

11 July 2025

Referrals Gateway  
Department of Climate Change, Energy, the Environment and Water  
**Submission via online portal**

Dear Sir/Madam,

**Public comment on EPBC No. 2025/10224  
2025 Victorian Renewable Energy Terminal  
5 Long Island Drive, Hastings 3915**

This submission is made by the Mornington Peninsula Shire Council (**Council**) in respect of EPBC Referral No. 2025/10224 (the **Referral**), for which public comment is invited until 16 July 2025

The Referral concerns the proposed Victorian Renewable Energy Terminal (**the Project**), a proposed facility primarily intended to serve as a laydown and assembly area for the development of offshore wind farms along the Victorian coast. The facility is also intended to accommodate ad hoc shipments of oversized and over mass items such as electrical transformers, and industrial plant and equipment when the facility is not at full capacity with offshore wind activities. The Project is proposed by the Port of Hastings Corporation and is located within the Port of Hastings.

The Project involves both onshore and marine components. The onshore works are located at 5 Long Island Drive, Hastings, within the municipal boundary of the Mornington Peninsula Shire. The marine works - including dredging, vessel access channels, and new reclamation - extend beyond the Shire's jurisdiction into Western Port waters and areas managed by other authorities or adjacent municipalities.

This submission sets out Council's position that the Project is a **controlled action** under the *Environment, Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**).

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## Role of Council

Council is the municipal authority for the Mornington Peninsula Shire. Under the *Local Government Act 2020* (Vic) (**LG Act**), Council's role is to "*provide good governance in its municipal district for the benefit and wellbeing of the municipal community*".<sup>1</sup>

In performance of this role, Council must give effect to the overarching governance principles in section 9 of the LG Act,<sup>2</sup> which include:

- Achieving the best outcomes for the municipal community, including future generations<sup>3</sup>
- Promoting economic, social and environmental sustainability, including planning for and mitigating climate change risks<sup>4</sup>
- Engaging the community in strategic planning and decision making.<sup>5</sup>

The municipal community includes people who live in, work in, or conduct activities in the district, ratepayers, and Traditional Owners.<sup>6</sup>

Consistent with these responsibilities, Council seeks to ensure the environment is protected for current and future generations. In Council's view, the Project will, or is likely to, have a significant environmental impact including on matters of national environmental significance (**MNES**) for the purposes of the EPBC Act. Accordingly, for the reasons set out below, Council submits that the Project is a controlled action and must be assessed under Part 9 of the EPBC Act.

## The Project

The Project is located within the Port of Hastings, adjacent to Long Island Drive and south of the BlueScope Steel wharf, within the Western Port area. Part of the site

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<sup>1</sup> *Local Government Act 2020*, s 8(1).

<sup>2</sup> *Local Government Act 2020*, s 9(1).

<sup>3</sup> *Local Government Act 2020*, s 9(2)(b).

<sup>4</sup> *Local Government Act 2020*, s 9(2)(c).

<sup>5</sup> *Local Government Act 2020*, s 9(2)(d).

<sup>6</sup> *Local Government Act 2020*, s 3(1).

includes the Old Tyabb Reclamation Area (**OTRA**), which Council understands to comprise material deposited during historic dredging activities in Western Port.

The Project involves both onshore and marine-based works within an overall project area of approximately 148.8 hectares, with a disturbance footprint of 76.3 hectares.

Key onshore components include:

- An operational area (~37 ha) for storage and pre-assembly of offshore wind components, located on the OTRA;
- A quay apron (~6 ha) adjacent to the quay wall;
- Revetments to the north and south of the previously reclaimed area;
- Associated infrastructure including site offices, warehouses, car parking, utilities, and heavy-duty pavement.

Key marine components comprise:

- A quay wall supported by piles;
- A dredged berth pocket and swing basin to accommodate large vessels;
- Modifications to the existing shipping channel;
- Reclamation of approximately 18 hectares of new land to support terminal operation; and
- Scour protection works.

Construction will involve a combination of ground improvement, dredging, land reclamation, and infrastructure installation to support terminal operations and offshore wind logistics.<sup>7</sup>

In parallel with the EPBC Act process, the Project is also subject to assessment under Victoria's *Environment Effects Act 1978* (**EE Act**). The Victorian Minister for Planning has determined under section 8B(3)(a) of the EE Act, that an Environment Effects Statement (**EES**) is required. The draft Scoping Requirements for the EES have been

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<sup>7</sup> Referral form, Section 1.2.1, pp 2-4.

publicly exhibited and are currently under consideration by the Minister for Planning for finalisation.

## **The Project is a Controlled Action**

### ***Legal Framework***

Under section 67 of the EPBC Act, a **controlled action** is defined as:

“An action that a person proposes to take is a controlled action if the taking of the action by the person without approval under Part 9 for the purposes of a provision of Part 3 would be (or would, but for section 25AA or 28AB, be) prohibited by the provision...”

