

Feedback from Earth Resources Regulation (Victoria) Consultation in the course of preparing an Environment Plan guideline

Introduction and context

Victoria's Earth Resources Regulation reviewed NOPSEMA's guideline, 'Consultation in the course of preparing an environment plan', during the process of assessing environment plans submitted by two different titleholders proposing to carry out offshore petroleum operations in Victorian state waters.

The guideline provided our Stakeholder Engagement team with a useful reference for assessing and determining whether both plans meet the stakeholder engagement requirements of the Victorian Offshore Petroleum and Greenhouse Gas Storage Regulations 2021 (the Victorian regulations) while addressing the consequences of the Federal Court of Australia's appeal decision on the case of Santos NA Barossa Pty Ltd v Tipakalippa (2022).

Although the guideline references the Commonwealth Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (the Commonwealth regulations), given these are basically mirrored within the Victorian regulations, much of the guideline's content could be easily applied to the task of assessing environment plans within the dual context of Victoria's legislative framework and relevant case law resulting from the Federal Court's appeal decision.

As a result, much of Earth Resources Regulation's feedback on the guideline is based on the experience of referring to it, alongside the Victorian regulations, for the purpose of assessing an environment plan rather than preparing one. We offer the following suggestions for NOPSEMA's consideration.

Feedback

In reviewing the Federal Court's findings, the reference to making a decision based on matters not demonstrated by the drilling environment plan but by 'previous environment plans' strongly resonated with Earth Resources Regulation.

This was due to our experience in assessing one of the environment plans referred to in the introduction, which similarly referred to previous plans without adequately demonstrating in the environment plan submitted for assessment that the regulatory requirements pertaining to consultation had been met.

As a result (and in light of the Federal Court's appeal decision), Earth Resources Regulation believes the draft guideline could be clearer about the need for the consultation section of an environment plan to:

- provide the methodology used to identify relevant authorities, persons and organisations who were consulted for the purposes of developing the plan as required by Commonwealth regulation 11A (Victorian regulation 13F)
- include sufficiently detailed information about how relevant authorities, persons and organisations were consulted, specifically how consultation activities, materials and timelines were tailored to the different needs and interests of those being consulted
- from the consultation undertaken, describe the environment(s) identified as potentially being affected by the proposed petroleum operation and include details of the relevant

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values and sensitivities of the environment(s), including the social, economic, heritage and cultural features of its people and communities

- provide an evaluation of the environmental impacts and risks identified and describe the control measures that have been established (developed in consideration of the consultation with relevant authorities, persons and organisations) to manage or reduce these to as low as reasonably practicable
- in consideration of the consultation that has occurred, outline the performance standards and outcomes to manage or reduce the environmental impacts and risks to as low as reasonably practicable, and the measurement criteria that will be used to determine whether these are being met
- include detailed information (drawn from the implementation strategy section of the environment plan) about how appropriate ongoing consultation with relevant authorities, persons and organisations will be undertaken during the plan's implementation, as required under Commonwealth regulation 14(9) (regulation 16(8) of the Victorian regulations).

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