

EAST WEST LINK – PRELIMINARY HEARING / RE: INCORRECT RELEASE OF CIS?

Preliminary Hearing Matter - for the Comprehensive Impact Statement Consultation

To:

The Chair, East West Link (Eastern Section) Project Assessment Committee
planning.panels@dtpli.vic.gov.au
(C/- Planning Panels Victoria, Level 5, 1 Spring Street, Melbourne 3000)

In Brief, I ask the Assessment Committee to consider and determine that the CIS was not prepared according to the Act and thus to find that it was not proper, under the conditions laid out in the Act for the Minister to have released the CIS to the public. As such, the CIS was not properly released under the Act into the public domain and so the Submissions and subsequent hearings are not valid.

Thus, the only proper course of action is to fulfill the conditions of the act and require the Project Proponent to re-release a completed CIS, as per Sect.38 to 42, that fulfills Sect.39 of the Act. This will then provide the opportunity of due process to the public and submitters to consider and prepare submissions based on an accurate CIS.

Until such time, the submissions to be heard at a Public Hearing, and the CIS itself should be considered as incomplete as they are based upon inadequate information.

As such, I ask the Assessment Committee to determine if, until the CIS is properly prepared and released correctly according to all the steps laid down in the Act, it can lawfully consider both current submissions and the CIS according to its Terms Of Reference (Part 1.3, 2.2 & 2.7).

Specifically, under the Act, Sect.57-1(b), I wish to raise with the Assessment Committee a procedural / preliminary matters in relation to the formal public hearings that will be conducted in relation to the comprehensive impact statement.

As Per The AC's Terms of Reference, Part 1.3, the AC is to assess the CIS in accordance with the Act (subject to the TOR) ... consider the alignment, design and performance for the project ... and make any recommendations as to appropriate conditions to be attached to any applicable law approvals - plus - TOR parts 2.7; to hear properly made submissions [regarding] whether impacts, or the Urban Design Framework.. have been properly addressed, and whether .. the noise etc .. will be appropriately managed by proposed measures.

It is within the authority of the AC's TOR to .. (Part 2.2d) consistent with the Act to .. consider any information requested from a person under Sect.245(2) of the Act, that is that the AC .. may require an applicable law decision maker to provide the AC with advice on a matter or issue the committee considers relevant for the purpose of making an AC recommendation.

If both the Project Proponent and the Minister have failed to comply with the Act, and the Submissions and the CIS become effectively invalid, then it is incumbent upon the AC to determine if it is proper and lawful to proceed under the Act.

As such, I ask the Assessment Committee to determine if that;

1. As the Project Proponent was required under Section 39 of the Act, that they must "prepare a comprehensive impact statement for the project that –
 - (a) complies with the scoping directions for that statement; and
 - (b) contains an assessment of the impacts of the declared project; and
 - (d) sets out the methods considered to avoid, minimize, manage or offset the impacts referred to.

Based on these requirements, to find that the Project Proponent has failed to comply with the Act, as it has not provided in the CIS, the following items;

- Cross Section plans with appropriate scaling as stated in the Scoping Directions (p.3, Part 2)
(Not given for the whole project & specifically for the Precinct 5 Elevated Toll-Road),
- Assessment & mitigation of Light Spill Impacts from the Elevated Toll-Road for all of Precinct 5
- Assessment & mitigation of Noise Impacts from the Arden Street Ramps
- Assessment & mitigation of Visual Impacts from the Arden Street Ramps

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- Assessment of the Noise Impacts from Toll-Road, on users of the Moonee Ponds Creek environs
- Assessment of the property rights of Bruce St residents to noise impact consideration, hence a lack of impact assessment and mitigation for Noise from the Toll-Road and the proposed Arden Street Ramps

Thus I ask the AC to determine if the Project Proponent has not prepared a comprehensive impact statement that fulfills the Scoping Directions and hence Section 39 of the Act.

