



City of
Moonee Valley

Special Meeting of Council

Wednesday, 15 October 2014 at 5:30pm

Agenda

Special Meeting of Council

Wednesday, 15 October 2014 at 5.30pm
to be held at Moonee Valley Civic Centre

TO:

Members: Cr Jan Chantry Mayor
Cr Nicole Marshall
Cr Shirley Cornish
Cr Jim Cusack
Cr Paul Giuliano
Cr Cam Nation
Cr Narelle Sharpe
Cr John Sipek
Cr Andrea Surace

Officers: Mr Neville Smith Chief Executive
Mr Bryan Lancaster Director City Works & Development
Mr Anthony Smith Director Corporate Services
Mr Jim Karabinis Acting Director Community Services
Mr Scott Widdicombe Director Environment & Lifestyle
Ms Yvonne Hansen Manager Governance & Local Laws

Business

1. **Opening**
2. **Apologies**
3. **Declarations of Conflict of Interest**
4. **Reports**
 - 4.1 East West Link - Update3
5. **Close Of Meeting**

NEVILLE SMITH
Chief Executive

COUNCIL REPORTS

4.1 East West Link - Update

File No: FOL/12/1274
Author: Chief Executive
Directorate: Office of the Chief Executive
Ward: Municipal

Purpose

This report is to provide Council with details of;

- The Minister for Planning's variation to his Approval Decision under section 90 (1) of the *Major Transport Projects Facilitation Act 2009*, (MTPFA) for the East West Link, Eastern Section;
- Changes to the Reference Design and additional impacts;
- Linking Melbourne Authority's (LMA) project initiatives of up to \$70m to meet the Performance Requirements (PR); and
- Legal options relating to the Minister's variation of his Approval Decision.

Recommendation

That Council:

1. Note the update on the East West Link Project.
2. Receive a further report at the November 2014 Ordinary Meeting outlining the response to further negotiation with the Linking Melbourne Authority (LMA) and the State Government on Council's proposals to mitigate the effect of the project and be provided with appropriate compensation.
3. Reserve its right to a Supreme Court Challenge if negotiations are unsuccessful.

Background

This report provides an update to the report received by Council on Tuesday, 22 July, 2014. At that meeting, Council considered a report on the "East West Link, Comprehensive Impact Statement, and Minister for Planning's Approval Decision". Council also adopted the resolution outlined in **Appendix A**.

Perhaps the most significant directions provided in that Motion were Parts 6, 8 and 9.

Part 6 of the Council resolution required that Council writes to the Minister for Planning:

- “Requesting inclusion on the advisory group(s) established to consider Development Plans for East West Link and to comment on the Transport Network Impact Assessment prior to VicRoads approval.
- Seeking to enter into a Memorandum of Understanding with the Council in order to provide financial mitigation with regard to project impacts (identified in the Council’s submission to the Assessment Committee), and the management of public land holdings into the future.
- Requesting details in relation to the City Link Widening project, and seeking his understanding of how it will be integrated into the final outcomes, and construction program for the East West Link, and also seeking retention of key safety upgrades in the vicinity of the Flemington Road, Racecourse Road and Mount Alexander Road.”

Council has in fact written two letters to the Minister for Planning (7 August and 26 August 2014) in relation to the above matters. Council has not received a reply to this correspondence and has not been provided with a copy of the Development Plans or the Transport Network Impact Assessment. Council has however received a letter from the Chief Executive Officer of LMA identifying details of how Moonee Valley City Council (MVCC) is to be compensated for the impact of the project on the municipality.

Part 8 of the Council resolution noted:

“that Yarra City Council and Moreland City Council have issued a Supreme Court challenge to both the Assessment Committee’s findings and the Minister’s decision and supports the City of Yarra and the City of Moreland in their decision to bring the proceedings in the Supreme Court.”

The commencement date for the hearing is scheduled to be heard in December 2014.

