



Chapter 5

Legislative framework and approval requirements

This chapter outlines the legislative framework and approvals process for the Viva Energy Gas Terminal Project (the project). Further information on the legislation and policy that are applicable to the Environment Effects Statement (EES) technical studies are discussed in Attachment III: *Legislation and policy report*.



5.1 Introduction

The project is being assessed through an EES administered by the Victorian Minister for Planning (the Minister) under the *Environment Effects Act 1978* (Vic) ('Environment Effects Act'). The EES process is not an approval in itself, but an assessment by the Minister as to whether the project is considered acceptable or otherwise in terms of potential environmental impacts. The Minister's assessment of the EES informs regulatory authorities on whether or not the project should proceed, and if so, under what conditions. Statutory approvals for a project being assessed under the Environment Effects Act cannot be considered and issued by regulatory authorities until the Minister's assessment of the EES is made.

Following the Victorian Minister for Planning's assessment of the EES, decisions will be made by the relevant statutory authorities regarding approval requirements. The project would require a number of key approvals including:

- Approval under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ('EPBC Act')
- Consent to use, develop and undertake works on marine and coastal Crown land under the *Marine and Coastal Act 2018* (Vic) ('Marine and Coastal Act')
- Development Licence and Operating Licence for the floating storage and regasification unit (FSRU) under the *Environment Protection Act 2017* (Vic) ('Environment Protection Act')
- Development Licence for the refinery and modification to the existing refinery Operating Licence under the Environment Protection Act
- Planning Scheme Amendment under the Greater Geelong Planning Scheme to apply a Specific Controls Overlay and Incorporated Document in accordance with the *Planning and Environment Act 1987* (Vic) ('Planning and Environment Act')
- Pipeline Licence for the pipeline under the *Pipelines Act 2005* (Vic) ('Pipelines Act')

- Approved Cultural Heritage Management Plan (CHMP) under the *Aboriginal Heritage Act 2006* (Vic) ('Aboriginal Heritage Act')
- Gas safety case for natural gas transmission infrastructure under the *Gas Safety Act 1997* (Vic) ('Gas Safety Act')
- Major Hazard Facility (MHF) safety case for the FSRU under the *Occupational Health and Safety Act 2004* (Vic) ('OHS Act')
- Amendment to the current refinery MHF safety case for the treatment facility under the OHS Act.

5.2 Environment Effects Act 1978

The Environment Effects Act sets out the process under which the Minister may require the proponent of a project to prepare an EES.

An EES is the proponent's statement about a proposed project and its potential environmental effects. An EES helps to inform the Minister's assessment on the acceptability of a project's environmental effects.

The project was referred by Viva Energy Gas Australia Pty Ltd (Viva Energy) to the Victorian Government under the Environment Effects Act on 11 November 2020 in a referral document outlining the potential effects of the project.

On 28 December 2020, the Minister issued a decision determining that an EES was required for the project due to the potential for a range of significant environmental effects. The Minister identified several primary areas of potential environmental impact requiring consideration, namely:

- The project has the potential for significant adverse effects on the marine environment of Corio Bay including marine water quality. Sediment mobilisation and water discharges may impact on the marine ecosystem, including seagrass and other habitat for listed fauna species, some of which are listed under the *Flora and Fauna Guarantee Act 1988* (Vic) ('FFG Act') and EPBC Act. The potentially significant effects



from construction and operation of the FSRU will occur within Corio Bay and potentially the Port Phillip Bay (Western Shoreline) and Bellarine Peninsula Ramsar site.

- The project has potential for contributing to greenhouse gas emissions which warrant further investigation of the nature and extent.

The Minister also identified a number of secondary areas of potential environmental impact to be addressed through integrated assessments, namely:

- Other potential effects of the project on air quality, noise, land use, Aboriginal and historic heritage, native vegetation, groundwater, traffic and transport, as well as visual amenity.

On the basis of the Minister's decision identifying primary and secondary issues for assessment, this EES addresses all potential environmental impacts with an emphasis on the substantive matters raised.

5.2.1 Environment Effects Statement process

The key purpose of an EES is to describe the project and its potential environmental effects to enable the Victorian Minister for Planning to make a final assessment on the acceptability of the project. While not an approval process in itself, the EES and the Minister's assessment report, is a key mechanism that enables statutory approval authorities to make informed decisions about the project.

