

Appendix 8 – Reasons for Decision

**REASONS FOR DECISION UNDER SECTION 77 OF THE
MAJOR TRANSPORT PROJECTS FACILITATION ACT 2009**

Provided under section 80(1)(b) of the *Major Transport Projects Facilitation Act 2009*

Introduction

1. This document gives the reasons for my decision under section 77 of the *Major Transport Projects Facilitation Act 2009* (the **MTPF Act**) for making the approval decision relating to the East West Link (**Eastern Section**) Project (**the Project**) dated 30 June 2014 (the **approval decision**). These reasons should be read together with the approval decision.
2. In making my decision under section 77 of the MTPF Act, in addition to the East West Link (Eastern Section) Comprehensive Impact Statement (**CIS**) and the supporting material relating to the CIS, I have had regard to:
 - (a) the Report and Recommendations of the Assessment Committee (**Committee**);
 - (b) the advice of the EPA under section 64 of the MTPF Act;
 - (c) the applicable law criteria under applicable laws (a list of which is attached to the CIS);
 - (d) the relevant legislation.
3. In my decision I have accepted some of the recommendations of the Committee, rejected others and required that other issues raised by the Committee be considered or addressed in the design and implementation phase of the Project.
4. In giving these reasons I do not address each and every aspect of the Project or the Committee's Report. As is evident from the Committee's Report, the assessment covers a vast terrain. There are substantial matters and matters of a relatively detailed nature that required consideration.
5. In these reasons I have focussed on the substantial matters that influence the overall decision to support the grant of applicable approvals for the Project. Where I have not discussed an aspect of the Project in these reasons it should be taken that the matter has been considered as part of the overall decision but taken alone the matter would not change the approval decision or the reasons herein.
6. For the purpose of these reasons I have addressed these substantial matters under the following headings:
 - (a) Committee process and Report;
 - (b) Summary of my decision and approach;
 - (c) Part A;
 - (d) Part B;

- (e) Southern connection;
- (f) Elliott Avenue and Flemington Road access;
- (g) Eastern portal and flyover;
- (h) Impacted properties;
- (i) Applicable approvals;
- (j) Other conditions on the approval decision.

Committee Report and process

7. On 20 December 2012, the Victorian Premier declared the “*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*” to be a declared project pursuant to the MTPF Act. The declared project is known as the East West Link (Eastern Section) Project (the **Project**). On 22 March 2013, Linking Melbourne Authority was appointed as the project proponent for the Project.
8. As exhibited the Reference Project described in the CIS comprises two parts:
 - Part A of the Project extends from the Eastern Freeway near Hoddle Street to CityLink;
 - Part B of the Project extends from CityLink through to the Port of Melbourne, along a parallel viaduct with CityLink.
9. On 21 October 2013, I appointed the East West Link (Eastern Section) Project Assessment Committee (the **Committee**) under sections 35 and 235 of the MTPF Act to assess the CIS, and to make recommendations to me in accordance with section 73 of the MTPF Act, in accordance with Terms of Reference dated 21 October 2013.
10. On 30 May 2014, I received the Committee’s report and recommendations in relation to the CIS (the **Report** and the **Recommendations**). The Committee conducted a public hearing and produced a detailed report within the statutory timelines. It also made recommendations, some of which are described below.
11. The task of the Committee was not an easy one and I commend the Committee for the management of the process and the quality of its Report. I am satisfied that the Committee approached its tasks diligently and explained its reasoning for its approach to its tasks. I generally accept the approach taken to the relevant legislative and policy frameworks. I have found the Report to be invaluable, not just for its findings and recommendations, but also for its explanation of the issues, submissions, contrary arguments and differing expert opinions.
12. The Committee made 43 Recommendations divided into Primary Recommendations and Issue Specific Recommendations. Where I refer to recommendations by number

in these reasons the number corresponds with the number in the Committee's Report.

13. Primary Recommendation 1 is to issue the applicable approvals for Part A of the Project, subject to Primary Recommendations 2 and 3, and Issue Specific Recommendations 5 to 36. Primary Recommendation 2 relates to the form in which Planning Scheme Amendment GC2 to the Melbourne, Moonee Valley, Moreland and Yarra Planning Schemes should be approved. Primary Recommendation 3 recommends certain changes to Part A of the Project.
14. Recommendation 4 is to set aside Part B of the Project, and the southbound connection of the Project to CityLink, and to not issue the relevant applicable approvals, until the announced works on CityLink and the Tullamarine Freeway, and West Link (i.e. the East West Link (Western Section)) are clarified. The Committee recommended the review of a number of aspects of Part B be undertaken as part of a new or revised Comprehensive Impact Statement in conjunction with the planning process for the East West Link (Western Section) and other road projects described above. If this recommendation were not supported, the Committee recommended that the alignment and proposed viaduct for Part B should be reviewed to consider placing it in-tunnel or aligning it on the east side of the existing CityLink. The Committee made a number of further recommendations (Recommendations 37 to 43) concerning Part B in the event Part B was approved at the same time as Part A.

