NELP TECHNICAL NOTE

NOTE:

1. This Technical Note has been prepared to respond to issues raised by the Inquiry and Advisory Committee (IAC) in the Preliminary Matters and Further Information Request dated 20 June 2019.

2. For ease of reference, this Technical Note sets out the relevant request made by the IAC followed by NELP’s response.

REQUEST:

3. The IAC made the following request at paragraphs #19 and #20 of the Further Information Request, to provide:

19. Confirmation whether such works are predicated on the prior approval of a Cultural Heritage Management Plan (CHMP) prepared under the Aboriginal Heritage Act 2006 in respect of the entirety of the Project area or whether a relevant exemption is expected to apply.

20. An explanation of why it is appropriate for non-reversible works to be permitted before key documents are approved, including vegetation removal, how the parameters for preparatory buildings and works will be documented and how it can be ensured they are to the minimum extent necessary.

RESPONSE:

Response to Request 19

1. The Cultural Heritage Management Plan (CHMP) is being prepared by the NELP as a mandatory CHMP under Section 46 of the Aboriginal Heritage Act 2006 (the Act). The CHMP allows for the management and protection of Aboriginal cultural heritage during the course of all activities associated with the proposed development of the North East Link (the project) that may disturb Aboriginal cultural heritage places within the activity area.

2. The activity area in the CHMP corresponds closely with the extent of the Project area, with only some minor divergences.

3. In accordance with section 49 of the Aboriginal Heritage Act 2006 a CHMP must be prepared before any works, including preparatory works, that are subject to the Public Works Order for the North East Link commence. The only works excluded from
the declaration of public works are:

(a) *Works and activities associated with designing and investigating North East Link and assessing its impacts, including geotechnical and environmental investigations, site surveys and assessments; and*

(b) *Establishing the location and assessing the integrity of existing utilities and services.*

4. Accordingly, some investigation and assessment activities may take place before the CHMP is approved. NELP is not currently aware of any proposed investigation or assessment activities that would require either, separate approval under the Act, or reliance on an exemption under the Act. In the event such approval or reliance is required, an assessment will be made when details of the activity are available as to the appropriate approach.

**Response to Request 20**

5. The framework for the approval of the Project which is included in the EES proposes that some works be allowed before key documents are approved. These preparatory works are set out in Clause 4.9.1 of the draft Incorporated Document (Appendix B of Attachment V of the EES) and are intended to commence prior to the approval of the EMF and EPRs, and other requirements relevant to the construction of the main works.

6. Allowing defined preparatory works to be carried out prior to the approval of key documents is a common approach for most major projects with Incorporated Documents. It is appropriate and necessary to undertake some preparatory works in the early stages of major transport infrastructure projects to allow for subsequent, time-critical works to be undertaken with a reduced risk of delay.

7. The preparatory works allowed are generally minor in scale and include:

- Vegetation removal, where, but for the Incorporated Document, a planning permit would not be required under the provisions of the Planning Schemes.
- Investigating, testing and preparatory works to determine the suitability of land, and property condition surveys.
- Creation of construction access points and working platforms.
- Site establishment works, including temporary site fencing and hoarding, site offices, hardstands and laydown areas.
- Establishing temporary car parking sites.
- Temporary relocation of walking and bicycle pathways and trails.
- Construction, protection, modification, removal or relocation of minor utility installations, rail signalling,
and overhead and associated infrastructure.

- Establishment of environment and traffic controls.
- Demolition to the minimum extent necessary to enable preparatory works.
- Salvaging and relocating of artefacts and other preparatory works required to be undertaken in accordance with the approved Cultural Heritage Management Plan (CHMP) prepared for the project under the Aboriginal Heritage Act 2006.
- Salvaging Matted Flax-lily (Dianella Amoena) and other preparatory works required to translocate Matted Flax-lily (Dianella Amoena) in accordance with a Translocation Plan approved for the Project under the Environment Protection and Biodiversity Conservation Act 1999.
- The removal, destruction or lopping of native vegetation to the minimum extent necessary to enable preparatory works, to the satisfaction of the Minister for Planning. Any native vegetation removed to enable preparatory works forms part of the total extent of native vegetation removal necessary for the construction of the project and native vegetation offsets must be provided in accordance with clause 4.8, except as otherwise agreed by the Secretary to DELWP.

8. Most of the proposed preparatory works are explicitly limited to temporary works, or works that are otherwise unlikely to have permanent impacts. Other preparatory works, including vegetation removal, are limited in their scope by reference to other controls and approvals, including:

- Vegetation removal that would not require a permit under the relevant Planning Scheme;
- Native vegetation removal to the satisfaction of the Minister for Planning which must be offset in accordance with clause 4.8 of the Incorporated Document;
- Salvaging Matted Flax-lily which must be done in accordance with a Translocation Plan approved under the Environment Protection and Biodiversity Conservation Act 1999; and
- Salvaging artefacts which must be in accordance with an approved Cultural Heritage Management Plan (CHMP) prepared for the Project under the Aboriginal Heritage Act 2006.

9. Additionally, the effect of the Incorporated Document will be that all preparatory works are limited to works that are undertaken for the purposes of the Project. This is a consequence of Clause 2.1 of the draft Incorporated Document which requires use and development for the Project (including preparatory works) be in accordance with Clause 4 of the draft Incorporated Document.
10. The requirement that preparatory works be to the minimum extent necessary applies to demolition and native vegetation removal that is necessary to enable preparatory works to be carried out.

CORRESPONDENCE: N/A

ATTACHMENTS: N/A