

**MELBOURNE METRO RAIL PROJECT ENVIRONMENT EFFECTS STATEMENT**  
**INQUIRY AND ADVISORY COMMITTEE**

**MMRA TECHNICAL NOTE**

**TECHNICAL NOTE NUMBER:** 041  
**DATE:** 19 August 2016  
**PRECINCT:** All Precincts  
**EES/MAP BOOK REFERENCE:** EES Chapter 23

**SUBJECT:** Environmental Management Framework  
Response to Section 16 of the 'Preliminary  
Matters and Further Information' Request

**NOTE:**

1. This Technical Note responds to the matters identified in Section 16 of the 'Preliminary and Further Information' request made by the IAC on 25 July 2016 (the "**Request**").
2. For ease of reference, this Technical Note adopts the topic headings set out in the Request and reproduces the relevant 'references' and 'requests' prior to setting out MMRA's response.

**16.1 Environmental management framework**

**(i) Reference**

*The EES documentation explains the proposed level of planning control to apply to the Project. For example in EES Volume 3, Chapter 23 which details the Environmental Management Framework for the Project - section 23.6 (page 23-9) and table 23-2 (page 23- 11); in Appendix A (Technical Folder 1 of 14) which includes a Draft Incorporated Document at Appendix B and the Explanatory report for Amendment GC45; in the Environmental Risk Assessment Report (Risk register) at Appendix B (Technical Folder 1 of 14).*

*The IAC is interested in the ability of these controls to construct and deliver the Project with the stated outcomes.*

**(ii) Request**

*The IAC requests advice on:*

93. *whether it is proposed that the recommended mitigation and management measures contained in the Risk Register for both the construction phase and the final form of the Project will be incorporated into the Environment Performance Requirements in the Environmental Management Framework (EMF) in the Incorporated Document.*
94. *If so, how it is proposed that this will occur, and if not, why not.*

**MMRA Response:**

3. It is not proposed to incorporate the mitigation and management measures from the Risk Register into the Environment Performance Requirements (“EPRs”) in the Environmental Management Framework (“EMF”) and onwards into the Incorporated Document.
4. The specialist studies undertaken by technical experts as part of the EES provide the foundation for the EPRs. Each EPR relates to identified environmental risks which it is designed to address, and the specialist reports identify mitigation measures that could be implemented in order to achieve the relevant EPR. This provides assurance that the identified risks are able to be properly mitigated.
5. EPRs define the environmental outcomes to be achieved during the design, construction and operation regardless of the design solutions adopted. This performance based approach aims to ensure that significant impacts are appropriately mitigated, while allowing for a delivery model with sufficient flexibility to encourage innovation by the private sector to determine how any recommended EPRs would be achieved.
6. If the EES approach were to prescribe mitigation measures, there is the potential that better ways of designing and delivering Melbourne Metro would not be pursued by contractors as formal changes to approvals would need to be pursued to vary from the mitigation measures, which would incur time delays and add cost. The flexibility in the means of meeting performance standards as set out in the EPRs is an important aspect of government procurement in achieving overall value for money.
7. Since publication of the EES, the EPRs have been refined to reflect the outcomes of further investigations, ongoing stakeholder consultation, and in response the MMRA’s expert witness recommendations. The EPR proposed by MMRA are now set out in the EPR Table IAC Version – Revisions 1. It is envisaged that there will be further refinements to the EPRs through the course of the hearing.
8. It is expected that, where any issues are identified in the future during project delivery, which require further change to the EPRs, this would be addressed through further amendment to the EPRs as set out in the EMF approved by the Minister for Planning under the Incorporated Document.

Technical Note 043 provides further information on complaints management, response and escalation where required. Resolution of complaints is audited, so that complaints or issues that cannot be, or are not being, resolved under the approved EPRs could trigger MMRA to propose an amended EPR to address the situation. Under the Incorporated Document, any amendment to the EPR would also need to be drafted to the satisfaction of the Minister for Planning.

9. This approach is already sufficiently robust and implemented into the planning system because:
  - a. Clause 5.2 of the Incorporated Document states that the project must be carried out generally in accordance with the EMF and the EPRs as endorsed by the Minister for Planning; and
  - b. The proposed amendment to clause 61.01 of the relevant planning schemes under planning scheme amendment GC45, which would make the Minister for Planning the responsible authority for administration and enforcement of the relevant planning schemes in respect of the Incorporated Document and any other provision of the scheme as it relates to the Melbourne Metro.
10. The expert evidence of Mr Milner identifies (at section 7.2) the 'extraordinary circumstances' of Melbourne Metro that justify the concentration of decision making under the planning scheme at a high and central level of government and under the stewardship of a Minister.
11. In addition to the Minister for Planning's substantial power of oversight over the project in administering and enforcing the Incorporated Document, the Minister would have the usual powers of a responsible authority as to enforcement under Part 6 of the *Planning and Environment Act 1987*.

