Date: 2 September 2019

NORTH EAST LINK PROJECT INQUIRY AND ADVISORY COMMITTEE

SUBMISSION ON BEHALF OF BULLEEN ART AND GARDEN CENTRE PTY LTD
INTRODUCTION

1. This submission is made on behalf of Bulleen Art and Garden Centre Pty Ltd (BAAG) with respect to the North East Link Project (Project).

2. BAAG occupies the land at 6 Manningham Road West, Bulleen (BAAG Land), on the western edge of the Bulleen Industrial Precinct (BIP) and nestled next to the Yarra River environs.

3. BAAG does not have an in principle or philosophical opposition to the Project. Its concerns are directed towards the impacts that the Project will have on BAAG and its customer base. If the Project did not place BAAG within the Special Controls Overlay (SCO) and the indicative construction compound, and matters of parking and access could be managed during and following construction, it would have been unlikely that BAAG would have expended considerable resources it has (the time of company directors and staff and the costs of engaging town planning and legal representation) to participate and protect what it genuinely considers to be a ‘much loved’ and valued business which is also a community asset.

4. This submission builds on BAAG’s original submission and focuses on:

   4.1 why BAAG is a significant asset and should be retained;

   4.2 characteristics of the BAAG Land;

   4.3 the impacts of the reference design on BAAG and the effect of the proposed framework for mitigating impacts;

   4.4 the difficulties in engaging in a constructive and mutually beneficial consultation process based on a reference design and impact of consequential uncertainty;

   4.5 the long-term aspirations for the BIP;

   4.6 the scope to minimise the construction compound in the vicinity of the Manningham interchange;

   4.7 the importance of maintaining access and parking during and post construction to business viability, particularly public parking along Manningham Road;

   4.8 options for relocation; and

   4.9 suggested revisions to the regulatory framework and the Environmental Performance Requirements (EPRs).
5. The submissions are made in the context where BAAG’s owners and key managers and staff are 100% committed to keeping the BAAG concept alive and thriving. This commitment is not driven so much by self-interest and future profits but a genuine desire to protect BAAG so that BAAG can continue to support various sustainability projects such as Sustainable Gardening Australia (SGA) and revegetation projects and to provide an accessible venue and outlet for local artists to display and sell their work. BAAG has little doubt that the reference to it as a not for profit business in the EES documentation was attributed to the authentic approach that BAAG adopts to giving back and supporting the community and the extent to which it has interwoven itself into the community.

6. BAAG’s primary position is that:

6.1 there is insufficient justification to support the size and configuration of the construction compound which presently requires most of the BAAG Land.

6.2 the construction compound should be reduced to allow this community asset to continue to operate from the BAAG Land, but only if good access and an equivalent number of car spaces are maintained.

6.3 if the preconditions for ongoing viable operations for BAAG cannot be assured during and post construction, the relocation of BAAG to another site within the immediate area should be facilitated and supported as part of the Project.

6.4 the EPRs should be revised to support the continued viability of BAAG (whether that is on the BAAG Land or on a nearby site).

BACKGROUND

Who is BAAG?

7. BAAG is more than a nursery and landscape supplies business. BAAG is a multifaceted business that integrates art gallery spaces and seminars with its nursery and landscape supplies functions, attracting about 135,000 visits each year.

8. BAAG has sustainability and community as central and inseparable principles, guiding day to day operations and the long-term strategy of the business. It believes that profit is a necessary prerequisite to achieving a range of environmental, social and business objectives. This means that even the nursery and garden supplies functions of the business are materially different to other typical businesses of this nature.
9. The EES Social Technical Report understood the ethos of BAAG, although it misunderstood the business model. It stated¹:

Bulleen Art and Garden is a not for profit business with a nursery and gallery space for emerging local artists. The business hosts various art and gardening workshops and social groups. As well as catering for schools excursions, community disability groups and elderly social groups, it is an important hub for a range of socio economic groups due to a range of free or affordable to join events hosted by the business.

10. This makes BAAG unique.

11. Whilst BAAG is different, it is a viable and professionally run business with about a total of about 50 full and part time staff.

12. BAAG is highly valued by the community.

13. The high value placed on BAAG by the community is evidenced in the support from the community through approximately 150 EES submissions and the community petition with approximately 5000 signatories.

14. Expert evidence has also recognised BAAG’s value. For example:

14.1 Mr Weston opines that BAAG is thought of as a ‘community facility’ and supported the relocation/retention of BAAG, given its role in promoting environmentally conscious behaviours, supporting artists, etc.

14.2 Ms Stubbs included the loss of BAAG under community infrastructure impacts.

14.3 Mr Barlow recognised the concerns about losing access to a specific service (e.g. Bulleen Art and Garden Centre) or the severance of a strong business relationship or a service that is essential to submitters.

14.4 Mr Begg acknowledged that, as a much used and much loved facility, BAAG has a role in creating the identity of the area.

14.5 Both Mr Barlow and Mr Weston supported the retention of BAAG.

The BAAG Land and its context

15. BAAG is located at the western entry to the municipality of Manningham. BAAG is nestled alongside adjacent parklands and the Yarra River, within the Valley of the Arts² and functions as a transition/buffer between the employment precinct to the east and the sensitive river environment to the west and south.

¹ See page 70.
² It is a term used by the Manningham City Council and various tourism associations to describe the Yarra River environs from Heidelberg to Warrandyte, being the location where many of the artists from the Heidelberg School painted and the birthplace of the Angry Penguin modern art movement at Heide.
16. The site has an area of approximately 7,716 sqm. BAAG is on Crown land and has a long-term lease to 2032 from Parks Victoria. The lease has been renewed continuously since 1967, with the current last lease term being for 21 years. There are still 13 years remaining on the lease. The permitted use under the Lease is ‘Sustainable living and natural world education and experiences, provision of plants, products, bulk materials and services for gardeners, art gallery & community resource’.

