

Terms of Reference

Edithvale Bonbeach Level Crossing Removal Project – 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 Edithvale Bonbeach Level Crossing Removal Project, in accordance with these terms of reference.

Name

1. The combined inquiry and advisory committee is to be known as the **Edithvale Bonbeach Level Crossing Removal Project Inquiry and Advisory Committee (IAC)**.

Skills

2. The IAC is to include experience in:
 - a. coastal acid sulphate soils and contaminated land/groundwater;
 - b. ecology, especially Ramsar listed wetlands
 - c. hydrogeology; and
 - d. strategic and statutory planning.
3. The IAC may seek additional specialist expert advice if required.
4. The IAC will include an appointed, Chair and other members.

Background

Edithvale Bonbeach Level Crossing Removal (the project)

5. The project will remove the level crossings at Edithvale Road, Edithvale and Station Street/Bondi Road, Bonbeach by grade separating the roads and the Frankston rail line. A rail-under-road option is proposed for both level crossing removals. The existing stations will be demolished and replaced with new station infrastructure.
 - a. The Bonbeach project area extends from Chelsea Road, Chelsea to Patterson River, Bonbeach. It includes the rail corridor and all of Station Street and Nepean Highway located to the east and west and small sections of adjacent road reserves.
 - b. The Edithvale project area extends from Lincoln Parade, Aspendale to Chelsea Road, Chelsea. It includes the rail corridor and all of Station Street and Nepean Highway to the east and west and small sections of adjacent road reserves.
 - c. The trench at Edithvale will be up to 1,300 metres long and a minimum of 14 metres wide, expanding to 24 metres wide at the platform location.
 - d. The trench at Bonbeach will be up to 1,200 metres long and a minimum of 14 metres wide, expanding to 24 metres wide at the platform location.
 - e. At both locations, the station precinct will include car parking on a deck over the rail trench. A barrier will protect the trench at both locations and ensure safety for the community at street level. At Edithvale, a new electrical substation, required to supply the increased power demand for trains on the Frankston corridor, will be built on the deck.

6. Construction will involve site-establishment works such as utility relocation and establishment of site facilities, followed by piling associated with the walls of the trench and lastly, the main occupation to excavate the trenches and construct the station and railway infrastructure.
7. The project proponent is the Level Crossing Removal Authority, an administrative office of the Department of Economic Development, Jobs, Transport and Resources.

EES decision

8. On 5 May 2017, the Minister for Planning determined that an environment effects statement (EES) was required for the project under the *Environment Effects Act 1978* (EE Act) and issued the 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 regional groundwater regime with potential subsequent changes to hydrological conditions at the Ramsar listed Edithvale-Seaford Wetlands;
 - b. the ecological character and habitat values of the Edithvale-Seaford Wetlands, especially the critical components of habitat for listed waterbirds, and the wetlands' dependent flora and fauna, due to alterations in the groundwater regime; and
 - c. the protected beneficial uses of groundwater, due to alterations in the groundwater regime, along with risks to human health, recreation and ecosystems due to changes in water quality from activation and excavation of potential acid sulphate soils and from interception/movement of existing contaminated soil and groundwater.
9. The Minister's decision also noted that 'other potential effects on the social or environmental setting are unlikely to be significant and should be readily addressed and mitigated through existing statutory processes and requirements under the *Aboriginal Heritage Act 2006*, *Environment Protection Act 1970*, *Planning and Environment Act 1987* (P&E Act), including construction noise, traffic and transport impacts, as well as visual impacts'.
10. The Level Crossing Removal Authority prepared an EES in response to the Minister for Planning's decision and scoping requirements issued for the EES in September 2017.
11. The EES was placed on public exhibition, together with draft amendments to the Kingston Planning Scheme, from 19 March 2018 to 2 May 2018.

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 8 May 2017, 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.

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.

14. Based upon the material provided to the IAC, the IAC report should address impacts on matters of national environmental significance to inform the Minister for Planning's assessment, as set out in paragraph 12.

Planning approval process

15. The Level Crossing Removal Authority has prepared draft Planning Scheme Amendments (PSAs) for each of the proposed level crossing removals (Amendments C155 and C156 to the Kingston Planning Scheme), in accordance with the P&E Act.
16. The IAC is to provide advice on the draft PSAs. The draft PSAs will facilitate the use and development of the project in accordance with project incorporated documents in the Kingston Planning Scheme. The incorporated documents 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;
 - b. permits to remove protected flora and/or fauna from public land under the *Flora and Fauna Guarantee Act 1988* (if required);
 - c. permits to take wildlife under the *Wildlife Act 1975* (if required); and
 - d. consent to use and develop coastal Crown land or land within 200 metres of the high-tide mark under the *Coastal Management Act 1995* (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 paragraph 12;
 - 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 undertake the following.
 - a. Review the draft PSAs along with public submissions received in relation to the planning controls proposed by the draft PSAs.
 - b. Assess whether the planning controls proposed by the draft PSAs are appropriate to facilitate 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 of environmental effects (impacts) of the level crossing removals 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;
- h. recommendations for proposed amendments to the Kingston Planning Scheme under the P&E Act to facilitate the project;
- i. relevant information and analysis in support of the IAC's conclusions and recommendations;
- j. a description of the proceedings conducted by the IAC and a list of those consulted and heard by the IAC; and
- k. a list of all recommendations including cross references to relevant discussions in the report.

