



Statement of Reasons for a decision under section 87 of the *Environment Protection and Biodiversity Conservation Act 1999* on an approach for assessment

I, TANYA STACPOOLE, Environment Assessments West (WA, SA, NT) Branch Head (A/g), Department of Climate Change, Energy, the Environment and Water (**the department**), delegate for the Minister for the Environment, provide the following statement of reasons for the decision by KYLIE CALHOUN (**the delegate**), Environment Assessments West (WA, SA, NT) Branch Head, delegate for the Minister for Environment, on 6 December 2022, under section 87 of the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**), that the proposed action by Santos NA Barossa Pty Ltd (**the proponent**) to construct, pre-commission, operate and decommission a gas export pipeline and associated infrastructure in Commonwealth waters and Northern Territory waters and land (**proposed action**), be assessed by preliminary documentation under Part 8, Division 4 of the EPBC Act.

Legislation

1. A copy of relevant provisions of the EPBC Act is at Annexure A to this statement of reasons.

Background

2. On 8 November 2022, the proponent referred the proposed action to the department under section 68 of the EPBC Act. This referral replaced the withdrawn referral EPBC 2022/9166 which was substantively the same, with the exception of the activities in Commonwealth waters.
3. On 6 December 2022, under section 75 of the EPBC Act, the delegate determined that the proposed action is a controlled action due to the likely significant impacts on the following Matters of National Environmental Significance (**MNES**):
 - a) Listed threatened species and communities (section 18 & section 18A);
 - b) Listed migratory species (section 20 & section 20A); and
 - c) The environment in a Commonwealth marine area (for a proposed action taken outside that impacts the environment inside the Commonwealth marine area), or the environment (for a proposed action taken inside a Commonwealth marine area) (section 23 & section 24A).
4. The delegate considered which assessment approach must be used for the assessment of the relevant impacts of the controlled action. On 6 December 2022, under section 87 of the EPBC Act, the delegate decided that the relevant impacts of the proposed action must be assessed by preliminary documentation under Part 8, Division 4 of the EPBC Act.

Evidence or other material on which my findings were based

5. The matters the delegate was required to consider in making a decision on the assessment approach are set out in section 87(3) of the EPBC Act. Those matters are:

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- a) information relating to the action given to the Minister in the referral of the proposal to take the action; and
 - b) any other information available to the Minister about the relevant impacts of the action that the Minister considers relevant (including information in a report on the impacts of actions under a policy, plan or program under which the action is to be taken that was given to the Minister under an agreement under Part 10 (about strategic assessments)); and
 - c) any relevant information received in response to an invitation under subparagraph 74(2)(b)(ii); and
 - d) the matters (if any) prescribed by the regulations; and
 - e) the guidelines (if any) published under subsection 87(6).
6. No guidelines or regulations relevant to sections 87(3)(d) or (e) of the EPBC Act have been made.
7. In making a decision under section 87 of the EPBC Act, the delegate considered the information in the referral relating to the proposed action and its relevant impacts. The delegate also considered the information on the relevant impacts detailed in the referral decision brief prepared by the department dated 6 December 2022, which had the following attachments:
- a) Decision notice
 - b) Letters
 - i. Letter to the proponent
 - ii. Letter to NT EPA
 - c) Referral Documentation
 - i. Referral
 - ii. Map of project area
 - iii. Protected matters search results of Darwin Pipeline Duplication (**DPD**) Project area - 4 August 2022
 - iv. Report from DPD pipeline route benthic surveys
 - v. DPD PLET treated seawater discharge modelling report
 - vi. DPD contingency treated seawater discharge modelling report
 - vii. Technical memo on turtle impacts from Project lighting in Darwin Harbour
 - viii. Supporting document to the DPD Project EPBC Act Referral Form
 - ix. Referral to the NT EPA for the DPD Project
 - x. Santos Environment, Health and Safety Policy
 - xi. Australian Institute of Marine Science (**AIMS**) regional assessment study of Shoals and Shelf habitat and fish in Barossa Development area
 - d) Departmental species information and guidance documents
 - i. ERT Report - 10 km buffer – including summary table. Generated 8 November 2022
 - ii. Marine bioregional plan for the North Marine Region
 - iii. Recovery Plan for Marine Turtles in Australia