Part 9 of the Council resolution noted;

“that the Performance Requirements in the Minister’s decision contain within them various “secondary consents” which call for the exercise of the Minister’s discretion, for example in LU3 and LU4. Council reserves its rights to challenge, including through administrative law review in the Supreme Court, the inappropriate exercise of this discretion”.

LU3 & LU4 relate to mitigating the effect of the project on the Moonee Ponds Creek Linear Park and Debneys Park.

The following key activities have occurred since 22 July 2014.

29 September 2014 - the Government announced that the East West Link contract had been signed. The contract has been awarded to East West Connect for a total cost of \$5.3 billion. The consortia is comprised of a number of companies and includes Lend Lease, Bouygues, Acciona and Capella Capital. The contract is a build, operate and maintain contract for a period of 25 years.

The total cost of the project is estimated to be \$6.8 billion. A separate tolling and traffic management contract is still to be awarded.

The project is 6.6 km long, consisting of twin 4.4 km long 3 lane tunnels and elevated road structures at the western end. The construction of the tunnel will commence at the western end and consist of 300 metres of cut and cover at both ends and 3.8 km of bored tunnel.

30 September 2014 - Council staff were briefed by the LMA on the winning bid and on the details of the final design. Council has been advised that the proposed works program will be as follows:

- Service relocations and on-site works to commence in late 2014
- Site establishment at the western end – around February 2015
- Excavation to commence in March 2015
- Tunnel boring to commence in May 2016
- No details were provided in relation to the construction of the interchange at the western end of the project.

2 October 2014 - the Victoria Government Gazette was released showing that on 29 September 2014, the Minister for Planning had issued a Notice of Determination to Grant Variation to Approval Decision for the East West Link (Eastern Section) Project, including variation to the Project Area and amendments to the Performance Requirements.

6 October 2014 – Council received a letter from the LMA (**Appendix B**) advising that; “up to \$70 million has been allocated through the East West Link Project to provide a wide range of upgrades to community facilities in the City of Moonee Valley. This funding is a combination of money allocated by the Victorian Government to meet the performance requirements outlined in the Minister for Planning's Approval Decision and through design solutions offered by East West Connect as part of its bid” (our emphasis).

13 October 2014 – A further letter is expected from the LMA following meetings last week providing further details of the revised design and clarification on compensation funding. At the time of writing this report, the letter had not been received.

Changes to Reference Design

The following section outlines the key changes (based on information to date) between the Reference Design (released 31 October 2013), the subject of the Assessment Committee hearings, and the final design (released 30 September 2014), which may yet be the subject of further changes as the project proceeds, the basis of the Contract between the State Government and East West Connect. The final design changes at Debnays Park and Ormond Road Off-Ramp / Brunswick Road on Ramp are shown at **Appendix C**.

Significant changes to the Reference Design are detailed below:

Racecourse Road

- New signalised intersection just west of existing CityLink allowing southbound traffic on the new arterial road to turn left (eastbound to City) or right (westbound to Flemington Racecourse/Showgrounds).
- Left turn slip lane accessing the new arterial ground level road just west of the Moonee Ponds Creek bridge and opposite the existing City Link northbound off ramp onto Racecourse Road.

Debneys Park

- New arterial ground level road connection between Mt Alexander Road and Racecourse through Debneys Park, to the west of the existing City Link and Moonee Ponds Creek.
- New shared path bridge connection from Debneys Park to Flemington Bridge Station, over the new arterial road and Moonee Ponds Creek and under the existing City Link and new viaduct structure for the future Part B connection.

Mt Alexander Road

- Road widening in front of Debneys Park and Alexander Lombard Tower to increase the capacity of the existing Mt Alexander Road / City Link on ramp signalised intersection (now including access to the East West Link tunnel and the new arterial road through Debneys Park), relocation north of the traffic signals servicing the existing Flemington Community Centre car park and relocation north of the super tram stop. This requires an additional 0.3ha of land within Debneys Park.
- New signalised intersection just west of the Moonee Ponds Creek bridge allowing traffic exiting the tunnel to access Mt Alexander Rd / Flemington Road and Racecourse Road via the new arterial road through Debneys Park.
- Widening on both sides of the existing Moonee Ponds Creek bridge.