17. Figure 1 is an extract from BAAG’s lease which shows the land that BAAG leases.

**Figure 1 – BAAG’s leasehold**
18. The BAAG Land broadly consists of three areas, namely.\(^3\)

18.1 Nursery and gallery space – 3,100 sqm

18.2 Landscape Supplies Yard – 2,800 sqm

18.3 Car Parking/Storage/Vehicle Access – 1820 sqm.

19. The nursery, gallery spaces and seminar rooms are generally located towards the front of the BAAG Land. These support the nursery, Bolin Bolin Gallery which hosts artwork from local artists, the main retail area, BAAG offices, seminar rooms, the Sculpture Garden, community area and SGA’s offices. These spaces occupy an area of about 3,100 square metres and is utilised by the majority of the 135,000 visitors to BAAG each year.

20. The garden supplies yard encompasses an area of about approximately 2,800 square metres and is located towards the rear of the BAAG Land. It forms part of the important integrated gardening offer provided on the BAAG Land. A delivery service to home and garden professional customers is also provided. The IAC may have seen BAAG’s colourful trucks on its travels when inspecting various sites associated with the Project.

**Car parking**

21. Various witnesses have referred to BAAG’s car parking arrangement. Often the description of its car parking arrangement was not entirely accurate.

22. The summary below provides an accurate description of the car spaces relied upon by BAAG.

23. BAAG’s business viability is dependent on the car parking in front of the nursery. This publicly available parking is partly located within the Manningham Road road reserve and on BAAG’s land. BAAG also has limited internal customer and separate staff car parking located entirely on its land.

24. There are about 40 publicly available car spaces in front of the BAAG Land and nearby businesses (these are predominantly within the road reserve and partly within the BAAG Land in front of the nursery area). These spaces are the main customer parking and are heavily utilised, particularly at weekends when adjoining businesses are closed. BAAG also has another 45 car spaces located in two areas on its land, just to the east of the seminar rooms which is used primarily by customers and suppliers and at the very southern end of the BAAG Land which is used primarily by staff and SGA volunteers. Only the spaces located near the seminar rooms are used by customers.

\(^{3}\) These are approximate areas, noting they slightly exceed the total lease area.
Access

25. In addition to BAAG’s internal access, the location of the BAAG Land along Manningham Road, allows for a landmark entry passed by around 60,000 vehicles daily, but also allows for safe and efficient access by supplier delivery vehicles.

Important attributes of the BAAG Land

26. Over the past 30 years, the nursery and landscape supplies industry has been under increasing pressure as prices and rents have increased dramatically. This has forced many nurseries to close. The BAAG Land is an important opportunity for an established business to continue to operate.

27. Within this challenging economic context, the BAAG Land meets the following criteria which are essential to BAAG’s current and ongoing operation:

27.1 relatively low economic value to allow a low intensity nursery use;

27.2 centrality to BAAG’s established customer base;

27.3 sufficient space for the numerous BAAG activities, including large outdoor areas for plants, garden supplies and covered spaces/buildings for gallery, garden hardware, offices, classroom;

27.4 arterial road exposure;

27.5 functional heavy vehicle access and parking;

27.6 appropriate zoning that allows the mix of land uses; and

27.7 ambience and relationship to adjoining parkland.

SUBMISSIONS

The Project

28. The BAAG Land is identified as part of the proposed construction compound on the western side of the proposed road alignment in the reference design.

29. Figure 2 shows the location of the BAAG Land in the context of the reference design.

30. The BAAG Land is entirely within the SCO1.
31. The EES indicates that within the BIP, ‘over 80 businesses would be displaced due to land acquisition’. Further, the EES notes that some businesses within the northern portal to southern portal will be subject to partial acquisition and some subject to temporary occupation. How these intentions apply to BAAG are unclear but BAAG has assumed that its inclusion within the indicative construction compound and entirely within the SCO1 means that it is likely to be displaced.

32. Tabled Document No. 166 – TN44 Attach C Map, which was tabled on 10 August 2019 by NELP, provided new information about the possible use of the construction compound. Document No. 160 shows for the first some of the functional elements which would be required within the construction compound. This document also shows functional elements occurring outside of the construction compound area shown in the reference design. Relevant to BAAG, it:

32.1 shows that there are no functional elements of the construction compound located on the nursery and gallery space on the BAAG Land;

32.2 utilises the elongated rear portion of the site for the overhead bridge crane (4), unreadable (5) and the circulation road (shown as green); and

32.3 Tabled Document No. 166 – TN44 Project timeline indicates that Manningham Intersection work will commence in January 2021 with completion in March 2027.
However, the EES\textsuperscript{4} indicates that construction of the interchange will take 30 months. BAAG questions which timeframe is correct as the differences in the duration are considerable.

33. The Reference Design includes a realignment of Manningham Road West. This realignment will displace street parking used by BAAG customers along Manningham Road West and some of these car spaces are within the BAAG Land.

34. The Project also includes a shared pathway. BAAG supports the principle of including such a pathway. Its location within the vicinity of the BAAG Land is not clear. BAAG would like to be involved in planning where this path will go as it may impact on land that BAAG has been actively revegetating for over 20 years.

\textit{Vagaries of adopting a reference design}

35. BAAG has found considering and responding to the reference design a complex and frustrating process. This is because the design of the Project is not settled. Indeed, the reference design is merely a hypothetical design for the Project, representing one possible solution. However, the reference design is the most detailed information that is publicly available about the Project and it is the design that all the technical reports have been based.

36. To the best of BAAG's knowledge, this frustration with adopting a reference design for this type of process is not new.

37. In the East-West Link IAC, the Committee said:\textsuperscript{5}

   The election by the LMA to proceed in the manner it has is open to it, and whether it adequately or appropriately addresses the various matters is a fact finding exercise about which opinions legitimately differ. It is clearly a matter for the Committee to reach conclusions upon which it can make its recommendations.

