

MMRA Response to submissions relating to the proposed Draft Planning Scheme Amendment GC45 (PSA)

7 October 2016

Issue raised	Submitter raising issue	MMRA response
<i>Incorporated Document</i>		

- 1. Consultation on Development Plans
 - requirement for consultation
 - entities to be consulted

MM159; MM180;
MM231; MM263;
MM318

MM257 City of Stonnington

MM314 Maribyrnong City Council

Evidence of R Milner

The Incorporated Document (version 5 September 2016) provides at clause 5.1.4 that a draft Development Plan be:

- provided to specified relevant agencies for consultation; and
- made available for public inspection and comment.

Clause 5.1.6 requires that a summary of that consultation and response to issues raised in consultation be provided when the draft Development Plan is submitted to the Minister for approval.

In response to matters canvassed in the evidence of Mr Milner, clause 5.1.4 c) of the Incorporated Document (version 5 September 2016) proposed that a draft Development Plan be made available for public inspection on a clearly identifiable Project website for a period of 14 days, and that details be provided of the entity to which comments can be directed during that time. A notice requirement has been included at 5.1.4 (version 26 September 2016) to provide further certainty about the inspection and comment process. Both of these are proposed as providing an appropriate balance of direction and flexibility as to implementation of the public inspection requirement.

Although a number of submitters requested specific inclusion in the Incorporated Document as entities to be consulted, MMRA considers that the above amendments to the Incorporated Document appropriately formalise the requirement for consultation and a response to issues raised in consultation. The Environmental Performance Requirements (EPR) Version 2 (5 September 2016) also provide strengthened provisions for consultation and information sharing with affected entities as appropriate to their circumstances.

Issue raised	Submitter raising issue	MMRA response
<p>2. Development Plans –scope and level of detail required by the Incorporated Document.</p> <ul style="list-style-type: none"> - matters to be included in a Development Plan under clause 5.1.3; - whether Development Plans should be provided for all tunnels and underground station infrastructure, not just for stations and public areas up to ticket gate. 	<p>MM365 City of Melbourne</p> <p>City of Melbourne submission received 5 October 2016</p>	<p>The City of Melbourne submission acknowledges that ‘any requirements for consultation about the detailed design of project infrastructure beyond the ticketed areas would be unnecessary’ but submits that the ticketed areas impacts on the public areas for which Development Plans are required, which cannot be carried out in the absence of detail for the whole of the project infrastructure.</p> <p>The Incorporated Document does not require specific Development Plans to be submitted for every underground aspect of the Project because these matters are dealt with by numerous other plans, frameworks and documents required under the EPR and the Incorporated Document itself. The location of underground structures will be constrained by the Project Land to which the Incorporated Document applies. Because of the technical and practical constraints in designing and constructing significant underground station and tunnel infrastructure in developed city areas, location of available surface land for entrances and location of utilities and plant, as well as the public and workplace safety requirements, there is limited scope for design alteration of the station structures themselves. Public design elements of the stations are addressed in the Urban Design Strategy, and clause 5.3.3 of the Incorporated Document (version 5 September 2016) requires that the use and development for the Project be carried out in accordance with the approved Urban Design Strategy, regardless of whether a Development Plan is also required.</p> <p>Detailed design plans for all aspects of the Project, including stations from ticket gate onwards, will be submitted for review by an Independent Reviewer under the PPP contracts to ensure that plans are consistent with the EPR, conditions of the Incorporated Document including the Urban Design Strategy and other approvals, and MMRA’s technical requirements. In this way, an integrated review of the whole of the project infrastructure is subject to assessment and review by the appropriate entities. It is not considered appropriate for the Incorporated Document which forms part of the planning control to duplicate the regulation of these highly technical considerations. The proposed DDO will manage the interaction between the tunnels and stations infrastructure and other development either above or in the vicinity of the Melbourne Metro.</p> <p>It should be noted that the Development Plans required by the Incorporated Document would generally include the public spaces and retail uses that form part of the stations as well as the station entrances and forecourt or entrance settings, and these would also be available for public inspection and comment. It is not considered appropriate for detailed plans of the technically sensitive aspects of this significant public infrastructure to be made publicly available.</p> <p>It is submitted that the Incorporated Document provides an appropriate delineation of areas for which Development Plans must be approved following consultation.</p>

Issue raised	Submitter raising issue	MMRA response
<p>3. Preparatory Works condition should be removed because it is unnecessary and potentially confusing</p>	<p>MM365 City of Melbourne</p>	<p>Preparatory Works envisaged under clause 5.6 of the Incorporated Document may be works preparatory for the Early Works, or for other work packages for the Project. Early Works are outlined and assessed in the EES. As set out in the evidence of R Milner, the planning system is familiar with the concept of Preparatory Works and it is not expected that this Project would cause particular difficulty in interpretation as to what may be Preparatory Works and what constitutes main project works for which an Early Works Plan or Development Plan should be prepared and approved. Refinements to clause 5.6 in the Incorporated Document (version 26 September 2016) further clarify the scope and intent of Preparatory Works and better balance the need for accountability and efficiency in the planning approval.</p> <p>It is acknowledged that the Preparatory Works condition in clause 5.6 covers some works for which a permit would not normally be required and this is made clear at clause 5.6.2a) (version 26 September 2016). However, other Preparatory Works within the listed categories may require planning approval. It is neither possible nor practicable at this stage of the Project to identify in detail all the works that a contractor may wish to undertake as Preparatory Works and consider whether planning approval would be required. Further, elsewhere in the Incorporated Document the project is subject to controls beyond what would normally occur in the planning scheme eg public inspection and comment on Development Plans where, under the ordinary operation of the planning scheme, no consultation would be required under the Capital City Zone at CBD North</p> <p>MMRA therefore submits that the Preparatory Works condition should remain, to be relied on and complied with if and when required, in order to fulfil its purpose in facilitating the Project.</p>
<p>4. Preparatory works condition 5.6 should be amended so that preparatory works cannot occur before relevant management plans have been approved to manage impacts or disruption to essential infrastructure services (e.g. water, sewer, power and communications), including consultation in development of those plans.</p>	<p>MM180</p>	<p>It is typical for an Incorporated Document to allow for Preparatory Works to occur prior to development and approval of plans for major project works. Refinements to clause 5.6 (version 26 September 2016) further clarify the scope and intent of Preparatory Works. It is not expected that this project would raise material new issues of interpretation as to what are relevant Preparatory Works and what falls outside this description and therefore should be subject to the other controls in the Incorporated Document including preparation of management plans.</p>
<p>5. Extent of Project Land - the Project Area identified in the PSA is more extensive than the Project Area in the EES. Clarification is sought regarding the extent of works in the</p>	<p>MM365 City of Melbourne</p>	<p>The Project Land in the maps to be included in the Incorporated Document does not exactly correspond to the land within the Project Boundary for each Precinct as set out in the EES Map Book. The Project Boundary for each Precinct provided a minimum area for</p>

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PSA Project Area and whether the impacts from these works have been assessed as part of the EES.

