Expert Witness Report: Gas Import Jetty and Pipeline Project: Aboriginal Cultural Heritage Impacts

Prepared for:
Ashurst and Hall & Wilcox on behalf of AGL Wholesale Gas Limited (AGL) and APA Transmission Pty Ltd (APA)
September 2020

Ecology and Heritage Partners Pty Ltd
Oona Nicolson
Copyright © Ecology and Heritage Partners Pty Ltd

This document is subject to copyright and may only be used for the purposes for which it was commissioned. The use or copying of this document in whole or part without the permission of Ecology and Heritage Partners Pty Ltd is an infringement of copyright.

Disclaimer

Although Ecology and Heritage Partners Pty Ltd have taken all the necessary steps to ensure that an accurate document has been prepared, the company accepts no liability for any damages or loss incurred as a result of reliance placed upon the report and its contents.
1 INTRODUCTION ........................................................................................................................................... 4
  1.1 Name and Address ................................................................................................................................. 4
  1.2 Qualifications and Expertise to make the Report .................................................................................. 4
  1.3 Area of Expertise .................................................................................................................................... 4
  1.4 Instructions and Information Relied Upon ............................................................................................. 5
  1.5 Overview ............................................................................................................................................... 5

2 SCOPE OF INSTRUCTIONS AND INFORMATION RELIED UPON .............................................. 6

3 FACTS, MATTERS AND ASSUMPTIONS .............................................................................................. 7
  3.1 The Project ............................................................................................................................................. 7
    3.1.1 The Pipeline Works ......................................................................................................................... 7
    3.1.2 The Gas Import Jetty Works ............................................................................................................ 7
  3.2 Documents and materials provided ....................................................................................................... 8
  3.3 Cultural Heritage ..................................................................................................................................... 8

4 SUMMARY OF KEY ISSUES, OPINIONS AND RECOMMENDATION .............................................. 10

5 CONSIDERATION OF CHAPTER AND EXHIBITED TECHNICAL REPORT .................................. 11
  5.1 Overview ............................................................................................................................................... 11
    5.1.1 Pipeline Works ................................................................................................................................. 11
    5.1.2 Jetty Works ...................................................................................................................................... 12

6 REVIEW OF SUBMISSIONS .................................................................................................................. 13
  6.1 Submission #487 .................................................................................................................................... 13
    6.1.1 Review of submission #487 ............................................................................................................... 13
  6.2 Submission from Cardinia Shire Council #2805 .................................................................................. 14
    6.2.1 Review of submission from CSC ..................................................................................................... 14
  6.3 Submission from Evolution Rail #2322 ................................................................................................. 14
  6.4 Submission from Bunurong Land Council Aboriginal Corporation #2322 ...................................... 15
    6.4.1 Review of submission from BLCAC ............................................................................................... 15

7 REVIEW AND RECOMMENDATIONS ON THE MITIGATION MEASURES IDENTIFIED IN THE EES AND THE KEY APPROVAL DOCUMENTS ................................................................. 19
  7.1 EES Mitigation Measures ..................................................................................................................... 19
    7.1.1 Pipeline Works .................................................................................................................................. 19
    7.1.2 Jetty Works ..................................................................................................................................... 20
7.2 The Pipeline Licence Application

7.2.1 Pipeline and Jetty Works

7.3 Suggested recommendations regarding the proposed mitigation measures and Key Approval Documents

7.3.1 Pipeline Works

7.3.2 Jetty Works

8 AUTHOR’S DECLARATION

APPENDICES
1 INTRODUCTION

1.1 Name and Address

This report has been prepared by Oona Nicolson, Director of Ecology and Heritage Partners, 292 Mt Alexander Road, Ascot Vale, Ph: (03) 9377 0100, onicolson@ehpartners.com.au.

1.2 Qualifications and Expertise to make the Report

I am a Director and the Principal Heritage Advisor at Ecology and Heritage Partners Pty. Ltd. Cultural Heritage Division. I have extensive experience in over 800 projects with a wide variety of clients. My qualifications are as follows:

- Bachelor of Arts (Honours in Archaeology) (First Class), Flinders University of South Australia (1996)
- Bachelor of Arts (Australian Archaeology and Australian Studies), Flinders University of South Australia (1995)

I have previously provided evidence at VCAT, the Supreme Court and government panels in the areas of Aboriginal and historical heritage in Victoria.

1.3 Area of Expertise

I am a heritage specialist with over 25 years of experience in the archaeological consulting sector, working in Victoria, South Australia, New South Wales, and Tasmania. I am a former Alternate Archaeology Member of the Victorian Heritage Council (2010-2016) and a former National President and Victorian State Chair of the Australian Association of Consulting Archaeologists Inc.

