

## Chapter 2

### Regulatory framework for oil and gas exploration and production

2.1 This chapter describes the regulatory arrangements for offshore oil and gas exploration and production, and the interactions between both federal and state authorities. Information is provided on the overall approach, legislative framework and approvals process which govern offshore operations.

2.2 This chapter also explores the unique role of the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) as an independent 'one-stop' regulator, and the principles and legislation it administers. Finally, information is included on BP's proposed venture, and the status of its application to NOPSEMA.

#### Offshore oil and gas approval and regulatory regime

2.3 The offshore oil and gas industry is technically complex and its regulation requires both specialist knowledge and expertise, and the co-operation of state and Commonwealth governments.

2.4 In South Australia, petroleum operations which occur within the three nautical mile limit of state waters are administered under the *Petroleum (Submerged Lands) Act 1982* (SA) and the *Petroleum and Geothermal Energy Act 2000* (SA).<sup>1</sup>

2.5 Petroleum operations which occur outside this three nautical mile limit occur within Commonwealth waters, and are administered under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act), the *Offshore Petroleum and Greenhouse Storage (Regulatory Levies) Act 2003*, and a range of associated regulations. These regulations include:

- Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009;
- Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009;
- Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011; and
- Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004.<sup>2</sup>

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1 South Australian Government, *Submission 44*, p. 4.

2 NOPSEMA, *Submission 7*, p. 7.

2.6 This legislation 'provides for the orderly exploration for, and recovery of, offshore oil and gas resources and sets out a basic framework of rights, entitlements and responsibilities of government and industry'.<sup>3</sup> It is underpinned by four key principles. These are:

- (a) Offshore oil and gas resources in Australia are best exploited, and risk managed appropriately, through commercial development;
- (b) All offshore operations are undertaken in accordance with good oilfield practice, and are compatible with optimal long-term exploitation of oil and gas resources;
- (c) Risks to health and safety and the marine environment associated with offshore operations must be managed to be as low as reasonably practicable, and deemed acceptable;
- (d) A system of licencing and titles grants exclusive property rights to titleholders to provide protection and incentives throughout the oil and gas lifecycle. These rights and incentives are dependent on compliance with requirements under the OPGGS Act and associated regulation, and title conditions.<sup>4</sup>

### ***Regulatory reforms***

2.7 On 21 August 2009, the Montara wellhead platform located in the Timor Sea and operated by PTTEP Australasia (Ashmore Cartier) Pty Ltd suffered a blowout which resulted in the uncontrolled escape of oil and gas. The leak was stopped on 3 November 2009, after a number of attempts. As a result of the incident, the Australian government initiated the Commission of Inquiry into the Montara Incident which examined the likely cause of the incident, and the adequacy of Australia's offshore oil and gas industry regulatory regime.<sup>5</sup>

2.8 On 24 November 2010, the Report was publicly released and the findings highlighted a number of operator design and regulatory failures. It recommended the establishment of a single, independent regulatory body with safety, well integrity and environmental management as its objectives.<sup>6</sup>

2.9 In 2011, amendments to the OPGGS Act and associated regulations were made to implement recommendations from the Inquiry. The key amendments included:

- the separation of offshore regulation and titles administration through the establishment of the National Offshore Petroleum Titles Administrator

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3 Department of Industry, Innovation and Science, *Submission 4*, p. 10.

4 Department of Industry, Innovation and Science, *Submission 4*, p. 10.

5 Department of Industry, Innovation and Science, *Submission 4*, p. 11.

6 Department of Industry, Innovation and Science, *Submission 4*, p. 11.

(NOPTA). This would ensure that any potential or perceived conflicts of objectives are avoided;

- the responsibility for the regulation of well operations management plans and approval of well activities was given to the former National Offshore Petroleum Safety Authority (NOPSA); and
- the regulation of environmental management in Commonwealth waters was also added to the remit of NOPSA, and its name was changed to the National Petroleum Safety and Environmental Management Authority (NOPSEMA) to reflect this additional responsibility.<sup>7</sup>