MM314 Maribyrnong City Council

MM100; MM207;
MM253; MM310;
MM367

Tabcorp submission received 3 October 2016

assessment under the EES to ensure consistency. In particular, where utilities are to be relocated for the Project, utilities generally extend from the land within the Project Boundary and continue along roadways. MMRA considers that the impacts of these works have been assessed through the EES, and that it is appropriate for the Project Land to include the additional area where works may be required, to avoid the potential need for minor planning permits to address part of a utility relocation where part is permitted through the Incorporated Document.

In some areas, such as at the University of Melbourne, the exact location where utilities are to be relocated is not yet known, so the Project Land provides an appropriate level of flexibility. MMRA considers that further consultation in respect of these matters is appropriately addressed through Technical Note 046 and:

- Consultation requirements for Development Plans and Early Works Plans under the Incorporated Document (version 5 September 2016 and 26 September 2016); and
- Consultation requirements in EPR Version 2 (5 September 2016) , in particular SC3, B2, NEW NVA.

MMRA does not propose to remove any property from the Project Land as requested by some submitters, unless the land is no longer required for the Project. Project Land maps 9 and 13 have been updated to reflect changes to the Project set out in Technical Notes 56, whilst Project Land maps 7, 8 and 15 have been updated in the final draft Incorporated Document tabled to the Committee. It is noted that the Incorporated Document applies only to use and development for the Project as set out in clause 2.0 of the Incorporated Document, so that unrelated ongoing or future use and development by a landowner is not subject to the controls in the Incorporated Document. Where land is to be temporarily occupied or compulsorily acquired for the Project (including in stratum), the provisions of the *Major Transport Projects Facilitation Act 2009* and *Land Acquisition and Compensation Act 1976* will apply. Technical Note 028 sets out further information in respect of communications with potentially affected landowners to date, and future process.

In response to submission MM314 (Maribyrnong City Council), MMRA advises that the Project Land generally reflects the Project Boundary for the Western Turnback Precinct, with some additional allowance for works that may be necessary in the adjacent local roads. The Project Boundary in this location is greater than the proposed construction footprint in the EES map book, because the exact extent of construction footprint is not yet known. The impacts of construction at the Western Turnback have been assessed through the EES, and consultation with Maribyrnong City Council as to the detail of works in this location continues ongoing.

Issue raised	Submitter raising issue	MMRA response
<p>6. The proposed Incorporated Document does not facilitate the integration of over site development as described in the Urban Design Strategy. The PSA should be modified to include reference to over site development specifically at Arden, CBD North and CBD South.</p>	<p>MM365 City of Melbourne MM376 VPA MM253</p>	<p>The Incorporated Document is not intended to provide approval for over site development. The bidders for the PPP component of the project will be required to include proposals for over site development at CBD North and CBD South that integrates with, and complements, the primary public transport purposes of those sites. Separate planning approval will be required for over site development under the Melbourne Planning Scheme. Those future planning approvals will also necessarily require proposed over site development to be consistent with the purposes of the station entrances and other public spaces approved for the Project.</p> <p>The distinction is appropriately reflected in the Incorporated Document in that:</p> <ul style="list-style-type: none"> • The Incorporated Document clearly identifies the Melbourne Metro Rail Project uses and development to which it applies, so that any addition over site use and development is clearly not encompassed in this document and requires separate approval; • The Incorporated Document provides appropriate integration by allowing for the underground station structures to include support for the future loading of an oversite development without specifying what this will be. <p>In relation to CBD North and CBD South, the future built form of the CBD is the subject of proposed planning scheme amendment C270 which is currently the subject of a panel hearing to advise the Minister for Planning. It would be inappropriate for the Melbourne Metro Incorporated Document to pre-empt the Minister's views following the outcome of that hearing in setting specific requirements for built form for over-site development.</p> <p>In relation to Arden, the VPA submission confirms that VPA is currently developing a draft Arden Vision and Strategic Framework for public consultation in 2016. In this context, while the Melbourne Metro will respond to and facilitate the strategic vision for this precinct, it would be premature to include specific requirements as to over site development prior to VPA's further strategic planning.</p>
<p>7. Incorporated Document – should include buffer zones and sound proofing requirements for new developments to protect existing industry at Arden</p>	<p>MM357</p>	<p>The Incorporated Document provides for the Melbourne Metro Rail Project, not for future development. Provision for buffer distances and other requirements for future development should be discussed as part of the strategic planning for the Arden area, which the Victorian Planning Authority (VPA) is progressing throughout 2016 and ongoing.</p>
<p>8. The Incorporated Document should provide clear guidance on land uses associated with the station e.g. cafes,</p>	<p>MM133 City of Port Phillip</p>	<p>The Incorporated Document provides for 'railway station', which is a defined land use – 'Land used to assemble and distribute goods and passengers and includes facilities to</p>

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newspaper stands and any other retail uses.

City of Port Phillip submission received 3 October 2016

park and manoeuvre vehicles. It may include the selling of food, drinks and other convenience goods and services.'

The Incorporated Document also provides for 'retail premises' at stations, which is a defined land use – 'Land used to: a) sell goods by retail, or by retail and wholesale; b) sell services; or c) hire goods.' Clause 74 of the VPP sets out a range of land uses which are nested within 'retail premises'.

Development Plans are required prior to commencement of construction of the stations up to the ticket gate, including associated uses, and this requires consultation with agencies including Councils.

These provisions reflect the normal processes for determining which instances of 'retail premises' would be appropriate and acceptable at a specific location, for example at a railway station, food & drink premises or shop, rather than landscape & garden supplies. It is submitted that they are appropriate for the Melbourne Metro project.

9. Incorporated Document – consultation on Urban Design Strategy and Environmental Management Framework

MM257 City of Stonnington
 MM314 Maribyrnong City Council
 MM180; MM231; MM318
 City of Port Phillip submission received 3 October 2016
 City of Melbourne submission received 5 October 2016

A draft Environmental Management Framework including EPR and a draft Urban Design Strategy were exhibited with the Environmental Effects Statement. These have been the subject of agency review through the Technical Reference Group process, public exhibition, submissions, and this hearing of the Committee. Further, the content of the Environmental Management Framework and Urban Design Strategy have been the subject of ongoing consultation between MMRA and relevant authorities.

MMRA has responded to matters raised by its expert advisors, or in submissions, this hearing and other consultation by providing the Committee and submitters with Version 1 EPR dated 19 August, EPR Version 2 (5 September 2016) and EPR Version 3 (26 September 2016). It is anticipated that further refinements may be made to the EPR and circulated prior to the end of this hearing.

As the Environmental Management Framework including EPR and the Urban Design Strategy have been the subject of this significant consultation and inquiry process, it is not considered necessary or appropriate for the Incorporated Document to require further consultation on those documents.

