounds for judicial review under the *Administrative Decisions (Judicial Review) Act 1977* and have been derived from the Administrative Review Council Decision Making best practice guides (2007).

Principle	Description in context of OPP decision-making
<b>The decision is within power</b>	A decision under regulation 9 and 13 will be made by the NOPSEMA CEO or a Representative of NOPSEMA appointed under a valid instrument of delegation made by the NOPSEMA CEO under the <i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i> (OPGGs Act). The decision maker will apply the correct legal tests under the OPGGS Act and associated regulations and the decision will not be otherwise contrary to law.
<b>The decision is fair</b>	The decision will be impartial and provide parties whose interests are affected with sufficient opportunity to give their views through a formal public comment period and regulatory requirements for the proponent to consider and respond to objections and claims. The public exhibition required by subregulation 9(5) of the Environment Regulations is the primary means of applying the hearing rule.
<b>Relevant information is considered</b>	<p>All relevant matters and considerations, including matters of fact, analysis or of opinion, will be taken into account in making the decision. The OPP submitted by the proponent is the central document considered in the decision. Information from NOPSEMA guidance, published material (including published scientific literature and material published by DAWE), stakeholder consultation, and offshore petroleum literature (i.e. published by the proponent, a peak industry body or regulators in other jurisdictions) are some other sources of information that may be relevant to a particular circumstance.</p> <p>Irrelevant matters and considerations must not be taken into account in making the decision. It is incumbent on the decision maker to determine what considerations are relevant and irrelevant. Economic factors such as titleholder work program commitments and encumbrance costs may be irrelevant considerations.</p>
<b>The decision is reasonable</b>	The decision will be objective and just, in light of all the circumstances such that a 'reasonable decision maker' would be of the same belief. In this context, a reasonable decision maker is likely to be one who is supported by advice from environmental management professionals with knowledge of environmental impacts and risks from offshore projects. A reasonable decision is one that has a path of logic which can be followed and understood, and which contains no important omission or inexplicable step.
<b>The decision is well founded</b>	A decision will be well founded, having a proper basis in the assessment of evidence and the application of policy, with regard to the merits of the case that relevant criteria have been met. A well-founded decision must be based on evidence that justifies the making of the decision that is underpinned by reasoned and supported arguments and is credible and relevant.

Principle	Description in context of OPP decision-making
<b>The decision is clear</b>	Decisions will be clearly explained by reference to applicable statutory criteria, relevant evidence, findings of fact, reasoning and conclusions.

## Appendix B: Principles of Ecologically Sustainable Development

To the extent relevant to the particular project, factors such as the following may be contemplated in relation to each principle.

ESD Principle	Examples of factors that NOPSEMA may have regard to
<p><b>'Integration Principle'</b></p> <p><b>Decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations.</b></p>	<p>The proponent's consideration and response to public comments; its evaluation of environmental impacts and risk to the socio-economic, cultural and ecological features of the environment that may be affected by the project; and demonstration of how environmental impacts and risks will be acceptable.</p>
<p><b>'Precautionary principle'</b></p> <p><b>If there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.</b></p>	<p>The proponent's evaluation of environmental impacts and risks; reasons and evidence in support of how the impacts and risks will be of an acceptable level; the level of scientific uncertainty associated with predictions of environmental impacts and risks and the anticipated effectiveness of management measures in controlling impacts and risks; the proponent's commitments to apply measures designed to manage residual scientific uncertainty; and the predicted severity, and persistence (including recovery potential) of environmental impacts and risks.</p>
<p><b>'Intergenerational principle'</b></p> <p><b>That the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations (the 'intergenerational principle').</b></p>	<p>Measures the proponent commits to apply to avoid and minimise environmental impacts and risks such that they will be managed to be an acceptable level for the duration of the environmental impact(s) generated by project; The case made in the OPP that environmental impacts and risks of the project will not forego the health, diversity and productivity of the environment for future generations.</p>
<p><b>'Biodiversity principle'</b></p> <p><b>The conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making.</b></p>	<p>The proponent's evaluation of environmental impacts to the biodiversity and ecological values of the environment affected, including matters of National Environmental Significance; and the levels of performance for management.</p>
<p><b>'Valuation principle'</b></p> <p><b>Improved valuation, pricing and incentive mechanisms should be promoted (the 'valuation principle').</b></p>	<p>Whether the OPP includes provision for the proponent to bear the cost of environmental management for the whole of project life to ensure that the environmental impacts and risks are managed to an acceptable level.</p>