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MORDIALLOC BY-PASS PROJECT

INQUIRY AND ADVISORY COMMITTEE

**AMENDMENT CG107 TO KINGSTON
PLANNING SCHEME**

SUBMISSION OF KINGSTON CITY COUNCIL

6 March 2019

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Table of contents

1	Introduction.....	1
2	The Incorporated Document and other planning controls.....	2
3	Environmental Management Strategy (EMS), other plans and environmental compliance assessment and approval.....	6
4	Urban design.....	8
5	Shared User Pathway and key connections along Project alignment	11
6	Multi-function fauna barrier	15
7	Acoustic impacts	16
8	Braeside Park.....	18
9	Wetlands.....	19
10	Heritage Overlay HO104	21
11	Groundwater	22
12	Surface water	23
13	Woodlands Drive amendment.....	23
14	Reclaimed water pipeline opportunity.....	24
15	Stormwater/future wetland opportunities	25
16	Solar installation.....	25
17	Conclusion	26

1 INTRODUCTION

- 1.1 Kingston City Council (**Council**) wishes to make submissions in response to the proposed Mordialloc Bypass Freeway connecting the Dingley Bypass with the Morning Peninsula Freeway (the **Project**).
- 1.2 The construction of the Mordialloc Bypass Freeway (**Project**) will have significant and permanent impacts in the immediate locality of, and further distant from, the Project area.
- 1.3 In order to peer review the EES Council retained a series of experts, namely:
- Landscape Design (Maddy Bisits, Spiire);
 - Urban Design and Strategic Planning (Tim Biles, Message Consultants);
 - Wetland Impact (Lance Lloyd, Lloyd Environmental);
 - Acoustic Engineering (Ross Leo, Clarity Acoustics);
 - Hydrogeology (Chris Smitt, EHS Support);
 - Hydrology (Warwick Bishop, Water Technology); and
 - Ecology, specifically Birdlife (Richard Loyn, Eco Insights).
- 1.4 It is important to recognise that this Project, but for minor elements at its southern end, is located wholly within the City of Kingston and the views of the Council as probably the key stakeholder should carry weight through any technical reference group stages, through these proceedings and during later stages of design, construction and operation. The shared user paths, the connections, Council's residents and ratepayers interfacing the Project, Council's open space areas (or Braeside Park located within the city) are and will continue to be variously of, significant interest to, and in many case the responsibility of, the Council.
- 1.5 Given the long life of the existing reservation and the traffic and transport benefits the Project will bring, it can be a little easy to accept the Project as effectively inevitable. What is not inevitable, however is acceptance of less than high quality outcomes on a project on what is, in some respects a "greenfield" site. Lacking the constraints of construction through or underneath an existing urban environment.
- 1.6 Both the qualified design experts and the lay people involved or interested in this Project have spent a lot of time recently admiring various road design outcomes, particularly in relation to interfaces, barriers and bridges. There are some very good examples of quality outcomes quite close to this proposed freeway such as elements of the Eastern Freeway, East link and Peninsula Freeway. There are also some ugly

and low quality outcomes in terms of design, a stark example of this being the Dingley Bypass.

- 1.7 There is some concern about the response to submissions in relation to environmental measures, acoustic measures and, importantly, design. That response indicating a reluctance on the part of the Project to be subject to stakeholder input, design approval or review and assessment of plans and outcomes. This in a context where many of the participation and review measures suggested reflect EPRs in other recent projects.
- 1.8 These submissions:
- 1.8.1 discuss from a regulatory perspective under the Planning Scheme, the Incorporated Document, the EES, including its Environmental Management Framework (**EMF**) and its Environmental Performance Requirements (**EPRs**);
 - 1.8.2 address in more detail issues set out in Council's opening submission; and
 - 1.8.3 address issues arising through these Committee hearings, including Council's views and preferred recommendations in respect of those issues;
 - 1.8.4 attach the latest draft of the proposed EPRs by Council (Council Version 2), these marked up to indicate minor changes from those circulated on Friday 1 March 2019.
- 1.9 In suggesting the EPRs we have drawn these from, and tested these against Council's independent experts and in some cases the MRPV experts. There are some examples of requested inclusions in the Project which are initiated by Council specifically, for example the so called "purple pipe" or consideration of joint stormwater management.
- 1.10 We note these Council submissions are delivered with a number of days still to come for the Committee hearings which may warrant further attention or comment from the Council.

2 THE INCORPORATED DOCUMENT AND OTHER PLANNING CONTROLS

- 2.1 Through use of an Incorporated Document it is proposed to grant overall planning approval for the Project, exempting the need for other planning approvals.

- 2.2 The use of incorporated documents for major projects, in particular, has become relatively common. The approach provides project certainty, substantial timing benefits for project delivery and subject to its proper drafting and implementation, is a beneficial and appropriate planning tool.
- 2.3 One of the benefits of the Incorporated Document approach is that it allows purpose built changes to address particular issues that can arise where some additional detail or approval process is required. It should not be a carte blanche approval.
- 2.4 For example native vegetation removal is still required to comply with the relevant DELWP Guidelines and, importantly, the development must accord with the EMF approved by the Minister for Planning through the EES process.
- 2.5 Within the Incorporated Document this Committee can recommend the inclusion of amendments or new requirements in a highly visible and more readily regulated way.
- 2.6 Another way for the Committee to identify and recommend the need to address, particular issues, is through the suggested modification to, or new inclusions in, the EPRs.
- 2.7 Balancing the appropriate location for suggested changes between the Incorporated Document and the EPRs, in a particular case, is something upon which reasonable opinion can differ, however, generally it is suggested modifications or new inclusions are better included in the EPRs unless the issue is of significant import. One important example is the Council's view that there should be an appropriate clause within the Incorporated Document in respect of the EMS, EPRs and other approved plans, which is elsewhere discussed in this submission.
- 2.8 The Incorporated Document is brought into the planning scheme through the Specific Control Overlay (**SCO**) and if adopted would become the third such control in Kingston, keeping company with the two such documents relating to LXRA projects.
- 2.9 Notable about the SCO introduced on 31 July 2018 is the ability to extend the time for any expiry of the control is with the responsible authority, located within the SCO and in this case is not referred to in the proposed Incorporated Document. This is satisfactory to the Council.
- 2.10 Expiry under the proposed Incorporated Plan is if:
- the development does not commence by 1 August 2020;
 - is not completed by 1 August 2025; or

