

## Oral Submissions to the Mordialloc Bypass ESS Inquiry and Advisory Committee

Enwerd Pty Ltd ACN 004 645 612

Written Submitter no. 53

### Introduction

1. These oral submissions are made on behalf of Enwerd Pty Ltd and supplement the written submissions made by Arnold Block Leibler Lawyers on Enwerd's behalf in relation to the proposed construction of the Mordialloc Bypass (**Project**).
2. As stated in our written submissions, Enwerd is the registered proprietor of a property located at 34 – 40 Garden Boulevard, Dingley Village (**Property**).
3. The Property is used as 2,418m<sup>2</sup> of office space and 3,813m<sup>2</sup> of warehouse space. The written submissions incorrectly states the Property is approximately 4,300m<sup>2</sup> however the total area of office and warehouse space is approximately 6,232 square meters over two floors.
4. The ESS shows that the boundary of the Property is one of the closest areas of land to the boundary of the Project, being some 25 meters away.
5. To give you some context, figure 1 below shows an aerial view of the front of the Property with the Project area and affected residential area shown in the background.



Figure 1 – Frontal view of 34-40 Garden Boulevard, Dingley Village (**Property**) showing the area of the proposed Mordialloc Bypass (**Project Area**) and the affected residential area in the background.

6. Figure 2 below shows an aerial view of the rear of the Property and its proximity to the Project Area and the affected residential area.



Figure 2 – Rear view of the Property showing the proximity to the Project Area and the affected residential area (Residential)

7. The imagery contained on the website for the ESS depicts the noise wall and landscaping proposed to minimise the impacts of the Project on the Residential Area shown in figures 1 and 2. It also depicts mature vegetation on the side of the Project Area closest to the Property.
8. Figure 3 below is a copy of an image taken from the Mordialloc Freeway Project website. The image shows the proximity of the Property to the Bypass.



Figure 3 – An image from the Project website (<http://mordialloc-freeway.u-c.com.au/V07/index.html>) showing the proposed Bypass and mitigation factors proposed in relation to Dingley Village.

9. The ESS and the MRPV's version of the Environmental Performance Requirements as at 25 February 2019 provide for considerable measures to be undertaken to minimise the impact of the Project on the Residential Area shown in these images. However, the ESS and EPRs provide minimal measures to reduce the impact of the Project on the Property or the surrounding commercial and industrial properties.

### **ESS Stated Objectives and Desired Benefits**

10. Paragraph 1.5 of the ESS states that one of the key benefits of the Project is making investment in key employment areas more attractive for business. It suggests that this will occur as a result of, amongst other things, improving access to the industrial areas in Braeside and Moorabbin.
11. Chapter 2 of the ESS repeatedly refers to the strengthening of employment opportunities and increasing the attractiveness of business and industry as being some of the key benefits of the Project.
12. Paragraph 2.6.2 entitled "*Improved amenity and attractiveness of the area as places to live and work*" states:

*"Benefits for residents and businesses include less traffic (particularly less heavy vehicles) near residential areas, improved air quality, reduced noise pollution, and safer and less congested arterial roads, improving the attractiveness of the area as a place to live and work."*

### **Impact of the Project on the Property and surrounding businesses**

13. Although the Property is currently vacant, past occupants of the Property have been commercial in nature. Due to the high ratio of office to warehouse space, the Property is highly suitable as a "Headquarters" destination for large organisations allowing office and administrative operations to be supported by warehouse space.
14. Despite the ESS promoting the benefits of the Project to business and employment, the EPRs provide minimal measures to mitigate the adverse impact of the Project on existing commercial and industrial properties that currently provide such business and employment opportunities. The ESS and EPRs also give little consideration to the varying nature and use of properties that fall within areas broadly classified as industrial. For example and as outlined, the Property is used as a mix of office and warehouse rather than an industrial use.
15. In particular, the EPRs do not sufficiently address the short and long term visual, noise, dust and odour impacts of the Project on the Property or surrounding buildings located directly adjacent to the Project. The EPRs simply do not address the adverse effect on existing investment and employment opportunities in areas adjacent to the Project.

16. On this basis, far from improving employment and investment in the areas surrounding the Project, it is submitted that the Project would have a considerable detrimental impact on such investment, business and employment opportunities if it proceeds as proposed.

### Visual Impact

17. The ESS includes a Landscape Concept Plan which identifies the “mitigation treatments for the entire bypass alignment”. The ESS also contains the statement that “over time, the recommended mitigation measures identified in the Landscape Concept Plan would result in a significant reduction of visual impacts as vegetation becomes established and the freeway is gradually screened from view”. In paragraph 11.8.1, the ESS states that standard mitigation considerations are based on seven years of growth of the proposed vegetation.

18. Indeed, Figure 3 extracted from the Project website (shown on page 2) shows developed and mature trees lining the side of the Project adjacent to the Property. However, it is evident from the caveat statements contained in the ESS that it will take a significant number of years to achieve even this level of growth. Enwerd suggests a conservative estimate would be between 15 to 20 years.

19. Figure 4 below is an excerpt from the Landscape Concept Plan showing the proposed “mitigation treatments” for the Property which includes planting indigenous / native trees.



