

SJB Planning



Melbourne Metro Rail Project Advisory Committee

STATEMENT OF PLANNING EVIDENCE

Prepared
for

RMIT University

by

Hugh W Smyth
SJB Planning Pty Ltd
Level 1, 80 Dorcas Street
SOUTHBANK VIC 3006
T: 03 8648 3500 F 03 8648 3599
ACN 007 427 554

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1.0 INTRODUCTION

1.1 Opening remarks

1. This Statement of Evidence relates to the Melbourne Metro Rail Project (MMRP). The MMRP is the subject of a joint Inquiry and Advisory Committee (IAC) appointed by the Minister for Planning, pursuant to the provisions of the *Environment Effects Act 1978* and *Planning and Environment Act 1987*, to explore the environmental and planning issues raised by the MMRP.
1. The Melbourne Metro Rail Authority (MMRA) is the proponent of the Environment Effects Statement (EES) for the MMRP and the Minister for Planning is the planning authority for the draft Planning Scheme Amendment; the latter being the specific focus of the Advisory Committee aspect of the joint IAC.
2. RMIT University lodged a submission to the EES, supporting the aspirations of the MMRP but raising specific concerns relating to the MMRP's impact, in particular the City North Station, on RMIT University, its staff and students.
3. In August 2016, I received a brief from Maddocks, on behalf of RMIT University, requesting I review the EES, draft Planning Scheme Amendment and RMIT's submission and confirm my views on the issues raised. The focus of my review was the draft Planning Scheme Amendment documentation which is the subject of the Advisory Committee element of the IAC's review.
4. I have prepared this Statement of Evidence setting out my opinions on the planning matters relevant to the MMRP's City North Station and the matters raised in RMIT University's submission.

1.2 Name, Qualifications and Experience

1. My name is Hugh Smyth and I am a Director of SJB Planning, which conducts business from premises located at Level 1, 80 Dorcas Street, Southbank.
2. I hold a Bachelor of Applied Science (Planning) obtained from the Royal Melbourne Institute of Technology (RMIT). I am also a member of the Victorian Planning and Environmental Law Association (VPELA).
3. I have been a planning consultant since 2006, advising public sector and private clients on a wide range of planning and development matters, including a range of residential, mixed use, commercial, retail and industrial projects, the preparation of planning scheme amendments, as well as the drafting use and interpretation of planning scheme provisions.
4. My area of expertise is urban planning matters.

1.3 Instructions

5. In early August 2016, I received a written brief from Maddocks seeking my opinion on the planning issues arising from RMIT' University's submission to the MMRP's EES. My instructions were:
 1. *Prepare a report assessing the planning merits of RMIT's submission to the IAC;*

2. *To the extent it is relevant to the draft Planning Scheme Amendment documents, comment on the recommendations made by RMIT in its submission relating to:*
 - a. *the terms of the draft Incorporated Document;*
 - b. *the terms of the draft Environmental Management Framework;*
 - c. *its desire for ongoing involvement in planning processes that will occur after the conclusion of the IAC hearings;*
 2. *Comment on any other planning matters that you feel are relevant to RMIT's interests, and the planning arrangements for the CBD North Precinct that you feel should be raised before the IAC;*
6. I subsequently agreed to prepare this report for the IAC, setting out my opinions on the planning merits of RMIT's submission, as they relate to the draft Planning Scheme Amendment documentation.
 7. I have had no involvement directly or indirectly with RMIT's submission.

1.4 Facts Matters and Assumptions

8. In preparing this statement I have:
 - reviewed the IAC's Directions;
 - reviewed the MMRP EES and associated documentation including, specifically, the draft Planning Scheme Amendment;
 - reviewed the peer review of the EES prepared for RMIT University by Meinhardt (and specialist sub-consultants) which I'm instructed formed the basis of the RMIT submission;
 - reviewed the submission by RMIT University to the EES;
 - reviewed the IAC's request for further information (dated 25 July) and the MMRA's technical advisory notes;
 - visited the site of the CBD North Station, associated works zones, the surrounding area and considered its land uses, physical attributes and constraints; and
 - reviewed relevant planning controls and policies as set out in the Melbourne Planning Scheme (and where relevant the other planning schemes affected by the MMRP) as well as associated reference and incorporated documents, including *Plan Melbourne*, and
 - had regard to the applicable provisions of the *Planning and Environment Act 1987*, as well as relevant Ministerial Directions and Planning Practice Notes.

1.5 This statement of evidence

5. This Statement of Evidence addresses planning matters related to the draft Planning Scheme Amendment documentation which accompanies the EES. It is one of a number of Statements of Evidence which have been prepared for the IAC's consideration, on behalf of the RMIT University.
6. My evidence addresses planning matters that arise, more specifically, as a consequence of the plans for the MMRP City North Station, the issue raised in the RMIT University submission and the draft Planning Scheme Amendment as it relates to these matters.

7. I have read Planning Panels Victoria's Guide to Expert Evidence Tribunal's Practice Note No. 2 on expert evidence and fully understand my duty to the IAC. My report proceeds on the basis of my expertise in urban planning matters. Except where stated, the views expressed in my report are my own opinions and are not provisional opinions.

