

Terms of Reference

Proposed Mordialloc Bypass – Inquiry and Advisory Committee

An inquiry appointed pursuant to section 9(1) of the *Environment Effects Act 1978* and advisory committee appointed pursuant to Part 7, Section 151 of the *Planning and Environment Act 1987* to consider and report on the proposed Mordialloc Bypass Project, in accordance with these terms of reference.

Name

1. The combined inquiry and advisory committee is to be known as the **Mordialloc Bypass Project Inquiry and Advisory Committee (IAC)**.

Skills

2. The IAC is to include experience in:
 - a. coastal acid sulphate soils, hydrogeology and contaminated land/groundwater;
 - b. ecology, especially Ramsar listed wetlands and other wetland habitats and vegetation including groundwater-dependent ecosystems and migratory and other wetland birds;
 - c. amenity issues including noise and landscape and visual impacts;
 - d. general civil (traffic) engineering; and
 - e. strategic and statutory planning.
3. The IAC may seek additional specialist expert advice if required.
4. The IAC will include an appointed Chair, Deputy Chair and other members.

Background

Proposed Mordialloc Bypass Project (the project)

5. The project is intended to connect the Mornington Peninsula Freeway to the Dingley Bypass. The preferred option described in the environment effects statement (EES) for the project is a freeway-standard road with grade-separated interchanges at Springvale Road, Boundary Road, Lower Dandenong Road and Centre Dandenong Road and an upgraded interchange at Thames Promenade. The EES also addresses feasible alternatives which the proponent has considered in the light of potentially achieving project objectives.
6. The project is generally located within land which is identified for road purposes in the planning schemes. However, some works may be required outside that land relating to changed access arrangements, for example at Woodlands industrial estate.
7. Construction will involve site-establishment works such as utility relocation and establishment of site facilities. Project construction works will include construction of embankments, pierced elevated roadways, works to manage spoil including potentially contaminated soil and potential acid sulphate soil, ancillary works to enable management of traffic noise, road run-off and fauna movements during the operational phase and other ancillary works.
8. The project proponent is the Major Road Projects Authority.

EES decision

9. On 13 September 2017, the Minister for Planning determined that an EES is required for the project under the *Environment Effects Act 1978* (EE Act) and issued his decision with procedures and requirements for the preparation of the EES under section 8B(5) of the EE Act. The reasons for

decision were based on the potential for a range of significant environmental effects, particularly those on:

- a. the habitat value and quality of wetlands and other habitats adjoining or traversed by the project, especially with regard to threatened species;
 - b. the surface water and groundwater systems that contribute to the health and habitat quality of adjacent and nearby wetlands, including the Ramsar-listed Edithvale-Seaford Wetlands;
 - c. indigenous cultural heritage values that may occur within the project alignment;
 - d. the containment and management of potentially contaminated soils and potential acid sulphate soils; and
 - e. amenity values of adjacent land, especially residential land and parkland.
10. The Major Road Projects Authority prepared an EES in response to the Minister for Planning's decision and the scoping requirements which the Minister issued for the EES in May 2018.
 11. The EES, including a draft amendment to the Kingston and Greater Dandenong planning schemes, is to be placed on public exhibition for 30 business days.

Commonwealth decision

12. The project was determined to be a controlled action that requires assessment and approval under the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) on 30 January 2018, because of its potential impacts on particular matters of national environmental significance. The controlling provisions under the EPBC Act relate to Ramsar wetlands (sections 16 and 17B), listed threatened species and communities (sections 18 and 18A) and listed migratory species (sections 20 and 20A).
13. The EES process is an accredited assessment process under the Commonwealth-Victorian Bilateral Agreement for Environmental Impact Assessment¹, to provide for the assessment of matters of national environmental significance required under the EPBC Act. The Minister for Planning's assessment under the EE Act will be provided to the Commonwealth to inform the EPBC Act approval decision, in accordance with Schedule 1 Part B of the bilateral agreement.
14. Based upon the material provided to the IAC, its report should address impacts on matters of national environmental significance, as set out in paragraph 12, to inform the Minister for Planning's assessment.

