

**NORTH EAST LINK PROJECT**  
**INQUIRY AND ADVISORY COMMITTEE**  
**OPENING SUBMISSIONS**  
**BANYULE, BOROONDARA AND WHITEHORSE CITY COUNCILS**

**Introduction**

1. These submissions are made on behalf of Banyule, Boroondara and Whitehorse City Councils (“the Councils” unless one or other Council is referred to specifically) in accordance with order [75] made by the IAC on 29 June 2019.
2. The position of the Councils is that, **if** the project is to proceed, there are a number of changes which should be made to it, which would result in a better match between the benefits which the project is said to deliver to the State, and the cost that the local communities are asked to bear in the name of that benefit.

**Framework**

3. The IAC is charged with preparing a report which, among other things, must make findings about whether:
  - (a) the project has the capacity to achieve acceptable environmental outcomes;

- (b) there are specific measures that are necessary and appropriate to prevent, mitigate or offset environmental effects; and
  - (c) there are any appropriate conditions that may be imposed on any approval for the project or changes that should be made to the draft PSA in order to ensure that the environmental effects of the project are **acceptable**.
4. In each of these terms of reference, the concluding line reads "*having regard to legislation, policy, best practice, and the principles and objectives of ecologically sustainable development*".
  5. In coming to its conclusions, the IAC (and ultimately the Minister) must engage with the policy matrix of the P&E Act.
  6. Planning approval for the project is required in the absence of legislation. Indeed the method and form of planning approval is foreshadowed as part of this process.
  7. Any form of planning approval requires the decision maker to engage with the VPPs, which in turn requires planning authorities to strive to integrate the range of planning policies relevant to the matters and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations<sup>1</sup>.

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<sup>1</sup> VPP Clause 71.02-3

8. It is relevant and important for the IAC to identify where the net community benefit lies in the context of this project, what is influencing the flow of those benefits and what changes are required to produce a *net* community benefit.
9. Any assessment of whether the outcome will be environmentally acceptable, where it is accepted that there will be negative impacts upon the environment, requires consideration of the benefits of the project – because in most cases it will be the overall benefits of the project (whether one a macro or a micro level) that will render a less than optimal environmental outcome “acceptable”. In the context of this project, the legislative framework taken as a whole, and the interconnectedness of the different aspects of the environment (physical, social, economic) there really is no other logical or rational way for the IAC to approach its task.
10. There may be legitimate debate about whether the currently proposed alignment is the most appropriate. That is for another place and time. In the context of this hearing, the Councils will not be agitating for an alternative alignment.
11. The Councils accept the broad principle that there is strategic planning support for **some** link between the north and the east and south east.
12. The Councils also accept that this hearing is concerned with whether this particular project (which is no more than a concept design), within this project boundary, is a project that answers the strategic call for such a link.

13. The Councils accept that the Government's policy position, and the content of the business case and other high level Government policy documents, identify in broad terms, the current proposed alignment as the nominal route for the connection.
14. That said, the Government's policy position as it presently stands is not, and has never been, informed by any detailed environmental assessment, let alone a detailed environmental assessment of this particular project or concept design.
15. Any Government policy statements which have given putative support for the desirability of such a link project have all been predicated upon the need for a thorough environmental assessment of project within this corridor.
16. The project *per se* is not endorsed by the Government policy framework, only the rough corridor or alignment within which it is located.
17. The IAC should not discount the possibility that its report and findings, properly considered and reached, might cause the Government to rethink its stated policy position, or its position on this project.
18. While the Government maintains its policy support for this corridor, it is for the planning decision makers (including the Minister for Planning) to determine whether a particular project is worthy of actual approval.
19. The project *per se* will only be able to be described as one which achieves acceptable environmental outcomes if it can be said that all of the inevitable physical, social and economic disturbance required to bring the project to fruition can be said to be worth it overall.

20. This requires consideration of the environmental impacts of the project (in physical, social and economic terms) against the benefits said to accrue to the community. Depending on the nature of the issue, this may require consideration at a micro and at a macro level.
21. The Councils are deeply concerned about the state of the EES that was published. The resources of the Councils, and no doubt other councils and members of the community, have (at considerable cost) been deployed reviewing an extensive, repetitive document which in the end, fails to address the very reason for its existence – a thoroughly investigated assessment of the potential environmental effects of the project.
22. The Councils concerns are supported by the content of expert evidence filed on its behalf 15 July 2019.
23. On and from that date, a considerable volume of material has been filed which, in substance, supplements the published EES. Some of that material was received yesterday.
24. As at the date of finalising this written submission, the Councils are not in a position to know whether or not this new information cures the defects of the published EES, and if so, what the effect of some of these matters might be on other parts of their respective cases.
25. The Councils acknowledge that further information may alleviate some of their concerns, but on the whole, the case for the Councils is that, even assuming the absence of an “environmental show stopper”, the reference design project remains one which simply fails to strike the right balance

between the actual benefits which will flow from the project (properly understood) and the impact that it will have on the environment.

