

IN THE MATTER OF
THE CRIB POINT GAS IMPORT JETTY & PIPELINE PROJECT

OPENING

1. This Opening is made on behalf of Mornington Peninsula and Bass Coast Shire Councils ('the Councils').
2. As councils under the *Local Government Act 2020*, the Councils are required to give effect to the 'overarching governance principles' set out in s9 of that Act. Relevantly, these principles include:
 - (b) *priority is to be given to achieving the best outcomes for the municipal community, including future generations;*
 - (c) *the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted;*
 - (d) *the municipal community is to be engaged in strategic planning and strategic decision making;*
3. The Councils submit that the 'best outcome for the municipal community', including in particular future generations, is for the IAC to recommend that the Project not proceed.

THE CONTEXT

4. Context is always critical in planning decision-making. What may be perfectly acceptable in one context may be entirely unacceptable in another. The most critical part of the context for the IAC's decision is that the Project is situated in Western Port.
5. Western Port is one of the jewel in Victoria's crown. GHD's Ecology Description, prepared in 2014 as part of a proposal to expand the Port of Hastings, provides a convenient overview:

Western Port is a coastal embayment in central Victoria, east of Port Phillip Bay and approximately 70 kilometres southeast of Melbourne. It is bounded by the Mornington Peninsula to the west, Koo Wee Rup to the north, Phillip Island to the south and features French Island at its centre. The bay is connected to Bass Strait by two channels: a wide western channel between

Flinders and the western point of Phillip Island and a narrow eastern channel between San Remo and Phillip Island.

Western Port covers an area of 680 square kilometres at high tide, including 270 square kilometres of intertidal mudflats which are exposed for varying lengths of time at low tide. It is a shallow, well-flushed embayment with a large tidal range of 2.3 metres in the southern sections and up to 3.1 metres in the northern section; this approximates 30 per cent of the total volume of Western Port at high tide. As a result, relatively high-velocity currents occur in some parts of the bay. In the two channels connecting Bass Strait, the outgoing tide tends to be strongest on the eastern side of the bay with water generally circulating in a clock-wise direction.

Approximately 17 primary waterways and 20 smaller waterways make up the catchment for Western Port, flowing mostly through agricultural and urban landscapes. Primary waterways discharging into the bay include Cardinia Creek, Toomuc Creek, Bunyip River, Tarago River, Lang Lang River and Bass River.

Koo Wee Rup Swamp once occupied extensive areas of the Western Port hinterland; since the 1870s drainage of the swamp for agricultural development and improved transport access has left this area highly modified, and the swamp/waterways persist as a series of channelised drains.

The terrestrial environment now supports a variety of ecological habitats, which have the potential to support a large diversity of flora and fauna species, including threatened flora and fauna species and communities.

Unique physico-chemical factors in Western Port have shaped a diverse array of physical features in the intertidal and sub-tidal environments, including intertidal mudflats, subtidal channel slopes, subtidal channels, sediment banks, deeper basins, isolated reefs and tideflushed water columns [references to figures omitted]. They support a range of important ecological habitats including seagrasses, mangroves, saltmarshes, rocky reefs, intertidal mudflats and pelagic environments. These in turn support a large diversity of flora and fauna species, including threatened flora and fauna species and communities.

Western Port is home to a diverse array of marine fish species, primarily because of the wide range of habitats available. Fish species include pelagic, benthic, and higher-order predatory species.

Invertebrate communities in Western Port have been the focus of various studies since the early 1970s. Invertebrates in Western Port are important in identifying the transfer of energy from primary producers such as seagrasses to higher-order organisms such as fish and birds.