### **Regulatory responsibilities**

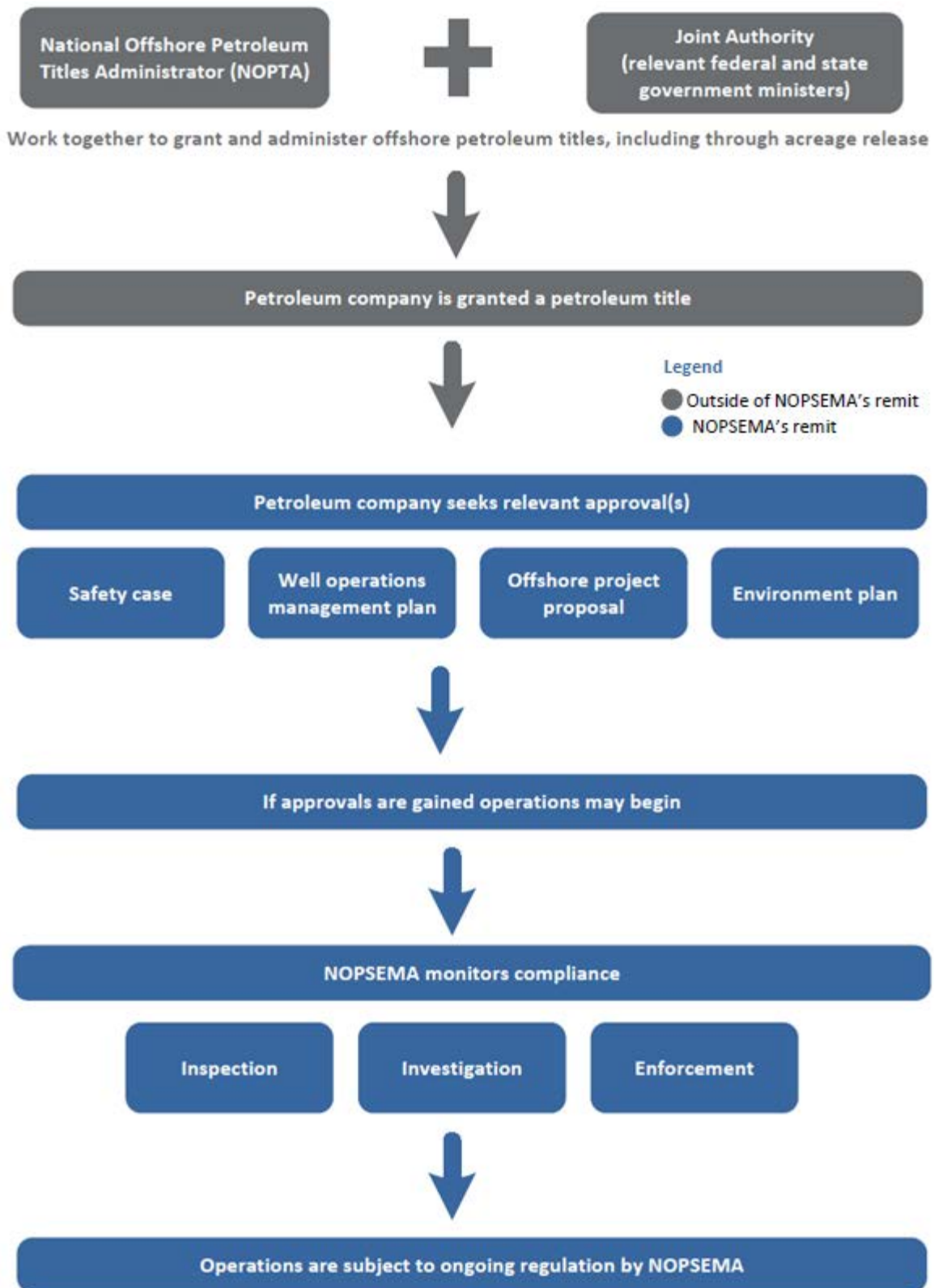
2.10 The legal framework regulating the Australian offshore oil and gas industry is administered by three Australian Government entities: the National Petroleum Titles Administrator (NOPTA); NOPSEMA; and the Department of Industry, Innovation and Science. Legislation is also administered in co-operation with state and Northern Territory governments through Joint Authorities.<sup>8</sup> Figure 2.1 shows the regulatory process from the granting and administering of titles, through to the monitoring of oil and gas operations to ensure regulatory compliance.

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7 Department of Industry, Innovation and Science, *Submission 4*, p. 11.

8 South Australian Government, *Submission 44*, p. 4.

**Figure 2.1 – Oil and gas activity regulatory process**



Source: NOPSEMA, Submission 7, Attachment 1, p. 30.

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### ***Joint Authority***

2.11 Each offshore area is administered by a Joint Authority comprising the responsible Commonwealth Minister (the Minister for Resources and Northern Australia) and the relevant state or Northern Territory Resources Minister.

2.12 Joint Authorities make key decisions on resource management and resource security, and have responsibilities under the OPGGS Act including:

- the release of offshore oil and gas exploration areas; and
- the granting of titles, and making any subsequent changes to title conditions.<sup>9</sup>

### ***National Offshore Petroleum Titles Administrator***

2.13 Offshore oil and gas activity in Australia can only occur where a company holds a valid title. NOPTA is responsible for the administration of petroleum and greenhouse gas titles in Commonwealth waters in Australia. Its key functions include:

- the provision of information, analysis and advice to the Joint Authorities;
- the collection, administration and release of data;
- to facilitate title administration such as the approval of registration of transfers and dealings associated with titles, and Joint Authority considerations of changes to title conditions; and
- to maintain registers of offshore titles.<sup>10</sup>

2.14 The Offshore Petroleum Exploration Acreage Release (acreage release) is the key component of the Australian Government's strategy to encourage and facilitate the exploration and production of offshore oil and gas in Commonwealth waters. Acreage<sup>11</sup> is released regularly to provide new investment opportunities, and to provide industry the ability to plan ongoing investment in Australia's offshore oil and gas sector.<sup>12</sup>

2.15 The responsible Commonwealth Minister (currently the Minister for Resources and Northern Australia), the Department of Industry, Innovation and Science, and Geoscience Australia undertake a 10–12 month consideration process to select areas for acreage release. This process is made up of three key components: the nomination of an area by industry, state/Northern Territory governments, or Geoscience Australia; the consideration of nominated areas; and a consultation process. The consultation process considers a range of factors including the

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9 Department of Industry, Innovation and Science, *Submission 4*, p. 12.

10 Department of Industry, Innovation and Science, *Submission 4*, p. 12.

11 'Acreage' refers to vacant offshore areas in Commonwealth waters for which companies can place a competitive bid.

12 For more information on acreage release see <http://www.petroleum-acreage.gov.au/>. See also Department of Industry, Innovation and Science, *Submission 4*, pp. 15–16.

prospectivity of the area; existence of title; and the proximity to sensitive marine zones.<sup>13</sup>

2.16 Once areas have been shortlisted, the Department of Industry, Innovation and Science undertakes targeted consultation with Commonwealth, state and Northern Territory agencies responsible for managing the marine environment. In addition, consultation is undertaken with industry bodies whose members have access rights such as fishing licences. The department works closely with the Department of the Environment and Energy which provides comprehensive comments in relation to the environmental considerations of each release area. This includes considerations such as whether the area includes Commonwealth Marine Reserves.<sup>14</sup>

2.17 The Department of Industry, Innovation and Science submitted that the targeted 'consultation assesses factors such as such as maritime boundaries, environmental and fisheries impacts, defence and communications requirements, maritime safety and native title interests'. The outcomes of this consultation may lead to the development of special conditions which must be met in the event that title is awarded for the area.<sup>15</sup>

2.18 Following targeted consultation, the Department of Industry, Innovation and Science publicly makes available the proposed areas for the following year's acreage release. In recognition of the increased community interest in the acreage release process, the department also made the proposed areas for the 2016 acreage release publicly available on its consultation hub. This provided the public with an opportunity to provide comment on proposed areas.<sup>16</sup>

2.19 Following release, investors are invited to make competitive work program bids or cash-bids.<sup>17</sup> These bids are assessed by NOPTA to determine compliance with

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13 Department of Industry, Innovation and Science, *Submission 4*, p. 15.