Delhi Court / Reserve

- The relocation of the City Link on-ramp from Mt. Alexander Road closer to the Alexander Lombard Tower and Delhi Court/Reserve.
- Northbound exit ramp from tunnel higher to accommodate existing City Link and tunnel entry ramp from Mt. Alexander Road.

Travancore Park

- New primary shared off-road path between existing path and creek embankment.

Fenton Reserve

- Relocation of Essendon Community Garden to Council owned land off Hockey Lane and west of Essendon Hockey Club. The club have advised Council staff that they have had met with the LMA and it is understood Linking Melbourne Authority will not be proceeding with this and the Garden will not be relocated.

Ormond Road / Brunswick Road

- Ormond Road northbound off ramp from tunnel widened from 3 to 4 lanes at Ormond Road and appears to further impact on Brisbane Reserve.
- New southbound on ramp from Brunswick Road with access to the tunnel only.
- Widening of Ormond Road / Brunswick Road bridge on south side, from 5 lanes to 8 lanes.
- Widening the north side of Ormond Road outside Ormond Park. This requires an additional 0.07ha of Ormond Park.

Ormond Park

- New shared path on the east side of Ormond Park linking Ormond Road to Holbrook Reserve (Moreland City Council) via a new shared path bridge.
- Relocation of car parking between soccer pavilion and water tank, west into soccer field.

Pattison Street

- New park (estimated area 0.11 hectares) created from the balance of land acquired from 32, 34 and 36 Pattison Street, not required for project purposes.
- Improved shared path access from Pattison Street / Dean Street to Moonee Ponds Creek Path Trail and into Holbrook Reserve (Moreland City Council) via a new shared path bridge.

Additional Impacts of Final Design

The following section outlines the additional impacts (based on information to date) resulting from the final design:

- Additional permanent Council land acquisition – 1.703 hectares. (1.633 hectares of Debneys Park).
- Increased traffic on Ormond Rd due to new on ramp at Brunswick Road. Revised traffic modelling has not yet been provided by LMA, however the CIS indicated a 30-40% increase in traffic associated with the Ormond Road off ramp alone (CIS Chapter 7 p32).
- Pedestrian / cyclist safety is compromised by the inclusion of additional / widening of intersections and the new arterial road through Debneys Park.
- Tram travel times on routes 57 and 59 are likely to increase due to the additional traffic signals on Racecourse Road and Mt Alexander Road and due to the general increase in traffic in the area.
- Noise increases will result from the new arterial road through Debneys Park, the relocation of City Link on ramp from Mt Alexander Road closer to the Alexander Lombard Tower / Delhi Court / reserve, the higher northbound exit ramp near Delhi Court and the widened Ormond Road off ramp.
- Air quality impacts due to the new arterial road through Debneys Park.
- Loss of current creek interface with Debneys Park due to new arterial road.

- Visual impacts due the number, height and scale of ramps connecting the tunnel to City Link (south and north) and Mt Alexander Road.

Changes to Project Area

The 2 October 2014 changes to “Variation to the Project Area” (referred to earlier) includes land required for both temporary and permanent occupation. **Appendix D** includes key plans indicating the variation to the project area in MVCC.

Table 1 outlines the amendments to the project area as they affect MVCC in terms of area.

Table 1

Location	Temporary Area (hectares) - Source CIS	Final Design - Change to Temporary (hectares)	Total Temporary Area (hectares)	Permanent Area (hectares) - Source CIS	Final Design - Change to Permanent (hectares)	Total Permanent Area (hectares)
Debneys Park	1.35	-1.0	0.35	0.02	+1.633	1.653
Travancore Park	0.17	No change	0.17	Nil	No change	Nil
Essendon Community Gardens	Nil	No change	Nil	0.001	No change	0.001
Council-owned land south of Ormond Road (Brisbane Reserve)	0.02	+0.11	0.13	0.009	No change	0.009
Crown land south of Ormond Road	0.15	No change	0.15	0.15	No change	0.15
Ormond Park	0.21	No change	0.21	0.15	+0.07	0.22
Total Council Land	1.90 hectares	-0.89 hectares	1.01 hectares	0.33 hectares	1.703 hectares	2.033 hectares

Table 1 indicates that there will be an increase of 1.703 hectares of Council land permanently required to facilitate the project. The majority of the additional requirement will be from within Debneys Park (1.633 hectares) principally to accommodate the at grade arterial connection between Racecourse Road and Mt. Alexander Road.