20. The ESS and EPRs are silent as to the size and maturity of the proposed planting. However, given the mitigation assessment is based on seven years growth as a starting point, it is clear the planting proposed is of shrubs, not trees, which will take years of growth before providing any meaningful benefit to the Property.
21. This minimal mitigation effort is entirely unsatisfactory and will have a significant impact on the future letting and use of the Property, particularly considering the commercial nature of the Property and the impact of the Project on office workers within the Property. This is in stark contrast to the stated benefits and objectives of the Project which include supporting and encouraging investment and employment in local areas.
22. In the MRPV's Part A Submissions, the MRPV states that Enwerd's concerns in this regard are dealt with by the expert evidence of Kirsten Bauer. However, Ms Bauer's evidence only deals with the residential landscaping of Dingley Village, and not of that of areas considered industrial.
23. Due to the lack of meaningful mitigating measures in relation to the Property, it is submitted that **EPR LV1** should be amended to specifically require the dense planting of trees sufficiently mature to provide an immediate mitigating benefit to the Property and surrounding commercial properties.

### **Noise Impact**

24. Chapter 12 of the ESS identifies the potential for increases in noise and vibration levels during the construction of the Project and also the operation of the Project which could significantly affect amenity in adjacent areas. However, these concessions are made in relation to residential and parkland areas only and do not consider wider commercial or industrial properties.
25. In the MRPV's Part A Submissions, the MRPV states that industrial and commercial uses are not sensitive receptors and refers to the expert evidence of Mike Dowsett. In Mr Dowsett's evidence, he states that industrial and commercial properties are "*not covered for traffic noise mitigation treatment under the [VicRoads Traffic Noise Reduction] Policy*" (**Policy**).
26. Although the Policy does not specifically cover the traffic noise mitigation treatment of industrial and commercial properties, it does not follow that no mitigation treatment is required in relation to such buildings in any circumstance. This seems to be the inference and position of the MRPV and this position is rejected by Enwerd.
27. The boundary of the Property is one of the closest areas of land to the boundary of the Project and this is demonstrated by Figures 1, 2 and 3. The predominant use of the Property when occupied has been that of office supplemented by warehouse use. The ability for occupants of the Property to work and utilise the Property effectively will be significantly materially impacted by the ongoing noise and vibration resulting from the construction and operation of the Project if

appropriate mitigation measures are not implemented. The impact is arguably greater than that of some residents along the bypass alignment given the proximity of the Property to the Project. This impact unmitigated will have a significant impact on the future letting and use of the Property.

28. It is therefore submitted that **EPR NV1** should be amended to include a specific obligation to minimise the noise and vibration impacts of the Project on the Property and neighbouring properties which closely abut the Project boundary. This obligation should specifically include the obligation to erect a noise barrier similar to those proposed for residential properties within Dingley Village.
29. Without such mitigating measures, the Project will again be in conflict with its stated benefits and objectives of supporting and encouraging investment and employment in local areas.

### **Dust and Odour Impact**

30. In Chapter 13, the ESS specifically references "*a long strip of houses in Dingley Village between Centre Dandenong Road and Lower Dandenong Road*" as being between 50 and 60 meters from the roadway and requiring mitigation and control measures to minimise the impact of dust on residents.
31. Figure 13.4 of the ESS shows that the commercial properties in Dingley, including the Property, are 25 meters from the Project boundary, half the distance of residential properties.
32. Despite the proximity of the Property to the Project, the ESS seems to be silent on the mitigation of the effects of dust and odour on the Property. This seems in direct contrast to the specific reference to the residential properties in Dingley Village, even though these properties are further away from the Project boundary than the Property.
33. It is therefore submitted that **EPRs AQ1 and AQ2** should be amended to include a specific obligation to minimise the dust and odour impacts of the Project on the Property and neighbouring commercial and industrial properties which closely abut the Project boundary.

### **Risk Management**

34. The ESS fails to set out any risk management measures, such as the preparation of a dilapidation report, to protect neighbouring properties from the acts of contractors engaged to carry out the Project.
35. In the MRPV's Part A Submissions, the MRPV refers to the expert evidence of Mike Dowsett in response to this point. Mr Dowsett suggests that the need for such dilapidation surveys will be assessed by the contractor as part of the compliance with EPR NV2 which requires the preparation of a Construction Noise and Vibration Plan in consultation with EPA Victoria.

36. Enwerd submits that this risk management measure is insufficient and inappropriate in a situation where the Property is in such close proximity to the Project boundary. In this situation, is it appropriate to require the contractor to carry out a dilapidation report in conjunction with Enwerd to ensure that any damage caused to the Property as a result of the construction of the Project can be identified and measured. Simply leaving it to the contractor to determine if the preparation of a dilapidation report is required is inappropriate.
37. It is therefore submitted that **EPR NV2** should be amended to include a specific requirement for the Construction Noise and Vibration Management Plan to include an obligation on the contractor to carry out a dilapidation report on the Property in conjunction with Enwerd. We suggest it may be appropriate for similar reports to also be prepared in relation to neighbouring properties which are also in close proximity to the Project boundary.

#### **Adverse effect on investment and employment**

38. As outlined previously, the ESS states some of the key benefits of the Project are the strengthening of employment opportunities and increasing the attractiveness of business and industry in surrounding areas. Without implementing the appropriate mitigation measures proposed by Enwerd, the Project will have the opposite effect on existing business and industry and employment opportunities in the area.
39. Enwerd has significant and reasonable concerns that the Project as currently proposed will significantly adversely affect its ability to lease the Property.
40. In response to Enwerd's concerns, the MRPV stated in its Part A Submissions that the "*impacts on nearby industrial areas will be acceptable and will be appropriately managed in accordance with the EMF and EPRs for the Project*". Enwerd respectfully disagrees with this statement unless the EPRs are amended as I have outlined. In particular, EPRs LV1, NV1, AQ1, AQ2 and NV2 must be amended to appropriately and adequately protect the interests of commercial, business and industry stakeholders, particularly those that are in close proximity to the Project boundary.

**Holly Cormie**

**Legal Counsel – Leasing**

**Juilliard Corporation Pty Ltd**