

**INQUIRY AND ADVISORY COMMITTEE
APPOINTED BY THE MINISTER FOR PLANNING
PLANNING PANELS VICTORIA**

**IN THE MATTER OF THE MORDIALLOC BYPASS PROJECT ENVIRONMENT
EFFECTS STATEMENT**

**IN THE MATTER OF AMENDMENT GC107 TO THE KINGSTON AND GREATER
DANDENONG PLANNING SCHEMES**

BETWEEN:

MAJOR ROAD PROJECTS VICTORIA

Proponent

and

KINGSTON CITY COUNCIL and others

Submitters

**SUBMISSIONS ON BEHALF OF
MAJOR ROAD PROJECTS VICTORIA**

PART B OPENING

Introduction

1. The purpose of this opening is to address certain key issues which are either relevant to the conduct of the hearing or that arise from the evidence and submissions to date.

MRPV's Case

2. MRPV's case consists of:
 - (a) The Environmental Effects Statement ('the EES');
 - (b) The Part A submission;
 - (c) This Part B and any additional submissions following presentation of the expert evidence called by MRPV;
 - (d) The written and oral overview of the project presented by Mr Daniel Kollmorgen of MRPV;
 - (e) The expert evidence (including presentations, written and oral evidence) relied upon by MRPV;
 - (f) The Response to Submissions attached to the Part A submission, as well as any updated response included in the Reply;
 - (g) The Environmental Performance Requirements ('EPRs'), including any amended EPRs proposed by MRPV;
 - (h) The Draft Planning Scheme Amendment GC107 to the Kingston and Greater Dandenong Planning Schemes ('the draft PSA'), including any amendments proposed by MRPV; and
 - (i) MRPV's closing submissions and reply.
3. For convenience, this Part B submission adopts the same definitions and acronyms as are used in the Part A submission and the EES.

The Role of the IAC as an Inquiry

4. The IAC is governed by its Terms of Reference ('the Terms'). Clause 18 of the Terms states that, in its capacity as an Inquiry under the *Environmental Effects Act 1978*, the IAC is to:

- a. *consider and report on the potential significant effects of the project investigated in the EES, taking into account the procedures and requirements of the Minister for the preparation of the EES under section 8B(5) of the EE Act (see Attachment 1) and the controlling provisions under the EPBC Act (see Attachment 2) as outlined in paragraphs 12-14 above;*
 - b. *recommend necessary avoidance, mitigation or management measures for the development of the project to balance project objectives with environmental, economic and social outcomes; and*
 - c. *assess the adequacy of the proposed environmental performance requirements and their suitability to achieve project-wide environmental outcomes, as described in the scoping requirements.¹*
5. The reference to ‘project-wide environmental outcomes ... described in the scoping requirements’ directs attention to the Evaluation Objectives contained in the *Scoping Requirements for the Mordialloc Bypass Environmental Effects Statement* (‘Scoping Requirements’). Those Evaluation Objectives are:

Transport efficiency, capacity and safety – *To provide for an effective connection between the Mornington Peninsula Freeway and the Dingley Bypass, to improve travel efficiency, road safety, and network capacity, as well as improve amenity and local transport networks in the Aspendale/Dingley area.*

Biodiversity – *To avoid, minimise or offset potential adverse effects on native vegetation, listed migratory and threatened species and communities, as well as habitat for other protected species.*

Water, catchment values and hydrology – *To minimise adverse effects on groundwater, surface water and floodplain environments and minimise effects on water quality and beneficial uses, including the ecological character of the Edithvale-Seaford Wetlands Ramsar site.*

¹ Terms of Reference, [18].

Land contamination and acid sulphate soils – To prevent adverse environmental or health effects from disturbing, storing or influencing the transport/movement of contaminated or acid-forming material.

Cultural heritage – To avoid or minimise adverse effects on Aboriginal and historic cultural heritage.

Amenity and environmental quality – To minimise adverse noise and other amenity effects on nearby residents and land uses, having regard to relevant limits, targets or standards.

Social, land use and infrastructure – To minimise potential adverse social and land use effects, including impacts on existing infrastructure and open space.

6. It is these Evaluation Objectives that provide the framework for the IAC's assessment of the Project and whether the Project can achieve acceptable outcomes. Some of the Evaluation Objectives are more contentious than others and MRPV's case and the expert evidence will address each of these Evaluation Objectives to the extent appropriate. However, it is first appropriate to deal with two matters that have arisen in submissions to the IAC.

