

NOTICE OF FILING

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File Title: SANTOS NA BAROSSA PTY LTD ACN 109 974 932 v DENNIS MURPHY
TIPAKALIPPA & ANOR
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Notice of Contention

No. VID 555 of 2022

Federal Court of Australia
District Registry: Victoria
Division: General

On appeal from a single judge of the Federal Court of Australia

Santos NA Barossa Pty Ltd (ACN 109 974 932)

Appellant

Dennis Murphy Tipakalippa and another

Respondents

To the Appellant and Second Respondent

The First Respondent contends that the judgment of the primary judge should be affirmed on grounds other than those relied on by the Court.

The First Respondent does not seek to cross-appeal from any part of the judgment.

Grounds relied on

Ground 1

The primary judge ought to have concluded that the Second Respondent, the National Offshore Petroleum Safety and Environmental Management Authority (**NOPSEMA**) was not reasonably satisfied, within the meaning of regulation 10(1) and as required by regulation 10A of the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (Cth) (**Regulations**), that the Barossa Developmental Drilling and Completions Environment Plan (the **Drilling EP**) demonstrated that the consultations required by Division 2.2(A) had been carried out by the Appellant (**Santos**), because:

- (a) the Drilling EP did not demonstrate that all relevant persons within the meaning of regulation 11A(1)(d) had been identified;

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- (b) further or alternatively, the Drilling EP did not demonstrate that Santos had consulted each relevant person because it did not demonstrate that traditional owners of the Tiwi Islands had either been consulted, or were not relevant persons, despite the Drilling EP stating the matters in J[205]-[206], and in particular the following which indicated that they had, or were likely to have, functions, interests, or activities which may be affected by the activities to be carried out under the Drilling EP:
- (i) The operational area is located within Commonwealth waters in the Timor Sea, approximately 138 km north of the Tiwi Islands and 263 km north-northwest of Darwin (Drilling EP p 34; J[206(i)]);
 - (ii) significant sea country for traditional owners exists within the environment that may be affected by the activities (**EMBA**) (Drilling EP p 34, J[205(i)]);
 - (iii) the “potential environmental impacts and risks of the activities” on “Tiwi Islands Sea Country” and “other areas of marine or terrestrial Aboriginal Cultural significance and / or heritage” were raised by another relevant person (Drilling EP, p 112; J[205(iv)]);
 - (iv) “The close, long-standing relationship between Aboriginal and Torres Strait Islander peoples and the coastal and marine environments of the area is evident in indigenous culture today. Within the EMBA, the Tiwi Islands have a long history of occupancy by Aboriginal and Torres Strait Islander peoples and the marine areas, particularly the Arafura Marine Park, are significant sea country for Aboriginal and Torres Strait Islander peoples” (Drilling EP, Appendix C, p 119; J[205(xiii)]);
 - (v) “Fishing, hunting and the maintenance of marine cultures and heritage through ritual, stories and traditional knowledge continue as important uses of the nearshore region and adjacent areas, while direct use by Aboriginal and Torres Strait Islander peoples deeper offshore is limited, many groups continue to have a direct cultural interest in decisions affecting the management of these waters. The cultural connections Aboriginal and Torres Strait Islander peoples maintain with the sea may be affected, for example, by offshore fisheries and industries” (Drilling EP, Appendix C, p 119; J[205(xiii)]);
 - (vi) “sensitivity mapping [derived from stakeholder engagement workshops held with Tiwi Islanders] identified Aboriginal heritage sites along the northern, western and southern coastlines of the Tiwi Islands, including areas used for food collection, sacred sites, camping sites and a dreaming site. These coastlines are within the EMBA but outside the permit area” (Drilling EP, Appendix C, pp 119-120; J[205(xiii)]);

- (vii) “A number of different fisheries operate around the Tiwi Islands, which occur near the southern end of the pipeline route corridor and within the EMBA. However, there appears to be a significant overlap in the harvest of primary species by Traditional Indigenous, recreational and commercial fisheries” (Drilling EP, Appendix C, p 124);
- (ix) the impacts of hydrocarbon spills for “indigenous users” would be “similar to those discussed above for fish” (which include “mortality” and “disease”) “resulting in socio-economic impacts” (Drilling EP, pp 268, 271; J[205(ix)]);
- (x) “the potential visible presence of surface oil within the EMBA would be of concern to Indigenous people” (Drilling EP, p 278; J[205(viii)]).

Ground of contention 2

If paragraph [97] of Santos’ submissions provides a basis to conclude that NOPSEMA was reasonably satisfied that the Drilling EP demonstrated that the consultations required by Division 2.2(A) had been carried out by Santos because Santos had appropriately consulted with the Tiwi Land Council (**TLC**) as the relevant person under regulation 11A(1)(d) in respect of any “sea country” of traditional owners of the Tiwi Islands (which is denied), then the primary judge ought to have concluded that NOPSEMA was not reasonably satisfied, within the meaning of regulation 10(1) and as required by regulation 11A(2), of the Regulations, that the information provided by Santos to the TLC (Reasons, Annexure 2) was sufficient to make an informed assessment of the possible consequences of the activity on the functions, interests and activities of the traditional owners of the Tiwi Islands, because it did not include:

- (a) any reference to significant sea country for traditional owners or the cultural connections or interests of traditional owners of the Tiwi Islands within the EMBA;
- (b) a map of the EMBA;
- (c) any information directed to the possible consequences of the activities to be carried out under the Drilling EP on the functions, interests or activities of the traditional owners of the Tiwi Islands within the EMBA.

Date: 14 October 2022

A handwritten signature in blue ink that reads "Brendan Dobbie". The signature is written in a cursive style with a small dot at the end of the last letter.

Signed by Brendan Dobbie
Managing Lawyer
Environmental Defenders Office
Lawyers for the First Respondent

Schedule

No. VID 555 of 2022

Federal Court of Australia

District Registry: Victoria

Division: General

Respondents

Second Respondent: National Offshore Petroleum Safety and Environmental
Management Authority

Date: 14 October 2022