Western Port's coastal and marine ecosystems are widely recognised to be of international, national and regional significance; it has

- *International and national zoological significance as a foraging area and high tide roosting site for migratory waders, as well as for its potential habitat for the critically endangered orange-bellied parrot, leading to the bay's listing as Western Port Ramsar site.*
- *National botanical significance for its extensive saltmarsh communities.*
- *National and international geomorphological significance.*
- *State significance for its marine community at San Remo.*

Western Port is a significant breeding area and nursery for several fish species and supports commercial fisheries. Flinders Aquaculture Fisheries Reserve (FAFR) covers an area of 440 hectares immediately north of Flinders, and supports commercial leases particularly for the growth of abalone and mussels. (internal citations omitted)'

6. As referred to above, Western Port is one of only sixty five wetlands in Australia listed under the *Convention on Wetlands of International Importance especially as Waterfowl Habitat* ('the Ramsar Convention'), satisfying seven of the nine criteria for listing under the Convention,² and serving as the third most important area for wading birds in Victoria.³
7. In addition to being a Ramsar wetland, Western Port is part of the Mornington Peninsula and Western Port Biosphere Reserve under the United Nations Economic, Scientific and Cultural Organisation's 'Man and Biosphere' program, which aims at 'establishing a scientific basis for the improvement of relationships between man and the environment'. UNESCO's listing for Western Port states:

¹ GHD, *Report for Port of Hastings Development Authority – Ecology Description* (2014), pp. 6 – 7.

² Department of Environment, Land, Water and Planning, *Western Port Ramsar Site Management Plan* (2017), p. 19.

³ Technical Report A, p. 203.

*The coastline and hinterland of the Western Port catchment support some of Victoria's most valuable natural areas. Western Port is representative of marine and coastal habitats (particularly intertidal habitats) that are only rarely found on the southern Australian coast at this scale. In addition to coastal wetlands, there are a number of inland swamps that represent important habitats and ecosystems and support a wide range of native fauna.*⁴

8. The environmental significance of Western Port is also recognised in *Plan Melbourne*, the primary strategic plan for the future development of Melbourne. Under the heading, 'Desired Planning Outcomes for Green Wedge and Peri-Urban Areas', *Plan Melbourne* states:

Environmental and biodiversity assets

*Protect and enhance environmental and biodiversity assets, such as coastal areas, wetlands, rivers and creeks, forests and grasslands. Key features of international and national significance include Ramsar-listed wetlands (Westernport, Edithvale–Seaford wetlands, Port Phillip Bay [Western Shoreline] and Bellarine Peninsula), the Western Grassland Reserve, the UNESCO Mornington Peninsula and Westernport Biosphere Reserve, and a range of national and state parks.*⁵

9. In addition to (or by virtue of) its significance as an environmental asset, Western Port is also a social and economic asset. In its *Western Port Ramsar Site Management Plan*, DELWP states:

The Western Port Ramsar Site has three Marine National Parks within its boundaries as well as French Island National Park. Western Port Ramsar Site and adjoining areas and its surrounds have also been designated as a Biosphere Reserve under the UNESCO's Man and the Biosphere program. The Ramsar site is within the traditional lands of the Boonwurrung, who maintain strong connections to the land and waters. The site contains the commercial Port of Hastings that services around 75 ships per year and contributes around \$67 million annually to the region's economy.

Western Port has a long history of recreational fishing and was declared a 'Recreational Fishing Haven' in December 2007 by the Department of Primary

⁴ UNESCO, 'Mornington Peninsula and Western Port', <http://www.unesco.org/new/en/natural-sciences/environment/ecological-sciences/biosphere-reserves/asia-and-the-pacific/australia/mornington-peninsula-and-western-port/> accessed 8 October 2020.

⁵ *Plan Melbourne*, p. 90.

Industries after imposing a ban on commercial fishing. Sailing and boating are popular past-times, and the Ramsar site contains several yacht clubs. The site is valued for its educational facilities including several school camps. Tourist expenditure for Western Port (excluding Phillip Island) is valued at \$285 million per year (Worley Parsons 2013). Based on figures presented in Carnell (2015) and the total area of saltmarsh and seagrass within the Ramsar site, the blue carbon value of the Western Port Ramsar Site is in the order of \$11.5 million.⁶

10. The same Worley Parsons report referred to by DELWP also undertook a valuation of the non-commercial services⁷ provided by the Victorian coast and gave what it described as a ‘conservative’ (based on an inability to value some services) valuation of \$8.4bn. The report observed:

A key finding from this study is that the value of Victoria’s non-commercial coastal ecosystem services (\$8.4 billion per year) is similar to the value of commercial coastal activities (\$9.8 billion per year). This finding has important implications for the way decisions about the use of ecosystem services ought to be made, particularly where there are competing demands for those services.