### **Changes**

26. The reference project, or anything like it, will have a significant effect on the local communities of the Councils.
27. During the accompanied inspection the Councils were not given the opportunity to show the IAC the locations which are most affected by the project, and to point matters out on the ground. It has been suggested that the IAC will independently visit locations nominated by the Councils. That is unsatisfactory to the Councils.
28. During the running of the Councils' case, the Councils intend to dedicate some of their hearing time to a further inspection. The bus will be the appropriate size to access the spaces that will be truly affected by the proposal. It will involve visiting areas of importance to the Councils case.
29. Assuming that the traffic modelling projections of the proponent are sufficiently robust, and that the future traffic generation will be as predicted by the proponent, the design of the connections to the roads that NELP has advanced is not particularly thoughtful.
30. A more considered design of the roads themselves would produce a smaller footprint, and create the opportunity for less impact. If the Councils' starting point is accepted, namely that a more efficient design is available to meet the traffic demand said by the proponent to exist, then there would likely be:

- (a) Less environmental impact overall;
  - (b) Less disturbance to important public facilities;
  - (c) More retained and useable public open space;
  - (d) Less direct impact of the project upon sensitive residential interfaces; and
  - (e) Less expense to the public purse.
31. Assuming everything else is equal, a reduction in the footprint of the project:
- (a) For those parts of Banyule affected by the project, this will mean:
    - (i) Less interruption to important surface water systems feeding the Banyule wetlands, AK Lines retarding basin and Kalparrin Gardens water harvesting and water quality assets;
    - (ii) More opportunity to provide Water Sensitive Urban Design and an Integrated Water Management system in accordance with SEPP;
    - (iii) There would be no trench, further dividing the municipality;
    - (iv) More money to make good the integrated transport objectives of the project, such as the creation of a proper bus terminal at Watsonia Station;
    - (v) More efficient interchanges with reduced noise impacts;

- (vi) More cross corridor sustainable transport elements re-connecting suburbs and key destinations;
  - (vii) More investment in Watsonia Activity Centre with improved connectivity, access and economic viability including business continuity;
  - (viii) Less impacts on established vegetation, some of which is classified as nationally environmentally significant;
  - (ix) Extension of existing truck curfews on arterial roads;
  - (x) Reduced impact on community facilities and provision of improvements to existing reserves to accommodate sporting club relocations; and
  - (xi) Retention of existing local road connections to the arterial road network;
- (b) For those parts of Whitehorse affected by the project, will mean:
- (i) The existing reserve of the Eastern Freeway, along with its interfaces north and south, could be largely preserved;
  - (ii) The environmental impact upon the Koonung Creek could be truly minimised, especially negating the need to barrel the Creek;
  - (iii) The open space and habitat corridor which provides an important link through the municipality could be maintained;

- (iv) The human and wildlife community will benefit from the retention of mature vegetation that will continue to thrive;
- (v) Negative impacts to the outlook of adjacent residents would be minimised by not installing new unsightly noise walls within metres of their back fences;
- (vi) Resident's private open spaces will not be compromised by overshadowing from closer noise walls;
- (vii) There will be fewer surface water attenuation requirements;
- (viii) Elimination of the amenity effects of the elevated roadways adjacent to the freeway;
- (ix) The negative experience for pedestrians and cyclists during construction would be lessened;
- (x) The visual amenity for residents and users of the linear open space would continue to be enjoyable
- (xi) The confined experience for cyclists and pedestrians along the narrowed shared path would be eliminated
- (xii) There will be no need to reconstruct Council's newly built boardwalk and other infrastructure around the Valda Avenue Wetlands. The resulting impact on the wildlife of the Wetlands would therefore be considerably reduced.
- (xiii) Reduced visual, noise and air amenity impacts to users of adjacent sporting facilities.