Planning approval process

15. The proponent has prepared a draft planning scheme amendment (PSA) for the project (Amendment GC107 to the Kingston and Greater Dandenong planning schemes), in accordance with the *Planning and Environment Act 1987* (P&E Act).
16. The IAC is to provide advice on the draft PSA. The draft PSA will facilitate the use and development of the project in accordance with a project incorporated document to be inserted into the Kingston and Greater Dandenong Planning Schemes. The incorporated document will include a requirement for a framework to manage environmental effects associated with both the construction and operational phases of the project.

Other approvals

17. Under Victorian law, the project requires other approvals and consents, as outlined in the EES:
 - a. an approved cultural heritage management plan under the *Aboriginal Heritage Act 2006*;

¹The agreement came into operation on 25 June 2009 and provides for the accreditation of specified Victorian statutory processes to ensure an integrated and coordinated assessment of actions requiring Commonwealth approval. The current version of the agreement was signed in 2014.

- b. approvals for works on roads under the *Road Management Act 2004*;
- c. approval for works on waterways under the *Water Act 1989*
- d. permits to remove protected flora and/or fauna from public land under the *Flora and Fauna Guarantee Act 1988* (if required); and
- e. permits to take wildlife under the *Wildlife Act 1975* (if required).

Purpose of the inquiry

18. In overview, the IAC is to:

- a. consider and report on the potential significant effects of the project investigated in the EES, taking into account the procedures and requirements of the Minister for the preparation of the EES under section 8B(5) of the EE Act (**see Attachment 1**) and the controlling provisions under the EPBC Act (**see Attachment 2**) as outlined in paragraphs 12-14 above;
- b. recommend necessary avoidance, mitigation or management measures for the development of the project to balance project objectives with environmental, economic and social outcomes; and
- c. assess the adequacy of the proposed environmental performance requirements and their suitability to achieve project-wide environmental outcomes, as described in the scoping requirements.

19. The IAC is to provide an integrated assessment of the potential significant environmental effects of the project.

Purpose of the advisory committee

20. The IAC is to:

- a. review the draft PSA along with public submissions received in relation to the planning controls proposed by the draft PSA; and
- b. assess whether the planning controls proposed by the draft PSA are appropriate to facilitate and control the use and development of the project.

Report

21. The IAC must produce a written report for the Minister for Planning presenting the IAC's:

- a. findings on the significant environmental effects (impacts) of the project proposed in the EES, including impacts on matters of national environmental significance protected under relevant controlling provisions of the EPBC Act;
- b. conclusions on the feasibility of the project achieving acceptable environmental outcomes in the context of applicable legislation, related policy, relevant best practice, and the principles and objectives of ecologically sustainable development;
- c. recommendations on whether the proposed project will deliver an appropriate balance of environmental, economic and social outcomes, having regard to the evaluation objectives in the EES scoping requirements, public submissions and the IAC's conclusions on the significant effects of the project;
- d. recommendations for feasible modifications to the project, including specific measures to prevent, mitigate or compensate for significant adverse effects in the context of relevant standards, objectives and guidelines established under relevant legislation;

- e. recommendations for approval conditions under Victorian law necessary to achieve acceptable environmental outcomes in the context of applicable legislation and policy, including advice on the PSA for the project;
 - f. recommendations on the framework for environmental management including the proposed environmental performance requirements for the project;
 - g. recommendations for the statutory planning framework established for the project; and
 - h. recommendations for proposed the proposed amendment to the Kingston and Greater Dandenong planning schemes under the P&E Act to facilitate the project.
22. The IAC's report must also include:
- a. relevant information and analysis in support of the IAC's conclusions and recommendations;
 - b. a description of the proceedings conducted by the IAC and a list of those consulted and heard by the IAC; and
 - c. a list of all recommendations including cross references to relevant discussions in the report.