Summary of my decision and approach

15. In summary I have:

- (a) Approved Part A and Part B of the Project;
- (b) Required the deletion of the connection between the Project and Elliott Avenue in favour of consideration of other means of achieving the proposed traffic movements;
- (c) Included a requirement for Development Plans to be prepared to my satisfaction for the design of specified aspects of Part A including the elevated structures at the east and west ends of Part A;
- (d) Included a requirement for a Development Plan to be prepared to my satisfaction for Part B of the Project;
- (e) Included a requirement for a Property Impact Report showing the impacts of the final design of elevated structures and viaducts on properties outside the Project Area;
- (f) Made a number of modifications to the East West Link Incorporated Document (June 2014) which forms part of Planning Scheme Amendment GC2 (**the Incorporated Document**);
- (g) Granted applicable approvals under the MTPF Act.

16. For reasons set out below I have not accepted the recommendations of the Assessment Committee to set aside, at this time, Part B and other aspects of the proposal.
17. For the reasons set out below I have not accepted the findings of the Committee that a flyover at the eastern end of the Project will have unacceptable impacts. I have not required amendments to the Performance Requirements and the Urban Design Principles to prevent a flyover.
18. I have made a number of changes to the Performance Requirements and Urban Design Principles as attached to the Committee's Report and some minor changes to the Incorporated Document.
19. I have acknowledged the recommendations of the Committee with respect to the importance of design outcomes in the final design of the Project and have included a requirement for the submission of Development Plans to my satisfaction.
20. In making my decision I have had regard to section 4 of the *Planning and Environment Act 1987*. This section sets out the overarching objectives for planning in this State. Unsurprisingly the delivery of public infrastructure can be traced to these objectives. So too can the full range of land use and development objectives which are to guide decisions. It goes without saying that not all objectives will be achieved in every decision. In many cases, and particularly for major infrastructure projects, the facilitation of one objective will conflict with other objectives. Clues as to conflict are also evident in the objectives themselves, to the effect that decisions are to consider all Victorians and to balance the interests of present and future generations. The balancing of conflicting objectives is referred to in the State Planning Policy Framework in the principle of net community benefit. This principle has been the guiding principle for my decision here.
21. I have considered the factors assessed by the Committee but I have given more or less weight to various factors in the ultimate balancing exercise I am required to undertake. In the result I have determined that the Project as approved by me is in the interests of net community benefit.
22. After much deliberation I decided not to adopt the Committee's Recommendations which would have required future approval processes for Part B and aspects of Part A. It is my opinion that the public interest is better served if the Project is approved, designed, implemented and delivered as an integrated approval decision. Further:
 - (a) An integrated approval decision will facilitate the design, contract and delivery phase of the Project. The decision will provide a level of certainty which is appropriate for such a major undertaking;
 - (b) I prefer an integrated approval decision with resolved Performance Requirements and Urban Design Principles at the outset so that all aspects of the design can be co-ordinated and informed as appropriate by other parts and staged with efficiency and flexibility;
 - (c) I consider that it is appropriate that the design of the various interchange points is co-ordinated with the design of the tunnel;

- (d) An integrated approval decision is appropriate in the context in the areas where I have required more limited re-design than was recommended by the Committee;
 - (e) An integrated approval decision for the Project is consistent with the significance of the Project and its assessment as a major project assessed under the MTPF Act;
 - (f) The intention of the process under the MTPF Act is to streamline the approval process, and timeframes are imposed by the Act. Difficult as that may be it is appropriate that so far as possible a clear and single decision be made for the Project at this time;
 - (g) An integrated decision is consistent with description and designation of the Project in Plan Melbourne;
 - (h) By contrast the recommendations of the Committee would risk further process, delay, uncertainty and quite possibly substantial variations to aspects of the Project. There can be no certainty that the ultimate approval would be materially different to the exhibited proposal or that it would not produce other impacts or issues which may be considered problematic;
 - (i) The public interest is served in this case by an integrated decision now rather than a piecemeal approval process.
23. In considering the economic justification for the Project I have taken a similar approach to that taken by the Committee. I do not rely on a business case. Further, it is not necessary for me to do so. It is sufficient for my purposes that the East West Link is enshrined in Plan Melbourne, which is incorporated in each of the relevant planning schemes. It follows that it is established as a matter of policy that the delivery of the Project will implement relevant planning objectives. It is axiomatic that, in the context of the approval decision the Project will deliver a range of economic benefits.
24. The reference project is purely a concept for assessment purposes. The final design is to be guided by the Urban Design Principles and the Performance Requirements. Many of the matters raised by the Committee can be addressed in the design process and are picked up by relevant Performance Requirements and Urban Design Principles. Subject to the modifications I have required I have determined that these documents will adequately inform the final design.
25. To accord with this decision, I have required that the Urban Design Principles and Performance Requirements be revised in accordance with the versions included in the Incorporated Document. These are a modification of the versions recommended by the Committee. Where I have adopted the reasoning of the Committee regarding the Urban Design Principles and Performance Requirements, I do not expand in these reasons. Where I have required revisions to the Urban Design Principles or Performance Requirements, the change is to be understood as being required to give effect to my decision and these reasons.