The Transport Objective and Consideration of Alternative Projects

7. A number of submissions sought to suggest that the EES is deficient because it has failed to consider alternatives to the Project, such as alternative alignments or alternative public transport projects.
8. This should not be accepted. The extent to which the EES is required to consider alternatives to the Project is defined by the Scoping Requirements, including the Evaluation Objectives.
9. Section 3.2 of the Scoping Requirements for the Project describe the content required to be included in the EES. It states, relevantly, that the main report should include:

*a description of relevant alternatives **capable of substantially meeting the project's objectives** that may also offer environmental or other benefits...*

10. In this instance, the *Transport efficiency, capacity and safety* Evaluation Objective ('the Transport Objective') for the Project specifically requires the Project to '*provide for an effective connection between the Mornington Peninsula Freeway and the Dingley Bypass*'. It is only if an alternative project could achieve this objective that it was required to be evaluated as part of the preparation of the EES.

11. This is consistent with the terms of the *Ministerial guidelines for the assessment of environmental effects under the Environmental Effects Act 1978* which state that an EES:

*will not normally be required to document alternatives **to** a project proposal, as opposed to alternatives **for** a project. ... The only alternative to a project proposal that will be routinely described in detail in an EES is the 'no project' scenario. (emphasis original)²*

12. Here, the '*project investigated in the EES*', as referred to in paragraph 18(a) of the IAC's Terms of Reference, is the connection of the Mornington Peninsula Freeway to the Dingley Bypass.³

13. Consistent with the Ministerial Guidelines and section 3.4 of the Scoping Requirements, the EES considered a number of road configuration options, including:

- (a) The 'no project' scenario, which provides the base case for assessment of the impacts of the Project;
- (b) A four-lane arterial road connection between the Dingley Bypass and the Mornington Peninsula Freeway; and

² Department of Sustainability and Environment (7th ed., 2006), p. 15.

³ Terms of Reference, [5]. Similarly, the Project is described on page 1 of the Scoping Requirements as a 'new freeway in south-eastern Melbourne connecting the Dingley Bypass (between Boundary and Tootal Roads) with the northern end of the Mornington Peninsula Freeway at Springvale Road'

- (c) A four-lane freeway connection between Dingley Bypass and the Mornington Peninsula Freeway.
- 14. The various alternatives advanced by submitters, such as public transport projects or upgrades of other road infrastructure, were not – and were not required to be – considered as part of the EES as they are incapable of fulfilling a critical element of the Transport Objective for the Project, namely, providing a connection between the Dingley Bypass and the Mornington Peninsula Freeway.
- 15. Having said that, it should be noted that, prior to the preparation of the EES, VicRoads and other stakeholders did consider a range of potential strategic interventions to address traffic issues in and around the Project area before settling on the Project as the preferred option. This process is summarised in Chapter 5 of the EES.

The Amenity Objective and Applicable Standards

- 16. Among the matters to be considered by the IAC are the noise and air quality impacts of the Project. These impacts fall to be assessed under the amenity and environmental quality Evaluation Objective ('the Amenity Objective').
- 17. As set out in the Amenity Objective, the Project is required:
 - To protect the health and wellbeing of residents and local communities, and minimise effects on air quality, noise and the social amenity of the area, having regard to relevant limits, targets or standards.*
- 18. A key aspect of the Amenity Objective is that it requires the IAC to conduct its assessment of amenity impacts '*having regard to relevant limits, targets and standards.*' This is reflected in the approach taken by the EES which has applied the following standards:
 - (a) The VicRoads *Traffic Noise Reduction Policy* ('TNRP') and *Road Design Note 06-01* in the identification of appropriate Project Objective Noise Levels as well as the assessment and management

of noise impacts from the Project on noise-sensitive receivers as defined in the TNRP; and

(b) State Environment Protection Policy (Air Quality Management) ('SEPP(AQM)') and State Environment Protection Policy Ambient Air Quality ('SEPP(AAQ)') in the assessment and evaluation of air quality impacts.⁴

19. The application of these standards to the Project has occurred in consultation with relevant statutory agencies and the Technical Reference Group for the Project, including the EPA.
20. Several submissions to the IAC seek, in effect, to argue that these standards are inadequate and that the IAC should seek to impose more stringent standards in relation to either noise levels or particulate emissions than those proposed for the Project, based on the TNRP or the SEPPs. These submissions should not be accepted.
21. Many of the same arguments were recently made to the IAC considering the West Gate Tunnel project, particularly in relation to standards for PM_{2.5} and ultrafine particulate matter. The West Gate IAC rejected those submissions, writing in its report:

A number of submissions suggested that air quality standards, and especially those related to ultrafine particulates, do not align with available medical research.

