Submissions in North East Link Project

Made on behalf of:
Manningham City Council
Banyule, Boroondara and Whitehorse City Councils
Recommended Next Steps

The IAC should:

• Adjourn the hearing to a date to be fixed; and
• In the interim,
  • Issue an interim report based on the submissions to the IAC to date;
  • Issue directions to NELP requiring it to address the deficiencies identified in those submissions.
Key Questions for the IAC

• Terms of Reference require the IAC to consider and answer the following questions:

  • What are the environmental effects of the Project?

  • If the Project is to be approved, what planning controls are required in order to ensure that the Project delivers a net community benefit?
Decision-making under the P&E Act

“Planning ... authorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.”

Clause 71.02, Victorian Planning Provisions

“The concept of net community benefit is not one of ideal outcomes, but of outcomes which result in a net benefit to the community assessed within a policy framework by reference to both their benefits and disbenefits”

Knox City Council v Tulcany Pty Ltd [2004] VSC 375, [13(e)]
The Need to Be Met

“The completion of the orbital road connection with the North East Link will:

• Enable the bypassing of an increasingly congested arterial road link that currently carries local, inter-suburban and metropolitan through traffic.

• Provide significantly enhanced intra-metropolitan freight links between south-east to north to match that provided elsewhere across the city.

• Facilitate cross-metropolitan freight movements from eastern Victoria to northern Victoria and beyond.

• Complete the metropolitan orbital road thus providing a choice of routes to access other parts of the city, including key transport hubs, without the need to cross the city centre.

• Provide an enhanced link between the east and south-east with the freight operations of Melbourne Airport.

• Provide an enhanced link between the east and south-east and the proposed Interstate Freight Terminal to be constructed at Beveridge.

• Facilitate an increase in accessibility to job opportunities for people with access to the completed orbital road. That is individuals will have more choices as to where they work for the same journey time. Similarly, employers will have access to a larger pool of potential job seekers within a given travel time catchment (e.g. 45 minutes).”

Expert witness statement of Michael Barlow, [24]
Q: Any project of this type is going to have an impact on local communities, isn’t it?
A: Yes
Q: It’s also important that the impact is proportionate to the need, isn’t it?
A: Absolutely.
Q: Put another way, the Project shouldn’t have any greater impact than the need for the Project demands?
A: I think it goes without saying.

Cross-examination of Michael Barlow, Attachment 1 to Joint Submission
Objectives of the Environment Effects Act

“One aim of this proposed legislation is to enable and encourage those responsible for designing works and proposals to seek advice and take environmental matters into account when preparing these designs. An even more direct aim is to ensure that those making decisions about works and proposals do so in the full knowledge of their significant effects.”

Environment Effects Bill, Second Reading Speech, 17 May 1978
Inadequate Information

• The EES does not provide adequate information to allow for positive finding about what the impacts of the Project as built and operated will be:

  • Reliance on a Reference Design and inadequate EPRs

  • The absence of any transparency about how the Reference Design was developed.
Reference Design

“The Reference Design is a functional design that sets out a spatial allocation – to inform the Project boundary, to inform assessments of impacts and that illustrates one way to achieve certain technical requirements. That’s its purpose. Do you understand that? It is not intended to be basis for measuring tenderer’s design concepts. Do you understand that?”

Questions in the cross-examination of Craig Czarny

“It is my opinion that the reference design cannot be treated as simply a “technical layout” devoid of any relevance to urban design. Indeed if this were so, I would question if the committee could have confidence to make a determination about the impacts of the proposal.”

Stephen Axford, Third Report to the IAC on Urban Design
Reference Design

• Observations of the East West Link (Eastern Section) Assessment Committee are still relevant:

As the Reference Project is a concept and not a ‘real’ project, it has made it difficult to fully assess the impacts of the Project, as they may occur or not, depending on whether the final Project is quite similar or very different to the Reference Project.

The Committee considers that in a high intensity urban environment such as that to be encountered by the Project, a more transparent, measured and structured approach to options identification and discussion with the community would have resulted in a superior process and Project outcome.

Assessment Committee Report [2014] PPV 76, section 5.5.2.
Reference Design

• No other example of the approved use of a Reference Design for a project in an environment of this sensitivity and complexity:

  • Mordialloc Bypass and LXRA Bonbeach / Edithvale – both linear infrastructure, in existing transport reservations with confined scope for environmental impact (Ramsar and other wetlands)

  • Westgate Tunnel Project – not a reference design.

  • Melbourne Metro Project – underground train line with limited surface presence, no significant environmental sensitivity
No Explanation of Reference Design

Principle of transparency
The principle of transparency means members of the public should have access to reliable and relevant information in appropriate forms to facilitate a good understanding of transport issues and the process by which decisions in relation to the transport system are made.

