



Western Distributor Planning Approval Pathways Report

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Executive Summary

This report outlines the recommended approval pathways for the three packages of work that form part of the Western Distributor Project.

The recommended approval pathway for each work package is summarised below:

- **Western Distributor, West Gate Freeway Widening and CBD access ramps (Western Distributor Works):** a planning scheme amendment (**PSA**) under section 20 of the *Planning and Environment Act 1987 (P&E Act)* informed by an assessment under the *Environment Effects Act 1978 (EE Act)*, on the basis that the scale and complexity of the Western Distributor Works warrants a comprehensive and integrated assessment of potential significant environmental effects, including an independent inquiry process;
- **Webb Dock Access Improvement Works (Webb Dock Works):** a combined planning scheme amendment and planning permit under Division 5 of Part 4 of the P&E Act, noting that these works are minor in comparison to, and physically separate from, the Western Distributor Works, are to be located within existing impacted road reserves or on Crown land (temporarily reserved) and do not have the potential for significant environmental effects that would require an assessment through a formal process. The temporary reservation will however need to be removed under the *Crown Land (Reserves) Act 1978*;
- **Monash Freeway Upgrade (Monash Freeway Works):** a planning scheme amendment under section 20 of the P&E Act, in the event that this is necessary. Initial assessment indicates that no planning permission is necessary in respect of these works which are to be constructed entirely within the existing freeway reserve, previously cleared of native vegetation and with no potential for significant environmental effects.

1 Introduction

This report provides an assessment of the options to obtain project approvals for the different packages of work to be delivered as part of the Project.

1.1 Objectives

The objectives of the planning approvals strategy are to:

- Establish robust and (where necessary) flexible planning assessment and approval pathways for the three separate work packages of the Project, that are:
 - in proportion to their likely impacts;
 - capable of identifying avoidance and mitigation measures to minimise adverse impacts during construction and operation; and
 - in the case of the Western Distributor Works, capable of responding to either a State or Transurban procurement process.
- Complete the assessment and approval processes for the different parts of the Project in a manner which facilitates commencement of construction of the Western Distributor Works in early 2018, completion of the Webb Dock Works in December 2017 and the Monash Freeway Works in 2018.
- Limit the potential for review of approvals granted for the Project.
- Enable effective community and stakeholder engagement on the likely impacts of the Project.
- Ensure the efficient and timely planning and environmental assessment of the Project is also credible, robust and "fit for purpose".

1.2 Overview

The proposed Project comprises three distinct works packages:

- Western Distributor, West Gate Freeway Widening and CBD access ramps (**Western Distributor Works**);
- Webb Dock Access Improvement Works (**Webb Dock Works**); and
- Monash Freeway Upgrade (**Monash Freeway Works**).

Justification for separation of the Project into these three work packages is addressed in the Project delivery options report.

While the proposed Project "as a whole" responds to the strategic need for upgraded and improved transport infrastructure particularly in the west of Melbourne, the materially different nature of three work packages warrant their consideration under separate and discrete assessment and approval pathways.

Each of these pathways are discussed individually in the sections below.

2 Western Distributor

The procurement process for delivery of the Western Distributor Works will not be known until the State completes its assessment of Transurban's proposal. As such, the preferred assessment and approval pathway needs to be sufficiently flexible to accommodate either a State or Transurban procurement process.

2.1 Summary of the works

The Western Distributor Works comprise the following key components:

- a new 3 x 3.5m lane tunnel with 1m shoulders for a length of 1.6km, with portals located between the West Gate Freeway and Hyde Street (southern portal) and east of Whitehall Street, north of Somerville Road and west of the Maribyrnong River (northern portal);
- single span bridge across Maribyrnong River, with three lane viaducts above Footscray Road with direct access to the Port of Melbourne at Mackenzie Road and Appleton Dock Road;
- connections to CityLink via the existing Dynon Road ramps, and access to Docklands, West Melbourne and central/inner City via ramps onto Footscray Road with additional connections to Dynon Road and Wurundjeri Way through construction of a new CBD Bypass road between Wurundjeri Way and Dynon Road; and
- widening of the existing West Gate Freeway by two lanes in each direction to provide overall capacity of six lanes each direction between Williamstown Road and M80, collector-distributor carriageways, elevated ramps, structures and surface road connections including a new connection at Hyde Street

