

# Terms of Reference

## Inquiry and Advisory Committee: Yan Yean Road (Stage 2) Upgrade Project

Version: July 2020

The Yan Yean Road (Stage 2) Upgrade Project Inquiry and Advisory Committee (the IAC) is appointed to inquire into, and report on, the proposed Yan Yean Road (Stage 2) Upgrade Project and its environmental effects in accordance with these terms of reference.

The IAC is appointed pursuant to:

- 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.

### Name

1. The IAC is to be known as the 'Yan Yean Road (Stage 2) Upgrade Project Inquiry and Advisory Committee'.

### Skills

2. The IAC members should have the following expertise:
  - a. road transport modelling, road design and traffic management;
  - b. biodiversity and ecology; and
  - c. social and cultural values of trees.
3. Where it considers it necessary, the IAC may seek additional specialist expert advice to assist it in undertaking its role.
4. The IAC will comprise an appointed Chair (IAC Chair) and other members.

### Purpose of the inquiry

5. 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 significant effects of the project, taking into account the draft evaluation objectives in the EES scoping requirements, 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 *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) (**see Attachment 2**) as outlined in paragraph 12;
  - c. identify any measures it considers necessary and effective to avoid, mitigate or manage the environmental effects of the project to balance project objectives with environmental, economic and social outcomes, including any necessary project modifications; and
  - d. report its findings and recommendations to the Minister for Planning to inform his assessment under the EE Act.

### Purpose of the advisory committee

6. The IAC is appointed as an advisory committee under section 151 of the P&E Act to:
  - a. review draft planning scheme amendment (PSA) GC92, which was 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 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.

## Background

### **Project outline**

7. The project proposes to duplicate a 5.5km portion of Yan Yean Road between Kurrak Road, Yarrambat and Bridge Inn Road, Doreen. The project includes:
  - a. increasing the existing two lanes to four lanes (comprising two lanes in each direction);
  - b. two new roundabouts at Heard Avenue and Youngs Road;
  - c. five new signalised intersections at Bannons Lane, Jorgensen Avenue, North Oatlands Road, Orchard Road and Bridge Inn Road;
  - d. upgrades to the existing signalised intersection at Ironbark Road, including an additional right hand turning lane, slip lane, and traffic island;
  - e. new street lighting at all intersections, road signage and landscaping;
  - f. new 3-metre-wide shared use path on the western side and 1.2 metre wide footpath on the eastern side of Yan Yean Road; and
  - g. installation of continuous safety barriers running along both sides of the road and in the centre median for protection against tree and car collisions.
8. The project's proponent is Major Road Projects Victoria, a project team within the Major Transport Infrastructure Authority at the Department of Transport, who is responsible for preparing technical studies, consulting with the public and stakeholders and preparing the EES.

### **EES assessment process**

9. On 14 October 2018, the Minister for Planning determined that an EES was required for the project under the EE Act and issued the decision with procedures and requirements for the preparation of the EES under section 8B(5) of the EE Act (**Attachment 1**). The reasons for decision were based on the potential for significant environmental effects.
  - a. The project has the potential for significant effects on biodiversity values as a result of the proposed clearance of a very large number of trees and habitat, including its contribution to potential cumulative effects on the critically endangered *Lathamus discolor* (Swift Parrot) listed under the *Flora and Fauna Guarantee Act 1988* and the *Environment Protection and Biodiversity Conservation Act 1999*.
  - b. Assessment of aspects of the design and potential refinements is required to understand their associated impacts, including where further avoidance and minimisation of tree loss is possible (in particular loss of preferred foraging trees for Swift Parrots and high retention trees of ecological and cultural value).
10. The proponent prepared an EES in response to the Minister for Planning's decision and the scoping requirements issued by him in June 2019.
11. The EES will be placed on public exhibition for thirty (30) business days, together with the draft PSA. The proponent will be responsible for giving notice. DELWP must liaise with the office of Planning Panels Victoria (PPV) to agree on the directions hearing and hearing dates, which should be included on all notices.

### **Commonwealth assessment process**

12. The project was determined to be a controlled action for the purposes of the EPBC Act on 15 February 2019 because of its potential impacts on matters of national environmental significance. The controlling provisions under the EPBC Act are listed threatened species and communities (sections 18 and 18A).
13. The EES process is an accredited process under the *Commonwealth-Victorian Bilateral Agreement for Environmental Impact Assessment*<sup>1</sup>, to provide for the assessment of matters of national environmental

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<sup>1</sup> The 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.

significance required under the EPBC Act. The Victorian Minister for Planning's assessment under the EE Act will be provided to the Commonwealth Minister for the Environment to inform the EPBC Act approval decision, in accordance with Schedule 1 Part B of the bilateral agreement. To assist the Minister for Planning in making his assessment, the IAC should specifically identify its advice relevant to matters of national environmental significance that may be affected by the project.