- (xiv) Funding could be reallocated to new walking and cycling infrastructure to partly offset the intrusion of increased vehicle traffic on local and arterial roads within Whitehorse.
- (c) For those parts of Boroondara affected by the project, will mean:
  - (i) Important sporting facilities which serve a regional catchment could remain largely undisturbed once the construction of the NEL is complete ;
  - (ii) The elimination or significant reduction in the overall amenity effects of the elevated roadways adjacent to the freeway;
  - (iii) The loss of public green open space in the Koonung Creek Reserve, a highly valued passive open space reserve of regional significance, is minimised;
  - (iv) The retention of mature canopy and understorey vegetation through the linear corridor along the Koonung Creek, through the Koonung Creek Reserve, the Freeway Golf Course and connecting to the Yarra River that ensures bird life, fauna and vegetation can continue to flourish in an otherwise highly urbanised environment;
  - (v) Residents of Mountain View Road do not suffer a 10m tall, solid noise wall closer to their houses and the loss of native vegetation in front of the current noise wall;
  - (vi) Private open space is not rendered useless by overshadowing from noise walls that have moved closer to residential

properties and/or built two or three times taller than they are currently;

- (vii) Koonung Creek Reserve, Musca Street Reserve and other green public open spaces will not be consumed to the degree proposed by the proponent for construction laydown area purposes, lessening the negative impact on neighbouring residents and public open space users;
- (viii) The Doncaster Road bridge does not need to be demolished and rebuilt ensuring access across the Eastern Freeway to goods, services and schools remains for Boroondara, and other, residents;
- (ix) Bulleen Road does not need to be raised to permit the NEL ramps to pass underneath, ensuring an at-grade access point can be provided directly from Bulleen Road to the Manningham Hotel, Bulleen Park and Ride (or the Boroondara Tennis Centre);
- (x) The highly used Koonung Creek Trail and Main Yarra Trail will, largely, be accessible through construction and users will continue to enjoy walking, running and riding through green public open space as they commute to work and recreate.

- 32. If the future traffic volumes are less than what the concept design is predicated upon, then there would be more opportunity to reduce the impact.
- 33. The three councils represent the interests of a resident population of close to half a million people. The physical areas of most concern and the

issues raised by the Councils are of sufficient importance to warrant changes in the project.

34. Without the changes, the project cannot be said to be in the net community benefit.
35. With these changes the project would be improved, but the question of whether the project is in the net community benefit remains a live issue until such time as the benefits are properly established, and the costs and impacts have been thoroughly investigated.

### **The EES**

36. There remain significant unanswered questions in relation to the environmental effects of the project.
37. The EES process proceeds upon the basis that a public works declaration was made in relation to the project.
38. The EE Act contains nothing about what might be included in an EES, but it does provide that the EES must be submitted to the Minister for his assessment of the environmental effects.
39. Section 3(3) requires the Minister to specify in any order declaring the project to be public works, the procedures and requirements that are to apply to the preparation of the EES.
40. Importantly, sub-paragraph (v) provides that:

*The level of detail of investigations for the EES studies should be consistent with the approach set out in the scoping requirements and be adequate to inform an assessment of the **significance and***

*acceptability of the potential environmental effects of the proposed works, in the context of the Minister Guidelines.*

41. Only after a document answering that description was produced should it have been placed on public exhibition. The published EES is insufficient for the purposes of section 3(3); does not properly address the *EES Scoping Requirements*, July 2018; is inconsistent with the Ministerial Guidelines for Assessment of Environmental Effects, and is generally not fit for purpose, having regard to the extent and complexity of the project. After all, the Government describes NEL as “Victoria’s biggest road project” and it describes this current process as:

*“An EES is Victoria’s most transparent and rigorous impact assessment process. It gives decision makers such as the Minister for Planning the information they need to determine whether planning approvals should be granted and what conditions should apply.”*

42. The various inadequacies of the published EES are documented in the expert evidence filed on behalf of the Councils.
43. In the Councils’ view, the EES was placed on public exhibition too early and in a state which did not fulfil the directions of the Minister.
44. This has meant that information critical to the proper assessment of the project was not available in the preparation of submissions to the EES, or in the preparation of expert evidence which the Councils were required to file on 15 July 2019.
45. The IAC made orders permitting the proponent to file further information, effectively with and after the filing of expert witness statements. In the 7 business days up to the date of this submission,

substantial volumes of new and highly technical material was filed – in accordance with orders made by the IAC. Some of that material was filed as late as Monday this week. A further, not insignificant, expert witness statement was filed on Tuesday evening of this week.

46. The Councils are committed to working with the Committee to the best of their ability. However, the process to date has seriously compromised the ability of the Councils to participate in these proceedings in a way which would provide the greatest assistance to the IAC in its deliberations.

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