   On a more general level, and regardless of any legal issues, there is no doubt that the use of a 'Reference Project' approach has caused considerable difficulty and angst for the Committee, other parties and the community.

   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. In practical terms this has caused the following issues:

   - Lack of certainty on key technical issues such as tunnelling approach leading to difficulty in fully assessing potential impacts;
   - Lack of certainty on other issues such as social and economic effects;

\textsuperscript{4} Table 10.2 on page 434 of the Smedley Technical and Strategic Pty Ltd – Traffic and Transport Impact Assessment (EES Technical Report).
\textsuperscript{5} At pages 57 and 58.
• The generation of significant community concern and stress about Reference Project elements that may not be in the final Project.

The approach has also led to difficulties for expert witnesses from the LMA and other parties who have tried to provide an expert opinion based on a Reference Project whose impacts, as far as they can be assessed given the uncertain design, may be significantly different to the final 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.

38. BAAG endorses the above observations and considers that the concerns held by the Committee in the East-West Link Project have revealed themselves in this Project and that an actual project within defined boundaries would have been a far superior outcome to the considerable uncertainty and disruption that has been caused.

39. BAAG considers that while adopting a reference design might have been reasonably open to NELP, this decision has caused unnecessary angst and concerns for BAAG and the many businesses within the BIP.

The Planning Scheme Amendment

40. The SCO1 Incorporated Document⁶ has the purpose to facilitate the Project and applies to the BAAG site. Figure 3 is an extract of the proposed SCO1 map.

**Figure 3 – Extract of SCO1 Map**

41. In broad terms, it provides that:

41.1 no planning permit is required for the use or development of the Project; and

41.2 before the Project commences an Environmental Management Framework (EMF) with Environmental Performance Requirements (EPRs) relating to a range of

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⁶ Tabled Document 116a.
matters such as business, land use planning, social and community, traffic and transport.

42. However, the EMF is not required to be prepared before preparatory works begin. Although BAAG understands the rationale for such an exclusion, to some extent, BAAG is concerned about the extent of preparatory works that may occur before the approval of documents, namely the creation of the construction compounds in advance of appropriate plans. Given the scale of building such compounds and the extent of demolition that would be required, BAAG considers that it would be appropriate for Environmental Management Framework to be prepared before the work begins on preparing the construction compounds.

43. BAAG shares the concerns of Marcellin in this regard and supports its proposed amendments to the incorporated document relating to managing preparatory buildings and works at paragraph 66 of its written submission.

The importance of this hearing

44. The EES relies on a reference design, which it has been emphasised throughout this hearing is only one way to deliver a functional road. This provides little comfort to affected stakeholders.

45. The concerns relating to the vagaries of a reference design are directly relevant to the implications for the BIP and the inability to evaluate to performance of the reference design in terms of urban design outcomes that can be anticipated.

46. The use of the reference design compromises any capacity to effectively balance the range of relevant objectives other than possible road function in an integrated way. As Mr Lorimer of Biosphere\(^7\) has identified (relating to ecology but similar principles should apply to other issues), there should be an integrated approach to balancing impacts and costs rather road engineers determining acceptable outcomes, adopting:

   A conference of experts from different disciplines (engineers, environmental scientists, social scientists, …) to explore options more thoroughly than leaving the engineers to decide by themselves how far they’ll go before giving up on tricky options. (It looks to me as though the engineers looked at a few options and decided to take the easiest or cheapest.)

47. The Councils with the resources of a small army of highly experienced lawyers and experts have found the EES lacking in specific analysis and consideration that balances key issues. This makes it extraordinarily difficult for other parties who simply do not have the financial resources.

48. This hearing is the only formal opportunity for input which will be assessed and possibly acted on prior to the appointment of the contractor about the framework that will guide the

\(^{7}\) Document 92
actual design of the Project. BAAG is concerned that contractors are likely to accord priority to road function, the ease of constructing the Project and readily quantifiable performance measures rather than stakeholder interests or objectives that rely on more qualitative evaluation. BAAG asks rhetorically, what are the incentives for Contractors to deliver positive outcomes for stakeholders if they are not clearly articulated in the EPRs?

49. Further, Mr Begg during his evidence emphasised that it is not possible to evaluate likely urban design outcomes and that he considered that the reference design was a starting point, providing only one possible functional design and it was his expectation that there may well be significant changes. Such evidence fortifies BAAG’s concerns and frustrations.

50. The proposed regulatory framework provides no assurance of an ongoing meaningful and influential role in consultations for stakeholders beyond the requirement for a 15 day notice period for UDLP under the proposed incorporated document.

51. BAAG endorses the oral submissions by the Councils that the:

51.1 import of the Project and the scale of impacts for the BIP, residents, and the environment warrants rigorous assessment through a transparent process; and

51.2 EES and reference design does not provide a basis for informed, effective consultation.

52. In this context, if the Project proceeds, BAAG seeks explicit recommendations to provide a level of comfort that undertakings given in this process are realised throughout the Project’s delivery, including post construction, and the contractor’s engagement.

53. Further, when the IAC is undertaking its assessment of the EES and the proposed planning scheme amendment, BAAG endorses the principles set out by Marcellin in its written submission at page 20.

Impacts on BAAG

Ongoing uncertainty

54. The protracted period of uncertainty has compromised normal business operation and conditions of any compensation constrain the capacity of businesses to respond to the Project (ie unable to act with confidence if a relocation option is identified).

55. Prior to the Government’s commitment to the Project, BAAG had a reasonable expectation that it would continue to operate profitably in the long term from the BAAG Land.