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- iv. National Light Pollution Guidelines for Wildlife
 - v. Conservation Management Plan for the Blue Whale
 - vi. EPBC Act Policy Statement 2.1 –Interaction between offshore seismic exploration and whales
 - vii. Significant impact guidelines 1.1 - Matters of National Environmental Significance
 - viii. Significant impact guidelines 1.2 - Actions on, or impacting upon, Commonwealth land, and actions by Commonwealth agencies
 - ix. Protected species and communities report - 25 November 2022
- e) Public Comments
- i. Public submissions table
 - ii. Environment Centre NT submission
- f) Ministerial Comments
- i. Minister for Defence
 - ii. Minister for Resources and Northern Australia
 - iii. Minister for Indigenous Australians
- g) Line Area Advice
- i. Migratory Species line area advice
 - ii. Environmental Contamination, Advice, and Standards line area advice
8. The proposed action is the construction, pre-commissioning, operation and decommissioning of a gas export pipeline and associated infrastructure located in Commonwealth waters and NT waters and land. The department noted that this action is part of a larger action to enable natural gas from offshore reservoirs of the approved Barossa Area Development to be exported to the existing Darwin LNG facility via a new pipeline. As all components of the larger action not included in this referral have already been approved, authorised or are currently being, or will be, considered for approval by the National Offshore Petroleum Safety and Environmental Management Authority (**NOPSEMA**) under Part 10 of the EPBC Act, the delegate accepted the referral of this action under section 74A(1) of the EPBC Act.
9. The department did not identify any other relevant information for the delegate's consideration.

Ministerial correspondence

10. By letter dated 8 November 2022, the following ministers were invited to comment on the referral:
- The Hon Richard Marles MP, Minister for Defence by way of the delegate for the Minister, Mr Lloyd Woodford
 - The Hon Madeleine King MP, Minister for Resources and Minister for Northern Australia
 - The Hon Linda Burney MP, Minister for Indigenous Australians
 - Senator the Hon Katy Gallagher, Minister for Finance by way of the delegate for the Minister, Mr Matthew Whitfort

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11. The delegate of the Minister for Defence responded on 23 November 2022, requesting ongoing engagement and consultation as the project progresses to ensure there are no conflicting activities with Defence Estate or Naval Waters.
12. Geoscience Australia responded on behalf of the Minister for Resources on 21 November 2022 and, noting the nature of the proposed action, concurred with the proponent's view that the proposed action is not a nuclear action, nor a coal seam gas or coal mining project.
13. The National Indigenous Australians Agency (**NIAA**) responded on behalf of the Minister for Indigenous Australians on 23 November 2022, noting:
 - The NIAA recommended the proponent seek advice on whether any future act requirements under the Native Title Act 1993 apply.
 - The proponent has engaged with a number of Traditional Owner groups and First Nations representative organisations in the Darwin area and Tiwi Islands. The NIAA stated their understanding that Traditional Owner groups affected by the proposed project have concerns about its potential impacts, including impacts on the ocean environment, hunting areas and cultural heritage. NIAA noted the need for thorough and sensitive consultation with Traditional Owners about this project while the legal proceedings about the Barossa Development are active, as well as post-decision.
 - The NIAA recommended that the proponent ensure they have engaged with the relevant Traditional Owners and First Nations stakeholders who have interests in or may be affected by a proposed development, including through potential cultural, social, and economic impacts. NIAA stated that this engagement should be ongoing for the entirety of a project's operational lifetime and decommissioning. NIAA recommended the proponent consider *Dhawura Ngilan: A Vision for Aboriginal and Torres Strait Islander Heritage in Australia* and the Best Practice Standards in Indigenous Cultural Heritage Management and Legislation as a guide to future consultation with First Nations stakeholders.
 - The NIAA stated they are unsure whether the previous cultural heritage assessment was conducted with Traditional Owners and covered all offshore areas in the current project area. Given the time that has elapsed since the previous cultural heritage assessment, NIAA advised the proponent to undertake a new First Nations cultural heritage survey of the entire project area with Traditional Owner participation. Further, that cultural heritage assessment should incorporate the offshore portions of the project area and address tangible and intangible values. Intangible values may include culturally significant species, ecological communities, biogeographic features and song lines.
 - The NIAA further recommended that the proponent collaborate with the Traditional Owners to develop a Cultural Heritage Management Plan (**CHMP**) to formalise agreed measures for cultural heritage management and impact mitigation, and jointly agreed protocols addressing the identification, protection and management of both tangible and intangible cultural values that may be revealed during project construction and operations. NIAA suggested that the CHMP also include cultural awareness training to ensure that all workers on the site are apprised of the importance of cultural heritage values within the landscape and can take steps to ensure their protection.
 - The NIAA recommended the proponent engage with Supply Nation to deliver project-related services and to connect with the local Community Development Program providers, Ironbark Aboriginal Corporation and Tiwi Islands Training & Employment Pty Ltd, to connect to First Nations jobseekers.
14. No comments were received from the Department of Finance.