In respect of the Western Distributor Works, most of the proposed works associated with the upgrade of the West Gate Freeway lie within the existing road reserve, however substantial components of the Western Distributor component including elevated structures, tunnel portals and bridge crossings of Stony Creek, the Maribyrnong River and Moonee Ponds Creek will lie outside existing road reserves or road zones.

Temporary and permanent land acquisition will be required to facilitate construction of the Western Distributor Works, principally in relation to the tunnel portal locations, construction and laydown areas, and the elevated structures associated with the eastern connections.

Both construction and operation phases of the Western Distributor Works have the potential for significant environmental effects due to the scale and environmental setting of the proposed works. Potential for environmental effects are likely to include:

- changes to air quality, particularly associated with the design and location of tunnel ventilation structures and re-distribution of vehicle traffic flow;
- potential impacts on biodiversity and associated ecological values, including on remnant native vegetation and species of national and State environmental significance;
- soil and groundwater contamination disturbance particularly associated with construction of the tunnel;
- potential changes to surface water quality and aquatic biodiversity of Maribyrnong River, Kororoit Creek, Moonee Ponds Creek and Stony Creek due to the waterway crossing construction works;
- Aboriginal cultural heritage in the vicinity of the Project infrastructure, particularly near Kororoit Creek;
- potential for impact on heritage structures including Stony Creek Draw Bridge and Footscray General Cargo Wharf;

- greenhouse gas emissions and solid and liquid waste that might be generated by the project both during construction and operation;
- changes to the amenity and environmental quality of the adjacent residential areas from construction and operation, particularly due to increased noise and dust levels, vibration and traffic disruption;
- impacts on reserved Crown land north of Princes Freeway/West Gate Freeway and east of Williamstown rail line and Stony Creek Reserve and some public open space;
- economic and social impacts to businesses and residents;
- land acquisition of commercial and industrial premises, and surrender and divestment of interests in public land in the Project area; and
- impacts during construction including disposal of spoil and contaminated soil from tunnelling.

2.2 Planning Approval Requirements

Comprehensive and integrated impact assessment of the Western Distributor Works is likely to be required, as the works have the potential for significant environmental effects on biodiversity assets and values, water environments, air quality, Aboriginal and cultural heritage and public amenity, including landscape and visual values and increased traffic noise during both the construction and operation phases. Formal impact assessment process will enable identification of avoidance and mitigation measures to minimise adverse impacts on the environment.

The Western Distributor Works will require planning approval under the P&E Act in the form of a Planning Scheme Amendment (PSA) providing site specific planning controls permitting use and development of land for the purposes of the Western Distributor Works, to the exclusion of all other provisions in the relevant planning schemes.

The Western Distributor Works will also require a number of key approvals for which the State will be responsible to obtain, including:

- an Environment Protection Authority (EPA) works approval under the Environment Protection Act 1970 (EP Act) in respect of the tunnel ventilation system;
- an approved Cultural Heritage Management Plan under the Aboriginal Heritage Act 2006 (AH Act); and
- approval from the Commonwealth Minister for Environment, in the event that the Project is determined to be 'a controlled action' under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).

Obtaining of all secondary approvals required for the Western Distributor Works will be the responsibility of either Transurban or Project Co, depending on the procurement process adopted. These include approvals under the Heritage Act 1995, Water Act 1989 and Road Management Act 2004.

2.3 Approval pathways available

The Western Distributor Works are likely to generate wide community interest and the selected planning assessment and approval pathway needs to be transparent and provide adequate opportunity for community consultation and stakeholder engagement.