### **Planning approval process**

14. The IAC is to consider and provide advice on draft PSA GC92. The draft PSA proposes planning controls and provisions that will allow for, and facilitate, the use and development of land for the project in accordance with an incorporated document that is proposed to be included in the Nillumbik and Whittlesea 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 proposes a requirement for the development of a framework to manage environmental effects associated with both the construction and operational phases of the project.

### **Other approvals**

16. The project may require several other statutory approvals and/or consents, as outlined in the EES, including:
  - 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*; and
  - c. an authority to take or disturb wildlife under the *Wildlife Act 1975*.

## **Process**

### **Stage 1 – Submissions**

17. Submissions on the EES and draft PSA will be collected by PPV in accordance with the '*Guide to Privacy at PPV*' through the Engage Victoria Website. All written submissions or other supporting documentation are public documents and should be published on-line, unless submitters request that their submission not be publicly available, or where the IAC specifically directs that the submission or a part of it is to remain confidential.
18. Electronic copies of submissions on the EES and draft PSA will be provided to the proponent, DELWP and Nillumbik and Whittlesea councils.
19. 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.
20. Any written material or evidence provided to the IAC during the public hearing will be published online, unless the IAC specifically directs that the material is to remain confidential.
21. PPV will retain any written submissions and other documentation provided to the IAC for a period of five years after the time of its appointment.

### **Stage 2 – Public hearing**

22. Prior to the commencement of the public hearing, the IAC must hold a Directions Hearing to make directions it considers necessary or appropriate as to the conduct, scope or scheduling of the public hearing.
23. The IAC must hold a public hearing and may make other such enquiries as are relevant to undertaking its role.
24. 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.

25. The IAC may inform itself in any way it sees fit, but must review and consider:
  - a. the exhibited EES and draft PSA;
  - b. 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.
26. 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 legal representation being necessary for parties to be effective participants; and
  - b. the IAC process is to be exploratory and constructive with adversarial behaviour minimised and with cross-examination controlled by the IAC Chair.
27. The IAC may limit the time of parties appearing before it.
28. 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.
29. The IAC may conduct a public hearing when there is a quorum of at least two of its members present or participating through electronic means in line with **Attachment 3**, one of whom must be the IAC Chair.
30. Recording of the hearing must be undertaken by the proponent, if directed by the IAC Chair. If the hearing is recorded, the audio recording will be provided to PPV as a weblink and would 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.
31. 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.

### **Stage 3 – Report**

32. 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 and their significance;
  - b. findings on whether acceptable environmental outcomes can be achieved, having regard to legislation, policy, best practice, and the principles and objectives of ecologically sustainable development;
  - c. recommendations and/or specific measures that it considers necessary and appropriate to prevent, mitigate or offset adverse environmental effects to acceptable environmental outcomes, having regard to legislation, policy, best practice, and the principles and objectives of ecologically sustainable development;
  - d. recommendations for any feasible modifications to the design or management of the project that would offer beneficial outcomes;
  - 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 about the structure and content of the proposed environmental management framework, including with respect to monitoring of environmental effects, contingency plans and site rehabilitation;
  - g. recommendations for any changes to the proposed environmental performance requirements;
  - h. recommendations with respect to the structure and content of the draft PSA; and
  - i. specific findings and recommendations about the predicted impacts on matters of national environmental significance and their acceptability, including appropriate controls and environmental management.
33. 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 and heard by the IAC;
- c. a list of all recommendations, including cross-references to relevant discussions in the report;
- d. a list of all submitters in response to the exhibited EES; and
- e. a list of the documents tabled during the public hearing.

### **Timing**

- 34. The IAC should commence its public hearing no later than 40 business days from the final date of the exhibition period, or as otherwise agreed by the Minister for Planning.
- 35. The IAC must submit its report in writing to the Minister for Planning within 40 business days from its last hearing date.

### **Minister's assessment**

- 36. The Minister for Planning will make his assessment of the environmental effects of the project after considering the IAC's report as well as the EES, submissions and any other relevant matters.
- 37. PPV will notify submitters of the release of the Minister for Planning's assessment and IAC report.