## **16.2 Planning scheme amendment and associated documentation**

### **(i) Reference**

*The Planning Scheme Amendment and associated documentation includes reference to the EMF at clause 5.2 of the Draft Incorporated Document. At section 23.4 (EES Main Report Vol 3, p23-6) and at table 23-2 (p23-11), there is detail about the role and responsibilities of various independent audits/review of the Project against the Environmental Performance Requirements.*

### **(ii) Request**

*The IAC requests advice on:*

95. *whether these reporting, independent audits and review mechanisms are, or should be, included in the Draft Incorporated Document.*

## **MMRA Response:**

12. In line with typical major infrastructure projects, the EMF sets out how project delivery would be regularly monitored, reviewed and audited. The results of these activities would be reported to MMRA under the various contractual packages and also, where necessary, to relevant authorities. These requirements will also be contained in MMRA's overall Project Environmental Management System ("**EMS**").
13. MMRA considers that the EMF is the appropriate location for these monitoring and review mechanisms to be elaborated, rather than be specifically set out in the Incorporated Document. The Minister for Planning's oversight of the proposed governance structure, and the effective implementation of the reporting and auditing mechanisms, is given effect through clause 5.2 of the Incorporated Document and clause 61.01 of the relevant planning schemes, as set out above.
14. The draft EMF included at Chapter 23 of the EES sets out the proposed mechanisms to ensure effective implementation of the review and auditing mechanisms. MMRA is requiring that contractors develop and implement an EMS that is accredited in compliance with International Standard *ISO 14001:2015 Environmental Management Systems* and that aligns with MMRA's EMS. This is a requirement in the EPR EM2.
15. MMRA's overall Project EMS will, among other things, outline processes and responsibilities for environmental risk assessment, incorporate a compliance register and describe an internal and external audit program. It will also describe the project's environmental compliance system, including definitions of what constitutes a non-conformance, requirement for a non-conformance tracking register, and timeframes and responsibilities for addressing non-conformances.
16. The approach of having a MMRA Project EMS, with each contractor having its own EMS, facilitates each entity demonstrating effective management of each EPR to the extent relevant to its own work package.
17. It is therefore not proposed to include the reporting, independent audits and review mechanisms contained in the EMF in the body of the Incorporated Document as MMRA considers there are sufficient mechanisms in place to ensure they are undertaken.
18. The Minister for Planning's endorsement of the EMF (and any future material amendments) at Clause 5.2 of the Incorporated Document provides accountability that MMRA and its contractors undertake, and act on the results of, the EMF reporting, auditing and review activities.

### **16.3 Approval of strategies, guidelines and plans**

#### **(i) Reference**

*The EES documentation refers to the need for the preparation of strategies such as the Urban Design Strategy, guidelines such as for tree lopping, removal and replacement and, at Clause 5.2 of the Draft Incorporated Document, the requirement for a Construction Environmental Management Plan, a Site Environmental Management Plan and Traffic Management Plan.*

**(ii) Request**

*The IAC requests clarification on:*

- 96. the governance and approval process proposed for those strategies, guidelines and plans. In particular, who is to approve these plans, and why that person or body is appropriate for the task*
- 97. the description of these plans etc being 'endorsed' by the Minister for Planning rather than approved.*

**MMRA Response:**

19. The person or body appropriate for the task of approving strategies, guidelines or plans (referred to below as 'plans') depends on:
  - a. The nature of the plan; and
  - b. The package of works to which it relates.
20. There are three levels of plans required for Melbourne Metro :
  - a. First level plans set the strategic direction and governance of the project,
  - b. Second level plans are to be developed to guide specific programs or works in order to manage potential impacts on the community broadly, and
  - c. Third level of plans relate to more technical or specific matters in relation to detailed design or detailed construction methodology in order for the contractor to deliver the required works in accordance with the EPRs.

**First level – key strategic plans**

21. As noted above and in the expert evidence of Mr Milner, the significant investment for Melbourne Metro, and the need to balance extensive construction impacts with public benefits, means that the Minister for Planning is the appropriate decision maker for the first level of key, strategic decisions which set the framework and direction for the project, for all work packages.
22. The first level comprises, in the Incorporated Document:
  - a. The Development Plans at Clause 5.1 would be approved by the Minister for Planning, providing the Minister the opportunity to

confirm that the detailed design suitably implements the EPRs, the Urban Design Strategy and considers the views of key agencies with either statutory or strategic interest in the project works at the given locations.

- b. The EMF at Clause 5.2 would be endorsed by the Minister for Planning to ensure the Minister is satisfied that framework for managing project impacts appropriately reflects the Minister's final assessment at the end of this EES process.
  - c. The Urban Design Strategy at Clause 5.3 would be approved by the Minister for Planning to ensure the Urban Design Strategy appropriately reflects the Minister's final assessment at the end of this EES process.
  - d. The Early Works Plan at Clause 5.4 of would be approved by the Minister for Planning to ensure it appropriately reflects the Minister's final assessment at the end of this EES process.
23. Although the Incorporated Document requests the Minister for Planning to either "endorse" and "approve" plans or strategies at different clauses, MMRA is satisfied to include consistent use of the word "approve" in any updated Incorporated Document.

