

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Climate Change and Energy

Offshore Electricity Infrastructure Act 2021

Offshore Electricity Infrastructure (Declared Area OEI-01-2023) Declaration 2023

Purpose and Operation

The *Offshore Electricity Infrastructure Act 2021* (OEI Act) establishes a legal framework to enable the construction, installation, commissioning, operation, maintenance, and decommissioning of offshore electricity infrastructure (OEI) in the Commonwealth offshore area. The OEI Act commenced on 2 June 2022.

The OEI Act provides a robust framework for granting licences to undertake OEI activities in the Commonwealth offshore area, while providing for co-existence with other marine users, the effective management of environmental impacts, the safety of workers and the protection of OEI.

Before the Minister can issue an invitation to apply for licences under the OEI Act in respect of a particular area, the Minister must first declare an area, by way of legislative instrument, pursuant to s 17(1) of the OEI Act.

Before a declaration can be made, pursuant to s 17(3) of the OEI Act, a number of criteria must be met:

- (a) a notice proposing to declare the area has been published; and
- (b) the day specified in the notice as the day by which submissions may be made has passed; and
- (c) the Minister has consulted:
 - i. the Defence Minister; and
 - ii. the Minister administering s 1 of the *Navigation Act 2012*; and
- (d) the Minister is satisfied that the area is suitable for offshore renewable energy infrastructure.

On 23 February 2023 a notice of proposal to declare an area in the Pacific Ocean, off the Hunter Region, New South Wales (NSW) was published on behalf of the Minister, on the Department of Climate Change, Energy, the Environment and Water's (the department's) website. This commenced a 65-day public consultation period which closed on 28 April 2023.

The Minister has consulted with the Defence Minister and the Minister administering section 1 of the *Navigation Act 2012*, formalised through letters sent by the Minister on 3 July 2023. The consultation with these Ministers did not raise any additional issues that had not been addressed during consultation with the respective departments of those Ministers.

In addition, for the Minister to be satisfied that the area is suitable for offshore renewable energy infrastructure, pursuant to subsection 19(1) of the OEI Act, the Minister must have regard to a number of prescribed matters. These are:

- (a) the potential impacts of the construction, installation, commissioning, operation, maintenance or decommissioning of offshore renewable energy infrastructure in the area on other marine users and interests;
- (b) any submissions received during the public consultation period;
- (c) any advice received as a result of the consultation with the two Ministers identified above;
- (d) Australia's international obligations in relation to the area;
- (e) Australia's greenhouse gas emissions reduction targets.

The Minister has had regard to all the matters required under the OEI Act.

Subsection 19(2) states that the Minister may also have regard to any other matters that they think are relevant.

The Minister has had regard to the following additional matters considered relevant:

- (a) the technical suitability of the proposed declared area;
- (b) the NSW Government's support for future offshore renewable energy infrastructure in the region;
- (c) the potential impacts of the construction, installation, commissioning, operation, maintenance or decommissioning of offshore renewable energy infrastructure on the area, shipping and the environment.

As the Minister has met all statutory preconditions required to make a declaration under the OEI Act, the Minister may:

- (a) declare the entire proposed declared area as suitable;
- (b) decide not to make a declaration; or
- (c) do either or both of the following, as they deem appropriate:
 - i. declare a part of the proposed declared area that the Minister is satisfied is suitable for offshore renewable energy infrastructure;
 - ii. declare an area subject to such conditions under s 20 of the OEI Act that they consider will make the declared area suitable for offshore renewable energy infrastructure.

The Minister has declared a part of the proposed declared area that is suitable for offshore renewable energy infrastructure. The Minister has also made the declaration subject to conditions under section 20 of the OEI Act that they consider make the area suitable for offshore renewable energy infrastructure.

The Offshore Electricity Infrastructure (Declared Area OEI-01-2023) Declaration 2023, gives legal effect and defines the spatial extent of the declared area in the Pacific Ocean off the Hunter Region, NSW and details the conditions that the declaration is subject to.

The Offshore Electricity Infrastructure (Declared Area OEI-01-2023) Declaration 2023 will remain in force until it is revoked under section 26 of the OEI Act or until it sunsets in accordance with the *Legislation Act 2003*.

