

# Terms of Reference

## Viva Energy Gas Terminal Inquiry and Advisory Committee

Version: March 2022

The Viva Energy Gas Terminal Inquiry and Advisory Committee (IAC) is appointed to inquire into, and report on, the proposed Viva Energy Gas Terminal Project (the project) and its environmental effects in accordance with these Terms of Reference.

The IAC is appointed pursuant to:

- section 9(1) of the *Environment Effects Act 1978* (EE Act) as an inquiry; and
- part 7, section 151 of the *Planning and Environment Act 1987* (P&E Act) as an advisory committee.

The IAC will also provide advice that can be used to inform the Environment Protection Authority's (EPA) consideration of the development licence applications under the *Environment Protection Act 2017* prepared by the proponent for the project.

The IAC may separately be appointed by the Minister for Energy, Environment and Climate Change as a panel under section 40 of the *Pipelines Act 2005* (Pipelines Act).

### Name

1. The IAC is to be known as the 'Viva Energy Gas Terminal Inquiry and Advisory Committee' (IAC).

### Skills

2. The IAC members should have the following skills:
  - a. biodiversity/ecology (marine environment and terrestrial / freshwater);
  - b. dredging and contamination;
  - c. greenhouse gas emissions; and
  - d. hazard and public safety.
3. The IAC may seek additional specialist expert advice to assist it in undertaking its role.
4. The IAC will comprise of appointed Chair (IAC Chair), a Deputy Chair and other members.

### 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 environmental effects of the project. The IAC is to:
  - a. review and consider the environment effects statement (EES), submissions received in relation to the project, the predicted environmental effects, and the other exhibited documents;
  - b. consider and report on the potential environmental effects of the project, their significance and acceptability, and in doing so have regard to the draft evaluation objectives in the EES scoping requirements and relevant policy and legislation;
  - c. identify any measures it considers necessary and effective to avoid, mitigate or manage the environmental effects of the project within acceptable limits, including any necessary project modifications; and
  - d. advise on how this relates to relevant conditions, controls and requirements that could form part of the necessary approvals and consent for the project.
6. The IAC is also appointed as an advisory committee under section 151 of the P&E Act to:

- a. review draft planning scheme amendment C442ggee (PSA), which has been prepared to apply a Specific Controls Overlay (SCO) and establish planning approval for the project under an incorporated document, along with any public submissions received in relation to the draft PSA; and
  - b. recommend any changes to the draft PSA that it considers necessary.
7. The IAC is to produce a report of its findings and recommendations to the Minister for Planning to inform their assessment under the EE Act and to assist the Minister to make a decision about the draft PSA.
  8. The IAC will provide advice to inform the EPA's consideration of the development licence applications prepared by the proponent for the project.
  9. The IAC may separately be appointed by the Minister for Energy, Environment and Climate Change as a panel under section 40 of the Pipelines Act.

## **Background**

### ***Project outline***

10. The Viva Energy Gas Terminal 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.
11. 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;
  - 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.
12. 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 an EES and draft PSA.

### ***EES assessment process***

13. In response to a referral under the EE Act from the proponent, the Minister for Planning determined on 28 December 2020 that an EES was required for the project and issued his decision with procedures and requirements for the preparation of the EES as specified in **Attachment 1**.
14. The EES was prepared by the proponent in response to the EES scoping requirements issued by the Minister for Planning in July 2021 (dated June 2021).
15. The EES will be placed on public exhibition for thirty (30) business days, together with the draft PSA, development licence applications and the pipeline licence application. This public comment process is in accordance with the procedures and requirements issued for this EES by the Minister for Planning. The proponent (Viva Energy Gas Australia Pty Ltd) is responsible for giving notice.

### ***Commonwealth assessment process***

16. Because of its potential impacts on matters of national environmental significance, the project was determined to be a controlled action for the purposes of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) on 21 February 2020. The relevant controlling provisions under the EPBC Act are Ramsar wetlands (section 16 and 17B), listed threatened species and communities (sections 18 and 18A), and listed migratory species (sections 20 and 20A).

