

Terms of Reference

Victorian Murray Floodplain Restoration Project Standing Inquiry and Advisory Committee

Version: August 2022

Standing Inquiry and Advisory Committee appointed to inquire into, and report on, the proposed nine Victorian Murray Floodplain Restoration Projects (VMFRP) and their potential environmental effects in accordance with this terms of reference.

VMFRP consists of nine discrete projects that are being assessed under the *Environment Effects Act 1978* (EE Act) via four 'assessment packages', as set out below:

- a. a single environment effects statement covering both Hattah Lakes North Floodplain Restoration Project and Belsar-Yungera Floodplain Restoration Project;
- b. a single environment effects statement covering both Lindsay Island Floodplain Restoration Project and Wallpolla Island Floodplain Restoration Project;
- c. a single environment report covering Nyah, Vinifera and Burra Creek Floodplain Restoration Projects; and
- d. a single environment report covering Gunbower National Park and Guttrum-Benwell Forests Floodplain Restoration Projects.

The Standing Inquiry and Advisory Committee is appointed pursuant to:

- section 9(1) of the EE Act as an inquiry; and
- part 7, section 151(1) of the *Planning and Environment Act 1987* (P&E Act) as an advisory committee.

Name

1. The Standing Inquiry and Advisory Committee is to be known as the 'Victorian Murray Floodplain Restoration Project Standing Inquiry and Advisory Committee' (SIAC).

Skills

2. The SIAC needs to have members that cover the following areas of knowledge and expertise:
 - a. floodplain ecology (terrestrial and aquatic);
 - b. environmental hydrology;
 - c. Aboriginal cultural heritage; and
 - d. land use and planning.
3. The SIAC may seek additional specialist expert advice to assist it in undertaking its role.
4. The SIAC will comprise of an appointed Lead Chair (SIAC Chair), co-Chairs and other appropriately qualified members.

Purpose

5. The SIAC is appointed by the Minister for Planning under section 9(1) of the EE Act and section 151(1) of the P&E Act to inquire into and provide an integrated assessment of the environmental effects of each of the projects within the VMFRP. For each of the assessment packages the SIAC is to:

- a. review and consider the relevant environment effects statement (EES) or environment report together with the associated technical appendices, other exhibited documents and submissions received in relation to the projects covered by the relevant EES or environment report package;
 - b. consider and report on potential environmental effects and benefits of each project presented in the relevant EES or environment report, their significance and acceptability, having regard to the evaluation objectives in scoping requirements and relevant policy and legislation;
 - c. consider and report on potential environmental effects for each project on relevant matters of national environmental significance protected under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) for that project;
 - d. identify any measures, including any necessary project modifications, it considers necessary and effective to sufficiently avoid, mitigate or manage the environmental effects, within acceptable limits, for the projects that are the subject of the relevant EES or environment report;
 - e. advise on how any identified measures relate to relevant conditions, controls and requirements that could form part of the necessary approvals and consents for the projects being assessed;
 - f. consider the merits of the draft planning scheme amendments (PSAs) exhibited with the EES or environment report (as applicable), which have been prepared to apply a Specific Controls Overlay, incorporated document and establish planning approval for the projects;
 - g. undertake a strategic assessment of draft PSAs, exhibited with the EES or environment report (as applicable) against the strategic considerations identified in the Planning Practice Note 46 Strategic Assessment Guidelines and other relevant considerations;
 - h. consider any relevant issues raised in submissions about the draft PSAs;
 - i. review the content of the draft PSAs including the incorporated documents; and
 - j. recommend any changes to the draft PSAs that it considers necessary.
6. For each of the four assessment packages, the SIAC is to produce a report of its findings and recommendations to the Minister for Planning to inform the assessment under the EE Act and, in turn to assist the Minister to make a decision about the PSAs for the projects relevant to the assessment package. One report shall be prepared for each assessment package however findings and recommendations need to be clearly identified for each individual project.

Background

Project outline

7. VMFRP is being implemented as part of Victoria's obligations under the Murray-Darling Basin Plan. The Basin Plan sets out Sustainable Diversion Limits, which are the amount of water that can be taken from the Murray-Darling Basin each year, and the projects form part of the greater Sustainable Diversion Limit Adjustment Mechanism (SDLAM) under the Murray Darling Basin Plan.
8. The structure and implementation of the Murray Darling Basin Plan, SDLAM and the Victorian Environmental Water Framework are outside the scope of matters to be examined by the SIAC. They are only context for these projects.
9. The projects aim to restore a more natural flooding regime to approximately 14,000 hectares of high ecological value floodplains along the Murray River through modification of existing and construction of new infrastructure.
10. The buildings and works proposed for these projects will include construction of infrastructure such as channels, regulators, containment banks, drop structures, spillways, temporary or permanent pumping stations, laydown areas, site compounds and workforce facilities. Construction and upgrade of access roads will be required, as well as the removal of native vegetation in construction areas. Sites will also need to be established to supply fill material to support construction.