56. BAAG recognises and appreciates the complexity of planning for such a large and complex project. However, success is not to be measured purely on the engineering outcome, it needs to be also measured in a balanced way on the extent that it considers and genuinely addresses the needs of the community and those affected.
57. BAAG has developed a constructive and good relationship with NELP. Given the significant and direct impacts on BAAG, has chosen to be actively engaged in the process and has sought to do so in a constructive way. This has involved hundreds of hours of work:

57.1 attempting to digest the vast amount of material to understand the Project;

57.2 actively being involved through its membership of the Community Liaison Group, Business Liaison Group and BIZ – Bulleen Industrial Precinct committee, attendance at public presentations;

57.3 having numerous meetings with NELP staff and their consultants;

57.4 hosting meetings between BIP and NELP staff;

57.5 preparing submissions on the EES;

57.6 liaising and meeting with the various community groups and organisations that BAAG supports; and

57.7 business planning for various scenarios.

58. In addition, BAAG has sought legal, planning and compensation advice, all at considerable costs to the business.

59. For a small business, the imposition of the Project has been substantial, and an unbudgeted cost that BAAG understands will not be compensated. This imposition on BAAG has been far greater than what could be reasonably expected as a cost of doing business.

60. BAAG’s experience to date is that after 2 years, there is no certainty as to what the Project will entail and what its impacts will be for BAAG. BAAG accepts there is the reference design, but it is simply that. There is no firm proposal.

61. BAAG has had continuous contact with and has generally received well thought out advice from NELP staff and its technical consultants. While this has been helpful, the advice is not binding on the Project. Examples include:

61.1 the ‘potential, indicative’ construction compound. This has been a central concern to BAAG from the outset. BAAG has consistently been advised that this is the maximum area required, yet it is only on Day 10 of this hearing that written information in the form of a map has been provided on possible spatial requirements and possible uses of the compound.

61.2 The timeline for relocation – despite repeated assurances that businesses would be provided with at least 2 years of the need to vacate:
61.2.1 BAAG has been told that the final decision on acquisition could potentially be October 2020.

61.2.2 The project timelines (Document No. 166 TN44) shows commencement of the Manningham intersection in January 2021.

61.2.3 The incorporated plan provides for various works that could be anticipated in a construction compound in advance of the various project plans.

62. The site of the Tunnel Boring Machine (TBM) is another uncertainty that BAAG faces. BAAG understands that there are two alternative sites for the TBM in the reference design, namely one at the northern end of the tunnel and the one at the southern end at the Manningham interchange.

63. BAAG has understood that the southern launch site at the Manningham Interchange was an unlikely outcome due to the timeframe required to relocate more than 80 businesses from the BIP and that this would potentially delay the start of the Project.

64. However, on Friday last week, NELP tabled a new map showing the area which would be available for the TBM. There is no detail regarding how the functional aspects of the site would be organised, as was shown in Tabled Document No. 166, noting that this document includes a TBM site that does not appear to require the BAAG Land.

65. BAAG is uncertain how to interpret this information and its impacts on BAAG.

66. BAAG staff are confronted daily with enquiries from customers about its fate. While BAAG’s staff understand that BAAG is ‘not cutting and running’, BAAG finds it very difficult in the above context to provide staff with any certainty about what lies ahead.

67. Ms Stoettrup, who assessed the business impacts supported an additional EPR to specifically address impacts for employees who lose their jobs which she suggested could include counselling, training and assistance with job search but she was unable or unwilling to indicate whether assistance would extend to financial support. BAAG supports these measures but says that they do not go far enough.

68. Most of the BAAG staff are qualified and skilled in their fields, so any such help would need to be tailored to their needs and the provision of appropriateness financial assistance also needs to be provided to them if BAAG was forced to closed.

69. In addition to the diversion of resources to engage in the various consultation processes associated with the Project and the EES process itself, business planning and investment is severely compromised as a direct result from:

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8 See Tabled Document No. 290.
69.1 the uncertainty about the actual design of the Project that will be constructed;

69.2 how long BAAG can remain on the BAAG Land (if this is at all possible); and

69.3 the conditions that will be experienced if remaining on the BAAG Land is possible.

The extent of the Manningham interchange construction compound

70. There are consistent references to ‘avoiding, minimising or offsetting/managing’ the effects of the Project in the EES, scoping requirements and assessment framework\(^9\) and specifically to minimise the footprint. For example:

Objective 3.4 Minimise footprint – Minimise negative impacts on the community and the environment by minimising the design footprint and visual bulk.

LP1 Minimise land use impacts: The project must be designed and constructed to minimise the design footprint and avoid, to the extent practicable, any temporary and permanent impacts on the on various uses, including commercial and industrial sites.

EPR B2 requires minimisation of disruption to businesses from permanent acquisition as much as practicable.

71. Before moving to BAAG’s specific concerns regarding the construction compound, it is important to say something about the EPRs. On one level LP1 would appear quite appropriate. However, on the other, the EPR is uncertain. BAAG considers that how the EPR is interpreted and applied will impact on the delivery of outcomes. Further, given the significant impact on business that will be caused by the construction compound, greater certainty is required. For example:

71.1 What factors will be used to determine whether ‘to the extent practicable’ has been achieved?

71.2 How will these various factors be weighted? For example, how will they be weighed against a potential increased cost to the Project?

71.3 At what point does the cost of alternatives to avoid the temporary or permanent occupation become no longer practicable?

72. BAAG considers that these questions need to be answered before the IAC should be confident that the EPRs will deliver acceptable outcomes.

73. The extent of the proposed construction compound in the vicinity of the Manningham interchange is uncertain. EES Map 19 includes the BAAG Land in the Indicative area of potential construction compound. BAAG has been told that this indicates the maximum

\(^9\) For example, North-East Link – EES scoping requirements at p.8, p.10, Section 4.4 of the EES.
area that will be used, but detailed designs may well require lesser area for the construction compound.

74. Even during the hearing, NELP was unable to advise of the extent of construction compound that is reasonably required or functions that must occur in a particular location for constructing the Project whereas other aspects such as car parking or shed and the like were described as ‘footloose’ and capable of being moved. At that time, Mr Morris acknowledged that the EES did not make this distinction.