17. Under the bilateral agreement between the Australian and Victorian Governments, the Victorian EES process is serving as the accredited process for the assessment purposes of the EPBC Act. The assessment of environmental effects to be made by the Victorian Minister for Planning will be provided to the Commonwealth Minister for the Environment to inform the approvals decision under the EPBC Act. To assist the Minister for Planning in making his assessment, the IAC should specifically identify its advice relevant to matters of national environmental significance that may be affected respectively by the project.

### ***Planning approval process***

18. The IAC is to consider and provide advice on draft PSA C442ggee that proposes planning controls and provisions for various works and activities associated with construction and operation of the project. The PSA is proposed to apply a SCO to the project area and regulate the use and development of the project in accordance with an incorporated document proposed to be included in the Greater Geelong Planning Scheme.

### ***Development licence process***

19. Two development licence applications for the project have been prepared in accordance with the provisions of the *Environment Protection Act 2017* (EP Act). The development licence applications will be jointly advertised with the EES, in accordance with section 70A of the EP Act.
20. Section 52(2)(e) of the EP Act provides that: *if the notice for the proposed development licence is intended to be combined under section 70(a) with a notice for works given under the Environment Effects Act 1978, any submissions... must be made together with any submissions made for the Environment Effects Statement relating to the works; and must be made within the time limits within which the submissions must be made for that Environment Effects Statement.* The IAC process will take place instead of a conference of interested persons under section 239 of the *Environment Protection Act 2017*.
21. The IAC is to provide advice that can be used to inform the EPA's consideration of the development licence applications prepared by the proponent. The IAC may request any further information from the proponent that it considers necessary to assist it to provide that advice. The advice should recommend avoidance, mitigation or management measures that the IAC considers are necessary to ensure compliance with any relevant legislation and/or policy.

### ***Pipeline licence application process***

22. A pipeline licence application, for the pipeline component of the project has been prepared in accordance with the Pipelines Act and forms part of the EES. Consequently, it will be jointly advertised with the EES in accordance with section 33 of the Pipelines Act.
23. The persons appointed to the IAC may separately be appointed by the Minister for Energy, Environment and Climate Change as a panel under section 40 of the Pipelines Act. If so, the members must act in accordance with the requirements of the Pipelines Act and any specifications in its instrument of appointment.

### ***Other approvals***

24. The project may require other statutory approvals and/or consents, as outlined in the EES, including but not limited to:
- a. an approved Cultural Heritage Management Plan under the *Aboriginal Heritage Act 2006*;
  - b. consents under the *Marine and Coastal Act 2018*;
  - c. a permit to remove listed flora and fauna under the *Flora and Fauna Guarantee Act 1988*; and
  - d. approvals under the *Water Act 1989* for works on relevant waterways.

## Process

### Stage 1 – Submissions

25. Submissions on the EES, draft PSA, development licence applications and pipeline licence application are to be provided in writing on or before the close of submissions. 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'*.
26. Petition responses will be treated as a single submission and only the first names from a petition submission will be registered and contacted.
27. 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 Hearing may be encouraged to present as a group, given their submissions raise the same issues.
28. All written submissions and other supporting documentation or evidence received through the course of the IAC process may be published online, unless the IAC specifically directs that the submission or other material, or part of it, is to remain confidential.
29. Electronic copies of each submission on the EES, draft PSA, development licence applications and pipeline licence application are to be provided to the proponent, Department of Environment, Land, Water and Planning (DELWP) (Impact Assessment), City of Greater Geelong council and the Wadawurrung Traditional Owners Aboriginal Corporation.
30. As each submission on the EES is also a submission on the development licence applications, electronic copies of each submission, including the contact details of submitters are to be provided to the EPA. The EPA may contact submitters regarding matters related to the development licence applications.
31. As each submission on the EES is also a submission on the application for a pipeline licence, electronic copies of each submission are to be provided to DELWP (Pipelines Unit) on behalf of the Minister for Energy, Environment and Climate Change.
32. PPV will retain any written submissions and other documentation provided to the IAC for a period of five years after the time of its appointment.