11. The proponent for all nine projects is Lower Murray Urban and Rural Water Corporation (LMW).
12. LMW, as the proponent, is responsible for preparing technical studies, consulting with the public and stakeholders and preparing the EESs and environment reports.

Assessment processes

13. The proponent provided a referral for each of the nine VMFRP projects to the Minister for Planning under the EE Act.
14. In response to the referrals made under the EE Act from the proponent, the former Minister for Planning determined that assessment under the EE Act was required for all 9 projects, either through the preparation of an EES or environment report (as specified in the Introduction). The projects have the potential for significant effects, in particular on floodplain ecosystems, native vegetation, threatened species and ecological communities, as well as Aboriginal cultural heritage values.
15. The EESs are being prepared by the proponent in response to the Minister for Planning's respective EES decisions, procedures and requirements, as well as the scoping requirements issued by the Minister for Planning for each EES.
16. The environment reports (ER) are being prepared by the proponent in response to the Minister for Planning's decisions, specified conditions and scopes issued by the Department of Environment, Land, Water and Planning (DELWP) for each ER.

Commonwealth assessment process

17. Due to the potential significant impacts on matters of national environmental significance, each of the nine VMFRP projects were determined to be a controlled action for the purposes of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act), thus requiring approval under the EPBC Act.
18. The Victorian assessment processes (either via an EES or environment report) are serving as the accredited assessment processes under the EPBC Act.
19. At the conclusion of each accredited process, the Victorian Minister for Planning will provide an assessment of environmental effects to the Commonwealth Minister for the Environment, to inform the approvals decision on each of the nine projects under the EPBC Act.

Planning approval process

20. The SIAC is to consider and provide advice on the draft PSAs that propose planning controls and provisions for the nine projects. The PSAs, in conjunction with other required approvals, will regulate the use and development of land for the projects in accordance with incorporated documents that are proposed to be included in the relevant Council's Planning Schemes.

Other approvals

21. The VMFRP projects may require several other statutory approvals and/or consents including:
 - a. an approved Cultural Heritage Management Plan under the *Aboriginal Heritage Act 2006*;
 - b. a permit to remove listed flora under the *Flora and Fauna Guarantee Act 1988*;
 - c. permits for works potentially affecting historic heritage sites under the *Heritage Act 2017*;
 - d. approval to undertake works in a national park under the *National Parks Act 1975*;
 - e. consent for the use or development of land within a declared road under the *Road Management Act 2004*;
 - f. authorisation to create obstructions to fish passage and/or a permit to take fish under the *Fisheries Act 1995*; and
 - g. a licence to take and use water and a licence for works on a waterway under the *Water Act 1989*.

Method

Submissions

22. Each of the EESs and environment reports (together with corresponding draft PSAs) will be placed on public exhibition, each for at least thirty (30) business days.
23. Submissions on each of the EESs, environment reports and corresponding draft PSAs are to be provided in writing on or before the close of exhibition for each assessment package. Submissions will be collected by the office of Planning Panels Victoria (PPV) on behalf of the Minister for Planning 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'.
24. Petition responses will be treated as a single submission and only the first name from a petition submission will be registered and contacted.
25. Pro-forma submitters will be registered and contacted individually if they provide their contact details. However, pro-forma submitters who want to be heard at the public hearing or roundtable forum may be encouraged to present as a group, given their submissions raise the same issues.
26. All written submissions and other supporting documentation or evidence received through the course of the SIAC process may be published online, unless the SIAC specifically directs that the submission or other material, or part of it, is to remain confidential.
27. Electronic copies of each submission on the EESs, environment reports and draft PSAs are to be provided to the proponent, DELWP Impact Assessment Unit, DELWP Regional Planning Services (Loddon Mallee), First Peoples – State Relations, relevant Registered Aboriginal Party (RAP), relevant Council and Parks Victoria.
28. PPV will retain any written submissions and other documentation provided to the SIAC for a period of five years after the time of its appointment.