26. I now turn to the substantial matters by reference to the headings set out above.

Part A

27. I have generally accepted the reasoning of the Assessment Committee for the approval of Part A subject to these reasons.

Part B

28. I have set out my reasons for approving Part B at this time. The Committee helpfully provided a set of recommendations for Part B in this event. With specific reference to these recommendations I respond as follows.

29. Recommendation 37 which recommended a master planning process in relation to the Debney's Park playground, Flemington Community Centre and the Flemington Community Garden will be implemented via the revised Performance Requirements.

30. Recommendation 38 which concerned the impact on the Vision Australia dog breeding and training facility can be considered as part of the Property Impact Report I have required in the approval decision conditions.

31. Recommendation 39 which recommended detailed air modelling assessment for Part B to guide the final design will be implemented via the revised Performance Requirements.

32. Recommendation 40 which concerned the West Melbourne Terminal Station site will be the subject of further consideration as part of the Property Impact Report, the Development Plan requirement and the revised Performance Requirements.

33. Recommendation 41 which recommended the removal of the access ramps to and from Arden Street is properly a matter for consideration in the final design for Part B, which will be the subject of a Development Plan which must be prepared to my satisfaction.

34. Recommendation 42 which concerned a process for identifying properties potentially impacted by elevated road structures and viaducts which may be the subject of voluntary purchase agreements will form part of the Property Impact Report which I have required as a condition of the approval decision.

35. Recommendation 43 which recommended noise and air quality mitigation measures to address potential impacts on Flemington Housing Estate Residents is a matter to be addressed in the Development Plan for Part B and has been included as a condition of this approval.

Southern connection

36. I note that the Committee recommended as Primary Recommendation 4 that the southbound connection of the Project should be set-aside until the recently announced works on CityLink, the Tullamarine Freeway, and WestLink are clarified.

37. The Committee considered that the impacts of the southbound connection of Part A to CityLink and its connection to Part B of the Project had not been adequately addressed. The Committee concluded that further work should be undertaken to better resolve these connections and that this further work should occur in association with identifying an appropriate Part B alignment.
38. For reasons I have explained I have determined that Part B should be approved at this time subject to the design and implementation addressing as appropriate the recommendations of the Committee. Accordingly, the resolution of the design of the southern connection between Parts A and B of the Project will be addressed by the conditions I have imposed on the approval decision which require the preparation of a Development Plan for certain aspects of the Project including the southern connection. The Development Plan will be required to be in accordance with the Urban Design Principles and the Performance Requirements in Tables 1 and 2 respectively of the East West Link Incorporated Document (June 2014) (the Incorporated Document) and must be prepared to my satisfaction.
39. I intend to establish an advisory group comprising the Chair or Deputy Chair of the Committee, the Victorian Government Architect (or Associate Victoria Government Architect) and representatives of the DTPLI Planning group, VicRoads and the Department of Treasury and Finance to advise me on the Development Plans that I have required be submitted to my satisfaction.

Elliott Avenue and Flemington Road connection

40. The Committee found that the Elliott Avenue interchange as shown in the Reference Project was unacceptable and it recommended that it be removed. The Committee recommended (Recommendation 3(e)) the deletion of the connection between the Project and Elliott Avenue due to its visual intrusion into Royal Park and its potential impact on landscape values in favour of other means of achieving the proposed traffic movements. I accept the Committee's recommendation in this regard. The Committee considered that the visual and related impacts of the Reference Project within Precinct 3: Royal Park represented an unacceptable intrusion into Royal Park. The Committee found that the reduction in open space, the permanent loss of trees, the realignment of the tram line and the increase in road and traffic-related infrastructure within the Park were matters which can and should be avoided.
41. The condition that I have imposed on the approval decisions which requires the deletion of the Elliott Avenue interchange is responsive to the protection of valued landscape and cultural heritage assets and will protect the landscape character and integrity of that part of Royal Park by minimising severance.
42. I note that the Committee was presented with a number of alternative designs for the Elliott Avenue interchange including designs which contemplated the construction of a tunnel portal at Flemington Road which was supported by a number of witnesses before the Committee. The Committee found that alternative interchange designs including a proposed alignment adjacent to Flemington Road should be examined. I accept the Committee's findings in that regard.