Task

22. The IAC may apply to vary these terms of reference in writing, prior to submission of its report.
23. 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 PSAs;
 - b. all public submissions and evidence provided by the proponent, state agencies, local council and the public;
 - 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.
24. 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.
25. 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 discontinued where deemed inappropriate by the IAC Chair; and
 - d. the IAC may commission specialist advice on other matters, if required, particularly in the areas of groundwater, engineering and ecology.
26. 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.
27. The IAC will meet and conduct hearings when there is a quorum of at least two of its members present.
28. The IAC will make an audio recording of any hearing sessions publicly available, as soon as practicable, after the conclusion of the sessions.

Submissions

29. 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 Level Crossing Removal Authority.
30. 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.
31. 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 has passed from the time of its appointment.
32. 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'.
33. The IAC must notify submitters upon release of the Ministers for Planning's assessment and IAC report.
34. Submissions to the IAC are public documents unless otherwise directed by the IAC.

Timing

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

Fee

38. 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.
39. 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 Level Crossing Removal Authority.

Miscellaneous

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

43. The IAC may meet and invite others to meet with them when there is at least two of the Committee members present.



Richard Wynne MP
Minister for Planning

Date: 28/3/18

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**REASONS FOR DECISION UNDER *ENVIRONMENT EFFECTS ACT 1978*****Title of Proposal:** Edithvale and Bonbeach level crossing removals**Proponent:** Level Crossing Removal Authority**Description of Project:**

This referral is for two crossings that are part of the Victoria Government's program to remove 50 level crossings in Melbourne. These are the level crossing removals at Edithvale Road, Edithvale and Station Street/Bondi Road, Bonbeach. Rail under road has been identified as the preferred option at both Edithvale and Bonbeach. Two trenches, approximately 8 metres deep, 12 metres wide, and 1,000 metres and 1,100 metres long for Edithvale and Bonbeach, respectively, will be constructed within the existing rail corridor.

Decision:

The Minister for Planning has decided that an Environment Effects Statement (EES) is required for the project, as described in the referral accepted on 9 March 2017.

Reasons for Decision:

- The project has the potential for a range of significant environmental effects. In particular the project as proposed is likely to have significant effects on:
 - the regional groundwater regime resulting in potential changes to hydrological conditions at the Ramsar listed Edithvale-Seaford Wetlands;
 - the ecological character and habitat values of the Edithvale-Seaford Wetlands, and the dependent flora and fauna, in particular the critical components of habitat for listed waterbirds, due to alterations in the groundwater regime;
 - the protected beneficial uses of groundwater, due to alterations in the groundwater regime, along with risks to human health, recreation and ecosystems due to changes in water quality from activation and excavation of potentially acid sulphate soils and from interception/movement of existing contaminated soil and groundwater.
- Other potential effects on the social or environmental setting are unlikely to be significant and should be readily addressed and mitigated through existing statutory processes and requirements under the *Aboriginal Heritage Act 2006*, *Environment Protection Act 1970*, *Planning and Environment Act 1987*, including construction noise, traffic and transport impacts, as well as visual impacts.
- Assessment of potentially significant effects through an EES is necessary to ensure their extent, significance and related uncertainties are sufficiently investigated. Those investigations will inform strategies for avoidance, minimisation or mitigation to ensure acceptable residual effects are achieved.

- An EES would also enable a transparent and rigorous process for consideration of potentially significant adverse effects of the project to inform relevant statutory decision-making, including under the *Planning and Environment Act 1987*, *Water Act 1989* and *Flora and Fauna Guarantee Act 1995*.

Date of Decision: 5 April 2017



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

Edithvale and Bonbeach Level Crossing Removal, Victoria (EPBC 2017/7906)

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

proposed action To remove two level crossings at Edithvale Road, Edithvale and Station Street/Bondi Road, Bonbeach, Victoria [see EPBC Act referral 2017/7906].

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

- Ramsar wetlands (sections 16 & 17B)
- Listed threatened species and communities (sections 18 & 18A)
- Listed migratory species (sections 20 & 20A)

designated proponent Level Crossing Removal Authority
ABN: 69 981 208 782

Decision-maker

Name and position James Barker
Assistant Secretary
Assessments and Sea Dumping Branch

Signature

date of decision 8 May 2017