Rather, clauses 5.2.5 and 5.3.2 are now proposed in the Incorporated Document. These provisions require that a draft Environmental Management Framework or Urban Design Strategy provided to the Minister for approval must be accompanied by a statement explaining any differences between the submitted document and the version set out in the EES as refined through this inquiry process and the Minister's assessment of the EES. This will ensure that any changes which are proposed moving away from the form of these

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MMRA response

documents that has been through consultation and inquiry, will be brought to the Minister's attention for consideration.

The submission by City of Melbourne on 5 October 2016 suggested entirely removing 5.2.5 and 5.3.2. This is on the basis "there should be no presumption that the Authority will need to second guess the Committee's recommendations." MMRA will respond to the Committee's recommendations and the Minister's final EES Assessment rather than second-guess them, as the EMF and UDS can only be submitted after the assessment by the Minister and the gazettal of Amendment GC45. MMRA proposes leaving 5.2.5 and 5.3.2 as they are, for the reasons set out in the above paragraph.

10. Incorporated Document – consultation on Early Works Plans

MM257 City of Stonnington
MM314 Maribyrnong City Council
MM180; MM231; MM318
Tabcorp submission received 3 October

The Incorporated Document (version 5 September 2016) provides at clause 5.4.4 that a draft Early Works Plan be provided to specified relevant agencies for consultation, and clause 5.4.5 requires that a summary of consultation and response to issues raised be provided when the draft Early Works Plan is submitted to the Minister for approval. Further changes to clause 5.4.5 (version 26 September 2016) require that all written comments received under clause 5.4.4 accompany the submission of the Early Works Plan for approval under clause 5.4.7, and clause 5.4.6 has been added to require the Minister for Planning consider all such written comments.

It is not considered necessary that Early Works Plans be the subject of broader public consultation (the Tabcorp submission highlighted in particular businesses potentially affected by utility changes) because the impacts of Early Works will be localised. Impacts on locally affected stakeholders would be the subject of consultation under the ongoing processes as set out in Technical Note 046. Further, as set out in Technical Note 041, the Early Works Contractor will be required to prepare and implement a Community and Stakeholder Engagement Management Plan, and this will apply to Early Works undertaken under Early Works Plans. Further, clause 5.4.7 has been amended to provide that the Minister must consider provision of an application for an amended Early Works Plan to comply with the same process of consultation as the initial Early Works Plan where he believes the amendment would have a significant effect on the environment or requires a change to the EPRs.

11. Expand the requirements for Development Plans to include additional plans, such as Traffic Management Plans, Heritage Management Plans and Construction Management Plans

MM133 City of Port Phillip
Recommendation 5
MM091; MM368

Development Plans are not prepared and approved in isolation from other conditions of the Incorporated Document. It is submitted that it would duplicate the requirement for these plans to be required as part of Development Plans, because they are already addressed through the Incorporated Document clause 5.2 which requires an Environmental Management Framework and EPR.

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City of Port Phillip submission received 3 October 2016

In particular, the Incorporated Document requires that an Environmental Management Framework be prepared, and must set out the process and timing for development of a Construction Environment Management Plan, Site Environment Implementation Plan and Traffic Management Plan as relevant to any stage or part of the Project, including process and timing for consultation with relevant Council/s and other agencies. Clause 5.2.7 of the Incorporated Document (version 26 September 2016) requires that the use and development be carried out in accordance with the approved Environmental Management Framework and EPR.

The EPR require:

- Construction Environmental Management Plan (CEMP) and Site Environment Implementation Plans, in consultation with agencies including Councils – EPR EM1 and EM2 including strengthened provision for consultation in development and implementation in EPR Version 2 (5 September 2016)
- Transport Management Plans and Traffic Management Plans – EPR T1, and Transport Demand Strategy – EPR T4, Traffic and Transport Working Group – new EPR TA
- Community and Stakeholder Engagement Management Plan and Business Disruption Plan relating to management of construction impacts – SC3, B2
- Construction Noise and Vibration Management Plan – NEW NVB and communications plan – NV4

The EPR have been amended (version 26 September 2016) to require a Heritage Management Plan/s. Regardless heritage permits and consents to disturb will be required for certain works impacting heritage under the Heritage Act 1995. In addition, the EPR require:

- specific noise and vibration works to manage EPBC Act heritage issues - EPR NV 2
- vibration modelling, monitoring and standard for impacts to structures including heritage structures – EPR NV 3, NV5, NV14
- requirement to avoid impacts to heritage through design, undertake pre-construction condition surveys, and rectification where required – CH2, CH4, CH 8
- Heritage interpretation strategy – CH7

It is submitted that the Incorporated Document sufficiently provides for the identified matters.

Issue raised	Submitter raising issue	MMRA response
12. Consultation on Management Plans	MM170; MM180 MM368	<p>MMRA submits that the Incorporated Document is not the appropriate location for requirements as to consultation with individual submitters on specific matters, and that consultation is appropriately provided for in the EPR.</p> <p>Technical Note 046 set out an overview of ongoing consultation proposed by MMRA, and consultation required by contractors. The need for consultation to respond at an appropriate level to the specific circumstances of each submitter, and address the issues of importance to each submitter, is recognised. The Version 1 EPR included further detail in respect of the Community and Stakeholder Engagement Management Plan (SC3), provision for the Parkville Precinct Working Group (NEW NVA) and the Traffic and Transport Working Group (NEW TA). EPR Version 3 (26 September 2016) has provided additional detail and clarity regarding consultation.</p>
13. Require the inclusion of the EPR in an appendix to the Incorporated Document.	<p>MM091; MM133; MM370</p> <p>City of Melbourne submission received 5 October 2016</p> <p>University of Melbourne submission received 6 October 2016</p>	<p>This is not supported.</p> <p>The only example of a Victorian project where EPR have been included in an Incorporated Document is East West Link, which was not constructed. Further the Incorporated Document for East West Link was approved following assessment of that project under the <i>Major Transport Projects Facilitation Act 2009</i>, rather than following an EES under the <i>Environment Effects Act 1978</i>.</p> <p>It is submitted that it is excessively restrictive to fix EPR into the planning scheme, as it potentially poses a significant administrative burden and time delay should the EPR need to be amended. It is not reasonable to assume that every required amendment to the EPR will meet the threshold for Ministerial intervention under s20(4) of the <i>Planning and Environment Act 1987</i> to facilitate a planning scheme amendment without a public hearing, nor would it be lawful or appropriate for the Minister for Planning to fetter the future exercise of this discretion. The potential delay should a panel be required to consider such planning scheme amendment would be excessive given the detailed impact assessment set out in the EES and before this Panel, and the proposed safeguards for future consideration of amendments by regulators and the Minister for Planning. If EPR are included in the planning scheme, the potential delay risk and cost will be priced by the market in the contracts, and would likely reduce the value for money to the State for this Project.</p> <p>The Incorporated Document (version 5 September 2016) includes new Appendix 1 (renumbered Appendix 2 in version 7 October 2016) which sets out the structure for approval of key strategic and framework plans by the Minister for Planning, approval of plans relating to management of potentially broad impacts by the State of Victoria as party to the relevant contracts (in practice, the Melbourne Metro Rail Authority) and approval of technical plans by MMRA or under the PPP review procedures including the Independent</p>

Issue raised

Submitter raising issue

MMRA response

Reviewer. The Incorporated Document (version 26 September 2016) clarifies that, in relation to the PPP contract, both the MMRA and the Independent Reviewer approve the 'broad impact' plans.