Part 3 of the EPBC Act prohibits any action that has, will have, or is likely to have a significant impact on an MNES unless approved under Part 9 of the Act<sup>8</sup>. Accordingly, an action is deemed a controlled action if it meets this threshold and is not subject to an existing approval under the Act<sup>9</sup>.

Where an action is determined to be a controlled action, approval under the EPBC Act is required before it can proceed. The referral process enables the Commonwealth Minister for the Environment and Water (**the Minister**) to determine whether a proposed action meets this definition.<sup>10</sup>

Based on the information provided in the referral form and accompanying documentation, Council considers that the Project is a controlled action within the meaning of the EPBC Act<sup>11</sup>, for the reasons outlined below.

### ***Likely significant impact on MNES***

Council submits that the Project will, or is likely to, have a significant impact on the following MNES:

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<sup>8</sup> EPBC Act, s 67.

<sup>9</sup> EPBC Act, s 67 and s 75.

<sup>10</sup> EPBC Act, s 67A.

<sup>11</sup> EPBC Act, s 67.

- The Western Port Ramsar wetland, a wetland of international importance;
- Nationally threatened species and ecological communities; and
- Listed migratory species.

According to the *Significant Impact Guidelines 1.1 – Matters of National Environmental Significance* (Commonwealth of Australia, 2013) (**Significant Impact Guidelines**), a significant impact is one that is “important, notable, or of consequence, having regard to its context or intensity.” The Guidelines also make clear that:

- A real or not remote chance of impact is sufficient to meet the threshold.
- Where there is a risk of serious or irreversible damage, a lack of scientific certainty about potential impacts of an action will not itself justify a decision that the action is not likely to have a significant impact – the precautionary principle applies.<sup>12</sup>

### ***Impacts on the Western Port Ramsar Wetland***

The Project area overlaps with the Western Port Ramsar wetland site and includes activities such as dredging, land reclamation, vegetation clearance, and marine construction within or adjacent to sensitive intertidal and wetland habitats. The Referral acknowledges that the Project has the potential to impact the wetland both directly and indirectly<sup>13</sup> and further confirms that some areas of the wetland would be destroyed or substantially modified.<sup>14</sup>

Council understands that the Project will, or is likely to, result in the following impacts:

- Loss and modification of Ramsar-relevant habitats, including intertidal mudflats, seagrass beds, saltmarsh, and mangroves, through dredging and land reclamation within or adjacent to the Ramsar site.

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<sup>12</sup> Significant Impact Guidelines, p 3.

<sup>13</sup> Referral form, Section 4.1.3.2, p 41.

<sup>14</sup> Referral form, Section 4.1.3.5, p 42.

- Disturbance to migratory shorebirds, including EPBC Act listed species, through increased noise, light and human activity during construction, potentially affecting roosting and foraging behaviour.
- Changes to hydrodynamic processes, including tidal flow and sediment transport, which may alter the ecological functioning of intertidal and shallow subtidal zones, despite modelling suggesting localised impacts.
- Changes to tidal regimes and water depths, arising from seabed modification and reclamation, which may affect wetland hydrology.
- Degradation of water quality during construction, through increased turbidity and sedimentation, which may affect aquatic vegetation, invertebrates and other wetland fauna.
- Impacts on threatened species habitat, including the Swamp Skink and other EPBC Act listed fauna, due to vegetation clearance and habitat fragmentation.
- Cumulative impacts, in combination with existing and proposed port- related and industrial activity in Western Port, contributing to long-term pressure on the ecological character of the Ramsar wetland site.

While the Referral outlines a range of mitigation and avoidance measures – including dredging controls, lighting management, and proposed habitat offsets – Council considers that, given the scale of the proposed works, their location within the Ramsar site boundary, and the sensitivity of the ecological values at risk, the impacts on the ecological character of the Ramsar site are likely to be significant. While the ultimate level of significance and acceptability of these impacts cannot yet be determined, a precautionary approach must be adopted. Further detailed assessment is necessary to fully understand the extent and consequences of the potential impacts.

### ***Threatened Species***

The Referral identifies suitable habitat within the Project site for a range of nationally listed threatened species, including both bird and terrestrial fauna.

Council considers that the Project is likely to result in:

- Habitat degradation or loss through vegetation clearance, landform modification, and altered hydrology;
- Noise, light, and dust emissions that may interfere with foraging or breeding behaviours;
- Direct loss or displacement of the Swamp Skink population in the OTRA due to land disturbance and altered topography.

There is a real possibility that these impacts will:

- Reduce the area of occupancy;
- Fragment existing populations;
- Disrupt breeding cycles;
- Degrade habitat to the extent that population decline is likely;
- Introduce or facilitate invasive species or disease.

Although the proponent adopts a precautionary position in acknowledging likely significant impacts, it qualifies this with reference to further studies. Council submits that the current level of information demonstrates the threshold for a controlled action under the EPBC Act is met.

Specially, the identification of threatened species and their habitats within the Project site, combined with the scale and nature of potential impacts, align with the significant impact criteria outlined in the EPBC Act's Significant Impact Guidelines 1.1.<sup>15</sup>

Under Section 67 of the EPBC Act, referral is required when an action is likely to have a significant impact on MNES, including threatened species and their habitat. The Minister must then determine whether the action is a controlled action under Section 75, based on this likelihood.