1.6 Summary of evidence statement

8. Infrastructure projects of the type and scale of the MMRP are inherently complex. Having had no involvement with the project until invited by RMIT (via its solicitors) to review and form opinions about it in August 2016, it came as no surprise to find copious amounts of written and other material documenting the project's inception, its strategic candidacy, the EES preparation and exhibition, and now, independent consideration of its merits by the IAC.
9. The process has drawn out various planning issues across a spectrum of interests. This is not surprising given the massive scale of the project, its geographical extent, the inherent complexity of undertaking infrastructure projects in a major City and the sheer number of persons affected. There appears to be a consensus that the MMRP is an important and necessary 'city shaping' infrastructure project that has the potential to make a significant, positive contribution to the City's future liveability and prosperity.
10. While I am obviously cognisant of the range of issues raised during the EES exhibition process including the submissions to it, and do not wish to be accused of oversimplifying things, it is my view that the planning matters raised by the draft Planning Scheme Amendment and the RMIT submission, as they relate to the CBD North Precinct are:
- (i) Have the appropriate 'tools' been used to facilitate the project throughout its various stages?
 - (ii) Is the drafting of the Incorporated Document appropriate to facilitate the delivery of the MMRP?
 - (iii) Is the content of the proposed Design and Development Overlay appropriate to control future development that may have an impact on the MMRP once operational?
11. I summarise my views on these matters, as follows:
- I am satisfied that the draft Planning Scheme Amendment uses the appropriate tools available under the Victoria Planning Provisions, to facilitate the project's approval, construction and ongoing operation. Whilst there are other tools available, I am satisfied that those chosen are the most effective available to advance the objectives of the *Planning and Environment Act 1987*.
 - The drafting of the proposed Incorporated Document is inadequate and requires review to ensure that appropriate safeguards are provided to protect the community (including RMIT University) from impacts during the construction phase and into the operation phase of the project which can be reasonably foreseen. A revised approach to the Incorporated Document should be adopted, one which:
 - provides for further consultation with key bodies, including RMIT University, as part of the further secondary consent approvals required in the Incorporated Document; and
 - the establishment of a Standing Advisory Committee (SAC) to make recommendations to the Minister for Planning in respect of the further approvals sought pursuant to the Incorporated Document and provide a forum for key parties (including RMIT) to be further consulted.
 - The Design and Development Overlay proposed to protect and manage the MMRP's operation into the future is appropriately drafted and will achieve its intended objectives.

2.0 BACKGROUND

2.1 The Melbourne Metro Rail Project – a brief summary

12. The EES provides a detailed description of the MMRP. It is a significant undertaking, representing the single largest public transport infrastructure project in Melbourne since the construction of the underground City Loop.

Melbourne Metro Rail Project

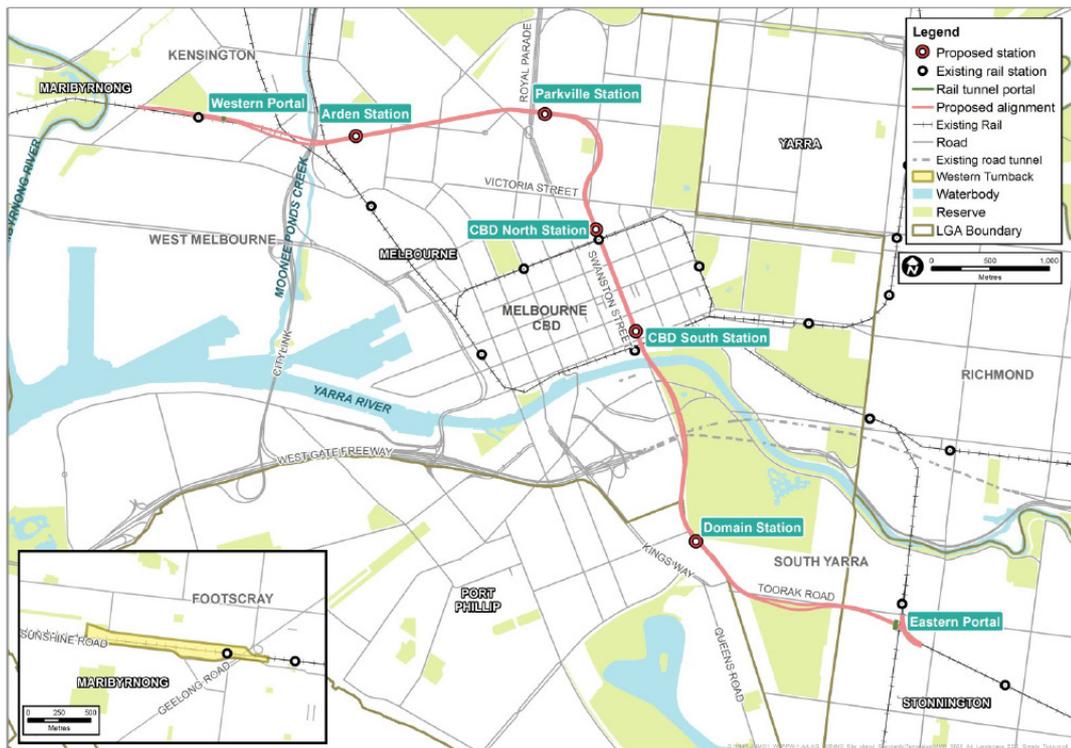


Figure 1: Overall MMRP Concept (Source: EES)

13. The project generally comprises five (5) new underground stations, two (2) new city stations that connect directly to the existing Flinders Street Station and Melbourne Central Stations, tram and train interchanges at Domain Station, rail tunnel portals at Kensington and South Yarra and a rail turn back at West Footscray Station.
14. It will create capacity within the broader metropolitan network, essentially creating a tunnel through the Melbourne CBD for the Pakenham, Cranbourne and Sunbury lines. In addition, increased rail services will be provided on other train lines not directly using the tunnels.

