



AGL Gas Import Jetty Project

AGL Wholesale Gas Limited

Aboriginal Heritage Due Diligence Assessment

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Contents

Glossary and Abbreviations	iii
Executive summary	iv
1. Introduction	1
1.1 Project Overview.....	1
1.2 Purpose of this report.....	1
1.3 Study area	1
2. Methodology	2
3. Desktop assessment	3
3.1 Legislative Framework	3
3.2 Previous Studies	3
3.3 Cultural Heritage Management Plan Requirement	3
3.4 Environment Effects Act 1978	3
3.5 Areas of Cultural Heritage Sensitivity.....	3
3.6 High impact activities.....	4
3.6.1 Land use history.....	4
3.7 Aboriginal Places	5
4. Conclusion	7
5. References	8

Glossary and Abbreviations

Abbreviation	Term	Definition
	Activity	The development or use of land as defined by the <i>Aboriginal Heritage Act 2006</i> .
	Activity area	The area or areas to be used or developed for an activity, as defined by the Aboriginal Heritage Regulations 2007.
AGL	AGL Wholesale Gas Limited	The Project proponent
CHMP	Cultural Heritage Management Plan	
CHS	Cultural heritage sensitivity	
DELWP	Department of Environment, Land, Water and Planning	
DoEE	Department of the Environment and Energy (Commonwealth)	
EES	Environment Effects Statement	
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>	
FSRU	Floating Storage and Regasification Unit	An LNG carrier that is used for floating storage and also has regasification equipment on board that allows it to directly send out high pressure gas to the market.
HO	Mornington Peninsula Planning Scheme Heritage Overlay	
Jacobs	Jacobs Group (Australia) Pty Ltd	
km	kilometre	
LNG	Liquefied Natural Gas	LNG is natural gas (predominantly methane, CH ₄ , with some mixture of ethane C ₂ H ₆) that has been converted to liquid form by chilling for ease of storage or transport
m	metre	
VAHR	Victorian Aboriginal Heritage Register	

Executive summary

AGL Wholesale Gas Limited (AGL) is proposing to develop a Liquefied Natural Gas (LNG) import facility, utilising a Floating Storage and Regasification Unit (FSRU) to be located at Crib Point on Victoria's Mornington Peninsula. The project, known as the "AGL Gas Import Jetty Project" (the Project), comprises:

- The continuous mooring of the FSRU at the existing Crib Point Jetty, which will receive LNG carriers of approximately 300m in length
- The construction of ancillary topside jetty infrastructure (Jetty Infrastructure), including high pressure gas unloading arms and a high pressure gas flowline mounted to the jetty and connecting to a flange on the landside component to allow connection to the Crib Point Pakenham Pipeline Project.

There are several other activities that are related to the AGL Gas Import Jetty Project, including the Jetty Upgrade and the Crib Point Pakenham Gas Pipeline Project (Pipeline Project) which are the subject of separate assessment and approval processes carried out by separate entities. The Pipeline Project will be subject to a Cultural Heritage Management Plan.

This report provides a due diligence assessment of the known and predicted Aboriginal cultural heritage values, which may have implications for the Project. The requirements for undertaking a Cultural Heritage Management Plan (CHMP) under the *Aboriginal Heritage Act 2006* and the Aboriginal Heritage Regulations 2007 were also assessed.

The Project's footprint within the landside component will comprise of the gas flow line from the jetty to a flange adjacent to the Pipeline Project end of line infrastructure, connecting it to the natural gas transmission pipeline and a temporary construction laydown area and staff facilities/amenities. The entire landside site has previously been subject to a detailed inspection, including survey and auger testing (Jones 2015). This inspection determined that the "area has undergone significant ground disturbance as defined by the Aboriginal Heritage Regulations 2007" (Jones 2015, p. 13). It was also reported that no surface evidence of Aboriginal cultural remains was observed, and therefore it is unlikely that Aboriginal cultural material exists on the site as surface indicators were not present.

A review of the Victorian Aboriginal Heritage Register determined that no Aboriginal Places were located within the Project activity area.

A Cultural Heritage Management Plan (CHMP) is mandatory if, among other things, the Aboriginal Heritage Regulations 2007 require the preparation of a CHMP for a proposed activity. There are two triggers for a CHMP under the Aboriginal Heritage Regulations 2007: (1) if an Environment Effects Statement (EES) is required under the *Environment Effects Act 1978*; or (2) if there are areas of cultural heritage sensitivity (CHS) within the activity area, **and** all or part of the proposed activity constitutes a 'high impact' activity.

