

Environment Effects Act 1978

Planning and Environment Act 1987

Inquiry and Advisory Committee Report

Melbourne Metro Rail Project

21 November 2016

The Independent Environmental Auditor would audit key plans, as required by the Incorporated Document, for compliance with the EPRs.

The role of the Independent Environmental Auditor is therefore additional (and separate) to the Independent Reviewer. The Independent Environmental Auditor responsibilities include:

- *Prior to commencement of work, verify that the contractor has complied with each relevant EPR;*
- *Conduct audits of the contractor's works to verify compliance with the CEMP, OEMP, EMF and EPRs;*
- *Review the contractor's performance against the EPRs; and*
- *Prepare audit reports containing the results of audits.*

... The audit reports would facilitate the continuous improvement of environmental management in respect of the Project activities.

21.3.5 Other matters relating to the Incorporated Document

The Committee received submissions about the opportunities for further consultation post approval of the Project through the provisions of the Incorporated Document. This related to the preparation and finalisation of the Development Plan and Early Works Plans, and changes to the EMF. Principally the submissions related to the opportunity for parties to comment on these, and the timing of which comments could be made.

The Incorporated Document generally provided for 14 days for any external comments, and these were largely from the OVGA and other Government agencies such as VicRoads, PTV and Heritage Victoria. The Councils and other institutions sought the opportunity to provide comments on these plans, as well as a change to the Incorporated Document to extend the timeframes either to 21 or 28 days. The other issue raised related to more specificity to the words through the deletion of "generally in accordance" to "in accordance".

21.4 Discussion

The approach of the Project EES of assessing a Concept Design rather than a detailed Project means the EMF and the EPR become critical in determining how the eventual Project can be delivered within an acceptable environmental framework. The Committee understand that the EPR are a product of the EMF and that the EMF itself needs to be approved by the Minister for Planning as detailed in Clause 5.2.6 of the Incorporated Document. As mentioned, the EMF was not the subject of submissions, rather submissions focused on the substance and contents of the EPR. It is important to note that, in the overall assessment framework, the Incorporated Document is the planning control that replaces a framework that may have otherwise existed within the planning scheme itself, or as planning permit conditions.

The Committee is satisfied with the MMRA's clarification of the differing roles of the Independent Environmental Auditor and the Independent Reviewer as described in TN69.

21.4.1 Referencing of the EPR in the Incorporated Document

The EPR are proposed to be applied contractually between the successful contractor/s and the State of Victoria (or the MMRA). The MMRA resisted the notion of including the EPR in

the Incorporated Document for the reasons set out in its opening and closing submission, as outlined in Chapter 21.3.1 of this report

The MMRA is correct that the EWL Project was the first and only Project where the performance requirements were recommended by that Committee to be included or linked within the Incorporated Document, although the Linking Melbourne Authority resisted this approach.

The Committee agrees that a strong link between the Incorporated Document and the EPR is important. However, the Committee believes that in the case of this Project, there is a direct link between the Incorporated Document and the EPR through the revised Incorporated Document at Clauses 5.2, in particular clauses 5.2.5, 5.2.6, 5.2.7 and Appendix 2 'Approval of Plans'. The Committee agrees with the East West Link Committee that applying performance requirements via the contractual arrangements may not be appropriate, but in the case of this Project, the EPR are more detailed, have had extensive revision to incorporate numerous submitters concerns, and the Incorporated Document has been strengthened at Clause 5.2 of the EMF to more clearly show the link between the EMF, EPR and the various management plans to be approved.

The Project is also differentiated from the East West Link Project as this Project has general overwhelming support from the community and stakeholders, whereas the East West Link Project did not. The East West Link Project was assessed under the MTPF Act rather than the EE Act, and the culmination of the East West Link assessment process was the grant of all relevant permissions required in respect of that Project, which is not the case for this Project.

The Committee tends to agree with the MMRA that where EPR are framed only on high-level terms, their incorporation as part of the Incorporated Document may be more appropriate. Where, however, those EPR prescribe both high-level objectives and more detailed and specific outcomes or implementation measures, they are better suited to being linked to the Incorporated Document rather than incorporated within it. The Committee agrees with Mr Townshend that if the EPR were to be included as a table directly within the Incorporated Document, then they would need to be written in a different way.