43. A condition of my approval decision for the Project is that the Elliott Avenue interchange is deleted and that a connection between the Project and Flemington Road be examined. I note that a connection between the Project and Flemington Road has not yet been the subject of detailed design. For this reason I have included a condition on the approval decision that a Development Plan showing the design for the connection between the Project and Flemington Road be submitted to me to my satisfaction.
44. This process will enable the feasibility and practicality of a Flemington Road connection design to be fully tested against the Urban Design Principles and the Performance Requirements which include the requirement that the Project minimise impacts on the built environment and landscape including public open space (Performance Requirement LV1). This process will also enable an assessment of whether the ultimate Project Area for the Project should be modified.

Eastern portal and interchange

45. I have rejected the Committee's finding that the option for a flyover at the eastern end of the Project would be unacceptable for the following reasons:
- (a) The Project is of such significance to the State, and this interchange so critical to the design, that it is necessary and desirable that the eastern portal and access be resolved sooner rather than later and with this approval.
 - (b) In rejecting the flyover the Committee relied upon the possibility of an alternative design. No alternative design was exhibited and no alternative has been tested in the manner of the flyover. I do not agree that it is appropriate to describe the exhibited Project as unacceptable in the absence of a demonstrated and proven alternative.
 - (c) I do not accept the flyover is unacceptable in urban design terms having regard to:
 - i. The element of subjectivity inherent in judgments such as this. This is demonstrated in this process by the differing opinions including expert opinions as to the visual impact of the flyover. There are many examples of public infrastructure around this state that continue to be the subject of differing opinions as to their visual impact. This does not render them unacceptable. There need be no "right" or "wrong" answer regarding the visual impact of the flyover;
 - ii. The fact that the character of the general locality can reasonably be expected to undergo substantial change in built form and scale in response to current policy. There are also substantial urban renewal opportunities around Victoria Park Station and on underutilised industrial land along Hoddle Street and Alexandra Parade. This potential is envisaged in Plan Melbourne and I have made previous announcements singling out the opportunity of the area as part of an urban renewal pipeline. The potential for a new urban form and scale

in the locality should not be underestimated when making long-term decisions now. I do not consider that a flyover is at odds with the built form scale change that can reasonably be expected to occur in the locality;

- iii. An expert report before the Committee proffered that a flyover at this location could be designed to be respectful to its context and well resolved. I agree;
 - iv. I consider that a flyover has the potential to be an important visual gateway feature and landmark in its own right. It is better not to shy away from achieving a well-designed flyover with visual interest. It can be designed to be a positive feature in the urban landscape;
 - v. Other road projects in the State have shown that elevated structures can be well resolved and interesting. I see no reason why a similar outcome appropriate to this context cannot be achieved here; and
 - vi. Even if taken alone any of the impacts described by the Committee as unacceptable are taken to be so, the unacceptability is outweighed by the acceptability of the Project as a whole.
- (d) I do not accept that the flyover should be rejected on the grounds of cultural heritage. Any detrimental impact on cultural heritage values is more than offset by the benefits of the Project and the landmark potential of the flyover. I would make this finding even if I agreed with the Committee as to the extent of impact on cultural heritage. In my assessment of the cultural heritage impacts I give considerable weight to the extent to which the locality can reasonably be expected to change over time in response to urban renewal and development opportunities round Victoria Park station and underutilised industrial sites along Hoddle Street and Alexandra Parade. I have already referred to the urban renewal aspirations of Plan Melbourne. It will be necessary for heritage assets and new development to be juxtaposed to some degree to achieve important land use and development outcomes.
- (e) I also do not accept that the visual integrity of the Shot Tower will be unacceptably compromised by the Project or a flyover. The inner urban context of the Shot Tower and the surrounding policy context are such that it ought not be expected to maintain the prominence it may once have had. It will maintain sufficient presence to be read and understood as a local landmark and heritage asset but its landmark presence will understandably be diminished over time as the surrounding area is built up. In this respect the local recognition of the Shot Tower as a landmark must not be taken out of context.
- (f) As to other specific heritage impacts, for reasons given, I do not consider that a project of this scale, importance and potential ought be designed to avoid property acquisition or demolition in the Gold Street Precinct (HO321) and Clifton Hill Western Precinct (HO317) (Recommendation 26). Whether the proposed Project Area ought be extended to include more properties here can be considered by the Project Authority after final design and

assessed in the Property Impact Report that I have required as a condition of approval of the Project. The Property Impact Report can also inform any future variations or decisions and whether further acquisition or voluntary purchase of properties should take place and whether any further mitigation measures will be required.