The amended project area indicates that:

- The south-east corner of the Flemington Community Centre is within the project area.
- The project area extends further into Debneys Park to the west of the original reference design boundary.
- The project area extends further north along Mt Alexander Road as far as Mooltan Street and further east and west along Racecourse Road.

- More land is required in the vicinity of Brisbane Reserve and Ormond Road.

Mitigation Options

Council officers believe the effect of the project on MVCC can be mitigated by removing the Ormond Road north-bound off ramp, Brunswick Road southbound on ramp and the new arterial road through Debneys Park.

In correspondence to the LMA Council has requested that the requisite Transport Network Impact Assessment be provided. When the Transport Network Impact Assessment is provided, this will be assessed to determine the justification for the current inclusions. Without this assessment, it is difficult to determine the need for these elements of the project.

In the event that these elements are not removed alternatives have been prepared based on the information available at the time of writing this report. These alternatives are shown in **Appendix E**; and include

- An Ormond Road– Brunswick Road interchange, similar to the constructed interchange at Springvale Road/EastLink.
- Variation to the proposed Road Connection between Mt Alexander Road and Racecourse Road, Flemington. (Note the new shared path/bridge connection will need to be reviewed following receipt of detailed plans).

Variation to the Approval Decision

In addition to changes to the project area, the Victoria Government Gazette of 2 October 2014 made changes to the Performance Requirements of the Minister's Decision. These variations to the Incorporated Document were applied for by the LMA on separate dates:

- 17 July 2014: to amend fifteen of the Performance Requirements.
- 28 August 2014: to include additional land.
- 1 September 2014: to amend performance requirements relating to public open space.

Key changes to the sixteen Performance Requirements that have implications for MVCC include:

Performance Requirement LU1 (no net loss of open space).

This requirement required that there be no net loss of open space. Council has previously advised the LMA and Minister for Planning that this PR should ensure that there is no loss of open space in MVCC.

This has now been deleted from PR LU1. (It is noted that the Urban Design Framework contains a note to ensure no permanent net loss of public open space but this note does not have the same weight as a requirement in a PR). The implications are that there is little basis to require that Council be fully compensated for the loss of public open space over and above a financial sum, for example with provision of additional open space. The mitigation required for this project is complex. It cannot be addressed solely with a sum of money.

Performance Requirement LU3 (Moonee Ponds Creek Linear Park) and LU4 (Debneys Park).

Performance Requirements LU3 and LU4 relate to specific requirements and future mitigation works at the project’s main interface within Moonee Valley.

Council has requested to be provided with the Development Plans that were considered by the Advisory Committee established to consider them. Council has requested the Development Plans as it is expected that these would provide the overall vision and details of the East West Connect’s design that underpinned their selection to undertake the project.

Unless Council is provided with the Development Plans, Council cannot be satisfied that there will be no further change to the project design in MVCC.

It is apparent that the PR’s are open to interpretation and can be subject to further change at the Minister’s discretion.

As such without being provided with plans showing key project features such as ramp design and heights, road alignment through Debneys Park and location of works site, Council cannot be certain that there will not be future amendments to the relevant plans and approvals as East West Connect undertake further design analysis and refinement.

