

Inquiry & Advisory Committee Terms of Reference

Supplementary Environment Effects Statement Viva Energy Gas Terminal Project



Department
of Transport
and Planning

Version: August 2024

The Viva Energy Gas Terminal Project Supplementary Environment Effects Statement (EES) Inquiry and Advisory Committee (IAC) is appointed to inquire into, and report on, the likely environmental effects of the proposed Viva Energy Gas Terminal Project (the project) assessed in the Supplementary EES, namely, likely effects on the marine environment, noise, air quality and underwater Aboriginal cultural heritage (i.e. Relevant Environmental Effects).

The IAC is appointed pursuant to:

- section 9(1) of the *Environment Effects Act 1978* (EE Act) as an Inquiry to consider the Supplementary EES and the Relevant Environmental Effects; and
- part 7, section 151(1) of the *Planning and Environment Act 1987* (P&E Act) as an Advisory Committee to consider the updated draft planning scheme amendment C442ggee (Updated PSA).

By way of background, the Minister determined on 28 December 2020 that an EES was required to assess the likely significant environmental effects of the project. The original EES was exhibited and then considered by the Viva Energy Gas Terminal Inquiry and Advisory Committee, which submitted its report to the Minister on 5 October 2022. Having considered the original IAC's report, the Minister determined that a supplementary EES was required to further address Relevant Environmental Effects. The Minister directed that a supplementary EES was required on 6 March 2023 (the Minister's Directions).

The Supplementary EES provides an updated assessment of the project's impacts on the marine environment, noise, air quality and underwater Aboriginal cultural heritage. It also includes:


- an updated assessment of likely significant impacts on relevant Matters of National Environmental Significance (MNES) protected under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act); and
- the Updated PSA, which has been prepared to establish planning approval for the project under a Specific Controls Overlay and an incorporated document.

Name

1. The IAC is to be known as the 'Viva Energy Gas Terminal Project Supplementary EES Inquiry and Advisory Committee'.

Skills

2. The IAC should consist of members with expertise in:
 - a. marine biodiversity and ecology (including marine flora and threatened and migratory bird species);
 - b. coastal processes and hydrodynamics (including with respect to water quality);
 - c. air quality and noise;
 - d. Aboriginal cultural heritage; and
 - e. statutory planning.
3. The IAC will comprise a Chair (IAC Chair), a Deputy Chair and other appropriately qualified members.
4. The Department of Transport and Planning (DTP) engaged an Independent Peer Reviewer to review and provide advice regarding the Supplementary EES, including the proponent's study program, specifically in relation to coastal processes, hydrodynamics, marine ecology and birds. The Independent Peer Reviewer will remain engaged by DTP until the IAC hearing concludes, to respond to any specific



queries from the IAC. Queries from the IAC to the Independent Peer Reviewer must be communicated in writing to DTP via the Impact Assessment Unit.


Purpose of the IAC

5. The IAC is appointed by the Minister for Planning under section 9(1) of the EE Act to hold an inquiry into and report on the Relevant Environmental Effects of the project. The IAC must:
 - a. review and consider the exhibited Supplementary EES, relevant referenced material and submissions in relation to Relevant Environmental Effects (i.e. those on the marine environment, noise, air quality and underwater Aboriginal cultural heritage);
 - b. consider and report on the significance and acceptability of Relevant Environmental Effects, having regard to relevant policy and legislation;
 - c. consider and report on the updated assessment of likely significant impacts on relevant MNES, in light of the updated information in the Supplementary EES attachment examining MNES, including the significance and acceptability of residual impacts;
 - d. consider new information in the Supplementary EES that is relevant to the EPA Development Licence applications that were exhibited with the original EES;
 - e. identify any additional mitigation measures or modifications, beyond those identified in the Supplementary EES, to avoid, mitigate or manage the Relevant Environmental Effects ; and
 - f. advise on how these measures and modifications should be implemented through the necessary approvals and consents for the project.
6. The IAC must assess the Relevant Environmental Effects in the context of the Minister's Directions, and in accordance with these terms of reference and in doing so should consider relevant aspects of the original EES, only where matters and investigations documented in the Supplementary EES rely upon or are integrated with the original EES. It is not the role of the IAC to re-examine effects that are outside the scope of the Supplementary EES.
7. In its capacity as an Advisory Committee, the IAC must:
 - a. review the Updated PSA;
 - b. consider any issues raised in public submissions that relate to the Relevant Environmental Effects or the updates to the PSA; and
 - c. recommend any changes to the Updated PSA that it considers necessary to address the Relevant Environmental Effects.
8. The IAC must produce a report of its findings and recommendations to the Minister for Planning on the Relevant Environmental Effects and the Updated PSA only, to inform:
 - a. the Minister's assessment under the EE Act, which will be considered by statutory decision makers for the project; and
 - b. the Minister's consideration of the Updated PSA under the P&E Act in due course.