As a full time professional consultant, my entire consulting career has been focused on Aboriginal and historical archaeology of south east Australia. I have a particular interest in the application of the Aboriginal Heritage Act 2006. I am a qualified Cultural Heritage Advisor under the Aboriginal Heritage Act 2006.

I am very familiar with the requirements of the Victorian State legislation in regard to heritage and planning matters. I have regularly worked with Aboriginal Victoria (AV), and sat on a number of steering committees, to assist them as a representative of the heritage consulting industry on matters in relation to the Aboriginal Heritage Act 2006, and more recently on the review of the Aboriginal Heritage Regulations 2007 (now 2018). I have also been a member of the Technical Advisory Group that advised the Aboriginal Victoria (AV) on the application of the Aboriginal Heritage Act 2006.

In addition, I have been involved in a number of heritage assessments for EES projects in Victoria. These include but are not limited to the Victorian Desalination Project, Willatook Wind Farm, Greater Geelong Planning Scheme Amendment C150 and Lonsdale Golf Course Redevelopment.
Currently I am a Full Member of the Australian Association of Consulting Archaeologists Inc. (AACAI), a member of the Australian Archaeological Association and a Fellow and former Board Member of the Victorian Planning and Environmental Law Association.

1.4 Instructions and Information Relied Upon

Oona Nicolson, Director of Ecology and Heritage Partners Pty Ltd was instructed by Ashurst and Hall & Wilcox on behalf of AGL Wholesale Gas Limited (AGL) and APA Transmission Pty Ltd (APA) to provide an expert opinion in regard on Aboriginal cultural heritage in relation to the Gas Import Jetty and Pipeline Project for the Hearing in relation to the Environmental Effects Statement (EES). The Minister will appoint an Inquiry and Advisory Committee (IAC) to conduct the Hearing.

I, Oona Nicolson of Ecology and Heritage Partners Pty Ltd, have prepared this Expert Witness Report pertaining to the Aboriginal Cultural Heritage Impacts for the Gas Import Jetty and Pipeline Project.

The proceeding statement is based on a review of the relevant background material provided to me.

1.5 Overview

On 8 October 2018, the Victorian Minister for Planning (Minister) determined that the Project will be assessed through a single Environmental Effects Statement (EES) under Environmental Effects Act 1978 (Vic) (the EE Act).

The Commonwealth Department of Environment and Energy (DEE) has separately determined that each of the Gas Import Jetty Works (the AGL project) and the Pipeline Works (the APA project), are controlled actions under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act). These actions are to be assessed under the Bilateral Agreement between the Victorian and Commonwealth governments. Accordingly, the EES will address both the EE Act and the EPBC Act processes and requirements.
2 SCOPE OF INSTRUCTIONS AND INFORMATION RELIED UPON

The instructions given to me for this report were as follows:

(a) provide an analysis and opinion on the aspects of the Project relating to cultural heritage.

(b) prepare an expert witness statement which addresses the matters set out below;
   1. consider the relevant evaluation objective in the Scoping Requirements and provide an opinion and analysis regarding the Chapter and Technical Report relevant to your area of expertise.
   2. include a section summarising the concerns raised in the public submissions that are relevant to your area of expertise and your opinion in response to those concerns;
   3. provide any recommendations you may have in relation to the mitigation measures proposed in the EES and outlined in Chapter 25 - Environmental Management Framework and the Key Approval Documents;
   4. is generally in accordance with the suggested structure provided in Annexure A of the brief, subject to any changes that in your opinion are necessary for your particular area of expertise;
   5. addresses all of the matters required in the Expert Evidence Guide (Guide) used for Planning Panel hearings.

(c) review any public submissions filed with the IAC during the public exhibition period which raise issues relevant to your witness statement;

(d) identify any further information relevant to your assessment, which you require to complete your expert witness statement;

(e) appear as an expert witness at the Hearing of the Project (which may be held by digital medium depending upon the restrictions in place at the time);

(f) if required to do so by the IAC, attend a conclave with other experts in your field of expertise who are giving evidence in the Hearing; and

(g) if you consider necessary, attend a site visit of the areas relevant to your witness statement in advance of the Hearing.

In addition I was asked to review the following:

(h) the Mitigation Measures (MMs) in Chapter 25 of the EES and to comment on them if any need amending and to review as relevant the Pipeline Licence Application in Attachment IX of the EES.
3 FACTS, MATTERS AND ASSUMPTIONS

3.1 The Project

The Project consists of two key sets of works:

(a) the Pipeline Works which are to be developed by APA; and
(b) the Gas Import Jetty Works which are to be developed by AGL.