However, in accordance with Regulation 43 (3) of the Aboriginal Heritage Regulations 2007, the continuous mooring of the FSRU and the construction of topside jetty infrastructure does not constitute a high impact activity. It is also likely the connection of the gas flow line from the jetty to the flange within the landside component will take place in an area that is already subject to significant ground disturbance. As such, a mandatory CHMP for the works is not required under the *Aboriginal Heritage Act 2006*.

It is also understood that AGL intend to refer the Project for assessment under the *Environment Effects Act 1978*. If it is determined as a result of that referral that an EES is required for the Project, then a mandatory CHMP will be required for the Project under section 46(1)(c) of the *Aboriginal Heritage Act 2006*. Given the extent of documented disturbance within the landside component, there is low potential for unknown Aboriginal cultural heritage to be impacted by the Project. As a result, a voluntary CHMP is not recommended in this case.

1. Introduction

1.1 Project Overview

AGL Wholesale Gas Limited (AGL) is proposing to develop a Liquefied Natural Gas (LNG) import facility, utilising a Floating Storage and Regasification Unit (FSRU) to be located at Crib Point on Victoria's Mornington Peninsula. The project, known as the "AGL Gas Import Jetty Project" (the Project), comprises:

- The continuous mooring of a FSRU at the existing Crib Point Jetty, which will receive LNG carriers of approximately 300m in length
- The construction of ancillary topside jetty infrastructure (Jetty Infrastructure), including high pressure gas unloading arms and a high pressure gas flowline mounted to the jetty and connecting to a flange on the landside component to allow connection to the Crib Point Pakenham Pipeline Project.

There are several other activities that are related to the AGL Gas Import Jetty Project. These include the Jetty Upgrade and the Crib Point Pakenham Gas Pipeline Project (Pipeline Project) which are the subject of separate assessment and approval processes carried out by separate entities.

1.2 Purpose of this report

Jacobs Group (Australia) Pty Ltd (Jacobs) was engaged by AGL to prepare an Aboriginal cultural heritage due diligence assessment for the Project. The purpose of the assessment is to determine the known and predicted Aboriginal cultural heritage values, constraints and subsequent requirements for the Project, including the potential requirement for a Cultural Heritage Management Plan (CHMP) under the *Aboriginal Heritage Act 2006* and the Aboriginal Heritage Regulations 2007.

This report has been prepared to in support of:

- A referral under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*
- A referral under the Victorian *Environment Effects Act 1978*.

1.3 Study area

The study area (the activity area) for the purposes of this assessment encompasses the area defined as the Project Site. This includes the landside component known as allotment 2040 The Esplanade, Crib Point and the Crib Point Jetty. The Project's footprint within the landside component will comprise of the extended gas flow line from the jetty to a flange on the landside component to allow connection to the Pipeline Project. During the construction phase a temporary construction laydown area, staff facilities/amenities and vehicle parking will also be located within the landside component.

The activity area is within:

- 200 metres of the high water mark of Western Port Bay (in relation to the flange adjacent to the Pipeline Project end of line infrastructure within the landside component); and
- the defined boundary of the Western Port Ramsar Wetland.

The activity area is therefore within an area of cultural heritage sensitivity, as defined in the Aboriginal Heritage Regulations 2007.

The Pipeline Project will comprise of a 55km (approximate) high pressure gas pipeline and associated end of line infrastructure (to be located on the landside area adjacent to the Crib Point Jetty). The construction and operation of the Pipeline Project will be carried out and managed by a separate entity, and accordingly, will be the subject of a separate assessment and approval process in accordance with relevant legislative requirements including Victoria's *Pipelines Act 2005*. The Pipeline Project will be subject to a CHMP.

2. Methodology

The methodology adopted for this assessment comprised a review of previous studies, review of proposed Project activities, a review of land use history and a search of the Victorian Aboriginal Heritage Register.

For the purposes of this assessment, no site inspection was made of the Project activity area. As previously mentioned, the Project's footprint within the landside component, will comprise the gas flow line from the jetty to the flange adjacent to the Pipeline Project end of line infrastructure, connecting it to the natural gas transmission pipeline and a temporary construction laydown area and staff facilities/amenities. The landside component had previously been subject to a detailed inspection, including survey and auger testing (Jones 2015) (Figure 3.1). This inspection determined that the "area has undergone significant ground disturbance as defined by the Aboriginal Heritage Regulations 2007" (Jones 2015, p. 13). It was also reported that no surface evidence of Aboriginal cultural remains was observed, and therefore it is unlikely that Aboriginal cultural material exists on the site as surface indicators were not present. For these reasons, an additional site inspection was not considered necessary.