75. While the questions Mr Morris put to Mr Haratsis elicited support for the EPR to minimise the acquisition of properties that may not be needed by the Project, citing BAAG as the example, BAAG is cautious about the comfort the EPR provides for two reasons. First, experts giving evidence, such as Mr Haratsis, do not determine the scope of the Project or which land will or will not be acquired. Second, to the best of BAAG’s knowledge, NELP has made no submission that the Project will no longer require the BAAG Land.

76. Accordingly, the IAC should assume that all or some of the BAAG Land could still be acquired, either permanently or temporarily.

77. BAAG’s concerns would be reduced if:

77.1 NELP made a public statement that the Project will ensure the survival of BAAG on the BAAG Land, including that any loss of land and parking could be compensated by a change of footprint; and

77.2 the IAC recommended that most of the BAAG Land should be removed from the construction compound and SCO1.

78. Further, none of the expert witnesses at this hearing appear to have contemplated how the footprint of the construction compound could be reduced. Despite impacts on the BIP being recognised as very high or severe, it is apparent from responses from expert witnesses – such as Ms Stoettrup, Mr Begg, Mr Haratsis, Mr Barlow, Ms Stubbs and Mr Weston – that they did not address the first step of how the identified impacts could be avoided or minimised by reducing the extent of the construction compound. Mr Haratsis also gave evidence that he had not had previous experience with a project that had such a large impact on business. Given Mr Haratsis’ experience, his evidence in this regard is compelling.

79. BAAG considers that despite the very high or severe impacts on the BIP, the absence of any technical justification for the size of the construction compound is both surprising and

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10 Such as on Day 3.
concerning. This is particularly so given the size of the compound has a direct effect on the extent of the land that will be required within the BIP.

80. In his social impact evidence Mr Weston did support avoiding the loss of BAAG if possible. Mr Barlow also supported relocating BAAG locally if the BAAG Land was required for the construction compound.

81. It was not until Day 10 that Doc 166 TN44 Attachment C provided a map showing the exhibited construction compound with an insert (which is very difficult to read) which appears to affect the elongated rear portion of the BAAG site but does not even show the whole of the BAAG Land – see Figure 4 below. It is understood that the area shown on this document remains ‘indicative’.

Figure 4 – Extract of Document No. 160

82. It could be inferred from this map insert (above) that much of the BAAG Land, including the nursery and art gallery space, should now not be required for the construction compound and it had only been included to provide contractor flexibility. 11

83. However, while this document has been provided to the IAC, its status is not clear, as is the influence it will have when the extent of the construction compound is finally determined.

11 As BAAG understands the reference design and the Document 166, the part of the BAAG Land now required has changed in broad terms from the northern half to the southern half. The insert has been rotated so north is facing to the top of the page.
Nevertheless, BAAG submits that this document can inform the reduction in the extent of construction compound shown in the reference design to exclude most of the BAAG Land.

84. BAAG endorses the submissions to the IAC from Marcelin that there is a high burden on NELP to clearly justify high and/or severe impacts by demonstrating that it is not practicable to avoid that impact, and, if it is not practical to avoid the impact, how the impact will be minimised.

85. In this regard, BAAG remains unaware of any technical basis for the location and extent of the construction compound despite the calling of extensive expert evidence, preparation of voluminous technical reports and over one month of hearing (to date). Given NELP has now completed its case, and no such information has been presented, BAAG considers that the IAC is entitled to draw an inference that no such technical basis exists.

86. So what does this mean for BAAG?

87. Given:

87.1 BAAG’s location on the edge of the construction compound and serves as a buffer to the adjacent to the riparian environment;

87.2 BAAG is a valued asset to the area and a significant employer;

87.3 BAAG is recognised in many submissions and by various experts as an asset that is highly valued by the community; and

87.4 there has been no business or organisation that has attracted the same level of interest from the community within the whole of the Project area, it would be appropriate that the impacts on BAAG should be avoided and if the impact cannot be reasonably avoided, it should be minimised.

88. An outcome where the Project causes the loss of BAAG will have a significant impact on the community, including on many local artists.

89. Conversely, the maintenance of the BAAG jobs and benefits to the community on the site reduces the costs to the Project. Further, if BAAG is ‘saved’ by its exclusion from the construction compound, this will result in a community benefit (as previously described) at no cost to the community or government as BAAG is an independent business with no government subsidies or help.

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12 BAAG notes that there have been over 150 submissions directly supporting it and a petition to save it containing almost 5,000 signatures. The submissions and petition contained many heartfelt messages of support for this much loved business.
90. Therefore, rather than relying on a strengthened EPR, which is dependent on contractor priorities and secondary approval processes where those affected have little influence, BAAG seeks a recommendation from the IAC that extent of the construction compound should be reduced to exclude the key public areas of BAAG and provide the necessary land for supporting car parking and loading, together with appropriate changes to the boundaries of the SCO1 as it applies to BAAG.

Recommendation sought

91. In light of the above, BAAG seeks a recommendation from the IAC that all reasonable steps should be taken to secure the ongoing survival of BAAG by either:

91.1 excluding the BAAG Land to the maximum extent possible, from the construction compound provided that appropriate levels of car parking, access and amenity can be maintained during the construction phase and post-construction and any loss of the BAAG Land is replaced adjoining the BAAG Land; or

91.2 if this is not possible, supporting and facilitating the viable relocation of BAAG, or part of BAAG, within the immediate area if operational conditions cannot be assured on the BAAG Land during the construction phase apart from limited, short term disruptions.\(^{13}\)

Importance of access and parking

92. The lack of certainty about the project design and road alignment, and its particular impacts on the BAAG Land, compounds BAAG’s broader concern about accessibility and traffic disruption in the precinct generally during the extended construction timeframe. The location of the BAAG Land fronting Manningham Road, allows for its landmark facade to be viewed by around 60,000 vehicles a day which is an important attribute and maintenance of this exposure is important to BAAG’s viability.