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<sup>15</sup> Significant Impact Guidelines, p 9.

Given the evidence currently available, Council submits that the threshold for a controlled action is met and further detailed assessment is necessary to determine the acceptability of the impacts and appropriate mitigation measures.

### ***Listed Migratory Species***

The Referral identifies a range of migratory shorebird and waterbird species that may occupy or forage within the Project area and surrounding intertidal zones.

The Project has the potential to significantly impact these species by:

- Loss of important terrestrial and intertidal habitat, particularly through vegetation clearance, dredging, and land reclamation;
- Disturbance caused by construction activities, including noise, vibration, and human presence during dredging and reclamation works;
- Operational impacts such as increased vessel traffic, artificial lighting, and long-term noise exposure, which may affect foraging, roosting, and resting behaviour.

Council considers that these impacts are likely to:

- Substantially modify, fragment or destroy important habitat for migratory species;
- Disrupt migratory patterns and essential behaviours such as resting and foraging, particularly for ecologically significant populations;
- Facilitate the introduction or spread of invasive species, further compromising the ecological function of the habitat.

These impacts align with the significant impact criteria for listed migratory species outlined in the EPBC Act Significant Impact Guidelines 1.1<sup>16</sup>, which define a significant impact as one that is likely to:

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<sup>16</sup> Significant Impact Guidelines, p 12.

- Substantially modify (including by fragmenting, altering fire regimes, altering nutrient cycles or hydrological cycles), destroy or isolate an area of important habitat for a migratory species; or
- Seriously disrupt the lifecycle (breeding, feeding, migration) of an ecologically significant proportion of the population.

While the Referral acknowledges the need for further investigations to better understand the scale of impact, Council maintains that the likelihood of significant harm to listed migratory species has already been demonstrated. Accordingly, the action should be treated as a controlled action under the EPBC Act, with further assessment required to determine the acceptability of impacts and appropriate avoidance or mitigation measures.

### ***Summary and Recommendation***

Given the location of the Project within the Ramsar site, its proximity to sensitive ecological features, and the scale and nature of the marine and terrestrial works, Council considers that the Project is highly likely to result in significant direct and indirect impacts on MNES.

Accordingly, **Council strongly recommends that the Minister determine the Project to be a controlled action under the EPBC Act.** This will ensure the proposal is subject to a full and rigorous assessment to determine the acceptability of the impacts, including considering potential mitigation measures and offsets where appropriate.

### **Changes Since the Previous (2023) Referral and Decision**

Council acknowledges that the previous referral for the Project (Ref. No. 2023/09609) was determined to be clearly unacceptable by the former Commonwealth Minister for the Environment and Water, due to the significant and irreversible risks posed to the ecological character of the Western Port Ramsar wetland.

Council recognises the current referral (Ref. No. 2025/10224) presents a significantly revised project scope, supported by additional technical documentation and proposed mitigation measures. Key updates include:

- A reduction in the reclamation footprint by approximately 35%, from 29 hectares to 18 hectares, and a reduction in dredging volume by approximately 70%.<sup>17</sup>
- Expanded environmental investigations, incorporating broader technical studies and updated baseline data.<sup>18</sup>

Council agrees that the current proposal should be assessed afresh on its merits. However, Council emphasises that:

- The Project continues to propose substantial works within a highly sensitive and internationally significant environmental setting;
- The risk profile remains high, and the likelihood of significant impact is real;
- A controlled action determination is essential to ensure the Project is subject to a comprehensive and transparent assessment process under the EPBC Act.

A controlled action decision does not predetermine the Project's acceptability but ensures that the appropriate assessment pathway is used, consistent with the significance of the potential impacts.

### **Consultation**

Should the Project be determined a controlled action, Council expects to be provided with further opportunities to contribute throughout the assessment process. This aligns with Council's responsibilities under the LG Act, including achieving the best outcomes for the municipal community – both now and into the future – promoting

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<sup>17</sup> EPBC Act Referral P2025/10224, Attachment 1, p 3

<sup>18</sup> EPBC Act Referral P2025/10224, Attachment 1, p 4

environmental, social and economic sustainability, and engaging the community in strategic planning and decision-making.

Council also considers there will be significant community interest in the Project, particularly in relation to potential impacts on the Western Port Ramsar wetland and other matters of national environmental significance. In these circumstances, it is essential that any future assessment process is open, transparent and inclusive – ensuring meaningful opportunities for both Council and the broader community to participate throughout the EPBC Act assessment process.

### **Contact Details**

If you have any queries in relation to this submission, please contact Katanya Barlow, Manager Strategic & Infrastructure Planning on [Katanya.Barlow@mornpen.vic.gov.au](mailto:Katanya.Barlow@mornpen.vic.gov.au).

Yours sincerely,



Jayde Hayes

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**Mornington Peninsula Shire Council**