

Mordialloc Bypass

Submission to the Mordialloc Bypass
EES Inquiry and Advisory Committee

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Introduction

1. This submission is made on behalf of VicRoads in relation to the Environment Effects Statement (**EES**) and draft Planning Scheme Amendment (**PSA**) for the Mordialloc Bypass Project (**Project**).
2. VicRoads supports:
 - 2.1. the Project as delivering important transport infrastructure for Melbourne's south-east; and
 - 2.2. the EES and PSA, subject to the matters that are the focus of this submission.
3. Indeed, VicRoads was originally responsible for the Project before the establishment of Major Road Projects Victoria (**MRPV**) in July 2018.
4. MRPV is now the proponent of the Project. It is accordingly the role of MRPV rather than VicRoads to provide justification for the Project and demonstrate to the Inquiry and Advisory Committee's (**IAC**) that all relevant matters have been addressed. VicRoads appears before the IAC in support of MRPV. Further, as VicRoads will be responsible for operating the Project/ road network upon completion, and accordingly has a significant interest in the EMF.
5. VicRoads supports the substance of the Environmental Management Framework (**EMF**), including the Environmental Performance Requirements (**EPRs**), but seeks the inclusion of further detail and clarifications with respect to VicRoads' roles and responsibilities.
6. VicRoads does not seek any changes to the PSA, except to seek clarification regarding the acquiring authority in the exhibited Public Acquisition Overlay map.
7. In accordance with direction 19 of the **IAC** directions dated 5 February 2019, this submission focuses on the changes VicRoads proposes the IAC ought to recommend to the Minister.
8. VicRoads has been in regular correspondence with MRPV before and during this hearing to resolve these matters. VicRoads supports the changes to the EPRs that were tabled by MRPV on Day 1 of the hearing.

VicRoads' roles and responsibilities

9. Paragraphs 6 to 16 in MRPV's Part A submission describe the agencies relevant to the Project, namely Transport for Victoria, MRPV and VicRoads. VicRoads does not intend to repeat these submissions but considers further detail may assist the IAC in contemplating the roles and responsibilities in the EMF.
10. This section of VicRoads' submission provides context for the amendments VicRoads is seeking to the EPRs.

VicRoads' legislative roles

11. The *Transport Integration Act 2010 (TI Act)* is Victoria's main transport legislation. It came into effect on 1 July 2010 to 'create a new framework for the provision of an integrated and sustainable transport system in Victoria'.¹
12. The TI Act provides for the continuation of the Roads Corporation as previously established under earlier legislation,² and permits the Roads Corporation to carry on business under the name 'VicRoads'.³
13. Most importantly, the TI Act provides that:⁴

*The primary object of the Roads Corporation is to provide, operate and maintain the road system consistent with the vision statement and the transport system objectives.*⁵

14. This primary object is stated to include:⁶

to ensure, in collaboration with other transport bodies and public entities, that the road system operates as part of an integrated transport system which seeks to meet the needs of all transport system users.

15. While VicRoads wears a number of figurative hats in relation to the Project, it holds this object paramount.
16. The TI Act empowers VicRoads with broad functions, including to construct, maintain and vary roads.⁷
17. VicRoads also has functions and powers as a road authority under the *Road Management Act 2004 (RM Act)* in respect of certain classes of road, including freeways and arterial roads.⁸ The first function of a road authority is:⁹

to provide and maintain, as part of a network of roads, roads for use by the community served by the road authority.

18. The RM Act effectively enables VicRoads to manage road assets under its control.

¹ TI Act, section 1.

² Section 80(1) of the TI Act.

³ Section 82 of the TI Act.

⁴ Section 86(1) of the TI Act.

⁵ The vision statement (Part 2, Division 1 in the TI Act) and transport system objectives (Part 2, Division 2 in the TI Act) incorporate the concepts of integration and sustainability and the values of inclusiveness, prosperity and environmental responsibility.