14 Department of Industry, Innovation and Science, *Submission 4*, p. 15.

15 Department of Industry, Innovation and Science, *Submission 4*, p. 15.

16 Department of Industry, Innovation and Science, *Submission 4*, p. 16.

17 Work program bidding allocates exploration acreage to the applicant who is proposing the most amount of work to explore the petroleum potential of a release area, subject to having the technical and financial competence to meet their work commitments. Under a competitive cash bidding system, applicants offer cash bids for the right to explore with exploration permits being awarded to the highest cash bidder. Permit holders have the exclusive right to apply for production licence if a resource is discovered. Cash bidding is used to allocate offshore petroleum acreage in mature areas and in areas containing known petroleum accumulations. The work program bidding system has been maintained for all other areas. See Department of Resources, Energy and Tourism, 'Competitive Cash-Bidding Fact Sheet', <http://www.industry.gov.au/resource/Documents/upstream-petroleum/Cash-Bidding-Fact-Sheet.pdf>

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the OPGGS Act, and other relevant guidelines. NOPTA then provides advice to the Joint Authority which makes a decision as to which bid to accept.<sup>18</sup>

2.20 In making a bid, applicants are required to provide evidence of both financial and technical capability, and comprehensive details of proposed exploratory activity to be carried out. Following an assessment of bids, NOPTA acting on behalf of the Joint Authority, executes the decision to make an offer to the successful bidder. If the offer is successful, NOPTA on behalf of the Joint Authority will grant an exploration title, and publish a notification in the Australian Government Gazette.<sup>19</sup>

2.21 The Department of Industry, Innovation and Science stated that it is important to note that the granting of an exploration title authorises the holder to undertake oil and gas exploration activity subject to the OPGGS Act and its associated regulations. This includes a requirement that the titleholder apply to NOPSEMA for approval prior to undertaking any exploration activity.<sup>20</sup>

### ***National Offshore Petroleum Safety and Environmental Management Authority***

2.22 NOPSEMA is the independent statutory authority established under the OPGGS Act responsible for the regulation of 'health and safety, well integrity and environmental management for offshore oil and gas operations in Commonwealth waters and in coastal waters where regulatory powers and functions have been conferred'.<sup>21</sup>

2.23 In its submission to the committee NOPSEMA stated that the authority's 'vision is for safe and environmentally responsible Australian offshore petroleum and greenhouse gas storage industries'. It further stated that its 'mission is to independently and professionally regulate offshore safety, integrity and environmental management'.<sup>22</sup>

2.24 NOPSEMA's legislated functions are specified under section 646 of the OPGGS Act. They are summarised as follows:

- to promote the occupational health and safety of persons engaged in offshore petroleum operations;
- to develop and implement effective monitoring and enforcement strategies to ensure compliance with the OPGGS Act and associated regulations;
- to investigate accidents, occurrences and circumstances that affect occupational health and safety, or that relate to deficiencies in environmental

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18 Department of Industry, Innovation and Science, *Submission 4*, p. 16.

19 Department of Industry, Innovation and Science, *Submission 4*, p. 16.

20 Department of Industry, Innovation and Science, *Submission 4*, p. 16.

21 NOPSEMA, *Submission 7*, p. 4

22 NOPSEMA, *Submission 7*, p. 4

management or the structural integrity of facilities, wells and well-related equipment;

- to advise on matters related to offshore health and safety, environmental management and the structural integrity of facilities, wells, and well-related equipment;
- to make reports on investigations to the responsible Commonwealth minister and each responsible state/Northern Territory minister;
- to provide support to the responsible Commonwealth minister through the provision of information, reports, analysis and recommendations; and
- to co-operate with other Commonwealth and state/Northern Territory agencies and authorities which have responsibility for regulated operations.<sup>23</sup>

2.25 The OPGGS Act requires that all offshore operations be carried out in accordance with 'good oilfield practice' which is defined as 'all those things that are generally accepted as good and safe in the carrying out of exploration for petroleum and petroleum recovery operations'.<sup>24</sup> Further, the Act also requires that offshore operations must not interfere with a range of activities including navigation, fishing, conservation, native title rights, or any other lawful oil or gas exploration activities.<sup>25</sup>

2.26 In the event of an escape of petroleum, titleholders are required under the Act to undertake a range of activities including controlling the spill, cleanup activities, recovery, and environmental monitoring.<sup>26</sup>

2.27 The OPGGS Act also provides NOPSEMA (or the responsible Commonwealth minister) with the authority to give written directions to titleholders on any aspect of petroleum exploration and production. This includes the authority to provide remedial directions to titleholders requiring the restoration of the environment, the removal or closure of well and well-equipment, the conservation and protection of natural resources and the rehabilitation of damaged seabed or subsoil.<sup>27</sup>

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23 *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, s. 646. See also NOPSEMA, *Submission 7*, p. 7.

24 *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, s. 569. See also NOPSEMA, *Submission 7*, p. 8.

25 *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, s. 280. See also NOPSEMA, *Submission 7*, p. 8.