### Stage 2 – Public Hearing

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, scope or scheduling of the public hearing.
34. The IAC must hold a public hearing and may make other such enquiries as are relevant to undertaking its role.
35. 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.
36. The IAC may inform itself in any way it sees fit, but must review and consider:
  - a. the exhibited EES, draft PSA, development licence applications and pipeline licence application;
  - b. the views of the Wadawurrung Traditional Owners Aboriginal Corporation (if known);
  - c. all submissions and evidence provided to the IAC by the proponent, state agencies, local councils and submitters;
  - d. any information provided by the proponent and parties that responds to submissions or directions of the IAC; and

- e. any other relevant information that is provided to, or obtained by, the IAC.
37. 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 regulated by the IAC.
38. The IAC may limit the time of parties appearing before it.
39. 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.
40. 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.
41. If directed by the IAC, 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 as soon as practicable after the conclusion of each day of the hearing, or otherwise as directed by the IAC.
42. Any other audio or video 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**

43. The IAC must produce a written report for the Minister for Planning containing its:
- a. analysis and conclusions with respect to the environmental effects of the project and their significance and acceptability;
  - b. 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;
  - c. recommendations and/or specific measures that it considers necessary and appropriate to prevent, mitigate or offset adverse environmental effects having regard to legislation, policy, best practice, and the principles and objectives of ecologically sustainable development;
  - d. recommendations as to any feasible modifications to the design or management of the project that would offer beneficial outcomes;
  - e. recommendations for any appropriate conditions that may be lawfully imposed on any approval for the project, or changes that should be made to the draft PSA in order to ensure that the environmental effects of the project are acceptable having regard to legislation, policy, best practice, and the principles and objectives of ecologically sustainable development;
  - f. recommendations as to the structure and content of the proposed environmental management framework, including with respect to monitoring of environmental effects, contingency plans and site rehabilitation;
  - g. recommendations with respect to the structure and content of the draft PSA;
  - h. recommendations with respect to the development licence applications, including recommendations about conditions that might appropriately be attached to the development licences if issued; and
  - i. specific findings and recommendations about the predicted impacts on matters of national environmental significance and their acceptability, including appropriate controls and environmental management.
44. The report should include:

- a. information and analysis 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 EES; and
- e. a list of the documents tabled during the proceedings.

### **Timing**

45. The IAC should hold a directions hearing no later than 20 business days from the final date of the exhibition period.
46. The IAC should commence the hearing no later than 50 business days from the final date of exhibition period.
47. The IAC must submit its report in writing to the Minister for Planning within 30 business days from its last day of its proceedings.
48. The DELWP'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**

49. The Minister for Planning will make his assessment of the environmental effects of the project after considering the IAC's report as well as the EES, submissions and any other relevant matters.
50. PPV will notify submitters of the release of the Minister for Planning's assessment and IAC report.

### **Fee**

51. 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.
52. 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.

### **Miscellaneous**

53. The IAC may apply to the Minister for Planning to vary these terms of reference in writing, at any time prior to submission of its report.
54. The IAC may retain legal counsel to assist if necessary.
55. The IAC may engage additional technical support if required.
56. PPV is to provide any necessary administrative support to the IAC. In addition, the Proponent is to provide any necessary administrative or technical support to the IAC in relation to the conduct of the Hearing (if required).

  
Richard Wynne MP  
Minister for Planning

Date: 2013 / 12 / 22

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

### **Project Management**

1. For matters regarding the IAC 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](mailto:Planning.Panels@delwp.vic.gov.au).
2. For matters regarding the EES process please contact the Impact Assessment Unit in DELWP by phone (03) 8508 2276 or email [environment.assessment@delwp.vic.gov.au](mailto:environment.assessment@delwp.vic.gov.au).