- the use has not commenced until 1 August 2030.
- 2.11 An explanation as to why there is a 5 year gap between completion and commencement is probably warranted, it appears unlikely the proposed freeway would sit unused for 5 years.
- 2.12 Importantly, assuming the various commencements and completions occur, the overall control does not expire. This means the ongoing obligations, particularly of VicRoads, will be permanent obligations. In contrast in the LXRA proposal for Edithvale and Bonbeach there was some uncertainty about who would take up ongoing management obligations and how they would be permanently put in place.
- 2.13 The more important permanent obligations (or ideally 10 year obligations) relate to the ongoing monitoring and maintenance of the wetland reinstatement, the potential for the instigation of contingency measures in relation to surface water or groundwater impacts, and bird monitoring.
- 2.14 If there are other issues which arise, which require a permanent control, this approach means this Committee can recommend that and if it is adopted in the EPRs it can be enforced.

Amending the Incorporated Document

- 2.15 We are unaware of any attempt to enforce compliance with Environment Management Framework or the various plans approved under that framework, or EPRs, in relation to a major project.
- 2.16 Aside from the propensity of such major projects to be run well and in compliance with their obligations, in part we suggest may be because the relevant agency is heavily invested in ensuring its contractors (to whom it transfers many of its obligations) are in compliance.
- 2.17 The Council seeks an amendment to the Incorporated Document (specifically at paragraph 4.2.4) to read:
- “4.2.4 the use and development of the Project must be carried out in accordance with the approved EMF, the EPRs, the Construction and Environmental Management Plan, the Environmental Management Plans and all other plans approved under the EPRs”.*
- 2.18 These next comments are somewhat legalistic as they relate to an exercise of interpreting the actual outcome of a reference in the Incorporated Document to “only” comply with the Environment Management Framework. The immediate difficulty with

this is that the EMF for this Project (and in fairness similar projects) is not written to create a clear and unambiguous compliance outcome. These documents are also the victim of drafting by multiple authors most of whom do not intend them to be read like a statute or regulation. Therefore the proposition that compliance with “only” the EMF is adequate reference in the Incorporated Document suffers when that concept is subject to scrutiny.

- 2.19 The question of what constitutes compliance with the EMF should be based upon what the EMF requires. Chapter 23 of the EES holds the Environmental Management Framework.
- 2.20 That EMF chapter then allocates responsibilities to do particular things to particular entities. Those entities include, principally, MRPV and an entity described as the “D & C” contractor.
- 2.21 Examples of this include at 23.12 (page 23-16) the proposition that:
- “the contractor would be required to comply with and implement all EPRs except where responsibility for implementation is retained by the State. The specific issues addressed by the EPRs are as per the headings in table 23.6”.*
- 2.22 At the risk of “splitting hairs” a failure to comply with the EPRs is the responsibility of the contractor only. There are various other similar examples not just through this section of the EES but through the EES generally.
- 2.23 The proposition is entirely different to a planning permit which has conditions which apply to the land and anybody undertaking the development of the land.
- 2.24 Equally in chapter 23 of the EES there is a description of the Environmental Management Framework which (in common with these major projects) specifies various obligations for the contractor and relies, very heavily, on the contract structure as the basis upon which the project is governed.
- 2.25 Principally as a result of the structure of these Environmental Management Frameworks (and EPRs) has evolved over time these broad generalised documents do not make it clear that whoever undertakes the development, and importantly whoever the development is undertaken on behalf of, must comply with various aspects including all of the plans approved under the EMF and EPRs.
- 2.26 One could spend hours going through the EES trying to rewrite it in a legalistic form however that is not something which should be invited either.

2.27 The simple solution to this is to include within the Incorporated Document and obligation that the Project, whoever undertakes it, must comply with the various elements, as suggested in the Council's requested amendment.

Urban Design

2.28 Also relevant to later discussion regarding amendment to the EPRs, "*Urban Design*" should be added as a proposed EPR element (at paragraph 4.2.1) either as a separate item or as part of *Landscape and Visual*.

Grammatical changes

2.29 The following is a list of potential grammatical changes:

- Deleting the words "*developing and using*" from paragraph 4.1(h);
- Deleting the word "Site" in the second line under clause 4.2.2(a). We understand they are simply "*Environmental Management Plans*";
- At clause 4.3(a)(i), deleting the word "*Works*". Otherwise this appears to provide an opportunity to conduct any work before the EMF is approved. The reference to vegetation removal may be appropriate for retention.

3 ENVIRONMENTAL MANAGEMENT STRATEGY (EMS), OTHER PLANS AND ENVIRONMENTAL COMPLIANCE ASSESSMENT AND APPROVAL

3.1 The Council has sought amendments to the EPRs EM1, EM2 and proposed the addition of an EM3.

3.2 Before turning to the particular detail of the requested amendments these changes arise from a desire to ensure overarching EPRs in relation to environmental management which:

- Are properly prepared;
- Are subject to input from relevant stakeholders and independent review;
- Are transparent in the sense that the EMS should be publicly available;
- Should be consistent with similar such EPRs in other projects, unless good reason is provided to the contrary.

