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Mr John McCrann
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29 July 2016
Matter 82449055
By Email

Dear Mr McCrann

Confidential and Privileged

**Melbourne Metro Rail Project
Engagement of Expert Witness — Surface Water**

As you are aware, we are acting as legal advisors to the Melbourne Metro Rail Authority (**Authority**) in connection with the Melbourne Metro Rail Project (**Project**). A Surface Water Impact Assessment — Technical Appendix N (**Surface Water Report**), prepared by Mr David Sheehan, has been exhibited as part of the Environment Effects Statement (**EES**) for the Project.

We refer to our letter to you dated 4 July 2016 engaging you to undertake certain work regarding surface water matters. The purpose of this letter is to engage you as an expert witness for the Inquiry and Advisory Committee (**IAC**) hearing into the EES, to provide you with instructions concerning the preparation of an expert witness statement, and to assist you in preparing for your appearance before the IAC.

1 Background

The EES went on public exhibition between 25 May 2016 and 6 July 2016. Now that the public exhibition period has ended, the IAC appointed by the Minister for Planning under the *Environment Effects Act 1978* (Vic) will consider and report on the EES. As part of this process the IAC will hear submissions and evidence on the merits and impacts of the Project from and on behalf of the Authority, government agencies and supporters or opponents of the Project.

A directions hearing was conducted by the IAC on 26 July 2016. The IAC made the following directions relevant to the preparation and circulation of your expert witness statement and your participation in the upcoming hearing:

- (a) The hearing will commence on 22 August 2016 and conclude on or around 5 October 2016;
- (b) The hearing will be conducted at the Mercure Hotel at 13 Spring Street, Melbourne;
- (c) MMRA will likely be allocated ten days to complete its principal case, between 22 August 2016 and 5 September 2016;
- (d) Expert witness statements must be prepared in accordance with Planning Panels Victoria's Guide to Expert Evidence and must be submitted to the IAC in electronic and hard copy formats by 10:00 am 12 August 2016;
- (e) Expert conclaves in respect of the following disciplines are to be conducted in the week commencing 15 August 2016. The experts participating in these conclaves are to prepare a statement which sets out matters upon which they

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agree and matters upon which they disagree, relevant to their areas of expertise. These statements will be provided to the IAC at the commencement of the hearing on 22 August 2016. The IAC has directed that the following disciplines be the subject of an expert conclave:

- (1) Traffic;
- (2) Heritage;
- (3) Acoustics and vibration;
- (4) Arboriculture;
- (5) Land Contamination;
- (6) Groundwater; and
- (7) Air Quality.

Please note that the IAC has not directed that surface water matters be the subject of an expert conclave.

2 Scope

2.1 Expert witness statement

We would like you to prepare an expert witness statement in accordance with Planning Panels Victoria's Guide to Expert Evidence (**Guide**) which prescribes the content and form of expert witness statements. We enclose a copy of the Guide for your reference. You are required to review and understand the Guide and to ensure your expert witness statement addresses all matters set out in the Guide, in particular those matters listed under the heading 'Content and Form of Expert's Report'. Please contact us if there is anything in the Guide which you do not understand, or if you have any questions in relation to it.

We have also enclosed a template to assist you to prepare and order your expert witness statement. You should treat the template as an aid and should not consider yourself constrained by it if you would prefer to structure your statement differently.

Your expert witness statement should:

- (a) State whether you adopt the findings in the Surface Water Report, identifying any departure from the findings and opinions expressed in that report.
- (b) Address or respond to the public submissions provided to you insofar as they relate to surface water matters. Please note that it is perfectly acceptable for you to group submissions and respond to them collectively where those submissions raise the same or similar issues and your response to each of those submissions would be the same. In circumstances where you consider that matters raised in submissions would be adequately addressed if a recommended Environment Performance Requirement (**EPR**) is adhered to, or are otherwise adequately addressed in the EES, you should specifically identify the relevant EPR or section of the EES, by way of reply.
- (c) Review the enclosed MMRA Technical Notes (see **2.3** below) and, insofar as they are relevant to your area of expertise, consider whether they give rise to a need to modify any of the proposed EPRs relevant to your area of expertise.
- (d) Critically evaluate the proposed EPRs that are relevant to your area of expertise and consider whether the EPRs establish an appropriate framework to govern the construction and operation of the Project if it ultimately differs from the Concept Design (but is still situated primarily within the Project Boundary as shown in the EES Map Book). Your expert witness statement should identify any modifications to the EPRs that you consider necessary.



