NORTH EAST LINK INQUIRY AND ADVISORY COMMITTEE

IN THE MATTER OF THE NORTH EAST LINK PROJECT ENVIRONMENT EFFECTS STATEMENT

IN THE MATTER OF DRAFT AMENDMENT GC98 TO THE BANYULE, MANNINGHAM, BOROONDARA, YARRA, WHITEHORSE, WHITTLESEA AND NILLUMBIK PLANNING SCHEMES

IN THE MATTER OF THE WORKS APPROVAL APPLICATION MADE IN RESPECT OF THE NORTH EAST LINK TUNNEL VENTILATION SYSTEM

SUBMISSIONS ON BEHALF OF NORTH EAST LINK PROJECT

PART A
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Outline

1. These Part A submissions are made on behalf of NELP\(^1\) as proponent of the North East Link Project (Project) and are filed in accordance with the Inquiry and Advisory Committee (IAC) directions made on 26 June 2019.

2. They comprise five parts:
   (a) Part 1 sets out an overview of NELP’s position before the IAC;
   (b) Part 2 describes key aspects of the Project, including its evolution and strategic rationale, and the terms upon which it has been declared pursuant to the Environment Effects Act 1978 (Vic) (the Minister’s Declaration);
   (c) Part 3 concerns the nature and scope of the IAC’s inquiry, having regard to the Terms of Reference\(^2\) and the applicable statutory context;
   (d) Part 4 identifies and addresses key issues raised in submissions; and
   (e) Part 5 addresses the IAC’s Request for Further Information and those made by other submitters.

3. NELP’s initial response to:
   (a) the 874 submissions made in respect of the EES, draft PSA, and works approval application, is presented in tabular form in Appendix A to these submissions;
   (b) the IAC’s Request for Further Information is Appendix B to these submissions.

4. Various background matters are described in detail in the EES and its attachments. These relevantly include the applicable statutory and strategic contexts,\(^3\) the assessment framework adopted in the preparation of the EES,\(^4\) NELP’s approach to consultation and stakeholder engagement,\(^5\) and the key steps that have been taken, and that are proposed to be taken, in the statutory assessment and approval processes applicable to the Project.\(^6\)

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\(^1\) The North East Link Project (NELP) is a dedicated project team the Major within Transport Infrastructure Authority, which is an administrative office in relation to the Department of Transport. NELP is responsible for overseeing the delivery of the Project on behalf of the Victorian Government, including developing the Business Case, stakeholder and community engagement, project approvals, design, construction and operation.

\(^2\) As issued by the Minister for Planning on 11 April 2019.

\(^3\) Chapter 3 and Section 2.4 of the EES; Attachment V to the EES; Section 4 of Technical Report E to the EES.

\(^4\) Chapter 4 of the EES.

\(^5\) Chapter 5 of the EES.

\(^6\) Chapter 3 and Sections 1.3 and 1.4 of the EES.
While aspects of these matters are addressed in these Part A submissions, NELP relies more generally upon, and does not repeat, the relevant sections of the EES in each of these respects.

5. These Part A submissions are further supplemented by, and should be read in conjunction with, the following documents:

   (a) The exhibited North East Link Project EES;\(^7\)

   (b) NELP Technical Notes TN1 to TN29;\(^8\) and

   (c) The expert witness reports filed by NELP with the IAC in accordance with the IAC’s directions.\(^9\)

6. NELP intends to make further submissions during the course of the hearing concerning discrete topics relevant to the IAC’s inquiry. It will present these submissions in advance of the evidence to be called in respect of those topics so as to identify key issues raised in submissions and to outline NELP’s position in respect of those issues. NELP will conclude its case by making closing submissions on Day 36 of the hearing in response to the submissions made and evidence called by other submitters before the IAC. Furthermore, consistent with the IAC’s directions,\(^10\) NELP will also prepare and submit technical notes to the IAC to provide additional information in respect of matters raised in submissions and in evidence and in response to requests for information made by the IAC and other parties.

**Part 1: Overview**

The Project’s Environmental Effects

7. The need for a freeway connection through Melbourne’s north east has long been recognised. Such a connection has consistently been recognised as necessary, or formed part of the planning for Victoria’s transport network, for decades.\(^11\) In more recent times, the Project has been described as a ‘high priority infrastructure project’ in Infrastructure

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\(^8\) As filed with the IAC on 17 July 2019.

\(^9\) As filed with the IAC on 15 July 2019.

\(^10\) See, in particular, paragraph 40.

\(^11\) See, for instance, the *Victorian Government F35 Study* (1974), the *Victorian Government Outer Ring Study* (1979), as well as the *Victorian Transport Plan* (2008) which identified the North East Link as a ‘medium term action’ at p 103.
Victoria’s 30 Year Infrastructure Strategy,\textsuperscript{12} and as a ‘catalyst’ and ‘state-shaping’ project in Victoria’s Infrastructure Plan.\textsuperscript{13}

8. The objectives and rationale for the Project are described in the EES\textsuperscript{14} and its financial and economic credentials have been assessed in the North East Link Business Case (the Business Case).\textsuperscript{15} The Project’s benefits are substantial and multi-faceted. They will accrue to current and future generations and will extend to residents and businesses within the south, east and north of Melbourne.\textsuperscript{16} They cannot be described in a single metric and are instead best understood by having regard to the Project’s stated objectives\textsuperscript{17} and the extent to which the Project will improve:

(a) business access and growth in Melbourne’s north, east and south east;

(b) household access to employment and education in Melbourne’s north, east and south east;

(c) freight and supply chain efficiency and industrial growth across the north, east and south east; and

(d) access, amenity and safety for communities in the north east.

9. These objectives, which were informed by community consultation, respond to key challenges presently facing metropolitan Melbourne and which are anticipated to intensify substantially over time.\textsuperscript{18} Indeed, as demonstrated in both the EES and the Business Case, the consequences of not addressing these challenges would be severe.\textsuperscript{19} The case to complete and upgrade these components of the orbital freeway network is compelling.

10. It is important to recognise that the Project as designed (and declared) will function as a ‘connected freeway link’ as opposed to a ‘bypass freeway’. The benefits of the Project arise both as a consequence of it constituting the missing link in Melbourne’s orbital freeway network and as a consequence of the linkages that it will provide to the surrounding arterial road network. Its capacity to improve business access and growth, to improve household access to employment and education, and to improve access and

\textsuperscript{12} Issued in December 2016 and accessible at \url{http://www.infrastructurevictoria.com.au/project/30-year-strategy}.
\textsuperscript{13} Issued in October 2017 and accessible at \url{https://www.vic.gov.au/victorian-infrastructure-plan}.
\textsuperscript{14} Chapters 2 and 3 of the EES.
\textsuperscript{15} Issued in May 2018 and accessible at \url{https://northeastlink.vic.gov.au/publications/businesscase}.
\textsuperscript{16} See section 2.2 of the EES and section 1 of the Business Case.
\textsuperscript{17} See table 2-1 in the EES at p 2-12.
\textsuperscript{18} See section 2.6 of the EES and chapter 3 of the Business Case.
\textsuperscript{19} See, for instance, section 2.4 of the Business Case.
amenity for communities in the north east, are in part reliant on these connections. The provision of fully functional interchanges with the arterial road network along the Project’s alignment is critical to the Project achieving its stated objectives.

11. It is also important to recognise that the benefits of the Project will be manifest not just in improvements in private vehicular travel, but also in substantial improvements to the freight network, the public transport network, and to modes of active travel.20

12. A comprehensive options analysis was undertaken in respect of potential corridor alignments for the Project, noting that there is no existing road reservation for North East Link.21 After substantial community consultation, and the assessment of multiple corridors, the Government selected the proposed alignment on the basis of its capacity to best respond to the identified challenges and to deliver the project objectives. This decision is not the subject of review by the IAC. The IAC’s inquiry must instead properly respond to the Terms of Reference, which are directed toward the declared project and the terms of the draft PSA and works approval application.

13. The environmental values of the project corridor are varied. While the majority is highly-urbanised, parts are given over to culturally-significant environmental and public open space resources, and others to existing transport infrastructure. To minimise impact, the Project’s footprint has been aligned where possible with existing road reservations, and a long-tunnelled section has been proposed in respect of those portions of the corridor that do not contain surface infrastructure. This notwithstanding, the Project will not be delivered without a range of localised effects on the environmental, social and economic values of the corridor. The type and severity of those effects will vary along the Project’s alignment and will differ in duration. The objective appraisal of the Project must have regard to the sheer scale of the Project and the inevitability of it generating temporary and permanent environmental effects.

14. During construction, the Project will generate substantial volumes of traffic on local roads, require the temporary and permanent occupation of land in public and private ownership, and result in the removal of substantial amounts of vegetation (including native vegetation). The tunnelling and trenching components of the Project have the potential to result in ground movement and to affect local hydrogeological conditions (including in proximity to the Yarra River) if not properly managed, and will generate considerable volumes of spoil

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20 See sections 9.5.2, 9.5.3, and 9.5.4 of the EES.
21 See section 6.3 of the EES.
(a portion of which will be contaminated). Proposed construction activities will generate noise and vibration (which, in certain locations, will occur for prolonged periods).

15. The physical infrastructure associated with the Project, including the new and expanded roadways (which will be variously at-, above-, and below-grade), the tunnel ventilation structures, and the other ancillary structures associated with the Project, will occupy some land presently utilised for recreation and other purposes, and will modify the physical environment along the alignment. The location of infrastructure within the urban reaches of the Yarra River catchment, and within flood plains associated with different water courses, will require management having regard to flood risk and water quality issues. This will require the localised modification of certain waterways in and around the Project’s alignment. The permanent acquisition of privately-owned properties will be necessary to accommodate parts of the Project and otherwise facilitate its construction, including both commercial properties (the majority of which are situated within the Bulleen Industrial Park) and residential properties, as well as sub-strata acquisition in respect of the tunnelled sections.

16. The Project’s operation will redistribute traffic and change traffic patterns within the north east, which will in turn affect traffic volumes on parts of the road network, and otherwise influence air quality and the acoustic environment.

17. NELP recognises that the majority of these impacts will be experienced most acutely by those residents, businesses and other stakeholders located in close proximity to the alignment, and that many of the Project’s impacts will result in marked changes in existing conditions. Notwithstanding that substantial portions of the Project will be tunnelled, it will not be possible to deliver the Project without generating localised impacts of these types. NELP recognises that it is important that the Project’s impacts are minimised to an appropriate extent and otherwise mitigated to achieve acceptable outcomes. A range of responses will be necessary along the Project’s alignment to address the anticipated impacts. The effective implementation of many of these responses will require cooperation between relevant authorities.

18. The EES has thoroughly described the Project’s impacts and assessed them against applicable regulations and standards. It demonstrates that, by adopting a range of mitigation and amelioration measures (the majority of which are well-understood and have been applied in comparable contexts within this state), the impacts of the Project can be reduced and managed to within acceptable levels. The EES goes on to define a robust
regulatory framework that will ensure that these outcomes are achieved. Demonstrating each of these matters will be a focus of NELP’s case before the IAC.

The Assessment Approach Adopted in the EES

19. Victoria’s transport network is presently undergoing a phase of near unprecedented upgrade and renewal. A substantial number of major transport projects are presently being completed within Victoria, and a number of others are either proposed or are presently the subject of statutory assessment and approval processes.\(^{22}\)

20. The considerable challenges associated with introducing substantial new transport infrastructure within established urban environments, as well as the complexities associated with the assessment of the environmental effects of such projects, are accordingly better understood than in the relatively recent past. Indeed, just as the State is developing considerable expertise in the formulation, procurement, construction and operation of major transport projects, so too is this jurisdiction developing considerable expertise in the assessment of major transport projects, including in respect of the identification and assessment of their environmental effects. This experience extends to the conduct of public hearings within efficient timeframes.