Background

Project outline

9. The project comprises the development of a gas terminal using a ship known as a floating storage and regasification unit (FSRU) at Refinery Pier in Corio Bay, adjacent to Viva Energy's Geelong refinery. The project would bring natural gas from other parts of the country and overseas to meet south-eastern Australian gas market demand.
10. The key components of the project include:
 - a. extension of the existing Refinery Pier – a new pier arm, new berth and ancillary pier infrastructure;
 - b. localised dredging for the new berth and ship turning basin, and deposition of dredged sediment at the existing Point Wilson dredged material ground;

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- c. the FSRU continuously moored at the new berth, which would receive liquefied natural gas (LNG) from visiting LNG carriers, store and convert the LNG into natural gas when needed;
 - d. a treatment facility located within the Geelong Refinery site to check that the gas meets transmission system standards, where odorant and nitrogen (when required) is added; and
 - e. a 7-kilometre pipeline to transfer the gas from the FSRU to the South West Pipeline connection point at Lara, comprising a 3-kilometre aboveground section and a 4-kilometre underground section.
11. The project's proponent is Viva Energy Gas Australia Pty Ltd, who is responsible for preparing technical studies, consulting with the public and stakeholders and preparing the Supplementary EES and Updated PSA.

Supplementary EES process

12. On 6 March 2023, the Minister for Planning directed that a supplementary EES is required for the project, in accordance with sections 5 and 8C(2) of the EE Act (the Minister's Directions), before the Minister completes her assessment of the project's environmental effects for consideration by statutory decision-makers.
13. The Minister was informed by the original IAC's report dated 5 October 2022, which found that there was insufficient information to advise on the acceptability of the Relevant Environmental Effects.
14. The Supplementary EES provides a further assessment of the Relevant Environmental Effects, necessary for the Minister to complete the Minister's assessment under the EE Act.
15. The Supplementary EES was prepared by the proponent in response to the Minister's Directions and the Study Program (April 2024) that was developed by the proponent in response to Item 1 of the 'Procedures to be applied to the Supplementary Statement'.
16. The Supplementary EES is to be placed on public exhibition for 30 business days. This public comment process is in accordance with the procedures and requirements issued for this Supplementary EES by the Minister. The proponent is responsible for public notice of Supplementary EES exhibition.

Commonwealth assessment process

17. Because of its likely significant impacts on MNES, the project was determined to be a controlled action on 21 February 2020, requiring assessment and approval under the EPBC Act. The relevant controlling provisions under the EPBC Act relate to Ramsar wetlands (section 16 and 17B), listed threatened species and communities (sections 18 & 18A), and listed migratory species (sections 20 & 20A).
18. Under the EPBC Act bilateral agreement between the Australian and Victorian governments, the Victorian EES process is serving as the accredited process to address EPBC Act assessment requirements for the project. The assessment of environmental effects to be made by the Victorian Minister for Planning will be provided to the Minister for the Environment and Water to inform the approval decision under the EPBC Act.
19. The Supplementary EES includes further assessment of impacts to threatened and migratory bird species and to the Port Phillip Bay (western shoreline) and Bellarine Peninsula Ramsar site, documented in an updated MNES report.

Planning approval process

20. As part of the original EES documentation, a draft PSA was prepared and exhibited for public review. The draft PSA includes planning controls and provisions for various works and activities associated with construction and operation of the project, which is proposed to be introduced through a Specific Controls Overlay, that enables regulation of the use and development of the project in accordance with an incorporated document.
21. The IAC appointed to consider the original EES and submissions considered the draft PSA and any relevant submissions received on these exhibited documents.