93. Access and parking are critical preconditions for BAAG. BAAG’s business is highly dependent on cars as the primary mode of transport for customers to transport typically heavy goods to their home or workplace. This heavy reliance on car travel by BAAG’s customers was accepted by Mr Kiriakidis in response to questions from Ms Foley.

94. The retail garden centre industry is highly seasonal. Customer car parking requirements fluctuate during the week and throughout the year. The car spaces previously identified are generally fully utilised during busy periods.

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\(^{13}\) To be clear – BAAG would prefer to stay on the BAAG Land and wear several months of disruption than to relocate. If significant disruption is expected to occur of an extended period, say 5-6 months.
95. Customers frequently visit BAAG for extended periods. This means that BAAG does not get the 'churn' of customers that other retailers experience where customers visit for a short time. This also impacts on the number of car spaces needed to serve the business.

96. Car parking for the BAAG Land is provided within the land itself and within the Manningham Road road reserve. The car spaces along Manningham Road are essential for the survival of BAAG and are heavily utilised, particularly at weekends, when adjoining businesses are closed. Ms Stoettrup and Mr Kiriakidis did not appear to appreciate that BAAG has both on and off street parking and in turn the broad role of these spaces.

97. Although BAAG has a number of onsite car spaces, these are generally not used by customers to the nursery and gallery space. The car spaces at the southern end of its lease hold are reserved for staff and SGA volunteer car parking. This parking area is too far to expect customers to walk with bulky purchases, and most of the car spaces are usually required for BAAG staff and SGA volunteers to park. Whereas the car spaces along the frontage of the BAAG Land are much closer to the nursery and are heavily used by customers.

98. This public parking resource has been historically relied upon by BAAG for customer parking for 50 years. As this resource has existed with some exclusivity, particularly at weekends when adjoining businesses are generally closed, BAAG has relied upon this resource. If a comparable parking resource is not available during and post construction, the ongoing operation of BAAG would not remain viable on the site.

99. The notes from Traffic conclave 31/7/19 P7 doc 1242.8 re BIP records that JK and HM did not agree regarding an approach to access:

   - HM considered the access arrangements for the ultimate land use of the BIP will be highly influential on the potential land use, potentially restricting or enabling opportunities. He suggested that the access arrangements should be established prior to any rezoning and should be displayed on the Reference Design.

   - JK suggested the function of the interchange should be protected first and foremost and noted that it was important that the highest and best land use (and scale) be determined first before considering traffic access requirements.

100. In this regard, Mr Kiriakidis conceded under cross-examination that, if BAAG was to remain, any parking that would be lost under the reference design would need to be replaced with possible access from a service road. BAAG supports Mr Kiriakidis’ position and invites the IAC to make a recommendation that gives effect to his evidence.

Recommendation sought

101. In light of the above, BAAG seeks a recommendation from the IAC that:
101.1 a specific EPR be included that requires maintenance of access and existing levels of on street/publicly available car parking for existing businesses that are to be retained:

101.1.1 throughout the project construction phase;

101.1.2 in the detailed project design; and

101.1.3 post construction.

Supporting long term aspirations for an arts and culture precinct

102. The North-East Link EES Urban Design Strategy (UDS) articulates a clear direction that the Project must recognise past, contemporary and shared indigenous and historic cultural values. The UDS objectives seek to protect, maintain and enhance the identity of local places, and to ensure an integrated engineering, urban design, architectural and landscape architectural approach that sensitively addresses social, cultural, functional and physical aspects of the project. Further, key directions for the Yarra River Valley include maximising opportunities for land use integration at the Manningham Road interchange.

103. Whereas Mr Begg considered local area specific urban design case studies are premature and was satisfied that the Urban Design Advisory Committee process would deliver good outcomes, evidence from Mr Haratsis argued that the transformation of the BIP warrants more specific guidance on the outcomes to be achieved.

104. Given the sensitivity of the Project corridor and to avoid the risk of urban design being treated as ‘salad dressing’, Mr Czarny advocated embedding a confirmed, more granular urban design, thinking through area specific schematic plans or Urban Design Framework prior to engaging contractors. He saw the need for commitment to an urban design and land use vision for the Manningham interchange area to avoid creating a no man’s land, as has occurred following other road projects (e.g., in South Melbourne). This would provide much greater assurance for the ambitions for the area to be realised.

105. BAAG supports this approach.

106. BAAG considers there are many opportunities within the urban design strategy to develop an ongoing dynamic public art program which engages local artists and the community as suggested in the submission by Sactum Theatre. BAAG supports this submission.

107. BAAG considers that providing access to Heide and Banksia Park from Manningham Road will support the aspirations for an arts and cultural precinct. Access to Heide and Banksia

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14 Page 12 Objectives 1.1 and 3.2.
15 Page 25 UDS 4Y.
Park from Manningham Road West would improve the visual and physical connection of Heide from Manningham Road and importantly between Heide and BAAG while minimising effects on parklands. However, this is not shown in the EES\textsuperscript{16} documentation.

108. The use of a reference design, with its in built uncertainties, increases the importance of the UDS and using conservative assumptions. Given the transformation of the BIP, land use planning and an urban design case study or urban design framework is vital to inform the Project and ensure the successful contractor delivers on community aspirations for the area. It should not be left to a process where ‘probity concerns’ and the contractor’s preferences will be powerful factors driving these outcomes, with those who are directly affected being excluded.

109. Whilst Bulleen Precinct Advisory Committee process has been deferred, the associated framework plan, prepared by DELWP in response to Action 21 of the Yarra River Action Plan, provides an indication of the types of aspirations being put forward for the precinct. The Birrarung Council has endorsed these aspirations.

110. The Framework Plan sets a vision for a Cultural Precinct that supports and protects the Yarra River at its heart. Aspirations include the development of an internationally significant arts precinct and renewal of the industrial precinct as a ‘potential new cultural place’\textsuperscript{17} and a “creative communities ecosystem”. The Framework Plan also includes an objective of including the renewal of employment uses that complement cultural uses.