Performance Requirement NV1 (Noise)

Aspect	West end	East end
Applies to the following roads within the Limit of Works:	<ul style="list-style-type: none"> – East West Link – Eastern Section carriageways connecting the western portal to CityLink, and associated ramps. – East West Link – Eastern Section carriageways 	<ul style="list-style-type: none"> – Hoddle Street and Bendigo Street – North side of Alexandra Parade between Gold and Smith streets
<p>External criteria (6am to 12 midnight)</p> <p><u>Category A or B buildings currently exposed to noise levels greater than 61dB LA10(18h) (i.e. 62dB or greater)</u></p> <p>Applies to all levels.</p>	<p>63dB LA10(18h)</p> <p><u>Increase in noise level must be no more than 2dB up to a maximum of 68dB LA10(18h)</u></p> <p>Category A or B buildings All levels</p>	<p>63dB LA10(18h) in accordance with the VicRoads Traffic Noise Policy.</p> <p>68dB LA10(18h), existing roads but no decrease in existing noise barrier height.</p> <p>63dB LA10(18h) for dwellings exposed due to demolition of intervening buildings.</p> <p><u>Increase in noise level must be no more than 2dB up to a maximum of 68dB LA10(18h) in the case of Category A or B buildings exposed due to demolition of intervening buildings</u></p> <p>Category A or B buildings All levels</p>

The implications of this revision (underlined in the table) indicates noise levels for the community may exceed 63 dBLA10(18hr), and may be up to 68 dB LA10(18h) and that no attenuation measures will be constructed if noise level increases are considered to

be less than 2 dB. There is also uncertainty if this PR applies to sound attenuation for noise generated from the whole corridor i.e. CityLink and East West Link – Eastern Section as agreed by the LMA at the Assessment Committee hearing in April 2014.

There is a clear requirement for there to be an effective noise management regime for the whole corridor, particularly in the vicinity of Flemington whereby Council has demonstrated that residents currently experience noise levels of 69dB.

It is not clear whether these limits set in the above PR will be relaxed during the construction program that will require amendments to the existing City Link sound tube.

LMA letter of 6 October 2014

The LMA letter received by Council (**Appendix B**) dated 6 October 2014 stated that;

“up to \$70 million has been allocated through the East West Link Project to provide a wide range of upgrades to community facilities in the City of Moonee Valley”.

The letter advises that;

“in addition to the money provided through East West Connect's bid, the State Government has allocated up to \$15 million to supplement initiatives arising from the community consultation to be undertaken by LMA, East West Connect and the City of Moonee Valley. This brings the total available funding for Debneys Park to \$30.7 million”

Details included are;

- Debneys Park Redevelopment - \$15.7 million (new community facilities).
- Moonee Ponds Creek Trail enhanced connectivity and enhancements to Ormond Park and Holbrook Reserve - \$1.5 million.
- Moonee Ponds Creek Trail enhanced connectivity and enhancements- Travancore Area - \$2.4 million.
- Flemington Bridge Station Upgrade - access and landscaping enhancements - \$6.5 million.

The letter advises that the value of the combined project initiatives and State Government funding to meet performance requirements in the City of Moonee Valley total up to \$70 million. It could be interpreted that between \$5.0m to \$10.0m of this amount is estimated to apply to land within the Cities of Moreland and Melbourne.

A meeting with the Chief Executive Officer of LMA on Friday 10 October requested confirmation of verbal advice that this is entirely for MVCC.

Council's initial assessment of the Reference Design project indicate that in order to fully mitigate the project impacts there will need to be provision of additional open space to compensate for the loss of public open space. Further analysis and negotiation would be required to fully assess whether the \$70m (maximum) that has been outlined in the LMA letter (6 October 2014) can meet Council's expectations of ensuring that the impacts of the project are fully mitigated. This is so, especially given

that the scope of the project has changed since document 515 (Summary of Council's mitigation measures) was tabled at the Assessment Committee.

Legal Options

Part 9 of the Council resolution of 22 July 2014 noted;

“that the Performance Requirements in the Minister's decision contain within them various “secondary consents” which call for the exercise of the Minister's discretion, for example in LU3 and LU4. Council reserves its rights to challenge, including through administrative law review in the Supreme Court, the inappropriate exercise of this discretion”.

The following courses of action are considered available to Council arising from the Minister's Original decision of 30 June and subsequent decisions.