Referrals to the SIAC

29. The DELWP Impact Assessment Unit will refer projects by letter to the SIAC, for advice on relevant aspects listed in clauses 5 and 6.
30. The referral letter will specify:
 - a. the locality/relevant municipality for each project being referred;
 - b. any specific matters, not already explicitly addressed in these terms of reference, the Minister for Planning seeks advice about;
31. The letter of referral will be a public document.

Public hearings for EES packages (including draft PSAs)

32. The SIAC must hold a public hearing for each of the two EES assessment packages and may make other such enquiries as are relevant to undertaking its role.
33. Prior to commencement of the public hearing for each EES, the SIAC must hold a directions hearing to make directions it considers necessary or appropriate as to the conduct, scope or scheduling of the public hearing.
34. When it conducts the public hearing, the SIAC has all the powers of an advisory committee that are specified in section 152(2) of the P&E Act.

Roundtable for environment report packages (including draft PSAs)

35. The SIAC must hold a roundtable forum for each of the two environment report assessment packages, unless given alternative direction in the referral letter, and may make other such enquiries as are relevant to undertaking its role.
36. Prior to commencement of the roundtable forum for each environment report, the SIAC may hold a directions hearing and make any directions it considers necessary or appropriate as to the conduct, scope or scheduling of the roundtable forum.
37. The SIAC may determine the scope of specific evidence and submissions to be presented by parties at the roundtable (such as by theme), based on key issues identified by the SIAC through its review of the exhibited environment report, draft PSA and submissions received on the exhibited documents. All relevant experts and parties with an interest in a particular issue or theme need to attend the roundtable for that theme, but not other sessions unless identified by the SIAC.

SIAC consultation processes

38. The SIAC may inform itself in any way it sees fit, but must review and consider for each assessment package:
 - a. the referral letter from the DELWP Impact Assessment Unit.
 - b. the exhibited EES or environment report (as applicable to the assessment package) and corresponding draft PSA;
 - c. all submissions and evidence provided to the SIAC by the proponent, state agencies, local councils and submitters;
 - d. any known views of the Registered Aboriginal Parties (RAPs) / Traditional Owner groups or seek the views of the RAPs / Traditional Owner groups if they are not already known;
 - e. any information provided by the proponent and parties that responds to submissions or directions of the SIAC; and
 - f. any other relevant information that is provided to, or obtained by, the SIAC.
39. In their review of the draft PSAs, the SIAC is to:
 - a. consider the P&E Act, ministerial directions, Victoria Planning Provisions and the Loddon Mallee North Regional Growth Plan.
 - b. consider the relevant planning schemes, including state, regional and local planning policies, and any adopted plans, strategies and PSAs. In particular, attention should be given to the consistency of the projects/draft PSAs with state policy on native vegetation, biodiversity and bushfire planning.
 - c. review all relevant material submitted on behalf of VMFRP or otherwise provided to the SIAC.
 - d. review all relevant submissions and evidence received.
40. The SIAC must conduct its processes in accordance with the following principles:
 - a. the public hearing/roundtable forum will be conducted in an open, orderly and equitable manner, in accordance with the principles of natural justice;
 - b. the public hearing/roundtable forum will be conducted with a minimum of formality and without legal representation being necessary for parties to be effective participants; and
 - c. the SIAC process is to be exploratory and constructive, with adversarial behaviour discouraged and with cross-examination/questioning regulated by the SIAC.
41. The SIAC may limit the time of parties appearing before it.

42. The SIAC may direct that a submission or evidence is confidential in nature and the hearing/roundtable forum be closed to the public for the purposes of receiving that submission or evidence.
43. The SIAC may conduct its processes when there is a quorum of at least two of its members present or participating through electronic means, one of whom must be the SIAC Chair or a co-Chair.
44. The SIAC should, as appropriate, use relevant understandings gained from SIAC's other public hearings or roundtable forums, including to assist with common matters and consistency.
45. Recording of the proceedings must be undertaken by the proponent, if directed by the SIAC. If recorded, the audio recording will be provided to PPV as a weblink and would be made publicly available on the project website as soon as practicable after the conclusion of each day of the proceedings, or otherwise as directed by the SIAC.
46. Any other audio or video recording of the conference by any other person or organisation may only occur with the prior consent of, and in accordance with, the directions of the SIAC.