22. The exhibited Supplementary EES documentation includes an updated draft of this PSA (C442ggee).

23. The Supplementary EES IAC is to consider and provide advice on the updates to the draft PSA.

Other approvals

24. The project will require other statutory approvals or consents, as outlined in the Supplementary EES, including:

- a. Pipeline licence under the *Pipelines Act 2005*;
- b. Development licences under the *Environment Protection Act 2017* (EP Act) for the FSRU component of the project and for the discharge of FSRU wastewater from the existing Viva Energy Refinery;
- c. an approved Cultural Heritage Management Plan under the *Aboriginal Heritage Act 2006*;
- d. consents under the *Marine and Coastal Act 2018*;
- e. a permit to remove listed and protected flora and fauna under the *Flora and Fauna Guarantee Act 1988*;
- f. a permit/approval under the P&E Act (Clause 52.17) to remove native vegetation; and
- g. approvals under the *Water Act 1989* for works on relevant waterways.


Process

Stage 1 – Submissions

25. Submissions on the Supplementary EES and Updated PSA are to be provided in writing on or before the close of submissions. Submissions are to be limited to Relevant Environmental Effects, and updates to the draft PSA.
26. Submissions will be collected by the office of Planning Panels Victoria (PPV) through the Engage Victoria platform. All submissions must state the name and address of the person making the submission. Submissions will be collected and managed in accordance with the *'Guide to Privacy at PPV'*.
27. Petition responses will be treated as a single submission and only the first names from a petition submission will be registered and contacted.
28. Pro-forma submitters will be registered and contacted individually if they provide their contact details. However, the IAC should encourage pro-forma submitters who want to be heard at the hearing to present as a group, given their submissions raise the same issues.
29. All written submissions and other supporting documentation or evidence received through the course of the IAC process must be published online, unless the IAC specifically directs that the submission or other material, or part of it, is to remain confidential.
30. Electronic copies of each submission on the Supplementary EES and Updated PSA are to be provided to the proponent, DTP (State Planning Assessment and Facilitation), City of Greater Geelong Council and the Wadawurrung Traditional Owners Aboriginal Corporation.
31. PPV must retain any written submissions and other documentation provided to the IAC for five years after its appointment.


Stage 2 – Public hearing

32. The IAC must hold a public hearing and may make other such enquiries as are relevant to undertaking its role.
33. Prior to the commencement of the public hearing, the IAC must hold a directions hearing to make directions it considers necessary or appropriate as to the conduct or scheduling of the public hearing.

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34. When it conducts a public hearing, the IAC has all the powers of an advisory committee that are specified in section 152(2) of the P&E Act.
 35. The IAC may inform itself in any way it sees fit, but must review and consider:
 - a. the Minister's Directions and these Terms of Reference;
 - b. the exhibited Supplementary EES and Updated PSA;
 - c. all submissions and evidence in relation to the Supplementary EES, but only to the extent they relate to Relevant Environmental Effects;
 - d. all submissions and evidence in relation to the Updated PSA, but only to the extent they relate to potential changes or updates to the draft PSA;
 - e. the views (if known) of the Wadawurrung Traditional Owners Aboriginal Corporation;
 - f. any other information that is provided to, or obtained by, the IAC that is relevant to the Relevant Environmental Effects or the updates to the draft PSA.
 36. The IAC must conduct its process in accordance with the following principles:
 - a. The public hearing will be conducted in an open, orderly and equitable manner, in accordance with the principles of natural justice.
 - b. The public hearing will be conducted with a minimum of formality and without legal representation being necessary for parties to be effective participants.
 - c. The IAC process is to be exploratory and constructive, with adversarial behaviour discouraged and with cross-examination/questioning to be regulated by the IAC, in the context of these three principles.
 37. The IAC may limit the time of parties appearing before it.
 38. The IAC may direct that a submission or evidence is confidential in nature and the hearing be closed to the public for the purposes of receiving that submission or evidence.
 39. The IAC may conduct a public hearing when there is a quorum of at least two of its members present or participating through electronic means, one of whom must be the IAC Chair or Deputy Chair.
 40. If directed by the IAC, an audio recording of the hearing must be undertaken by the proponent. If recorded, the audio recording will be provided to PPV as a weblink and would be made publicly available by PPV as soon as practicable after the conclusion of each day of the hearing, or otherwise as directed by the IAC.
 41. Any other recording of the hearing by any other person or organisation may only occur with the prior consent of, and strictly in accordance with, the directions of the IAC.