111. BAAG’s existing cultural value is highlighted in the Framework Plan, which includes a specific nomination of BAAG on the Cultural Heritage precinct map\textsuperscript{18}. The map also includes reference imagery of the landmark entry artwork to BAAG. It is noted that it is the only existing asset recognised by the plan that has direct frontage to and presence from a major road.

112. BAAG is located at the physical entry point to Manningham as the first tenancy within the Bulleen Precinct when entering from Banyule. It is the only existing arts related feature that can be viewed to the west of the proposed Manningham Road interchange. The art installation at its entry provides a noteworthy landmark to the Bulleen Precinct. This locational factor, along with the significant investment made by BAAG and its local community of artists in creating an artistic landmark, allows a visitor to instantly identify the artistic and cultural values presented by BAAG and the river corridor more generally.

113. BAAG has strong credentials in environmental sustainability, parkland enhancement in Bulleen and promoting community focussed arts in a way that complements Heide MOMA and its parkland setting. Its survival and continued development would directly align with

\textsuperscript{16} Horizontal plan, Construction Reference Design Sheet 19 & Alternative Design Sheet 20.
\textsuperscript{17} Map 5a – Land Use & Culture: Appendix H.
\textsuperscript{18} Map 3 – Cultural Heritage: Appendix I.
the Urban Design vision and objectives to achieve an enduring legacy from the Project through the development of a cultural precinct, enhancement of the scenic drive passing in front of BAAG and environmental gains. This cultural value is part of a fledging existing arts and sustainable gardening precinct that includes Heide and the Heidelberg School Artist Trail.

114. Further, both Mr Begg and Mr Barlow accepted the Framework Plan is relevant to consider when assessing the impacts of the Project. However, it was also concerning that Mr Barlow thought the Framework Plan was directed more towards land to the north of Manningham Road around Heide. A review of the Framework Plan, including Map 5A reveals that a potential new cultural place would be included within the BIP, south of Manningham Road and the ‘Cultural Gateway’ is marked to include most of the BIP – see Figure 5. BAAG considers that the proposed arts and cultural precinct is much broader than what Mr Barlow had understood.

Figure 5 – Extract of Figure 5A from the Framework Plan.

115. Accordingly, BAAG has an important role to play in contributing to the identified ‘Cultural Gateway’ under the Framework Plan.

116. BAAG does not purport to be of the same significance of Heide – which is envisaged as the anchor to a cultural precinct of international standing. Rather, BAAG represents a substantial, authentic arts and environmental asset with a strong focus on supporting local artists and community tapping into and nurturing their creativity that complements Heide and the arts trail. It is a quirky, authentic cultural asset with demonstrated support for the local artist and gardening community as well as a strong emphasis on sustainability and on complementing the adjoining Yarra River environment.

117. Although BAAG and Heide are different offerings they do complement each other and visitors to one facility will often visit the other.
118. As the witnesses, such as Mr Begg, have acknowledged, the Project should maintain and enhance the opportunities to realise these types of aspirations. BAAG is an important asset for the evolution of a precinct with soul, rather than just another new office park or supermarket based convenience centre. The IAC will also hear from other submitters advocating for an interesting and authentic inclusion of art into the Project, which will further support the objectives of the Framework Plan.

119. Therefore:

119.1 BAAG’s continued operation is entirely consistent with and would provide a ‘local anchor’ for a developing arts and cultural precinct as foreshadowed in the latest strategic planning for this locality; and

119.2 an arts strategy for this precinct – beyond ‘plonk art’ and road user wayfinding – should extend to local art that complements international aspirations anchored by Heide. A specific EPR is needed.

Recommendation sought

120. In light of the above, BAAG seeks a recommendation from the IAC that:

120.1 BAAG should be retained to support the existing and proposed arts and cultural precinct.

120.2 the urban design strategy should include an ongoing and dynamic public art program which engages local artists and the community.

Other matters

Support for Sustainable Gardening Australia

121. As a strong supporter of SGA, BAAG considers it is imperative that the needs of SGA are appropriately addressed to provide certainty of operations now and into the future. This is in addition to BAAG’s support for SGA’s more detailed submission concerning the establishment of a North-East Link Sustainability Centre to offset the impacts of the Project.

Tree loss and revegetation areas

122. Over the years BAAG has invested considerable time and money revegetating areas surrounding the BAAG Land. BAAG would like to see these areas protected and improved as part of the Project. BAAG is cognisant that the IAC will hear from various other submitters such as Friends of the Yarra Valley Parks about the importance of the local environment. BAAG supports those written submissions that have been made, including those in support of the Caltex River Redgum.
RETTAINING BAAG

123. The current site is suitable for the continued operation for BAAG. If BAAG faces full acquisition, the business will be required to relocate to a new site or, if a suitable site cannot be found, the business will close. BAAG does not want to close.

124. Mr Barlow accepted that if BAAG was removed in totality that it would compromise achieving the objectives of the Framework Plan and has made recommendations that BAAG be relocated locally.

125. The potential options to continue to operate are set out below in order of preference.

Remaining on the BAAG Land

126. BAAG’s demonstrated cultural and employment value for the local area would be well served by remaining on the BAAG Land which has a sense of place that communities have grown to value.

127. It appears that the rear of the BAAG Land may be required within the construction compound area, both from Document Number 166 and the proximity of the finished road infrastructure to the BAAG Land.

128. If this land was lost, which seems likely, it may mean that BAAG could not carry out all of its current operations on the BAAG Land.

129. This could be addressed by either:

129.1 changing BAAG’s operational footprint if alternative adjacent land of equivalent area was available; or

129.2 a temporary relocation of the garden supplies yard to a nearby location, with the provision of the equivalent land area post construction.

