

**IN THE MATTER OF THE  
CRIB POINT GAS IMPORT JETTY AND CRIB POINT-PAKENHAM  
GAS PIPELINE  
INQUIRY, ADVISORY COMMITTEE AND PANEL**

**OPENING SUBMISSION ON BEHALF OF  
ENVIRONMENT VICTORIA, SAVE WESTERNPORT INC. AND THE  
VICTORIAN NATIONAL PARKS ASSOCIATION**

**Introduction**

1. This submission is made on behalf of Environment Victoria, Save Westernport Inc. and the Victorian National Parks Association (the “**submitter group**”).
2. Within the constellation of participants from which the IAC will hear, the submitter group are a voice for the environment, for the internationally significant Westernport Bay, and for the local community.<sup>1</sup>
3. Drawing on a wide range of specialist input and a detailed review of the EES, the submitter group has formed the view that the proposed jetty and pipeline project would be environmentally unacceptable because:
  - a. It would use natural resources of recognised international significance and degrade them. It would use sea water as its ‘cooling engine’ and Westernport Bay as its waste disposal. 468 million litres of sea water would pass through the ship’s heat exchanger pipes each day,<sup>2</sup> rendered hostile to life by chlorination, and pumped back into the bay.

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<sup>1</sup> A brief description of each of the members of the submitter group is provided at the appendix to this submission.

<sup>2</sup> EES Chapter 4, EES Description, Table 4-2, p 4-8 (Open loop regasification mode, 3 trains).

- b. It would result in substantial impacts to the faunal and floral communities of intertidal mudflats, seabeds, the water column, and the air, with deleterious effects on everything from plankton to apex predators.
  - c. In addition to its effects on its immediate environment, the enormous and unnecessary greenhouse gas emissions with which it would be associated would continue a downward trajectory rejected by science and policy. Over 60% of its total GHG emissions are from importation (liquefaction and ship travel from overseas).<sup>3</sup> Therefore, what would otherwise be a “cleaner” fossil fuel source (gas) turns out no better than coal.
  - d. It would have obvious risks and impacts, largely unquantifiable, that are inherent and simply cannot be designed out or mitigated by controls. These include a large increase in foreign ship traffic; spills and leaks; jet hosing of gas import ships (to prevent ship contact with minus 160°C carriers – called a ‘water curtain’); general cleaning and maintenance of a permanently moored industrial facility. Relevantly, sea water is also used for cooling the ship’s 4 ‘dual fuel’ (gas and diesel) engines. 58.6 million litres of sea water will pass through engine cooling systems each day and discharge to the bay.<sup>4</sup>
4. Taking an intergenerational view for a moment, the most important issues of now are not technical, or economic, but environmental. Even if this project were economically positive (on which there are differing expert views), it is a polluting project within a sensitive environment. It is the wrong location for such a project, even if this type of facility were supportable in principle.
5. Accordingly, the IAC should advise the Minister that the proposal has significant and unacceptable environmental impacts and that it should not be facilitated.

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<sup>3</sup> EES Chapter 11 (Greenhouse gas), Table 11-4 (Gas Import Jetty Works operational emissions - open loop and closed loop modes), p 11-10.

<sup>4</sup> EES Chapter 4 (Project Description), Table 4-3, p 4-10 (Open loop regasification mode, 3 trains).

## The Purpose of the Inquiry

6. The IAC has been appointed by the Minister for Planning to hold an inquiry into the environmental effects of the project.<sup>5</sup> Under its Terms of Reference, the IAC is to:
  - a. review and consider the EES and public submissions received in relation to the environmental effects of the project;
  - b. draft conclusions on the potential environmental effects of the project, their significance and acceptability, having regard to the draft evaluation objectives in the EES scoping requirements and relevant policy and legislation;
  - c. report its findings and recommendations to the Minister for Planning so that he can assess the project's environmental effects.<sup>6</sup>
7. The IAC's reporting obligation is expanded upon by clause 39 of the Terms which sets out the matters that the report must contain. In particular, the IAC is required to draw conclusions and make findings with respect to:
  - a. the environmental effects of the project and their significance and acceptability; and
  - b. whether acceptable outcomes can be achieved, having regard to legislation, policy, best practice, and the principles of ecologically sustainable development.
8. In coming to its conclusions, the IAC (and ultimately the Minister) must engage with the policy matrix of the *Planning and Environment Act 1987*. This necessarily includes planning policy considerations. To achieve an acceptable outcome in planning terms, the project must balance conflicting objectives in favour of achieving a net community benefit and sustainable development for the benefit of present and future generations.
9. But the concept of 'acceptability' as attends the IAC is broader than that with which we are familiar in the planning context.

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<sup>5</sup> *Environment Effects Act 1978*, s 9(1).