Background

The boundaries of Declared Area OEI-01-2023 were informed by a number of factors including:

- key feasibility factors for offshore wind in Australia as identified by the Blue Economy Cooperative Research Centre;
- the proximity of the area to existing electricity infrastructure;
- the technical suitability of the area;
- NSW government support for offshore electricity infrastructure in the area;
- the level of industry interest in applying for licences under the OEI Act to construct offshore electricity infrastructure in the area;
- advice received through consultation with the Defence Minister and the Minister administering section 1 of the *Navigation Act 2012*.
- information and advice received through ongoing consultation with relevant Commonwealth and New South Wales government agencies; and
- submissions received during the public consultation period.

The declaration has been made subject to conditions. OEI licence holders within any part of the Declared Area OEI-01-2023 must ensure that any offshore renewable energy infrastructure does not exceed 260 metres above mean sea level. This condition was requested by the Department of Defence to assist in the management of aviation.

Under the OEI Act, licence holders must develop management plans prior to carrying out any offshore renewable energy infrastructure activities within their licence areas. The declaration is subject to conditions that require holders of feasibility licences or research and demonstration licences in preparing these management plans to consult with a range of stakeholders and address the outcomes of this consultation in the management plan for the licence. These stakeholders include the Department of Defence; the Bureau of Meteorology; the Australian Maritime Safety Authority; the Civil Aviation Safety Authority; and titleholders of any existing petroleum or greenhouse gas titles issued under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* whose title area overlaps with the licence area.

In addition, feasibility licence holders are also required to consult with holders of fishing concessions granted under the *Fisheries Management Act 1991*; or licences issued under the *Fisheries Management Act 1994* (NSW) that can be exercised in relation to any part, or parts, of the licence area. Feasibility licence holders will need to address the outcomes of this consultation in the management plan for the licence, including how impacts on these holders may be avoided, mitigated, or offset.

The management plan must also address matters of environmental management, including how the licence holder is to comply with any obligations under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), or regulations under that Act, in relation to the activities to be carried out under the licence.

The management plan must be approved by the Offshore Infrastructure Regulator before an application for a commercial licence can be granted. Before deciding whether to grant a commercial licence, the Minister may require the developer to conduct specific kinds of consultation. OEI licence holders should ensure they have received all other relevant approvals, including those required under the EPBC Act, and undertake any other consultation processes, before they apply for commercial licences.

Prospective holders of licences issued under the OEI Act should be aware that there are a number of threatened species in the vicinity of the Declared Area OEI-01-2023 including, but not limited to the following critically endangered or endangered species:

- Gould's Petrel (*Pterodroma leucoptera leucoptera*)
- Eastern Curlew (*Numenius madagascariensis*)
- Various Albatrosses, Petrels and shorebirds
- Southern Right Whale (*Eubalaena australis*)
- Blue Whale (*Balaenoptera musculus*)
- Grey Nurse Shark (*Carcharias taurus*)
- Leatherback Turtle (*Dermodochelys coriacea*)
- Loggerhead Turtle (*Caretta caretta*)

There are also a number of migratory species that have important foraging or breeding areas within the declaration area, including humpback and minke whales, dugongs, rays, mako and birds including shearwaters, frigatebird, common noddy and tropicbirds. The area is also close to two Ramsar wetland sites – Hunter Estuary Wetlands and Myall Lakes.

Authority

Under subsection 17(1) of the OEI Act: Subject to subsection (3), the Minister may, by legislative instrument, declare a specified area in the Commonwealth offshore area for the purposes of this Act.

Consultation

The Minister published the Notice of Proposal to declare an area in the Pacific Ocean off the Hunter Region, NSW on 23 February 2023. This commenced the statutory public consultation period as required under the OEI Act. Members of the public were able to make submissions via the department's Have Your Say web platform. On 28 April 2023, the public consultation period closed. 1,916 submissions were received.

Information on the consultation was shared across a number of social media channels, including on the department's website and on departmental social media channels, Twitter, Facebook, Instagram and LinkedIn. Paid advertising was undertaken in local newspapers and

radio, and via social media. A leaflet drop was also conducted in coastal suburbs adjacent to the proposed area.

Community Information sessions

The community was invited to participate in a number of community information sessions held during the consultation period. In total, seven information sessions were held across the Central Coast, Lake Macquarie, Newcastle and Port Stephens regions (Wamberal, Doyalson, Swansea, Newcastle City, Mereweather, Hawk's Nest, Nelson Bay) from 6 March to 9 March 2023, attracting more than 300 attendants.

Targeted meetings with stakeholder groups including local council representatives, First Nation groups, and port operators were also conducted in the Hunter and Central Coast regions.

