

Terms of Reference

North East Link Project – Inquiry and Advisory Committee

The North East Link Inquiry and Advisory Committee (the IAC) is appointed to inquire into, and report on, the North East Link Project (Project) in accordance with these terms of reference.

The IAC is appointed pursuant to both:

- section 9(1) of the *Environment Effects Act 1978* (EE Act) as an inquiry; and
- part 7, section 151 of the *Planning and Environment Act 1987* (P&E Act) as an advisory committee.

The IAC will also provide advice that can be used to inform the Environment Protection Authority's consideration of the works approval application (WAA) prepared by the proponent for the Project.

Role of the IAC

1. The IAC is appointed by the Minister for Planning under section 9(1) of the EE Act to hold an inquiry into the environmental effects of the Project. The IAC is to:
 - a. review and consider the environment effects statement (EES) and public submissions received in relation to the environmental effects of the project;
 - b. consider and report on the potential environmental effects of the project, having regard to the evaluation objectives in the EES scoping requirements;
 - c. identify any measures it considers necessary to avoid, mitigate or manage the environmental effects of the project; and
 - d. provide advice to the Environment Protection Authority that can be used to inform its consideration of the WAA.
2. The IAC is appointed as an advisory committee under section 151 of the P&E Act to:
 - a. review the draft planning scheme amendment (draft PSA), which has been prepared to facilitate the Project, along with any public submissions received in relation to the draft PSA;
 - b. provide a report to the Minister for Planning as to whether the draft PSA contains provisions and controls that are appropriate for the Project; and
 - c. recommend any changes to the draft PSA that it considers necessary.

IAC members

3. The IAC members should have the following skills:
 - a. road transport modelling, road design and traffic management;
 - b. social impact;
 - c. urban design and visual impact; and
 - d. statutory planning.
4. The IAC may seek additional specialist expert advice to assist it in undertaking its role.
5. The IAC will comprise an appointed chair (IAC Chair), a deputy chair and other members.

Background

Project outline

6. The Project proposes to connect Melbourne's freeway network between the M80 Ring Road and the Eastern Freeway, which will be upgraded and include a new busway. In summary, the Project proposes the following sections of works:
 - a. M80 Ring Road to Lower Plenty Road – a mixture of above, below and at surface road sections, a ventilation facility near Blamey Road, and new road interchanges at the M80 Ring Road, Grimshaw Street and Lower Plenty Road.
 - b. Tunnels – twin tunnels under residential areas, the Banyule Flats and the Yarra River to south of Manningham Road.
 - c. Bridge Street to Eastern Freeway – a cut and cover tunnel and a mined tunnel, with the southern tunnel portal and associated ventilation facility located south of the Veneto Club. This section would also include new interchanges at Manningham Road and the Eastern Freeway.
 - d. Eastern Freeway – widening of the Eastern Freeway, from around Hoddle Street in the west through to Springvale Road in the east to accommodate future traffic volumes, the provision of new dedicated bus lanes for the Doncaster Busway and other associated works.
 - e. Ancillary and temporary works to support construction of the Project.
7. The proponent is the State of Victoria acting through the Major Transport Infrastructure Authority (MTIA), which is an administrative office within the Department of Transport. The North East Link Project (NELP) is the division within MTIA that is responsible for developing and delivering the Project.
8. The proponent is responsible for preparing technical studies, consulting with the public and stakeholders and preparing an EES.

EES assessment process

9. The Project has been declared pursuant to section 3(1) of the EE Act to be 'public works' for the purposes of that act by an order of the Minister for Planning published in the Government Gazette on 2 February 2018. Pursuant to section 4(1) of the EE Act, an EES must be prepared for public works, and submitted to the Minister for Planning, before those works can commence. Procedures and requirements specified in the order are provided in Attachment 1.
10. The EES has been prepared by the proponent in response to the EES scoping requirements issued by the Minister for Planning in June 2018.
11. The EES is to be placed on public exhibition from 10 April 2019 to 7 June 2019, together with the WAA, and draft PSA.

Commonwealth assessment process

12. Because of its potential impacts on matters of national environmental significance, the Project was determined to be a controlled action for the purposes of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) on 13 April 2018. The relevant controlling provisions under the EPBC Act relate to listed threatened species and communities (sections 18 and 18A), listed migratory species (sections 20 and 20A) and environment on Commonwealth lands (sections 26 and 27A).
13. The EPBC Act assessment is to be undertaken through a public environment report. The public environment report is intended to be exhibited concurrently with the EES and will be assessed independently from the IAC by the Commonwealth Department of Environment and Energy. Any submissions on matters of national environmental 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 environment report.

Planning approval process

14. The IAC is to consider and provide advice on the draft PSA. The draft PSA proposes planning controls and provisions that will allow for, and facilitate, the use and development of the Project in accordance with an incorporated document which is proposed to be included in the Banyule, Boroondara, Manningham, Nillumbik, Whitehorse, Whittlesea and Yarra planning schemes.
15. The draft PSA proposes that the Project be exempt from any requirement to obtain a planning permit, subject to any conditions set out in the incorporated document. The incorporated document is also proposed to include a requirement for the development of a framework to manage environmental effects associated with both the construction and operational phases of the Project.

