INTRODUCTION

These submissions are made on behalf of Marcellin College ("Marcellin"). They are further to Marcellin’s opening submissions (document 88a) and its substantive submissions dated 18 August 2019 (document 223).

These submissions very briefly:
a) explain Marcellin’s final version of the Incorporated Document (noting that this position is put forward without prejudice to its primary position that more work needs to be done before the Planning Scheme Amendment is approved);

b) explain Marcellin’s final version of the Environment Performance Requirements (ERPs) (noting that this position is put forward without prejudice to its primary position that the EPRs are unable, in and of themselves, to ensure that the project will provide acceptable outcomes);

and

c) update the IAC on discussions between Marcellin and NELP to date.

THE INCORPORATED DOCUMENT

3. Attachment 1 is Marcellin’s final version of the Incorporated Document.

4. NELP has accepted some changes suggested by Marcellin but has not accepted many of the key changes, including the proposed construction compound condition. The construction compound condition is critical to avoiding, minimising and mitigating the effects of the Project.

5. NELP has also rejected Marcellin’s tightening up of the drafting and Marcellin’s change which corrects what appears to be a typo in referencing 4.7.3 instead of 4.7.4.

6. Perhaps tellingly, NELP has rejected Marcellin’s suggestion that the UDS must be accompanied with a statement explaining any differences between it, and the North East Link Urban Design Strategy April 2019. Without even this reference, there is nothing at all in the Incorporated Document (other than the SCO maps and tunnel map) which ties the project in any way to any of the documents assessed by the IAC.

7. NELP has not produced a document explaining its rejection of Marcellin’s proposed changes.

8. In particular, it is not clear why NELP has rejected instances where Marcellin has tried to tighten up the wording of the ID (eg clauses 4.5.2). It would appear that NELP is purposefully putting forward a document with loose language. The
ID is the primary planning tool to regulate one of Victoria’s biggest infrastructure project. Loose language ought be avoided.

9. In addition to the changes suggest in Marcellin’s substantive submission, Attachment 1 also includes a condition (4.8) requiring that the Minister for Planning endorse key plans for the project, rather than leaving them to the contractor under the EPRs. Marcellin has included the following key plans, although it notes that those are the plans that are of most concern to Marcellin, and there may well be others of equal importance to other parties:

   a) Construction Noise and Vibration Management Plan; and
   b) Communications and Community Engagement Plan.

THE EPRs

10. Attachment 1 is Marcellin’s final version of the EPRs.

11. At para 68(b) of Marcellin’s submissions we said ERP NV1 should be modified to include a requirement to consider the road traffic noise levels at the Marcellin College playing fields (and equivalent uses) as this is not currently addressed by the EPRs.

12. NELP has not agreed to make this change. We rely on the evidence of Mr Evans. Active open space should be protected from the effects of noise – particularly when the evidence is that the playing fields are used for teaching purposes.

13. The Councils propose NV1NEW:

   Noise at Public open Space
   Design, construct and maintain (for 20 years or the life of the Project) the Project works to ensure the noise level at any area of passive or active open space does not exceed the existing noise level +2dB(A)L10 between 7am to 10pm each day.

14. This EPR could be modified to also address school sports ovals as follows:

   Noise at Public Open Space and School Ovals
   Design, construct and maintain (for 20 years or the life of the Project) the Project works to ensure the noise level at any area of passive or active open space (including school ovals) does not exceed the existing noise level +2dB(A)L10 between 7am to 10pm each day.
15. At para 68(d) of Marcellin’s submissions we said **ERP NV4** should say:

   Prepare, implement and maintain a Construction Noise and Vibration Management Plan (CNVMP) in consultation with EPA Victoria and relevant councils and other stakeholders listed in SC2.

16. Marcellin maintains its position that there should be a process for direct input into the CNVMP by affected stakeholders, not round-about input through the CCEP process.

17. Marcellin also stated

   EPR NV4 should be modified to include a process for maintaining the CNVMP such that it be updated, at minimum, every 6 months with **external stakeholder review** (suggested by Mr Evans and agreed at the noise conclave but not take up by NELP to date)

   (emphasis added)

18. NELP did not agree to stakeholder involvement in the 6 monthly review of the CNVMP. Marcellin maintains its position that the review should involve stakeholder input.