26 NOPSEMA, *Submission 7*, p. 8.

27 NOPSEMA, *Submission 7*, p. 8.



2.28 As the independent regulator, NOPSEMA is not involved in policy decisions such as the selection or release of areas for exploration and development, or the granting of petroleum titles. Rather, NOPSEMA makes 'merits based decisions on specific activities and their potential interactions with the environment in which they are proposed to occur'. NOPSEMA stated that:

Decisions focus exclusively on the technical and scientific merits of risk management plans and are independent of economic, commercial and political factors.<sup>28</sup>

### *Approvals process*

2.29 The Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (Environment Regulations) require titleholders to prepare and submit an Environment Plan for activities proposed in Commonwealth Waters, to NOPSEMA for assessment and approval. The Environment Regulations set out the criteria for acceptance, and the content requirements for Environment Plans. The object of the Environment Regulations is to ensure that

...oil and gas and greenhouse gas activities are carried out in a manner that is consistent with the principles of ecologically sustainable development and in a manner by which all environmental impacts and risks of the activity will be reduced to as low as reasonably practicable and acceptable levels.<sup>29</sup>

2.30 Once an Environment Plan is submitted to NOPSEMA, it is assessed against the criteria for acceptance contained in the Environment Regulations. If it is found not to meet these criteria, titleholders are given the opportunity to modify and resubmit the plan. NOPSEMA typically only allows titleholders two opportunities to modify and resubmit a plan before making a decision to accept or reject it.<sup>30</sup>

2.31 An Environment Plan is deemed to be in operation from the date it is accepted by NOPSEMA, and the titleholder is required to provide a summary for publication on the NOPSEMA website within 10 days. If an Environment Plan is rejected by NOPSEMA, the titleholder may choose to submit another Environment Plan for the same activity, and NOPSEMA will commence a new assessment.<sup>31</sup> NOPSEMA noted that its assessment process is iterative and that more than 90 per cent of Environment Plans have at least one interim decision before a final decision to accept or reject a

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28 NOPSEMA, *Submission 7*, p. 4.

29 Department of Industry, Innovation and Science, *Submission 4*, p. 21.

30 NOPSEMA, *Assessment Process*, <https://www.nopsema.gov.au/environmental-management/assessment-process/>, (accessed 15 February 2017).

31 NOPSEMA, *Assessment Process*, <https://www.nopsema.gov.au/environmental-management/assessment-process/>, (accessed 15 February 2017).

plan is made. Interim decisions can include requests for further information, or as noted above, an opportunity to modify and resubmit a plan.<sup>32</sup>

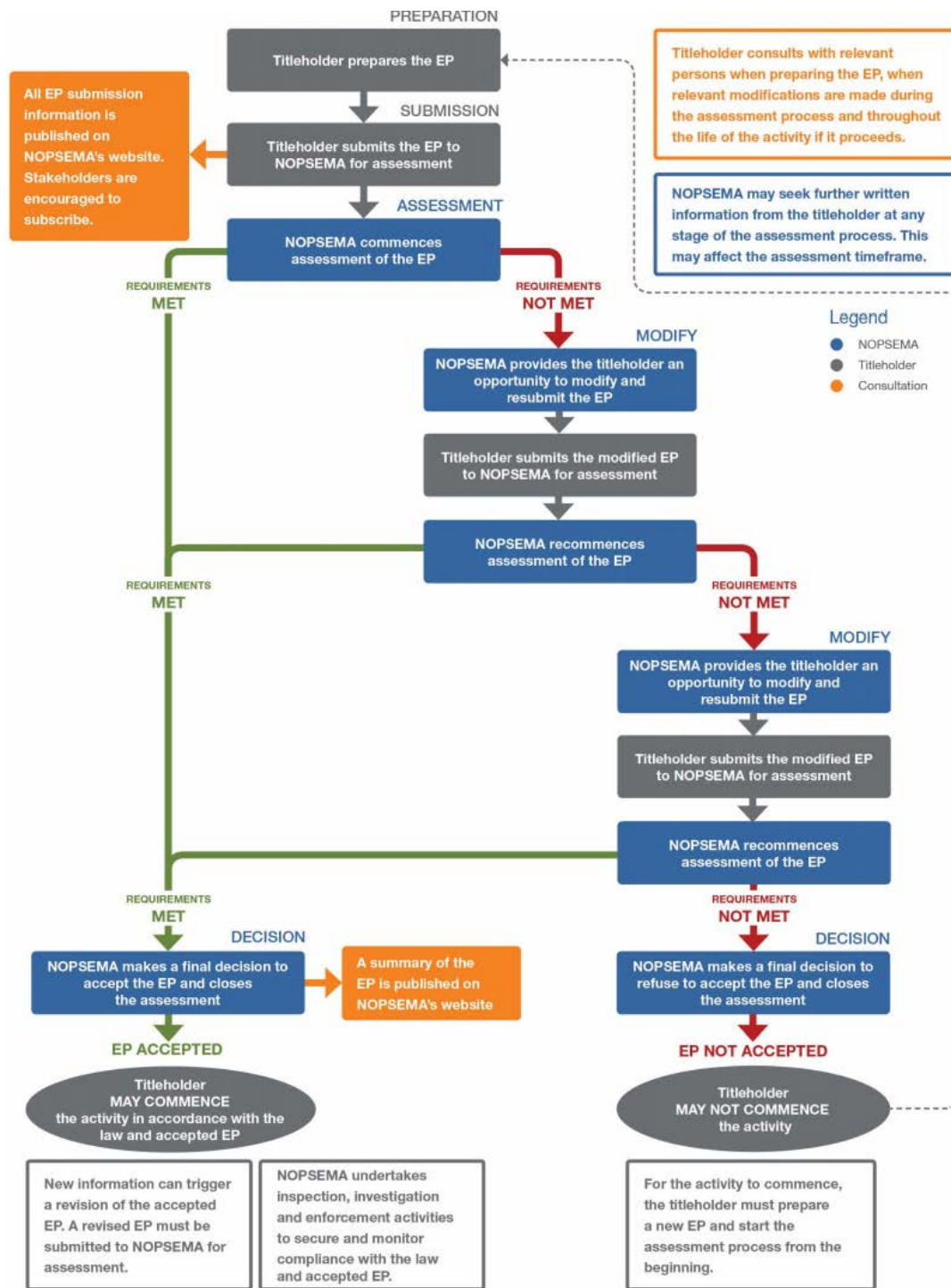
2.32 As an independent statutory authority, NOPSEMA's decisions are based only upon the requirements of the Environment Regulations, and the scientific and technical merits of proposed risk management strategies and measures. NOPSEMA submitted that with the exception of potential impacts and risks to socioeconomic aspects of the immediate environment, NOPSEMA does not consider economic, commercial, or political factors when making a decision.<sup>33</sup> Figure 2.2 shows the assessment process for environment plans.