Online sector -based engagement

Relevant industry stakeholders were invited to participate in online industry and community specific sessions held during the consultation period. Six sessions were held between 20 March and 23 March 2023. These sessions were targeted to the following industry groups: aviation, commercial fishing, recreational fishing, tourism, community groups, local businesses and the maritime industry. A total of 18 individuals attended these online sessions.

Ongoing consultation was also undertaken with relevant Commonwealth and NSW Government agencies that have policy and regulatory oversight over marine users and interests.

Regulatory Impact

A Regulation Impact Statement (RIS) was prepared for the OEI Act.¹ This RIS was included in the Explanatory Memorandum for the OEI Act. The Office of Impact Analysis has previously been contacted for advice on the need for a RIS and have advised that declarations are within the scope of the OEI Act RIS process. As such, the preparation of an Impact Analysis is not required for this declaration.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is set out in Attachment B.

¹ Office of Impact Analysis reference number 42703.

Details of the *Offshore Electricity Infrastructure (Declared Area OEI-01-2023) Declaration 2023.*

Section 1 – Name

This section provides that the name of the instrument is the *Offshore Electricity Infrastructure (Declared Area OEI-01-2023) Declaration 2023.*

Section 2 – Commencement

This section provides that the declaration commences on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the declaration is made under section 17 of the *Offshore Electricity Infrastructure Act 2021.*

Section 4 – Definitions

This item provides for definitions of terms used in the declaration. These terms include ‘Declared Area OEI-01-2023’, which is the area specified in Schedule 1 of the instrument.

Section 5 – Declared area

Subsection 5(1) declares the area ‘Declared Area OEI-01-2023’ as a ‘declared area’ for the purposes of the OEI Act.

Subsection 5(2) refers to Schedule 2 of the declaration, which sets out a simplified map that illustrates the location of the declared area.

Section 6 – Conditions

This section sets out the conditions that the declaration is subject to.

Condition 1

This condition limits the height of infrastructure to a maximum of 260 metres above mean sea level. This condition mitigates negative impacts to the air capability of the Australian Defence Force.

Condition 2

This condition requires that feasibility licence holders and research and demonstration licence holders, within the Declared Area OEI-01-2023 must, when preparing a management plan for

the licence, consult with a number of Commonwealth Government agencies and titleholders of existing petroleum or greenhouse gas titles issued under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* whose title area overlaps with the licence area, or a representative nominated by the holder for the purposes of the consultation. The outcomes of the consultation must be addressed in the management plan.

The construction, installation, commissioning, operation, maintenance or decommissioning of offshore renewable energy infrastructure within the Declared Area OEI-01-2023 may:

- present technical challenges for Defence operations and radar capability;
- present technical challenges for the existing weather radar network;
- impact the safety of navigation of vessels and aircraft;
- present interaction risks with *Offshore Petroleum and Greenhouse Gas Storage Act 2006* titleholders.

This condition ensures that feasibility licence holders and research and demonstration licence holders will undertake consultation with Commonwealth agencies who have identified the potential for offshore renewable energy infrastructure to impact on their existing operations or regulatory regimes, and that these potential impacts will be expressly considered during the development of projects.

Condition 3

This condition requires that feasibility licence holders, within the Declared Area OEI-01-2023, must, when preparing a management plan for the licence, consult with holders of fishing concessions granted under the *Fisheries Management Act 1991* and licences issued under the *Fisheries Management Act 1994* (NSW) that can be exercised in relation to any part, or parts, of the licence area. If a concession or licence holder has nominated a representative organisation for the purposes of the consultation, the feasibility licence holder must consult with the representative organisation. The outcomes of the consultation must be addressed in the management plan, including how impacts on these holders may be avoided, mitigated, or offset.

The Declared Area OEI-01-2023 overlaps existing fisheries within Commonwealth waters managed under the *Fisheries Management Act 1991* or the *Fisheries Management Act 1994* (NSW). To ensure potential impacts on existing commercial fishing rights are expressly considered by feasibility licence holders the declaration has been made subject to this condition.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Offshore Electricity Infrastructure (Declared Area OEI-01-2023) Declaration 2023

This declaration is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Offshore Electricity Infrastructure (Declared Area OEI-01-2023) Declaration 2023 gives legal effect and defines the spatial extent of the declared area in the Pacific Ocean off the Hunter Region, NSW and details the conditions that the declaration is subject to.

Human rights implications

This declaration does not engage any of the applicable rights or freedoms.

Conclusion

This declaration is compatible with human rights as it does not raise any human rights issues.

The Hon Chris Bowen MP
Minister for Climate Change and Energy