In particular, clause 5.2.6 of the Incorporated Document and Appendix 1 (renumbered Appendix 2 in version 7 October 2016) confirm that the Environmental Management Framework, including EPR, must be approved by the Minister for Planning. The Environmental Management Framework, including EPR, may be amended from time to time, with the approval of the Minister for Planning (Incorporated Document version 26 September 2016). As set out in Technical Note 041 and the evidence of Mr Milner, it is submitted that the Minister for Planning is the appropriate entity to hold responsibility for the EPR.

14. Include the principles and objectives from the Urban Design Strategy in an appendix to the Incorporated Document for transparency

MM133 City of Port Phillip

MM091

City of Stonnington submission received 6 October 2016

It is not proposed that the Urban Design Strategy objectives, principles or guidelines be explicitly listed in the Incorporated Document.

As set out in Technical Note 041 and the evidence of Mr Milner, it is submitted that the Minister for Planning is the appropriate entity to hold responsibility for the Urban Design Strategy. The evidence of Mr Jones is that the EPR appropriately reference and require implementation of the Urban Design Strategy.

As noted above, a draft Urban Design Strategy was exhibited with the EES, and clause 5.3.2 of the Incorporated Document version 1 September 2016 requires that a draft Urban Design Strategy submitted to the Minister for approval must be accompanied by a statement explaining(EPR Version 3 (26 September 2016) any differences, which will bring to the Minister's attention any divergence from the urban design principles and objectives that have been the subject of this significant consultation and inquiry.

15. Require that 'use and development for the project must be carried out generally in accordance with the objectives, principles and guidelines of the endorsed Urban Design Strategy'

MM133 City of Port Phillip

Clause 5.3.3 of the Incorporated Document (version 5 September 2016) requires that the use and development be carried out 'in accordance with' the Urban Design Strategy. This is reflected in clause 5.1.3(c) of the Incorporated Document (version 5 September 2016), which requires that a Development Plan include an explanation as to how the Development Plan demonstrates use and development will meet the requirement to be in accordance with the Urban Design Strategy.

16. Changes to Development Plans - there are concerns about how any future changes will be managed, monitored and

MM133 City of Port Phillip

The Council's concern to ensure that it is consulted in relation to relevant proposed changes to approved Development Plans is understood. However, not all amendments to

Issue raised

Submitter raising issue

MMRA response

assessed. Specifically there are concerns about the lack of criteria to assess against, lack of compulsory consultation, and absence of a mechanism to report and monitor compliance.

MM091

approved Development Plans may be major, and not all may impact all Councils and listed agencies. It is submitted that it would not be appropriate for the Incorporated Document to apply the wording proposed by Council which necessarily requires consultation with those bodies.

Clause 5.1.10 of the Incorporated Document (version 5 September 2016) provides that a Development Plan approved by the Minister for Planning may be amended to the satisfaction of the Minister for Planning and, importantly, that the Minister may require an application for approval of a material amendment to a Development Plan to comply with the requirements of clauses relating to demonstrating accordance with the Urban Design Strategy, consultation, response to consultation, and assessment of differences to the EES version of the document. The Incorporated Document (version 26 September 2016) further clarifies this by requiring, at Clause 5.1.10, the Minister for Planning amended Development Plan/s be subject to the same consultation and notification processes as an initial Development Plan, where there would be a significant effect on the environment or where a change to the EPRs are required.

17. Incorporated Document – mechanism to report and monitor compliance.

MM133 City of Port Phillip

MM091; MM373

University of Melbourne submission received 6 October 2016

MMRA does not support a provision in the Incorporated Document itself relating to monitoring and reporting compliance with Development Plans. This would be unusual and it is unclear what statutory role such reporting would play.

The governance structure for the Project is set out in chapter 23 of the EES (Environmental Management Framework), and further clarified in Technical Note 041. In addition, clause 5.2.3 and 5.2.4 of the Incorporated Document (version 5 September 2016) clarify for the avoidance of doubt that the Environmental Management Framework must:

- identify the entity responsible for approval of each plan required under the Incorporated Document or the Environmental Performance Requirements generally in accordance with the table in Appendix 1 (renumbered Appendix 2 in version 7 October 2016) to the Incorporated Document; and
- identify requirements for monitoring, reporting and auditing of compliance with the Environmental Performance Requirements, the Incorporated Document, and each plan set out in the table in Appendix 1 to the Incorporated Document.

Further clause 5.2.5 of the Incorporated Document (version 5 September 2016) requires that the Environmental Management Framework submitted to the Minister for approval under the Incorporated Document must be accompanied by a statement identifying any differences between the submitted version and the version of the Environmental Management Framework which has been the subject of this inquiry process and the Minister's assessment of the EES. The Incorporated Document (version 26 September

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2016) amends “identify” differences to “explain” differences, therefore ensuring justification for differences is presented to the Minister for Planning. MMRA submits that these provisions appropriately provide for the governance and compliance requirements to be set out in the Environmental Management Framework, with the Minister for Planning retaining oversight of this document as is appropriate for this strategic document.

18. The City of Port Phillip recommends the amendment of the wording of the Incorporated Document section 5.2 (Environmental Management Framework) and 5.3 (Urban Design Strategy) to reflect the above wording relating to Development Plans, to require consultation on major / significant amendments.

MM133 City of Port Phillip Recommendation 10
MM091
City of Port Phillip submission received 3 October 2016

This suggestion is not supported.

As set out in Technical Note 041 and the evidence of Mr Milner, it is submitted that the Minister for Planning is the appropriate entity to hold responsibility for the Environmental Management Framework and the Urban Design Strategy. Clauses 5.2.7 and 5.3.1 of the Incorporated Document (version 5 September 2016) appropriately provide that an approved Environmental Management Framework and the Urban Design Strategy can be amended to the satisfaction of the Minister for Planning. Incorporated Document (26 September 2016) now provides that the EMF (clauses 5.2.6) and the Urban Design Strategy (5.3.1) may be amended with the approval of the Minister for Planning. It is reasonable to expect that, in exercising the Minister’s powers having regard to the needs of the Project and the community overall, the Minister would require an appropriate level of consultation and response to be undertaken, commensurate with the nature of a proposed amendment, before being satisfied as to any amendment of these key strategic framework documents. It is not necessary for the Incorporated Document to specify the considerations that the Minister may take into account in making such an assessment at a future time.