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32 NOPSEMA, *Submission 7*, p. 13.

33 NOPSEMA, *Submission 7*, p. 13.

**Figure 2.2 – Environment Plan approval process**



Source: NOPSEMA, <https://www.nopsema.gov.au/environmental-management/assessment-process/environment-plans/>.

### *Assessment criteria*

2.33 NOPSEMA submitted that during an assessment it has regard to: the compliance record of the titleholder where it relates to matters contained in the Environment Plan, all relevant information including correspondence from external stakeholders; all policies, guidelines and management plans related to matters protected under Part 3 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act); and reputable, publicly available scientific and academic research relevant to the assessment.<sup>34</sup>

2.34 In order to be assessed as meeting regulatory requirements, titleholders must demonstrate that impacts and risks associated with oil and gas activities are reduced to As Low As Reasonably Practicable (ALARP), and that they are consistent with relevant Commonwealth Marine Reserve management plans where applicable.<sup>35</sup> The assessment and approval process also explicitly takes into consideration any potential impacts on matters protected under Part 3 of the EPBC Act. These include:

- world heritage properties;
- national heritage places;
- wetlands of national importance;
- listed threatened species and ecological communities;
- listed migratory species; and
- the Commonwealth marine area.<sup>36</sup>

2.35 NOPSEMA submitted that the Environment Regulations intend to ensure that any petroleum activity is carried out in accordance with the principles of ecologically sustainable development as defined under the EPBC Act. One of these principles, commonly known as 'the precautionary principle' states that:

...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.<sup>37</sup>

2.36 NOPSEMA stated that by implementing control measures that reduce or eliminate uncertainty, titleholders can demonstrate that impacts and risks will be of an acceptable level and ALARP.<sup>38</sup>

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34 NOPSEMA, *Submission 7*, p. 12.

35 Department of Industry, Innovation and Science, *Submission 4*, p. 21.

36 NOPSEMA, *Submission 7*, p. 14.

37 NOPSEMA, *Submission 7*, p. 24.

38 NOPSEMA, *Submission 7*, p. 24.

2.37 In preparing an Environment Plan, titleholders must also comply with rigorous consultation requirements. Titleholders must 'consult with relevant persons including a person or organisation whose functions, interests or activities may be affected by the activities to be carried out under the Environment Plan, or any other person or organisation that the titleholder considers relevant'. Relevant persons can include government agencies, community groups, industry bodies and operators, non-government and conservation groups.<sup>39</sup>

2.38 Titleholders are also required to provide '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 a reasonable period for the consultation'.<sup>40</sup>

2.39 Under the Environment Regulations, NOPSEMA cannot accept an Environment Plan that does not demonstrate compliance with consultation requirements.<sup>41</sup>

2.40 The Environment Plan must also include a comprehensive Oil Pollution Emergency Plan (OPEP) which provides details of response and monitoring arrangements in the event of an oil spill. The OPEP must include information on control measures, response capability, and monitoring capability. It is intended to ensure that the titleholder has demonstrated its ability to quickly and effectively respond in the event of an oil pollution emergency.<sup>42</sup>

2.41 The OPGGS Act requires titleholders to demonstrate financial assurance sufficient to meet the costs, expenses and liabilities arising from carrying out oil and gas activities. This assurance is intended to ensure that the titleholder will have the capacity to meet any costs, expenses and liabilities associated with its legislative obligations under the OPGGS Act. This includes obligations to control, clean-up and monitor the effects of an oil spill, and in the event of failing to comply, the costs of reimbursing NOPSEMA or the responsible Commonwealth Minister.<sup>43</sup>

2.42 The Environment Regulations provide NOPSEMA with the ability to assess compliance with the requirement of financial assurance as a condition precedent to the acceptance of an Environment Plan. NOPSEMA must not accept an Environment Plan if it is not reasonably satisfied that financial assurance is sufficient or in an acceptable form. If financial assurance is not maintained during the course of oil and gas

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39 Department of Industry, Innovation and Science, *Submission 4*, p. 21.

40 Department of Industry, Innovation and Science, *Submission 4*, p. 21.

41 Department of Industry, Innovation and Science, *Submission 4*, p. 21.

42 Department of Industry, Innovation and Science, *Submission 4*, p. 25.

43 Department of Industry, Innovation and Science, *Submission 4*, pp. 25–26.

activities, NOPSEMA has grounds to withdraw its acceptance of an Environment Plan.<sup>44</sup>

### ***Endorsement of approvals process***

2.43 In February 2014, the Commonwealth Minister for the Environment endorsed NOPSEMA's environmental authorisation program (the Program) as being 'appropriate to ensure that offshore oil and gas activities do not have unacceptable impacts on matters protected under the EPBC Act'.<sup>45</sup>

2.44 This endorsement had the effect of making NOPSEMA the sole environment regulator for oil and gas activities in Commonwealth waters. As a consequence, activities which are assessed and approved by NOPSEMA no longer require assessment and approval by the Department of the Environment under the EPBC Act. NOPSEMA stated that this streamlining reduced the duplication of environmental regulation whilst still maintaining strong environmental safeguards.<sup>46</sup>

2.45 In 2015, following the first 12 months of operation of the Program, NOPSEMA was subject to an independent review of its authorisation process. The review found that NOPSEMA was delivering the levels of environmental protection required under the EPBC Act.<sup>47</sup>

### ***Objective based regulation***

2.46 The OPGGS Act, and the Environment Regulations operate to provide an 'objective based' environmental management regime administered by NOPSEMA. NOPSEMA submitted that the Environment Regulations were:

...developed to provide an objective-based regime within which titleholders are free to adopt environmental management practices and technologies best suited to individual company circumstances, activities and locations, subject to demonstrating that appropriate environmental performance outcomes and environmental performance standards will be met.<sup>48</sup>

2.47 The Environment Regulations 'do not prescribe specific processes, standards or procedures, but rather, regulates through the achievement of environmental objectives'. As such, proponents are able to determine how these objectives are to be achieved within the parameters of the Environment Regulations.<sup>49</sup>

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44 Department of Industry, Innovation and Science, *Submission 4*, p. 26.

