

West Gate Tunnel Project

Report of Ricky Feldman

1 Introduction

My firm Andrew Long and Associates prepared the technical report titled West Gate Tunnel Project Aboriginal Cultural Heritage Assessment (Technical Report) which is included as Technical Report O to the Environment Effects Statement (EES) for the West Gate Tunnel Project (Project).

The role that I had in preparing the Technical Report was as lead author. David Mathews was co-author on the technical report.

I adopt the Technical Report, in combination with this document, as my written expert evidence for the purposes of the West Gate Tunnel Project Inquiry and Advisory Committee's review of the EES, draft planning scheme amendment and works approval application.

2 Qualifications and experience

Appendix A contains a statement setting out my qualifications and experience, and the other matters raised by Planning Panels Victoria 'Guide to Expert Evidence'.

A copy of my curriculum vitae is provided in Appendix B.

3 Further work since preparation of the Technical Report

Since the Technical Report was finalised, Andrew Long and Associates have undertaken further work in relation to the completion and application to the Secretary of the Department of Premier and Cabinet for approval of a cultural heritage management plan (CHMP) under section 65 of the *Aboriginal Heritage Act* 2006 for the Road Upgrade, West Gate Tunnel Project (CHMP 14562). The Secretary of the Department of Premier and Cabinet received the CHMP for evaluation on the 17th July 2017. The statutory evaluation period is 30 calendar days.

A summary of my findings in relation to this further work is that the evaluation undertaken as part of the CHMP has determined that the project can be undertaken in a way that minimises harm to one of the Aboriginal cultural heritage places that is present in the activity area:

- Kororoit Creek, Brooklyn 1 (7822-4067)

Harm will be minimised to 7822-4067 by limiting the depth of permitted ground disturbing works in this location to a maximum of 300mm beneath the current ground surface. Archaeological testing in the vicinity 7822-4067 has demonstrated introduced fill / significantly disturbed soil deposits to depths of at least approximately 500mm beneath the current ground surface. Furthermore, all Aboriginal cultural heritage from the place has been identified at depths of greater than 500mm.

The activity cannot be undertaken in a way that minimises harm to the low density artefact distribution (LDAD) that is present in the activity area:

- Kororoit Creek, Brooklyn LDAD 1 (7822-4068)

The CHMP outlines specific cultural heritage management conditions that must be considered in relation to the approval of the CHMP, in accordance with Section 61(c) of the *Aboriginal Heritage Act 2006*. This presently includes provision for cultural heritage inductions, signage for restricted access, relevant site inspections, suitable storage, documentation and repatriation of heritage as well as a process for cultural heritage interpretation. The CHMP also provides a plan for contingency finds during construction.

However, this further work has not caused me to materially change my opinions as expressed in the Technical Report.

4 Written Submissions

4.1 Submissions Received

I have read the public submissions to the EES, draft planning scheme amendment and works approval application and identified those that are relevant to the Technical Report and my area of expertise. These include the following submissions:

- PPV_ID 184
- PPV_ID 344
- PPV_ID 354
- PPV_ID 106
- PPV_ID 167
- PPV_ID 434
- PPV_ID 312
- PPV_ID 469
- PPV_ID 378

4.2 Summary of Issues Raised

The submissions have raised the following issues relevant to my area of expertise:

- The adequacy of characterisation of Aboriginal heritage values in the project area
 - PPV_ID 184 – the EES should identify intangible heritage places of cultural value. The EES does not appropriately consider City of Melbourne’s heritage policies.
 - PPV_ID 344 – the EES states that no Aboriginal cultural heritage places are located within the project boundary of the port, CityLink and city connections component and the CHMP doesn’t provide for specific Aboriginal cultural heritage considerations within this component, however the Arden-Macaulay Structure Plan 2012 has recorded several archaeological sites along Moonee Ponds Creek.
 - PPV_ID 354 – issues raised duplicate PPV_ID 344.
- Concerns about disturbance to two registered Aboriginal heritage places