The results demonstrate the need for decision makers to consider the tradeoffs between the benefits of healthy functioning ecosystems and those associated with expanding use and development. Not doing so unknowingly puts at risk a large amount of value in the form of natural capital and associated services. Quantifying the cause and effect relationships between human activities and their impact of ecosystem services, particular where the effects of the activity are separated from the activity in space and/or time is the key challenge in adopting a sustainable decision approach for the Victorian coast.⁸

11. The above documents all underline the significance of Western Port as an environmental, social and economic asset at a regional, State and even international level which can, and should, be protected for the benefit of current and future generations.

⁶ *Ramsar Site Management Plan*, pp. 26 – 27.

⁷ E.g., storm protection, carbon sequestration, providing habitat for species, recreational opportunities (excluding tourism). See also *Victorian Coastal Strategy 2014*, p. 25.

⁸ Worley Parsons, *Assessing the Value of Coastal Resources* (2013), p. vi.

12. It follows that it is crucial that proposals for significant new development in Western Port are thoroughly and properly scrutinised, both in terms of their strategic justification and in terms of their likely impacts on the environment.
13. It is the Councils' submission that the proposal fails on both fronts.

INADEQUATE JUSTIFICATION

14. The fundamental rationale for the Project is that there is a predicted shortfall in gas supply to Victoria from 2024 and that additional supply is therefore necessary to ensure energy security.
15. The evidence falls well short of establishing that such a shortfall will in fact occur in the absence of the Project:
 - (a) First, previous shortfalls predicted by AEMO for 2019⁹ have been avoided through the introduction of policy measures which enable government intervention in the gas market (the Australian Domestic Gas Security Mechanism) and, in parallel, an agreement between the Commonwealth and LNG exporters to supply uncontracted gas to the domestic market.¹⁰ Nothing in EES suggests that such a mechanism, if employed, could not avert any shortfall.
 - (b) Second, any shortfall in 2024 arises not from an overall shortage of gas, which is projected to be adequate to service the east coast market until 2026, but rather from infrastructure constraints within the Victorian gas transport network. AEMO has already identified a number of other projects, including the import terminal approved at Port Kembla, that could address these constraints.¹¹
16. It should also be noted that both the ACCC and COAG have recognised that there is a high degree of opacity in the gas market and that it is in the interests of producers not to address information asymmetries. This led to COAG approving changes to the way information is obtained by AEMO in preparing *Gas Statements Of*

⁹ AEMO, *Gas Statement Of Opportunities 2017 Update*, p. xx

¹⁰ Department of Industry, Innovation and Science, *Review of the Australian Domestic Gas Security Mechanism (2020)*, pp. 11 – 12.

¹¹ AEMO, *Victorian Gas Planning Report 2020*, pp. 8 – 9.

Opportunities.¹² Consequently, it remains to be seen whether the current projected shortfalls will still be projected in the 2021 *Gas Statement Of Opportunities*.