There are three main planning assessment approval pathways available for the Project. These are:

- EES and PSA (recommended): an impact assessment via Environment Effects Statement (EES) under the EE Act and planning approval by way of a PSA under the P&E Act (options include concurrent EES and PSA processes or sequential approach with a PSA under section 20 of the P&E Act to follow the EES assessment process).
- PSA only: limited environmental impact assessment as part of a planning approval process by way of a PSA under the P&E Act;
- CIS and single approval decision: an impact assessment by way of a Comprehensive Impact Statement (CIS) and subsequent Planning Minister's approval decision granting all key planning and environmental approvals under the MTPF Act;

Each of these processes are discussed in further detail below.

2.3.1 PSA concurrently with, or subsequent to an EES

An EES is required for works having the potential to have a significant impact on the environment at a State or regional level, requiring a comprehensive and integrated assessment addressing a range of issues including economic, social and heritage issues. An EES is also required for declared "public works" determined by the Planning Minister as capable of having a significant effect on the environment. The recently declared Melbourne Metro Rail Project is an example on point.

Normally, a project with the potential for significant environmental effects would be referred by the Project Proponent to the Planning Minister for a decision on the need for an assessment under the EE Act. The timeframe for the Minister's decision recommended in the Ministerial Guidelines made under the EE Act is 20 business days.

However in the case of the Western Distributor Works, the Minister has a discretionary power to declare the works as 'public works' under section 3 of the EE Act, if the Minister considers that the works will have, or are capable of having, a significant effect on the environment. This option is available to the Minister as the State will be responsible for undertaking the assessment and securing planning approval for the Western Distributor Works, irrespective of whether a State or Transurban procurement process is adopted.

If the Minister for Planning makes a declaration under section 3 of the EE Act, there will be no need to formally refer the Western Distributor Works to the Minister, and an EES will need to be prepared to characterise and assess the potentially significant environmental, social and economic effects of the Western Distributor Works.

A key feature of the EES assessment process is that it is an assessment process only, with requisite approvals to be obtained from relevant statutory decision makers following completion of the assessment. This enables any necessary adjustments to be made to the project before seeking requisite approvals including adjustments in response to the assessment process and the Planning Minister's Assessment report in particular.

There is also opportunity to co-ordinate approvals with the EES assessment process, including EPA works approval and planning scheme amendment. If an application for an EPA works approval is advertised concurrently with the EES and approval granted substantially in accordance with the Minister's Assessment under the EE Act, then there is no third party right of review against the EPA's works approval decision.

A planning scheme amendment can also be advertised concurrently with the EES, and a single panel appointed under both the EE Act and the P&E Act to consider submissions and report back to the Planning Minister under both Acts (where the Planning Minister is also the planning authority for the amendment). However this combined process has the potential to delay completion of the process.

2.3.2 PSA process only

The Western Distributor Works require planning approval under the P&E Act, in the form of a planning scheme amendment. A planning scheme amendment process provides for a more limited assessment of project impacts and community engagement, than an EES assessment process.

Under the P&E Act, the process for obtaining a planning scheme amendment can take one of 3 main forms:

- a) a fully exhibited PSA with a Panel appointed under the P&E Act to consider submissions and provide a report with its recommendations to the planning authority after conducting a formal hearing and considering all submissions;
- b) appointment by the Planning Minister of an Advisory Committee under the P&E Act to provide independent advice to the Planning Minister on any matter that the Minister refers to the Committee including advice on any draft PSA prepared for the project; or
- c) a Ministerial amendment under section 20 of the P&E Act where the Minister exempts himself from the usual exhibition and notice requirements where the Minister is of the opinion that compliance with any of those requirements is not warranted or that the interests of Victoria or any part of Victoria make such exemptions appropriate.

Each of the processes in (a) and (b) above are well tested, comprehensive and transparent planning assessment and approval processes.