15. The proposed CBD North Station component of the project is the most proximate and relevant to RMIT University. As set out in the EES, the CBD North Station comprises the following key components:

- A new station to the north of the existing City Loop tunnels.
- A southern entrance on La Trobe Street, connected below ground to the existing Melbourne Central Station with potential for future development above.
- A northern entrance accessed from Franklin Street.
- Plant rooms below Franklin Street and A'Beckett Streets, as well as below the southern station entrance.
- Ventilation fire egress and maintenance access in Franklin Street and the west side of Swanston Street, as well as ventilation and maintenance access in A'Beckett Street.

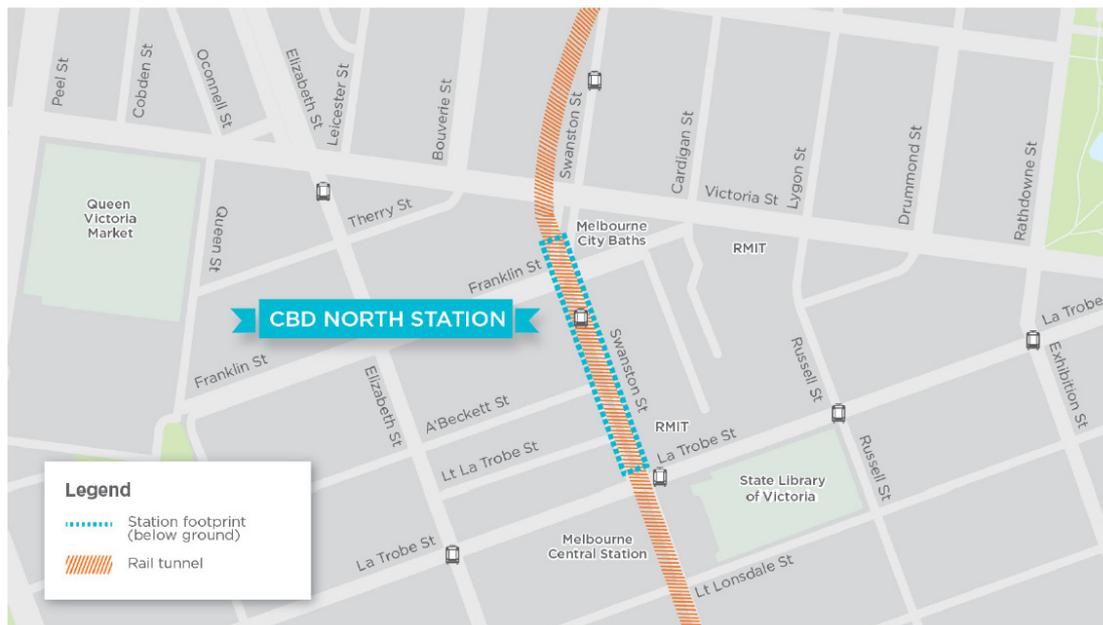


Figure 2: CBD North Station location (Source: EES)

16. The construction activities associated with this aspect of the MMRP generally contemplates:

- Acquisition of private property and demolition of existing structures, including RMIT's informal outdoor recreation facility on the corner of A'Beckett and Stewart Streets.
- Relocation of services and construction of access shafts (Franklin and A'Beckett).
- Removal of existing (street) trees.
- Cavern excavation of station tunnels.
- A mined tunnel construction.
- Fit out of stations.
- Track works for the rail tunnels.
- Restoration of construction sites within the precinct.