Comments from Territory Ministers

15. By letter dated 8 November 2022, an invitation to comment on the referral was sent to Dr Paul Vogel, Chairperson of the NT Environment Protection Authority (EPA), as a delegated contact for the Northern Territory Minister for Environment, Climate Change and Water Security, the Hon Lauren Moss MLA.
16. No comments were received in response to that invitation. However, the department advised that Dr Vogel had previously responded on behalf of the then NT Minister for Environment and Natural Resources to a request for comment on the previous Darwin Pipeline Duplication referral (EPBC 2022/9166) which was later withdrawn. Dr Vogel's earlier response noted potential impacts to migratory marine megafauna and listed threatened and migratory marine turtles. Potential impact pathways identified in this comment included vessel traffic, dredging operations, pile driving and associated underwater noise, and light pollution. The following mitigation measures were recommended:
 - a) Implementation of vessel speed limits during the construction and operation phase;
 - b) Marine megafauna observation zones and exclusion zones;
 - c) That the observation period for marine megafauna prior to commencing dredging and pile driving is 20 minutes and that the observer is solely dedicated to the task of sighting and recording marine megafauna interactions prior to, and during, dredging and pile driving operations; and
 - d) Lighting specifications follow the National Light Pollution Guidelines for Wildlife Including Marine Turtles, Seabirds and Migratory Shorebirds (2020).
17. The delegate considered that Dr Vogel's earlier comment was relevant to the impacts of the proposed action.

Public comments

18. As required by section 74(3) of the EPBC Act, the proposal was published on the department's website on 8 November 2022 and public comments were invited until 22 November 2022. Three public submissions were received on the referral. The delegate considered all comments received in accordance with section 75(1A) of the EPBC Act. The content of public comments is summarised in paragraphs 19 and 20 of this letter.

Greenhouse gas (GHG) emissions

19. All comments received raised concerns regarding the contribution that GHG emissions associated with the larger action will have to anthropogenic climate change and associated impacts. The Environment Centre NT (ECNT) submitted their view that the department should consider all impacts from the larger action, including in assessing the impacts from scope 1, 2 and 3 GHG emissions, and impacts to the Great Barrier Reef Marine Park, and World and National Heritage (including Kakadu National Park and Uluru-Kata Tjuta National Park). ECNT submitted that impacts from these GHG emissions associated with the larger Barossa Area Development are consistent with the definition of "impact" in section 527E of the EPBC Act and that the larger action, of which the proposed action 'is a necessary and indispensable component,' is likely to have a significant impact on certain matters of national environmental

significance because of its contributions to climate change by the total scope 1, 2 and 3 GHG emissions from the larger action. ECNT have made submissions about the climate change impacts to various matters of national environmental significance and referred to material, including Commonwealth and international reports, relating to climate change impacts. The delegate took the public comments into account, including those from ECNT, concerning GHG emissions from the larger action.

