

TERMS OF REFERENCE FOR INQUIRY

UNDER SECTION 9(1) OF THE *ENVIRONMENT EFFECTS ACT 1978*

PORT PHILLIP BAY CHANNEL DEEPENING PROJECT

1. PURPOSE

The Inquiry is to inquire into the environmental effects of the works known as the Port Phillip Bay Channel Deepening Project (CDP) as contemplated by section 9(1) of the *Environment Effects Act 1978* and to assist the Minister for Planning to make an assessment of the environmental effects of those works under that Act.

2. BACKGROUND

The Proposal

The 2004 Victorian Ports Strategic Framework identified deepening the channel access to the Port of Melbourne as a key aspect of improving Victoria's container shipping trade. Deepening would enable a new generation of deeper draught container ships, which are assuming a greater role in global trade, to access the Port fully loaded.

The Port of Melbourne Corporation (PoMC) proposes to deepen sections of the shipping channels that provide access to the Port of Melbourne through Port Phillip Bay to cater for vessels with a draught of up to 14m at all states of tide. The project design is based on deepening:

- the Great Ship Channel through the Port Phillip Heads;
- the South Channel up to Hovell Pile;
- the Port of Melbourne Channel north from about Fawkner Beacon; and
- the Yarra River Channel from Williamstown into the Port berths and swing basins.

Between the South Channel at Hovell Pile and the Port Melbourne Channel is the "Fairway", an area of deeper water that does not require dredging.

The Victorian Government has given its in-principle support for the CDP, subject to the satisfactory outcome of Victoria's environmental assessment and approval processes and the resolution of technical and financing aspects.

EES Process and Project Decisions

On 9 May 2002 the Minister for Planning declared the CDP to be public works under the *Environment Effects Act 1978*. This means that an Environment Effects Statement (EES) was required to be prepared by the proponent. The EES was prepared by PoMC and exhibited for public comment for six weeks in July-August 2004.

In July 2004 the Minister for Planning appointed an Inquiry under section 9(1) of the *Environment Effects Act 1978* to consider the EES and public submissions. The Inquiry held

hearings in September-December 2004 and provided a report to the Minister in February 2005.

In July 2005 the Minister for Planning announced that he was requiring PoMC to prepare a Supplementary EES (termed a "supplementary statement" under the Act), to address certain issues.

In October 2005 the Minister issued Assessment Guidelines to guide the preparation of the Supplementary EES (SEES). These guidelines reflect a definition of environment, for the purpose of environmental assessment, which includes physical, biological, cultural, social and economic aspects.

At the request of the Minister, an Independent Expert Group was appointed by the Secretary to the Department of Sustainability and Environment (DSE), to advise on the preparation and adequacy of the SEES and to provide input to the Inquiry in relation to its particular areas of expertise.

The Minister for Planning has determined that the SEES is to be exhibited for public comment for 30 business days until Monday 7 May 2007. Written submissions in response to the SEES will be expected to document submitters' views with supporting information, and the Inquiry process will provide an opportunity to clarify these submissions. PoMC is to provide to the Inquiry a written response to issues raised in submissions on the SEES.

Once the Minister for Planning receives the report of this Inquiry, he will prepare an Assessment under the *Environment Effects Act 1978*. This Assessment is to be considered by relevant decision-makers before they decide whether the project should be approved.

The primary Victorian decision-makers are the Minister for Roads and Ports, who is responsible for the project itself and the Minister for Water, Environment and Climate Change, who will decide whether to grant approval under the *Coastal Management Act 1995* for the project.

The CDP is also a controlled action under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* and requires approval under that Act. The EES process for this project has been accredited as the required assessment process under that Act, to inform the Australian Minister for the Environment and Water Resources' decision whether to approve the CDP.

In addition to required approvals of the CDP works under the *Coastal Management Act 1995* and the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), other permits or other forms of consent may be required in relation to the CDP. For example, consent could be given under section 27 of the *National Parks Act 1975* and Orders in Council could be made under section 52(3) of the *Flora and Fauna Guarantee Act 1988* and section 73 of the *Fisheries Act 1975*.

3. TASK

The Inquiry is to provide a written report to the Minister for Planning setting out information and advice in relation to the following matters only.