19. Incorporated Document – consultation with RMIT

MM180 RMIT

RMIT recommends that a specific EPR be developed to prevent and minimise disruption to RMIT’s existing contracted works programme as an obligation which is addressed through the Environmental Management Framework and as part of the Incorporated Document.

MMRA submits that a specific requirement for consultation with RMIT would not be appropriate as a condition of the Incorporated Document. Items 1, 9, 10 and 12 above address consultation requirements under the Incorporated Document generally, and note that the EPR Version 2 (5 September 2016) and EPR Version 3 (26 September 2016) and the Incorporated Document (26 September 2016) also include further clarification of ongoing consultation requirements.

MMRA convenes weekly meetings between senior officers of MMRA and RMIT, allowing for two-way feedback in relation to the Project as it affects RMIT. MMRA proposes that these meetings continue during the procurement and delivery phase, including representatives of contractors where relevant. MMRA does not consider it necessary that

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MMRA response

this established and ongoing process be included in the Incorporated Document.

20. Incorporated Document - removal of land from Incorporated Document unless explicitly subject to air rights purchased by the Project, or a sunset clause removing the property from the Project Land from specified land at the conclusion of the construction works.

MM274

MMRA confirms that the Incorporated Document only applies to the Project activities listed in clause 4 of the Incorporated Document. For any other use or development, the zoning, overlays and other provisions of the relevant Planning Schemes apply.

The Incorporated Document cannot be removed at the end of construction because it provides for ongoing use and maintenance works for the Project as defined in clauses 3 and 4 of the Incorporated Document. Planning schemes do not provide for different zoning at strata, so it would not be appropriate to simply re-zone the tunnels and stations as a Public Use Zone as this would also affect land at surface.

21. Transparency of approved plans under the Incorporated Document

Evidence of Mr Milner
City of Melbourne submission received 5 October 2016

The Incorporated Document (version 5 September 2016) addresses the transparency of approved documents in clause 5.7 (now including the EPRs by the amendment to clause 5.7.1 (b) Incorporated Document (26 September 2016)), which provides that a current version of each Development Plan, the Environmental Management Framework (including the EPRs), the Urban Design Strategy and each Early Works Plan must be provided on a clearly identifiable Project website until commencement of public train operations through the tunnels

The City of Melbourne's submission on 5 October suggests making various additional plans available via the clearly identifiable Project website outlined above. This is not supported as these Plans are all "broad impact" plans at Appendix 2 that have not been subject to public comment via the Incorporated Document provisions, and are in the nature of 'working plans' that not typically publicly available. However the plans nominated by MMRA for inclusion on the website are all "strategic and development plans" that have been subject to public comment at some stage. It is therefore to make those plans available to give public certainty of the final result of those plans.

22. Development Plans and Early Works Plans must include an explanation as to how it demonstrates compliance with the EPRs

MM318 University of Melbourne
MM365 City of Melbourne

Additional provisions at clauses 5.1.3c) and 5.4.3 have been inserted to require that Development Plans and Early Works Plans must include an explanation as to how the plan demonstrates that the use and development will be in accordance with relevant Environmental Performance Requirements as required by clause 5.2.7 of the Incorporated Document.

Issue raised	Submitter raising issue	MMRA response
<p>23. Length of time for public inspection to be 28 days</p>	<p>MM318 University of Melbourne MM180 RMIT RMIT submission received 3 October 2016</p>	<p>MMRA submits that the proposed 14-day timeframe for public inspection of Development Plans is an appropriate length of time for the community to consider Development Plans. This timeframe is supported by Mr Milner's evidence (paragraph 201) and is consistent with other examples within planning schemes such as:</p> <ul style="list-style-type: none"> • Melbourne Airport Rail Link Development Plan (Schedule 11 to the Development Plan Overlay) where the development plan must be on display in appropriate public places for a period of not less than 14 days • 800 Toorak Road Comprehensive Development Plan (Schedule 1 to the Comprehensive Development Zone) where the responsible authority must display the plan at the responsible authority's office for at least 14 days • Australian Catholic University Development Plan (Schedule 2 to the Development Plan Overlay) where the development plan shall be available for public inspection for 14 days prior to its consideration by the responsible authority. <p>Affected stakeholders will also be consulted under the Environmental Performance Requirements, in particular SC3 and B2.</p>
<p>24. There must be a requirement that the community is notified of the public inspection period</p>	<p>MM365 City of Melbourne MM257 City of Stonnington MM133 City of Port Phillip Angela Williams, submission received 3 October 2016</p>	<p>An additional requirement at clause 5.1.4 has been inserted. The provision requires that a notice must be published in a newspaper generally circulating in the area to which the Development Plan applies informing the community of the public inspection period.</p> <p>MMRA would use both local newspapers (if available) and metropolitan newspapers in giving of notice. MMRA would also provide information about the development plans via its well-established communication channels including its website, eNews and social media</p>
<p>25. Minister for Planning's obligation to consider comments received within the public inspection period</p>	<p>MM318 University of Melbourne</p>	<p>The Minister for Planning will now be required to consider all comments received via the public inspection period (see clause 5.1.6). This provision will make the Minister for Planning's role more clear in relation to how comments received via the public section process will be taken into account.</p>

Issue raised	Submitter raising issue	MMRA response
26. Development Plans must comply with the EPRs and be in accordance with the Urban Design Strategy	MM318 University of Melbourne	MMRA considers that this proposed provision would be a duplication of clauses 5.2.7 and 5.3.3. These two clauses combine to require that Development Plans must in accordance with the EPRs and the Urban Design Strategy.
27. Amendments to Development Plans, EMF or EPRs cannot increase or add new environmental impacts	MM318 University of Melbourne RMIT submission received 3 October 2016	Clauses 5.1.10 and 5.4.7 of the Incorporated Document (26 September 2016) have been amended to include reference to the Minister providing for third party consultation consistent with an initial approval of a Development Plan, EMF or EPRs where the Minister believes that the amendment would have a significant effect on the environment (or requires a change to the Environmental Performance Requirements). This language reflects the exercise of discretion and assessment that a Minister would be called upon the exercise under the Environment Effects Act (Vic) or the EPBC Act (Cth). This request for a more onerous constraint is unnecessary and excessive in the circumstances of the assessment which has been undertaken for this Project.
28. Amendments to Development Plans must undergo the same process as if it were a new Development Plan	MM318 University of Melbourne MM180 RMIT	Clause 5.1.10 of the Incorporated Document provides that a Development Plan approved by the Minister for Planning may be amended to the satisfaction of the Minister for Planning and, importantly, that the Minister may require an application for approval of a material amendment to a Development Plan to comply with the requirements of clauses relating to demonstrating accordance with the Urban Design Strategy, consultation, response to consultation, and assessment of differences to the EES version of the document.
29. Works in association with a Development Plan, other than works in clauses 5.4 and 5.6, must not commence prior to approval of a Development Plan	MM318 University of Melbourne	The insertion of this provision is duplicative considering the prohibitions within clause 5.1.7, which requires that a Development Plan must be approved by the Minister for Planning prior to the commencement of any development to which that Development Plan relates.
30. Works other than works in an Early Works Plan must not commence prior to approval of the EMF and Environmental Performance Requirements	MM318 University of Melbourne	This suggested amendment would be duplicative as clause 5.2.1 requires that "prior to the commencement of any buildings or works associated with the Project (including Early Works under clause 5.4), an Environmental Management Framework must be prepared for the Project or any stage or part of the Project.
31. The Construction Environmental Management Plan not be	MM365 City of	Level 1 documents comprising the EMF (& EPRs), Urban Design Strategy, Development Plans and Early Works Plans will be submitted to the Minister for Planning for approval.