3.1.1 The Pipeline Works

The Pipeline Works include:

(a) an underground gas pipeline approximately 57 kilometres long linking the Crib Point Receiving Facility at Crib Point and the VTS east of Pakenham (noting that various options were considered for the route and minor deviations may continue to arise due to negotiations with affected landowners along the route);

(b) a pigging facility at the Crib Point Receiving Facility to enable in-line inspections of the pipeline with a pipeline inspection gauge (pig);

(c) an above-ground Pakenham Delivery Facility adjacent to the Pakenham East rail depot to monitor and regulate gas;

(d) a below-ground End of Line Scraper Station (EOLSS) located at the connection point to the VTS, north of the Princes Highway in Pakenham; and

(e) two above-ground mainline valves (MLV1 and MLV2) located at different points along the pipeline alignment to enable isolation of the pipeline in an emergency.

3.1.2 The Gas Import Jetty Works

The Gas Import Jetty Works include:

(a) continuous mooring of an FSRU at Berth 2 of the existing Crib Point Jetty to store LNG and regasify LNG into natural gas using the onboard regasification unit;

(b) jetty infrastructure on the Crib Point Jetty including marine loading arms (MLAs) that would connect to the FSRU and gas piping, to transfer the gas from the FSRU to the Crib Point Receiving Facility;

(c) Crib Point Receiving Facility, including gas metering, odorant injection and nitrogen injection (if required to meet the standard gas quality specifications) – the Crib Point Receiving Facility would be located on land adjacent to the Crib Point Jetty.
3.2 Documents and materials provided

The EES was provided to me in digital format. The specific chapters I have been instructed to consider that may be relevant were:

Chapter 1 (Introduction);
Chapter 2 (Project Rationale);
Chapter 3 (Project development);
Chapter 4 (Project Description);
Chapter 5 (Key Approvals and Assessment Framework);
Chapter 17 (Land Use); and
Chapter 21 (Aboriginal cultural heritage).

Chapter 25 Mitigation Measures

The two key technical reports that were considered relevant were Technical Report L (Land Use) and P (Aboriginal cultural heritage).

Submissions were reviewed and there were two specific submissions that relate to my area of expertise. These were from 1) Cardinia Shire Council and 2) The Bunurong Land Council Aboriginal Corporation (BLCAC). In addition, I was provided with email correspondence on 18 September 2020 and 23 September 2020 from Hall & Wilcox and Ashurst that contained further information from Biosis in relation to the CHMP works and the consultation undertaken with the BLCAC.

The documents sent to me via email on 23 September 2020 from Hall & Wilcox contained documentation relating to the pipeline CHMPs. This data included draft for CHMPS 15383 and CHMP 15384 and tables relating to consultation and meetings held with the BLCAC about the CHMPs. The CHMPs are confidential and no part of them that relates to location of cultural heritage places is repeated in this report.

My review of these documents and the letter indicates that extensive consultation has taken place between the Heritage Advisors on behalf of the Sponsors and the BLCAC in relation to the CHMPs. There is still field based work to be completed for the two pipeline CHMPs, although it appears the desktop CHMP for the jetty works is ready for submission upon issues of a final design plan and final meeting with the BLCAC to clarify issues around intangible heritage. No tangible Aboriginal heritage is present in the jetty works area. I am satisfied that the desktop assessment is sufficient for this area given the extensive impacts and previous land use that indicates the likelihood of Aboriginal heritage to be negligible.

3.3 Cultural Heritage

The Aboriginal cultural heritage assessment report for the EES was prepared by Biosis as the Heritage Advisors. The EES report was based on a desktop assessment and works that have been carried out to date as part of three Aboriginal Cultural Heritage Management Plans (CHMPs) that cover the two areas, the Pipeline and the Jetty Works.
Pipeline Works:

CHMP 15383: this covers the southern portion of the proposed pipeline alignment from Crib Point to Tooradin. The BLCAC are the RAP for this area and will evaluate the CHMP.

CHMP 15384: This covers the northern portion of the proposed pipeline alignment from Tooradin to Pakenham. Aboriginal Victoria (AV) will evaluate this CHMP as there are multiple Aboriginal organisations with cultural interest in the land and a RAP has not been appointed over all the land.

Jetty Works:

CHMP 16300: this covers the Crib Point Receiving Facility and the existing jetty at Crib Point. The BLCAC are the RAP for this area and will evaluate the CHMP.