Stage 3 – Report

42. The IAC must produce a written report for the Minister for Planning containing its:
 - a. analysis and conclusions with respect to the Relevant Environmental Effects of the project (namely likely impacts on the marine environment, noise, air quality and underwater Aboriginal cultural heritage) and their significance and acceptability;
 - b. findings on whether acceptable environmental outcomes can be achieved in relation to the Relevant Environmental Effects, having regard to legislation, policy, best practice, and the principles and objectives of ecologically sustainable development;
 - c. recommendations and/or specific measures that it considers necessary and appropriate to prevent, mitigate or offset adverse Relevant Environmental Effects;
 - d. recommendations as to any feasible modifications to the design or management of the project considered necessary to reduce or mitigate Relevant Environmental Effects;
 - e. recommendations for appropriate conditions that may be lawfully imposed on any approval for the project to manage Relevant Environmental Effects to acceptable levels, including recommendations for the EPA Development Licences, and changes (if any) to the Updated PSA;

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- f. recommendations as to the structure and content of the proposed environmental management framework dealing with Relevant Environmental Effects, including with respect to monitoring, contingency plans and site rehabilitation; and
 - g. specific findings and recommendations about the residual impacts on MNES and their acceptability, including appropriate controls and environmental management.

43. The report must include:

- a. information and analysis of the Relevant Environmental Effects in support of the IAC's findings and recommendations;
- b. a list of all recommendations, including cross-references to relevant discussions in the report;
- c. a description of the public hearing conducted by the IAC, and a list of those persons consulted with or heard;
- d. a list of all submitters in response to the exhibited Supplementary EES and Updated PSA; and
- e. a list of the documents tabled during the proceedings.

Timing

- 44. The IAC should hold a directions hearing no later than 20 business days from the final date of the exhibition period.
- 45. The IAC should commence the hearing no later than 40 business days from the final date of exhibition period.
- 46. The IAC must submit its report in writing to the Minister for Planning within 30 business days from the last day of its proceedings, unless the report writing period spans the Christmas-New Year period, in which case 40 business days will apply.
- 47. The DTP's Impact Assessment Unit must liaise with PPV to agree on the directions hearing and hearing dates, which are to be included on all public notices.

Minister's assessment

- 48. The Minister for Planning will make an assessment of the environmental effects of the project under the EE Act, having considered the IAC report, the Supplementary EES, submissions on the Supplementary EES, as well as the original IAC report dated 5 October 2022, the original EES and any other relevant matters.
- 49. PPV will notify submitters of the release of the Minister's assessment and the IAC report.

Miscellaneous

- 50. The IAC may apply to the Minister for Planning to vary these terms of reference in writing at any time before submission of its report. This includes to vary the required hearing or reporting timeframe if there are special circumstances that necessitate a longer timeframe.
- 51. The IAC may retain specialist expert advice, additional technical support and/or legal counsel to assist if considered necessary.
- 52. PPV is to provide administrative support to the IAC. The proponent is to provide administrative or technical support to the IAC in relation to the conduct of the hearing.

Fee

- 53. The fees for the members of the IAC will be set at the current rate for a panel appointed under part 8 of the P&E Act.

54. All costs of the IAC, including the costs of obtaining any expert advice, technical administration and legal support, venue hire, accommodation, recording proceedings and other costs must be met by the proponent.



Sonya Kilkenny MP
Minister for Planning

Date: 8/9/2024

The following information does not form part the Terms of Reference.

Project Management

1. For matters regarding the IAC process, please contact Planning Panels Victoria, by phone (03) 5381 9457 or email Planning.Panels@transport.vic.gov.au.
2. For matters regarding the EES process please contact the Impact Assessment Unit in DTP by phone 03) 8622 7633 or email environment.assessment@transport.vic.gov.au.