19. The joint councils (in LP1) have proposed the following

   Adopt an integrated planning approach to the Manningham interchange which:
   - supports viable future land uses (such as commercial and industrial) and includes maximising the developable area of residual land at surface level to the extent practicable;
   - consolidates or minimises the fragmentation of residual land parcels;
   - supports retention of the River Red Gum at 39 Bridge Street, Bulleen
   - …

20. Marcellin endorses this approach for the Bulleen interchange. An EPR (LP1A) could be included which contains the recommendation of the IAC, for example it may read:

   Adopt an integrated planning approach to the Eastern Freeway/Bulleen Road interchange which:
   - Provides appropriate access to the Park and Ride facility;
• Provides the Manningham Hotel with appropriate access;
• Does not provide a shared access between Marcellin College and Manningham Hotel;
• Retains the entirety of Marcellin College’s Bulleen Road frontage in the long term (recognizing that part of that frontage may be an elevated road).

21. Marcellin queried the wording of SC NEW1 through questions of Mr Evans. It has been amended but further changes are required.

22. LP1 states:

The project must be designed and constructed to:
– Minimise the design footprint and avoid, to the extent practicable, any temporary and permanent impacts on the following land uses:
  – Parks and reserves
  – Significant landscapes around the Yarra River
  – Other sensitive land uses such as educational facilities

23. The SCNEW1 requirements are inconsistent when applied to public as opposed to private land, in particular in relation to active recreation areas. It should be amended as follows:

**Manage impacts of land acquisition and occupation:**

Where private or public land is to be permanently acquired or temporarily occupied, the project will minimise the extent of the acquisition or the extent or duration of the occupation.

Where private land is to be permanently acquired or temporarily occupied, the project will:
• Use a case-management approach for project interactions with affected land owners and occupants
• Endeavour to reach agreement on the terms for possession of the land
• Consider the relative vulnerability and special needs of land owners and occupants.
• Return private land not required for permanent project infrastructure to its pre-existing use post-construction as soon as practicable, unless otherwise agreed with the land manager owner.
• In the case of private land used for formal active recreation, ensure that impacts are minimised in accordance with SCNEW 2.
Where public land is to be permanently acquired or temporarily occupied, the project will:

- Minimise the extent of the acquisition or the extent or duration of the occupation
- Endeavour to reach agreement with the land manager on the terms for possession of the land
- Return public land not required for permanent project infrastructure to its pre-existing use post-construction as soon as practicable, unless otherwise agreed with the land manager.
- In the case of public land used for formal active recreation, ensure that impacts are minimised in accordance with SC4.

24. **SCNEW2** should also reflect SC4.

Where construction or operation activities directly impact formal active recreation facilities or community infrastructure facilities such as schools, child care centres, and aged care centres, consultation must occur with facility operators, owners and user groups of the facilities to understand and, implement any practical measures that can be taken to avoid or minimise impacts. Such measures should achieve the continued operation of each facility, with suitable access and reasonable protection of amenity, except where otherwise agreed with relevant facility owners. If the continued operation is not achieved, the project will work in collaboration with the landowner to identify relocation opportunities with the objective of accommodating displaced facilities and maintaining the continuity of those formal active recreational activities, except where otherwise agreed with the relevant facility owner. The project will prepare and implement a relocation plan, designed to achieve replacement of displaced facilities at suitable locations within a defined timeframe, to meet this objective.

25. **EPR T2** should be amended as follows in accordance with Ms Dunstan’s evidence:

Transport Management Plan(s) (TMP)

Prior to commencement of relevant works, develop and implement Transport Management Plan(s) (TMP) to minimise disruption to affected local land uses, traffic, car parking, public transport (rail, tram and bus), pedestrian and bicycle movements and existing public facilities during all stages of construction.