The CHMPs are required under the *Aboriginal Heritage Act 2006* and the *Environment Effects Act 1978*. These three CHMPs are all still in the process of being prepared. It is noted that a CHMP is not required to be approved prior to the Environment Effects Statement being approved. Consultation with a variety of bodies has taken place for these CHMPs.
4 SUMMARY OF KEY ISSUES, OPINIONS AND RECOMMENDATION

The Aboriginal Cultural Heritage Impact Assessment is based on the findings of three CHMPs that are all in progress for the Project. They are as follows:

**Pipeline Works:**

CHMP 15383: this covers the southern portion of the proposed pipeline alignment from Crib Point to Tooradin. The BLCAC are the RAP for this area and will evaluate the CHMP. Nine Aboriginal heritage places would be impacted. A series of conditions are recommended that allow impacts to all nine heritage places. These include salvages, cultural awareness training, compliance inspections, and repatriation of Aboriginal cultural heritage material.

CHMP 15384: This covers the northern portion of the proposed pipeline alignment from Tooradin to Pakenham. Aboriginal Victoria (AV) will evaluate this CHMP as there are multiple Aboriginal organisations with cultural interest in the land and a RAP has not been appointed over any of the land. Five Aboriginal heritage places would be impacted. A series of conditions are recommended that allow impacts to all five heritage places. These include salvages, cultural awareness training, compliance inspections, and repatriation of Aboriginal cultural heritage material.

**Jetty Works:**

CHMP 16300: this covers the Crib Point Receiving Facility and the existing jetty at Crib Point. The BLCAC are the RAP for this area and will evaluate the CHMP. This is a desktop CHMP and due to the land use history of the area it is not considered likely for Aboriginal heritage to be present. A desktop CHMP has been agreed between BLCAC and the Heritage Advisors as a sufficient level of assessment.

All three CHMPs are in draft stage. Consultation is still required with all the appropriate Traditional Owners groups in order to finalise agreements on the significance of heritage places, the impacts and the nature of the mitigation measures in order to gain approval.

The range of mitigation measures suggested at this point appear to be appropriate and have been suggested in order to try and reduce and minimise impacts to heritage places. They incorporate an appropriate level of mitigation measures involving archaeological salvage of heritage places and compliance inspections by Traditional Owner groups.
5 CONSIDERATION OF CHAPTER AND EXHIBITED TECHNICAL REPORT

5.1 Overview

The Project has been assessed against the draft evaluation objectives set out in the EES scoping requirements. These draft objectives identify the desired outcomes to be achieved in terms of identifying and managing the potential impacts of constructing and operating the project. Site selection for the pipeline and Crib Point for the associated Jetty works and the FSRU was identified as a key component to avoid and reduce potential impacts. Following the initial site selection, the specialist study by Biosis (Chapter 21 and Technical Report P) were utilised for the EES to assess the impacts of the Project and to identify any mitigation measures to avoid, minimise and/or manage potential impacts.

The following draft evaluation objective is relevant to Aboriginal cultural heritage and identifies the desired outcomes in the context of potential Project effects.

Draft evaluation objective for Aboriginal cultural heritage is: To avoid or minimise adverse effects on Aboriginal and historic cultural heritage.

In preparing my comments on the cultural heritage I also read the information contained in Technical Report L (Land Use) and Chapter 17 Land Use. Understanding land use is pertinent in regard to interpreting land impacts in relation to the survival and/or intactness of Aboriginal heritage places.

5.1.1 Pipeline Works

Review of Chapter 21 and Technical Report P indicate that there will be a range of potential impacts on Aboriginal places regarding the Pipeline Works.

CHMP 15384

There are a series of at least five Aboriginal places that will be impacted by the works associated with the Pipeline. The CHMP consultation indicates that that harm may be permitted to impact these places. Final Agreements in regard to the mitigation measures where harm is allowed is being finalised with the range of Aboriginal stakeholders and Aboriginal Victoria. A series of archaeological salvage programs have been suggested as mitigation measures for these Aboriginal heritage places.

CHMP 15383

There are a series of at least nine Aboriginal places that will be impacted by the works associated with the Pipeline. The CHMP consultation indicates that that harm may be permitted to impact these places. Final Agreements in regard to the mitigation measures where harm is allowed is being finalised with the range of Aboriginal stakeholders and Aboriginal Victoria. A series of archaeological salvage programs have been suggested as mitigation measures for these Aboriginal heritage places.
5.1.2 Jetty Works

Review of Chapter 21 and Technical Report P indicate that there will not be any identified specific impacts on Aboriginal heritage places regarding the Jetty Works. The main condition for this CHMP is ensuring a copy of the approved CHMP is kept on site during the works program. If any Aboriginal heritage is found during construction works, the CHMP has a series of contingency plans that must be followed. The BLCAC would be involved in the implementation of any contingency plans.
6 REVIEW OF SUBMISSIONS

Four submissions were received that were quite specific to Aboriginal cultural heritage matters. These four submissions are contained in full in Appendix 4.