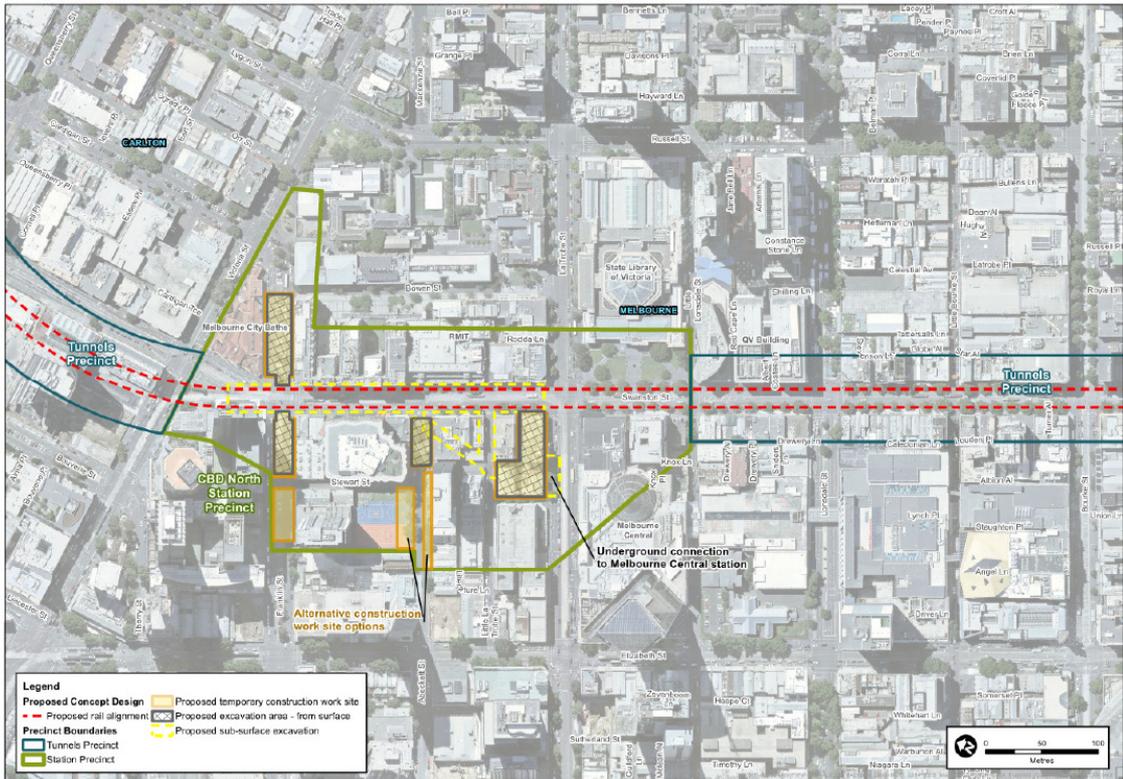


Figure 3: Construction details for CBD North Station (Source EES)

2.2 A brief synopsis of RMIT University and its affected land

17. Section 2 of the University’s submission sets out helpful information regarding the University in some detail. The key components of this which I believe are worthy of note include:

- Annual revenue \$1.1 billion in 2015.
- \$3 billion invested in infrastructure.
- 50,000 students and staff attend the City campus.
- Up to 10,000 students and staff cross Swanston Street every day.
- 5,000 cross Victoria Street from Franklin Street to Cardigan Street during a standard operating day.
- 11,000 international students studying at Melbourne campuses.
- A major contributor to higher education with education contributing over \$4.7 million to the State’s economy.
- Operates 24 hours a day 7 days a week.

18. As can be deciphered from the below figure, the University will flank the proposed CBD North Station either side of Swanston Street and about the station entrance (and appurtenant infrastructure) in Franklin Street.

CITY CAMPUS

City campus buildings not on this map:
 » Building 154 (Royal Dental Hospital, 720 Swan

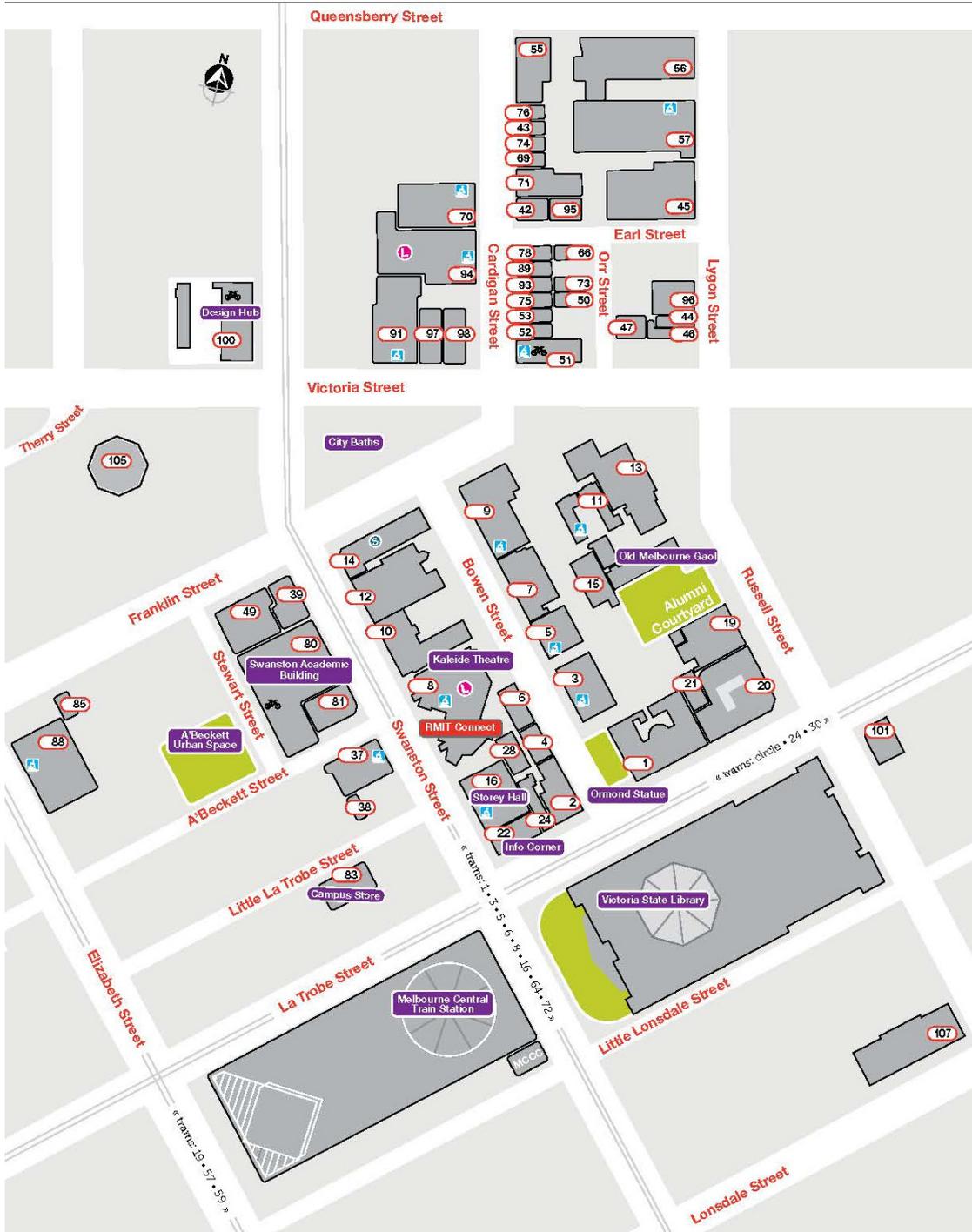


Figure 4: RMIT City Campus Map (Source: RMIT University)