### **Fee**

- 38. The fees for the members of the IAC will be set at the current rate for a panel appointed under part 8 of the P&E Act.
- 39. All costs of the IAC, including the costs of obtaining any expert advice, technical administration and legal support, venue hire, accommodation, recording proceedings and other costs must be met by the proponent.

### **Miscellaneous**

- 40. 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.
- 41. The IAC may retain legal counsel to assist it in undertaking its role.
- 42. PPV is to provide any necessary administrative support to the IAC.
- 43. The IAC may engage additional technical or administrative support as required.



**Hon Richard Wynne MP**  
**Minister for Planning**

Date: 16 / 08 / 2020

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

### **Project Management**

1. For matters regarding the IAC process, please contact Amy Selvaraj, Senior Project Officer, of Planning Panels Victoria, by phone (03) 8392 5120 or email [planning.panels@delwp.vic.gov.au](mailto:planning.panels@delwp.vic.gov.au).
2. For matters regarding the EES process please contact the Impact Assessment Unit in DELWP by phone (03) 8392 5503 or email [environment.assessment@delwp.vic.gov.au](mailto:environment.assessment@delwp.vic.gov.au).

## **Attachment 1**

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

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

- a) The EES is to document the investigation, avoidance and minimisation of potential environmental effects of the proposed road upgrade and relevant alternatives, as well as associated environmental mitigation and management measures. The EES should address:
  - (i) projected traffic growth volumes and related uncertainties for Yan Yean Road and related roads in the network;
  - (ii) design alternatives and refinements and their associated impacts, particularly how they avoid and minimise native tree loss with proposed locations of tree and vegetation removal, no go zones and offset requirements and a demonstration that avoid and minimise principles have been applied; and
  - (iii) consideration of carriageways, medians, shared pathways, footpaths, intersections and other treatments to minimise the loss of preferred foraging trees for the critically endangered *Lathamus discolor* (Swift Parrot) and avoidance of high retention trees of ecological and cultural value.
- b) The matters to be investigated and documented in the EES will be set out in detail in scoping requirements prepared by the Department of Environment, Land, Water and Planning (the department). Draft scoping requirements will be exhibited for 15 business days for public comment, before being finalised and then issued by the Minister for Planning.
- c) The level of detail of investigation for the EES studies should be consistent with the scoping requirements issued for this project and be adequate to inform an assessment of the potential environmental effects (and their acceptability) of the project and any relevant alternatives, in the context of the Ministerial Guidelines.
- d) The proponent is to prepare and submit to the department a draft EES study program to inform the preparation of scoping requirements.
- e) The department is to convene an inter-agency technical reference group (TRG) to advise the proponent and the department on EES scoping, adequacy of technical studies during EES preparation, and statutory approval processes.
- f) The proponent is to prepare and submit to the department its proposed EES consultation plan for engaging the public and stakeholders during the preparation of the EES. Once completed to the satisfaction of the department, the consultation plan is to be implemented by the proponent, having regard to advice from the department and the TRG.
- g) Following confirmation of draft scoping requirements, the proponent is to prepare and submit to the department its proposed schedule for technical studies, preparation and exhibition of the EES. The schedule will enable alignment of the proponent's and department's schedules, particularly for managing timely TRG review of technical investigations and EES documentation.
- h) The proponent is to apply appropriate peer review and quality management procedures to enable the completion of EES studies and documentation to an acceptable standard.
- i) 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.
- j) An inquiry will be appointed under the *Environment Effects Act 1978* to consider and report on the 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) of the *Environment Effects Act 1978*.

- Major Road Projects Victoria (proponent)
- Minister for Roads and Road Safety
- Minister for Energy, Environment and Climate Change
- Secretary of the Department of Environment, Land Water and Planning
- Melbourne Water
- Shire of Nillumbik
- City of Whittlesea
- Aboriginal Victoria
- Heritage Victoria