A few of the other submissions raised general concern about Aboriginal cultural heritage places being impacted. Instead of addressing these broader concerns individually, my comments that address the submissions below should be considered to also address the broader submissions concerns as they all relate to the same issues.

6.1 Submission #487

Submission #487 raises concern about the Aboriginal cultural heritage assessment being incomplete. The submitter is a Bunwurrang/Bunurong (Bunurong) woman. The submission raises concern about the assessments that have been carried out as incomplete and as focusing just on tangible heritage, being the physical evidence, such as artefacts, middens, tools and human remains. Although these physical remains are acknowledged as important and of immense value, the intangible heritage described as the deep spiritual significance that Aboriginal people hold for the land is highlighted. This is expanded in the submission in relation to the land and sea country between Sandy Point and French Island (Jouap) and the entire shipping channel beginning at the entrance to Western Port. The submission elaborates on the Sea Country being Women’s Country with key Ceremonial, Lore and Dreaming story places for Bunurong women and girls. This is also referred to as Women’s Business and the submission notes that in recent years there has been a profound push to revive and renew the ceremonies associated with Women’s Business and Initiation.

Dreaming stories are elaborated on in the submission particularly in relation to the area around Sandy Point and Women’s Creation stories involving the Great Mother Whale and an Aboriginal Whale Songline traveling around the country lining coastal clans in story, song and ritual and the reciprocal obligation to care and protect the Creator beings. The submission elaborates on concerns about the whales and dolphins that may be impacted.

6.1.1 Review of submission #487

The concerns raised by submission #487 are directly relevant to the issues of intangible cultural heritage for the Traditional Owners. The CHMPs for the project do not contain specific information relating to intangible cultural heritage. Intangible cultural heritage would include the importance of Dreamtime stories, Songlines and Women’s Business and their relationship to Country. Consultation must take place with the relevant Traditional Owners regarding impacts to tangible and intangible heritage matters. There is a Registered Aboriginal Party (RAP) that has been appointed under the Aboriginal Heritage Act 2006 that must be consulted on all heritage matters on their land. The RAP for part of the Project, including all the Jetty works component, are the Bunurong Land Council Aboriginal Corporation (BLCAC) represent Traditional owners for their land. BLCAC have also raised similar concerns in their submission (see below) in regard to the absence of
consultation regarding intangible heritage, although they are not specific about the issues, whereas submittor #487 provides more specific cultural knowledge that is relevant to the area. For the whole Project, all relevant Traditional Owners should be consulted to share their intangible heritage and work with the Project proponents to ensure the CHMPs adequately addresses the heritage issues.

6.2 Submission from Cardinia Shire Council #2805

The submission from Cardinia Shire Council (CSC) notes on page 7 that the draft CHMPs should be provided to local Indigenous groups for comment and that an Indigenous Participation Plan should be explored for the project.

6.2.1 Review of submission from CSC

It is understood that all three drafts of the CHMPs will be provided to the local Traditional Owner groups that hold cultural interest in the area for comment. An Indigenous Participation Plan beyond the conditions and agreements for heritage places reached in the CHMPs is outside the scope of a heritage assessment.

6.3 Submission from Evolution Rail #2322

This submission has specific concerns about the Pakenham Depot location and the impact on prior CHMP approvals. Section 7 of the submission on page 14 indicates that a previously approved CHMP that currently exists in relation to the Pakenham depot site has identified a no-go zone in relation to cultural heritage on their land. Evolution Rail (ER) are extremely concerned about any disturbance to this area that could result in damage to possible heritage. ER have submitted that the CHMP being prepared for the Pipeline that affects this area of cultural sensitivity must take this into account. A potential solution has been offered up by ER that is outlined in Section 7.2 of the submission. Three suggested points are put forward by ER as a solution. These are below in italics and my comments are included (non-italicised):

a) **Conduct investigations and obtain advice about the cultural heritage significance of the entire pipeline alignment (including the PDF site and laydown area) and implement appropriate cultural heritage management and protection measure, including engagement with local traditional owners;**

   It is my understanding this is being carried out through the current CHMP process.

b) **Not disturb and continue to preserve the cultural heritage no-go zone established on the Pakenham East Depot in a similar way to the protections put in place by the existing CHMP for the Pakenham East Depot site; and**

   If the no-go zone is required to be impacted by the pipeline Project, then the approved CHMP for the Project will address this and allow it. CHMPs are specific to an activity and the Sponsor of that activity. ER still have an obligation not to disturb any part of the no-go zone under their approved CHMP.

c) **Ensure that activities associated with the Pipeline Project, whether those activities arise during the construction or operational phase, do not impact upon or in any way compromise compliance with the existing CHMP in relation to the Pakenham East Depot.**
CHMPs are specific to an activity and the Sponsor of that activity. The Pipeline project will not be permitted to conduct works that are outside the approvals allowed in their CHMP. Consultation with ER is advised to ensure that each of the stakeholders understands their obligations in regard to their respective CHMPs.