21. While every project is different, and each has the capacity to give rise to a range of different social, economic and environmental effects, the recent assessments of other major transport projects provide guidance concerning how to assess the environmental effects and broader planning merits of projects of this type including:

   (a) The means by which relevant environmental risks can be identified and quantified;

   (b) The appropriate use of a reference project as a tool to inform the assessment of the environmental effects;

   (c) The proper function and structure of governance regimes;

   (d) The role that environmental performance requirements should play within those regimes;

\(^{22}\) A list of major transport projects that are presently being undertaken within Victoria, or that are planned to be undertaken, can be found at [https://bigbuild.vic.gov.au/projects](https://bigbuild.vic.gov.au/projects). These relevantly include the Melbourne Metro Rail Project, the Level Crossing Removal Project, the Regional Rail Revival Project, the West Gate Tunnel Project, and the upgrades to the M80, Citylink, Tullamarine, and Monash Freeways.
(e) The central role that consultation plays in the effective identification and assessment of environmental effects; and

(f) The reliance on independent peer review in the preparation and documentation of technical analyses within an EES.

22. These matters have informed the preparation of the EES. Indeed, the IAC should be satisfied that the EES not only responds positively to the Scoping Requirements issued in respect of the Project, but that it also constitutes best practice for the assessment of environmental effects undertaken in respect of major projects within Victoria. This is evident in various respects including, among other things, the robust criteria adopted for the assessment of environmental effects, the extent and detail of the analysis recorded in the EES, the extent to which that analysis has been the subject of independent peer review, and the extent of consultation that has been undertaken at each phase of the Project’s development. While aspects of the EES will inevitably be challenged during the course of the IAC hearing, the IAC should conclude that, taken as a whole, the EES is of a high quality and allows for a thorough understanding of the potential environmental effects of the Project.

The Reference Project and the Consideration of Alternative Design Options

23. The Project will be designed, constructed, operated and maintained by private sector partners. The methodology adopted for the assessment of the environmental effects of the Project is similar to that adopted in respect of other major transport projects that have been delivered pursuant to this procurement approach in recent times (including, most recently, the Melbourne Metro Rail Project).

24. Consistent with the Scoping Requirements, a reference project has been adopted to assist in the identification and assessment of the likely environmental effects of the Project and to test the adequacy and robustness of the proposed Environment Management Framework and Environmental Performance Requirements. This approach is now well-understood in environmental effects assessments undertaken within this state. In this case the reference project adopted for the purposes of the assessment underwent a detailed review process and is fit for purpose. While it does not assume how matters of detailed design or construction might be implemented, such as design elements relevant to the implementation of the Urban Design Strategy, it contains sufficient detail to constitute an

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23 As issued on 24 June 2018.
effective means by which to assess the likely environmental effects of the Project as declared.

25. There are clear differences between an assessment of the environmental effects of a Project based on a reference design as opposed to a final or ultimate design. It is important to recognise that a reference design is a tool to facilitate the assessment of potential environmental effects and that it does not necessarily constitute the only means by which the Project could be delivered. Indeed, one of the principal benefits of the adopted procurement model, is that it fosters competition in the private sector and encourages design innovation to achieve superior outcomes to the reference project.

26. The EES includes the following statement concerning the adopted assessment approach:\textsuperscript{24}

\textit{The EES has adopted a performance – based approach to assess a reference project. The reference project is not the final design for North East Link but demonstrates the project’s feasibility and ability to achieve acceptable outcomes. The project contractors could make further refinements provided these changes meet the approved project objectives, satisfy the EPRs set for the project and are within the designated project boundary (the area within which all permanent structures and temporary construction compounds must be located).}

27. Consistent with this approach, the Terms of Reference include a direction that the IAC’s report include recommendations in respect of any ‘feasible modifications to the alignment or design of the Project that would offer beneficial outcomes’.\textsuperscript{25}

28. NELP has presented alternative design options to elements of the reference project as part of the EES process. In considering modifications of this type it is important to bear in mind that:

(a) any modifications to the reference project will not necessarily represent the final design; and

(b) a finding that a modification that would offer beneficial outcomes does not necessarily mean the reference project option is unacceptable.

29. It is understood that some submissions include proposed modifications to the reference project as part of their submissions to the IAC and that details of these modifications will be provided during the course of the hearing. To assist the IAC in making

\textsuperscript{24} At p 9.
\textsuperscript{25} At paragraph 31(c).
recommendations on modifications to the alignment or reference project design NELP will adopt the following approach:

(a) NELP will first identify whether a proposed modification is appropriate for consideration as part of the EES assessment. Where a submission for a modification raises a matter of design detail, or a particular urban design outcome, NELP will generally rely on the EPRs and will not provide a detailed response. To do otherwise risks misleading the public as to the role of the reference project.

(b) Where a suggested modification raises a matter of road design and functionality that requires consideration, NELP will prepare a response within a specific technical note. These technical notes will be identified with an “R” so that they are understood to be responses to reference design modifications. In each case the technical note will:

(i) describe the suggested modification;

(ii) provide a preliminary response as to feasibility (in the sense of whether the modification preserves functionality, is within the project boundary, and appears to be achievable from an engineering standpoint - subject always to demonstration that all EPRs are met in the final design);

(iii) identify topics to consider for beneficial or detrimental environmental effects by comparison with the reference project;

(iv) provide other information as practicable; and

(v) indicate (by stating ‘yes’ or ‘no’) whether, in NELP’s opinion, the modification appears to be worthy of consideration in the preparation and assessment of the final design.

30. At the time of these Part A submissions specific technical notes are being prepared to respond to suggested modifications arising from consultation and submissions. These Technical Notes will be provided on or prior to Day 1 of the hearing.

31. In some instances submitters contend for more substantial changes by comparison to the reference project. The most prominent example is the suggestion to extend the tunnel further north to a location somewhere south of Grimshaw Street. Options for a longer tunnel were explored during the development of the reference project and, to assist the IAC,
information about this process will be provided in a technical note(s). NELP’s approach to this suggestion is that:

(a) Any modification that extends the length of tunnel must preserve the functionality of the project; and

(b) A longer tunnel may be feasible (in the sense described above) but has different and significant effects including (but limited to) in respect of land take, project cost, and delivery.

32. While project cost and delivery are ultimately matters for State Government these were sufficient reasons for the EES to be prepared on the basis of the reference project.

The Proposed Regulatory Framework

33. As in the case of other recent environmental assessments, the adequacy and robustness of the proposed regulatory framework, of which the Environment Management Framework and Environment Performance Requirements constitute critical components, should be a primary focus of the IAC’s inquiry.

34. The EMF contained within the EES has been informed by those formulated in respect of other major transport projects undertaken in recent times. It:

(a) clearly articulates roles and responsibilities on the part of the relevant authorities and project contractors, and makes specific provision for, and assigns various review, verification, and audit functions to, an independent environmental auditor;

(b) makes provision for a range of environmental management documents, including the EMF, EPRs, and Urban Design Strategy, as well as various subsidiary plans to be prepared pursuant to the EPRs (including a Construction Environment Management Plan and an Operation Environment Management Plan); and

(c) will require the implementation of monitoring, auditing and reporting protocols to evaluate compliance.

35. The recommended EPRs specified for the Project are set out in the EES.\(^{26}\) They are a combination of prescriptive and performance-based requirements that appropriately

\(^{26}\) At Section 27.7.2.
reference and require compliance with applicable standards where appropriate, and which provide flexibility in the means by which the Project can be configured.

36. **NELP proposes to assist the IAC by preparing further and progressive versions of the EPRs to record modifications supported by NELP based on the consideration of evidence and submissions. The first of these versions will be produced on Day 1 of the hearing.**

37. **In reviewing the EPRs, NELP contends that the following six principles (adopted in the context of the assessment of the Melbourne Metro Rail Project)** provide a useful framework to guide the IAC’s assessment:

   (a) First, does the EPR properly describe the environmental impact that is to be managed?

   (b) Second, does the EPR establish an appropriate benchmark in respect of delivery of the Project?

   (c) Third, does the EPR properly provide for the preparation and implementation of appropriate management plans where necessary?

   (d) Fourth, does the EPR properly provide for, or sit in a framework which, properly provides for consultation with stakeholders and affected persons?

   (e) Fifth, is the EPR sufficiently robust to account for alternative design options from the reference project and within the project boundary?

   (f) Sixth, does the EPR properly acknowledge its relationship with other EPRs?

38. **NELP will adopt this framework in testing suggested modifications to the EPRs made during the course of the hearing.**

39. **The terms of the draft PSA, and in particular the incorporated document prepared in respect of the Project, strike an appropriate balance between ensuring that the key regulatory instruments to be prepared in respect of the Project (which, in addition to the EMF and EPRs, include the proposed Urban Design Strategy) are implemented and given effect, and maintaining a degree of flexibility within the relevant controls to allow design innovation and the capacity to respond to any unforeseen circumstances encountered during the course of construction or operation. NELP will maintain an ‘IAC version’ of**

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the draft PSA material recording any modifications that it considers appropriate in response to matters raised in submissions and in evidence during the course of the hearing.

40. The Works Approval Application, which has been prepared in respect of the tunnel ventilation system, is documented as an attachment to the EES. It has been informed by appropriate technical analyses demonstrating compliance with all applicable requirements and has been framed having regard to the works approval issued in respect of the West Gate Tunnel Project.

Stakeholder Consultation and Ongoing Engagement

41. NELP is conscious that the IAC process is investigative (rather than adversarial) in character and that, pursuant to its Terms of Reference, the IAC may ‘inform itself as it sees fit’. NELP has been and remains committed to facilitating a transparent assessment of the environmental effects of the Project.

42. To this end NELP engaged in extensive stakeholder and community consultation prior to and during the preparation of the EES. This included consultation with relevant authorities and local councils via bodies such as the Technical Reference Group (established in February 2018) and with individuals and institutions by a variety of means including Community Liaison Groups, Community Technical Discussion Groups, and community workshops, public information sessions, street meetings, and online feedback tools.

43. The present assessment process should also be understood in the context of the broader consultation undertaken in respect of the Project. This relevantly included policy announcements as to the State Government’s intentions, planning policy recognition for the Project, the assessment of the Project by advisory bodies such as Infrastructure Australia, the consultation undertaken in respect of route selection, and the preparation and publication of the Business Case.

44. In the specific context of this hearing, NELP will continue to provide further information in respect of the Project, including in response to the IAC’s request made on 20 June 2019. Furthermore, as indicated at the directions hearing, to the extent that the additional requests for information made by other submitters are reasonable and properly concern matters relevant to this process, NELP will respond publicly to those requests (including, where

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28 See paragraph 22 of the Terms of Reference.
29 An extensive summary of that consultation is contained in Attachment IV to the EES.
appropriate, by means of technical notes prepared in respect of discrete topics) so that this further material is available to all interested participants in the process.

45. NELP has also invited expert witnesses called on behalf of other submitters the opportunity to meet with the principal authors of the technical reports and interrogate modelling conducted in respect of the Project. It has adopted this approach, to streamline the exchange of information and to ensure that the public hearings can be focussed on getting to the point of the matter. This approach was applied to some witnesses in the West Gate Tunnel Project but, as far as NELP is aware has not occurred to this extent or with the support of an IAC direction in any other project.

Part 2: The Project

The Project’s Rationale

46. A sound understanding of the Project’s rationale provides important context for the assessment of its environmental effects and the suitability of the draft PSA. Chapters 2 and 6 of the EES address this matter while the Traffic and Transport Impact Assessment provides supporting technical analysis. Additional analysis is contained within chapters 1 – 4 of the Business Case (which informed the preparation of, and are referenced within, the EES).

47. This section of the submissions summarises key elements of those analyses by reference to figures produced or otherwise referenced within those materials.