Issue raised	Submitter raising issue	MMRA response
approved by the State of Victoria (MMRA)	Melbourne MM257 City of Stonnington City of Melbourne submission received 5 October 2016	<p>The CEMP and other Level 2 documents prepared by contractors will be reviewed and approved by the State (MMRA) and the Independent Reviewer. MMRA does not propose for the CEMPs to be approved by the Minister for Planning. EPR EM2 provides a robust mechanism for thorough consultation with regulatory bodies and other relevant stakeholders and thereby providing the means for a thorough CEMP. (EM2: "...must include consultation with Councils, Heritage Victoria, the Roads Corporation, Melbourne Water, Public Transport Victoria, and the Environment Protection Authority and other stakeholders as relevant."). The contractor must set out a program describing the consultation processes proposed.</p> <p>The Independent Reviewer (an independent consultant appointed jointly by MMRA and the contractor) will be qualified and experienced in construction environmental management. MMRA environmental specialists are also qualified and experienced in construction environmental management and hold a detailed understanding of the project and its environmental requirements. It is for these reasons that it is appropriate for the CEMP to be approved by the State (MMRA) and the Independent Reviewer.</p> <p>City of Melbourne's submission on 5 October 2016 included a proposed clause 5.7 in relation to approval of the CEMP, using wording adapted from the East West Link (Eastern Section) Project Incorporated Document. Notwithstanding that the other Incorporated Document was for a different project and assessed and approved under different legislation, MMRA considers that the approach taken by including approval of the CEMP at Appendix 2 of the Incorporated Document provides accountability through the planning system of approval of that document. As discussed above in this section, EPR EM2 provides for appropriate consultation during the development of the CEMP.</p>
32. Inconsistencies in language between the Incorporated Document, EMF and EPRs should be resolved, taking into account Technical Note 041	MM365 City of Melbourne	MMRA acknowledges that the language used in these documents may be out of step given the various updates that have occurred throughout the hearings. Updated versions of Incorporated Document and the EPRs will be provided to the IAC on 26 September. An update to the EMF will be provided at a later date.
33. Drafting issue – process between public inspection period and submission of a Development Plan to the Minister for Planning	MM365 City of Melbourne	<p>Clause 5.1.5 of the Incorporated Document (version 5 September 2016) contained a drafting issue that implied a Development Plan must be submitted to the Minister for Planning immediately following the 14 days of public inspection.</p> <p>Clause 5.1.4 of the Incorporated Document (version 26 September 2016) has resolved this drafting issue.</p>

Issue raised	Submitter raising issue	MMRA response
34. Development Plans should give an indication as to the materials and external finishes that will be utilised	MM365 City of Melbourne	Clause 5.1.3c) of the Incorporated Document (version 26 September 2016) now requires that a Development Plan explain how the selected materials and external finishes will be in accordance with the Urban Design Strategy.
35. Public inspection period of the Development Plans should allow for comments from the community, not just inspection	MM180 RMIT	Clause 5.1.4c) has been amended to provide the community with an opportunity to submit comments during the public inspection period. Clause 5.1.6 also compels the Minister for Planning to consider all comments received via the public inspection period.
36. Commit to regular public reporting on compliance with EPRs and other relevant standards	<p>MM133 City of Port Phillip</p> <p>MM318 University of Melbourne</p> <p>City of Melbourne submission received 5 October 2016</p>	<p>The EMF (section 23.8.2) requires that the performance against each contractor's CEMP would be reported to the MMRA and relevant government agencies as appropriate. Further details related to reporting and external notification will be provided by the contractors and written into their respective CEMPs. This would include what needs to be reported and to whom and the timeframe for reporting.</p> <p>The MMRA EMS commits to the following in relation to external communications: "The MMRA website is used as the main platform for external communications. Fact sheets, newsletters and videos to show the environmental and sustainability objectives and how the project is tracking as well as innovations and carbon reduction stories will be shared through the website."</p> <p>The Environmental Management Framework (section 23.8.2) requires that the contractor provide to MMRA monthly environmental performance reports and quarterly project activity reports. MMRA would also be provided with data/reports pursuant to relevant Environmental Performance Requirements to enable the monitoring of compliance, such as:</p> <ul style="list-style-type: none"> • Monitoring data of travel behaviour changes (EPR T1) • Reporting on best practice GHG abatement measures and sustainability initiatives identified in the Concept Design is implemented in the detailed design (EPR G2) • Air quality monitoring (EPR AQ1) • Noise and vibration monitoring (EPR NV3) • Groundwater monitoring (EPR GW5) <p>Such data would be audited by the Independent Environmental Auditor on a periodic basis to assess compliance with legislative requirements and the Environmental Performance</p>

Issue raised

Submitter raising issue

MMRA response

Requirements.

Further details related to contractors' monitoring of compliance, reporting and external notification will be provided by the contractors and written into their respective EMS and CEMPs. This would include what needs to be reported and to whom and the timeframe for reporting.

37. Minister for Planning 'must' require an application for approval of a 'material' amendment to a Development Plan or Early Works Plan to undertake consultation with affected stakeholders

MM133 City of Port Phillip

MM365 City of Melbourne

MM257 City of Stonnington

MM318 University of Melbourne

City of Port Phillip submission received 3 October 2016

Clauses 5.1.10 and 5.4.7, in relation to amendments to Development Plans and Early Works Plans respectively, have been amended. The Minister for Planning now 'must' require an application for approval of an amendment to a plan to comply with consultation requirements at clauses 5.1.3, 5.1.4, 5.1.5 or 5.4.3 and 5.4.4 respectively if the Minister believes the amendment would have a significant effect on the environment or requires a change to the Environmental Performance Requirements approved under clause 5.2.

These amendments ensure that affected stakeholders are appropriately consulted where a Development Plan or Early Works Plan is being amended causing a significant effect on the environment or requires a change to the Environmental Performance Requirements.

