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Kathryn Mitchell
Chair, East West Link Assessment Committee
Panels Victoria
1 Spring St
Melbourne, VIC 3000

10th January 2014

Dear Ms Mitchell,

I enclose a submission to the Directions Hearing to be held on Tuesday 14th which sets out the various procedural issues that I wish to raise at the hearing. These are not issues about the merits of the case but go to the process of the Committee.

In particular I am concerned about the limits placed by section 57 that require the Committee to identify all the issues of concern within 20 days of the closure of submissions and put its request to the proponent at the Preliminary Hearing. Given more than a thousand submissions and the huge range of issues raised, this is a formidable task.

I am focusing on some very important documents that are used to justify this project and contain information essential for understanding its planning and environmental impacts.

I therefore submit it is vital that these be included in the Panel's request for additional information under section 54 of the *Major Transport Projects Facilitation Act 2009*

I also draw your attention to the various practical and feasible alternatives raised in the submissions, most notably the Southern alignment which eliminates the impacts on Royal Park and request that the Committee exercise its power under section 69 to seek a Supplementary Comprehensive Impact Statement covering this option.

I appreciate that there will be a lot of business to conduct on Tuesday but I would ask that you recognise me and provide an opportunity for me to briefly argue these points at the Preliminary Directions Hearing.

Yours Sincerely

Andrew Herington
0418 573 504

Directions being sought from the Panel at Preliminary Hearing on EW Link CIS

Andrew Herington 14th Jan 2014

OVERVIEW

This submission sets out those matters raised in my submission to the Panel which warrant the Panel making Directions at this stage and seeking additional information before the commencement of the formal Hearings in March.

There are a range of matters on which the proponent should be required to provide additional information on unclear or ambiguous matters in the CIS. It is understood that in the first instance the Committee is required by s 57(4) of the *MTPF Act* to give such notice within 20 working days of the closure of submissions (i.e. 14 Jan 2014).

It is submitted that the information requests outlined in this submission should be put to the proponent by the Committee so its response can be published as required on a website accessible to the public.

Other suggestions are made for obtaining expert advice, government agency input and independent consultant reviews; the costs of which are recoverable under s 253 of the Act.

There are a number of critical issues about the definition of the project which need to be resolved at the outset by the Committee and issues raised by the nature of submissions from other parties. In particular I draw your attention to paragraph 4.2 regarding the Minister's application to address the Panel through his Counsel.

The four broad issues that I wish to address at the Directions Hearing are:

- 1. Additional information that should be obtained**
- 2. Expert evidence that should be sought**
- 3. Definition of the project**
- 4. Issues arising from other submissions**

The author of this submission would like to address this additional information as part of his further submissions to the Assessment Committee.

1. ADDITIONAL INFORMATION THAT SHOULD BE RELEASED

The Assessment Committee should require LMA as proponent to provide it with the following documents on 18 issues essential for a proper assessment of the project and its likely planning and environmental impacts:

- 1.1 The East West Link Business case submitted to Infrastructure Australia and supporting documents. Truly commercial information not provided to the bidders can be easily redacted.
- 1.2 The full Veitch Lister Consulting (VLC) traffic analysis report.
- 1.3 The six Consultant reports that have been refused under the FOI Act (and currently before VCAT,) namely:
 1. Evans and Peck Pty Ltd *Independent peer review of scope options/ route alignment.*
 2. Arup Pty Ltd *East West link- independent peer review of transport modeling*
 3. Evans and Peck Pty Ltd *Independent peer review and assistance in finalizing the economic analysis for the East West link business case.*
 4. Evans and Peck Pty Ltd *Independent peer review and assistance in finalizing the economic analysis for the East West link business case – Part 2 Traffic model review.*
 5. GHD Pty Ltd *Westgate-Port Freight links options investigation*
 6. Pricewaterhouse Coopers *East West Link – economic modeling of enabling projects and assistance with Infrastructure Australia submission*
- 1.4 The consultant report on the choice of alignment (identified in the CIS as having considered 63 options – including variations on the Southern Alignment)
- 1.5 Documents held by the proponent in relation to the “prudent and feasible” alternatives to eight key parts of the reference design including:
 - An underpass rather than a bridge at Hoddle St for north to east movements
 - Reserving the median between Merri Creek and Gold St for future use by public transport (light or heavy rail)
 - The redesign of the western portal so it is covered to at least Manningham Rd
 - Acceptable locations for the ventilation shafts – not including a mid tunnel shaft
 - The purpose of north facing ramps at Elliot Avenue
 - The lack of an on ramp at Brunswick Rd.
 - The alignment of Part B
- 1.6 Disclosure of the base toll assumed for the purpose of estimating traffic volumes and the method of sensitivity analysis used to determine traffic volumes.