The Development of the Metropolitan Freeway Network

48. The 1969 Transport Plan shown in Figure 1 below was prepared by the Bolte State Government and identified what might be developed as Melbourne’s freeway and arterial road network.

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30 This part of the submission has been prepared in response to direction 73(c) made by the IAC on 26 June 2019.
31 Appendix A to the EES.
The 1969 Transport Plan built upon the analysis undertaken as part of the Melbourne Metropolitan Planning Scheme Report of 1954 and foreshadowed the creation of what is now the current M1 corridor and the Tullamarine Freeway among other freeway connections. It also made provision for freeways which generally align with what are now the Eastern Freeway, EastLink, and the Metropolitan Ring Road, and made specific provision for the creation of a freeway link between these corridors on an alignment that generally conforms to that of the Project.

As Figure 2 demonstrates, throughout the 1970s and 1980s, investment in urban transport infrastructure focussed predominantly on Melbourne’s radial freeway network (that is, routes into and out of the central city). Substantial investments were made during this time in respect of the Tullamarine Freeway, the South Eastern Freeway, the Monash Freeway, the West Gate Freeway and the Eastern Freeway. These projects were pursued partly because they could be accommodated within existing road reservations and did not require extensive acquisition.

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33 Corridor F9 and F14 as shown on the 1969 Plan.
34 Corridor F14.
35 Corridor F19.
36 Corridor F35 North.
37 Corridors F3, F5.
38 Corridor F18.
Melbourne’s ongoing decentralisation throughout the latter parts of the 20th century led to increasing demand for cross-city vehicle movements. It was not until the 1990s, however, that Melbourne’s first orbital freeway – the M80 (or Western Ring Road) – commenced construction. It was completed in 1999 and links the Hume, Tullamarine, Calder, Western and West Gate Freeways.

The orbital freeway network was substantially enhanced upon the completion of EastLink in 2008, which connects the Eastern Freeway to the Frankston Freeway and, following its completion in 2013, Peninsula Link.

Since that time, the ‘missing link’ in the orbital freeway network has been a connection between the Western Ring Road and EastLink.

The North East Link has long been recognised as the means by which this link should be delivered. The Victorian Transport Plan prepared in 2008 identified the North East Link as a ‘medium term action’ owing to its ‘importance to national economic productivity and competitiveness’. Infrastructure Australia identified the Project as a ‘priority initiative’ at that time. It maintained that classification until upgrading the Project’s status to a ‘high

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51. Melbourne’s ongoing decentralisation throughout the latter parts of the 20th century led to increasing demand for cross-city vehicle movements. It was not until the 1990s, however, that Melbourne’s first orbital freeway – the M80 (or Western Ring Road) – commenced construction. It was completed in 1999 and links the Hume, Tullamarine, Calder, Western and West Gate Freeways.

52. The orbital freeway network was substantially enhanced upon the completion of EastLink in 2008, which connects the Eastern Freeway to the Frankston Freeway and, following its completion in 2013, Peninsula Link.

53. Since that time, the ‘missing link’ in the orbital freeway network has been a connection between the Western Ring Road and EastLink.

54. The North East Link has long been recognised as the means by which this link should be delivered. The Victorian Transport Plan prepared in 2008 identified the North East Link as a ‘medium term action’ owing to its ‘importance to national economic productivity and competitiveness’. Infrastructure Australia identified the Project as a ‘priority initiative’ at that time. It maintained that classification until upgrading the Project’s status to a ‘high

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At p 103.
priority project’ in or around October 2018.\textsuperscript{41} Separately, Infrastructure Victoria identified the Project as a ‘high priority infrastructure project’ in its \textit{30 Year Infrastructure Strategy} (released in December 2016),\textsuperscript{42} a decision which in turn informed the preparation of the \textit{Victoria Infrastructure Plan} (released in October 2017) in which the Project is described as a ‘catalyst’ and ‘state-shaping’ project.\textsuperscript{43}

\textit{Deficiencies in the North East Transport Network}

55. The transport network in the north east differs in many respects from that within other parts of metropolitan Melbourne. Compared to the transport network within the south east, for instance, there is limited access to trams and rail services, a lower reliance on freeways for longer trips, and a considerably more disjointed arterial road network.\textsuperscript{44} As shown in Figure 3, this has resulted in a higher reliance on car travel within the north east relative to the metropolitan average, and a lower reliance on public transport and other modes of travel.

\begin{center}
\textbf{Figure 3: Transport Mode Share in the North-East vs Metropolitan Melbourne}\textsuperscript{45}
\end{center}

56. Owing in part to the dislocation of the orbital freeway network, the arterial road network in this location caters for a high volume of traffic, including a mix of local and regional trips, carrying commuters and commercial trips between employment and activity centres in the north, east, and south east, and to and from Melbourne Airport.

\textsuperscript{42} See, for instance, at p 143.
\textsuperscript{43} See, for instance, at p 8.
\textsuperscript{44} A comparison of the arterial road networks of the east and north east is shown in Figure 6-45 of the TTIA.
\textsuperscript{45} TTIA, figure 6-17.
57. Traffic conditions across the network are presently poor and have worsened considerably in recent years. As shown in Figure 4, traffic volumes on key arterial roads within the north east have increased substantially since the turn of the century, whereas traffic volumes within the inner city have remained relatively constant over the same period.

Figure 4: Daily Traffic Growth on North-Eastern Roads

58. The extent to which traffic volumes within the network are comprised of regional trips is demonstrated in Figure 5 (which records the strong demand for cross-city movements in the north east). Indeed, while radial demand is strong within the region (accounting for approximately 250,000 daily trips in 2016), orbital demand is far greater (accounting for approximately 340,000 daily trips in 2016) and is anticipated to increase considerably in the future (accounting for in the order of 440,000 daily trips by 2036).

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46 TTIA, figure 6-21.
47 Of these 340,000 trips, 100,000 were to and from the north, 160,000 were to and from the inner east, 20,000 were to and from the outer east, and 60,000 were to and from the east: Business Case, p 1-21.
48 Of these 440,000 trips, 160,000 would be to and from the north, 180,000 would be to and from the inner east, 20,000 would be to and from the outer east, and 80,000 would be to and from the east: Business Case, p 1-21.
The over-reliance on the Rosanna Road corridor constitutes a particular shortcoming of the network. At present, that road carries up to 50,000 vehicles per day. Figure 6, which shows the origins and destinations of southbound movements along Rosanna Road, demonstrates that a substantial proportion of those movements are attributable to trips originating to the north of the M80 and/or terminating to the south of the Eastern Freeway.

Figure 5: Daily Trip Movements Across Melbourne to and from the North-East, 2016 and 2036

Figure 6: Destination of Traffic Travelling Southbound on Rosanna Road

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49 Business Case, figure 1-9.
50 TTIA, p 96.
51 TTIA, figure 6-48.
60. A further consequence of the dislocation in the orbital freeway network is that the road network within the north east carries a disproportionately high volume of freight. In 2016, around 10% of the total Victorian freight task (totalling 46 million tonnes) travelled through the north east, with between 8100 and 9000 trucks passing through the M80 – Greensborough Road interchange each day.\textsuperscript{52} The Bulleen Road – Rosanna Road – Greensborough Road corridor alone carried in the order of 3000 – 8000 trucks per day across its length (notwithstanding the existing curfews).\textsuperscript{53}

61. Figure 7 shows existing truck volumes at key locations throughout the network.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{truck_volumes}
\caption{Figure 7: Truck Types at Key Locations\textsuperscript{54}}
\end{figure}

62. Unsurprisingly, the vast majority of freight movements within the network are regional in character. Figure 8 demonstrates the nature and extent of cross-city freight movements through the north east.

\textsuperscript{52} Business Case, p 1-21.
\textsuperscript{53} TTIA, p 145.
\textsuperscript{54} TTIA, figure 6-70.
Figure 8: Key Annual Freight Movements through the North East

63. The Yarra River constitutes a further impediment to the efficient functioning of this part of the road network. As shown in Figure 9, there are presently only five river crossings within the network; at Chandler Highway, Burke Road, Manningham Road, Fitzsimons Lane and Warrandyte Bridge.

Figure 9: Yarra River Crossing Locations

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55 Business Case, figure 2-22.
64. Cumulatively, these five crossings comprise 18 traffic lanes, the busiest of which is the Manningham Road Bridge (which accommodates approximately 31% of all traffic crossing the Yarra River in the north east).\textsuperscript{57}

65. Because they constitute clear constraints to the capacity of the network, these routes (along with their feeder routes) are typically congested at peak periods.\textsuperscript{58} Figure 10 shows the origins and destinations of southbound traffic using the Manningham Road Bridge in the AM peak. Compared to the four alternate river crossings, the origins and destinations of traffic movements at this location are most widely spread, demonstrating that it services the broadest catchment.

![Figure 10: Origins and Destinations of Southbound Traffic using Manningham Road Bridge in the AM Peak](image)

66. Each of these factors adversely affects network performance. This is well-reflected in the relatively large number of key metrics in which the transport network within the north east performs below the metropolitan average.\textsuperscript{60}

\textsuperscript{56} TTIA, figure 6-39.
\textsuperscript{57} TTIA, p 117.
\textsuperscript{58} TTIA, section 6.3.1.
\textsuperscript{59} TTIA, figure 6-42.
\textsuperscript{60} See, for instance, Table 6-1 of the TTIA (p 94).
Congestion along the Eastern Freeway

67. The Eastern Freeway was constructed in stages between 1975 and 1997. The first stage, completed in 1977, comprised the section between Hoddle Street and Bulleen Road. The second stage, completed in 1982, comprised the section between Bulleen Road and Doncaster Road. The final stage, completed in 1997, comprised the section between Doncaster Road and Springvale Road.

68. The first two stages of the Eastern Freeway were designed with a wide central median strip free of substantial impediments so as to facilitate the future provision of the Doncaster Rail Line. Land was previously reserved to the north of the freeway reservation east of Bulleen Road to facilitate the rail line’s passage to Doncaster East.

69. Unlike other major elements of the metropolitan freeway network, very little has been done to enhance any of the components of the Eastern Freeway since their completion.

70. The freeway is one of the most important components of Melbourne’s radial freeway network and presently carries daily volumes of in the order of 120,000 – 180,000 vehicles along its length, of which the greatest volumes occur between Tram Road and Middleborough Road.61

71. Several sections of the freeway are routinely subject to severe congestion and delays during peak periods. This is attributable to a range of factors including the extent of merging and weaving at the freeway interchanges, a lack of ramp-metering along the corridor, the close spacing of various interchanges, a lack of mid-block capacity, and bottlenecks that occur either side of the EastLink tunnels.62

72. Importantly, these delays are not limited to the freeway’s western extremity. Instead, as Figure 11 demonstrates, considerable congestion and delays occur at various points along the length of the alignment during peak periods.

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61 TTIA, p 95.
62 TTIA, p 129.
The Problems Arising from the Shortcomings in the Network

73. The identified shortcomings in the transport network give rise to a number of problems of an economic and socioeconomic character. These are examined in detail in chapter 2 of the Business Case and in section 2.3 of the EES.

74. They have been succinctly summarised in the Business Case and are reflected in the project evaluation summary prepared by Infrastructure Australia in respect of the Project:

Three key problems were identified in relation to transport connectivity in the north east corridor:

- Melbourne’s poor orbital connectivity is constraining the economic potential of the city and Victoria:
  - Businesses in Melbourne’s north, east and south east lack access to large labour markets in the rest of Greater Melbourne
  - Movement between businesses and their customers and suppliers is highly constrained
  - Arterial roads in the north east are unable to cater to growing and competing travel demands
  - Congestion is constraining bus services, which are the main form of public transport in the north east
  - Inequality and disadvantage is expected to grow with congestion, which limits access to opportunities.