6.4 Submission from Bunurong Land Council Aboriginal Corporation #2322

The submission from the BLCAC in response to the EES is contained in full in Appendix 4. Due to its length it is not repeated in full in this section.

There are a range of concerns raised by the BLCAC. The seven main areas are each outlined in the submission. They are:

Section 2: Aboriginal Intangible Heritage
Section 3: Places
Section 4: Lack of Balance
Section 5: Consultation
Section 6: Adhering to the Act and Regulations
Section 7: Cultural Heritage Management Plans
Section 8: Risk Management

6.4.1 Review of submission from BLCAC

Each paragraph in each section has been numbered and I refer to the relevant paragraphs using the BLCAC numbering system. In summary, all of the issues presented by the BLCAC appear to be able to be addressed as part of the finalisation of the draft CHMPs. Extensive consultation with the BLCAC appears to have taken place by Biosis, although it appears different Heritage Advisors have attended different meetings depending on which CHMP is being discussed. It is also noted that BLCAC submission expresses frustration at being asked to provide comment on assessments that are not considered complete. This is likely a result of the EES process and not necessarily the fault of the Heritage Advisors or Sponsors.

6.4.1.1 Section 2: Aboriginal Intangible Heritage

The first concern raised by the BLCAC submission relates to Intangible cultural heritage (Section 1.10 and Section 2). The submission notes that Intangible cultural heritage is entirely missing from the proponent’s EES and this is a significant gap in the proposed projects planning and therefore construction and operations.

The priority of the project must be to avoid harm to Aboriginal cultural heritage, both tangible and intangible (1.12). Section 2 of the submission elaborates on the importance of Intangible heritage to the Bunurong people. The Burra Charter is referenced in relation to ‘the tangible being emphasised to the detriment of the Intangible’. The emphasis in Section 2 is on Bunurong people’s relationship to Country.
Reference specifically to the desktop CHMP 16300 for the Jetty works notes that although no Aboriginal heritage is present (tangible) that the Wooleys Beach and Warringine Park area are “Country” and must be cared for because of the relationship between Bunurong people and the land. There is criticism of the CHMP process in relation to Intangible heritage and how it is recorded and managed.

My review of this section and in particular the information provided to me on 23 September 2020, being the meeting notes and draft CHMPs indicate that it appears intangible heritage was brought up during consultation but for unknown reasons, the intangible values were not identified for the purposes of the CHMPs. Given the CHMPs are still all at draft stage and not completed it appears there is still opportunity for the BLCAC to raise their concerns with the Sponsor and Heritage Advisors to ensure intangible heritage is identified and incorporated into the CHMPs. BLCAC should be consulted to share their knowledge of intangible heritage as appropriate. This understanding of intangible heritage can only be provided by the Traditional Owners and it is inappropriate for the HA to comment on it.

6.4.1.2 Section 3: Places

The BLCAC submission is concerned about how the Technical Report and draft CHMPs presents information on heritage places and the individual locations of heritage places is not appropriate and that the project area should be presented as a contiguous cultural landscape. BLCAC note that understanding of ‘place’ is done quite differently between Bunurong people compared with non-indigenous people (3.2). Bunurong acknowledge that their way of understanding place could probably not even be transmitted in hours of consulting, and that the Proponents and the Heritage Advisors do not understand their perception of place.

My review of this indicates that the Technical Report prepared by Biosis was completed in accordance with scoping documents required for an EES. This effectively restricts what can be stated in the report. To a certain degree, the Biosis report is commenting on the heritage assessments as carried out under the Aboriginal Heritage Act 2006. Under the Aboriginal Heritage Act 2006, the CHMP must provide information in relation to the extent, nature and significance of any Aboriginal places. The Biosis reports did not provide commentary on the BLCAC understanding of place as it is not appropriate for them to do so. The comments provided by BLCAC in relation to the interpretation of place and cultural landscapes should be explored further as part of the CHMP completion. BLCAC should be consulted to share their understanding of place. This understanding of place can only be provided by the Traditional Owners and it is inappropriate for the HA to comment on it.