<sup>6</sup> Terms of Reference, [5].

10. Acceptable environmental effects and outcomes are those that provide for a protected environment, and that are consistent with ‘a trajectory of improvement’. Effects and outcomes that allow for the environment to be further deteriorated by ongoing incremental losses and trajectories of decline are not acceptable.
11. That much is consistent with the proposition that the acceptability of the project’s environmental effects depends on whether the project is ‘ecologically sustainable’.
12. This question has relevance through clause 39 of the Terms of Reference, and through the *Ministerial Guidelines for Assessment of Environmental Effects under the Environment Effects Act 1978 (Ministerial Guidelines)*. The Ministerial Guidelines which specify that the EES process is guided by the ‘need to assess the consistency of proposed works with principles and objectives of ecologically sustainable development’ (ESD).<sup>7</sup>
13. The common definition of ESD is ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs’.<sup>8</sup>
14. The well-known judgment of Preston CJ in *Telstra v Hornsby Shire Council*<sup>9</sup> outlines the constituent principles of ESD as including:
  - a. sustainable or ‘prudent’ use of resources;
  - b. integrated decision-making which ensures mutual respect and reciprocity between economic and environmental considerations;
  - c. the precautionary principle;
  - d. equity, both inter-generational and intra-generational;
  - e. the conservation of biological diversity and ecological integrity should be a fundamental consideration; and

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<sup>7</sup> *Ministerial Guidelines for Assessment of Environmental Effects under the Environment Effects Act 1978* (2006) 3.

<sup>8</sup> World Commission on Environment and Development, *Our Common Future* (1987) 44.

<sup>9</sup> *Telstra v Hornsby Shire Council* [2006] NSWLEC 133, [108]-[120].

- f. internalisation of environmental costs into decision-making for economic and other development plans, programmes and projects likely to affect the environment.

15. All of these principles are relevant and applicable to the assessment of whether the environmental effects and outcomes likely to arise from the project would be acceptable.

16. They form the context within which the IAC will hear submissions, receive evidence, and make its recommendations.

17. The importance of a robust assessment of acceptability against those principles is emphasised in this statement of Preston CJ in *Telstra v Hornsby Shire Council*:

These principles do not exhaustively describe the full ambit of the concept of ecologically sustainable development, but they do afford guidance in most situations. These principles, if adequately implemented, may ultimately realise a paradigm shift from a world in which the development of the environment takes place without regard to environmental consequences, to one where a culture of sustainability extends to institutions, private development interests, communities and individuals.<sup>10</sup>

18. The breadth of the question of ‘acceptability’ is also influenced by the scope of the sources of environmental law with which the Terms of Reference require the IAC to engage in determining the acceptability of such effects – but also their significance. The submitter group will address each in the course of the submissions it makes. Key sources include:

- a. the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) and Australia’s obligations under Ramsar Convention on Wetlands of International Importance (**Ramsar Convention**):

BEING CONVINCED that wetlands constitute a resource of great economic, cultural, scientific, and recreational value, the loss of which would be irreparable;

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<sup>10</sup> *Telstra v Hornsby Shire Council* [2006] NSWLEC 133 [121].

DESIRING to stem the progressive encroachment on and loss of wetlands now and in the future.<sup>11</sup>

- b. the *Environment Protection Act 1970* (Vic) and its subordinate legislation, including the State Environment Protection Policy (Waters);
- c. the *Climate Change Act 2017* (Vic), in the context of the proposed facility's contribution to greenhouse gas emissions<sup>12</sup> in a context where Victorian has a legislated emissions reduction target of net zero greenhouse gas emissions by the year 2050.

### **The Impacts of the Project**

19. The submitter group's evidence and submission will address the following key impacts:

- a. marine biodiversity;
- b. safety risks and hazards;
- c. acid sulphate soils;
- d. social impacts; and
- e. greenhouse gas emissions.

20. With reference to the key issues identified in the Scoping Requirements,<sup>13</sup> the particular concerns of the submitter group are:

- a. adverse effects on biodiversity values and the functions, values and beneficial uses of surface water environments (especially the Western Port Ramsar site) due to changes in water quality from contaminants and pollutants,<sup>14</sup>

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<sup>11</sup> *Convention on Wetlands of International Importance* (Ramsar, Iran, 1971) <[https://www.ramsar.org/sites/default/files/documents/library/current\\_convention\\_text\\_e.pdf](https://www.ramsar.org/sites/default/files/documents/library/current_convention_text_e.pdf)>.

<sup>12</sup> Section 17.

<sup>13</sup> *Scoping requirements for the Gas Import Jetty and Crib Point to Pakenham Gas Pipeline* (January 2019) 11, Table 1: Draft evaluation objectives ('**Scoping Requirements**').