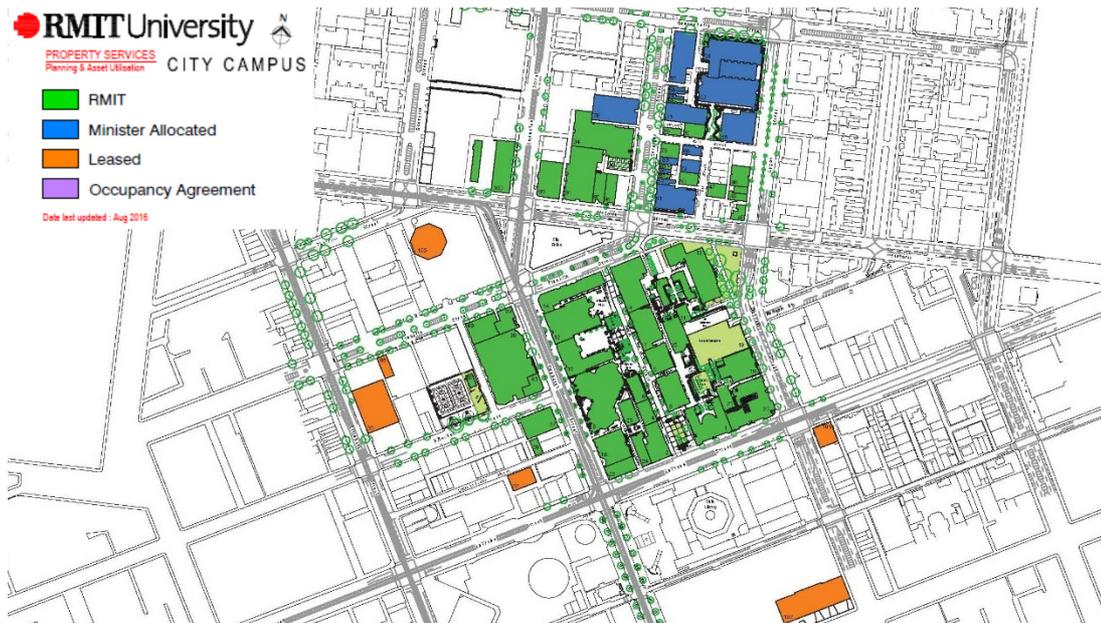


Figure 5: RMIT land holdings and interests (Source RMIT University) and reproduced at Attachment 1

19. What is interesting about the RMIT University City Campus and its physical characteristics is that unlike many traditional University campuses, it is comparatively decentralised, spread across a large geographical areas and its grounds are largely open to the public. Movement between buildings is often reliant upon the City's public street network and not self-contained within a campus 'boundary'. This is not unsurprising given the intensively settled structure of the City's street and land network and history of land assembly. It is also apparent that RMIT is a significant owner of land within the CBD and fringe areas.
20. RMIT University's existing land and the University's operations will be affected by the MMRP during both the construction and operational phases of the project, potentially as follows:

Land

- A'Beckett Urban Square occupied (construction phase).
- Building 38 compulsorily acquired (construction and operation phases)
- Building 37 and 100 strata rights transferred (construction and operations phases)

Operations

- Vehicular access to Bowen Street from Franklin Street and access to existing loading/unloading facilities in Franklin Street may be removed should Franklin Street be permanently closed, as proposed (construction and operation phases).
- Pedestrian connectivity for students and staff moving between the main campus buildings flanking Bowen Street and those buildings in Cardigan Street north of Victoria Street will be interrupted by the works zone in Franklin Street (construction phase).
- Pedestrian connectivity for students and staff moving between the main campus buildings and the existing building on the west side of Swanston Street will be interrupted by the works zones in Swanston Street (construction phase).
- Noise and vibration impact from the construction works (above and below ground) and from the future operation of the rail system (construction and operation phases).
- General construction impacts (in addition to noise and vibration) on the environment adjoining the University buildings (construction phase).

- Compromised ability to carry out research activities due to sensitivities to environmental factors during construction (construction and operation phase).
- Reduction in student and staff interest in attending/working for RMIT University due to length of construction activities (construction phase).
- Improved connectivity with the new rail infrastructure for staff, students and visitors upon project completion (operation phase).
- Increased attraction of staff and students to the University due to the improved public transport accessibility.

2.3 Issues raised in the RMIT submission

21. RMIT's submission to the EES sets out a range of concerns with the EES and associated EMF (and its EPRS), the draft Planning Scheme Amendment, as well as suggested improvements that would address issues raised.
22. I synthesise the key elements of the submission, as follows:
- A lack of understanding in the EES and EMP in relation to RMIT's operations and therein the MMRP's potential impacts on those operations.
 - Lack of clarity/detail of the design (including multiple design options) and inability to properly assess and understand potential impacts.
 - Exclusion from the statutory approvals process following the IAC hearings and lack of ability to provide input during the underground construction and above ground works phases of the project.
 - Lack of certainty regarding the project's EPRs.
 - Inadequate EPRs in the draft EMP.
 - Direct property impacts, including restricted access.
 - Detrimental impacts resulting from noise and vibration including impacts on the University's capacity to undertake research due to these impacts.
 - Restricted movement and access during the construction phase, reducing the connectivity between campus buildings and potentially compromising the safety of students and staff.
 - Need for proactive engagement with RMIT by the MMRA.
23. I note that the RMIT submission was informed by a 'Peer Review' of the EES, prepared by Meinhardt and a series of specialist sub-consultants. I understand that this work informed the RMIT submission's recommendations.