The EES process is designed to be rigorous and transparent, with opportunities provided for input from stakeholders and the wider community.

The matters to be investigated and documented in the EES are set out in the scoping requirements issued by the Minister. The scoping requirements ensure that the EES properly responds to the decision that an EES is required, identifies potential significant environmental effects and explains how environmental effects of the proposed works will be avoided, mitigated or managed throughout each project phase. It will also ensure that the EES provides sufficient and appropriate information to allow for the Minister to provide an assessment of

the environmental effects under the Environment Effects Act.

Draft scoping requirements were exhibited by the Department of Environment, Land, Water and Planning (DELWP) for public comment between 26 April 2021 to 17 May 2021. After considering public submissions, the Minister published final scoping requirements in July 2021 (dated June 2021). This EES has been prepared in accordance with the final scoping requirements.

The EES will be on placed on public exhibition for at least 30 business days after completion. During this time, all stakeholders have access to the EES and associated technical study reports and can make written submissions on matters addressed in the EES and technical studies. Submissions can also be made on the applications for statutory approvals being exhibited at the same time:

- Environment Protection Authority (EPA) Victoria Development Licence applications (refer to Attachment V: *Development Licence Applications*)
- Pipeline Licence application (refer to Attachment VI: *Pipeline Licence Application*)
- Draft Planning Scheme Amendment (refer to Attachment VII: *Draft Planning Scheme Amendment*).

Following the public exhibition period, the Minister is likely to appoint a panel inquiry to consider the EES, the exhibited applications and public submissions, and to provide a report to the Minister. The Minister will consider this report prior to issuing a written assessment of the project. The assessment, called the 'Minister's assessment', then informs statutory decision-makers responsible for issuing environmental approvals for the project. A project's statutory approvals cannot be considered and issued by regulatory authorities until the Minister's assessment is made.

Further information on the EES process is provided in Chapter 1: *Introduction*.

5.3 Key approvals

The following section discusses key legislation and associated approval requirements. Additional legislation and policy requirements that are applicable to the EES technical studies are discussed further in Attachment III: *Legislation and policy report*.

Figure 5-1 outlines the key approvals required for each of the project components.

Legislation	FSRU	Refinery Pier Extension	Treatment Facility	Aboveground pipeline	Underground pipeline	Refinery
Environment Protection and Biodiversity Conservation Act 1999	Approval of controlled action 2020/8838					
Marine and Coastal Act 2018	Consent			Consent		
Environment Protection Act 2017	Development Licence and Operating Licence					Development Licence and modification to existing refinery Operating Licence
Planning and Environment Act 1987	Planning Scheme Amendment and Incorporated Document					
Pipelines Act 2005				Pipeline Licence		
Aboriginal Heritage Act 2006			CHMP			
Gas Safety Act 1997			Gas Safety Case			
Occupational Health and Safety Act 2004	MHF Safety Case		Amendment to the current refinery MHF Safety Case			

Figure 5-1 Key approvals for each project component

5.3.1 Environment Protection and Biodiversity Conservation Act 1999 (Cth)

The EPBC Act is the Australian Government's principal environmental protection and biodiversity conservation legislation.

The EPBC Act provides the legal framework for the conservation of biodiversity and the protection of the environment, particularly those aspects which are among the nine Matters of National Environmental Significance (MNES), including world heritage properties, national heritage places, Ramsar wetlands, listed threatened species and ecological communities and listed migratory species.

On 21 January 2021, the delegate for the Commonwealth Minister for the Environment determined the project to be a controlled action. The EPBC Act states that 'controlled' actions, being actions that are determined as likely to have a significant impact on a MNES, are subject to assessment and approval under the EPBC Act.

The Commonwealth Minister for the Environment considered the project to be a controlled action due to potential significant impacts on the Port Phillip Bay (Western Shoreline) and Bellarine Peninsula Ramsar wetland, listed threatened species and ecological communities and listed migratory species.

The Victorian EES will serve as the accredited assessment process for the purpose of the EPBC Act under a Bilateral Assessment Agreement between the Australian and Victorian governments.