<sup>14</sup> See Scoping Requirements, 14 and 15.

- b. significant short and long-term impacts on marine biota due to either entrainment of organisms in seawater for regasification or discharge of cooled seawater after use for regasification;<sup>15</sup>
- c. the overall adverse effects on the ecological character and biodiversity values of the Western Port Ramsar site;<sup>16</sup>
- d. significant impacts on the marine environment resulting from accidental or unintended leaks or spills and or the introduction of exotic species;<sup>17</sup>
- e. disturbance of contaminated soil and acid sulphate soil;<sup>18</sup>
- f. temporary or permanent changes to use of or access to existing infrastructure in the project area and in its vicinity;<sup>19</sup>
- g. impacts on recreational activities from the project and adverse impacts on visual or landscape values;<sup>20</sup>and
- h. greenhouse gas emissions resulting from the project, including direct and indirect emissions from operation.<sup>21</sup>

21. The submitter group will call expert evidence to address the matters above. In particular, evidence will be called to address the significance of, and or lack of information about:

- a. the impacts of toxicants discharged from the floating storage and regassification unit (FSRU);
- b. the bioaccumulation of toxicants in food webs and the associated vulnerabilities for apex predators, including wetland birds, penguins, fish, seals, and dolphins;

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<sup>15</sup> See Scoping Requirements, 14 and 19.

<sup>16</sup> See Scoping Requirements, 14 and 16.

<sup>17</sup> See Scoping Requirements, 14, 16 and 19.

<sup>18</sup> Scoping Requirements, 19.

<sup>19</sup> See Scoping Requirements, 17.

<sup>20</sup> See Scoping Requirements, 17.

<sup>21</sup> Scoping Requirements, 19.

- c. impacts on marine biota due to entrainment, and the total intake of plankton;
- d. impacts from the combined effects of the operations and discharges of the FSRU, including temperature changes, toxicants and sediment disturbance on a diversity of communities on the seabed;
- e. changes to the nature and distribution of biotopes on the seabed and in the water column, and the related impacts on various flora and fauna;
- f. changes to prey accessibility, prey quality and or behaviour disruptions that affect wetland bird species;
- g. barrier effects in the North Arm of Westernport Bay caused by a combination of noise, vibration, lighting, odour, discharges and seabed habitat changes in and around the FSRU;
- h. the catastrophic impacts of a potential major oil spill, in light of the hydro-connectivity between Crib Point and the rest of Westernport Bay and the potential interaction of LNG vessels with vessels traversing to/from the Long Island Point oil terminal;
- i. impacts of the introduction of invasive species and marine pests;
- j. acid sulphate soil impacts of the project, including:
  - i. potential contamination of watercourses;
  - ii. declines in aquatic ecosystem health, including potential “dead zones” for aquatic organisms; and
  - iii. barriers in waterways for aquatic organism migration;
- k. the potential to permanently displace the community from unique and intrinsically valuable green and blue spaces used by both local residents and visitors to the area;
- l. the negative social impact on the community’s way of life, their culture, their personal and shared resources, and their mental and physical health and wellbeing; and

- m. the potential to compromise real and perceived amenity and safety of residents and visitors to the area.

### **The Project's Rationale does not Justify its Effects**

- 22. To persuade the IAC that the project will be of positive effect, the proponent will need to establish that the project has a convincing rationale.
- 23. The submitter group submits that the proponent's project rationale is flawed and that, contrary to what it suggests, the project cannot 'provide for safe and cost-effective augmentation of Victoria's natural gas supply in the medium to long term'. In particular:
  - a. the project is not cost-effective. Imported gas is expensive gas as it has to go through the liquefaction and shipping process;
  - b. the project is not safe and will not assist Victoria's transition to a low-carbon economy. A full lifecycle analysis of importing LNG shows that it is amongst the highest emitting fuels available in the market; and
  - c. the project is not needed. The east coast of Australia already has enough gas to supply consumers and there are alternatives for increasing energy security in Victoria. Attempting to solve allocation issues by importing gas will only add costs as it embeds the cost of liquefaction and shipping into the domestic price.
- 24. As submitted by the Mornington Peninsula Shire Council, the proponent's failure to provide any objective or independent assessment against the evaluation objective of 'Energy efficiency, security, affordability and safety' is a fundamental deficiency in the EES. Such an assessment is required under the EES because it is essential to assess the project against the principles and objectives of ESD. The failure to address the rationale for the project impairs submitters and the IAC from undertaking a robust net community benefit assessment of the project.
- 25. Our clients will call expert evidence to address the above matters.