⁶ Section 86(2)(a) of the TI Act.

⁷ Section 87 of the TI Act.

⁸ Sections 36 and 37 of the RM Act.

⁹ Section 34(1)(a) of the RM Act.

19. Additionally:
 - 19.1. the *Road Safety Act* 1986 enables VicRoads to regulate and manage road users on a road; and
 - 19.2. the *Planning and Environment Act* 1987 enables VicRoads to participate in the making of planning decisions that could affect its ability to achieve its primary objective under the TI Act.

VicRoads' roles in relation to the Project

VicRoads as the original proponent of the Project

20. Until as recently as mid-2018, VicRoads was the proponent for this and similar major road projects across Victoria.
21. Section 1.3 of the EES provides a high-level overview of the historical development of the Project and touches on the transfer of delivery of the Project from VicRoads to MRPV.
22. In summary:
 - 22.1. A bypass in this location was first proposed by the Melbourne and Metropolitan Board of Works in 1954, with land being reserved for that purpose since the 1990s.
 - 22.2. In 2011-2014, VicRoads undertook a strategic transport assessment and feasibility study of constructing a bypass within the land reserved for that purpose.
 - 22.3. In 2016, VicRoads began more detailed planning and project development for a bypass.
 - 22.4. In 2017, VicRoads as proponent referred the Project to the Minister for Planning under the *Environment Effects Act* 1978. On 13 September 2017, the Minister decided an EES was required. VicRoads accordingly commenced preparation of the EES.
 - 22.5. On 1 July 2018, the Major Road Projects Authority (**MRPA**) was appointed as an administrative office under the Office of the Coordinator-General for the Major Transport Infrastructure Program in the Department of Economic Development, Jobs, Transport and Resources (**DEDJTR**). This change was part of a broader State government effort to bring a more integrated approach to project delivery across the Victorian transport portfolio. MRPA took over delivery for projects previously managed by the Major Projects division of VicRoads.
 - 22.6. Following the 24 November 2018 election, the Victorian government announced machinery-of-government changes to take effect from 1 January 2019. These included the transition of DEDJTR into two new departments – the Department of Jobs, Precincts and Regions and the Department of Transport (**DoT**).
 - 22.7. On 1 January 2019, MRPA became MRPV, forming part of the Major Transport Infrastructure Authority established that day as an administrative office of the new DoT.

23. The creation of MRPV and transfer of the major projects function out of VicRoads is part of a broader shift in the functions of Victoria's respective transport entities. This has occurred through administrative rather than legislative change but has had significant practical effects.
24. A key benefit is to allow VicRoads to focus on its core role as road network manager.
25. The timing of this Project means the EES process has coincided with the transition period during which the details of agencies' specific roles and responsibilities are being determined.
26. Broadly, as stated in the EES and MRPV's Part A submission, MRPV is the agency responsible for obtaining the approvals for the Project and delivering the Project in compliance with those approvals, while VicRoads will be responsible for operating the Project once delivered, including compliance with approvals during this phase.
27. VicRoads acknowledges and accepts this broad division. However, VicRoads in conjunction with MRPV have agreed to minor amendments to the EMF and EPRs to clarify the specifics of VicRoads' role and responsibilities in respect of the Project. This submission addresses the proposed amendments agreed by VicRoads and MRPV to the exhibited documents.
28. VicRoads has been working with MRPV to achieve greater certainty, but notes it is ultimately the IAC's role to assess the adequacy of the EMF and report to the Minister for Planning on any recommended changes.