Task

23. The IAC may apply to vary these terms of reference in writing, prior to submission of its report.
24. The IAC may inform itself in any way it sees fit, but must consider all relevant matters, including but not limited to:
- a. the exhibited EES and draft PSA;
 - b. all public submissions and evidence provided by the proponent, state agencies, local council and the public (including both written submissions in response to the exhibited EES and submissions presented during the IAC's hearing);
 - c. information provided by the proponent that addresses, to the extent practicable, the submissions provided by the public; and
 - d. other information provided to, or obtained by, the IAC, having regard to statutory provisions, policies and plans.
25. The IAC must conduct a public hearing and may make other such enquiries as it considers are relevant to its assessment of the potential environmental effects of the project.
26. The IAC must conduct its hearings in accordance with the following principles:
- a. the hearings will be conducted in an open, orderly and equitable manner, in accordance with the rules of natural justice, with a minimum of formality and without the necessity for legal representation;
 - b. the IAC process is to be exploratory and constructive with adversarial behaviour minimised;
 - c. parties without legal representation will not be disadvantaged – cross-examination will be regulated by the Chair; and
 - d. the IAC may commission specialist advice on other matters, if required, particularly in the areas of groundwater, engineering and ecology.
27. The hearings are to be conducted in public, unless a submission is confidential in nature and the IAC Chair deems the hearing should be closed to the public in relation to that submission.
28. The IAC will meet and conduct hearings when there is a quorum of at least two of its members present.
29. Hearing sessions may be recorded by any party at its cost, only with the prior approval of the IAC. The IAC may give directions regarding public access to any such recordings.

Submissions

30. All submissions are to be collected by Planning Panels Victoria in accordance with the Guide to Privacy at PPV. Electronic copies of submissions will be provided to the relevant Council, DELWP and the proponent.
31. Petitions and pro-forma letters will be treated as a single submission and only the first name to appear on the first page of the submission will receive correspondence in relation to the IAC.
32. The IAC must retain a library of all written submissions or other supporting documentation provided to it directly, until either a decision has been made on its report or five years have passed from the time of its appointment.
33. Any written submissions or other supporting documentation provided to the IAC must be published on Planning Panels Victoria website, unless the IAC specifically directs that the material is to remain 'in camera'.
34. The IAC must notify submitters upon release of the Ministers for Planning's assessment and IAC report.
35. Submissions to the IAC are public documents unless otherwise directed by the IAC.

Timing

36. The IAC is required to begin its hearings process no later than 20 business days from the final date of the exhibition period, or as otherwise agreed.
37. The IAC is required to submit its report in writing to the Minister for Planning within 30 business days from its last hearing date.
38. The IAC may limit the time of parties appearing before it.

Fee

39. The members of the IAC will receive the same fees and allowances as a panel appointed under Division 1 of Part 8 of the P&E Act.
40. All costs of the IAC, including expert advice, technical administration and legal support, venue hire, accommodation, recording proceedings and other costs will be met by the proponent.

Miscellaneous

41. The IAC may retain legal counsel to assist it.
42. Planning Panels Victoria is to provide administrative support to the IAC.
43. The IAC may engage additional technical and administrative support as required.



Richard Wynne MP
Minister for Planning

Date: 8/10/18

The following information does not form part of the Terms of Reference.

Project manager

44. For matters regarding the inquiry process, please contact Greta Grivas of Planning Panels Victoria, by phone (03) 8392 5121 or email planning.panels@delwp.vic.gov.au
45. For matters regarding the EES process please contact the Impact Assessment Unit in Department of Environment Land Water and Planning (DELWP) by phone (03) 8392 5503 or email environment.assessment@delwp.vic.gov.au.

Attachment 1

DECISION ON PROJECT: Mordialloc Bypass

Decision under section 8B(3) of the *Environment Effects Act 1978*

Assessment through an Environment Effects Statement (EES) under the *Environment Effects Act 1978* **is required** for the reasons set out in the attached Notice of Reasons for Decision.