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63 TTIA, figure 6-52.
• Inefficient freight movement between Melbourne’s north and south east is limiting supply chain competitiveness and hindering the growth of high value industries:
  o The lack of access for freight vehicles in the north east impacts on competitiveness
  o Congestion and poor reliability arising from the freeway network ‘gap’ reduces freight productivity
  o Inefficient cross-city access through the north east and lack of links that can accommodate high productivity vehicles puts pressure on other routes, such as the M1
  o Growth of industrial precincts in the north and south east will increase freight constraints and costs.
• Congestion and heavy vehicles on neighbourhood roads is harming liveability and community wellbeing:
  o Access to destinations is restricted for residents due to capacity constraints on local and arterial roads
  o Limited public and active transport impact on liveability, health, wellbeing, and community dislocation
  o High traffic volumes and freight are reducing local amenity and quality of life for residents
  o Sustainable and productive growth in the north and north east is put at risk by low accessibility and amenity, which could deter household and business investment and curtail land use planning options.

75. The Project’s benefits can be understood in terms of its capacity to address each of these problems.

Improvements to Melbourne’s Economic Prosperity

76. It is self-evident that a comprehensive and high-performing transport system is an important enabler of sustained economic prosperity. Transport networks support the productivity and success of urban areas and their catchments, by getting people to work, supporting deep and productive labour markets and allowing businesses within the area to reap the benefits of agglomeration. Delays and unreliability on the network have direct costs, increasing business costs and affecting productivity and innovation.

77. The 2015 Australian Infrastructure Audit found, in this respect, that the cost of congestion of urban transport networks within Australian capital cities was $13.7 billion in 2011, and
that without significant capacity upgrades it was anticipated to increase by 290% to approximately $53.3 billion in 2031.\textsuperscript{65}

78. It is for this reason that Infrastructure Australia identified the problems associated with congestion within Australia’s urban centres to be ‘nationally significant’ and, in the context of Melbourne specifically, identified their resolution as being critical (among other things) to the future expansion of major industrial precincts in the north and south east.\textsuperscript{66}

79. The disconnect that presently exists between population growth and the distribution of jobs within metropolitan Melbourne is illustrative of this problem. Indeed, as Figure 12 demonstrates, without substantial capacity upgrades across the network, that problem is likely to increase materially over time.

![Figure 12: Job Density (Employment Proportions) in Melbourne, 2016\textsuperscript{67}](image)

80. The capacity for the Project to contribute towards an effective response to these issues is well-illustrated by the benefits that it will deliver to the La Trobe National Employment and Innovation Cluster.

\textsuperscript{65} Australian Infrastructure Audit Report – Vol 1, at p 9. Within Melbourne and Geelong these figures were estimated to be $2.837 billion and $9.206 billion respectively.


\textsuperscript{67} EES, figure 2-2.
81. The La Trobe NEIC is one of seven national employment and innovation clusters identified in Plan Melbourne. As its designation would suggest, it has been identified as being of ‘national significance’ pursuant to that document, and has been attributed a corresponding level of strategic significance.\(^{68}\) It is proposed to constitute the key location for the growth of employment and business in the north eastern part of Melbourne with a particular focus on the provision of leading education, health and research facilities.\(^{69}\)

82. At present there are approximately 28,500 jobs located within the existing cluster and approximately 37,000 tertiary enrolments at La Trobe University. As Figure 13 demonstrates, it is presently serviced by arterial road connections at Bell Street, Plenty Road, Greensborough Road and Rosanna Road, as well as the Hurstbridge and South Morang rail lines, a tram route, and local bus services.

![Figure 13: Overview of the Latrobe Precinct](Source: La Trobe National Employment and Innovation Cluster Draft Framework, 2017)

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\(^{68}\) Plan Melbourne, p 14.


\(^{70}\) TTIA at figure 6-9.
83. Analysis recorded in the Business Case demonstrates that the La Trobe NEIC has relatively low accessibility to the types of skilled and specialised workers that are integral to it realising its strategic potential.\(^71\)

84. The Project has the capacity to address this limitation by delivering faster travel speeds and reduced journey times to and from the NEIC. It will improve connection between the NEIC and other centres such as Dandenong, Ringwood and Box Hill\(^72\) and, as demonstrated by Figure 14, will materially improve the NEIC’s labour catchment.

![Figure 14: Improved Labour Force Access\(^73\)](source)

85. The La Trobe NEIC is not alone in enjoying these types of benefits. Figure 14 demonstrates the extent to which other activity centres and businesses located within and

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\(^71\) See, in particular, at p 2-7 and 2-8.

\(^72\) Business Case, p 8-18.

\(^73\) Business Case, figure 8-3.
around Melbourne’s north east and east will similarly benefit from the improved connectivity that the Project will facilitate between workers and jobs.  

86. The Project also has the capacity to deliver a range of other agglomeration benefits of both an economic and socioeconomic character. These include benefits in respect of improved household accessibility to local services, education and recreation.  

87. The travel time savings that will be delivered by the Project are illustrative of the extent of these benefits. As shown in Section 9.4 of the TTIA, the Project is predicted to improve travel times generally across the network (compared with the no project case), with the largest travel time savings occurring along:

(a) The North East Link (with time savings of in the order of 35 minutes between Doncaster Road and Plenty Road during peak periods);

(b) the Eastern Freeway (with time savings of in the order of 5 to 11 minutes between Springvale Road and Hoddle Street during peak periods); and

(c) the Greensborough Road – Rosanna Road – Bulleen Road corridor (with time savings of in the order of 10 to 17 minutes during peak periods).

88. These benefits will arise both as a consequence of the proposed capacity upgrades to the network (in the form of both the north-south sections of North East Link and the upgrades to the Eastern Freeway) and as a consequence of the diversion of traffic away from arterial roads.

89. Figure 15 demonstrates the extent of these benefits along different routes in and around the Project corridor during the AM peak (having regard to existing, no project, and project scenarios).

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74 As noted in the Business Case at p 8-16: ‘North East Link is highly effective in providing an increased labour pool to Epping, Ringwood and La Trobe, areas with large numbers of firms with high demand for workers. On average, the project is expected to increase the available labour pool for firms in these locations by more than 110,000 workers, and by 62,000 workers more generally across the north east. Increased labour pools for NEICs and MACs such as Epping, Ringwood and Latrobe are particularly important for driving economic growth and higher levels of productivity and innovation, as these are the designated powerhouses of future commercial growth and hubs for employment in the north, north east and east of Melbourne. The project also facilitates better business access to workers more broadly across the rest of Melbourne, with the average labour pool increasing by an additional 37,000 workers.’

75 See, in this latter respect, the EES at p 2-24.
Figure 15: Forecast Travel Times, AM Peak Westbound/Southbound – 2017, 2036, ‘No Project’ and 2036 ‘With Project’

90. Figure 16 demonstrates the extent of these savings in trips between key locations during the AM Peak.

<table>
<thead>
<tr>
<th>Route (as shown in Figure 7.5)</th>
<th>Origin</th>
<th>Destination</th>
<th>Change in travel times between 2036 project case and 2036 ‘no project’ case</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>South Morang</td>
<td>Box Hill</td>
<td>-20% to -25%</td>
</tr>
<tr>
<td>2</td>
<td>Eltham</td>
<td>Ringwood</td>
<td>-10% to -15%</td>
</tr>
<tr>
<td>3</td>
<td>Greensborough</td>
<td>Heidelberg</td>
<td>-25% to -30%</td>
</tr>
<tr>
<td>4</td>
<td>Doncaster</td>
<td>La Trobe</td>
<td>-10% to -15%</td>
</tr>
<tr>
<td>5</td>
<td>Epping</td>
<td>Northland</td>
<td>-1% to -5%</td>
</tr>
<tr>
<td>6</td>
<td>Eltham</td>
<td>Swinburne University</td>
<td>-10% to -15%</td>
</tr>
</tbody>
</table>

Figure 16: Change in Travel Times Between Key Locations

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76 TTIA, figure 9-88.
91. The extent of the benefits of travel time savings attributable to the Project is significant. As assessed in the Business Case, the net present value of the economic benefits attributable to travel time savings is $6.571 billion, being the single greatest benefit attributable to the Project.\(^{78}\)

**Improvements to Melbourne’s Freight Network**

92. In addition to constituting the missing link in metropolitan Melbourne’s orbital freeway network, the Project will substantially enhance Victoria’s High Productivity Freight Vehicle Network (HPFV Network). As demonstrated in Figure 17, the Project will allow the majority of trucks to travel between the north and south east of Melbourne entirely via the freeway network, using a combination of EastLink, an upgraded Eastern Freeway, the North East Link and the upgraded M80 Ring Road.

![Figure 17: Victoria’s HPFV Mass Network Map\(^{79}\)](image)

93. This will deliver a range of benefits to freight movements in the form of reduced travel times, reduced vehicle operating costs, and improved travel reliability. This will, in turn, result in a range of supply chain benefits across Victoria, including in respect of better

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\(^{77}\) Business Case, table 7-2 and figure 7-3.

\(^{78}\) See, for instance, at p 10-12.

\(^{79}\) EES, figure 2-4.
freight connectivity, improved access between industrial precincts, greater freight productivity, and a more efficient metropolitan logistics system.\(^{80}\)

94. Figure 18, which shows the distribution of both heavy and light commercial vehicle travel time savings attributable to the Project, demonstrates the extent to which these benefits will accrue beyond the project corridor.

![Figure 18: Distribution of HCV and LCV Travel Time Benefits by Origin – Impact of North East Link\(^{81}\)](image)

95. A comparison of the proportion of truck travel along freeways and non-freeways in the ‘Project’ and ‘no Project’ scenarios is presented in Table 9-18 of the TTIA.\(^{82}\) It constitutes a useful measure of the extent to which the Project will upgrade freight movements within the network, and relevantly shows that in the ‘with Project’ scenario the proportion of truck travel on non-freeway links in the north-east decreases from 72 % to 57 %, bringing the north east region closer in line with the metropolitan Melbourne average.

\(^{80}\) Business Case, p 8-21.
\(^{81}\) Business Case, figure 8-7.
\(^{82}\) TTIA, p 396.
Improvements in Liveability and Community Wellbeing

96. The substantial redistribution of private and commercial vehicle movements will result in marked improvements in traffic and environmental conditions within the local and arterial road network.

97. Other than roads feeding the North East Link, traffic volumes would decrease on almost every road between the M80 Ring Road and Eastern Freeway (compared with the no project case), as traffic diverts to the Project. This would alleviate congestion for road users in the region, including cars, trucks and bus users, and also improve amenity for pedestrians and cyclists.

98. The TTIA demonstrates that the largest reductions are anticipated on the parallel routes of Rosanna Road (which would accommodate in the order of 11,600 fewer vehicles per day) and Greensborough Road (which would accommodate in the order of 19,000 fewer vehicles per day). It would also remove traffic on roads servicing the La Trobe NEIC precinct. The provision of an additional river crossing would lessen the existing burden on the five existing river crossings.

99. A comprehensive list of volume changes is contained at Table 9-4 of the TTIA and the results are represented diagrammatically at Figures 9-9, 9-10 and 9-11 of the TTIA.

100. The extent to which the Project will reduce truck volumes along the Rosanna Road corridor is substantial. A summary of the predicted changes in truck volumes along this route is presented in Table 9-19 of the TTIA. Cross-city truck traffic on Rosanna Road is anticipated to reduce significantly as a result of the Project, with volumes reducing by up to approximately 75%. The proportion of daily truck traffic is also forecast to reduce from 9% to 4% between the ‘no Project’ and ‘with Project’ scenarios. Usage of the road by local trips is forecast to increase from approximately 51% to 80% with the Project, reflecting the diversion of medium and longer cross-city trips from the arterial road network onto the Project.