2.4 The draft Planning Scheme Amendment

24. The draft Planning Scheme Amendment documentation exhibited as part of the EES proposes to amend the Melbourne, Port Phillip, Stonnington and Maribyrnong Planning Schemes in the following manner, to facilitate the delivery of the project's planning approvals:
- Introduce a new schedule to Clause 43.02 (Design and Development Overlay) to apply to land above and adjacent to the new tunnels, stations and associated infrastructure (does not apply to the Maribyrnong Planning Scheme) and updating of the Planning Scheme maps to reflect this.

- Amend schedule to Clause 52.03 (Specific Sites and Exclusions) to facilitate the planning approval for the MMRP in accordance with the *Melbourne Metro Rail Project Incorporated Document, April 2016*.
- Amend the schedule to Clause 61.01 making the Minister for Planning the Responsible Authority for the MMRP land.
- Amend Clause 64.04 to establish the Secretary of the DEDJTR as a determining referral authority for permit applications required by the new schedule to Clause 43.02 up until 31 December 2026 and, thereafter, VicTrack (does not apply to the Maribymong Planning Scheme).
- Amend the schedule to Clause 81.01 to insert an incorporated document titled *Melbourne Metro Rail Project Incorporated Document, April 2016*.

25. At this stage in the project's planning and subject to the outcomes of the IAC process, I understand that the Minister for Planning would subsequently proceed to prepare, adopt and approve the Planning Scheme Amendment (GC45) pursuant to the powers conferred on the Minister in Section 20 of the Act.

3.0 KEY CONSIDERATIONS AND ASSESSMENT

26. My views on the draft Planning Scheme Amendment are set in the following sub sections.

3.1 What are the appropriate statutory tools?

27. I note that the RMIT submission does not contest the strategic candidacy of the MMRP and I likewise have formed the view that there is a clear strategic rationale for the project generally.

28. The EES is accompanied by a detailed assessment against the Minister's Direction No.11 (Strategic Assessment Guidelines).

29. For completeness, I am generally satisfied that there has been a comprehensive strategic evaluation of the proposed planning scheme amendment and the outcome it intends to produce, to justify the amending of the planning schemes to facilitate the MMRP, subject to resolving the matters I raise below.

30. I do not intend on a tedious recitation of the analysis undertaken as part of the EES in respect of the various options available to facilitate planning approvals for the MMRP and to substantiate the approach adopted in the draft Planning Scheme Amendment. The analysis already undertaken has been extensive, thorough and considered. I do not take issue with that analysis 'in principle' and the tools selected to facilitate the MMRP's planning approvals.

31. In this regard, key to my findings is:

- Whilst other legislative options are available to facilitate the approval of the project, the existing format and structure of the VPPs provide appropriate, efficient and functional provisions to enable the timely, coordinated and integrated approval of the project.
- There is a clear need for an amendment to the five planning schemes to facilitate the approvals process. The delivery of the project by way of the planning permit application process would be inefficient, cumbersome and disjointed, given the significant geographical footprint of the project and multiplicity of municipalities it affects. This also justifies making the Minister for Planning the Responsible Authority of the project's planning approvals.
- The use of the schedule to Clause 52.03 and the associated Incorporated Document is appropriate. Clause 52.03 was designed and has consistently operated to enable complex projects to be delivered in a timely fashion. The scale and complexity of the MMRP clearly represents "extraordinary circumstances" and warrants 'specific controls designed to achieve a particular land use and development outcome' in accordance with the purpose of Clause 52.03.
- The Design and Development Overlay proposed is a statutory tool well suited to protecting the rail infrastructure during the construction and operational phases of the MMRP and, of the tools available under the VPP suite of controls, is one which is ideally suited to consideration of important design and built form issues, as part of a responsible authority's consideration of future buildings and works applications. The DDO enables the referral of applications to government agencies charged with the maintenance of the infrastructure, as well as legal rights of review of decisions that is consistent with the VPPs performance based framework.
- Whilst the DDO is a transparent control, that is easily identifiable to land owners, the Incorporated Document is less so. However, given the Incorporated Document is intended to

facilitate the delivery of the construction of the MMRP (and not its ongoing operation) and not otherwise specifically regulate use and development of land, this does not present any ongoing challenges.

- The changes proposed in the Planning Scheme Amendment will not have a negative impact on the resource and administrative costs of the municipal Councils and would result in substantially lesser costs than seeking to implement and deliver the project via the normal planning permit application process. Making the Minister for Planning the Responsible Authority will increase resource and administrative costs, however, not beyond a point which would be unreasonable or excessive having regard to the project's scale and complexity.

32. For these reasons, I am satisfied that the statutory tools adopted by the draft Planning Scheme Amendment are appropriate and that the amendment is strategically justified.

3.2 Is the Incorporated Document appropriate?

33. As I have concluded that the Planning Scheme Amendment adopts the appropriate statutory planning tools to advance the objectives of the Act and facilitate the MMRP, I have turned my mind to the actual content and structure of the Incorporated Document and whether they are appropriate.