21.4.2 Scope of the EPR

The Committee received helpful submissions about further amendments to the EPR. Notwithstanding, many recommendations for change to the EPR had their genesis in individual circumstance and were focused on achieving a particular individual benefit. The Committee prefers to stay at a higher level with EPR that are targeted, have clarity of language so they are simply expressed and focused, are clear in their purpose and intent (including whether they are mandatory or discretionary).

Generally, the Committee considers that the EPR (as revised) identify and address an appropriate range of issues and management measures that might be expected for a major project such as this in a highly urbanised environment. There is some difficulty in being overly confident that such an approach will be effective when the Committee is assessing a Project that has not been provided any detailed design regarding technical delivery or what elements of the Project will look like, and it is based upon a concept only. Notwithstanding, the Committee has considered this difficulty in its approach to the revised EPR.

Submissions, evidence and discussions relating to specific EPR are provided throughout this report and are not repeated here, however the Committee provides its version of the EPR at Appendix F which incorporates many of the suggested changes from the MMRA and other submitters whom provided their suggested changes to the Committee.

Of note, as it relates to the EMF, the Committee has included a new EPR EM04 which builds upon the EPR already included in Version 4 regarding stakeholder consultation and a process for complaints management. The Committee is of the mind that stakeholder consultation and complaints management is a higher order matter that needs to be elevated and crosses all EPR and aspects of the Project, which is why it has been given prominence in the Environmental Management 'EM' EPR.

21.4.3 Should the EPR be prescriptive?

The Committee understands the MMRA's desire that the EPR are worded in such a way to allow for a high level of flexibility in order for the successful contractor(s) to include innovative design and construction techniques. However, similar to the Assessment Committee for East West Link, this Committee does not consider such flexibility is always the preferable approach in a highly urbanised environment where the community, key stakeholders and decision makers have not yet seen a detailed design. This Project has many elements to it including vent shafts, stations, the tunnelling works, road works/changes to traffic conditions, new bridges, TBM launch sites and others, all of which have no design plans yet available. There is very little certainty as to what the Project will look like and how it will be delivered, other than the Project concept area and precincts, and that the construction period for the Project will be approximately six to 10 years.

The Committee sees benefit in a mixture of prescriptive (for example set noise and vibration limits) and flexibility in providing a revised set of EPR.

21.4.4 How will the EPR be implemented?

Implementing the construction and operational stages of the Project through effective adherence to a set of EPR is not without its difficulties. There is a long list of various plans and actions that need to be prepared and approved prior to construction commencing (early works, tunnel and stations) including a range of stakeholder consultations.

Although the EPR are not proposed to be included in the Incorporated Document, the Committee's concerns with implementation and enforcement are somewhat alleviated through the role of the Independent Environmental Auditor and Independent Reviewer, including the reporting of the Independent Environmental Auditor.

The Committee is satisfied that through Clause 5.1 of the Incorporated Document, the Minister for Planning approves various Development Plans providing the Minister the opportunity to confirm that the detailed design suitably implements the EPR as well as the UDS and considers the views of key agencies and stakeholders with either statutory or strategic interest in the Project works at various locations. These Development Plans will be made available for public inspection (Clause 5.1.4(c)) and a summary of consultation and responses to issues raised during the consultation will be provided to the Minister as part of the Development Plan approval process (Clause 5.1.5).

The Committee is mindful that its recommended version of the EPR builds upon the issues raised by various submitters, and has attempted to achieve the appropriate balance between too much prescription and too much flexibility in preparing the Committee's recommended version at Appendix F.

21.4.5 Other matters relating to the Incorporated Document

In the main, the Committee considers that the public submission and hearing process for this EES is the key opportunity for interested stakeholders to provide its views on any aspect relating to the Project. The 379 submissions received and the 33 Hearing days ensured that all relevant matters were able to be raised and considered. The contributions made by many parties has ensured a better and more robust outcome for all aspects of the Project. This is acknowledged by the Committee and was acknowledged by the MMRA in its closing.