3. Desktop assessment

3.1 Legislative Framework

The *Aboriginal Heritage Act 2006* establishes a process to protect and manage Aboriginal cultural heritage. It identifies activities which require preparation of a CHMP to assess whether a project will have any impact on Aboriginal cultural heritage values and to outline any management recommendations to protect and manage Aboriginal cultural heritage.

3.2 Previous Studies

As already noted, the landside component known as allotment 2040 The Esplanade, Crib Point was previously subject to a detailed inspection, including survey and auger testing (Jones 2015) (Figure 3.1). This inspection determined that the “area has undergone significant ground disturbance as defined by the Aboriginal Heritage Regulations 2007” (Jones 2015, p. 13). It was also reported that no surface evidence of Aboriginal cultural remains was observed, and therefore it is unlikely that Aboriginal cultural material exists on the site as surface indicators were not present.

No further archaeological assessments have been undertaken in the activity area.

3.3 Cultural Heritage Management Plan Requirement

There are two triggers in the Aboriginal Heritage Regulations 2007 for determining if a mandatory CHMP is required for an activity. These include if an Environment Effects Statement (EES) is required under the *Environment Effects Act 1978*; or if there are areas of cultural heritage sensitivity (CHS) within the activity area, **and** all or part of the proposed activity constitutes a ‘high impact’ activity.

However, an area is not an area of CHS, if it has been subject to significant ground disturbance. Significant ground disturbance is defined in Regulation 4 of the Aboriginal Heritage Regulations 2007 as disturbance by machinery in the course of grading, excavating, digging, dredging or deep ripping, but does not include ploughing (other than deep ripping) of:

- The topsoil or surface rock layer of the ground, or
- A waterway.

The burden of proving that an area has been subject to significant ground disturbance and does not therefore require archaeological investigation rests with the Sponsor. The Sponsor must provide evidence to support a claim of significant ground disturbance. Evidence may include: common knowledge, publically available records, further information or expert advice or opinion (DPC 2013).

3.4 Environment Effects Act 1978

AGL are referring the Project under the *Environment Effects Act 1978* to determine if an EES is required. If it is determined that an EES is required, then a mandatory CHMP will be required for the Project under section 46(1)(c) of the *Aboriginal Heritage Act 2006*.

3.5 Areas of Cultural Heritage Sensitivity

The Aboriginal Heritage Regulations 2007 provide that the following among other things, are areas of CHS:

26 Declared Ramsar wetlands

(1) Subject to subregulation (2), a declared Ramsar wetland or land within 200 metres of a declared Ramsar wetland is an area of cultural heritage sensitivity.

(2) If part of a declared Ramsar wetland or part of the land within 200 metres of a declared Ramsar wetland has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity.

28 Coastal land

(1) Subject to subregulation (2), land within 200 metres of the high water mark of the coastal waters of Victoria or any sea within the limits of Victoria is an area of cultural heritage sensitivity.

(2) If part of the land specified in subregulation (1) has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity.

The proposed works on the jetty fall within the defined boundary of the Western Port Ramsar Wetland. Given that it is not possible to establish significant ground disturbance here, the works on the jetty are regarded to be within an area of cultural heritage sensitivity.

The Project's footprint within the landside component, comprising the connection of the gas flow line from the jetty to a flange adjacent to the Pipeline Project end of line infrastructure, and temporary construction laydown and staff facilities/amenities will be located within the Port Land previously subject to significant ground disturbance. This disturbance was established during a site inspection documented in *Allotment 2040, The Esplanade, Crib Point: Cultural Heritage Assessment and Implications for Development* (Jones 2015). The Project works within the landside component are not regarded to be within an area of cultural heritage sensitivity.

3.6 High impact activities

According to Division 5 of the Aboriginal Heritage Regulations 2007, the following works constitute a high impact activity:

43 Buildings and works for specified uses

(1) The construction of a building or the construction or carrying out of works on land is a high impact activity if the construction of the building or the construction or carrying out of the works—

(a) would result in significant ground disturbance; and

(b) is for or associated with the use of the land for any one or more of the following purposes-

(xxiii) a utility installation, other than a telecommunications facility, if-

(D) the works affect an area exceeding 25 square metres

However, as defined in Regulation 43 (3):

(3) Despite subregulation (1), the construction of a building or the construction or carrying out of works on land is not a high impact activity if it is for or associated with a purpose listed under subregulation (1)(b) for which the land was being lawfully used immediately before the commencement day.