38. The Minister for Planning may allow works to commence before a Development Plan or other requirement is approved

University of Melbourne submission received 6 October 2016

MMRA acknowledges that clause 5.1.8 raises significant transparency issues. Clauses 5.1 and 5.4 have been developed as the comprehensive frameworks to manage works for this project. As such, this clause has been removed in version 7 October 2016.

39. The approved EMF and the Urban Design Strategy must be in accordance with the versions as refined through the EES process

University of Melbourne submission received 6 October 2016

University of Melbourne proposes that the Minister for Planning can only approve an EMF and an Urban Design Strategy that is in accordance with versions of the EMF and UDS as refined through the EES process.

This proposal does not allow the IAC or the Minister for Planning to make recommendations for amendments to these two documents. The EMF and the UDS are still subject to an assessment by both the IAC and the Minister for Planning and as such this proposal is not supported.

Issue raised	Submitter raising issue	MMRA response
40. Early Works Plan must explain how it is in accordance with the Urban Design Strategy	University of Melbourne submission received 6 October 2016	<p>Clause 5.3.3 of the Incorporated Document requires that the use and development for the Project must be carried out in accordance with the approved Urban Design Strategy. This provision would already require works undertaken via and Early Works Plan to be in accordance with the UDS.</p> <p>However, for transparency, a new requirement has been added to clause 5.4.3 (version 7 October 2016) to require that an Early Works Plan must explain how it will be in accordance with the UDS.</p>
41. Early Works Plan to be available for public inspection for 28 days prior to its consideration by the Minister for Planning	University of Melbourne submission received 6 October 2016	<p>The early works as described in Chapter 6 of the EES do not represent a final built form unlike the works to be approved under Development Plans (e.g. station entrances). As such, there is a distinction between works carried out under Early Works Plans and under Development Plans.</p> <p>Works undertaken via an Early Works Plan will still require consultation that is wider than clause 5.4.4. EPRs SC3 and B2 in particular will require consultation with affected stakeholders.</p>
42. Permit triggers for the creation, variation or removal of an easement or covenant within or over the Project Land should remain	City of Stonnington submission received 6 October 2016	<p>In delivering the Melbourne Metro there may be circumstances where easements or covenants either need to be created, varied or removed. Clause 4.1b) has been included for, and is required for, the efficient delivery of the Melbourne Metro. For example MMRA may need to remove restrictions on titles that it has acquired for the project. The insertion of clause 4.1b) merely turns off the permit trigger at clause 52.02 of the Planning Schemes. It does not go beyond any powers conferred under the <i>Major Transport Facilitation Act 2009</i> in relation to restrictions on title, nor does it allow MMRA to apply these powers for purposes other than the delivery of the project.</p>
43. The terms used at 4.2 and 4.3 are too broad	City of Stonnington submission received 6 October 2016	<p>The terms used to describe the Melbourne Metro, where possible, are taken from clause 74 of the Victoria Planning Provisions.</p> <p>Despite the general nature of the terms used, various safeguards are in place to ensure Melbourne Metro is appropriately constructed and operated. These include the comprehensive set of EPRs, Development Plans, Early Works Plans and Urban Design Strategy – all of which require the approval of the Minister for Planning.</p>

Issue raised	Submitter raising issue	MMRA response
44. The Incorporated Document should not make provision for value capture	City of Stonnington submission received 6 October 2016	The description of the project at clause 4 does not make provision for any value capture or over-site development. This has not been assessed via the EES process nor would it form part of a Development Plan. Accordingly the existing controls prevent over-site development.
45. The establishment of environmental and traffic controls should be occur prior to an EMF being approved	City of Stonnington submission received 6 October 2016	The establishment of environmental and traffic controls are considered to be minor in nature (eg no-go fencing for trees to be retained and protected etc) and should not be subject to the EMF or Development Plans / Early Works Plans. Environmental and traffic controls are typically exempt from requiring a planning permit by virtue of clause 62 of the Victoria Planning Provisions.
Design and Development Overlay		
46. The DDO adds an additional planning application process.	MM180, MM207, MM228, MM250, MM362	<p>MMRA submits that the DDO properly includes an additional requirement for assessment of proposals that have the potential to adversely affect the Melbourne Metro underground infrastructure.</p> <p>The technical assessment envisaged under the DDO reflects the technical assessment that is currently required in respect of development in the vicinity of the Melbourne Underground Rail Loop (City Loop). That process is regulated under legislation under the <i>Transport (Compliance and Miscellaneous) Act 1983</i> rather than through the planning schemes</p>
47. It is recommended that DEDJTR establish a clear pre-application process to advise property owners on the potential impacts of the DDO on their property or development.	MM133 City of Port Phillip	<p>Agreed that this process is important. However, it is not appropriate for the DDO itself to include provision for a pre-application process.</p> <p>MMRA is working to develop:</p> <ul style="list-style-type: none"> • A draft Planning Practice Note which would, if adopted by the Minister for Planning, set out a lay person's guide to the DDO and the assessment process for permit applications affected by the DDO, including the importance of pre-application consultation with the referral authority for exchange of information and scoping of the technical assessment required; and • DDO Technical Guidelines as recommended in the evidence of R Milner. The Technical Guidelines would assist the referral authority in responding to applications

Issue raised

Submitter raising issue

MMRA response

referred under the DDO and *Major Transport Projects Facilitation Act 2009*.

The DDO Technical Guidelines will reflect the technical and procedural experience in assessing applications for development above the City Loop tunnels over the past 35 years, as discussed in the evidence of Mr Bennett. As noted above, that process is regulated under legislation under the *Transport (Compliance and Miscellaneous) Act 1983* rather than through the planning schemes.

The Technical Guidelines will also emphasise the strong preference for consultation between MMRA and developers or property owners prior to the submission of a formal permit application, to assist developers and property owners to understand the level of risk associated with their proposal, level of technical analysis required, provide information that will assist the owner/developer in preparing the planning permit application, and to enable efficient responses within the statutory permit process.

48. MMRA should notify owners within the DDO regarding the specific impacts of loading requirements on future development and consider mitigation measures to offset loss of development rights.

Limitation on future development may impact property prices.

MM257 City of Stonnington

MM013, MM207, MM250, MM257, MM299, MM300, MM301, MM308, MM327, MM362, MM367

All owners of land within the proposed DDO have been notified, as set out in Technical Note 028.

As discussed in the evidence of Mr Bennett, it is not possible to ascertain at a theoretical level what potential limitation the DDO may have on future development of land within the DDO. It is accepted that, for some land directly above the tunnels in shallow locations, the required clearances may limit future deep excavation, although this will still depend on design of the proposed development, and whether construction methodologies can be identified that can achieve the required protection. Mr Bennett's evidence is that the presence of the Project is otherwise unlikely to preclude future developments, but that engineering measures might be required in some cases to modify the effects of the development.