- 1.7 Further details on the method used to project future traffic volumes and the factors that have driven traffic volume reductions in this corridor over the past decade.
- 1.8 Further evidence from the proponent and PTV on the implications for the project if the full PTV network improvements were in place by 2031 as planned.
- 1.9 The Assessment Committee should seek further information from the proponent about how to protect these options for future improvements to public transport.
- 1.10 Provisions concerning truck traffic during construction and specify the routes this traffic will use, particularly those involved in the disposal of excavated material and the location for disposal of soil.
- 1.11 Additional material on the location of noise barriers and noise tubes required to achieve its proposed standard for noise adjacent to the project when operating.
- 1.12 Evidence that addresses the issue of setting standards for light spillage and fully addresses the potential impacts and risks.
- 1.13 Specific details on the proposed form of tunnel construction as this will have major impacts on the assessment.
- 1.14 The measures proposed for dewatering during both construction and operation and treatment of groundwater and whether this is to be reinjected into the aquifer or recycled.
- 1.15 Additional information in relation to the monitoring and disposal proposed for contaminated soil encountered during construction.
- 1.16 The details of the proponent's job creation estimates, the duration of these jobs, the number of permanent jobs lost and the extent to which overseas short term contractors will be employed to deliver the project.
- 1.17 Evidence to support the generalised claims that "all Victorians" will benefit from the project.
- 1.18 Evidence quantifying the claimed freight movement benefits, the predicted future use of the road for freight purposes and the rationale for this connection to the Port of Melbourne given the intention to shift activity to Hastings.

2. EXPERT EVIDENCE THAT SHOULD BE SOUGHT

The Assessment Committee should utilise its powers under its terms of reference to make directions to seek further detailed evidence from independent experts that have a direct and detailed knowledge of the project:

- 2.1 **Infrastructure Australia** has been assessing the detailed Business case for some six months and is in an ideal position to advise the Committee on the relative merits of East-West Link, and WestLink and the Metro rail tunnel.
- 2.2 The **Victorian Auditor General** should be invited to appear and provide an independent risk assessment of the project.
- 2.3 The Committee should seek expert evidence from **Ms Roz Hansen** the former **Chair of the Plan Melbourne Ministerial Advisory Committee**, responsible for overseeing the development of *Plan Melbourne* in relation to the conflict between the East West Link and the other objectives of Plan Melbourne.
- 2.4 The Assessment Committee should seek independent expert advice on the “prudent and feasible” alternatives to eight key parts of the reference design including:
 - The use of the Southern alignment
 - An underpass rather than a bridge at Hoddle St for north to east movements
 - Reserving the median between Merri Creek and Gold St for future use by public transport (light or heavy rail)
 - The redesign of the western portal so it is covered to at least Manningham Rd
 - Acceptable locations for the ventilation shafts – not including a mid tunnel shaft
 - The purpose of the north facing ramps at Elliot Avenue
 - The lack of an on-ramp at Brunswick Rd
 - The alignment of Part B
- 2.5 Evidence from **Veitch Lister Consulting** on the reasons for the differences in the separate forecasts they have provided to LMA and PTV
- 2.6 The Assessment Committee should seek an independent expert analysis of the traffic projections and maps from the proponent showing actual volumes.
- 2.7 Evidence from independent experts concerning the origins and destination of traffic and whether this is based on actual interviews, traffic counts or computer modelling.

- 2.8 Advice from **Yarra Trams** and independent experts on the claims of major improvements to north south public transport following the construction of a tunnel link including seeking specific evidence from Yarra Trams.
- 2.9 Advice from independent open space planners providing a full account of the open space issues, the impacts on current recreational uses and the proposed replacement open space to be provided.