- 3.3 With respect, the proposition that the EES presently contains an Environmental Management Framework that includes an obligation on the contractor to retain Environmental Auditor is not satisfactory of itself. At its simplest level is it the failure to retain such independent audit (namely the breach of contract) a breach of the planning scheme or is the breach the failure to actually undertake that third party audit?
- 3.4 We have considered the Environment Management Framework at chapter 23 above and this commentary raises similar issues. For example the obligation is not to prepare a CEMP, the obligation is for the contractor to prepare a CEMP. The obligation is to do that in accordance with the EPRs, therefore if there is no particular reference in the EPRs to some element then presumably the contractor is under no obligation to incorporate it in the CEMP.
- 3.5 This same flaw found its way into the first words of EM1 as exhibited.
- 3.6 There are references to the “State” as having a retained responsibility in various of the EPRs. For example at EM1 whilst the EMF (the high level document) is to be approved by the Minister for Planning it appears that the “State” reference is in fact supposed to be a reference to MRPV when one refers back to, for example, table 23.3 which has the words “*State of Victoria (MRPA)*” in the heading. Then in EM2 MRPV is referred to specifically which begs the question of what the reference to “State” means in EMP1 and the later references to it in EMP2.
- 3.7 The proposition as we understand it is that the MRPV is to be the approval agency for any other plans below the EMF which is to be approved by the Minister for Planning. Putting aside whether that is considered acceptable, it should be consistently dealt with in the EPRs.
- 3.8 These issues support the Council’s proposition that several of these plans ought to be the subject of review from some form of independent reviewer or environmental auditor. Amendments have been suggested to EM2 and the inclusion of a new EM3 is proposed.
- 3.9 Notably the amendments to EM1, EM2 and the new EM3 are generally consistent with that which was proposed and accepted at the Westgate Tunnel Project IAC and subsequently in its EPRs. No doubt the Environmental Management Framework in that case placed similar obligations on the contractor and whilst mimicking something which has already occurred (ie Westgate) is not always the best argument, there

would need to be good reason why this project has elements in it which denies that approach.

- 3.10 This independent review obligation (EM3) also sought to address concerns regarding the proposed design, the proposed construction techniques through, and the proposed reinstatement and subsequent monitoring of, the Waterways wetland. Other suggested changes in the EPRs create the need for such plans and monitoring and the new EM3 sees that subject to independent review.
- 3.11 Inclusion of the changes to EM1, EM2 and the addition of EM3 adds confidence in relation to the likely successful implementation of the Project. It is respectfully suggested that if it adds additional administration or time, that is warranted.

4 URBAN DESIGN

- 4.1 The initial EPRs contained no urban design measures or direction other than reference to state government documentation.
- 4.2 The original and “day 1” EPRs, make no provision for independent design review, to ensure that the design plans drafted comply with both the EPRs and best practice principles.
- 4.3 In their presentations at the Committee Hearing, MRPV’s relevant experts, Mr Michael Barlow, and Ms Kirsten Bauer, both expressed support for provisions of some form of design control or independent oversight in the EPRs.
- 4.4 Further, no current design for the bridged section of the Project at the Waterways Estate has been provided by MRPV. The highly visible nature of the bridged section and the sensitive area in which the bridged section is to be located, seeking some certainty and oversight as to the ultimate design outcome is a critical matter to Council and on behalf of the residents and visitors.
- 4.5 As with earlier comments in these submission incorporating this review requirement (ie appointing someone external) as a contractual obligation of the “D & C” contractor, is inadequate.
- 4.6 For these reasons, Council seeks that the EPRs as they relate to landscape and urban design be amended in three ways:
- 4.6.1 that the Office of the Victorian Government Architect (**OVGA**) be appointed to review existing and future plans as they related to the

relevant EPRs and that the recommendations of the OVGA be complied with to the extent practicable (proposed EPR LV9);

4.6.2 that Council be specified as a key stakeholder to be consulted throughout the design process; and

4.6.3 critical design objections and elements are specified in the EPRs.

(proposed EPRs LV1 and LV2).

4.7 Other drivers for Council's firm view on this issue of urban design include:

- That urban and built form design was raised by Council and others through the technical reference group and any reference to it was left out of the EPRs, in stark contrast to EPRs for other projects such as the Westgate Tunnel project;
- No equivalent of the Urban Design Approval Panel (**UDAP**) advanced for the LXRA projects was advanced;
- A number of urban design recommendations made by *Aspect* such as the connection at Chadwick Reserve or the use of a board walk south of Bowen Parkway, and other design objectives, were left out of the EES or the EPRs;
- There was consultation with the Office of the Victorian Government Architect (**OVGA**) resulting in recommendations regarding urban design. These gained no traction;
- The lack of existing conceptual designs for various components including, crucially, the bridged sections through waterways and the various barriers.

4.8 The likely better outcome of a sound design review process, including appropriate stakeholders and an overarching view of an independent entity should be fairly obvious. Opposition to that based, principally on administration or delay does not deny the validity of that process.

4.9 The current proposition is the entire design preparation will be undertaken by a contractor who will naturally be seeking to implement the Project at the best price. The contractor's obligations include obligations to comply with the EPRs however (at least until the first day of this IAC hearing) there were no EPRs in relation to design.

4.10 The requested changes to EPRs LV1 and LV2 are explained in more detail below.

Landscape design and urban (LV1)

- 4.11 The Council submission seeks that EPR LV1 specify Council as a key stakeholder to be consulted with respect to the landscape and urban design plans for the Project. Council's preference would be to participate in the design process through an Urban Design Advisory Panel (**UDAP**), or a like process.

Built form design (LV2)

- 4.12 There is considerable overlap between the recommendations of Ms Kirsten Bauer, and that of Council's expert visual and urban design witnesses, Ms Maddy Bisits and Mr Tim Biles. Specifically, that that ultimate Project design achieve a high quality, recessive outcome, utilising muted colour palettes to minimise landscape and visual impacts associated with the most affected and/or sensitive areas along the Project alignment. Specifically Waterways and the Mordialloc Creek crossing, given the bridge section portion of the Project through this area, Braeside Park and Aspendale Gardens.
- 4.13 Council seeks, that these built form objections/elements be specified in the EPRs by way of Council's suggested amended EPR LV2.
- 4.14 We note that, other than by the EPRs (Council recommends this approach) or the Incorporated Document (no recommended) there is no other way to provide direction on design outcome.