6.4.1.3 Section 4: Lack of Balance

BLCAC raise concern about the lack of balance between a scientific view of heritage as presented in the Technical Report and their view of Country.

Similar to my comments above, it is difficult for the Heritage Advisors to have this balance when the reports they rely on for the EES are based at this stage on the physical assessment of heritage as defined under the Aboriginal Heritage Act 2006 and is required to consider project impacts. Certainly, the consultation meetings for the CHMPs would normally elaborate on the cultural views of the Aboriginal heritage held by the Traditional Owners. The Heritage Advisors are not in a position to assess cultural values, only the Traditional Owners can do this. As the CHMPs are still in draft stage there is opportunity for the BLCAC to elaborate on their views on their heritage.
6.4.1.4 Section 5: Consultation

This section by the BLCAC indicates that they feel the knowledge and expertise they hold has been ignored or not fully taken into account.

My review of this notes that there are three CHMPs still at draft stage, therefore there is opportunity to remedy this situation. The records provided to me indicate extensive meetings with the BLCAC during the course of the CHMP preparations. There may be a disparity in how the consultation has been carried out given the large scale of the projects and the different individuals attending meetings for the CHMPs. It may be advisable for the Proponent and Heritage Advisors to ensure there is consistent consultation by a core consultation group made up of representatives of the BLCAC, the Heritage Advisors and Sponsors (Proponents) that address the issues raised for all the CHMPs, rather than different Heritage Advisors attending separate consultation meetings for the different CHMPs. This whole of project approach should assist in ensuring all parties are across the relevant parts of the project.

6.4.1.5 Section 6: Adhering to the Act and Regulations

This section is concerned with the EES process and the BLCAC submit that they would prefer the CHMPs be approved prior to the EES decision making process taking place.

It is my understanding that a mandatory CHMP is required to be prepared for any project that is required to prepare an Environmental Effects Statement. Section 49 of the Aboriginal Heritage Act 2006 does not specify that the CHMP must be approved prior to the EES being approved. The timing of approvals must be examined in relation to Section 8C of the Environmental Effects Act 1978. Section 8C relates to decisions not to be made and works not to proceed until assessment considered. On this basis, a CHMP cannot be evaluated and approval given under the Aboriginal Heritage Act 2006 until such time as the Minister is provided with the prepared EES and has made an assessment. I note that it is not uncommon for an EES to be approved when the CHMP(s) is not complete. This is not necessarily ideal and it would be preferable to have approved CHMPs in place but at the current time that is how the process operates.

6.4.1.6 Section 7: Cultural Heritage Management Plans

The first part of this section relates to the CHMP and EES process which I have addressed in my review above. The second part relates to specific comments in relation to CHMP 16300 (Jetty Works) and comments regarding Aboriginal heritage, specifically shell middens being present in this area.

My review of this notes that the draft CHMP consultation records provided to me indicate that no shell middens have been located during geotechnical works and that agreement was reached between the Heritage Advisors and the BLCAC in August 2020 where it has been confirmed that no Aboriginal tangible heritage is present and no further physical investigations would be required for the approval of CHMP 16300. It appears this issue will be confirmed through further consultation.

6.4.1.7 Section 8: Risk Management

BLCAC raise a range of concerns regarding the risk management measures that have been presented and that they are not specific enough.
As before, my review of this indicates that given consultation with BLCAC still has to take place in order to finalise the CHMPs for approval, the risk management measures and management recommendations can be elaborated on and agreements made on what is appropriate, thereby resolving this issue.
7 REVIEW AND RECOMMENDATIONS ON THE MITIGATION MEASURES IDENTIFIED IN THE EES AND THE KEY APPROVAL DOCUMENTS

7.1 EES Mitigation Measures

The suggested mitigation measures as proposed in the three CHMPs are appropriate in regard to achieving the draft evaluation objective for Aboriginal cultural heritage. The draft objective being to avoid or minimise adverse effects on Aboriginal and historic cultural heritage. However, it is noted that given the submission made by the BLCAC, further consultation with Traditional Owners needs to take place regarding intangible heritage matters, interpretation of place and impacts to places.

7.1.1 Pipeline Works

A range of salvages has been proposed where impacts cannot be avoided with the two CHMPS associated with the Pipeline works. Given the linear nature of the project it is difficult to avoid impact to all Aboriginal cultural heritage. Fourteen Aboriginal heritage places were identified. These were all identified as part of the two CHMPs for the Pipeline works.