- PPV_ID 106 - request for impacts to Aboriginal cultural heritage to be mitigated, sites protected and appropriate recognition given.
- PPV_ID 167 – concerns regarding disturbance/loss of two Aboriginal cultural heritage places and no plans to avoid the area.
- PPV_ID 434 – suggests that potential for disturbance of two Aboriginal heritage places should be avoided.
- Concerns about possible impact to sensitive areas, for example, waterways
 - PPV_ID 312 – loss of the remainder of a past environment at Moonee Ponds Creek.
 - PPV_ID 469 – concern in relation to contradictory urban design outcomes, in relation to cultural heritage references, and deficiencies in the wider community engagement strategy and consultation process.
- Aboriginal cultural heritage interpretation
 - PPV_ID 378 – requests the inclusion of the Kororoit Creek area in the heritage interpretation strategy for the Project.

4.3 Response to Issues Raised

Set out below are my comments and response to the issues raised by the written submissions relevant to the area of my expertise.

PPV_ID 184

The Technical Report and the management conditions expressed in the CHMP are consistent with the City of Melbourne’s policies, namely the Heritage Strategy 2013 and the Aboriginal Heritage Action Plan 2015-18 and in accordance with the *Aboriginal Heritage Act* 2006. The CHMP considers a process for the project to consider interpretation of relevant Aboriginal heritage. A formal process of stakeholder consultation involving the three Traditional Owner Groups/Registered Aboriginal Party applicants was undertaken as part of the impact assessment and CHMP. Concerns were expressed by these groups that intangible heritage must not be included unless it was substantiated by the Traditional Owner Groups/Registered Aboriginal Party applicants and presented to all three groups. No supporting documentation was forthcoming.

PPV_ID 344 and PPV_ID 354

The CHMP cannot provide specific conditions for the management of Aboriginal heritage places that are presently unidentified, however the CHMP provides comprehensive contingency measures for the unexpected discovery of Aboriginal cultural heritage. The Arden-Macaulay Structure Plan 2012 does correctly reference several Aboriginal archaeological sites that have been recorded along the Moonee Ponds Creek, however the Structure Plan immediately follows this assertion with the qualifying statement that ‘none to date have been identified in Arden-Macaulay (Arden-Macaulay Structure Plan 2012, p. 82). Further, the Structure Plan continues to assert that parts of Moonee Ponds Creek have been subject to significant ground disturbance and would therefore not be considered an area of cultural heritage sensitivity according to the relevant legislation and ‘as such, it is unlikely that Cultural Heritage Management Plans would be required for developments in the Arden-Macaulay area’ (Arden-Macaulay Structure Plan 2012, p. 82).

PPV_ID 106, PPV_ID 167 and PPV_ID 434

In accordance with the requirements of Section 61 of the *Aboriginal Heritage Act 2006*, specific matters are to be considered in relation to the approval of a CHMP for the activity. As such, the evaluation undertaken as part of the CHMP has determined that the project can be undertaken in a way that minimises harm to one of the Aboriginal cultural heritage places that is present in the activity area:

- Kororoit Creek, Brooklyn 1 (7822-4067)

Harm will be minimised to 7822-4067 by limiting the depth of permitted ground disturbing works in this location to a maximum of 300mm beneath the current ground surface. Archaeological testing in the vicinity 7822-4067 has demonstrated introduced fill / significantly disturbed soil deposits to depths of at least approximately 500mm beneath the current ground surface. Furthermore, all Aboriginal cultural heritage from the place has been identified at depths of greater than 500mm.