Other protected matters

20. In relation to other protected matters, ENCT raised the following additional concerns:

- The information provided in the referral is inaccurate and de-emphasises important environmental values associated with Darwin Harbour, including the extent of hard coral habitat.
- Information provided in the Ichthys monitoring program, which was relied on in the referral for determining impacts of project activities on marine ecosystems, may be inadequate to assess impacts on marine turtles and migratory mammals because the report is out-dated and lacking in information.
- A significant increase in underwater noise and increased shipping traffic may have an impact on the Australian Humpback, Australian Snubfin and Spotted Bottlenose dolphins within Darwin Harbour.
- Impacts on some threatened and migratory species that have been recorded in Darwin Harbour, were not considered in the referral, including:
 - Large tooth (Freshwater) Sawfish (*Pristis pristis* Indo-West Pacific subpopulation) – vulnerable; migratory
 - Green Sawfish (*Pristis zijsron*) – vulnerable; migratory
 - Dwarf Sawfish (*Pristis clavata*) – vulnerable; migratory
 - False Killer Whales (*Pseudorca crassidens*) – cetacean
 - Dwarf Spinner Dolphins (*Stenella longirostris roseiventris*) – cetacean
 - Humpback Whale (*Megaptera novaeangliae*) – migratory, cetacean
- Pre-lay activities (including trenching and pipelay) may impact Commonwealth waters.

Findings on material questions of fact

21. As outlined at [2]-[3], the delegate decided that the proposed action was a controlled action and the controlling provisions for the proposed action are:

- a) Listed threatened species and communities (section 18 & section 18A);
- b) Listed migratory species (section 20 & section 20A); and
- c) The environment in a Commonwealth marine area (for a proposed action taken outside that impacts the environment inside the Commonwealth marine area), or the environment (for a proposed action taken inside a Commonwealth marine area) (section 23 & section 24A).

22. The delegate considered that the information provided by the department was sufficient to make a decision on the assessment approach under section 87 of the EPBC Act.

The referral and the relevant impacts of the proposed action

23. The delegate considered the information in the referral documentation when making the assessment approach decision under subsection 87(3) of the EPBC Act. The delegate also

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- considered the information relating to the impacts of the action and the description of the proposed action provided in the referral decision briefing package (see paragraph 4).
24. The material indicates that the location and scope of the proposed action and its impacts are well defined. Specifically, the proposed action has potential to result in:
 - a) seafloor disturbance of up to 1,244 ha (approximately 618 ha pipeline footprint and approximately 626 ha spoil disposal ground footprint);
 - b) chemical discharges and disturbance of sediment within the Commonwealth marine environment;
 - c) disturbance to Flatback Turtle (*Natator depressus*) interesting habitat critical to survival and Biologically Important Area (BIA) because of dredging and pipelay activities; and
 - d) injury or displacement of Australian Snubfin Dolphin (*Orcaella heinsohni*), Australian (Indo-Pacific) Humpback Dolphin (*Sousa sahalensis*), Spotted Bottlenose Dolphin (*Tursiops aduncus*) within a BIA because of acoustic disturbance associated with marine piling and dredging activities.
 25. In making the decision, the delegate took into account ministerial and public comments.
 26. After reviewing the referral documentation and information provided in the referral decision briefing package, the delegate considered that there is a real or not remote chance or possibility that the proposed action will result in a substantial change in water quality, which may adversely impact on biodiversity, ecological integrity, social amenity or human health, and have a substantial adverse effect on a population of a marine or cetacean species including its life cycle and spatial distribution. The delegate therefore considered that a significant impact on the environment of the Commonwealth marine area because of the proposed action is likely to occur.
 27. After reviewing the referral documentation and information provided in the referral decision briefing package, the delegate considered that there is a real or not remote chance that the proposed action will adversely affect habitat critical to the survival of the Flatback Turtle, disrupt the breeding cycle of an important population, or substantially modify an important area of habitat for a migratory species. The delegate therefore considered that, in the absence of adequate mitigation measures, a significant impact on the Flatback Turtle because of the proposed action has potential to occur and thus requires assessment.
 28. After reviewing the referral documentation and information provided in the referral decision briefing package, the delegate considered that there is a real or not remote chance that the proposed action will seriously disrupt the lifecycle (breeding, feeding, migration or resting behaviour) of an ecologically significant proportion of the population of a migratory species or substantially modify, destroy or isolate an area of important habitat for a migratory species. The delegate therefore considered that, in the absence of adequate mitigation measures, a significant impact on the Australian Snubfin Dolphin, Australian Humpback Dolphin, and Spotted Bottlenose Dolphin because of the proposed action has potential to occur and thus requires assessment.
 29. The delegate considered the following regarding GHG emissions associated with the proposed action:

- a) This action is part of a larger project to enable natural gas from offshore reservoirs of the Barossa Area Development to be exported to the existing Darwin LNG facility via a new pipeline. The proposed action does not include extractive activities. As noted in paragraph 8, other elements of this larger action will be regulated by NOPSEMA. ECNT's submission is premised on the department considering the emissions associated with the larger action. The delegate understands that an Environment Plan for the extractive activities, which form part of the larger action, will be submitted to NOPSEMA for assessment and approval.
 - b) Having accepted the referral of the proposed action pursuant to s 74A, the delegate considered the GHG emissions associated with the proposed action. The delegate considered that the proposed action, given its place in the supply chain, would not be a substantial cause of scope 3 GHG emissions associated with the end-use of gas from the larger action.
 - c) Taking into account the nature and size of the proposed action, the delegate considered that the scope 1 and 2 GHGs emissions associated with the proposed action will not be a substantial cause of any adverse climate change-related effects on matters of national environmental significance.
30. The delegate considered the following regarding other matters raised in public comments:
- a) Benthic surveys and habitat mapping was undertaken in September 2022 for the proposed action.
 - b) The delegate considered, but did not rely on, conclusions drawn from the Ichthys dredge monitoring program. The delegate considered internal departmental advice regarding potential impact pathways and receptors for sediment disturbance associated with dredging activities.
 - c) The delegate determined that significant impacts to other EPBC listed species are possible and will assess these impacts in the assessment phase.

Information provided under subparagraph 74(2)(b)(ii) of the EPBC Act

31. The delegate considered correspondence from the Northern Territory EPA, advising that a bilateral or accredited assessment cannot apply, as the referral contains components within Commonwealth waters, which were not included in the referral to the NT EPA. Considering the advice from the NT EPA, the delegate found that the proposed action is not eligible for assessment under a bilateral agreement or accredited assessment.

Subsection 87(5) of the EPBC Act

32. Subsection 87(5) of the EPBC Act provides that the Minister may decide on assessment by preliminary documentation under Division 4 only if the Minister is satisfied (after considering the matters in subsection 87(3)) that the approach will allow the Minister to make an informed decision on whether to approve under Part 9 (for the purposes of each controlling provision) the taking of the action.
33. The delegate noted, and agreed with, the department's advice that assessment by preliminary documentation is an appropriate approach and will allow the Minister to make an informed decision whether or not to approve the taking of the action under Part 9, given the following:
- a) Assessment on referral information, bilateral or accredited assessments are not tenable.

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- b) The number and complexity of relevant impacts is low and locally confined.
 - c) The relevant impacts of the action can be predicted with a high degree of confidence.
 - d) Good quality information has been provided in the referral, noting that some additional information for sediment disturbance, marine discharges, potential contaminants, and impacts and mitigation measures for protected species has been sought for the assessment phase, pursuant to s 95A.
 - e) The approach would provide opportunity for public comment on the draft preliminary documentation during the assessment stage.
34. Further to the findings above, the delegate concluded that assessment by preliminary documentation (further information required) will ensure that the relevant impacts of the proposed action are adequately assessed and will allow an informed decision to be made on whether to approve, under Part 9 of the EPBC Act (for the purposes of each controlling provision), the taking of the proposed action.
35. The delegate therefore decided on 6 December 2022, under section 87 of the EPBC Act, that the relevant impacts of the proposed action will be assessed by preliminary documentation under Part 8, Division 4 of the EPBC Act.

name and position	Tanya Stacpoole Acting Branch Head Environment Assessments West (WA, SA, NT) Branch
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signature	
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date of decision	25 January 2023
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Annexure A- Relevant Provisions of the EPBC Act

Section 87 - Minister must decide on approach for assessment

Minister must choose one assessment approach

1. The Minister must decide which one of the following approaches must be used for assessment of the relevant impacts of an action that the Minister has decided is a controlled action:
 - a) assessment by an accredited assessment process;
 - aa) assessment on referral information under Division 3A;
 - b) assessment on preliminary documentation under Division 4;
 - c) assessment by public environment report under Division 5;
 - d) assessment by environmental impact statement under Division 6;
 - e) assessment by inquiry under Division 7.