# Terms of Reference

## Attachment 1

### **Procedures and requirements under section 8B(5) of the *Environment Effects Act 1978***

The procedures and requirements applying to the EES, in accordance with both section 8B(5) of the Act and the *Ministerial guidelines for assessment of environmental effects under the Environment Effects Act 1978* (Ministerial Guidelines), are as follows.

- (i) The EES is to document investigations and avoidance of potential environmental effects of the proposed project, project alternatives and their effects, as well as the feasibility of associated environmental mitigation and management measures.
- (ii) Primarily, the EES is to incorporate an integrated assessment, and characterisation of associated uncertainties, of the project's potential effects on the marine environment and ecosystem of Corio Bay from:
  - a. dredging works;
  - b. mobilisation of sediment and associated contaminants, such as arsenic and zinc;
  - c. construction at, and around, Refinery Pier;
  - d. seawater intake to and cold water/residual chlorine discharges from the floating storage and gasification unit (FSRU), and
  - e. re-use of FSRU intake seawater within the refinery and warm water/residual chlorine discharges from the refinery.

The EES is also to incorporate an integrated assessment of the broader environmental effects of greenhouse gas emissions from FSRU operation.

- (iii) Secondly, the EES is to incorporate a risk-based, integrated assessment of the project's potential environmental effects on air quality, noise, agriculture, land use, native vegetation, habitat for listed threatened species, groundwater, Aboriginal and historic cultural heritage, landscape and visual amenity, and transport.
- (iv) The matters to be investigated and documented in the EES will be set out more fully in scoping requirements. Draft scoping requirements will be exhibited for 15 business days, for public comment, before final scoping requirements are issued by the Minister for Planning.
- (v) The level of detail of investigation for the EES studies should be consistent with the approach set out in the scoping requirements and be adequate to inform an assessment of the significance and acceptability of its potential environmental effects, in the context of the Ministerial Guidelines.
- (vi) The proponent is to prepare and submit to the Department of Environment, Land, Water and Planning (DELWP) a draft EES study program to inform the preparation of scoping requirements.
- (vii) DELWP will convene an inter-agency technical reference group (TRG) to advise DELWP and the proponent during the preparation of the EES on the scoping requirements, the design and adequacy of the EES studies, and coordination with statutory approval processes.
- (viii) The proponent is to prepare and submit to DELWP its proposed EES consultation plan for consulting the public and engaging with stakeholders during the preparation of the EES. Once completed to the satisfaction of DELWP, the EES consultation plan is to be implemented (and updated as appropriate) by the proponent, having regard to advice from DELWP and the TRG.
- (ix) The proponent is also to prepare and submit to DELWP its proposed schedule for the completion of studies, preparation and exhibition of the EES, following confirmation of the draft scoping requirements.
- (x) The proponent is to apply appropriate peer review and quality management procedures to enable



the completion of EES studies to a satisfactory standard.

- (xi) The EES is to be exhibited for a period of not less than 30 business days for public comment, unless the exhibition period spans the Christmas/New Year period, in which case 40 business days will apply.
- (xii) An inquiry will be appointed under the *Environment Effects Act 1978* to consider the environmental effects of the proposal.

#### **Notification**

The following parties are to be notified of this decision in accordance with sections 8A and 8B(4)(a)(i) of the *Environment Effects Act 1978*:

- Viva Energy Gas Australia Pty Ltd (proponent);
- Minister for Energy, Environment and Climate Change;
- Minister for Water;
- Secretary of the Department of Environment, Land, Water and Planning;
- Mayor of City of Greater Geelong;
- CEO of the Corangamite Catchment Management Authority;
- CEO of the Environment Protection Authority;
- Executive Director of Aboriginal Victoria;
- Executive Director of Heritage Victoria; and
- CEO of Wadawurrung Traditional Owners Aboriginal Corporation.