The activity associated with the CHMP cannot be undertaken in a way that minimises harm to the low density artefact distribution (LDAD) that is present in the activity area:

- Kororoit Creek, Brooklyn LDAD 1 (7822-4068)

The CHMP outlines specific cultural heritage management conditions that must be considered in relation to the approval of the CHMP, in accordance with Section 61(c) of the *Aboriginal Heritage Act 2006*. This will include provision for cultural heritage inductions, signage for restricted access, relevant site inspections, suitable storage, documentation and repatriation of heritage as well as a process for cultural heritage interpretation. The CHMP also provides a plan for contingency finds during construction.

PPV_ID 312

The submission acknowledges the extensive impacts to the Moonee Ponds Creek environment relating to the historical land use from the second half of the nineteenth century, including the stripping of vegetation, dumping of sewerage and rubbish and the creation of a coal canal, to its use in the twentieth century as railyards and industrial sites. In accordance with the evaluation undertaken in the CHMP and Sections 5.7 and 5.10 of the Technical Report O, this land use would have had significant and detrimental impacts on any potential Aboriginal cultural heritage places or values in the area.

PPV_ID 469

Andrew Long and Associates are not experts in the field of urban design (see Appendix A (f)).

PPV_ID 378

The CHMP considers a process for the project to consider interpretation of relevant Aboriginal heritage. The CHMP requires the Sponsor or Sponsor's delegate to consult with the relevant Traditional Owner Groups/Registered Aboriginal Party applicant representatives regarding the development of appropriate signage and/or interpretation relating to the Aboriginal cultural heritage of the activity area.

4.3 Response to IAC Questions and Further Information Request

There are no questions relevant to Aboriginal cultural heritage.

Declaration

I have made all the inquiries that I believe are desirable and appropriate and that no matters of significance which I regard as relevant have to my knowledge been withheld from the Inquiry and Advisory Committee.



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Signed

Date: 31 July 2017

Appendix A Matters Raised by PPV Guide to Expert Evidence

- (a) the name and address of the expert;

Ricky Feldman

- (b) the expert's qualifications and experience;

(2001) Bachelor of Arts (Honours in Archaeology), University of Melbourne

(1999) Bachelor of Science, University of Melbourne

Professional archaeological and heritage consultant since 2002. Recognised as a Heritage Advisor for the purposes of the *Aboriginal Heritage Act 2006*

- (c) a statement identifying the expert's area of expertise to make the report;

My area of expertise is Aboriginal cultural heritage management. I have sufficient expertise to produce this report as I have more than 15 years' experience in undertaking cultural heritage assessments, including provision of expert witness statements within the State of Victoria.

- (d) a statement identifying all other significant contributors to the report and where necessary outlining their expertise;

David Mathews (Andrew Long and Associates) co-authored the technical report and was lead author on the CHMP.

(2004) Bachelor of Arts (First class Honours), Archaeology, University of Calgary Canada

- (e) all instructions that define the scope of the report (original and supplementary and whether in writing or oral);

- Review of the public submissions relevant to Aboriginal cultural heritage
- Review previous work (Technical Report O) and identify whether there are any changes to the conclusions of the report arising out of the issues raised by the public submissions or as a consequence of any other relevant matter
- Prepare an expert report in response to the above scope
- Respond to IAC Questions and Further Information Request

- (f) the identity of the person who carried out any tests or experiments upon which the expert relied in making this report and the qualifications of that person;

In accordance with regulation 61 (3) of the *Aboriginal Heritage Act 2006*, CHMP excavations were supervised by qualified archaeologists and were carried out in accordance with proper archaeological practice by the following participants, accompanied by field archaeologists, assistants and Traditional Owner Groups/Registered Aboriginal Party applicant representatives during the complex assessment (subsurface investigations):

David Mathews - (2004) Bachelor of Arts (First class Honours), Archaeology, University of Calgary Canada

Vaia Liouas – (2009) Bachelor of Arts, The University of Melbourne

Jonathan Lushey – (2005) Bachelor of Archaeology (Honours), La Trobe University

- (g) a statement setting out the key assumptions made in preparing the report;

The submissions considered in this report are limited to a review of nine submissions with relevant keywords entries.