VicRoads as the road network manager

29. VicRoads, as the road network manager, is responsible for approvals, policies and guidelines that inform the design of road improvements on the arterial road network.
30. VicRoads also supports Transport for Victoria's strategic and transport network planning role to deliver better and safer journeys that connect places and support Victoria's prosperity and liveability. This includes working with Transport for Victoria to monitor transport network performance and identify future network needs.
31. VicRoads has been, and will continue to be, closely involved in the detailed design of the Project to ensure the ultimate design and construction contributes to the overall efficiency, safety, sustainability and effectiveness of the arterial road network for road users.
32. As noted above, VicRoads commenced preparation of the EES. As this work was continued by MRPV, VicRoads has considered the exhibited EES, including attachments and appendices.
33. Mr Peter Kelly of WSP has provided an expert witness statement in relation to transport on behalf of MRPV, which refers to further assessment and modelling he has undertaken and summarises his findings.
34. On the basis of the material before it, VicRoads supports the EES in its capacity as the road network manager.

VicRoads as a key landowner

35. VicRoads is a significant landowner within the Project area, including land that has been acquired or proposed to be acquired in accordance with the Public Acquisition Overlays (**PAO**) in the Kingston and Greater Dandenong Planning Schemes.
36. The land owned by VicRoads extends beyond the land proposed to be used for the road asset itself, and includes, for instance, the former landfill in the north of the proposed alignment.
37. Land management will largely be the responsibility of MRPV until the design and construction of the Project is complete, after which VicRoads will resume responsibility for the land. However, VicRoads will remain the legal owner of the project land and has an interest in the management of environmental risks attaching to project construction in this capacity.
38. Land that has been acquired for the Project that is no longer required once the Project has been completed will be managed in accordance with the *Victorian Government Landholding Policy and Guidelines*.¹⁰

VicRoads as the Project operator

39. VicRoads will be largely responsible for the operation phase of the Project, including ongoing asset and environmental management, as it is responsible for other non-commercial freeways in Victoria. However, not all matters identified in the EPRs as applying to the operation phase will be the responsibility of VicRoads, as some of those matters will form part of the design and construct contract.
40. The contract will include a two-year defects liability period and provide for formal project handover from MRPV to VicRoads. The exact schedule will be determined in the future by agreement between MRPV and VicRoads. Once project handover has been completed VicRoads will become responsible for operation and maintenance of the Project.
41. The environmental components of the handover typically include:
 - 41.1. specialist environment reports prepared as part of the planning and delivery and construction phases;
 - 41.2. status of permits and approvals from outstanding environmental commitments;
 - 41.3. relevant manuals and operational information related to any infrastructure where applicable; and
 - 41.4. details of known environmental assets and sensitivities within the project area and management required.

¹⁰ Department of Treasury and Finance, September 2017.

42. This includes, but is not limited to:
 - 42.1. noise walls, with asset details to be included in the asset register;
 - 42.2. the location of significant cultural heritage and biodiversity sites;
 - 42.3. the location of contaminated areas;
 - 42.4. the location of specific water sensitive road design features such as wetland bioswales and infiltration devices;
 - 42.5. the location and details of any scar/mortuary trees and welcome to country signs; and
 - 42.6. details on renewable energy devices.
43. VicRoads' *Environmental Risk Management Guidelines* (2012):
 - 43.1. describe the systems used by VicRoads to manage risk and protect the environment and how these are implemented at different project stages; and
 - 43.2. outline the tools that guide VicRoads in managing environmental issues through the lifecycle of a project.
44. The details of VicRoads' responsibility for this Project will be determined through the development of management plans as required by the EPRs, including the Operations Environmental Management Plan (**OEMP**).
45. To an extent, the matters for which VicRoads will be responsible in respect of the Project are consistent with VicRoads' legislative role. However, under the EMF in the exhibited EES, VicRoads would be subject to obligations in the EPRs that go above and beyond its existing road management role across Victoria.
46. VicRoads is not seeking by this submission to avoid such obligations and is willing to accept responsibility under the EPRs as appropriate. VicRoads through its amendments agreed with MRPV, are seeking greater certainty as to its roles and responsibilities and to ensure that the IAC, in providing advice to the Minister for Planning, understand the justification for these changes.
47. This submission sets out several relatively minor changes to the EPRs that VicRoads considers will appropriately address this.