- (e) Include a statement addressing the point raised in paragraph 3.1.3 of the surface water peer review report, as per our engagement letter of 4 July 2016.
- (f) Attach a report or reports addressing the other matters set out in our engagement letter dated 4 July 2016.

2.2 Presenting at IAC

You will be required to present evidence to the IAC based on your expert witness statement. When you give evidence, you will be expected to answer questions put to you by the IAC and other parties and you may be cross-examined by counsel.

Given the serious time constraints for the IAC hearing, a PowerPoint presentation may not be required for all witnesses. We will advise you closer to the hearing date whether a PowerPoint presentation will be required and, if so, the length it should be.

A timetable has been published by the IAC since the directions hearing. Surface water evidence is scheduled to be heard on Thursday **25 August 2016**. We will advise you if there is any change to this date.

We may also ask that you be available at other times on or after 25 August 2016 when evidence relevant to your area of expertise is being given by other Authority experts or by experts retained by other parties. We recommend that you set aside three full days — 24 August 2016 to 26 August 2016 — for the hearing process. This will allow one day for preparation, one day for the giving of evidence and an additional day in case your evidence is delayed or extends to an additional day.

2.3 MMRA Technical Notes

Throughout the course of the hearing MMRA will prepare technical notes in response to requests for information made by the IAC or in respect of matters arising out of submissions made to the IAC or following consultation with relevant stakeholders (**MMRA Technical Notes**). The purpose of the MMRA Technical Notes is to set out MMRA's position in respect of particular issues or matters that arise throughout the course of the hearing.

The first group of MMRA Technical Notes — numbered 1–18 — was provided to the IAC at the Directions Hearing. Copies of those MMRA Technical Notes are enclosed.

MMRA Technical Notes 1–8 were prepared in response to a request for information made by the IAC on 13 July 2016, which is also enclosed. MMRA Technical Notes 9–18 document modifications to the Concept Design supported by MMRA.

It is anticipated that MMRA will prepare further technical notes both in advance of and during the hearing. As noted above, you may be instructed to review further technical notes prior to the completion of your witness statement or prior to giving evidence before the IAC. You may also be instructed to assist in the preparation of technical notes relevant to your area of expertise.

3 Your duties and responsibilities as an expert witness

As set out in the Guide, an expert witness has a duty to the Panel (IAC) and not to the person engaging the expert. You are not an advocate for any party. Consequently, though you are retained by the Authority, you are retained as an expert to assist the IAC and have an overriding duty to it. The IAC will expect you to be objective, professional and form an independent view as to the matters in respect of which your opinion is sought.

4 Fee estimate and invoicing

It is important to note that you will continue to be contractually engaged by the Authority. The Authority will continue to be responsible for the payment of your fees and your accounts should be sent directly to the appropriate person nominated by the Authority.



5 Confidentiality

Your expert witness statement, presentation and any drafts which are prepared in accordance with this retainer are confidential and are not to be copied or used for any purpose unrelated to the IAC hearing without our permission.

Material supplied by Herbert Smith Freehills is, unless it is already in the public domain, confidential and is not to be copied or used for any purpose unrelated to your retainer without our permission.

6 Conflict of interest

It is important that you are free from any possible conflict of interest in providing your advice. While we assume you have no conflict of interest given your role in design for the Project and preparation for the IAC hearing, you should again ensure that you have no connection with any potential party to the IAC hearing which could preclude you from providing your opinion in an objective and independent manner.

7 Communications

Unless advised otherwise, all communications, whether verbal or written, should be directed to our office so that we can coordinate, manage and integrate work activities with legal requirements and ensure legal professional privilege is maintained, as appropriate. It is, however, quite appropriate for your communications to be copied into the Authority.