After considering the Victorian Minister for Planning's assessment under the Environment Effects Act, the Commonwealth Minister for the Environment or their delegate will ultimately decide whether the action is approved, approved with conditions, or refused under the EPBC Act.

5.3.2 Marine and Coastal Act 2018

The primary objective of the Marine and Coastal Act is to protect Victoria's marine and coastal environment. It provides an integrated and coordinated approach to planning and managing the Victorian marine and coastal environment by protecting the coastline and addressing the long-term challenges of climate change, population growth and ageing coastal structures.

Any use or development of the Victorian marine area or coastal Crown land within 200 metres inland of the high-water mark requires consent under the Marine and Coastal Act. The project requires consent under the Marine and Coastal Act for the components of the project to which this Act applies, namely to 'use or develop, or undertake works on, marine and coastal Crown land'.

Dredging works as well as dredged sediment disposal associated with the project will require consent as this requires the project to 'undertake works on marine and coastal Crown land'. Consent will also be required for the 'use and development of marine and coastal Crown land' through the installation and continuous mooring of the FSRU and construction of the temporary loadout facility, new pier arm, aboveground pipeline and seawater transfer pipe from the FSRU to the existing refinery cooling water intake.

5.3.3 Environment Protection Act 2017

The Environment Protection Act aims to protect Victoria's air, water and land by adopting a 'general environmental duty' (GED) which imposes a broad obligation on entities and individuals to take proactive steps to minimise risks of harm to human health and the environment from pollution or waste. EPA Victoria administers the Environment Protection Act and subordinate legislation.

Under the Environment Protection Act, the GED include duties relating to pollution incidents and duties relating to contaminated land. The project would be required to operate in accordance with these duties, to manage and respond to risks of harm and notify the Authority in the event of a notifiable incident or contamination.

The Environment Protection Act regulates discharges to the environment including, but not limited to, emissions to air, surface water and groundwater by a system of permissions. Any discharge to the environment during the construction or operation of the project must be in accordance with the requirements of the Environment Protection Act.

Schedule 1 of the Environment Protection Regulations 2021 sets out prescribed permission activities. The FSRU is not included in an industry category as a prescribed activity, however, due to the emissions to air from the FSRU, it is a prescribed development activity and a prescribed operating activity as described in the L: Others category.

The prescribed permission activity in the L01 (general discharges or emissions to the atmosphere) category is described as: Activities which discharge or emit to the atmosphere and the discharge or emission is:

- a. at least 100 kilograms per day of (i) volatile organic compounds; or (ii) particles; or (iii) oxides of sulphur; or (iv) oxides of nitrogen; or (v) other acid gases (excluding carbon dioxide); or
- b. at least 500 kilograms per day of carbon monoxide.

In addition, the FSRU could be included in the category Utilities K01, also a prescribed development activity and prescribed operating activity.

The prescribed permission activity in the K01 (power generation) category is described as: Generating electrical power from the consumption of a fuel at a rated capacity of at least 5 MW of electrical power.

The Environment Protection Act therefore requires a Development Licence for the 'construction or installation' of the FSRU, and a subsequent Operating Licence for the operation of the FSRU.

The Geelong Refinery will also require a separate Development Licence or exemption for A04 (Industrial wastewater treatment) which requires permission for discharging or depositing industrial wastewater generated at another site (the FRSU) exceeding a design or actual flow rate of 5000 litres per day or on any day. Reuse of the FSRU discharge water as refinery cooling water is a modification to the existing prescribed activity at the refinery (which is only for G03 - Oil or gas refining) as this would involve 'discharging or depositing industrial wastewater' generated by the FSRU. The application for the Development Licence relating to the discharge of FSRU wastewater from the refinery will be made by Viva Energy Refining Pty Ltd, holder of the current refinery Operating Licence 46555. The current refinery Operating Licence would also need to be modified, subject to issue of a Development Licence, to enable the new prescribed permission activity in the A04 category to occur, however, may not need modification for discharge of the wastewater if the discharge is compliant with current licence conditions.

5.3.4 Planning and Environment Act 1987

The Planning and Environment Act establishes a framework for planning the use, development and protection of land in Victoria.