83 Volumes along Plenty Road would reduce by 9,900 vpd, on Waiora Road by 7,600 vpd, on Upper Heidelberg Road by 3,300 vpd, on Waterdale Road by 3,000 vpd, and on Kingsbury Drive by 2,600 vpd.
84 Volumes along Chandler Highway would reduce by 6,100 vpd, on Burke Road by 7,900 vpd, on Banksia Street/Manningham Road by 13,300 vpd, on Fitzsimons Lane by 16,600 vpd, and on Warrandyte Bridge by 6,200 vpd.
85 TTIA, p 406.
86 Ibid.
87 Ibid.
88 Ibid.
101. Benefits for residents and businesses would include reduced noise pollution, improved air quality, safer local roads, less time lost sitting in traffic and reduced feelings of stress. Freeing up arterial connections in the north-east to carry the appropriate vehicles and trips would also better connect residents to key local destinations (such as schools and recreational facilities) and provide more opportunities for people to take up walking and cycling.

102. A number of other metrics reflect the extent to which the Project will improve network performance and amenity, compared to the no project case. For instance, average vehicle speeds are anticipated to increase across the network by approximately 6%. Vehicle travel on arterial and local roads is anticipated to decrease materially in a number of locations, including within the municipalities of Banyule (by 14%), Darebin (by 5%), Nillumbik (by 10%), and Manningham (by 8%). Negligible changes are forecast within Whittlesea and Whitehorse (anticipated to increase by 1%), Boroondara (anticipated to decrease by 1%), and Maroondah and Yarra (which are not anticipated to change at all).

*Other Benefits*

103. The Project will deliver a range of additional benefits.

104. These relevantly include:

   (a) Substantial upgrades to the capacity of the public transport network through the delivery of the Doncaster Busway, which will provide full-time, completely segregated bus lanes between Doncaster Road and Hoddle Street, and will not preclude the future provision of Doncaster rail;

   (b) Substantial travel time savings across bus and tram services in the north-east of up to 10% (as a consequence of the decongestion of the north-eastern arterial road network);

   (c) Substantial improvements to the active travel network through the provision of an extensive program of ‘core’ and ‘complementary’ walking and cycling infrastructure upgrades across the study area.

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89 TTIA, p 289.
90 TTIA, p 310 and 323.
91 As addressed in section 9.2.3 of the TTIA.
92 TTIA, p 413.
93 As addressed at section 9.7 of the TTIA.
(d) Substantial upgrades to the operation and performance of the Eastern Freeway corridor, including substantial improvements in traffic speeds for inbound and outbound movements, and the removal of substantial flow breakdowns along the length of the freeway;94 and

(e) The improved resilience of the road network.95

A Connected Freeway Will Best Realise these Benefits

105. The Project has been designed (and declared) to function as a ‘connected’ freeway as opposed to a ‘bypass’ freeway. In simple terms, whereas a bypass freeway would function as a link between the M80 and the Eastern Freeway, a connected freeway also provides for connectivity between that freeway link and the intervening arterial road network.

106. The basis for that decision is described in the EES and detailed in the Business Case (as part of the broader assessment of strategic options identified to address the deficiencies identified in the network). In short, while a bypass freeway has the capacity to address many of the network’s deficiencies (including those attributable to the missing link in the orbital road network), it would not provide direct connections to key employment and activity centres that are necessary to realise fully economic growth and other opportunities for residents in the north east.

107. The provision of fully functional interchanges with the arterial road network is accordingly a critical component of the Project and is integral to it realising its strategic potential.

The Relevance of this Analysis to the IAC’s Inquiry

108. While the direct focus of the IAC’s inquiry will properly be on assessing the nature and extent of the Project’s localised environmental effects, it is important that the IAC also has regard to the overall objectives and rationale of the Project in completing its task. Were this not to occur, the assessment would not be properly balanced, and would prone to ill-informed findings as to potential modifications to the Project.

109. The Project’s broader economic and socioeconomic benefits are relevant to, and are properly considered within, its environmental effects.96 They are also relevant to an

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94 As addressed at section 9.2.5 of the TTIA.
95 Section 9.2.5 of the TTIA.
96 The Ministerial Guidelines for Assessment of Environmental Effects Under the Environment Effects Act 1978 relevantly defines the term ‘environment’ to include the ‘physical, biological, heritage, cultural, social, health,
assessment of the suitability of the draft PSA and the extent to which it will support net community benefit and acceptable planning outcomes. They are, furthermore, matters which inform the manner in which the Project responds to the transport system objectives and transport decision making principles specified in the Transport Integration Act. 97

110. On NELP’s analysis of the submissions, it is evident that whilst there is contrary opinion about different components of the Project, there is limited contest as to its need or the validity of its stated objectives. This reflects the compelling need for the material upgrade and enhancement of this component of the road network and its capacity to deliver substantial benefits to residents and businesses within the north east of Melbourne and further afield.

The Development of the Project

111. The key stages in the development of the Project are described in chapter 6 of the EES and are represented diagrammatically in Figure 19 below. The community engagement undertaken to inform the staged development of the Project is described in sections 4 and 5 of the Stakeholder Consultation Report. 98

97 The ‘transport system objectives’ and ‘transport decision making principles’ set out within Divisions 2 and 3 of Part 2 of the Act. They relevantly address considerations of ‘social and economic inclusion’, economic prosperity, environmental sustainability, and the integration of transport and land use and informed the preparation of the project objectives. They constitute important touchstones in assessing the acceptability of the environmental effects of the Project.

98 Attachment IV to the EES.
The Corridor Analysis

112. It is relevant to note that the Project development process described above was preceded by Infrastructure Victoria identifying the North East Link as a ‘high priority infrastructure project’ in its 30 Year Infrastructure Strategy released in December 2016. That report, in turn, had been informed by modelling and economic analysis undertaken in respect of the North East Link, which ‘showed the North East Link … as being [a] relatively high-performing project[], offering substantial benefits in terms of linking people to employment across the city, and improv[ing] freight reliability and travel times’.100 It

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99 EES, figure 6-1.
100 At p 147. See also Table 1 of the Preliminary Demand Modelling and Economic Appraisal Report dated 27 September 2016 at p xv which contains a comparative analysis of preliminary cost benefit ratios calculated in respect of other potential transport projects.
called, as a ‘first step’, for a detailed assessment of alternative alignments to be undertaken.\textsuperscript{101}

113. The assessment called for by Infrastructure Victoria occurred in the context of the Business Case (and after the completion of the broader strategic assessment undertaken as part of that process).

114. Figure 20 shows the alignments of the four corridors that were assessed.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{North_East_Link_Potential_Corridor_Options.png}
\caption{North East Link Potential Corridor Options\textsuperscript{102}}
\end{figure}

115. As described in section 6.3.5 of the EES and chapter 5 of the Business Case, of the corridors identified, Corridor Option A was ultimately selected as the preferred route of the Project on the basis that it would:

(a) Provide the best opportunity to make connections to the existing road network that respond to travel demand through, in and out of the north east, such that it would attract the most through traffic to the new link of all the options considered;

(b) Provide better connectivity for all freight journeys and serve a greater number of freight catchments for trucks travelling across the city’s north, north east, east and south east, such that it offered the best opportunity to remove trucks from local roads in the north east;

\textsuperscript{101} At p 148.
\textsuperscript{102} EES, figure 6-4.
(c) Interact most effectively with the road network in the north east, having the greatest ability of all the options to reduce traffic on existing arterial roads and provide opportunities to improve conditions for more local journeys and on-road public transport;

(d) Provide better access for businesses and households in the north, north east, east and south east to workers, jobs and services, given its capacity to connect closest to areas of greater economic and employment activity;

(e) Provide the greatest improvement in business access to labour markets of all the corridor options considered;

(f) Provide the opportunity to deliver an integrated Doncaster Busway solution along the Eastern Freeway, as well as addressing existing capacity and connectivity issues on the freeway; and

(g) Provide the best opportunity to upgrade, connect and expand walking and cycling infrastructure in the north east.

116. Public consultation was undertaken as part of this process in mid to late 2017. The Government’s announcement of Corridor A as its preferred corridor occurred on 24 November 2017.

117. A number of submitters seek to contest this decision by contending that alternative corridors should be preferred. NELP presents its case on the basis that the assessment of alternative corridor alignments is outside the IAC’s Terms of Reference. While the IAC has been directed to consider potential modifications to the alignment of the Project as part of its report, those modifications should be limited to design modifications to the proposed alignment, as opposed to modifications that would result in a materially different alignment altogether. This is clear given the specific terms of the declared works and the extent to which a different corridor would result in a markedly different project (in terms of both its functionality and environmental impacts) than the one that has been assessed. It is also consistent with the terms of the Ministerial Guidelines which draw a distinction between alternatives to a project and alternatives for a project.103

103 At p 15.
The Business Case

118. The Business Case was published in May 2018. The economic appraisal and cost benefit analysis documented in the Business Case concluded that the Project would deliver significant economic value to the State and national economies (with benefits anticipated to exceed costs by in the order of $2.2 billion in present day values).  

119. The Business Case also relevantly identified the Availability Private Public Partnership model as being the preferred procurement approach in respect of the primary works package. This model was identified as being best placed to optimise market participation and maximise competition to drive value for money (among other things). It is an approach that has been adopted in the procurement of many other major infrastructure projects in recent times, including the Victorian Desalination Plant, the East West Link, and the Melbourne Metro Rail Project.

120. It is noted that a number of submissions made in respect of the EES criticise aspects of the Business Case. While many of those criticisms are beyond the scope of the IAC’s inquiry, it is noted for present purposes that many are factually inaccurate. It is not the case, for instance, that the Business Case did not take into account the works proposed on the Eastern Freeway, or that the Business Case was undertaken in respect of a design that differs in material respects from the reference project assessed under the EES. The Business Case was instead prepared in respect of a reference project that is broadly comparable to that assessed under the EES, and was otherwise informed by traffic modelling and analysis that is consistent with that undertaken as part of the EES.

121. It is noted, furthermore, that the Business Case was independently reviewed by Infrastructure Australia. By announcement made in October 2018, Infrastructure Australia specifically gave a ‘green light to the North East Link Business Case’, and reclassified the Project as a ‘high priority project’ for the purposes of the National Infrastructure Priority List.

The Declared Project

122. On 12 January 2018, the North East Link Authority submitted a project outline to the Minister for Planning, and requested that the project described therein be declared ‘public

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104 Chapter 10 of the Business Case.
105 Chapter 11 of the Business Case.
works’ for the purposes of s 3(1) of the *Environment Effects Act.* The project outline was consistent with the concept design assessed in the Business Case and, among other things, made specific provision for a fully connected freeway link between the M80 and Eastern Freeway and for substantial upgrades to the Eastern Freeway. The project outline also specified the proposed project boundary and identified ‘no-go zones’ within which works and/or surface works will not be permitted. Those areas were identified based on their particular environmental values and included the Bolin Bolin Billabong, the Flying Fox campsite at Yarra Bend, and the Heidi Museum of Modern Art (among other locations).

123. On 2 February 2018 the Minister declared the works proposed for the Project to be ‘public works’ for the purposes of s 3(1) of the *Environment Effects Act.* The declaration conforms to the project outline and specifically provides for the Project to include the following elements (from north to south):

(a) a mixture of above, below and at surface road sections between the M80/Greensborough Bypass and the northern tunnel portal, with new road interchanges at the M80, Grimshaw Street and Lower Plenty Road;

(b) the northern tunnel portal and associated infrastructure (including the ventilation structure and substation) located just north of Lower Plenty Road, with the tunnel running continuously to the south of Manningham Road, and with a new interchange at Manningham Road;

(c) the continuation of the tunnel between Bridge Street and the southern portal, which is to be situated to the south of the Veneto Club, and which is to include open cut and bored or mined sections;

(d) a southern tunnel portal and associated structures located south of the Veneto club with surface road and viaduct structures connecting to the Eastern Freeway via a new interchange; and

(e) widening and upgrade works along the entirety of the Eastern Freeway, along with new dedicated bus lanes for rapid bus services.

