

DEPARTMENT OF INDUSTRY, SCIENCE AND RESOURCES

MS23-000059

To: Minister for Resources (For Decision)

DECISION MAKER ON PEP-11 APPLICATIONS

Timing: Routine

Recommendations: That you

1. **Indicate** your preferred Commonwealth decision maker who will, with the NSW decision maker, make Joint Authority decisions for the Petroleum Exploration Permit 11 (PEP-11) applications:
 - a. **Option A:** the Commonwealth Minister for Resources;
 - b. **Option B:** another Commonwealth Minister in the Industry, Science and Resources Portfolio; or
 - c. **Option C:** an SES employee in the department, as your delegate. s47C
2. **Note** that the department recommends that you discuss whether the decision should be made by ministers or delegates with the Hon Courtney Houssos MLC, NSW Minister for Natural Resources and the responsible State Minister for the Joint Authority, before indicating a preferred Commonwealth decision maker. s47C
3. **Note** that under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, Joint Authority decisions must be made either by the two Ministers or two delegates of the Joint Authority, so Minister Houssos will need to agree should Option C be preferred. s47C

s47C**Minister:****Comments:**

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For Parliamentary Services' use only. Date Submitted to the Minister's office in PDMS:			7/6/2023

Key Points:

1. On 14 February 2023, the Federal Court made orders to quash the decision of the Commonwealth-NSW Offshore Petroleum Joint Authority dated 26 March 2022 to refuse the application for a variation and suspension of the conditions to which PEP-11 is subject and remit the application to the Joint Authority (**MS23-000170** refers).

a. ^{s42}

2. The purpose of this brief is to obtain your preference for the Commonwealth decision maker for the PEP-11 applications. ^{s42}
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Sensitivities and Handling

3. On 4 February 2023, Chris Minns, as the then leader of the NSW state Opposition, announced that the Opposition continues to oppose PEP-11. The department is not aware of any similar statements made by the now Premier since the election on 25 March 2023.

Data referenced: N/A

Consultation with the Cities and Northern Australia Division, Department of Infrastructure, Transport, Regional Development, Communications and the Arts: Nil

4. The matter is not relevant to the Northern Australia portfolio.

Other Consultation: YES

5. Legal Branch

ATTACHMENTS

A: Options for the Commonwealth decision maker for PEP-11 applications

B: ^{s42}

Attachment A

Options for the Commonwealth decision maker for PEP-11 applications

1. There are three options for the Commonwealth decision maker, ^{s42}
s42

Option A – Commonwealth Minister for Resources as the responsible Commonwealth Minister

2. As the Commonwealth Minister for Resources, you can make decisions as the responsible Commonwealth Minister, jointly with the responsible NSW Minister, as members of the Commonwealth-NSW Offshore Petroleum Joint Authority under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act).

s42

Option B – Another Commonwealth Minister appointed to the Industry, Science and Resources Portfolio as the responsible Commonwealth Minister

4. Under the OPGGS Act, another Commonwealth Minister appointed to the Industry, Science and Resources Portfolio (Portfolio) can also exercise powers as the responsible Commonwealth Minister. Another Minister appointed to the Portfolio could therefore be the Commonwealth decision maker.

5. ^{s42}

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Option C – An SES employee in the department, as a delegate of the Joint Authority

6. An SES employee could be the Commonwealth decision maker as a delegate of the Commonwealth member of the Joint Authority.

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~~OFFICIAL: SENSITIVE~~
~~Legal Privilege~~



Prepared for Department of Industry, Science and Resources

s22 A/g Senior Legal Counsel

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18 May 2023

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