Until your statement is in final form it should not be signed. You should, however, be aware that unsigned documents may need to be disclosed to other parties.

8. Important dates

We confirm the following dates in respect of the upcoming hearing:

- (a) Meeting with counsel and Herbert Smith Freehills on **10 August 2016**.
- (b) Final witness statements due to Herbert Smith Freehills on **10 August 2016**.
- (c) If required, a PowerPoint presentation of your evidence for presentation at the hearing due **17 August 2016**.
- (d) IAC hearing: Monday **22 August to 5 October 2016** — Surface water evidence scheduled for Thursday **25 August 2016**.

If you have any questions about this letter, your role in the hearing, or the approval process, or would like to discuss your availability or the content of your expert witness statement, please contact us.

Yours sincerely

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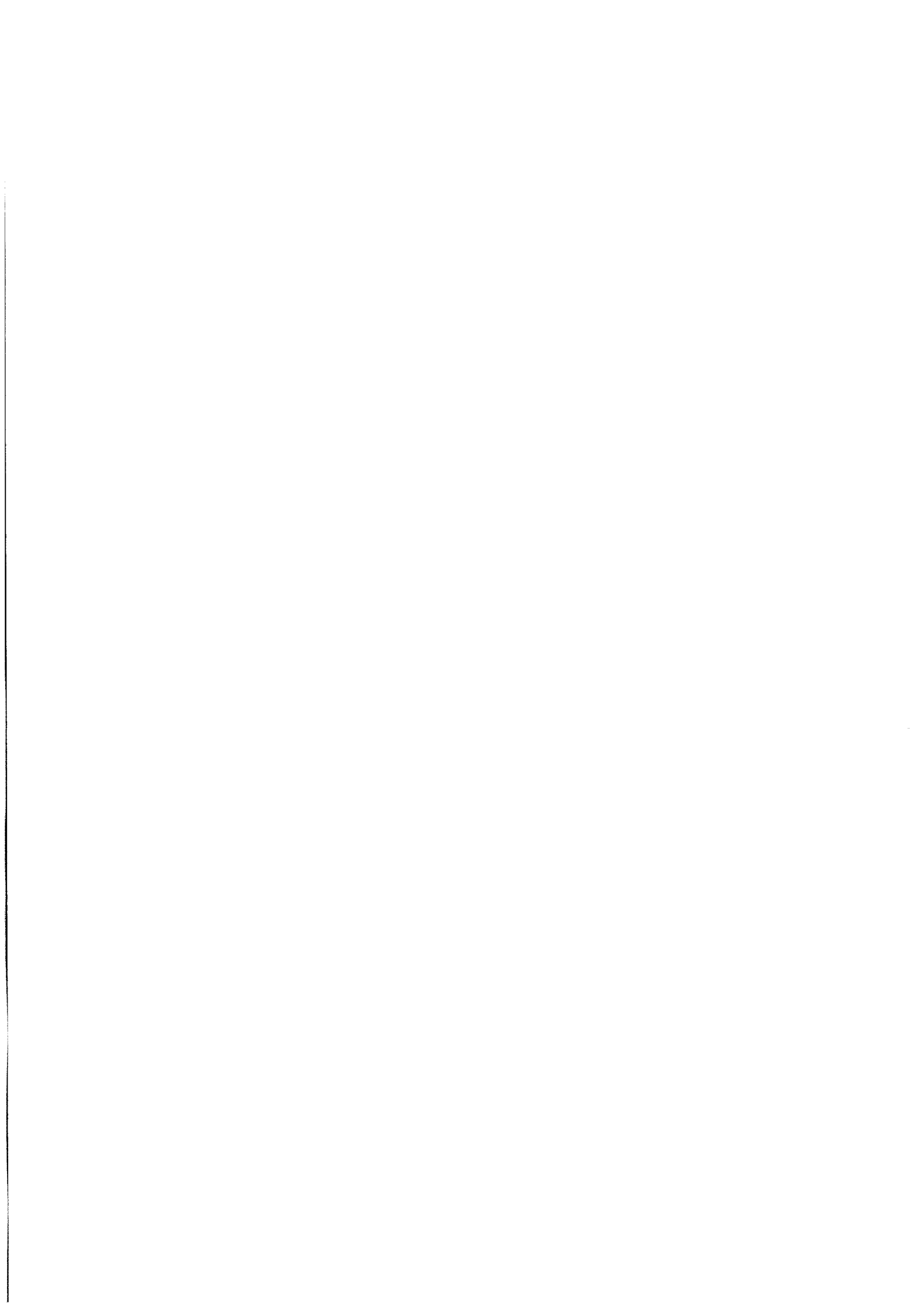
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Herbert Smith Freehills LLP and its subsidiaries and Herbert Smith Freehills, an Australian Partnership ABN 98 773 882 646, are separate member firms of the international legal practice known as Herbert Smith Freehills.