**HON RICHARD WYNNE MP**  
**Minister for Planning**

**Attachment 2**



Australian Government  
Department of the Environment and Energy

**Notification of  
REFERRAL DECISION AND DESIGNATED PROPONENT – controlled action  
DECISION ON ASSESSMENT APPROACH**

**Yan Yean Road Stage 2 Upgrade, Victoria (EPBC 2018/8371)**

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

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<b>proposed action</b>	To duplicate (from two to four lanes) approximately 5.5 km of the existing Yan Yean Road, from Kurack Road in the south to Bridge Inn Road in the north, and to undertake associated construction, in Victoria [See EPBC Act referral 2018/8371].
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<b>decision on proposed action</b>	The proposed action is a controlled action.  The project will require assessment and approval under the EPBC Act before it can proceed.
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<b>relevant controlling provisions</b>	<ul style="list-style-type: none"><li>Listed threatened species and communities (sections 18 &amp; 18A)</li></ul>
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<b>designated proponent</b>	DEPARTMENT OF TRANSPORT  ABN 69 981 208 782
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<b>assessment approach</b>	The project will be assessed under the assessment bilateral agreement with Victoria.
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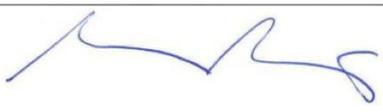
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**Decision-maker**

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<b>Name and position</b>	James Barker Assistant Secretary Assessments and Governance Branch
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<b>Signature</b>	
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<b>date of decision</b>	2/4/2019
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### **Attachment 3**

#### **Amended procedures and requirements under section 8B(5) of the *Environment Effects Act 1978*.**

Under the declared state of emergency in response to the coronavirus pandemic, conventional exhibition of environment effects statements (EES) is not possible. Physical display of printed copies of the EES in public places cannot occur. Similarly, arrangements with respect to formal hearings of inquiries under the Environment Effects Act will also differ, if Stage 3 or other restrictions are still in force at the time of an inquiry.

Accordingly, the procedures and requirements applying to the EES, issued on 14 October 2018 in accordance with section 8B(5) of the Act and the *Ministerial guidelines for assessment of environmental effects under the Environment Effects Act 1978*, are amended as follows.

- (a) The EES is to be exhibited for a period of 30 business days for public comment, or such other period as the Minister may subsequently direct in writing.
- (b) No less than two weeks before the first day of the public exhibition period, the proponent must place notices in newspapers and on-line, or otherwise communicate with known interested parties, to:
  1. foreshadow the intention to commence formal exhibition;
  2. note the impossibility of providing exhibition copies for physical inspection at public exhibition places;
  3. describe intended on-line availability of the EES and related documentation for exhibition purposes; and
  4. invite potential submitters to register to receive EES documents on USB media, and for those who may have accessibility issues or, where electronic options are impracticable, in hard copy.
- (c) Where hard copy documents are reasonably requested, the proponent must provide hard copies of:
  1. the EES summary document and mapbook free of charge, and the EES Main Report for a modest charge aligned with postage costs, unless instructed otherwise by the Department of Environment, Land, Water and Planning's (DELWP) Director Impact Assessment; and
  2. other EES attachments or EES technical appendices, subject to payment of an appropriate fee, having regard to costs of printing and postage and the circumstances of the request, unless instructed otherwise by DELWP's Director Impact Assessment.
- (d) The proponent must dispatch requested USB media and hard copies to registered addresses within a week of receipt of each registration (and payment, where relevant) or in time for the commencement of the exhibition period, whichever is the later.
- (e) The inquiry that I will appoint under the Environment Effects Act, subject to the approval of the Governor in Council, to consider the environmental effects of the proposal is to be conducted by formal hearing in the most practicable manner available under the prevailing circumstances. That might, if necessary, include the use of video conferencing or other comparable technology.
- (f) The proponent must arrange for recordings to be made of formal hearings of the inquiry, whether held conventionally or remotely, subject to any directions from the inquiry chair, and must cause recordings to be posted on-line as quickly as practicable. The proponent must post links to the recordings on its project website as soon as practicable after each day of hearings. DELWP must post links to the recordings on its relevant web pages as soon as practicable after each day of hearings.

## **Notification**

The following parties (proponent and relevant decision-makers) are to be notified of these amended procedures and requirements in accordance with section 8B(4)(a)(i) and 8B(5) of the Environment Effects Act:

- Major Road Projects Victoria (proponent);
- Minister for Roads and Road Safety;
- Minister for Energy, Environment and Climate Change;
- Secretary of the Department of Environment, Land, Water and Planning;
- Managing Director Melbourne Water;
- Mayor of Shire of Nillumbik;
- Chair of Administrators of City of Whittlesea;
- Executive Director Aboriginal Victoria; and
- Executive Director Heritage Victoria.

**HON RICHARD WYNNE MP**  
**Minister for Planning**

**Date:**            /        /