45 NOPSEMA, *Submission 7*, p. 14.

46 NOPSEMA, *Submission 7*, p. 14.

47 NOPSEMA, *Submission 7*, p. 14.

48 NOPSEMA, *Submission 7*, Attachment 3, p. 6.

49 NOPSEMA, *Submission 7*, Attachment 4, p. 17.

2.48 Objective based environmental regulatory systems are considered to be best practice for high hazard industries such as offshore petroleum operations. Such systems require project developers to:

...consider and identify the acceptable outcomes for all environmental matters, including matters of national environmental significance. The activity approved must also include a clear demonstration of how those outcomes will be delivered. This is in contrast to requirements under a prescriptive regulatory regime, where the project developers only consider those matters specifically identified by the regulation and meet the minimum standard of protection the regulator prescribes.<sup>50</sup>

2.49 The global adoption of objective based regulatory frameworks for the offshore oil and gas sector stems largely from the worldwide reassessment of regulation which occurred following the 1988 Piper Alpha disaster in the United Kingdom's North Sea. The large explosion which destroyed the Piper Alpha oil and gas platform and killed 167 people, led to the UK government conducting an inquiry into the factors which caused the disaster. The UK Committee of Inquiry into the Piper Alpha incident recommended moving from prescriptive regulation to an objective based regime.<sup>51</sup>

2.50 Objective based regulatory regimes are based on the principle that while the legislation provides broad safety and environmental objectives, titleholders must develop and implement the measures to achieve these goals. The Department of Industry, Innovation and Science explained that this 'places the onus and duty of care for environmental protection on project developers seeking to undertake offshore activities'.<sup>52</sup>

2.51 The Department of Industry, Innovation and Science explained that such an approach encourages the:

...continuous improvement to achieve appropriate environmental outcomes and ecologically sustainable development. It ensures flexibility in operational matters to meet the unique nature of different projects, and avoids a 'one size fits all' approach to regulation, allowing industry to determine the most effective and efficient way to operate.<sup>53</sup>

## **BP's proposed venture – process and status**

2.52 The following provides an overview of the proposal for petroleum exploration and production in the Great Australian Bight put forward by BP Development Australia Pty Ltd (BP).

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50 Department of Industry, Innovation and Science, *Submission 4*, p. 19.

51 Department of Industry, Innovation and Science, *Submission 4*, p. 19.

52 Department of Industry, Innovation and Science, *Submission 4*, p. 19.

53 Department of Industry, Innovation and Science, *Submission 4*, p. 19.

2.53 In June 2009, areas of the Great Australian Bight were released under the 2009 Offshore Petroleum Exploration Acreage Release. In April 2010, BP Exploration (Alpha) Ltd<sup>54</sup> lodged a bid for four release areas. On 14 January 2011, following an assessment of BP's technical and financial competence to undertake the proposed work program, the Commonwealth-South Australia Offshore Petroleum Joint Authority awarded four petroleum exploration titles (EPP37–40) to BP.<sup>55</sup>

2.54 The Joint Authority, in recognition of the sensitive environmental and agricultural elements critical to the rural economy of the Great Australian Bight region, and in light of the Deepwater Horizon incident, imposed additional special conditions on all four titles. These special conditions included the requirement that:

All well casing and cement design is to be undertaken by an appropriately qualified and experienced engineer, who, along with other such personnel associated with permit activities, will make themselves available for peer review at the discretion, and to the satisfaction of NOPSEMA.<sup>56</sup>

2.55 They also included the requirement that:

Prior to the commencement of drilling, the permittee is required to lodge with NOPSEMA:

- An approved well design integrity monitoring plan designed to assure well integrity within each well, which must be agreed by NOPSEMA and will include quarterly compliance reporting.
- Independent certification by the original provider, prior to installation, that each Blowout Preventer to be used has been satisfactorily tested to design pressures.<sup>57</sup>

2.56 Prior to the commencement of drilling, BP would also have to:

...satisfy and have approved by NOPSEMA, the hydrocarbon spill mitigation technologies and risk mitigation processes that it will deploy throughout the drill and maintain for the active life of the well.<sup>58</sup>

2.57 There were also conditions which applied during exploration. These included the requirement that:

As soon as practicable after the completion of drilling, and prior to the commencement of any other exploration activity, the permittee will conduct and report to NOPTA, for review by NOPSEMA, on Cement Bond Logging to demonstrate effectiveness of cement jobs behind well casing.<sup>59</sup>

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54 The titles were later transferred to BP Developments Australia Pty Ltd in 2012.

55 Department of Industry, Innovation and Science, *Submission 4*, pp. 16–17.

56 Department of Industry, Innovation and Science, *Submission 4*, p. 17.

57 Department of Industry, Innovation and Science, *Submission 4*, p. 17.

58 Department of Industry, Innovation and Science, *Submission 4*, p. 17.

59 Department of Industry, Innovation and Science, *Submission 4*, p. 17.



2.58 Finally, BP would be required to:

...undertake an annual Environment, Health and Safety Management System self-assessment each year, as per requirements determined by NOPSEMA, in relation to the effectiveness of system elements, including the Management of Change processes and procedures.<sup>60</sup>

2.59 Throughout its exploratory activities, BP would be required to satisfy regulators that it was not only compliant with special conditions, but also standard title conditions, and all other legislative requirements.<sup>61</sup>