3.6.1 Land use history

The activity area including the jetty was developed in 1964-65 for the establishment of a BP refinery. The *Western Port (Crib Point Terminal) Act 1963* was created to authorise the works. Although the refinery was closed in 1985, the site continued to be used as an import facility.

Under the Mornington Peninsula Planning Scheme, a "wharf" is defined as: Land used to provide facilities for ships, such as bulk and container ships, passenger ships, and defence force marine craft. The land uses proposed for the Project, including the mooring of the FSRU and the associated use of Jetty topsides and

flowline fall within the use of land for a "wharf". As the onshore component of the Project is being used to provide facilities for unloading the FSRU, this area also falls within the use of land for a "wharf".

The previous fuel import activities described above also constitute the use of land for a "wharf". The list of land uses in Regulation 43(1)(b) includes a "transport terminal". A "wharf" is one of the land uses nested within this category of land use under the Mornington Peninsula Planning Scheme and so is deemed to also fall within Regulation 43(1)(b).

Given this land use history, the proposed works are therefore associated with a relevant purpose for which the land was being lawfully used immediately before the commencement day.

Consequently, in accordance with Regulation 43(3) of the Aboriginal Heritage Regulations 2007, they do not constitute a high impact activity.

3.7 Aboriginal Places

The Victorian Aboriginal Heritage Register (VAHR) holds the records of all known Aboriginal cultural heritage places and objects within Victoria. Aboriginal heritage places and objects are irreplaceable, non-renewable resources and can also include traditional and spiritual sites of significance. These places or objects are normally identified during archaeological surveys, and are recorded by Heritage Advisors.

The VAHR was accessed by Chris Tsiplakis (Archaeologist, Jacobs) on 31 August 2017.

A search of the VAHR showed there to be no known Aboriginal Places located within the proposed activity area. A single Aboriginal Place is located within three kilometres (Jacks Beach; VAHR 7921-0369), which includes shell midden and surface scatter components.