EPR – Specific Requirements

- 4.15 To date there has been no location to insert a detailed or specific requirement. These have been added in the second part of a new LV2 in Council's suggestion. Equally a separate EPR could be set up for these.
- 4.16 The merit of these proposals is addressed in other parts of this submission however currently the suggested inclusions are:
- A minimum width of 6 metres to the underpass at Braeside Park;
 - A new underpass at Chadwick Reserve;
 - A solid barrier, of not less than 3 metres height, along the Braeside Park interface (east);
 - A board walk as the Project SUP south of Bowen Parkway;

- Space allowance for the “purple pipe”;
- An underpass or overpass (inevitably most likely an overpass) connection at the Dingley Bypass from north to south on the east side;
- Allowances for a secondary SUP on the west side.

4.17 Unless these elements are quite specifically designated then there is a prospect that they will not be provided (or allowed for) or they will be provided as a reduced or less than best practice outcome.

5 SHARED USER PATHWAY AND KEY CONNECTIONS ALONG PROJECT ALIGNMENT

5.1 Council seeks four key connections built along the Project alignment to allow users high quality access to the shared user pathway (**SUP**), including from the “Chain of Parks”.

Braeside/Park Way

5.2 The first key connection is a widened underpass from Park Way to Braeside Park. A widened underpass has been supported by Ms Bauer in both her written and oral evidence, where she states that the underpass should be “as wide as possible”. Council seeks that the underpass be not less than 6 metres wide to ensure a sense of connectivity, improve sightlines for users entering and moving through the underpass.

5.3 Ms Bisits evidence is that the underpass should be a minimum of 6 metres, similarly Mr Biles supports that width. Notably that must also be with a best practice design outcome including appropriate safety standards and the Committee has received evidence about that.

5.4 This is an absolutely crucial connection and if the proponent is successful in its opposition to the Chadwick Reserve connection, it will be the only connection other than via road along the entire 9.7 kilometre freeway.

5.5 The only proposition against the 6 metre width is that it will increase costs. No evidence of any kind has been advanced about what the cost increase might be to extend that underpass by, probably, about 2.5 metres from that which MRPV may have preferred, noting the 3.6 minimum referred to in the EES. It should be remembered that this cost increase occurs without, presently, the Project being required to provide a single overpass over the full 9.7 kilometre section.

- 5.6 It is interesting to consider that in the context of travel down any new or even somewhat dated freeways, like East Link, the Eastern Freeway or Peninsula Link. Key parts of those proposals include in some cases striking overpass arrangements for pedestrian and bikes. There are multiple such connections to the benefit of the local and greater community.

SUP as board walk

- 5.7 The second key connection is the continuation of the SUP as a board walk, south of Bowen Parkway, going east to west under the elevated carriageway at Waterways Estate, to meet the western side of the Project alignment. Such a connection was featured in the preliminary SUP plans shown to Council and was removed from subsequent versions, apparently for 'ecological reasons'. MRPV's ecological expert, Mr Rodney van der Ree as well as Council's ecological expert, Mr Lance Lloyd indicated they believed there was no obvious substantive ecological reason why a board walk could not be constructed.
- 5.8 When one applies a level of common sense to this issue, the proposition that the construction of the freeway bridge with driven piles and the level of disturbance that will occur through this section, versus the addition of a modest board walk, tipping the environmental impact over the brink, is highly dubious.
- 5.9 Different reasons exist for the board walk which include:
- It being a more direct connection without the "dog leg" up Bowen Parkway;
 - Bringing SUP/board walk users closer to the attractive wetland areas;
 - Mr Biles view that in addition to those other elements there is an element of "compensation" to the more local users of the wetland.
- 5.10 The current bicycle path along Bowen Parkway is a Council asset installed for local connection purposes. It is not a shared user pathway envisaged to service a new freeway in the style of that which exists along East Link or Eastern Freeway. It is simply a cheaper and less than ideal outcome that provides a cost benefit to the Project.
- 5.11 If the Committee did not recommend the inclusion of the board walk then, with respect, it will be necessary to recommend inclusion of improvements to the existing Bowen Parkway cycle and pedestrian path. It is not clear from the EES that is envisaged. Presently that pathway is (approximately) a little over 2 metres wide and is not

designed to serve as a major SUP along a freeway alignment. The Committee will note interaction with school users and other pedestrians at the busy time of the site inspection, who will now need to share that narrower Bowen Parkway connection with those broader SUP users.

Chadwick Reserve

- 5.12 The third key connection is an underpass connection from the western side of the Project alignment generally adjacent to Elm Tree Drive, Dingley Village, connecting to the SUP at, approximately, Chadwick Reserve. Council considers such a connection critical given that the SUP at this portion of the alignment is approximately 1.5 kilometres in length, without any points of access in between. Nearmaps and Google Maps clearly depict an informal connection at this location that has been created by continual use over time in the existing Project reservation. The additional aerial images of the “depot” show those depot tracks exist independently from the connecting pathway.
- 5.13 Similarly, given that Council plans to develop Chadwick Reserve to, include a potential wetlands, Council also seeks to ensure cyclist and pedestrian access to Chadwick Reserve from Dingley Village. The connection opportunity received support from Ms Bauer in both her written and oral evidence.
- 5.14 Notably MRPV’s own consultants *Aspect* recommended this as an appropriate connection for consideration, as did the OVGA. With respect no proper or adequate assessment of this connection was subsequently undertaken by the proponent despite those recommendations. The only response on this issue is that pedestrian counts were done that indicate a lesser usage and assertions (arising at this hearing) that this would be a costly exercise because it might be (it probably would be) more difficult to achieve because of the lower embankment height at this location.
- 5.15 We suggest there is validity in the proposition that “*if you build it they will come*”. The brand new 3 metre wide SUP is designed to encourage people to ride and walk along the SUP. As noted in the Message Consultant material there are bike paths on road within the industrial estate adjoining and Council’s long term aspirations locate a secondary bike and pedestrian path along the western alignment. The presence of a new underpass will see its use dramatically increase in our respectful opinion.
- 5.16 In terms of connection to the western side (from or near Chadwick) the Proponent has (at least to date) apparently undertaken no investigations. Council and titles office records show Elm Drive and Holly Streets as private roads, there being obvious

potential locations for some form of shared use pathway. A number of entities including Council and Roads Corporation, have the power to acquire an easement, or more likely freehold, access and it is readily acknowledged that this would come at increased cost, including compensation. Notably this is a project of tens of millions of dollars and there and will continue to be “swings and roundabouts” in cost. For example the acquisition and compensation that may no longer be required because of the alternate Woodlands Drive proposal will be a cost saving. An additional acquisition cost to achieve a connection at this location will be just that, additional.