## Inadequacies and Unknowns

26. Finally, the submitter group notes its deep, collective concern about the fitness of the published EES for purpose.
27. Whilst the *Environment Effects Act 1978* is silent on what might be included in an EES, section 3(3) requires the Minister to specify the procedures and requirements that are to apply to the preparation of the EES, in an Order declaring the project to be public works.
28. Relevantly, sub-clause (iii) of the Minister's procedures and requirements provides that:
- The level of detail of investigation for the EES studies should be consistent with the scoping requirements issued for this project and *be adequate to inform an assessment of the potential environmental effects (and their acceptability) of the project* and any relevant alternatives, in the context of the Ministerial Guidelines (emphasis added).
29. The term 'effects' includes direct, indirect, combined, cumulative, consequential, short and long-term, beneficial and adverse.<sup>22</sup>
30. Overall, the EES is manifestly inadequate to inform an assessment of the potential environmental effects of the project.
31. The various inadequacies of the published EES are documented in the expert evidence filed on behalf of the submitter group, with key themes including:
- a. a general lack of scientific rigour in many of the assessments;
  - b. an *ad hoc* selection of issues: no overarching standardisation of process for identifying sensitive ecological components, screening of threats and hazards or predicting biological impacts;
  - c. a lack of any formal and or specific consideration of ecosystem effects;

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<sup>22</sup> Scoping Requirements, 7.

- d. spatially limited scope of the biological impact assessment, with little consideration of ecological processes and linkages that can extend impacts over a larger area than that immediately surrounding the FSRU;
- e. limited (or no) consideration of uncertainty, including gaps in knowledge of impacts, impact processes, biological responses and efficacy of mitigation; and
- f. a risk assessment method that is not fit for purpose.

32. The submitter group is also concerned that significant unanswered questions remain in relation to the environmental effects on the project. Of particular note:

- a. the potential impacts from production and release of toxicants from chlorine disinfection are not known. In particular, there has been no systematic monitoring of the occurrence – and environmental effects – of Halogenated Organic Compounds (**HOCs**) in marine waters receiving chlorine discharge;
- b. the EES failed to specifically consider Ramsar wetland values and associated species. Each of the values, including listed migratory birds, form different functions and components of the ecosystem, with different sensitivities and consequences for impacts. The EES provides no scrutiny or examination of such specifics or ecosystem effects;
- c. the EES largely failed to predict biological impacts. There is no specific assessment of types of biological impacts, magnitudes and spatial extents of potential change for any of the wetland and marine priority features;
- d. the potential for barrier effects on behaviour and movements of fauna, with implications for wider ecosystem processes, are not considered;
- e. the catastrophic consequences of shipping incidences resulting in a major oil spill and potentially LNG releases, including the cumulative effects from such an incident, are not addressed. In fact, the EES does not contain any shipping risk assessment whatsoever;
- f. the introduction of invasive marine pests, are not assessed in the context of existing evidence;

g. there are significant gaps in knowledge on acid sulfate soils impacts, including gaps on baseline conditions, inadequate consideration of offsite impacts once acidity is generated (including on aquatic ecosystems health) and no consideration of the effects of oxidation on relevant coastal Ecological Vegetation Classes (EVCs).

33. The published EES is insufficient for the purposes of section 3(3) of the EE Act. It is not consistent with the Scoping Requirements or the Ministerial Guidelines. It is not sufficient to allow the IAC, or ultimately the Minister, to assess the environmental effects of the proposed facility and pipeline as acceptable. In those circumstances, the precautionary principle must prevail

### **Conclusion**

34. Environment Victoria, Save Westernport and the Victorian National Parks Association look forward to the opportunity to fully explore these matters with the IAC and fellow parties over the balance of this hearing.

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## APPENDIX

### THE SUBMITTER GROUP

1. Environment Victoria is an independent and not-for-profit organisation that has been campaigning to look after Victoria's environment for more than fifty years. With more than 40 grassroots members groups and 200,000 individual supporters, Environment Victoria is a community of Victorians standing up for a safe climate, healthy rivers, and a sustainable future.<sup>23</sup>
2. Save Westernport Inc. is an independent community group which exists to safeguard Westernport Bay's critical habitat and encourage responsible economic activity to ensure a healthy environment for all life. Save Westernport has over 16,000 active supporters, many of whom live close to the proposed project sites.<sup>24</sup>
3. The Victorian National Parks Association is an independent, non-profit, membership-based group which exists to protect Victoria's natural environment and biodiversity through the establishment and effective management of national parks, conservation reserves and other measures. The Victorian National Parks Association have been a voice for the protection of Victoria's unique natural heritage for almost seventy years.<sup>25</sup>

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<sup>23</sup> See Submission 3088.

<sup>24</sup> See Submission 3129.

<sup>25</sup> See Submission 3004.