However, as the Project is at Concept Design stage, and as there is much more to be done to reach the final design stage, the Committee considers some additional input by relevant stakeholders is warranted. This is not to say that all aspects of the Project should or could be opened up for further review or hearing. The Committee notes the submissions of some parties, including RMIT and the Cities of Stonnington and Port Phillip that sought an Advisory Committee type process to ensure an independent review on further matters. It is a matter for the Minister for Planning to consider at a later date if he wishes to implement a further process in the form of a Standing Advisory Committee or similar.

It does however support the Incorporated Document providing the opportunity for further input and review of the Development Plans for each precinct and the Early Works Plans through the opportunity to provide written comments to the Minister for Planning on each of these. Further, in the light of submissions made about the timeframes, the Committee endorses a timeframe for all aspects of 15 business days from the time of notice on the Project website and through a daily newspaper.

It goes without saying that such notices and the Project website must be carefully managed to ensure that interested parties can access these in a timely manner. In this regard, the Committee recommends that EPR SC3 be modified whereby interested stakeholders can register their details so that they are automatically advised of any matter affecting the Precinct or any matter Project wide, including opportunities to comment on the Development Plan or Early Works Plan.

21.5 Findings

With regard to the EMF, the Committee accepts Version 4 tabled by the MMRA (D360) as it reflects the changes made to the Incorporated Document (D358), the EPR (D365) and the advice within TN41, TN68 and TN69. The Committee agrees that the EMF is a sound and robust framework for managing the environmental effects of the Project during its construction and operational stages.

The Committee finds that the MMRA has responded to a numerous requests for changes to the EPR during the course of the Hearings, and is commended for doing so. The Technical Notes provided by the MMRA greatly assisted the Committee in its understanding of a number of matters, and provided clarity around roles, responsibilities and implementation of the EMF and EPR.

In response to the questions about EPR posed by the MMRA, the Committee provides the following in response:

Do the EPRs properly respond to the environmental impact that is to be managed?

The EPR adequately respond to the environmental, social and economic impacts that have been identified in the EES, and provide appropriate actions and controls to minimise impacts from the Project during construction and operation.

Do the EPRs establish an appropriate benchmark in respect of delivery of the Project?

The Committee agrees with the MMRA that the EPR need to be focused on describing the environmental outcomes to be achieved rather than prescribing the manner in which they should be achieved. The EPR need to provide an adequate level of assurance that appropriate environmental standards will be achieved without unnecessarily limiting innovation in design or implementation, and in this regard the Committee finds that the EPR as modified in Appendix F establish an appropriate benchmark in respect of Project delivery.

Do the EPRs properly provide for the preparation and implementation of appropriate management plans where necessary?

The Committee finds there are a number of relevant plans that are required under various EPR that help to identify mitigation measures as the detailed design of the Project becomes available. Importantly, construction of the Project cannot commence until such plans are prepared and approved and in some instances, reviewed by the Independent Environmental Auditor.

Do the EPRs properly provide for (or sit within a framework which properly provides for) consultation with stakeholders and affected persons?

There are provisions in the Incorporated Document and in the EPR, including SC3 and EM04, that provide for adequate stakeholder and community consultation. The EPR make provision for significant stakeholder engagement including relevant agencies and councils as well as having purpose-built reference groups for transport (the TTWG) and Parkville institutions (the PPRG) that the Committee has recommended have independent chairs. The invitation to provide written comments within 15 business days provides sufficient opportunity for ongoing third party engagement.

Are the EPRs sufficiently robust to account for changes from the Concept Design and within the Project Boundary?

The EMF and the EPR include strong checks and balances including reporting requirements, various management plans, independent environmental auditing, independent review and monitoring. The EPR apply to the approved Project and are approved by the Minister for Planning as part of the EMF.

Do the EPR properly acknowledge their relationship with other EPR?

The Committee finds that the EPR properly acknowledge their relationship with other EPR and that the Committee's recommended version makes it clear up front that the EPR are not to be read in isolation.

The amended Committee version of the EPR is found in Appendix F and should be applied to the Project and incorporated into the EMF.

Incorporated Document

Additionally, the Committee supports the opportunity for stakeholders to comment on relevant Development Plans and Early Works Plans for a 15 business day period. The amended Committee version of the Incorporated Document is found in Appendix E and should be applied to the Project.