Works approval process

16. A WAA for the Project has been prepared in accordance with the provisions of the *Environment Protection Act 1970* (EP Act). The works approval application will be jointly advertised with the EES, in accordance with section 20AA of the EP Act.
17. Section 19B(3)(b) of the EP Act provides that: *if an application for a works approval is to be jointly advertised under section 20AA with a notice relating to the same proposal under the Environment Effects Act 1978... comments by any person or body interested in the application must be made as a submission on the environment effects statement or be included in any submission on the environment effects statement.* In addition, the Environment Protection Authority can no longer decide under section 19B(6) to hold a section 20B conference.
18. The IAC is to provide advice that can be used to inform the Environment Protection Authority's consideration of the WAA prepared by the proponent. The IAC may request any further information from the proponent that it considers necessary to assist it to provide that advice. The advice should recommend avoidance, mitigation or management measures that the IAC considers are necessary to ensure compliance with any relevant legislation and/or policy.

Other approvals

19. The Project requires a number of other statutory approvals and/or consents, as outlined in the EES, and which include:
 - a. an approved Cultural Heritage Management Plan under the *Aboriginal Heritage Act 2006* to manage works in areas of cultural heritage sensitivity;
 - b. a permit to remove listed flora and fauna under the *Flora and Fauna Guarantee Act 1988*;
 - c. an authority to take or disturb wildlife under the *Wildlife Act 1975*;
 - d. licences to construct a groundwater bore and subsequently extract groundwater, as well as consents for works on, over or under waterways under the *Water Act 1989*;
 - e. consent for works on freeways and arterial roads declared under the *Road Management Act 2004*; and
 - f. permits for impacts to places identified on the Victorian Heritage Register under the *Heritage Act 2017*.

Public Hearing

20. The IAC must hold a public hearing and may make other such enquiries as are relevant to undertaking its role.
21. When it conducts a public hearing, the IAC has all the powers of an advisory committee that are specified in section 152(2) of the P&E Act.

22. The IAC may inform itself in any way it sees fit, but must review and consider:
 - a. the exhibited EES, draft PSA and WAA;
 - b. all public submissions, and all submissions and evidence provided to the IAC by the proponent, state agencies, local councils and the public;
 - c. any information provided by the proponent that responds to submissions; and
 - d. any other relevant information that is provided to, or obtained by, the IAC.
23. Prior to the commencement of the public hearing, the IAC must hold a directions hearing in order to make any directions it considers necessary or appropriate as to the conduct, scope or scheduling of the public hearing.
24. The IAC must conduct its public hearing in accordance with the following principles:
 - a. the public hearing will be conducted in an open, orderly and equitable manner, in accordance with the principles of natural justice, with a minimum of formality and without the necessity for legal representation; and
 - b. the IAC process is to be exploratory and constructive with adversarial behaviour minimised with cross-examination strictly controlled by the IAC Chair.
25. The IAC may limit the time of parties appearing before it.
26. The IAC may, at its discretion, conduct concurrent public hearings as part of the public hearing where it considers it appropriate or efficient to do so, and where, in the opinion of the IAC, submitters participating in the hearing would not be unreasonably disadvantaged by those concurrent hearings.
27. The IAC Chair may direct that a submission or evidence is confidential in nature and the hearing be closed to the public for the purposes of receiving that submission or evidence.
28. The IAC may only conduct a public hearing (including any concurrent public hearing) when there is a quorum of at least two of its members present, one of whom must be the IAC Chair or deputy chair.
29. Recording of the hearing will be managed by Planning Panels Victoria, in accordance with any directions made by the IAC Chair. The audio recording of any hearing sessions will be made publicly available as soon as practicable after the conclusion of each day of the hearing, or otherwise as directed by the IAC Chair.
30. Any other audio or video recording of the hearing by any other person or organisation may only occur with the prior consent of, and strictly in accordance with, the directions of the IAC Chair.

Report

31. The IAC must produce a written report for the Minister for Planning containing the IAC's:
 - a. findings with respect to the environmental effects of the Project;
 - b. findings as to the capacity for the Project to achieve acceptable environmental outcomes having regard to legislation, policy, best practice, and the principles and objectives of ecologically sustainable development;
 - c. recommendations as to any feasible modifications to the alignment or design of the Project that would offer beneficial outcomes;
 - d. recommendations and/or specific measures that it considers necessary and appropriate to prevent, mitigate or offset adverse environmental effects having regard to legislation, policy, best practice, and the principles and objectives of ecologically sustainable development;

- e. recommendations for any appropriate conditions that may be lawfully imposed on any approval for the Project, or changes that should be made to the draft PSA in order to ensure that the environmental effects of the Project are acceptable having regard to legislation, policy, best practice, and the principles and objectives of ecologically sustainable development;
 - f. recommendations for changes to the proposed urban design strategy;
 - g. recommendations as to the structure and content of the proposed environmental management framework;
 - h. recommendations as to any changes to the proposed environmental performance requirements; and
 - i. recommendations with respect to the structure and content of the draft PSA.
32. The report should include:
- a. information and analysis in support of the IAC's findings and recommendations;
 - b. a description of the public hearing conducted by the IAC, and a list of those persons consulted with or heard by the IAC;
 - c. a list of all recommendations, including cross-references to relevant discussions in the report; and
 - d. a list of the documents tabled during the public hearing.

