

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

5 September 2016

Issue raised

Submitter raising issue

MMRA response

Incorporated Document

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 and 5.1.5 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.

Although MMRA does not consider it necessary for the Incorporated Document to specify how public inspection should occur, in response to matters canvassed in the evidence of Mr Milner, clause 5.1.5 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. This is 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.

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<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>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.</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>
<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</p>

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Plan or Development Plan should be prepared and approved.

It is acknowledged that the Preparatory Works condition in clause 5.6 covers some works for which a permit would not normally be required. 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 the works that a contractor may wish to undertake as Preparatory Works and consider whether planning approval would be required.

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.

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.

MM180

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. 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.

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

MM365 City of Melbourne
MM314 Maribyrnong City Council
MM100; MM207;
MM253; MM310;
MM367

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 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
- 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,

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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 provided during the course of the hearing, as set out in Technical Note 056. It is noted that the Incorporated Document applies only to use and development for the Project as set out in clause 3.0 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.

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.

MM365 City of Melbourne
MM376 VPA
MM253

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.

The distinction is appropriately reflected in the Incorporated Document in that:

- 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.

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

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7. Incorporated Document – should include buffer zones and sound proofing requirements for new developments to protect existing industry	MM357	<p>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>
8. The Incorporated Document should provide clear guidance on land uses associated with the station e.g. cafes, newspaper stands and any other retail uses.	MM133 City of Port Phillip	<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 park and manoeuvre vehicles. It may include the selling of food, drinks and other convenience goods and services.'</p> <p>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'.</p> <p>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.</p> <p>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.</p>
9. Incorporated Document – consultation on Urban Design Strategy and Environmental Management Framework	<p>MM257 City of Stonnington p</p> <p>MM314 Maribyrnong City Council</p> <p>MM180; MM231; MM318</p>	<p>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.</p> <p>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, and EPR Version 2 (5 September 2016). It is anticipated that further refinements may be made to the EPR and</p>

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10. Incorporated Document – consultation on Early Works Plans	MM257 City of Stonnington MM314 Maribyrnong City Council MM180; MM231; MM318	<p>circulated prior to the end of this hearing.</p> <p>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.</p> <p>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 identifying 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 documents that has been through consultation and inquiry, will be brought to the Minister's attention for consideration.</p>
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	<p>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.</p> <p>It is not considered necessary that Early Works Plans be the subject of broader public consultation 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.</p> <p>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.</p> <p>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 5 September 2016) requires that the use and development be carried out in a manner consistent with the approved Environmental Management Framework and EPR.</p>

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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 do not specifically require Heritage Management Plans, however 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.

12.Consultation on Management Plans

MM170; MM180
MM368

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.

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).

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13.Require the inclusion of the EPR in an appendix to the Incorporated Document.	MM091; MM133; MM370	<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 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 Reviewer.</p> <p>In particular, clause 5.2.6 of the Incorporated Document and Appendix 1 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, again to the satisfaction of the Minister for Planning. 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.</p>
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	<p>It is not proposed that the Urban Design Strategy objectives, principles or guidelines be explicitly listed in the Incorporated Document.</p> <p>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.</p> <p>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 identifying any differences, which will</p>

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		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 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.	MM133 City of Port Phillip MM091	<p>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 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.</p> <p>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.</p>
17.Incorporated Document – mechanism to report and monitor compliance.	MM133 City of Port Phillip MM091; MM373	<p>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.</p> <p>The governance structure for the Project is set out 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:</p> <ul style="list-style-type: none"> • 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 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

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		<p>Appendix 1 to the Incorporated Document.</p> <p>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. 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.</p>
<p>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.</p>	<p>MM133 City of Port Phillip Recommendation 10 MM091</p>	<p>This suggestion is not supported.</p> <p>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. 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.</p>
<p>19.Incorporated Document – consultation with RMIT</p>	<p>MM180</p>	<p>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.</p> <p>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) also include further clarification of ongoing consultation requirements.</p> <p>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 this established and ongoing process be included in the Incorporated Document.</p>

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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	<p>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.</p> <p>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.</p>
21. Transparency of approved plans under the Incorporated Document	Evidence of Mr Milner	The Incorporated Document (version 5 September 2016) addresses the transparency of approved documents in clause 5.7, which provides that a current version of each Development Plan, the Environmental Management Framework, 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.
<i>Design and Development Overlay</i>		
22. 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>
23. 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

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Guidelines would assist the referral authority in responding to applications 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.

24.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 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.

Issue raised	Submitter raising issue	MMRA response
<p>25. 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.</p>	<p>MM133 City of Port Phillip</p>	<p>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.</p> <p>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.</p>
<p>26. DDO – permit exemptions</p> <p>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.</p> <p>MM257 – that the exemptions and requirement for specialist input should be better identified.</p> <p>MM253 – exemption for maintenance, renovation or improvement of existing properties</p>	<p>MM257 City of Stonnington</p> <p>MM253; MM318</p>	<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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 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.</p>
<p>27. DDO – revision of affected area:</p> <ul style="list-style-type: none"> General review of the DDO alignment once the 	<p>MM274; MM318;</p> <p>MM367</p>	<p>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</p>

Issue raised	Submitter raising issue	MMRA response
<p>Project has been delivered;</p> <ul style="list-style-type: none"> 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. 		<p>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.</p> <p>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.</p> <p>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.</p>
<p>28.DDO – should be amended to provide compensation for affected landowners</p>	<p>MM148; MM228; MM250; MM301</p>	<p>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.</p> <p>Application of the DDO supports the objectives of planning in Victoria and achieves a net community benefit.</p>
<p>29.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.</p>	<p>-</p>	<p>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.</p> <p>MMRA agrees that there is some potential for development to occur where the referral authority has not agreed that the proposed development will not adversely impact the Melbourne Metro infrastructure:</p> <ul style="list-style-type: none"> 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. <p>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</p>

Issue raised	Submitter raising issue	MMRA response
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protection applies.

Other

30. 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.