Section 21, Transport Integration Act 2010
No Explanation of Reference Design

• NELP has not provided any clear explanation of why it designed the Reference Design in the way it did. In particular, no explanation of:

  • What the ‘technical requirements’ are that the Reference Design is said to meet;
  • The policy basis for those technical requirements; and
  • What trade-offs arose in the design process and how they were made.

• Absence of any explanation significantly inhibits the ability of the IAC and other submitters to interrogate NELP’s decision-making and determine whether an appropriate balance has been struck.
Feasibility

• Terms of Reference require IAC to make recommendations in respect of ‘feasible’ modifications

• Clear that there are many potential modifications to the Project that would reduce negative impacts (e.g. tunnel extensions).

• Impossible to evaluate feasibility in circumstances where the design drivers (including technical requirements) are not clearly articulated.

• Makes NELP, not IAC, arbiter of ‘feasibility’.
Environmental Performance Requirements

• Entirely unknown whether, or how much, the Final Project will look like the Reference Design

• Only binding constraints on form of ‘Final Project’ are:
  • The Incorporated Document
  • The Environment Performance Requirements
  • Such contractual requirement as NELP chooses to impose
Environment Performance Requirements

• The Environmental Performance Requirements are inadequate as they do not guarantee that the Final Project will be an improvement on the Reference Design:

  • Typically do not require the achievement of particular outcomes (i.e. a reduction in footprint);

  • Instead, require the following processes (‘minimis[ing]’ the footprint) which may or may not result in a reduction in footprint.

  • Achievement of those goals will be subject to compliance with any (currently unknown) binding contractual requirements (e.g. attainment of Level of Service D).
Three Key Deficiencies

• Risk of mitigation failure – Ecology (Simpson Barracks)

• Impacts inadequately assessed – e.g. Groundwater, Surface Water

• Inadequate mitigation – Urban Design
Risk of Mitigation Failure: Simpson Barracks

• Project proposes to encroach on Commonwealth land at Simpson Barracks. Area of encroachment includes:

  • 1/3\textsuperscript{rd} of the largest known population of Matted Flax-Lily in Victoria; and

  • The only known population of Studley Park Gum that is currently recruiting new members.

• EPRs propose what is essentially translocation for both species.
Translocation is not Mitigation

Translocation “*trades certain losses against uncertain gains.*”

Ecology Conclave Statement

“*Given the uncertainty of success of a translocation program, the potential use of translocation as an ameliorative measure should not be treated as a relevant deciding factor when determining the potential impact of a development (i.e. translocation does not effectively or reliably decrease the significance of an impact).*”

Guidelines for Translocation of Threatened Plants in Australia, p. 17
“[M]ost translocations associated with development approvals will likely increase the extinction risk of the species as losses may not be able to be compensated and any such losses precede future management actions, including any translocation actions.

...

A mitigation translocation approval should not be granted unless and until:

• all possible measures have been taken to avoid and minimise impacts (as per global best practice offsetting guidelines (Maron et al. 2012);

• ...

• it can be demonstrated with acceptable certainty that there will be no irreparable harm to the species”

Guidelines for Translocation of Threatened Plants in Australia, p. 17
Alternatives to Simpson Barracks

• NELP asserts that the only alternative to works in Simpson Barracks ‘whilst retaining project functionality’ is to acquire (and presumably demolish) 140 houses (TN 48).

• This should not be accepted in the absence of supporting evidence.

Recommendations:

• During the adjournment, NELP should be required to prepare and document alternative designs for the area around Simpson Barracks.

• The documentation should include a detailed explanation of the benefits and costs:
  • Providing an intersection as shown in the Reference Design; and
  • Providing an intersection which does not impinge on Simpson Barracks.
Inadequate Assessment: Groundwater and GDEs

“The project is located adjacent to environmentally sensitive areas ... The primary objective of numerical groundwater modelling is to inform potential impacts and risks of the project on these sensitive receptors.”


“In my opinion the groundwater model is a good “first pass model”, but the model cannot be used to accurately predict impacts on sensitive environmental receptors (its stated objective).”

Presentation of Chris Smitt, slide 2
Groundwater: Uncertainties Remain

• Conclave agreed that there were ‘few bores’ in the alluvium that hosts many environmental receptors on the Yarra flood plain.
• In addition, relatively few bores close to environmental sensitive receptors.
• Result is that assumptions have had to be made about the behaviour of the alluvium.
• Existing model unable to predict impacts to less than 0.5m.
• Criticisms acknowledged by the final statement of Mr Barker on Groundwater
• Result is that predictions for impacts on sensitive receptors are materially more uncertain than predictions along alignment.
• This is potentially significant given the environmental sensitivities of the Yarra flood plain area and the GDEs that exist there.
Groundwater: Further Work Required

• NELP asserts that uncertainties should be left to be resolved in the post-approval stage. Says that the best way to deal with uncertainty is through a statistical probability analysis (i.e. Monte Carlo analysis).