The Act sets out procedures for preparing planning schemes in each municipality consistent with the Victorian Planning Provisions (VPPs) as well as procedures for amending planning schemes and obtaining planning permits to govern land use and development.

Approval under the Planning and Environment Act will be required for the project via a Planning Scheme Amendment to the Greater Geelong Planning Scheme. It is proposed to apply a Specific Controls Overlay with an Incorporated Document. The Incorporated Document would allow the use

and development of land for the project to be undertaken in accordance with specific conditions contained within the Incorporated Document.

5.3.5 Pipelines Act 2005

The Pipelines Act is the primary legislation governing the construction and operation of pipelines in Victoria. The Pipelines Act covers 'high' transmission pipelines for the conveyance of gas, oil and other substances. DELWP and Energy Safe Victoria (ESV) are responsible for administering the Pipelines Act along with the Pipeline Regulations 2017. The project will require a Pipeline Licence under the Pipelines Act for the construction and operation of the 7-kilometre pipeline, comprising the 3-kilometre aboveground section of the pipeline and the 4-kilometre underground section of the pipeline.

The Pipelines Act requires licensed pipelines to be constructed and operated in accordance with *Australian Standard 2885: Pipelines—Gas and liquid petroleum*. The standard requires pipeline licensees to implement a range of environmental and safety measures to reduce foreseeable risks associated with operating a licensed pipeline. This includes understanding how land is being used when pipelines are constructed and where land is planned to be redeveloped once they are operating.

It is a requirement under the Pipelines Act that a licensee must prepare a Safety Management Plan, Environment Management Plan and a Consultation Plan. A Pipeline Consultation Plan was first prepared in November 2020. In April 2021, following the Minister for Planning's decision requiring an EES to be prepared for the project, a project Consultation Plan was developed in response to the requirements of both the Environment Effects Act and the Pipelines Act. The project Consultation Plan superseded the Pipeline Consultation Plan and applies up until public exhibition of the EES and other approvals documentation including the application for a Pipeline Licence. The Safety Management Plan and Environment Management Plan are to be submitted to and approved by ESV and the Minister for Energy, Environment and Climate Change. Construction and operation of the pipeline cannot commence without the approval of both plans.

5.3.6 Aboriginal Heritage Act 2006

The Aboriginal Heritage Act provides for the protection of Aboriginal cultural heritage in Victoria.

Section 49 of the Aboriginal Heritage Act states that a CHMP must be prepared when an EES is required under the Environment Effects Act in respect of any works. The CHMP must be prepared before works start.

A CHMP is being prepared for the project (CHMP 17816) in consultation with First Peoples – State Relations and the Wadawurrung Traditional Owners Aboriginal Corporation, the Registered Aboriginal Party for the area. The CHMP would be lodged for approval following the Minister’s assessment of the EES.

5.3.7 Gas Safety Act 1997

The Gas Safety Act aims to regulate the safety of gas supply and use in Victoria and to provide for the safe conveyance, sale, supply, measurement, control and use of gas. ESV administers the Act and the regulations under the Act including the Gas Safety (Safety Case) Regulations 2018.

Under Part 3 of the Gas Safety Act, a gas safety case would be required for the licenced pipeline and the odorant and nitrogen injection equipment at the treatment facility as these are considered natural gas transmission infrastructure. The safety case would be prepared in accordance with the Gas Safety (Safety Case) Regulations 2018 and would require approval from ESV.

5.3.8 Occupational Health and Safety Act 2004

The OHS Act is the main workplace health and safety law in Victoria. It aims to protect the health, safety and welfare of employees and other people at work. This includes ensuring the health and safety of the public is not at risk due to workplace activities. The Occupational Health and Safety Regulations 2017 (OHS Regulations) build on the OHS Act and set out how to fulfil duties and obligations and particular processes that support the OHS Act.

Part 5.2 and Schedules 14 to 18 inclusive of the OHS Regulations provide for the regulation of MHFs. Viva Energy will submit a safety case to WorkSafe Victoria (WSV) for the FSRU, in accordance with Part 5.2, Division 8 of the OHS Regulations. The safety case will include the information required by Schedule 17 and be accompanied by a safety management system (as per Schedule 15) and emergency management plan (as per Schedule 16).