34. The Incorporated Document is the key component of the MMRP's planning approvals process and gives life to the project's delivery. It will be the project specific document that provides the framework for the Minister for Planning's consideration and approval of the MMRP's (i) detailed design and protection framework during the construction phase and (ii) the design of the above ground works required to finish off the sub surface works and integrate the MMRP into the surrounding context.

35. In my view, Clauses 1 (Introduction), 2 (Purpose) 3 (Land Description) and 4 (Control) are appropriately framed to effectively implement the framework for the Incorporated Document. There is no scope for inconsistency or confusion in respect of the its operation, application and administration, in my view.

36. It is the structure and requirements of Clause 5 (Conditions) of the Incorporated Document which has some shortcomings and warrant revisions, in my view.

3.2.1 Philosophical Approach

37. My first concern relates to the underlying philosophy of excluding third parties from the further planning approvals process set out in Clauses 5.1, 5.2, 5.3 and 5.4 of the Incorporated Document, in circumstances where the plans for the MMRP are conceptual and, as a consequence, uncertain.

38. It is not uncommon that an Incorporated Document implemented pursuant to Clause 52.03 of a Planning Scheme might remove third party notice and review rights. Indeed, within the Central City for instance, third party notice and review rights for use and development permit applications are already largely curtailed.

39. After all, one of the advantages of the Incorporated Document tool is it is ideally suited to expeditiously facilitating a defined project and, in some instance, specifically used to remove third party rights. However, in my opinion, the removal of these rights should come with an obligation that the Incorporated Document provides a clear understanding of the outcome to be delivered as a consequence of the Incorporated Document's implementation. For a project of this magnitude, I accept that the imperative to consult and resolve issues with third parties must be balanced against the need for efficiency and expediency in project delivery terms. These need not be mutually

exclusive concepts, in my view. I believe that the right balance has not been struck in the draft Incorporated Document.

40. The principle of fairness is an objective of the Act and the objective of the planning framework established by the Act¹. It is critical that the implementation of the MMRP approval process respects this principle, without compromising the achievement of the other similarly relevant and important objectives.
41. In this instance, the Incorporated Document removes any formal further third party involvement in the planning approvals process. This process is the final opportunity for involvement and is based on documentation relating to an unresolved design concept for the MMRP that can be best described as 'high level' or 'indicative'. Further, the Incorporated Document's 'Conditions' do not impose requirements necessary to achieve certain outcomes or avoid certain impacts. Rather, it principally sets out what approval must be sought and what is to be submitted as part of seeking such approval. It then defers to the Development Plan (DP), Environmental Management Framework (EMF), Urban Design Strategy (UDS) and/or Early Works Plan (EWP), respectively, in order to resolve the detail and outcomes to be achieved. I note that once approved, these approved documents are able to be amended with the further approval of the Minister. The provisions as drafted, do not establish a requirement to consult further (at all) in respect of an amendment to any approval pursuant to the Incorporated Document, despite requiring consultation in the initial submission.
42. I also note that Clause 5.1, 5.2 and 5.4 refer to an obligation to consult further with certain authorities/agencies (e.g. VicRoads, Heritage Victoria, etc.) and for that consultation to be summarised as part of the information submitted for the Minister to consider. Interestingly, there is no obligation pursuant to Clause 5.3 to consult with any other party in relation to the preparation of the UDS, the approval of which is a pre-requisite to the approval of the DP required by Clause 5.1. In this regard, I recommend that the consultation obligations be extended to Clause 5.3 in respect of the UDS.
43. If the Incorporated Document is to be an effective and fair provision, a decision is required as to whether it will either:
 - a) Contain clear, specific requirements of the MMRP in each of Clause 5.1, 5.2, 5.3, and 5.4 to give a reasonable level of certainty to affected parties no longer involved in the approvals process, with limited ability for change; or
 - b) If remaining vague in its specific requirements, be structured to require further consultation with key affected parties in a meaningful way.
44. In my opinion (b) is to be preferred over (a), when taking all relevant matters into account. To some extent it would be unreasonable to lock in the MMRP and remove its ability to adapt the project as the design detail evolves and the project proceeds to resolving the precise delivery arrangements for the project. In my view this undermines the effectiveness of option (a). In contrast, option (b) maximises potential flexibility for the MMRP, but with an appurtenant obligation to further consult with affected parties to ensure that changes to the project are properly scrutinised and resolved.

3.2.2 Further consultation – who should be involved and how?

45. In recommending that the MMRP be subject to further consultation through the planning approvals process, I'm conscious that this further consultation cannot become so burdensome as to unreasonably delay the delivery of such an important project, with potential associated costs to the Victorian Community.