- 5.17 Most importantly this will be the only opportunity to achieve this connection. Like the argument advanced against an underpass at Dingley Bypass the potential to retrofit an underpass under two carriageways of existing freeway is, pragmatically, impossible.
- 5.18 We return to the point about this being a “greenfield” site. Various Planning Scheme policy, the proponents own consultants, the Office of the Victorian Government Architect, Council’s independent experts and a range of others believe that this connection opportunity should at the very least be investigated and that investigation should be the subject of third party consultation and independent review.

Dingley Bypass – overpass/underpass connection

- 5.19 The fourth connection is for MRPV to provide an overpass connection at the Dingley Bypass, from north to south, on the eastern side, in accordance with the long-term plan to connect the “Chain of Parks” in the Kingston City Council Green Wedge Management Plan 2012.
- 5.20 In addition there is an existing SUP on the north side of the Dingley Bypass and with the introduction of the freeway path users will now want to gain access to or from the new SUP.
- 5.21 Council submits that the introduction of this freeway does trigger or warrant the construction of this overpass albeit initial demand would only be from the Dingley Bypass SUP, with future demand coming from the Chain of Parks proposal.
- 5.22 One could also make the argument that its development might be deferred until the combination of the implementation of the Chain of Parks proposal and a later expansion of the freeway to 6 lanes, however we respectfully suggest that such an obligation at that time, sought to be imposed on the then road operator will similarly be resisted.

- 5.23 As elsewhere indicated there are multiple examples of bridging structures for pedestrians and bicycles incorporated in infrastructure projects. These include the recent LXRA Projects and the multiple examples along East Link in more recent years.
- 5.24 If the Committee (or indeed the Minister on subsequent consideration) were not minded to impose the overpass connection then as a minimum, requirements should be incorporated into the EPRs which impose:
- *Design that ensures the ability for the future delivery of an overpass connection from the north side of Dingley Bypass, to the eastern alignment of the proposed shared user path; and*
 - *At grade modifications including signalling and construction, to the Dingley Bypass to allow safe and efficient crossing by pedestrians and bicycle users from north to south on the eastern side of the proposed freeway alignment connecting to the proposed SUP.*

Additional Allowance

- 5.25 A future connection which this Project should not be required to build is the proposed future western SUP. Rather the Project should be required to take account of that potential in its design and ensure adequate space is left for that, unless that is significantly impractical or cost prohibitive. It would appear achievable.
- 5.26 An SUP on the western side would be the Council's responsibility to implement and is in line with Council's connections objectives. It could be included as a design allowance at the new LV2.

6 MULTI-FUNCTION FAUNA BARRIER

- 6.1 It is apparent that the decision to establish fauna barriers at 2 metres in height, whilst principally directed at encouraging birds to fly over the proposed freeway, is not drawn from any specific or confident recommendation that 2 metres is an adequate height. All ecological (bird) experts indicated preference towards a likely higher barrier to achieve bird flight up and over the freeway, including over larger trucks.
- 6.2 Council has suggested an EPR which requires further consultation, research and recommendations to try and achieve an "optimal" height for this purpose.
- 6.3 It also appears to be agreed that the fauna barrier should be constructed to achieve an acoustic outcome, namely serve multiple purposes of both a fauna barrier, an

acoustic measure for the benefit of birdlife and human park visitors and finally a visual barrier from the park.

- 6.4 Mr van der Ree indicated in his evidence that in preference to effectively a wire mesh fence over the northern section of Braeside Park a low solid barrier of a little over 1 metre in height with a lip, to discourage earth bound fauna, should be preferred. It is not entirely clear where that might be located but it appears responsible to suggest that it should not be located between the SUP and the park as those riding along the shared user path will no doubt want to obtain access to Braeside Park.
- 6.5 With the addition of another 2 metres on that fauna barrier along the northern sections of Braeside Park one can immediately achieve a fauna, visual and acoustic barrier.

7 ACOUSTIC IMPACTS

- 7.1 The expert for and submissions of, MRPV in relation to acoustics are that the VicRoads Policy ought to be adopted, however it ought not adopted the approach where the background level is 50 dB or less with a noise increase in excess of 12 dB. In addition MRPV opposes the provision of any acoustic measures along the boundary of Braeside Park except for the concession MRPV has offered to Parks Victoria in relation to its buildings. Notably that concession was not offered as part of the EES but in response to Parks Victoria submissions and is also outside VicRoads Policy.
- 7.2 It is also, now, clear that the multifunction fauna barrier will provide acoustic benefit however that was not original intention. Rather it was a happy coincidence, including for the birdlife within the relevant adjacent wetlands.
- 7.3 The other relevant part of MRPV's evidence is that its expert does not wish to see expanded and detailed EPRs of the type advanced by Mr Leo. In an honest and forthright response Mr Dowsett indicated that the audit and review obligations in relation to the acoustic measures for the Westgate Tunnel Project created a significant burden both administrative and cost. It is respectfully suggested that this is not a reason for failing to impose quite specific obligations, in fact it may well be a reason why it is necessary to impose such obligations.
- 7.4 Mr Leo on behalf of the Kingston City Council supports the imposition of acoustic controls which:

- Follow the VicRoads policy, including both the consideration of the “plus 12 dB” proposition, but also in keeping with VicRoads policy, assessing that on a site by site visual or built form impact basis;
- Ensuring the fauna barrier operates as an acoustic control;
- Protecting Braeside Park over its entire alignment with acoustic barriers that may in part take the form of fauna barriers.