2. Also, I ask the AC to consider that with the abilities under the TOR 2(2d) and Sect.245(2) of the Act, to request legal opinion as to whether it was valid/proper under the Act for the Minister (under delegation, 15OCT) to have determined that the CIS met the requirements of Sect.39 of the Act, and thus was the CIS not adequate for release as per Section 42.(2)&(3) of the Act (as the CIS as shown above, does not meets the Acts requirements);

(2) The Planning Minister, in a review determination, may determine that a comprehensive impact statement may be released for public exhibition under Subdivision 4 only if the Minister is satisfied that the statement is adequate to be released for that purpose.

(3) In order to be satisfied that a comprehensive impact statement is adequate to be released for public exhibition, the Minister must be satisfied the statement meets the requirements set out in section 39.

Note that I ask the AC to consider this as a preliminary matter, as I ask the AC to question the validity of the CIS and any subsequent Submissions and Hearings;.

- If the CIS was not adequate for release, then it follows that it should not have been deemed adequate for release.
- If it was not adequate for release, it should not have been in the public domain and so then all submissions are in effect incomplete and not worthy of consideration by the Assessment committee.
- Thus both the AC and the public have been denied the right under the Act to consider a CIS that is adequate for review under the Act.

3. Therefore, if the CIS does not complete the demands of Sect.39 of the Act, and that the CIS was not adequate for release under Sect.42 of the Act, then I ask the Assessment Committee to consider that it is only proper under the Act, to find and recommend to the Minister that;

- the Project Proponent must be required to re-evaluate the Project and produce a Comprehensive Impact Statement that fulfills all aspects of the Scoping Directions and Section 39 of the Act, especially those areas that the original CIS failed to cover or consider correctly (this is not limited to those items as listed above).
- the public must be allowed proper consideration and allowed to revise their Submissions to the AC based on a properly made CIS and be given the maximum time period, for a thorough re-evaluation of a re-submitted CIS (submitted to the minister as per Section 41 (parts 1 & 2) and Section 42 of the Act.
- only then would it be proper for the Minister to correctly consider that the CIS is adequate for release for Public Exhibition as per the Act.
(Note that the Act does allow for the Minister to direct the CIS back to the Project Proponent if the CIS was not fit for release under Sect.42(5), but for some reason this didn't occur as it should have).
- the time period given for public consideration of a CIS that is “adequate for re-release” must be the maximum allowable under the act, due to the inconvenience placed upon the public by the Project Proponent and the failure of the Minister to ensure a properly released CIS document in the first instance.
- due to the improper release of an inadequate CIS, in order to properly fulfill the spirit and conditions as laid out in the Act, in effect ‘the clock should be reset’ for the CIS determination and release, back to Subdivision 3, parts (38) to (42) of the Act.

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- the Public Hearings should not proceed, until each of the correct steps are sequentially fulfilled according to the Act, as to do otherwise, the AC will not be considering a complete CIS nor Submissions made based on a properly comprehensive CIS.
In effect, the AC would be basing its determinations and recommendations on incomplete and potentially invalid data.

I ask the Assessment Committee to consider and present these determinations to the Minister, as we the public have not been given proper consideration, or allowance of the due process as laid out in the Act.

That is - the public should have been able to consider during a public exhibition period and make **submissions based on a satisfactorily prepared CIS** as laid out under the Act. Unfortunately the Project Proponent has neglected to provide this detailed as required under the Act, plus it has denied the AC of the opportunity of considering all relevant information.

Regrettably, the Project Proponent has denied the public/groups this opportunity, by not acting in accordance with the Act.

To support my assertion in 1 above, that the Project Proponent has not prepared a CIS in accordance with the act, I offer the detail contained within my Submission.

Again, I ask the Assessment Committee to undertake this determination as we the public have not been given proper consideration or allowance of due process as laid out in the Act, That is, to properly consider elements of a completed CIS according to the Act and the Scoping Directions, and so to provide properly made submissions to the Assessment Committee.

NOTE: This Preliminary Hearing Matter in no way limits all of the individual points made within my individual CIS Submission to the Assessment Committee. I ask that the AC considers each point I have made in my submission as it would all points made by submitters to the AC panel.

Regards,

Michael Ingram
5 Bruce Street Kensington, VIC 3031
0418 865 057