Considerations in making choice

2. In making the decision, the Minister must consider:
 - a) information relating to the action given to the Minister in the referral of the proposal to take the action; and
 - b) any other information available to the Minister about the relevant impacts of the action that the Minister considers relevant (including information in a report on the impacts of actions under a policy, plan or program under which the action is to be taken that was given to the Minister under an agreement under Part 10 (about strategic assessments)); and
 - c) any relevant information received in response to an invitation under subparagraph 7 4(2)(b)(ii); and
 - d) the matters (if any) prescribed by the regulations; and
 - e) the guidelines (if any) published under subsection (6).

Accredited assessment process

3. The Minister may decide on an assessment by an accredited assessment process only if the Minister is satisfied that:
 - a) the process is to be carried out under a law of the Commonwealth, a State or a self-governing Territory; and
 - b) the process and the law meet the standards (if any) prescribed by the regulations; and
 - c) the process will ensure that the relevant impacts of the action are adequately assessed; and
 - d) he or she will receive a report of the outcome of the process that will provide enough information on the relevant impacts of the action to let him or her make an informed

decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action.

Assessment on referral information

- 4A. The Minister may decide on an assessment on referral information under Division 3A only if the Minister is satisfied (after considering the matters in subsection (3)) that the action meets the criteria prescribed in the regulations for the purposes of this subsection.

Assessment on preliminary documentation

4. The Minister may decide on an assessment on preliminary documentation under Division 4 only if the Minister is satisfied (after considering the matters in subsection (3)) that that approach will allow the Minister to make an informed decision whether or not to approve under Part 9 (for the purposes of each controlling provision) the taking of the action.

Guidelines for choosing assessment approach

5. The Minister may publish in the Gazette guidelines setting out criteria for deciding which approach must be used for assessing the relevant impacts of an action.

Section 88 – Timing of decision on assessment approach

Initial decision

1. The Minister must decide on the approach to be used for assessment of the relevant impacts of the action within 20 business days after the Minister receives the referral of the proposal to take the action.
Note: Section 156 sets out rules about time limits.

When initial decision must be made

2. The Minister must make the decision under subsection (1) on the same day as the Minister has decided, under subsection 75(1), that the action is a controlled action, unless the Minister has requested more information under subsection 76(3) or section 89 for the purposes of deciding on the approach to be used for assessment of the relevant impacts of the action.

Time does not run while further information sought

4. If the Minister has requested more information in relation to the action under subsection 76(1), (2) or (3) or section 89, a day is not to be counted as a business day for the purposes of subsection (1) if it is:
- on or after the day the Minister requested the information; and
 - on or before the day on which the Minister receives the last of the information requested.

Running of time may be suspended by agreement

5. The Minister and the designated proponent of the action may agree in writing that days within a period worked out in accordance with the agreement are not to be counted as business days for the purposes of subsection (1). If the agreement is made, those days are not to be counted for the purposes of that subsection.

Section 89 – Minister may request more information for making decision

1. If the Minister believes on reasonable grounds that the information given to the Minister in relation to an action is not enough to allow the Minister to make an informed decision on the approach to be used for assessment of the relevant impacts of the action, the Minister may request the designated proponent to provide specified information relevant to making the decision.
2. Without limiting subsection (1), if the action is to be taken in a State or self-governing Territory, the Minister may request the designated proponent of the action to provide information about:
 - a. whether the relevant impacts of the action have been, or are being, assessed by the State or Territory; and
 - b. if so, the method of assessment that was, or is being, used and what stage the assessment has reached.
3. The Minister may make a request in relation to an action under this section even if the Minister has made a request under subsection 76(3) in relation to the action.