Attached

- 1 Planning Panels Victoria — Guide to Expert Evidence
- 2 Pro forma Expert Witness Statement
- 3 MMRA Technical Notes
- 4 IAC request for further information (13 July 2016)





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Attachment 1

Planning Panels Victoria — Guide to Expert Evidence

See attached.



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Attachment 2

Pro forma Expert Witness Statement

In the matter of the Melbourne Metro Rail Project

Planning Panels Victoria

Proponent: Melbourne Metro Rail Authority

**Expert Witness Statement of
[insert name]**

Expert of Melbourne Metro Rail Authority



1 Name and address

[insert]

2 Qualifications and experience

Appendix A contains a statement detailing my qualifications and expertise and addressing the matters set out within Planning Panels Victoria's Guide to Expert Evidence.

3 Scope

3.1 Role in Preparation of the EES

[Outline role in respect of the preparation of relevant sections of the EES].

An appropriate statement may be:

My firm AJM was responsible for the preparation of the technical report titled "[##]" which is included as Technical Appendix [##] to the EES.

My role in the preparation of the [relevant EES report] was to [describe].

3.2 Instructions

My instructions to prepare this witness statement are set out in Appendix A.

3.3 Process and Methodology

[insert]

4 Findings

4.1 Summary of Opinions

I have reviewed the [relevant EES Report] in preparing this expert witness statement.

Save where otherwise indicated I adopt the [relevant EES Report] as the basis of my evidence before the Inquiry and Advisory Committee.

[Outline any changes (if necessary) to the initial report.]

[Outline any changes (if necessary) to the initial report.]

[Outline any changes (if necessary) to the initial report.]

[Outline any changes (if necessary) to the initial report.]



4.2 Any Additional Work Undertaken Since Exhibition of EES

[Only if relevant]

4.3 Response to Submissions

I have reviewed the following submissions which raise issues concerning [relevant area of expertise]: [identify relevant submission numbers here.]

My detailed response to the matters raised in these submissions is set out in Appendix C.
[Insert]

4.4 Review of MMRA Technical Notes

I have reviewed MMRA Technical Notes 1 – [##].

[Insert]

4.5 Environmental Performance Requirements

I have reviewed the EPRs relevant to [area of expertise].

[Outline any changes (if necessary) to the initial report.]

EPR No.	Original EPR	Recommended EPR	Reason for Modification
	<i>[text]</i>	<i>[text showing marked-up change]</i>	

5 Declaration

I have made all the inquiries that I believe are desirable and appropriate and no matters of significance which I regard as relevant have to my knowledge been withheld from the Panel.

Signed

Dated 2016



Annexure A – Response to PPV Guide to Expert Evidence

Expert's Qualifications

[Insert]

Professional Associations

[Insert]

Employment History and Achievements

[Insert]

Expertise to Make Report

[Insert]

Other Significant Contributors to the Report (if any)

[Insert]

Instructions to Prepare Report

[Insert]

Identity of Persons who have Carried out Tests or Experiments upon which Reliance has been Placed (if any)

[Insert]

Reports Relied Upon to Prepare Expert Witness Statement

[Insert]



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Annexure B – Curriculum Vitae



Annexure C – Detailed Response to Submissions

Issue	Submission No.	Response	Any Recommended New or Modified Environmental Performance Requirement



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Attachment 3

MMRA Technical Notes

See attached.



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Attachment 4

IAC request for further information (13 July 2016)

See attached.