Report

47. For each of the four assessment packages, the SIAC must produce a written report for the Minister for Planning containing its:
 - a. analysis and conclusions with respect to the predicted environmental effects and benefits of each project in the package and their respective significance and acceptability, based on the EES or environment report documents (as applicable) and public submissions, as well as documentation and evidence presented to the SIAC, and having regard to referral letter given to the SIAC under paragraph 28;
 - b. in the context of predicted effects, advise on whether each project within the EES or environment report (as applicable) is expected to result in overall improvement to the biodiversity values of relevant floodplain ecosystems (including listed threatened species and communities), including for each relevant matter of national environmental significance;
 - c. recommendations on whether the proposed alternative arrangement to compensate for the removal, destruction or lopping of native vegetation and associated impact on biodiversity is considered acceptable, and if not, whether any biodiversity offsets are necessary;
 - d. recommendations for any feasible modifications to the projects, necessary to achieve appropriate environmental outcomes, including in relation to variations to the proposed design and/or environmental monitoring and management measures;
 - e. findings on whether acceptable environmental outcomes can be achieved, having regard to legislation, policy, best practice, and the principles and objectives of ecologically sustainable development;
 - f. recommendations on specific measures appropriate to prevent or mitigate adverse environmental effects to achieve acceptable environmental outcomes, having regard to legislation, policy, best practice, and the principles and objectives of ecologically sustainable development;
 - g. a short summary and assessment of the issues raised in submissions about the draft PSAs;
 - h. advice on whether the consultation on the draft PSAs and proposed planning approval process is considered adequate or whether additional consultation should occur;
 - i. recommendations for any appropriate conditions that may be lawfully imposed on any approval for the projects, or changes that should be made to the draft PSA (for each assessment package) in order to ensure that the environmental effects of the projects are acceptable having regard to legislation, policy, best practice, and the principles and objectives of ecologically sustainable development;

- j. recommendations about the structure and content of the draft management plans provided with the EES, including with respect to mitigation and monitoring of environmental effects, as well as contingency measures; and
 - k. specific findings and recommendations about the predicted impacts on matters of national environmental significance and their acceptability, including appropriate controls and environmental management.
48. Each report should include:
- a. information and analysis in support of the SIAC'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/roundtable conducted by the SIAC, and a list of those persons consulted with or heard;
 - d. a list of all submitters in response to the exhibited EES/environment report and the draft PSA; and
 - e. a list of the documents tabled during the proceedings.
49. In preparing reports for each package, the SIAC should provide advice and recommendations cognisant of other packages as appropriate, including to address consistency across all VMFRP projects where appropriate.

Timing

50. For public hearings, the SIAC should commence proceedings no later than 30 business days from the final date of the exhibition period.
51. For roundtable forums, the SIAC should commence proceedings no later than 20 business days from the final date of the exhibition period, cognisant of timing and sequencing of public hearings/roundtable forums for other assessment packages.
52. The SIAC must submit its report in writing to the Minister for Planning within 40 business days from the last day of its proceedings for a public hearing and 30 business days from the last day of its proceedings for a roundtable forum.
53. The DELWP Impact Assessment Unit must liaise with the office of PPV and the proponent to agree on the proposed dates to be included on all public notices for the exhibition of the EESs and environment reports (including draft PSAs) for the directions hearing, hearing and/or roundtable forum.

Minister's assessment

54. The Minister for Planning will issue a Minister's assessment of the environmental effects of each of the projects that are the subject of an assessment package after considering the corresponding SIAC's report, as well as the EES or environment report (as applicable), submissions and any other relevant matters (as applicable).
55. PPV will notify all submitters for each assessment package of the release of the Minister for Planning's assessment and SIAC report.

Fee

56. The fees for the members of the SIAC will be set at the current rate for a panel appointed under part 8 of the P&E Act.
57. All costs of the SIAC, 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.

Miscellaneous

58. The SIAC may apply to the Minister for Planning to vary these terms of reference in writing, at any time prior to submission of its final report.
59. The SIAC may retain specialist expert advice and legal counsel to assist if necessary.
60. PPV is to provide any necessary administrative support to the SIAC. In addition, the proponent is to provide any necessary administrative or technical support to the SIAC in relation to the conduct of hearings and roundtables.



Hon Lizzie Blandthorn MP
Minister for Planning

Date: 16 / 8 / 22

The following information does not form part the terms of reference.

Project Management

1. For matters regarding the inquiry and advisory committee process, please contact Amy Selvaraj, Senior Project Officer, of Planning Panels Victoria, by phone (03) 8624 5714 or email Planning.Panels@delwp.vic.gov.au.
2. For matters regarding the EES and environment report processes please contact the Impact Assessment Unit in DELWP by email environment.assessment@delwp.vic.gov.au.