Of the 14 places to be impacted two of the places have already been salvaged, VAHR 0433 and VAHR 8021-0434 and no further mitigation is required. Seven places will be destroyed and must be mitigated according to the CHMP conditions. These places are: VAHR 7921-0419, VAHR 7921-1750, VAHR 7921-1753, VAHR 7921-1754, VAHR 7921-1755 and VAHR 7921-1756.

Two places are still undergoing assessment as part of CHMP 15383, these are VAHR 7921-0036 and VAHR 7921-1533 and have not yet had impact assessments completed for them.

Two places, VAHR 7921-1762 and VAHR 7921-1751 would be partially destroyed by the proposed pipeline works. The portions that will be destroyed must be mitigated according to the CHMP conditions. These include:

- Compliance responsibility;
- Dispute resolution;
- Reviewing and remedying compliance/noncompliance;
- Notification and management of unexpected Aboriginal cultural heritage findings during the Project works;
- Custody of Aboriginal heritage; and
- Notification and management of unexpected discovery of suspected human/ancestral remains during the project works.
The impacts to the Aboriginal place were assessed using a risk assessment methodology that identified potential construction and operational risks as well as risk pathways and assigned consequences and likelihood ratings. The overall risk rating was then determined. The conclusions indicated that the residual risk to Aboriginal cultural heritage values from the project is considered to be very low to medium.

It is considered that the mitigation measures proposed are appropriate and include a range of measures in addition to archaeological salvage. Given the submission made by the BLCAC, further consultation needs to take place regarding intangible heritage matters, interpretation of place and impacts to places.

### 7.1.2 Jetty Works

No Aboriginal heritage places were identified. The mitigation measures are general in that a copy of the CHMP is to be kept on site during the works program.

### 7.2 The Pipeline Licence Application

#### 7.2.1 Pipeline and Jetty Works

Ultimately there will be two sets of Environmental Performance Requirements (EPRs) – one for the AGL works and one for the APA works. The performance standards in the table below have been based on the Mitigation Measures in Chapter 25 and have been tailored for use in the Pipeline License EMP.

<table>
<thead>
<tr>
<th>Cultural heritage</th>
<th>Description</th>
<th>Pre-construction</th>
<th>Construction</th>
<th>Post-construction</th>
</tr>
</thead>
<tbody>
<tr>
<td>CH1</td>
<td>Cultural heritage will be managed in accordance with the Cultural Heritage Management Plans (CHMPs 15383 and 15384)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CH2</td>
<td>Where required by the project’s Cultural Heritage Management Plan (CHMP #15574), areas of cultural heritage significance will be avoided (e.g. reduced ROW, realignment or trenchless construction). Refer to CHMPs 15383 and 15384 for details.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CH3</td>
<td>Construction areas will be demarcated with survey pegs, fencing or other markers to ensure works are limited to the approved CHMP Activity Areas.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CH4</td>
<td>Areas of cultural heritage significance to be avoided will be shown on site plans.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CH5</td>
<td>Areas of cultural heritage significance to be avoided will be fenced and signed in accordance with the requirements of the CHMP.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CH6</td>
<td>Cultural heritage artefacts will be salvaged prior to ground disturbance in accordance with any CHMP requirements.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Should cultural heritage artefacts be found during the project, the Cultural Heritage accidental finds protocol in the relevant CHMP will be followed

These measures are considered appropriate for both the Pipeline and Jetty works.

7.3 Suggested recommendations regarding the proposed mitigation measures and Key Approval Documents

7.3.1 Pipeline Works

The range of proposed mitigation measures that have been suggested for the Aboriginal places to be impacted for the pipeline works CHMPs (CHMP 15384 and CHMP 15383) are appropriate. Given the submission made by the BLCAC, further consultation needs to take place regarding intangible heritage matters, the Traditional Owner view of places and impacts to places. A whole of project working group is suggested that incorporates input from the Traditional Owners.

7.3.2 Jetty Works

The mitigation measure that have been suggested in relation to CHMP 16300 is that a copy of the CHMP is to be kept on site during the works program. This is considered appropriate. Given the submission made by the BLCAC, further consultation needs to take place regarding intangible heritage matters and the Traditional Owner view of places. A whole of project working group is suggested that incorporates input from the Traditional Owners.
8 AUTHOR’S DECLARATION

I, Oona Nicolson, have read the Expert Witness Code of Conduct and agree to be bound by it. I have made all the inquiries that I believe are desirable and appropriate and that no matters of significance which I regard as relevant have to my knowledge been withheld from the Panel.

[Signature]

Date 25/09/2020
APPENDICES
APPENDIX 1: SUBMISSION #487
APPENDIX 3: SUBMISSION #2322
APPENDIX 4: SUBMISSION #2870