- (g) I do not accept the Committee's finding that the flyover is not "justified" by traffic volumes, nor do I accept (if it is suggested) that the flyover must be "justified" by traffic volumes. Even if the traffic counts and predictions are unresolved this is not a precondition for approval of the design of this significant interchange. I also proceed on the basis that predictions of future traffic volumes are influenced by the assumptions used in the models including other land use and development in the area and further afield. The more critical factor in my reasoning is the opportunity to design an elevated structure as part of the gateway at Hoddle Street. I note the Committee did not find that the flyover would not be effective for its traffic function. I agree.
- (h) The visual impacts of the flyover from nearby properties on the west side of Hoddle Street will need to be, and can be, assessed in the detailed design of the Project. These properties can be included in the Property Impact Report I have required as a condition of my approval.
- (i) The opportunity to investigate relocation of the tunnel portal or portals to the east can be investigated in the design of the Project if that is considered appropriate by the Project Authority. However if this is to occur, and the Project is to be altered on that basis, such a substantial change should occur as a variation to the Project and not as a requirement of this approval. The nature of such a change is such that it may be appropriate for further and other advice if it is to be considered.
- (j) I have included a condition on the approval decision to require the submission to me of a Development Plan for the final design of the eastern flyover before its construction.
- (k) Consistent with this reasoning the sidetrack should remain but can be the subject of further consideration during the detailed design and construction process. The Committee suggested that further guidelines may be necessary to protect residential amenity abutting the sidetrack area. While I agree residential amenity ought to be protected I consider that this matter can be dealt with in the final design and in the Construction Environmental Management Plan.

Impacted Properties

- 46. I have included as a condition of my approval decision a requirement that the Development Plans be accompanied by a report prepared to my satisfaction which identifies properties that are materially impacted by any elevated structures shown on the Development Plans (the Property Impact Report) in consideration of the fact that the final design for these structures has not been resolved.

47. This will allow further consideration of whether any adjustments should be made to the land identified in Figure 1 of the Incorporated Document forming part of Planning Scheme Amendment GC2 and whether there is a need for Linking Melbourne Authority to acquire additional properties within or immediately adjacent to that land. The Property Impact Report will also consider whether any further mitigation measures are required to ameliorate significant impacts on affected properties.

Applicable approvals

Applicable approval: Decisions to prepare, adopt and approve Planning Scheme Amendment GC2 under sections 8, 29 and 35 of the *Planning and Environment Act 1987*

48. Planning Scheme Amendment GC2 to the Melbourne, Moonee Valley, Moreland and Yarra Planning Schemes is required to facilitate the use and development of land shown on the maps which form part of Amendment GC2 for the purposes of the Project.
49. Amendment GC2 introduces an incorporated document into the planning schemes that removes the need for a planning permit for the Project, subject to conditions, and makes the Minister for Planning the responsible authority for administering and enforcing the planning schemes in relation to Part A of the Project.
50. After considering the applicable law criteria under the Planning and Environment Act 1987 (the PE Act), and relevant Ministerial Directions the Committee recommended in Recommendation 1(b) to issue the applicable approval being Planning Scheme Amendment GC2, under sections 8, 29 and 35 of the PE Act, for Part A of the Project as modified in the decision.
51. My decision is to adopt Planning Scheme Amendment GC2, generally as exhibited, and including Part B, subject to:
- (a) A condition requiring the use and development and the ancillary activities specified in the Incorporated Document to be in accordance with the Urban Design Principles (Table 1) and the Performance Requirements (Table 2).
 - (b) deleting the exhibited Design and Development Overlays until the final design is adopted.
52. Having regard to the Recommendations of the Committee, and having had regard to the applicable law criteria under the PE Act, I have decided to prepare, adopt and approve Planning Scheme Amendment GC2 which includes the Committee's recommended Incorporated Document as shown at Appendix D of the Report subject to the changes outlined below.
53. The Incorporated Document requires the Project to be developed in accordance with the Performance Requirements and the Urban Design Principles attached to this decision. These revised Performance Requirements and the revised Urban Design Principles form part of the revised Incorporated Document.
54. In addition to revising the Incorporated Document as described above, for clarity I have made the following changes to the Incorporated Document:

- (a) In accordance with Recommendation 2(f) in the Report, the exhibited Design and Development Overlays in the Yarra Planning Scheme and Melbourne Planning Scheme have not been included at this time. The form of the Design and Development Overlays will be considered once the tunnel alignment has been finalised.
- (b) Changing the description of Figure 1 to East West Link (Eastern Section) Incorporated Document and the legend to identify in yellow the land to which the East West Link (Eastern Section) Incorporated Document applies.

55. Where I have made changes to the Incorporated Document including the Performance Requirements and Urban Design Principles that are not described in these reasons those changes are made for consistency with my approval decision and these reasons.

Applicable approval: works approval under section 19B of the *Environment Protection Act 1970*

56. A Works Approval is required under section 19B of the *Environment Protection Act 1970* (the EP Act) to construct the ventilation and lighting systems required for the proposed tunnels forming part of Part A of the Project.