Submissions

33. All submissions on the EES, draft PSA and WAA are to be sent to, and managed by, Planning Panels Victoria in accordance with Planning Panels Victoria's guide to privacy. All written submissions or other supporting documentation should be published on Engage Victoria's website, unless submitters request that their submission not be publicly available, or where the IAC specifically directs that the submission or part of it is to remain confidential.
34. Electronic copies of submissions on the EES, draft PSA and WAA should be provided to the Department of Environment, Land, Water and Planning, Environment Protection Authority and Major Transport Infrastructure Authority.
35. Petitions will be treated as a single submission, and only the first name to appear on the first page of the submission should receive correspondence in relation to the IAC.
36. Any written material or evidence provided to the IAC during the public hearing should be published on Engage Victoria's website, unless the IAC specifically directs that the material is to remain confidential.
37. Planning Panels Victoria will notify submitters of the release of the Minister for Planning's assessment and IAC report.
38. Planning Panels Victoria will retain any written submissions and other documentation provided to the IAC for a period of five years after the time of the appointment of the IAC.

Timing

39. The IAC must begin its hearings no later than 35 business days from the final date of the exhibition period, or as otherwise agreed by the Minister for Planning.
40. The IAC is required to submit its report in writing to the Minister for Planning within 30 business days from its last hearing date.

Fees and Allowances

41. The members of the IAC will receive the same fees and allowances as a senior sessional panel member appointed under division 1 of part 8 of the P&E Act.
42. All costs of the IAC, including the costs of obtaining any expert advice, technical administration and legal support (including legal counsel if engaged), venue hire, accommodation, recording proceedings and other costs must be met by the MTIA.

Miscellaneous

43. The IAC may apply to the Minister for Planning to vary these terms of reference in writing, at any time prior to submission of its report.
44. The IAC may retain legal counsel to assist it in undertaking its role.
45. Planning Panels Victoria is to provide any necessary administrative support to the IAC.
46. The IAC may engage additional technical and administrative support as required.



Richard Wynne MP
Minister for Planning

Date:

11/4/19

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

Project manager

47. For matters regarding the IAC process, please contact Greta Grivas of Planning Panels Victoria, by phone (03) 8392 5123 or email planning.panels@delwp.vic.gov.au
48. 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

PROCEDURES AND REQUIREMENTS: North East Link Project

Under section 3(3) of the Environment Effects Act 1978

The following procedures and requirements are to apply to the environment effects statement (EES) for the Public Works:

- (i) The EES is to document investigations of potential environmental effects of the Public Works, including the feasibility of design alternatives and relevant environmental mitigation and management measures, in particular for:
 - a. potential effects on biodiversity, including through loss, degradation or fragmentation of habitat or through other causes (e.g. shading, light, noise and vibration), as well as related ecological effects;
 - b. potential effects on beneficial uses of surface water and groundwaters due to changes in flows, water quality, hydrology connectivity, mobilisation of existing groundwater contamination, or dewatering arising during construction or operation;
 - c. potential for ground movement or other geophysical conditions including risks related to land and river bank or bed stability;
 - d. effects on cultural heritage values including Aboriginal cultural heritage;
 - e. potential effects on health and amenity during construction and operation due to changes in visual conditions, changes in land use, redistributed traffic and transport changes, air quality, traffic noise and vibration;
 - f. potential temporary and permanent effects on transport network and services, both for residents and businesses located in the vicinity of the proposed and related works and for the broader community;
 - g. potential for displacement or severance of commercial and residential properties;
 - h. potential for acid sulphate soils, other contaminated materials and the management of spoil throughout construction; and
 - i. other effects on land uses and the community, including recreational value of open space.
- (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 at least 15 business days for public comment, before final scoping requirements are endorsed by the Minister for Planning.
- (iii) The North East Link Authority is also 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 North East Link Authority is to prepare a schedule for the completion of studies, and preparation and exhibition of the EES to facilitate the alignment of the North East Link Authority's and DELWP's timeframes, including for review of technical studies for the EES and the main EES documentation.
- (v) The level of detail of investigation for the EES studies should be consistent with the approach set out in the scoping requirements and be adequate to inform an assessment of the significance and acceptability of the potential environmental effects of the proposed works, in the context of the Ministerial Guidelines.
- (vi) DELWP will convene an inter-agency technical reference group (TRG) to advise DELWP and the North East Link Authority, as appropriate, during the preparation of the EES, the scoping requirements, the design and adequacy of the EES studies, and coordination with statutory approval processes.
- (vii) The North East Link Authority 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.
- (viii) The North East Link Authority is to apply appropriate peer review and quality management procedures to enable the completion of EES studies to a satisfactory standard.
- (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 appointed pursuant to section 9(1) of the Environment Effects Act 1978 will be established to consider the environmental effects of the Public Works.