The process in (c) is also a robust and proven process, however this process is unlikely to be appropriate for projects with potential for significant adverse effects, where the Minister's decision is not informed by independent advice and assessment either by way of assessment under the EE Act or by an Advisory Committee under section 151 of the P&E Act.

A PSA may introduce project specific planning controls to the exclusion of all other planning controls in the relevant planning schemes.

Project specific planning controls introduced through a planning scheme amendment have formed a key part of the approvals required for almost all recent major transport and infrastructure projects delivered by the State in Victoria including Peninsula Link, Regional Rail Link (Sections 1 and 2), Desalination Project and South Morang Rail Extension.

2.3.3 CIS and single approval decision under the MTPF Act

The MTPF Act has as its purpose to facilitate the development of major transport projects including road projects. It contains both assessment and approval provisions in Parts 3 and 8 and a range of project delivery provisions including in relation to land assembly and land acquisition, road management powers and a specific regime dealing with utilities.

The MTPF Act applies to declared transport projects assessed by the Premier to be of economic, social or environmental significance to the State or a region of the State. A transport project can be declared for the purposes of the entire Act (including the assessment and approval provisions in Parts 3 and 8) or for the entire Act excluding Parts 3 and 8.

A key benefit of the assessment and approval processes under the MTPF Act is the ability for the Planning Minister to make a single approval decision granting all key planning and environmental approvals required for construction of a major road project including a planning scheme amendment, EPA works approval, heritage permits and consents, waterway crossing licences and

various consents and approvals under the *Road Management Act 2004*, *Wildlife Act 1975* and *Flora and Fauna Guarantee Act 1988*. An approved cultural heritage management plan and Commonwealth approval under the EPBC Act (if required) would however need to be obtained independently.

The Minister's approval decision under the MTPF Act is to be informed by an Assessment Committee report and recommendation as to whether the applicable approvals necessary for development of the declared project ought to be granted with or without conditions. Before providing its recommendation, the Assessment Committee must assess the comprehensive impact statement (**CIS**) prepared for the project, consider submissions and conduct a formal hearing.

The CIS assessment process provides a detailed and comprehensive assessment of a wide range of planning and environmental issues in relation to a project. It is particularly suited to projects with a high degree of design development, and where the impacts are capable of being assessed to enable applicable approvals required for development of the project to be granted.

The assessment and approval provisions of the MTPF Act have only been used to assess and approve a single project - the East West Link (Eastern Section) Project. However, there have been a number of projects which have been declared for the purposes of accessing the remaining provisions of the Act including Peninsula Link, Regional Rail Link (Sections 1 and 2), Western Highway Duplication (Section 1) and Melbourne Metro Rail Project.

2.4 Recommended assessment and approval pathway

Each of the assessment and approval pathways discussed above have their advantages and disadvantages.

The recommended planning assessment and approval pathway for the Western Distributor Works is an impact assessment via an EES process with the Minister's Assessment under the EE Act informing statutory approval decisions, including the planning scheme amendment which can be prepared by the Planning Minister under section 20 of the P&E Act, subsequent to the EES. This process has been applied for many major projects, including the Peninsula Link and Desalination Projects.

It is considered that the range, complexity and magnitude of issues potentially presented by the Western Distributor Works warrant a comprehensive and integrated assessment. Consequently, a planning scheme amendment process under the P&E Act without an assessment under the EE Act, is not considered adequate.

The EES assessment process under the EE Act and the CIS assessment process under the MTPF Act, each provide for a comprehensive assessment of a full range of planning, environmental, social, economic, heritage, traffic and transport related issues with adequate opportunity for community consultation and stakeholder engagement.

The EES assessment process followed by a planning scheme amendment under section 20 of the P&E Act is the recommended assessment and approval pathway for the Main Project, as:

- the EES assessment process is a well-established and widely understood process which has been successfully used on many State development and infrastructure projects. The CIS assessment process by contrast is relatively new, and is not well understood which can generate confusion and distrust in the process.
- use of the CIS assessment process requires amendment of the Project Proposal Guidelines to make them consistent with amendments made to the MTPFA in 2013, whereas no amendment is necessary before using the EES assessment process.
- the EES assessment process is more flexible than the CIS assessment process. An EES assesses the environmental effects of a project and whether it is capable of providing acceptable outcomes. It culminates in the Minister's Assessment which *informs* statutory

decision makers on whether or not to grant the requisite approvals for the project and the conditions to be imposed.