The TMP must be informed and supported by an appropriate level of transport modelling and must include:

- Requirements for maintaining transport and access capacity for all travel modes in the peak demand periods

...
26. We also draw to the IAC’s attention para [69] of Marcellin’s substantive submission, namely that the UDS be amended to include the following:

The ventilation structures and associated buildings are to be designed in the round with equal attention given to design of those parts of the structures visible from within the road corridor and those parts visible from locations external to the road corridor.

AN UPDATE

27. Mr Gnanakone gave oral evidence in relation to the capacity to reconfigure Sandra St and Thompsons Road to provide for a right hand turn out of the hotel. Marcellin does not intend to produce a further addendum from Ms Dunstan. Marcellin relies upon Ms Dunstan’s oral evidence in response to this, in particular:

a) There are 400 car spaces that can be expected to fill (in the AM) or empty (in the PM) over several hours each.

b) What is relevant for the right-turn out is when they empty (which should be a more extended time than when they fill in the AM).

c) Even if the car spaces empty in only 2 hours, that is less than 1 departing car per bus (400 spaces/580 buses equates to 0.69 cars per bus).

d) That would equate to 3.2 cars a minute (0.69 cars * 4.7 buses) and the vast majority would want to turn left and not right. Even at a 50/50 split, that's 1.6 cars per minute.

e) There are 2 approach lanes and the cycle time is likely to be 120 seconds. So that is 3.2 cars split across 2 lanes.

f) 1.6 cars in each lane can be accommodated in a queue for each cycle between exiting Sanda Street and the stop line to the bus way.

g) The modelling to date already says that the volumes will drop on Thompsons Road.

28. Marcellin’s substantive submission concluded as follows:

Given that:
NELP has not presented a Part B submission addressing the matters that Marcellin has raised;

Marcellin expects more material to be forthcoming from NELP (eg whether the sidetrack is required and if its footprint can be reduced); and

Marcellin hopes that NELP will address the issues that it has raised-

Marcellin seeks to reserve a right of reply - as a matter of procedural fairness – to respond to any new matters raised by NELP between now and the end of the hearing.

29. NELP has still not filed any substantive submissions in this matter.

30. Marcellin is therefore only able to update the IAC with the following information:

a) On 12 September 2019 (after being shown the plan in an earlier meeting but not given a copy) a plan was provided to Marcellin (Attachment 3) under cover of an email (Attachment 4) that shows a reduced construction compound line, and reconfigured ovals. The reconfigures ovals retain a full size rugby field, but reduce Lyons oval in size. Based on that plan, an alternative full sized oval would need to be provided offsite at least for weekend sport. The plan is a move in the right direction. Without the reduced construction compound line, Marcellin would not have a rugby pitch. As previously explained, this is problematic as there are no rugby fields in the nearby area.

b) In the same email, NELP’s solicitors explained:

NELP does not agree that the SCO does not need to cover the land required for the realigned Melbourne Water Corporation (MWC) sewerage pipeline. The inclusion of this land within the SCO will facilitate the land's inclusion in the designated project area under the Major Transport Projects Facilitation Act 2009 allowing acquisition of easement rights necessary to provide for the pipeline's relocation.

31. As per Marcellin’s oral submissions, as far as Marcellin is aware, the application of the SCO has nothing to do with NELP’s powers of acquisition of the easement. Marcellin maintains that, at a minimum, the SCO should be reduced to the line shown on the plan provided on 12 September 2019.
32. After an 8 week hearing, there is still no clarity about the impacts of the Project on Marcellin. The impacts as a result of the reference design and the Bulleen switch are quite different. A third design would no doubt have a different range of effects yet again. The project boundary allows both of those options and lots of variations in between. How can the IAC assess whether or not impacts have been avoided, minimised or appropriately mitigated when it cannot determine what the impacts are?

33. Marcellin’s joins with the councils in asking you to:
   
a) recommend a supplementary EES; or

b) adjourn this hearing to a date to be fixed to enable a more concrete proposal to be put on the table for assessment for those parts of the project that the IAC has concerns about.

34. We re-iterate the recommendations sought in our submissions especially those set out at para [55]-[66].

**Juliet Forsyth**
Owen Dixon Chambers West

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15 September 2019