2.60 On 1 October 2015, BP submitted an Environment Plan to NOPSEMA proposing exploration drilling in a joint venture with Statoil Australia Theta B.V. The proposed drilling would have occurred at water depths between 1,000 and 2,500 metres approximately 395 km west of Port Lincoln, and 340 km south of Ceduna in South Australia.<sup>62</sup>

2.61 On 16 November 2015, NOPSEMA notified BP that it was not satisfied that the Environment Plan met the approval criteria of the Environment Regulations. BP was provided with an opportunity to change and resubmit its Environment Plan accordingly. On 15 March 2016, BP resubmitted its modified plan to NOPSEMA for approval.<sup>63</sup>

2.62 On 16 May 2016, after a complex assessment<sup>64</sup> NOPSEMA again notified BP that it was not reasonably satisfied with the Environment Plan, and again BP was given the opportunity for modification and resubmission. On 12 July 2016, BP sought an extension of time for the modification and resubmission of its Environment Plan.<sup>65</sup>

2.63 On 18 August 2016, BP sought, and was granted an extension until 31 December 2016. On 19 August 2016, BP submitted a new Environment Plan for two exploration wells advising that these two exploration wells were a subset of the activity covered by the original plan which would need to be amended accordingly to remove them from its scope.<sup>66</sup>

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60 Department of Industry, Innovation and Science, *Submission 4*, p. 17.

61 Department of Industry, Innovation and Science, *Submission 4*, p. 17.

62 NOPSEMA, *Submission 7*, p. 16.

63 NOPSEMA, *Submission 7*, p. 16.

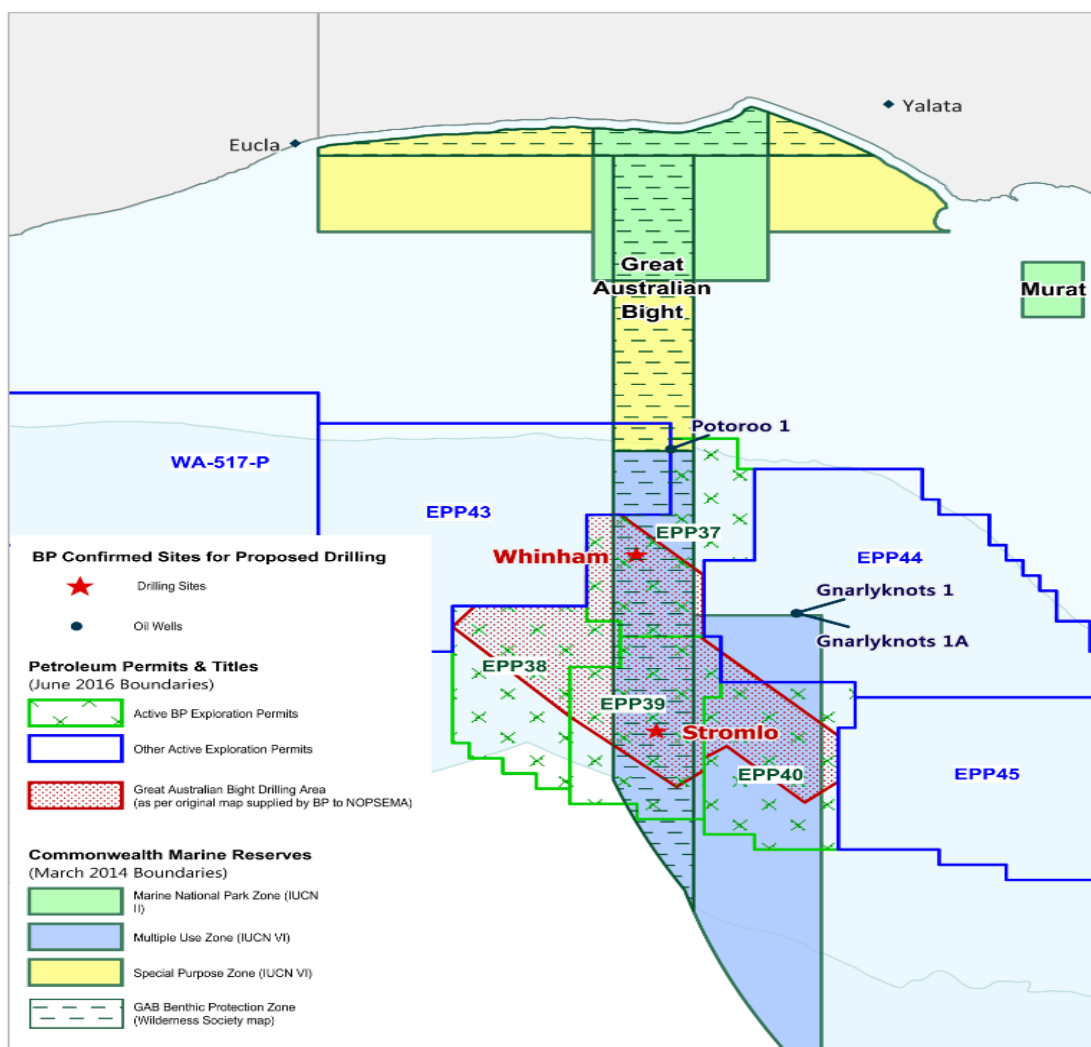
64 NOPSEMA outlined on their website that they were unable to make a decision within the 30 day timeframe as it considered the Environment Plan required a complex assessment.

65 NOPSEMA, *Great Australian Bight Exploration Drilling Program*, <https://www.nopsema.gov.au/environmental-management/activity-status-and-summaries/details/340>, (accessed 15 February 2017).

66 NOPSEMA, *Great Australian Bight Exploration Drilling Program*, <https://www.nopsema.gov.au/environmental-management/activity-status-and-summaries/details/340>, (accessed 15 February 2017).