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124. The declaration also specifies a tightly defined project boundary in respect of all components of the Project other than the tunnelled section north of Manningham Road and south of Lower Plenty Road (in respect of which a broader ‘indicative tunnel alignment’ was specified).

125. It is apparent, having regard to the above, that while flexibility is provided in respect of the ultimate configuration and design of the Project, the declaration has been framed to clearly define the essential components of the Project, including those sections of the road that will be in and out of tunnel, those sections that will be at, above or below grade, the location of the tunnel portals, the intersections that are to be provided, and the physical area within which the works are to be completed.

126. The relatively high degree of specificity in the declaration is well demonstrated by having regard to the terms upon which comparable declarations made in respect of other major infrastructure projects that were proposed to be procured by means of an Availability Private Public Partnership. It provides greater certainty concerning the scope and extent of the Project’s potential environmental effects.

Concluding Remarks

127. It is apparent, having regard to the above, that the process adopted in developing and ultimately defining the Project has been thorough and systematic. The merits of the Project have been endorsed by independent advisory bodies and have been assessed and documented in the project-specific Business Case. The process adopted in evaluating project alternatives, including in respect of the consideration of alternative corridors and strategic design options, was comprehensive. It was informed by a considerable amount of technical analysis that is, in turn, relevant to the current assessment process. Indeed, in this case, the IAC should be satisfied that the degree of analysis that informed the development of the Project is comparable to or greater than that completed in respect of any other large infrastructure project undertaken within this State, and that it provides a sound basis from to assess the environmental effects of the Project.

109 The East West Link, for instance, was simply declared pursuant to s 10 of the Major Transport Projects Facilitation Act 2009 (Vic), to be a ‘proposed freeway-standard link between the Eastern Freeway and the Tullamarine Freeway generally along the Alexandra Parade corridor, with a further southerly connection to the Port of Melbourne area’. 
Part 3: The Inquiry and the Applicable Statutory Processes

128. This hearing concerns three statutory processes:

(a) The first is an inquiry by the IAC into the environmental effects of the Project pursuant to s. 9(1) of the Environment Effects Act 1978;

(b) The second is an assessment by the IAC of the draft PSA pursuant to s. 151 of the Planning and Environment Act 1987; and

(c) The third is an assessment by the IAC of matters relevant to the works approval application made in respect of the tunnel ventilation system pursuant to the Environment Protection Act 1970.

129. The subject matter of those processes, and the nature of the IAC’s inquiry in respect of each, are summarised below.

The Environmental Effects Inquiry Under the Environment Effects Act

The EES

130. NELP has prepared the EES pursuant to s 4 of the Environment Effects Act and in accordance with:

(a) the procedures and requirements specified by the Minister pursuant to s. 3(1) of the Environment Effects Act as part of the Minister’s Order made on 2 February 2018;

(b) the Scoping Requirements issued by the Minister for Planning in respect of the preparation of the EES in June 2018 (which, amongst other things, contain the draft evaluation objectives specified in respect of the Project); and

(c) the Ministerial Guidelines for Assessment of Environmental Effects Under the Environment Effects Act 1978 (the Ministerial Guidelines).

131. NELP consulted widely in the preparation of the EES and in accordance with the Engagement Plan prepared in respect of the Project. The process that was adopted, and

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110 The consultation and engagement program is described in Chapter 5 of the EES. The Project-specific Engagement Plan was prepared in accordance with the Scoping Directions and is accessible at www.planning.vic.gov.au/environment-assessment/browse-projects/projects/north-east-link.
the extent of stakeholder engagement, should be considered best practice for a Project of this type.

132. Community engagement occurred over many months and included (but was not limited to):

(a) A range of publications in digital and print media;\textsuperscript{111}

(b) A series of open community information sessions (conducted between April-May 2018, September-October 2018, and April-May 2019);\textsuperscript{112}

(c) The establishment of Community Liaison Groups, chaired by facilitators independent of NELP, in respect of the northern and southern sections of the Project;\textsuperscript{113} and

(d) The establishment of Community Technical Discussion Groups in respect of engineering and design related matters and walking and cycling related matters.\textsuperscript{114}

133. Engagement with government and other statutory authorities included (but was not limited to):

(a) the establishment of the Technical Reference Group in February 2018;\textsuperscript{115}

(b) the establishment of the Urban Design Advisory Panel in January 2018;\textsuperscript{116}

(c) the establishment of the Council Communications Working Group in 2017;\textsuperscript{117}

(d) one-on-one briefing sessions given to key stakeholders such as the Chief Executives and Councillors of the seven municipalities through which the Project passes;\textsuperscript{118} and

(e) consultation with the Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation.\textsuperscript{119}

\textsuperscript{111} Section 5.5.1 of the EES.
\textsuperscript{112} Section 5.5.2 of the EES.
\textsuperscript{113} Section 5.5.4 of the EES.
\textsuperscript{114} Section 5.5.5 of the EES.
\textsuperscript{115} Section 5.5.7 of the EES.
\textsuperscript{116} Section 5.5.8 of the EES.
\textsuperscript{117} Section 5.5 of the EES.
\textsuperscript{118} Ibid.
\textsuperscript{119} Section 5.5.9 of the EES.
134. The assessment framework adopted in preparing the EES is described in Chapter 4 of the EES and is not repeated for present purposes. It is noted, however, that:

(a) Table 4-1 of the EES identifies the draft evaluation objectives in respect of which the EES has been prepared, the key legislation that has informed aspects of the assessments undertaken in each respect, and the chapters and technical reports that are relevant to each evaluation objective;\(^{120}\) and

(b) Section 4.4 describes the assessment approach adopted in each of the technical studies, including the methodology adopted in respect of the identification and rating of risks associated with the Project.\(^ {121}\)

135. Chapters 9 – 26 of the EES document the environmental effects of the Project having regard to the evaluation objectives specified in the Scoping Requirements. The technical analyses supporting each chapter of the EES are contained in comprehensive technical reports exhibited as appendices to the EES.

136. A distinguishing feature of this EES is the extent to which these technical analyses have been the subject of independent peer review. In this regard peer reviews were conducted (and documented) in respect of Technical Reports A ‘Traffic and Transport’ (in respect of both transport modelling and the Traffic and Transport Impact Assessment), B ‘Air Quality’, C ‘Surface Noise and Vibration’, J ‘Human Health’, N ‘Groundwater’, P ‘Surface Water’. These peer reviews, which were predominantly iterative in nature, supplemented the role of the Technical Reference Group and provide considerable assurance as to the validity and accuracy of the assessments documented in the EES.

137. The Environmental Management Framework prepared in respect of the Project is set out in Chapter 27 of the EES. It constitutes an important component of the EES and has been designed to provide a transparent and integrated governance framework to manage environmental impacts associated with the design, construction and operational phases of the Project.

138. The EMF includes EPRs that define the environmental outcomes that must be achieved in respect of the Project (regardless of the detailed design solutions that are ultimately adopted). They have been prepared having regard to applicable standards and guidelines and are properly targeted to the range of environmental effects associated with the Project.

\(^ {120}\) At p 4-3.

\(^ {121}\) Which has been based upon \textit{AS/NZS ISO 31000:2009 Risk Management Principles and Guidelines}. 
In keeping with the regulatory regimes implemented in respect of other major transport projects, the EPRs do not generally prescribe particular design outcomes for the Project, and are instead predominantly performance based in character. NELP will continue to refine the EPRs throughout the hearing in response to submissions and evidence.

139. The EMF also specifies the roles and responsibilities of various stakeholders,\(^\text{122}\) identifies the key approvals that would need to be obtained and complied with,\(^\text{123}\) specifies requirements in respect of the identification, assessment and management of risks,\(^\text{124}\) identifies the environmental management documentation that will need to be prepared in respect of the Project (which relevantly includes a wide range of environmental management plans to be prepared during construction and operation),\(^\text{125}\) and specifies the approach that will apply to evaluating compliance with the EMF and EPRs, including in respect of monitoring, auditing and reporting processes.\(^\text{126}\)

140. Consistent with best practice, the EMF makes provision for the appointment of an Independent Environmental Auditor in respect of the Project. The IEA’s role is comprehensive and extends to the completion of periodic audits in respect of the various components of the EMF (including the EPRs and the primary and secondary construction and operation environment management plans to be prepared in respect of the Project).

141. The EES also contains an Urban Design Strategy prepared in respect of the Project.\(^\text{127}\) It identifies the principal urban design requirements for the Project (in the form of corridor-wide, place-specific, and more detailed requirements and benchmarks) and establishes a framework pursuant to which the ultimate Urban Design and Landscape Plans prepared in respect of the Project will be assessed.

_The IAC’s Inquiry_

142. The terms of the IAC’s inquiry into the environmental effects of the Project are described in paragraph 1 of the Terms of Reference. They relevantly include considering and reporting on the potential environmental effects of the Project having regard to the evaluation objectives in the Scoping Requirements\(^\text{128}\) and identifying measures that the

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\(^{122}\) Section 27.2.
\(^{123}\) Section 27.3.
\(^{124}\) Section 27.4.
\(^{125}\) Section 27.5.
\(^{126}\) Section 27.6.
\(^{127}\) At Attachment II to the EES.
\(^{128}\) Terms of Reference, paragraph 1(b).
IAC considers necessary to avoid, mitigate or manage the environmental effects of the Project.\textsuperscript{129}

143. The Terms of Reference relevantly provide that, in doing so, the IAC may ‘inform itself as it sees fit’,\textsuperscript{130} and that it must consider a range of matters including the exhibited EES,\textsuperscript{131} the submissions made in respect of the EES,\textsuperscript{132} and any additional information provided to it during the course of the hearing\textsuperscript{133} (including by NELP in response to submissions).\textsuperscript{134}

144. In preparing its report in respect of the environmental effects of the Project the IAC must, amongst other things, document its findings as to the capacity of the Project to achieve ‘acceptable environmental outcomes having regard to legislation, policy, best practice, and principles and objectives of ecologically sustainable development’.\textsuperscript{135} It must also record its recommendations in respect of ‘any feasible modifications to the alignment or design of the Project that would offer beneficial outcomes’\textsuperscript{136} and its ‘recommendations and/or specific measures that it considers necessary and appropriate to prevent, mitigate or offset adverse environmental effects ...’\textsuperscript{137} The IAC is also directed to record any recommendations it has in respect of the EMF, Urban Design Strategy, and EPRs.\textsuperscript{138}

\textbf{The Assessment Committee Inquiry Under the \textit{Planning and Environment Act}}

\textbf{The Draft PSA}

145. Draft Planning Scheme Amendment GC98 has been prepared in respect of the Banyule, Manningham, Boroondara, Yarra, Whitehorse, Whittlesea and Nillumbik Planning Schemes. It would:

\begin{itemize}
  \item[(a)] introduce an incorporated document in respect of the Project;\textsuperscript{139}
  \item[(b)] apply a Design and Development Overlay over the tunnels and associated infrastructure in the Banyule and Manningham Planning Schemes;
\end{itemize}

\begin{flushleft}
\textsuperscript{129} \textit{Ibid}, paragraph 1(d).
\textsuperscript{130} \textit{Ibid}, paragraph 22.
\textsuperscript{131} \textit{Ibid}, paragraph 22(a).
\textsuperscript{132} \textit{Ibid}, paragraph 22(b).
\textsuperscript{133} \textit{Ibid}, paragraph 22(d).
\textsuperscript{134} \textit{Ibid}, paragraph 22(c).
\textsuperscript{135} \textit{Ibid}, paragraph 31(b).
\textsuperscript{136} \textit{Ibid}, paragraph 31(c).
\textsuperscript{137} \textit{Ibid}, paragraph 31(d).
\textsuperscript{138} \textit{Ibid}, paragraphs 31(f), (g), (h).
\textsuperscript{139} By means of inserting clause 45.12 Specific Clause Overlay (\textit{SCO}) and schedules to the \textit{SCO} in the planning schemes, and by amending the schedules to clause 72.04.
\end{flushleft}
(c) amend the planning scheme maps to clearly define the physical application of the respective planning controls; and

(d) make the Minister for Planning the responsible authority for administering and enforcing the incorporated document.\textsuperscript{140}

146. Each of these components of the proposed regulatory regime are consistent with those implemented in respect of other largescale linear infrastructure projects approved within this State in recent times.

