

Stakeholder Briefing

Consultation in the course of preparing an
environment plan

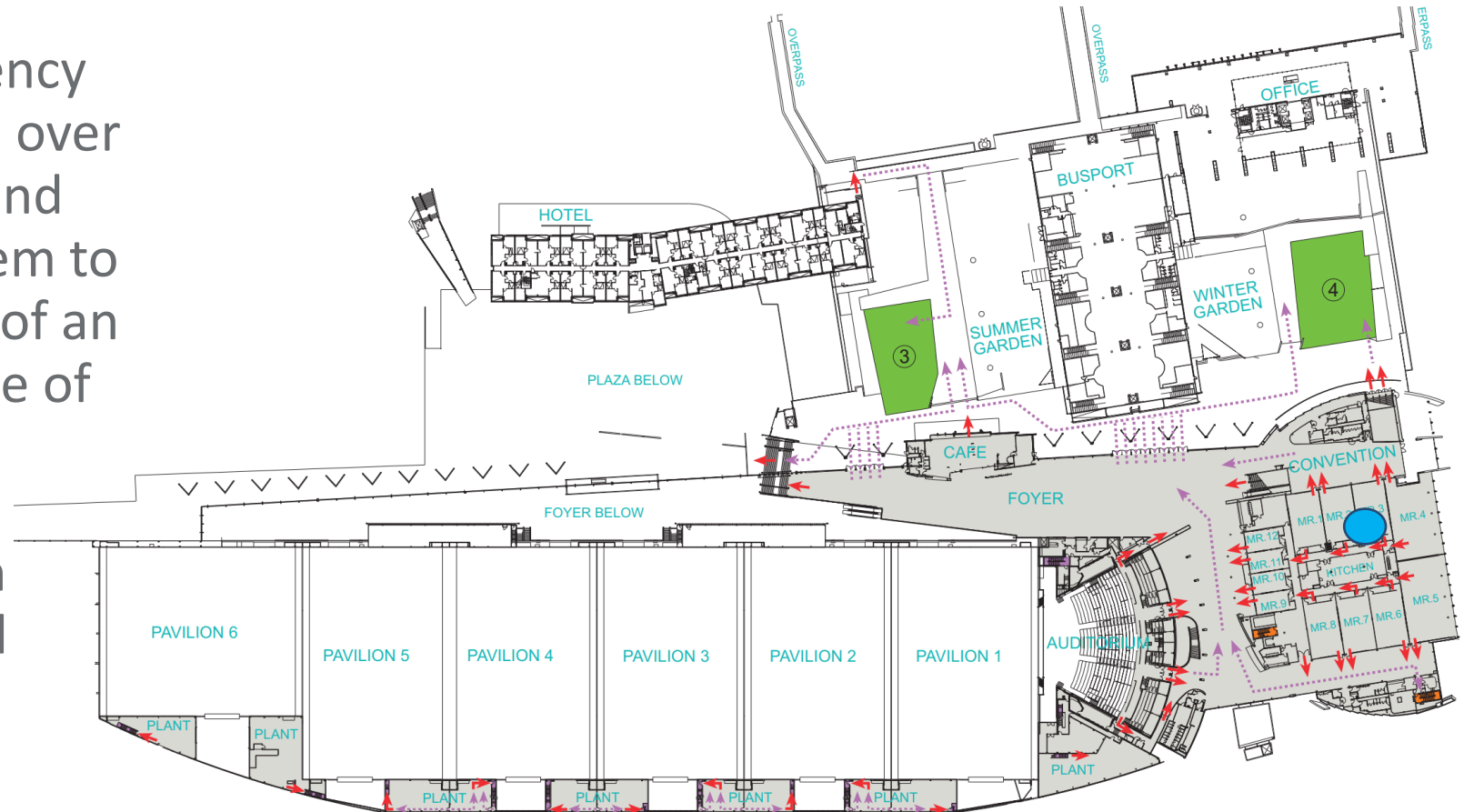
15 December 2022



Welcome and housekeeping

In the event of an emergency instructions will be issued over the Emergency Warning and Intercommunication System to assist in the coordination of an evacuation and/or passage of information.

This information will be in the form of an automated tone and verbal communication.



Welcome to country

Phil Walleystack



Q&A: [slido.com](https://www.slido.com) and enter code 3760114

Introductions

Presenters



Cameron Grebe

Head of Environment

Renewables and
Decommissioning
NOPSEMA



Nicola Brischetto

Deputy Director

Office of the Chief
Executive NOPSEMA



Catherine Kesteven

General Manager

Offshore Resources Branch
Department of Industry,
Science and Resources

Q&A: [slido.com](https://www.slido.com) and enter code 3760114

Q&A

At the end of today's briefing we will take questions from participants using the Slido platform.

Participants using Slido will be able to see all the questions submitted and “upvote” them if they wish.

NOPSEMA will attempt to answer as many questions as possible at the end of the presentation.

Questions will be collated and a Q&A document published on our website in due course.