Submissions

Operation phase in the EMF

48. VicRoads considers the content of the EMF to be appropriate, subject to minor amendments to provide further clarity of the roles and responsibilities of VicRoads.

49. The final Scoping Requirements set out the specific matters to be investigated and documented in the EES for the Project.¹¹ Section 5 addresses the scoping requirements for the EMF and states relevantly that:

The EMF should include:

...

- *organisational responsibilities and accountabilities for environmental management;*
- *how a register of environmental risks associated with the project is to be maintained during project implementation (including matters identified in preceding sections in the Scoping Requirements as well as other pertinent risks);*
- ...
- *the procedures for monitoring or verifying compliance with performance requirements and review of the effectiveness of the EMF for compliance and continuous improvement; and*
- *procedures for auditing and reporting of performance including compliance with relevant statutory conditions and standards.*

The EMF should outline:

- *the relevant environmental management plans for construction and operation phases of the project;*
- *a program for community consultation, stakeholder engagement and communications during the construction and operation of the project, including opportunities for local stakeholders to engage with the proponent to seek responses to issues that might arise when the project is undertaken.*

50. Chapter 23 of the EES sets out the EMF. VicRoads considers the EMF to largely focus on the design and construction phases of the Project and that much of the responsibilities and accountabilities for the operational phase will be determined as part of the plans required by the EPRs.

51. Section 23.6 of the EMF states:

An Operations Environmental Management Plan (OEMP) will apply to the operational phase of the project. It shall be prepared by the contractor as part of the Operations, Maintenance and Monitoring (OMM) Manual, where the maintenance requirements under the EMF are to be captured. At project completion, this will be handed over and implemented by VicRoads.

During the operational phase of the project, the ongoing responsibility for environmental management monitoring or maintenance requirements would be undertaken by VicRoads in accordance with their existing management systems.

¹¹ *Scoping Requirements for Mordialloc Bypass Environment Effects Statement (May 2018).*

52. Table 23.1 sets out tasks/responsibilities for the relevant entities. It includes for the Design and Construct Contractor:
- *Prepare Operations, Maintenance and Monitoring (OMM) Manual at the time of project completion, including a maintenance activity calendar for a 5 year period complying with the EMF and EPRs.*
53. It includes for MRPA (now MRPV):
- *Comply with those provisions of the approved EMF and EPRs for which the State is responsible.*
 - *Review and approve the Operations Environment Management Plan (OEMP) to apply to the operations phase of the project.*
54. It includes for VicRoads:
- *Incorporate the Operations, Maintenance and Monitoring (OMM) Manual into the operations and maintenance regime.*
 - *Deliver commitments identified in the Commitments Register which continue once the project is delivered.*
55. MRPV has advised VicRoads that the reference to the Commitments Register is a mistake that will be deleted in the final version of the EMF.
56. Section 23.9.1 addresses the development of 'key plans'. Table 23.3 in this section describes the key environmental management documentation. It includes a description of the Construction Environmental Management Plan (**CEMP**) but nothing in relation to the OEMP.
57. Section 23.9.3 addresses approvals and change management. Table 23.5 in this section, which sets out environmental management documentation responsibilities, does not include the OEMP.
58. VicRoads considers that whilst these matters are not detailed in the EMF exhibited as part of the EES, they will be consequently addressed through the final version of the EMF approved by the Minister for Planning under the Incorporated Document.

Amendments sought to the EPRs

59. VicRoads will be chiefly responsible for implementing the OEMP and other plans that apply during the operation phase. However, in the exhibited EES, VicRoads is given no role in either preparing or approving these plans (or in the reporting framework), other than a broad statement in EPR EM2 that:
- The process for development and implementation of the CEMP and other management plan(s) must include consultation with the Kingston City Council, Greater Dandenong City Council, VicRoads, Melbourne Water and EPA Victoria as relevant.*
60. VicRoads has a significant interest in both the content of the management plans and being at least informed about performance and compliance during the construction phase. The framework set up by the EMF should ensure this.