7.5 Notably in the Westgate Tunnel Project whilst the inclusion of target noise levels for the recreation areas were removed, walls at particular locations of particular heights were specified. Mr Leo will confirm that these heights actually achieved those suggested noise levels but rather than including the noise level objective the heights were adopted as a blunter or clearer form of control for specific locations. In effect that is what the Council is recommending in this case, namely a clear requirement of 3 metres.

7.6 The Committee asked the proponent to produce assessments and/or a plan which shows the height of barriers which achieve levels of 63 to 68 dB for Braeside Park and 60 dB for the wetland areas.

7.7 In a blunt solution we would submit a simplistic and effective approach is a minimum 3 metre high barrier along the entire length of Braeside Park.

7.8 From an acoustic prospective if the precise targets of 60 dB and 63 dB are not achieved it will be very likely something close to that will be achieved.

7.9 Also the use of a constant height along the Braeside Park alignment meets the design objective of quality longitudinal outcomes, without variations in materials and height. The current MRPV proposal sees a 2 metre barrier of indeterminate materials which runs to a location at least near to the Parks Victoria building, thereafter a 3 metre barrier imposed in an ad-hoc response to Parks Victoria, thereafter a green mesh fence, thereafter an acoustic barrier.

7.10 A concern raised by Mr Dowsett is that if this proposal allows for barriers on Braeside Park then this will set a “precedent” from that road authorities will be asked to provide acoustic measures to all recreational areas.

7.11 Firstly there is no legal precedent set, each site can and will be assessed on a case by case basis.

- 7.12 There will be cases where the relevant abutting recreational areas do not warrant acoustic protection however this is not one of those cases.
- 7.13 The fact that this park is located in an urban area and has Moorabbin Airport nearby, is no reason to treat it less carefully from an acoustic prospective, in fact it is arguable a reason to treat it more carefully.
- 7.14 Apparently noise levels from Moorabbin Airport may increase and it may, from time to time, see noise levels in excess of 60 dB. None of that (current or future) changes the proposition that areas of Braeside Park will see noise increases of 10 dB from that which is current. Those parties most affected will be uses of the Howard Trail and anybody seeking to enjoy the western areas of Braeside Park.
- 7.15 The Council does not agree with or accept propositions advanced by Mr Dowsett that some park users might just move away towards the east, effectively creating a less attractive zone pushing people to other locations in the park.

8 BRAESIDE PARK

- 8.1 We addressed elsewhere the issues of the multi-function fauna barrier at Braeside Park and acoustic impacts on Braeside Park. This section is designed to bring those issues together with a visual aspect and also highlight the multiple benefits offered by the one solution (ie some form of barrier) along that entire eastern interface.
- 8.2 Comments in relation to the multi-function fauna barrier and the acoustic impacts are already dealt with.
- 8.3 Message Consultants plans or concept plans show embankments abutting Braeside Park at above 4 metres in areas where there is no intention to have any form of visual barrier. There is a reasonable set back however rather than the view from the park to the current environment (and ground levels) the visual impact of passing traffic will be substantially exacerbated by the fact that it raised up in the view line at least 4 metres, then decreasing slightly towards the south and increasing slightly towards the north. It will present as a totally changed environment to that which the park land currently enjoys and those which enter and use these areas of the park will effectively do so "in spite of" this presence.
- 8.4 What is now eventuating is a likely requirement that the multi-function fauna barriers are increased in height, potentially to as high as 3 or even 4 metres from the south, further MRPV have accepted an obligation to create 3 metre high acoustic barriers at or around the Parks Victoria buildings and finally the fauna barrier along the northern

section is likely to be a low concrete or solid construction. Thereafter there is an acoustic barrier coming down from the north. The net result is a mishmash of treatments along the eastern boundary, made particularly worse if you return to the proposition of simply a wire fence for a part of the northern section as originally envisaged.

- 8.5 Notably a 2 metre height along this northern section will be inadequate to block the view of larger vehicles, on the elevated platform, created by the embankments.
- 8.6 The clear requirement suggested by the Council of a minimum 3 metres along the entire alignment will be far more able to achieve a consistent longitudinal design outcome and every sense is a multi-function barrier in that it is providing:
- Visual relief for park users;
 - Acoustic relief for both humans and birds of the wetlands;
 - Significant acoustic and visual relief for users of the shared use pathway;
 - Functioning as a fauna barrier along the entire section; and
 - Could be increased to 4 metres (or more) at the south to meet acoustic targets or achieve higher bird flight.
- 8.7 Finally all of the experts have indicated a preference towards protection of the park users and their views and impacts as opposed to a balance toward visual appreciation and access for freeway users. Notably, however, Mr Biles gave evidence (after extensive analysis) that the visual outcome for freeway travellers with Braeside Park abutting (behind a 3 metre barrier) would still be of some benefit to those travellers.

9 WETLANDS

- 9.1 A key issue of Council is that there is no existing proposed design, proposed construction methodology or proposed reinstatement for the works within the Waterways wetland.
- 9.2 Ecological evidence from MRPV had no knowledge of what construction methods were likely to be utilised to limit environmental impacts during the construction phase and no detail was advanced in terms of reinstatement methodology. Notably, given the likely conclusion in respect of limited impact on Edithvale Wetlands and the fact that actual construction is occurring in the Waterways wetland, this is the highest ecological environmental impact of the entire proposal. Council's evidence was that the sampling or testing in these localities was limited and Mr Lloyd was particularly concerned both at a general level in the capacity of such projects to achieve long term

reinstatement outcomes but at a specific level, the lack of information about intentions for the Project.

