

**IN PLANNING PANELS VICTORIA
INDEPENDENT ADVISORY COMMITTEE (IAC)
NORTH EAST LINK PROJECT (PROJECT)**

BETWEEN

NORTH EAST LINK AUTHORITY

and

ENVIRONMENT PROTECTION AUTHORITY VICTORIA

and

OTHERS

SUBMISSIONS ON BEHALF OF THE ENVIRONMENT PROTECTION AUTHORITY VICTORIA –

“TO THE SATISFACTION OF”

1. Several submitters have requested that various EPRs include requirements for plans to be prepared or actions to be done “to the satisfaction of” the Environment Protection Authority of Victoria (**EPA**).
2. EPA made oral submissions on this issue on 13 September 2019 and the IAC requested that those submissions be put in writing. These submissions confirm EPA’s position. EPA’s proposed changes to the EPRs, tracked into the clean version of the ‘final draft’ EPRs (version 5, 12 September 2019, document 411) with explanatory comments, are attached to these submissions.
3. EPA does not support a requirement for matters to be done “to the satisfaction of” EPA in the EPRs. There are two principal reasons for this position. (EPA has other concerns, but these are the key ones.)
4. First, the proposal for a requirement for EPA approval should be assessed having regard to the costs and benefits of approval relative to the costs and benefits of consultation. The potential costs – in time and resources – of EPA approval are significant for EPA and for the proponent. A consultation obligation is less onerous but still provides for effective EPA input. EPA has agreed a consultation protocol with the proponent that will complement the formal consultation obligations in the EMF and facilitate appropriate consultation with EPA. Further, the EMF includes a process for review and sign-off of plans by the IEA, ensuring that there is expert review of plans – it is not just EPA. In these circumstances, EPA’s view is that any additional benefits of EPA approval – as compared to consultation with EPA (and IEA review of plans) – would be marginal, and that the costs would outweigh the benefits.

5. Second, EPA approving a plan is inconsistent with the general environmental duty, which places the onus on the duty holder to continuously evaluate how it will meet the duty. EPA approving a plan is inevitably taken as “EPA says it is okay if we do this”. That is not how the new regime works, and not consistent with how EPA seeks to operate currently. The content of a plan, whether or not to the satisfaction of EPA, is meaningless if the plan is not fully implemented, or fails to protect the environment. It is the role of duty holders to fully understand the risks of their activity and plan to satisfy the duty of compliance. It is EPA’s role to identify non-compliance.
6. EPA accepts matters being expressed as “to its satisfaction” in other contexts where EPA is exercising a statutory power, such as issuing and overseeing works approvals and licences.

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