57. The Committee concluded that impacts on air quality, including greenhouse gas emissions, and noise impacts arising from the tunnels ventilation and lighting systems, should be able to be managed in accordance with relevant State Environment Protection Policies (SEPPs) and protocols for environment management (PEMs) under the EP Act. After considering the applicable law criteria under the EP Act that are relevant to the granting of a works approval, the Committee recommended granting a Works Approval in Primary Recommendation 1(a), subject to conditions that are outlined in Recommendation 25.

58. On 28 May 2014, I received advice from the EPA under section 64 of the MTPF Act regarding the Works Approval, dated 23 May 2014. The EPA has concluded that compliance with the SEPPs (Air Quality Management and N-1) and Protocol for Environmental Management (Greenhouse Gas Emissions and Energy Efficiency in Industry) can be achieved by the Project, and that a works approval for the tunnels ventilation system should issue, subject to conditions.

59. My decision to grant the Works Approval has had regard to:

- the Committee's Recommendations and the Committee's discussion of the issues relating to the Works Approval;
- the advice of the EPA under section 64 of the MTPF Act; and
- the applicable law criteria under the EP Act for the granting of a works approval.

60. Both the Committee's Recommendations and the EPA's advice under section 64 of the MTPF Act dealt with conditions that should be included in the Works Approval. The conditions included on the Works Approval are consistent with the Committee's Recommendations and the EPA's advice.

61. In particular, Condition WA_W1 requires the proponent (Linking Melbourne Authority) to provide to the EPA a report or reports with detailed plans and specifications of the tunnels ventilation system (including the stacks and any mid-tunnel air intake), and the lighting system, which demonstrate how they comply with the relevant SEPPs and the Protocol for Environmental Management 'Greenhouse Gas Emissions and Energy Efficiency in Industry'. The reports are also required to demonstrate that the impacts of the final design are no greater than those predicted by modelling for the Reference Project. This condition is generally as recommended in the EPA's advice to me under section 64 of the MTPF Act, and is consistent with the conditions recommended by the Committee in Recommendations 25(a) and (b).
62. The Works Approval also includes a Premises Plan that identifies the general locations of the ventilation stacks.
63. Condition WA_R1.1.1 of the Works Approval requires the proponent to provide the EPA with a plan, at least 18 months prior to commissioning the tunnels ventilation and lighting systems, that includes a monitoring program for in-tunnel air quality, stack emissions, and ambient air quality and noise both before and after operation of the tunnels commences. This condition, which is consistent with the Committee's Recommendations 25(f) and which has been endorsed by the EPA, will ensure that proper baseline data is gathered before the commencement of the operation of the tunnels. This will enable the future performance of the tunnels ventilation system to be accurately measured, and decisions to be made regarding the need to retrofit pollution control equipment, consistent with the Committee's Recommendations 25(d) and (e).
64. The Committee's Recommendation 25(c) was to include a condition on the Works Approval adopting the Carbon Monoxide in-tunnel air quality standards used for the CityLink and Eastlink projects. Consistent with the advice of the EPA under section 64, I have not included this condition on the Works Approval as I consider that it is more appropriate to be included on the licence that will be required under the EP Act to operate the tunnels ventilation and lighting systems.
65. The Committee's Recommendations 25(d) and (e) relate to making provision for retrofitting pollution control equipment in the ventilation stacks if particulate emissions exceed certain levels. Based on the EPA's advice to me under section 64 of the MTPF Act, I have not included specific conditions on the Works Approval to this effect as the EPA advises that they are not required. I adopt the EPA's reasons in this regard.
66. Additional Performance Requirements relating to air quality and noise have been recommended by the Committee. These Recommendations will be implemented primarily via the conditions on the Works Approval (as relevant) and the requirement in the Incorporated Document that the Project meet the revised Performance Requirements. I note that it may be appropriate for Performance Requirements which relate to emissions from the scheduled premises to be referenced in the licence to operate the tunnels ventilation and lighting systems that the proponent will require under the EP Act (to be issued by the EPA), and I have informed the EPA of this.