Scan the QR code or
visit slido.com and enter code **3760114**

Q&A: slido.com and enter code 3760114

Commitment to implement the Uluru Statement



The Australian Government recognises Aboriginal and Torres Strait Islander cultures as a critical part of our national identity

The Government has made a commitment to implement the Uluru Statement from the Heart in full, including a referendum in this term of Government to enshrine a Indigenous-voice to Parliament in the Constitution

A Makarrata Commission will also be co-designed to work on a national process of treaty-making and truth-telling

NOPSEMA supports this work. We recognise the important role First Nations peoples have in informing decision making where those decisions affect them

The role of the regulator



Independent regulator for safety, structural integrity and environmental management of offshore petroleum under OPGGS Act and associated regulations

Since June 2022, also regulator for renewable energy projects in Commonwealth waters under OEI Act and regulations

Operate under the endorsed program under EPBC Act

Environmental protection role:

- Advise on good practice
- Assessment & decision-making for approvals
- Monitoring and enforcement of compliance with legislation, regulations and approvals
- Investigation and enforcement of non-compliance

Santos NA Barossa Pty Ltd v Tipakalippa [2022]

FCAFC 193 (The Appeal Decision)



The Appeal Decision clarifies the law regarding requirements for consultation in accordance with the Environment Regulations

- Reinforces the purpose of consultation
- Clarifies the requirements for titleholders
- Provides statutory interpretation of 11A(1)(d) relevant persons consultation
- Specifically addresses consultation with First Nations peoples

Pathway to ensure appropriate consultation



- The Appeal Decision (Court) ✓
- **NOPSEMA** publish guideline & other documentation ✓
 - Assessment policies & EP Decision-making guidelines
 - Decisions/notices to all EPs under assessment and submitted after 2 December 2022
- **Titleholders**/industry to develop consultation process(es) in consultation with relevant persons
- **Titleholders** implement consultation processes
- **Titleholders** submit EPs for assessment after consultation has been carried out

Regulatory requirements & the interim guideline



Duty to consult with relevant persons

Duty to consult is placed onto the titleholder

Consultation with people or organisations whose functions, interests or activities may be affected

Broad capture of all ascertainable persons or organisations

Consultation must:

- Be undertaken in course of preparing the EP
- Provide context specific information about the environment and potential environmental impacts and risks
- Be ongoing throughout the life of the activity (Reg 14(9))

Regulatory requirements & the guideline



Effective consultation expectations

Consultation requirements for titleholders:

- Identifying relevant persons
- Carrying out consultation including sufficient information and reasonable period of time informed by relevant persons
- Reporting on consultation

Clarifications:

- Communally held interests
- First Nations peoples / groups
- EP must demonstrate (i.e. with evidence) sound processes and meaningful consultation

Regulatory requirements

Functions, interests and activities

Functions: A relevant persons 'power or duty to do something'

Activities: What a relevant person is likely already doing. Activities has a broader meaning than the definition for 'activity' provided in regulation 4

Interests: Refers to the concept of interest in public administrative law and includes any interest possessed by an individual, whether or not the interest amounts to a legal right, or is a proprietary or financial interest, or relates to reputation

A Traditional Owner's connection to sea country is recognised as interest that must be considered by titleholders where it is determined to be relevant

Regulatory requirements

Sufficient information and time to respond

The Appeal Decision reinforces the approach taken to inform effective consultation practices:

- Sufficient information to enable consideration of impacts
- Nature and scope of information from EP appropriate
- Right to request information and privacy of information provided
- Adequate time to consider impacts and respond

Meaningful consultation – provides enough information to ensure objectives of consultation are met

Consultation with First Nations people and groups



Design of titleholders' consultation processes should be informed by First Nations groups' input

The Appeal Decision identified

- No shortage of guidance on consultation processes that can be adopted by titleholders
- Reasonable opportunity to participate must be provided
- Interests may be individual or communally held

NOPSEMA assessment of duty to consult



NOPSEMA must be reasonably satisfied that the titleholder has met requirements (Regulation 10A) and may make reasonable enquiries

Reasonably: “there must be a clear justification for the decision to accept an environment plan, which is to be determined objectively”

EP must include all the information to demonstrate to NOPSEMA that titleholder has discharged the duty

Other workstreams

For NOPSEMA



- Working with other government agencies and counterparts in other jurisdictions
 - Samuels review and Government response (EPBC Act reform)
 - Cultural Heritage Protection reforms
- Direct engagement with stakeholders to advise on consultation requirements and hear directly from community
- Build on existing capacity and expertise
- Continue RAP journey and First Nations Engagement Strategy

Next steps

For industry

Update/develop processes for:

- identifying relevant persons in accordance with requirements including NOPSEMA Guideline
- consultation processes that are designed to address expectations those being consulted (eg co-design)

Adapt processes to address issues raised by relevant persons to ensure process remains effective

Challenges and opportunities

Industry collaborative and co-designed consultation frameworks

- High priority work
- Time and effort required by titleholders
- Opportunities to build engagement
- Collaboration and co-design with relevant persons stakeholders

Summary

- The Appeal Decision has provided clarity
- **NOPSEMA** has prepared guidelines & updated other documentation to assist
 - feedback invited for the interim period (~3 months)
- **Titleholders**/industry need to develop consultation process(es) in consultation with relevant persons
- **Titleholders** must then implement consultation processes
- **Titleholders** can then submit (or resubmit) EPs for assessment after consultation has been carried out

Q&A



NOPSEMA

Australia's offshore
energy regulator

**National Offshore Petroleum Safety and
Environmental Management Authority**

Level 8 Alluvion, 58 Mounts Bay Rd, Perth WA 6000
GPO Box 2568, Perth WA 6001 Australia

nopsema.gov.au



NOPSEMA

Australia's offshore
energy regulator