- 9.3 The Council has recommended particular changes to the EPRs to reflect its concerns and on the basis that the Committee is prepared to assume that it is significantly more likely than not than the construction and remediation can be achieved then at the very least we suggest changes such as those suggested ought to be incorporated.
- 9.4 Importantly, as a key motivator of the EES there is agreement amongst the various ecologists that there would be minimal and acceptable impacts at Edithvale Wetlands, which is why much of the attention has turned back towards the directly affected wetlands.
- 9.5 The impact on wetlands at Braeside Park and Woodlands Industrial Estate relate to the ability of fauna (including birds) to still move between the various wetlands. This being achieved for ground based fauna through culverts or fauna passages and for birds not so much created as incorporating design (in terms of the multi-function fauna barriers), to improve safety based on flight height. Separate submissions are made about the MFFBs and height.
- 9.6 In relation to acoustic impacts of birdlife on wetlands various experts have reviewed various articles, reports or documents including most recently the proponent's expert references to the CALTRAN work from California. Whilst all express reservations around the relevant assessments and reports it does appear to be the relatively consistent theme and that is there is limited impact, if any, if the noise levels in those wetlands is at 60 dB or below. Notably, Mr Dowsett's acoustic evidence on the assumption that the MFFBs were designed to provide proper acoustic protection at 2 metres in height there will still be significant portions of the Braeside Park wetland and Woodland wetland at above 60 dB.
- 9.7 None of the bird ecologist expert could categorically assert that these noise levels immediately adjacent to the freeway, up to the approximately 60 dB line would have significant adverse impact upon birdlife, nor was there categorical opinion that it would not have some adverse impact.
- 9.8 If it comes to pass, as an outcome of review to establish the most appropriate multi-function barrier height for bird flight that these barriers are increased then the provision of the additional acoustic protection to the birdlife in the wetland would be happy and welcome coincidence.

10 HERITAGE OVERLAY HO104

- 10.1 We provide the Committee with a copy of the heritage citation which in turn led to the Heritage Overlay. Importantly reference to the sewerage infrastructure, in addition to the actual buildings, is prominent within that assessment.
- 10.2 It is accepted that the locality is currently incorrectly mapped however if that is rectified it should be rectified in a manner that either replaces the Heritage Overlay over the infrastructure and buildings it was intended to be placed upon and not arbitrarily reduced to just two buildings, as it currently proposed in the amendment.
- 10.3 Council accepts responsibility for its late recognition of the deficiency associated with the proposal to “fix up” the mapping error which was not raised in Council’s original submission to the EES, however that does not solve the more important point about what areas should be mapped, or not.
- 10.4 Whilst it is speculation it appears likely that there are significant portions of the original circle shape that need not be mapped. This appears to include (or more accurately should exclude) any land on the actual freeway reservation.
- 10.5 Apparently Parks Victoria wish to see the Heritage Overlay excluded from one of the three buildings at the locality which has no particular heritage merit. Council is not opposed to that in principle however there has been no material advanced which assists in deciding which parts of the original intended mapping should now be excluded.
- 10.6 A suggestion that just the two buildings plus effectively an outline of the sewerage infrastructure has been considered however, that is subject to:
- The likely need for at least some curtilage around or between the designated elements; and
 - A proper heritage assessment before that final determination (of inclusion or exclusion) can be made.
- 10.7 In relation to the Planning Scheme Amendment for the Heritage Overlay map we respectfully request that the Committee recommend a further heritage assessment be obtained to clarify which elements should be incorporated in a new map and in turn a new map could be prepared.
- 10.8 With respect this process could occur in a matter of weeks and the actual adoption of the amendment to the plan would not be substantially delayed and certainly would not

need to delay the report of this Committee. Our recommendation to the Council is that this work is got underway, urgently.

- 10.9 There is also an EPR that refers to non-cultural heritage which, similar to the proposed mapping change, only refers to the two buildings. We respectfully suggest that that is not justified and that there should be an amendment to the EPR (as Council has already suggested in it redraft) to recognise the sewerage infrastructure.

11 GROUNDWATER

- 11.1 To the extent that the EES terms of reference should be interpreted to require groundwater modelling for the entire project area, that has not occurred. A decision was made, we suggest largely influenced by the existing model for the LXRA projects at Cheltenham and Bonbeach, to exclude the northern portion of the project area above Lower Dandenong Road.
- 11.2 Whilst not entirely clear it was also likely this decision was influenced by the propensity of landfills in the northern locality, including uncapped and unlined landfills, which are impacting local groundwater in any event. The proposition is that groundwater ought be dealt with at a site specific level, in relation to the landfill relevant to the Project site.
- 11.3 Ms Jones for MRPV had indicated that as the project proceeds additional monitoring wells ought be installed in appropriate locations near the Project site landfill to establish baseline data and then those wells should be monitored over an appropriate period of time.
- 11.4 Limited details around construction methodology at the landfill have been provided however assurances are provided by MRPV experts that construction ought to be able to be carried out so as to mitigate risk, particularly in terms of the driven pile approach and the bridging of the landfill surface.
- 11.5 What is notable from the minimal testing which occurred is the presence of PFAS in adjacent water drains, for example, with those drainage lines finding their way toward the south in the surface water environment. This Committee would have better informed in relation to the risks of the landfill if that additional groundwater work has been done already and the Committee will need to be satisfied that measures to install additional monitoring will occur sufficiently soon to set up that base line and measure impacts (if any). In terms of the EPRs it should first be noted that groundwater is initially dealt with in conjunction with surface water in the EPRs.

- 11.6 The proposal in the exhibited EPRs in relation to monitoring refers to the utilisation of **existing** monitoring, no additional monitoring was proposed. Ms Jones accepted that this extra monitoring is required and certainly it is recommended by Mr Smitt. The Council recommended EPRs suggest a standalone groundwater EPR, suggested GW1 to provide some specificity in relation to these requirements.
- 11.7 The Committee will have heard the differing propositions regarding whether the 99 percentile ought be adopted for testing of surface water and groundwater and is invited to make a recommendation in relation to this aspect.