Applicable approval: licence under section 67 of the *Water Act 1989*

67. The Project requires a licence under section 67 of the Water Act 1989 (the Water Act) to construct, alter, operate or decommission works on a waterway, including works to deviate a waterway.
68. The Committee concluded that impacts on surface water, including waterways, should be able to be managed acceptably through project delivery and that any separate conditions on the water licence were not required on the assumption that the Performance Requirements are complied with.
69. After considering the applicable law criteria under the Water Act, the Committee recommended in Recommendation 1(f) to issue the applicable approval being a licence under section 67 of the Water Act to construct, alter, operate or decommission works on a waterway, including deviate a waterway, subject to Primary Recommendations 2 and 3 and Issue Specific Recommendations 5 to 36. Recommendation 30 is to issue the licence for works on waterways in Merri Creek and Moonee Ponds Creek (for Part A of the Project).
70. Having had regard to the applicable law criteria under the Water Act and the Committee's Report and Recommendations, I have decided to issue a licence under section 67 of the Water Act for Part A of the Project, in accordance with the Committee's Recommendations. I have also decided to issue the licence for Part B of the project. The licence will be issued in the format used by Melbourne Water for the issue of a licence.
71. Primary Recommendation 2(b) is to apply the revised Performance Requirements shown in Appendix E of the Report to the Project. This is relevant to the grant of the licence under the Water Act because the Performance Requirements provide measures to manage the potential effects of the Project on waterways.
72. Melbourne Water is required to administer the licence. For this reason, conditions have been included on the licence to ensure that the requirement to comply with the specific Performance Requirements that are relevant to impacts on waterways can be enforced by Melbourne Water under the licence and the Water Act.
73. Consistent with Primary Recommendation 2(b), I have included conditions 1 and 2 on the licence. These conditions require the licence holder (Linking Melbourne Authority) to carry out all works in accordance with the specific Performance Requirements and Urban Design Principles (in the revised form recommended by the Committee) that relate to works on a waterway. These conditions also give effect to other Issue Specific Recommendations of the Committee that are relevant to the licence under section 67 of the Water Act.
74. Primary Recommendation 4 was that Part B of the Project be set aside, and that the applicable approvals for Part B not issue. I have addressed earlier in these reasons my response to that recommendation, and the Description of Works in the licence relates to works that are required in connection with Parts A and B of the Project.

Applicable approval: heritage permits under section 74 of the *Heritage Act 1995*

75. In making my approval decision granting the permits required by section 74 of the Heritage Act 1995 (the Heritage Act) authorising works in relation to registered places, I have had regard to the applicable law criteria and the relevant Recommendations of the Committee.
76. The Committee recommended the granting of five permits under the Heritage Act for the following places recorded in the Victorian Heritage Register, in Primary Recommendation 1(c):
- Melbourne General Cemetery (H1788);
 - Cambridge Terrace (H1606);
 - Royal Parade (H2198)
 - Former Police Station complex (H1545); and
 - The former College Church (H0394).
77. The Committee considered the extent to which the Project would affect the cultural heritage significance of the places recorded in the Victorian Heritage Register within the proposed Project Area. The Committee concluded that for the five heritage places for which a heritage permit has been sought, the impacts are limited due to tunnelling at a minimum approximate depth of 20 metres, and that permits should be granted.
78. The Committee recommended applying the revised Performance Requirements shown in Appendix E of their Report, in Recommendation 2(b). This is relevant to the permits under the Heritage Act because the revised Performance Requirements provide measures to manage the potential effects of the Project on cultural heritage including places recorded in the Victorian Heritage Register. I have accepted the Committee's revised Performance Requirements insofar as they relate to heritage matters.
79. The Committee did not consider that any separate conditions were required to manage impacts on places recorded in the Victorian Heritage Register, on the assumption that the Performance Requirements will be complied with.
80. However, given the Executive Director, Heritage Victoria is required to administer and enforce the permits, I have included condition 1 on the permits to ensure that the requirement to comply with the specific Performance Requirements relevant to cultural heritage can be enforced by the Executive Director, Heritage Victoria under the permits and the Heritage Act.
81. The heritage permits also include the standard conditions that would normally be applied to the issue of permits under the Heritage Act, modified slightly to reflect that the Minister for Planning has issued the approval under the MTPF Act, rather than the Executive Director, Heritage Victoria issuing the permits under the Heritage Act.

Applicable approval: heritage consents under section 129 of the *Heritage Act*

82. In granting the consents to damage or interfere with archaeological sites or relics under section 129 of the Heritage Act, I have had regard to the Recommendations of the Committee that are relevant to the granting of those consents, and the applicable law criteria.
83. The Committee recommended in Primary Recommendation 1(d) the granting of two consents under section 129 of the Heritage Act for impacts on archaeological sites and relics recorded in the Heritage Inventory affected by Part A of the Project, namely for works affecting Yarra Bend Park (H7922-0142) and Royal Park (H7822-2311). I have also decided to grant consents under s 129 for the sites and relics recorded in the Heritage Inventory affected by Part B of the Project, namely for works affecting Debney's Park East (H7822-0209) and the West Melbourne Rubbish Tips – Dynon Road Tip (H7822-0312).
84. The Committee recommended applying the revised Performance Requirements shown in Appendix E of their Report to the Project, in Recommendation 2(b). The Performance Requirements provide measures to manage the potential effects of the Project on cultural heritage including known archaeological historic sites and relics. I have accepted the Committee's revised Performance Requirements insofar as they relate to heritage matters.
85. The Committee did not consider that any separate conditions for cultural heritage were required, on the assumption that the Performance Requirements will be complied with.
86. However, given the Executive Director, Heritage Victoria is required to administer and enforce the consents, I have included condition 1 on the consents which to ensure that compliance with the specific Performance Requirements that are relevant to the matters covered by the consents can be enforced under the consents and the Heritage Act.
87. The consents also include the standard conditions that would normally be applied to the issue of consent under the Heritage Act, modified slightly to reflect that the Minister for Planning has issued the consents under the MTPF Act, rather than the Executive Director, Heritage Victoria issuing the consents under the Heritage Act.