#### **Second level – plans addressing potentially broad community impacts**

24. MMRA is responsible for delivering Melbourne Metro and recognises that the delivery may have potentially broad impacts on the community and businesses, and that there is a need for effective governance structures to ensure that contractors appropriately address the community's expectations in managing these broad scale impacts. MMRA will therefore be responsible under the contractual provisions for approval of the second level of plans, although the approval structure will differ depending on the contractual package to which the plan relates (see below).
25. The second level plans are:
- a. Construction Environment Management Plan/s required under the Incorporated Document;
  - b. Site Environment Implementation Plans required under the Incorporated Document;
  - c. Urban Design Management Plan, to implement the Urban Design Strategy approved by the Minister for Planning under the Incorporated Document and other EPR relating to urban design, such as LV2;
  - d. Transport Management Plan (T1) and Traffic Management Plan/s as required by the Incorporated Document;

- e. Operations Environment Management Plan;
  - f. Community and Stakeholder Engagement Management Plan;
  - g. Business Disruption Plan (B2);
  - h. Community and Business Involvement Plan (SC3); and
  - i. Construction Noise and Vibration Management Plan (NVB – see EPR Table IAC Version – Revisions 1).
26. As explained in the EES, MMRA proposes to address the particular technical and commercial complexities of Melbourne Metro by procuring it through a number of different work packages. The State has existing contractual relationships with train and tram operators, and its ability to effectively implement works with these parties is well understood.
27. Submissions on the EES have largely focused on the works to be delivered as Early Works, the Rail Infrastructure Alliance (portals), and by the Public Private Partnership (PPP) Contractor (Tunnel and Stations package), as the EES identified that these construction works are expected to have the greatest potential impact on local stakeholders and communities. For all of these works, MMRA remains a responsible party assisting the Secretary to the Department of Economic Development, Jobs, Transport and Resource in exercise of the powers and functions as project proponent under the *Major Transport Projects Facilitation Act*. However, the role of MMRA for each package will be slightly different, as appropriate under the different contractual relationships.
28. In this context, MMRA notes that a PPP is a proven infrastructure procurement model that is increasingly being used by governments across Australia alongside more traditional methods to deliver infrastructure to the community. PPPs in Victoria have successfully delivered 24 projects to date, including schools, hospitals, water infrastructure, correctional and court facilities, EastLink, CityLink, Peninsula Link, and the redevelopment of Southern Cross Station.
29. The aim of a PPP is to deliver improved services and better value for money, primarily through appropriate risk transfer, encouraging innovation, greater asset utilization and an integrated whole-of-life management, underpinned by private financing. The proposal to procure the Melbourne Metro tunnel and stations as a PPP was made in accordance with the National PPP Guidelines. Requirements to achieve technical and procedural performance requirements, and structures for auditing and reporting including an Independent Reviewer, are key aspects of market expectations of a PPP. In order to achieve best value for money, it is important to utilise these typical governance structures which have been successful on previous PPP projects in Victoria.

30. Each EPR will apply to each work package, to the extent relevant to it. Contractors will be required to cooperate and coordinate with each other to facilitate delivery of the project so that works from all packages cumulatively comply with the EPRs.
31. Plans mentioned in the Incorporated Document and EPRs would be prepared by each contractor to the extent relevant to their work package.
32. For second level plans, approval would be as follows:
  - a. For Early Works, the Rail Infrastructure Alliance and the Rail Systems Alliance, second level plans would be approved by MMRA because of MMRA's role of directing and overseeing project delivery and in directing resolution of any identified non-compliance; and
  - b. Where prepared by the PPP Contractor, plans would be approved by MMRA and Independent Reviewer under the PPP review procedures for PPP contracts. The role of the Independent Reviewer is well established in the delivery of PPP projects in Victoria.

**Third level – other plans required by EPRs**

33. Third level plans include all other plans listed in the EPRs, other than the specified level 2 plans. These plans would reflect the chosen contractor's methods of implementing the EMF and other regulatory requirements rather than the strategic direction and governing requirements for the Project, or matters of less broad community impact. The approval structure for third level plans will also depend on the contractual package, as follows:
  - a. For Early Works, Rail Infrastructure Alliance and Rail Systems Alliance, third level plans would be approved by MMRA because of MMRA's role in delivering the project; and
  - b. Where prepared by the PPP Contractor, third level plans would be accepted by the Independent Reviewer under typical PPP review procedures for PPP contracts, which includes review and comment by the State (being MMRA for Melbourne Metro), and confirmation that the plan complies with all statutory approvals, the Incorporated Document and the EPRs.

**CORRESPONDENCE:**

No correspondence.

**ATTACHMENTS:**

No attachments.