12 SURFACE WATER

- 12.1 Council determined that it would not call Mr Bishop, principally because his work (including former work for the Kingston City Council) related particularly to impacts on localised flooding or inundation events plus particularly impacts on Council drainage infrastructure.
- 12.2 In addition to satisfaction about that issue it is noted that the final EPR requires no impact on the infrastructure of various agencies, including Kingston City Council.
- 12.3 Surface waters have however been raised as an issue in relation to impact on the ecology and particularly the Waterways wetland and reinstatement and then as a separate issue the landfill construction and the capacity of contamination (not existing but arising from the Project) to enter the surface water system. Those elements are otherwise dealt with in this submission.
- 12.4 Finally Council has suggested EPR changes key amongst which are:
- Additional monitoring;
 - Adoption of the 99 percentile; and
 - A ten year period for the monitoring.

13 WOODLANDS DRIVE AMENDMENT

- 13.1 The first thing apparent is that Woodland Drive is a busy connection, including use by larger vehicles accessing the Woodlands Industrial Estate.
- 13.2 The original proposal of truncating Woodland Drive had outcomes which included:
- Diverting north bound traffic (including heavy vehicles) through a 90 degree turn, into "local" industrial streets with a minimum of two new turning movements;

- Remove the ability to turn into Woodland Drive from the north;
 - Involved the acquisition of private land, including potentially through compulsion.
- 13.3 Kingston City Council (including, and from its traffic personnel) indicate that this alternative of the extension of Woodland Drive is much preferred, effectively as a counter to the negatives expressed above.
- 13.4 An effort should be made, if possible, to modify the proposed Woodland Drive connection from the freeway (south) to minimise impact on number 21 Woodland Drive. That site is occupied by office/light industrial uses and at the north ends in a triangle which is Owners Corporation land. There is access around the back of these separate lots or units which should be maintained. It appears plausible that if any land needed to be acquired from the Owners Corporation this might be achieved with a loss “only” of Owners Corporation land and some car parks and this rear access and exit from this property could still be achieved.
- 13.5 MRPV has provided responses in relation to other less obvious potential impacts of a shift to this option, such as impacts on ecology and surface water which although preliminary appear to be positive.

14 RECLAIMED WATER PIPELINE OPPORTUNITY

- 14.1 A unique, ‘once in a lifetime’ opportunity exists for a reclaimed water pipeline, predominately under the SUP, along the Project alignment. The pipeline would be to provide water from the South Eastern Petrification Plant (**SEPP**) to market gardens, and other high-volume water users in Council’s Green Wedge, as well as the Monash National Employment and Innovation Cluster (**NEIC**) (see the proposed pipeline alignment and the proximity of the proposed pipeline to the NEIC at **Attachment 1** and **Attachment 2**, respectively). This opportunity enjoys the broad support of Council, the Department of Environment, Land, Water and Planning (**DELWP**), and South East Water (see letters of support from DELWP and South East Water at **Attachment 3** and **Attachment 4**, respectively).
- 14.2 The pipeline could be built as part of the Project, with the cost of construction to be reimbursed to MRPV. Or it could be built at a later date.
- 14.3 If later, Council would seek that the SUP and associated vegetation on the perimeter of the SUP, is built at a width and alignment to accommodate the construction of the

pipeline in the future, as well as provide sufficient space for future access and maintenance by vehicles.

- 14.4 The Incorporated Document already provides for the installation of utilities and services, and no amendments specifying one of the above arrangements regarding construction of the pipeline would need to be made.

15 STORMWATER/FUTURE WETLAND OPPORTUNITIES

- 15.1 Council has been in ongoing discussions with MRPV and prior to that VicRoads representatives regarding appropriate drainage solutions, in relation to stormwater runoff.
- 15.2 Dealing with stormwater discharging from the Project could be incorporated into local stormwater treatment and even re-use proposals.

16 SOLAR INSTALLATION

- 16.1 Council's Green Wedge Plan (April 2012) notes that a viable use of former landfill sites could be a Solar Energy Park (page 67) as follows:

"A Solar Park in the Green Wedge has many benefits including: close proximity to the existing electricity grid (most solar parks to date are in remote locations); and minimal off site impacts".

- 16.2 On 22 May 2017 Council supported officers "commencement of a feasibility study investigating the potential for renewable energy investment in the Kingston Green Wedge". That work has now been completed however the results of which are confidential due to some commercial aspects.
- 16.3 Council's Climate Change Strategy 2018 (page 97) identified large scale solar as an option for achieving net zero corporate emissions by 2050 and 20% reduction in community emissions by 2025. These targets are consistent with the Victorian Government 2020 emissions reduction target of 15-20% below 2005 levels as outlined in Victoria's Climate Change Framework (page 5).
- 16.4 VicRoads have an Sustainability and Climate Change Strategy 2015-2020 which has the vision of:

"Our vision is to make lives better for our road users, the local and global community and future generations. As an organisation we will balance the needs of all groups of society. While addressing road user needs we will also seek to improve the broader community's health and wellbeing while protecting their environmental values. To do this, we need to recognise that our impact extends beyond the road corridor, within the broader community and long after construction is complete".

- 16.5 Recognition of the ability or preference to investigate opportunities with MRPV and VicRoads for solar installations along the Freeway alignment may ideally be incorporated into the final EES or if considered even more appropriate, in an EPR.

17 CONCLUSION

- 17.1 Kingston City Council has valued the opportunity to participate both through this Committee Hearing and earlier with MRPV and other stakeholders through the EES preparation process.
- 17.2 Kingston City Council invites the Committee's consideration of the Project and the works undertaken through the EES, noting the need for and appropriateness of, various recommendations to refine and improve the EES outcomes in the form of modifications to the Incorporated Document or the EPRs.

6 March 2019



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for and on behalf of Kingston City Council