Applicable approval: consent under clause 1, Schedule 2 of the *Road Management Act 2004*

88. In deciding to issue consent under clause 1 Schedule 2 of the Road Management Act 2004 (the RM Act) for connections to a freeway by the Project, I have had regard to the applicable law criteria under the RM Act and the Recommendations of the Committee.
89. The Committee recommended granting consent under clause 1, Schedule 2 of the RM Act for Part A of the Project at Primary Recommendation 1(e), for the following freeway connections:
- Direct connection to the eastbound carriageway of East West Link with the eastbound carriageway of the Eastern Freeway.

- Direct connection of the westbound carriageway of the Eastern Freeway with the westbound carriageway of East West Link.
- Exit ramp from the southbound carriageway of Citylink/Tullamarine Freeway connecting to the eastbound carriageway of East West Link.
- Entry ramp to the northbound carriageway of the Citylink/Tullamarine Freeway providing connection from the westbound carriageway of East West Link.

90. I have decided to grant consent for these freeway connections. For the reasons identified earlier I have also determined to grant consents for the freeway connections for Part B of the Project at this time being the entry ramps from the westbound carriageway of the East West Link connecting to the southbound carriageway of CityLink in Parkville and from the northbound carriageway of CityLink to the eastbound carriageway of East West Link.

91. I note that VicRoads provided in principle support for the granting of the relevant consents in its letter to the Linking Melbourne Authority on 29 September 2013 that is included in the CIS prepared for the Project.

92. The Committee's Recommendation 2(b) recommends the implementation of the revised Performance Requirements. This is relevant to the decision to grant consent for connections to a freeway, because the Performance Requirements include measures to manage traffic and transport impacts of the Project including impact from road traffic noise, and specific requirements for consultation with relevant road management authorities. I have generally accepted the Committee's revised Performance Requirements insofar as they relate to road management matters. The Performance Requirements will be implemented via the inclusion of the Performance Requirements in the Incorporated Document which is being introduced by Planning Scheme Amendment GC2.

93. I have also included conditions on the consent that were requested by VicRoads.

94. The Committee's Recommendations 3(g) and 4 recommended that the southbound connection between CityLink/Tullamarine Freeway and the Project be set aside. For the reasons identified earlier in these reasons I have determined that the southbound connection between the CityLink/Tullamarine Freeway and the Project will be approved as part of this approval but subject to the requirement for the submission of a Development Plan to my satisfaction.

Applicable approval: Comment on a Plan of Works under Section 66 of the Conservation Forests and Lands Act 1987

95. In relation to the comment from the Secretary of DEPI pursuant to section 66 of the Conservation, Forests and Lands Act 1987 on a plan of works across a waterway, this is required for works affecting the Moonee Ponds Creek for Part B of the Project.

96. The CIS included a plan of works pursuant to section 66 of the Conservation, Forests and Lands Act 1987, which was assessed by the Committee. The Committee was presented with evidence and submissions relating to the potential impacts of the Project on aquatic ecology and impacts on flora and fauna identified in the plan of works.
97. Moonee Ponds Creek is highly modified due to historical land use impacts and a large proportion of Moonee Ponds Creek within the Project Area is concrete-lined (channelised) with little to no aquatic vegetation or habitat.
98. I am satisfied that the potential impacts of the Project on habitat, vegetation and on flora and fauna have been given appropriate consideration. I am satisfied that the Performance Requirements imposed on the Project and the Environmental Management Framework provide an appropriate framework for managing the impacts of the Project and these requirements will be implemented by the conditions on the Project contained within the Incorporated Document being implemented pursuant to Planning Scheme Amendment GC5. Accordingly, I grant the applicable approval under Section 66 of the Conservation Forests and Lands Act.

Other conditions on the approval decision

99. The other conditions I have included on the approval decision are self-explanatory and are otherwise explained in these reasons. In general terms the inclusion of these conditions is consistent with my decision to approve the whole Project in a single and integrated approval decision, and to establish a further process for my satisfaction of specified aspects of the final design.
100. The inclusion of a condition requiring a Property Impact Report will enable the further consideration of certain impacts on properties after the resolution of the final design. I note here that the approval decision can be amended on the application of the Project Authority and I also retain powers under the Planning and Environment Act 1987 should it become appropriate to make adjustments to the Incorporated Document in the future.

Date:

30.6.14

Matthew Guy MLC
Minister for Planning