¹ Refer Section 4(1) and (2) of the Act

46. Any further consultation through the planning approvals process must be carefully handled, efficient and targeted, to ensure it does not morph into an unwieldy and unreasonable impost.
47. I note the key project schedule dates in the EES contemplate the finalisation of the planning and environmental approvals, procurement of major construction contract etc. in the period of 2017-2018. The overall project timeframe contemplates completion of the project in 2026. Thus, I'm of the view that the propensity for 'delay' associated with further consultation through the approval process needs to be viewed through the prism of the overall project program, in relative terms. Provided any further consultation process is carefully managed and structured to avoid unnecessary delay, I am confident that the further consultation through the approvals process will not prejudice the project's target program.
48. In this regard, I note that the Incorporated Document already contemplates some form of further consultation but in a manner that simply requires certain agencies² to be consulted. It doesn't set out how this consultation is to take place or how the results/outcomes of this further consultation are to be addressed – simply reported as part of the submission documentation. I am of the view that a more rigorous consultation process to ensure the integrity of the overall process, be required pursuant to Clauses 5.1, 5.2 5.3, and 5.4 of the Incorporated Document and that consideration should be given to extending the bodies to be consulted to include RMIT University, and potentially others.
49. A key focus of the University's submission is the desire to be more intimately involved in the delivery of the project to ensure that impacts are mitigated and interruption, ameliorated. The University's interface with the City North Station is immediate, significant and the impacts over a long period of time will be extensive. Given the significant population the University serves, its contribution to the Victorian (and National) Economy and its significance in the Education sector and immediate interface with both above and below ground works, I am satisfied that there is sufficient justification to extend the Incorporated Document's consultation requirements to RMIT University, in relation to the CBD North Precinct component of the MMRP.
50. In making the foregoing recommendations, I have also turned my mind to considering how the consultation could be best managed to ensure its effective and has the potential to add value to the project's outcomes. In my opinion, an effective further consultation through the Incorporated Document should include:
- Those bodies to be consulted prior to the formal submission of any DPs, EMFs, UDSs and EWP, inclusive of RMIT University and any other body which the IAC regards as a worthy candidate for further involvement;
 - Consultation with the bodies in respect of approvals sought pursuant to Clauses 5.1, 5.2, 5.,3 and 5.4 of the Incorporated Document, to take place as part of the formal approval process; and
 - The appointment of a Standing Advisory Committee (SAC) for the Incorporated Document approval process, to (i) provide a forum for the consideration of consultation feedback from nominated bodies on the finer details of the project as they evolve, and (ii) provide independent recommendations to the Minister Planning, to assist the Minister deciding whether to approve DPs, EMFs, UDS and EAPs submitted pursuant to the Incorporated Document.
51. Appropriately, the final decision on the approvals would still rest with the Minister for Planning, however, key bodies will have been provided with a chance to raise issues, offer potential solutions and matters fully ventilated to achieve appropriate outcomes for the project and the community.

² Including the Office of the Victorian Government Architect, Council/s, the Roads Corporation, Heritage Victoria, Melbourne Water, Public Transport Development Authority, Environmental Protection Authority.

3.2.3 Specific terminology/drafting

52. In reviewing and considering the draft Incorporated Document, I have identified the following matters which should be attended to in the finalisation of the Incorporated Document:
- Consistency in terminology relating to 'approved' rather than endorsed.
 - Deletion of the following from Clause 5.1 – "Approval may be granted by the Minister for Planning to demolish, construct a building or construct or carry out works associated with the project before a Development Plan or other requirement is approved". This exemption has the potential to undermine the integrity of the development plan requirement and potentially make Clause 5.1 largely redundant. At the very least, the scope of this exemption should be curtailed by appropriate caveats.
 - Rephrasing of Clause 2 to read "...in accordance with the controls, conditions and expiry provisions in clauses 4,5 and 6 of this incorporated Document.

3.3 Is the Design and Development Overlay Schedule appropriate?

53. The proposed DDO is intended to be the ongoing planning control within the dedicated to the operational phase of the MMRP.
54. The proposed DDO schedule clearly sets out the purpose and design objectives to be achieved by the control and development affected by it. Those matters which will not trigger the need for a permit are logical and appropriately cross reference back to the general exemptions at Clause 62. Whilst it is beyond my expertise to comment on the technical assumptions underpinning the thresholds for the need for a permit, buildings and works that will trigger the need for a permit, clearly relate to the purpose and design objectives.
55. Further, the application requirements should assist the responsible authority with exercising its discretion when considering permit applications. The provision of exemptions from notice and review requirements of the Act is similarly consistent with the approach to DDOs in the CBD. The referral requirements are equally logical and necessary to provide technical assistance in the exercise of discretion and to give effect to the outcomes sought to be achieved by the control.
56. The application of the DDO will place an imposition on affected landowners. In my view, that impost would be neither unreasonable nor unnecessary. The benefits associated with the protection of the rail infrastructure significantly outweigh the impost.
57. I am satisfied that the proposed DDO is appropriately drafted, is fit for its intended purpose and will be effective in protecting an essential, critical and high value public infrastructure.

4.0 CONCLUSIONS

58. Having reviewed and considered the MMRP EES and draft Planning Scheme Amendment, I have concluded that:
- I am satisfied that the draft Planning Scheme Amendment uses the appropriate tools available under the Victoria Planning Provisions, to facilitate the project's approval, construction and ongoing operation. Whilst there are other tools available, I am satisfied that those chosen are the most effective available to advance the objectives of the *Planning and Environment Act 1987*.
 - The drafting of the proposed Incorporated Document is inadequate and requires review to ensure that appropriate safeguards are provided to protect the community (including RMIT University) from impacts during the construction phase and into the operation phase of the project. A revised approach to the Incorporated Document should be adopted, one which:
 - provides for further consultation with key bodies, including RMIT University, as part of the further secondary consent approvals required in the Incorporated Document; and
 - the establishment of a Standing Advisory Committee (SAC) to make recommendations to the Minister for Planning in respect of the further approvals sought pursuant to the Incorporated Document and provide a forum for key parties (including RMIT) to be further consulted.
 - The Design and Development Overlay proposed to protect and manage the MMRP's operation into the future is appropriately drafted and will achieve its intended objectives.

Declaration

In reaching my conclusions, 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 IAC.



Hugh W Smyth
BAppSci (Planning), MVPELA
12 August 2016

Attachment 1

-  RMIT
-  Minister Allocated
-  Leased
-  Occupancy Agreement

Date last updated : Aug 2016