2.64 The new proposal stated that the two wells (Stromlo-1 and Whinham-1) would be drilled by a semi-submersible mobile offshore drilling unit. Stromlo-1 was located approximately 600km west of Port Lincoln and 400km southwest of Ceduna in a water depth of approximately 2,250m. Whinham-1 was located approximately 600km west of Port Lincoln and 350km southwest of Ceduna in a water depth of approximately 1,150m (see Figure 2.3). The drilling program was scheduled to commence in the fourth quarter of 2016 to the first quarter of 2017. It was anticipated that each well would take approximately 75 days to drill. NOPSEMA was due to make a decision on this new Environment Plan on 19 September 2016.<sup>67</sup>

**Figure 2.3 – Map showing proposed drilling sites for Stromlo-1 and Whinham-1**



Source: Australian Parliamentary Library.

67 NOPSEMA, *Great Australian Bight Exploration Drilling Program*, <https://www.nopsema.gov.au/environmental-management/activity-status-and-summaries/details/375>, (accessed 15 February 2017).

2.65 On 15 September 2016, BP released its own oil spill modelling for the proposed exploratory drilling program. This modelling was based on a 'worst credible case' oil spill scenario. BP also released its oil spill response planning strategic review.<sup>68</sup>

2.66 On 11 October 2016, BP announced that it would not be progressing with its exploration drilling program in the Great Australian Bight 'citing commercial reasons and a change in their global investment strategy'.<sup>69</sup> On 20 December 2016, BP withdrew both Environment Plans.<sup>70</sup>

2.67 In an official statement, BP Developments Australia's Managing Director for Exploration and Production, Ms Claire Fitzpatrick, commented:

The decision follows the review and refresh of BP's upstream strategy earlier this year, which included focusing exploration on opportunities likely to create value in the near to medium term, primarily building on BP's significant existing upstream positions.

BP has determined that the GAB project will not be able to compete for capital investment with other upstream opportunities in its global portfolio in the foreseeable future.

We have looked long and hard at our exploration plans for the Great Australian Bight but, in the current external environment, we will only pursue frontier exploration opportunities if they are competitive and aligned to our strategic goals. After extensive and careful consideration, this has proven not to be the case for our project to explore in the Bight.<sup>71</sup>

2.68 NOPSEMA noted that prior to BP withdrawing the Environment Plan, it had requested further information from BP on the following key issues:

- potential oil spill scenarios and arrangements in place to ensure that control measures proposed were appropriate to manage potential impacts and risks;
- plans for monitoring of the environment in the event of an oil spill;
- the values and sensitivities of the surrounding environment including but not limited to fisheries, Commonwealth Marine Reserves and matters protected under the EPBC Act, the potential for impacts and risks to these features and how these were proposed to be managed;

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68 Available with The Wilderness Society submission, *Submission 79*. See also Chapter 3.

69 Department of Industry, Innovation and Science, *Submission 72*, p. 3.

70 NOPSEMA, *Great Australian Bight Exploration Drilling Program*, <https://www.nopsema.gov.au/environmental-management/activity-status-and-summaries/details/340>, (accessed 15 February 2017).

71 BP Developments Australia, Press Releases, *BP decides not to proceed with Great Australian Bight exploration*, 11 October 2016, <http://www.bp.com/en/global/corporate/press/press-releases/bp-decides-not-to-proceed-with-great-australian-bight-exploration.html>, (accessed 27 October 2016).

- consultation with relevant persons, and demonstration that this consultation met regulatory requirements;
- management of potential impacts and risks from planned emissions and discharges from the activity; and
- the implementation strategy for the activity, and demonstration that the environmental management system in place for the activity would be effective in continuously identifying and reducing environmental impacts and risks to levels that are acceptable and as low as reasonably practicable.<sup>72</sup>

2.69 Further information on these key areas was not provided prior to the withdrawal of the Environment Plans, and NOPSEMA stated that no further assessment of the submissions would occur.<sup>73</sup>

### ***Title default***

2.70 The Department of Industry, Innovation and Science stated that if 'exploration wells are not drilled by 30 June 2017, the title will be in default on its work commitments, and may be cancelled at any time'. It noted that prior to default, titleholders are able to seek investors to take-over their commitments which could allow the continuation of the permits.<sup>74</sup>

2.71 In the event that the titles fall into default and are subsequently cancelled, titleholders are able to 'make good on their commitments by diverting the committed expenditure to exploration of other areas—via a Good Standing Agreement'.<sup>75</sup>

2.72 The Department of Industry, Innovation and Science explained that:

The Good Standing Agreement is a policy mechanism available to companies that wish to maintain 'good standing' with government to 'make good' their default. If a company chooses not to enter into a Good Standing Agreement, its default will reflect poorly on past performance and may affect its ability to secure new exploration permits.<sup>76</sup>

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72 NOPSEMA, *BP withdraws Environment Plans for drilling in the Great Australian Bight*, 21 December 2016, <https://www.nopsema.gov.au/news-and-media/nopsemas-assessment-of-the-great-australian-bight-drilling-program/bp-withdraws-environment-plans-for-drilling-in-the-great-australian-bight/>, (accessed 15 February 2017).

73 NOPSEMA, *BP withdraws Environment Plans for drilling in the Great Australian Bight*, 21 December 2016, <https://www.nopsema.gov.au/news-and-media/nopsemas-assessment-of-the-great-australian-bight-drilling-program/bp-withdraws-environment-plans-for-drilling-in-the-great-australian-bight/>, (accessed 15 February 2017).

74 Department of Industry, Innovation and Science, *Submission 72*, p. 5.

75 Department of Industry, Innovation and Science, *Submission 72*, p. 5.

76 Department of Industry, Innovation and Science, *Submission 72*, p. 5.

2.73 If permits cease to exist, they revert to vacant acreage and may be nominated in future acreage releases to be considered for new petroleum exploration permits.<sup>77</sup>

2.74 According to the Department of Industry, Innovation and Science 'as of 20 October 2016, BP and its joint venture partner had not made an application to the Commonwealth-South Australian Joint Authority regarding the future of the permits'.<sup>78</sup>

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77 Department of Industry, Innovation and Science, *Submission 72*, p. 5.

78 Department of Industry, Innovation and Science, *Submission 72*, p. 5.