147. The incorporated document is a project-specific planning control designed to facilitate the delivery of the Project. It would apply to the land designated by the project boundary and would operate, subject to the satisfaction of a number of conditions, to exclude and otherwise exempt the Project from the need to obtain any further planning permission.

148. Those conditions relevantly include requirements to prepare (prior to the commencement of construction), and act ‘in accordance with’, an Environment Management Framework and Urban Design Strategy to the satisfaction of the Minister for Planning.\textsuperscript{141} The incorporated document corresponds with the terms of the EES in that it requires that:

(a) the EMF must contain EPRs in respect of the types of environmental effects addressed in the EES\textsuperscript{142} and that it make provision for the preparation of the range of environmental management plans during the construction and operation of the Project that are addressed in the EES;\textsuperscript{143} and

(b) the Urban Design Strategy must specify an urban design vision in respect of the Project as well as urban design principles and location-specific design directions or themes.\textsuperscript{144}

149. It also specifically directs, in each case, that to the extent that either the EMF or UDS differ from those instruments as they are ultimately addressed in the Minister’s assessment of the environmental effects of the Project, a statement must be prepared explaining those differences.\textsuperscript{145}

\textsuperscript{140} By amending the schedules to clause 72.01.
\textsuperscript{141} At clauses 4.5.1 and 4.6.1.
\textsuperscript{142} At clause 4.5.1.
\textsuperscript{143} At clause 4.5.2.
\textsuperscript{144} At clause 4.6.2.
\textsuperscript{145} At clauses 4.5.2(b) and 4.6.3.
150. The incorporated document also requires the preparation and approval of Urban Design and Landscape Plans prior to the commencement of development of permanent above-ground buildings or structures. The plans must be prepared to the satisfaction of the Minister for Planning and in consultation with relevant government authorities and the Urban Design Advisory Panel convened in respect of the Project (which includes representatives of the Office of the Victorian Government Architect). The plans must, amongst other things, show the final built form design for the Project, and demonstrate the manner in which the UDLPs implement and respond to the terms of the EMF and UDS. The use and development of the Project must be carried out generally in accordance with the approved plans.

151. Other provisions of the incorporated document concern the provision of native vegetation offsets and preparatory buildings and works.

152. The Design and Development Overlay would operate to protect the integrity of the tunnel structures from development undertaken above or in close proximity to the tunnel’s alignment. It has been drafted on comparable terms to the controls introduced in respect of the Melbourne Metro Rail Project and Westgate Tunnel Project and has been informed by technical analysis completed by GHD.

153. The strategic basis of the Project and the draft Amendment is addressed (amongst other places) by Mr Barlow in his Strategic Planning Assessment.

*The IAC’s Inquiry*

154. In its capacity as an Advisory Committee under the *Planning and Environment Act* the IAC must (amongst other things):

   (a) review the draft planning scheme amendment and any public submissions received in relation to it;

   (b) provide a report to the Minister as to whether the draft PSA contains provisions and controls that are appropriate for the Project; and

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146 At clause 4.7.1.
147 See clauses 4.7.1 and 4.7.4.
148 See clauses 4.7.2 and 4.7.3.
149 At clause 4.7.8.
150 See clauses 4.8 and 4.9.
151 Set out in Appendix C to Attachment V to the EES.
152 Terms of Reference, at paragraph 2(a).
153 *Ibid*, at paragraph 2(b).
155. In preparing its report to the Minister the IAC must consider whether ‘changes should be made to the draft PSA in order to ensure that the environmental effects of the Project are acceptable having regard to legislation, best practice, and the principles and objectives of ecologically sustainable development’ and must record any recommendations it has in respect of the ‘structure and content of the draft PSA’.  

156. Considerations relevant to this assessment are no doubt familiar to the IAC and are set out within:

(a) the Planning and Environment Act;
(b) the Victoria Planning Provisions; and
(c) Ministerial Directions 11 and 15 made pursuant to the Planning and Environment Act.

The Works Approval Inquiry Under the Environment Protection Act 1970

The Works Approval Application

157. The works approval application concerns the proposed tunnel ventilation system, being the only component of the Project that constitutes a scheduled premise for the purposes of the Environment Protection Act and Environment Protection (Scheduled Premises) Regulations 2017.

158. The system will comprise in-tunnel ventilation infrastructure, the two tunnel ventilation structures situated in close proximity to the northern and southern portals, and the emergency smoke exhaust system to be situated at the Manningham Road interchange.

159. The works approval application is Attachment VI to the EES and has been informed by the Tunnel Ventilation System Air Quality Impact Assessment prepared by Golder & Associates and a Noise Impact Assessment prepared by SRL. It is proposed that the works approval be granted on terms similar to those of the works approval issued in respect of the West Gate Tunnel ventilation system.

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154 Ibid, at paragraph 2(c).
155 Ibid, at paragraphs 31(e) and 31(i).
156 Appendix A to the Works Approval Application.
157 Appendix C to the Works Approval Application.
158 Section 1.1.3 of the Works Approval Application.
160. It is noted that the new legislative regime governing environment protection in Victoria is expected to come into effect on 1 July 2020 by operation of the Environment Protection Amendment Act 2018.

161. The implications of the new regime to the Project are addressed in greater detail below. For present purposes, however, it is noted that the new regime will contain transitional arrangements in respect of works approvals issued prior to its commencement and works approval applications that are pending upon its commencement. The new regime also contains mechanisms by which any works approval issued prior to its commencement can be modified to reflect the requirements of the new regime. These provisions ensure that any works approval issued in respect of the Project will, to the extent necessary, be brought into line with the requirements of the new regime upon its commencement.

The IAC’s Inquiry

162. The Terms of Reference direct that the IAC is to provide advice to the EPA that can be used to inform its consideration of the Works Approval Application. This advice is to include recommendations in respect of ‘avoidance, mitigation or management measures’ that the IAC considers are ‘necessary to ensure compliance with any legislation and/or policy’. The Terms of Reference also provide that the IAC may request any further information from NELP in respect of this aspect of its assessment.

Part 4: The Submissions

163. 874 submissions were made in response to the exhibition of the EES, the draft PSA and the works approval application.

164. A tabulated summary of the key issues identified in those submissions, and NELP’s initial response to those issues, is Appendix A to these submissions.

165. Detailed submissions will be made in NELP’s final submissions in response to argument and evidence put to the IAC through the course of the hearing. It is appropriate at this

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159 Environment Protection Amendment Act 2018 at ss 470 and 471. Further, by operation of s 470, the new permissions will be known as a development licence as opposed to a works approval.

160 Environment Protection Amendment Act 2018 at s 474.

161 Ibid., s 472.

162 It is noted, also, that the same transitional provisions apply to licenses issued under s 20 of the current Act.

163 Terms of Reference at paragraph 1(d).

164 Ibid., at paragraph 18.

165 Ibid.
early stage, however, to respond to some of the more overarching concerns expressed by submitters that go to the heart of this inquiry process.

166. A number of submissions are peripheral to the terms of reference and key focus of the IAC’s inquiry. These include submissions to the effect that:

(a) Public transport projects are preferable to, and should be prioritised ahead of, road projects;
(b) Road projects are intrinsically incompatible with the *Transport Integration Act*;
(c) The Project should adopt a different corridor;
(d) The Project should include a range of further road, public transport and active travel projects;
(e) The assessment should not occur at the same time as the assessment under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth); and
(f) The EES is inadequate because it does not include a comprehensive assessment of the matters set out above.

167. The starting point for the IAC’s consideration of whether any of the above matters is relevant to, or assists the IAC in, its inquiry is to be found in its role as defined by the legislative scheme and the Terms of Reference.

168. As outlined above, the Project is the fulcrum of the IAC’s inquiry under the Terms of Reference, as demonstrated by the defined role of the IAC under paragraph 1 of the Terms of Reference, namely:

(a) To review and consider the EES and submissions received in relation to the environmental effects of the Project;
(b) To consider and report on the potential environmental effects of the Project, having regard to the evaluation objectives in the EES scoping requirements; and
(c) To identify any measures it considers necessary to avoid, mitigate or manage the environmental effects of the Project.

169. It is not the role of the IAC – under the *Environment Effects Act* or the Terms of Reference – to usurp the role of the Executive arm of government by examining policy decisions already made by government, or setting out a range of alternative policy decisions that might be made.
170. The Project is a road project. The Project objectives are relevant to a road project. While the Project includes significant investment in public transport in the form of the Doncaster Busway and active travel infrastructure, it is not a rail project. An assessment of the environmental effects of the Project should not be undertaken with a pejorative view of road projects, which are a necessary part of the overall transport system.

171. The vision of the Transport Integration Act is for an integrated and sustainable transport system that contributes to an inclusive, prosperous and environmentally responsible State. A significant pipeline of transport infrastructure projects is currently being delivered in Victoria, of which this Project would form one component. This includes public transport projects such as Regional Rail Link, the Melbourne Metro Rail Project and the Level Crossings Removal Project, and road projects such as the West Gate Tunnel Project.

172. It is not necessary for a single project to simultaneously provide all of the components of an integrated and sustainable transport system in order to be compatible with the Transport Integration Act.

173. Similarly, while four potential corridors were investigated as part of the Business Case for the Project, a policy decision was made by the government to proceed with Corridor A. This IAC process should not be used as a proxy to review that policy decision.

174. The Project includes a range of works that are, in some ways, ancillary to the core task of providing a connected freeway link between the M80 and the Eastern Freeway, including missing links in, and upgrades to, the active travel network adjacent to the Project alignment, and the Doncaster Busway. These works have been included as part of the Project on the basis that they have a sufficiently close connection to the Project objectives. Any additional complementary projects beyond the current scope of the Project would similarly need to be viewed as being necessary to meet the project objectives in order to be recommended for inclusion within the Project.

175. Likewise, alternative design proposals would need to amount to measures necessary to avoid, mitigate or manage the environmental effects of the Project in order to be relevant to the IAC’s task.

176. While a number of submitters have criticised the EES for asserted inadequacies in its scope or documentation (often on the basis that it does not include assessment of those matters discussed above), the IAC’s role is not to assess the adequacy of the EES per se. That assessment was made by the Minister in approving it for exhibition. As noted above, the
IAC may inform itself in any way that it sees fit, such that if the IAC considers it needs additional information to inform itself of the environmental effects of the Project it has the ability to make further enquiries of NELP in order to obtain the information it needs.

177. NELP has taken, and will continue to take throughout the IAC hearing, a cooperative approach to requests for further information. But it will not entertain – and the IAC should not entertain – requests for information that do not relate to the Project as declared or its environmental effects. The relevance of requests for information should be assessed having regard to the fact that the Project before the IAC is a reference design, which will necessarily go through a process of detailed design following the award of the Project to a successful tenderer.