- Take No Legal Action – This would entail working with LMA and East West Connect to achieve improved outcomes for MVCC, and ensuring that full compensation and mitigation is achieved to ameliorate project impacts.
- Council takes its own Court action in relation to the Secondary Consents.
- Council join the Cities of Moreland and Yarra in Supreme Court action to challenge the validity of the project i.e. have the project quashed.

Appendix F outlines an assessment of these options including reasons, risk to MVCC and potential costs involved with each option.

Discussion

The East West Link Project and its effect on Moonee Valley City Council is one of the most significant issues facing this Council in recent years. Careful consideration needs to be given in terms of how Council progresses this issue. The three options presented in this report all involve further significant work, negotiation and expert consultancy / legal expenditure.

Recent discussions with officers from the City of Moreland and the City of Yarra indicate their wish is not for Moonee Valley to join their legal action to quash the Project at this point in time as the legal process to join that action may not in fact be possible or will delay the Hearing set for December 2014 considerably.

Realistically only two options are available to Council. The first is for Council to continue to negotiate with LMA to establish why the significant changes to the project design have been included and whether they are required, and further to negotiate for adequate compensation for any loss of land and amenity to the residents of our municipality. This option does not provide Council with legal options to compel negotiation or disclosure of reasons for variations to approval decision and there may be further amendments to Performance Requirements.

The second option is to take legal action in the Supreme Court against the Minister for Planning which would include discovery of any documents supporting the changed design. Through discovery Council will be able to assess whether the Minister for Planning, LMA and VicRoads have adequately assessed the changes proposed or in fact have just unreasonably adopted the design provided by the successful tender.

This option would involve considerable cost and there is no certainty that the design as currently approved will change. If such action is taken it ought to be done sooner than later.

In discussions with the Chief Executive of VicRoads held on 9 October 2014 and the Chief Executive Officer of LMA on Friday 10 October 2014, both have provided assurance that such justification and evaluation to support the design changes has in fact been checked.

As mentioned previously, a further letter is expected from the Chief Executive Officer of LMA prior to the Special Council Meeting on 15 October 2014. This letter is expected to confirm that in relation to Debneys Park, the \$15.7 million provision in the contract with East West Connect (EWC) and the \$15 million contribution from the State Government is for the design and construction of new replacement community facilities in accordance with a Master Plan to be developed between MVCC and LMA, that the \$30 million allocation regarding public open space is specifically for works within the City of Moonee Valley.

Another important consideration in determining the way forward is our future relationship with this State Government if re-elected. Taking legal action against the State Government and the Minister for Planning needs to be considered in light of the future cooperation of the State Government in terms of funding for not only mitigating the effects of this project but for a whole range of other projects that Council works with the State Government to achieve. Whilst everyone expects that the State Government should deal with all Councils in an objective manner, I cannot be confident that taking legal action against the State Government may in fact jeopardise Council's potential for ongoing cooperation in the future.

If Council were to take the path of a Supreme Court action, the following alternative recommendation is provided:

That Council instruct legal counsel, including a SC/QC to draft and then issue Supreme Court proceedings to challenge inter alia, the legal basis of the Minister's decisions to assume to himself certain powers after embarking upon a Comprehensive Impact Assessment (CIA) process and decisions of the Minister relating to the exercise of secondary consents under that process.

Implications

1. Legislative

There are direct statutory impacts for Council. The Minister for Planning will be the Responsible Authority for all approvals within the designated Project Area.

2. Council Plan / Policy

Key impacts were outlined in Council's submission and evidence presented to the Assessment Committee.

3. Financial

Depending on the option taken in relation to future legal action there are various potential costs to Council. These are outlined in **Appendix F**.

Conclusion

Taking into account the overall risk involved in legal opposition to this project, it is appropriate to recommend to Council that we continue to negotiate with the State Government to seek an understanding of the need for the changes proposed and to further explore with them alternatives as identified in the report.

If such negotiation is unsuccessful Council reserves its right to Supreme Court Challenge. Council will be provided with a report in November to identify the outcome of negotiations and give guidance on this issue.