The IAC notes that standards often lag research and this is not a new situation. However, the IAC is not in a position to arbitrarily establish new standards; its role is to assess the environment effects of the Project within the existing legislative and policy context.⁵

⁴ It is the view of MRPV that, strictly speaking, SEPP(AQM) is the policy to be applied in the evaluation of a new source of emissions, rather than SEPP(AAQ) – see clause 10(3), 13, 18 of SEPP(AQM); cf. clause 18(1), SEPP(AAQ). On the evidence, however, the Project performs acceptably whichever standard is adopted.

⁵ *West Gate Tunnel Project Inquiry and Advisory Committee Report* (2017), p. 142.

22. As the West Gate IAC noted, the proper course is for the EPA '*to continue to monitor emerging medical research and modify the air quality standards as necessary to maintain a best practice approach.*'⁶
23. MRPV supports this approach. The task of setting standards – whether for air quality or noise – involves a wide-ranging evaluation of not simply the benefits of adopting a particular standard, but the costs and practicalities of doing so as well, which goes well beyond the scope of the matters to be considered in the evaluation of an EES for any single project.
24. This reality is well illustrated by the process undertaken by the National Environment Protection Council when it recently amended the *National Environment Protection Measure (Ambient Air Quality)* to include mandatory PM_{2.5} standards.
25. In preparing that amendment, the National Environment Protection Council:
- (a) Commissioned the following studies:
 - (i) A health risk assessment of the impacts of ambient emissions in Australia;
 - (ii) An economic analysis of the costs and benefits of potential new particle standards; and
 - (iii) A review of emissions reductions frameworks and their potential application in Australia;
 - (b) Prepared a draft variation to the NEPM (AAQ), accompanied by an Impact Statement discussing the economic, social and environmental impacts of the proposed variation; and
 - (c) Undertook consultation on that variation.
26. The standards that have been set by the National Environment Protection Council are the considered and informed result of assessing the practicality of achieving the objective of reducing PM_{2.5}, the different methods available to

⁶ Ibid.

achieve that objective and the likely cost of each approach. They reflect a balancing act between the desirability of improving air quality and health outcomes against the costs and practicalities of doing so.

27. Should the EPA choose to consider new standards, it will be required to go through a similar statutory process under the *Environment Protection Act 1970*.⁷
28. In these circumstances, it is respectfully submitted that, in respect of noise and air quality, the IAC is tasked with assessing whether the environmental effects of the Project are acceptable based on the application of relevant limits, targets and standards as they exist at the time the IAC's assessment falls to be made.

The Role of the IAC as an Advisory Committee

29. In terms of its role as an Advisory Committee under the *Planning and Environment Act 1987*, the IAC is required to:
 - (a) *review the draft PSA along with public submissions received in relation to the planning controls proposed by the draft PSA; and*
 - (b) *assess whether the planning controls proposed by the PSA are appropriate to facilitate and control the use and development of the project.*⁸
30. In considering the appropriateness of the planning controls, the IAC should have regard to the terms of clause 71.02-3 of the Victorian Planning Provisions which requires decision-makers to:

endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.

⁷ Sections 18A and 18C, *Environment Protection Act 1970*.

⁸ Terms of Reference, [20].

THE IAC'S REPORT

31. There is no doubt that the Project will have a range of impacts on the project area and surrounds. The impacts will be both positive and negative in nature. Some impacts will be temporary and some impacts will be permanent.
32. Clause 21 of the Terms of Reference sets out the matters that the IAC must address in its report to the Minister. Of significance for present purposes is paragraph 21(c) which requires the IAC to make recommendations on:
- whether the proposed project will deliver an appropriate balance of environmental, economic and social outcomes, having regard to the evaluation objectives in the EES scoping requirements, public submissions and the IAC's conclusions on the significant effects of the project*
33. This concept of achieving an appropriate balance of outcomes is, in MRPV's submission, substantially the same as the concept of 'net community benefit' referred to previously. Essentially, it requires the IAC to balance all relevant considerations and assess whether, on an overall basis, the delivery of the Project will achieve acceptable outcomes.
34. Overall, it will be MRPV's submission that the development of the Project will deliver a range of benefits to the local community, the South-East region and the State more broadly. Benefits of the Project include:
- (a) Delivering a connection between the Dingley Bypass and Mornington Peninsula that has been anticipated since the 1960s and has been proposed for this alignment since the 1990s;
 - (b) Providing additional road capacity to meet the needs of our growing city, including the needs of commuters, business and industry;
 - (c) The increased access opportunities for economic and industrial centres, including the Moorabbin Airport;

- (d) Improving road safety and travel efficiency by providing a safer and faster way to move between the Dingley Bypass and Mornington Peninsular Freeway;
 - (e) Delivering overall improvements in terms of safety and efficiency for the local road network;
 - (f) Providing a more direct route for heavy vehicle movements (particularly freight), freeing up local roads for use by other vehicles and reducing amenity impacts along those roads;
 - (g) Providing improved efficiencies for public transport through bus service lanes; and
 - (h) Facilitating active transport by delivering new Share User Paths for cyclists and pedestrians.
35. While the Project has the potential to have negative environmental effects, MRPV will submit that the design of the Project, including the EPRs, is such that those impacts can be satisfactorily avoided, managed or mitigated to acceptable levels in accordance with the Evaluation Objectives. This is consistent with the conclusions reached in the EES and the expert evidence called on behalf of MRPV and expert evidence called on behalf of the Kingston City Council (**Council**).