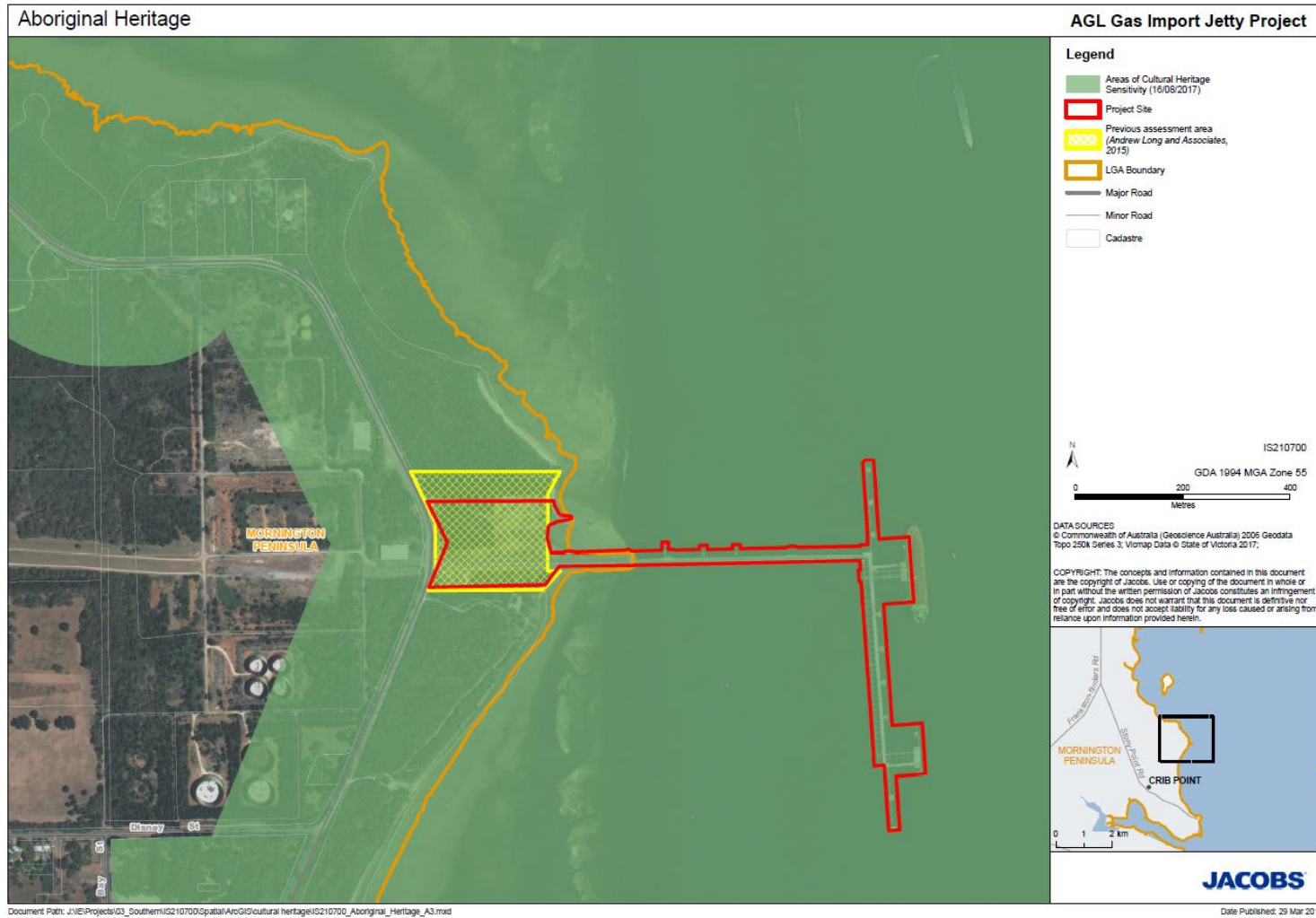


Figure 3.1 : Previous Assessment Area (Andrew Long and Associates, 2015)

4. Conclusion

This Aboriginal heritage due diligence assessment was undertaken for the Project to determine the known and predicted Aboriginal cultural heritage values, constraints and subsequent requirements for the Project, including the potential requirement for a CHMP under the *Aboriginal Heritage Act 2006* and the Aboriginal Heritage Regulations 2007.

A review of the VAHR determined that no Aboriginal Places were located within the Project activity area.

A previous detailed site inspection of the landside component within the Project activity area, including survey and auger testing was conducted by Jones (2015). This assessment determined that the “area has undergone significant ground disturbance as defined by the Aboriginal Heritage Regulations 2007”. It was also reported that no surface evidence of Aboriginal cultural remains was observed, and therefore it is unlikely that Aboriginal cultural material exists on the site as surface indicators were not present.

In determining whether a CHMP is required under the Aboriginal Heritage Regulations 2007 for the Project, there are two triggers: 1) if an EES is required under the *Environment Effects Act 1978*; or 2) if there are areas of cultural heritage sensitivity (CHS) within the activity area, **and** all or part of the proposed activity constitutes a ‘high impact’ activity.

In accordance with the definitions provided in Division 3 of the Aboriginal Heritage Regulations 2007, the Project is located within an area of CHS (the Project Site falls within the defined boundary of the Western Port Ramsar Wetland (Regulation 26)). However, in accordance with Regulation 43 (3) of the Aboriginal Heritage Regulations 2007 the works do not constitute a high impact activity. As such, a mandatory CHMP for the works is not required under the *Aboriginal Cultural Heritage Act 2006*.

AGL are referring the Project under the *Environment Effects Act 1978* to determine if an EES is required. If it is determined that an EES is required, then a mandatory CHMP will be required for the Project under section 46(1)(c) of the *Aboriginal Heritage Act 2006*.

It is unlikely the permanent mooring of the FSRU, the construction of the topside jetty infrastructure or the connection of the gas flow line to the flange adjacent to the Pipeline Project end of line infrastructure would result in significant ground disturbance. The connection of the gas flow line from the jetty to the flange adjacent to the Pipeline Project end of line infrastructure on the landside component will occur in an area subject to significant ground disturbance. Given the extent of documented disturbance within the landside component, there is also low potential for unknown Aboriginal cultural heritage to be impacted by the Project. In light of the above, a voluntary CHMP is not recommended in this case.

5. References

DPC (2013). *2013 Aboriginal Heritage Act 2006 Practice Note: Significant Ground Disturbance*. Retrieved 25 October 2013 from http://www.dpc.vic.gov.au/images/documents/Aboriginal_Affairs/Practice-Note-Significant-Ground-Disturbance.pdf

Jones, Z. (2015). *Allotment 2040, The Esplanade, Crib Point: Cultural Heritage Assessment and Implications for Development*. Fitzroy, Port of Hastings Development Authority.