An amendment to the current refinery MHF safety case will also be prepared for the storage of odorant within the treatment facility as this will be located within the refinery boundary.

5.4 Other approvals

Other approvals may be required for the project under Victorian legislation, which (if required) would be sought after the primary approvals have been obtained and prior to construction commencement. These include, but are not limited to:

- Permits under the *Flora and Fauna Guarantee Act 1988* (Vic) ('FFG Act') if required for the removal of FFG Act listed species.

The FFG Act is the primary legislation that manages biodiversity conservation and sustainable use of native ecology in Victoria. The FFG Act provides a legal framework that promotes conservation of Victoria’s native flora and fauna and enables the management of potentially threatening processes. Threatened species and communities of flora and fauna, as well as threatening processes, are listed under the FFG Act. Section 47 of the FFG Act states that a permit is required for the removal of any listed protected flora from public land.

If construction of the pipeline results in the removal of FFG Act listed species on public land, then permits would be required.

5.5 Summary of key approvals and administering agencies

A summary of the key approvals required for the project is outlined below in **Table 5-1**, along with the relevant statutory approval authority and the applicable project phase.

Table 5-1 Key approvals required for the project

Legislation	Regulations	Statutory approval	Statutory approval authority	Project phase
<i>Environment Protection and Biodiversity Conservation Act 1999 (Cth)</i>	-	Approval of the project which is a controlled action	Minister for the Environment	Construction, operation, and decommissioning
<i>Marine and Coastal Act 2018 (Vic)</i>	-	Consent to 'undertake works on marine and coastal Crown land' (dredging and dredged spoil disposal) Consent for the 'use and development of marine and coastal Crown land' (FSRU, pier extension, aboveground pipeline and piping from the FSRU to the existing refinery cooling water intake)	Minister for Energy, Environment and Climate Change	Construction and operation
<i>Environment Protection Act 2017 (Vic)</i>	Environment Protection Regulations 2021 (Vic)	Development Licence and Operating Licence for the installation and operation of the FSRU The Geelong Refinery will also require a separate Development Licence or exemption for A04 (Industrial wastewater treatment) which requires permission for discharging or depositing industrial wastewater generated at another site (the FRSU) exceeding a design or actual flow rate of 5000 litres per day or on any day. As the holder of the current refinery Operating Licence 46555 Viva Energy Refining Pty Ltd will be the applicant for this Development Licence. Receipt of the FSRU discharge water for reuse as refinery cooling water is a modification to the existing prescribed activity at the refinery (which is only for G03 - Oil or gas refining). The current refinery Operating Licence would also need to be modified, subject to issue of a Development Licence, to enable receipt of the wastewater (A04) but may not need modification	Environment Protection Authority	Construction and operation

Legislation	Regulations	Statutory approval	Statutory approval authority	Project phase
		for discharge of the wastewater if the discharge is compliant with current licence conditions.		
<i>Planning and Environment Act 1987 (Vic)</i>	-	Planning Scheme Amendment (Specific Controls Overlay) to the Greater Geelong Planning Scheme	Minister for Planning	Construction and operation
<i>Pipelines Act 2005 (Vic)</i>	Pipelines Regulations 2017 (Vic)	Pipeline Licence to construct and operate a pipeline, including: <ul style="list-style-type: none"> • Environment Management Plan • Safety Management Plan • Pipeline Consultation Plan 	Minister for Energy, Environment and Climate Change Energy Safe Victoria	Construction and operation
<i>Aboriginal Heritage Act 2006 (Vic)</i>	-	CHMP	First Peoples – State Relations and relevant Registered Aboriginal Party	Construction
<i>Gas Safety Act 1997 (Vic)</i>	Gas Safety (Safety Case) Regulations 2018	Gas safety case for the licenced pipeline and the odorant and nitrogen injection equipment at the treatment facility	Energy Safe Victoria	Operation
<i>Occupational Health and Safety Act 2004 (Vic)</i>	Occupational Health and Safety Regulations 2017	MHF Licence for the FSRU Amendment to the current refinery MHF Licence for the storage of odorant within the treatment facility.	WorkSafe Victoria	Operation

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