17. Further, even on its own terms, the contribution made by the FSRU to Victoria's energy security will be marginal. AEMO estimates that the use of the FSRU at Crib Pt could delay any modelled shortfall by 'up to' six years.¹³ Mr Bolt, of the Nous Group, adopts this analysis.¹⁴ Such an outcome does not satisfy the draft evaluation objective of providing 'medium to long term' energy security. It represents, at best, a stopgap measure.
18. Finally, to the extent it is said that the Project will put downwards pressure on gas prices, it is acknowledged that Mr Kelp's modelling suggests this is so, subject to import prices. At the same time, that modelling also shows that, on the base case modelled scenario, gas users will still experience a near doubling in the price of gas across the modelled period from approximately \$5.50 per GJ in 2020 to \$10 per GJ by 2040.¹⁵ It is questionable whether gas from the Project can properly be regarded as 'affordable'.
19. Moreover, the Councils are concerned that approval of the Project has the potential to entrench fossil fuel use and delay transition to cleaner energy sources, an outcome that would contribute to the ongoing climate crisis and undermine the achievement of Victoria's legislated goal of net zero by 2050. This concern is borne out by Mr Kelp's modelling, which indicates that gas consumption in Victoria is 16% higher in 2040 under the 'Project' scenario than under the 'No Project' scenario.¹⁶
20. For the above reasons, the Councils consider that the Project fails to achieve its stated aims and, for that reason alone, should not be approved.

INADEQUATE IMPACT ASSESSMENT

21. Given the sensitive nature of the Western Port environment and the express policy in *Plan Melbourne* to protect and enhance its values, the Councils consider there is an evidentiary onus on the applicant to demonstrate that the Project's impacts can be

¹² COAG Energy Council, *Measures to Improve Transparency in the Gas Market: Regulatory Impact Statement for Decision* (March 2020).

¹³ AEMO, *Gas Statement Of Opportunities 2020*, p. 52.

¹⁴ Expert Witness Statement of Richard Bolt, p.10.

¹⁵ Expert Witness Statement of Jerome Fahrner, Appendix C, Figure 2.1

¹⁶ Ibid, Figure 2.11

adequately managed. If the IAC is not satisfied that this can be done, then it should recommend refusal.

22. This approach is particularly appropriate because Crib Point is not the only location in Victoria that an FSRU could be moored. It is self-evident that, if the same benefits could be delivered in a non-Ramsar location, this would be a better outcome than approving use and development in a Ramsar site. Here, it is notable that Viva Energy has a proposal for a FSRU located at Corio in Geelong. Nothing in the material before the IAC suggests that such an alternative proposal would be less effective at delivering the objectives sought by the Project or that it could not be brought online in time to address any shortfall. As such, clear justification should be required before a proposal is permitted to advance in such a sensitive environment as Western Port when a less impactful alternative is in the planning stages.
23. If there is a theme to the expert reports provided to the IAC by objector parties, it is that the Project simply has not done the work to provide the IAC with confidence that its impacts can be properly assessed and managed.
24. The clearest example of the EES' failure to address a potentially significant impact is the failure of the EES to address potential tourism impacts, notwithstanding that – as Mr McNeill identifies¹⁷ – this was expressly required by the Scoping Requirements. Tourism is an important part of both the Councils economies (and the State's) and potential risks to tourism are something that should have been properly considered.¹⁸ This includes both reputational risks associated with any perceived 'industrialisation' of Crib Point and surrounds, but also any potential impact on tourism in the event of, say, an oil spill, noting that the DELWP *Ramsar Site Management Plan* states that modelling of oil spills
- could occur rapidly (quicker than mitigation measures could be deployed) and that there would be widespread damage to ecosystems, habitats and species.*¹⁹
25. Similar issues arise in relation to various other elements of the EES. It is impractical to summarise all of the issues raised by the Council's experts in an opening submission, but by way of example:
- (a) In relation to groundwater, Mr Smitt notes that only one groundwater gauging event has been undertaken and that this is insufficient to characterise a

¹⁷ Expert Witness Statement of Chris McNeill, [5.44].

¹⁸ Expert Witness Statement of Chris McNeill, [5.45]; Expert Witness Statement of Stuart Moore generally.

¹⁹ DELWP, *Western Port Ramsar Site Management Plan*, p. 102. The Plan also observes that recovery from oil spills at other locations has taken decades.

baseline assessment and that further monitoring needs to be undertaken which, depending on the outcome, may require the impact assessment to be revisited.