The CHMP has not been approved and is presently undergoing evaluation by the Secretary of the Department of Premier and Cabinet.

- (h) a statement setting out any questions falling outside the expert's expertise and also a statement indicating whether the report is incomplete or inaccurate in any respect.

PPV_ID 469 raises concern in relation to some of the project's contradictory urban design outcomes and deficiencies in the wider community engagement strategy and consultation process. The design aims are to establish a strong connection with Melbourne's cultural heritage and urban history, however Andrew Long and Associates were not involved in this consultation process, or the development of the urban design concept, nor are we experts in the field of urban design. Our Technical Report and CHMP included adequate stakeholder consultation for the purposes of our reports.

Appendix B CV

Ricky Feldman Executive Director

Higher Qualifications:

Bachelor of Arts (Honours in Archaeology), University of Melbourne 2001

Bachelor of Science, University of Melbourne 1999

Areas of Specialisation:

With over fifteen years of professional experience Ricky has effectively delivered high profile heritage programs for Government and major companies. He specialises in managing Aboriginal and historical archaeological assessments, major project planning, stakeholder engagement, risk assessments, EES and predictive modelling. He regularly provides expert witness for Planning Panels.



Professional Experience:

2001 – current: Executive Director (formerly Associate and Project Manager) (Andrew Long + Associates Pty Ltd)

Duties include project management, strategic growth, consultation with Aboriginal communities, government departments and private developers. Field assessments archaeological surveys, monitoring, excavation. Documentation of sites & report writing.

2000: Research Archaeologist (Melbourne University)

Managing and undertaking research into Aboriginal sites in north east Australia as part of an Australia Research Council grant. Included extensive Aboriginal community consultation, surveying and large-scale intra-site excavation of Aboriginal sites and taphonomic analysis. Documentation of results presented to the Aboriginal community and published in a research journal.

1999: Research Archaeologist (Heritage Victoria)

Faunal analysis of excavated material from Heidelberg. Included identification of species, identification of cut marks and interpretation of butchering techniques.

1998 - 1999: Assistant Archaeologist (Melbourne University).

Survey and excavation as part of a research project examining post-contact Aboriginal places in the Western District, Victoria.

Prominent Projects:

Longford LNG Pipeline - 2014 - current

Hastings to Longford, WorleyParsons – Utilities

Lead Heritage Consultant

Managing all aspects of this high profile project, achieving effective time and cost management on both the delivery of two separate cultural heritage management plans and salvage components.

Western Highway EES - 2012 - 2013

Regional Victoria, VicRoads – Transport

Senior Heritage Consultant

Conducting an impact assessment and alignment options assessment in a sensitive heritage landscape involving a detailed programme of stakeholder consultation and the preparation of an Aboriginal site predictive model and cultural values mapping.

Regional Rail Link - 2009 - 2015

Regional Victoria, Boulderstone Leighton Joint Venture (BLJV) - Transport

Lead Heritage Consultant

Managing all aspects of this high profile project, achieving effective time and cost management on both the delivery of seven separate cultural heritage management plans and salvage components.

Melbourne-Geelong Interconnector - 2009 - 2011

Regional Victoria, Barwon Water – Utilities

Senior Heritage Consultant

The assessment included two cultural heritage management plans and dealt with both Aboriginal and historical cultural heritage issues.

Melbourne Growth Areas - 2009 - 2011

Melbourne, Growth Areas Authority – Planning

Heritage and Community Consultant

Providing a foundation for a strategic solution to the management of Aboriginal cultural heritage within Melbourne's four growth areas.

Bellarine Safe Harbour - 2007

Bellarine, Parks Victoria – Planning

Senior Heritage Consultant

The objectives of the assessment were to identify Aboriginal and historical archaeological sites, identify landforms of archaeological potential, and to make appropriate management recommendations for their future preservation.