130. If this option was adopted, in order to remain viable, BAAG would require:

130.1 retention of a minimum of 80 parking spaces, with at least 35 spaces within the Manningham Road frontage; and

130.2 retention of direct access to Manningham Road for the full construction period and post construction;

130.3 full retention of nursery and gallery area, with internal space allocated for internal car parking, storage and supplier deliveries; and

130.4 possible temporary relocation of garden supplies function and/or partial site reconfiguration if adjoining land is available.
Figure 6 attempts to show the above areas if the whole of the BAAG Land cannot be retained. Area A contains the nursery, gallery and driveway. This land needs to be retained in a partial relocation scenario. Area B could be lost if an equivalent area adjoining the BAAG Land was provided. Area C contains the garden supplies which BAAG would consider relocating. The above position is of course subject to the commercial terms of any relocation and constructing replacement works.

Figure 6 – Overview of key areas of the BAAG Land

Relocation options

132. BAAG has thoroughly reviewed alternative locations to satisfy their operational needs and objectives, however this has proven to be extremely difficult. This is because any new site needs to satisfy the following minimum criteria:

132.1 A large area of land (minimum 2 acres plus additional space to allow for the public roadside parking currently utilised) to house the numerous activities that BAAG hosts with necessary parking for staff and customers.

132.2 A location that is central to its established customer base to allow existing loyal customers to access the new location.

132.3 Is of a reasonably low economic value.

132.4 Has exposure from a busy road frontage.
132.5 Services a similar market area.

132.6 Is zoned appropriately to allow for a nursery to operate.

132.7 Is located within an area where there is a degree of ambiance and environmental value as this suits the modus operandi of BAAG.

133. None of the available sites that have been identified to date have met these criteria. Further, none of the sites within the Preston Industrial Precinct in Table 1 of Ms Stoettrup’s evidence that are currently for sale would be suitable and Websters Road would not be suitable in terms of its size, location, amenity or exposure to an arterial road.

134. Both Mr Barlow and Ms Stoettrup implied that BAAG might be able to relocate nearby in a river location. The Greenery Nursery site to the west on the northern side of Banksia Street is the only other nursery in the area. At first glance, this site might seem like a good option but the site is not without its challenges. Although it was recently offered for sale, the Greenery:

134.1 is currently under private ownership;

134.2 is much larger than BAAG, with a freehold of 6 acres, whereas BAAG currently leases 2 acres;

134.3 a Public Acquisition Overlay applies to the land, which would perpetuate the current uncertainty regarding long term tenure;

134.4 as acknowledged in expert reports¹⁹ there are some uncertainties with respect to flood level modelling of the Yarra catchment and there are differing views about the potential to mitigate the flood risk to an acceptable level for a nursery; and

134.5 from the perspective of public open space and the objectives of the Yarra River Protection (Wilip-gin Birrarung murron) Act 2017 (Yarra River Protection Act), the BAAG Land seems to be a logical site for a long term garden centre use as it is peripheral to the parks, has greater setbacks to the riparian zone, acts as a buffer between the parkland and other uses while being complementary and supportive of the activities and objectives of the Yarra River Protection Act.

135. Nevertheless, if BAAG could not remain on its current site, BAAG would consider relocating to part of the Greenery site on a long term basis if the PAO was removed, the flood risk can be mitigated to an acceptable level without cost to it and commercial terms are fair.

¹⁹ For example, see 4.4.4 Document 30C Scott Dunn Expert Report and Expert Report of Warwick Bishop.
136. This would not be BAAG’s preferred option as to move the whole business would be a major disruption to the business. Relocation or reinstatement of art installations would be a mammoth task and significant planning and cost would be necessary to reconfigure the site. Movement of stock, fixtures and fittings would be another major task, albeit a lesser task than relocating the art installations.

137. BAAG is open to considering a temporary, partial relocation of its garden supplies to another suitable site such as part of the Greenery site as an alternative, again subject to the commercial terms of the arrangement.

**Requested changes to the EPRs**

138. BAAG submits that the EES should be revised to secure viable ongoing operation of BAAG, appropriate recognition of local stakeholders, more explicit support for people who lose their jobs as a result of the Project and to support the realisation of aspirations for the future of the local Manningham Road Interchange Area. These changes relate to the extent of the Manningham interchange construction compound, development of a localised Urban Design Framework, a greater emphasis on consistency with the Framework Plan.

139. The tracked changes version of the Revision 1 EPRs is attached. This document includes BAAG’s requested changes to the EPRs.

**CONCLUSION**

140. BAAG wishes to thank the IAC for setting aside this time to present its concerns. It also wishes to thank Ms Foley for asking a number of questions on its behalf of various witnesses. This process has allowed BAAG to participate, albeit in a more limited way, with having questions asked of the witnesses.

141. BAAG has appreciated the constructive working relationship it has had with NELP to date, and beyond this hearing process, BAAG looks forward to this relationship continuing with ongoing discussions with the NELP officers and its consultant representatives.

142. BAAG considers that it is a unique business and community asset that contributes most to the local community and environment. The careful and sensitive planning of the Project to ensure its successful retention and survival through the construction phrase will greatly assist with the potential community benefit that can be delivered by the Project.

143. Saving BAAG would be a win for the community, a win for its 50 employees, a win for the local arts precinct, a win for many local artists and a win for the business itself. This will be a win that imposes no cost to NELP as the loss of a small section of the proposed construction compound would appear to be surplus to NELP’s needs.

144. BAAG notes, like Marcellin, that:
144.1  NELP has not presented a submission addressing the matters that BAAG has raised; and

144.2  if more material is forthcoming from NELP addressing BAAG’s issues,

BAAG seeks to reserve a right of reply to respond to any relevant new matters that are raised.

145.  For the above reasons, and in order to achieve this outcome, BAAG requests that the IAC recommends that greater detail is required in the EPRs and for BAAG to be explicitly recognised as proposed in the attached revised EPRs.


Darren Wong
Planology
Lawyers for Bulleen Art and Garden Centre Pty Ltd
2 September 2019