



INPEX Operations Australia Pty Ltd
ACN 150 217 262

22/100 St Georges Terrace Perth
Western Australia 6000

Tel +61 8 6213 6000

INPEX.com.au

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Environment, Renewables & Decommissioning

National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA)
Submitted online

RE: NOPSEMA's Guideline on Consultation Requirements in the Course of Preparing an Environment Plan

To whom this may concern

INPEX welcomes the opportunity to engage with NOPSEMA and provide comment in response to the Guideline on Consultation Requirements in the Course of Preparing an Environment Plan (December 2022) (**Guideline**).

INPEX has been an active member of the Australian business community since 1986 and, as operator of Ichthys LNG, is the largest Japanese investor in the country.

At the outset, we wish to reiterate our commitment to best practice relevant person engagement. We recognise the importance of relevant person engagement in the preparation of Environment Plans. As such, we are committed to actively seeking the input of relevant persons, addressing their concerns, and ensuring that their views are considered in the development of Environment Plans. INPEX considers consultation to be an ongoing process, in which we can build and foster long-term relationships with our valued stakeholders in the communities in which we operate.

For awareness, INPEX – and other operators - have significantly enhanced its stakeholder communication and engagement efforts, following the Court's decision, as follows:

- Critically, significant consultation with multiple First Nations communities, across new and varying locations across north Western Australia and the Northern Territory;
- Extensive consultation with offshore tourism and fishing operators, fishing associations, tourism councils to avoid impacting commercial business activities;
- Consultation with significant local councils, government agencies, authorities and public officials;
- Enhanced publicly available information through community meetings, website updates, fact sheets, community forums, utilising QR codes for easy access by members of the public;
- Consultation with environmental groups to address their requests for information; and
- Provision advertisements in community, state and national newspapers.

It should be noted while the consultation efforts and resourcing has greatly increased, industry and stakeholders have experienced unanticipated adverse outcomes:

- **Reports of significant stakeholder fatigue** noted by First Nations represented organisations, who have expressed concern at the pressure and time to consult with multiple proponents who are required to engage as per the requirements under the OPGGSA;
- **Industry is consulting for the first time with some First Nations communities** that have not previously been considered as potential relevant persons to a planned activity or in fact had any exposure to the oil and gas activity. This requires additional context of the industry, the regulator and the purpose of Environment Plans prior to any discussions specific to the actual scope of the activities.
- **It is proving challenging to consult such First Nations communities in a timely manner** as a result given the need to first explain OPGGSA and which we are now engaging on unplanned activities. Furthermore, considerable delays are being experienced relating to factors such as their existing obligations and COVID-19 backlog and on occasion, cultural reasons such as 'Sorry time' due to bereavement.
- **Given the vast geographical spread of potential relevant persons**, there are significant travel and logistical considerations, particularly in Northern Australia;
- **INPEX's relevant persons identified has risen** from 250 stakeholders to in excess of 750 stakeholders (300% increase) - which is being replicated across industry Operators, resulting in additional stakeholder fatigue across communities;
- **Significant delays in the ability to submit Environment Plans for assessment** creating significant cost burdens for industry members who had contracted drilling rigs, seismic marine vessels, resulting in major cost exposures and lack of ability to meet project timeframes, delaying potential oil and gas supply and carbon, capture and storage projects.

While we acknowledge that the Guideline has been helpful in providing some direction to Environment Plan consultation, we believe that it could be improved in certain areas, as outlined below, to make the Guideline more effective.

1. Reasonable consultation period

The current Guideline references a "reasonable consultation period" but does not provide sufficient guidance on how this should be determined. We suggest that NOPSEMA provides more definitive guidance on how it plans to assess what constitutes a reasonable consultation period. Noting that there is currently no requirement under the Regulations for a 'set period'

As the Regulations currently provide, the focus should be on the nature of the consultation rather than a time frame. A reasonableness scale or framework that takes into account the complexity, extent, duration and impact on an activity could be useful. A well-defined, fit-for-purpose consultation ensures that the consultation process is efficient and effective, and provides the relevant persons being consulted with a clear understanding on how the consultation process will run, enabling relevant persons and operator alike to plan for their activities accordingly. Ultimately, a well-defined consultation process is key to ensuring projects are developed in a responsible and sustainable manner.

2. Assessment of Intangible values

INPEX believes that the Guideline requires more definitive guidance on how NOPSEMA plans to assess intangible values and culturally sensitive matters. For example, what is culturally ALARP? While the current Guideline briefly mentions the need to consider these

values, it does not provide sufficient guidance on how this should be done. We recommend that NOPSEMA provide further details and references on how it plans to assess these matters. This could include specific examples of what relevant persons should consider and how they should be assessed.

3. International relevant persons guidance

While the *Offshore Petroleum and Greenhouse Gas Storage Act* and supporting Regulations (**OPGGSA**) and the NOPSEMA Guideline provides guidance on consultation with relevant persons in the course of Environment Plan consultation, there is a need for more clarification on how international relevant persons or stakeholders are to be consulted in the development of offshore Environment Plans. Specifically, we would like to see more guidance on the identification and engagement of international stakeholders, as well as the communication and consultation processes that should be used for international stakeholders that may be deemed relevant under the legislation.

4. The concept of "consent" versus "consultation"

Under the OPGGSA Guideline Environment Plan, obtaining "consent" or "agreement" is not required when undertaking consultation with stakeholders. This requirement recognises that stakeholders may not always agree with a proposed plan, but it is important to listen to their perspectives and consider their input in the decision-making process

Accordingly, the focus is on engaging with stakeholders and addressing their feedback for the development of an EP and associated controls, to ensure that the EP takes into account the concerns and needs of all stakeholders, including local communities, indigenous groups, environmental organizations, and other interested parties.

The nature and extent of use of stakeholder's land provide good reasons why consultation is required to lead to consent under the *Native Title Act 1993 (NTA)* as opposed to the purpose of consultation under the OPGGSA. However, this difference is creating confusion amongst some traditional owner stakeholders more familiar with onshore consultation practices under the NTA and needs to be clarified by NOPSEMA.

We believe the areas outlined in this position paper could benefit from further guidance to ensure that Project proponents and Operators are able to prepare Environment Plans that adequately consider the NOPSEMA's requirements.

We hope NOPSEMA will take our points into account and consider revising the Guideline to ensure that these issues are addressed, and the Guideline reflects an appropriate balance between all parties.

Thank you for your attention to this matter. We remain committed to working with NOPSEMA to ensure that our industry operates in a safe and sustainable manner.

Yours sincerely,