3. DEFINITION OF THE PROJECT

The third group of issues revolve around critical problems with the definition of the project and exactly what the Committee is assessing:

3.1. Inability to transfer approvals

There is nothing in the *Major Transport Projects Facilitation Act* that refers to the method of assessment using a “reference project”. The brief mention given to this approach in the scoping statement for the Committee does not empower the legal transfer of approvals recommended by the Assessment Committee to a different project. The use of transferable “performance indicators” is not legally provided for and are not sufficiently measurable.

3.2. Need for consideration of actual project

The Assessment Committee should write to the Government asking for disclosure of any changes to the design or variations in the overall proposal before the Committee completes its deliberations. Its views on the reference project are not transferable to an alternative.

3.3 Requirement for a supplementary assessment

In the event that the bid chosen by the Government includes significant variations the Committee should request a supplementary assessment process so the specific impacts of the selected project can be properly assessed.

3.4 Determination of what is being proposed and approved

The Assessment Committee should resolve at the outset whether it is considering one or both parts of the project and how it will report on the separate impacts of Part A if Part B is delayed or never built. Clearly there is a mismatch between the CIS – which envisages two stages and a complete project and what the Government has called tenders for.

3.5 Exceptional circumstances application for Southern Alignment

The Committee should determine that the failure to properly consider the Southern Alignment constitutes exceptional circumstances and that under section 69(2) write to the

Minister seeking his approval to consider this as a prudent and feasible alternative which would have much lesser impact and greater benefits.

The Assessment Committee should foreshadow a second round of hearings will be required in mid 2014 to consider any variations in design of the submitted project and other issues arising from the Government's choice of a preferred consortium to build the project.

4. MATTERS ARISING FROM OTHER SUBMISSIONS

The following three matters, not covered in my original submission to the Panel, arise as a consequence of examining the submissions from other parties and impact on the conduct of the hearings.

4.1 Aboriginal heritage

The fact that Aboriginal heritage approvals are outside of the scope of the CIS was not made clear in publicity around the Statement. As a consequence a lot of people have made representations on aboriginal heritage matters to the wrong body.

To rectify this it is proposed that the Panel should refer all such submissions to the Manager, Heritage Assessments, Office of Aboriginal Affairs Victoria, (who is the Inspector under the Aboriginal Heritage Act 2006) and to the representatives of the Wurrundjeri people.

This will enable those matters to be considered under the separate process being undertaken to prepare a Cultural Heritage Management Plan for the East West Link

4.2 The proposed representation of the Minister before the Panel

Submission 344 has been made on behalf of the Minister for Planning by David Honey, General Counsel for the Department of Transport, Planning and Local Infrastructure.

I submit it is improper for the Minister to be represented before the Assessment Panel which was established by him to advise him as the ultimate decision maker. His representative should not appear and not be allowed to participate in proceedings by cross examining witnesses or otherwise intervening.

The objective in points 3.1 and 2 of his letter – to advise the Committee or the steps in the CIS process and the proposed changes to the Planning scheme could be done by letter or by an officer of the Department. This should not be given precedence at the outset of the Hearing.

It is particularly unacceptable that the Minister should seek to address the Committee through his Counsel at the termination of the hearing. In point 3.3 of his submission, he seeks an hour to effectively rebut evidence of other witnesses by addressing the issue of “whether the relevant parts of the CIS adequately address the applicable law criteria for granting the planning scheme amendment”.

This would be tantamount to pre-empting the decision of the Assessment Committee and effectively bypass its deliberations by the Minister telling them what the answer should be.

The Assessment Panel should expressly decide at the Preliminary Hearing to reject point 3.3 of the Minister’s submission and deny him direct representation through the Panel hearings as a clear conflict with his responsibilities as decision maker.

4.3 Representation of bidders and pecuniary interest

It is noted that some submissions come from parties who are part of the tender process for the PPP to build Part A of the project or those who are consultants or contractors who make generalised statements of support for the project.

It is submitted that it would be inappropriate for these parties to be given direct representation at the Panel and for any person being heard to disclose any pecuniary interest in the construction of the project.

4.4 Searchable database of submissions

Currently the more than one thousand submissions are only accessible on the website in the form of pdf images of the documents. It would be of benefit to the Committee and to all participants in the hearings if the submissions could be combined into a single searchable database that can be readily accessed during proceedings.

4.5 Access to wifi

It would also be of assistance to all participants if the hearing room could have access to wifi