To some extent, it will remain the responsibility of owners/developers and their consultants to be aware of the implications of the DDO for their property planning. MMRA would not propose to initiate discussions with property owners, but would encourage and respond to pre-application discussions initiated by owners / developers. MMRA considers that the application of the DDO provides a transparent framework for the assessment process that is necessary to protect the underground infrastructure, and this is supported by the evidence of Mr Milner and Mr Bennett.

MMRA does not propose to provide property-specific assessment of development implications of the DDO nor to provide mitigation measures to offset loss of development rights. Neither of these steps would be typically undertaken as a consequence of the application of 'public good' overlays under planning schemes, such as Land Subject to Inundation Overlay or Environmental Significance Overlay. While application of a Heritage

Issue raised

Submitter raising issue

MMRA response

Overlay may include a property-specific assessment of heritage values, it does not typically extent to assessment of development limitations imposed by the Heritage Overlay, nor any mitigation for loss of any future development rights.

49. Clarification is requested in regards to whether a retrospective planning permit is required where an existing approval has not yet been acted on and the proposal includes sub-surface works that would affect the Melbourne Metro.

MM133 City of Port Phillip

It is not proposed that the DDO require a planning permit where an existing approval has not yet been acted upon at the date the DDO is gazetted.

The Future Development Loading report appended to the Land Use and Planning report at Technical Appendix E of the EES confirms that, where a planning permit has been issued prior to the date on which the DDO is gazetted, the Project contractors will be required to take that development into account in the detailed design and proposed construction methodology. The evidence of Mr Bennett confirms this approach. This requirement will also be reflected in MMRA's technical requirements in the project contracts.

50. DDO – permit exemptions

MM318 - That the permit exemptions under clause 3 of the Design and Development Overlay Schedule 67, should be revised to include an exemption for internal and external alterations to buildings which do not require structural works more than two metres below the existing surface level.

MM257 – that the exemptions and requirement for specialist input should be better identified.

MM253 – exemption for maintenance, renovation or improvement of existing properties

MM257 City of Stonnington
MM253; MM318

The amendment suggested by MM318 is not supported. The evidence of Mr Bennett is that, while at face value, it would appear to make it consistent with the requirement for a new building, the example of a new building is also limited with respect to the overall height of the proposal.

The intention of the exemptions being limited to above ground is to avoid a complicated set of requirements for assessment around changes to structures that are already existing. The scope of an appropriate exemption for alterations to buildings as proposed by the submitter would still require consideration of the loadings from the existing structure and extent of the changes, and is therefore not appropriate for exemption in all cases without further consideration.

MMRA's view is that it is preferable for the DDO exemptions and permit requirements to be as simple and clearly worded as possible. MMRA will strongly encourage pre-permit application discussions with landowners and developers and will recommend a level of assessment appropriate to the potential impacts and risks associated with the proposal.

In response to MM257, it is considered that the exemptions and requirements for specialist input are appropriately identified in the DDO. MMRA will strongly encourage developers and landowners to initiate pre-permit application discussions, during which MMRA will be able to provide further advice as to assessment requirements and process specific to the proposal.

In response to MM253, an exemption for maintenance, renovation or improvement of existing properties would not be appropriate, as the purpose of the DDO is to provide a

Issue raised

Submitter raising issue

MMRA response

process for assessment whether those activities would pose a risk to the Melbourne Metro infrastructure. It is noted that internal and external alterations to an existing building which do not require works below surface level are exempt from the permit and referral requirement, and this may cover some domestic maintenance and renovations.

51. DDO – revision of affected area:

- General review of the DDO alignment once the Project has been delivered;
- Removal from land generally as it limits future development;
- Reduction of the DDO to land explicitly subject to air rights purchased by the Project, or a sunset clause removing the DDO from specified land.

MM274; MM318;
MM367

The proposal that the extent of the DDO be reviewed following completion of the Project is supported by MMRA, consistent with the evidence of Mr Bennett. It is expected that this would occur on completion of construction as discussed in the evidence of Mr Bennett, to ensure that the DDO applies to all land required to protect the Melbourne Metro infrastructure in accordance with the purposes of the DDO. The analysis undertaken for the EES and reported in the Future Development Loading report and Mr Bennett’s expert witness statement indicates that amendments would be minor, rather than materially altering the extent of the DDO along the extent of the alignment. There may be some small changes to properties to which the DDO applies.

It is not proposed that the DDO be removed from any property simply because of a potential limitation on future development imposed by the DDO, given the vital purpose of the DDO in protecting the Melbourne Metro infrastructure. It is not proposed that the Project purchase air rights to support the DDO.

It is not considered appropriate to set a timeframe for this re-assessment in the DDO itself or to apply the DDO as an interim provision because the exact timing of this analysis is not certain and the extent of changes are generally not expected to be substantial.

52. DDO – should be amended to provide compensation for affected landowners

MM148; MM228;
MM250; MM301

Compensation is not typically provided to landowners affected by the application of an overlay, even where that overlay may require a property owner to obtain specialist advice to assist in future permit applications. A common example is a Heritage Overlay.

Application of the DDO supports the objectives of planning in Victoria and achieves a net community benefit.

53. DDO – in cross examination of Mr Milner, the question was raised whether tunnel protection should be provided through legislation rather than a DDO, including to avoid the potential for VCAT to issue a permit where the referral authority has objected.

-

MMRA has proposed the DDO as an appropriate mechanism to protect the underground infrastructure, using the existing and available suite of planning tools. Other options for tunnel protection are outlined in the Strategic Justification for proposed Planning Scheme Amendment GC45 in Technical Appendix A of the EES.

MMRA agrees that there is some potential for development to occur where the referral

Issue raised**Submitter raising issue****MMRA response**

authority has not agreed that the proposed development will not adversely impact the Melbourne Metro infrastructure:

- Where the referral authority has objected to a permit application, resulting in its refusal, but on review the Victorian Civil and Administrative Tribunal directs that a permit be issued; or
- Where a development is permitted through a planning scheme amendment rather than a planning permit process, and the views of the referral authority are not afforded the same level of statutory weight through the planning scheme amendment process.

If a legislative protection mechanism is recommended by the Committee, reflecting the protection currently afforded to the Melbourne Underground Rail Loop (City Loop), MMRA considers that there would be some benefits in transparency if an overlay were also applied, reflecting the area within which the legislative protection applies.

Other

54. Amend cl 61.01 to clarify the physical and legal extent of the Metro Project, for which Minister for Planning becomes responsible authority.

MM133 City of Port Phillip

MMRA submits that it is appropriate that the Minister for Planning be the responsible authority for this multi-jurisdictional project of State significance. This is consistent with the evidence of Mr Milner.

This wording as to the extent of the Project for which the Minister becomes the responsible authority reflects clause 61.01 of the VPP as it related to the Regional Rail Link Project.

It is considered that the proposed wording provides sufficient clarity.