- there is greater potential for the project's design to be developed concurrently with an EES assessment process than with a CIS assessment process. Under a CIS, the design needs to be developed with sufficient certainty to enable all relevant application material to be included in the CIS for each applicable approval sought for the project.
- there are additional documentation requirements in the preparation of a CIS over an EES. As a CIS is both an assessment and approvals process, the CIS is to contain much more information on the applicable approvals required for the project than an EES where the application material is prepared independently of the EES. In addition to the application material, the CIS must also contain the requirements of all applicable laws applying to the approvals sought, and details of the applicable law criteria under such laws and how such criteria apply to the project.
- there is arguably less risk of challenge to the approval decisions by statutory authorities following an EES assessment process than the Minister's approval decision under the MTPFA following a CIS assessment process.
- use of the EES assessment process does not prevent use of the MTPFA project delivery provisions following a planning scheme amendment authorising use and development of the Project and declaration of a project area.
- if the Project is a controlled action under the Commonwealth EPBC Act, there is a requirement to prepare and exhibit a revised CIS under the accredited assessment requirements of the Bilateral Agreement between the Commonwealth and the State, which does not exist for an EES assessment process, and which can add to the length of the CIS assessment process.
- there is otherwise no significant time difference between the two assessment and approval processes under either a Transurban or State procurement process, provided there is careful management of the EES assessment process to ensure that it is conducted in a time efficient manner.

3 Webb Dock Access Improvements

3.1 Summary of the works

Webb Dock Works: this package comprises the following two key components which are physically and functionally separate from the Western Distributor Works:

- widening of Cook Street from Todd Road (eastbound) to the entrance of M1, which works are proposed to be delivered by VicRoads consistent with the already committed widening of Cook Street (westbound);
- a separated carriageway along the north side of the West Gate Freeway providing direct access from Cook Street to CityLink, together with associated ramp metering, [REDACTED]

The works are to be located within existing impacted road reserves or on Crown land (temporarily reserved) and do not have the potential for significant environmental effects that would require an assessment through a formal process.

3.2 Approvals requirements

The Webb Dock Works are separate from the Western Distributor Works and do not trigger the need for a formal impact assessment, because the works are to be constructed within existing impacted road reserves or on Crown land (temporarily reserved) with no remnant native vegetation and no potential for significant environmental effects.

These works will require a planning scheme amendment under section 20 of the P&E Act and a planning permit in relation to altering access to a category one Road Zone in respect of at least two access points.

The works will also require the removal of the temporary reservation over Crown land under the Crown Land (Reserves) Act 1978.

4 Monash Freeway Upgrade

4.1 Summary of the works

This package includes an additional lane in each direction from EastLink to Clyde Road, widening to the median with structural upgrades as required, and associated ramp metering and arterial network management of the South Gippsland Freeway, which works are, at this stage, proposed to be delivered as a State led D&C procurement, subject to further analysis.

4.2 Approvals requirements

The Monash Freeway Upgrade will be undertaken entirely within the existing road reserve with the additional lanes to be constructed in the median. Structural upgrades and bridge expansions will be required over waterways which, subject to further assessment, may warrant referral under the EPBC Act. An additional noise barrier may be required adjacent to the outbound off-ramp at Heatherton Road, with a height of 2 metres and a length of 100 metres, however the predicted change in noise level due to ramp widening has been assessed as negligible.

Based on initial assessments, no planning permission is considered necessary in respect of these works which are to be constructed entirely within the existing freeway reserve, previously cleared of native vegetation and with no potential for significant environmental effects.