61. To that end, VicRoads seeks recommendations from the IAC that EPR EM2 be amended to additionally specify that:

Plans that apply to the operation phase of the project, including the OEMP, must be prepared in conjunction with VicRoads.

62. VicRoads seeks the following insertion of similar wording in EPR CL3, which require a passive landfill gas capture and ventilation system, as this does not constitute a 'plan' captured under EPR EM2:

...
The passive landfill gas capture and ventilation system must be prepared in conjunction with VicRoads and must meet the landfill gas management requirements of the EPA's guideline...

[Underlined wording to be inserted]

Transparency and consistency in the EPRs

63. VicRoads observes that a number of EPRs impose obligations relating to the operation phase of the Project, including EPRs CL3, CL5, LV1, LV3 and NV3.
64. On the face of the EMF, these obligations will be VicRoads' responsibility. In practice and appropriately, EPRs LV3 and NV3 will remain the responsibility of the MRPV/contractor rather than VicRoads:
- 64.1. LV3 requires public open spaces, vegetation cover and facilities disturbed by temporary works to be reinstated within 12 months of the commencement of the operation.
- 64.2. NV3 requires traffic noise to be measured after the project has opened to verify conformance with the traffic noise EPR. It requires remedial action before final completion if the EPR is not met.
65. VicRoads suggests it may be appropriate for certainty and transparency to clarify the role of the MRPV/contractor within EPR LV3 and NV3.
66. VicRoads does not hold a strong view on this matter, other than supporting the introduction of greater transparency where possible and to ensure that there is a clear understanding that VicRoads will not be responsible for all obligations during the operational phase of the project.
67. Similarly, VicRoads observes the EMF and EPRs refer to VicRoads as 'VicRoads', whereas the draft Incorporated Document refers to VicRoads as the 'Roads Corporation'.¹²
68. As noted above, the TI Act provides for the continued establishment of the Roads Corporation and permits it to carry out business under the name 'VicRoads'. The RM Act refers to VicRoads throughout as 'VicRoads'.
69. Again, VicRoads does not hold a strong view as to which name should be used. 'VicRoads' may be more transparent for the community. However, VicRoads suggests terminology should be consistent across the EMF, EPRs and Incorporated Document.

¹² At section 4.2.2.

Planning Scheme Amendment

70. VicRoads supports proposed Amendment GC107 to the Kingston and Greater Dandenong Planning Schemes (**Amendment GC107**).
71. One aspect of Amendment GC107 is to amend map 6PAO in the Kingston Planning Scheme to apply the PAO to four additional parcels of land.
72. Map 6PAO in the Kingston Planning Scheme presently identifies land affected by PAO1. The Schedule to the PAO in the Kingston Planning Scheme identifies the Roads Corporation as the acquiring authority and 'roads' as the purpose of acquisition for PAO1.
73. VicRoads notes the exhibited version of map 6PAO at Attachment II to the EES does not specify a schedule number for the land to which the PAO is proposed to be applied or in the legend. VicRoads queries whether the references to 'PAO' should be amended to 'PAO1'.

Conclusion

74. VicRoads respectfully requests that the IAC include the changes sought in this submission in the IAC's recommendations to the Minister. Specifically, VicRoads requests that:

74.1. The following sentence be added to EPR EM2:

The OEMP and all plans that apply to the operation phase of the project must be prepared in conjunction with VicRoads.

74.2. The following sentence in EPR CL3 be amended to:

The passive landfill gas capture and ventilation system must be prepared to in conjunction with VicRoads and must meet the landfill gas management requirements of the EPA's guideline...

[Underlined wording to be inserted]

75. This completes the submission by VicRoads.

28 February 2019

Kate Stapleton
Manager Planning Practice, Land and Environment
VicRoads