- (b) Among the many criticisms levelled by Mssrs Lincoln-Smith and Blount at the EES, is the adoption of a bare minimum approach to undertaken bird surveys which, although strictly compliant with Commonwealth policy, does not represent a survey effort proportionate to the importance of the site.
 - (c) Dr Lorimer expresses concern about the failure of the EES to address potential issues associated with 'frac outs' during horizontal directional drilling and the potential for significant impacts on the endangered Merran's Sun Orchid, despite the EES' reliance on HDD as a measure to avoid impacts on that species.
 - (d) Mr Antonopoulos identifies a concern with the suitability of ISO 9613 for noise modelling from a project of this kind, given the limitations of that Standard and the different results produced by other methods using the same inputs as well as the failure of the assessment to make allowance for noise from existing industrial operations.
 - (e) Less significantly, but consistently with the approach taken elsewhere, the traffic impact assessment relies exclusively on estimated traffic volumes. As Ms Marshall indicates, while this is a reasonable approach for smaller roads, it is also reasonable to expect that actual volumes would be used for key intersections and roads.
26. These flaws, along with the flaws identified in the Councils' initial submissions, mean that the Councils have very little confidence that, if the Project proceeds, the Project's impacts have been properly identified or assessed or that the mitigation measures adopted will be adequate to deal with the impacts that do arise.
27. The potential failure to identify impacts is particularly important because it makes the proposed reliance on 'adaptive management' techniques inappropriate as such approaches, intrinsically, rely on the proper identification and monitoring of risks to manage impacts.
28. In contrast to the above, one area where there is a comparatively high level of confidence regarding the impacts of the Project is in relation to greenhouse gases.
29. Put shortly, the Project will produce significant emissions – figure 1 of Mr Sichlau's evidence shows that, adopting a global emissions inventory approach (which he

acknowledges as being relevant to Paris climate goals and hence the mitigation of worse climate change) shows that, by 2040, the Project would be responsible for more than 1% of Victoria's total emissions relative to 2017.²⁰ At the level of Mornington Peninsula Shire, scope 1 and 2 emissions from the Project will increase by 3 – 12% depending on the mode of operation (open vs closed loop).

30. Both Councils have declared – or more accurately recognised – a climate emergency, with Mornington Peninsula Shire Council seeking to reduce community emissions by 85% by 2035 and Bass Coast Shire Council targeting net zero by 2030. As a minimum, and consistent with conditions imposed on the Narrabri Gas Field approval, the Project should be required to offset all scope 1 and 2 emissions arising from both the construction and operation of the Project for its entire lifespan so as to ensure that the Project does not reduce the ability of Mornington Peninsula Shire Council in particular to achieve its emissions reductions target.
31. The Councils also have concerns that the operation of the Project will materially change the amenity in the area, particularly at Woolleys Beach and HMAS Otama Lookout.
32. Mr Antonopoulos predicts that operational noise from the facility at this level would likely be 'clearly audible for significant periods in these areas due to its different character from existing natural noise sources'.²¹ He also observes that the predicted noise levels are well above the typical/average background noise levels of 34dBA collected at the Crib Point Jetty noise logger. These beaches provide a valuable recreational asset for the community, not least because of their peaceful natural environment. Consistent with the recommendation of the IAC for the West Gate Tunnel Project, Council submits that any approval of the Project should incorporate operational noise limits for open spaces such as these beaches where practicable.
33. Additionally to the noise impacts, the visual amenity currently enjoyed by visitors to/users of Woolleys Beach will change profoundly and adversely with the permanent mooring and lighting of the FSRU at the Crib Point jetty.

CONCLUSION

34. The Council looks forward to the opportunity to fully explore these matters with IAC, the Proponents and other parties over the balance of this hearing.

²⁰ Expert Witness Statement of Ben Sichlau, p. 19.

²¹ Expert Witness Statement of Jim Antonopoulos, [34], p. 10.

Rupert Watters
Owen Dixon Chambers

Instructed by
Harwood Andrews