The Environmental Management Framework

36. The primary mechanism for managing the environmental impacts arising from the Project is the Environmental Management Framework ('the EMF'). The EMF provides a transparent and integrated governance framework for managing the environmental effects of the Project in the context of applicable environmental laws and statutory approvals.
37. Chapter 23 of the EES sets out the EMF, as summarised in the Part A submission.⁹ The EMF approach is commonly applied in projects of this nature and provides a sound and robust framework for managing the environmental effects of the project.

⁹ Part A submission, [35] to [47].

38. Key elements of the EMF, which ensures compliance with the relevant statutory requirements, accountabilities and conditions for approval include:
- (a) The EPRs;
 - (b) Landscape and Urban Design Plans;
 - (c) The Soil Management Plan;
 - (d) The Acid Sulphate Soil Management Plan;
 - (e) The Landfill Gas Management Plan;
 - (f) The Water Management and Monitoring Plan;
 - (g) The Community and Stakeholder Engagement Plan;
 - (h) The Transport Management Plan;
 - (i) The Construction Noise and Vibration Management Plan; and
 - (j) The Sustainability Management Plan.
39. A Cultural Heritage Management Plan will also form part of the EMF, but is approved through a separate process under the *Aboriginal Heritage Act 2006*.
40. The EMF is given legal force by the Incorporated Document. Clause 4.2.1 of the Incorporated Document provides that, prior to the carrying out of any development, the EMF must be approved by the Minister for Planning. The Incorporated Document also provides that the EMF must include the EPRs and that the use and development of the Project must be in accordance with the EMF.¹⁰ The result is that the EPRs will form binding legal conditions on the use and development of the Project. Further, given that the Incorporated Document will form part of the planning scheme, it would be open to the relevant responsible authority (or any person) to enforce compliance with the Incorporated Document and the EMF, including the EPRs.

¹⁰ Clauses 4.2.1 and 4.2.4, draft Incorporated Document.

The EPRs

41. While the EMF provides the framework for managing impacts, the EPRs define the outcomes that must be achieved during the detailed design, construction and operations phases of the Project and provide the necessary standards to be met.
42. The evidence of Mr Biles, called on behalf of Council, describes the drafting techniques utilised for the EPRs. He describes the various techniques used and concludes *“the draft EPRs illustrate the range of techniques that can be used, as appropriate, to guide project outcomes and provide the appropriate balance between prescription and flexibility within a ‘performance based’ framework.”*¹¹
43. MRPV agrees with this assessment. MRPV disagrees with a number of submitters that have sought to impose more prescriptive outcomes or add a level of detail not appropriate for the Project and the processes it utilises. In particular, it is noted:
 - (a) the Project is at the reference design stage only, and will be subject to further detailed design and assessment;
 - (b) overly prescriptive EPRs would prevent design innovation and could result in poorer environmental outcomes given the incentives that have been put in place for the successful tenderer to improve the environmental outcomes achieved through the project; and
 - (c) there is sufficient certainty in the EMF and EPRs for an assessment of the likely effects of the Project to be undertaken now, with further consultation and approval processes to be undertaken before those documents are finalised.
44. It should be noted that the design of the Project is not fixed, subject to certain constraints relating to fitness for purpose, e.g., compliance with road design safety standards. This is deliberate. Like many projects in

¹¹ Witness Statement of Tim Biles, section 1.5.

this State, the assessment is carried out in the context of a reference design, an approach that is both practical and appropriate.

45. It is MRPV's intention that the successful tenderer should be able to interrogate and challenge the proposed reference design with the objective of delivering better outcomes than anticipated. In this approach there is no final or comprehensive design showing actual built form outcomes for assessment by this IAC.
46. Likewise, the specific details of the contents of the plans required by the EMF and the EPRs are not fixed. They will be completed as the Project develops and the necessary details are known. By the time these plans are in place, and the EMF is assessed and approved by the Minister for Planning, the level of certainty required to appropriately regulate the Project will be in place.

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Instructed by Clayton Utz

25 February 2019