178. NELP endorses the approach that was taken by the West Gate Tunnel Project IAC against a background of similar submissions. The West Gate Tunnel Project IAC considered both the adverse and beneficial environmental effects of that project overall, and assessed whether the environmental effects of that project could be managed to an acceptable level.\[^{166}\] It did not consider the benefits of other potential projects that were not before it.\[^{167}\]

179. The adoption of a reference design to inform the assessment of environmental effects has been criticised in a number of the submissions. Whilst it is true that the ultimate configuration of the Project may differ in certain respects from the reference project, the proper question for present purposes is not whether there is scope for this to occur, but instead whether the reference project adopted for the purposes of the EES is an effective tool to assess the likely environmental effects of the Project as declared.

180. In this case the IAC should be satisfied that it is, given the refined nature of the reference design (the detailed development of which is described in Section 6.4 of the EES), the relatively specific terms of the Minister’s declaration of public works, the confined nature of the Project boundary, and the functional and design requirements that must necessarily be incorporated within the Project.

181. To the extent that submissions raise issues in respect of the adequacy of the assessment of the process pursuant to the *EPBC Act* these submissions should be disregarded. The Terms of Reference make clear that ‘[a]ny submissions on matters of national environmental

\[^{166}\] West Gate Tunnel Project Inquiry and Advisory Committee Report, 23 October 2017, pp ii and 17.

\[^{167}\] Ibid, p 17.
significance are to be made to the Department of Environment and Energy and consequently, the IAC report is not required to, and should not, address impacts on matters of national environmental significance as described in the public environmental report.\textsuperscript{168}

**Part 5: Requests for Further Information**

**The IAC’s Request for Further Information**

182. The IAC’s *Preliminary Matters and Further Information Request* is dated 20 June 2019.

183. NELP has responded to the majority of the IAC’s requests in evidence and in technical notes. A table cross-referencing these responses to the IAC’s queries is Appendix B to these submissions.

**Part 2.2**

184. Part 2.2 of the Request for Further Information concerns legislation and policies. For ease of reference the relevant parts of the request are set out below:

(i) Reference

*Melbourne Water submission* (Submission 800, page 4 and 7 refers to relevant legislation and waterway strategies. There may also be other relevant legislation such as the new *Environment Protection Act 2017* that the IAC should consider in the assessment.

(ii) Request

3. An understanding of whether and how the Project has considered the recommendations of the *Yarra Strategic Plan*, the *Yarra River Protection (Wilip-gin Birrarung murrur) Act 2017* and the *Healthy Waterways Strategy (2018)* in its impact assessment.

4. Whether the Project needs to, or has, responded to the *Environment Protection Act 2017*, and if so how (for both construction and operation).

5. The status of any *Victoria Transport Plan under the Transport Integration Act 2010* and how the Project Responds to that Plan.

185. These matters are appropriately addressed in these Part A submissions. NELP’s responses are set out below.

**Item 3: Yarra River Protection (Wilip-gin Birrarung murrur) Act 2017**

186. The *Yarra River Protection (Wilip-gin Birrarung murrur) Act* came into effect on 1 December 2017.\textsuperscript{169} The objects of the Act include to ‘recognise the importance of the

\textsuperscript{168} At [13].
Yarra River, and its parklands and associated public places, to the economic prosperity, vitality and liveability of Melbourne and the Yarra Valley’ including ‘the ecological health, and the cultural, social, environmental and amenity values of the Yarra River and the landscape in which the Yarra River is situated’ and ‘the environmental significance of the biodiversity corridor along the Yarra River’. 170

187. The Act principally concerns ‘Yarra River land’, which is defined to include the ‘Yarra River, including its bed, soil, and banks’, and any other land declared to be Yarra River land by the Governor in Council. 171 It establishes the Yarra Protection Principles which concern a range of matters including principles of a general, environmental, social, recreational, cultural and managerial character. 172

188. The Yarra Protection Principles are required to be taken into account in the preparation of the Yarra Strategic Plan, which is in turn an instrument designed to ‘guide the future use and development’ of land to which it applies, and ‘identify key areas for protection within the Yarra Strategic Plan’. 173 Upon the approval of the Yarra Strategic Plan, Part 3AAA will be introduced into the Planning and Environment Act 1987, and will affect planning scheme amendments relating to Yarra River land. 174

189. Melbourne Water has been appointed as the lead agency in respect of the preparation of the Yarra Strategic Plan. It has undertaken consultation in respect of the preparation of the Plan 175 and is expected to release a draft for public consultation later in 2019. 176

190. Various other legislative instruments include requirements on the part of statutory authorities to not act inconsistently with, or to have regard to, the Yarra Strategic Plan, or to otherwise have regard to the Yarra Protection Principles. 177 A pertinent example is s

169 Other than s 63 which will come into effect upon the approval of the initial Yarra Strategic Plan.
170 See s 5(a).
171 The scope of any such declaration is defined by s 14 of the Act, which identifies land within 500 metres of the bank of the Yarra and that is inter alia land reserved under the Crown Land (Reserves) Act 1978 or that is owned by a ‘responsible public entity’.
172 See ss 7 – 13.
173 See s 16.
174 See s 63.
176 Ibid.
89A of the *Transport Integration Act*. In all cases, however, these requirements contain an exemption in respect of the performance of statutory functions relating to a declared project within the meaning of the *Major Transport Projects Facilitation Act 2009*.

191. Notwithstanding that the Yarra Strategic Plan has not yet been prepared, and that there are various legislative exemptions concerning the strict application of the Plan and the Yarra Protection Principles to statutory decision making concerning declared projects under the *Major Transport Projects Facilitation Act*, NELP has had regard to the Yarra Protection Principles in the preparation of the EES.

192. The relevant principles were considered, for instance, in the development of the Scoping Requirements and evaluation objectives which guided the assessment of environmental effects.

193. Whilst not necessarily specifically limited to the Yarra River, relevant evaluation objectives include:
   - To avoid or minimise adverse effects on the interconnected surface water, groundwater and floodplain environments
   - To avoid or minimise adverse effects on Aboriginal and historical cultural heritage values
   - To avoid or minimise adverse effects on vegetation (including remnant, planted and regenerated) listed rare and threatened species and ecological communities, habitat for listed threatened species, listed migratory species and other protected flora and fauna, and address offset requirements for residual environmental effects, consistent with relevant State policies.
   - 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.

194. Relevant Scoping Requirements are set out below:
   - Potential for project works to affect waterways, groundwater and hydrology, including with respect to flooding and future climate change scenarios.
   - Potential for significant effects on biodiversity values including effects associated with changes in hydrology or hydrogeology (including under future climate change scenarios) or threatening processes listed under the FFG Act.
   - Potential for indirect and direct impacts on riparian and in-stream environments brought about by the project both intersecting and near the project area.

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178 Which provides that the Roads Corporation must not act inconsistently with the Yarra Strategic Plan that is expressed to be binding on the Roads Corporation when performing a function or duty and must have regard to the Yarra protection principles, and those parts of a Yarra Strategic Plan not expressed to be binding on Roads Corporation.
• Potential for adverse impacts on ecological character and key habitat locations including Bolin Bolin Billabong, Banyule Flats wetlands, Yarra River and Koonung Creek.

• Assess direct and indirect effects on ecological character and significant habitat sites near the project area including Bolin Bolin Billabong, Banyule Flats Wetlands, Yarra River and Koonung Creek.

• Describe measures to avoid or mitigate project effects on waterways and flood behaviour and management.

• Describe measures to protect surface water quality, especially during the construction phase, with reference to SEPP objectives and other relevant standards and guidelines.

• Assess residual effects on quality and availability of groundwater and water quality in receiving waters, having regard to existing water quality conditions, proposed mitigation measures and relevant SEPP standards.

195. These issues, in turn, have been specifically considered in a range of impact assessments including in respect of ecology, surface water, historical heritage, and aboriginal cultural heritage.

196. The Urban Design Strategy also reinforces the importance of the Yarra River in the context of the Project, through Objective 1.2 which requires that contractors provide a design that amongst other things respects and promotes the Yarra River and its environs, and Part 5 which specifically concerns the Yarra River Valley.

197. The IAC’s query also concerns the Healthy Waterways Strategy (Melbourne Water, 2018). That strategy concerns the management of rivers, wetlands and estuaries in the Port Phillip and Westernport region. It documents a 50-year vision for the Port Phillip and Westernport region and identifies high waterway values and priority management activities over a 10-year period with objectives to guide activities and indicate progress towards improving the waterway condition. The various evaluation objectives and scoping requirements identified above are relevant to matters identified in the Strategy. The Strategy is also specifically considered in Technical Report P – Surface Water.

Item 4: Environment Protection Act 2017

198. The legislative regime in respect of environment protection within Victoria presently comprises three principal parts:

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179 Technical Report Q.
180 Technical Report P.
181 Technical Report K.
182 Technical report L.
(a) The Environment Protection Act 1970;

(b) The Environment Protection Act 2017; and

(c) The Environment Protection Amendment Act 2018.

199. The 1970 and 2017 Acts are presently in force and respectively contain the operative substantive provisions and the operative procedural/administrative provisions concerning environmental protection within Victoria. The 2018 Act, the majority of which is expected to commence operation on 1 July 2020, will repeal the 1970 Act and introduce substantive provisions into the 2017 Act. A summary of those provisions as they concern the Project is contained within EPA’s submission to the IAC.  

200. The implications of the new regime to the works approval application are addressed in paragraphs 160 - 161 above. In short, transitional provisions contained within the 2018 Act will ensure that any works approval issued prior to the commencement of the new regime will continue to operate in the form of a new permission known as a development licence, and will (to the extent necessary) be amended to comply with the provisions of that Act.

201. It is noted, more generally, that other elements of the regulatory regime proposed in respect of the Project will contain mechanisms that will allow them, to the extent necessary, to be modified to respond to the new legislative regime.

202. The incorporated document, for instance, provides that the Environment Management Framework (which will contain the Environment Protection Requirements) may be modified from time to time, to the satisfaction of the Minister for Planning. NELP acknowledges that it will be appropriate to update the EMF to the extent necessary to respond to the new legislative regime and the various instruments that will be issued pursuant to it. As the form and content of those instruments are not yet known, however, it is not possible to pre-empt their content as part of this assessment process.

Item 5: Victorian Transport Plan

203. A Victorian Transport Plan has not been prepared since the commencement of the Transport Integration Act 2010. The 2008 Victorian Transport Plan, which preceded the Transport Integration Act but which remains a reference document pursuant to the Victoria

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183 Submission 600, Part 4.3.
184 At clause 4.5.4.
Planning Provisions, has been discussed above and is further addressed in Mr Barlow’s witness statement.

Requests Made by Other Submitters and Expert Meetings

204. A number of submitters have requested further information from NELP in respect of aspects of the Project and the EES. A record of these requests, and of the status of NELP’s response to these requests, will be tabled on Day 1 of the Hearing.

205. A register of meetings conducted in accordance with paragraph 4 of the IAC’s directions made on 26 June 2019 (between ‘NELP experts’ and expert witnesses called on behalf of other submitters) will also be tabled on Day 1 of the hearing.

Next Steps

206. NELP will continue its case before the IAC by:

(a) presenting opening submissions on Day 1 of the hearing, which will include a description of the Project;

(b) tabling an initial revision to the EPRs in response to changes proposed in submissions and in evidence on Day 1 of the hearing; and

(c) presenting topic specific submissions in advance of the expert witnesses to be called in respect of the various disciplines.

207. It will make closing submissions to the IAC on Day 36 of the hearing.

STUART MORRIS
CHRIS TOWNSHEND
EMILY PORTER
BARNABY CHESSELL

Counsel for North East Link Project
Instructed by Clayton Utz

17 July 2019

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185 At clause 18.91-1S.
186 At p 24.
187 As is required by Direction 6.
APPENDIX B – RESPONSE TO THE IAC’S REQUEST FOR FURTHER INFORMATION