Procedures and requirements under section 8B(5) of the *Environment Effects Act 1978*

The procedures and requirements applying to the EES process, in accordance with both section 8B(5) of the Act and the *Ministerial guidelines for assessment of environmental effects under the Environment Effects Act 1978* (Ministerial Guidelines), are as follows:

- (i) The EES is to document focussed investigations of potential environmental effects of the proposed project, including the feasibility of associated environmental mitigation and management measures, in particular for:
 - a. potential effects on biodiversity values, including through direct or indirect loss, degradation or fragmentation of habitat or through other causes including road-kill, as well as related ecological effects;
 - b. potential effects on water environments and related beneficial uses, including as a result of changes to hydrology and groundwater;
 - c. potential effects resulting from disturbance or mobilisation of anthropogenic soil contaminants or potential acid sulphate soils;
 - d. potential effects on Indigenous cultural heritage values; and
 - e. other effects on land uses and the local communities.
- (ii) The matters to be investigated and documented in the EES will be set out more fully in scoping requirements. Draft scoping requirements will be exhibited for 15 business days for public comment, before final scoping requirements are issued by the Minister for Planning.
- (iii) The proponent is to prepare and submit to the Department of Environment, Land, Water and Planning (DELWP) a draft EES study program to inform the preparation of scoping requirements.
- (iv) The level of detail of investigation for the EES studies should be consistent with the approach set out in the scoping requirements, and should be adequate to inform an assessment of the significance and acceptability of its potential environmental effects, in the context of the Ministerial Guidelines.
- (v) DELWP will convene an inter-agency Technical Reference Group (TRG) to advise the Department and the proponent, as appropriate, during the preparation of the EES on the scoping requirements, the design and adequacy of the EES studies, and coordination with statutory approval processes.
- (vi) The proponent is to prepare and implement an EES Consultation Plan for informing the public and consulting with stakeholders during the preparation of the EES, having regard to advice from DELWP and the TRG.
- (vii) The proponent is also to prepare and submit to DELWP its proposed schedule for the completion of studies, preparation and exhibition of the EES, following confirmation of the scoping requirements. This schedule is intended to facilitate the alignment of the proponent's and DELWP's timeframes, including for TRG review of technical studies for the EES and the main EES documentation.
- (viii) The proponent is to apply appropriate peer review and quality management procedures to enable the completion of EES studies to a satisfactory standard.

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- (ix) The EES is to be exhibited for a period of 30 business days for public comment, unless the exhibition period spans the Christmas–New Year period, in which case 40 business days will apply.
- (x) An inquiry will be appointed under the *Environment Effects Act 1978* to consider environmental effects of the proposal.

Notification

The following parties (proponent and relevant decision-makers) are to be notified of this decision in accordance with sections 8A and 8B(4)(a)(i) of the *Environment Effects Act 1978*, as appropriate:

- VicRoads (proponent)
- Minister for Roads
- Minister for Environment and Climate Change
- Kingston City Council
- Melbourne Water
- Southern Rural Water
- Aboriginal Victoria.



HON RICHARD WYNNE MP
Minister for Planning

Date: 13/9/17

Attachment 2




Australian Government
Department of the Environment and Energy

**Notification of
REFERRAL DECISION AND DESIGNATED PROPONENT – controlled action**

Mordialloc Bypass Project, Victoria (EPBC 2017/8091)

This decision is made under section 75 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

proposed action	To construct and operate the Mordialloc Bypass, a four-lane arterial road with divided median and path for walking and cycling, within Melbourne's south-eastern suburbs, with the provision of a future upgrade to a six-lane road [See EPBC Act referral 2017/8091]
decision on proposed action	The proposed action is a controlled action. The project will require assessment and approval under the EPBC Act before it can proceed.
relevant controlling provisions	<ul style="list-style-type: none"> • Ramsar wetlands (sections 16 & 17B) • Listed threatened species and communities (sections 18 & 18A) • Listed migratory species (sections 20 & 20A)
designated proponent	ROADS CORPORATION ABN 61 760 960 480
assessment approach	The project will be assessed under the assessment bilateral agreement with Victoria.
Decision-maker	
Name and position	James Barker Assistant Secretary Assessments and Governance Branch
Signature	
date of decision	30 / 1 / 2018