• There is no impediment to delaying the project to gather further data in order to refine the numerical model. The best way to address uncertainty is through obtaining more data and updating the model.

Recommendation

• NELP should continue to gather data during the adjournment in order to refine the model and provide a more accurate estimate of impacts on GDEs.
Inadequate Assessment: Surface Water

To avoid or minimise adverse effects on the interconnected surface water, groundwater and floodplain environments.

Catchment values Evaluation Objective

“The most challenging aspect of providing an informed opinion on the reference design with respect to surface water is the lack of evidence to support claims that impacts identified, be it an increase in flood level, decrease in water quality or reduction in access to water supply, will be mitigated within the detailed design phase of the project.”

Expert witness statement of Warwick Bishop, section 8.4.1.

Concerns regarding the level of detail presented in the EES and supporting documents was flagged by David Fuller and by Warwick Bishop and Scott Dunn

Revised Surface Water Conclave Statement
“It is generally good practise to undertake a feasibility assessment via coarse mitigation modelling at the concept (or reference) design phase to establish that a solution is indeed possible at the location.

... 

The apparent tendency to lean on the EPRs as a method to defer the need to resolve identified impacts provides the affected stakeholders no insight into potential solutions nor the opportunity to provide comment on the suitability of the proposed solution(s).”

Expert witness statement of Warwick Bishop, section 8.4.1.
Surface Water: Potential Unintended Consequences

“It is my experience that, in the review of development proposals for planning approval over many years, detailed results of the impacts of the proposed works and any mitigation solutions are required at the planning stage. This is to ensure that mitigation is feasible and does not have any unintended consequences, which at a later stage may not be able to be accommodated within the constraints of the approved project plan.”

Expert witness statement of Warwick Bishop, section 8.2.3.

• Two immediate areas of risk:
  • Clear that delivering surface water management infrastructure will involve an as yet unquantified land take, result in further acquisition of public open space.
  • Barrelling of Banyule Creek has the potential to adversely impact on the Banyule Flats ‘no go’ zone if measures for managing increase surface water flows / velocities are infeasible / inadequate.
Surface Water: Water Quality Impacts

• No new water quality data gathered as part of EES.

• Absence of baseline data means difficult to assess compliance or non-compliance with relevant statutory standards.

• Although ability to comply with relevant Best Practice Environment Management Guidelines is asserted, it is not established whether this is across the Project as a whole, across catchments or across individual receivers.

• The use of MUSIC is potentially problematic unless the parameters used are adjusted to reflect the particular circumstances of the Project.
Surface Water: Further Work Required

Recommendations:

• Hydraulic mitigation modelling should be undertaken to provide clarity as to whether (or not) mitigation solutions to the predicted flood and water quality impacts of the Project can be achieved at each location in question for the reference design.

• Assessment into the feasibility of the WSUD assets proposed including earmarked locations and asset configurations to provide all stakeholders with a clear understanding of what may potentially form part of the detailed design is missing from the EES documentation.

• An assessment into whether BPEMG water quality treatment targets can be met at a catchment scale rather than at a holistic project scale to ensure the even distribution of stormwater treatment between all receiving waterways is needed.
Inadequate Mitigation – Urban Design and Visual Impact

To minimise adverse effects on landscape values, visual amenity, recreational and open space values and to maximise the enhancement of these values where opportunities exist.

Landscape, visual and recreational values Evaluation Objective

“[The Reference Design] is not a final design and does not represent the implementation of the UDS. ... It is therefore misconceived to attempt to critique the Reference Project against the requirements of the UDS.”

NELP Group 1 Submission, [16] and [18]
No justification for failure to integrate UD

- The Urban Design Strategy is the primary tool for managing visual impacts, but NELP has expressly prepared the Reference Design on the basis that it does not respond to the proposed UDS.

- Contrary to the approach in NSW:

  "Urban design is to be considered early on in relation to small projects as well as large projects. The integration of an urban design perspective helps:
  ➢ Realise a program or project’s potential.
  ➢ Avoid impacts (not just mitigate them).
  ➢ Produce an integrated engineering and urban design (which represents an improved public domain)."

Road and Maritime Services, Beyond the Pavement: Urban Design Policy, Procedures and Design Principles, p. 19
No Minimisation of Visual Impact

• Result is that no inference can be drawn about whether the impacts of the Project will be minimised, let alone sufficiently minimised.

• EPRs defer that question until post-approval where it will be decided between NELP and the contractor.

Recommendations

• Agree with Mr Axford’s support for a ‘more specific approach’ and his recommended pre-approval refinements to Reference Design.

• Supports the need for an adjournment which would allow additional design work to be undertaken which could then be evaluated by IAC.
Benefits of Adjournment

• No aspect of the Project that cannot be improved with additional time.

• Even where impacts are known and mitigation identified, more time to prepare for the development of the Project can provide benefits.

• Clear example relates to the impacts of the Project at Bulleen Industrial Precinct and around the Southern Portal.