- (1) *Whether the proposed design for the CDP (including for the channels, dredged material grounds and navigational aids) is safe, suitable and technically feasible to implement using the proposed dredging technologies.*
- (2) *The likely environmental effects of the proposed CDP dredging activities and the subsequent operation of the deepened shipping channels.*
- (3) *Whether the proposed project design and approach to project implementation (including technologies and work methods), with or without modification, are suitable to ensure the achievement of acceptable environmental outcomes, having regard to relevant legislation and policy, as well as costs, benefits and operational efficiency in delivering the project.*
- (4) *The considerations relevant to the Assessment that will inform decisions whether or not to approve the CDP under the Coastal Management Act 1995 and under the Environment Protection and Biodiversity Conservation Act 1999 (Cth).*

4. PROCEDURE

The Inquiry is to adopt the following procedure.

- (1) Commence its investigations during the period of SEES exhibition.
- (2) Consider the exhibited SEES, issues and information put forward in submissions on the SEES, the proponent's written response to submissions on the SEES, and other relevant information either provided to or obtained by the Inquiry.
- (3) Conduct a Directions Hearing to establish a timetable of proceedings, identify key issues that it intends to examine and to provide appropriate directions to submitters to supply particular information (note that the term 'submitters' is used throughout these Terms of Reference to refer to the proponent and any other persons who make any submission to the Inquiry).
- (4) If considered of assistance by the Inquiry, to conduct discussion sessions involving submitters and/or experts to clarify issues of contention, discuss particular topics identified by the Inquiry, and if practicable, to identify the level of agreement amongst participating submitters and/or experts.
- (5) Conduct a Public Hearing to obtain information from submitters and relevant agencies, including expert witnesses, regarding matters relevant to the Task of the Inquiry.
- (6) Request further information, if necessary, from relevant submitters in relation to either issues previously identified or additional matters.
- (7) Seek written or verbal information or advice, as required, from the Independent Expert Group or its individual members or from such other experts or specialists as the Inquiry

may consider would be of assistance. Any such information or advice must be publicly disclosed (unless it is of a confidential nature).

- (8) At the discretion of the Inquiry, to retain legal counsel to assist the Inquiry from time to time.

The Inquiry may otherwise regulate its own procedure including (subject to Section 5) the conduct of hearings.

5. CONDUCT OF HEARING

The Inquiry should conduct its hearings in accordance with the following protocols.

- (1) The conduct of the Public Hearing and any discussion session will be managed by the Chair.
- (2) The Inquiry may meet and conduct hearings and discussion sessions when there is a quorum of at least two of the Inquiry members.
- (3) Written submissions should be the principal means of providing input to the Inquiry process. The Public Hearing is intended to provide an opportunity for submitters to clarify information or views as presented by them in their written submissions and to raise issues with respect to the information, approaches and views presented by other submitters or publicly disclosed by the Inquiry. The proponent will have an opportunity to respond to submissions, including input from other submitters during the Inquiry process.
- (4) The Public Hearing and any discussion sessions will be exploratory and constructive, and adversarial behaviour will be discouraged.
- (5) The Public Hearing and any discussion sessions will be conducted in an open, orderly and timely manner, with a minimum of formality and without the necessity for legal representation.
- (6) Parties without legal representation will not be disadvantaged.
- (7) There will be no cross examination of submitters or expert witnesses and any questioning will be conducted by the Inquiry. At its discretion, the Inquiry may allow questions from submitters through the Chair.
- (8) The Inquiry may of its own initiative call any expert or specialist to present a report or give evidence at a Public Hearing.

6. OUTCOMES

The Inquiry is to prepare a written report for the Minister for Planning presenting:

- (1) The Inquiry's response to the Task detailed in Section 3, including its findings and recommendations; and
- (2) A description of the proceedings conducted by the Inquiry and a list of those consulted or heard by the Inquiry.

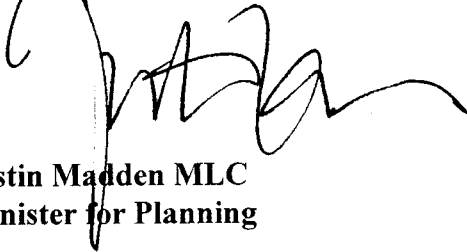
7. TIMING

The schedule for the Public Hearing will be set by the Inquiry at its Directions Hearing

The inquiry should allow four weeks of hearings together with any time necessary to conduct discussion sessions as provided for in Section 4 above. The discussion sessions and Public Hearing are to extend over no more than seven weeks in total.

The Inquiry is required to submit its report by 1 October 2007, unless an extension is agreed to by the Minister.

APPROVED:



**Justin Madden MLC
Minister for Planning**

DATE:

4.4.07